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P U B L I C H E A R I N G

before

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

SENATE BILL 683

(Imposes mandatory terms of imprisonment without eligibility
for parole upon persons convicted of certain drug offenses)

February 19, 1986
University of Medicine and Dentistry
Medical School Building
Newark, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Frank X. Graves, Jr., Chairman
Senator Paul Contillo, Vice Chairman
Senator John P. Caufield
Senator C. Louis Bassano
Senator Joseph Bubba

ALSO PRESENT:

Geraldine Weltman
Office of Legislative Services
Aide, Senate Law, Public Safety
and Defense Committee

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SENATE, No. 683

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator GRAVES

AN ACT concerning the penalties for manufacturing, distributing
or dispensing controlled dangerous substances and amending
section 19 of P. L. 1970, c. 226.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 19 of P. L. 1970, c. 226 (C. 24:21-19) is amended to
2 read as follows:

3 19. a. Except as authorized by this act, it shall be unlawful for
4 any person knowingly or intentionally:

5 (1) To manufacture, distribute, or dispense, or to possess or
6 have under his control with intent to manufacture, distribute, or
7 dispense, a controlled dangerous substance; or

8 (2) To create, distribute, or possess or have under his control
9 with intent to distribute, a counterfeit controlled dangerous
10 substance.

11 b. Any person who violates subsection a. with respect to:

12 (1) A substance, in a quantity of less than one ounce including
13 any adulterants or dilutants, classified in Schedules I or II which
14 is a narcotic drug, or in a quantity of one ounce or more with there
15 being included less than 3.5 grams of the pure free base Schedule
16 I or II narcotic drug, is guilty of a high misdemeanor and shall be
17 punished by imprisonment for not more than 12 years, a fine of
18 not more than **[\$25,000.00]** *\$100,000.00*, or both; or

19 (2) A substance, in a quantity of one ounce or more including
20 any adulterants or dilutants, classified in Schedules I or II which
21 is a narcotic drug, provided that there are included at least 3.5

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted February 24, 1986.

**—Senate amendments adopted March 6, 1986.

22 grams of the pure free base Schedule I or II narcotic drug, is guilty
 23 of a high misdemeanor and shall be punished by imprisonment for
 24 up to life, a fine of not more than ~~[\$25,000.00]~~ \$100,000.00, or both;
 25 or

26 (3) Any other controlled dangerous substance classified in
 27 Schedules I, II, III or IV is guilty of a high misdemeanor and
 28 shall be punished by imprisonment for not more than five years, a
 29 fine of not more than ~~[\$15,000.00]~~ \$50,000.00, or both; or

30 (4) A substance classified in Schedule V is guilty of a misde-
 31 meanor and shall be punished by imprisonment for not more than
 32 one year, a fine of not more than ~~[\$5,000.00]~~ \$10,000.00, or both.

33 *c. Any person convicted of a crime punishable under *~~[para-~~*
 34 *graphs (1),]* **paragraph** (2) *of subsection b. with respect to
 35 *heroin or with respect to coca leaves and any salt, compound, deriv-*
 36 *ative, or preparation of coca leaves, and any salt, compound,*
 37 *derivative, or preparation thereof which is chemically equivalent*
 38 *or identical with any of these substances, except that the sub-*
 39 *stances shall not include decocainized coca leaves or extractions*
 40 *which do not contain cocaine or ecogine,* or *any person convicted*
 41 *of a crime punishable under paragraph* (3) of subsection b. *with*
 42 *respect to lysergic acid diethylamide or phencyclidine* shall be*
 43 *sentenced to a term of imprisonment. The term of imprisonment*
 44 *shall include the imposition of a minimum term during which the*
 45 *person shall be ineligible for parole. *~~[The minimum term for a~~*
 46 *conviction punishable under paragraph (1) of subsection b. shall*
 47 *be three years imprisonment.]** *The minimum term for a conviction*
 48 *punishable under paragraph (2) of subsection b. *with respect to*
 49 *heroin or with respect to coca leaves and any salt, compound,*
 50 *derivative, or preparation of coca leaves, and any salt, compound,*
 51 *derivative, or preparation thereof which is chemically equivalent*
 52 *or identical with any of these substances, except that the substances*
 53 *shall not include decocainized coca leaves or extractions which do*
 54 *not contain cocaine or ecogine,* shall be **[10]** **not less than*
 55 *one-third nor more than one-half of the sentence imposed by the*
 56 *court or three** years **[*of* imprisonment]** **, whichever is*
 57 *greater, except that if a person is sentenced to life imprisonment,*
 58 *the minimum term shall be 25 years**.* *The minimum term for a*
 59 *conviction punishable under paragraph (3) *of subsection b. with*
 60 *respect to lysergic acid diethylamide or phencyclidine* shall be*
 61 ***not less than one-third nor more than one-half of the sentence*
 62 *imposed by the court or** one year **[*of* imprisonment. If a*
 63 *term of imprisonment is imposed pursuant to the provisions of*
 64 *section 26 of this act (C. 24:21-26), the term of imprisonment*

65 without eligibility for parole mandated by this subsection shall be
 66 doubled[]]** *whichever is greater***. **If a term of imprisonment*
 67 *is imposed pursuant to the provisions of section 26 of this act (C.*
 68 *24:21-26), the term of imprisonment without eligibility for parole*
 69 *mandated by this subsection shall be doubled. A mandatory mini-*
 70 *imum sentence under this subsection shall be waived if the county*
 71 *prosecutor and the assignment judge agree that a defendant eligible*
 72 *for a mandatory minimum sentence under this subsection has co-*
 73 *operated with law enforcement officials in their investigations and*
 74 *that a waiver of the mandatory minimum sentence is therefore*
 75 *appropriate under the circumstances.**

76 ***d. (1) Whenever a person who is a user of a controlled dan-*
 77 *gerous substance as defined in this act is convicted of an offense*
 78 *under this section that carries a mandatory minimum term of im-*
 79 *prisonment without parole eligibility, the court, upon notice of the*
 80 *prosecutor, may on motion of the defendant or the court and with*
 81 *the consent of the defendant, waive the mandatory minimum term*
 82 *of imprisonment without parole eligibility and place the defendant*
 83 *under supervisory treatment subject to reasonable terms and con-*
 84 *ditions required by the court and by law.*

85 *(2) Upon a first violation of a term or condition of supervisory*
 86 *treatment the court in its discretion may, and upon a subsequent*
 87 *violation of a term or condition of supervisory treatment the court*
 88 *shall, proceed to impose upon the defendant the mandatory mini-*
 89 *imum term of imprisonment without parole eligibility required*
 90 *under this section minus the time spent by the defendant in a resi-*
 91 *dential treatment facility, if the supervisory treatment includes*
 92 *referral to a residential treatment facility.*

93 *(3) A term of supervisory treatment imposed under this sub-*
 94 *section shall not include referral to a residential treatment facility*
 95 *for a period greater than the period of the mandatory minimum*
 96 *term of imprisonment waived by the court.*

97 *(4) This subsection shall not apply to any person previously*
 98 *convicted of an offense under paragraph (2) of subsection b. of this*
 99 *section with respect to heroin or coca leaves and any salt, com-*
 100 *pound, derivative, or preparation of coca leaves, and any salt,*
 101 *compound, derivative, or preparation thereof which is chemically*
 102 *equivalent or identical with any of these substances, except that*
 103 *the substances shall not include decocainized coca leaves or extrac-*
 104 *tions which do not contain cocaine or ecogine, or under paragraph*
 105 *(3) of subsection b. of this section with respect to lysergic acid*
 106 *diethylamide or phencyclidine.***

1 2. This act shall take effect immediately.

CRIMINAL JUSTICE

Imposes mandatory terms of imprisonment without eligibility for
parole upon persons convicted of certain drug offenses.

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SENATOR FRANK X. GRAVES, JR. (Chairman): Good morning, and please be seated. Please cooperate with the no smoking. One of our Senators is adverse to smoke, Senator Bubba, and he cannot stay in the same room where there is smoking. Out of consideration for him, there will be no smoking.

SENATOR BUBBA: Thank you, Senator Graves. I appreciate your concern.

SENATOR GRAVES: Also, if there are any law enforcement officers in the room, we have had a telephone call from Cary Edwards' wife that she hasn't seen him since January 8, and if he does show up, please have him call home and reverse the charges. (laughter)

We are going to start on time. We will first handle a couple of bills that have to do with public safety, and by then, probably, the other two Senators will have arrived.

I would like to introduce the legislators who are here. Incidentally, the legislators I am introducing are cosponsors -- equal sponsors -- of the legislation we are taking up today. Senator Bubba is on my extreme right. He is the congenial, friendly Senator from Passaic County.

SENATOR BUBBA: Only with Senator Graves.

SENATOR GRAVES: Senator Caufield, who is also the Fire Director of the City of Newark, is here, as is Assemblyman Girgenti, who is sponsoring similar legislation in the Assembly. I have asked the Assemblyman to sit in with us, so he can be kept abreast of the target date for the adoption of such statutes.

The first bill we will discuss is, again, a jointly sponsored piece of legislation, which somewhat amends our \$25 million police act of last year, and our \$8 million fire act. What it does is, it frees a municipality, under certain circumstances, from meeting its obligation in getting State aid. Translated, it means nothing more in the State budget.

It leaves the \$25 million that the Governor has put into the budget, which Cary announced two weeks ago Saturday, and it leaves the \$8 million in. It does not touch the bills.

What it does is-- A lot of municipalities have not been able to meet its requirements financially, and have not been able to take advantage of the bill. In some other municipalities-- Some municipalities are going to have to peel out of the bill because of the fiscal crisis being brought about by the Gramm-Rudman bill, or whatever it might be called when it is finally broken down and gets to the Supreme Court. Regardless, much Federal aid is going to be denied a lot of municipalities in this State -- in the State itself -- meaning that either the municipalities will be faced with curtailing severely important services, such as police and fire, or raising taxes to the point of being confiscatory.

So, it has no impact whatsoever on the State fiscal obligation of the two bills, but loosens up the ability of a city or a municipality -- big or little -- to gain its right to appeal and seek these moneys, because many municipalities -- I understand one-quarter in this State -- have not been able to take advantage of the bill because they have not been able to meet the requirements of the bill as it now stands.

So, that's basically what the bills are about. Is there anyone who wishes to be heard on either one of the two?

SENATOR BUBBA: I have a couple of things to talk about. The basis for the funding mechanism for paid fire, volunteer fire, and paid police, was based on the premise that urban aid communities receive funds consistently for police and fire -- which they should -- but suburban communities, communities that do not have the same problem as the urban communities, never seem to be able to participate in these funds.

Based on that premise -- which I brought up at the Committee meeting, by the way -- we then established that

communities outside of the urban aid communities would be able to receive these dollars for additional police, fire, etc. -- volunteer or paid -- on the basis of a 50% match, which, you know, I wasn't crazy about at the time, but a half a loaf is better than none.

If it is your intention that communities will now not have to put up the 50%, I will be in wholehearted agreement -- if it is all of the communities. But, if it is based on the codicil that they have to provide need, I don't really want to get involved in that. All I would like this bill to say-- Well, that's not how the bill-- (answering a comment by unknown person) You know, that's not the way I read the bill. The bill kind of presents itself in a manner that if there is a financial crisis, the--

SENATOR GRAVES: You didn't see the amendments, Joe.

MS. WELTMAN (Committee Aide): There are amendments.

SENATOR BUBBA: There are amendments that will change it that will--

MS. WELTMAN: Yes, yes.

SENATOR GRAVES: It is just what you said first.

SENATOR BUBBA: All right. Where are the amendments?

MS. WELTMAN: They are in there; they should be right next to the bill.

SENATOR GRAVES: The only thing is, as I said to you, Barry Skokowski just called, and Michael Cole from the Governor's office, and both said that police cars have to come out.

SENATOR BUBBA: Why do the police cars have to come out, because we passed another piece of legislation?

MS. WELTMAN: That's the police bill.

SENATOR CAUFIELD: What did they tell you, Senator?

SENATOR GRAVES: What Community Affairs said to us was, "Let's put something in it so that you can also buy police equipment from this bill, such as a police car," but Michael

Cole and Barry Skokowski said this morning that that part has to come out.

SENATOR BUBBA: Why?

SENATOR GRAVES: Well, because it is the Governor's intention that these police be visible. He feels that putting them in a police car isn't going to give that visibility -- the street interpretation.

SENATOR BUBBA: Which I agree with. Suppose the communities can't replace existing police cars, which is really the thrust of the problem that I have heard from the varied communities, that because of budgetary constraints, they can't replace existing vehicles.

SENATOR GRAVES: And, also, under the original Safe and Clean, you can buy police cars.

SENATOR BUBBA: Right.

SENATOR GRAVES: But, if we are going to run into a problem, we'd better not set ourselves up to lose what we're going to try to gain. And, if the Governor is going to be adamant in his position, and he becomes so key factor to this, particularly-- His input on this legislation made it finally happen, after years of trying to get it to happen. Speaking as a Mayor, I think we would gain a lot more the other way. We are guaranteeing that at least there will be police officers. We are guaranteeing that there will be a body out there to fight, not necessarily the vehicle to get the body to the problem, but the body will be there.

So, I would say let's meet them-- If we can win some of the other points, let's leave that one part out and look for that another year.

MS. WELTMAN: With the amendments, non-urban aid towns, in addition to being able to use the money for vehicles, would be able to use the money for other upgrading of patrol activities, not necessarily hiring police officers. There have been other bills introduced, too, that would allow them to use it for things like training.

SENATOR GRAVES: Well, you're allowed to do it for training. You are allowed to use the present money for training. You are allowed to completely buy the policeman's uniform, pay his pension, train him, buy him a bulletproof vest, pay for his gun, buy his badge. That's all in the bill, as it originally was.

SENATOR CAUFIELD: Mr. Chairman, when you talk about buying uniforms, are you talking about volunteer companies or all companies?

SENATOR GRAVES: Well, first let's handle the police bill. Let's take the police first because-- I agree with you somewhat on the fire question, because we want fire departments to buy equipment. We want them to, because every fire department has to spend a lot of money on every fireman this year.

SENATOR CAUFIELD: Yeah, but if you look at the amount of money we are going to be spending -- that is going to many of the volunteer companies, they couldn't buy two spare tires, nevermind a vehicle.

SENATOR GRAVES: Okay. Well, let's first handle the police.

SENATOR BUBBA: When does this money become available? Is this money available--

SENATOR GRAVES: July 1.

SENATOR BUBBA: In the new budget?

SENATOR GRAVES: Yes.

SENATOR BUBBA: Not in the--

SENATOR GRAVES: No. This takes effect July 1 under the new \$25 million.

SENATOR BUBBA: So, to repeat, because I want to be clear on this, if a community receives-- Let's say its coffer was going to receive about \$100,000 if they matched it with \$100,000. Now they will just receive the \$100,000 without the match money?

SENATOR GRAVES: But they must put it for police personnel.

SENATOR BUBBA: Yeah. All they need do is apply for the money?

SENATOR GRAVES: Correct.

SENATOR BUBBA: Frank Graves, this is landmark legislation. It will be my pleasure to support it.

SENATOR GRAVES: Okay. John?

SENATOR CAUFIELD: Well, frankly, I have mixed emotions on the whole thing. I'm not sure we are really accomplishing what we set out to accomplish in the first place. In other words, the number of police officers on the force would be decreased. (negative response) Of course it would. If we get \$100,000 from the State, and we no longer have to put up a match, well then the part that we don't put the match up for has to come out of someplace, doesn't it?

SENATOR GRAVES: The city, the town, not the State.

SENATOR CAUFIELD: Yeah, I understand that, but the net result is still less policemen.

SENATOR BUBBA: Well, if you presume that most of the people applied for the funds -- the matching funds. It is my understanding and, from what Frank said this morning, his understanding, that most communities did not apply for the funds because they didn't have the match.

SENATOR CAUFIELD: I don't think he said most; I think he said 25%.

SENATOR GRAVES: Well, that's a lot.

SENATOR CAUFIELD: It's not most, though.

SENATOR GRAVES: No, but it's a lot.

SENATOR BUBBA: Well, most of them in my district, if not all, did not apply for that reason.

SENATOR CAUFIELD: Yeah, all things considered, I am going to support the bill, but -- as a fire director, and the same thing for a police director -- I just have some reservations.

SENATOR GRAVES: All right. Second, any public input? (no response) Roll call. This is on the police.

MS. WELTMAN: On Senate Bill 1546, with amendments.

SENATOR GRAVES: Right.

MS. WELTMAN: Senator Bubba?

SENATOR BUBBA: Yes.

MS. WELTMAN: Senator Bassano?

SENATOR BASSANO: Yes.

MS. WELTMAN: Senator Caufield?

SENATOR CAUFIELD: Yes.

MS. WELTMAN: Senator Graves?

SENATOR GRAVES: Yes. (Whereby motion is passed unanimously.)

Senator Bassano has just joined us. Good morning.

SENATOR BASSANO: How are you doing?

SENATOR GRAVES: Okay. We will now consider the fire bill. That may not be as easy. Tell about the amendments to the fire bill.

MS. WELTMAN: This is for Senate Bill 1551. Like the police bill, this bill makes changes in the program under which funds are made available to municipalities to provide additional fire services, to help the municipalities have budgetary flexibility when they face Federal cutbacks. As amended by the Committee, the bill would eliminate the requirement that a municipality provide matching funds from other sources. And, under the current law, all communities, even those with volunteer fire departments, have to put up some matching money.

It also permits all towns, no matter what type of fire department they maintain, to use the funds received under the program to purchase vehicles that cannot be purchased under the bonding law. What that would mean would be cars would be permitted; fire apparatus would not be permitted.

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SENATOR GRAVES: But, hoses, ladders, cars -- something that is directly related to fighting fires but is not a bondable item--

MS. WELTMAN: Right. Okay.

SENATOR GRAVES: Okay.

MS. WELTMAN: Finally, the bill permits the Director of the Division of Local Government Services to waive the requirement that a municipality has to maintain its fire force at a certain level -- at the level that it maintained on January 31, 1985 -- in order to get the money, if he determines that there is a budgetary crisis in the municipality.

SENATOR GRAVES: Which might very well be forthcoming to a lot of municipalities either this year or, certainly, next year.

SENATOR BUBBA: Is that language in the police bill as well, that they don't have to keep the force level up?

MS. WELTMAN: If there is a budgetary crisis.

SENATOR BUBBA: That really flies in the face-- That is what I was driving at before. That really flies in the face of what we tried to do with this legislation. Now I'm really plugged into what Senator Caufield said. I didn't understand what you were saying before.

You know, our purpose was to increase the police and fire forces, not to subsidize the existing forces. So, in supporting the last piece of legislation, I was supporting the funds for increased police, not for supporting the existing budget. And the same with this. If this money were added to, then I would support it, but under the other conditions, I would have to withdraw my support of the other bill, and this one.

SENATOR GRAVES: Let me explain the problem as best I can. Municipality A, in order to entitle itself to take advantage of these two pieces of legislation, maintains a level of January 31, 1985. Municipality A now loses "X" numbers of

hundreds of thousands of dollars from revenue sharing from the Community Development Block Grant, and belongs to the Passaic Valley Sewer Commission, as an example, and has to increase its payment by a half a million dollars.

The only place that a municipality has some flexibility in its budget, is public works and public safety. Everything else is fixed. Pensions are fixed. Aid to education is fixed. The gas and electric bills are fixed. Its insurance bills are horrendous, but fixed.

The municipality is then faced with the crisis that it has to take a half a million dollars out of its public safety bill, and a half a million dollars out of its public works, in order to survive a fiscal problem.

The first thing a municipality has to do then, is fire every policeman that it put on through this particular bill, in order to get, first, at its -- what is left. That is what I mean by a crisis.

And, before a city wrecks itself and loses the 25 or 30 policemen or firemen it has under this bill-- It would have to fire every one of them in order to get to what its level was on January 31, 1985. That is why I am saying it is essentially important for us to leave that there, so that the municipality would only have to prove to the Department of Community Affairs-- It couldn't do it on its own. It would have to prove to them that they would lose the whole program, plus more police and firemen would have to be let go in order to survive its fiscal crisis.

So, I think it is essentially important that we do leave that there. A municipality can't pull a fast one, because it has to convince Skokowski's office, whatever-- What is that called?

MS. WELTMAN: The Division of Local Government.

SENATOR GRAVES: It has to convince the Division of Local Government that it has a real crisis, and that ace in the

hole is standing there before the city erodes all of its public safety.

SENATOR BUBBA: All right. So, let me redefine this in my mind. With respect to communities which do not have budget crises -- communities which do not have a budget crisis -- they will be getting these funds without a match for additional police or additional fire equipment, or what have you.

SENATOR GRAVES: Exactly.

SENATOR BUBBA: Well, I guess I have to compromise and accept it, if I am going to be able to receive funds for towns which never received them before. I'll compromise and allow the existing towns to maintain. So, I will support the legislation.

SENATOR BASSANO: Question.

SENATOR GRAVES: Go ahead, Senator Bassano. Senator Paul Contillo has joined us.

SENATOR BASSANO: I have a community in my district -- my own hometown -- which is considering closing one of three firehouses and reducing its fire fighting force from 120 to 80 members. How would this bill--

SENATOR GRAVES: That's a paid force?

SENATOR BASSANO: It's a paid force.

SENATOR GRAVES: Wow.

SENATOR BASSANO: It is considering doing that based upon a study that was presented to the governing body. How would this bill affect that community?

SENATOR GRAVES: They would have to convince the Division of Local Government that this fiscal problem they have would waive the right of them maintaining Level A in order to get to Level B by getting the money. In other words, they could not make the decision locally. They could not play hocus-pocus with public safety. They must convince a fellow by the name of Barry Skokowski that it is a true problem. If he,

in his opinion, said, "Oh, no, the city can afford this, you're just saying this," then they would lose the right to participate.

SENATOR BASSANO: Uh-huh.

SENATOR GRAVES: Any further questions?

SENATOR CAUFIELD: Mr. Chairman, I don't really have any questions, but just to make my position clear, I am going to support the legislation because I am concerned about what is going to happen in the municipalities next year. But, I have very mixed emotions.

You know, I don't know that we should be saying that communities don't have to put up something. Maybe we ought to change the amount, I don't know. You know, it is like when we have people -- and it is a lousy analogy, I guess -- but people buying homes-- They take care of the homes. Where they don't have to put any investment in it, well, history kind of tells us they don't take care of them so good.

I also raise the same concern I did before, that we are going to have less fire fighters than we had before. I don't have any doubt in my mind about that. You know, I have watched my own department over the years decrease by about 350 fire fighters -- some 1000 and something, down to 700. And, you know, that hasn't been bad, because at the same time we decreased building fires by 50%.

But, I don't know. When I hear Senator Bassano talking about a town I know very well-- If they go from 120 fire fighters down to 80, how many does that give them on duty at one time? They have a four-tour, four platoons, and assuming nobody works in arson, and nobody works in fire prevention, and nobody works in administration, the most that would ever give them is 20 men.

SENATOR GRAVES: Yes.

SENATOR CAUFIELD: Twenty men, you know, excluding vacations, sick leave, personal days, etc. Twenty men on duty at any one time -- that's ridiculous.

SENATOR GRAVES: He's talking about your town, Senator Bassano.

SENATOR CAUFIELD: I'm sure Senator Bassano agrees with me.

SENATOR BASSANO: I agree with you. I think we need another firehouse, and they want to close one.

SENATOR CAUFIELD: You are probably talking about having 14, you know, taking vacations, again, sick leave, personal days, and whatever time -- compassionate leave -- is required. So, you are probably talking about having 12 or 15 people on duty at any one time. Our experience tells us if you have one, single building fire, you have to call in help.

SENATOR BASSANO: I think that is something maybe this Committee should look at with regard to depending on other communities to come in for backup assistance. It seems that a lot of the communities have been depending more and more on mutual aid, something that they shouldn't be doing, in order to supplement their local services, particularly in the area of fire fighting services.

SENATOR CAUFIELD: There is nothing wrong with mutual aid, providing it is not part of your plan. I mean, it should be something that happens when you have emergencies. We responded, last year, 35 times to our contiguous communities. Fortunately, we didn't need any additional help ourselves. But, you know, I just suspect that some towns are taking the view that, "Well, we can always call Trenton." "We can always call Newark," or, "We can call somebody else," and that is a terrible way to pre-plan. You know, that ought to be part of your emergency plan when you come up to a very unusual situation -- but not normally.

You know, again, because of my concerns about what is going to happen to the cities, I have great trepidation. I think anybody who is looking at next year knows that the cities face one -- and the State-- I don't blame it on the State

because I am sure the State wants to do the things it has done in the past, and maybe even improve upon them. But the way I look at it right now, next year is probably going to be the worst year maybe in history -- certainly in many, many years -- for municipalities.

So, again, I am going to support the bill, but I have a great many reservations.

SENATOR GRAVES: Okay. It has been moved and seconded. Moved by-- Was it Senator Bubba? (affirmative response) Seconded by Senator Caufield. Discussion? (no response) Roll call.

MS. WELTMAN: Senate Bill 1551, with Committee amendments. Senator Bubba?

SENATOR BUBBA: Yes.

