
Committee Meeting

of

ASSEMBLY JUDICIARY COMMITTEE

“The Committee will receive testimony concerning the expungement of marijuana offenses in light of potential decriminalization or legalization”

For discussion only:

Assembly Bill A-3620

LOCATION: Committee Room 16
State House Annex
Trenton, New Jersey

DATE: June 4, 2018
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Annette Quijano, Chair
Assemblyman Arthur Barclay
Assemblywoman Carol A. Murphy
Assemblywoman Shavonda E. Sumter
Assemblyman Benjie E. Wimberly



ALSO PRESENT:

Miriam Bavati
Rafaela Garcia
Office of Legislative Services
Committee Aides

Brian Quigley
Assembly Majority
Committee Aide

Natalie Ghaul
Assembly Republican
Committee Aide

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Meeting Transcribed by
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COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE
FROM: ASSEMBLYWOMAN ANNETTE QUIJANO, CHAIRWOMAN
SUBJECT: COMMITTEE MEETING - JUNE 4, 2018

The public may address comments and questions to Rafaela Garcia, Miriam Bavati, Committee Aides, or make bill status and scheduling inquiries to Denise Darmody, Secretary, at (609)847-3865, fax (609)292-6510, or e-mail: OLSAideAJU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Assembly Judiciary Committee will meet on Monday, June 4, 2018 at 10:00 AM in Committee Room 16, 4th Floor, State House Annex, Trenton, New Jersey.

The committee will receive testimony concerning the expungement of marijuana offenses in light of potential decriminalization or legalization.

FOR DISCUSSION ONLY:

A-3620
Quijano/Barclay/Sumter
Provides for expedited expungement of marijuana offenses in the event of decriminalization or legalization; establishes the "Expungement Coordinator Program" for certain marijuana convictions.

Issued 5/30/18

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ASSEMBLY, No. 3620

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 12, 2018

Sponsored by:

Assemblywoman ANNETTE QUIJANO

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Assemblyman ARTHUR BARCLAY

District 5 (Camden and Gloucester)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

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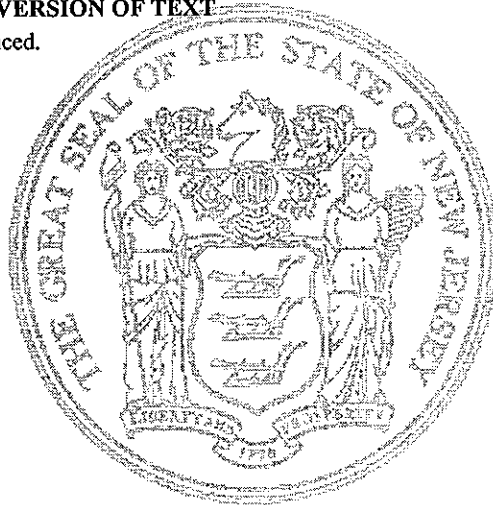
Assemblywomen Murphy, Jasey and McKnight

SYNOPSIS

Provides for expedited expungement of marijuana offenses in the event of decriminalization or legalization; establishes the "Expungement Coordinator Program" for certain marijuana convictions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2018)

1 AN ACT concerning expungement and supplementing Title 2C of
2 the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. Notwithstanding any other provision of law to the
8 contrary, upon enactment of legislation legalizing or
9 decriminalizing possession and use of marijuana, hashish,
10 marijuana concentrate or marijuana-infused products the following
11 persons may file a petition for expungement at any time:

12 (1) any person who has been charged with or convicted of
13 obtaining, possessing, using, being under the influence of, or failing
14 to make lawful disposition of marijuana pursuant to N.J.S.2C:35-10
15 and whose past act is no longer considered to be a crime or offense;

16 (2) any person who has been charged with or convicted of using
17 or possessing with intent to use drug paraphernalia for use of
18 marijuana pursuant N.J.S.2C:36-2 and whose past act is no longer
19 considered to be a crime or offense; or

20 (3) any person who has been charged with or convicted of
21 possessing or using marijuana concentrate or marijuana-infused
22 products and whose past act is no longer considered to be a crime or
23 offense.

24 b. The provisions of N.J.S.2C:52-9 through N.J.S.2C:52-14
25 shall not apply to the petition and the court, upon review of the
26 petition, shall immediately grant the expungement.

27 c. As used in this section:

28 "Marijuana concentrate" means a product consisting wholly or in
29 part of the resin extracted from any part of the plant Genus
30 Cannabis L. and having a tetrahydrocannabinol concentration
31 greater than 10 percent.

32 "Marijuana-infused products" means products that contain
33 marijuana extracts, are intended for human use, are derived from
34 marijuana and have a tetrahydrocannabinol concentration no greater
35 than 10 percent.

36
37 2. a. The Administrative Director of the Courts shall establish
38 an "Expungement Coordinator Program" for the purpose of serving
39 as a resource for persons who file a petition for expungement in
40 accordance with the provisions of P.L. , c. (C.) (pending
41 before the Legislature as this bill). The expungement coordinator
42 shall provide assistance to the applicant with:

43 (1) preparing, filing, and servicing the expungement application;

44 (2) obtaining the necessary records from the appropriate county
45 or State government agencies for completion of the expungement
46 application; and

47 (3) distributing the finalized expungement order.

1 b. As used in P.L. , c. (C.) (pending before the
2 Legislature as this bill), an “expungement coordinator” shall mean a
3 volunteer who has been screened, trained, approved, and supervised
4 by the Administrative Director of the Courts to participate in the
5 “Expungement Coordinator Program.” “Volunteer” means a
6 member of any civic or community-based organization involved
7 with social justice issues, an attorney on a pro bono basis or an
8 attorney from a legal services organization that provides legal
9 assistance in civil matters, or a law student attending any accredited
10 law school.

11 c. An expungement coordinator shall be subject to guidelines
12 and standards established by the Administrative Director of the
13 Courts.

14 d. Any expungement coordinator acting in good faith within
15 the scope of his appointment shall have immunity from any civil or
16 criminal liability that otherwise might result by reason of his
17 actions or failures to act except in cases of willful or wanton
18 misconduct.

19
20 3. The Administrative Director of the Courts shall develop and
21 maintain a public awareness campaign regarding the “Expungement
22 Coordinator Program” established pursuant to
23 P.L. , c. (C.) (pending before the Legislature as this bill).
24

25 4. This act shall take effect upon the enactment of legislation
26 legalizing or decriminalizing possession and use of marijuana,
27 hashish, marijuana concentrate or marijuana-infused products.
28

29
30 STATEMENT
31

32 This bill, which is contingent upon enactment of legislation
33 legalizing or decriminalizing possession and use of marijuana,
34 would provide for an expedited expungement process for certain
35 marijuana and marijuana-related offenses and establish an
36 expungement coordinator program to facilitate the process.

37 Currently, the Judiciary provides materials and information to
38 assist individuals in petitioning the court for expungement. While
39 this information is essential, one-to-one assistance to those
40 individuals is also important. It is the sponsor’s belief that
41 establishing a centralized resource where individuals charged with
42 or convicted of marijuana offenses may go for assistance enhances
43 the Judiciary’s existing system.

44 AUTOMATIC EXPUNGEMENT

45 The bill provides that upon enactment of legislation legalizing or
46 decriminalizing possession and use of marijuana, hashish,
47 marijuana concentrate or marijuana-infused products, any person
48 charged with or convicted of certain marijuana offenses would be

1 eligible for automatic expungement of their criminal records.
2 Under the bill, any person who has been charged with or convicted
3 of obtaining, possessing, using, being under the influence of, or
4 failing to make lawful disposition of marijuana pursuant to
5 N.J.S.2C:35-10 and whose past act is no longer considered to be a
6 crime or offense would be eligible for automatic expungement.
7 Automatic expungement would also apply for any person who has
8 been charged with or convicted of using or possessing with intent to
9 use drug paraphernalia for use of marijuana pursuant N.J.S.2C:36-2
10 and whose past act is no longer considered to be a crime or offense.
11 In addition, automatic expungement would apply for any person
12 who has been charged with or convicted of possessing or using
13 marijuana concentrate or marijuana-infused products and whose
14 past act is no longer considered to be a crime or offense.

15 EXPUNGEMENT COORDINATOR PROGRAM

16 In addition, the bill provides that the Administrative Director of
17 the Courts would establish an "Expungement Coordinator Program"
18 for the purpose of serving as a resource to persons who file a
19 petition for expungement in accordance with the bill. The
20 expungement coordinator would provide assistance to the applicant
21 with the preparation, filing, and service of the expungement
22 application. The coordinator would also provide assistance to the
23 applicant with obtaining the records needed for completion of the
24 expungement application from county or State government agencies
25 and assist the applicant with the finalized order.

26 The coordinator would be a volunteer who has been screened,
27 trained, approved and supervised by the Administrative Director of
28 the Courts to participate in the program. "Volunteer" means a
29 member of any civic or community-based organization involved in
30 social justice issues, an attorney on a pro bono basis or an attorney
31 from a legal services organization that provides legal assistance in
32 civil matters, or a law student attending any accredited law school.
33 An expungement coordinator would be subject to guidelines and
34 standards established by the Administrative Director of the Courts.
35 Any coordinator acting in good faith within the scope of his
36 appointment would be immune from any civil or criminal
37 immunity, except in cases of willful or wanton misconduct.

38 PUBLIC AWARENESS CAMPAIGN

39 The bill would also require the Administrative Director of the
40 Courts to develop and maintain a public awareness campaign
41 regarding the program

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ASSEMBLYWOMAN ANNETTE QUIJANO (Chair):

Welcome to the Assemblyman Judiciary Committee meeting.

We will start with a Pledge of Allegiance.

Assemblywoman Murphy, could you please lead us?

(all recite Pledge)

May I have a roll call, please?

MS. GARCIA (Committee Aide): Yes, Chairwoman.

Assemblyman Peterson is absent.

Assemblyman Carroll is absent.

Assemblywoman Sumter.

ASSEMBLYWOMAN SUMTER: Present.

MS. GARCIA: Assemblywoman Murphy.

ASSEMBLYWOMAN MURPHY: Present.

MS. GARCIA: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Here.

MS. GARCIA: Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Present.

MS. GARCIA: And Chairwoman Quijano.

ASSEMBLYWOMAN QUIJANO: Present.

MS. GARCIA: The Bill, for discussion only, is A-3620. It provides for expedited expungement of marijuana offenses in the event of decriminalization or legalization of marijuana; establishes the Expungement Coordinator Program for certain marijuana convictions.

ASSEMBLYWOMAN QUIJANO: Thank you.

Today this Committee will be discussing the possible impact of expunging criminal records of individuals who have been convicted of low-level marijuana crimes in the State of New Jersey.

Although this conversation takes place as legislators in both houses -- as well as the Governor -- discuss possible marijuana legalization or decriminalization, we will not be discussing whether to take either of those actions.

We are here today to discuss the social justice impact of expunging criminal records for marijuana crimes that may no longer exist if either legalization or decriminalization law is enacted in the future. Additionally, we are going to discuss the administration of expungements in relation to our courts, law enforcement, and corrections.

A criminal marijuana charge has a detrimental effect on an individual's opportunity to access higher education, gainful employment, and housing support. If we are to allow for a legal possession and use of marijuana -- as many other states have done -- then we have to ask ourselves if it's morally just to allow those individuals to continue to carry the scarlet letter, and is it in our best interest as a State.

We also need to address the reality that minorities face marijuana charges at significantly disproportionate rates than those of their white peers, although usage rates across racial lines are generally the same.

Allowing marijuana charges to be expunged is not the silver bullet to solving these discrepancies or systematic discriminations in our judicial system. But it is an important step towards bending the moral arc of the universe towards justice.

We will be discussing A-3620, legislation that provides for expedited expungement of marijuana offenses in the event of decriminalization or legalization; and establishes the Expungement Coordinator Program for certain marijuana convictions. This legislation, if passed, would be triggered upon legalization or decriminalization of marijuana, and is designed to address the social justice aspect of marijuana reform.

Whether you support these reforms or not, the question of expungement needs to be asked. As all who have worked on legislative matters with me, I consider my initial legislation as a starting point for a productive conversation about what we are trying to achieve. That's why I have invited everyone here to share their knowledge and expertise with the Assembly Judiciary Committee. This is a complicated matter that needs to be thoroughly discussed, and I thank you all in advance for being here and taking part in this hearing.

As a reminder, I ask that all who testify refrain from discussing their support or opposition to legalization or decriminalization of marijuana, and remain on the topic of expungement of records.

Our first individual to testify will be, from the NAACP of New Jersey, Safer Quraishi.

If I mispronounce your name, please correct me, on the record.

SAFEER QURAIISHI: Greetings.

My name is Safer Quraishi from the New Jersey State Conference NAACP.

Thank you for giving me the opportunity to testify before you today.

I do bring you greetings on behalf of our State Conference President, Richard Smith, who is also a member of the National Board.

I'd also like to thank you, Assemblywoman Quijano, for bringing the racial justice to the forefront of this argument and having this discussion with us today.

The expungement aspect of marijuana is a civil rights issue. We have-- Obviously we've heard people of color are more likely to be arrested, prosecuted, and put in jail for low-level marijuana offenses -- particularly the use of color; and we find that this is not a just property. Justice is being just -- is the quality of being just and fair, and these laws that we currently have are not just nor fair.

The numbers, of having a white person who is three times less likely to be convicted for a marijuana offense, makes this a civil rights issue. The NAACP is generally conservative in the issues that it supports; but when we see the disproportionate prosecution of African Americans for drug-related offenses, we need to do something about it. If these laws are being enforced correctly, then the number of arrests, prosecutions, and prison sentences will be proportionate to society across the board.

New Jersey's war on marijuana has been a bit of a failure; and in its path we find that those who have been convicted of marijuana offenses find very long-term exclusions. These offenders can face up to six months in jail, loss of driving and job privileges. They face a criminal record which, as you said, is a scarlet letter, stigmatizing the individual for life. There is no way around that; once you-- There is always that letter that you will wear on your jacket.

We see exorbitant fees and fines; we're seeing arrest warrants, obviously, if those fines aren't paid; and job discrimination, loss of public housing, and student loans. I mean, across this country we have 2.6 million people in jail and another 4.8 million on probation or parole. And we feel as though expunging these records is not -- one panacea to liberate a community, but we can-- The war has failed, and we need to provide these people a way to get back into the community and to be able to rejoin their families for something that, if you cross a few state lines, is absolutely legal.

