THE LEGISLATIVE RESPONSE TO THE DRUG PROBLEM IN NEW JERSEY

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Presently, there are approximately six thousand bills before the New Jersey Legislature of which A-1774 is key to a public policy that can produce a generation free from drug abuse. Although this bill has already passed in the Assembly, its future as law is still in serious doubt. Its story provides a fascinating insight into the legislative process as the end product of the interaction of political, personal, conceptual, and public dimensions.

The legislature has been enacting laws regarding drug and alcohol abuse for over a century.[1] Most of these statutes have

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[1] In the 19th Century, the legislature addressed alcohol problems with a "supply side" remedy.

> Whenever any person, according to the provisions of this act, shall be convicted of being a common drunkard, or of deserting or willfully refusing or neglecting to provide for or maintain his family, and it shall appear to the satisfaction of the magistrate before whom such conviction was had that the cause of such neglect is the habitual excessive use of intoxicating liquor by said convict, it shall be the duty of said magistrate to make an order, directed to the overseer of the poor of said township in which said conviction shall be made, warning all persons selling intoxicating liquor, to desist from selling any intoxicating liquor to said convict. . . 1898 N.J. LAWS 239.

Since 1903, a variety of statutes that seek to address the issues related to the education, treatment, and prevention of alcoholism and drug abuse have been enacted. Many of these statutes appear to have been adopted during a period of crisis or a period of heightened public awareness of the dangers associated with alcoholism and drug abuse. These statutes, however, in the final analysis do not present a coordinated or integrated response to a complex problem. Education legislation dating from the early 1900's recognized a link between alcoholism and drug abuse and addressed both issues together.

In 1903, a curriculum on "[t]he nature of alcoholic drinks and narcotics and their effects upon the human system" was mandated "in all schools supported . . . by public monies." The instruction was to be "in the same manner as other like branches [are] taught" and was to be taught through "the use of graded text books." 1903 N.J. LAWS 1 (2d Spec. Sess.).

The same statute, a comprehensive school reform act, prohibited the granting

been passed in flurries of legislative activity. But by the 1960's, the drug problem became an epidemic,[2] and New Jersey began to

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of a certificate to teach general subjects unless the applicant had "passed a satisfactory examination in physiology and hygiene" with special reference to the nature of alcoholic drinks and narcotics and their effects upon the human system." 1903 N.J. LAWS 1 (2d Spec. Sess.).

From a health perspective, a variety of responses have been attempted. The responses often reflect topical attitudes and treat alcoholism and drug abuse as separate problems. With regard to alcoholism for example, in 1945 the Commission on Alcoholism and Promotion of Temperance was established pursuant to P.L. 1945, c.94. 1945 N.J. LAWS 94. The Commission was "empowered to prepare and administer a program for the rehabilitation of alcoholics and the promotion and furtherance of temperance and temperance education." *Id.* The Commission membership was multi-disciplinary and included the Commissioners of Alcoholic Beverage Control, Institutions and Agencies, Education and the Director of Health. The Commission was directed to establish clinics for the diagnosis and treatment of alcoholism, engage in public awareness, and to conduct scientific research.

The Commission was abolished in 1948 as a result of its own Commission's recommendations. The resulting legislation, an Act Authorizing the Establishment of Facilities for the Medical Treatment of Alcoholics and for the Prevention of Alcoholism, P.L. 1948, c.453, sought to institutionalize within the Department of Health an alcoholism education, research and rehabilitation function. The Preamble to the Act recognized alcoholism "as an important public health problem." 1948 N.J. LAWS 453. With regard to drug abuse, the legislative response was to move from a law enforcement perspective to the creation of a discrete, administrative unit within the Department of Health.

In 1954, the education statute was amended to require that a "full and adequate" drug abuse curriculum be taught in a "manner. . .adapted to the age and understanding of the pupils." 1954 N.J. LAWS 81. In 1954, a Permanent Commission on Narcotic Control was also created pursuant to an Act creating a Permanent Commission on Narcotic Control. 1953 N.J. LAWS 449 (1st Spec. Sess.).

This Commission, apparently the first to address drug abuse, was not allocated to any department. It consisted of five uncompensated members appointed by the Governor and was given a law enforcement emphasis. The Commission was charged with "the continuous study of the laws of this State relating to narcotic drugs particularly relating to the control of the narcotic drug traffic" and was required to make legislative recommendations to more "effectually control the illegal use of narcotic drugs." *Id.* It was required to report on an annual basis the results of its study and was given subpoena power.

[2] N. Bejerot, Prevention and Control of Drug Abuse Epidemics, (May 26, 1985). (A paper read at the International Conference of Youth and Drugs of the National Parents' Resource Institute for Drug Education, Georgia World Congress Center). Dr. Bejerot writes:

> Characteristic of [the epidemic type of drug consumption] is that it usually arises in Bohemian circles where romantic dreamers or adventurous norm breakers experiment in small groups with exotic or new inebriants in a search for novel experiences. After years or decades of drug use in isolated groups, the first phase of the epidemic, it spreads in

strengthen its laws.[3] Several reforms were tried in the 1970's,[4]

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the second phase to new categories, often to other groups of norm-breakers, and then in particular to criminal circles.

In the third phase drug consumption reaches out to broad groups of the normal population, and first to those which have the weakest impulse control and the least stable system of values, that is the youth. In the fourth phase, the epidemic abuse tends to spread upwards through the age groups and may begin to resemble drug use of [the] traditional type: That is, it is no longer considered to be a breach of norms.

