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MARIJUANA DECRIMINALIZATION

HEARING

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

Pursuant to S. Res. 72, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

S. 1450

WHICH AMENDS CERTAIN PROVISIONS OF THE CONTROLLED SUBSTANCES ACT RELATING TO MARIJUANA

MAY 14, 1975

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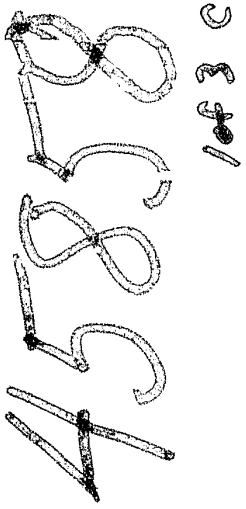
or the use of the Committee on the Judiciary



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Public Law 91-513
91st Congress, H. R. 18583
October 27, 1970

An Act

To amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Drug Abuse Prevention and Control Act of 1970". Comprehensive Drug Abuse Prevention and Control Act of 1970.

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TITLE I—REHABILITATION PROGRAMS RELATING TO DRUG ABUSE

PROGRAMS UNDER COMMUNITY MENTAL HEALTH CENTERS ACT RELATING TO DRUG ABUSE

SECTION 1. (a) Part D of the Community Mental Health Centers Act is amended as follows:

(1) Sections 251, 252, and 253 of such part (42 U.S.C. 2688k, 2688l, and 2688m) are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts" each place those words appear in those sections. 82 Stat. 1009.

(2) Clauses (A) and (C) of section 252 of such part are each amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) The heading for such part is amended to read as follows:

"PART D—NARCOTIC ADDICTION, DRUG ABUSE, AND DRUG DEPENDENCE PREVENTION AND REHABILITATION".

(b) Part E of such Act is amended as follows:

(1) Section 261(a) of such part (42 U.S.C. 2688o) is amended by striking out "$30,000,000 for the fiscal year ending June 30, 1971, $35,000,000 for the fiscal year ending June 30, 1972, and $40,000,000 for the fiscal year ending June 30, 1973" and inserting in lieu thereof "$40,000,000 for the fiscal year ending June 30, 1971, $60,000,000 for the fiscal year ending June 30, 1972, and $80,000,000 for the fiscal year ending June 30, 1973". 82 Stat. 1010; Ante, p. 57.

(2) Section 261(a) of such part is further amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) Sections 261(c) and 264 are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts". Ante, pp. 58, 61.

(4) The section headings for sections 261 and 263 are each amended by striking out "AND NARCOTIC ADDICTS" and inserting in lieu thereof ", NARCOTIC ADDICTS, AND OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS".

(c) Part D of such Act is further amended by redesignating sections 253 and 254 as sections 254 and 255, respectively, and by adding after section 252 the following new section: 42 USC 2688n.

"DRUG ABUSE EDUCATION

"SEC. 253. (a) The Secretary is authorized to make grants to States and political subdivisions thereof and to public or nonprofit private agencies and organizations, and to enter into contracts with other private agencies and organizations, for— Grants. Contract authority.

"(1) the collection, preparation, and dissemination of educational materials dealing with the use and abuse of drugs and the prevention of drug abuse, and

"(2) the development and evaluation of programs of drug abuse education directed at the general public, school-age children, and special high-risk groups.

"(b) The Secretary, acting through the National Institute of Mental Health, shall (1) serve as a focal point for the collection and dissemination of information related to drug abuse; (2) collect, prepare, and disseminate materials (including films and other educational devices) dealing with the abuse of drugs and the prevention of drug

abuse; (3) provide for the preparation, production, and conduct of programs of public education (including those using films and other educational devices); (4) train professional and other persons to organize and participate in programs of public education in relation to drug abuse; (5) coordinate activities carried on by such departments, agencies, and instrumentalities of the Federal Government as he shall designate with respect to health education aspects of drug abuse; (6) provide technical assistance to State and local health and educational agencies with respect to the establishment and implementation of programs and procedures for public education on drug abuse; and (7) undertake other activities essential to a national program for drug abuse education.

Personnel training.

"(c) The Secretary, acting through the National Institute of Mental Health, is authorized to develop and conduct workshops, institutes, and other activities for the training of professional and other personnel to work in the area of drug abuse education.

Appropriation.

"(d) To carry out the purposes of this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1971, $12,000,000 for the fiscal year ending June 30, 1972, and $14,000,000 for the fiscal year ending June 30, 1973."

82 Stat. 1009; Ante, p.1238. 42 USC 2688k.

(d) Such part D is further amended by adding at the end thereof the following new section:

"SPECIAL PROJECTS FOR NARCOTIC ADDICTS AND DRUG DEPENDENT PERSONS

Grants, treatment and rehabilitation.

"SEC. 256. (a) The Secretary is authorized to make grants to public or nonprofit private agencies and organizations to cover a portion of the costs of programs for treatment and rehabilitation of narcotic addicts or drug dependent persons which include one or more of the following: (1) Detoxification services or (2) institutional services (including medical, psychological, educational, or counseling services) or (3) community-based aftercare services.

Conditions.

"(b) Grants under this section for the costs of any treatment and rehabilitation program—

"(1) may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of eight years after such first day; and

Limitation.

"(2) (A) except as provided in subparagraph (B), may not exceed 80 per centum of such costs for each of the first two years after such first day, 75 per centum of such costs for the third year after such first day, 60 per centum of such costs for the fourth year after such first day, 45 per centum of such costs for the fifth year after such first day, and 30 per centum of such costs for each of the next three years after such first day; and

"(B) in the case of any such program providing services for persons in an area designated by the Secretary as an urban or rural poverty area, such grants may not exceed 90 per centum of such costs for each of the first two years after such first day, 80 per centum of such costs for the third year after such first day, 75 per centum of such costs for the fourth and fifth years after such first day, and 70 per centum of such costs for each of the next three years after such first day.

"(c) No application for a grant authorized by this section shall be approved by the Secretary unless such application is forwarded through the State agency responsible for administering the plan submitted pursuant to section 204 of this Act or, if there be a separate State agency, designated by the Governor as responsible for planning, coordinating, and executing the State's efforts in the treatment and

77 Stat. 291; 81 Stat. 79. 42 USC 2684.

rehabilitation of narcotic addicts and drug dependent persons, through such latter agency, which shall submit to the Secretary such comments as he deems appropriate. No application for a grant under this section for a program to provide services for persons in an area in which is located a facility constructed as a new facility after the date of enactment of this section with funds provided under a grant under part A or this part shall be approved unless such application contains satisfactory assurance that, to the extent feasible, such program will be included as part of the programs conducted in or through such facility.

"(d) The Secretary shall make grants under this section for projects within the States in accordance with criteria determined by him designed to provide priority for grant applications in States, and in areas within the States, having the higher percentages of population who are narcotic addicts or drug dependent persons. Criteria.

"(e) There are authorized to be appropriated to carry out this section not to exceed $20,000,000 for the fiscal year ending June 30, 1971; $30,000,000 for the fiscal year ending June 30, 1972; and $35,000,000 for the fiscal year ending June 30, 1973." Appropriation.

BROADER TREATMENT AUTHORITY IN PUBLIC HEALTH SERVICE HOSPITALS FOR PERSONS WITH DRUG ABUSE AND OTHER DRUG DEPENDENCE PROBLEMS

SEC. 2. (a) Part E of title III of the Public Health Service Act is amended as follows:

(1) Section 341(a) of such part is amended by adding immediately after "addicts" the second time it appears the following: "and other persons with drug abuse and drug dependence problems". 80 Stat. 1449. 42 USC 257.

(2)(A) Sections 342, 343, 344, and 346 of such part are each amended by inserting "or other persons with drug abuse and drug dependence problems" immediately after "addicts" each place it appears in those sections. 58 Stat. 699; 68 Stat. 79. 42 USC 258-260, 261.

(B) The section heading of section 342 of such part is amended by inserting "OR OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS" after "ADDICTS".

(3) Sections 343 and 344 of such part are each amended by inserting "or other person with a drug abuse or other drug dependence problem" immediately after "addict" each place it appears in those sections.

(4) Sections 343, 344, and 347 of such part are each amended by inserting ", drug abuse, or drug dependence" immediately after "addiction" each place it appears in those sections. 42 USC 261a.

(5) Section 346 of such part is amended by inserting "or substance controlled under the Controlled Substances Act" immediately after "habit-forming narcotic drug". Post, p. 1242.

(6) The heading for such part is amended to read as follows:

"PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS".

(b) Section 2 of the Public Health Service Act (42 U.S.C. 201) is amended by adding after paragraph (p) the following new paragraph: 58 Stat. 682; 74 Stat. 34.

"(q) The term 'drug dependent person' means a person who is using a controlled substance (as defined in section 102 of the Controlled Substances Act) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence." Post, p. 1243.

RESEARCH UNDER THE PUBLIC HEALTH SERVICE ACT IN DRUG USE, ABUSE, AND ADDICTION

Research populations, protection of identity.
70 Stat. 929.

SEC. 3. (a) Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) is amended by adding after and below paragraph (2) the following:

"The Secretary may authorize persons engaged in research on the use and effect of drugs to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

80 Stat. 1184.
42 USC 246.

(b) Section 314(d)(2) of the Public Health Service Act is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof "; and"; and

(3) by adding after subparagraph (J) the following new subparagraph:

"(K) provide for services for the prevention and treatment of drug abuse and drug dependence, commensurate with the extent of the problem."

81 Stat. 79.

(c) Section 507 of the Public Health Service Act (42 U.S.C. 225a) is amended—

(1) by striking out "available for research, training, or demonstration project grants pursuant to this Act" and inserting in lieu thereof "available under this Act for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under the Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities", and

77 Stat. 190.
42 USC 2681 note.

(2) by inserting immediately before the period at the end thereof the following: ", except that grants to such Federal institutions may be funded at 100 per centum of the costs".

MEDICAL TREATMENT OF NARCOTIC ADDICTION

SEC. 4. The Secretary of Health, Education, and Welfare, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

Report to Congress.

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

SHORT TITLE

SEC. 100. This title may be cited as the "Controlled Substances Act". Citation of title.

FINDINGS AND DECLARATIONS

SEC. 101. The Congress makes the following findings and declarations:

(1) Many of the drugs included within this title have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances. 18 UST 1407.

DEFINITIONS

SEC. 102. As used in this title:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner,

whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4) The term "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

Post, p. 1247.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

68A Stat. 595.
26 USC 5001.

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means—

(A) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid; or (ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(d)); or

52 Stat. 1050.

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance. The term "distributor" means a person who so delivers a controlled substance.

(12) The term "drug" has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act. 52 Stat. 1041; 79 Stat. 234; 21 USC 321.

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(16) The term "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, coca leaves, and opiates.

(B) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates.

(C) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (A) or (B).

Such term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(17) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(18) The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

(19) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(21) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(23) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health, Education, and Welfare.

(24) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(25) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(26) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

INCREASED NUMBERS OF ENFORCEMENT PERSONNEL

SEC. 103. (a) During the fiscal year 1971, the Bureau of Narcotics and Dangerous Drugs is authorized to add at least 300 agents, together with necessary supporting personnel, to the number of enforcement personnel currently available to it.

Appropriation.

(b) There are authorized to be appropriated not to exceed $6,000,000 for the fiscal year 1971 and for each fiscal year thereafter to carry out the provisions of subsection (a).

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

AUTHORITY AND CRITERIA FOR CLASSIFICATION OF SUBSTANCES

SEC. 201. (a) The Attorney General shall apply the provisions of this title to the controlled substances listed in the schedules established by section 202 of this title and to any other drug or other substance added to such schedules under this title. Except as provided in subsections (d) and (e), the Attorney General may by rule—

(1) add to such a schedule or transfer between such schedules any drug or other substance if he—

(A) finds that such drug or other substance has a potential for abuse, and

(B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 202 for the schedule in which such drug is to be placed; or

(2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.

Hearing opportunity. Rules. 80 Stat. 381. 5 USC 551.

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of title 5 of the United States Code. Proceedings for the issuance, amendment, or

repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.

(b) The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a). Evaluation.

(c) In making any finding under subsection (a) of this section or under subsection (b) of section 202, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.
(2) Scientific evidence of its pharmacological effect, if known.
(3) The state of current scientific knowledge regarding the drug or other substance.
(4) Its history and current pattern of abuse.
(5) The scope, duration, and significance of abuse.
(6) What, if any, risk there is to the public health.
(7) Its psychic or physiological dependence liability.
(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

(d) If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section. Order.

(e) The Attorney General may, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the Attorney General designates a substance as an immediate precursor and places it in a schedule, other substances shall not be placed in a schedule solely because they are its precursors.

(f) If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

(g) (1) The Attorney General shall by regulation exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

52 Stat. 1040. 21 USC 321.

Dextromethorphan, exception.

(2) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this title unless controlled after the date of such enactment pursuant to the foregoing provisions of this section.

SCHEDULES OF CONTROLLED SUBSTANCES

Establishment.

SEC. 202. (a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title and shall be updated and republished on an annual basis thereafter.

Placement on schedules, findings required.

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

Opiates.

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.

(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

Opium derivatives.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

Hallucinogenic substances.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine.
(2) 5-methoxy-3,4-methylenedioxy amphetamine.
(3) 3,4,5-trimethoxy amphetamine.
(4) Bufotenine.
(5) Diethyltryptamine.
(6) Dimethyltryptamine.
(7) 4-methyl-2,5-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Marihuana.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.
(14) N-methyl-3-piperidyl benzilate.
(15) Psilocybin.
(16) Psilocyn.
(17) Tetrahydrocannabinols.

SCHEDULE II

Substances, vegetable origin or chemical synthesis.

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Opiates.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphan.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone-Intermediate, 4-cyano - 2 - dimethylamino-4,4-diphenyl butane.
(13) Moramide-Intermediate, 2 - methyl - 3 - morpholino-1, 1-diphenylpropane-carboxylic acid.
(14) Pethidine.
(15) Pethidine-Intermediate-A, 4 - cyano-1-methyl-4-phenylpiperidine.
(16) Pethidine-Intermediate-B, ethyl - 4-phenylpiperidine-4-carboxylate.
(17) Pethidine-Intermediate-C, 1-methyl - 4 - phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

Methamphetamine.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III

Stimulants.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

Depressants.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

Nalorphine.

(c) Nalorphine.

Narcotic drugs.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(1) Barbital.
(2) Chloral betaine.
(3) Chloral hydrate.
(4) Ethchlorvynol.
(5) Ethinamate.
(6) Methohexital.
(7) Meprobamate.
(8) Methylphenobarbital.
(9) Paraldehyde.
(10) Petrichloral.
(11) Phenobarbital.

SCHEDULE V

Narcotic drugs containing nonnarcotic active medicinal ingredients.

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Stimulants or depressants containing active medicinal ingredients; exception.

(d) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

RULES AND REGULATIONS

Rules and regulations.

SEC. 301. The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

PERSONS REQUIRED TO REGISTER

Annual registration.

SEC. 302. (a) Every person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(b) Persons registered by the Attorney General under this title to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions of this title.

Registration, exceptions.

(c) The following persons shall not be required to register and may lawfully possess any controlled substance under this title:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent or employee is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of the controlled substance is in the usual course of his business or employment.

Ante, p. 1245.

(3) An ultimate user who possesses such substance for a purpose specified in section 102(25).

Waiver.

(d) The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

Separate registration.

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

Inspection.

(f) The Attorney General is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

REGISTRATION REQUIREMENTS

Factors consistent with public interest.

SEC. 303. (a) The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

Controls. Importation and bulk manufacture, limitation.

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately com-

petitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) compliance with applicable State and local law; Compliance.

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances; Technology.

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances; Applicants, prior conviction record.

(5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and Experience.

(6) such other factors as may be relevant to and consistent with the public health and safety.

(b) The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered: Factors consistent to public interest.

(1) maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(c) Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 306. Prohibition.

Post, p. 1257.

(d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(e) The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Research.

(f) Practitioners shall be registered to dispense or conduct research with controlled substances in schedule II, III, IV, or V if they are authorized to dispense or conduct research under the law of the State in which they practice. Separate registration under this part for practitioners engaging in research with nonnarcotic controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Pharmacies (as distinguished from pharmacists) when engaged in commercial activities, shall be registered to dispense controlled substances in schedule II, III, IV, or V if they are authorized to dispense under the law of the State in which they regularly conduct business. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 304(a).

Pharmacies.

Research applications.

DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

SEC. 304. (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this title or title III;

Post, p. 1285.

(2) has been convicted of a felony under this title or title III or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance; or

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances.

(b) The Attorney General may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

Service of order.

(c) Before taking action pursuant to this section, or pursuant to a denial of registration under section 303, the Attorney General shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney

General at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with subchapter II of chapter 5 of title 5 of the United States Code. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this title or any other law of the United States. 80 Stat. 381. 5 USC 551.

(d) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction. Registration, suspension.

(e) The suspension or revocation of a registration under this section shall operate to suspend or revoke any quota applicable under section 306.

(f) In the event the Attorney General suspends or revokes a registration granted under section 303, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 511(e). Post, p. 1277.

LABELING AND PACKAGING REQUIREMENTS

SEC. 305. (a) It shall be unlawful to distribute a controlled substance in a commercial container unless such container, when and as required by regulations of the Attorney General, bears a label (as defined in section 201(k) of the Federal Food, Drug, and Cosmetic Act) containing an identifying symbol for such substance in accordance with such regulations. A different symbol shall be required for each schedule of controlled substances. Symbol. 52 Stat. 1041. 21 USC 321.

(b) It shall be unlawful for the manufacturer of any controlled substance to distribute such substance unless the labeling (as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act) of such substance contains, when and as required by regulations of the Attorney General, the identifying symbol required under subsection (a).

(c) The Secretary shall prescribe regulations under section 503(b) of the Federal Food, Drug, and Cosmetic Act which shall provide that the label of a drug listed in schedule II, III, or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a crime to transfer the drug to any person other than the patient. 65 Stat. 648. 21 USC 353.

(d) It shall be unlawful to distribute controlled substances in schedule I or II, and narcotic drugs in schedule III or IV, unless the bottle or other container, stopper, covering, or wrapper thereof is securely sealed as required by regulations of the Attorney General. Unlawful distribution.

QUOTAS APPLICABLE TO CERTAIN SUBSTANCES

Production quota.

SEC. 306. (a) The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.

(b) The Attorney General shall limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General under subsection (a). The quota of each registered manufacturer for each basic class of controlled substance in schedule I or II shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. However, if any registrant, before the issuance of a limitation or reduction in quota, has manufactured in excess of his revised quota, the amount of the excess shall be subtracted from his quota for the following year.

Manufacturing quota.

(c) On or before July 1 of each year, upon application therefor by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the basic classes of controlled substances in schedules I and II that the manufacturer seeks to produce. The quota shall be subject to the provisions of subsections (a) and (b) of this section. In fixing such quotas, the Attorney General shall determine the manufacturer's estimated disposal, inventory, and other requirements for the calendar year; and, in making his determination, the Attorney General shall consider the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

(d) The Attorney General shall, upon application and subject to the provisions of subsections (a) and (b) of this section, fix a quota for a basic class of controlled substance in schedule I or II for any registrant who has not manufactured that basic class of controlled substance during one or more preceding calendar years. In fixing such quota, the Attorney General shall take into account the registrant's reasonably anticipated requirements for the current year; and, in making his determination of such requirements, he shall consider such factors specified in subsection (c) of this section as may be relevant.

Quota, increase.

(e) At any time during the year any registrant who has applied for or received a manufacturing quota for a basic class of controlled substance in schedule I or II may apply for an increase in that quota to meet his estimated disposal, inventory, and other requirements during the remainder of that year. In passing upon the application the Attorney General shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the year. In passing upon the application the Attorney General may also take into account the amount, if any, by which the determination of the Attorney General under subsection (a) of this section exceeds the aggregate of the quotas of all registrants under this section.

Controlled substances, incidental production, exception.

(f) Notwithstanding any other provisions of this title, no registration or quota may be required for the manufacture of such quantities of controlled substances in schedules I and II as incidentally and

necessarily result from the manufacturing process used for the manufacture of a controlled substance with respect to which its manufacturer is duly registered under this title. The Attorney General may, by regulation, prescribe restrictions on the retention and disposal of such incidentally produced substances. Restrictions.

RECORDS AND REPORTS OF REGISTRANTS

SEC. 307. (a) Except as provided in subsection (c)— Inventory.

(1) every registrant under this title shall, on the effective date of this section, or as soon thereafter as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand, except that the regulations prescribed under this section shall permit each such biennial inventory (following the initial inventory required by this paragraph) to be prepared on such registrant's regular general physical inventory date (if any) which is nearest to and does not vary by more than six months from the biennial date that would otherwise apply;

(2) on the effective date of each regulation of the Attorney General controlling a substance that immediately prior to such date was not a controlled substance, each registrant under this title manufacturing, distributing, or dispensing such substance shall make a complete and accurate record of all stocks thereof on hand; and

(3) on and after the effective date of this section, every registrant under this title manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this paragraph shall not require the maintenance of a perpetual inventory.

(b) Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. Availability.

(c) The foregoing provisions of this section shall not apply— Nonapplicability.

(1) (A) with respect to narcotic controlled substances in schedule II, III, IV, or V, to the prescribing or administering of such substances by a practitioner in the lawful course of his professional practice; or

(B) with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed;

(2) (A) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in research conducted in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act; 52 Stat. 1052; 76 Stat. 783. 82 Stat. 343. 21 USC 355, 360b.

(B) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in preclinical research or in teaching; or

(3) to the extent of any exemption granted to any person, with respect to all or part of such provisions, by the Attorney General by or pursuant to regulation on the basis of a finding that the application of such provisions (or part thereof) to such person is not necessary for carrying out the purposes of this title.

(d) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General of every sale, delivery, or other disposal by him of any controlled substance, and each distributor shall make such reports with respect to narcotic controlled substances, identifying by the registration number assigned under this title the person or establishment (unless exempt from registration under section 302(d)) to whom such sale, delivery, or other disposal was made.

(e) Regulations under sections 505(i) and 512(j) of the Federal Food, Drug, and Cosmetic Act, relating to investigational use of drugs, shall include such procedures as the Secretary, after consultation with the Attorney General, determines are necessary to insure the security and accountability of controlled substances used in research to which such regulations apply.

52 Stat. 1052; 76 Stat. 783. 82 Stat. 343. 21 USC 355, 360b.

ORDER FORMS

Unlawful distribution.

SEC. 308. (a) It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section.

Nonapplicability.

(b) Nothing in subsection (a) shall apply to—

(1) the exportation of such substances from the United States in conformity with title III;

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(2) the delivery of such a substance to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution by the owner of the substance to a third person, this paragraph shall not relieve the distributor from compliance with subsection (a).

Preservation and availability.

(c) (1) Every person who in pursuance of an order required under subsection (a) distributes a controlled substance shall preserve such order for a period of two years, and shall make such order available for inspection and copying by officers and employees of the United States duly authorized for that purpose by the Attorney General, and by officers or employees of States or their political subdivisions who are charged with the enforcement of State or local laws regulating the production, or regulating the distribution or dispensing, of controlled substances and who are authorized under such laws to inspect such orders.

Duplicate, preservation and availability.

(2) Every person who gives an order required under subsection (a) shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section, and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying by the officers and employees mentioned in paragraph (1) of this subsection.

(d)(1) The Attorney General shall issue forms pursuant to subsections (a) and (c)(2) only to persons validly registered under section 303 (or exempted from registration under section 302(d)). Whenever any such form is issued to a person, the Attorney General shall, before delivery thereof, insert therein the name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances. Forms, issuance.

(2) The Attorney General may charge reasonable fees for the issuance of such forms in such amounts as he may prescribe for the purpose of covering the cost to the United States of issuing such forms, and other necessary activities in connection therewith. Fees.

(e) It shall be unlawful for any person to obtain by means of order forms issued under this section controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business in such substances or in the course of his professional practice or research. Unlawful act.

PRESCRIPTIONS

SEC. 309. (a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 307 of this title. No prescription for a controlled substance in schedule II may be refilled. 52 Stat. 1040. 21 USC 301. 65 Stat. 648. 21 USC 353.

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

(d) Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405, any person who violates subsection (a) of this section shall be sentenced as follows:

Post, p. 1265.

Penalties.

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

Post, p. 1285.

Special parole term.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 404. Marihuana, simple possession.

(c) A special parole term imposed under this section or section 405 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 405 shall be in addition to, and not in lieu of, any other parole provided for by law. Special parole term.

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III; Post, p. 1285.

(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal; or Ante, p. 1256. Post, p. 1276.

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph. Penalty. Jurisdiction of courts. 62 Stat. 934.

(2) (A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both.

Penalty.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of $50,000, or both.

Post, p. 1285.

Penalty.

Exception.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

Ante, p. 1259.

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

"Communication facility."

Penalty.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs,

marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both. Penalty.

PENALTY FOR SIMPLE POSSESSION; CONDITIONAL DISCHARGE AND EXPUNGING OF RECORDS FOR FIRST OFFENSE

SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both. Post, p. 1285.

(b) (1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this title or title III, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person. Nonpublic record, retention.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. First offense, expunging of records, order.

The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

SEC. 405. (a) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b), and (2) at least twice any special parole term authorized by section 401(b), for a first offense involving the same controlled substance and schedule.

(b) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b), and (2) at least three times any special parole term authorized by section 401(b), for a second or subsequent offense involving the same controlled substance and schedule.