MS. WELTMAN: Senator Bassano?

SENATOR BASSANO: Yes.

MS. WELTMAN: Senator Caufield?

SENATOR CAUFIELD: Yes.

MS. WELTMAN: Senator Contillo?

SENATOR CONTILLO: Yes.

MS. WELTMAN: Senator Graves?

SENATOR GRAVES: Yes.

We will now take up the main reason why most of us are here. In the State of New Jersey today, our drug problem has become of epidemic proportions. It is a problem that some people maybe thought years ago was related only to the cities with impacted populations which necessarily had all the problems that go with governing and being part of city life. I think that has radically changed. I don't think there is a municipality in this State -- and there are over 500 municipalities -- that is free of the problem of drugs.

It does not recognize race, color, or creed, rich or poor or moderate income. It strikes at all. It has caused the death of our children. It has changed the structure of human

life in so many homes that it would be an exaggeration in your minds if I mentioned how many homes were affected by it, but they are.

In yesterday's paper alone-- I want to point out -- and this is only one paper in the whole State -- a headline, "Four Nabbed in Clifton Drug Bust." That is one story. Number two: "Narcotic Suspect Linked in Dumont House Burglary in Upper Bergen County." Number three, "Man Faces Drug Charge in Ridgefield." All three of them would be considered-- One is datelined Englewood Cliffs, one Ridgefield, and one Clifton. None of them could be considered, by any stretch of the imagination, impoverished municipalities. Quite contrary to that.

In today's newspapers, which Senator Bubba and I brought down, on one of the front pages, there is a story about a trial which took place in Passaic County yesterday, in which a city narcotics detective testified on the high quality of cocaine which Demaris Torres (phonetic spelling) of Summer Street is accused of receiving in Christmas cards from Peru, which had a street value of \$32,000. Can you imagine that? Cocaine coming in from Peru in Christmas cards.

So, it recognizes no holidays; it recognizes no race; it recognizes no color; it recognizes no creed. But drugs and alcohol are killing our kids, breaking up our families, and are having such an impact on this State, that four of us related together have equally cosponsored what we consider a tough drug law. The fifth Senator on the Committee -- not necessarily a sponsor -- wanted to get more input before he made a decision on which way he would be supportive. The four of us who are sponsoring this legislation are: Senator Bubba, Senator Bassano, Senator Caufield, and me, Senator Graves. We also have six other Senators, from both sides of the aisle, who are cosponsoring it.

It is not to be recognized as a Democratic solution or a Republican solution to the problem. It says that we recognize that this is one of the basic problems in this State that is out of control, that no matter how hard our efforts have been to deal with it, we have lost, or we are losing. The arrests we make are not necessarily making an impact on our various municipalities to bring about the results which we hoped we would see.

Last July, an organization called P.I.C.O., after having a half a dozen church meetings throughout the City of Paterson, had a huge rally in which they brought 500 people to a meeting. I'm not sure if Joe Bubba was there; I think he may have been. But, a lot of legislators from Passaic County were there. They brought some of the highest talent in the State. They brought the person in charge of Federal drug enforcement for the State. They brought Colonel Pagano, the Superintendent of the State Police, they brought Joseph Falcone, the prosecutor of that particular county, and all related enforcement agencies. At the conclusion of that meeting, we all felt that the best thing to do was to tackle drugs as we tackled the gun law. The gun law is five years old today in the State of New Jersey and, as a result of that gun law, of the 13,000 people in State prisons, approximately 1400 are there under the gun law.

Colonel Pagano, the former Attorney General, and the present Attorney General have been extremely supportive. I have letters to Cary Edwards, in his position as Counsel to the Governor, which were sent to more than one person in the State, in which they were trying to get the Governor's office to intercede -- to reduce the mandatory sentencing for using guns in the commission of a crime. He has pointed out, in response to those letters, the support of -- not the lack of support, but the support of -- mandatory sentencing. Colonel Pagano has, on more than one occasion, said that one of the biggest

impacts on lessening crime in this State, has been the mandatory sentencing aspect.

Very recently, the State Police had a drug raid in an area I am from, where some 47 indictments were processed, and 42 people were picked up at five or six o'clock in the morning over the next day, at which time Colonel Pagano disclosed to the 100 law enforcement officers there, his full support, and now firm belief, that mandatory sentencing is the one route that we have not tackled yet that we should tackle.

This is the second hearing on this particular aspect. Most of us seated in this room in an elected capacity feel that there is no other alternative left, except to become as strict with those who are dealing in drugs and selling drugs as we are with those who use guns in the commission of a crime.

I believe that 50% of the crime in this State is related to drugs, by those who have to get the money to support their habits. The number of deaths, in my opinion, has reached the point where it far exceeds people being killed by gun or knife -- those who are being killed by drugs, or death caused in relation to drugs.

For that reason, this Committee, working as a unit, has caused this bill to be put into this posture. At the direction of Senate President Russo, we are having this hearing, in this particular part of the State, to gather as much information as we can, and to invite the Attorney General, and his assistant in charge of criminal investigation, to appear before the Committee. The first witness, because of a time constraint, will be the Attorney General of the State of New Jersey. General Edwards?

I think it would fair, first, to give any other Senator here a chance for some opening remarks. Senator Bubba, we will start with you.

SENATOR BUBBA: Well, not to repeat any of the remarks which were made by our Chairman, it is obvious to all present

that certainly among the constituents in New Jersey, drugs do present a serious problem in our society. I think Senator Graves ought to be commended for the efforts he has put forth with respect to this legislation. I am extremely supportive of it, and will do all in my power to assist on this side of the aisle.

SENATOR GRAVES: Senator Bassano, another cosponsor.

SENATOR BASSANO: No comments at this time. I am sure I will have something to say later on.

SENATOR GRAVES: Senator Caufield, another cosponsor.

SENATOR CAUFIELD: Mr. Chairman, I would like to make my position clear, first of all, on mandatory sentencing. As a basic thing, I oppose mandatory sentencing, although I did cosponsor the gun bill, and I gladly cosponsored this bill. These are exceptions in my kind of thinking. I have enough faith in the judiciary that they ought to have leeway, normally, in deciding what kind of a punishment should be granted.

For example, if Senator Contillo and I both committed the same crime, and he has a record -- I'll pick on you, Senator Contillo -- all the way down the end of his arm, and this is the first time I have ever been in trouble, I think the judge ought to have some leeway in deciding what the sentence should be. Not so for drug pushers. I am not talking about the person who has drugs for his own use. This bill, I think, does not include him. That kind of person is truly a sick person. We ought not be giving him a mandatory sentence. We ought to be doing something to rehab him, and to make him a useful citizen again. I know how difficult that is.

Certainly, I would not be for a mandatory sentence for that kind of a person. The kind I have been reading about, where a State trooper locked up a guy with \$11 million worth of drugs, and so forth-- If I object to this bill in any way, I don't think three years is enough. I would be more for 10

years, or 20 years, or whatever else you want to give them, because what you are dealing with there are real hoodlums, uncaring hoodlums. They are really the scum of the earth. We all know what they are doing. I would wager that if we went around -- we're certainly not going to do it -- but if we went around this room, we would find that everyone, either in their own immediate family, or among their acquaintances, has people who are victims of these hoodlums we are talking about.

So, if we can remove those people from the streets for as many years as you want, I certainly would support that 100%. I am going to support the bill, providing I hear a little bit more from a few people who are here today, who can enlighten us on some other aspects of it, to make sure we are covering the right things. Again -- I said this so many times -- everyone is concerned about communism, but there is no doubt in my mind that the drug threat to this country is greater than communism.

I am glad we are having this hearing today, and I commend Senator Graves and Assemblyman Girgenti for introducing the legislation. I certainly will not only vote for the bill, with the right provisions, but I will talk for it and support it in every way possible.

SENATOR GRAVES: Senator Contillo?

SENATOR CONTILLO: Even though I am not on the bill as a sponsor, the Chairman has graciously allowed me to say a word about the bill.

I would really like to hear what the Attorney General has to say. Of course, this is an easy bill to sponsor, but I have a concern. Senator Caufield, I thought you really described the problems I have very well. But it seems, as I read the bill, it says in the beginning that if you -- in line 5 -- that if you possess-- I think you can go to jail for 12 years. I am concerned about how the bill deals with victims, not only the victims of the people who are mugged and robbed

and murdered, but the victim-- The person who takes the drugs himself, in my opinion, is really a victim. I separate the user from the seller and the dealer. My reluctance to initially sponsor the bill is until we clarify how we deal with the problem of separating that victim -- the person who is using the drugs -- who really needs help, as opposed to a 12-year jail term.

So, I would like to see -- as this hearing goes on -- how we deal with that problem. Then I would hope I could join the rest of my Committee in supporting it.

SENATOR GRAVES: Thank you, Senator. Okay, Gerry Weltman will outline the bill we are talking about today.

MS. WELTMAN: What the bill does is impose mandatory terms of imprisonment without parole eligibility on persons who commit crimes which involve manufacturing, distributing, or dispensing certain narcotics and other controlled dangerous substances. It also raises the maximum fines that can be imposed for these offenses.

The bill requires that a person convicted of manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute, or dispense an ounce or more of heroin or cocaine must be sentenced to imprisonment without parole eligibility for between three and 25 years.

The current law authorizes the court to sentence such a person to a maximum term of life imprisonment, but imposes no minimum and, in fact, imposes no requirement of imprisonment at all. The bill requires that such a person be sentenced to imprisonment, first of all, and imprisonment without parole for between one-third and one-half of the term imposed by the court, or three years, whichever is greater. If life imprisonment is imposed, the minimum term without parole under the bill is 25 years.

The bill also requires that a person convicted of this offense with the drugs LSD or angel dust must be sentenced to

imprisonment without parole eligibility for between one year and two and a half years. The current law authorizes the court to sentence such a person to a maximum term of imprisonment of five years. This bill requires that the person be sentenced to imprisonment without parole for between one-third and one-half of the sentence imposed by the judge, or one year, whichever is greater.

There are also amendments being proposed to the bill by the sponsor, which would require that the mandatory term of imprisonment imposed under the bill's provisions be doubled, if the person is convicted of possessing the drug with the intent of distributing it to a person 17 years of age or younger.

SENATOR GRAVES: Good morning, Mr. Attorney General.

A T T O R N E Y G E N E R A L W . C A R Y E D W A R D S :
Good morning, Senator.

SENATOR GRAVES: I don't think there is a member of this Committee who does not believe that you share and support our hopes to lessen the epidemic impact that drugs are having upon our State. In fact, this past summer, after we finished the P.I.C.O. meetings, I contacted your office, and asked the Governor to give consideration to setting up a completely different strike force -- completely unrelated to the State Police, that would have nothing to do in the State except drug enforcement.

You wrote me on August 1, saying that the Governor had directed the Attorney General to contact me, which his assistant, Donald Belsole, did on a half a dozen occasions. But, there seemed to be some problem internally getting it to happen. I see that one of the first things you ordered is that it is going to happen. I think all of us are grateful for that. We hope we don't have to wait until July for it to happen. We hope you will be able to implement it much earlier than that.

We now look to you for guidance, for your thinking, how you feel it should be done, what legislation you feel is needed to make it more effective, and the professional input that you and your staff can give us. Attorney General Edwards.

ATTORNEY GENERAL EDWARDS: Thank you very much, Senator. It is a pleasure to be here to talk about a subject matter that is probably one of the most important, not only law enforcement, but societal problems facing the State of New Jersey. I think you and the other Senators have adeptly pointed out the magnitude of the problem.

You are absolutely right in your recollection of my position on mandatory sentencing involving the Graves' Act and, also, my support in the Legislature and vote for Title 2C when it was passed in the late '70s, which strengthened the courts' hand in the sentencing process. I think it has been a very effective tool for law enforcement in the broader sense.

There is no question that the reduction in our crime rates in the State of New Jersey is directly related to a whole host of activities involving the sentencing and the surety of sentence and the speed of our trial process. It has resulted in a significant growth in our prison population, a growth that has almost doubled in the period of time that this Administration has been in office. It has gone from about 5000 or 6000 to almost 13,000 in the prisons, at a cost of hundreds and hundreds of millions of dollars, by the way, in construction and continued maintenance, which is one of the related problems to mandatory sentencing.

I support -- and the professional staff in the Department of Law and Public Safety, the Division of Criminal Justice, the State Police, all support -- the concept of mandatory sentencing for the sale and distribution or intent to sell and distribute controlled dangerous substances. The issue is really more complex than that. You can't mandate sentencing -- make sentencing mandatory and put more people in jail unless

you have the jail cells to put them in. You can't look at this particular issue in isolation, is what I am really telling you.

We found with the Graves' Act -- again, in the broader, conceptual way -- that mandatory sentencing increases the number of trials. It reduces the numbers of pleas, which increases the number of prosecutors and investigators who are sitting in courtrooms trying cases, as opposed to those who are pleading out in particular circumstances, which taxes the capacity of our already taxed law enforcement agencies in enforcing -- investigating the various crimes that are being committed out there.

The problem with drugs is a pervasive one; it is a broad one. It is not simplistic in its approach. The solutions to it are not simplistic. I don't think this Committee, nor government, can approach it in a simplistic way, and I don't think we have, in the broader sense. There are two schools of thought in the interdiction of drugs and the solution to that problem. Should we dry up the source? Should we go to the streets and attack the users in a whole host of ways -- educationally, or in a rehabilitative sense, or in a criminal sense, if that is necessary? Or, should we go to the upper echelons of that particular operation? Should we attack, or try to attack the sources of that distribution system, or should we go to the middle distribution level? Should we have mandatory sentencing? Should we have drug rehabilitation? Should we have more money for investigators?

One of the problems we have in New Jersey -- one of the reasons I wanted to put together that drug enforcement task force -- was, I don't think we knew all the answers to all those problems from a criminal enforcement standpoint. Title 24 needs revision, not just in the sentencing area, but Title 24 that deals with drug enforcement and drug problems in New Jersey needs a good, solid re-look. How do we address that problem? How does this Committee address it? How does the

Department of Law and Public Safety address it? You are looking at one particular component. You are looking at four particular controlled dangerous substances. You are looking at heroin and cocaine; you are looking at angel dust and LSD. You are looking at the sale and distribution of those, and you are looking to make a mandatory minimum sentence out of the arrests and convictions that are made in that area.

Our statistics in New Jersey cannot tell you how many people -- not right at this moment -- we might be affecting by this. How many more jail cells do we need? How many more trial days are going to be involved? What does this do to our speedy trial system, which both the Department of Law and Public Safety and the court system have worked years to try to put together? We know that justice must be swift and it must be certain. You are dealing with the certainty of it. The speedy trial process is the swiftness of it. That is a very complex program -- our speedy trial program. What does mandatory sentencing of these four categories of drug sellers and distributors mean to that particular system? I can't give you the answer to that today. I will be able to give you the answer to that in a short period of time.

How many more prison cells are we, in fact, going to need? Some of the statistical analyses -- and I am saying purely speculative statistical analyses -- indicate that we may have as many as 50,000 people involved in the sale and distribution of the levels you may be referring to in this particular bill. If our arrest levels in that hold true, that we are picking up 16%, or 20% of those particular individuals, that is 10,000 individuals we are talking about. We do not have 10,000 drug distributors in our prisons right now. You are talking about, maybe, a \$200 million bill to build the prison cells to meet this. You are talking \$100 million, perhaps, in costs to maintain those particular prisons and that particular population.

It does you no good, as it didn't do Governor Rockefeller in New York in the late '60s any good, to make mandatory sentencing of certain drug offenses a necessity, if there is not a jail cell to put them in, if there is not going to be a swift trial to guarantee that they go to jail quickly, and if we can't keep them in those particular jail cells. We must deal with this problem and the issue of mandatory sentencing in a much more comprehensive way.

When I recommended to the Governor and the Governor recommended in his budget the Task Force on Drug Enforcement, one of the provisions we sent over to OMB, which the legislative budget committees at this particular point in time will be reviewing over the next couple of months-- One of the provisions we put in it -- the objectives to be achieved if we get those particular appropriations, was to review Title 24 to determine the possibility of initiating mandatory sentencing requirements for specific Title 24 violations, and to establish a more uniform sentencing policy for all the defendants convicted of Title 24 offenses.

What I am saying to you is, there are more violations of Title 24 involving drug use, abuse, distribution, and sale than you are covering in this particular bill. We need to look much more deeply into Title 24 and the whole sentencing process, to be sure it is, in fact, the deterrent it is supposed to be. I don't believe we can deal with a bill as simplistic as this one, although I do support the concept.

In preparation for this particular task force and this particular budgetary request, which for this budget year is \$2.9 million -- not a lot of money in the totality of a \$9 billion plus budget -- we believe this will probably grow to \$5 million or \$6 million by the FY '88 budget. We believe that by June or July of this year, in preparation for the implementation of this task force, we can come back to this particular Committee -- to you and to all of the sponsors of

this bill, and Assemblyman Girgenti in the Assembly, and any of the other interested committees -- with a package of recommendations that we believe will be comprehensive, and which will include mandatory sentencing for the four categories of offenses that you have outlined, but one that will be comprehensive in its attempts to deal with the uniformity of sentencing for all Title 24 offenses, to deal with the issue of repeat offenders, who we believe -- as the Senator pointed out -- should be more stringently dealt with than the first-time offender, to deal with the issue of our speedy trial program, which is absolutely essential to the success of our drug enforcement, and to deal with the issue of the number of prison cells and be able to predict what they will be and what those particular costs should be, so that you deal with it in a comprehensive way.

I, too, believe that the impacts on society -- the costs of that particular program, the sentencing costs, the prosecutorial costs, the investigatory costs, and the jail cells that will be necessary-- We must guarantee that everyone who commits a crime in this State, which we have done for the last four years, can, in fact, be achieved. I believe there is nothing more important than attacking the drug issue, not just because it also hits organized crime and its dollars, but because it is the cause. Some people have speculated to as much as 50% of all other crime is interrelated somehow with drug use and drug abuse, by the user, by the seller, and by organized crime. Other people have indicated that that is closer to 25%. Whatever it may be, the crux of our law enforcement problems and the safety of our citizens in this particular State is directly related to our success in dealing with drugs. We have proven conclusively, in my opinion, that mandatory sentencing in specific areas has a vital role to play in preventing the expansion of criminal activities and, in fact, contributing toward the reduction of it.

But, don't for a minute think that that, in and of itself, is the answer to the problem. The problem is far more comprehensive and complex than that. My Department and Don Belsole, who is my First Assistant and the Director of the Division of Criminal Justice, have been working on this problem not just since I arrived on the scene, but for the last year. You properly pointed out that this is not a new issue for us. We are walking one step at a time. First, we need to put together this particular task force that has more to do than just do investigations. It has a larger responsibility. It should bring together the criminal law enforcement community under one umbrella when it attacks drug enforcement, drug use, and drug abuse, so that the data that we don't have today, the data that I need to be able to answer the consequences of what this bill means, the data we need to deal with the Title 24 sentencing problem, the data we need to catch the criminal who is pushing brown heroin in Hudson County and brown heroin in Salem County-- It is not presently being done.

All of those pieces have to come together, and if we try to address it in a simplistic way, or lead the public even to believe that that simplistic solution of either mandatory sentencing or even this task force is the answer to drug enforcement in New Jersey, we are only fooling them, and ultimately we will fail in our attempt to really address the most important problem facing New Jersey.

On that note, both my First Assistant, Don Belsole, and myself have to be in Atlantic County this afternoon, so I asked him to come up with me to fill in any of the items -- statistical, factual, or other information that he may have garnered over the last few years as Director of Criminal Justice, to supplement my particular testimony. Then, both of us will be prepared to answer any and all questions you may have with reference to this bill and the much larger program I think you are trying to address.

D O N A L D R. B E L S O L E: Gentlemen: Senator Caufield, I share your concern with mandatory sentencing; I always have. I made an exception with the Graves' Act because I believed in it at that time. It has proved out to be the way to go. But, I believe judges should have the discretion in sentencing people who appear before them for criminal violations -- having been convicted of criminal violations.

Let me share with you some statistics. To give you some idea of the magnitude of the problem-- We all know it is bad. I mean, you can't go on the street now and get any citizen and ask him, "Do we have a bad drug problem?" -- but that he is going to say, "Yes." But, let me give you an idea of how bad it is.

We did a survey in 1984 of students in this State, and we came up with the following statistics: Two out of every three students who answered the questionnaire we sent out -- the Division of Criminal Justice -- reported they had used illicit drugs -- two out of three. Fifty percent of the students who used these drugs indicated they used drugs other than marijuana. Students reported that they commenced using drugs in the tenth grade. Our survey shows an increase of drug usage from 1980 to 1983 from 42% to 46%. It's going up.

Parenthetically, intelligence that we have from the State Police and FBI shows us that cocaine, unlike any other product or any other substance in society, has risen in quality and gone down in price over the last five years. Now, if you talk about supply and demand, that tells you something about this industry. It is a growth industry.

We found out from the students that-- Seventy percent of them said, "We would not, perhaps, use drugs, if we had something to fear." We found out from the survey that they were not sure they would get caught, and they felt -- and some of the students who responded were very responsible -- that the word ought to get out that if you get caught with drugs, something is going to happen.

The survey started me thinking that something has to be done. Senator Graves, you and I have spoken about this. One of the reasons I am staying in government is because I feel the necessity, vis-a-vis the drug problem and organized crime. Under the new Attorney General's leadership, I think we will achieve much. But, never, never, never make the mistake of saying that if we have mandatory sentencing, it is going to clear up the drug problem. It is not going to happen that way.

It seems to me that the following must be done; this is what we are working on. I am going to ask you to kind of wait on this for two, three, or four months until we can put it together. Number one, I think the time has come to take Title 24 and move it into Title 2C, to bring with the movement into 2C all the sentencing provisions of Title 2C -- mandatory sentencing, presumptive sentencing, extended terms, and the like. No longer can we have the drug statutes outside of our criminal code.

I think we ought to consider mandatory sentencing. I think we ought to consider it in terms of sales to children, and I was glad to see this amendment here this morning. Certainly, they are actually killing our kids, and I think your words were chosen well. I think we ought to consider not in ounces -- over an ounce, under an ounce, 3.5, quality, etc. -- I think we ought to start considering pounds, someone with 500 pounds, as opposed to one ounce -- the mules, if you will, who come through this State with 100 pounds, 200 pounds, 300 pounds. Maybe the word ought to get out that if you are a mule coming through New Jersey, you are in trouble. So, we are going to consider that also.

I think we ought to consider specific types of offenders. All right, what if you have someone -- a possessionary type of offense -- who is a three- or four-time loser? Should we consider a mandatory provision for that individual? I think not, but it should be considered.

Therefore, we need an overview of the entire drug code, which we are in the midst of doing now, and will continue to do as quickly as we can. But, we won't do it in a Band-Aid way, or a quick-fix way. It is going to take a lot of time and a lot of talent.

I think you ought to always keep in mind that if you are going to cure the drug problem in this State, or in the United States, education is the vehicle. You know, drug problems become problems of law enforcement. It is a societal problem which the police officer is to solve for us. I believe that without the work and the effort and the success of law enforcement over the last 25 years, the drug problem would have brought this society to its knees. There is no question in my mind about that. But, the police officer can just do so much.

I think we are going to have to educate our children when they are in the third, fourth, and fifth grades. I hate to tell you, but I think that by the time they get to seventh and eighth grade, it is too late. I am working now -- and the Attorney General is with me -- on this with the Commission to Deter Criminal Activity, using the best minds we can get to put together some type of an educational package for the Department of Education, to educate this generation, and the next generation, so perhaps in the next 5, 10, 15 years, as we change the direction of this State, vis-a-vis drugs, we will also have a drug-free late teen, early 20s group that will inherit the result of all the work law enforcement will do.

Lastly, the drug task force. That is going to coordinate and work with and assist everyone in this State. It is going to do one very important thing, and this is the last thing I will tell you. The General and I met with the head of the FBI this week, and Colonel Pagano -- not together, separately -- and both told us -- and I support this 100%-- I did not say "not together" because they wouldn't be together; it just happened to be different days.

No one knows the magnitude of the problem in this State -- no one. So, as part of this task force -- I would like to tell you this because it will give you hope; it will give the citizens hope -- we want to form a data bank. Every time someone is arrested-- Every time there is a lab analysis of confiscated CDS, it goes into the bank. Every time someone is arrested again, it goes into the bank. Every time a seizure occurs, it goes into the bank. So, with the computer technology we have now, we can assess the problem, where it is. Is it in your city or your city? What needs to be done? What type of drug? What individual is becoming involved in it? This is organized crime in both the traditional sense and an organized crime sense.

So, we are not late in the game. We have been knocking our heads against walls for years. But, I think we are on the right path. I think you are going to have to be patient, which is hard to ask when we have this tremendous problem. But, we are moving in the right direction; I firmly believe that. I think we can get back to you before June or July of this year with a package for you.

Thank you.

SENATOR GRAVES: Okay, a couple of things. This Committee was responsible for two important pieces of legislation. One was raising the drinking age. That came out of this Committee; it was our bill. And the second thing was mandatory sentencing for those who use guns.

