

January 6, 2004

The Honorable William J. Haynes Jr.
U.S. District Court
C/o Peter J. Strianse, Esq.
Tune, Entrekin and White P.C.
Suite 2100, AmSouth Center
315 Deaderick St.
Nashville, TN 37238-2100

Re. Bernard H. Ellis, Jr., MA, MPH

Dear Judge Haynes,

The purpose of my letter is to share my perspective as a former member of the New Mexico State House of Representatives, during which time I met and worked with Mr. Ellis. In addition, I want to request that you consider Mr. Ellis to be a community asset who would be wasted, should he be incarcerated and/or stripped of his home and other modest assets.

I was trained under a LEAPP federal grant as a drug prosecutor in Los Angeles in 1978. In addition to my work as a prosecutor, I have worked for the World Health Organization and the Foreign Service Institute, and I was chief legal counsel for the California Office of Economic Opportunity before moving to New Mexico in 1985. I have been licensed to practice law in California, New Mexico and in the federal courts.

I was elected to the New Mexico House of Representatives in 1996. The Albuquerque, New Mexico legislative district I represented was middle to lower class, ethnically mixed and with the biggest concentration of drug-related crime in the state of New Mexico. I was elected to do something about it. I felt that crime should be a non-partisan issue and so I worked with Democrats and Republicans alike on these issues.

Some of the legislation and initiatives I proposed while in the New Mexico House of Representatives included the following: mandatory random drug-testing in prisons; completion of drug programs as a condition precedent to the award of "good time"; introduction of a Megan's law (New Mexico was the only state in the Union without one at the time); closing drive-up windows for alcohol sales; increasing sentences for drunk and drugged-driving, narcotics sales, rape and child molestation; and the establishment of drug-free school and residential zones wherein penalties for possession and sale of narcotics would carry mandatory enhancements. The New Mexico news media tabbed me the most knowledgeable and toughest crime legislator they had seen in at least a decade.

Much of the criticism my initiatives received was from the Democratic leadership in the House of Representatives as well as criminal defense attorneys of both parties serving in the House and Senate. (I am a Democrat.) One of the ways they attempted to curtail my efforts was to deny me resources so that I was unable to hire expert witnesses for research and hearings. It was within the context of this restriction that I met Mr. Ellis. It was the Albuquerque sheriff who gave me Mr. Ellis' name and phone number.

Over a period of months, Mr. Ellis consulted with me for free and greatly assisted me in devising a plan that was implemented without legislation by the Republican Chief of Prisons for drug testing and treatment of prisoners. I am told that within 3 months of implementation of the programs, drug use in our prisons dropped nearly 60 per cent.

In addition, Mr. Ellis agreed to present his research findings on the positive effects of closing drive-up windows for alcohol sales in McKinley County, NM (in 1992) to three separate legislative committees in 1998. Mr. Ellis' testimony was accompanied by clear and concise research reports that were widely circulated in the legislative and executive branches of government and quoted extensively in the New Mexico media. As a direct result of the research evidence which Mr. Ellis prepared and presented (pro bono) in these venues, we were able to pass my legislation (which Governor Gary Johnson signed) to close all drive-up windows for alcohol sales statewide in 1998.

Finally, Mr. Ellis and I worked together to help bring funds to New Mexico to conduct a comprehensive evaluation of our state-funded substance abuse treatment network. This evaluation used unique and cost-effective research methods that Mr. Ellis had developed in our state when he established the Substance Abuse Epidemiology Unit for the New Mexico Department of Health in 1991. His research program was recognized by the (US) Centers for Disease Control and Prevention as the first research unit within any state department of health in the country to treat substance abuse as the serious public health problem that it is. Many of the research methods that he developed in New Mexico are still widely used throughout the country in similar research units, which have been established and funded with significant federal support.

As public servants, both you and I are well aware of the acute limitation of resources available to law enforcement and the judiciary. It shouldn't be this way, but we both know that it is. I wish to respectfully suggest that you consider Mr. Ellis' ability to contribute further to the reduction of the crime and suffering caused by substance abuse when you pass sentence on him. He is a valuable community asset who would be wasted should he be incarcerated and/or bankrupted by this court proceeding.

Given Mr. Ellis' demonstrated talents and commitment to serving the public good, it makes justifiable fiscal sense to me to allow him to keep his home and farm by reducing the disproportionate fine that has been levied against him, and to require him to do community service in his areas of expertise for a period of time, instead of locking him away in federal prison.

Speaking for my fellow New Mexicans (some of whom you have also received letters from, I am told), we would be especially gratified if the Court were to direct that Mr. Ellis do community service vis-à-vis our State's substance abuse reduction efforts, which he helped initiate in the early 1990s. I have made unofficial inquiries, and found that our State's law enforcement agencies are more than willing to cooperate in supervising Mr. Ellis' community service, should the Court so order.

Thank you for your attention to my letter, and to my request for leniency in this case. If you would like to speak with me, you can reach me at (505) 281-5456 or getty@swcp.com.

Sincerely,

Rita G. Getty
New Mexico House of Representatives (retired)