82 Stat. 1361.
21 USC 333.

ATTEMPT AND CONSPIRACY

SEC. 406. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 407. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a)(1) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than $100,000, and to the forfeiture prescribed in paragraph (2); except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than $200,000, and to the forfeiture prescribed in paragraph (2).

Penalty.

(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—

Forfeiture.

(A) the profits obtained by him in such enterprise, and

(B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(b) For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this title or title III the punishment for which is a felony, and Post, p. 1285.

(2) such violation is a part of a continuing series of violations of this title or title III—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

(c) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of title 18 of the United States Code and the Act of July 15, 1932 (D.C. Code, secs. 24–203—24–207), shall not apply. 65 Stat. 150; 47 Stat. 697; 61 Stat. 378; 67 Stat. 91; 79 Stat. 113.

(d) The district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as they shall deem proper. Jurisdiction of courts.

DANGEROUS SPECIAL DRUG OFFENDER SENTENCING

SEC. 409. (a) Whenever a United States attorney charged with the prosecution of a defendant in a court of the United States for an alleged felonious violation of any provision of this title or title III committed when the defendant was over the age of twenty-one years has reasons to believe that the defendant is a dangerous special drug offender such United States attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special drug offender who upon conviction for such felonious violation is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special drug offender. In no case shall the fact that the defendant is alleged to be a dangerous special drug offender be an issue upon the trial of such felonious violation, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special drug offender and his counsel. Notice. Prohibition.

(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felonious violation, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. Hearing without jury.

Notice. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto.

Presentence report, inspection. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment.

Penalty. If it appears by a preponderance of the information, including information submitted during the trial of such felonious violation and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special drug offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felonious violation. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felonious violation. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

Sentence.

(c) This section shall not prevent the imposition and execution of a sentence of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special drug offender to less than any mandatory minimum penalty prescribed by law for such felonious violation. This section shall not be construed as creating any mandatory minimum penalty.

Conditions. (e) A defendant is a special drug offender for purposes of this section if—

(1) the defendant has previously been convicted in courts of the United States or a State or any political subdivision thereof for two or more offenses involving dealing in controlled substances, committed on occasions different from one another and different from such felonious violation, and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felonious violation, and less than five years have elapsed between the commission of such felonious violation and either the defendant's release, or parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense involving dealing in controlled substances and punishable by death or imprisonment in excess of one year under applicable laws of the United States or a State or any political subdivision thereof; or

(2) the defendant committed such felonious violation as part of a pattern of dealing in controlled substances which was crimi-

nal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felonious violation was, or the defendant committed such felonious violation in furtherance of, a conspiracy with three or more other persons to engage in a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or dealing, or give or receive a bribe or use force in connection with such dealing.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such dealing. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Code of 1954. For purposes of paragraph (2) of this subsection, special skill or expertise in such dealing includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of such dealing, the enlistment of accomplices in such dealing, the escape from detection or apprehension for such dealing, or the disposition of the fruits or proceeds of such dealing. For purposes of paragraphs (2) and (3) of this subsection, such dealing forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

Substantial source of income.

80 Stat. 838. 29 USC 206.

68A Stat. 17; 83 Stat. 655. 26 USC 62. Dealing.

(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felonious violation is required for the protection of the public from further criminal conduct by the defendant.

Defendant, dangerous.

(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

Appeal.

(h) With respect to the imposition, correction, or reduction of a sentence after proceedings under this section, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court

Sentence, review.

extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felonious violation and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of the abuse of the right of the United States to take such review.

INFORMATION FOR SENTENCING

SEC. 410. Except as otherwise provided in this title or section 303(a) of the Public Health Service Act, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence under this title or title III.

70 Stat. 929.
42 USC 242a.

Post, p. 1285.

PROCEEDINGS TO ESTABLISH PRIOR CONVICTIONS

SEC. 411. (a)(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

Prohibition.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence. Previous conviction, affirmation or denial.

(c) (1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a) (1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law. Denial, written response. Hearing. Court without jury. Evidence, introduction.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge. Constitution of U.S., violation.

(d) (1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part. Sentence, imposition.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction. Statute of limitations.

Part E—Administrative and Enforcement Provisions

PROCEDURES

Sec. 501. (a) The Attorney General may delegate any of his functions under this title to any officer or employee of the Department of Justice. Attorney General, functions, delegation.

Regulations.

(b) The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this title.

Gifts, etc., acceptance.

(c) The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

EDUCATION AND RESEARCH PROGRAMS OF THE ATTORNEY GENERAL

SEC. 502. (a) The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this title. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;

(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

(5) studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels; and

(6) studies or special projects to develop information necessary to carry out his functions under section 201 of this title.

Ante, p. 1245.

(b) The Attorney General may enter into contracts for such educational and research activities without performance bonds and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

Research populations, identification, prohibition.

(c) The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

Controlled substances, exception.

(d) The Attorney General, on his own motion or at the request of the Secretary, may authorize the possession, distribution, and dispensing of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from State or Federal prosecution for possession, distribution, and dispensing of controlled substances to the extent authorized by the Attorney General.

COOPERATIVE ARRANGEMENTS

SEC. 503. (a) The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States;

(3) conduct training programs on controlled substance law enforcement for local, State, and Federal personnel;

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes; and

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this title; except that no such agency or instrumentality shall be required to furnish the name of, or other identifying information about, a patient or research subject whose identity it has undertaken to keep confidential.

Assistance.

Prohibition.

ADVISORY COMMITTEES

SEC. 504. The Attorney General may from time to time appoint committees to advise him with respect to preventing and controlling the abuse of controlled substances. Members of the committees may be entitled to receive compensation at the rate of $100 for each day (including traveltime) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the committees, members of the committees shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

Appointment.

Compensation.

Travel expenses, etc.

80 Stat. 498; 83 Stat. 190, 5 USC 5701.

ADMINISTRATIVE HEARINGS

SEC. 505. (a) In carrying out his functions under this title, the Attorney General may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

(b) Except as otherwise provided in this title, notice shall be given and hearings shall be conducted under appropriate procedures of subchapter II of chapter 5, title 5, United States Code.

80 Stat. 381, 5 USC 551.

SUBPENAS

SEC. 506. (a) In any investigation relating to his functions under this title with respect to controlled substances, the Attorney General may subpena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory

Exception.

Fees.

Service.

Refusal to obey subpena.

Order.

Failure to obey order, penalty.

Jurisdiction.

or other place subject to the jurisdiction of the United States at any designated place of hearing; except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpena. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) A subpena issued under this section may be served by any person designated in the subpena to serve it. Service upon a natural person may be made by personal delivery of the subpena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpena entered on a true copy thereof by the person serving it shall be proof of service.

(c) In the case of contumacy by or refusal to obey a subpena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpena. The court may issue an order requiring the subpenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

JUDICIAL REVIEW

SEC. 507. All final determinations, findings, and conclusions of the Attorney General under this title shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

POWERS OF ENFORCEMENT PERSONNEL

SEC. 508. Any officer or employee of the Bureau of Narcotics and Dangerous Drug designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this title; and

(5) perform such other law enforcement duties as the Attorney General may designate.

SEARCH WARRANTS

SEC. 509. (a) A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

Authority to break and enter under certain conditions.

(b) Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

"Controlled premises."

SEC. 510. (a) As used in this section, the term "controlled premises" means—

(1) places where original or other records or documents required under this title are kept or required to be kept, and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 303 (or exempted from registration under section 302(d)) may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances.

(b) (1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this title and otherwise facilitating the carrying out of his functions under this title, the Attorney General is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Attorney General. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the inspector shall have the right—

(A) to inspect and copy records, reports, and other documents required to be kept or made under this title;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in para-

graph (5) of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in clause (A) or otherwise bearing on the provisions of this title; and

(C) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data; or

(C) pricing data.

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpena issued in accordance with section 506, nor for entries and administrative inspections (including seizures of property)—

(1) with the consent of the owner, operator, or agent in charge of the controlled premises;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

Administrative inspection warrants, issuance and execution.

(d) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this title or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

"Probable cause."

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b) (2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made. Warrants, filing.

FORFEITURES

SEC. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this title or title III; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

Post, p. 1285.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this title.

(b) Any property subject to forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this title;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Property, custody of Attorney General.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this title, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Whenever property is forfeited under this title the Attorney General may—

(1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs;

(3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States. Controlled substances, forfeiture.

(g) (1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

INJUNCTIONS

SEC. 512. (a) The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this title. Jurisdiction of courts.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure. 28 USC app.

ENFORCEMENT PROCEEDINGS

SEC. 513. Before any violation of this title is reported by the Director of the Bureau of Narcotics and Dangerous Drugs to any United States attorney for institution of a criminal proceeding, the Director may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. Notice.

IMMUNITY AND PRIVILEGE

SEC. 514. (a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this title, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. Refusal to testify, prohibition.

Order.

(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

BURDEN OF PROOF; LIABILITIES

SEC. 515. (a) (1) It shall not be necessary for the United States to negative any exemption or exception set forth in this title in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this title, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

Ante, p. 1264.

(2) In the case of a person charged under section 404(a) with the possession of a controlled substance, any label identifying such substance for purposes of section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

65 Stat. 648.
21 USC 353.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this title, he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

(c) The burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with controlled substances in schedule I was used in accordance with the provisions of this title shall be on the persons engaged in such use.

Criminal liability, prohibition, exception.
62 Stat. 803.

(d) Except as provided in sections 2234 and 2235 of title 18, United States Code, no civil or criminal liability shall be imposed by virtue of this title upon any duly authorized Federal officer lawfully engaged in the enforcement of this title, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

PAYMENTS AND ADVANCES

Informers, payment.

SEC. 516. (a) The Attorney General is authorized to pay any person, from funds appropriated for the Bureau of Narcotics and Dangerous Drugs, for information concerning a violation of this title, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

(b) Moneys expended from appropriations of the Bureau of Narcotics and Dangerous Drugs for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Bureau.

(c) The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this title. Funds, advancement, authority of Attorney General.

PART F—ADVISORY COMMISSION

ESTABLISHMENT OF COMMISSION ON MARIHUANA AND DRUG ABUSE

SEC. 601. (a) There is established a commission to be known as the Commission on Marihuana and Drug Abuse (hereafter in this section referred to as the "Commission"). The Commission shall be composed of— Membership.

(1) two Members of the Senate appointed by the President of the Senate;

(2) two Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(3) nine members appointed by the President of the United States.

At no time shall more than one of the members appointed under paragraph (1), or more than one of the members appointed under paragraph (2), or more than five of the members appointed under paragraph (3) be members of the same political party.

(b) (1) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Seven members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Quorum.

(2) Members of the Commission who are Members of Congress or full-time officers or employees of the United States shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission. Members of the Commission from private life shall receive $100 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties. Travel expenses, etc. Compensation.

(3) The Commission shall meet at the call of the Chairman or at the call of a majority of the members thereof. Meetings.

(c) (1) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. Personnel. 80 Stat. 443, 467. 5 USC 5101, 5331.

(2) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants. Persons so employed shall receive compensation at a rate to be fixed by the Commission, but not in excess of $75 per diem, including traveltime. While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently. 35 F. R. 6247. Experts and consultants. 80 Stat. 416. Travel expenses, etc. 80 Stat. 499; 83 Stat. 190.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to Information, availability.

carry out its duties under this section. Upon request of the Chairman of the Commission, such department or agency shall furnish such information to the Commission.

Marihuana, study.

(d) (1) The Commission shall conduct a study of marihuana including, but not limited to, the following areas:

(A) the extent of use of marihuana in the United States to include its various sources, the number of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;

(B) an evaluation of the efficacy of existing marihuana laws;

(C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;

(D) the relationship of marihuana use to aggressive behavior and crime;

(E) the relationship between marihuana and the use of other drugs; and

(F) the international control of marihuana.

Report to President and Congress.

(2) Within one year after the date on which funds first become available to carry out this section, the Commission shall submit to the President and the Congress a comprehensive report on its study and investigation under this subsection which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

Drug abuse, study and investigation. Interim reports. Final report to President and Congress. Termination. Expenditures, limitation.

(e) The Commission shall conduct a comprehensive study and investigation of the causes of drug abuse and their relative significance. The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

(f) Total expenditures of the Commission shall not exceed $1,000,000.

PART G—CONFORMING, TRANSITIONAL AND EFFECTIVE DATE, AND GENERAL PROVISIONS

REPEALS AND CONFORMING AMENDMENTS

Repeals. 79 Stat. 227, 232, 228; 82 Stat. 1361.

SEC. 701. (a) Sections 201(v), 301(q), and 511 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(v), 331(q), 360(a) are repealed.

Penalties. 82 Stat. 1361.

(b) Subsections (a) and (b) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) are amended to read as follows:

"SEC. 303. (a) Any person who violates a provision of section 301 shall be imprisoned for not more than one year or fined not more than $1,000, or both.

"(b) Notwithstanding the provisions of subsection (a) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000 or both."

79 Stat. 233.

(c) Section 304(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(a)(2)) is amended (1) by striking out clauses (A) and (D), (2) by striking out "of such depressant or stimulant

drug or" in clause (C), (3) by adding "and" after the comma at the end of clause (C), and (4) by redesignating clauses (B), (C), and (E) as clauses (A), (B), and (C), respectively.

(d) Section 304(d)(3)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(d)(3)(iii)) is amended by striking out "depressant or stimulant drugs or". 79 Stat. 233.

(e) Section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) is amended (1) in subsection (a) by striking out paragraph (2), by inserting "and" at the end of paragraph (1), and by redesignating paragraph (3) as paragraph (2); (2) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (b); (3) by striking out the last sentence of subsection (b); (4) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (c); (5) by striking out the last sentence of subsection (c); (6) by striking out "(1)" in subsection (d) and by inserting a period after "drug or drugs" in that subsection and deleting the remainder of that subsection; and (7) by striking out "AND CERTAIN WHOLESALERS" in the section heading. 76 Stat. 794; 79 Stat. 231.

(f) Section 702 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) is amended by striking out "to depressant or stimulant drugs or" in subsection (e). 79 Stat. 234.

(g) Section 201(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(a)(2)) is amended by inserting a period after "Canal Zone" the first time these words appear and deleting all thereafter in such section 201(a)(2). 76 Stat. 796; 82 Stat. 1362.

(h) The last sentence of section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended (1) by striking out "This paragraph" and inserting in lieu thereof "Clause (2) of the third sentence of this paragraph,", and (2) by striking out "section 2 of the Act of May 26, 1922, as amended (U.S.C. 1934, edition, title 21, sec. 173)" and inserting in lieu thereof "the Controlled Substances Import and Export Act". 52 Stat. 1058.

(i)(1) Section 1114 of title 18, United States Code, is amended by striking out "the Bureau of Narcotics" and inserting in lieu thereof "the Bureau of Narcotics and Dangerous Drugs". 65 Stat. 721.

(2) Section 1952 of such title is amended— 75 Stat. 498.

(A) by inserting in subsection (b)(1) "or controlled substances (as defined in section 102(6) of the Controlled Substances Act)" immediately following "narcotics"; and 18 USC 1952.

(B) by striking out "or narcotics" in subsection (c).

(j) Subsection (a) of section 302 of the Public Health Service Act (42 U.S.C. 242(a)) is amended to read as follows: Drugs, study. 58 Stat. 692.

"SEC. 302. (a) In carrying out the purposes of section 301 with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act and Controlled Substances Import and Export Act, together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be Report to Attorney General.

Ante, p. 1242. Post, p. 1285.

84 STAT. 1283

reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts."

PENDING PROCEEDINGS

SEC. 702. (a) Prosecutions for any violation of law occurring prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(c) All administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on the date of enactment of this Act shall be continued and brought to final determination in accord with laws and regulations in effect prior to such date of enactment. Where a drug is finally determined under such proceedings to be a depressant or stimulant drug, as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act, such drug shall automatically be controlled under this title by the Attorney General without further proceedings and listed in the appropriate schedule after he has obtained the recommendation of the Secretary. Any drug with respect to which such a final determination has been made prior to the date of enactment of this Act which is not listed in section 202 within schedules I through V shall automatically be controlled under this title by the Attorney General without further proceedings, and be listed in the appropriate schedule, after he has obtained the recommendations of the Secretary.

Ante, p. 1281.

Ante, p. 1247.

PROVISIONAL REGISTRATION

SEC. 703. (a) (1) Any person who—

(A) is engaged in manufacturing, distributing, or dispensing any controlled substance on the day before the effective date of section 302, and

(B) is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954,

Ante, p. 1282.

68A Stat. 555.

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 303 for the manufacture, distribution, or dispensing (as the case may be) of controlled substances.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of section 303 of this title.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 303 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of manufacturers, distributors, or dispensers, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 704. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Parts A, B, E, and F of this title, section 702, this section, and sections 705 through 709, shall become effective upon enactment.

(c) Sections 305 (relating to labels and labeling), and 306 (relating to manufacturing quotas) shall become effective on the date specified in subsection (a) of this section, except that the Attorney General may by order published in the Federal Register postpone the effective date of either or both of these sections for such period as he may determine to be necessary for the efficient administration of this title.

Ante, p. 1256.

Publication in Federal Register.

CONTINUATION OF REGULATIONS

SEC. 705. Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

SEVERABILITY

SEC. 706. If a provision of this Act is held invalid, all valid provisions that are severable shall remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

SAVING PROVISION

SEC. 707. Nothing in this Act, except this part and, to the extent of any inconsistency, sections 307(e) and 309 of this title, shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act.

52 Stat. 1040.
21 USC 301.

APPLICATION OF STATE LAW

SEC. 708. No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

APPROPRIATIONS AUTHORIZATIONS

SEC. 709. There are authorized to be appropriated for expenses of the Department of Justice in carrying out its functions under this title (except section 103) not to exceed $60,000,000 for the fiscal year ending June 30, 1972, $70,000,000 for the fiscal year ending June 30, 1973, and $90,000,000 for the fiscal year ending June 30, 1974.

Ante, p. 1245.

TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

SHORT TITLE

Citation of title.

SEC. 1000. This title may be cited as the "Controlled Substances Import and Export Act".

PART A—IMPORTATION AND EXPORTATION

DEFINITIONS

SEC. 1001. (a) For purposes of this part—

(1) The term "import" means, with respect to any article, any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(2) The term "customs territory of the United States" has the meaning assigned to such term by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202).

77A Stat. 11.

(b) Each term defined in section 102 of title II shall have the same meaning for purposes of this title as such term has for purposes of title II.

Ante, p. 1242.

IMPORTATION OF CONTROLLED SUBSTANCES

Unlawful acts.

SEC. 1002. (a) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV, or V of title II, except that—

Exceptions.

(1) such amounts of crude opium and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

(2) such amounts of any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States—

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate, or

(B) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303,

Ante, p. 1253.

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance—

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

(c) In addition to the amount of coca leaves authorized to be imported into the United States under subsection (a), the Attorney General may permit the importation of additional amounts of coca leaves. All cocaine and ecgonine (and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made) contained in such additional amounts of coca leaves imported under this subsection shall be destroyed under the supervision of an authorized representative of the Attorney General.

EXPORTATION OF CONTROLLED SUBSTANCES

SEC. 1003. (a) It shall be unlawful to export from the United States any narcotic drug in schedule I, II, III, or IV unless— Unlawful acts.

(1) it is exported to a country which is a party to—

(A) the International Opium Convention of 1912 for the Suppression of the Abuses of Opium, Morphine, Cocaine, and Derivative Drugs, or to the International Opium Convention signed at Geneva on February 19, 1925; or 38 Stat. 1912. 61 Stat. 2230.

(B) the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs concluded at Geneva, July 13, 1931, as amended by the protocol signed at Lake Success on December 11, 1946, and the protocol bringing under international control drugs outside the scope of the convention of July 13, 1931, for limiting the manufacture and regulating the distribution of narcotic drugs (as amended by the protocol signed at Lake Success on December 11, 1946), signed at Paris, November 19, 1948; or 48 Stat. 1543. 62 Stat. 1796. 2 UST 1629.

(C) the Single Convention on Narcotic Drugs, 1961, signed at New York, March 30, 1961; 18 UST 1407.

(2) such country has instituted and maintains, in conformity with the conventions to which it is a party, a system for the control of imports of narcotic drugs which the Attorney General deems adequate;

(3) the narcotic drug is consigned to a holder of such permits or licenses as may be required under the laws of the country of import, and a permit or license to import such drug has been issued by the country of import;

(4) substantial evidence is furnished to the Attorney General by the exporter that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drug for medical or scientific uses within such country; and

(5) a permit to export the narcotic drug in each instance has been issued by the Attorney General.

(b) Notwithstanding subsection (a), the Attorney General may authorize any narcotic drug (including crude opium and coca leaves) in schedule I, II, III, or IV to be exported from the United States to a country which is a party to any of the international instruments mentioned in subsection (a) if the particular drug is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose. Ante, p. 1248.

(c) It shall be unlawful to export from the United States any nonnarcotic controlled substance in schedule I or II unless—

(1) it is exported to a country which has instituted and maintains a system which the Attorney General deems adequate for the control of imports of such substances;

(2) the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;

(3) substantial evidence is furnished to the Attorney General that (A) the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country to which exported, (B) it will not be exported from such country, and (C) there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and

(4) a permit to export the controlled substance in each instance has been issued by the Attorney General.

(d) Notwithstanding subsection (c), the Attorney General may authorize any nonnarcotic controlled substance in schedule I or II to be exported from the United States if the particular substance is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Ante, p. 1248.

(e) It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substance in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination;

(2) a special controlled substance invoice, in triplicate, accompanies the shipment setting forth such information as the Attorney General may prescribe to identify the parties to the shipment and the means of shipping, and

(3) two additional copies of the invoice are forwarded to the Attorney General before the controlled substance is exported from the United States.

TRANSSHIPMENT AND IN-TRANSIT SHIPMENT OF CONTROLLED SUBSTANCES

SEC. 1004. Notwithstanding sections 1002, 1003, and 1007—

(1) A controlled substance in schedule I may—

(A) be imported into the United States for transshipment to another country, or

(B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation,

if and only if it is so imported, transferred, or transshipped (i) for scientific, medical, or other legitimate purposes in the country of destination, and (ii) with the prior written approval of the Attorney General (which shall be granted or denied within 21 days of the request).

(2) A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.

POSSESSION ON BOARD VESSELS, ETC., ARRIVING IN OR DEPARTING FROM UNITED STATES

SEC. 1005. It shall be unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier,

arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle. Ante, p. 1248.

EXEMPTION AUTHORITY

SEC. 1006. (a) The Attorney General may by regulation exempt from sections 1002 (a) and (b), 1003, 1004, and 1005 any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.

(b) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance listed in paragraph (a) or (b) of schedule III or in schedule IV or V from the applicaton of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

PERSONS REQUIRED TO REGISTER

SEC. 1007. (a) No person may—

(1) import into the customs territory of the United States from any place outside thereof (but within the United States), or import into the United States from any place outside thereof, any controlled substance, or

(2) export from the United States any controlled substance in schedule I, II, III, or IV,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 1008, or unless such person is exempt from registration under subsection (b).

(b) (1) The following persons shall not be required to register under the provisions of this section and may lawfully possess a controlled substance:

(A) An agent or an employee of any importer or exporter registered under section 1008 if such agent or employee is acting in the usual course of his business or employment.

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment.

(C) An ultimate user who possesses such substance for a purpose specified in section 102(25) and in conformity with an exemption granted under section 1006(a). Ante, p. 1245.

(2) The Attorney General may, by regulation, waive the requirement for registration of certain importers and exporters if he finds it consistent with the public health and safety; and may authorize any such importer or exporter to possess controlled substances for purposes of importation and exportation.

REGISTRATION REQUIREMENTS

SEC. 1008. (a) The Attorney General shall register an applicant to import or export a controlled substance in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this section. In determining the public interest, the factors enumerated in paragraph (1) through (6) of section 303(a) shall be considered.

Ante, p. 1253.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration.

(c) The Attorney General shall register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in paragraphs (1) through (6) of section 303(d) shall be considered.

(d) No registration shall be issued under this part for a period in excess of one year. Unless the regulations of the Attorney General otherwise provide, section 302(f), 304, 305, and 307 shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 303.

Ante, pp. 1253-1258.

Rules and regulations.

(e) The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances under this section.

(f) Persons registered by the Attorney General under this section to import or export controlled substances may import or export (and, for the purpose of so importing or exporting, may possess) such substances to the extent authorized by their registration and in conformity with the other provisions of this title and title II.

(g) A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

(h) Except in emergency situations as described in section 1002(a)(2)(A), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

MANUFACTURE OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION

SEC. 1009. It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II—

(1) intending that such substance be unlawfully imported into the United States; or

(2) knowing that such substance will be unlawfully imported into the United States.

This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 1002, 1003, or 1007, knowingly or intionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b) (1) In the case of a violation under subsection (a) with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $25,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment. Ante, p. 1248.

(2) In the case of a violation under subsection (a) with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than $15,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(c) A special parole term imposed under this section or section 1012 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 1012 is in addition to, and not in lieu of, any other parole provided for by law.

PROHIBITED ACTS B—PENALTIES

SEC. 1011. Any person who violates section 1004 shall be subject to the following penalties:

(1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. Sections 402 (c) (1) and (c) (3) shall apply to any civil penalty assessed under this paragraph. Ante, p. 1262.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than $25,000 or both.

SECOND OR SUBSEQUENT OFFENSES

SEC. 1012. (a) Any person convicted of any offense under this part is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. If the conviction is for an offense

punishable under section 1010(b), and if it is the offender's second or subsequent offense, the court shall impose, in addition to any term of imprisonment and fine, twice the special parole term otherwise authorized.