Legalization just needs to -- legalization or decriminalization needs to include policies that will provide automatic or retroactive expungements, or a fast-track to being expunged.

And without an element such as this, we feel that the legislation would be poor. And we -- the NAACP would be distraught to see legalization occur on the backs of colored people, saying that, you know, "This is the reason we need to do this, but we're not going to help you out when it comes to getting out of jail, and getting you back into the community, and resocializing you and getting you to a place where you should have been."

And that would be all.

Thank you.

ASSEMBLYWOMAN QUIJANO: Thank you.

Does anyone have any questions for this individual?

Go ahead.

ASSEMBLYWOMAN SUMTER: Through the Chair, are you leaving us a copy of your testimony?

MR. QURAIISHI: Yes, I can give you-- I can't give you this one, because it is all marked up; but I can give you another one.

ASSEMBLYWOMAN SUMTER: Great; thank you.

ASSEMBLYWOMAN QUIJANO: Anyone else?

Assemblyman Wimberly, do you have a question? (no response)

ASSEMBLYWOMAN QUIJANO: Thank you so much.

MR. QURAIISHI: Thank you.

ASSEMBLYWOMAN QUIJANO: The next individual -- Amol Sinha, ACLU-New Jersey, in favor.

A M O L S I N H A, Esq.: Thank you so much, Chair Quijano, and members of the Committee, for sponsoring this piece of legislation and for allowing me to testify.

My name is Amol Sinha; I'm the Executive Director of the American Civil Liberties Union of New Jersey. The ACLU of New Jersey has been around for over 60 years, and we are a nonpartisan advocacy organization that works towards promoting and defending constitutional and Civil Rights.

We're also on the steering committee of a coalition called New Jersey United for Marijuana Reform, which looks at the impact of prohibition from a racial and social justice lens. We're a broad-based committee, advocating for legalization from the Civil Rights and advocacy world. We bring together law enforcement, prosecutors, doctors and other experts, and community members to talk about the impact of prohibition and what we can do to undo the harms of prohibition in our state today.

The ACLU has opposed marijuana prohibition since 1968, and we've helped lead the movement for legalization in other states across the country.

We believe that the reform of our marijuana laws is a Civil Rights priority and a key component of reforming our broken criminal justice system. And this hearing today is a great opportunity for us to discuss how we can work together to ensure that marijuana legalization or decriminalization -- whatever the path might be -- serves its intended purpose: to end a Civil Rights crisis and undo the harms of prohibition.

A critical step in doing so is to expunge the records of those with marijuana convictions.

So I know my colleague Safer had mentioned some of these statistics, so bear with me while I provide some context.

New Jersey is among a handful of states leading the country in its numbers of marijuana arrests. According to the recent studies, in 2016, New Jersey made over 32,000 marijuana possession arrests. In 2015, the year before, it made over 25,000 such arrests. These numbers have been on an upward trajectory for at least the past decade. And over the past decade, our state has made hundreds of thousands of arrests and spent over \$1 billion enforcing marijuana laws, all for something that is now inevitably going to be legalized.

Ninety percent of these arrests are of everyday people for small amounts of marijuana possession.

And it should be no surprise that not all communities are impacted equally by marijuana enforcement. Black New Jerseyans are three times more likely to be arrested for marijuana possession than whites; and

black individuals -- according to a ACLU of New Jersey report that we published last year, black individuals were disproportionately arrested in every single county. But in four counties -- including Hunterdon, Ocean, Monmouth, and Salem -- black New Jerseyans were arrested at four times or more than white folks in the same counties. And in some places, those numbers climbed exponentially, including some shore towns where black New Jerseyans were arrested at a rate of 31.8 times their white counterparts.

As we know, a single arrest and conviction can have devastating lifelong consequences. As Safer mentioned, you can face up to six months in jail; you can face fines and fees of more than \$1,500; you can be evicted from public housing; you can have immigration consequences up to deportation; you can be banned from adoption; and as we all know, it's incredibly difficult to find employment, and you're disqualified from professional occupations and licensure in many, many industries.

For us, expungements are a matter of racial, social, and economic justice. Other jurisdictions that have legalized marijuana, including California, did so without considering fully the racial justice consequences of prohibition. And right now, New Jersey is set up to be a leader on this front. California realized its error, and several jurisdictions across the state are now finding ways to lead with social justice, and expunge the records of folks who have been disproportionately impacted in their communities. This includes San Francisco, San Diego County, and Alameda County -- which includes Oakland. They're promising to affirmatively search for those folks who might be eligible for expungement

and either seal or expunge their records, or reclassify their marijuana charges.

New Jersey can also be a leader in not just criminal justice, but also simple fairness and decency. It would make no sense for people to continue to suffer the consequences of an unjust marijuana enforcement action simply because they were arrested before the Bill signing.

Right now, expunging a record is costly and onerous. It could cost an individual thousands of dollars if they choose to obtain a lawyer for the service. If you're *pro se*, it could cost over \$200 just in fees and the certified mail, which you would have to do to process the paperwork. It could take months -- up to a year, if not longer. And it's incredibly burdensome for any individual, but especially those who are limited in social economic status, to go through this process. And those are the folks who are going to be disproportionately targeted and against whom, perpetually, injustices will be repeated.

Expunging records is also just the right thing to do. Of course, we fully acknowledge that automatic expungement is no easy task; but it is possible, as we've seen in other jurisdictions. It's possible and it's worthwhile. It's something that's going to ensure that New Jersey stands out as a leader when it debates whether or not legalization is right for us.

And I encourage this Committee to urge members of both houses that, when they talk about legalization or when they talk about marijuana reform, that they talk about social and racial justice. Of course, legalization, creating a new industry, is going to have strong business, and legal, and economic implications. But unless we take time to examine ourselves and undo the harms that we are continuing to perpetuate in this

state, we will be at a loss. It would be a shame to have a newly built industry built on the backs of criminalized people of color.

So I will leave it at that, and I'm happy to answer any questions.

ASSEMBLYWOMAN QUIJANO: Any questions?

Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thanks, Chairwoman.

So my question -- how can I put it -- so we are all familiar with, like you said, California and all that. So I recently read in San Francisco -- they went back as far as 1975, expunging all the records. So my question to you, here in New Jersey, if passed in both houses and the Governor signs it -- if you had a recommendation, what would you recommend how far we should go back? And if we do take it back, people who had the records on their record, now that it's taken off, do we give them any-- Well, answer the first question first.

MR. SINHA: Sure.

ASSEMBLYMAN BARCLAY: I don't want to go through all-- (laughter) What would you prefer; if you had a recommendation, what you prefer -- how far we go back?

MR. SINHA: I would recommend going back as far as we can, making sure that the first documented marijuana--

ASSEMBLYMAN WIMBERLY: Do you have a specific date; instead of saying, "as far as we can"?

MR. SINHA: Yes; I don't have a specific date. I actually don't know how far back the data goes in New Jersey, and I'm sure the folks who are here from the Administrative Office of the Courts can answer that for

us. But I would recommend going back as far as the data allows us to. If we have, you know, a marijuana arrest that somebody is still suffering from -- the consequences of -- dating back to 1974, I would hope that that person would still be eligible for expungement. Because as we know, and as I've discussed, regardless of how far back the arrest was, that person is still barred from certain occupations; that person is still unable to participate fully as a civic participant and as an economic participant in our community.

ASSEMBLYMAN BARCLAY: If it's, you know, just-- I know plenty of people personally who have, you know, just a part of that record. And it basically -- I don't want to say screwed up their lives, but in a sense it did because they can't get certain jobs; they can't, like you said, get public housing or public -- you know, in most cases, public assistance, to my knowledge. So it's definitely an issue that, you know -- this is definitely-- We have to talk about this to a deeper extent. And I'm not an expert on this, so this is when people like yourself, and the NAACP, and other organizations come in and try to get the best -- come up with the best plan necessarily moving forward.

MR. SINHA: Thank you, Assemblyman.

ASSEMBLYMAN BARCLAY: Thank you, Chairwoman.

ASSEMBLYWOMAN QUIJANO: Just to answer -- chime in, I believe we should go-- We shouldn't have a date certain that we can only go back to. I think it should be -- go back as far as where an individual has been negatively impacted.

MR. SINHA: That's right.

ASSEMBLYWOMAN QUIJANO: Because as you testified, it does impact jobs and housing.

All right; so here are some questions, okay?

On the expungement, where do we draw the line: simple possession versus distribution? Should we have a tiered system? The first tier would be simple possession; the second would be various other crimes that have marijuana; and third would be the most difficult, where there was probable cause based on the marijuana, but got charged with something else?

MR. SINHA: Yes.

ASSEMBLYWOMAN QUIJANO: So if you could just answer those two questions, I would appreciate it.

MR. SINHA: Sure.

That's a challenging question, for sure. And it implicates a lot of complicated data issues as well, as you know.

Of course, simple possession should be in the scope of the law. I would recommend expanding it to some distribution charges as well, because we're going to create-- And if marijuana is legalized, we're going to create an industry in which distribution will be the norm. Right now, I participated in dozens of -- and my colleagues have participated in dozens of conversations around marijuana legalization, and we hear people talking about supply, and demand, and distribution, and market share in a context that used to be taboo. And this industry has existed -- whether we choose to acknowledge it or not -- and those conversations have been happening underground. And it would be ironic and cruel to continue to target people

for having the same conversations that we're just now able to have above ground.

And so I would include distribution charges in the legislation, and broaden it to include certain types of distribution for sure.

Now, for those triggering offenses -- for those offenses in which marijuana creates the probable cause to arrest -- you know, from the ACLU's perspective, I would recommend that any time the paperwork says that the individual's arrest, and charge, and conviction was based on something that is now legalized, that that person should have the opportunity to expunge their records.

Now, of course, there is going to be complicating factors, and there is going to be, perhaps, an adversarial process involved when that petition is brought to the fore. But I do recommend taking a close look at how marijuana enforcement has not only been used to target those people who are actually consuming or selling marijuana, but also been used as a scapegoat to be able to look for other things. It's the easiest thing to claim, yet somehow the hardest thing to find. You often hear stories of law enforcement smelling marijuana, and then allowing that to be the probable cause for the basis of a search of a vehicle, or a home, or a person; and then using that search to find things that would be otherwise illegal. But as we know, that is fruit off the poisonous tree, right? That search, if not based in fact or if it's a search of something based on-- If it's based on a search of something that is now legalized, it would be incredibly problematic for us to be okay with a situation in which those individuals don't get an opportunity to expunge their records.

ASSEMBLYWOMAN QUIJANO: Assemblywoman Murphy.

ASSEMBLYWOMAN MURPHY: Thank you, Chair.
Welcome.

Just a couple of clarity questions for (indiscernible).

MR. SINHA: Sure.

ASSEMBLYWOMAN MURPHY: ACLU -- what is your present involvement with those folks in our communities who can't afford to hire attorneys, who are looking to expunge records now? What is the ACLU's involvement presently?

MR. SINHA: Sure.

The ACLU is an impact litigation organization and a policy organization. So while we don't take on those individual cases, we get calls like that all the time. We try to educate the public about processes that may be hard to decode, and we work with law enforcement, and prosecutors, and defense attorneys to provide that education.

But we can also help folks find those attorneys who may be able to help them through the expungement process.

ASSEMBLYWOMAN MURPHY: Do you-- If this law does come about and expungements are -- we move forward with the expungements once everything else gets into play, and legalization of marijuana and/or decriminalization occurs, would the ACLU be in favor of making their presence known and help out in the community? And you hit the nail on the head when you said the fees are so high that some of our folks can't afford it in most of our densely populated or our economically challenged communities. How would the ACLU play a part in helping those folks who need-- Because, you know, I think the community needs help, especially those who can't afford attorneys; and not necessarily saying

that an attorney needs to be the person processing this. I guess it all depends on what we're looking at. How would you project the ACLU's involvement in all of this?

MR. SINHA: Thank you for that question.

We're eager to continue doing what we've always been doing -- which is to help people in whatever way we can to connect them to the right people to make sure that they are able to avail themselves of due process.

What I would recommend, though, is that the process become as automatic as possible so that the burden is no longer on an organization or the individual to process their expungement. These other jurisdictions that I mentioned in California -- they're using technological advances in personnel to actually expunge the records of the folks who are eligible. So once we define the population subset of folks who would be eligible for expungement, I would recommend that the State do whatever it can to take on that burden themselves so that individuals aren't charged with it; and that organizations that may be under-resourced and don't have the personnel to oversee the onerous process themselves, aren't tasked with something without the quality assurance and control that we need for this process.

So while I would love to see the ACLU step into this world and do more than we can right now, we're still strapped for resources, even in 2018, at the ACLU. And we're constantly looking to ways in which we can streamline our projects and make sure that our resources are being used in smart ways.

So I would encourage-- And I know a lot of other public interest organizations that feel the same way. So I would encourage the State to look to ways in which it can fund or resource -- provide resources to the appropriate administrative office to not just create a volunteer position, but a fully funded position that would help people navigate the expungement process. Not just for marijuana; beyond marijuana, because I know a lot of people who would benefit from that.

ASSEMBLYWOMAN MURPHY: And one last thing, through the Chair -- would you mind sending in, through the Chair, the statistics that you shared with us earlier?

MR. SINHA: Sure.

ASSEMBLYWOMAN MURPHY: That way, then, we have it for our records, as well as future background knowledge.

Thank you.

MR. SINHA: Thank you; I'll send, through the Chair, a report that the ACLU of New Jersey put together in 2017 that highlights all of these statistics; and also a report from ACLU National, from 2013, about the racial disparities, state-by-state, so that you have that in front of you.

ASSEMBLYWOMAN QUIJANO: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Thank you, Chairwoman.

And just on your expertise, the average cost for an expungement, would you say? Would you know that off the top of your head?

MR. SINHA: Well, it depends if you're using a lawyer or not.

ASSEMBLYMAN WIMBERLY: Using a lawyer.

MR. SINHA: Using a lawyer, it depends on that lawyer. I mean, it could be well over \$1,000 to hire--

ASSEMBLYMAN WIMBERLY: That answers my question.

MR. SINHA: Yes.

ASSEMBLYMAN WIMBERLY: So that basically eliminates so many people, you know, financially, of color, of their economic status.