The primary factor [in the drug market] is that millions of people are prepared to break norms and laws in order to use these natural inebriants, and also hundreds of synthetic drugs. It is thus the personal breach of norms which forms the moral basis, and the personal possession of drugs the legal basis of the drug market, and not the international syndicates. These, in fact, are a late result of the appearance of a drug epidemic.

We have to accept the painful truth that we cannot win decisive advances before narcotic consumption, the abuser himself and personal possession of drugs are placed in the center of our strategy.

[3] Legislation from the period 1960-1970, reflected an attitude that treated alcoholism and drug abuse separately. Although attempts were made to provide an inter-disciplinary focus for a specific problem, such as drug abuse, the legislation can be characterized as being immediate responses to topical problems and did not, for the most part, contemplate the institutionalization of sustained, long term solutions.

In 1964, the permanent Commission on Narcotic Control was abolished by a more comprehensive statutory scheme, An Act concerning the commitment, confinement, disposition, care, treatment and rehabilitation of drug addicts and other persons having drugs illegally in their possession. 1964 N.J. LAWS 226 *repealing* 1953 N.J. LAWS 449 (1st Spec. Sess). A public policy was articulated that "a comprehensive program be established . . . to prevent drug addiction and to provide diagnosis, treatment, care and rehabilitation for drug addicts. . . ." *Id.* § 1.

A Narcotics Advisory Council was created within the Department of Institutions and Agencies and was comprised of five ex-officio members, the Attorney General and the Commissioners of the Departments of Institutions and Agencies, Health, Education, and Labor and Industry and "six additional members appointed by the governor with the advice and consent of the Senate." *Id.* § 2. The Narcotic Advisory Council was abolished in 1978, pursuant to An Act to Abolish Certain Committees. 1978 N.J. LAWS 34.

This Council's focus was clearly treatment related, as distinguished from its predecessor which had a distinctive law enforcement orientation. The Council was charged with advising the Commissioner of the Department of Institutions and Agencies on the "formulat[ion] of a comprehensive plan for long-range development through the utilization of Federal, State, county, local and private resources of adequate services and facilities for the prevention and control of drug addiction, . . . diagnosis, treatment and control of drug addiction, diagnosis, treatment and control of drug addicts." 1964 N.J. LAWS 226. The Council was also charged with assisting the Commissioner in the "promotion, development, establishment, co-ordination and conduct of unified programs for education, prevention, diagnosis, rehabilitation and control in the field of drug addiction in co-operation with Federal,

the most notable of which was the Controlled Dangerous Sub-

State, county, local and private agencies." *Id.* § 3b. The Commissioner of the Department of Institutions and Agencies was charged with primary responsibility for developing the long range comprehensive plan in consultation with the Council as well as for interdepartmental cooperation and program development based on the comprehensive plan. *Id.* § 4.

The 1964 Act was amended in 1967 to add to the ex-officio membership the Commissioner of Community Affairs and to require the Council to meet every second month. 1967 N.J. LAWS 83.

In 1968, the Commissioner of Education was authorized to establish workshop programs in order "to provide junior high school teachers with a sober and factual presentation on the problems of drug abuse." A $50,000 appropriation accompanied this legislation. 1968 N.J. LAWS 89.

Comprehensive drug abuse legislation was enacted in 1969. The Narcotic and Drug Abuse Control Act of 1969, N.J. STAT. ANN. §§ 26:2G-1 to -16 (West 1987) established a discrete administrative unit within the Department of Health focused on drugs. A $250,000 appropriation was provided.

The 1969 Act represented an attempt to centralize in one agency and in one individual a variety of powers and duties scattered throughout a variety of departments, it also focused responsibility on a division director, rather than on a commissioner. "All the functions, powers and duties of the Commissioner of Institutions and Agencies, and the Commissioner of Community Affairs, related essentially to prevention, treatment and rehabilitation" were transferred to the division director, as were "the functions, powers and duties of the Commissioner of Health in regard to the manufacture, sale and distribution of narcotic, depressants and stimulant drugs." N.J. STAT. ANN. § 26:2G-3 (West 1987).

The Director of Narcotic and Drug Abuse Control is required to "formulate a comprehensive plan for the long-range development . . . of adequate services and facilities for the prevention of drug addiction and the diagnosis, treatment and rehabilitation of drug addicts and (b) to promote, develop and coordinate . . . unified programs of education, prevention, diagnosis, treatment and after care. . . ." N.J. STAT. ANN. § 26:2G-5 (West 1987). The Director is required "to submit to the Governor, the Legislature and the Commissioner of Health an annual report, . . ." to provide public information, to "maintain statistical records" and "to control and regulate the manufacture, sale, distribution, possession and use of narcotic, depressant and stimulant drugs." *Id.* Through sheer accretion of detail, an attempt is made to provide a more comprehensive integrated, but ultimately compartmentalized basis for dealing with the drug problem. The licensing of narcotic and drug abuse treatment centers, however, is specifically vested in the Commissioner of Health and not in the Director of the Division of Narcotic and Drug Abuse Control. N.J. STAT. ANN. 26:2G-23 (West 1987).

[4] In 1970, the Commissioner of Education was "directed to establish summer workshops and training programs to train selected teachers to teach drug education programs to secondary school teachers." 1970 N.J. LAWS 85. The Commissioner was directed to call upon the assistance of the Department of Education, the Department of Higher Education, Rutgers University, the New Jersey College of Medicine and Dentistry and the Urban Schools Development Council as a steering committee to develop the workshops and training programs.