(b) For purposes of this section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, one or more prior convictions of him for a felony under any provision of this title or title II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final.

Ante, p. 1242.

Ante, p. 1269.

(c) Section 411 shall apply with respect to any proceeding to sentence a person under this section.

ATTEMPT AND CONSPIRACY

SEC. 1013. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 1014. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

APPLICABILITY OF PART E OF TITLE II

Ante, p. 1270.

SEC. 1015. Part E of title II shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this title, to administrative and judicial proceedings under this title, and to violations of this title, to the same extent that such part applies to functions of the Attorney General (and such officers and employees) under title II, to such proceedings under title II, and to violations of title II. For purposes of the application of this section to section 510, any reference in such section 510 to "this title" shall be deemed to be a reference to title III, any reference to section 303 shall be deemed to be a reference to section 1008, and any reference to section 302(d) shall be deemed to be a reference to section 1007(b)(2).

Ante, p. 1274.
Ante, p. 1285.
Ante, p. 1253.

AUTHORITY OF SECRETARY OF TREASURY

SEC. 1016. Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

PART B—AMENDMENTS AND REPEALS, TRANSITIONAL AND EFFECTIVE DATE PROVISIONS

REPEALS

SEC. 1101. (a) The following provisions of law are repealed:

(1) The Act of February 23, 1887 (21 U.S.C. 191–193).

24 Stat. 409.

(2) The Narcotic Drugs Import and Export Act (21 U.S.C. 171, 173, 174–184, 185).

38 Stat. 275.

(3) The Act of March 28, 1928 (31 U.S.C. 529a).

53 Stat. 1262.

(4) Sections 2(b), 6, 7, and 8 of the Act of June 14, 1930 (21 U.S.C. 162(b), 173a, 197, 198).

46 Stat. 585; 70 Stat. 575.

(5) The Act of July 3, 1930 (21 U.S.C. 199). 46 Stat. 850.
(6) Section 6 of the Act of March 28, 1928 (31 U.S.C. 529g). 53 Stat. 1263.
(7) The Opium Poppy Control Act of 1942 (21 U.S.C. 188–188n). 56 Stat. 1045.
(8) Section 15 of the Act of August 1, 1956 (48 U.S.C. 1421m). 70 Stat. 910.
(9) The Act of July 11, 1941 (21 U.S.C. 184a). 55 Stat. 584.
(10) The Narcotics Manufacturing Act of 1960 (21 U.S.C. 501–517). 74 Stat. 55.

(b) (1) (A) Chapter 68 of title 18 of the United States Code (relating to narcotics) is repealed. 70 Stat. 572. 18 USC 1401-1405.

(B) The item relating to such chapter 68 in the analysis of part I of such title 18 is repealed.

(2) (A) Section 3616 of title 18 of the United States Code (relating to use of confiscated motor vehicles) is repealed. 62 Stat. 840.

(B) The item relating to such section 3616 in the analysis of chapter 229 of such title 18 is repealed. 68A Stat. 549.

(3) (A) Subchapter A of chapter 39 of the Internal Revenue Code of 1954 (relating to narcotic drugs and marihuana) is repealed. 26 USC 4701-4776.

(B) The table of subchapters of such chapter 39 is amended by striking out

"SUBCHAPTER A. Narcotic drugs and marihuana."

(4) (A) Sections 7237 (relating to violation of laws relating to narcotic drugs and to marihuana) and 7238 (relating to violation of laws relating to opium for smoking) of the Internal Revenue Code of 1954 are repealed. 70 Stat. 568;

(B) The table of sections of part II of subchapter A of chapter 75 of the Internal Revenue Code of 1954 is amended by striking out the items relating to such sections 7237 and 7238. 80 Stat. 1449. 26 USC 7237, 7238.

(5) (A) Section 7491 of the Internal Revenue Code of 1954 (relating to burden of proof of exemptions in case of marihuana offenses) is repealed. 26 USC 7491.

(B) The table of sections for subchapter E of chapter 76 of the Internal Revenue Code of 1954 is amended by striking out the item relating to such section 7491.

CONFORMING AMENDMENTS

SEC. 1102. (a) Section 4901(a) of the Internal Revenue Code of 1954 is amended by striking out the comma immediately before "4461" and inserting in lieu thereof "or", and by striking out ", 4721 (narcotic drugs), or 4751 (marihuana)". 79 Stat. 149.

(b) Section 4905(b)(1) of the Internal Revenue Code of 1954 (relating to registration) is amended by striking out ", narcotics, marihuana," and ", 4722, 4753,".

(c) Section 6808 of the Internal Revenue Code of 1954 (relating to special provisions relating to stamps) is amended by striking out paragraph (8).

(d) Section 7012 of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out subsections (a) and (b).

(e) Section 7103(d)(3) of the Internal Revenue Code of 1954 (relating to bonds required with respect to certain products) is amended by striking out subparagraph (D).

(f) Section 7326 of the Internal Revenue Code of 1954 (relating to disposal of forfeited or abandoned property in special cases) is amended by striking out subsection (b). 72 Stat. 1429.

(g) (1) Section 7607 of the Internal Revenue Code of 1954 (relating to additional authority for Bureau of Narcotics and Bureau of Customs) is amended— 70 Stat. 570.

(A) by striking out "The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents of the Bureau of Narcotics of the Department of the Treasury, and officers" and inserting in lieu thereof "Officers";

(B) by striking out in paragraph (2) "narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761)" and inserting in lieu thereof "narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act)"; and

(C) by striking out "BUREAU OF NARCOTICS AND" in the section heading.

(2) The item relating to section 7607 in the table of contents of subchapter A of chapter 78 of the Internal Revenue Code of 1954 is amended by striking out "Bureau of Narcotics and".

70 Stat. 570.

(h) Section 7609(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

72 Stat. 1430.

(i) Section 7641 of the Internal Revenue Code of 1954 (relating to supervision of operations of certain manufacturers) is amended by striking out "opium suitable for smoking purposes,".

68A Stat. 905.
26 USC 7641.

(j) Section 7651 of the Internal Revenue Code of 1954 (relating to administration and collection of taxes in possessions) is amended by striking out "and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana)".

(k) Section 7655(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

(l) Section 2901(a) of title 28 of the United States Code is amended by striking out "as defined by section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined by section 102(16) of the Controlled Substances Act".

80 Stat. 1438.

(m) The last sentence of the second paragraph of section 584 of the Act of June 17, 1930 (19 U.S.C. 1584), is amended to read as follows: "As used in this paragraph, the terms 'opiate' and 'marihuana' shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act."

58 Stat. 722;
60 Stat. 39.

(n) (1) The first section of the Act of August 7, 1939 (31 U.S.C. 529a), is repealed.

Repeal.
53 Stat. 1262.

(2) Section 3 of such Act (31 U.S.C. 529d) is amended by striking out "or the Commissioner of Narcotics, as the case may be,".

(3) Section 4 of such Act (31 U.S.C. 529e) is amended by striking out "or narcotics" each place it appears.

(4) Section 5 of such Act (31 U.S.C. 529f) is amended by striking out "or narcotics" in the first sentence.

(o) Section 308(c)(2) of the Act of August 27, 1935 (40 U.S.C. 304m) is amended by striking out "Narcotic Drug Import and Export Act" and inserting in lieu thereof "Controlled Substances Act".

49 Stat. 880.

(p) Paragraph (a) of section 301 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411) is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act".

80 Stat. 1444.

(q) Paragraph (a) of the first section of the Act of July 15, 1954 (46 U.S.C. 239a) is amended to read as follows:

68 Stat. 484.

"(a) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act."

(r) Paragraph (d) of section 7 of the Act of August 9, 1939 (49 U.S.C. 787) is amended to read as follows: 53 Stat. 1292.

"(d) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act;" "Narcotic drug."

(s) Paragraph (a) of section 4251 of title 18, United States Code, is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act". 80 Stat. 1442.

(t) The first section of the Act of August 11, 1955 (21 U.S.C. 198a), is amended to read as follows: "That for the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of title 18 of the United States Code (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 102 of the Controlled Substances Act), the Secretary of the Treasury may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States." Investigations, subpoena power. 69 Stat. 684. 62 Stat. 716. Witnesses, travel expenses.

PENDING PROCEEDINGS

SEC. 1103. (a) Prosecutions for any violation of law occurring prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

PROVISIONAL REGISTRATION

SEC. 1104. (a) (1) Any person—

(A) who is engaged in importing or exporting any controlled substance on the day before the effective date of section 1007,

(B) who notifies the Attorney General that he is so engaged, and

(C) who is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954, 76 Stat. 794; 79 Stat. 231. 21 USC 360. 68A Stat. 555. 26 USC 4722.

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 1008 for the import or export (as the case may be) of controlled substances.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of part A of this title. Ante, p. 1285.

Ante, p. 1255.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 1008 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of importers or exporters, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 1105. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Sections 1000, 1001, 1006, 1015, 1016, 1103, 1104, and this section shall become effective upon enactment.

Ante, pp. 1234, 1257.

(c)(1) If the Attorney General, pursuant to the authority of section 704(c) of title II, postpones the effective date of section 306 (relating to manufacturing quotas) for any period beyond the date specified in section 704(a) and such postponement applies to narcotic drugs, the repeal of the Narcotics Manufacturing Act of 1960 by paragraph (10) of section 1101(a) of this title is hereby postponed for the same period, except that the postponement made by this paragraph shall not apply to the repeal of sections 4, 5, 13, 15, and 16 of that Act.

(2) Effective for any period of postponement, by paragraph (1) of this subsection, of the repeal of provisions of the Narcotics Manufacturing Act of 1960, that Act shall be applied subject to the following modifications:

"Narcotic drug." Ante, p. 1244.

(A) The term "narcotic drug" shall mean a narcotic drug as defined in section 102(16) of title II, and all references, in the Narcotics Manufacturing Act of 1960, to a narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 are amended to refer to a narcotic drug as defined by such section 102(16).

(B) On and after the date prescribed by the Attorney General pursuant to clause (2) of section 703(c) of title II, the requirements of a manufacturer's license with respect to a basic class of narcotic drug under the Narcotics Manufacturing Act of 1960, and of a registration under section 4722 of the Internal Revenue Code of 1954 as a prerequisite to issuance of such a license, shall be superseded by a requirement of actual registration (as distinguished from provisional registration) as a manufacturer of that class of drug under section 303(a) of title II.

Ante, p. 1253.

(C) On and after the effective date of the repeal of such section 4722 by section 1101(b)(3) of this title, but prior to the date specified in subparagraph (B) of this paragraph, the requirement of registration under such section 4722 as a prerequisite of a manufacturer's license under the Narcotics Manufacturing Act of 1960 shall be superseded by a requirement of either (i) actual registration as a manufacturer under section 303 of title II or (ii) provisional registration (by virtue of a preexisting registration under such section 4722) under section 703 of title II.

(d) Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

TITLE IV—REPORT ON ADVISORY COUNCILS

REPORT ON ADVISORY COUNCILS

Reports to Congress.

SEC. 1200. (a) Not later than March 31 of each calendar year after 1970, the Secretary of the Department of Health, Education, and Welfare shall submit a report on the activities of advisory councils (established or organized pursuant to any applicable statute of the Public Health Service Act, Public Law 410, Seventy-eighth Congress, as amended, or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, as amended) to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and occupations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each advisory council.

77 Stat. 282. 42 USC 2661 note.

(b) If the Secretary determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined.

"Statutory advisory council."

(c) As used in this section, the term "statutory advisory council" means any committee, board, commission, council, or other similar group established or organized pursuant to any applicable statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter.

Approved October 27, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1444 (pts. 1 and 2) (Comm. on Interstate and Foreign Commerce) and No. 91-1603 (Comm. of Conference).
SENATE REPORT No. 91-613 accompanying S. 3246 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Jan. 23, 24, 26-28, S. 3246 considered and passed Senate.
Sept. 23, 24, considered and passed House.
Oct. 6, 7, considered and passed Senate, amended.
Oct. 8, 14, House agreed to conference report.
Oct. 14, Senate agreed to conference report.

PROPOSED CHANGES IN MARIHUANA CONTROLS,[1] 94TH CONG.—COMPARATIVE ANALYSIS

Subject	Existing law	S. 746/93d Cong., Hughes/Javits	S. 1450/94th Cong., Javits/Cranston et al.
Possession for private use.	1st offense is a misdemeanor, punishable by up to 1 yr in prison and/or up to $5,000. (However, see provision on discharge and record expungement, below.) 2d offense is a felony, punishable by up to 2 yr and/or up to $10,000. [21 U.S.C. 844(a)].	Makes such possession legal, whether for use by the possessor or by others if no profit is involved in the transfer. No limits are set on the amount that can be possessed privately (see below), but public possession is legal only in an amount not exceeding 3 oz.	Makes such possession subject only to a civil fine of up to $100, if the amount possessed does not exceed 1 oz. Makes no distinction between 1st and subsequent offenses.
Definition of "private"	No distinction is made between private and public possession, nor between possession for private use as opposed to possession for use in public.	"Private" means: "within a private dwelling or other residence for [one's] own use or for the use of others, within any such residence or dwelling," if it is not intended to distribute the marihuana for profit.	Same as S. 746.
Nonprofit distribution	Treats distribution of "a small amount" for no remuneration the same as a simple possession offense (see above). [21 U.S.C. 841(b)(4)]	Makes it legal to distribute "lawfully possessed" marihuana (i.e., possessed for private personal use or for the private personal use of others if no profit is involved in the transfer—and, where the possession is in a public area, in an amount not exceeding 3 oz.) when such distribution is not made for profit. Does not define "profit".	Makes nonprofit distribution of "lawfully possessed" marihuana subject only to a civil fine of up to $100. However, since no possession would be lawful under the bill, the language would appear to frustrate the obvious intent of the provision. Apparently, there would be no limit on the amount that could be distributed under the specified circumstances without incurring greater liability than the civil fine.
Special 1st offender treatment.	Provides that a court may, upon finding any person guilty of simple possession of any controlled dangerous substance—who has not previously been convicted of violating a Federal law relating to the substances covered under the Controlled Substances Act—defer further proceedings and place the person on probation for up to 1 yr. Upon fulfillment of the terms of probation, the court is required to dismiss the proceedings. The discharge may not be deemed a conviction for the purposes of the disabilities imposed by law upon persons convicted of crimes. However, the discharge and dismissal is available only once, unless the person were under 21 at the time of the offense. The under-21 offender who is discharged is entitled to an order expunging all records of his arrest and trial except for a nonpublic record retained by the Justice Department. [21 U.S.C. 844(b)].	No comparable provision	No comparable provision, but contains this language: "Nothing in this section shall be construed as requiring the Attorney General to initiate proceedings involving violations of this section whenever he believes that the public interest will be adequately served by a suitable written notice or warning."

PROPOSED CHANGES IN MARIHUANA CONTROLS,[1] 94TH CONG.—COMPARATIVE ANALYSIS—Continued

Subject	Existing law	S. 746/93d Cong., Hughes/Javits	S. 1450/94th Cong., Javits/Cranston et al.
Marihuana intoxication as defense to a charge of violation of a Federal law.	No provision comparable to those of S. 746 or S. 1450.	Provides that in the prosecution of any person charged with a Federal offense, the fact that the person was suffering from marihuana intoxication at the time he committed the offense may not be a defense to the charge.	Same as S. 746, but exempts from the restriction cases where the intoxication was not self-induced.
Definition of "marihuana."	Means "all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin . . .". Includes hashish. [21 U.S.C. 802(15)].	Same	Same.

[1] U.S. Senate, Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary, Honorable Birch Bayh, Chairman.

94TH CONGRESS
1ST SESSION

S. 1450

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1975

Mr. JAVITS (for himself, Mr. BROOKE, Mr. CRANSTON, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend certain provisions of the Controlled Substances Act relating to marihuana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Marihuana Control Act of 1975".

SEC. 2. That the Controlled Substances Act is amended by inserting immediately after section 404 thereof the following new section:

"SEC. 404A. (a) Notwithstanding the provisions of section 308, 401(a)(1), 404, or any other provision of this title or any other Federal law, any person who—

"(1) possesses not more than one ounce of marihuana within a private dwelling or other residence for his own use, or for the use of others, within any such residence or dwelling, if such marihuana is not possessed with the intent to distribute, transfer, or sell such marihuana in violation of this title or any other Federal law; or

"(2) possesses in a public area, not more than one ounce of marihuana if the possession of such marihuana is incident to a private use within the purview of subparagraph (1) of this paragraph, and is not with the intent to distribute, transfer, or sell such marihuana for profit in violation of this title or any other Federal law; or

"(3) distributes or transfers, in public or private, any marihuana lawfully possessed, to any person for a private use within the purview of subparagraph (1) of the first paragraph of this subsection, if such distribution or transfer, is not made for profit—

shall be guilty of an offense, for which such person shall be subject to a civil fine of not more than $100. Such acts shall not constitute crimes against the United States and such person shall not be subject to arrest or suffer any disadvantage or disability except that specified in this section.

"(b) Nothing in this section shall be construed as requiring the Attorney General to initiate proceedings involving violations of this section whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

"(c) In the prosecution of any person charged with an offense in violation of any Federal law, the fact that such person was suffering from marihuana intoxication at the time of the commission of that offense shall not be a defense to that charge or any element thereof, unless such intoxication was not self-induced.".

MARIJUANA DECRIMINALIZATION

WEDNESDAY, MAY 14, 1975

U. S. SENATE,
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Bayh, Hart, Burdick, Kennedy, Mathias, Hruska, and Fong) met, pursuant to notice, at 10:10 a.m., in room 6202, Dirksen Senate Office Building, Senator Birch Bayh (chairman of the subcommittee) presiding.

Present: Senators Bayh and Hart of Michigan.

Also present: John M. Rector, staff director and chief counsel; Mary Kaaren Jolly, editorial director and chief clerk; and Alice Van Landingham, staff assistant.

Senator BAYH. We will convene our hearing this morning.

The subcommittee's enabling resolution, S. Res. 72, section 12, 94th Congress, is hereby noted for the record. I will also include the complete text of Public Law 91–513, the Comprehensive Drug Abuse Prevention and Control Act of 1970, October 27, 1970; a comparative analysis of proposed changes in marihuana controls compiled by the subcommittee; and the text of S. 1450, a bill to amend certain provisions of the Controlled Substances Act relating to marihuana in the hearing record.[1]

I will state my thoughts that compelled me, as the chairman of the subcommittee, to ask the committee to begin to hold hearings on the subject.

I will then yield to my colleague from Michigan, and we will get on to addressing ourselves to the problem of receiving the thoughts of our very distinguished panel of witnesses.

OPENING STATEMENT OF SENATOR BIRCH BAYH, CHAIRMAN

Senator BAYH. We meet today to consider legislation relating to the appropriate legal sanctions for the private possession of small amounts of marihuana.

Throughout the Subcommittee To Investigate Juvenile Delinquency's 4-year investigation of drug traffic and abuse I have noted with concern the growing number of arrests for marihuana possession. Arrests have increased from 188,682 in 1970 to 420,700 in 1973. It may go as high as 500,000 for 1974. This is not nearly as dramatic as the 1,000-percent increase between 1965–70 from 18,815 to 188,682; but it is rather astonishing that this 3-year increase of 232,018 is more than 12 times the total marihuana arrests just 10 years ago.

[1] See p. LXXXIII.

Additionally, the number of marihuana arrests as a percentage of all drug arrests has increased substantially. In 1970 these arrests amounted to 45.4 percent of total drug arrests. During the 1970–73 period 1,127,389 of the total 2,063,900 drug arrests were for marihuana. And in 1973, the most recent year for which records are available, 67 percent of all drug arrests were for marihuana.

Available studies and research to date have found that the majority of those arrested are otherwise law-abiding young people in possession of small amounts of marihuana. In fact, a Presidential commission found that the vast majority of users are essentially indistinguishable from their nonuser peers by any criteria other than its use.

During these last 4 years, I have likewise been especially concerned about the ever-escalating level of serious crime. The recently released FBI report on the trends in crime for 1974 presents a frightening picture of the rising tide of criminal activity in America. Serious crime in the United States rose 17 percent last year, the highest annual increase since the FBI began collecting data 45 years ago. In fact, the increase for the final quarter of 1974 had reached 19 percent. The suburban increase for last year was 20 percent while crime in rural areas increased by 21 percent. In smaller communities—under 10,000—crime increased by 24 percent last year while robbery alone went up 30 percent.

ALLOCATING CRIME FIGHTING RESOURCES

The rising tide of serious crimes inevitably raises the question of whether we are properly allocating our crime fighting resources and aggressively pursuing the arrest and criminal prosecution of the 13 million American users of marihuana. It is estimated that the prosecution of these cases costs $600 million annually.

In 1969 and 1970 the subcommittee considered the adequacy of penalties for marihuana with the result that the new Controlled Substances Act provided that simple possession or distribution of a small amount of marihuana for no remuneration were both designated misdemeanors, not felonies, punishable by up to 1 year in jail and/or up to a $5,000 fine. It was the view of many members that the sanctions should be further reduced. Some suggested that the sanction be eliminated for such conduct.

In order to permit a thorough assessment of these issues the subcommittee recommended the creation of a Presidential commission. The Congress agreed and provided for the establishment of the Commission on Marihuana and Drug Abuse in part F of the Controlled Substances Act.

This body known as the Shafer Commission, after its distinguished chairman, conducted an in-depth study of the issues and concluded that marihuana was not dangerous enough to the user or to the general public for its private possession and use to remain a criminal offense.

In the last several years a growing list of organizations and individuals have endorsed the Shafer Commission recommendations, including the following:

American Bar Association.
Consumer Union, publishers of Consumer Reports.
National Conference of Commissioners on Uniform State Laws.
American Public Health Association.

National Advisory Commission on Criminal Justice Standards and Goals.

National Council of Churches.

The Governing Board of the American Medical Association.

National Education Association.

B'nai B'rith.

Canadian Commission of Inquiry into the Non-Medical use of Drugs [Le Dain Commission].

San Franciso Committee on Crime.

Mayor's Advisory Committee on Narcotics Addiction [Washington, D.C.].

John Finlator, retired Deputy Director, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice.

William F. Buckley, Jr., syndicated columnist, author, TV host and editor of National Review.

James J. Kilpatrick, syndicated columnist, Washington Evening Star.

In the Senate, several subcommittees have developed informative records regarding the impact of marihuana abuse. The Subcommittee on Alcoholism and Narcotics, of the Committee on Labor and Public Welfare, has very effectively identified the qualities of marihuana as they impact on the public health and welfare. The Subcommittee on Internal Security, of the Committee on the Judiciary, has assessed the impact of marihuana use on U.S. security and I would agree, as Dr. Robert DuPont, director of the Special Action Office of Drug Abuse Prevention recently said of its work. "I think Senator Eastland is to be commended for his efforts to consolidate many of these new studies and to bring them to the attention of the American people."

S. 1450 POLICY OF MARIHUANA DISCOURAGEMENT

The subject of our hearing S. 1450, the "Marihuana Control Act of 1975" introduced by Senators Javits, Cranston, Brooke, and Nelson, reflects the general recommendation of the Shafer Presidential Commission. It adopts an approach similar to that undertaken by the State of Oregon which abolished criminal penalties for simple possession of marihuana and substituted a civil fine of up to $100 for possession and nonprofit transfers of up to 1 ounce of marihuana. Criminal penalties for sale of the drug for profit would remain intact. Thus, this approach maintains a policy of discouragement toward marihuana use while recognizing the current inappropriate use of law enforcement resources and the destructive impact of criminal records for such common conduct.

This measure and others such as S. 746, introduced by Senators Hughes and Javits in the 93d Congress, are often referred to as decriminalization bills. It is important to note, however, that there are significant difference even between these measures. For example, under the old Hughes-Javits bill private possession of any amount of marihuana, so long as it was not possessed with the intent to sell for profit, would have been lawful. Similarly, the earlier bill removed all sanctions for the public possession of 3 ounces or less if incident to private use and not held with intent to sell for profit, and if lawfully possessed, this amount was not subject, as contraband, to seizure or

forfeiture. The focus of our hearing today—S. 1450—however, while it eliminates criminal sanctions for possession of only 1 ounce for private use, it retains a civil sanction against such possession. We will explore additional differences during the hearing this morning.

Although more can be learned about the Oregon experience, one recent study found that after the first year there was no increase in the number of users and a majority of Oregonians approve the new law. In an interview last week with writer Thomas Love of the Washington Star, Oregon Attorney General, Lee Johnson, said that rather than decrease the respect for law among young people the new approach has probably increased it. He said, "It has given them [young people] a feeling that government is more receptive to changes which have taken place. I think it's probably created more respect for government as a whole."

Similar measures are being considered by more than 20 State legislatures.

REASSESS NATIONAL POLICY RELATED TO SERIOUS CRIME

In view of the failure, nationally, to curb violent and serious crime, I believe it is time to seriously reassess our priorities relative to the limited resources available to the Nation's severely overburdened criminal justice agencies.

Are taxpayers, who are primarily and understandably interested in the protection of properly and safety of person, most effectively served by the investment of $600 million in marihuana possession cases?

Is the public interest served by arresting annually 500,000, mostly young people, for simple possession of small amounts of marihuana and thereby assuring that they are inhibited for life—in their education and careers—by the unrelenting stigma of a criminal record?

Is the public getting the highest return on their tax dollars in the national effort to curb drug traffic and drug-related crime when two-thirds of all drug arrests are for predominately simple marihuana possession?

I am inclined to think not.

As D.C. Superior Court Chief Judge Harold H. Greene emphasized last week, we must concentrate our limited resources on the vigorous pursuit and prosecution of more serious offenders such as murderers, rapists, robbers, burglars, and those committing aggravated assaults.