MR. SINHA: That's right.

ASSEMBLYMAN WIMBERLY: And that was just my point -- that, you know, we have to, as a State, come up with some type of system, be it if marijuana is legalized -- for revenue to go towards this. Or, like you said, there has to be some way, through technology, that we can expedite this process.

But that's just my point. I knew it was over \$1,000, but I didn't know if you had an exact number, on average.

Thank you.

MR. SINHA: Thank you.

ASSEMBLYWOMAN QUIJANO: All right; I have another question.

MR. SINHA: Yes.

ASSEMBLYWOMAN QUIJANO: We've heard that there are software programs to identify individuals eligible for expungement in one other state. Is there any data that would help us? For instance, was it a good experience? You know, the thing is, with whatever we do, we have to make sure we do it the right way. And so, yes, we have the benefit of best practices of other states, but we have to make sure it works. And so have you heard of any of those programs, software programs?

MR. SINHA: You know, I've heard of software programs emerging, but I haven't heard of what the results have been. And so I can certainly do some research and find out and send it your way, Chairwoman, to figure out whether or not it's been a fruitful experience.

But it's a start, right? And it's something that I think is worthwhile in investing in, in our state, to determine -- to explore whether or not it's something that works for us. Because if it does, it's something that could open up a lot of doors for a lot of people in our state -- and that includes in occupational licensing, for instance, right? -- in being able to obtain employment, and in being able to take advantage of public housing, or many other economic and social consequences that people are currently barred from.

ASSEMBLYWOMAN QUIJANO: You had mentioned that we should make the process as automatic as possible. Were there any other mechanisms that you were referring to besides the software?

MR. SINHA: Well, currently, the Bill contemplates -- 3620 contemplates removing a number of the procedural hurdles from Title 2C, I think sections 52-9 to 52-14 -- right? -- that do not apply to marijuana arrests. And I think that's a step in the right direction. I think removing as many of those sorts of hurdles as possible would certainly help get us closer to automation.

I think the ideal would be a situation in which nobody has to file any paperwork ever and, you know, individuals are simply notified that their records have been expunged. And, you know, I think -- I would imagine that this requires both personnel and technological advances. In addition to software, I think the personnel piece of that is incredibly

important. So while I know that the Bill contemplates an Expungement Coordinator Program, I think it would be worthwhile to invest in that and make sure that that's a robust program that will actually serve to capture as many people -- *capture* is a bad word -- but will encompass as many people as possible.

ASSEMBLYWOMAN QUIJANO: Thank you very much.

MR. SINHA: Thank you so much for your time.

ASSEMBLYWOMAN QUIJANO: Next speakers -- Alyson Jones and Steve Somogyi, from the Judiciary.

A L Y S O N J O N E S, Esq.: Good morning.

Alyson Jones, Legislative Liaison for the Judiciary. Beside me this morning is Steve Somogyi; he's our Assistant Director for Municipal Court Services.

Thank you very much for inviting us to come and talk to you.

I'm going to, sort of, talk a little bit about the expungement process now, as it's laid out in 2C:52-1 through 52-32; some changes that have happened to those sections of our statutes recently; and some that are coming at the end of 2018.

And then Steve is going to talk a little bit about what we think might be the kinds of charges and convictions that you're considering for expungements. But I will say we have very preliminarily -- kind of like yourselves -- begun this conversation at the AOC. And it's been a challenge to get our arms around it. I think, as the Chairwoman sort of spoke in the beginning, without a clear definition of "are we legalizing," "are we decriminalizing," what exactly does the world look like where we have permissible marijuana usage is just -- it's a challenge to talk about the

expungement piece. But we're going to do our very best for you this morning.

So as I said, you can find everything you need to know about the expungement process in 2C:52-1 through 52-32. And just so we're all on the same page, I want the definition of what an expungement is, from the statute.

It says an expungement is "the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of any offense within the criminal justice system."

So I know often there's this tendency to think about, "Well, an expungement is a *court* record; it's a *court* issue." It's much broader. It's all of our partners in the criminal justice system. We all touch on this. And that kind of takes me to -- how do you actually do this?

So, first, it is the petitioner's responsibility to go out there and find all their records. If that becomes--

ASSEMBLYWOMAN QUIJANO: I don't-- What is *all their records*?

MS. JONES: So all the records of-- Exactly what I talked about in the definition -- with the court, with the detention or correctional facility; with law enforcement, with criminal justice; concerning your apprehension, your arrest, your detention, your trial.

ASSEMBLYWOMAN QUIJANO: So the individual -- and I apologize to interrupt.

MS. JONES: No, please; questions are good.

ASSEMBLYWOMAN QUIJANO: But I just want to make sure that as we go along, we're all on the same page.

MS. JONES: Yes.

ASSEMBLYWOMAN QUIJANO: So that means the individual -- let's say they're *pro se*; they're doing this on their own -- would have to go to each and every institution to get their records? Or is there one-stop--

MS. JONES: Well, it's going to depend on exactly what the charges are; when -- timeframe is important. If they're very old-- PROMIS/Gavel, which is our criminal system, was originally established in the 1980s. So while it has a lot of data and a lot of good data, if we're talking about events that occurred before that system was built, it gets challenging. If you can't locate your records, you can go to the State Police and request that they do a criminal history. This may involve fingerprinting, so that they can identify the correct Alyson Jones. And there are certain statutory exceptions to this as well. For example, most recently, the expungement for successful drug court graduates was amended, and they follow a slightly different process that involves the Prosecutor and the Public Defender helping them gather those records.

So once you have all of that together, you file your petition. And I will say there is a very thorough kit on our web page that we put together, with legal services, that walks you through a step-by-step guide of how to do that, including all of these forms. So there's a form petition that includes your request for the hearing, your form order; it even includes cover letters, because this has to be sent -- you have to give notice to several different entities, and it includes all of those forms -- fill-in-the-blank forms.

So in your petition, you have to, as I said, list all of your arrests, charges, and prosecutions, even those that you're not seeking to expunge in this petition. This is all laid out in -- as part of 2C:52-1. It's all in there.

And then you have to -- once you file it with the court, you have to serve it. And the statute says you have to serve it on the Attorney General, the State Police, the County Prosecutor, the Municipal Court Administrator, local law enforcement, the jail warden or Superintendent of Corrections; possibly probation, if that was something that you were involved with; and possibly the Division of Criminal Justice, in certain circumstances.

The statute says that a hearing has to be held within 35 to 60 days. I will say that often the hearing is waived; we don't bring everybody in. Typically the Prosecutor is able to do -- it is the County Prosecutor's obligation, and they are able to do their review of the person's criminal history, of all the charges they're seeking to have -- and convictions they're seeking to have expunged, and they will let the court know ahead of time, "There's no need to have a hearing on this. There's no issue of fact. You can do this on the papers, and it will be handled that way."

Once you get your order -- your final expungement order -- you then have to send it back out to all of those same entities so that they know and they can clear the record that they have of your arrest, prosecution, convictions.

ASSEMBLYWOMAN QUIJANO: So do you get a letter from those entities saying we cleared you out--

MS. JONES: I do not know how they--

ASSEMBLYWOMAN QUIJANO: -- as a confirmation? I'm only saying this because there are other experiences I've had that -- let's say a hospital bill that was supposed to be cleared out, and 10 years later pops up because it wasn't cleared out.

MS. JONES: You would need to ask the jail wardens--

ASSEMBLYWOMAN QUIJANO: Okay.

MS. JONES: --and law enforcement, State Police, how they respond. I'm sorry; I do not know.

ASSEMBLYWOMAN QUIJANO: That's okay. I'm just going to list my questions; thanks. (laughter)

MS. JONES: Okay.

ASSEMBLYWOMAN SUMTER: (off mike) (Indiscernible).

ASSEMBLYWOMAN QUIJANO: Go ahead, Assemblywoman.

MS. JONES: Hold on one second there.

ASSEMBLYWOMAN QUIJANO: Yes.

ASSEMBLYWOMAN SUMTER: Thank you, Alyson.

And after hearing all of what a petitioner needs to do, it's validation for a Coordinator for the services. But do you know if there's a filing fee for each of the entities that they need to submit their application to?

MS. JONES: They file it with the courts--

ASSEMBLYWOMAN SUMTER: Or is it one fee for the expungement for all of the different levels that they may be going through -- if they have a municipal case, a county case, a State case, or does it all flow through one?

MS. JONES: It gets filed in the Superior Court, Criminal part. There is one filing fee for that; it is set by statute. It is \$75. I'm not aware that any of those other entities charge any kind of processing fees; but again, that would need to be a discussion with them.

ASSEMBLYWOMAN QUIJANO: (off mike) (Indiscernible).

MS. JONES: We're doing about 10,000 of these petitions a year right now. It fluctuates, but that's the approximate number.

And as I mentioned, in October -- October 1 -- some additional amendments will go into effect. They largely impact how soon you can bring an expungement, typically on an indictable--

I'm sorry.

ASSEMBLYWOMAN SUMTER: So that's almost \$1 billion (*sic*) in fees; if it's \$75, 10,000 applicants a year?

MS. JONES: Is that the correct math? I became a lawyer for a reason. (laughter)

ASSEMBLYWOMAN QUIJANO: (Indiscernible) have to do math. (laughter)

ASSEMBLYWOMAN SUMTER: Okay; that's almost \$1 billion in fees, just on expungement applications.

ASSEMBLYWOMAN QUIJANO: On the 10,000 a year, do you break it down racially and by sex -- how many are actually going through this expungement process?

MS. JONES: I don't believe so; but that's something I can ask and follow up with you on, if you like.

ASSEMBLYWOMAN QUIJANO: Okay; all right.

Go ahead; I'm sorry, Alyson. We're just, like, so -- we have so many questions.

MS. JONES: No, that's okay.

Hey, everybody has lots of questions. That's okay.

The new law -- right now, you typically have to wait between 5 and 10 years to expunge an indictable. That's going to be reduced to 6.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
(Indiscernible) (laughter)

ASSEMBLYWOMAN SUMTER: Almost a \$1 million -- I just want to correct that -- almost \$1 million in fees.

MS. JONES: And on the disorderly persons, we're going to, again, keep-- While the timeframe remains the same, you're going to be able to put more disorderly persons on a single expungement than the statute currently permits you to do.

Do you have any more questions for me? I'll turn it over to Steve.

ASSEMBLYWOMAN QUIJANO: Yes; yes; okay.

So thank you for walking us through the process. I always thought we were -- that it was easier; sorry.

When you started, you already lost me on the forms on the website and all the arrests, convictions. Most people don't even know what their medical history is, let alone what their criminal history is, over years. So that to me -- we lost people.

I'm sure the forms are great; I think you really do need an attorney, which -- that's not what we need to do. We need to make it available for everyone.

So not knocking, you know. I think you're doing a great job; 10,000 is a great number. I'm sure we're going to get a lot more if this occurs.

Okay; let's-- You did a great job, Alyson; and you did a great job because we all interrupted you numerous times. And we had you jumping, and you did a great job.

Thank you.

MS. JONES: Well, thank you.

I'm going to turn it over to Steve, who is going to do another great job for you -- talk about more specifics.

S T E V E N A. S O M O G Y I: Good morning, Chairwoman, and everybody on the Committee.

I just want to throw out a couple key facts and some information about the process, which I think will help as we continue this important conversation.

The numbers in play here can be really staggering. Now, my responsibility is overseeing all the municipal courts. Let me also preface -- I was asked Friday to come here, so I don't have all the data available; nor do I have a really comprehensive view on exactly all the things happening in the Superior Court, but I can respond to some questions on that.

Now, from the municipal court side, I ran some data for 2016 and 2017. There were, just on DP -- drug possessions -- which is 2C:35-10A4 -- in 2016 there were approximately 43,000 charges for that drug possession filed in our municipal courts. In 2017, the number was about 40,000. Again, I don't have the data available to continue going back, but

using those two years as a baseline, we can extrapolate in terms of what the numbers may look like as we move forward in the conversation.

Just on those two years, since 2008, there's been approximately 400,000 drug possession arrests for just simple -- you know, having marijuana; just 50 grams or less. Since 2000, the number is about three-quarters of a million; and since 1992, the number is about a million. So the numbers we're talking about here are staggering. And Alyson indicated that we're doing about 10,000 expungements a year. So if something is put into place, obviously we need a conversation -- an important conversation about how as a system we handle something like this, because it's significant.

Now, in addition to just the raw numbers, there are some other things I just want to make the Committee aware of. That as an example, the current possession incorporates both marijuana and hashish. If somebody is picked up on possession, they are charged with the exact same statute regardless of the substance. So I just want to throw out that if there is any legislation focusing on this, if we want to try to use the power of our computer system, which has already come up in a couple of questions -- if it's only marijuana, as an example, and not hashish it makes it infinitely more difficult to identify the possible cases. Because in our system we don't have the ability to determine which is a marijuana charge and which is a hashish charge, since they are both written on the same statute, okay?

So another key piece is -- and it gets into using the computer system to try to identify. As Alyson laid out, the current process now is for someone to file a petition, file something in our Superior Court. If we wanted to use the power of the computer system, obviously the legislation would need to be crafted that would, one, clearly articulate what charge

we're talking about, and what substance we're talking about, or substances; but equally important is, we would need to determine whether or not someone would still have to file a petition or whether we could, as somebody mentioned earlier -- I think it was Los Angeles has done something electronically -- we would need the legislation to permit certain applications to be done that way. I just want to put that on the radar.

But importantly, this process is not just about technology. If it was, it would be a much simpler conversation we would have today and moving forward. This process is also a very manual process; not only for the Judiciary, but for law enforcement, and the jails, and other entities. Because, as Alyson indicated, the files are kept in different locations and in different forms. We have in our PROMIS/Gavel system, and in our ACS -- which is our Municipal Court system -- obviously, the original data on what got filed. But there is also the paper file. As Alyson indicated, if there's an expungement ordered now, the expungement order identifies that in all the key areas, all the key stakeholders that they need to expunge their files. Just from the Municipal Courts' end, what it means is, the Superior Court orders it, and the Municipal Court gets a copy of that order and then has to not only do the work in the computer system, but also grab the paper file. And basically we have a separate-- We don't destroy it, but we have a separate filing system, secure filing system, that it gets just a number; and it's basically part of the expungement process.