The Commissioner was also "directed to establish drug education training programs for teachers in school districts containing secondary school" grades, con-

sisting "of eight sessions, each lasting a minimum of one-and-a-half clock hours . . . between September 15, 1970 and December 15, 1970." 1970 N.J. LAWS 85. The programs were to "be conducted by the teachers who attended the summer workshops" that the Act established. All teachers were required to attend. The Act also created, in effect, a drug education administrative unit within the Department of Education headed by a program director appointed by the Commissioner of Education. *Id.* Significantly the Act also required all secondary school grades to incorporate into their health education curriculum a minimum of ten clock hours per school year of drug education. *Id.* A $175,000 appropriation accompanied this bill. 1970 N.J. LAWS 86.

In 1971, the Legislature directed that "a Statewide effort . . . avoid[ing] divisiveness, organizational uncertainty, . . . unnecessary duplication of effort and unproductive controversy" to be administered through the Division of Narcotic and Drug Abuse Control. 1971 N.J. LAWS 128. A statewide system of Drug Abuse Treatment and Counseling Clinics is established, administered through regional centers. Counties are authorized to "establish regional medically oriented clinics to provide after care for individuals . . . discharged from mental hospitals." *Id.* § 9.

In 1972, a statute was enacted providing for the medical examination of students under the influence of drugs. (P.L. 1971, c.390).

An Act authorizing the establishment for the medical treatment of alcoholics and for the prevention of alcoholism 1948 N.J. LAWS 453 was repealed in 1975. The "Alcoholism Treatment and Rehabilitation Act" established a State policy to provide a continue of treatment for alcoholism. N.J. STAT. ANN. §§ 26:2B-6 to -35 (West 1987). This comprehensive act also established a multi-disciplinary Advisory Council on Alcoholism, which N.J. STAT. ANN. § 26:2B-10 required to make an annual report to the Governor. The Department, as distinguished from the Division, is required to prepare a comprehensive plan related, however, primarily to treatment. The Advisory Council on Alcoholism is directed to "assist the Commissioner in coordinating the efforts of all public agencies and private organizations within the State concerned with the prevention and treatment of" alcoholism and "in developing a comprehensive plan and program for the treatment of" alcoholism. N.J. STAT. ANN. § 26:2B-11 (West 1987).

The Act also requires the Department to "[p]repare, publish and disseminate educational materials [relating to] . . . alcoholism, [and] to [d]evelop and implement an ongoing system of collecting, analyzing and distributing statistics on the incidents and prevalence of alcoholism. . ." in New Jersey. N.J. STAT. ANN. § 26:2B-13 (West 1987). The Act and amendments to the Act require the Department to interact and coordinate with a variety of other agencies including the Department of Institutions and Agencies, the Division of Motor Vehicles, the Administrative Office of the Courts, youth bureaus, alcohol treatment programs, hospitals and mental health centers, schools, police departments and the Division of Alcoholic Beverage Control. N.J. STAT. ANN. §§ 26:2B-13, -23, -24, -25 (West 1987).

The Department is required to approve and license public and private facilities, including detoxification facilities and residential treatment facilities. N.J. STAT. ANN. § 26:2B-14 (West 1987). The Act mandates the provision of alcoholism treatment benefits. N.J. STAT. ANN. § 17:48A-7(a) (West 1987). The Act also details the procedures governing the handling of intoxicated persons and alcoholics by police officers. N.J. STAT. ANN. § 26:2B-15, -16 (West 1987).

The Department of Health is recognized as the single state agency primarily responsible for the treatment of intoxicated persons and alcoholics. All other pro-

stances Act,[5] (the "Act") subsequently aptly described by contemporary commentaries as "realistic" and "enlightened."[6] From the present perspective, however, it was unfortunate that the criminal provisions of the Act were embodied in Title 24, the Health Code, which prevented them from becoming a part of the new penal code that was drafted the following year.[7] The Health

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grams related to treatment and rehabilitation must be in accord with the comprehensive plan. N.J. STAT. ANN. § 26:2B-27 (West 1987).

In 1979, the long-standing mandate that the school curriculum include a course in the effects of alcoholic drinks and narcotics was expanded upon. 1979 N.J. LAWS 263. Provisions were made for the development of curriculum guidelines. Consultation with the Department of Health was mandated. Each Board of Education was required to adopt and implement "policies and procedures for the evaluation and treatment of pupils involved in incidents of possession or consumption of alcoholic beverages on school property or at school functions." *Id.* Cooperation with local alcoholism groups approved by the Department of Health was required.

The Commissioner was required to "make an in-depth study of the incidence of consumption of alcoholic beverages by school pupils." *Id.* The State Board was directed to establish a detailed "comprehensive plan, to be submitted within three years designed to ensure the effectiveness of instructional programs." *Id.* Again, the statute required cooperation with the Department of Health. *Id.*

The requirement, dating from 1903, that teacher certification include knowledge of narcotics and alcohol was also amended. This requirement forbade the issuance of teacher certification "to any teaching staff member who has not passed a satisfactory examination in physiology and hygiene with special reference to the nature of alcoholic drinks and narcotics and their effects upon the human system." 1979 N.J. LAWS 263.

The patchwork education statutes relating to alcoholism and drug abuse were repealed in 1987. The Legislature enacted a more comprehensive statutory scheme for substance abuse programs in the public schools. Alcohol use and drug abuse were again linked. N.J. STAT. ANN. §§ 18A-40A-1 to -21 (West Supp. 1988).