I, for one, feel that we have had too many efforts on the part of public officials to shy away from controversy by ignoring reality and to try to look at facts and come to what might be a popular conclusion, instead of the accurate conclusion. I am hopeful that these hearings will, by their very existence, show that the Congress of the United States is wiling to pursue the right answer to the question—that is not without significant controversy.

The whole country is deeply alarmed about the fact that we have recently been advised by the Federal Bureau of Investigation that during last year we had a larger increase in crime in this country than at any other previous time in our history.

The Subcommittee to Investigate Juvenile Delinquency has, in many instances, been made painfully aware of the direct correlation

between drug abuse and a certain type of criminal activities. We have been recently advised that there has been another wave of opiate-heroin abuse in the country. We used to have the "French connection" with opium coming in from Turkey. Now, we are advised that a big percentage of heroin comes into the country from Mexico. It has been dramatically increased.

Let there be no question of what this does to society. Yet, when you look at the hard facts, 67 percent of all drug arrests last year were not from opium, barbiturates or amphetamines, but, were from marihuana. A large percentage of these, a half a million Americans, were arrested for the possession of small amounts of marihuana. It is reasonably estimated that we spend almost $600 million each year in the prosecution of offenders whose offense against society is possession or use of small amounts of marihuana.

It seems that we must direct our attention whether we are really serving society well by utilizing that amount of resource toward those who possess small amounts of marihuana. Thus, that money is taken away from the pursuit of criminals who are creating much more serious offense against society.

HYPOCRISY OF LAW ENFORCEMENT POLICIES

In addition, I think we, as public officials, have a responsibility to understand that there is a tremendous amount of hypocrisy in the country today. Large numbers of Americans are deeply concerned about the manner that some of our laws are enforced and some of them are not; the way in which they are not enforced equally against all offenders; and, the way in which our priorities—as far as law enforcement concern—are really not relevant to the critical problems that confront us today.

I want us to pay particular attention, during these hearings to the extent to which some of our laws are not enforced. Some of them are enforced more strenuously against certain segments of our population, than they are against others. In particular, I say to my distinguished colleague from Michigan, I find the ultimate hypocrisy in our society expressed very eloquently in the way which we impose very strenuous sentences on some young people—who for reasons that appear to be good to them, although, frankly, they would not appear to be good to me—that use marihuana. They end up spending long periods of their life in jail. Yet, in the same States that support this type of penalty for the use and individual use of marihuana, you can find someone out on the highway intoxicated, endangering everybody they meet, and their sentence will be, perhaps, to lose their license.

There is, also, a great deal of hypocrisy about the differing ways society reacts to the use of differing kinds of drugs or substances that have a detrimental impact on human beings.

I am hopeful we will pursue the answers to some of these questions. But, frankly, I think the evidence is still out. I hope we can still the hysteria, and that we can pursue the truth wherever it leads us. And if we make some people angry, that is the price we pay and the responsibility we have.

I yield to my distinguished colleague from Michigan.

Senator HART. Thank you, Mr. Chairman.

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STATEMENT OF SENATOR PHILIP HART

Senator HART. I welcome a chance to be brought up to date on where we are and where we should be on marihuana. Since the record does not contain pictures, I will have to describe myself as from that generation.

I understood that if you used marihuana on Tuesday, that of course you would be on heroin on Friday. I have been updated. It takes at least a full week. There are those who still believe that.

In the last campaign I was running and in 1970 I explained, though from that generation, I had doubts about our wisdom and said that I would like in this term to see the Congress act on the best evidence available. Does it hurt a user? And to what extent? And in what sense is society disadvantaged by possession and distribution of small amounts.

I am satisfied that the answers are in and appear to be correct. I propose to offer an amendment to codification of the criminal code S. 1 to remove any sanction for possession and noncommercial distribution for up to 100 grams. I am told that is about 3½ ounces.

My education, like a lot of people of my generation, included the fact that one of my children is one of the statistics that you have here. He is a minor and spent 20 days in jail for a stub that big [indicating]. That is all the education I needed to convince me that it—marihuana prosecution policy—was a topsy-turvey operation and made no sense.

I hope before I leave here, we will have corrected that.

Senator BAYH. Thank you, Senator Hart.

I would like to say it has been my fortune to serve in the U.S. Senate for over 12 years. Of the inspirations I have had with my colleagues, one whom I would like to be able to emulate fully and completely, is my distinguished friend and colleague from Michigan. I know no one who pursues the truth more doggedly—without regard to where it may lead—to the perspective of his conscience.

I am alarmed at the rumors—which I hope are unfounded—that perhaps the times have weighed heavily enough on my friend from Michigan that he might seek to be removed of this burden. Although, let me say, it would be easy to understand why those burdens would become onerous. However, if you were to leave, it would significantly increase the burden of many of us. We would find it very difficult to follow his example, and pick up the load that he now carries.

This morning we are privileged to hear testimony from a knowledgeable panel of legal experts who are intimately familiar with the issues we intend to discuss. I look forward to an informative and productive session.

Mr. Donald Miller, who is the General Counsel of the Drug Enforcement Administration, here on the behalf of the Attorney General; Mr. Keith Stroup, director of the National Organization for the Reform of Marihuana Laws; Richard Bonnie, assistant professor of law, University of Virginia; Hon. J. Pat Horton, district attorney, Lane County, Eugene, Oreg.; and Richard Wood, assistant district attorney, Denver, Colo.

RELATION TO LAWLESSNESS AND CRIME

Gentlemen, we appreciate your presence. There is so much fiction involved regarding marihuana—what is its potential for harm to human beings and to society; what are the ramifications of current control policies on the total drug picture, and its relationship to lawlessness and crime?

Mr. Horton, in your constituency where a different approach to marihuana is pursued, what has been the impact? And rather than have the traditional, unfortunately rather cold, stereotyped approach of a hearing where we would have a series of witnesses—although each one of you, in your own right, is very well qualified to testify individually—I would like for us to develop a dialog where we can be very frank and open with one another.

I think the panel approach is more desirable than a series of more formalized statements. I understand that all of you may have some thoughts that you would like to share, formally or informally, and I do not mean to put any restrictions on your approach to this subject matter.

I think, perhaps, Mr. Miller, the protocol suggests that you ought to initiate our testimony. So, if we could begin with you, and then proceed to the other witnesses. That is what I would like to do, if it is all right with you other gentlemen.

STATEMENT OF DONALD MILLER, CHIEF COUNSEL, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPT. OF JUSTICE, ON THE BEHALF OF THE ATTORNEY GENERAL OF THE UNITED STATES

Mr. MILLER. Thank you, Mr. Chairman.

I am appearing here today on behalf of the Department of Justice, specifically the Drug Enforcement Administration. Also, I will qualify or add to my prepared statement [1] which has been transmitted to the subcommittee.

At the outset, I want to state that marihuana in the United States is big business. It is not the same casual transfer and use of small amounts of an innoxious weed that we saw back in the 1930's, when we first decided to take action against marihuana. Today, tons of marihuana are being smuggled into the United States by large well-financed, well-organized criminal organizations.

Total domestic and foreign cooperative removals of marihuana have increased from about 184,000 pounds in 1970 to over 2 million pounds in 1974. Considering that we probably do not remove a high percentage of the marihuana from the total market, the amount getting through is astronomical.

Necessarily, and in accordance with our congressional mandate, the Drug Enforcement Administration has concentrated its investigative resources on the supply of marihuana. DEA has made very few arrests for possession without intent to distribute.

LABORATORY ANALYZES OVER 1,000 1-OUNCE MARIHUANA "CASES"

Parenthetically, Mr. Chairman, I would like to add that our laboratory reports reveal that over 1,000 exhibits of marihuana under 1 ounce were submitted for analysis by DEA agents during the last 12 months. Those simple possession cases made by the Bureau of Customs and the Immigration and Naturalization Service as a result of routine border searches are usually turned over to the States for disposition.

Accordingly, insofar as the Department of Justice is concerned, the criminal sanctions for simple possession in section 404 of the Controlled Substances Act have not been applied as an enforcement measure against marihuana users and minor distributors.

I mean, by that, that our agents do not set out deliberately to make seizures of small amounts of marihuana as an enforcement strategy. It may be worthwhile then to consider what we have sought to do by means of applying criminal sanction against simple possession and distribution of small amounts of marihuana.

Ask the man on the street the purpose of the marihuana penalties and he will probably reply in effect, to prevent social harm. Ask him how the law operates to prevent social harm and he almost certainly will say, by punishing people who commit marihuana offenses, which results in deterring others from committing such offenses. Other people will mention that the law is a symbol; a majority of the society expressing its disapproval of drug use through the criminal law.

[1] See p. 17.

That seems to sum it up. We have concluded since enactment of the Marihuana Tax Act of 1937, that marihuana use should be discouraged by subjecting related activity to criminal punishment. Although substantially reduced from the previous harsh penalties, when the Controlled Substances Act of 1970 was drafted, we again designed a stimulus in the form of penalties in attempt to convince our people to avoid courses of action potentially dangerous.

Has it worked? Are people ever deterred from what they want to do by threat of physical suffering? And, if the threat of punishment does deter marihuana offenders, is it the fear of going to jail rather than the inconvenience and perhaps disgrace of paying a $100 fine that people would fear?

REAL PREVENTION . . . PUBLIC PSYCHOLOGY

Real prevention of the spreading abuse of marihuana is a complicated subject of cause and correction, and of public psychology as well. Not even a short presentation, so far as I am concerned, would be possible in time that I have here today Mr. Chairman.

But, these are important factors that should be studied fully before changes are made—changes that may result in an even less effective social force against marihuana use.

S. 1450 would invoke a new concept into our attempt to control drug abuse. The proposed legislation would amend the Controlled Substances Act of 1970 by eliminating as a crime any offense; (1) of possessing up to 1 ounce of marihuana without intent to distribute it, and, (2) distributing up to 1 ounce of marihuana if not made for profit. Such offenses would be punishable by a civil fine of not more than $100, and violators would not be subject to arrest or any other disadvantage or disability not specified in the new section. Paragraph (b) of the bill would establish additional latitude by authorizing the Attorney General to disregard enforcement of the civil remedy "whenever he believes that the public interest will be adequately served by a suitable written notice or warning."

Senator BAYH. Mr. Miller, excuse me for interrupting, I have to ask if you have any recommendations for perhaps improving this legislation? I would hope that—particularly from the Department of Justice standpoint—we could take a broad approach to this and not just be confined to the one particular bill in question.

Perhaps we will do that. I just want to suggest I think that it is appropriate that you look at the one bill that has been introduced. There have been a number of suggestions and I would like for us to get a general feeling.

Mr. MILLER. In a negative way I can set forth certain recommendations. I have no positive recommendations.

Senator BAYH. You have complete liberty to be either negative or positive, as you care to describe those terms.

Mr. MILLER. The sponsors of the proposed legislation have made an effort to walk the thin line between so-called "legalization" of marihuana and so-called "decriminalization." It is clear to me that the sponsors intend for the legislation to operate as a de facto blockade against enforcement of certain provisions of the Controlled Substances

Act. I say that because of the way the bill is drafted. But also, since such a change in the Federal law would ultimately result in widespread adoption at the State level, the consequences of the proposed legislation could be the elimination of police agencies from enforcing laws against personal possession and distribution of small amounts of marihuana.

Although possession of not more than 1 ounce of marihuana for personal use is still an offense under S. 1450, the ability to enforce the provision is nearly insurmountable. The bill states at the end of subsection (a) that "such person shall not be subject to arrest or suffer any disadvantage of disability except as specified in this new section."

Frankly, I do not know what that means. Does it mean that the offender may not ever be summoned before a U.S. magistrate under Rule 4 of the Rules of Criminal Procedure?

I have no doubt that Rule 41 relating to search warrants would not be applicable, since the essential ground for the issuance of a search warrant is that the property is intended for use as a means of committing a criminal offense. Without the power to search or arrest, the only possibility of a person being charged with simple possession would be pursuant to a lawful search incident to another offense, and I am not even sure that that is really possible.

The difficult feature in paragraph (a) (1) is in determining whether the marihuana is intended for distribution. Considering that paragraph (a) (3) creates a civil fine of up to $100 for distribution of not more than 1 ounce of marihuana before a search warrant could be issued, I believe proof would be required showing that the person possessing the marihuana intended to make a distribution for profit.

Paragraph (a) (2) poses similar difficulties. If the person who possesses the marihuana in public cannot be arrested, how else can the provision be enforced? If a police officer has positive reason to believe that a person is in possession of 1 ounce of hashish, unless the person has the hashish in plain sight what power does the officer have? Without authority to search, I question whether he can do anything.

In the normal street situation, an officer does not always have the facts necessary to make a decision precisely in line with the proposed legislation. He will not be able to readily determine whether the amount possessed is more than 1 ounce; it is not specified in the bill what procedures are to be followed in lieu of arrest; the officer cannot discern whether the person is transient or likely to honor a summons—presuming that we have the authority to issue a summons—and it is not clear what is the recourse when a person does not honor the summons.

The other feature of the bill, namely the provision relating to casual distribution of small amounts of marihuana for no profit, is also objectionable. This feature goes against all reasons for having drug control laws. It is a pronouncement that the Government no longer takes a harsh view regarding proselytizers—those persons who convert naive persons to drug abusers.

This provisions means that if a person desires to introduce marihuana use to juveniles, he may do so and face only a fine of up to $100 so long as the transfer is totally donative or only to reimburse himself for out-of-pocket expenses.

DISCREPANCY IN LANGUAGE OF JAVITS' BILL

I want to add something here, Mr. Chairman, that is not in my prepared text. But it is an important discrepancy. That is between paragraps (a) (1) and (a) (3) of S. 1450, on page 2.[1] Paragraph (1) seems to except from its coverage any marihuana possessed without intent to distribute. It could be concluded that such a person could be charged with a felony under section 401 of the Controlled Substances Act. But, paragraph (a) (3) does something different. If the substantive effect of selling carries a penalty of only a $100 fine, how can the offense of possession for sale carry a higher penalty?

Apparently, what the sponsors of the bill had in mind, was to also add the words "not for profit" to paragraph (1) and also to paragraph (2).

Senator BAYH. Is that question one of your own conviction, or do you view it as a legal——

Mr. MILLER. As a legal difficulty, sir.

Senator BAYH. Do you think we, in the Congress, are prohibited from legislating, "if you sell it we can fine you; if you own it we cannot fine you—or do not choose to"?

Mr. MILLER. The courts would have a field day presuming you would ever get a case to the courts.

Senator BAYH. Well, the courts are having a field day now with several hundred thousand kids and older people who use marihuana; and I think we have to make the best judgment. But looking at this from a constitutional standpoint, if you feel that you are in a position to advise us in that regard we will pursue that question, because that is a legitimate one. It is one that I struggled with in the Schafer Commission report, in trying to balance the differing opinions that exist in the country.

If you think it is wrong to have language saying you cannot sell it, and then treating it differently when in possession, that is one thing. But looking at it from a constitutional question, do you, the Justice Department, or anybody in the administration have a position about the constitutionality of the ability of the Congress to distinguish between possession and sale?

Mr. MILLER. No, sir. I do not make that statement at all.

Senator BAYH. What other question is there except legality, as far as the "courts having a field day" is concerned?

Mr. MILLER. The courts in sentencing people are going to be much concerned about a law that authorizes a felony conviction for possession with intent to sell marihuana, whereas, a person who actually sells under 1 ounce is subject only to a $100 fine. That is the way the bill is presently drafted.

Senator BAYH. There is nothing unique about that.

You could be walking down the street with a coat; you could be driving somebody else's car and have a Rembrandt painting in it; any number of different examples where just ownership is not illegal. Because, in the process, you are not doing anything like selling the object. It is a matter of proof is it not? That is not a new question as far as our courts are concerned.

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[1] See p. LXXXIV.

Mr. MILLER. That is a new issue, so far as I know, in drug control; that is, where a person can be charged with a higher offense for possessing a substance that he can be charged for selling the same substance.

Senator BAYH. I believe we are trying to see whether we should take a new look at this. This is new as far as drug enforcement is concerned. We are trying to find out just where this course leads; and I appreciate your analysis of it.

PROOF OF INTENT IN CRIMINAL LAWS

The reason I keep interrupting here is that I want us to be absolutely certain that we know what we *are* saying, and what we *are not* saying. The burden of proving intention, as part of a criminal sanction, is not unique as far as criminal laws of this country are concerned.

Mr. MILLER. No, sir, it is not unique. Another troublesome feature, Mr. Chairman, is that the proposed legislation does not authorize the seizure of the marihuana illegally possessed. Although section 511(f) of the Controlled Substances Act considers marihuana as a contraband which may be seized and summarily forfeited, the bill provides that such person shall not suffer any disadvantage or disability except that specified in this section.

Mr. Chairman, I have discussed some of the problems that immediately come to mind in analyzing S. 1450. Perhaps an example of how the bill would operate in practice would be enlightening. Picture this situation at Dulles Airport.

Customs inspectors have found a package containing three-quarters of an ounce of hashish in the luggage of a person entering the United States. Faced with the need to do something, they read this new section 404A and find that the person cannot be arrested; that any search of the person would have to be based on general customs law authority; that they have no power to seize the hashish; and that they have a dubious responsibility to subject the violator to a civil fine. The inspectors debate whether the person can be detained, and whether he can be taken against his will to a U.S. magistrate. They will find no answers in the new law.

How do we get a person charged? This bill is simply devoid of procedure of getting a person charged before the U.S. magistrate. Remember, that our agents are not authorized by anything I have ever read that gives them the power to issue a citation demanding a person to show up before a U.S. magistrate for a civil offense. You might say, well, take them immediately before the U.S. magistrate. We do not have the authority to do that. If a person decides he does not want to go, we could not arrest him, we could not issue a citation, we could not command him to go before the magistrate. I am simply at a loss to say how the bill can be administered.

Another example is the situation where DEA agents executing a search warrant for heroin violation find only a package containing three-quarters of an ounce of hashish. Remembering that the new law would not allow the person to be subjected to any other disadvantage or disability, how can they gather evidence sufficient to prove the charge. Can they seize the marihuana as evidence of the offense? Or does the bill intend to negate that authority? I do not know.

COMITY OF NATIONS . . . AGREEMENTS ON DRUG TRAFFICKING

Turning to another consideration, Mr. Chairman, a very important one, a threshold question in any discussion of making marihuana possession violation virtually unenforceable, is one of comity of nations.

The United States, through bilateral agreements with various foreign states, is involved in a multifaceted attack on drug trafficking worldwide. One important goal is to prevent drugs like heroin and cocaine from reaching our shores. Many of the nations which we have asked to devote a maximum effort to control heroin and cocaine trafficking do not have a severe problem with these drugs.

In many cases, they view cannabis, in its various forms, as their most serious problem. Yet, those countries cooperate with the United States and others either because they believe their adherence to the Single Convention on Narcotic Drugs of 1961 and other agreements, requires them to do so, or because they feel a moral commitment to help eradicate marihuana use.

If, in the face of this international cooperation, the United States or a significant number of its component States were to adopt a permissive attitude toward marihuana, there is a serious possibility that some other nations might perceive this country to be unmindful of its obligations and unconcerned with the domestic problems of other countries.

This position has been confirmed again and again at many meetings of the United Nations Commmission on Narcotic Drugs, the policy-initiating organ of the United Nations Economic and Social Council. At the Commission meeting in February of this year, the Commission adopted a resolution reaffirming that in view of numerous findings of scientific research, there can be no doubt as to the harmful effects of marihuana; and it recommended to all countries and competent international organs and organizations not to lose momentum in taking appropriate measure against cannabis abuse, supply of cannabis and cannabis resin, and, in particular, illegal trade and traffic in cannabis and drugs derived from cannabis, in order not to endanger the success of global and regional efforts in this field.

The Commission specifically noted how a relaxing of controls by one country could affect others by stating that a reduced control regarding cannabis and drugs derived from cannabis in one area might create an important source of supply and illicit traffic in the same substance in other areas.

Mr. Chairman, everybody in that room of the Commission meeting in Geneva knew full well that this resolution was taken against the Netherlands, which had taken a very permissive attitude insofar as the enforcement of its marihuana laws is concerned.

If we do not continue to have and enforce laws against marihuana use, or if other countries would regard our weakening of control as a sign of bad faith or insensitivity to their drug problems, the cooperation we can expect from foreign governments in helping us control our heroin and cocaine problem will be significantly reduced.

STATE ACTION CONCERNING MARIHUANA LAWS

I want to conclude my statement by saying that there has already been much action by the Federal and State governments in the past 4 years. According to a survey I recently conducted through DEA regional directors, nearly all of the States now have provisions for the handling of minor possession cases. In 44 States, possession of small quantities of marihuana is considered as no more than a misdemeanor, and in 4 other States the charge can be reduced to a misdemeanor by the judge.

Only two States handle possession of any amount of marihuana as a felony. Forty-eight States permit conditional discharging of offenders without conviction, and 44 States authorize complete expungement of the record of persons charged with minor possession of marihuana.

Additionally, virtually all States have juvenile delinquency laws whereby the offender is not charged with the substantive violation.

We have an opportunity to observe whether lessening of penalties in those States will have an effect on drug abuse and the ability of law enforcement to cope with the change.

As we have learned from the acceptance of other drugs in our culture, the knowledge gained after acceptance is almost useless in reversing our course irrespective of the proven hazards.

Mr. Chairman, in regard to the last sentence of this prepared statement, I want to point out that the Department of Justice has not yet taken a position on the concept of the proposed legislation. My statement points out many deficiencies in S. 1450, which are, of course, fully supported by the Department. And it does represent my views and so far as I can presume to do so, the views of the law enforcement community.

Thank you, Mr. Chairman.

JUSTICE DEPARTMENT SHIFTS POSITION ON DECRIMINALIZATION BILL

Senator BAYH. The final sentence: "Therefore the Department of Justice recommends against the enactment of this legislation."

Mr. MILLER. It should be deleted from the printed text.

Senator BAYH. So ordered.

[Testimony continues on p. 41.]

Statement

of

Donald E. Miller
Chief Counsel
Drug Enforcement Administration
U.S. Department of Justice

before the

Subcommittee on Juvenile Delinquency
(Birch Bayh, Chairman)
Senate Committee on the Judiciary

May 14, 1975

Mr. Chairman:

I am appearing before you today on behalf of the Department of Justice, and specifically the Drug Enforcement Administration, to furnish the Department's views on the impact of S.1450 on the criminal justice system.

At the outset, I want to state that the marihuana traffic is "big business." It is not the same casual transfer and use of small amounts of an innoxious weed we saw back in the 30's when we first decided to take action to control marihuana. Today, tons of marihuana are being smuggled into the United States by large, well-financed, and well-organized criminal organizations. Total domestic and foreign cooperative removals of marihuana have increased from about 184,000 pounds in 1970 to over 2,000,000 pounds in 1974. Considering that we probably do not remove a high percentage of the marihuana from the total market, the amount getting through is astronomical.

Necessarily and in accordance with our Congressional mandate, the Drug Enforcement Administration has concentrated its investigative resources on the supply of marihuana. DEA has made very few arrests for possession without intent to distribute. Those simple possession cases made by the Bureau of Customs and the Immigration

and Naturalization Service as a result of routine border searches are usually turned over to the States for disposition.

Accordingly, insofar as the Department of Justice is concerned, the criminal sanctions for simple possession in section 404 of the Controlled Substances Act have not been applied as an enforcement measure against marihuana users and minor distributors. It may be worthwhile then to consider what we have sought to do by means of applying criminal sanctions against simple possession and distribution of small amounts of marihuana.

Ask the man on the street the purpose of the marihuana penalties and he will probably reply in effect, "To prevent social harm." Ask him how the law operates to prevent social harm, and he almost certainly will say, "By punishing people who commit marihuana offenses, which results in deterring others from committing such offenses." Other people will mention that the law is a "symbol"; a majority of the society expressing its disapproval of drug use through the criminal law.

That seems to sum it up. We have concluded since enactment of the Marihuana Tax Act of 1937, that marihuana use should be discouraged by subjecting related activity to criminal punishment. Although substantially reduced from the previous harsh penalties, when the Controlled

Substances Act of 1970 was drafted, we again designed a stimulus in the form of penalties in attempt to convince our people to avoid courses of action potentially dangerous.

Has it worked? Are people ever deterred from what they want to do by threat of physical suffering? And, if the threat of punishment does deter marihuana offenders, is it the fear of going to jail rather than the inconvenience and perhaps disgrace of paying a $100 fine that people fear?

Real prevention of the spreading abuse of marihuana is a complicated subject of cause and correction, and of public psychology as well. Not even a short presentation is possible in my brief time here. But, Mr. Chairman, these are important factors that should be studied fully before changes are made -- changes that may result in an even less effective social force against marihuana use.

S.1450 would invoke a new concept into our attempt to control drug abuse. The proposed legislation would amend the Controlled Substances Act of 1970 by eliminating as a crime any offense (1) of possessing up to one ounce of marihuana without intent to distribute it, and (2) distributing up to one ounce of marihuana if not made for profit. Such offenses would be punishable by a civil fine of not more than $100, and violators would not be

subject to arrest or any other disadvantage or disability not specified in the new section. Paragraph (b) of the bill would establish additional latitude by authorizing the Attorney General to disregard enforcement of the civil remedy "whenever he believes that the public interest will be adequately served by a suitable written notice or warning."