So there's-- I just want to throw this out there. Even with all the technology we have to bear-- And I'll be honest, in the Judiciary we have some very significant technology, thank you, Legislature; we have that, but there's still a very manual process involved in any type of request. The

police are going to have paper copies; the jails are going to have paper copies; the State Police, obviously, has its own protocol for what they need to do.

ASSEMBLYWOMAN QUIJANO: Assemblywoman Sumter has a question.

ASSEMBLYWOMAN SUMTER: Thank you, Madam Chair.

Steve, I'm trying to wrap my mind around where we have three different levels; all of the information is completed differently, depending on the municipality. And then it goes into a central place that's either paper or computer, for the drug charge, or-- How do you know whether it's marijuana or hashish?

MR. SOMOGYI: We don't. The only way you can tell is you have to go back-- In the computer system, I would not be able to tell. On the papers themselves I would be able to tell.

ASSEMBLYWOMAN SUMTER: Because the code is the same.

MR. SOMOGYI: Yes; the charging statute is the same for both substances. The only way to determine whether it was marijuana or hashish is somebody would have to go back to the original charging documents and actually look to determine what that person was charged with possessing.

ASSEMBLYWOMAN SUMTER: Do you know if every municipality or court system has someone who does that function; or would it be an added duty, to your knowledge?

MR. SOMOGYI: It would definitely be an added duty on the Superior Court side, and also on the Municipal Court side. And also with the County Prosecutor, depending on their role in that process.

ASSEMBLYWOMAN SUMTER: Thank you; wow.

MR. SOMOGYI: Another key piece -- and this is part of the processing for how everything is integrated into our computer system, particularly on the Superior Court side. We have a lot of defendants who are charged only with possession; then you have defendants who are charged with possession of marijuana, possession of heroin, possession of paraphernalia -- multiple charges and multiple substances, etc. Then you have defendants who -- there might have been a theft, or there might have been an assault. And during the course of the arrest marijuana might have been found on the defendant. And why that's important is, particularly on the Superior Court side, we do not have the ability, the way the case is constructed, to expunge individual charges. So if somebody is found guilty or charged with theft and possession of marijuana, we do not have the ability to just expunge the marijuana charge. We can only expunge an entire case, or we can't expunge it all. And many expungement requests are denied specifically because of that; because a case is a case, and things are all tied together.

I just wanted to throw that out.

ASSEMBLYWOMAN QUIJANO: Okay; Assemblywoman Sumter has a question, but I also want you to address those cases that the County Prosecutor gets, and then downgrades it back to Municipal Court.

MR. SOMOGYI: Okay.

ASSEMBLYWOMAN QUIJANO: Okay; but go ahead, Assemblywoman.

ASSEMBLYWOMAN SUMTER: I believe, Madam Chair, if he answers that question -- because I wanted to know how many of those cases look like that.

ASSEMBLYWOMAN QUIJANO: Okay.

ASSEMBLYWOMAN SUMTER: So, that would be--

ASSEMBLYWOMAN QUIJANO: There we go; if you can.

MR. SOMOGYI: In terms of the downgrade?

ASSEMBLYWOMAN QUIJANO: Yes, the downgrade and (indiscernible).

MR. SOMOGYI: I don't have numbers, but a pretty sizable percentage of drug cases are downgraded, particularly if it's not a very large amount, or if the person is a first-timer, maybe a second-timer; they don't have a serious history. It is very common for them to be filed as *indictables*; so they go up to Superior Court, the County Prosecutor will review; make a determination that it's not worth indicting on. So then it gets downgraded to a 50 grams or less, as an example, marijuana; and then its handled and disposed by Municipal Court.

ASSEMBLYWOMAN QUIJANO: Can you provide those numbers to us; how many--

MR. SOMOGYI: Sure.

ASSEMBLYWOMAN QUIJANO: And if you could break it down by county, that would be even more helpful. But if you can, if you can just give us a number so we would know.

MR. SOMOGYI: Yes, we will be able to pull that together.

ASSEMBLYWOMAN QUIJANO: In a calendar year.

Okay, thank you.

MR. SOMOGYI: And--

Oh, I'm sorry; yes.

ASSEMBLYWOMAN SUMTER: I'm sorry, Steve; and Madam Chair. Do you know how many cases of expungement are not approved each year? Can you all get that number to us? Or is it just based on time to complete them -- to review the application? How many applications are not approved?

MS. JONES: You mean how many petitions are granted versus denied?

ASSEMBLYWOMAN SUMTER: Yes.

MS. JONES: We can get you that information.

ASSEMBLYWOMAN SUMTER: Okay, great.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
(Indiscernible).

MR. SOMOGYI: Okay, thank you.

Another key piece -- and again, it has come up as part of a couple of comments, and Alyson mentioned it as well, and some of the questions have touched on this -- is our Municipal Court computer system is the Automated Complaint System for our criminal, quasi-criminal-type matters. That has been fully operational, statewide, since 1996. The PROMIS/Gavel system goes back as early as, I think, like, 1972, 1973; but it has only been since around the mid-to-late 1980s that it was operational in every county. So it goes back to the question of the ability electronically to be able to identify these cases.

Now, I mentioned going back to 1992, for just the municipal, we may be talking about a million cases. Obviously, going back 10, 15

years; and the late 1980s was the first real push, I guess, with the *war on drugs*, for lack of a better term -- so there are going to be a lot of numbers, as well, in there.

From the computer system -- from the Judiciary standpoint, again, I would have the ability to identify all of the applicable drug offenses that we're talking about in the computer system. Again, we have that whole manual process that I mentioned earlier. But going back prior to our computer systems, that's where it gets literally almost impossible, because you-- In order to identify those cases -- I don't have a computer system -- that's a manual process. Our Municipal Courts, as an example, prior to our computer system, have what's called *docket books*. If anyone has ever spent some time in a Municipal Court, the books are probably about two feet tall, a foot-and-a-half wide, and it's just a ledger that -- the defendant name, ticket number, charge number, etc., etc., and the disposition. It would be nigh on impossible to identify -- for the Judiciary to really identify cases prior to what's in our computer system.

ASSEMBLYWOMAN QUIJANO: I have a question.

On the criminal histories that prosecutors ask for in Municipal Court, how far back can that go, given what you just said about these databases?

MR. SOMOGYI: I would -- I think the State Police would have to answer that question.

ASSEMBLYWOMAN QUIJANO: Okay.

MR. SOMOGYI: The drug offense is something-- When it's a DP, that is printable; so a defendant should be printed by the police, should get an SBI, should be registered on the CCH. But how comprehensive that

is, how far back it goes -- I would defer to a representative from the State Police.

UNIDENTIFIED MEMBER OF COMMITTEE:
(Indiscernible).

MR. SOMOGYI: I think the last comment, or thing I want to leave you with -- it goes back to I think what Alyson said, and I think I've mentioned it already a little bit -- is, an expungement is a very system-wide approach. It's not just Judiciary; it's local law enforcement, it's the State Police, it's the County Prosecutors, it's the jails -- anyone who may have touched that case and either entered it into their computer system or kept a paper file. So I think it's important, as we continue the conversation, that all the different stakeholders realize what their responsibility may be if this does come to pass.

ASSEMBLYWOMAN QUIJANO: The problem with Judiciary-cleared records continuing to appear in private sector background checks has been reported. Those who have had their record expunged may still have old information held and distributed by private background check providers. Has the Judiciary been made aware of the problem of private background check providers holding and distributing expunged records?

MS. JONES: So once information leaves the Judiciary and goes out there into private hands, into the Internet, there's very little we can do to control it. So if you do -- if, say, your record was properly released in accordance with the court rules and transparency in government, and then you later come to us and ask for it to be expunged, we can't recall that information from a private individual or group. We change our records, and all of our other government partners change their records; but there is--

And the statute provides for no way to get to those records, those old records, that may be in private hands.

ASSEMBLYWOMAN SUMTER: Do you all keep a databank of requests, for a period of time, of private entities that make a request of someone's records; and do we notify the individuals that a private request has been made for their records?

MS. JONES: I am not sure. I will have to talk with our IT department and find out for you.

ASSEMBLYWOMAN SUMTER: Okay; thank you. Please.

MR. SOMOGYI: Can I touch base on that, real quick?

ASSEMBLYWOMAN SUMTER: Sure.

MR. SOMOGYI: I just want to mention that, obviously, with the Judiciary, what's important to all of us is we are a transparent organization. If something is public record, then if someone comes and makes a request -- whether it's at a local Municipal Court or Superior Court -- our obligation is to provide.

ASSEMBLYWOMAN SUMTER: Right. But do you notify the individual that someone has made a request?

MR. SOMOGYI: We do not.

ASSEMBLYWOMAN SUMTER: Okay; thank you.

ASSEMBLYWOMAN QUIJANO: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Thank you, Chairwoman.

Before I forget, I need to understand the difference between hash and marijuana. Both are-- I mean, I don't know if I'm the only one--

MR. SOMOGYI: I don't know--

MS. JONES: I don't think we're the people to answer that.
(laughter)

ASSEMBLYMAN WIMBERLY: --and I think other people in the room are probably asking the same question.

UNIDENTIFIED MEMBER OF COMMITTEE:
(Indiscernible) answer that.

ASSEMBLYMAN WIMBERLY: You don't-- I mean, well, on a legal end, can you answer it for me on a legal part of--

MR. SOMOGYI: On the legal end, they're both charged under the statute, and the penalties are the same.

ASSEMBLYMAN BARCLAY: (of mike) So why is it different? That's the question.

ASSEMBLYMAN WIMBERLY: You can't answer that.

ASSEMBLYWOMAN QUIJANO: (off mike) That's all right. We'll have it answered.

ASSEMBLYMAN WIMBERLY: We're going to have that answered?

ASSEMBLYWOMAN QUIJANO: (off mike) We have a lot more people to testify.

ASSEMBLYMAN WIMBERLY: Somebody out there, please, be ready for an answer. (laughter)

Thank you.

ASSEMBLYWOMAN QUIJANO: Any other remarks?

MR. SOMOGYI: No.

ASSEMBLYWOMAN QUIJANO: Thank you very much.

MR. SOMOGYI: Thank you very much.

ASSEMBLYWOMAN QUIJANO: All right. Now we're going to hear from a Prosecutor, Jon-Henry Barr, New Jersey State Municipal Prosecutors Association, in favor.

J O N - H E N R Y B A R R, Esq.: Good morning, Madam Chairwoman.

I thank you for the opportunity to testify before this Committee.

I am the President Emeritus of the New Jersey State Municipal Prosecutors Association. It was under my leadership, as President in 2014, that we publicly came out in support of the legalization of marijuana.

With respect to the issue of expungements, candidly, we as an Association have not taken a position. I'm not sure that we will, but I can tell you, as a general rule of thumb, as someone who has been involved in all of the decisions where we weighed in on pending legislation, I would doubt that there would be opposition to expedited expungements provided there will not be a role for municipal prosecutors to play in the paperwork process.

I don't have to tell the Chairwoman, who is a fellow Municipal Prosecutor and a member of our Association, that. We are mostly part-time, local political patronage appointees, and we don't have a lot of the resources to actually be involved in the expungement process.

So if it is done without our involvement, it's likely not to see any opposition from our Association.

Speaking just for myself, as a Municipal Prosecutor since 2001, I want to provide the Committee with just 60 seconds of background on me. I am, besides being a past President of the State Municipal Prosecutors

Association, and a current supporter and a member of the legalization group, New Jersey United for Marijuana Reform, I'm also a life-long Republican. I was elected to the Town Council in my hometown of Clark when I was in law school, back in the early 1990s. I actually spent two summers as an Assembly Republican intern. So there is probably a host of issues involving taxes, affordable housing, school funding, and the role of government in the (indiscernible) of New Jersey where I would disagree with many on this Committee.

But nonetheless, on the issue of expunging records for someone with a marijuana conviction I can say, with confidence, it simply serves no salutary purpose, in my opinion, as an experienced municipal prosecutor, to maintain someone with a criminal record for having possession of a joint, or even several times of getting caught with possession of a joint of marijuana. It's simply doesn't do anything to advance our interests as New Jerseyans, or as society in general.

So I do support an expedited expungement process; and I am reasonably confident that while I can't assure you that the Municipal Prosecutors Association would collectively support expedited expungement, I seriously doubt there would be any strong opposition to it.

We need to restore a level of justice. The war on marijuana and its consequences with these convictions for marijuana has anchored people, and saddled people, and yes, it's even frustrated people like myself who have had to prosecute these cases. And quite candidly, right now, when I get a case and I have to look through a criminal history, and I see there are multiple offenses of possession of marijuana -- and each time it was a conviction for under 50 grams, and each time the person either did no jail

or a very little amount of jail -- I'm really frustrated because I feel that, as a prosecutor, as someone who is sworn to be a zealous advocate for the State in seeking justice, I'm dealing with a scofflaw who I should be asking the court to send to jail for a long time, because this is someone who just isn't obeying the law. But as a practical human being, I'm thinking, "This is crazy." I just-- I mean, I'm really torn between feeling I need to enforce the law, and realizing that the disobedience of this particular law is so pervasive that I'm really not doing society any good by asking for a jail term.

So my message to this Committee this morning is, please make my life easier and try to allow for an expedited expungement process so we can restore some justice to our system.

And with that, I'll be happy to entertain questions.

ASSEMBLYWOMAN QUIJANO: Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thank you, Chairwoman.

Maybe you can help answer this question, because it affects a lot of people who look like me. And I myself have been pulled over at different times and was treated very badly just because, I feel, what I look like. And then when I present myself and talk, and they feel as though-- And before that, I rolled all my windows down and all that. And once we got to talking, they feel as though I'm not a threat; just the tone comes all the way down. It goes from very high style to a very, "Yes, sir, no sir," which it should have been like that from the -- I shouldn't have been judged from the jump.

So my question -- because someone mentioned earlier about-- The previous gentleman spoke about how hard it will be getting charges

taken away because of combined charges. So my question to you is, moving forward -- and I'm no lawyer; I don't know, but I'm asking -- so how can we-- Moving forward, how can we, you know, get through that? Because some people will get pulled over for not putting their turn signal on, and then the cop -- they may smell marijuana, then they get a warrant to search the car, and then they have all these other charges; they-- Whatever. So my question is, how can we negate that; or can we? I don't know.

MR. BARR: Let me try to answer by basing it strictly on my experience over the last 17-plus years as a Municipal Prosecutor.