I think everybody will agree they both have been proven in the best interest of this State. It doesn't mean that you still don't get alcohol and have a bad accident, because we had a very bad accident in West Milford. There is some belief that it may have been related to alcohol; and four kids were killed at age 17. The final word isn't in on that. It still means that some people will take a chance and give alcohol to kids, and it still means that some people will take a chance at using a gun in the commission of a crime.

But there are stiffness and penalties out there, and the significant thing that the Attorney General said was that he fortified this Committee's belief that it is of epidemic proportions, because he said there are probably 50,000 people in this State in relation to making drugs available. If there were 50,000 people in this State who had typhoid fever, you'd close the State down -- the bridges, the tunnels, the turnpikes, and everything else -- and open whatever institution was necessary to deal with it. We would be dealing with it. We wouldn't say, "Wait a year until we try this trial and that trial." We would do everything we could to stop it and to make sure that it was confined, riddled (sic), so our State could become a healthy State again.

You said something else that was significant to me. You said, of those you portrayed as responding to your inquiry, 70% would stop if they had fear. That's what this bill is. That is what this bill is. You are admitting that, number one, you are in favor of mandatory sentencing to some degree -- you admit that -- but you're worried about the jails to put them in. But, you are not worried about the hospitals to carry our kids into. I withdraw that; you are worried. That is wrong for me to say. I don't know you as well as I know Cary Edwards; he is worried. He's got kids, like we all have kids. He is worried. He lives in suburbia, where it is affecting his town, as it is affecting my town.

But you also have to worry-- Are you going to continue to worry about the hospital beds, the morgue keepers, the funerals you are going to have your kids go to if you don't do something, and do something dramatic now, instead of talking about it? You're talking about that-- You have no reality about how bad it is. Your handle is of epidemic proportions when you say 50,000. When you say two out of every three kids have taken a crack at it -- maybe not the ones we're talking about; maybe only in the marijuana category -- you're talking

about a significance that, if they had something to worry about, they wouldn't.

When you say, you know, you want to get the 100-pounders, you know, we get off the boat on that one, because nobody is going to carry it through the streets of Paterson, or Oakland, or Morris County, or Wayne -- with the 100 pounds on their backs. But, we're worrying about the guy who has both pockets full, who is making it available to somebody, who is going to make it available to our kids this afternoon at our high schools and at other particular places.

So, I can't understand, in view of the fact that you have substantially been supportive of how bad the problem is in New Jersey-- It's easy for us to take-- Sure, it should never have been in the Health Department; 24 is Health, 2C is you. It belongs there. I can't see how anybody would want to venture anything, say, you know, it isn't so.

In the meantime, we need something constructive. We need a message. We need a thorough implementation in everybody's mind in this State that we're tough. You know, judges, if they have to sit on Saturday and Sunday to save our kids, the same as a doctor has to be available when our kids come in from an overdose to the hospital on a Saturday or Sunday, so, let them sit. For \$70,000 or \$85,000 a year, let them be there. Let the prosecutors get in there. If it is a disproportion, like our hospitals would have to stay open, let our courts stay open. Let's go seven days a week. If we have to put two shifts on, let's put two shifts on. You have 1000 jail cells that are about to open in Newark. They are going to open this year, to the best of my knowledge. I read where you proposed putting 500 more cells in Camden County.

MR. BELSOLE: They are all full.

SENATOR GRAVES: What?

MR. BELSOLE: They are all backed up in--

SENATOR GRAVES: No, I thought you were putting 500 more in.

MR. BELSOLE: They are all full.

SENATOR GRAVES: No, you haven't even built them yet.

MR. BELSOLE: But, they are full. There are people to go in every one of those. They are to meet the existing overcrowding problems, sir.

SENATOR GRAVES: Fine. If we have to build another prison-- It is going to be cheaper for us to build a prison than it is a hospital ward. How the hell do we say to these families who are losing their kids-- How do we say about the 20- to 30-year-old that we found two dead on Union Avenue in the City of Paterson within the past month? Two people killed, one by a hit-and-run, drug related, and another guy laying in his car on Union Avenue, a block away from your house -- two blocks away from your house, Nancy (speaking to someone in the audience). How do we say that even though they were 20 and should have known better, they both died of overdoses?

ATTORNEY GENERAL EDWARDS: Senator, we are not saying that. We're saying that we need to do-- We tried to give you a comprehensive picture of what the whole problem is. We are saying we want a mandatory sentencing bill; we want that mandatory sentencing bill to be comprehensive and deal with the right categories of drug use, so it is effective. We want you and this Committee, and the Legislature, to understand that it does you no good to pass a mandatory sentencing bill unless you deal with the other collateral spin-off problems. We are not asking this Committee to even deal with it. The entire Legislature has to deal with it, though. Rockefeller tried to make -- in the late '60s -- mandatory sentencing for drug users. He had no jail cells to put them in, and it fell apart. That is a worse crime on this particular issue than anything else you can do, because then the public will really believe that you can't enforce your own laws. So, we only--

SENATOR GRAVES: General, how many times have we seen commercials of Mayor Koch slamming a jail cell on a gun user in New York? They did away with it. How come ours works?

ATTORNEY GENERAL EDWARDS: Because we provide the cells.

SENATOR GRAVES: Right.

ATTORNEY GENERAL EDWARDS: Three hundred million dollars a year is the budget for Corrections to presently house 13,000 prisoners. If you do a 20% conviction of the 50,000 number that I am talking about, you are going to add 10,000 people. That's \$300 million. Where is that \$300 million coming from -- that is an operating budget; that is not construction -- to take care of those particular criminals you are going to lock up? We should put the \$300 million up. We should provide the jail cells for every single person who commits a crime in this State. We've done that; you've done it. You voted for it over and over.

SENATOR GRAVES: I sponsored the jail bill.

ATTORNEY GENERAL EDWARDS: Absolutely. Every time it was necessary we've done that. But, let's do it so we don't have an overcrowding problem, so we're not looking at a Federal judge looking down our throats and telling us he is going to let these prisoners out on the streets, which is what they are doing around the country. Not in New Jersey, but that is what they are doing around the country because they weren't prepared to provide for it.

The only thing I ask this Committee to do is to allow us to look at 24, and then come back to you. We might be able to give you even stricter sentences for other kinds of drug-related offenses and a consistency in sentencing that you don't presently have. It would be far more effective than trying to move this bill through within the next week or two. We can do that. We can do it together, and we can do it in a matter of months, not in a matter of years. All we need is just a little bit of time to put the pieces together, and we will really do something that will mean something for decades in New Jersey, not something that is going to look good in the

newspaper and be a deterrent for a year because we're pretending we have mandatory sentencing, when we can't deliver it.

If we are going to do it, let's do it right so the mandatory sentencing sticks, so that the prosecutors are there, so that the judges are working over the weekend, nights, and whenever they have to -- as long as we can pay the bill to keep the building open and supply the prosecutors to do that -- and the investigators, so they're still out arresting people and not sitting in courtrooms. But you've got to look at those two components of this problem, and 24, and move it to 2C. That is not something that can be done in a matter of a week. It can be done in a couple of months. The only thing we're telling you is, within the law enforcement community, we've got certain things we think you should address if you really want to solve the problem. Or, do you want to throw a Band-Aid at it? This is a Band-Aid. This is not going to even address the problem.

SENATOR GRAVES: I totally resent--

ATTORNEY GENERAL EDWARDS: I don't mean that personally.

SENATOR GRAVES: I totally resent it when you say we are throwing a Band-Aid. I totally resent that you feel that this is happening today. I introduced this bill two years ago.

ATTORNEY GENERAL EDWARDS: In 1984, Senator. I remember exactly when you introduced this bill -- January, 1984.

SENATOR GRAVES: Yeah. It has taken me a long time to get the public support that we finally got, that has moved a lot of you people to the position where you are.

ATTORNEY GENERAL EDWARDS: Absolutely; absolutely.

SENATOR GRAVES: Senator Bubba?

SENATOR BUBBA: Well, I really take exception to the comment about something that would look good in the paper, because I've got a newspaper article here, and with respect to the strike force that you put together, General, I understand

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-- based on this article -- that 32 State troopers, seven State investigators, one lieutenant, and four detective sergeants are being placed on with this \$5 million; 10 deputy attorneys general to prepare prosecution for the case; and, at some point, \$1.5 million in surveillance equipment. That particular section of this \$5 million-- I don't know how much money you have left over after you talk about these particular people -- personnel and equipment. Purely and simply, I think that is an example of what looks good in the paper. It is going to lead to the arrest and conviction of a number of drug traffickers, I would hope, and I think that we can safely say, based on the past history of the State troopers, that they are going to be successful.

If they are successful in their efforts, where are you going to put the prisoners? You have already accounted for an investigation force; you have accounted for a prosecution force; you have accounted for surveillance equipment, but you have not accounted for where you are going to place the prisoners. I think that when you talk about \$300 million, it's a drop in the bucket in this growth industry that exists in the State of New Jersey.

I think that maybe what we ought to be doing with this bill, or maybe the recommendation that ought to be coming from the General's office, is to provide an easier means for you to confiscate property and moneys related to drug activities. If we do that, I can assure you -- it's my feeling -- that we will never have a monetary problem in the State of New Jersey with respect to prisons. Confiscate the money, build more prisons, put them in jail, and let's solve the problem. I really can't see-- I am prepared to wait a certain period of time, but I can't see waiting for any protracted period of time because the money is not going to drop out of the sky to develop these prison facilities.

In all of the travels or speaking engagements or questioning sessions that I have been at, I have never heard any individual ever complain to me about the amount the State is paying for prisons or to keep prisoners behind bars.

With that in mind, I think we ought to be looking a little closer at what we're saying here.

MR. BELSOLE: Well, I-- Let me just--

SENATOR GRAVES: Senator Contillo?

MR. BELSOLE: Excuse me. You're on the right track. You know, I don't know why this is turning into a debate. We all agree. All right? There is no question in my mind that the way to go is to plug into this system -- mandatory sentencing. So, you know, I get this feeling we're debating. We're not debating; we all agree.

SENATOR GRAVES: Well, it sounded like it.

MR. BELSOLE: Well, okay. Maybe it is a problem with words at times.

SENATOR GRAVES: It sounded like you're afraid we're going to have to build more prisons.

MR. BELSOLE: No, no. I have been in favor of more prisons since I got into this business. All right? I am not afraid of anything. I am just suggesting to you -- and please understand this -- that this is not an armed robber who may commit four, five, or six armed robberies, or 10 armed robberies. This is a seller of drugs who might have 100 transactions a week. If you are going to have mandatory sentencing and we haven't got a jail to put them in, or we have a backed up court system that can't reach them and convict them, they are selling. All right? It's not one armed robbery or two armed robberies. He's selling and he's selling and he's selling, and he's poisoning. We agree 100%.

All I'm saying is, we ought to take the whole thing, look at it, put it together as a package, link it with the task force, link it with education, link it with the Federal people,

and have a blueprint for success in this State, and I think this is what we all want.

SENATOR GRAVES: Senator Contillo?

SENATOR CONTILLO: Yes. Will you explain to me, Attorney General Edwards, how there is a greater burden on the courts with mandatory sentencing? It would seem to me that if I knew I was faced with a jail sentence for a certain crime, I would be much-- It would be much easier for me, much quicker-- I would much quicker opt for a reduced sentence or a plea bargaining, as opposed to going to court. I don't understand that.

ATTORNEY GENERAL EDWARDS: When you have someone who has a minimum sentence which he is going to serve, and take the Graves Act, which you see here--

SENATOR CONTILLO: It's upon conviction, too, isn't it?

ATTORNEY GENERAL EDWARDS: Yes. We have found -- and Prosecutor Falcone and Director Belsole can probably tell you more specifically-- If you are arrested for possessing a drug -- a gun in committing a crime, you know you are going to jail for three years. There is nothing to plea bargain, so your only chance is to go to trial. So, you are going to try to beat it in a courtroom because you can't get the sentence reduced. You can't promise to cooperate and do something else, because the sentence is mandatory.

SENATOR CONTILLO: If you are convicted.

ATTORNEY GENERAL EDWARDS: If you are convicted.

SENATOR CONTILLO: But, if you plea bargain, you go in with a--

ATTORNEY GENERAL EDWARDS: Oh, no, plea bargaining is not-- You can't plea bargain. You can't plea bargain a minimum mandatory sentence. You would have to change the charge away from that drug-related sentence, but you can't plea bargain it away. If you have a gun in your hand and you are convicted--

SENATOR CONTILLO: And you're convicted--

ATTORNEY GENERAL EDWARDS: If you commit any other crime with a gun in your hand and you're convicted--

SENATOR CONTILLO: If you are convicted--

ATTORNEY GENERAL EDWARDS: If you commit any other crime with a gun in your hand, you cannot plea bargain that away.

MR. BELSOLE: The plea is conviction.

ATTORNEY GENERAL EDWARDS: The plea is conviction. A plea is, "I plead guilty." That's what it means. You walk in and say, "I plead guilty." A guy is prepared to go in and plead guilty--

SENATOR CONTILLO: To a lesser crime, though.

ATTORNEY GENERAL EDWARDS: Sometimes, yes.

SENATOR CONTILLO: And, therefore, that mandated sentence won't take--

ATTORNEY GENERAL EDWARDS: Or for a whole host of other reasons.

SENATOR CONTILLO: Okay.

ATTORNEY GENERAL EDWARDS: But what happens -- and I'm not saying we shouldn't; I think we should-- We should have a mandatory sentence. If it takes longer, people are going to say, "Look, I'm not going to plead. I'm going to try that case to try to beat it when I get there." Fine. Let them do that. We'll convict them, and we'll put them in jail for the three years in the Graves case, or for a minimum of three years or one year that is provided under this particular bill, or a third of whatever they're sentencing on. But you're going to have-- The reality is, you're going to have more trial time; more prosecutors spending more time sitting in a courtroom to try more cases.

I think we have -- please now -- 93% of all of our cases. On non-minimum mandatory cases, you'll have maybe 80%, maybe 75%. We'll be able to tell you that number so you'll

know how many more days a prosecutor has to sit in court, and an investigator, and the detectives who have to testify in those cases, who wouldn't otherwise be there. They would be out trying to arrest other criminals. Those are all spin-offs. You should know what those spin-offs are. We should be able to tell you what they are, so that when you make your judgment, you can also be prepared to take the other collateral action that is necessary to support it.

I am not trying to get into an adversary relationship with this Committee, but--

SENATOR CONTILLO: That wasn't an adversary--

ATTORNEY GENERAL EDWARDS: No, I know it wasn't, Senator.

SENATOR CONTILLO: My next one might be.

ATTORNEY GENERAL EDWARDS: Nor were Senator Graves and Senator Bubba. It was not mine or the Department's attempt. We agree with the bill. We agree with the concept. We just ask you to do a little bit more than is in this particular bill to reach other problems that you are not addressing in this bill -- because they are impacted by it -- so that you and the rest of the Legislature, when you vote on the bill, can take that other collateral action.

SENATOR CONTILLO: Would you please clarify one other thing you said?

ATTORNEY GENERAL EDWARDS: Sure.

SENATOR CONTILLO: You said that about 50% of the people in jail now are there for drug-related problems -- drug-related crimes.

ATTORNEY GENERAL EDWARDS: I said-- Well, that's speculation. We don't have the numbers.

SENATOR CONTILLO: You said to me-- I wrote down what you said.

ATTORNEY GENERAL EDWARDS: I said that 50% of the criminals are involved -- speculation, this is-- Surveys and various things show that 50% are somehow also related to drugs.

SENATOR CONTILLO: Okay. I'll accept your number. That means that 50% of the people who are in jail are involved with this whole problem.

ATTORNEY GENERAL EDWARDS: No, 50% of the people convicted are not involved in the sale and distribution of drugs.

SENATOR CONTILLO: No, not sale, but drug related.

ATTORNEY GENERAL EDWARDS: They use drugs; they are involved with drugs somehow, yes.

SENATOR CONTILLO: But they also then go out and commit another crime. Is that what you are really saying?

ATTORNEY GENERAL EDWARDS: Yes, absolutely.

SENATOR CONTILLO: And that's why I was astounded when you said to me, in effect, "We can't afford to do this," or "We can't afford to do this yet."

ATTORNEY GENERAL EDWARDS: I didn't say, "We can't afford to do it."

SENATOR CONTILLO: The costs will be too great.

ATTORNEY GENERAL EDWARDS: I did not say that.

SENATOR CONTILLO: Well, do you feel-- Okay. You're saying we don't have the money; we don't have the jails.

ATTORNEY GENERAL EDWARDS: No. I said if you are going to do it, I want you to also vote out a bill to appropriate the money to build the jail cells, to appropriate the dollars to supply the prosecutors necessary to try the cases. I didn't say we didn't have the money.

SENATOR CONTILLO: Okay, but then the only thing that's stopping us is money, in effect.

ATTORNEY GENERAL EDWARDS: No. The only thing that is stopping you is the bill before you--

SENATOR CONTILLO: Which is money; which is dollars.

ATTORNEY GENERAL EDWARDS: --which will appropriate money to build jail cells, amend the appropriation for the Department of Corrections, provide the necessary prosecutors,

amend Title 2C to include Title 24, and make sentencing for all drug-related offenses consistent. It's not just for these four separate items, but more than that, because there are more kinds of offenses being committed out there involving drugs for which there should be surety and more profound sentencing policies by the courts.

I am just asking you to expand on, and expound on, the various--

SENATOR CONTILLO: If, indeed, this bill were to become law-- I sat, I thought, with quite an open mind, because I hadn't made up my mind if I should sponsor this legislation or not. But, it seems to me that the great amount of money that the State is spending now, and the great amount of room that is being taken up in this State, are due to people involved in drug-related crimes. So, really, in the long run, it may cost-- And if we're talking about money-- We can debate that one, but I think we're just talking about money, though; we're talking about dollars and cents. If the State were to appropriate-- If we were to put forth a bill -- but we're talking about the money to build the prisons. The money is not as great as you might think, because we're spending it one way or another now. We're putting people in jail for burglaries, and muggings, and all those other robberies that take place that are really drug related.

I think if this bill is successful and does what other mandated bills do, it should cut down the number of crimes and should reduce some of the population in the prisons. And further than that, the total cost on society can't be compared to a couple of hundred million dollars. I'm sure the State spends much more than that now on all the drug-related expenses that occur. So, you know, what I heard from you as I listened was -- and you can refine it if you want -- if it's not dollars and cents, it's legislation that requires us to build more prisons, which is really dollars and cents.

My impression of this would be that on a purely accountant's balance sheet of dollars and cents, we can't afford not to do this.

ATTORNEY GENERAL EDWARDS: You're absolutely right, Senator.

SENATOR CONTILLO: Then let me ask you one more question.

ATTORNEY GENERAL EDWARDS: If I were you, I would sponsor the bill.

SENATOR CONTILLO: Okay. Would you? Yeah, because my one problem hasn't been discussed, and I thought I would like to ask you that before you leave.

Are you satisfied that this does not affect a user per se, a person-- I read it as a non-lawyer, and it seems to me that on the very first page it says, "If you possess the product--" It does not amplify -- unless it does in some subsequent--

ATTORNEY GENERAL EDWARDS: It does -- another second. "If you possess it with intent to distribute and sell--"

SENATOR CONTILLO: Yeah, but it doesn't say that on the first page. But, you're satisfied that--

ATTORNEY GENERAL EDWARDS: We are satisfied that it does. Please recognize, Senator, though, that a lot of the sellers and distributors of these quantities of drugs are also very heavy users.

SENATOR CONTILLO: I understand that, so what they--

ATTORNEY GENERAL EDWARDS: They are also juveniles -- a great number of them.

SENATOR CONTILLO: How do you deal with those?

ATTORNEY GENERAL EDWARDS: One of the facts is -- just as an aside -- organized crime and the criminals, who are really the manufacturers, the upper echelon, are getting kids to distribute the stuff, kids to carry it, kids to sell it.

SENATOR GRAVES: That means that Education has to involve itself.

SENATOR CONTILLO: So then, from your standpoint, you feel that this separates a user from a seller -- this bill does?

ATTORNEY GENERAL EDWARDS: Yes, it successfully does.

SENATOR CONTILLO: How do you then deal with that young person who, because of his habit, becomes a seller?

ATTORNEY GENERAL EDWARDS: A seller? According to this bill, you put him in jail.

SENATOR CONTILLO: Do we put him in jail for 12 years? He's shaking his head no on that one. (referring to Mr. Belsole)

MR. BELSOLE: See, I think you have to treat people differently. You have to look at the offense; you have to look at the offender; you have to look at the victim. Now, I think there is a difference between someone who sells 400 pounds of cocaine and is in the big business -- organized crime business of selling cocaine -- and the kid who has to buy and sell to keep going.

SENATOR GRAVES: He should be shot.

SENATOR CONTILLO: That's right, the death penalty.

SENATOR GRAVES: The death penalty should take over for him.

MR. BELSOLE: All right, but I'm saying there has to be a distinction. To answer just two questions that you pose: One, 40% to 50% -- this is fairly accurate -- of all the work handled by county prosecutors is drug related. Also, no possessor -- sheer possessor -- of drugs is affected at all by this particular-- You were right, Gerry, when you said that before. This is a sellers' bill. It historically has been.

SENATOR GRAVES: That's what we're going after. We're going after the seller. We're going after the guy who is on the street corner.

ATTORNEY GENERAL EDWARDS: That's right. To a great extent, Senator, also, a lot of the questions you asked-- We believe there should be mandatory sentencing for sellers and

distributors. We would like to be able to answer those questions, though, as to how many cells we need. How many people are presently in jail who are drug related? How many new cells? How many more prosecutors do we need? What do we need to do to supply more judges and/or courtrooms to try these cases, in fact? How many will, in fact, plea out and how many will opt for trial?

In a period of time we can tell you that. We can also come back and tell you other amendments that need to be made to Title 24 and move it into Title 2C, with firm recommendations that might even make this a better bill, and it's already a good bill.

SENATOR CONTILLO: As the Chairman suggested, this bill will stimulate you to develop that information.

ATTORNEY GENERAL EDWARDS: Absolutely.

SENATOR GRAVES: Senator Bassano had his hand up first. Go ahead, Senator Bassano.

SENATOR BASSANO: A question right to the point: Do you support the legislation that is before us now?

ATTORNEY GENERAL EDWARDS: In its present form?

SENATOR BASSANO: In its present form, as it is right now.

ATTORNEY GENERAL EDWARDS: No. I would move it to Title 2C. We would make further amendments to this bill. I would provide additional sentencing requirements that would expand on it. That is why I am asking for a little time to come back to tell you--

SENATOR GRAVES: Well, do you support mandatory sentencing?

ATTORNEY GENERAL EDWARDS: Absolutely.

SENATOR GRAVES: Well, that is what this bill is about.

SENATOR BASSANO: Would you object to this Committee moving this legislation in its present form, then amending, through another piece of legislation, some of the changes that you will suggest two or three months down the road?

ATTORNEY GENERAL EDWARDS: No, I would suggest-- My suggestion to the Committee -- and I am not dictating this to the Committee; you can move in whatever direction you want -- is to wait the two or three months necessary for us to get you that data. This bill may move in its present form with some minor amendments, along with other collateral bills that we believe you should also address at the same time.

Obviously, you have the right to move this one -- move the concept ahead. I know the legislative process. One thing is, if you kick it up and keep it moving, it gets a higher profile, you get more people responding, and you get more action faster. I know how that role functions. That's your choice; that's your strategy. We're here to tell you, and to give you as much information as we presently have. We are also here to tell you that in two or three months we will have more information for you.

SENATOR GRAVES: But, 2C wouldn't go through our Committee. It would go to Judiciary.

SENATOR BASSANO: What we're concerned about is getting something--

ATTORNEY GENERAL EDWARDS: Well, if you keep the bill here, you can amend this and amend 2C at the same time.

SENATOR GRAVES: Oh, we're going to keep the bill.

SENATOR BASSANO: We are concerned about getting something started--

ATTORNEY GENERAL EDWARDS: I mean as opposed to--

SENATOR BASSANO: --right now, and that is the bill before us. It may not be a cure-all to the problems that will be brought up for some of the solutions you may suggest, but we feel we can at least start the process moving with this legislation.

ATTORNEY GENERAL EDWARDS: I don't object to that at all. This Committee is a good Committee, I think, to deal with this issue. I think the Committee is concerned. I know the

Chairman's history in this area, and I would like to come back to this Committee in view of this particular problem. So, I've asked this Committee to await that. If you want to release the bill and move it through the process--

SENATOR GRAVES: We can't release it today; this is a public hearing.

ATTORNEY GENERAL EDWARDS: I know that, but within a week or so, whenever you meet again. In my opinion, we would be making a mistake. I'm liable to wind up dealing with another committee, going back through the whole educational process, when you gentlemen have spent a significant amount of time on it. I am just asking for the time to allow you to deal with the issue in a comprehensive way because you've got this in front of you, not that we disagree with anything you do.

SENATOR BASSANO: Can you give us a time frame as to when you will have all your data available?

ATTORNEY GENERAL EDWARDS: I think we indicated no later than June. It might be a lot sooner. I just-- I like to be pessimistic on our production time.

SENATOR GRAVES: There will be 100 more kids dead if we wait until June.