The sponsors of the proposed legislation have made an effort to walk the thin line between "legalization" of marihuana and "decriminalization." It is clear to me that the sponsors intend for the legislation to operate as a de facto blockade against enforcement of certain provisions of the Controlled Substances Act. Also, since such a change in the Federal law would ultimately result in widespread adoption at the State level, the consequences of the proposed legislation could be the elimination of police agencies from enforcing laws against personal possession and distribution of small amounts of marihuana.

Although possession of not more than one ounce of marihuana for personal use is still an offense, the ability to enforce the provision is nearly insurmountable. The bill states at the end of subsection (a) that "such person shall not be subject to arrest or suffer any disadvantage or disability except as specified in this section."

Frankly, I do not know what that means. Does it mean that the offender may not ever be summoned before a U.S. magistrate under Rule 4 of the Rules of Criminal Procedure? I have no doubt that Rule 41 relating to search warrants would not be applicable, since an essential ground for issuance of a search warrant is that the property is intended for use as a means of committing a criminal offense. Without the power to search or arrest, the only real possibility of a person being charged with simple possession of marihuana would be pursuant to a lawful search incident to another offense.

The difficult feature in paragraph (a)(1) is in determining whether the marihuana is intended for distribution. Considering that paragraph (a)(3) creates a civil fine of up to $100 for distribution of not more than one ounce of marihuana, before a search warrant could be issued, I believe proof would be required showing that the person possessing the marihuana intended to make a distribution for profit.

Paragraph (a)(2) poses similar difficulties. If the person who possesses the marihuana in public cannot be arrested, how else can the provision be enforced? If a police officer has positive reason to believe that a person is in possession of one ounce of hashish, unless the person

has the hashish in plain sight what power does the officer have? Without authority to search, I question whether he can do anything.

In the normal street situation, an officer does not always have the facts necessary to make a decision precisely in line with the proposed legislation. He will not be able to readily determine whether the amount possessed is more than one ounce; it is not specified in the bill what procedures are to be followed in lieu of arrest; he cannot discern whether the person is transient and likely to honor a summons; and it is not clear what is the resource when a person does not honor a summons.

The other feature of the bill, namely the provision relating to casual distribution of small amounts of marihuana for no profit, is also objectionable. This feature goes against all reasons for having drug control laws. It is a pronouncement that the Government no longer takes a harsh view regarding proselytizers -- those persons who convert naive persons to drug abusers. This provision means that if a person desires to introduce marihuana use to juveniles, he may do so and face only a fine of up to $100 so long as the transfer is totally donative or only to reimburse himself for out-of-pocket expenses.

Another troublesome feature is that the proposed legislation does not authorize the seizure of the marihuana illegally possessed. Although section 511(f) of the Controlled Substances Act considers marihuana as a contraband which may be seized and summarily forfeited, the bill provides that "such person shall not . . . suffer any disadvantage or disability except that specified in this section."

Mr. Chairman, I have discussed some of the problems that immediately come to mind in analyzing S.1450. Perhaps, an example of how the bill would operate in practice would be enlightening. Picture this situation at Dulles Airport. Customs inspectors have found a package containing three-quarters of an ounce of hashish in the luggage of a person entering the United States. Faced with the need to do something, they read the new section 404A and find that the person cannot be arrested; that any search of the person would need to be based on general customs law authority; that they have no power to seize the hashish; and that they have a dubious responsibility to subject the violator to a civil fine. The inspectors debate whether the person can be detained, and whether he can be taken against his will to a U.S. magistrate. They will find no answers in the new law.

Another example is the situation where DEA agents executing a search warrant for a heroin violation find only a package containing three-quarters of an ounce of hashish. Remembering that the new law would not allow the person to be subjected to any other disadvantage or disability, how can they gather evidence sufficient to prove a charge? Can they seize the marihuana as evidence of the offense, or does the bill intend to negate that authority?

Turning to another consideration, Mr. Chairman, a threshold question in any discussion of making marihuana possession violations virtually unenforceable is one of comity of nations. The United States, through bilateral agreements with various foreign states, is involved in a multifaceted attack on drug trafficking world-wide. One important goal is to prevent drugs like heroin and cocaine from reaching our shores. Many of the nations which we have asked to devote a maximum effort to control heroin and cocaine trafficking do not have a severe problem with these drugs. In many cases, they view cannabis, in its various forms, as their most serious problem. Yet, these countries cooperate with the United States and others either because they believe their adherence to the Single Convention and other agreements requires them to

do so, or because they feel a moral commitment to help eradicate marihuana use in other areas of the world. If, in the face of this international cooperation, the United States, or a significant number of its component states, were to adopt a permissive attitude toward marihuana, there is a serious possibility that some other nations might perceive this country to be unmindful of its obligations and unconcerned with the domestic drug problems of others.

This position has been confirmed again and again at many meetings of the United Nations Commission on Narcotic Drugs, the policy initiating organ of the United Nations Economic and Social Council. At the Commission meeting in February of this year, the Commission adopted a resolution reaffirming that in view of numerous findings of scientific research, there can be no doubt as to the harmful effects of marihuana; and it recommended to all countries and competent international organs and organizations not to lose momentum in taking appropriate measures against cannabis abuse, supply of cannabis and cannabis resin, and, in particular, illegal trade and traffic in cannabis and drugs derived from cannabis, in order not to endanger the success of global and regional efforts in this field. The Commission specifically noted how a relaxing of controls by one country could affect others by stating, "[It realized]

that a reduced control regarding cannabis and drugs derived from cannabis in one area might create an important source of supply of, and illicit traffic in the same substance in other areas." If we do not continue to have and enforce laws against marihuana use, or if other countries would regard our weakening of control as a sign of bad faith or insensativity to their drug problems, the cooperation we can expect from foreign governments in helping us control our heroin and cocaine problem will be significantly reduced.

I want to conclude my statement by saying that there has already been much action by the Federal and State Governments in the past four years. According to a survey I recently conducted through DEA Regional Directors, nearly all of the States now have provisions for the handling of minor possession cases. In 44 States, possession of small quantities of marihuana is considered as no more than a misdemeanor, and in four other States the charge can be reduced to a misdemeanor by the judge. Only two States handle possession of any amount of marihuana as a felony. Forty-eight States permit conditional discharging of offenders without conviction, and forty-four States authorize complete expungement of the record of persons charged with minor possession of marihuana. Additionally,

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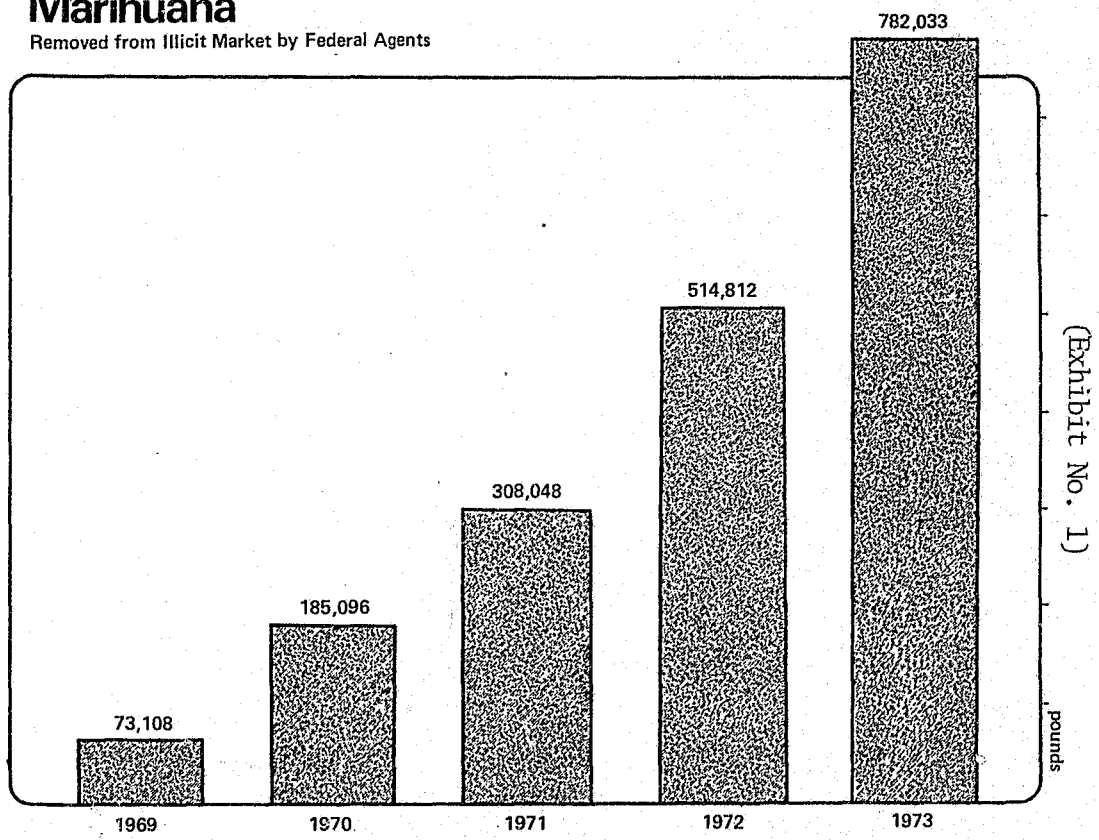
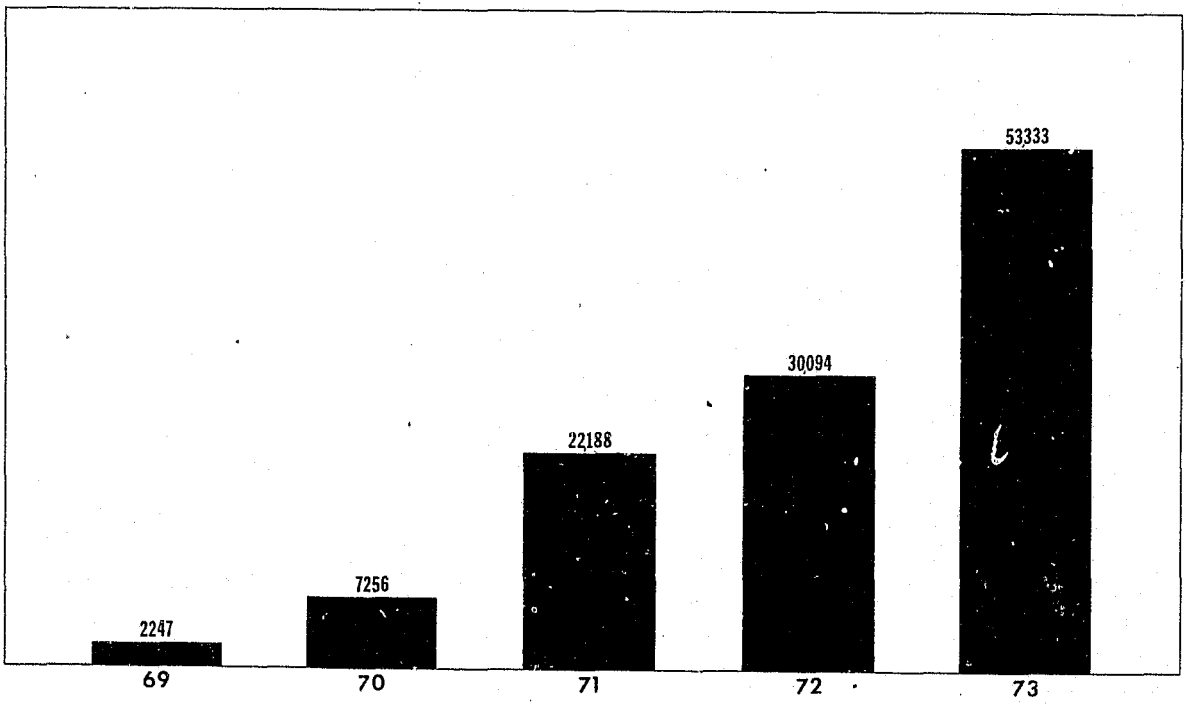
We have an opportunity to observe whether lessening of penalties in those States will have an effect on drug abuse and the ability of law enforcement to cope with the change. As we have learned from the acceptance of other drugs in our culture, the knowledge gained after acceptance is almost useless in reversing our course irrespective of the proven hazards.


Marihuana
Removed from Illicit Market by Federal Agents
782,033
514,812
308,048
185,096
73,108
pounds
1969
1970
1971
1972
1973

(Exhibit No. 1)

HASHISH

REMOVED FROM ILLICIT MARKET BY FEDERAL AGENTS
(IN POUNDS)



Mr. TARTAGLINO. The first chart illustrates the illicit marihuana and the second chart the illicit hashish by year from 1969 to 1973, removed by Federal agents alone. You can see that when we speak of hashish, seizures have increased from roughly a little more than 2,000 pounds in 1969 to 53,000 pounds in 1973, or some 27 tons. We have gone from 1 to 27 tons in a very short space of time.

In marihuana you can see a very similar increase. We have gone to some 375 tons that were removed in 1973.

Mr. MARTIN. 780,000 pounds?

Mr. TARTAGLINO. Yes, I am reducing that figure to tons; and that is just an illustration of how we have grown from 35 tons in 1969.

I might add that as recently as 10 years ago, the only hashish that was found in the United States was probably a quarter pound in the sole of some seaman's shoe that he brought over for his own use. I recall when our seizure was under 10 pounds a year. But, in 1969 we exceeded 1 ton, and of course last year we have gone to 27 tons.

Mr. MARTIN. I think it might be useful to let people know what 1 pound of hashish can do. A quart of whiskey can only get a few people drunk, but how many people can get drunk on a pound of hashish?

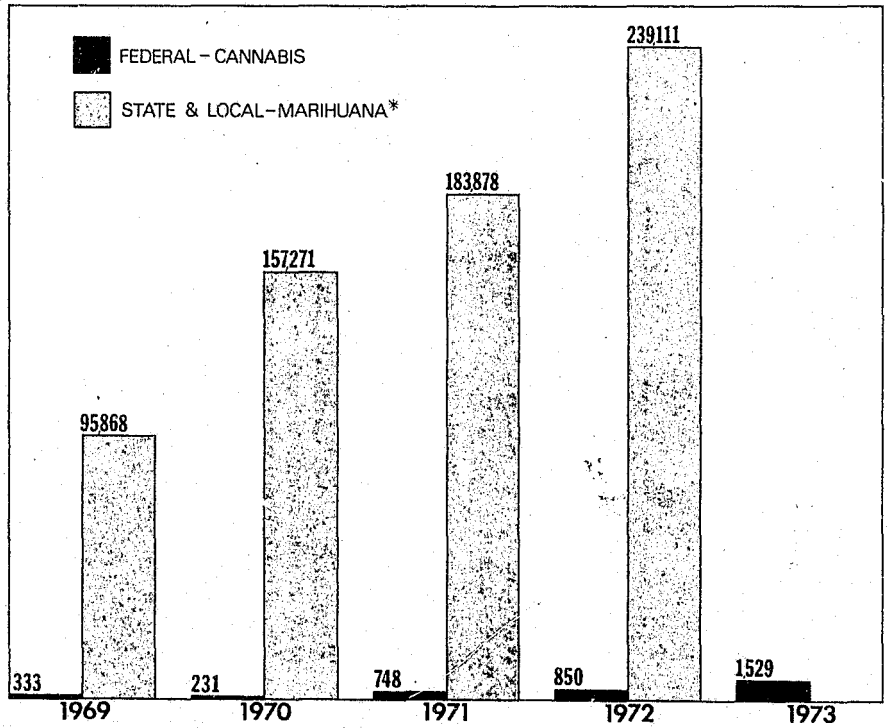
Mr. TARTAGLINO. Well, I would have to go into a discussion of the potency of it, but what you say is roughly correct.

This third chart shows the arrests for cannabis State, local and Federal; the yellow is Federal, we have gone from 333 arrests in 1969 to over 1,500 last year.

You can see local enforcement agencies in 1972 arrested almost a quarter of a million people in the United States for cannabis violations, hashish and marihuana.

In the map that you see before you we have tried to give you an illustration of generally the areas that are affected in the United States today; the purple arrows illustrate hashish; the orange illustrates marihuana. We also have represented there on this chart the largest marihuana seizure on record, 42 tons in Jamaica; a single seizure of marihuana which was destined for the United States. The largest domestic seizure last December, 20 tons in Florida. In hashish the largest domestic seizure, 3,700 pounds, almost 2 tons, in Miami, in March of this year. The largest foreign seizure, 12 tons in Karachi, Pakistan.

ARRESTS



* Source: Uniform Crime Report

"SEA TRADER"

During February 1974, information was developed which indicated that a group of individuals had been smuggling tons of marihuana from the Caribbean into the United States, including New York, Louisiana, and Florida. Information was also developed that this group had been planning to bring a large load of hashish from Morocco. Intelligence indicated that the load would be 7,000 pounds and would be transported on a vessel later identified as the "Sea Trader." The "Sea Trader" is a 153 foot, 45 ton gross freighter, registered out of Panama. The "Sea Trader" was believed to be in Morocco, departure date unknown, and attempts to locate were initiated, and alerts were posted in the continental United States.

On April 9, 1974, information was received that the "Sea Trader" was dead in the water with engine trouble at a point approximately 150 miles south-east of Bermuda.

DEA requested the assistance of the U.S. Coast Guard who dispatched a long-range search plane to locate "Sea Trader" and conduct a search for any vessel enroute to contact "Sea Trader" and attempt to offload the hashish.

The U.S. Coast Guard Cutter "Gallatin" was dispatched and proceeded at the fastest possible speed to attempt to take the vessel in tow to the nearest U.S. Port.

On April 10, 1974, Coast Guard Cutter "Gallatin" arrived on scene and relieved sea going Tug Robin VIII of the tow. "Sea Trader" would not agree to be towed to the nearest U.S. port but agreed to have "Gallatin" tow "Sea Trader" to protected Bahamian waters.

On April 12, 1974, "Sea Trader" was anchored within the 3-mile limit of Bahamian waters and two other boats approached to assist the "Sea Trader."

"Sea Trader" was boarded by Drug Enforcement Administration and Bahamian authorities and subsequent search revealed 70 bags containing approximately 3,700 pounds of hashish. Nine subjects were arrested and two vessels were seized by the Bahamian authorities.

The contraband and subjects were returned to Nassau for criminal proceedings. DEA will initiate conspiracy indictments in the United States.

Mr. SOURWINE. Your charts and tables, sir, appear to indicate that the rate of increase of hashish is substantially greater than the rate of increase of marihuana. For instance, over a 5-year period the marihuana increase is roughly 10 times; the hashish increase is 22 times. Do you take that as an indication that hashish is in some degree replacing marihuana, that the user is starting out with pot and graduating to hash?

MARIHUANA AND HASHISH REMOVED FROM ILLICIT MARKET BY FEDERAL AGENTS (IN POUNDS)

	Calendar year—				
	1969	1970	1971	1972	1973
Marihuana:					
Total	73,108	185,096	308,048	514,812	782,033
Domestic (DEA)	9,924	9,092	21,380	51,897	51,379
Ports and borders (Customs, INS)	59,840	148,772	201,558	365,421	489,961
DEA/foreign cooperative	3,344	26,422	85,110	97,494	240,693
Hashish:					
Total	2,247	7,256	22,188	30,094	53,333
Domestic (DEA)	239	234	882	1,151	641
Ports and borders (Customs, INS)	1,602	3,811	6,900	8,754	7,235
DEA/foreign cooperative	406	3,211	14,406	20,189	45,457

OPIUM, HEROIN, AND COCAINE REMOVAL FROM ILLICIT MARKET BY FEDERAL AGENTS AND ARRESTS

	Calendar year—				
	1969	1970	1971	1972	1973
Total domestic removal (in pounds):					
Opium	25	30	58	66	120
Heroin	427	691	1,541	1,036	483
Cocaine	208	730	602	916	1,347
Total DEA/foreign cooperative seizures (in pounds):					
Opium	1,590	1,360	1,440	17,379	50,746
Morphine base	706	811	2,271	2,104	2,262
Heroin	395	301	937	2,416	821
Cocaine	35	75	346	801	1,015
DEA Federal arrests:					
Heroin				2,159	2,169
Cocaine	[1] 950	[1] 1,104	[1] 1,923	1,231	1,645
Other narcotics				63	47
State and local arrests: [2]					
Heroin and cocaine	67,945	108,427	114,573	92,364	

[1] Reported as narcotics arrests.
[2] Source: Uniform crime report.

QUANTITIES OF DRUGS SEIZED [1]

[In kilograms] [1]

	Calendar year—		
	1968	1969	1970
Cannabis:			
Herb	1,471,408	1,825,769	3,073,638
Resin	37,253	32,237	41,574
Opium	40,153	40,729	29,308
Morphine	813	846	543
Heroin	546	463	567
Cocaine	158	152	460

[1] Source: 25th Session, Commission on Narcotic Drugs (Sept. 22, 1972).

Mr. TARTAGLINO. I definitely think so, I agree with that.
Mr. MARTIN. Thank you very much, Mr. Tartaglino.
Mr. TARTAGLINO. Thank you, sir.

(Exhibit No. 2)

SUPPORTING DOCUMENTATION SUBMITTED BY MR. JERRY JENSON, DEPUTY ADMINISTRATOR, DEA

C3-73-0127:

On August 25, 1972, four U.S. citizens smuggled 860 pounds of hashish into the U.S. at New York City. The hashish had been concealed by the group in a 1971 Chevrolet pick-up truck in Casablanca, Morocco and shipped to New York. All of the hashish was seized by U.S. Customs and DEA and DEA Agents subsequently arrested the defendants.

G1-74-0087:

On March 4, 1974, 2,439 pounds of hashish from Morocco was smuggled into the U.S. at Ft. Lauderdale, Florida via a private yacht. Two Canadian citizens, one British citizens, and one U.S. citizens were arrested by DEA and the hashish seized.

M9-74-0058:

On October 22, 1974, DEA working jointly with the Mexican Federal Judicial Police (MFJP) located 20,000 pounds of marihuana stored on a ranch near La Pesca, Mexico. The MFJP assisted by DEA and the Mexican Army seized the entire amount of marihuana, arrested 15 Mexican citizens on the ranch and seized two aircraft. A few hours before the arrests in Mexico, a third aircraft left the La Pesca ranch and was followed by DEA aircraft to a ranch near Fredericksburg, Texas, where the occupants were arrested by DEA Agents and 1,600 pounds of marihuana was seized from the aircraft.

M3-74-0060:

On January 22, 1975, four Greek citizens, one naturalized citizen born in Greece, and one U.S. born citizen were arrested upon the delivery to an undercover DEA Agent of 16½ pounds of hashish and 18 pounds of hashish oil. 3,994 grams of hashish had been purchased by DEA Agents from this group previous to their arrest.

N8-74-0197—Elias Velasquez-Velasquez

On December 26, 1974, the head of a drug smuggling organization responsible for smuggling tons of marihuana from Mexico into the U.S. was arrested by Mexican Federal Judicial Police (MFJP) based on DEA investigative efforts. Eleven vehicles from the Velasquez organization had been previously seized by U.S. Customs in smuggling attempts into the United States involving quantities in excess of 3,000 pounds of marihuana. At the time of his arrest, VELASQUEZ was in possession of 200 pounds of marihuana, marihuana processing equipment and three "load" vehicles containing marihuana residue.

R2-74-1085:

On November 28, 1974 Mexican Federal Judicial Police (MFJP) arrested six Mexican citizens and seized 10,866 kilogram packages of marihuana in Tiajuana, Mexico as a result of extensive investigative effort by DEA. At least three of the defendants were armed and apprehended after an exchange of gunfire by MJFP officers and the defendants. These defendants were a part of the notorious Beltran smuggling organization operating between the interior of Mexico and the Tiajuana border area.

AN ANALYSIS OF DEA MARIHUANA ARRESTEES

(July–December 1973)

I. BACKGROUND

A. Purpose of Survey

The purpose of the survey was to determine the significance of DEA marihuana arrests in terms of the trafficking potential of the marihuana law violator. The principal factors utilized in making this evaluation were the quantity of marihuana

trafficked, the extent to which violators were involved in other drugs, and criminal records of the arrestees. In terms of descriptive information, judicial dispositions were also reviewed.

In brief, the quality of the DEA marihuana arrests were measured to ascertain whether or not these cases were commensurate with the level of traffic normally associated with Federal drug cases.

B. Scope

The case files pertaining to all DEA defendants classified as marihuana violators were reviewed. The following information was extracted from these files, recorded and tabulated:

Name and case number;
Region;
Prior criminal record;
Armed violations;
Total drugs involved in each case; and
Judicial disposition including sentence.

To insure that these cases accurately reflected DEA activities, arrests made in cooperation with other agencies were excluded. Of approximately 720 violators examined, 356 or 49% were found to be exclusively DEA arrests. Cases involving drugs other than marihuana were excluded from consideration, unless the investigation was primarily initiated for marihuana.

II. ANALYSIS

A. Arrests by Region

An examination of the distribution of marihuana arrests by DEA region (Fig. I) indicates that the greatest proportion of these cases are made along the Mexican border. Over seventy percent of the arrests made during the period analyzed occurred in DEA regions Eleven, Twelve, and Fourteen. Underscoring the importance of the Mexican border traffic in DEA marihuana operations is the fact that over sixty-five percent (65%) of DEA marihuana arrestees were Spanish-surnamed; virtually all were Mexicans or of Mexican descent.