The war on drugs, in general, and the war on marijuana in particular, I see as a major root cause of this hostility between so many people in the minority community and the police. The police are trained to enforce the law. We train and we encourage them to root out drugs, arrest people who have them -- and certainly who are dealing them -- and prosecute them vigorously.

Marijuana -- while I certainly don't see as safe or healthy, I don't see it as so dangerous that it justifies the expenditure of our public resources. I think once we reach the point of legalization, and there is nothing to be -- the police officer is not going to really benefit from effectuating an arrest, I really believe we're going to see a positive direction as far as the hostility, and its concern, and its inclination to think that you're up to something and you're up to no good, particularly if you are driving in a neighborhood where there are not a lot of people who look like you.

So that's all part of what I think are positive developments.

Now, we can get into another discussion on issues of marijuana and its restrictions; and I know the Chair has requested that we try to limit our discussion on expungements. So I-- Generally speaking, I don't think the issue of expungement is going to be, first and foremost, on the mind of police officers when they're conducting the investigation and making an arrest. That really comes much further down the road. It's really the legalization -- the initial legalization, which I believe would begin to break down the barriers, and the hostility, and the acrimony that seems to exist.

It's not going to eliminate the problem, and I think that Chairwoman Quijano alluded to it at the beginning. We're not-- Marijuana legalization and expedited expungement -- none of this is going to create the perfect society. None of these solutions are really going to make everything great. But they're going to make things better. And that's the main message that I have. I just -- I don't see any need-- I am sworn to prosecute people for possession of marijuana; I'm sworn to prosecute these people. The statutes are on the books. I just can't ignore these statutes without violating my oath.

ASSEMBLYMAN BARCLAY: You know-- And thank you; I appreciate your honesty and all that.

But you know, it just bothers me, and I'm not saying -- it just bothers me when you read statistics where it's like, you know, African Americans are three times more likely to get arrested than whites for the same crime. You know, or three times-- Numbers like that. If it doesn't bother you, then you--

MR. BARR: I agree.

ASSEMBLYMAN BARCLAY: --I don't know what to say, because it's not fair.

MR. BARR: I agree.

ASSEMBLYMAN BARCLAY: It's 2018; it's not, you know, 1618, or 1718, or 1818. It's just sad, you know?

MR. BARR: Assemblyman, candidly, I think there is a whole host of reasons for that, and it's not rooted in pure racism all the time.

ASSEMBLYMAN BARCLAY: No, I get that.

ASSEMBLYWOMAN QUIJANO: Gentlemen, would you wrap it up?

MR. BARR: I think it's just a matter of circumstances, and where minorities are living, and where they--

ASSEMBLYMAN BARCLAY: But trust me, I'm just saying at the end of the day, the numbers don't lie. You can't fake those.

MR. BARR: And I think that people like me who really are interested in promoting justice -- because our State Supreme Court has ruled many times that our -- prosecutors are not really just supposed to seek convictions; we're supposed to seek justice. That's one of the reasons that I am here this morning.

ASSEMBLYMAN BARCLAY: Thank you.

MR. BARR: We want to see justice; we don't want to perpetuate injustice.

ASSEMBLYMAN BARCLAY: Thank you, sir. I appreciate you.

ASSEMBLYWOMAN QUIJANO: Thank you.

The next speaker is Sarah Lageson, Rutgers School of Criminal Justice.

SARAH E. LAGESON, Ph.D.: Good morning.

Thank you so much for letting me come speak today, and for your work on this.

I'm an Assistant Professor at the Rutgers School of Criminal Justice in Newark; and I'm currently conducting a study that is funded by the National Institute of Justice on expungement.

So we are following 100 expungement seekers in New Jersey. We have 71 people currently in our study, and we began data collection last June, June 2017.

Through the study we monitor the expungement process at the individual level; we analyze people's CCHs -- so their official criminal histories, their court records, anything we can get from law enforcement and probation, and then private background check companies. And we're doing an analysis of the errors and the mismatch that occurs in all these different records.

ASSEMBLYWOMAN QUIJANO: When you-- I'm sorry.

DR. LAGESON: Yes?

ASSEMBLYWOMAN QUIJANO: When you say *errors and mismatches*, what is that?

DR. LAGESON: So we use the CCH as, sort of, the baseline criminal record for the study. And I do want to say that--

ASSEMBLYWOMAN QUIJANO: I'm a Prosecutor; I know what that means. But could you make sure--

DR. LAGESON: Sure. So the New Jersey State Police has this sort of central repository for your criminal record. And you can request a version of that; it's a personal records request that includes your dismissals and your arrests. It's really important to get that to fill out an expungement petition, because you need to self-report every time you have been arrested, or your petition will be denied.

So we use that; we get that from our participants, and then we use that as our baseline, and then we compare all the different versions of someone's record to that.

Importantly, we also compare the person's own version of events. So we systematically talk about the record of everybody in the study.

UNIDENTIFIED MEMBERS OF COMMITTEE: (off mike)
(Indiscernible).

ASSEMBLYWOMAN QUIJANO: All right; we're just over here -- a babble of discussion.

What happens with identity theft, and individuals who have that problem?

DR. LAGESON: So, let me-- Can I back up a little?

ASSEMBLYWOMAN QUIJANO: In your study, have you run into any of that?

DR. LAGESON: Yes; so I was going to say, in the two preliminary findings I wanted to kind of share -- is first, there's incredible attrition. We have not gotten anybody through the entire expungement process yet. The first barrier is the cost, which I think has been covered. And we do referrals to Legal Aid, so we can get some of those fees waived.

But that \$41 to get the CCH, we cannot get waived. So the grant is actually paying for this on behalf of our research participants, and many of them would not pursue expungement without that.

The second big issue with the petitions is the incorrect, outdated, and mismatched identities in records.

So a lot of times someone will bring their record in, and we'll go through it, and they'll say, "Well, this isn't me; this didn't happen; I don't remember it happening this way." If it's before the 1990s, it will often say that the case is *open* or *pending*. The participant will go to the court; they will try to get the judgement or the disposition. They cannot find it sometimes, because the records are old, they're stale; oftentimes an arrest will not actually lead to charges, but if that person is fingerprinted, then that arrest shows up on their CCH.

We have one gentleman who submitted an expungement petition; it was denied by the judge for incorrectly reporting his prior arrest history. Though he copied his arrest history from his CCH onto the petition, it turns out -- and this took two researchers and two attorneys a year to figure out -- that he had violated an order from the Family Court when he was a juvenile. And the judge had that in his version of the record, but we didn't have it in our version of the record. So his petition was denied.

So those are sort of the two barriers to successful expungements that we've identified so far in the study.

ASSEMBLYWOMAN QUIJANO: All right. So you're saying that if an individual doesn't remember one of their previous -- what would you call it -- not even a *conviction*--

DR. LAGESON: Arrest.

ASSEMBLYWOMAN QUIJANO: Arrest.

DR. LAGESON: Yes.

ASSEMBLYWOMAN QUIJANO: And the judge would not tell you--

DR. LAGESON: So you get a letter back--

ASSEMBLYWOMAN QUIJANO: --that this was outstanding?

DR. LAGESON: Yes, they get a letter back saying, "Your petition has been denied, and here's why. You did not report X, Y, and Z."

ASSEMBLYWOMAN QUIJANO: Oh, so they do explain what you haven't reported.

DR. LAGESON: Right.

ASSEMBLYWOMAN QUIJANO: It gives the individual the ability to follow up on that.

DR. LAGESON: Yes. But you have to refile.

ASSEMBLYWOMAN QUIJANO: Refile.

DR. LAGESON: Yes.

ASSEMBLYWOMAN QUIJANO: And pay all the fees again?

DR. LAGESON: Yes.

ASSEMBLYWOMAN QUIJANO: Okay; can you write that?

DR. LAGESON: Another issue is, if you weren't fingerprinted for an arrest-- Let's say you get, like, a ticket. So this same gentlemen had a -- it was a smoking in public ticket. He wasn't fingerprinted for that, so it did not show up on the CCH, so he didn't report it on his petition. That also was the reason for why his expungement petition was denied -- because he didn't report that.

ASSEMBLYWOMAN QUIJANO: (off mike) Okay.

DR. LAGESON: Okay; so those are the first two things.

So, I mean, my point is that if you're really thinking about automatic expungement, the fees have to be waived, because that is a big barrier for people.

The second point is that automatic expungement is not going to correct these database errors. So we go to law enforcement and we say, "Okay, I have this arrest number." "Well, we don't have that record anymore." So there's no disposition paperwork. Sometimes it happens at the courts, sometimes it happens in probation. So there's a more global issue at play -- that it is a technological and data problem.

And I will reiterate what has been said earlier. That because there is no automated data processes yet within all these different criminal justice agencies, expungement really needs to be thought of as a manual process and very much a petitioner-forward process.

And just keep in mind that police departments, courts, prosecution, and probation all have their own databases that they rely upon, first and foremost.

I wanted to speak a bit about the Coordinator position that you proposed, which I think is extremely necessary. It would be great if it was a funded position. But I think the key would be for that person to have direct access to these different databases, which is going to take a lot of coordination and wrangling. But it would be extremely helpful just to have more transparency around what is contained in someone's record and these different formats.

That person will need to serve the expungement order separately, if the order is granted, to each different entity. And most importantly, they have to systematically and routinely audit after an order has been served to ensure that there is compliance in all these different arenas.

If the order is not updated in all these different databases, that can actually hurt the petitioner much more than just having the conviction. Because they will -- if that is showing up on a background check, or on the Internet, or in a government database, that person can be accused of lying about a previous charge. So it's sort of like a double punishment if the records aren't maintained.

I also want to note that many of the people in our study assume that legal expungement will clear the version of their record that appears in a background check or just on the Internet. That is not the case. The record of an arrest does remain available after an expungement, for all practical purposes. So I know that you are discussing a public campaign to sort of educate people on this, and that's just a very touchy issue that needs to be addressed, and is often kind of ignored in these discussions, because it's a very -- almost intractable problem. But I think it's important to let the petitioner know that the third party background checks are going to be a problem -- that they can serve their order and they can serve their expungement order to *mugshots.com* and websites like that. But again, they have to follow up and actually make sure that compliance is happening. And so the burden is on the petitioner there.

And my last point is that within this public education campaign component, I think it would be really important to target people who have

been shut out of expungement so far because of marijuana convictions. So, as you know, an expungement -- you kind of count up your previous arrests or convictions to determine your eligibility. I think there are a lot of people who will now be eligible for a general expungement for other cases, if this were to go through. So I would just sort of keep that in mind in the architecture of the messaging.

That's all I came to share today, but I'm happy to answer questions about the study.

ASSEMBLYWOMAN QUIJANO: Great.

Anyone have any questions? (no response) No?

Will you be submitting written testimony?

DR. LAGESON: Yes.

ASSEMBLYWOMAN QUIJANO: Okay; well, I know we'll have follow-up questions--

DR. LAGESON: Sure.

ASSEMBLYWOMAN QUIJANO: --it's just that we were feverishly writing notes (laughter) on issues that you brought up that we hadn't thought about.

And we'll be in touch.

DR. LAGESON: Great.

ASSEMBLYWOMAN QUIJANO: Thank you.

DR. LAGESON: Thank you.

ASSEMBLYWOMAN QUIJANO: Next, Bill Caruso.

W I L L I A M J. C A R U S O, Esq.: Good morning, Chairwoman; and good morning, members of the Committee.

My name is Bill Caruso. I've been involved, since I left working in this building, with a variety of different organizations, driving marijuana legalization in a variety of different capacities.

I work with the folks at New Jersey United for Marijuana Reform -- I helped to form that group back in 2015; New Jersey Cannabis Industry Association; and a variety of other organizations you'll hear from today, as well, that I work with, generally in the common goal.

This is probably one of the most important discussions we've had inside of this building related to this topic. And it takes nothing away from all the other wonderful work that has gone on, but I really want to applaud you, Chairwoman, for taking on this initiative. We've been hearing from a lot of folks, "It's too difficult, it's too hard." It's not. And it's something that we can put our time and energies to, and I will devote my time and energies to this as well.

So I want to talk about a couple of things that haven't been covered here today. First and foremost, I come here with the title of *father*. We're raising three little boys. Like everybody else in the world, we struggle, on a daily basis, to keep up with everything. But there's nothing that debilitates a family more than when one of your members of your family is ill, and particularly with a life-threatening illness. And you all know, who have had children, or if you have a niece or nephew, or have a loved one, when that child is sick, particularly when you're up overnight, you will do everything in your power to bring whatever curability you can to that child.

We have put parents in harm's way in our state. We have made parents choose between breaking the law and giving their children the

healing drugs they need. Still to this day, despite energies that have gone on in this building to legalize certain efforts of medicinal marijuana, we still have created criminals in our state who have only been trying to help either their children or a loved one. Those folks have had the prospect of losing employment, having to move out of the state, and, in horrendous situations, child custody.

So for those individuals in particular, expungement becomes paramount. It becomes a significant issue of whether or not they can put their families back together. And I just didn't want that aspect of this discussion to be left out; and you may hear from some others today, particularly from some of the patient community, who will talk about some of those challenges of literally trying to get their medicine and being arrested; and then the prospect of how they fight for their rights back. And this results in child custody proceedings -- whether it's a divorce, or a DYFS issue -- and a variety of other things where folks don't have the resources to go avail themselves of the courts, and this complicated process we've heard of.

Second, I am also an attorney; I work for a law firm. I'm a member of the Board of the New Jersey Chamber of Commerce, although not testifying here today. But I am a member of the business community. And the one thing I can tell you in our state, as becoming a member of the private sector business community, is the issue of employment is a paramount concern. Finding folks to employ is a difficult prospect for employers; finding qualified folks, not necessarily with the right skills -- those can be trained -- but with the right attitude to come and kick down whatever walls are in the way of getting the task done for an employer.

Good quality employees; we have tons of them here in our state. But accessing them is important and a problem.

And with this issue still out there we have, apparently, millions of people who potentially could be significant, productive members of our workforce, but they have this impediment. And they can't transit out of it because they don't have the resources to do so. And we are putting a tremendous, tremendous burden on our economy, then, by not employing, to the best of their ability, all of these different folks who could be contributing and making New Jersey better.