ATTORNEY GENERAL EDWARDS: Yes, I understand that.

MR. BELSOLE: But, let me just tell you something else. If you want to go with this bill, another amendment you might want to consider is things that are troubling us in terms of putting the whole package together. You know, the only way law enforcement can really be successful in the drug war is to work deals. I hate to tell you that. You know, no one likes to talk about working deals. But that is how you get from the mule to the next guy to the next guy.

SENATOR GRAVES: Is that plea bargaining that you are trying to--

MR. BELSOLE: Yeah. You say to the guy, "You have--"

ATTORNEY GENERAL EDWARDS: No, that is not plea bargaining. That's a deal. "How about immunity if you turn the other guy in?"

MR. BELSOLE: Well, plea bargaining because when you arrest somebody and charge-- You know, there are all kinds of ways of doing it. I know we don't like to talk about this, but this is like cancer surgery. You have to work like this.

SENATOR GRAVES: It's common knowledge.

MR. BELSOLE: When you have -- and Senator Graves knows this as well as anyone-- No one has fought harder to keep your bill intact than we have through the appellate process, so you can't plea bargain it.

SENATOR GRAVES: I admit that. Edwards has written letters in the paper.

MR. BELSOLE: Yeah, but I say that, not in a patronizing way -- I say that so you understand that when you have a mandatory sentencing bill like this, you really do away with the ability of the prosecutor -- all right? -- to enter into the types of agreements and plea bargains, if you will, or plea agreements, in order to get one step up.

You said you were worried about the guy with his pockets full on the streets of Paterson. Well, it's the goddamned S.O.B. coming through the highways with the five or six pounts, or 200 pounds, who is supplying him. We found that 40% of what is coming through New Jersey is staying in New Jersey. It's staggering.

SENATOR GRAVES: This survey you took of kids in high school-- I'll bet you the kids in high school in Paterson aren't the users, because they can't afford it. I'll bet you the kids in Hawthorne and other towns are the kids who are buying it.

MR. BELSOLE: I think it's a universal problem.

SENATOR BASSANO: I just want to clarify. On one hand you're saying you support the bill, and on the other hand

you're saying you want the latitude to be able to work a deal of some type, which this bill obviously will stop you from doing. It will tie your hands in that particular case.

MR. BELSOLE: Correct; yeah. It has to really be worked out so--

SENATOR BASSANO: I can't understand. How can you be supportive of mandatory sentencing, and yet at the same time say you want the latitude to be able to plea bargain?

MR. BELSOLE: I think you would have to define -- and very carefully define -- what the prosecutors and courts can do. You would want to hold onto the mandatory provisions, but have some elastic nature to it. That is what we have to work on.

You have a lot of people in this room who are going to testify today, and I think they will address that problem with you -- the people who work in the streets who are making the arrests. So, it's a sophisticated problem. I would be dishonest if I said I had an answer to it. But, yeah, I do support mandatory sentencing, but there are a lot of things that come with it, from the jails to plea bargaining, and everything in-between.

SENATOR GRAVES: Senator Caufield?

SENATOR CAUFIELD: Mr. Chairman and Attorney General, I'll try to be brief. We recognize that the bill is not a panacea, but I do think it sends a loud, clear message to some of the people who need that message very badly. I know we need education, we need rehab, we need hospitals, because we should never write off all those people who are addicts today. They are as sick as a person who has cancer, or heart disease, or any other medical problem. So, even though the success rate may not be great, we would be a very poor nation if we just wrote those people off.

You spoke about costs before, Mr. Attorney General, and you're right. You know, I'm on the Revenue and Finance

Committee and I know that we consider costs -- the costs of prosecution, the costs of the prisons, maintaining the prisons, and whatever else goes with it, but we also have to consider the costs in terms of human suffering, of rehab, of loss of wages, of breakups of homes, and all the far-reaching things that go with it. I know you can't just come up with a dollar factor and put it on that, but I can assure you it is a very high one.

When we talk about costs-- You know, when we declare war, we don't worry much about costs, do we? I can't think of anyplace where we ought to more declare war than on these insidious, unscrupulous hoodlums who are responsible for destroying our kids, destroying our families, and all the other things they are doing -- all the evil they are doing.

Now, again, I hope that doesn't sound irresponsible, because when it comes to financial expenditures I don't take an irresponsible attitude. But in a case like this, I can't think of any bill, whether it's for prisons or for doing more to make your job a success, that I would not vote for, would not speak for, and would not support entirely.

Just one other point. I wonder sometimes if we ought not take a good look at the priorities as to who is in jail, because outside of murderers, I can't think of anybody who ought to be in jail more than the kind of people that this bill is aimed at getting. You know, I know it wouldn't be too popular if you started letting some people out of jail, but I think it is something we ought to take a very, very good look at. All good decisions are not easy decisions, and I'm sure that would be a hard one. But, we ought to take a good look at who is in jail, and who ought to be in jail who has a much higher priority.

I honestly think that one of our greatest chances of success -- and I'm not saying this because you're here -- is through you. I've seen your attitude. Without speaking

specifically on this subject, I've talked to you so many times over the last several years -- the last four years -- and I really think our best hope is through you and through your Department.

One final question: In discussions with the Feds, is there any kind of an agreement whereby the Federal government will share their information with us, or is that a turf problem? If it is a turf problem, damn it, somebody ought to forget it because we're dealing with something here that, whether it's the Feds, whether it's your Department, whatever, we ought not be hung up on things like that. Is that a problem?

ATTORNEY GENERAL EDWARDS: Senator, there are always turf problems in law enforcement. Law enforcement people are very, very proud people. They don't get paid a lot of money; they don't have the expectations of ever getting rich as public servants in that particular category. They get their satisfaction out of their job performance, and the rewards they get are out of making arrests and out of making cases. Sometimes their enthusiasm to do that becomes problematic in the communications area.

I am confident, after my meeting with representatives from the Federal government -- the FBI -- this week-- I spent all day yesterday at the State Police Headquarters going through briefings on the various operations there. I know our own Division of Criminal Justice; I know our county prosecutors very well. I believe we can cross all of those communication levels. Nobody has really tried to coordinate all that before. Don Belsole has been working on that, trying to put the pieces of it together. I am prepared to put the full weight of my support behind it.

So, do I believe we can do it? Yes. Do I believe they will communicate? Yes, I do. I just believe they need a little push, a little nudge, and somebody to encourage them to do it so they know they are not forgotten in the process and that nobody is trying to run over them.

Senator, when we do declare war, we don't think about the cost. My suggestions have-- Please don't mistake our comments about education in the other collateral areas that are needed in drug rehab to at all affect what we are talking about in this bill. The only issues that we are talking about here are putting together a bill and a system of sure, mandatory punishment for sellers and distributors of dangerous drugs, period. In order for that to happen, there has to be a jail cell for them. There has to be a prosecutor who will prosecute them -- who will try that case. There needs to be a judge who will do it. We are only asking you to consider those factors in addition to these, so we can be sure that that, in fact, happens. You can declare war all you want, but if you don't have any guns, it doesn't matter; you are going to lose the war. We just want this Committee to get the benefit of our thinking about the guns you need to make mandatory sentencing work, because we believe in mandatory sentencing.

SENATOR CAUFIELD: Just finally, you know, this bill, as I indicated, is not an answer; it is not a solution.

ATTORNEY GENERAL EDWARDS: Of course it's not.

SENATOR CAUFIELD: I understand that, but there has to be a master plan that takes all of these things into consideration. You know, where have we really been? I know everybody in law enforcement is very concerned about drug addiction, drug sales, and so forth, but someone has to have a master plan that deals with all of these things, and I hope that will come through your Department.

ATTORNEY GENERAL EDWARDS: Senator, law enforcement has been fighting this war on the streets day in and day out. Senator Graves was there when the State Police-- Talk about cooperation, the Mayor's office in Paterson, Prosecutor Falcone's office, and the State Police put that package together in a cooperative effort that shows what we can do if we communicate -- if we talk -- on a very small scale.

The law enforcement community is fighting this war on drugs every day. They are asking you to give them mandatory sentencing, to give them the resources to win that war, to give them the guns and the ammunition if you are going to declare war on it, and back it up with the dollars. We've done that in New Jersey. We did it in the Graves Act. The prison cells have been there. New Jersey has not allowed one person out of jail who should have been there, because we didn't have the jail cells for them. I'm asking you to be as responsible in dealing with this issue as you have been in the past, and I know you will. Give us all the tools and ammunition we need to win this war. Let's not declare war and lose. That's all we're asking.

I believe this Committee has the background, the dedication, and the understanding of the problem to do that. I would like to come back to this Committee with some of those other solutions so that this can move and be understood in its totality. We support you, and I mean this -- Senator Contillo, sponsor the bill.

SENATOR CONTILLO: I did. You convinced me.

ATTORNEY GENERAL EDWARDS: If I were there in the Legislature, I would be on that bill.

SENATOR CONTILLO: Okay, thank you.

SENATOR GRAVES: Assemblyman Girgenti? I'm coming right back to you, Senator Bubba.

ASSEMBLYMAN GIRGENTI: Attorney General, I want to say first of all that I commend you for the work you've done. I've known you for years in terms of the Legislature. But, the one thing that bothers me when I come before this type of a hearing-- The fact of the matter is, we heard nay sayers -- as you well know because you were in the Legislature at that time -- about the Graves bill, about the mandatory sentencing. There were a lot of problems over that. We look back at history, and now we all come in and talk about the results. I

believe you were supportive at that time. We look at the results and we say this is one of the key ingredients of the reduction in the crime rate in this State.

We all know that nothing is really written in cement when it is first proposed as a law. But the issue is being brought out, as you mentioned earlier-- We want that input that you're giving, but the fact of the matter is, this bill has been around for awhile. I can't hold you responsible because you have just moved into your capacity. You know, why were we not given this type of information last year? We had a hearing in the Assembly -- the Judiciary Committee -- and we were not told that there were a lot of amendments or that people were thinking of different, you know, different ideas to put into this type of a bill. It disturbs me that this has been laying around; it has been two years since the bill was originally proposed. As I said, I can't hold you personally responsible because you have just taken over in the last month.

But the fact of the matter is, where was all this input and all this information that should have been here before today? Do you know what I mean? It's sad. Senator Graves extended me the courtesy of coming down here today because I am on the Assembly Judiciary Committee and am also the prime sponsor now of this bill in the Assembly. I am very interested in it. I think that, you know, we have to look at the track record. Now, we're talking about something here that I feel will have a tremendous impact on the whole criminal community in terms of this type of sentencing. We have seen it as a deterrent. I think this will be another deterrent. It is a step in the right direction.

You agree with it, but the problem is, why wasn't more done, if that is the case? Why did we not have that input for this hearing, not people coming here and actually almost shooting the bill full of holes and saying that we ought to transfer from Title 24 to Title 2C? Why wasn't that brought up in the past? I just don't understand that.

ATTORNEY GENERAL EDWARDS: Assemblyman, it's not very productive for me to go back and say who did what right or wrong in the past, either in the Legislature or within the law enforcement community. Suffice it to say that part of those turf battles that I was speaking to Senator Caufield about-- What I found in late November, early December, when I took a look at the Department of Law and Public Safety, were discussions going on as to how this particular task force was going to be put together. Who was going to control it -- the State Police, the Division of Criminal Justice? Who was going to do it? It had been floating around for at least six months in proposal stages.

The Department, to its credit in the balance, was working on that particular problem. You know, when I was in the Legislature, why didn't I sponsor a mandatory sentencing bill for drug sales? You know, that was eight years ago. The problem isn't new; it has been here for 20 years. The problem was here when I was in college and high school. Because we're getting around, we're learning; we're doing better. The law enforcement community is doing better. In my opinion, they're doing a lot better. The Legislature is doing a better job at law enforcement policy setting. It took 10 years to amend 2C. Why did it take two years, you know, in 1978-79 when we voted on it? And, John, you were there with me during that period.

I don't know why. I can't answer all those questions. I can answer where we are today and where we're going. My commitment to this Committee is to get you the answers you need so that you can release the best mandatory drug sentencing bill you can put together.

SENATOR GRAVES: April 1 -- that's six weeks. Senator Bubba?

ATTORNEY GENERAL EDWARDS: I am only here to help. You release bills, I understand.

SENATOR GRAVES: I know, but three months is too long -- April 1.

SENATOR BUBBA: Let me just say that on a couple of occasions, both you, General, and your assistant, have said, "I wonder how we got into an adversarial condition here, when really and truly we're both supporting the same type of things." I might suggest that one of the reasons is that your job really, as Attorney General, is to prosecute people. Let the fellow who heads the Department of Corrections come in here and complain that he doesn't have enough prisons, and we'll see what we can do to assist him with building more prisons.

With respect to the mandatory laws on guns, how we could deal with people, and how we could make exceptions to the law, well, I think there are three exceptions to the law where a person will not be prosecuted for commission of a crime with a gun. I really don't believe-- I think you got yourself wrapped up in trying to prove your point as you were speaking, and I don't really think you meant to say if this bill were to occur -- were to become law -- that you couldn't sit down and make a deal with anybody, because I think you still could. I think if you pick-- Please, don't insult my intelligence. If you pick somebody up who has 10 pounds of cocaine on him and you just don't prosecute him, and don't tell anybody his name, if he turned over a \$100 million deal, or something else, I still think you could deal on that basis.

With respect to the heartrending thought of a child or an individual who might be convicted under this bill -- or this bill that becomes a law -- I think what you have to consider is that the day the user becomes a seller, is the day that the person grows up. When that day occurs, I think he is going to have to be told that he is going to have to pay for a crime that could cost the life of someone else. I mean, I think that is the line of demarcation. If, God forbid, there are users, if we can stop those users from being sellers, I think at least we're ahead of the game.

SENATOR GRAVES: Okay. Thank you, Attorney General. Have a nice trip to Atlantic City, General. We hope we didn't disturb your day.

I am going to call for some citizens' input at the present time, the P.I.C.O. group, which had so much to do with rallying the foundation's support. Would you please come forward and introduce yourselves and share your concerns? Please introduce yourselves to the Committee, if you will.

N A N C Y M A R T I N E Z: My name is Nancy Martinez. I live in Paterson, New Jersey. I am a member of the Paterson Interfaith Communities Organization, a coalition of 24 churches in our city which has taken up drugs as one of the issues we feel is most detrimental to the people in our city.

Luis, will you introduce yourself?

L U I S O N A: My name is Luis Ona. I am from Paterson. I am Cochairman of the Drug Committee for P.I.C.O. We have been working with our Senator Graves and other persons, trying to help to get rid of the drugs in our community and in our State.

SENATOR GRAVES: Over a series of months, you produced a number of meetings that took place on the altars of churches and in the parish homes of all of the denominations in a certain area of New Jersey. At that time, you produced hundreds of people and their families and showed the genuine concern of parents with their kids, who they brought to the meetings, showing how concerned the parents were about the accessibility and easyness (sic) of their children to be able to pick up drugs on the streets.

From that grew your huge meeting, at which you were able to produce some of the most outstanding law enforcement officers of this State, from the Attorney General's office, to the prosecutor, to Colonel Pagano, to the head of the Federal Strike Force for the State of New Jersey, and to the present prosecutor of Passaic County. They were all at that meeting.

Would you, in a couple of minutes, tell us why you did this?

MS. MARTINEZ: Yes. As you said, we are just ordinary citizens. That is the way we come here, as very plain people -- working people, representative of those same people in our city. Through our meetings, we saw how they suffer. They are concerned about their children, seeing these drugs being sold on the street, that they would accept this as a way of life, as a way to go as they grew. They have to labor to make a living for these children and their concern is that once they are able to afford better for their children, they will have lost them to drugs.

SENATOR GRAVES: So, you testify to a ground swelling of people.

MS. MARTINEZ: Yes.

SENATOR GRAVES: The family structure, where people who hardly ever come out of their houses anymore, who watch TV, came out right after dinner to a series of 10 meetings that you held--

MS. MARTINEZ: Yes.

SENATOR GRAVES: --and filled their churches, and pleaded for help because they saw that they were going to lose their children, maybe even to death.

MS. MARTINEZ: That's right. I know families who have lost children to death, and another family who has a young daughter in Greystone Park, incapable any more of running her life. She is a mental incompetent now. She went through a Catholic school, but became prey to the enticement of these drug sellers, who, for money, I would say, murdered her. She is, to this family, dead. This is what they have to deal with on a very local, basic level.

SENATOR GRAVES: From a public point of view, do you think we can afford to wait?

MS. MARTINEZ: No.

SENATOR GRAVES: Or do you think this Committee should act?

MS. MARTINEZ: I don't think we can afford to wait, because what if a couple of months draws into six months, and eight months, and a year, and you all know far better than I do what happens in so many instances. Well-meaning though the thoughts may be, in actuality, it may never come to pass for another year or more. In that time there could be more children lost, more families hurt. I don't think we can wait. This may be, at this point, a finger in the dike, but I think to let the whole dike collapse for want of a finger is foolish. I think you should do something. This is what the people want. They don't understand how these people are permitted to flaunt the law on the corners of every city and town, and nothing happens to them. They don't understand it. You know, "Where are you?" They don't see you. They don't realize the workings of government. They just know what they see, that these people are selling drugs openly on the street, and are not being put anywhere because of it.

With the Tylenol scare, one little capsule has brought so many great minds to bear and so many millions of dollars to bear, and here these capsules have been sold for years -- 20, 30 years -- and we are nowhere as far as doing something about it. I really think to show these people that someone cares, something should be done as quickly as possible.

SENATOR GRAVES: Any questions? (negative response) Okay, thank you. Please remain. Assemblyman Russo? (referring to former Assemblyman Russo) Senator Bassano has asked us to squeeze in your three minutes. You have three minutes to testify. Senator Bassano said you have a tough schedule.

P E T E R J. R U S S O: My name is Peter J. Russo, former Assemblyman from 1967 to 1973. Mr. Bassano -- Senator Bassano -- I want to congratulate you, first of all -- and you, Senator Graves -- for bringing this issue up before the entire State of New Jersey. But, in the year 1973, I put these strong laws in

-- mandatory sentences -- and they were rejected. Here I have one of the bills put in, in 1973, where Senator Bassano was the sponsor of the bill.

SENATOR GRAVES: Assemblyman Bassano at that time?

MR. RUSSO: At that time, Assemblyman, yes. And the next sponsor was former Assemblyman Thomas Kean, who is now the Governor of the State of New Jersey.

SENATOR GRAVES: Is the Attorney General still in the room? (laughter) (negative response) General Edwards, are you there? (no response) Is General Edwards there? (affirmative response) General?

ATTORNEY GENERAL EDWARDS: Repeat what you said.

SENATOR GRAVES: Mr. Russo, would you repeat who introduced a similar bill in 1973?

MR. RUSSO: In 1973, a similar type bill-- I introduced a bill on narcotics, and Senator Bassano was the sponsor. Let me tell you something: He always wanted to do something about narcotics in the State.

SENATOR GRAVES: Okay, he's not running this year. Get to the other one.

MR. RUSSO: The other sponsor was Assemblyman Thomas Kean, who is the Governor of the State of New Jersey.

SENATOR GRAVES: He introduced a bill in 1973 for mandatory sentencing.

MR. RUSSO: And the bill that he sponsored-- The purpose of this bill was to increase the penalties for narcotic violations. It was based on-- It followed closely the increased penalties received and enacted in the State of New York.

Now, I think you ought to put this bill in, not on April 1, but on March 1. Don't let this wait.

SENATOR GRAVES: No, no. We told the Attorney General, who wanted to give us some information in three months, to give it to us by April 1.

MR. RUSSO: I just have a statement. My name is Peter J. Russo, former Mayor of--

ATTORNEY GENERAL EDWARDS: Thank you, Senator.

SENATOR GRAVES: Thanks a lot, Cary.

MR. RUSSO: My name is Peter J. Russo, former Mayor of Lyndhurst and former Assemblyman from the South Bergen district. As the Mayor of Lyndhurst, I, too, had a drug problem, and conducted a raid by the New Jersey State Police in 1972, just like you did. About 80 pushers were arrested in 1972 and an undisclosed number of users amounted to about 162 users in the Lyndhurst High School and all that area there. I think one of the men who was in the high school at that time is in this room today.

I, too, was criticized by members of the Bergen County Sheriff's office, and as late as May, 1985, a member of the Bergen County Sheriff's office was still criticizing me for a raid that took place in 1972. As an Assemblyman from 1967 to 1973, I was Chairman of the Narcotics Study Committee. I urged and had bills in the hopper for the same reason that you people have these bills.

SENATOR GRAVES: Assemblyman, if you will -- pertinent to the-- Is there a need for this legislation? Please get to the point.

MR. RUSSO: It is going to hit it right on the head.

SENATOR GRAVES: Go ahead; get to the point.

MR. RUSSO: Just give me a chance to talk.

SENATOR GRAVES: We don't want the-- Get to the point.

MR. RUSSO: All right. Now, Ann McCune (phonetic spelling), a spokesman for the Bar Association, said that the group had traditionally opposed mandatory minimum sentences because that restricts the flexibility of the judge and the lawyers. Ann McCune is not thinking about the young children and the fact that this is an epidemic of drugs, but of the pocketbooks of a lot of selfish lawyers in the State of New Jersey.

This bill should become law immediately. The Governor would not sign these bills into law in 1972. The Commissioner of Education, the head of the State Police, and the Attorney General's office should endorse this bill and make it law immediately. Senator Graves should be congratulated for finally doing something about this dreaded epidemic -- I call it a disaster -- throughout the entire school system in the State of New Jersey.

Now, from 1967 to 1986, we knew about this epidemic, and nothing was done. We have to forget about the discretion of the judges and the lawyers. They have to get together once and for all and say, "Let's think about the victims of the State of New Jersey." Just as you said, "How much is it going to cost to keep that man in a hospital who is sick?"

May I ask you a question, Senator Graves?

SENATOR GRAVES: Go ahead.

MR. RUSSO: How much does it cost to take care of a drug addict for one year?

SENATOR GRAVES: I have no idea.

MR. RUSSO: Well, it was \$8000 in 1973, and I guarantee you it's about three or four times more now. I say this sincerely: The famous Vice President Bush made a statement, "You gotta start kicking ass, and it's gotta start with the local police departments. You gotta get the attorneys general to go after the local police departments because they are not doing their job."

This is a very good bill, and I want to congratulate this Committee and wish you all the luck in the world. If I can do anything to help you, I will be glad to do it. Thank you very much.

SENATOR GRAVES: Okay. Joseph Falcone, Passaic County Prosecutor?

J O S E P H A . F A L C O N E: Thank you, Mr. Chairman. I'm State County Prosecutor Joseph Falcone. I also currently

serve as President of the County Prosecutors' Association of New Jersey.

I would like to commend this Committee for introducing the concept of mandatory sentencing to deal with drug dealers.

I have been in law enforcement for almost 17 years now. I have come to certain conclusions with regard to the drug problem, which I would like to briefly share with you.

One is that -- as you pointed out, Mr. Chairman -- about 50% of all crimes are drug related. I believe that figure may even be higher with regard to violent street crime. I have also concluded that despite the best efforts of local police, county prosecutors, State Police, and Federal authorities, we are, indeed, losing the war which has been declared over and over again by the Federal government and, of course, the State government. We are losing that war because I believe, as you have recognized, that the risk to the drug trafficker at present is far outweighed by the economic benefits. And, until all of us do something to correct that imbalance, we will see no major improvements in the situation.

If, indeed, it is impossible to give law enforcement the types of personnel, the numbers of personnel, that we so desperately need, then the task force concept which the Attorney General has introduced is long overdue and is much needed. We need someone to coordinate at the State level what each of us is doing at the county level and the local level. I think it is almost impossible for the Salem County Prosecutor to really know what dealings are going on in the City of Paterson and vice versa, yet they very well may be directly related.

Also, with regard to the turf problem that you pointed out, Senator Caufield, there is presently in existence in this State, the Federal/State Law Enforcement Coordinating Council, or Committee. It is cochaired by the U.S. Attorney for this district and the Attorney General. I serve on that Committee

in my capacity as President of the Prosecutors' Association. We have been meeting, ever since U.S. Attorney Greelish took over, with all heads of the Federal law enforcement agencies; the State Police, the Attorney General's staff; and, of course, the Prosecutors' Association, and police chiefs and sheriffs' officials, to come up with a coordinated effort -- a plan. What are our respective resources? How can we share resources? What has to be done in terms of sharing information, and things of that nature.

In my 17 years, I have seen many a turf war, but I am happy to say that at present, those wars are less and less, and the problems are less and less with regard to cooperation between Federal and State.

I would urge and I would support the comments made by the Attorney General and Director Belsole; however, we need an overhaul of Title 24. It is not a sufficient weapon for prosecutors at the present time. When we convict major drug dealers, as we have been endeavoring to do, the penalties, although on the books, have not been imposed. At present, there is discretion to the court to impose up to a life sentence for certain dealers, or for being in possession of certain high quantities and qualities of drugs. But, in my 17 years of law enforcement, both with the Essex County Prosecutor's office and the Passaic County Prosecutor's office, I know of no judge who has ever imposed a mandatory life sentence on someone who was convicted of the very crimes that are in the old law -- or in the existing law.