In 1983, an Alcohol Education, Rehabilitation and Enforcement Fund was established as a nonlapsing, revolving fund in a separate account in the Department of Health. N.J. STAT. ANN. §§ 26:2B-32 to -35 (West 1987). The Fund is "credited with 10.75% of the tax revenue collected "pursuant to the Alcoholic Beverage Wholesale Sales Tax Act which imposed a 7.3% tax on the receipts on the sale of alcoholic beverages." *Id.* Although 89.2% of the tax revenues are credited to the general fund, for the first time a stable recurring source of a funding is established for alcohol programs in New Jersey. Significantly, a decentralized county based alcoholism treatment system is embraced and comprehensive master planning is required.

[5] Controlled Dangerous Substance Act, introduced as N.J. Senate Bill 851, effective January 17, 1971 originally enacted as N.J. STAT. ANN. §§ 24:21-1 to -45 (West Supp 1988) as amended N.J. STAT. ANN. §§ 24:21-1 to -18, -21 to -25, -29, -31 to -45 (West Supp. 1988).

[6] Comment, *Drug Law Revision The New Jersey Approach*, 2 SETON HALL L. REV. 369 (1971).

[7] THE NEW JERSEY PENAL CODE, *Final Report of the New Jersey Criminal Law Revi-*

Code granted wide latitude in sentencing to judges who did not always mete out sentences that were as severe as would be required under the penal code.[8]

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sion Commission, (1971 Vol II: Commentary). In an introductory note to Chapter 35, the Commission notes:

> Most of this State's law controlling dangerous drug offenses is in N.J.S. 24:21-1 through 45, the New Jersey Controlled Dangerous Substances Act. There are additionally, scattered throughout Title 2A, a series of offenses relating to dangerous drugs. We recommend the retention of the offenses stated in Title 24. Further, we except these provisions from our general policy of having the Code's provisions as to sentences and sentencing apply to all offenses wherever found in our law. We do this because the drug laws were so recently subjected to complete reformulation.

The recommendations of this Commission were finally embodied in law in 1979.

[8] From an Overview of the Comprehensive Drug Reform Act of 1986 by W. Cary Edwards, Attorney General, State of New Jersey issued soon after the Act became law:

> Our analysis of the predecessor drug law codified in Title 24 revealed that the statute enacted in 1970 was designed to give courts greater flexibility in sentencing decisions. *See State v. Staten*, 62 N.J. 435, 439 (1973) (per curiam). The most notable defect in this system, as evidenced by actual sentencing practices over the years, was that the legislation failed to provide to the courts any meaningful graduation scheme by which to distinguish or rank the seriousness of a given drug offense. Although sentencing courts in drug cases were required to weigh the aggravating and mitigating factors enumerated at N.J. STAT. ANN. § 2C:44-1, appellate courts have held that other penal code sentencing provisions which depend on "degree classifications" are inapplicable. *See, e.g., State v. Sobel*, 183 N.J. Super. 473 (App. Div. 1982). The presumption of imprisonment for first and second degree offenders, for example, had been held to be inapplicable, precisely because drug offenders sentenced under the Controlled Dangerous Substances Act of 1970 were not convicted of an offense of any recognized degree.
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> In *State v. Sainz*, which was decided on June 18, 1987, the New Jersey Supreme Court aptly characterized the sentencing process of drug offenders under Title 24 as "somewhat unruly." *State v. Sainz*, 107 N.J. 283, 289 (1987). By eschewing the degree classification scheme which governs the sentencing of persons convicted of all other serious offenses, the drug laws codified in Title 24 simply failed to provide the courts with any guidelines with which to ensure in each case the imposition of an appropriate penalty. Under Title 24, offenders could be sentenced up to a maximum term, with no minimum term established for any offense. A person convicted of distributing large quantities of heroin or cocaine, for example, could be sentenced to a custodial term ranging from zero to life imprisonment. If the person had previously been sentenced to any term ranging from a completely noncustodial or probationary term to up to "double" life imprisonment.

Meanwhile, the drug problem continued to grow as those who experimented with drugs in the late 1960's became the addicts of the 1970's, and as drugs, at that point a multi-billion dollar industry, were aggressively marketed. While methadone clinics sprouted, acceptance of drug use bloomed. It was widely believed that cocaine was not dangerous to your health. In addition, the popular cultural media of music and movies reinforced the message that recreational drug use was a normal part of American life.

By early 1986, when I became Attorney General and formed the new Supply and Demand Reduction Narcotics Task Force, crack, the inexpensive and instantly addictive form of cocaine which came into vogue during the summer of 1986, could be found in the pockets of teenagers from Paterson to Princeton. Len Bias's death in the spring of 1986 began to awaken people to the fact that drugs were far more pervasive, and cocaine far more deadly, than many had understood before.[9] Media attention mushroomed. While *Time* and *Newsweek* carried cover stories on the drug epidemic and newspapers did investigative reports, people began to realize that drugs were affecting every aspect of

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> Such a broad range of potential sentencing options invites sentencing disparity, that is, unjustified differences in sentences imposed upon similarly situated offenders. From a penological perspective, persons convicted of similar offenses should, all other factors being equal, be subject to, and actually receive, similar sentences. In evaluating the true effectiveness of a sentencing scheme, therefore, it is not enough to look solely to the written law and those sentences which could, in theory, have been imposed under it. Rather, the only accurate measure of a penal law's effectiveness is to examine how that law has been interpreted and implemented, as evidenced by actual sentencing practices over time. A law which appears strict on its face, moreover, may in actuality be surprisingly lenient in its application.
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> In fact, in this State, the most severe penalties for drug offenders which are theoretically available under Title 24 were only very rarely imposed. Of the more than 150 convicted drug offenders sentenced throughout the State during the last six months of 1985 who were eligible for life terms of imprisonment, less than one-half were sentenced to State Prison for any term whatsoever. Not one of these defendants, moreover, was sentenced to a life term.