And this hurts us in two ways. This hurts us, obviously, in folks that can be employed in good paying jobs here in our state that can't, but for this issue. But what about the folks who can get training to become the next lawyers, the next doctors, the next scientists, the next STEM professionals, who can't go to college, who can't get a student loan because they have this criminal conviction on their record?

So from an economic perspective-- And we've heard a little bit about the financial side of what this is going to cost. There's going to have to be some investment here. There's also an opportunity cost for not doing this.

Now, that's a lovely sentiment, and those are important. But you are in June; you're in budget season. This is when we talk about real dollars, and not feelings. So I want to get to the two other items, that I think are the most important part of this discussion, in terms of how we implement it.

And I applaud the folks from the AOC for being here today with a real, rational discussion about how this gets done. They are right;

there are technological impediments that need to be done. There are real-world impediments that are going to present this. I think, Chairwoman, to your point about -- we try to automate everything, but there's always the *but-for*; there's always the one thing out there where you do need a set of eyes and ears on this too.

So I'd offer two things to you. If and when we move on something related to a legalization bill -- and I know we're not going to talk about that today -- there's going to be a ton of revenue. We've talked about the dirty money that's involved with this. Nobody wants to talk about the money. But when we talk about the money, the money must be reinvested in these racial and social justice pieces. Expungement is paramount, and the resources and the money that need to go in to upgrade our Office of the Courts' systems and technology for resources related to personnel -- this is a paramount concern. This is where the money needs to go. And, in some ways, it's a temporary issue. This is something we can grow out of. We can move through a backlog, and then transition through, and maybe the funding goes somewhere else later on. But the first dollars in need to go devoted to this.

And the last piece -- then I'll shut up -- so I left this wonderful place, and apparently when you leave public service as an attorney and you go into private service, they require you to do pro bono work, legal work. And I am not the greatest attorney in the history of the world. I can do okay. But I remember getting, soon after leaving here, a yellow manila packet from my friends at the Office of the Courts. (laughter) And I had a parole hearing that I had to attend to. I had a parole violation, and I was responsible for it.

So I went to my ethics counsel and said, "There's no way in heck that I'm going to be able to do this." And he said, "Yes, you are; you're going to learn it, we're going to help you." And I did, and I represented this person in front of the Camden County parole hearing.

I would submit to you that there's more for us to do as private attorneys. I would submit to you -- and I'm sorry, I'm probably going to get yelled at by a lot of my colleagues -- but we have the ability, we have the resources, more so than I do, to represent a pro bono client in front of a parole hearing. I absolutely could help navigate groups of individuals through a complicated expungement process. We can rely, to some extent-- I think some of this should be automated; and our friends at the ACLU and others have talked about the need, and why we need, to automate a lot of this. But for some of those tough cases, don't be afraid to throw this out on your volunteer soldiers in the pro bono legal world. We have the capability to jump into some of this too.

That's all I have to say. Thank you very much.

ASSEMBLYWOMAN QUIJANO: Assemblywoman Sumter.

ASSEMBLYWOMAN SUMTER: Thank you, Chair.

And Bill, I believe you are one of the brightest legal minds.

So is it clear that you're advocating to organize a group of lawyers to provide pro bono services-- (laughter)

MR. CARUSO: I'm in, Assemblywoman; let's do it.

ASSEMBLYWOMAN SUMTER: --to do the expungements?

All right; you heard it here, and it's recorded. (laughter)

Thank you.

MR. CARUSO: Let's do it.

ASSEMBLYWOMAN QUIJANO: You notice I didn't ask that question. (laughter)

MR. CARUSO: I'm going to get run out of town, but it's worth it; it's worth it for the cause.

ASSEMBLYWOMAN QUIJANO: Anyone else; any questions?

MR. CARUSO: Thank you; thank you very much.

ASSEMBLYWOMAN QUIJANO: Yes, Assemblyman Wimberly.

MR. CARUSO: We'll have more people coming up that--

ASSEMBLYWOMAN QUIJANO: You're not done yet; you're not done yet.

MR. CARUSO: Oh, I'm sorry.

ASSEMBLYMAN WIMBERLY: Hey, Bill, thank you for your pro bono work for the City of Paterson. (laughter) We appreciate that.

But on another note -- and I may have missed this; and you may have to come back up, or maybe ask-- The drug court piece. When they go through the drug court, will their records be expunged? Alyson, that was a question -- I received a text message on that; somebody actually listens to this stuff.

MR. CARUSO: I believe they're coded differently, so that's a start. But I don't think it's automatic.

ASSEMBLYMAN WIMBERLY: (Indiscernible).

I'm sorry, Chair. Yes, I apologize, I apologize.

ASSEMBLYWOMAN QUIJANO: Just so you know, in the Bill, though it may go through changes, it says *an attorney on a pro bono basis*. So we have you in there.

MR. CARUSO: I read the Bill. I'm not advocating for anything in particular. I'm just saying that, generally, we can utilize these resources to help.

MS. JONES: (off mike) (Indiscernible).

ASSEMBLYMAN WIMBERLY: Yes, there was clarity somebody needed in reference to the drug court -- the people who graduate through drug court, and expungement.

MS. JONES: Right. So the last time that you all amended the expungement statute it had to do with successful graduates of our drug court program. They -- as the statute reads now, they can get assistance from the Public Defender's Office, from the Prosecutor's Office, in making their petition.

ASSEMBLYMAN WIMBERLY: At cost, or no cost?

MS. JONES: The statute does not speak to the cost.

ASSEMBLYMAN WIMBERLY: Okay.

MS. JONES: In terms of putting together their criminal history (indiscernible).

ASSEMBLYMAN WIMBERLY: And through the court -- I don't expect this answer today -- from our previous, I would say, four years or eight years of drug court graduates, can we get kind of a demographic of who's graduating from drug court?

MS. JONES: There is a very in depth report currently on our web page all about--

ASSEMBLYMAN WIMBERLY: It's all on your what?

MS. JONES: Drug court; I can send you that link if you'd like.

ASSEMBLYMAN WIMBERLY: I'd appreciate that, through the Chairwoman.

Thank you very much; thank you.

MS. JONES: Certainly; no problem.

ASSEMBLYWOMAN SUMTER: Any other members? (no response)

Seeing none, thank you.

MR. CARUSO: Thanks.

ASSEMBLYWOMAN SUMTER: Next we'll have Cliff Nolan, Teamsters Joint Council.

He's not here? Thank you.

We'll move on.

Scott, you ready? Scott Rudder, New Jersey CannaBusiness Association.

SCOTT RUDDER: Good morning, good afternoon.

A lot of the conversation has already been had already, so I don't want to repeat a lot of what has been discussed, other than to stress a few points. And my colleague, Bill Caruso, really nailed it.

So I'm going to share a story that was in today's *USA Today*. It was about a couple in Georgia; it was not a New Jersey story, but it can be a New Jersey story.

So here's a couple in Georgia; they can't get access -- legal access to cannabis for their son, who's 15 years old, who has several seizures per day. They decide to break the law in order for this person, for their child, to have the medicine that he needs. A 15-year-old boy has several

seizures a day, smokes cannabis as a medicine, and goes seizure-free for 71 days.

During that time, during that 71-day period, somebody turned them into the cops; somebody notified authorities. The authorities come to the house; they take that kid from his parents. They take that child from his own home, from his own community, and they put that child in a state institution. On that 71st day -- it was actually the very first day -- he had a seizure, because he no longer had access to his medicine.

It's a real, real challenge; and as Bill articulated, it's something where parents, others, loved ones, teachers, are all doing something to help somebody. And if that FDA-approved drug is not providing the relief, if that FDA drug is actually causing other types of harms and addictions, then this cannabis thing is real, and it's real medicine, and it's a medicine first.

So as we're looking at this as an issue for expungement -- if you're talking about legalization, expungement must be part of that process. You look at the number of jobs that are going to be created in this new economy, in this new market. We're going to have tens of thousands of new jobs. And we have all these people who won't be able to qualify for many of these positions.

So in addition to not being able to qualify for student loans, or going into the military, or mortgages later on in life; as these parents might find out, they might lose their home. While all that's going on, expungement must be part of the legalization process, and it should go back as far as you are able to go. It should go from the very beginning, as far as our records hold. Because if you understand cannabis prohibition from the beginning, it was based on racism and greed. And once you understand

that, as your foundation for this law -- all those convictions should go away; all of them.

So we support this; we support Assembly Bill 3620.

And thank you.

ASSEMBLYWOMAN SUMTER: Any questions from members?

Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Hi; good afternoon.

When you say *all convictions* should go -- even distribution?

MR. RUDDER: All possession; all possession.

ASSEMBLYMAN WIMBERLY: Possession; okay. I just wanted to clarify.

MR. RUDDER: Correct; thank you.

ASSEMBLYWOMAN SUMTER: Thank you, Scott.

Next we will have Kate M. Bell, Esq., MPP.

KATE M. BELL, Esq.: Good afternoon.

My name is Kate Bell; I'm with the Marijuana Policy Project.

We are the nation's leading marijuana policy reform organization, and have led the efforts to legalize, tax, and regulate marijuana in five of the eight states that have now done so. We also work to pass medical, as well as expungement, bills around the country.

My personal background is as a criminal defense attorney in Baltimore City. I sometimes joke that I came to this movement to put some of my former colleagues out of business. But in all seriousness, I saw way too many people dragged into the criminal justice system for consuming something that is safer than alcohol; for growing a couple of

plants in their homes for their own medical use; for simply sharing cannabis with a friend. And that is what brings me here today.

I won't repeat all the reasons for doing this; I think they were well articulated at the beginning of this hearing by both the Chairwoman and some of the other witnesses. So on that point, I will just say, me too, and launch right into the practical aspects of this.

Having sat here and listened to how complicated and difficult the expungement process is in New Jersey -- which was incredible to me, based on my own experiences in Maryland having filed these -- I would respectfully encourage this Committee to, perhaps, take a broader look at reforming the expungement process to streamline it for everyone who applies, which I know goes a little bit outside the scope of this hearing.

But in terms of the cannabis aspect, we absolutely support the Bill and would want to see it actually go further.

I think for expungement offenses like we're talking about -- some marijuana possession, paraphernalia possession; the lowest level of marijuana distribution, which often simply means sharing cannabis with friend, as opposed to actually selling it -- we would say -- we would support automatic expungement. And a lot of people when they say *automatic expungement*, they think that there's this magic button in Judiciary that they can just push. There is no magic button, as I think has been very clear today.

So what I mean when I say that, is that a person does not have to apply; that the onus is on the court system to identify those cases and to do it for them. There have been prosecutors' offices around the country in different cities that have proactively done this. When the state has allowed

for expungement, they have said, “We are not going to wait to make people apply.”

In California -- I just wanted to give you this one piece of data -- there were 500,000 people arrested in the last decade who are eligible now for expungement. The number of applications they have had since they allowed for this in the 2016 initiative is 1,500. And I am not an expert on the California process; but I’m guessing it is probably less intense than the one in New Jersey. (laughter)

And you’ve heard a lot about the barriers already, so I’m not going to repeat that. But I think it’s incredibly important to not put people through that process; and for the people who do need to file, to have assistance of counsel, at least for the indigent individuals, guaranteed. Whether that’s through Bill Caruso (laughter), or the Public Defender, or Legal Services -- however you do it. You know, I know this is not about legalization, but if New Jersey is going to be bringing in \$300 million a year, there is no reason that some of that tax revenue can’t go towards hiring temporary employees for the courts to go through these cases.

As Bill already mentioned, we’re only talking about a couple of year process to go through the backlog. Before I came up here, I was going to recommend you put a deadline in the statute for them of a year. Having heard the previous testimony, I’ll say two years to go through all of those cases.

A question was asked earlier about what the year should be; you know, how far back do you go? Well, logically speaking, I would say 1971; and please feel free to check my math on this, because if I could do math, I wouldn’t have had to go to law school. But I believe that people

born in 1971 would-- Or, I'm sorry; people who were 18 in 1971 would be 65 now.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
(Indiscernible)

MS. BELL: Right? No; I'm really bad at math. (laughter)

But my larger point is that whatever year you were 18, and you're now 65, that -- I was also trying to listen and hear at the same time.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
Forty-seven.

MS. BELL: Yes; so, not close at all. (laughter)

But the point is, once you hit 65, some of those collateral consequences are going to be less of an issue, so that would be a logical year. In terms of practicality, it may end up being the year that the computer database goes back to.

Individuals who did not get their record expunged by the time the deadline hits could then still file. You know, maybe their paperwork is missing; maybe their record was so old that there was no paperwork. And so those individuals could then have an opportunity to actually do the filing.

But it's not just these low-level offenses. There are also a number of other marijuana offenses that would now be less serious, or certainly treated less seriously by the criminal justice system, were they to occur post-legalization. For those individuals, there could be an application process by which they could either apply for resentencing or ask the court to consider expungement, but not necessarily grant it automatically. For those cases, it would make sense to notify the prosecutor to allow them

whatever objections they wanted, and to have a hearing so that the court, in the interest of justice, could decide whether or not this is something that happened a long time ago where you were selling a small amount. You haven't been in any trouble since; yes, let's go ahead and get this off your record. Versus someone who is engaged in, perhaps, violent activities, in addition to drug sales, where they would not want to get rid of that from their record.

There needs to be a burden of proof set in the statute. A lot of times there isn't one, because there's never needed to be one because it was just -- you committed this offense this many years ago or you didn't. Once you start getting into, like, how much did they have, how serious was this -- you need a factual burden for the hearings. My suggestion would be that the prosecutor would bear the burden, rather than the defendant. The State is going to have better access to records and more resources than the individual is. Then that it be by clear and convincing evidence, which is between the normal civil threshold and beyond a reasonable doubt, which is somewhat onerous for these very old cases.

Those are sort of my recommendations for moving forward in Jersey. In terms of what other states have done, New Jersey really has an opportunity to be a leader on this issue. There are other states looking at it. California, as I mentioned, has this actually in their initiative; but they're still trying to tweak it. There's actually a bill being considered right now that would take the application process out of it, so the people wouldn't have to apply. Their provisions actually go the furthest, in terms of considering all past marijuana offenses for potential resentencing.

In Oregon, they've also added a ceiling; in Portland, they're using their local marijuana tax revenue to go back and do this without people having to apply.

Nevada passed a bill to allow for expungement. Unfortunately, that was vetoed by the governor.