So, we need some teeth, and this is an excellent starting point as far as I am concerned to deal with that problem, to increase the imbalance which I think exists, and to make the risk for those who wish to engage in drug trafficking such that they would think twice about doing it and, if they do think twice and still do it, the penalties will be severe enough to not only punish them, but hopefully deter others, as we have seen with the gun act.

SENATOR CONTILLO: Do you suggest that no judge has applied the maximum sentence?

MR. FALCONE: No. I suggest that in my experience, I know of no case in which that has been done. I am not saying it hasn't been done.

SENATOR CONTILLO: This is Passaic County you are talking about?

MR. FALCONE: Passaic County, and I spent six years in the Essex County Prosecutor's office in the beginning of my career.

SENATOR CONTILLO: But, at no time did any judge apply the maximum sentence.

MR. FALCONE: To my knowledge, I know of no case in which the facts were there to support that conviction in which the judge imposed the maximum penalty -- in my personal experience.

SENATOR CONTILLO: Then why should we consider maximum convictions?

MR. FALCONE: Because I think it is needed. What we have done so far under the existing law obviously has not worked. It has not worked for a variety of reasons, but one of them has been that we don't have sufficient ammunition in our arsenal by virtue of a tough law, which would enable us to deal severely with those who wish to traffic in narcotics in this State.

SENATOR GRAVES: If there were a line in the law that said that if the prosecutor and the assignment judge of that county wanted to relieve what seemed to be what the Attorney General and Mr. Belsole were saying, the person who got caught could open up maybe 100 more important arrests. And, if they both agreed that then this person could be tried outside of that mandatory-- In other words, if the assignment judge of the county where the arrest took place and the prosecutor of that county or the Attorney General-- We'll take it higher

than that. If the Attorney General and the assignment judge of that county both agreed that then that person could fall outside of this law for the purposes of making this law more effective, would you think that would work? If one of the things they feel about this law is that they are afraid that because they can't give immunity in a specific case -- they can't give freedom to tell and explode on others -- that they may wind up with the one guy, but that one guy may be able to give them 100 guys, do you think that might be helpful?

MR. FALCONE: Well, certainly that might satisfy the Attorney General if that language were in the bill, but with regard to your Graves Act, we can do that, but it is not specifically spelled out in the law. It is by virtue of a resolution or directive from the Chief Justice, which is now part of the annotation to that bill, which indicates that one of the exceptions to get around the mandatory provisions of the Graves Act is if, indeed, you can satisfy the judge that that defendant is cooperating with you and put it on the record before that judge.

SENATOR CONTILLO: Many times when they cooperate they don't wish it on the record, though.

MR. FALCONE: Well, you put it in camera, and the judge can seal the record.

SENATOR CONTILLO: Mr. Chairman, just an observation, too. We talk about the overhaul, and certainly we all agree. I think our concern is that that overhaul not go on for years -- that, you know, the situation is so urgent that that overhaul -- whatever priority it needs, whatever extra consideration -- ought to be done shortly.

MR. FALCONE: I agree, Senator. I have been working with Director Belsole for the past six to eight months because he has been very concerned about this problem. He has very top people in his office working on it with prosecutor representatives, to put together an overhaul of Title 24, which all of us in the law enforcement community feel is most needed.

SENATOR CAUFIELD: Just one other observation, said, I guess, a little bit in jest. When Mayor Russo spoke about the Vice President talking about kicking butt -- kissing, I almost said (laughter) -- you know, maybe his own butt should have been kicked.

MR. RUSSO: My butt?

SENATOR CAUFIELD: No, not yours -- the Vice President's. (laughter) You know, because I remember just a few -- some years ago when, as part of our declaration of war, the President of the United States appointed a certain group to be in touch with all of law enforcement to coordinate all the efforts on drugs, and who did he appoint? Not some great law enforcement person. He appointed the Vice President. And then a year or so later, I can remember seeing on TV -- on "60 Minutes" -- what a great job they did. When they asked various law enforcement agencies throughout the country what they thought of this group, they said, "What group?" They had never even heard of it. That is only a little aside, but I just thought as long as you brought up the Vice President, I might just say that I don't think that was much of a commitment to an all-out war on drugs.

SENATOR GRAVES: It is five after one on the button. We will take a 30-minute break.

(RECESS)

AFTER RECESS:

SENATOR GRAVES: The next witness will be the Sheriff of Essex County. Go ahead, Sheriff.

S H E R I F F T H O M A S D' A L E S S I O: Senator Graves, let me first commend you for your bill on raising the drinking age. This Committee did a great job on that. I also commend you on the Graves Act. I believe in the bill you are proposing today on mandatory sentencing. We in Essex County,

in the Sheriff's office, have a Bureau of Narcotics that is staffed by 30 undercover officers, and every year we make hundreds of arrests. We seize millions of dollars worth of drugs, and yet, the problem continues.

So, as the prosecutor said earlier -- Falcone -- I agree that we are losing the war, and something must be done. I believe that until you show the drug dealers and the people bringing drugs into our communities that we mean business and that they are going to jail, this problem will not cease. Today, I see it as a problem in Essex County where we are losing our next generation of leaders to drug abuse.

SENATOR GRAVES: How widespread is the drug problem in Essex County?

SHERIFF D'ALESSIO: It's widespread. We have many problems in Essex County with drugs. Also, in the Sheriff's office, we have a Drug and Alcohol Education Program, where we have speakers going in front of parent groups and schools.

SENATOR GRAVES: Do you believe it is the number one crime factor in your county?

SHERIFF D'ALESSIO: Yes, no doubt about it. The people dealing drugs and using drugs are the same people who are out there committing crimes. I believe what the Attorney General said earlier: "If we need more jails, and we need more judges, let's do it." We are not winning the war, and we are not solving any problems the way we are going today.

SENATOR GRAVES: What part of the arrests is repeaters?

SHERIFF D'ALESSIO: I would say the greatest percentage are repeaters today, especially with drugs. It is a revolving door. That shows that the sentencing law we have today is not working in that area, because the same people come back.

SENATOR GRAVES: So, if they were mandated to prison, they could not become the statistic of being arrested six months or a year later.

SHERIFF D'ALESSIO: That's right. They would be put back in prison where they belong, where they can't affect and infect our young people. That is the problem that is happening today in Essex County and throughout our State. So, I support your bill. I support mandatory sentencing. I think we need something. Something has to be changed, and I am for that. Give them a clear message that if they sell drugs and they deal drugs, they are going to jail, and they're staying there.

SENATOR GRAVES: Okay. I just want to get a couple more Senators into their seats.

Okay, Senators, the Sheriff of Essex County has to leave, but basically what he just said to us, for the record, was that he is fully supportive of the legislation. He, who deals as an enforcement officer, feels that the only answer to the problem is that it be done on a mandatory basis. He also claims it is the number one crime factor of Essex County. Drugs and drug-related crimes are the number one factor of crime in his particular county.

SHERIFF D'ALESSIO: May I say one other thing, Senator?

SENATOR GRAVES: Sure.

SHERIFF D'ALESSIO: This bill doesn't touch on one other area that I would like to see this bill encompass; that's marijuana. That's something that this bill does not speak to, and I think that that should be part of this bill. It should be included that people who sell -- whatever quantity it be, whether it be over a pound, or five pounds-- These people should also be included in this bill, because your two biggest drug abuses are alcohol and marijuana. That's where the people start -- the youngsters.

SENATOR GRAVES: Senator Caufield?

SENATOR CAUFIELD: Sheriff, could you tell me-- Some people have an idea that nothing is being done. Could you tell me how many arrests your department made last year?

SHERIFF D'ALESSIO: Last year we were up over 300 arrests. This is street-level dealers, mid-level, and high-level. We worked with DEA, the Federal--

SENATOR CONTILLO: Marijuana?

SENATOR CAUFIELD: No, narcotics in general.

SHERIFF D'ALESSIO: Yes.

SENATOR CONTILLO: That includes marijuana, though?

SHERIFF D'ALESSIO: Yes.

SENATOR CAUFIELD: Are you running into much marijuana now?

SHERIFF D'ALESSIO: Yes.

SENATOR CAUFIELD: Yeah.

SENATOR CONTILLO: What percentage are you talking about?

SHERIFF D'ALESSIO: Well, marijuana is out there today. In fact, what you have today-- You can go to a ball game, or you can go to a concert, or you can go to a football game on a Sunday, and people just seem to think that it's legal. They will smoke it right in front of you. You've been to the Yankee Stadium, or you've been to Giant Stadium. I mean, it's there. It's in the air, and they don't hide it.

SENATOR BUBBA: Byrne Arena.

SHERIFF D'ALESSIO: They smoke it with impunity today.

SENATOR CAUFIELD: When you say that-- On two occasions in the last year or so, I called the Sheriff on what we suspected were drug pushers on a nice, residential street in Vailsburg. In both cases, they made raids; made arrests. And, by the way, they are all out of there now.

SHERIFF D'ALESSIO: More than likely they're out.

SENATOR CAUFIELD: Yeah, they have left, and there is a new owner in.

SHERIFF D'ALESSIO: That is if they were ever even put in jail, other than being slated, and put out on bail, and released.

SENATOR CAUFIELD: But we are satisfied that they are out of our neighborhood.

SENATOR GRAVES: Captain Hemsey, would you come forward, please? You said you made 300 arrests in a year.

SHERIFF D'ALESSIO: Yes.

SENATOR GRAVES: Captain Hemsey, how many arrests did you make in the year 1985?

C A P T A I N A B R A H A M H E M S E Y: We made 1304 arrests.

SENATOR GRAVES: How many?

CAPTAIN HEMSEY: One thousand, three hundred and four.

SENATOR CAUFIELD: Where is that?

SENATOR GRAVES: Paterson, New Jersey.

SENATOR CAUFIELD: Oh, well, you guys are loaded.

CAPTAIN HEMSEY: I don't have statistics on convictions, sir. Of course, they haven't all gone to court yet. I will emphatically state that our conviction rate in the City of Paterson, with the prosecutor's office, is about 93%.

SENATOR CAUFIELD: I am sure if you had the figures here today to add the number of arrests that were made by the Newark Police-- They make them by the scores every week but, unfortunately, they are out in the street the next day in most cases -- in all too many cases, the juveniles. But, I am sure that would be a fantastic number.

SHERIFF D'ALESSIO: See, the municipalities deal more with the stree-level sellers. The Bureau of Narcotics we have in the county deals more with the mid-level and upper-level -- wiretap jobs and large drug buys. But, the numbers are astounding.

SENATOR GRAVES: Of the number of people you have arrested in your year-- He said something about a high percentage of repeaters. What percentage of your arrests is repeaters? In other words, the guy who is arrested and is out two days later-- What percentage?

CAPTAIN HEMSEY: Senator, I compiled statistics for the last five-year period, where we in the City of Paterson brought about over 6000 arrests. Out of that, we had 1033 repeaters, at least twice. And, out of that 1033, we had 78 who were arrested at least four times, and one as high as eight times, and they have been out in the street all that while.

SENATOR CONTILLO: For selling, now, not using?

CAPTAIN HEMSEY: Selling, distribution.

SENATOR CONTILLO: Not marijuana, but other--

CAPTAIN HEMSEY: Marijuana and coke. Once the offense is over an ounce of marijuana, it becomes an indictable offense. So, we have to charge--

SENATOR CONTILLO: An ounce of marijuana?

CAPTAIN HEMSEY: Yes, sir.

SENATOR CONTILLO: And how much cocaine?

CAPTAIN HEMSEY: Well, anything under cocaine; whether it be one \$20 capsule or a kilo, it is indictable.

SENATOR CONTILLO: Selling, not using?

CAPTAIN HEMSEY: Selling, right, but even using.

SENATOR CONTILLO: Oh, this includes people who are just using?

CAPTAIN HEMSEY: No, no. The figure I gave you on the repeaters is sellers.

SENATOR CONTILLO: Sellers, but the 1000 people-- Were some of those just users?

CAPTAIN HEMSEY: The 1304 that we effected the arrests on are users and sellers. Out of that, there are 608 who were charged with possession with intent to distribute, and 91 were where we made undercover -- where they sold to undercover agents.

SENATOR CONTILLO: So, about 600 were those who the Senator's bill directs itself to.

CAPTAIN HEMSEY: Yes, sir.

SENATOR CONTILLO: Will you just give me a profile of the person who gets convicted under this as a seller -- the type of person? Are these young people who are just addicts themselves?

CAPTAIN HEMSEY: No. They are users, because when we are talking about cocaine, we are not talking about addicts; we are talking about users. Okay? They are users. Yesterday we made an arrest of a 15-year-old juvenile who had 47 vials of crack cocaine. Now, he is a user, but he is also a seller.

SENATOR CONTILLO: Aren't most sellers also users?

CAPTAIN HEMSEY: Yes, sir. That is how they-- They try to justify selling to supply their habit of using.

SENATOR CAUFIELD: Yeah, but they are not the people we are after in this bill.

CAPTAIN HEMSEY: No, no. The people we are after-- Here is a perfect example, sir. Just bear with me for one second. In February of 1984, we arrested a subject for distribution of cocaine. In August of the same year, he was again arrested and charged. On December 6, 1984, the subject went before the courts and pleaded guilty, and was given five years probation. For a whole year, he stayed clean. December 12, 1985, we again arrested him for distribution. On January 6, 1986, we again arrested him. On January 10, 1986, we again arrested him. On February 12, we again arrested him for distribution of drugs.

This person knows that after he goes before the courts, his probation is going to be revoked, so he is out there selling. That is probably the strongest reason we come before you and say, "Make mandatory sentencing." This guy should have been in jail two years ago.

SENATOR GRAVES: Absolutely.

SENATOR CAUFIELD: Why do you feel he was not?

CAPTAIN HEMSEY: I can't--

SENATOR GRAVES: Because the judge had the discretion to put him on probation for five years.

CAPTAIN HEMSEY: The judge didn't put him in jail; he put him on five years probation.

SENATOR GRAVES: This was a Superior Court judge in the County of Passaic?

CAPTAIN HEMSEY: Yes, sir. Whether there is no room in the jails-- It is not for me to decide why the judge--

SENATOR GRAVES: Who was that judge, do you know?

CAPTAIN HEMSEY: I have no idea, sir. But, in the City of Paterson-- I resent the gentleman's remark that local law enforcement does not do their job. We do our job in the City of Paterson. I don't know about Lyndhurst.

SENATOR GRAVES: That is apparent from the number of arrests you made.

CAPTAIN HEMSEY: Well, in Paterson we do our job.

SENATOR GRAVES: Okay. We are going to give those against a chance.

I would like to introduce one of the Councilmen from the City of Paterson who is a retired police sergeant. You are limited to two minutes, because the Assemblyman -- your chauffeur -- is up there waiting for you.

COUNCILMAN ROY GRIFFIN: Right. First of all, I am Councilman Roy Griffin from the City of Paterson. I am a retired police sergeant. I put in 30 years at the Paterson Police Department. So, I know firsthand some of the problems we have here in the City of Paterson.

I endorse mandatory sentencing. I disagree with plea bargaining because when you have plea bargaining, that is when you get the repeaters. Someone made a statement before that if you had a fellow here, and sort of took him off to the side with the Attorney General, maybe you could compromise, and grab maybe 10 or 20 big fish in a narcotic war. I have to disagree with that. If you have a man who is going to be able to rat out 10 or 15 or 20 important people in a narcotic fight, that man is not going to live to testify against one of them. He

would be gone before we could get any benefit from what he was supposed to give us.

SENATOR CAUFIELD: Should we encourage that?

COUNCILMAN GRIFFIN: Encourage doing away with him? Sure. Then you won't have a problem with him the next day. I am a hard-liner.

SENATOR CAUFIELD: I said that rather half-heartedly.

COUNCILMAN GRIFFIN: I have to agree with something that was said before. We need education and public relations. We have to start in the lower grades of the schools. That is critical. You know, the reason why the problem is getting so much notoriety is because-- Take the City of Paterson. It sort of mushroomed out into the suburbs, and when it mushroomed out to the suburbs, it started making a lot of other people wake up, saying, "It is not just a problem of a town like the City of Paterson or Newark or Camden." They are starting to realize that it is hitting anybody, from the lower echelon in our world to the top brass.

I think the Senator stated before that if we had an epidemic of typhoid, we would put a lot of resources into trying to lick the typhoid. One of the problems -- I know it is a big problem -- is that it is coming into the United States from foreign countries. We have to try to stop that stuff from coming into the country. One of the ways, I feel -- and I think the Senator made statements like this -- is to cut off aid to some of these countries which do it for their own economy. That is the way they survive.

We have to look at the overall picture. I am one who, if you do apprehend some of these -- particularly if they are juveniles-- Years ago, they had the CCC and the NRA. I think we should have some kind of camps where we could put these juveniles and sort of get them out into the forest to work. I think if you put them out in the forest, or into some kind of building, you would get the benefit of putting them away. I

think that is the only way you are going to sort of put a lid on the repeaters.

I also worked -- years ago -- over at the Mount Carmel Guild with some of the drug addicts on a part-time basis for maybe five or six years. I have to say that over there they are not afraid of being caught, because the problem is they are caught and they are out -- as Captain Hemsey stated -- the next day. If you had the mandatory sentencing, you could put them away for three years, five years, and I think you would cut into the crime problem we have in the State of New Jersey.

SENATOR GRAVES: Okay, Councilman--

COUNCILMAN GRIFFIN: Just one more second.

SENATOR GRAVES: Go ahead.

COUNCILMAN GRIFFIN: I believe we should have a task force, because in any town the narcotic officers are known to the drug pushers and the addicts. I think if we had a task force funded by the State of New Jersey, and switched them up and down the State, I think you would be able to lick some of these problems, too.

Thank you.

SENATOR GRAVES: Okay, thank you, Councilman. Denis Mansmann, New Jersey Association for the Prevention and Treatment of Substance Abuse. Good afternoon, sir.

D E N I S M A N S M A N N: Good afternoon.

SENATOR GRAVES: We are going to try to condense because we have a lot--

MR. MANSMANN: Okay, I won't read my statement. First of all, I want to applaud you for your vigorous concern. Sometimes we who are in the drug treatment field feel that we are out there by ourselves and no one really cares about what we are doing, or about the people we are trying to help.

I must say that I, and the drug treatment programs I represent -- some 40 across the State; there are about 82 altogether -- would certainly back you 100% in this mandatory

sentencing. I really think the only way it can be effective is if there is no watering down of it; if it is a very strong bill. It does send a very strong message.

We get the by-product of that, because as the police department begins to get tough on drugs in a particular town, we end up getting a lot more people into treatment. As you get tough with people on the statewide level, you are going to get a lot more people into treatment.

I also want to congratulate the P.I.C.O. group. I think that community kind of awareness and willingness to work with the problem is essential. It will probably do more than anything else to turn a town around. That only happens when we finally say in a town, "Enough, we don't want this any more in our town. We don't want this to happen any more. I don't want my children growing up with this." I have a four-year-old and an eight-year-old, and I don't want them to live like that. It is only at that point, I think, that we can turn things around.

What I am somewhat concerned about -- the concern also of Senator Contillo and Senator Caufield -- is, in making the mandatory sentencing, oftentimes a seller is also a user; and oftentimes a seller is someone who is an addict. Many times they are selling because they are supporting their habits in that way. I think there is a certain amount of toughness that has to go with that, but on the other hand, I think that if treatment has never been tried with a person, treatment should be tried, and I think it should be mandatory. I think a judge should have the discretion in some cases--

SENATOR GRAVES: Like the drunken driving.

MR. MANSMANN: --to be able to say, "You either get into treatment, or you are going to jail." We are effective in treatment. We do reduce crime; we do reduce the amount of drug use; and, we are successful with some 33% of our people who get into treatment.

SENATOR CONTILLO: This is exactly the crux of John's hesitation and my whole problem with the bill. You discuss it on Page 2 of your prepared statement, which you didn't read. What you are suggesting then, is that the bill be amended to mandate, for a youthful, first-time offender -- that the judge mandate part of his sentence for treatment, as opposed to prison.

MR. MANSMANN: Yes, that sort of thing, some way or other or including mandatory treatment. It works. Most of our clients are sent to us by Probation. At first, they are very reluctant to get involved in treatment but, as we work with them, we can turn them around.

SENATOR CONTILLO: Okay. Then, how about a person who goes into treatment who doesn't want to go? In other words, are you successful with people who really don't want to be in that program, who are only going there in lieu of prison?

MR. MANSMANN: No. Eventually, if they don't, then we report that to Probation, and they are put off the program, and they are sent back to jail.

SENATOR CONTILLO: You are suggesting one-time treatment. If it is not successful, or if a repeat takes place, then the five-year jail sentence should be implemented -- or whatever it happens to be.

MR. MANSMANN: Something along that line. I haven't thought that out, but I think something where there is an opportunity for the person to get into treatment. We applaud when the local police pick up someone on my program who is selling drugs to others. We applaud that because we feel that we don't have the ability to report that person because of confidentiality. We are glad to see that that person gets caught, and that person gets off the street and goes to jail, because they are not cooperating with my program any more than they are cooperating with the community.

SENATOR CONTILLO: But, what you are suggesting is that first shot--

MR. MANSMANN: Yes.

SENATOR CONTILLO: --treatment for a youthful first offender.

MR. MANSMANN: Yes.

SENATOR CAUFIELD: Why youthful? He doesn't have to be youthful.

SENATOR BASSANO: See, I disagree with that.

SENATOR CAUFIELD: What about a guy 31 years old? I guess it depends on your definition of youthful. I think 60 is youthful. (laughter)

SENATOR CONTILLO: The difference between being 15 years old, or 17 years old-- When does this kick into law at present? What age do you have to be to go to prison under this law now?

MS. WELTMAN: You have to be an adult, 18.

SENATOR CONTILLO: You have to be 18 before it applies to you, anyhow.

MR. MANSMANN: But there are some people-- Heavy users get involved, many times, when they are 18, 19 years old, for the first time.

SENATOR CONTILLO: Then, as he says, drop the word "youthful," if you please.

SENATOR CAUFIELD: What would you do with the star player from the Mets, you know, first offense, second offense? You know, I am not sure-- First of all, I think anybody who doesn't believe in treatment for people who are hooked, and who are strictly addicts, who are just selling for their habit-- They are not very enlightened. I really don't think they understand the problem. I said this earlier: I think they are as sick as people with cancer or heart conditions or whatever else.

The kind of program you are talking about-- Is that basically the six-week program with the aftercare, and attending meetings?

MR. MANSMANN: That is part of it. We have a whole range of various types of programs.

SENATOR CAUFIELD: Are some of them more than six months?

MR. MANSMANN: Some of them are six months; some of them are longer than that. Some of them go up to two years.

SENATOR CAUFIELD: Aren't most of them six months?

MR. MANSMANN: No. The alcohol is mostly six months. Most of our residential programs are for 18 months.

SENATOR CAUFIELD: Isn't that funny? I won't mention the place, but I am thinking about a place up in Sussex County, where they treat alcoholism for two weeks, and other types of narcotics, they treat for six weeks -- with some exceptions -- but that is the basic thing.

MR. MANSMANN: Yes, yes, with intensive aftercare.

SENATOR CAUFIELD: Aftercare is something like 11 weeks, or 16 weeks, and even after that they have-- I think they call it the 90-90 Program, where they have to attend 90 meetings in a row--

MR. MANSMANN: Yes.

SENATOR CAUFIELD: --of either Alcoholics Anonymous or Narcotics Anonymous.

MR. MANSMANN: Yes.

SENATOR CAUFIELD: But, that is the kind of program you are talking about?

MR. MANSMANN: Yes, but remember, here we are talking about someone who slips back into using. Someone who slips back into using and goes on to selling-- I really think there shouldn't be another chance for that person.

SENATOR CAUFIELD: I don't agree.

SENATOR CONTILLO: There should not be.

SENATOR CAUFIELD: I don't think anybody should be struck out with less than three strikes. I'm sure if you talk to your rehab centers, they will tell you that they almost

expect that most of the people who leave there after six weeks are going to fall at least once more. I don't know how many falls you should really be allowed, but I know I use a program in my own department, but I don't strike anybody out with less than three stikes.

MR. MANSMANN: No, I agree with you, Senator. I am not saying--

SENATOR CONTILLO: Using and selling. He is talking about users.

MR. MANSMANN: I am talking about users. When I say someone who has used and also sold and never tried treatment, and there is some evidence that he is selling in order to support his habit, that person should be mandated for treatment. If they fall back into use, that is one thing, but if they fall back into selling, then I think the mandatory sentencing should take place.

SENATOR CAUFIELD: As far as I am concerned, the person who will not go into rehab -- one time at bat and you're out, that's different. I am talking about people who go in and make a very bona fide effort, you know--

MR. MANSMANN: Relapse is a part of treatment.

SENATOR CAUFIELD: I would hate to think that every time -- and I am not on drugs -- but every time in my life I fell two or three times that I was going to be condemned. I would have been condemned to hell a long time ago.

MR. MANSMANN: No, that is-- Absolutely, but it is a different question where you are talking about relapse into selling, than relapse into using.

SENATOR GRAVES: I think we get the point. Thank you. The next person will be Alan Silber, Association of Criminal Defense Lawyers of New Jersey.