9 Leo, *How Cocaine Killed Len Bias*, TIME, Jul. 7, 1986, at 52. "The impact of [Bias'] death was apparently not lost on America's 5 million or so regular cocaine users. Even as Bias was being eulogized in services . . . cocaine hot lines around the country were clogged with anxious callers." *Id.*

American life including the workplace.[10] It was becoming clear that America was well on the way to losing another generation to drugs.[11]

In 1986, Governor Thomas Kean took his second oath of office, while the Republicans took over the New Jersey Assembly and the Democrats maintained control of the Senate. The Legislature, feeling the pressure to address this problem, initially turned to a law enforcement solution. Senator Frank Graves (D-Passaic), for example, in January 1986 introduced a bill requiring a five year mandatory sentence for all drug dealers.

But many of us were coming to the conclusion that simply strengthening existing law enforcement statutes was insufficient.[12] The drug problem's implications for crime, child abuse, highway safety, and productivity losses, to name just a few, were becoming increasingly evident. Certainly the Legislature, impatient with problems that resist getting solved by the next election, was having a hard time finding a solution.

On March 17, 1986, I appeared before the Assembly Appropriations Committee to outline by budget needs for the upcoming fiscal year. At that time I told the members of the Committee what I have been telling anyone who would listen ever since. We indeed need tougher drug laws, and the drug laws ought to be a part of the Criminal Code, not the Health Code. But the solution to the drug problem is not law enforcement. Here is part of what I said to them.

> The solution that I have found, and everyone has found who has thought about this problem, is a comprehensive one. Neither law enforcement, nor education nor treatment nor any

[10] Adler, *Maryland fails a Drug Test*, TIME, Aug. 4, 1986, at 16; Cooper, *Cocaine is a loaded gun*, NEWSWEEK, Jul. 7, 1986, at 26; Cooper, *The Mystery of a star's death*, NEWSWEEK, June 30, 1986, at 29; Callahan, *An empty dream*, TIME, June 30, 1986, at 73; *Alarmed companies fight to drive illegal drugs out of the workplace*, TIME, Mar. 17, 1986.

[11] At the same time, the Federal Government was making budget cuts in the area of treatment. In 1983, Federal appropriations totaled about $222 million as compared with $332 million in 1980.

[12] Attacking the supply side of drugs through law enforcement, however, was clearly necessary. In 1967, there were 5,045 arrests for drug offenses (Crime in New Jersey: Uniform Crime Reports, 1967). In 1986, about 40,000 drug arrests were made (Crime in New Jersey: Uniform Crime Reports, 1986). Since we know that about 56% or 224,000 of the some 400,000 criminal offenses can be tied to illegal drugs, it was clear that law enforcement, despite its efforts, could not keep up with the problem.

> other approach by itself is going to solve the problem. We need to put together in the State of New Jersey and as a society a program that deals with each of these levels equally and comprehensively. The war that needs to be declared is not a war that says we are going to fight a major battle tomorrow and win. It requires a ten to twenty year effort, what I like to call a generation's worth of effort.
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> If we deal with the six areas I've described—law enforcement, prevention, intervention, treatment, education and public awareness—if we deal with them comprehensively, and institutionalize such an approach over the next twenty years, we have a chance to win that war.[13]

It would not be the last time legislators heard that speech.

In June 1986, I appeared before the Assembly Judiciary Committee to request a delay on the approval of what would become the Comprehensive Drug Law of 1987 because my staff was still working out the complex implications of tougher sentences. For example, if New Jersey was going to require longer, mandatory sentences for drug offenses, the state would need more prison space. Both the Governor and I were worried about this serious problem of overcrowded prisons. By August, the Governor had indicated that he would only consider a new drug law if it were accompanied by adequate resources to make it effective.

Also in August, I sent the Governor proposals which outlined much more extensively the concepts I had laid before the Assembly Appropriations Committee in March. These proposals would ultimately become the foundation for the Governor's Blueprint for a Drug Free New Jersey. I also sent the Governor a letter suggesting he form a Cabinet Working Group on Drug Abuse because I could not see a comprehensive approach to the problem coming together unless the major players—the cabinet members—were participating in the solution. Such a working group could perhaps find ways to institutionalize drug reform ideas we had been developing since Governor Kean asked me to make drugs a priority when I became Attorney General. The Governor, who has been supportive of our drug initiatives all along, embraced both the Blueprint and the idea of a Cabinet Working Group.