However, a lot of states are also looking at expungement reform more generally. So that would apply to marijuana offenses. And this is a trend all around the country, as I think more and more policymakers are realizing how much of a burden these criminal records put on people, and that it makes sense to make that more available.

In terms of the private actors though -- I don't know that anyone has really successfully addressed that yet. One suggestion I could make is that obviously it's difficult to tell a private employer what to do, but at least for government contractors, the State of New Jersey can say, "You want our money? Don't use these private background check companies." So that's, like, one possible approach. Or at least don't use these companies unless they certify to the State of New Jersey that they're not going to look at records that have been expunged, and they're actually going to put some effort into cleaning up their own databases.

Oh, and the difference between hash and cannabis-- (laughter) So all hash is, is marijuana that's been squished. Like, literally, in Afghanistan, the tribes make it by squishing it with their hands until it becomes a resin. There is no state that has considered legalization that has even considered not including concentrates. So concentrates are not only hash, but oil, wax; basically the flower taken and put into a more concentrated form for smoking or vaping.

I can't imagine a scenario in which New Jersey would legalize flower cannabis and not any of the other products. So I can't imagine there being any reason to make that distinction.

I will say there are very likely to be other confusing things in the old records. For example, in Maryland -- which is where I practiced -- there is no-- Unlike New Jersey, there aren't as many quantity thresholds in the offenses. So when they decriminalized 10 grams or less, under the law it's supposed to be that anything that's no longer a crime is expungable. Well, how do you know how much marijuana they had, when it wasn't an element of the offense when they pled? And so we actually helped pass a bill that just shortened the waiting period for expungement so that, essentially, people before decrim would be able to get their marijuana charge expunged, regardless of the quantity, and avoid the whole issue; because there was no burden of proof in the statute, so how do you know?

ASSEMBLYWOMAN QUIJANO: Will you be submitting written testimony?

MS. BELL: Um--

ASSEMBLYWOMAN QUIJANO: Not today; you can send it. I understand people write notes; I do the same thing. But it would be great if you could send it in the next week or so.

MS. BELL: Sure; thank you for that additional time, Chairwoman. I would be happy to put some written testimony together; I apologize I didn't have a chance to do so before this hearing.

ASSEMBLYWOMAN QUIJANO: That's okay.

What will happen, I'm sure, once we receive your written testimony -- there will be some follow-up. It's just that we're not going to do that right now.

MS. BELL: One last comment that I wanted to make--

ASSEMBLYWOMAN QUIJANO: Sure.

MS. BELL: --while I'm sitting here.

I would encourage you all to look at Oakland. I mean, so the disadvantage that California has had is because their medical law was so early, there was no statewide regulation. And so it was a little chaotic there. The advantage to that for New Jersey is that a lot of the localities have been experimenting with different approaches, so there's even more, sort of, information coming out of the state.

Oakland has a very strong equity program; and obviously there is some overlap between what we're talking about today and what we're talking about on the legalization side with licensing and equity provisions.

In Oakland, you actually can be eligible for a license if-- You get an advantage if you were one of the people who was arrested for cannabis, or if you're low income, or if you live in one of those zip code that have been over-policed. So there are a number of criteria there; but what's interesting, as well, about what they're doing is that there is an organization that's actually called the *Hood Incubator*, which takes people who have been arrested for marijuana offenses and helps them get into the legal industry because--

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
What's it called?

MS. BELL: The Hood Incubator.

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike)
(Indiscernible).

MS. BELL: Yes. Because a lot of these people, just because they -- even if they can get a license, it doesn't necessarily mean they're going to have the ability and resources to get into the legal industry. So there is sort of an overlap between these two issues.

And with that, thank you very much for your time.

ASSEMBLYWOMAN QUIJANO: Yes, I want to ask you one more thing.

MS. BELL: Sure.

ASSEMBLYWOMAN QUIJANO: It's come to my attention that individuals who are licensed medical marijuana users in others states -- if they come to New Jersey, they'll get arrested because they don't have -- they're not medical-- They're not a resident, and they don't have a medical marijuana card here. What is that -- what is the-- In other states, what has been your experience?

MS. BELL: So it's called *reciprocity*, which is actually a terribly misleading term, because it's not about the two states recognizing each other's programs. It's about providing protections for out-of-state patients. But that's not as sound-bitey of a term.

So other states are looking at this. There are a number of them now that have added at least some kind of defense. So in some states it's an affirmative defense, which means you would have to get arrested, go to court, and prove you're a patient -- which I used to represent people under affirmative defense. It's a terrible thing to put a patient through, but it's better than nothing.

Other states have just said, “Okay, if you have your card from another state, that’s enough. You know, you won’t get in trouble for possession.”

There are a couple of states that actually allow out-of-state patients to purchase at dispensaries. Which makes sense because if you think about it, if I am here in Trenton today, and I need to get a prescription filled at CVS -- I live in Washington, D.C. -- I could walk into that CVS with no problem and get my prescription filled. So why are we putting patients through this, where they can’t get their medicine while they’re traveling?

So there are ways to do that, particularly if the patient-- Because not all states have ID cards, but most of them do. So then they have this government-issued card with a number on it that can be verified. And so those individuals can actually get their medicine.

I know that that’s something that’s been talked about by-- The Governor has recommend that that -- that reciprocity be added to the New Jersey program, and that’s certainly something that is a valuable protection for patients, particularly people who are coming -- tourists and things like that.

ASSEMBLYWOMAN QUIJANO: All right; thank you.

I know-- I don’t know if it’s -- I have to check with Shane. I don’t know if my Bill was introduced yet, but I do-- It was? He’s shaking his head “yes.”

I had introduced legislation. In New Jersey we have the snowbirds -- individuals who come from Florida to New Jersey on a regular

basis. And that's where the question came up, with the snowbirds. So I just wanted to make sure that we are handling and addressing all the issues.

Thank you so much.

MS. BELL: Thank you.

ASSEMBLYWOMAN QUIJANO: Next, Colleen Begley, in favor.

C O L L E E N B E G L E Y: Thank you so much for having me here today.

My name is Colleen Begley; I'm from Morristown, New Jersey. I have been a New Jersey resident my entire life. I'm a medical marijuana patient in the New Jersey program who recently just found out they were pregnant. So I've been trying to navigate with your medical marijuana director -- Program Director Sue Carson -- the logistics of being a medical marijuana patient in the program.

It's not what I'm going to talk about here today.

I've given you guys my written testimony; I encourage you to read it. I'm not going to go through reading it for you.

But I wanted to give you guys the opportunity to see a real face, a real live person who has been convicted of marijuana crimes in the State of New Jersey over and over again, ranging from possession, to distribution; even crimes that, as you addressed with your tier system, were related to cannabis, from an unleashed dog ticket all the way to second degree eluding. At the root of all of these cases, if you look at the casework, is cannabis and the prohibition of cannabis.

I'm somebody who has, probably, \$1,000 in my savings account right now; I'm not in a position to bid for a State contract. It was a

great segue from the Marijuana Policy Project there about the Oakland economic opportunities for people like me. I would certainly encourage you-- Now, keep my face in your head when you guys address this issue. I'm not a bad person. I've been trying to help people in the State of New Jersey, providing cannabis as medicine for a decade; over a decade. I've been convicted over and over again. I've done two State prison bits; I am currently on probation for distribution of marijuana. I have an open case for possession of marijuana in Brick Township. I'm a registered patient in the New Jersey program.

There are a lot of holes and cracks here. And I am going to ask you guys, please don't let me and people like me fall through the cracks. You know, I'd be glad to work with you; you know, kind of give you a face and the sounding board for somebody who's in the position of, basically, re-entry. I got out of prison last May. I completed parole; I've been on ISP. You know, it has created a real problem with my family dynamic. My parents do not approve of me, who I am, what I do, my activism regarding marijuana. They are successful people. I grew up in Morristown. My father is a lawyer; he's a retired judge. And to him I'm a criminal still, you know? I'm a criminal in the State of New Jersey. I don't have money in the bank to try to get into the game here in New Jersey legally. With my marijuana convictions, I can't even work in one of the medical facilities in the State of New Jersey currently.

But I'm not going to go into anything too in depth. I encourage you all, if you'd like, to talk with you or your staffers. I'd be happy to at any time.

And I will open it up to questions for you guys. You have a real-life pot dealer here. (laughter)

ASSEMBLYWOMAN QUIJANO: Any questions? (no response)

There are no questions, but I will be calling you--

MS. BEGLEY: Please do.

ASSEMBLYWOMAN QUIJANO: --to get your input into what you said were the *gaps*.

MS. BEGLEY: Please do. You know, there are just a lot of cracks, and I've seen a lot of people in the system who weren't necessarily from the background that I was from. You know, I had a wealthy upbringing in Morristown, New Jersey. I went to college; I do owe them one class still, which I can't get financial aid to pay for, of course, because of my marijuana convictions.

But, you know, I've gotten a chance to kind of get to know some of these people, and would like to represent some of the interests of the lower economic communities, people who have been incarcerated, particularly women who have been incarcerated. I mean, I'm scared about custody of my child and issues regarding this. Even though I've tried to, knowing what I do, nip it in the bud and work with your Department of Health to make sure my child and I are protected as patients in the State of New Jersey.

I don't want to leave the State of New Jersey, like many families have. But I'm at a point now where, for the safety of my child, that's a viable option I'm looking at, you know? -- just transferring everything out of the State of New Jersey. I'd like to see this system work;

I'd like to see it work for people like me, families like me. You know, I look forward to working with you guys on this. I think your hearts are in the right places on it, and I think we can put our heads together and figure it out.

Thank you so much for your time.

ASSEMBLYWOMAN QUIJANO: (off mike) Oh; I'm so sorry. I thought I was on.

Next is Dara Servis, Executive Director and Co-Founder of New Jersey Cannabis--

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) She's not here.

ASSEMBLYWOMAN QUIJANO: I know she's not here, but I have to read into the record.

Thank you.

Co-Founder, New Jersey Cannabis Industry Association, in favor, no need to testify.

Next would be Leo Bridgewater, Minorities for Medical Marijuana, in favor.

LEO BRIDGEWATER: Good afternoon, Chairwoman Quijano, members of the Committee.

I would like to, first, commend you on addressing this issue in such a public forum.

This is the 800-ton elephant in the room: What do we do? I'm not going to beat a dead dog; I don't have any more statistics. I don't think you need to hear any other new way with what you already know. This does need to happen.

Unfortunately, the general population of the State of New Jersey doesn't really understand just how far advanced we are in this conversation, and how long we've been having these kinds of talks.

Which drives home the point that education, education, education is even more paramount. I mean, we even have to teach on what the difference between hashish and cannabis is, which are one in the same. And just so you know, another form of hashish is when you take dry ice and put it in a bag with cannabis and you beat it; the residue -- the powder that comes off that settles at the bottom, that's the hashish. So just expanding the explanation that was given.

In terms of where -- how far back should we go when we talk about record expungement. I'm one of the three -- I'm one of the plaintiffs on the Jeff Sessions lawsuit; we actually just refiled last week. And during discovery we talked about the fact that the Nixon Administration purposely used cannabis as a means to target black people and hippies, along with heroin. So cannabis was packaged together with heroin so that the Nixon Administration could go after the Black Panther party and hippies during the Vietnam War because they were his biggest opponents.

So in my mind, let's go back to the Nixon Administration. Because what we are talking about doing is righting a very serious wrong. And when you listen to the numbers that were just given by the ACLU and various other organizations here, we've pretty much locked up over a quarter of a million people for something that they shouldn't be locked up for.

And so for a lot of people, for a lot of folks in New Jersey, we have a police culture problem. So some folks' utopia is the disturbia for a lot of other people.

And so I'm also the National Director for Veterans Outreach with Minorities for Medical Marijuana. M4MM has actually held record expungement clinics in other states; so much so that we even have a wraparound service where we track a person who is taking part in that expungement service, and then we also help them out with finding a position or a job; also with their formal education. If you look at the formal education of the general population in this state, it's grossly below basic. And so a few of you know -- Assemblyman Wimberly knows I've been going up and down this state trying to educate folks on what this means. And again they, sort of, kind of, go hand-in-hand with the legalization effort and the expungement effort.

But when you look at what the MPP representative, Kate Bell, just told you -- it's called the *Hood Incubator*. And those are all -- although we look at-- We have a daunting task ahead of us; there are working examples of programs that actually have been successful.

New Jersey has been given the unicorn designation by the industry as a whole; the reason being is because we are poised to be the second state to legislatively legalize cannabis. Now, what that means for people of color, in particular, is that it puts us in a much more powerful position than any other time in the history of this industry. Part of that unicorn designation, and why the industry is watching us so hard, happens to be this Bill -- because we are righting a very serious wrong.

And there's a reason why the industry, as a whole, is called the *Wild, Wild West* -- because we don't really have any very real standards; like there isn't any industry standard unit of measurement yet.

And so when you have the upper echelons of ownership and positions in the industry occupied by middle-aged-to-older white men, that is a symptom of that chaos in this industry, being in this baby stage. And then couple that with trying to right a wrong in terms of how we are locking up New Jerseyans -- or just people period -- for this plant. Moving forward, depending on what we do, the industry is going to -- this will be the new jumping off point.

So understand that what you all have ahead of you -- you have so many more eyes on you, that I think a lot of folks don't understand.

And with that, I will end what I have to say. I will open it up to any questions, if any of you have them.

If not, good afternoon. I applaud you, and thank you so much for broaching this.

ASSEMBLYWOMAN QUIJANO: Thank you, Leo.

Any questions? (no response)

No, we're good.

Thank you.

Next, Edward Tobias, in favor.

EDWARD N. TOBIAS, Esq.: Okay; I'm also taping it as well, just for my own personal edification.

But let me introduce myself. As you heard, my name is Edward Tobias; I'm an attorney. I'm a cannabis attorney. I just started doing that, really, at the end of January. I had been thinking about it for a while; but

of course, until we had a new Governor, there was really no hope of anything ever taking place.

The good thing is, I'm allowed to speak to you because the Judiciary allows me to. I was able to speak before the Danielsen -- the Assembly Committee with Assemblyman Danielsen at Middlesex County College; I was able to speak before the Division of Consumer Affairs when they talked about descheduling it. I had different focuses, based on those venues.