A L A N S I L B E R: Good afternoon, Senators.

SENATOR GRAVES: Go ahead, sir.

MR. SILBER: My name is Alan Silber, and I am appearing on behalf of the Association of Criminal Defense Lawyers of New Jersey. I am a member of the Board of Trustees and a defense attorney here with an office in Newark. I was an assistant prosecutor for five years in Essex County. Probably my chief claim to fame is teaching Joe Falcone how to play center field.

We are here, I take it, to discuss a very narrow issue. The narrow issue is whether in the treatment of the social problem that drugs have caused us -- we are in agreement that is a widespread problem -- whether minimum mandatory sentences removing discretion from the judges is an effective method of treatment. I think we are in agreement, and I would side with the Attorney General, that there are many negatives to it. The question for us to determine is whether the negatives are outweighed by the positives. Let me list some of the negatives. I think the Attorney General probably did a better job than I did.

Prison space is certainly the first. In every instance where there has been minimum mandatory sentences, the result has been a skyrocketing of the prison population.

SENATOR GRAVES: I am not going to interrupt you, and I haven't, but I want to share something with you. At lunch, I was sitting with the Senior Vice President of this hospital. I asked him, "Approximately how many beds, today, in this hospital, are being used in relation to drugs?" He told me between 15 and 25 a day. I said, "What is the cost per day?" He said, "For the average case, a person who is under control, so to speak, about \$600 a day. For a person who has gone beyond that, it could be upwards of \$1000 a day." So, we are talking 25 beds, \$1000 apiece, \$25,000 a day. You know, you are talking about multi-millions of dollars in hospital beds, versus making cells available for the people who are taking our kids, who have been innocent to life, and, in fact, persuading

them, through weakness, to adopt stuff which normally they never would have done if that person wasn't there to persuade them. I don't think it costs \$1000 a day to keep a prisoner.

MR. SILBER: I would like to make two comments to that, Senator, if I may, and then go on. The first is, the cost to society from the drug problem is enormous in many areas. There is no question about that. The issue here is, will the imposition of minimum mandatory sentences help us in treating that problem, and in making the assessment as to the degree it will help? If there is any degree, what is the cost of the imposition of minimum mandatory? So, it is a fairly narrow issue I am addressing. The numbers, it seems to me, that are pertinent for this Committee to understand, are-- We are talking about \$75,000 per bed for new construction costs. We are talking about \$20,000 a year to house a prisoner. I think it is \$23,000 or \$24,000 in New Jersey. It is about between \$15,000 and \$20,000 nationally.

So, we are talking about a big expenditure. It is a sufficient expenditure if you get the good that you are aiming for.

SENATOR GRAVES: It's \$20,000 to \$25,000 a day for the prison bed, but it is \$300,000 a year for the patient's bed, who--

MR. SILBER: I understand what you're saying, but we're apples and oranges in that kind of a context.

SENATOR GRAVES: How is that apples and oranges?

MR. SILBER: It's apples and oranges because of the narrow issue we are addressing. The issue is, does minimum mandatory sentence help, and what is the cost of the minimum mandatory sentence? When you say \$300,000 for the bed, you are postulating that it does help and somehow we are going to decrease the cost of that hospital bed if we institute minimum mandatory sentences. I don't think you can point to a study that would indicate that that is so.

What we are dealing with -- if I may continue--

SENATOR GRAVES: Just back to what you are talking about with the prison. You are talking about it is going to cost more to develop more prison beds.

MR. SILBER: It costs approximately--

SENATOR GRAVES: Okay, but if you take the Attorney General's own statements that over 50% of the people who are in prison now are there for drug-related crimes-- If this bill is successful in arresting those who are selling those drugs, there is no question in anyone's mind that the number of crimes -- drug-related crimes -- will reduce.

MR. SILBER: Oh, there is a great question. I think there is a very great question.

SENATOR GRAVES: There is a question that if we arrest all the drug--

MR. SILBER: The people who you are going to catch in this bill are, for the most part, going to be low-level dealers; they are going to be mules; they are going to be easily replaceable in the system. As long as you have the victimless crime of drug use and sales, there is no indication that higher sentences, more Draconian sentences, surer sentences are an effective deterrent.

For example, take the Rockefeller laws, probably the toughest drug laws in the country. What do we know about the Rockefeller laws? What did we find out? First, what the Rockefeller laws cost the people of the State of New York was enormous prison overcrowding, and sentences in which Federal judges have ordered the release of prisoners because of the situation where they did not have sufficient prison beds to deal with it. In terms of speedy trial -- one of the things the Attorney General pointed out -- we went from 170 days in New York to 340 days in New York, with the imposition of the Rockefeller laws, from the beginning of the litigation to the end of the litigation. We doubled the number of trials that

were taking place and that-- By the way, that would probably be exacerbated or increased under the bill coming out of this Committee, because the Rockefeller bills imposed such a stringent penalty for what New York calls the "A-1 felony," where their minimum mandatory was 15 to life, almost requiring people charged with those crimes to plead down to avoid that minimum mandatory if they went to trial.

So, the Rockefeller laws had two real detriments. One was to increase the trials down below, and the second was to really impair an innocent defendant's right to go to trial because he ran such an enormous risk with the minimum mandatory penalty.

SENATOR GRAVES: Has that law been abolished in New York?

MR. SILBER: Pardon me?

SENATOR GRAVES: Has that law been abolished in New York?

MR. SILBER: It has been amended, but it is still in effect. It is pretty much routinely criticized by both prosecutors and practitioners in the City.

The other problem that concerns us greatly -- and I think both Senator Contillo and Senator Caufield mentioned it in their opening statements, and it certainly is a part of my empirical experience -- is the kind of person who gets caught in the net who really doesn't deserve to go to jail; to deprive the judge of the discretion to say, "This is a special case. This is a case where there are many sympathetic factors."

SENATOR GRAVES: But, isn't it the only way-- I'm picking your mind.

MR. SILBER: Sure. I am here to help.

SENATOR GRAVES: I hardly interrupted anyone, but I am doing this because I am picking your mind. When you say "the kind of person who shouldn't get caught--" The only person who can get caught in this law is someone who is selling drugs.

MR. SILBER: Let me give you an example, if I may.

SENATOR GRAVES: Go ahead.

MR. SILBER: A personal case. I had a case, a young college student -- this was not in New Jersey, but I think it is still an apropos case of what would happen in this law -- involved in a multi-million dollar cocaine conspiracy ring, albeit on a low level. He was a mule.

SENATOR GRAVES: What is a mule?

MR. SILBER: A mule is one, in the parlance, who transports -- a pack animal. He is not an entrepreneur. He was paid a flat fee to transport large -- way in excess of what the minimum quantity is here. He admitted doing it on, I think, something like 12 or 15 occasions over a two- or three-year period. He had been out of the business -- and it is a business -- he had been out of that business for three years when he was indicted. He was indicted because somebody testified, somebody testified, somebody testified. What we are seeing in the business is the so-called "drugless drug case," the case based on informers in past testimony.

Here is a young man who had given up the business, had cured his own particular cocaine problem, who had graduated from college, had taken graduate work in college, who had gotten a job with a real estate firm in Washington, D.C., of enormous promise--

SENATOR CONTILLO: That could apply to murder, as well.

MR. SILBER: Pardon me?

SENATOR CONTILLO: Are you suggesting then that a person who committed a murder should be not guilty of it because--

MR. SILBER: No, no, and I am not suggesting--

SENATOR CONTILLO: How many kids could he have killed?

MR. SILBER: May I answer his question, because I think it is really relevant. First, drugs, because of the nature of them, are different than murder, and second, the fact

of the matter is, I didn't say that he shouldn't have been convicted; I didn't say that he shouldn't have been punished. What I said was, when the prosecutor of the case stood up and said to the judge, "Judge, because of what this young man has done in rehabilitating his life, we don't think he should go to jail." The judge should have the discretion, in those kinds of cases -- and admittedly they are rare -- to say, "Perform 500 hours of community service. Go to a halfway house." In another case I know of where there was a similar kind of a situation, the judge proposed a halfway house problem. In another case I know about -- which was not mine, but a colleague's case -- there was a work release so that the family business could continue, where it otherwise would have collapsed.

There is not a practitioner in our Association who cannot point you to one, two, or three cases where we would all -- if we understood the case -- we would all say, "This is a very sympathetic case," and an injustice would be perpetuated if the judge didn't have the discretion to formulate creative fashions. What we are hearing from the former Attorney General of the United States -- William French Smith -- what we are hearing from all kinds of sociologists and criminologists today, is that the prison boom of the '70s has not worked, that there have not been deterrents. What we found out from the Rockefeller laws -- much tougher than the laws this Committee has proposed -- is that there has not been a deviation of crime, that the drug problem is a kind of pervasive problem that may not be susceptible to simply more repressive legislation, that it may need a different kind of approach, and what we are going to do is exact a terrible toll in society in terms of a fiscal toll, in terms of a human toll, in terms of an inability for all of us to do justice in the individual case.

After all, in the system of criminal justice, it is the individual case that is the hallmark of what makes the

American system great, and what differentiates us from other systems and from eastern bloc powers. So, the ability to deal on a case-by-case basis with the various factors in a case is what makes our system humane, when it is humane. What we need to understand, and what we need to do as we look about is-- First, of all the nations in the civilized world, we have more people in our percentage of population in prison than any other nation in the western world, and than any other civilized nation in the world, except for South Africa and the Soviet Union. It needs to be a statistic that we consider very seriously when we understand what we are doing to the fabric of our society when all we do is try and achieve a solution of a complicated problem by just repressive legislation.

What we need to know is that in the '70s, we went that route. The '60s were considered more permissive. We enacted legislation that decreased the penalties for drugs. In the '70s, we went the other way. We enacted the toughest set of drug laws and minimum mandatory sentences. It has not solved the problem.

I would commend an excellent book to this Committee, called "Confronting Crime: An American Challenge," by Elliott Curry (phonetic spelling). He was on the staff of the National Commission on Violence. He is a professor at Berkeley and at Yale. He is a sociologist and a criminologist. His conclusion about minimum mandatory sentences is that in the drug area, and in most areas, they simply do not work. He cites to studies in the Massachusetts law; he cites to studies in Michigan law. He comes to the conclusion that the costs, fiscally and in human terms, are enormous, and that there is not a single study which can really prove that there is a deterrent, that, in fact, we are stopping people from committing the kind of crime we are talking about.

This -- and I am going to be finished very shortly -- statute casts a very broad net. Three point five grams of

cocaine is not a lot. You are going to get young people, who are most susceptible to rehabilitation, who will be most harmed by a three-year prison sentence. You are going to get people who are distributing, but not distributing commercially. I think that is why Attorney General Edwards said we should be talking in terms of pounds and not ounces, because it is a net that is cast way too broadly to attack the problem of the big drug dealer, who I think you are after, rather than those -- albeit it is illicit -- who essentially buy in bulk to split among themselves because they are users. So, when someone does this, and he distributes three or four grams to someone else, yes, he has bought and he has distributed; but, no, this is not commercial distribution. Nevertheless, you will pick up in the net you have cast so broadly in this bill, those kinds of people who I don't think any of us want to pick up.

I want to conclude -- if I may -- with a very interesting paragraph on repressive legislation by Dr. James Hemslin (phonetic spelling), who is a sociologist at Southern Illinois University. He wrote, I think, a must-read article for those of us who want to solve society's problems called "Towards a Rational Drug Policy." One of the things that Dr. Hemslin points out -- and I think it is mandatory for us to all understand the implications of this-- You have to excuse me because my eyes are getting to the point where I need glasses now.

SENATOR CONTILLO: Your arms aren't long enough.

MR. SILBER: Exactly. "Other people, for one reason or another, have also disliked certain drugs, and have also attempted to solve the matter through repressive legislation. For example, the Muslims once had a coffee problem. In the seventeenth century, Muslim leaders thought that coffee was a highly undesirable substance. They directly associated coffee drinking with laziness. They prescribed the death penalty for owning or for even visiting a coffeehouse. But, people

continued to drink coffee. The death penalty was also imposed for smoking tobacco, when that drug was out of favor with the influentials of Germany, Persia, Russia, and Turkey. Repressive legislation, however, even when it goes to this extreme, fails to stop people from using drugs that are in favor at the time."

That is a lesson that I believe we have to learn if we are going to begin to achieve what we all want to achieve in common, which is to find a way to deal with a very serious problem in society.

SENATOR CONTILLO: You represent the--

MR. SILBER: The Association of Criminal Defense Lawyers of New Jersey.

SENATOR CONTILLO: Okay. I would have to assume that so many people are accused of the same crime -- different people. I think one of the reasons why people feel very strongly about mandatory sentences -- the public feels it, and the legislators feel it -- is because the same crime will be applied to two different individuals, and the average poor slob -- as he might be -- who does not have a lot of dollars, and cannot hire a very expensive, high-powered law firm to defend him, will usually feel the full brunt of the law. I think the public's perception is that the law is not really for everyone. The law does not apply to those individuals who have enough money to hire the people, say, from your Association.

MR. SILBER: Our Association comprises public defenders, as well.

SENATOR CONTILLO: I tried not to--

MR. SILBER: I'm sorry; I apologize.

SENATOR CONTILLO: I think that is one of the reasons why the public feels very strongly about mandated sentences. You said there is no evidence that mandating sentences reduces the crime they are aimed at. That is contrary to what we have seen very recently. Senator Graves single handedly, in a

number of different items-- Number one, his "use a gun and go to jail routine" has worked. It has deterred crimes with weapons, from law enforcement information we have. If that doesn't affect you, there isn't a person in this State who doesn't know that if you drive drunk -- which is a mandated sentence that he has led the fight on-- If you drive drunk, you lose your license. So, the amount of people who drive drunk are less.

So, the evidence that I see, without opening up textbooks and going to people who can give you three sides of any question you choose, there is no question in my mind -- or the minds of everybody in the State -- that what we have seen recently -- in a couple of simple laws -- mandating sentences does work.

MR. SILBER: First, if I may respond, the Association of Criminal Defense Lawyers -- and I think this is important for all to know because we are going to be around for a long time -- is comprised not only of private practitioners, but also of public defenders. What we are talking about here is giving the judges the ability to deal with the individual cases in which the individual case requires.

SENATOR GRAVES: But, Captain Hemsey showed how the judge failed -- put the guy on probation for five years.

MR. SILBER: You know, I think it--

SENATOR GRAVES: He has been arrested four times since.

MR. SILBER: That's right, and his probation would be violated in that kind of a situation. He would probably go to jail for much longer than the minimum mandatory term. What we don't want to do is throw the baby out with the bath water. We have a system of justice that is committed to the idea that it is better that 10 guilty people go free than that one innocent person goes to jail. In much the same manner, I believe it is better that we give someone a second bite at the apple than to put someone in jail who does not belong there.

SENATOR CONTILLO: This has nothing to do with letting guilty people off the hook.

SENATOR CAUFIELD: No. I think what you are referring to, having a very high-powered law firm, and so forth, may have something to do with finding you guilty or not guilty. I don't think it has any effect, in my opinion, on the judges who levy the sentences.

MR. SILBER: I agree.

SENATOR CAUFIELD: When I hear a story like Senator Graves just referred to, that kind of repulses me a bit, but I don't think that is a typical judge. I have great faith in our judiciary. I think we have an excellent judiciary. You are not always going to agree, and a judge is not always going to make the right decision. Indeed, the guy may be back two weeks later on the same offense, but as a general principle, I think we have very learned and very intelligent judges. I think they make good decisions. You will always hear the horror stories. You know, we will hear some here today.

SENATOR GRAVES: Mr. Silber, I think your input was significant and important. Thank you very much, sir.

MR. SILBER: Thank you.

Sergeant Leo Uebelein, Union County Prosecutor's Office.

S E R G E A N T L E O J. U E B E L E I N, J R.:
Honorable Senators: I come to you here as Sergeant Leo J. Uebelein, not of the Union County Prosecutor's Office -- I am a member of the Union County Prosecutor's Office -- but I come to you here today as the President of the New Jersey Narcotic Enforcement Officers Association. I am in total representation of that particular organization, and I would like to thank you for giving us the opportunity to come before you, because it has been a long time that this organization has been involved in this type of narcotic enforcement activity, as well as drug enforcement and drug abuse programs.

Prior to giving my statement, I would like to preface it by saying that within the next two weeks, we, as an association, are coming across with a Drug Awareness Program geared, primarily, to the kindergarten through the fourth grade area on a statewide basis. The program will be unveiled within the next two weeks. It is just showing that we are around; we have been around for 20 years, and we have been doing this type of work for years, sometimes without anybody knowing that we are in existence. To further prove that point, what I have done-- I have taken all 40 Senators in the State of New Jersey and have put them on our Narcotic News mailing list, so you will be privy to all of our information, all our problems, and all of the things that come through our Association that might help you in some of your decision making.

SENATOR GRAVES: May we ask you-- We are trying to condense some parts of this hearing.

SERGEANT UEBELEIN: Okay. I will now--

SENATOR GRAVES: Are you in favor of this legislation, or do you find fault with it?

SERGEANT UEBELEIN: Our Association has prepared a statement on a consensus opinion.

SENATOR GRAVES: We have your statement.

SERGEANT UEBELEIN: Yes.

SENATOR GRAVES: I am trying to draw from you for other consumption.

SERGEANT UEBELEIN: Okay. The Association, for the most part, is in favor of this legislation.

SENATOR GRAVES: Do you think this legislation will help to decrease the availability of drugs on the streets in this State?

SERGEANT UEBELEIN: The Association, in consensus, feels that-- I would only like to say that because this was a article drawn up for presentation to you today, I would like to read it into the record.

SENATOR GRAVES: No, we all have it.

SERGEANT UEBELEIN: Okay.

SENATOR GRAVES: It will be printed right in the record.

SERGEANT UEBELEIN: Okay, thank you, because it was the work of some 30 board of directors and officers over the last few weeks.

SENATOR GRAVES: It is going to be part of the record; that is why I am trying to cut it.

SERGEANT UEBELEIN: Thank you very much, Senator.

SENATOR GRAVES: You, as an enforcement officer representing a county -- representing the entire State--

SERGEANT UEBELEIN: I am representing the New Jersey Narcotic Enforcement Officers Association, yes, sir.

SENATOR GRAVES: You are supportive?

SERGEANT UEBELEIN: We are supportive of this.

SENATOR GRAVES: Okay, thank you.

SENATOR CONTILLO: Do you think it will help you to keep drugs off the street?

SERGEANT UEBELEIN: Our membership definitely feels it is a good bite that we need to take into this drug problem. What we have had in the past has not shown any great deficits in causing the problems to desist, and we think we should change the game plans and maybe go a little heavier into the bite. I also think it is unilateral; it is equal for everybody in the State of New Jersey, whether a person has a high-powered attorney, or whether he has nothing at all. If the guy with the high-powered attorney does the same thing as the other guy, he gets the same problem as the guy who has no attorney and lives in the ghetto. It is a fair, equal bill.

SENATOR GRAVES: Okay, thank you. Is the representative of the New Jersey Association on Correction still here? (affirmative response)

K A R E N S P I N N E R: Thank you, Senator Graves. My name is Karen Spinner. I am the Director of Public Education and Policy for the New Jersey Association on Correction. The Association is a statewide organization of citizens who are working for the improvement of criminal justice and corrections in New Jersey.

Briefly, I would like to state that we are opposed to mandatory minimum sentences. This is a longstanding policy of the Association. Quite honestly, we don't feel that locking up sellers of drugs, especially those who are using them themselves, is going to be a solution to the drug abuse problem.

SENATOR GRAVES: Tell me what you feel would be the proper approach.

MS. SPINNER: A combination of treatment and perhaps incarceration for some individuals. However, indiscriminate sentencing to mandatory sentences, I don't think solves the problem. There is no -- or very little -- treatment in the correctional institutions in the State of New Jersey. Corrections has not been able to deal with the problem historically. I don't think they have the tools to do it at this time, nor have they been given the tools, even with the expanded capacity we got due to mandatory sentencing in its other forms.

We have lots of jails; we have lots of prison beds. What we don't have is the money that goes with those things, to provide treatment in the facilities for alcoholics or for people who have drug addiction problems. As the Attorney General said this morning, it is not enough to just set up mandatory sentences and lock people up. You have to provide the Department of Corrections with sufficient funds to do their job properly.

SENATOR GRAVES: We said we would do that.

SENATOR CONTILLO: Yeah, this Committee, more than any other, feels a very deep responsibility there.

SENATOR CAUFIELD: There is also another area that I don't think you deal with at all. I know Senator Bassano has a bill in on it. What do you do with mentally disturbed people -- mental cases? Do you really do anything for them? Do they really have any treatment? You know, I sat on the JAC for several years, and when we heard the presentations and we raised that question, it sounded pretty much to me like we are very deficient. And, that is a big part of our population. That is a big part of our homeless population in Newark, Camden, Paterson, and everywhere else, people who are not mentally competent.

MS. SPINNER: Exactly. That really is outside the area of my expertise. We deal primarily with offenders and ex-offenders.

SENATOR CONTILLO: Who do you represent -- I'm sorry.

MS. SPINNER: The New Jersey Association on Correction. We are a citizens' group. We also provide a variety of direct services to offenders through pre-release centers and through our Clients' Services.

SENATOR GRAVES: And you basically don't believe in mandatory sentencing.

MS. SPINNER: We do not believe in mandatory sentences. We don't think it really serves the purpose. It locks people up. If locking people up solved the problem, I think the problems would be gone by now.

SENATOR GRAVES: How do you feel about rapists?

MS. SPINNER: How do I feel about rapists?

SENATOR GRAVES: What would you want, to just counsel them?

MS. SPINNER: No. I believe there is a need for certain people-- Certain offenders need to be incarcerated. Please don't believe that we are opposed to incarceration.

SENATOR GRAVES: I am not trying to belittle; I am trying to learn from you. How do you feel about a rapist? Should a rapist be in jail?

SENATOR BASSANO: No, but the one thing incarceration does is take people out of society. That is the one thing it does.

MS. SPINNER: I am not saying that is wrong. I just think that a mandatory sentence does not necessarily solve the problem. I am not saying that people who sell drugs should not be incarcerated, but I think there is room for discretion in that instance, and I think that if we are going to lock people up, then we really must commit the funds.

I sat at the Joint Appropriations last year, and I talked about this specific problem. I was told by a member of that Committee, "We give the Department everything they need." Well, evidently I must be talking to different people in the Department, because they don't have the money they need to provide the programs. I think if we are going to do this-- I am not naive enough to think that we are not going to have another mandatory sentencing bill in this State. If we are going to do mandatory sentencing, then give the Department what it needs to do the job right. No more half programs. No more programs that don't--

They just send the people out the same way they came in. I think there is something we need to do more than locking people up. We do a little bit in the institutions, but it is not enough. If we have to lock people up, let's do it right. Let's provide treatment for them on their way out and while they are in there. However, recognize the fact that most people who are locked up are very resistant to treatment, so treatment may only be appropriate on the way out, in terms of a pre-release setting, and there is a great need for treatment in pre-release.

SENATOR CAUFIELD: I think the young lady has made a point that I have heard you make many times, Senator Graves: Don't mandate programs on the cities, unless you are going to give them the money to carry them out. I think that is exactly

what you're saying, Ms. Spinner. You are concerned about all of these problems, but, as was said earlier by the Attorney General, if we mandate things and then don't give people the tools to carry them out, it isn't effective. There is no use kidding ourselves. So, I agree with you.

MS. SPINNER: That is why I think we have to look at the whole picture. Earlier, Senator Bubba said, "Well, let Commissioner Fauver come in and ask for his money for the prisons." That is not enough. We all have to be concerned. One of the main problems we have had all along is that each department came along and did their own thing. Consequently, people fell through the cracks, like the mentally ill offender and the developmentally disabled offender. They fall through the cracks because they are not really Corrections' people, but, you know, nobody wants them in the other piece either because they are a little aberrant.

I think we have to look at it from a universal perspective. These problems all fit together; they are not individual problems.

SENATOR CAUFIELD: That's right.

MS. SPINNER: That is what I would urge in the review of this bill. Maybe we should be waiting a few months to get it all together. That would be my perspective.

SENATOR GRAVES: Okay, thank you. American Civil Liberties Union -- my constant sparring partner.

J E F F R E Y F O G E L: I know I have testified before this Committee before on a similar bill, so I don't think much of what I say will surprise the members of the Committee. But, I would like to make some brief remarks, both about the concept embodied in this bill, and about some specifics of the bill.

From my point of view, as a civil libertarian, as a lawyer who has practiced in the criminal defense area, and as a student of life -- very interested in it -- and someone who is very concerned about the drug problem, the major flaw with the

concept is that law enforcement can do something about this problem. We have a large social/health problem in our country associated with drugs. I was happy to see that we were here at the medical school to discuss this serious social/health problem, and yet the only people who have testified -- really -- have been from law enforcement.

I think, frankly, we all put too much of a burden on law enforcement, when we ask them to know the law, to try cases, to do sentencings, to handle appeals, to be able to catch culprits, but also to be experts on how to solve social problems. They can't do it. They are not trained for it; they don't have the competence; they don't have the expertise. We should give them accolades for the work they do, the work they do well in catching criminals, but I think we all make a mistake when we look to them for the solution of social problems, and in particular the health problem, which is what I see this to be.