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[13] Transcript of remarks delivered by Attorney General Edwards before the Assembly Coordinating Panel on Drug Abuse, Trenton, N.J., Mar. 12, 1987. (edited from the original)

During that summer of 1986, the Commission to Deter Criminal Activity, a group charged with the task of making known to ordinary citizens the societal consequences of criminal activity, conducted a series of public hearings about drugs. What they heard was that treatment, prevention, education, rehabilitation, and public awareness were a tangle of ineffective efforts with no plan and no coordination, and such efforts that were having little or no impact on the vastness of the drug problem. As John Brooks, Director of the Institute for Human Development put it:

> The State of New Jersey is going to have to get into a partnership with every unit of government that has something to do with this issue and each community is going to have to have a partnership in order for us to do something about [the drug problem].[14]

Sporadically, individuals were finding their way out of the nightmare of drugs, but we found that fifteen or twenty thousand young people every year were graduating from high school admitting that they were using or abusing drugs and alcohol more than ten times a month.[15]

In September of 1986, I gave my, by now, standard speech to the members of the Senate Committee on Children's Services, chaired by Senator Costa (D-Burlington). This time a few more heads were nodding. But when the Senate Republicans introduced a package of drug bills that same month which simply sought to strengthen existing programs rather than revamp the whole way we were approaching the problem, I knew there was a lot more legislative education ahead.

At that point, everyone was on the drug bandwagon playing as loudly as possible. The Assembly Democrats, still chafing at their unaccustomed role of being in the minority, used the lets-fix-the-drug-problem-now flurry to announce at a press conference that they had *already* introduced some twenty-five bills on drugs, but that partisan pressures were holding them up. Again, they had completely missed the point that a piecemeal tinkering with laws in the existing structure was completely insufficient. It would not be the

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14 Commission to Deter Criminal Activity, *Report on Drug and Alcohol Abuse*, February 1988, at 7.

15 Drug and Alcohol Abuse Among New Jersey High School Students, 1987. The survey was taken in the Fall, 1986.

last time, however, when both parties used the drug problem to score political points.

On October 15, 1986 the Governor, at his Crime Conference in New Brunswick, released the Governor's Blueprint for a Drug Free New Jersey and announced the formation of a Cabinet Working Group on Drug Abuse, which I was to chair. The Blueprint is extremely significant. With the help of the Governor's Office, it was prepared by a Statewide Narcotics Task Force within the Department of Law and Public Safety created that July to implement a program aimed at eliminating both the supply side—distribution and trafficking—and the demand side—the use of drugs and alcohol by citizens. Now used as a national model, the Blueprint outlined an agenda for both short and long term action integrating resources statewide to create a "drug-free" climate in New Jersey. For the first time in a single document, the plan for reducing demand was coupled with a plan for reducing supply.

The supply side approach of the Blueprint went beyond street patrol "buy-bust" operations, and called for narcotic investigations that would invade the upper levels of the drug world. Seizure and forfeiture provisions were also advanced. But the Blueprint's breakthrough was its recognition that ultimately only a reduction of demand, through prevention, intervention, education, treatment, and public awareness, could destroy the cycle of drug abuse and break the back of drug trafficking. It also called on citizens and leaders in each community to band together into "Alliances" toward the common goal of reducing the demand for alcohol and drugs, particularly among young people.

Meanwhile, at the State House Annex, some 130 bills on drugs were awaiting consideration by the Assembly. Speaker Hardwick (R. Union) realized the need for some kind of coordination and announced the formation of an Assembly Planning and Coordinating Panel on Drug Abuse to be chaired by Assemblyman Walter M.D. Kern (R-Bergen), who also chaired the Assembly Judiciary Committee. Speaker Hardwick required that no committee could consider a drug bill until it cleared the coordinating panel.

The significance of the panel is twofold. First, it did indeed bring order to the litter of drug bills before the lower house. The panel decided to consider bills that dealt with law enforcement first, then education, then treatment and rehabilitation. They made substantial headway. Their deliberations during the law enforcement

phase resulted in the Comprehensive Drug Reform Act of 1987 (the "Drug Reform Act")[16] which had been drafted by my office initially, and which subsequently received the full backing of the panel. The Drug Reform Act is a major component, but not the only component, of drug reform in New Jersey.

In addition to transferring all drug offenses currently in Title 24, the Health Code Statute into Title 2C, New Jersey's Criminal Code, the Drug Reform Act ensures the imposition of stern, consistent punishment for all drug offenders, ranging from street level users and dealers to the highest ranking kingpins.[17] The Drug Reform Act includes a three year minimum sentence for the distribution of illicit drugs within one thousand feet of a school property, a five year minimum sentence for using a minor in a drug distribution network, and a twenty-five year minimum sentence for a leader of a drug trafficking network.[18] It also requires the loss of driving privileges for not less than six months for anyone convicted of any drug related offense,[19] a provision that has really gotten the attention of New Jersey's young people.

For the first time, new mandatory minimum penalties and criminal fines made law enforcement efforts against drug offenders realistic and cost effective by causing the offender to pay for prevention. There are mandatory Drug Enforcement and Demand Reduction (DEDR) penalties, ranging from $500 for a disorderly persons offense to $3000 for a first degree offense.[20] These penalties, in turn, will provide a stable funding source for the community "Alliance" programs envisioned in the Governor's Blueprint if A-1774 is passed.[21] If it is not passed the money collected from DEDR penalties will continue to accumulate in a fund to be used for prevention and education. The panel acted swiftly and decisively in bringing before the legislature this new tool for law enforcement.[22]

However, the legislative panel's significant deficiency was its

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16 1987 N.J. LAWS 106 codified as amended in N.J. STAT. ANN. §§ 2C:35-1 to -23 (West Supp. 1988).

17 *Id.* §§ 2C:35-3 to -11.

18 *Id.* § 2C:35-3 to -7.

19 *Id.* § 2C:35-16.

20 *Id.* § 2C:35-15.