FIG. I.—MARIHUANA ARRESTS BY DEA REGIONS

Region	Total arrests	Percent	Rank
1	6	3	8
2	16	4	5
3	4	1	9
4	2	1	10
5	15	4	6
6	13	4	7
7	13	4	7
8	18	6	4
10	6	2	8
11	68	19	2
12	47	13	3
13	6	2	8
14	142	40	1
Total	356	100	

B. Significance of Arrests by Distribution of Removals

In order to separate cases which might reasonably constitute possession for personal use, defendants involved with less than one ounce (28 grams) of marihuana were separated from the total defendants. The remaining cases were separated into four categories based upon the quantity of drug involvement. These were, quantities in excess of one hundred kilograms, fifty-one to one hundred kilograms, and one kilogram to fifty kilograms. Each of these groups represent varying levels of the wholesale traffic. The fourth category comprised cases involving one ounce to one kilogram of marihuana; this volume is normally associated with the retail level of the marihuana traffic.

In addition to a tabulation of drug quantities involved with each DEA arrest, data which would reflect upon the total criminal involvement of each defendant was collected. This information included whether or not the defendant was armed, the prior criminal record, involvement with other drugs, and the pertinent DEA criminal rating assigned to each arrestee.

FIG 2.—DISTRIBUTION OF DEA MARJHUANA ARRESTS BY QUANTITY OF DRUG, JULY–DECEMBER 1973

	Under 28 g	28 g/999 g	1 kg/50 kg	51 kg/100 kg	100 kg-plus
Total arrested (356)	5.0	20.0	155.0	33	143
Average criminal rating point	3.4	3.8	3.8	3.12	3.33
Number armed	1.0	0	(7) 11.0	(3) 1	(15) 22
Number with prior criminal record	(40) 2.0	(50) 10.0	(39) 60.0	(48) 16	(43) 61
Number involved with other drugs	(80) 4.0	(10) 2.0	(15) 23.0	(6) 2	(16) 23
Narcotics	4.0	1.0	2.0	0	6
Other	0	1.0	21.0	2	17

Note: Figures in parentheses indicate percent.

An inspection of the data in Fig. I indicates that the bulk of DEA marihuana cases involve some level of the wholesale traffic, with the majority (50%) involving amounts in excess of fifty (50) kilograms. In most of the cases reviewed, quantities of this size were commonly transported in bulk, by truck or by automobile across the border to a rendezvous point where the shipment was broken up and placed in different vehicles. The marihuana in most of these situations was packaged in brick form.

In numerous cases especially involving smaller quantities of marihuana, the drug was enclosed in paper bags and placed casually in automobile trunks or adjacent to the driver. In most of these situations, the arrestees would attempt to cross routinely into the U.S. during daylight hours at heavily travelled border crossing points. The apparent lack of concern exhibited by many of these persons would suggest that many Mexican nationals who commute to the U.S. daily may supplement their incomes by transporting and selling small lots of marihuana on a routine basis.

A substantial portion of all arrestees had prior criminal records most frequently reflecting previous drug arrests. Sixty-one (43%) of the persons involved in quantities of over one hundred kilograms had previous arrest records. The proportion of persons with prior records in all other categories ranged from forty to fifty percent.

In only one group, those involved in over one hundred kilograms, was the proportion of persons armed significant. In the one hundred kilogram-plus group, twenty-three defendants or 16%, were armed. This fact may be explained by the desire of these persons to protect their shipments from theft by other drug dealers.

Involvement with drugs other than marihuana was significant for only one group, those trafficking in less than one ounce of marihuana. Four of the five defendants (80%) were involved with heroin and, in fact, were originally the subjects of narcotics investigations. These persons were classified as marihuana defendants due to the fact that they possessed only cannabis at the time of their arrest and no purchases of evidence were made by DEA personnel.

C. Judicial Disposition of DEA Marihuana Arrestees

Dismissals and declinations are very high for all groups of arrestees. This fact is probably explained by the unwillingness of prosecuting attorneys and judges to uphold indictments in these cases unless there was "prima facie" evidence presented against the defendant.

There appears to be little consistency in the sentencing related to these cases. Although prison sentences were less frequent for the lower range of arrestees, length of sentence had little relationship to the quantity of drug involvement (Fig. 3).

FIG. 3.—JUDICIAL DISPOSITION OF DEA MARIHUANA CASES, JULY–DECEMBER 1973

	Under 28 g	28/999	1kg/50 kg	51 kg/100 kg	100 kg plus
Total arrests	5	20	155	33	143
Total court disposition	0	2	60	9	47
Dismissed or declined			15	0	10
Probation, YCA or NARA		1	14	2	6
Prison		1	(50) 31	(76) 7	(66) 31
Average sentence in months		96	38	29	42

Note: Figures in parentheses indicate percent.

Conclusion

In general, marihuana arrests which are exclusively made by DEA involve violators capable of trafficking in substantial quantities of the drug. Only a small proportion of these arrestees were involved in less than one kilogram of marihuana. The proportion of persons involved in less than one ounce of marihuana was insignificant.

There is a strong possibility that marihuana arrests made by DEA Task Forces were less significant. These arrests were not reviewed since they do not exclusively involve DEA resource inputs, nor is a DEA laboratory analysis performed upon the evidence in most cases. Consequently, information regarding the actual drugs of involvement for most of these cases would prove difficult to develop.

An evaluation of the case histories of DEA marihuana violators indicates that a significant proportion were previously engaged in illicit activities prior to coming to the attention of DEA. As a group, these persons do not appear particularly dangerous; in fact, a large number appear relatively casual in their trafficking activities. Only in those cases where very large quantities of marihuana were involved did the defendants exhibit a tendency to be armed.

Most DEA marihuana cases are closely associated with the Mexican border, and involve smuggling operations.

TOTAL FEDERAL DOMESTIC AND FOREIGN COOPERATIVE REMOVALS FOR MARIHUANA, HASHISH, AND HASHISH OIL

[Calendar years 1970–74]

	1970	1971	1972	1973	1974
Total removals:					
Marihuana:					
Domestic	157,864	222,938	417,318	542,857	891,065
Foreign	26,422	85,110	97,494	240,693	1,118,578
Total	184,286	308,048	514,812	783,550	2,009,643
Hashish:					
Domestic	4,045	7,782	9,905	7,680	7,002
Foreign	3,211	14,406	20,189	45,457	43,919
Total	7,256	22,188	30,094	53,137	50,921
Hashish oil: [1]					
Domestic					13
Foreign					356
Total					369

[1] New category as of July 1, 1974.

DAWN DEATH AND INJURY REPORTS [1] FOR CANNABIS BY QUARTER, JULY 1973–DECEMBER 1974

[Fiscal year quarters]

	1st, 1974	2d, 1974	3d, 1974	4th, 1974	1st, 1975	2d, 1975
Death reports [2]	4	0	2	0	1	
Injury reports	358	619	560	565	630	582

[1] Total of reports submitted from 23 major standard metropolitan statistical areas.
[2] There is a 3-month reporting lag on death reports.

[EXHIBIT No. 3]

U.S. DELEGATE STATEMENT ON THE PROBLEM OF CANNABIS

26TH SESSION, COMMISSION ON NARCOTIC DRUGS, GENEVA, FEBRUARY 17–28, 1975

While cannabis has been used from the dawn of folk medicine, almost all of this use was based on prescientific observation. In the U.S. cannabis has been used for decades but it is only in the last decade or so that its use has assumed worrisome proportions. The cannabis question became intertwined with other social and political problems, many of them closely related to the dramatic increases in the youth population during the decade of the sixties. While the total U.S. population grew seventeen percent between 1960 and 1973, the number of youth in the 14 to 25 year old age category grew by an astonishing 61 percent, an increase of 16.3 million people. To this change in our population must be added the heavy burden of the ignorance of centuries. The debate on the cannabis issue could not be enlightened by a body of factual knowledge about the drug and its effects because no such body of knowledge existed.

Little more than a decade ago use in the U.S. was still largely confined to small numbers of individuals in a relatively few large cities. By 1971, however, it was estimated that approximately ten million Americans had tried the drug and by 1974, this number had swelled to in excess of 26 million. One in seven persons in the U.S. age twelve or over is currently estimated to have made some use of marihuana; in some parts of the country one in three persons have tried it.

At least two million persons are daily users. Although use is most common among adolescents and young adults, there is increasing evidence that such use is coming to include both younger and older segments of the population. Moreover, of the fifty percent of those who have ever tried the drug who continue its use, half do so once a week or more often and about one in five users do so on a daily basis.

As use came to assume increasing proportions, the United States Government decided to launch a high priority research effort to increase our then rather incomplete knowledge of marihuana's properties and effects. Seven years ago when the program began, even the necessary drug materials to conduct research were difficult to obtain, frequently of unknown origin and of unspecified potency. Because much of the earlier research is difficult to interpret as a result of the poorly characterized cannabis used, early emphasis was placed on developing reliable supplies of natural and synthetic materials considered necessary for basic pharmacological research. Such materials have now been supplied to over a thousand researchers both in the U.S. and abroad. We are grateful to the United Nations Laboratory for its role in facilitating distribution of cannabis materials to overseas investigators. Our research program has evolved from an initial investment of a little over a million dollars a year for twenty projects to its current level of over 60 projects supported at an annual cost of 5 million dollars.

The U.S. has placed heavy emphasis on research to clarify serious questions about the consequences of cannabis use. Summarizing the results of this research, the annual Marihuana and Health Reports of the Secretary of the Department of Health, Education, and Welfare and the report of the National Commission on Marihuana and Drug Abuse, issued in March 1973, have placed the issue in much clearer perspective. They can best be understood as constructive reactions to the prevailing confusion about cannabis. After examining the available evidence, these early reports concluded that there was no clear evidence of serious health hazard from moderate use of cannabis by healthy people. These documents were carefully phrased. They presented scientific evidence in the policy context of discouraging drug use and they explicitly left the door open to new evidence of health-related problems.

Within the last two years, new findings have appeared giving us cause for greater concern than before.

These new areas of concern include the effects of cannabis on male sex hormone levels, interference with the body's immune response, effects on fundamental cell metabolism and the acute effects of marihuana intoxication including the effects on driving and work performance. Work on the metabolism of tetrahydrocannabinol (THC), the major biologically active component of cannabis, showed that the substance was highly soluble in fat but that it had low solubility in water. Thus, like DDT, THC may accumulate in fatty tissues such as the brain and gonads. These questions obviously bear further study.

As mentioned earlier, the last two years have produced new evidence of widespread and frequent use of cannabis to add to the growing evidence of serious potential health hazards. The law enforcement and treatment communities also reported the increasingly common appearance during the last year of hashish oil, a more concentrated cannabis product with THC content of 60 to 90 percent compared to the less than 3 percent potency often found in marihuana cigarettes in the United States.

These recent developments undercut the relatively comfortable image of mature, healthy young persons infrequently using marihuana of low potency. Surely this relatively benign pattern remains the most common in the United States, but there appears to be a large and growing minority who use the drug more frequently at a high potency and at a younger age. These trends disturb even the most optimistic observers of the contemporary marihuana scene in the United States.

Running parallel to these epidemiological and scientific developments, there have been major changes in legal and social policy related to cannabis. Just as the scientific community has struggled to put cannabis into more realistic perspective, so have legal and political communities struggled with the problem during the last decade. These years have seen a clear cut movement away from use of severe criminal penalties for the possession of cannabis. At the Federal level, law enforcement has been "retargeted" during the last few years at the drug distribution system and not at the drug user to maximize the impact on illicit traffic in cannabis. Use of cannabis has been increasingly seen as an important responsibility of the rapidly developing drug abuse treatment system.

These two parallel developments—the increasing evidence of serious health hazard from cannabis use and the strong trend toward reduced criminal penalties for possession—are seen as contradictory only by those who persist in polarizing the issue, reading every statement as either for or against cannabis. Programs aimed at discouragement of the use of marihuana and the movement away from the use of serve criminal sanctions for possession are aimed at a common goal—reducing the overall social costs of marihuana use in our country.

To avoid any misunderstanding of our policy, one distinction should be made absolutely clear. In reducing our possession penalties, we have not legalized use of cannabis and we do not intend to legalize cannabis. In 1970, the Federal Controlled Substances Act reduced the criminal penalties for possession of any illegal drug, including marihuana, from a felony to a misdemeanor, punishable on first offense by imprisonment for not more than a year. Some jurisdictions below the Federal level have reduced penalties even further. Very few of those arrested under Federal law for possession of marihuana went to jail for even one day. Our policy is clearly to discourage use by a variety of means with a flexible series of sanctions depending upon the seriousness of the offense. Penalties for illicit distribution have not been reduced and our policy is to continue the vigorous prosecution of persons engaged in the illicit distribution of cannabis. Major developments in illicit traffic will be described in our statement on Agenda Item 9. We do not see trends described here as weakening our law enforcement efforts; indeed, these developments mean that limited law enforcement resources can be targeted where they will have the greatest impact on availability of unauthorized drugs.

Mr. Chairman, we are well aware that a society cannot change its position on drugs with every new finding from the laboratory, the field or the street. Rapid changes or perceived reversals of social policy contribute to uncertainty and undermine the confidence that people must have in their government and other institutions. That is why, Mr. Chairman, the United States has moved slowly and cautiously away from severe penalties on possession and the exaggerated rhetoric on the dangers of cannabis heard several decades ago. At the same time, we reject the other extreme—the opinions of the misguided reformers of the sixties who wanted to legalize cannabis. At the present time differences of opinion about policy on cannabis in the United States have been resolved. Discussion continues about the various means of discouraging cannabis use without producing excessive social costs. Concerning our basic goal, however, there is unanimity among informed people in the United States that for the benefit of the individual and society, cannabis use should continue to be discouraged. Use will not be authorized. The scientific evidence and our international obligations under treaty are clear on these points. We intend to follow both.

Thank you, Mr. Chairman.

[Testimony continued from page 16.]

Senator BAYH. I hope that as we proceed with the hearings, we might ask some of your colleagues or yourself, Mr. Miller, at Justice, to explore more fully the concept so that we can have an enlightened presentation—relative to this concept. If we decide that the weight of evidence suggests that we should proceed in this area, we would, of course, like to have your critique of any legislative vehicles, just as you have critiqued this particular legislative vehicle.

S. 1450—VIOLATION OF TREATY COMMITMENTS?

Let me ask a question. Then I will come back to other areas you mentioned. I do not remember the exact words; but something to the effect that actions such as this might be interpreted by other nations as violation of treaty commitments.

Would this bill or similar legislation be a violation of treaty commitments?

Mr. MILLER. This bill, as drafted, which I perceive to be unenforceable, would be very close to becoming a violation of treaty obligations because it is completely unenforceable.

Senator BAYH. I ask the question again. Is it yes or no? Will this be a violation of our treaty commitments?

Mr. MILLER. Sir, I cannot answer it yes or no. I can only say that as presently drafted, being unenforceable, it certainly would border on being violations of our treaty obligations.

Senator BAYH. If it could be enforced, would it be a violation?

Mr. MILLER. If it could be enforced, no, sir, it would not be a violation of our treaty obligations.

Senator BAYH. I had asked my staff to give me their judgment on that; and they concluded, as have U.N. legal experts, that this would not violate the treaties.

Mr. Wood, why do not you proceed. Then we will just go from your left to right.

STATEMENT OF RICHARD WOOD, ASSISTANT DISTRICT ATTORNEY, DENVER, COLO.

Mr. WOOD. Thank you, Mr. Chairman.

Initially, I would like to agree with Mr. Miller that there are, it seems to me, some defects in the bill as drafted. From a purely practical point of view the committee, I think, would like to look at or work out.

Senator BAYH. Let me just say, once again, we are not wedded to any particular legislation. We have not arrived at any foregone conclusions.

So, I hope you will all be very frank in assessing this piece of legislation, make alternative suggestions, or/and note a good idea or a poor one. We are trying to determine the precise language necessary.

Mr. WOOD. I understand that. And for that reason I do not think you probably want me to go through this nitpicking every line and dot on the page. And I could perhaps make that available to the staff at a later time.

Senator BAYH. Please.

Mr. Wood. But insofar as the concept is concerned, I want to express support for the concept of the bill and hope that the committee will be able to work out language which will make the concepts enforceable, and will do the things that I think the committee realizes needs to be done.

In Colorado, our legislature is at this very time working with a bill that is very similar in concept to Senator Javits' bill, that has now passed the Colorado house and the senate in different forms. And there is a conference committee that is attempting to work out those differences. But in concept it is quite similar.

In Denver, the city of Denver, which is the jurisdiction that I am representing, on March 18 of last year we enacted a city ordinance violation to handle small-amount marihuana cases. We did that with the support of the Denver Police Department and the Denver district attorney's office, and since that time our experience with that has been excellent.

MONETARY SAVINGS THROUGH CITY'S MARIHUANA ORDINANCE

We have found that we have a money savings to the police department, to the courts, to the prosecutor's office. Our dockets have been relieved. We actually have more arrests for the ticket type of a violation than we did before when it was a State charge. Officers recognizing that the system requires less of their time, less money, are more inclined, I think to issue citations under this system than they were before.

I think before there was to some extent an attitude of maybe feeling it was not worth it if just a couple of cigarettes were found on somebody. It was not worth all the trouble of having to go to court and all the waste of time to everybody concerned.

Now. the officers, if they see an offense, are not dissuaded from writing out a ticket. And in most cases, the person is released and summoned back into court.

There have been virtually no motions to suppress virtually no trials under this new procedure. We saved a great deal of time. The police department narcotics bureau in Denver likes this procedure. We like this procedure. The net result has been in Denver that possession of a small amount of marihuana—our law defines it as one-half ounce because we are tied into a State statute which uses a half ounce as a limiting amount—but the net result has been a fine, generally in the area of $25 to $50. And this applies to first offenders. So far there have not been any second offenders come through this system, I understand.

So, I think the system is working. And what is important is that we only have about 1,300 police officers in Denver. We have a crime problem like any other big city does. And I think that big city or small city, at some point you have got to make a determination where you are going to put a limited amount of dollars. Are you going to put it into half a million marihuana arrests a year? Such as is being done nationally. Or are you going to divert the amount of money that that represents, I do not know how much that is, but it must be a considerable amount of money.

Senator Bayh. The estimated figure is $600 million annually.

UTILIZE MONEY TO ENFORCE MAJOR CRIMINAL LAWS

Mr. WOOD. I think that if as a country we are able to divert $600 million into crimes like robbery and rape and burglary and homicides, things that are extremely serious that have people afraid to live in certain sections of certain cities and have certain cities dying we could put $600 million into the enforcement of that kind of thing and divert it away from marihuana and handle marihuana on the basis of the crimes that you have in this bill, I think we would be way ahead. I think then we would be making a positive step toward the kind of enforcement of laws that people want and that the cities need.

I think Denver is better off than many cities. Like all big cities, we do have a crime problem. And we do have a limited amount of money. We are very close to the red line on our budget every year. We simply cannot afford to waste money on areas of enforcement that are not of primary concern to the citizens of Denver.

As I said, I did have some suggestions about the law, about the particular bill that Senator Javits introduced. But I will save those and just submit those to the committee.

I concede that marihuana may be harmful. I think any drug probably is harmful. And it is a matter of extent and degree. But just again, dealing with the concept I wonder—if a user is harming himself, how are we helping him by adding to that? Possibly ruining his career, throwing him in jail and diverting money from, as I said, the more important kinds of violent crimes against persons that we really should be having our limited resources directed against. I think that it is just a matter of priorities. And I hope that the Federal law may provide something of a guideline for other States to indicate to them that their priorities should be directed toward the violent crimes, the crimes against persons, the crimes that the FBI statistics show we are having much less success against than we certainly wish we were.

Those are all the remarks I have on the concept of it. If you have any questions, later on, I would be happy to answer them.

61-801 O - 77 - 9

MARIJUANA CITY ORDINANCE

(DENVER, COLO.)

ANALYSIS OF FIRST YEAR OF OPERATIONS; WITH FORMS USED BY POLICE DEPARTMENT

Prepared By:

Richard Wood
Chief Deputy District Attorney
Denver, Colorado
May 9, 1975

THE DENVER MARIJUANA ORDINANCE

Since March 8, 1974, Denver, Colorado, has been utilizing a city ordinance to handle small amount (less than one-half ounce) possession of marijuana violations. The ordinance carries a maximum possible penalty of $300 and 90 days in county jail (compared to the current Colorado state statute, C.R.S. 12-22-322(7) 1973 which, for the same offense, carries a penalty of $500 and one year in county jail).

The ordinance applies only to first offenders.

Since its effective date, 1,830 marijuana ordinance violations have been filed as of April, 1975. In most cases defendants have pled guilty and received a $25 or $50 fine, and in some cases a 5-day suspended county jail sentence.

The Denver Police Department approves of the new procedure, which reduces paperwork and allows concentration on more serious crimes. The Police Department estimates that approximately 20% of those arrested are "ordered in" (a summons procedure) and approximately 80% are taken to jail--with the majority of this 80% being released without bond following booking and processing procedures which typically take from one to four hours. The small percent held on bond are detained either because they are transient or because the amount of marijuana they possessed is believed to be appreciably above one-half ounce, or because they are known to have prior records of possession, sale, or use or drugs.

To facilitate "order in" procedures, the Police Department is beginning to utilize "identiseal" index finger identifiers on summons forms--to try to avoid problems of false arrest, forged or stolen identification cards, drivers licenses, etc.

Attached are copies of the ordinance, and the Police Department forms currently in use in Denver.

###

DENVER COUNTY COURT
GENERAL SESSIONS SUMMONS AND COMPLAINT

☐ JAIL, BOND REQUIRED
☐ HOLD FOR HEALTH
☐ JAIL, BOND NOT REQUIRED
(AFTER I.D. PROCESSING AND WHEN SOBER)

THE COUNTY COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO
THE CITY AND COUNTY OF DENVER, PLAINTIFF, V.

ID. NO.

Mr. _____ DEFENDANT
LAST FIRST INITIAL

DRESS _____ EMPL. BY _____ Date of Birth _____

I AM HEREBY COMMANDED TO APPEAR BEFORE THIS COURT AS THE SAME AND PLACE HEREINAFTER SET FORTH TO ANSWER THE CHARGE(S) OR VIOLATION(S) OF THE REVISED MUNICIPAL CODE OF THE CITY AND COUNTY OF DENVER AS INDICATED BELOW AGAINST THE PEACE AND DIGNITY OF THE PEOPLE AND WHICH OCCURRED IN THE CITY AND COUNTY OF DENVER, COLORADO, AT OR NEAR

ation of Offense _____ On or About (Date) _____ 197__ Time _____ M.

Appearance Date _____ Month _____ Day _____ Year at 8:00 A.M. in Room 111, City & County Bldg., West Colfax and Bannock Street, Denver, Colorado.

Failure to appear as specified, will result in a Warrant for your arrest.

✓	SEC. NO.	RELATING TO	✓	SEC. NO.	RELATING TO	✓	SEC. NO.	RELATING TO	✓	SEC. NO.	RELATING TO
	813-1-3	UNLAWFUL USE OF TEAR GAS		822.5-1	[illegible]		842 3-1	UNLAWFUL COUNTENANCE		866 1-2	INTERFERENCE
	813 2-2	UNLAWFUL TO POSSESS CANNABIS		820.1-1	FALSE EVIDENCE OF FALSE IDENTIFICATION		843.1-1	CONCEALED WEAPON		846 1-3	RESISTANCE TO DEPUTY SHERIFF
	822.1-1(2)	PROSTITUTION		841.2	SOLICITING IN PUBLIC WAY OR PUBLIC PLACE		843.1-1	UNLAWFUL TO FLOURISH A WEAPON		846 3-4	UNLAWFUL TO GIVE FALSE INFORMATION
	822.1-1(3)	PUBLIC INDECENCY		841.7-1	CONSTRUCTING IN PUBLIC WAY OR PUBLIC PLACE		843 1-2	UNLAWFUL CARRYING OF WEAPON		851.1-1	DESTRUCTION OF PUBLIC PROPERTY
	822.7-1	PATRONIZING A PROSTITUTE		842.1-1	DISCRIMINATE USE OF TELEPHONE		845 3-1	UNLAWFUL TO RIDE OR DISCHARGE FIREARM		851 2	UNLAWFUL ACTS INVOLVING FIRE AND POLICE PROPERTY
	822.4-1	UNLAWFUL REGISTRATION		842.2-1	DISTURBING THE PEACE		846.1-1	RESISTANCE		852.1-1	DESTRUCTION OF PRIVATE PROPERTY
										854.1	PETTY THEFT

OTHER VIOLATIONS (DESCRIBE)

COMPLAINANT _____

SUBSCRIBED AND SWORN TO BEFORE ME, DATE _____ 197 COMPLAINANT _____ SER. NO. _____

DEPUTY CLERK

SERVED _____ 197 TIME _____ BY _____ COMPLAINANT _____ SER. NO. _____

THE ABOVE COMPLAINANT KNOWS OR BELIEVES AND SO ALLEGES THAT THE ABOVE NAMED DEFENDANT VIOLATED THE ABOVE SECTIONS OF THE REVISED MUNICIPAL CODE OF THE CITY AND COUNTY OF DENVER.

NOTICE TO DEFENDANT: YOU ARE REQUIRED TO APPEAR AT THE TIME AND PLACE SET FORTH IN THIS SUMMONS AND COMPLAINT. FAILURE TO APPEAR MAY RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST.

Specified © Moore Business Forms, Inc.

THIS IS THE "TICKET" FORM USED BY THE DENVER POLICE DEPARTMENT FOR MARIJUANA VIOLATIONS. IN OFFICER'S DISCRETION SUSPECT MAY BE ORDERED IN (SUMMONS), JAILED AND BOND SET, OR JAILED ONLY FOR BOOKING AND PROCESSING (ONE TO FOUR HOURS) AND THEN RELEASED.