I don't think--

SENATOR BASSANO: You don't consider this a law enforcement problem?

MR. FOGEL: Well, I think there are aspects of it that are law enforcement. But, frankly, I think the law enforcement problem has come about because of many of the laws that prohibit the use of drugs.

Organized crime in America started during Prohibition, and organized crime in America has flourished during the prohibition of these drugs, some that are at issue in this bill, and others, as well. I don't think we can begin to approach the problem until you take organized crime out of it; until you take the incredible profit motive out of it. I don't care if you were to execute every convicted drug dealer, you will have people lined up in our ghettos for the job. One reason is, there are no other jobs around. Another reason is, this is the most lucrative trade in the world today, particularly in the drugs this Committee is dealing with.

If you do not eliminate the profit motive from the sale and distribution of these drugs, we will have failed in our attempt to try to stop, or limit, the distribution to society, because I think the answer that law enforcement expresses, but doesn't take to the logical conclusion, is that we can't stop it right now. It cannot be stopped. Put 50,000 people in jail in New Jersey simply for drug offenses, and there will be 50,000 people out on the street selling drugs.

Well, if that is the conclusion, then the question is: What do we do about the problem? I think we have to take a step back, and first take a much more careful and scientific look at what the problem is. For example, we lump drugs together. We make assertions that drugs are dangerous. The assertion is often made that heroin is a very dangerous drug. The medical facts -- here we are in a medical school, and we don't have any testimony to this effect-- Heroin is not a drug that creates a physical problem to anybody, except -- this is not to say that this is small -- addiction. Nobody dies from using heroin. People die from using adulterated heroin, and the reason they are getting adulterated heroin out on the street is because people are looking to make money by hustling it. People may die from overdoses after they have gotten what they thought was heroin, but was really baking powder; if they had been using baking powder and then finally using heroin, and then found themselves in an overdose problem.

SENATOR GRAVES: Does a person act rationally when he is using heroin?

MR. FOGEL: Well, I can only speak from limited experience with people who I have observed, either clients or so on. They are no more rational than many people who use alcohol in our society, including those who use it in--

SENATOR GRAVES: That is not a fair comparison.

MR. FOGEL: --my social class at cocktail parties. Many of them are not particularly coherent at those.

SENATOR GRAVES: That is not a fair comparison. We are talking about society itself. We are talking about 6,900,000 people who want to obey the law, who want to be able to let their daughters go to the store in peace, and don't want to worry about such problems.

Does a person on heroin -- a user -- does he or she act with a rationale whereby they can tell right from wrong, and whereby they will not opt to do something that they normally would never do if not on heroin?

MR. FOGEL: My understanding -- and I don't claim expertise in this -- is that you cannot expect rationality in terms of judgment from that person, but you also will not expect violence from that person. The violence and crime that we associate with drug use is violence and crime that deals with two questions: How do I get enough money to pay for the drugs I want, or have to use, and secondly, how do I keep my competitor out of this neighborhood?

Those are the two areas of the primary form of violence that are associated with this. If we could get these people off the street, if you could put them in State-run stores, you wouldn't have the people on the streets selling drugs to kids; you wouldn't have the people on the street killing each other; you wouldn't have adulterated drugs being sold.

In my view, what the efforts of society have to focus on are our young people. I start to think, as I sit listening to this Committee, what would happen if we were to take the \$400 million or \$500 million that the Attorney General was talking about, in terms of increased prosecutors, prosecution, jail space, and so on, and we, as the State of New Jersey, said: "Let's try \$500 million with our young people this year on drugs; let's make sure that there is a counselor for every three kids in our schools, so that they can go to someone and talk to him; let's make sure that there are rehabilitation

clinics; and, let's make sure that there is a specialist teacher in every grade in our schools in the State of New Jersey, to begin to turn around the fadism that is associated with drug usage"?

For many, many years, we had to fight the statement, "When I grew up, I wanted a cigarette." My first cigarette was at age 13. Why? Well, I saw on television that the athletes smoked cigarettes; the movie stars smoked cigarettes. I could be an adult, I could be sexy, I could have greater physical prowess if I smoked cigarettes. Hogwash! The truth was, all that could happen to me if I smoked a cigarette, was that ultimately I would die from it. And, I thank God that I was able to have the courage -- I shared this kind of addiction, I think, as many people did, with heroin addicts and others -- to kick that habit some 10 years ago, and to feel much better because of it.

But, we need to change those mores. Now, when you look around at our schools, you see a reduction in the usage of cigarettes. Why? We have done a number of things as a society. We have pointed a finger where it belongs: "This stuff will kill you." We have started to eliminate advertising on TV to prohibit the -- to prohibit sort of trying to brainwash our young people into thinking this is a good thing to do, when we know that it is going to harm them.

SENATOR GRAVES: Suppose we adopted your philosophy and your programs, and we instituted, through mandating educational circles, doing what you said. What is your advice to deal with the problem that is here today, which is amplifying itself on an hour-to-hour basis, which is uncontrollable, and which is of epidemic proportions? What are you suggesting we do with that guy out there now who is standing on that street corner and has 50 people a day who he is selling to?

MR. FOGEL: Do you mean, what would I do if I had the power to do it?

SENATOR GRAVES: Yeah, what would you do?

MR. FOGEL: I'll tell you what I would do: For the adult population, I would legalize the drugs and sell them in State-controlled stores -- to the adult population.

SENATOR CONTILLO: Your answer to mandated jail terms is free drugs?

MR. FOGEL: Not free drugs, no, because--

SENATOR BASSANO: May I ask you--

MR. FOGEL: --I think I would want the money.

SENATOR CONTILLO: Now, wait a second. You spent a long time discussing the answer to the problem. If not free drugs, sold through a State store -- okay. In effect, easily accessible drugs is your solution versus mandated--

MR. FOGEL: For the adult population.

SENATOR CONTILLO: Which would be what age? What is adult to you, 18 or 21?

MR. FOGEL: I would be willing to discuss 21. That may be a more appropriate age, before people are mature enough to even thing about it.

SENATOR CONTILLO: Okay, but you are substituting for a mandated jail term to people who sell the product now, a program of accessible, reasonably priced drugs.

MR. FOGEL: Then I wouldn't have to be scared when I walked out on the street that that person was going to mug me to get the money to buy drugs.

SENATOR CONTILLO: Okay.

SENATOR BASSANO: You don't get mugged by winos if you walk the street over here?

MR. FOGEL: I don't.

SENATOR BASSANO: Winos who take the money from you and then take the money into the liquor store to buy a bottle of wine?

MR. FOGEL: I have not gotten mugged by them; I have gotten hassled by them a lot.

SENATOR BASSANO: I wouldn't advise you to walk in the area here for that reason.

MR. FOGEL: I happen to work around here; I don't have much choice.

SENATOR BASSANO: What I want to point out to you is the problem of liquor in our society, which is exactly what you are telling us we should do with drugs. Liquor is a major problem in our society, which we try to address before this Committee continuously.

MR. FOGEL: I agree, and I applaud a lot of your efforts.

SENATOR BASSANO: And we still have problems.

MR. FOGEL: I understand that, but one of the things that our society concluded was, Prohibition didn't work. It simply didn't work. There was discussion here today about people smoking marijuana in football stadiums. Well, I am too young, and most of the members of the Committee are too young, but I have no doubt that during the Prohibition era, that same thing was being discussed -- openly flaunting the law -- until the law itself was brought into disrepute.

When we have 50 million people in America regularly using some substance or another that is illicit, and we continue on this path, we interfere with the integrity of the law.

SENATOR GRAVES: But, the kids are not able to get their hands on alcohol like they are able to get their hands on narcotics. They can't stuff little bottles into their pockets like they can stuff those little packets.

So, what you're saying is, for the generation that is coming, start an intensified educational program on drugs and the effects of them.

MR. FOGEL: And counseling. I think you need some one-to-one counseling for that.

SENATOR GRAVES: Everything that goes with it.

MR. FOGEL: Right.

SENATOR GRAVES: And, what you are saying for the adults is, make it legal for them -- not make it free -- to go and purchase it.

MR. FOGEL: To use it for themselves.

SENATOR GRAVES: Are you concerned about how some people are going to have the ability to get the money to go to the State-owned store to buy the drugs?

SENATOR CONTILLO: They're cheap.

MR. FOGEL: Well, they are going to be relatively cheap compared to what the black market prices are -- relatively. I mean, I think it is worth discussing.

SENATOR GRAVES: But you do admit that the rationale of a person on heroin or cocaine is not the same rationale of a person who, like you, is sitting here?

MR. FOGEL: The judgment is reduced. I had a debate recently with Sheriff Englehardt about the urine testing program. He was talking about how it is important to make sure that police officers, who are allowed to carry guns 24 hours a day and execute police powers, should never use drugs, because they have a weapon in their hands, and so on, and their judgment would be reduced.

Well, you know, you have a glass of alcohol in your hand, and your judgment is significantly reduced. The question is, are we going to continue on a notion that this high is okay, but we don't like that high. We don't like either high because they interfere with productivity; they interfere with people in a lot of ways. But the question, as a society, is, how are we going to deal with it?

SENATOR GRAVES: But what you are saying, Jeff, is that it is okay for government to make available a substance to its citizens, who you admit would not be able to have proper rationale; who would be making decisions that would not normally be made by them in the same manner and same background amplification of a person who is on heroin.

God forbid that these people were put into positions of high office, or making decisions on legislation -- what we are doing here today -- a decision to judge on heroin, a decision to let this person go or not let this person go. I can't believe, in 1986, that you could believe that such a conclusion should be forthcoming to be supportive, instead of knocking off this particular habit.

MR. FOGEL: But, Senator, I think you are assuming that there would be a great increase in the usage of those drugs. I am suggesting to you that the studies indicate that there may not be.

SENATOR BASSANO: No, I think where you are wrong is that you think we feel-- Well, let me take that back and start from the beginning.

The problem in society right now with alcohol and with smoking is a major problem. Now what you are advocating is to add a third problem to society by legalizing drugs. What we want to do as a group, if possible, is to outlaw the drugs entirely, and do our best to keep them out of the hands of our society. That is the purpose of this legislation.

MR. FOGEL: Senator, I feel that I would be willing to have that discussion if it were possible. But, as I said, the conclusion that I think you can get from looking around-- Ten billion dollars was spent last year on law enforcement dealing with drugs. How many billion-- Put in 10 times \$10 billion, and you still won't solve it.

So, the question is, how do we come to grips with it? Well, one solution is law enforcement, and for that solution you should have the Ayatollah Khomeini here, because he will tell you how to stop drug usage. Cut off arms, execute everybody, have a garrison state, and you might be able to solve a problem like this through law enforcement. But, if you are not prepared to go that route -- and I know you're not -- you cannot solve it because it hasn't been solved no matter how

much money you spent on it, no matter how much law enforcement is put on it, no matter how many people are put in jail.

SENATOR GRAVES: There is one guy here--

SENATOR CONTILLO: Sultan Graves.

MR. FOGEL: Well, now, wait. I'm sorry, but--

SENATOR CAUFIELD: I certainly have to agree that if you are going to take organized crime out of it, you have to take the profit out of it, but that is only dealing with one phase of it. It would still be available. It wouldn't be any more available than it is now--

MR. FOGEL: I don't think so.

SENATOR CAUFIELD: --I don't think, because I can't imagine--

MR. FOGEL: It being more available.

SENATOR CAUFIELD: --drugs being any more available than they are today.

Frank, you had one other thought about the Senators. Maybe they ought to be the first ones to get a blood test.

MR. FOGEL: That was Sheriff Englehardt who said that, not me.

SENATOR CONTILLO: You know, you said it was mostly law enforcement people who testified; mostly lawyers testified here today.

MR. FOGEL: I can only-- I mean, I can't really apologize too much for that.

SENATOR GRAVES: It was lawyer after lawyer.

SENATOR CONTILLO: It was lawyer after lawyer we heard from.

SENATOR CAUFIELD: You know, I don't think there is a big profit in alcohol. For example, particularly the winos, who someone referred to here-- I know from personal knowledge that you can get a bottle of Thunderbird or My Wild Irish Rose -- those little bottles they have -- for about 45 cents.

MR. FOGEL: Well, it is sad what alcohol has done to families--

SENATOR CAUFIELD: Of course. Alcohol--

MR. FOGEL: --to children. If we were to talk about a problem for children, let's talk about the abuse of children by alcoholic parents.

SENATOR CAUFIELD: First of all, I don't think there are many people in the Legislature who are going to have the courage to do some of the things you suggested. Some of them do make a lot of sense. But, as far as alcohol is concerned, that, undoubtedly, is the biggest problem of all, because, unfortunately, no matter what people tell me, alcohol is still socially acceptable.

What do you say when someone walks into your house: "Will you have a drink?" You don't mean Coke; you don't mean coffee.

SENATOR CONTILLO: No more, though.

SENATOR CAUFIELD: No more?

MR. FOGEL: Well, you know--

SENATOR CONTILLO: Because of the mandatory loss of--

MR. FOGEL: Well, I didn't go into mandatory sentencing, which I oppose--

SENATOR CAUFIELD: I don't have a liquor license in my home.

SENATOR CONTILLO: I was waiting for you to get to the bill.

MR. FOGEL: Let me just say a couple of things, because I do want to get to the bill. Frankly, I didn't expect to be able to come--

SENATOR CONTILLO: The Chairman is going now, and I am not going to put up with all this.

MR. FOGEL: --before the Committee and convince the members of the Committee of my position. I think my position -- and it is not just mine-- Bill Buckley has been writing about this subject, who is very conservative; jurisprudence professors have been writing about it.

SENATOR CAUFIELD: That didn't help your case much with me.

MR. FOGEL: Pardon?

SENATOR CAUFIELD: That didn't help your case much with me.

MR. FOGEL: Okay, that is why I saved it until the end.

SENATOR GRAVES: Jeff, didn't you tell me that it was wrong to raise the drinking age?

MR. FOGEL: I thought so, yeah.

SENATOR GRAVES: Didn't you tell me my gun law was going to be unconstitutional?

MR. FOGEL: No, I didn't say that. I wasn't that optimistic. (laughter) But, let me get back to the law for just a second.

SENATOR CONTILLO: Don't you worry about all the harm you cause?

MR. FOGEL: How do I cause harm? No, I feel that if people ignore the children, and spend all of their time on seeing if we can pick up these mules and these drug dealers and put them in jail -- we are ignoring our children.

SENATOR CAUFIELD: We're not saying that you spend all your time at it.

MR. FOGEL: But, we are not talking hundreds of millions of dollars for education. We're talking hundreds of millions the other way.

SENATOR CAUFIELD: But, you heard me say that it should be part of a master plan. I don't think this is any answer at all.

MR. FOGEL: But the master plan happens to be 99% for law enforcement, and 1% for education. I would switch those priorities, and I think it would go better.

SENATOR CAUFIELD: Absolutely, like I have been preaching.

SENATOR CONTILLO: This is a very philosophical discussion. Would you deal with this bill?

MR. FOGEL: I would love, also, to see--

SENATOR CONTILLO: Would you deal with this bill, please?

MR. FOGEL: Yes. One other thing: I would love to see, perhaps, the Legislature set up a longer range commission to look into the long-range problems associated with this, because there are many problems here. The underground economy in our ghettos is based a lot on drugs, and many people are forced into this because there is nothing else in that community. We are going to have to start to talk about what it would take to stop drugs in that community. What are people going to be making a living on? That is not an unconnected problem, but it is a broad one.

Now, my concern here with mandatory sentencing is that there is always going to be -- as Alan Silber said -- the horrible cases, where someone is going to jail who no one thinks should go to jail. On the other hand, I think the numbers of cases where somebody who doesn't go to jail who should go to jail, are extremely rare, and I think you ought to call on the Attorney General to indicate to the Committee how many people convicted of distributing an ounce of heroin have not gone to jail. Then you will start to see whether, even from your perspective, you think it works -- whether it is even needed.

Secondly, and I guess I am more concerned about the second part, which sets no limit-- The section on LSD and angel dust says "any distribution." Correct? (no response) And, if the amendment goes through as proposed by the sponsor, it will be doubled for distribution under 17.

Well, I only give you one example. I think I gave it to the Committee before.

SENATOR CONTILLO: Distribution to 17 or under.

MR. FOGEL: To 17 or under. The 19-year-old, who comes home from college with one capsule of LSD that he cuts in

half and gives to his 17-year-old brother-- Are you going to put that 19-year-old college student in jail for two years mandatory minimum sentence? The answer is, you have no choice if you pass this bill. You simply have no choice. That person is going to jail. There is no discretion. We are not talking only about selling. The language in there is "distribution." It can be the most casual, friendly kind of distribution and, if it happens in a family setting, you are going to find the older -- the 19-year-old, older brother, who shared the LSD capsule that he got somewhere on the street or in college with his younger brother, going to jail for two years at a minimum.

I think you've got to concentrate on that. Even if you want to concentrate on sellers, concentrate on sellers; don't make it casual distribution. Use the words "selling for profit," and let's set a minimum limit on what that is. To say any amount of angel dust and any amount of LSD is simply to put us back in the setting where we are putting people in jail who have one marijuana cigarette, and will get us nowhere, except wasting time and money, and destroying their lives, as well.

SENATOR CAUFIELD: I agree that too much money goes into one phase and not enough into the other. That is something that long before I knew anything about drugs I was pushing in fire prevention. We put 95%, 98% of our effort, and our dollars, into fire suppression and, you know, I don't want to get off the subject -- and I have been criticized for saying this, but I know I'm right -- if I had 1000 more fire fighters on apparatus in Newark, I wouldn't have no less death. We wouldn't have one less fire, because they don't prevent fires. They put out fires. They may put them out more efficiently, maybe -- and I even have questions about that -- but they won't prevent any fires.

It is only in the last -- I guess in the last year or so that we have made a lot of progress on that, to where we now have a hell of a lot more of our budget going into preventing the fires.

MR. FOGEL: I think that is true of law enforcement in general.

SENATOR CAUFIELD: Of course, it is the same thing.

MR. FOGEL: You are not going to solve drugs by putting more policemen on the beat, or more prosecutors or judges. Then the question really becomes, do you want to spend \$400 million or \$500 million a year on that, as opposed to something else, and we don't have an unlimited amount of money. I mean, nobody can suggest-- As much money as we might want to spend -- and the Legislature has consistently increased the Corrections budget, where everybody else is going nowhere -- there is not an infinite amount of money. There is going to have to be a shifting of priorities. I don't expect my position to prevail in the short run. I would like to raise it, but I would hope that maybe some people will think about -- as you are saying, Senator -- let's start shifting the priorities and give it a shot. Let's see. This isn't working, so the answer that law enforcement gives, "This isn't working; let's have more of this to the ninth degree, instead of to the sixth degree--" Well, what about maybe there is another solution?

SENATOR CAUFIELD: Maybe that is because that is an easy political decision.

MR. FOGEL: It is an easy political decision.

SENATOR CAUFIELD: And it is very popular. Put 2000 more cops on the streets of New Jersey -- which we did not do, by the way-- If anybody ever looks at those figures, they are going to find--

SENATOR CONTILLO: Are we still on the same bill?

SENATOR CAUFIELD: Yeah, we are on the same bill, but we are talking about something that is closely related to it. It is the same thing. You know, it is the perception, unfortunately. Everybody says, "Hey, give me more cops on the street and I am going to be safer." You know, you need a

certain amount of cops, don't get me wrong. In fact, I voted for every police bill we have had to provide more money, because I think we have let our police departments go down to levels that they should never have gone down to. But I think there is a point where you have to say, "Are there other things we should do in order to prevent the crime?"

I know they will give you the argument that, "Yeah, the more visible the police" -- and there is some truth to that -- "the less crime there will be."

MR. FOGEL: Certainly the safer you feel, anyway, and that is an important factor also.

SENATOR CAUFIELD: And, that is what it is; that's what it is. People perceive themselves as being safer, and sometimes they are safer just for that reason, because now they will come out on the streets and, with large numbers of people on the streets, usually there is less crime. Well, we are getting a little far afield.

SENATOR CONTILLO: I would think so.

SENATOR CAUFIELD: That's right. You're the Vice Chairman, why didn't you call me out of order.

MR. FOGEL: If I may leave with one remark, I really would encourage the Committee, as it thinks in the future--

SENATOR CONTILLO: As far as I can tell, with all this smoke, you have identified one area to us--

MR. FOGEL: Right.

SENATOR CONTILLO: -where you think that the bill could be amended. You dealt with the 19-year-old coming home-- Apparently, from what staff shows me, that does not apply within the law -- your example -- because of the time. However, you bring up a subject that is also in existing law, that right now that person can go to jail for up to five years. However, maybe we should look at adding quantities to it. So, you know, we will examine that.

Now, Do you have anything else that is pertinent to this bill?

MR. FOGEL: No.

SENATOR CONTILLO: Okay.

MR. FOGEL: I would like to urge you, though, to think in the long run about the possibility of a commission to look at this for a more dispassionate, less political -- if I may -- point of view. That would include public health--

SENATOR CONTILLO: I don't know what you mean by "less political."

MR. FOGEL: Well, I think there is a lot of pressure in the political sector to deal with solutions like this to this problem. If it is removed slightly -- as we have often done with very emotional issues, whether they have been civil disorders in our communities in the '60s, whether they have been pornography, or whatever -- and we can include public health officials, we can include sociologists, as well as law enforcement, we may be giving something to the public, as well as just what they think they want.

SENATOR CONTILLO: I don't think you are describing this bill as a politically motivated bill, are you?

MR. FOGEL: No, I think the issue is very -- you know, has a lot of political ramifications.

SENATOR CAUFIELD: Mr. Chairman, I would not say it is a politically motivated bill, but I would tell you that bills like this don't get 20 and 30 and 40 sponsors, people who never read the bill, unless they thought it was going to do them some good politically. Sorry, sorry.

SENATOR CONTILLO: There are four sponsors, the members of the Committee.

SENATOR CAUFIELD: No, we have more than that.

SENATOR CONTILLO: Is that your motivation for sponsoring this bill?

SENATOR CAUFIELD: No, I have read the bill. I have experienced -- as a person who has lived in Newark all his life, and who still lives here -- these God damned -- pardon my

French -- drug problems, and I am very concerned about them. I don't think we have the answer here; I think it is a part of the answer, though.

MR. FOGEL: Thank you, sir.

SENATOR BASSANO: I think that the Ayatollah was the best suggestion so far.

SENATOR CONTILLO: He left.

SENATOR BASSANO: Oh, he left, okay.

MS. WELTMAN: Is there anyone here from the New Jersey State Bar Association? (no response) Okay, then there is one more person, Jean Lange. Ms. Lange?

J E A N L A N G E: My name is Jean Lange, and I am representing today the National Organization for the Reform of Marijuana Laws.

SENATOR CONTILLO: For the what?

MS. LANGE: For the Reform of Marijuana Laws. In that capacity, I would like to speak to the bill specifically. But, for the past 10 years or so, I have done a good deal of drug research. I could ramble on endlessly, but I think Mr. Fogel has made the point very clear.

SENATOR CONTILLO: He rambled on, and you are not going to.

MS. LANGE: I would like to offer some kind of help, if a commission is ever established. I think you are really just starting to get under the surface of a really large problem. I think you need a lot more education, research, and resources, which can be made available to you by private citizens.

Specifically on this bill -- as Mr. Fogel mentioned -- LSD carries no quantity level; neither does the provision that deals with marijuana.

SENATOR CONTILLO: But, it is my understanding that this bill doesn't deal with marijuana sales.

MS. LANGE: Subsection b., Paragraph (3), I believe, states that: "Any non-narcotic substance in Schedules I through V" -- I don't have my copy of the bill with me. May I borrow yours for a moment? (addressing aide)

SENATOR CONTILLO: What raises the potential fine-- We have heard a lot of testimony on giving judges greater latitude, so in response to that, we have given them some additional latitude in this bill. That is all we've done.

MS. LANGE: Well, the sheriff who testified before me said that the minimum mandatory sentences should encompass marijuana as well.

SENATOR CONTILLO: Excuse me?

MS. LANGE: The sheriff before me testified that marijuana should be included in the minimum mandatory sentences.

SENATOR CONTILLO: Yes, he did.

MS. LANGE: However, under Paragraph (3), it, again, does not give an amount for marijuana. One of the reasons that I brought up initially that this is a very hard problem for legislators to understand, is because you are really unfamiliar with the drug culture to know how it works. Marijuana, in particular-- The manner in which it is distributed is very, very often through casual transfer. This means, in essence, that someone will purchase a quarter of a pound of marijuana, will sell three of the ounces to his friends, and keep one for his own use.

This also means, in some cases, that someone may buy an ounce of marijuana and may roll it into marijuana cigarettes and sell a lot of them; then keep the rest for his own personal use.

There is another problem, because particularly marijuana users do not wish to be involved in the black market that has grown up around the distribution of drugs. It is very well documented that because of the black market situation, dealers who deal in marijuana also, at times, make the buyers

more accessible to buy other kinds of drugs. For this reason, a lot of the marijuana users are going into growing their own marijuana for their own personal use, so that they can stay out of this black market.