21 With 50,000 arrests in 1987, the potential exists for some $25 million to be available to education and prevention.

22 The Official Commentary to the Comprehensive Drug Reform Act of 1987, 9 CRIM. JUST. Q. 149 (1987).

failure to provide for a revision to the system. That is, the coordinating panel, though an *ad hoc* group, kept to itself the function of coordinating the attack on the drug problem. The Acts passed to date fit into well established channels of government.[23] So far as I know, however by January 1987, it had not contemplated institutionalizing a kind of permanent coordinating panel to orchestrate the solution to drug problems, as it were, across departmental lines.

The pace of effort for true drug reform had become hampered by this mindset. Picture if you will vertical channels (education, labor, pensions) with ladders of authority in each. Each channel is discreet, walled off from other channels by buildings, bureaucracies, and traditions. The Legislature, as is most of government, is comfortable with this model because that is the way government usually works. If you have a law enforcement bill about drugs, you put it into the law enforcement channel. If education about drugs is needed, the law fits into the Education Department channel; treatment into Health Department; family problems into Human Services Department; and jails into Department of Corrections.

The trouble with this departmentalized paradigm is that drugs, unlike the matter of motor vehicles, say, or civil service reform, does not fit neatly into channels. Drugs are a medical-social-highway-family-criminal-educational issue that defy vertical channeling. The drug problem is horizontal in nature. Drugs not only cut through every aspect of society, but also almost every vertical institution of government. That is why the solution to the drug problem must likewise be horizontal, not vertical.

Nevertheless, the Kern legislative panel was the first structured response to the drug problem, and they took their work seriously. By December, 1986 they had pared down the many bills on education to ten. These ten sent to the Senate, were combined in committee to make two new Senate bills, which were eventually signed into law in January 1988.[24]

At that time, everything was starting to come together. The Cabinet Working Group issued its first report in which it called for a "centralized planning mechanism" to implement the Governor's

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[23] *See, e.g.*, The Narcotic and Drug Abuse Control Act of 1969, codified at N.J. STAT. ANN. §§ 26:2G-1 to -16 (West 1987).

[24] S-1137 (Lesniak) enacted as 1987 N.J. LAWS 387, codified in N.J. STAT. ANN. §§ 18A:40A-8 to -21 (West Supp. 1988); S-2497 (Bubba) enacted as 1987 N.J. LAWS 389, codified in N.J. STAT. ANN. §§ 18A:40A-1 to -7 (West Supp. 1987).

Blueprint. The Drug Reform Act swiftly passed through both houses unanimously, was signed into law in April 1987 and became effective in the following July.

Once the Drug Reform Act was passed, and with it bills on education passed in the fall of 1987, it seemed as if New Jersey was on the brink of having the next phase become reality. Within our grasp was the crucial initiative of institutionalizing and coordinating these drug reform strides, along with the treatment and rehabilitation components and the community Alliance concept, so that we would finally make a commitment to the long-term war on drugs.

But troubled waters lay ahead. First, the drug panel began to lose enthusiasm when it approached the third component of its coordinating charge: treatment and rehabilitation. For one thing, the public's interest in this subject was not as intense as it had been for the law enforcement and education components of reform, especially if treatment reform could mean higher insurance premiums should insurance policies be required to cover drug as well as alcohol treatment. Insurance companies also resisted this idea. Second, 1987 was an election year, and the attention of legislators was turning to practical political considerations. Third, the current structure hindered change because drugs and alcohol abuse are treated by two separate offices in the Department of Health, even though the poly-addiction of most clients calls into question this neat distinction.

Through the Division on Alcoholism and its companion entity, the Advisory Council on Alcoholism, alcohol treatment recently received stable funding through the Alcohol Education Rehabilitation and Enforcement Fund. These monies are channeled through a decentralized, county-based system to treatment programs. Significant public involvement accompanies this approach. Any change to this system would then constitute a threat to the status quo.

On the other hand, the Division of Narcotics and Drug Abuse and its statutory companion, the Narcotics Advisory Council has a centralized fund distribution structure, and receives most of its money from the state's general fund. Treatment providers, most of whom are content with the centralized system, were wary of change and wondered if their individual funding pipeline will be disrupted. Making permanent changes in structure was going to be more difficult than we first imagined.

In February, the Prison Bond Issue[25] which the Governor had insisted upon, moved through the legislature easily, in part because it was an understandable need, and in part because it only required that the legislature ask the public to approve or disapprove the funding. This Prison Bond Issue fulfilled the Governor's mandate that drug reform legislation be tied to prison funding reform.

On March 25, 1987, the Cabinet Working Group was ready to issue its position paper calling for a Coordinating Council on Drugs. This report would recommend that a master plan on drug and alcohol abuse be developed by the independent Governor's Coordinating Council, which would make budget recommendations for the entire range of drug programs in the state and also oversee the community Alliance programs that had originally been contemplated in the Governor's Blueprint.

The Council would be located in the Department of Treasury because the Working Group felt that if the Coordinating Council were located in any other department, such as Education, Health or Human Services, it would eventually share the priorities and prejudices of that department. The Cabinet Working Group had become convinced that only a Council that had the authority to cut across departmental lines could be effective. Most importantly, with its budget oversight responsibilities, Treasury seemed an appropriate location for the Council.

Unfortunately, before the position paper was officially issued, inaccurate leaks about its contents watered speculative news stories. Based on snippets of discarded drafts, these stories began to characterize the Coordinating Council a "super-agency," a term that invites visions of vast bureaucracies and autocratic directors. There was even the suggestion that the establishment of this so-called super-agency, by virtue of its authority to allocate money to worthwhile drug and alcohol programs, was driven by my possible political aspirations for the future. Vehement and sincere denials failed to dissuade some people from these kinds of allegations.