DENVER POLICE DEPARTMENT
INTER-DEPARTMENT
CORRESPONDENCE

TO DATE

FROM

SUBJECT

FORM 200 (REV. 12/62) P/D

THIS IS A FORM USED FOR INTELLIGENCE, TO BE FILLED OUT BY THE ARRESTING OFFICER AND FORWARDED TO NARCOTICS BUREAU.

REQUEST FOR LABORATORY EXAMINATION

CRIME LABORATORY
DENVER POLICE DEPARTMENT

Cust. # _____
Date _____
Time _____

Check Examination Requested: ☐ FIREARMS ☐ NARCOTICS ☐ PRINTS ☐ OTHER

List further instructions:

_____

Lab. # _____

_____
Complaintant or Victim

Seal # _____

_____
Address

Case # _____

Offense _____ (List details, include ALL suspects.)

Describe fully all articles submitted for examination:

ITEM #	AMT.	DESCRIPTION

_____ _____ _____ _____
Submitting Officer Serial No. Submitting Officer Serial No.

Page _____ of _____

DPD 341 (9/74) — PLEASE PRINT —

WHEN A SUSPECT IS PICKED UP FOR A MARIJUANA ORDINANCE VIOLATION THIS ANALYSIS FORM IS FILLED OUT, ANALYSIS IS NOT DONE UNLESS SUSPECT ENTERS NOT GUILTY PLEA AND CASE IS SET FOR TRIAL. ROUTINE ANALYSIS IS COSTLY, THIS PROCEDURE RESERVES ANALYSIS FOR ONLY THOSE FEW CASES WHICH ARE NOT RESOLVED BY A PLEA.

hols (methyl, ethyl, isopropyl, propyl, butyl), aliphatic acetates (ethyl, methyl, propyl, methyl cellosolve acetate), acetone, benzene, carbon tetracholoride, cyclohexane, freons (freon 11 and freon 12), hexane, methyl ethyl ketone, methyl isobutyl ketone, naphtha, perchlorethylene, toluene, trichlorocthane, or xylene.

.1-2. Use or Possession. It shall be unlawful for any person intentionally to smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system, or to possess, buy or use any such substance for the purpose of violating or aiding another to violate this Section 813.1.

.1-3. Under the Influence. It shall be unlawful for any person to be under the influence of any toxic vapors as defined in Subdivision 813.1-1.

.1-4. Sale.

.1-4(1). It shall be unlawful for any person to sell, give, deliver or furnish any substance releasing toxic vapors to any minor without the personal or written consent of a parent, guardian, or other person having legal care or custody of such minor, except when the sale of one tube of glue is made simultaneously with the sale, purchase, and delivery of a hobby or model kit.

.1-4(2). It shall be unlawful for any person, except a person who is at the time of such sale actually employed by or engaged in operating a bona fide commercial establishment at a fixed location, to sell to any other person any substance releasing toxic vapors, and all sales of such substance not made in or from such an establishment shall be unlawful.

.1-4(3). It shall be unlawful for any person knowingly to sell or offer for sale, deliver, or give away to any other person any substance releasing toxic vapors, where the seller, offerer, deliverer, or donor knows or has reason to believe that such substance will be used for the purpose of inducing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system.

.1-5. Exception. This Section 813.1 shall not apply to the inhalation of anesthesia for medical or dental purposes. (Ord. 120, Series 1974)

.2. Cannabis

.2-1. Definitions. As used in this Section the term "Cannabis" shall mean all parts of the plant cannabis whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

.2-2. Unlawful to Possess. It shall be unlawful for any person knowingly to possess cannabis; provided, however, that this Subdivision 813.2-2 shall not apply to any person who shall have been previously convicted under this Subdivision 813.2-2 or under any statute of the State of Colorado of the offence of possession of cannabis, nor to any person knowingly in possession of one-half ounce or more of cannabis. (Ord. 120, Series 1974)

820—OFFENSES RELATING TO MORALS

821 . 821—NARCOTICS AND INTOXICATING LIQUORS

.1. Unlawful Possession of Injection Devices.

.1-1. It shall be unlawful for any person to possess any hypodermic

Senator BAYH. Thank you. We will have questions later. We will hear the other panelists.

Mr. Stroup, will you proceed?

I understand you have a prepared statement to submit and it will be included in the record [1] after your oral testimony.

STATEMENT OF R. KEITH STROUP, DIRECTOR, NATIONAL ORGANIZATION FOR THE REFORM OF MARIHUANA LAWS

Mr. STROUP. Mr. Chairman, I represent a slightly different perspective than the other panelists, and I appreciate the opportunity to participate.

I am the director of an organization called NORML, the National Organization for the Reform of Marihuana Laws.

We are a nonprofit public interest lobby, whose only purpose, since we began some 5 years ago, has been to attempt to remove the marihuana user for the criminal justice system.

I want quickly to disavow the tendency of people to consider NORML a pro-pot lobby. We are not attempting to encourage use, and, in fact, we support discouragement toward all recreational drug use; and that includes tobacco and alcohol, as well as marihuana.

But we also recognize that we live in a culture where literally millions of people do use drugs recreationally. A hundred million people drink alcohol, 60 million smoke cigarettes, and there are now 13 million people who regularly smoke marihuana.

Our position is essentially that while marihuana certainly has some potential for harm, at least among the heavy, chronic, long-term users, we are not properly addressing that risk by handing a criminal arrest record and/or the possibility of jail to the person who smokes.

Our organization supports the Marihuana Commission recommendation of complete decriminalization. It is our strong belief that as individuals in a free society, we have a constitutional right to make the final choice, once well-informed, as to whether we choose to take the risk of smoking marihuana.

Now, most of us would hope that people would not. We would hope that marihuana use would, in fact, decline or disappear. But if our past experience with drug use in this country is any example, that is not likely to occur. We now have 8 percent of the adult population who smoke marihuana.

These people are not generally criminal types. Nor are they any longer the stereotyped long-haired radical of the sixties.

In fact, the Marihuana Commission found that by any criteria other than their use of marihuana, marihuana smokers are indistinguishable from their nonmarihuana smoking peers.

I resent the idea that although I am an adult citizen with a value system much like yours and the rest of the people in this room, I am subject to arrest simply because I choose to smoke marihuana.

MARIHUANA CONTROL LAWS UNCONSTITUTIONAL

I believe that is unconstitutional, and we are challenging these laws in the courts. We are asking the courts to declare the private possession

[1] See p. 52.

and use of marihuana to be protected within the constitutional right to privacy. But as you know, the courts are slow to act in this area. They would prefer to see legislatures act on this.

As a result, we have over the past 4½ years presented our side of the marihuana issue to more than half of the States in legislative hearings.

Currently, 25 States and the District of Columbia are considering measures essentially similar to S. 1450. We expect that perhaps as many as a half a dozen of these will adopt some form of decriminalization this session.

As I was listening to Mr. Miller's testimony, I was thinking how similar our approaches are. The major difference is that we at NORML are simply not willing to say that because we have a heroin problem in this country, which we all know we have, and because the use of cocaine seems to be on the increase, that 13 million of us who smoke marihuana should be subjected to arrest. The Bureau of Narcotics fails to explain how this adds to a more effective enforcement policy toward heroin and cocaine.

I do not understand what Mr. Miller had in mind. I do not see how my possession of an ounce of marihuana has anything to do with his catching a heroin trafficker. But even if it did, in a free society the individual is not supposed to be forced into a position of being a police agent. It becomes a matter of civil rights. And the 13 million of us who occasionally smoke marihuana should not be subject to arrest simply so the Drug Enforcement Administration can have a more impressive enforcement record.

The real opposition to decriminalization in any form, whether a civil-fine version or the complete decriminalization as recommended by the Marihuana Commission, is a legitimate concern that without criminal penalties there will be a giant increase in usage.

OREGON LAW RESULTS: NO INCREASE IN USAGE

While that is a legitimate concern, it is one that is not borne out in fact. As you may know, in the State of Oregon about 28 months ago, criminal penalties were removed for small amounts of marihuana. A year after that new laws was put into effect, a survey was taken by the Drug Abuse Council, an independent foundation here in Washington, D.C., in an attempt to measure any increase in usage which had occurred. The surprising results: there had been no increase in usage whatsoever following decriminalization in Oregon.

In addition, the people who do not smoke marihuana—91 percent of the adults do not use marihuana in Oregon despite the lack of the criminal deterrent—were asked why they do not smoke it.

Over half of the nonsmokers said they simply were not interested. The second biggest category, approximately 23 percent of the nonsmokers, said they were concerned about the health consequences. They were concerned that if they smoked marihuana it would endanger their health, a valid consideration. Only 6 percent of the nonsmokers gave law enforcement reasons for their lack of use.

I think what we are showing is something that many people have suspected for a long time; drug use patterns in this country operate almost totally independent of the criminal law. Certainly this is true

as to drugs like marihuana, which are culturally accepted by at least a growing minority of our population.

So, what our organization is suggesting and what the sponsors of S. 1450 are trying to accomplish is this. There is still great disagreement in this country as to what our ultimate policy concerning marihuana should be. Some people favor a legally controlled market. In other words, eliminate the black market. This would permit age controls, and quality controls and consumer protection measures which are simply not possible with a black market. But there is not yet sufficient political support for that step in the country. And, in fact, this step would be in conflict with our obligations under the Single Convention Treaty of 1961, an international drug control treaty.

Decriminalization in any of its forms is a middle position. It allows us to call a moratorium on minor marihuana arrests. We call a "cease-fire" on arrests for small amounts. That gives us 2 or 3 years during which we can deliberately work out a long-term marihuana policy with better data, with better knowledge of how the various systems have worked, but without the necessity of sacrificing a half million young peoples' careers every year. That is why we support S. 1450.

The civil-fine approach is not our concept. As a marihuana smoker myself, I resent the idea that someone could fine me. But I resent even more adamantly the concept that under current law they can arrest me and throw me in jail. So we see S. 1450 as a compromise, cease-fire measure, which we certainly support. But it is an interim measure and. eventually we should go the full step and eliminate penalties altogether.

[Testimony continued on page 96.]

STATEMENT TO THE

SUBCOMMITTEE ON JUVENILE DELINQUENCY OF THE

JUDICIARY COMMITTEE OF THE UNITED STATES SENATE

BY R. KEITH STROUP

DIRECTOR, NATIONAL ORGANIZATION FOR THE

REFORM OF MARIJUANA LAWS (NORML)

WEDNESDAY, MAY 14, 1975

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear here today and to present our views on S1450, the Marijuana Control Act of 1975. NORML is a non-profit, public interest group seeking a non-criminal response to the private use of marijuana. NORML is supported by approximately twenty thousand active members, and works through public education, with the legislatures, and in the courts.

NORML does not advocate or encourage the use of marijuana, and fully supports a policy of discouragement of all recreational drug use ... including alcohol and tobacco, as well as marijuana ... aimed especially at adolescent use. But we oppose the use of the criminal law against persons who, despite a policy of discouragement, choose to smoke marijuana.

NORML supports the recommendation of the National Commission on Marijuana and Drug Abuse (the Shafer Commission), that the personal use of marijuana be decriminalized. That is, persons found in the possession of a small amount of marijuana for personal use should not be subjected to the criminal process. Thus we have supported, and we have asked others to support, the proposals over the past three years of Senator Jacob Javits and Congressman Edward Koch to amend the federal criminal code to incorporate this recommendation. Additionally, in the three years since the Shafer Commission issued its report on marijuana, Marijuana: A Signal of Misunderstanding, NORML has worked toward the passage of similar marijuana decriminalization proposals in more than half the states.

I regret to report that during that time, the only state to enact the Commission's recommendation ... and then in a modified form ... was Oregon. As you know, in October of 1973 the state of Oregon adopted a civil fine system, enforced with a citation rather than a criminal arrest, for minor marijuana violations. I should add, however, that 21 states and the District of Columbia are presently considering similar proposals.

During the same three year period, the numbers of persons arrested on marijuana charges in this country continued to rise dramatically: from approximately 226,000 arrests

annually to 420,000 annually, and that latter figure represents only the year 1973. The arrest figures for marijuana offenses for 1974 are expected to exceed half a million, and should be released by the FBI within the next few weeks.

The social costs of these arrests are staggering. A study by the California state legislature determined that each arrest costs at least $1,500 to process. Projected nationally, the states may be spending nearly half a billion dollars a year to make marijuana arrests, 93% of which the Shafer Commission found were for simply possessing small quantities of marijuana. The cost to the individual in terms of future opportunities lost through the permanent scar of a criminal arrest record is impossible to calculate.

Since the Javits-Koch proposals were first introduced in the Congress, the debate about a workable and sensible marijuana policy in this country has been steady and growing. We are seeing an emergence of a new national consenses forming around the concept that indeed marijuana use should be discouraged, but that the criminal justice system is an inappropriate, costly and unduly harsh system by which our society indicates its disapproval.

Will a change in the law signal increased usage, a fear often expressed by opponents to decriminalization? No, according to surveys conducted in Oregon one year after

their law was changed. The survey, conducted by the Drug Abuse Council, an independent Washington, D.C. foundation, showed no apparent increase in marijuana usage.

Moreover, other surveys taken by the Drug Abuse Council measured the attitudes of citizens in the state of Oregon and in neighboring California. The surveys indicated that those who do not use marijuana, which comprises 91% of the adult population, do not themselves consider the presence of criminal penalties an important deterrent. Most cited a general lack of interest, or an honest concern that its use might be detrimental to their health, as reasons why they did not smoke marijuana.

The Oregon experience has provided valuable benchmarks to measure the impact of decriminalization. But we must also consider the other side of the marijuana issue: the health questions. This side unfortunately has been subjected on occasion to exploitations and distortions in the popular media. The result is public confusion. Unverified claims by researchers who themselves admit to a strong moral bias against marijuana were accepted as fact and repeated widely and often throughout the media. Meanwhile, follow-up studies conducted with more stringent controls and more objective interpreters have often contradicted or significantly negated the importance of the earlier claims. Instead of clarification in the media, the newer findings have been largely ignored.

Let me stress that NORML does not consider marijuana to be a harmless drug. But we do believe that the potential for marijuana's harm, especially if used at moderate levels, as is the case with the vast majority of marijuana smokers in this country, has been grossly exaggerated.

For a current and objective evaluation of the present state of marijuana research in this country, I would direct the Committee's attention to the 1974 Annual Report submitted to the Congress by the National Institute of Drug Abuse (NIDA), Marijuana and Health, and to special reports appearing in the March and April issues of Consumer Reports magazine. Their conclusion, and I think a reasonable and responsible one, is that adolescent use in particular should be avoided, and that marijuana may have a potential for harm to the user, especially with chronic, long-term heavy use. However, NIDA Director Dr. Robert L. DuPont has this to say concerning the more recent claims:

> The implications of these preliminary studies are, at this point, speculative.... Thus far there is no clinical evidence indicative of such consequences although continuing research is obviously required.

To effectively discourage the use of marijuana, the government must continue to direct a comprehensive research effort into all potential dangers from the use of marijuana. This information, presented in an honest and straightforward manner, should then be made available to all persons who use or may

consider the use of marijuana in an effort to demonstrate what possible harm may be present. In particular, these efforts should be directed towards youth. This is precisely the program envisioned by the Javits-Koch bills over the past three years. Marijuana usage would continue to be discouraged by focusing law enforcement efforts against the commercial trafficker and by warnings of potential health hazards.

Many legislators are not yet willing to remove all penalties for the use of marijuana. They tell us privately that they are concerned that this would be erroneously viewed by their constituents as a "permissive" step. This is why I think we are finding considerable political support for a system based on the Oregon experience, in which the user is subject to a maximum $100 civil ciation, and is removed from the process of the criminal law. The maintenance of the civil citation system is intended to dramatize more strongly that marijuana use is not approved conduct, but in a manner incurring less social and individual costs, and more responsive to current attitudes toward marijuana.

NORML would prefer a policy of complete decriminalization as recommended by the Shafer Commission. There is, however, good cause to actively and aggressively support a civil fine system. Persons using marijuana may be endangering their own health, at least if they fall into the pattern of heavy,

long-term usage, but they are in no sense criminal. The Shafer Commission found that the vast majority are responsible and productive citizens.

In a free society the individual is permitted, though discouraged, to take certain risks as long as they do not endanger others. Skydiving, drinking alcohol, smoking cigarettes and over-eating are but some of the high risk activities people engage in every day. Yet they remain free from arrest. From the best available evidence, smoking marijuana is far less harmful. But the 13 million persons who regularly smoke marijuana are still classified as criminals by the law of 49 states and the federal government.

We cannot in good conscience sit by and continue the frustratingly slow but necessary process of gathering public and legislative support for complete decriminalization, while watching the arrest figures for minor marijuana infractions skyrocket.

The Marijuana Control Act of 1975 (S1450), while allowing a moderate civil fine to be imposed against people found in possession of small amounts of marijuana, eliminates the entire process of arrest and jailing, and the attendant criminal record. The concept of an informed free choice is preserved. Equally important, under the bill the police officer will no longer be asked to attempt to control morals with a nightstick. For most jurisdictions this will represent a considerable time

savings which can be expended in dealing with the mounting toll of serious crime.

NORML supports these efforts as a "cease-fire" approach to this continuing and troublesome issue on the domestic front. We support these bills because we honestly believe it is important now to immediately stop the tragic pattern of criminal arrests. This will allow all sides more time to make a deliberate determination of whether society should go further and remove all penalties.

I have attached to my statement a comprehensive legislative memorandum which describes in greater detail NORML's position on this issue.

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DATE: APRIL, 1975

LEGISLATIVE MEMO

RE: THE MARIJUANA ISSUE

FROM: KEITH STROUP
DIRECTOR, NORML

Memo

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I. Brief Legal History of Marijuana

Marijuana has been used as an intoxicant in various parts of the world for centuries, and in this country since before the turn of the century. However, its use in the U.S. was generally limited to minority groups, including the Chicano migrant workers in the Southwest and blacks in and around New Orleans. As a result, there was little opposition when states first began to ban its sale, Utah passing the first anti-marijuana law in 1915. Sixteen Western states had adopted anti-marijuana laws by 1930.

In the East, New York state led the way in 1927 with what proved to be the model for the Uniform Narcotics Act.

The Federal Bureau of Narcotics was created in 1930. The marijuana scare had already begun, as evidenced by the many state laws already in existence. But with the start of the Bureau came the first coordinated effort to convince the U.S. public that marijuana was a "killer weed."

Harry Anslinger, the ex-prohibition agent who was named the Bureau's first director, began a campaign that included lobbying for passage of the Uniform Narcotics Act, with an optional provision making marijuana illegal, on the state level and the Marijuana Tax Act federally. By 1937, when the first federal law was passed, marijuana was already illegal in every state and was thought to cause crime and "sexual excess."

In 1951 the Boggs Act raised penalties for drug offenses and for the first time in federal law introduced the concept of minimum mandatory sentences. Additional amendments in 1956 raised federal penalties for drug offenses to their zenith.

During the next decade, marijuana usage skyrocketed. Although never satisfactorily explained, marijuana use became identified with the youth culture of the sixties that was opposing the Viet Nam war. Marijuana became a symbol of dissatisfaction and rebellion, feared by the establishment more for the perceived threat to their value system than for any medical threat.

The rebellious youth of the 60's were generally middle class and white. So marijuana began to enter the mainstream of political America. As the arrests rose -- arrests not of blacks or Chicanos -- but suburban, white, middle class kids -- pressure began to mount to moderate criminal laws against the user.

In 1970, as part of the Controlled Substances Act, federal penalties for possession of all drugs were lowered from a felony to a misdemeanor, with a special provision for first offenders that permitted the defendant who pleads guilty or is found guilty to be placed on a conditional probation which, if the terms are fulfilled, result in the charges being dismissed. Since no adjudication of guilt is ever entered by the

court, the defendant can subsequently report that he has never been convicted of a crime.

Further, if the person when arrested was not over 21 years old, he qualifies to have his arrest records "expunged."

Following the lead of the federal government, states began to similarly moderate their marijuana penalties over the ensuing four years. Where once all states treated possession of small amounts of marijuana as a felony, by 1974 all had reverted to the misdemeanor level, although a few still give the prosecutor and/or the judge the choice of proceeding as a felony or a misdemeanor.

And one state, Oregon, has classified possession of small amounts of marijuana as a civil violation, removing the user from the criminal law altogether.

II. Marijuana Usage Today

According to surveys taken in October 1972 by the National Commission on Marijuana and Drug Abuse (Shafer Commission), 26 million Americans had tried marijuana and 13 million were regular users. This breaks down to 16% of the adult population over 18, and 14% of youth between 12 and 17. Two-thirds of all college students have tried marijuana, as have 55% of persons 18-21 years old and 40%

of the age group 22-25. Recently released survey results taken in October 1974 by the independent, Washington, D.C. based Drug Abuse Council indicate that 18% of the adults have now tried marijuana (approximately 30 million Americans), with 8% continuing to use it (13 million). It is noteworthy that despite recent alarmist claims by Senator Eastland and others, in fact there is no "epidemic" of marijuana use in this country. The number of current users has remained constant since 1972.

The individual who smokes marijuana today hardly fits the stereotyped image concocted in the 1930's -- the depraved criminal who got "high" on his reefer and committed vicious crime. In fact, the Shafer Commission found -- "the most notable statement that can be made about the vast majority of marijuana users -- experimenters and intermittent users -- is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criterion other than their marijuana use."

The use of marijuana today is socially the equivalent of the use of alcohol by most of our citizens. It is the recreational drug of choice of a growing minority.

III. Is Marijuana Dangerous to the User?

No drug is totally harmless, including marijuana. But the evidence strongly suggests no significant harm is caused by the occasional use of marijuana and whatever risk is involved with marijuana is far less than the demonstrated harm from a number of other drugs permitted in our society.

We should continue to look for potential ill effects from the use of marijuana -- especially the chronic, heavy use. But any findings of potential harm should be used to discourage use, not to justify treating the user as a criminal. As Dr. Tom Bryant, president of the Drug Abuse Council recently stated:

> "...we should not permit a medical debate to frustrate the decriminalization policy recommended by the Marijuana Commission. Even if marijuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."

This past year we have heard several new claims of potential harm from marijuana use. These claims have received widespread media exposure, often far greater than the substance of the study warranted. Because of inadequate controls, excessive dosage levels, the known bias of the researchers, or for other reasons, the claims often fall flat under close objective examination. Unfortunately the public is left only with the original, unfounded impression.

A glaring recent example is the Report of the U.S. Senate Subcommittee on Internal Security entitled "Marijuana-Hashish Epidmeic and its Impact on United States Security." Subcommittee Chairman James O. Eastland talked of a "marijuana-hashish epidemic," a pending "national disaster," and "a large population of semi-zombies."

The Senator's answer to this perceived threat: wage an all-out propaganda campaign, beginning with the distribution of his admittedly unbalanced one-sided Report. Senator Eastland refused to permit anyone to testify unless their testimony would support his premise -- that marijuana was highly dangerous, medically and morally. The result is a biased, frightening document offering little scientific value and no solutions.

Yet, because the Eastland hearings were reported by a generally uncritical press, there now appears to be a rather widespread belief that recent studies have shown marijuana to be terribly dangerous.

Each year the Department of H.E.W. attempts to summarize the research on marijua and to reach some conclusions about the potential dangers. In their recently released Report for 1974, National Institute for Drug Abuse (NIDA) Director Dr. Robert L. DuPont discusses the recent claims:

> "These more recent studies deal with three areas of concern. They are: effects on male sex hormone levels, interference with the body's immune

> response and effects on fundamental cell metabolism. The implications of these preliminary studies are, at this point, speculative. There is concern that alteration in hormone levels as a result of chronic use may interfere with normal adolescent development or with sexual differentiation of male fetuses if cannabis is used by pregnant women at critical periods of fetal development. Effects on the immune response and on cell metabolism might seriously affect resistance to disease or result in a variety of degenerative or genetic changes. Thus far there is no clinical evidence indicative of such consequences although continuing research is obviously required." (emphasis added)

Dr. DuPont also cautioned,

> "We must also recognize that no drug with major pharmacological action -- including marihuana -- can ever be truly safe. It is inevitable that further research will disclose additional hazards. In developing rational social policy, scientific evidence of a health hazard must be balanced against social and economic costs incurred by possible alternative strategies for discouraging drug abuse."

Dr. DuPont, who also serves as chief Presidential drug advisor in his capacity as director of the White House Special Action Office for Drug Abuse Prevention, recently endorsed publicly the Oregon approach. He believes marijuana presents health risks to the user, and should be actively discouraged, but opposes the use of the criminal law for possession of small amounts.

It should be stressed that the National Commission on Marijuana and Drug Abuse, when they recommended decriminalizing the user, did not presuppose marijuana would be harmless.

And several members of the Commission have reiterated their conclusions since the Eastland Hearings.

> "No drug is totally safe or harmless. In a sense, there is no human activity which is totally harmless. However, it is my opinion that marijuana involves only a minimal risk of harm to the user. Clearly the potential harmfulness of marijuana to the user is on a much lower order of magnitude than the potential harmfulness of such other drugs as alcohol, tobacco, amphetamines, barbiturates, and hallucinogens." J. Thomas Ungerleider, M.D., Presidential Appointee to the National Commission."

> Since publication of the Commission's Report in March 1972, numerous studies have been reported, some suggesting that the dangers from marijuana are far greater than the Report indicated, others demonstrating that its use produces relatively little harm. In short, work in the last two years has not fundamentally changed the data base on which the recommendations were made." Dr. Dana Farnsworth, Presidential Appointee to the National Commission."