But let me read, essentially, what I'm able to do. It's on my business card. Essentially, I'm able to "counsel clients regarding the validity, scope, meaning, and application of existing and/or proposed cannabis law, subject to New Jersey Rule of Professional Conduct 1.2(d)." And that's the only reason that I am legally allowed to speak on this.

When I testified before the Division of Consumer Affairs, I gave a personal note about my brother-in-law, who-- He's passed away. He had cancer; he was in Delaware. And he was smoking cannabis to relieve his symptoms, because that was the venue there.

This particular venue is on expungement. And one of the things I've been toying with, in my short journey to try to figure out where, as a cannabis attorney, I fit in -- you know, whether I represent the large companies that are trying to get licenses; whether I am able to represent people who want to start small businesses in the cannabis industry; or whether I want to address the social justice aspects -- I've been to everything. I've been to the cannabis symposium in Newark; I've been around people who smoke cannabis -- unlawfully, of course -- in New Jersey. But as we know, it's enforced, unfortunately, on a racial basis.

I also want to just say one thing. One of the things, too -- I'm kind of off-the-cuff; I don't have any prepared remarks, I'm just kind of thinking because I was called. But it's funny that Mr. Bridgewater mentioned in this suit about the reason that cannabis legislation was-- It was primarily under Richard Nixon. And of course, you know, it was against blacks and hippies. But, you know, it's great when you have the old Internet meme that, "Don't believe everything you hear on the Internet." And, of course, that was a quote from Abraham Lincoln.

But, you know, when you have the President of the United States who not only is quoted -- and he is quoted in the complaint, Richard Nixon -- as saying that one of the real reasons that he was against marijuana legalization was not because of blacks, it was not because of hippies. But he actually said this -- it was mainly he was upset because marijuana legalization was all because of the Jews. And it's one thing, because-- It's one thing to hear it -- I mean, it's one thing to see it printed; it's one thing to hear of it. But you know, he taped everything; so he said it.

And that's one of the things that kind of goes back to expungement. Because, really, the State actors are the ones who -- I don't want to say *criminals*, although the Attorney General from California would say that you are. But because you're representing the State, you're able to get away with it.

I want to show you a picture; hopefully it doesn't turn off my-- This person here (indicates) -- okay? -- I know her. (laughter) I'm not going to say who she is, but I know her. She was underage at the time, okay? And she was arrested for shoplifting in Texas. I know another person who was arrested for shoplifting in Virginia; and in Virginia they

don't even have expungement. I know, because I looked it up -- okay? -- on a pro bono basis; because I was trying to get her her first job in nursing. And of course--

ASSEMBLYWOMAN QUIJANO: I need you to focus on--

MR. TOBIAS: To keep going and focus.

ASSEMBLYWOMAN QUIJANO: --on expungement--

MR. TOBIAS: Well, that's what I'm trying to do; I understand.

ASSEMBLYWOMAN QUIJANO: --as related to cannabis.

MR. TOBIAS: Yes.

ASSEMBLYWOMAN QUIJANO: I don't want to open this up to expungements on shoplifting, or anything else.

MR. TOBIAS: Yes; yes.

ASSEMBLYWOMAN QUIJANO: Unless it has a direct link to cannabis.

MR. TOBIAS: Okay; yes.

ASSEMBLYWOMAN QUIJANO: Okay?

MR. TOBIAS: Well, what I'm trying to get at, in my own personal knowledge of these people, is because their lives were ruined, you know, because this got out -- it wasn't the offense that they did. And this is the problem; is whether it's something, let's say, as minor as shoplifting or as minor as possession of cannabis -- and you even have this in your press release -- it's the consequences of having a criminal record for marijuana possession. It's not the act itself; it's the double punishment.

I have a copy of the FAFSA. Right here, there's a question: "Have you been convicted for the possession or sale of illegal drugs for an

offense that occurred while you were receiving Federal student aid, such as grants, work study or loans?” And the problem -- and the reason I put it in terms of shoplifting and everything is, it’s not the governmental record, it’s the fact that the governmental record is public. And of course, we have the problems that -- the need for the public to know it, versus the need for someone not to be doubly punished; double jeopardy. And that’s really the problem. Someone also mentioned *mugshots.com*. Of course, that’s where I got my-- This other person’s picture was on *mugshots.com*. Actually, I don’t think it was on *mugshots*, but similar to *mugshots.com*. And of course, all this is public information.

And when you put on a job application -- you’re forced to actively say that you were convicted or arrested, okay? When you have -- when your employer goes for the State Police and gets that, you know, that’s when they’re denied the job; that’s when they’re denied the interview.

I just want to lead with, essentially, what Attorney General Becerra did -- he’s the Attorney General for California -- because one of the things that Assemblywoman Sumter correctly noted was how much money New Jersey makes from expungement fees. And of course, the attorneys have to charge for this, because it is a lot of work. So \$1,000 really is not that much money to have to get all the records, and do all the things, and do all the court appearances. But it’s the act of providing the records that’s the problem.

ASSEMBLYWOMAN QUIJANO: Can--

MR. TOBIAS: Attorney General Becerra says-- Let me just-- I apologize, but I just want to read it into the record.

“The pay-for-removal scheme attempts to profit off someone else’s humiliation. Those who can’t afford to pay into this scheme to have their information removed pay the price when they look for a job, housing, or try to build relationships with others. This is exploitation, plain and simple.”

He was, of course, saying that when he arrested the owners of *mugshots.com*; yet it seems like the current expungement process in New Jersey is very similar. That’s what I believe.

ASSEMBLYWOMAN QUIJANO: Can you wrap it up?

MR. TOBIAS: Yes, yes. I apologize.

I do have a couple, just, questions, just for legislative intent.

ASSEMBLYWOMAN QUIJANO: You can ask a question; you may not receive the answer today.

MR. TOBIAS: Yes, yes.

But I read the Bill, and it’s very interesting. Of course, I don’t have any criticisms; I didn’t write it. But I have questions, because it seems like if passed in its current form, the fact that if a person has a medical marijuana card-- Would that be enough -- and I am just asking it rhetorically -- would that be enough to have their record automatically expunged? As opposed to, of course, we’re now going towards the problem of whether it’s going to be medical marijuana or adult-use marijuana that’s the legalization. But that’s one of the questions.

And would this expungement in New Jersey -- would this be a factor that would allow a person to say “no” on their Federal form? And these are important questions, because these things will be litigated.

And people need to have their records expunged. They need to put all this behind them so they can move on. They have to be involved in a burgeoning industry and just be able to put their past behind them.

ASSEMBLYWOMAN QUIJANO: They're two important questions. We're looking into those points, and I appreciate you coming out today.

MR. TOBIAS: Okay; thank you very much.

ASSEMBLYWOMAN QUIJANO: Thank you.

Next, Jo Anne Zito, Coalition for Medical Marijuana of New Jersey.

J O A N N E Z I T O: Hello, honorable Chairwoman and members of the Assembly Judiciary Committee.

I would like to -- regarding Bill A-3620.

I would like to start by thanking the sponsors of this Bill, including my representative, Assemblywoman Sumter, for their leadership in taking some crucial measures in seeking some justice in a very hypocritical war on cannabis.

I myself am a victim of prohibition. I was turned down for a job at Godiva Chocolatier preparing chocolates for sales; and TKL Research as an appointment setter, in 2016, for a cannabis misdemeanor from 2013. Both jobs expressed great interest in hiring me until they received my background check. A mother of two, with one in college, and I couldn't get a job selling chocolates because of my possession of a substance shown to be safer than alcohol.

Expungement of cannabis misdemeanors seems like the least we can do in the event of legalization. We may not be able to restore lives lost

or families destroyed by the many sanctions of cannabis prohibition -- like prison time served or fines paid, jobs lost, property lost, rights violated, and the ability to acquire assistance, insurance, loans, or licenses -- but we can help some in a state with one of the highest arrests for cannabis.

I would like to cease all cannabis charges immediately and release those imprisoned, on probation, or parole, or the Drug Court program for cannabis.

That's why I feel, although this is a step in the right direction -- which I am very grateful for -- it does not go far enough, based on the legalization and decriminalization bills at hand. I feel cannabis legalization in New Jersey would be greatly irresponsible without restoring the right for one to cultivate their own personal cannabis, or allow small cannabis collectives, especially for patients. Cannabis legalization seeks to make lawful consumers out of citizens who have previously been financially incapacitated through prohibition.

Many people cultivate or sell cannabis now because they otherwise could not afford to buy it. Continuing to persecute these citizens for these felonies -- which home cultivation is legal in all states that have legalized cannabis, except Washington State, which has legal home cultivation for patients -- in a legalization model cannot be considered legalization for social justice, as the Governor and advocates are requesting. The right to grow one's own cannabis is the best way to ensure equity. Legalization cannot just be for industry or revenue; it has to be for the people and real rehabilitation to lives most affected by cannabis prohibition. Cannabis felons need access to jobs also.

We are victims of prohibition; a law based on lies. A law people cannot and have not respected due to its unjustness and hypocritical nature. Laws that sought to pervert and withhold a plant that was given to us for healing, as is being seen through our growing patient population. Cannabis should be used in good spirit to have a positive effect on society; therefore, I believe cannabis legalization for revenue only serves to corrupt the good spirit of the plant.

Cannabis is an herbal medicine that Dr. Sanjay Gupta demonstrates may be a solution to the opioid crisis. And it's quite possible we would not be in this crisis situation had we not made cannabis a last resort medicine in New Jersey. This is the backwards thinking that should be turned forward.

We need to free/pardon Jon Peditto, and felons like him; he is serving eight years in the New Jersey State prison system for growing 17 plants. This is someone the medical cannabis community could use now to help support the many registering patients. There are many complaints of monopolistic and corporate cannabis in New Jersey, and patients still suffer, with little recourse.

Many patients cannot afford the fees to maintain medical recommendations, travel to the sparse dispensaries in the state, or the medications themselves; and they still suffer, with little recourse. Many people, patients want small batch, personalized, local medicine; and the therapeutic experience of gardening their own medicine.

These rights have been given to patients in every other state that has legalized cannabis to ensure a truly compassionate medical program.

And as far as decriminalization goes, looking at the epic proportion and epic racially disproportionate cannabis arrests in New Jersey -- that were more of a danger to a person's life than cannabis itself -- that is something the State should have done already, probably a long time ago.

Please stop arrests, free the prisoners, release those on Drug Court -- which is a dangerous program where judges play doctors -- and discontinue prosecution and fines for cannabis. Please help truly rehabilitate lives harmed by prohibition by offering a legalization that the people can get behind in good spirit.

Thank you.

ASSEMBLYWOMAN QUIJANO: Okay; have you submitted testimony, a written testimony?

MS. ZITO: Yes, I did.

ASSEMBLYWOMAN QUIJANO: Okay; any questions? (no response)

No? Okay.

Thank you so much.

MS. ZITO: I did have one other question.

Given my conviction, which was a misdemeanor -- disorderly persons -- it came out of two felony charges, which were child endangerment and possession of under 50 grams. I didn't know -- you know, reading the Bill and the laws, I didn't know how -- if that actually would be expungable.

ASSEMBLYWOMAN QUIJANO: I can't comment to something that may impact you or not. We would have to look at the

record; and we're still discussing the Bill and where we're going to come out in amounts and everything.

So I can't answer that, and no one can on this panel.

MS. ZITO: I know listening to -- hearing it being taken apart, it is -- it's confusing to know exactly what, you know, the people can be looking forward to.

ASSEMBLYWOMAN QUIJANO: All right. In my opening statement I said this is the beginning of a conversation. So we so noted; we will review your written testimony. And thank you so much for coming in.

MS. ZITO: Thank you.

And I did also want to say that a couple of people referenced *hippies*. I did want to say Nixon -- I think he more sought them out as they were war protestors and a nuisance to what he was trying to achieve. And it was also a way to ban jobs from both categories of people they were trying to criminalize.

ASSEMBLYWOMAN QUIJANO: All right; thank you very much.

MS. ZITO: Thank you.

ASSEMBLYWOMAN QUIJANO: The last speaker will be Gale Bonker, if that individual is still in the room. (no response)

If not, in favor.

All right.

We received by e-mail, on behalf of the Hispanic Bar Association of New Jersey President Hector Ruiz, a statement. I'm not reading the whole thing into the record.

I will read in, “The expungement provisions under Bill A-3620 provide an important step for many in New Jersey to continue to serve as productive citizens of the State without having the effects of a conviction for marijuana, and are especially important given the legislation legalizing or decriminalizing possession and use of marijuana at the State level. The Hispanic Bar Association of New Jersey supports change to expungement legislation, and encourages these discussions to continue.”

I want to say that this has been one of the better Committees that I have participated in. There have been discussions from everyone, and the legislators had lots of questions that we will continue to work on and with. And I’m securing additional information.

Does anyone have any comments?

Yes; Assemblywoman Sumter.

ASSEMBLYWOMAN SUMTER: Madam Chair, I want to thank you for allowing me to substitute in on this discussion.

I have, of course, more questions than I have answers for. And this issue is complicated, but long overdue. We’re talking about a time period from the 1970s; and I am proud to say that I am 44, so it’s nice to work on legislation and--

UNIDENTIFIED MEMBER OF COMMITTEE: (off mike) I thought you were 24. (laughter)

ASSEMBLYWOMAN SUMTER: I used to be. Those were good years, too. But it’s nice to work on legislation where we’re able to impact change that will impact people’s lives for the better, and our state.

And thank you for your leadership, and allowing me to be a co-sponsor with you on this legislation.

ASSEMBLYWOMAN QUIJANO: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: I also, Madam Chairwoman, thank you for allowing me to sit in today. And the impact of this and the continued knowledge that I'm learning about expungement -- and particularly some of the things that we learned today from our Judiciary staff -- is something that we could bring back to our communities to help them expedite this process.

And this is just the beginning of what I think is true justice for so many people, not just in New Jersey, but throughout America.

ASSEMBLYWOMAN QUIJANO: Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thank you, Madam Chairwoman.

I just want to say thanks again for having this hearing. Today was very knowledgeable for me. I've learned some things that I had no clue that existed.

And I vow to continue to learn as much more as I can, and to stay on top of it, because it affects not only myself, but generations to come.

So I just want to say thank you for having this hearing.

Thank you.

ASSEMBLYWOMAN QUIJANO: So thank you very much, everyone who came and participated. We're going to work hard on this issue, and we're going to do justice to the citizens of New Jersey.

(MEETING CONCLUDED)