So by the time I appeared before the legislative panel on March 12, thirteen days before the report came out, I was being questioned about a super-agency the Cabinet had never proposed. Later that month, I appeared before the Senate Appropriations Committee to

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[25] S-2555 (Graves) enacted as 1987 N.J. LAWS 178 codified in N.J. STAT. ANN. §§ 18A-89.4 to -89.7 (West Supp. 1988).

explain how the $22 million we were looking for would be the first coordinated expenditure on the drug problem, combining the funds of individual departments, federal dollars and money from the DEDR penalties. A small portion of the money would fund the Coordinating Council. Although I appeared with the Commissioner of Education, Saul Cooperman, and the Commissioner of Health, Molly Coye, to show the Commissioners' and my complete faith in this plan, suspicions about ulterior motives persisted. More unfavorable media attention followed.

Finally, the idea of a Coordinating Council, the master plan and the Alliances was drafted into a bill, A-4171 (the "Bill" and later A-1774), sponsored by Assemblyman Walter Kern (R-Bergen), and cosponsored by Assemblywoman Maureen Ogden (R-Essex). The Bill was introduced in May, 1987. At the same time, Senator Jack Ewing (R-Somerset) introduced his own version, which paralleled the Cabinet Working Group's bill with one important exception: The new Council was to be located in the Health Department where many of the existing controls would be unchanged.

Sides were chosen, and both bills languished during the summer of 1987 while the window of opportunity for the Bill was closing swiftly. For one thing, the legislative election, which was expected to be a narrow victory for the Republicans in the Assembly, cast its shadow over even the slightest move by legislators. For another, shore pollution which had dominated the headlines all summer was becoming the white hot topic in Trenton. The "something's-got-to-be-done" feeling about drugs that characterized the fall of 1986 gave way to the same feeling about pollution at the beach in 1987.

With an election in November, politicians were reading the headlines carefully. There were also growing indications that the various existing bureaucracies that the Bill may affect were digging in their heals against change. The drug abuse issue had become political cannon-fodder. In September, I met several times with Speaker Hardwick to see if we could not break the impasse that Ewing's bill had created. Negotiations continued until the Spring of 1988.

By Spring, Walter Kern, the sponsor of what was now known as A-1774 was facing mounting personal and professional difficulties,[26]

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[26] MANUAL OF LEGIS OF N.J. 1988, at 283, 203rd Leg. 2d Sess. (1988).

and the Bill had effectively lost one of its chief proponents. But the negotiations about the Bill were still ongoing, in April, representatives of the Cabinet Working Group and the Assembly agreed that the Cabinet's version with some modifications should be released from Kern's committee. Senator Ewing, who had not been part of the agreement, was furious, as was Hardwick who would have been content to leave well enough alone when it came to such a controversial matter.

The Bill, released from the Panel in May, went to the Assembly Appropriations Committee. The Chairman of the Committee, Assemblyman Anthony M. "Doc" Villane[27] (R-Monmouth) was confident he had the necessary votes for the Bill, but not without help from Democrats. With the Bill about to be voted on, the Democrats informed Villane they wanted something for their support, namely, shared control of the Committee agenda throughout the session. Villane, already irate at the Democrats' demand, was then confronted by Ewing who swept into the room full of accusations about being unfairly treated. They argued violently, and, except for adroit moves by staffers, would have come to blows. A-1774, like Steinbeck's Pearl, seems to attract trouble.

In the end, the logjam broke slightly when the Bill was released by the committee, and was recently passed by the Assembly. It now goes to the Senate where it will undergo a new round of debate. But another election, the 1989 Gubernatorial Race, has now entered into the picture, and I am deeply troubled about the fate of A-1774.

I have one hope. It must be manifestly clear to everyone that our policy of stopping drugs by trying to choke off the supply, isn't working. While the provisions of the Drug Reform Act do have demand-side components, its supply side emphasis is not adequate to really solve the drug problem in New Jersey. And therein lies my hope. I have talked to legislators, Republicans and Democrats alike. Politics aside, I have heard how very must they are disturbed by the drug epidemic, and how frightened they are of its ultimate consequences.

That is why I have to believe that those who have come this far in reform will acknowledge the need for the Coordinating Council, the Master Plan and the Alliances, and that A-1774 will find its way to the Governor's desk.

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[27] Dr. Villane is now the Commissioner of Community Affairs.

Beyond the Bill, though, I hope that we all will have learned a lesson about how to deal with problems like drugs, and perhaps with a whole slate of problems government faces as we approach the second millennium. Often problems are so complex, so entrenched, so difficult, that asking a single, discreet department or office in government to solve the problem is to prescribe failure. More and more, I believe, the horizontal thinking that will ultimately spell the solution to the drug epidemic can help us to grasp and come to terms with other difficulties we face. For that to happen, however, policymakers must re-examine the limitations of the vertical thinking which has historically dominated the legislative process and the bureaucracy it has created. While the immediate need is clear for a comprehensive and coordinated drug policy, the larger challenge is to consider how other complex problems faced by government can be similarly attacked, despite the difficulties of crossing lines of established turf. Perhaps, in the end, the new horizontal thinking necessary for licking the drug problem will prove to be a requisite key for solving any number of seemingly intractable problems that have plagued us for too long.