Again, this is purely educational. The kind of marijuana that people would want to grow and smoke would be a female marijuana plant that would be completely in flower. In order to get, say, five marijuana plants that would be of that kind, that they would want to keep and smoke for themselves, they may have to start 100 marijuana seedlings, in order to come up with these five good plants at the end of the year. It is a very involved process.

SENATOR CONTILLO: Are you going to give us all lessons on this, or--

MS. LANGE: Well, it's late, but if you would like me to, I would be happy.

SENATOR CAUFIELD: Do it yourself at home.

MS. LANGE: Well, this is a very big problem. If the police come in and arrest someone for having a patch behind his house, and then they look in the basement and there are 100 seedlings, and there are the various trappings and paraphernalia, how are the police to know whether this is for distribution, or whether this is for their personal use? There is really no way to tell. Coupled with the fact of casual transfer -- which I mentioned before -- it is sort of like growing house plants. A lot of people have really green thumbs when it comes to growing house plants, and they will trade slips of plants with each other. People who grow very good marijuana plants--

SENATOR CONTILLO: I understand, but all we are doing here is increasing the discretion of the judge when he -- in his infinite wisdom and knowledge -- decides that that particular case should have a higher fine. That is all this bill does.

MS. LANGE: But it raises it to \$50,000.

SENATOR CONTILLO: Correct, for those real evil people who are selling it -- not using it -- but selling tons of it.

MS. LANGE: The law does not specifically say that, though. It doesn't say tons or pounds.

SENATOR CONTILLO: No, but we give the discretion to the judge. I have heard so much testimony here today to give the discretion to the judge.

MS. LANGE: And you don't feel that this is too vague to allow someone who does have these 100 seedlings to possibly have to pay a \$50,000 fine?

SENATOR CAUFIELD: But would a sensible judge to that, though? I have to assume--

MS. LANGE: Well, there are a lot of appeals in the State. I imagine a lot of people don't think their sentences are quite justified.

SENATOR BASSANO: I would have to think that with 100 seedlings that the person is not growing them for himself -- for his own use.

MS. LANGE: That is not necessarily true.

SENATOR BASSANO: He would have to be a pretty heavy smoker.

SENATOR CAUFIELD: Two packs a day is not bad.

SENATOR CONTILLO: Are you looking for a--

MS. LANGE: Not if you are talking about five good marijuana plants at the end of the year. It's really not--

SENATOR CONTILLO: Are you looking for sort of a home-grown exemption, like you have for home-grown wine? (laughter)

MS. LANGE: That would really--

SENATOR CONTILLO: My grandfather made his own wine.

SENATOR CAUFIELD: They shouldn't be treated alike, I think is what you're saying -- all the home grown.

MS. LANGE: No, they shouldn't be. I was certainly going to start this out by pointing to the problems of alcohol abuse. My father was an alcohol addict, and it certainly destroyed our whole family. He was certainly alive and young enough to participate in alcohol consumption during the Prohibition, and we know that laws against it didn't work.

All Prohibition did was have people buying alcohol that sometimes was not pure and really did hurt them. At least it is regulated now. It is still a horrible problem.

SENATOR CAUFIELD: It also spurred their interest in doing it because they were getting away with something.

MS. LANGE: Right. That is very proven. I have brought some of these today (referring to pamphlets) in my effort to try to help educate you. This is called, "An Analysis of Marijuana Policy." It was done by the Federal government. It was published in 1981. This was a follow-up study to President Nixon's 1969 panel, which released its findings in 1972. It recommended decriminalization of marijuana. Nevertheless, we still have the same laws.

This book has gone through every study that has been done on marijuana until 1981 -- until its release. It brings up the subject of home cultivation. I think if you look in the news lately, you will see that home cultivation is becoming more and more popular, for the reasons I have mentioned. People do not want to be involved in the black market; they do not want to pay the high prices; and, they don't want to be susceptible to adulterated marijuana, particularly with the paraquat being sprayed on it.

SENATOR CONTILLO: Are you finished? (affirmative nod) Are there any questions for this witness?

SENATOR CAUFIELD: It sounds like this young lady could talk for a few more hours, but--

MS. LANGE: I beg your pardon?

SENATOR CAUFIELD: I said, it sounds like you have enough to talk for a few more hours, but you are not going to.

MS. LANGE: Well, I do, but it is almost three o'clock. I could.

SENATOR CAUFIELD: I'm sure you could.

SENATOR CONTILLO: Thank you very much.

MS. LANGE: Thank you.

SENATOR BASSANO: Are you enjoying this hearing, Temporary Chairman?

SENATOR CONTILLO: Is there anyone else who wishes to enlighten the Committee? (affirmative response) Yes, would you please identify yourself, and come on down here to the witness table?

Is there anyone else who wishes to speak on this? (affirmative response) You also wish to speak, okay. Are you together? (affirmative response) Okay. Is there anyone else here who wishes to speak on this bill? (no further response) Okay, then these will be the last people we will take.

C A P T A I N J O S E P H Z A D R O G A: Thank you, Senator. I am Captain Zadroga from the North Arlington Police Department. I have been in law enforcement for the last 15 or 16 years. I was asked to come here by my Chief of Police and the Mayor of North Arlington -- Mayor Kaiser -- to speak on behalf of the bill -- in support of the bill.

I would just like to say one thing about it. The police members in North Arlington are supportive of the bill; the Chief of Police is in support of the bill for the mandatory sentencing. I will give you one example of why we are in support of this bill. As you know, any undercover investigation takes months and months to really close out, especially with the laws nowadays. There is no more of that on the street, frisk them, arrest them for possession of drugs. That is over and done with. Now you have to spend hours and months of investigation to get anyone who is actually distributing cocaine, or any drug for that matter.

We had one case just recently over the summer where we spent well over a year on it. It was a female, approximately 33 years old, and her live-in boyfriend. The live-in boyfriend was a mule -- as was explained here -- who used to transport it from Columbia and Peru and Florida. He is presently arrested, and will probably be in jail for a long time, once all of his complaints are adjudicated in the Federal court in New York and in the Florida court.

However, his girlfriend continued to distribute cocaine in our town. She was a member of the Board of Education; she was the head of the girls' softball league in town, and she continued to distribute drugs. After a long investigation and finally obtaining an informant who was willing to come forward and testify -- not even testify, just give us some information for a search warrant -- we were able to arrest her. We got her with a substantial amount of drugs. It was 99% pure cocaine.

However, it looks like she is just going to get off scot-free, with maybe just probation or -- like they said -- some type of--

SENATOR CONTILLO: Why is that?

CAPTAIN ZADROGA: She was probably a first-time offender. I felt, because of her position on the school board and also head of the girls' softball team in the town, and also involved with the recreation commission, and we know for a fact that she was selling to the youth -- teen-agers-- I just felt that for something like this she should get a jail term.

SENATOR CONTILLO: That's horrendous. You know, it is almost hypocritical.

CAPTAIN ZADROGA: I agree; I agree, and this is just one case that I like to bring up. I had another case similar to that, where we spent well over \$10,000 on an investigation. This doesn't come under this law, because it was for distribution of marijuana. But it was distributing to

juveniles in town. Detective Italiano alongside of me can explain more on that case. But, they were selling to the youth in town. They had a supermarket set up, and he is still out free. From what I understand, he is back in business again, and we are running another investigation.

But, these are the types of cases that are disheartening to law enforcement. This is why we would like to see--

SENATOR CONTILLO: What you are saying, in effect, is, you think that if these people were put in jail, you would save police work.

CAPTAIN ZADROGA: We would save police work; plus it would be a deterrent for other people out there.

SENATOR CONTILLO: In some degrees, it would produce a dollar saving? In other words, you would get more miles per dollar in your Police Department if this--

CAPTAIN ZADROGA: Oh, definitely. These investigations cost a lot of money nowadays. Overtime alone is horrendous when you run an operation. When we run an operation with a search warrant, we have to have at least 10 people involved. And, we are a small department. We are 40 personnel, tops. That means hiring five or six people. You're talking \$1000, \$2000 a day, excluding overtime for the next day for doing paperwork and so forth. It is expensive.

SENATOR CONTILLO: Then this person would be apprehended and not be back in the system again, where you would have to investigate him two or three or four times before he is finally put away.

CAPTAIN ZADROGA: Correct, Senator.

SENATOR CAUFIELD: I certainly see your point in wanting a mandatory sentence. I agree with you. But I would hope that even under our present law, if the judge is thinking right-- He has to consider a first-time offender, but he can consider those other things you mentioned -- the positions she

held, and so forth. Just like I feel that people in government or politicians who are involved in bribery ought to be punished more severely than other people, even if it is only their first offense. You know, there is no way to predict what a judge is going to do, obviously, but if he is really thinking straight, I would hope that he would add time for the fact that this person held these kinds of positions of trust in the community, and put him or her in jail, where they undoubtedly belong.

SENATOR CONTILLO: She could run a softball team in jail.

SENATOR CAUFIELD: She could run a program in jail, right.

SENATOR CONTILLO: Do you wish to add something, sir?

DETECTIVE FRANK ITALIANO: My name is Detective Frank Italiano. I am the juvenile officer in the North Arlington Police Department. I would just like to say that I am in support of this bill. First of all, it would act-- It might not be a cure-all, but it would act as a deterrent. I have many juveniles who we lock up for possession, or even possession with intent to distribute, who would come down to me after they were locked up and went through the courts, and say, "That wasn't that bad," and we lock them up six, seven, eight times. They will come down to my office and just say, "You know, that's not too bad. Maybe next time."

There is a deterrent, which is well needed out there. Like I said, this might not be a cure-all, but it is the first step which is much needed. Also, it would provide an answer to the parents when I have to tell them that their son or daughter has just overdosed and is dead, and they say, "Well, what are you doing about it?" This could be an answer that could-- You know, it is not going to relieve their pain, but it is something that could be said. That is all I have to say.

SENATOR CONTILLO: Detective, may I ask you a question? You seem to be the one who goes right on the scene. The one item in this whole bill that makes me uneasy -- and I think it bothers John a little bit, too-- You deal with people who are 18 years old, 17, 19; you are dealing with young people.

DETECTIVE ITALIANO: Eighteen and under, yes.

SENATOR CONTILLO: Oh, you are dealing with 18 and under.

DETECTIVE ITALIANO: The juveniles, yes.

SENATOR CONTILLO: They will not come under this law, then.

DETECTIVE ITALIANO: They will not come under it, but I'm saying it would act as a deterrent, just as the drunk driving. It could make them stop and think, before they get involved in it, or that heavily involved in it, the consequences which they could face.

SENATOR CONTILLO: I have noticed that young people know exactly what the law is. When they get to be 18, it is a very good effect on many of them, because they realize that then they are going to have to pay the piper for what they do. But they are sort of arrogant when they are still in that 16- and 17-year-old category.

DETECTIVE ITALIANO: Right. They'll come down and say, "That wasn't too bad," but if you have a stiff deterrent, it may, you know, more than likely -- I don't say may, it should affect them younger, you know, 16.

SENATOR CONTILLO: I guess what my concern is, how do you deal with the person who comes under this law at, say, 18? You know he is a young fellow from the high school; everybody knows him. He may even be playing ball on the team. And he does sell a few pieces to his teammates or his neighbors. It is the first time he has done it, and he is a user. Do you think he should go to jail for the couple of years, or do you think the judge might be better with the option of giving him

treatment, still giving him the same two or three years that we put in this bill, but making the first part of that mandated treatment?

DETECTIVE ITALIANO: It should be a mandated treatment. All juvenile offenders should have an opportunity to receive treatment first, rather than a mandatory--

SENATOR CONTILLO: At least the first time around.

DETECTIVE ITALIANO: I would say first or second. It depends on, you know, the severity or what drug they are dealing with.

We counsel a lot of-- We try to place them in rehabilitation centers, but as long as it is mandated and followed up by the courts or the Probation Department, which says that they adhere to the strict rules of that, because we send youths to rehab places, and if they don't follow the guidelines of the rehab, rehab kicks them out. Then the kid is back on the street and nothing is really accomplished.

SENATOR CONTILLO: Well, in this case, the youth would be back in jail.

DETECTIVE ITALIANO: Well, right. Like I say, a stiff--

SENATOR CONTILLO: In other words, if he does not adhere to the rules of the rehab center -- and that is not in the bill-- I think they actually ought to consider--

DETECTIVE ITALIANO: The deterrent would be there in this bill. I mean, I go into schools. There is the Officer Phil Program, where we educate kindergarten through seventh grade on drugs, the effects of them, and what could happen to them. Also, right now, a stiff deterrent is needed.

SENATOR CAUFIELD: Mr. Chairman, I think that someplace along the line -- and I know it is getting a little bit away from the issue -- we have to take a whole new look at juvenile delinquents. You know, I am not sure that the juvenile delinquent of 15 years ago is the same juvenile

delinquent today. Maybe the age is not realistic any more. I would not have spoken that way 10 years ago. At the same time, we also have to change the attitude of the public.

You know, when I can turn my TV on and watch a first baseman on the Mets, who just got done pleading guilty to using and, I believe, selling drugs, and so forth -- and he did get immunity -- come up to bat and get a two-minute standing ovation, it kind of makes me wonder. I don't say you should condemn him or you should not try to help, but a two-minute -- any ovation -- but a two-minute standing ovation, that tells me something that I don't think I care to hear.

SENATOR BASSANO: He should be ready for the Yankees; that is what it tells you.

SENATOR CAUFIELD: That's a poor attitude, though, on the part of the public. You know, this guy is not a hero. He is a hero in a baseball uniform, but he sure as hell is not a hero when it comes to his personal life. It just tells me something about our public, and it tells me something that I think is very sad.

SENATOR CONTILLO: Thank you, Senator. Thank you, gentlemen. No one else wanting to be heard, I will close the hearing.

SENATOR CAUFIELD: I think Lou wanted to make a two-minute statement.

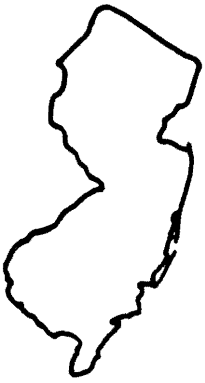
SENATOR CONTILLO: No, no. I asked before.

SENATOR BASSANO: No, that is all right.

SENATOR CONTILLO: The hearing is adjourned.

(HEARING CONCLUDED)

APPENDIX



**NEW JERSEY ASSOCIATION FOR THE
PREVENTION & TREATMENT OF SUBSTANCE ABUSE**
486 LAWRIE STREET • PERTH AMBOY, NEW JERSEY 08861

DRUG TREATMENT IN NEW JERSEY AND THE CRIMINAL
JUSTICE SYSTEM

I am Denis Mansmann, Director of Perth Amboy Addiction Center in Perth Amboy, and am here representing New Jersey Association for the Prevention and Treatment of Substance Abuse as the Association's immediate past President and member of the Executive. I represent more than 40 drug treatment programs of the 82 various programs in New Jersey. These programs offer a variety of services from Evaluation, Counseling, Urine Monitoring, Methadone Maintenance and Detoxification on an outpatient basis and inpatient medical detoxification and residential short term and long term treatment. All of these programs are community based and constantly looking how to best serve the communities in which they find themselves. With limited funds and staffing each program tries to be as responsive to the needs of the drug abuser and addicts as limits will allow. Thus our programs are trying to fill the various drug prevention and treatment needs of the community. We may give a talk to Grade School children about alternatives to drugs, counsel a High School adolescent and his family caught using marijuana during school hours or treat a cocaine or heroin addict in an outpatient or inpatient program. Yesterday I saw a mother of a 16 year old worried sick about her son's drug use and counseled her on how to handle the problem within the context of her parental authority in her family.

As a result of our drug treatment programs concern for the community, the criminal justice systems from the local police departments, county courts and state prison systems has had a long and varied relationship with our network of drug treatment programs.

Because the drug treatment client is involved in illegal activities and because the client initially is not usually amenable to treatment, it is to be expected that the criminal justice system will have a profound effect on the treatment programs. Up to 50 percent of all referrals are generated in many programs from local police departments, probation, parole, juvenile aide bureaus, early release programs, and intensive supervision programs. The threat of police action is often enough to push reluctant clients into treatment. As a result of this procession of clients from the criminal justice system, treatment programs with their need to assess and evaluate clients initially, their outcome studies and their clinical sense, have a certain expertise in speaking to this august committee. Let me briefly summerize our position concerning the incarceration of drug abusers and addicts.

There are drug abusers and addicts who are best incarcerated. There are drug abusers and addicts in treatment who would do best in prison. But there are clients who will benefit from treatment rather than prison. Treatment is a successful and cost effective alternative to incarceration for most drug abusers and addicts who commit crime behind their addiction and abuse. Those who have their addiction and abuse alleviated in treatment do not need to be incarcerated. Incarceration is more expensive, less effective in curbing recidivism and has little impact on the health care system.

Studies have shown that all clients in treatment have an 85% reduction in crime, better access to health care and a large reduction in drug use. When you assess the client numbers further 33% of those who complete treatment are successful in keeping drug free for 5 years and beyond. Further studies show that clients in treatment are divided into 3 categories. The ideal client who responds to treatment struggles and eventually succeeds in being free of all illicit drug use and criminal behavior, find jobs and pay enough taxes to pay for their treatment. The middle group of clients seem to fluctuate between an ideal state and some drug use while in treatment. These too are usually working and struggling with their problems but with only relative success. These are the clients who go from a \$100.00 a day heroin problem to an occasional slip into heroin use, periodic drinking, or coke use, or prescription drug abuse but are no longer causing crime waves in their towns, struggle to be clean and succeed for longer and longer periods of time. Crises, stress and loss bring them down quickly but their ability to recover is just as quick.

Then there are the clients who use treatment programs for their own purposes, continue criminal activity although much less than before, fall in and out of jobs and seem to try to get over on the treatment agency, probation etc. These I would call the criminal element which would probably do better in prison because they need very strict 24 hour structure to manage their lives.

Just as the treatment agencies can distinguish a psychiatric client from a normal client, or a generally healthy client from a sick client, we are able also to assess the criminal from the drug abuser/addict. But we do not write off the last classification easily either, because at times we are amazed at the progress some make after many, many struggles.

The criminal justice system has a way of asking this assessment from us and in cooperation with the probation officers, parole officers, and judges most programs do a very good job of pre-trial and pre-sentence assessments. When a judge is making a sentence demands treatment and demands to know when the client fouls-up and then passes a prison sentence we have a good working relationship between the criminal justice

system and the treatment system. Each has a role to play in working out what is best for the community and the client.

Treatment agencies have no problems with incarceration when a client has failed at treatment or has an underlying criminal behavior pattern. In Perth Amboy the police send me clients from the street and I have no problem when they arrest a client in treatment who is messing up in the community. I have had clients who have done best in prison and come out admittedly better for the experience. Some of these have gotten back into treatment shortly after leaving prison and are now doing well on the program. Some feel they have their drug habits beat and only time will tell for sure. But of my 200 or more clients now in treatment the majority are better off in treatment than in prison. Mandatory sentencing would not give them the opportunity to try treatment. Our present system with stricter guidelines for assessment, better reporting mechanisms between the courts and treatment agencies and the full weight of the law mandating treatment initially would be helpful. The criminal justice system has a role to play as does the treatment agencies. It is when these roles are mixed up that confusion prevails, inappropriate referrals are made and the courts either cut loose on the streets criminals who should be in prison or fill the prisons with substance abusers and addicts who eat up the communities dollars, and leave no room for the true criminals to be confined.

Middlesex County has a good working relationship with the treatment of agencies. Probation gets a pre-trial and pre-sentence report from the agencies. The agencies do a long-term screening with monitored urines, frequent visits to the agency of 2 or 3 times a week over a 2 month period. From the cooperation in coming to the agency, social, family, criminal, work and drug histories a clear assessment can be made to the courts about the client as to his drug involvement, psychosocial behaviors and criminal behaviors. When a quick assessment needs to be made a treatment person assesses the person in the county jail. A final report is made to the court with a recommendation of treatment or non-treatment. Usually a failed client will not cooperate with the evaluation and show a need for stricter supervision of either residential treatment or incarceration. Frequent calls between probation and the counselor assigned the cases make for a fair and reasonable assessment.

Of the 360 clients sent to my outpatient program by the criminal justice system in 1985 approximately 238 will succeed in treatment. If that 238 were sent to prison the cost would be about \$10,000.00 per year per person or \$2,380.00. We treat them for less than \$200,000.00 for the same one year period. The 122 who failed at treatment will eventually cost the tax payer \$1,220,000.00 to be incarcerated.

Drug treatment has been demonstratively a cost effective alternative to firing employees in industry, hospitalization of high-risk health hazards, and to incarcerating the drug abuser and addict. It seems foolish to us in the treatment industry to pay high costs for a process that leaves the drug abuser untreated and as much a menace to society coming out of prison as he was when he went into prison.

DM:mda

New Jersey Narcotic Enforcement Officers Association

LEO J. UEBELEIN, JR.
PRESIDENT

P. O. BOX 1720
NEWARK, N. J. 07101

The New Jersey Narcotic Enforcement Officers Association is an organization comprised of 1500 persons involved in federal, state, county and municipal law enforcement, and comprised also of educators, rehabilitation and treatment officers, attorneys, clergymen, pharmacists and persons from private industry. For the past decade we have been pushing for mandatory minimum sentences for persons convicted of Controlled Dangerous Substance Distribution offenses. Consequently, it was with great pleasure that we learned of Senator Graves' sponsorship of Senate Bill No. 1422, mandating such sentences for at least certain types of controlled dangerous substances.

During the past five years this State has witnessed a frightening increase, particularly with regards to Cocaine, in the amount of drugs being brought into the jurisdiction and in the number of people involved in the importation and distribution of such substances. It is patently obvious that the present level of sentences being meted out for distribution offenses has little, if any, deterrent effect upon drug traffickers. The lure of enormous profits makes the risk of minimal jail time one well worth taking. Time and again we have witnessed the "revolving door" of justice, where repeat offenders serve short-term or non-custodial sentences, only to return to the streets to once again ply their nefarious trade.

It is the position of the NJNEOA that substantial mandatory minimum sentences, coupled with increased monetary penalties, such as those set forth in Senate Bill No. 1422, are absolutely essential in order to establish an effective deterrent to the enticement of the enormous profits inherent in the drug trade. Furthermore, such sentences will serve law enforcement in particular, and society in general, by providing a mechanism that will disrupt, and hopefully break, existing and well established drug trafficking organizations and connections.

Additionally, mandatory minimum sentences for Controlled Dangerous Substance Distribution offenses will serve the cause of justice by reducing the wide disparity in sentencing that presently exists, not only inter-county, but intra-county as well. No longer would the custodial fate of a drug trafficker depend upon the county in which he is convicted or the judge by whom he is sentenced. The prospect of swift and certain punishment would become a reality rather than an ideal.

Notwithstanding this strong endorsement by the NJNEOA of mandatory minimum sentences for controlled dangerous substance distributors, the Association takes this opportunity to point out certain problems inherent in Senate Bill No. 1422. Problems which, from a law enforcement viewpoint, must be addressed.

First and foremost, it must be recognized that effective drug enforcement is substantially dependent upon the development and cooperation of confidential informants. The greatest inducement to fostering such cooperation is the ability to promise a defendant who is considering cooperation that a recommendation of a minimal or non-custodial sentence can be made by the State to the sentencing judge. Without that ability, the pool of potential informants will dry up, thereby having a deleterious effect on drug enforcement. Consequently, any law imposing mandatory minimum sentences must contain a mechanism whereby a County Prosecutor or the Attorney General, for good cause shown, can recommend that the mandatory minimum sentence be waived.

Secondly, the Association is of the opinion that Senate Bill No. 1422 does not go far enough in certain respects. A conviction for conspiring to distribute controlled dangerous substances should carry a mandatory minimum sentence. It is obvious that without the unlawful agreement to begin with, there would be no importation and distribution. Furthermore, experience has shown that at the highest levels of a narcotic distribution network, participants rarely come in physical contact with the illegal substance. There is no reason such persons should escape the reach of a mandatory minimum statute.

The NJNEOA is of the further opinion that the penalties proposed in Senate Bill No. 1422 for LSD and PCP, while a step in the right direction, are not stringent enough. There are no acceptable medical uses of these drugs for humans. They are every bit as dangerous as cocaine and heroin, and present comparable enforcement problems. Thus, the Association recommends that the proposed mandatory minimum sentences for distribution of these substances be increased.

Lastly, the NJNEOA notes that methamphetamine, commonly referred to as "Speed", is not included in the list of drugs for which mandatory minimum sentences have been proposed. From an enforcement standpoint, this drug, particularly in southern New Jersey, presents problems identical to cocaine, heroin, LSD and PCP. Consequently, persons who choose to traffic in this substance should also be subject to mandatory minimum sentencing.

3.

The NJNEOA, throughout its 20 year history, has made a commitment to the youth and citizens of this State to prevent drug abuse, not to encourage it; to foster respect for the law, not to disparage it. The implementation of properly drafted mandatory minimum sentencing laws for drug traffickers will facilitate the attainment of these goals.

LEO J. UEBELEIN, JR.

President

New Jersey Narcotic Enforcement Officers Association