In response to the flurry of contradictory medical claims, the Drug Abuse Council, a Washington, D.C. based private foundation funded primarily by the Ford Foundation, recently sponsored a seminar to discuss the recent research. The major researchers were invited, including some of the most vocal opponents of marijuana. At the conclusion of the conference, following closed-door meetings involving critiques of the major work by peers, Dr. Daniel X. Freedman, the respected Chairman of the Department of Psychiatry, University of Chicago, had this to say:

> "I don't think that scientists can tell the public there is going to be any major damage to their health on the basis of the current knowledge."

This is also the conclusion of a detailed critique of the recent medical reports by award winning science writer Ed Brecher and the editors of Consumer Reports, in an update of their excellent work Licit and Illicit Drugs. The March and April issues of Consumer Reports conclude that "recent reports, like past reports, fail to prove that marijuana is either harmful or harmless." C.U. reiterated their belief that "no drug is harmless to all persons at all dosage levels or under all conditions of use."

As part of the 1974 NORML Conference, a medical panel headed by Dr. Norman Zinberg, including Drs. Lester Grinspoon, J. Thomas Ungerleider, Andrew T. Weil and David Smith, discussed these recent claims and reached similar conclusions; the risk to the user demonstrated by these studies has been grossly exaggerated by the authors and/or the media.

The potential harm from marijuana has been greatly exaggerated by those who wish to maintain criminal penalties against the user. The thrust of this campaign has been to allege that new research, unavailable when the Marijuana Commission Report was released in 1972, renders their recommendations invalid. This is an attempt to use the medical/health questions as a "red herring."

Marijuana should be decriminalized, even if it were eventually shown to be dangerous. Giving an arrest record to the user only exacerbates the potential for harm.

And while marijuana may not be harmless, neither is it a terribly dangerous drug. Certainly it presents far less of a health hazard than alcohol, tobacco, birth control pills, and a host of other drugs available in our society. Any risk to the user falls within the ambit of choice the informed individual should be allowed in a free society. So long as the research results warrant it, we should warn against the use of marijuana, but we should not criminalize those who ignore our advice.

IV. The Legal Options

There are three general approaches to marijuana available to society.

A. Continued Criminal Prohibition

Even those who oppose decriminalization (E.G. Senator Eastland) no longer want the smoker sent to jail. They claim the criminal law should be maintained as discouragement, though only enforced with fines and suspended sentences, with jail saved for repeat offenders or exceptional circumstances.

Costs of Continued Criminal Prohibition

But the costs of continued criminal prohibition are great.

1. ARRESTS

According to the F.B.I., more than one million persons have been arrested for marijuana offenses in this country in the last four years.

TOTAL MARIJUANA ARRESTS NATIONALLY

Year	Total Marijuana Arrests	% of Total Drug Arrests	Increase Over Prior Year	Total Drug Arrests
1970	188,682	45.4%	--	415,600
1971	225,828	45.9%	19%	492,000
1972	292,179	55.4%	29%	527,400
1973	420,700	66.9%	43%	628,900
TOTAL	1,127,389			2,063,900

Source: Uniform Crime Reports Federal Bureau of Investigation

And note that 62% of those arrested were under the age of 21 and 88% of those arrested were under the age of 26.

A statistical analysis of state marijuana arrests by the Shafer Commission uncovered the unsettling fact that 93% were for possession -- not sale -- and two-thirds of these involved the quantity of one ounce or less. Only 7% of the arrests were against the commercial trafficker.

In sum, what we're doing in this country is arresting more than 400,000 young people each year, the vast majority possessing small quantities of marijuana for their personal use.

2. LAW ENFORCEMENT RESOURCES

The use of the criminal law is a costly and inefficient instrument of enforcing moral standards or combatting different life styles. The marijuana laws stifle the already overburdened and overcrowded criminal justice system with the processing of hundreds of thousands of minor arrests. Over 10% of all defendants charged in federal courts in 1973 were charged with marijuana violations. In 1970, this figure was less than 1%. A vast amount of valuable police and prosecutorial time and resources are used to prosecute marijuana cases, diverting law enforcement resources away from the control of serious crime. Nationally, it is estimated that approximately 600 million dollars is spent annually enforcing the marijuana laws.

3. RESPECT FOR THE LEGAL SYSTEM

To the millions of young people who are defined as criminals, the marijuana laws engender disrespect and bitterness for the entire legal system. They resent being defined as criminal for their use of marijuana in a system which permits, and it often seems encourages, the use of such proven dangerous drugs as tobacco and alcohol.

The enforcement of the marijuana laws is often selective, applied only to those whose life style or political views are not popular. Thus the marijuana laws are viewed as mostly political, a threat to apply when the offender gets "out of line."

Alleged Benefit from Criminal Prohibition

The primary benefit of criminal prohibition is the alleged deterrent effect of the threat of criminal prosecution. This assumes that if we removed the criminal penalties, marijuana usage would increase greatly. Thus, it is reasoned, the costs of criminal prohibition are justified in our fight against drug abuse in this society.

First, one cannot help but conclude that 35 years of criminal prohibition have failed miserably as a deterrent to use. In 1937, when the federal law was passed, it is estimated that there were, at most, 50,000 smokers in the country. Today there are 13 million regular smokers. Consumers Union recently concluded, in Licit and Illicit Drugs:

> "It is now much too late to debate the issue: Marijuana versus no marijuana. Marijuana is here to stay. No conceivable law enforcement effort can curb its availability."

Also, the change to a decriminalization approach in Oregon was effected without any apparent increase in usage. The Drug Abuse Council surveys taken after one year uncovered the following:

1) there has been no significant increase in persons smoking marijuana in Oregon; and

2) those who do smoke marijuana actually reported a decrease in usage (40% reported a decrease; only 5% an increase).

Therefore, decriminalization should not be seen as leading inevitably to increased usage. In fact, in Oregon where we have accumulated some experience, that has not been the result.

B. Legalize the Sale and Use of Marijuana

There are those who favor the adoption of a legal market in order to exercise control over the currently uncontrolled, black market.

With a black market, there is no way to impose age, strength or quality controls. With proper controls, the potential harm from marijuana might be minimized. The country made this decision with alcohol in 1931, and will likely eventually reach the same conclusion as to marijuana.

However, this is not currently a political option. First, the concept of legal marijuana is still opposed strongly by the public. Misunderstood, legalization is seen as a permissive step, opposed by around 80% of the population. Second, our international treaty obligations, under the Single Convention Treaty of 1961, would be in conflict with such a system. These obligations could be redefined, and probably will be eventually, but this argument would be immediately raised should a legalization bill be introduced federally.

The Marijuana Commission rejected this option on the basis that such a system would institutionalize marijuana use. They said they preferred to continue to discourage marijuana use and to see if its popularity diminished. That was their rationalization for decriminalizing use without providing a legal market.

C. Decriminalize the User

Decriminalization was the brainchild of the Shafer Commission. It was intended to balance the potential harm to society from marijuana, or the perceived threat to society's value system from its use, with the need to eliminate the social costs in wrecked lives and careers from bringing criminal charges against so many of our citizens.

Decriminalization, by eliminating criminal penalties from the user, allows the police resources to be concentrated against the commercial seller. This is consistent with a discouragement effort, and morally more defensible.

Since the Marijuana Commission made its recommendation in March of 1972, the concept of decriminalization has been endorsed by a growing list of organizations, including:

American Bar Association
Consumers Union, publishers of Consumer Reports
National Conference of Commissioners on Uniform State Laws
American Public Health Association
National Advisory Commission on Criminal Justice Standards and Goals

National Council of Churches
The Governing Board of the American Medical Association
National Education Association
B'nai B'rith
Canadian Commission of Inquiry into the Non-Medical Use of Drugs (Le Dain Commission)
San Francisco Committee on Crime
Mayor's Advisory Committee on Narcotics Addiction (Washington, D.C.)
American Academy of Pediatrics
Illinois Bar Association
Minnesota Bar Association
Vermont Bar Association
New York Bar Association
Washington Bar Association
Massachusetts Bar Association

In addition, three state legislatures have made their own studies (California, New Jersey and Massachusetts) and have all recommended decriminalization.

The concept has recently been endorsed editorially by William F. Buckley, Jr., James J. Kilpatrick, Ann Landers, The Washington Post, The New York Times, The Boston Globe, The Los Angeles Times, The Chicago Sun-Times, and a host of others.

OREGON

In October, 1973, the state of Oregon adopted a modified form of decriminalization which defined possession of up to one ounce of marijuana as a violation, subjecting the violator to a maximum $100 civil fine. Criminal penalties were retained for all other categories.

Opponents of the bill argued that marijuana use would greatly increase if criminal laws were removed.

But surveys taken by the Drug Abuse Council after the law had been in effect one year showed no increase had, in fact, occurred. And the law has been accepted warmly by the voters. According to this recent survey, 58% of the Oregonians approve of the new law, only 39% favor reverting to stronger penalties.

Other attempts to analyze the Oregon experiment have reached similarly favorable conclusions.

A recently released report by the Legislative Research Office of the Oregon Legislature concluded after one year that

> "it appears that the laws have not caused the major problems for the state which some had predicted, and that the laws have for the most part, been accepted or approved of by those officials who are responsible for enforcing and administering them."

Mr. Pat Horton, District Attorney for Lane County, Oregon, agrees. After one year, Mr. Horton says,

> "Decriminalization has, in fact, prioritized police work into areas of violent crime and crime against property....Currently law enforcement officers spend more time in the area of violent crimes and, thus, better serve their community....The relationship between the youth in the community and the police has improved substantially....It has removed from the docket approximately one-third of the total number of cases awaiting trial."

"Acceptance of the new legislation in Oregon has been been overwhelmingly positive," Horton observes. By all measurable standards, decriminalization was a comfortable transition, signifying fair play to the individual and widespread acceptance by our electorate."

And Consumer Reports, in the April 1975 issue, offers the following opinion of the Oregon experience:

> "CU's research for "Licit and Illicit Drugs" impelled us to be among the first national organizations to recommend marijuana decriminalization -- that is, the removal of all criminal penalties for marijuana possession and personal use."
>
> "Oregon's experience with the practical results of decriminalization buttresses our decision to remain on that list."

Based upon that favorable experience, Oregon type decriminalization bills are now being considered in many states and on the federal level.

This concept, classifying marijuana as a civil-fine offense, was a minority recommendation of the Marijuana Commission, favored by the Commission's only two House members, Congressmen Tim Lee Carter (D-Ky) and Paul Rogers (D-Fl), and by former director of the Illinois Bureau of Investigation, Mr. Mitchell Ware.

V. Conclusion

Public attitudes towards marijuana smoking have changed dramatically over the past few years. Where once stiff jail penalties were required for someone caught with a small amount of marijuana, small fines and suspended jail sentences are routine in almost all jurisdictions today.

But the laws remain, and so do the arrests. In fact, the number of young people arrested grows each year, and

that means costly attorney's fees, life-long criminal arrest records with their debilitating impact on one's educational and career opportunities, as well as the costly drain on law-enforcement resources, badly needed to combat serious crime.

Decriminalization represents a compromise with significant and growing public support. In fact, recent surveys demonstrate that no elected official need fear reprisal, as the public attitudes have shifted dramatically. Bills to eliminate criminal penalties for minor marijuana violations are now being considered in more than 20 states and by the Congress. Several are expected to pass this session.

Decriminalizing the marijuana smoker represents a common-sense approach which deserves support.

STATEMENT ON CONCENTRATED FORMS OF CANNABIS

NORML shares the recommendations of the National Commission on Marijuana and Drug Abuse that statutory distinctions based on potency are neither desirable nor feasible at the present time. Because of current usage patterns and the practical problems inherent in controlling potency in an unregulated market, distinctions between less potent and more potent varieties are unwarranted, impractical and unfair.

STATEMENT ON MARIJUANA AND DRIVING

NORML strongly discourages the driving of automobiles or other vehicles while under the influence of marijuana or any other drug, and recognizes the legitimate public interest in prohibiting such conduct.

(Exhibit No. 4)

NORML STATEMENTS OF POSITION AND POLICY

The following Statements of Position and Policy were formally adopted at the 1975 annual meeting of the NORML Board of Directors, Executive Committee and Advisory Board. The Statements represent the official positions of NORML, and are subject to annual review.

Washington, D.C.
December 5, 1975

for more information, contact
NORML
2317 M St., N.W.
Washington, D.C. 20037

National Organization for the Reform
of Marijuana Laws
A Non-profit, Public Interest Group

STATEMENT ON DECRIMINALIZATION

NORML supports the removal of all criminal and civil penalties for the private possession of marijuana for personal use. The right of possession should include other acts incidental to such possession, including cultivation and transportation for personal use, and the casual, non-profit transfers of small amounts of marijuana.

STATEMENT ON PERSONAL USE AND POSSESSION

Removal of criminal penalties for the individual who uses or possesses marijuana in private is consistent with traditional American values of personal choice, individual freedom and the right of privacy. Decriminalization is not based on the premise that marijuana use is harmless or that it should be encouraged, but rather that such use should fall within the ambit of individual choice permitted in a free society. It is a social policy aimed at reducing the harm caused by defining marijuana users as criminals.

By removing penalties for the user, without establishing a legal market, a clear public policy of discouragement is continued. Such a policy reduces the immense human, fiscal and social costs of marijuana prohibition by allowing law enforcement efforts to be concentrated on commercial traffickers, particularly those who sell truly dangerous drugs or who sell any drugs to minors.

NORML is opposed to arbitrary quantity limitations as the standard for defining what constitutes possession for personal use. Marijuana users, like wine drinkers and tobacco smokers, often have more marijuana in their posession than can be immediately consumed. Similarly, individual usage and consumption patterns vary greatly. While quantity limitations appear to be a necessary interim statutory approach to decriminalization, the law should reflect the reality of differences in usage patterns and behavior and should recognize the inherent shortcomings of arbitrary ounce limitations.

STATEMENT ON CULTIVATION FOR PERSONAL USE

The right to possess marijuana for personal use includes the right to grow small amounts for personal consumption. Removal of criminal penalties for the private cultivation of marijuana for personal use provides a legal source of supply for marijuana without resort to the establishment of a legal distribution system.

An individual who grows small amounts of marijuana for personal use is apt to be less involved in the illicit drug culture and will have less contact with drug dealers who have an economic incentive for selling other more dangerous—and more expensive—drugs.

STATEMENT ON NON-PROFIT TRANSFERS

The right to possess marijuana for personal use should include the right to transfer small amounts of marijuana between adults for insignificant consideration.

The National Commission on Marijuana and Drug Abuse, in attempting to differentiate between users and sellers, found that the distinction is more meaningful if the "seller" designation is limited to commercial traffickers.

Most smokers share their marijuana with friends, and often the courtesy is returned. Thus they may purchase more marijuana than they personally will use, selling some to friends at cost. Such transfers, involving little or no profit, should be treated as incidental to personal use, rather than commercial sale or furnishing.

STATEMENT ON UNLAWFUL SALE

It must be recognized that where personal use and possession of marijuana are no longer serious crimes, it is both inconsistent and irrational to provide lengthy prison terms for those who distribute marijuana for profit.

STATEMENT ON DISCOURAGING USE

NORML fully supports a discouragement policy towards the recreational use of all drugs, including alcohol, tobacco and marijuana. This policy should be implemented by a public education campaign aimed at warning users and potential users of the risks involved with the use of all recreational drugs. Such warnings should reflect an honest scientific and medical concern. Similarly, advertising which encourages the recreational use of drugs should not be permitted.

Most importantly, criminal penalties should not be applied against those who use such drugs, despite warnings to the contrary. The limits of the criminal sanction must be recognized and not diluted through application to private social conduct which constitutes no direct threat of harm to others. Society should have confidence in the ability of informed individuals to make decisions as to whether they choose to assume whatever personal risks accompany recreational drug use.

STATEMENT ON LEGALIZATION

Legalization of marijuana generally refers to a system for the sale or distribution of marijuana which is authorized by law. As recommended by such organizations as Consumers Union, studies should be undertaken to consider alternative regulatory models which would both minimize the potential for abuse and not encourage use. Specifically, NORML favors appointment of a Commission to conduct such a review.

(Exhibit No. 5)

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

NORML MEMO

2317 M STREET, N.W. WASHINGTON, D.C. 20037 202-223-3170

DATE: MAY 1976

LEGISLATIVE MEMO

RE: THE MARIJUANA ISSUE -- SHOULD WE CONTINUE TO TREAT MARIJUANA SMOKERS AS CRIMINALS?

FROM: KEITH STROUP
NATIONAL DIRECTOR, NORML

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I. Brief Legal History of Marijuana

Marijuana has been used an an intoxicant in various parts of the world for centuries, and in this country since before the turn of the century. However, its use in the U.S. was generally limited to minority groups, including the Chicano migrant workers in the Southwest and blacks in and around New Orleans. As a result, there was little opposition when states first began to ban its sale, Utah and California passing the first anti-marijuana laws in 1915. Sixteen Western states had adopted anti-marijuana laws by 1930.

In the East, New York state led the way in 1927 with what proved to be the model for the Uniform Narcotics Act.

When the Federal Bureau of Narcotics was created in 1930, the marijuana scare had already begun, as evidenced by the many state laws already in existence. But with the start of the Bureau came the first coordinated effort to convince the U.S. public that marijuana was a "killer weed."

Harry Anslinger, the ex-prohibition agent who was named the Bureau's first director, began a campaign that included lobbying for passage of the Uniform Narcotics Act, with an optional provision making marijuana illegal, on the state level and the Marijuana Tax Act federally. By 1937, when the first federal law was passed, marijuana was already illegal in every state and was thought to cause crime and lead to insanity.

In 1951 the Boggs Act raised penalties for drug offenses and for the first time in federal law introduced the concept of minimum mandatory sentences. Additional amendments in 1956 raised federal penalties for drug offenses to their zenith.

During the next decade, marijuana usage skyrocketed. Although never satisfactorily explained, marijuana use became identified with the youth culture of the sixties that was opposing the Viet Nam war. Marijuana became a symbol of dissatisfaction and rebellion, feared by the establishment more for the perceived threat to their value system than for any health threat.

The rebellious youth of the 60's were often middle class and white. So marijuana began to enter the mainstream of political America. As the arrests rose -- arrests not of blacks or Chicanos -- but suburban, white, middle class kids -- pressure began to mount to moderate criminal laws against the user.

In 1970, as part of the Controlled Substances Act, federal penalties for possession of all drugs were lowered from a felony to a misdemeanor, with a special provision for first offenders that permitted the defendant who pleads guilty or is found guilty to be placed on a conditional probation which, if the terms are fulfilled, results in the charges being dismissed. Since no adjudication of guilt is ever entered by the court, the defendant can subsequently report that he has never been convicted of a crime.

Further, if the person when arrested was not over 21 years old, he qualifies to have his arrest records "expunged."

Following the lead of the federal government, states began to similarly moderate their marijuana penalties over the ensuing four years. Where once all states treated possession of small amounts of marijuana as a felony, by 1974 all but Nevada had reverted to the misdemeanor level, and Arizona still gives the prosecutor the choice of proceeding as a felony or a misdemeanor.

And eight states, beginning with Oregon in 1973, have adopted a modified form of decriminalization; minor marijuana violations are treated with a fine only, enforced with a citation rather than an arrest, and the offender is not saddled with a permanent criminal record.

II. Marijuana Usage Today

A continuing series of U.S. government sponsored surveys beginning in 1971, complimented by Drug Abuse Council[1] surveys beginning in 1974, show that around 13 million Americans (8% of the adults and 12% of youth aged 12-17) are current[2] marijuana smokers and that a total of 34 million Americans (19% of the adults and 23% of the youth) have smoked marijuana at least once.

Interestingly, the marijuana usage rates demonstrate a number of indentifiable patterns, but there is no indication that they are in any manner related to the particular law in effect in the jurisdiction.

For example, after Oregon had removed their criminal laws on minor marijuana violations for one full year, 19% of their adults had tried marijuana, and 9% were current users.[3] This compares favorably to neighboring California,[4] which then still retained a possible 10 year felony sentence for minor possession cases, where 28% of the adults had tried marijuana and 9% were current smokers; and nationwide[5] figures showing 18% of all adults had experimented with marijuana and 8% were current smokers.

The results of follow-up surveys by the Drug Abuse Council on the second anniversary of decriminalization in Oregon showed equally favorable results: 20% of the adults had tried marijuana, while 8% are current users.[6] There has been absolutely no increase in marijuana smoking since criminal penalties were removed more than two years ago.

Of the Oregonians who did not currently smoke (91% first year/92% second year) only 6% the first year and 4% the second said that the threat of prosecution was a deterrent; the majority (53% and 65%) said they were simply not interested in marijuana, with concern about possible ill-effects to the smoker's health apparently the only accountable deterrent (23% and 28%). In neighboring California, even with the supposed threat of a ten year felony, only 12% of the non-smokers said the fear of criminal prosecution was a deterrent to them. Much as in Oregon, 50% of the non-smokers were simply not interested in marijuana, and 38% were deterred by fears of adverse health consequences.

It becomes apparent that a majority of our citizens don't smoke marijuana because they are not interested in it and because they are not yet certain of the health implications involved. This is true whether the state decriminalizes marijuana or whether it treats even minor violations as a felony. As of December, 1975, the marijuana usage patterns in Oregon were not unlike the rest of the country; but Oregonians who did smoke were not being arrested.

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1 The Drug Abuse Council, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation and research funding in the field of drug use and misuse.

2 Defined as "having smoked marijuana within the past month and indicates some possibility of using again."

3 Survey of Marijuana Use - State of California, Released by the Drug Abuse Council, March 8, 1975.

4 Survey of Marijuana Use - State of Oregon, Released by the Drug Abuse Council, December 15, 1974.

5 Survey of Marijuana Use and Attitudes, Released by the Drug Abuse Council, January, 1975.

6 Survey of Marijuana Use - State of Oregon, Released by the Drug Abuse Council, December 1, 1975.

Perhaps that accounts for the widespread acceptance of the new approach. The Drug Abuse Council found that two years after decriminalization had become effective, 58% of the Oregonians approved of the new law, or a more liberal version of decriminalization, while only 40% favored a return to criminal penalties. A second survey[7] showed an even higher (61%) approval rating, with only 32% disapproving.

The major factors which appear to be determinative of the likelihood of smoking marijuana are regional (East and West Coasts are highest), age (18-25 is highest), educational level (highest rates associated with higher educational level), and population density (urban rates highest).

The following is a reprint of some highlights of a nationwide usage and attitudinal survey sponsored by the National Institute on Drug Abuse, H.E.W., released in October, 1975, with the 1974 data taken between November, 1974 and March, 1975.[8]

MARIJUANA AND HASHISH EXPERIENCE

	Adults			Juveniles (12-17)		
	1971	1972	1974	1971	1972	1974
Ever Used Marijuana	15%	16%	19%	14%	14%	23%
Current User**	5%	8%	7%	6%	7%	12%
Began Smoking Marij. w/in Last Year*	*	*	2%	*	*	9%
Ever Used Hashish	*	*	9%	*	*	10%
Current User	*	*	2%	*	*	3%
Began Smoking Hash w/in Last Year	*	*	1%	*	*	5%

*Not included in 1971 and 1972 Surveys
**Current user defined as "having used within past month"

MARIJUANA EXPERIENCE AMONG PARTICULAR SUBGROUPS

Age (Adults)	Have Ever Used	Current Users
18-25	53%	25%
26-34	29%	8%
35-49	7%	1%
50+	2%	--
Age (Youth)		
12-13	6%	2%
14-15	22%	12%
16-17	39%	20%
Sex (Adults)		
Male	24%	9%
Female	14%	5%
Sex (Youth)		
Male	24%	12%
Female	21%	11%

7 Oregon Research Institute State-Wide Survey, November, 1975.

8 Public Experience with Psychoactive Substances, A Nationwide Study Among Adults and Youth, Prepared by Response Analysis Corporation, for the National Institute on Drug Abuse, August, 1975.

Education (Adults)	Have Ever Used	Current Users
Below High School Graduate	9%	3%
High School Graduate	20%	7%
Currently in College	61%	33%
Some College Completed	27%	10%
Region (Adults		
Northeast	22%	7%
North Central	17%	7%
South	13%	4%
West	29%	11%
Region (Youth)		
North	26%	14%
North Central	21%	11%
South	17%	6%
West	30%	19%
Population Density (Adult)		
Large Metropolitan	25%	9%
Other Metropolitan	19%	8%
Non-Metropolitan	11%	3%

This same federal survey found that 86% of the American adults now oppose the imposition of any jail penalty for minor marijuana offenses, and 52% favor only a fine and/or probation.

PREFERRED HANDLING OF MARIJUANA OFFENSES

(Adults)	Possession	Sale
No penalty	16%	7%
A fine only	15%	15%
Probation	21%	10%
Require treatment	34%	1%
Up to 1 year in jail	6%	27%
More than 1 year in jail	4%	36%
No opinion	4%	4%

The individual who smokes marijuana today hardly fits the stereotyped image concocted in the 1930's -- the depraved criminal who got "high" on his reefer and committed vicious crime. In fact, the National Commission on Marijuana and Drug Abuse (Shafer Commission) found, in their March 1972 Report[9] recommending marijuana decriminalization -- "the most notable statement that can be made about the vast majority of marijuana users -- is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criterion other than their marijuana use."

The use of marijuana today by 13 million Americans is socially the equivalent of the use of alcohol by some 100 million Americans. It is the recreational drug of choice of a substantial minority.

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9 Marijuana, A Signal of Misunderstanding, First Report of the National Commission on Marijuana and Drug Abuse, March, 1972.

III. Is Marijuana Dangerous to the User?

No drug is totally harmless, including marijuana. But the evidence strongly suggests no significant harm is caused by the occasional use of marijuana and whatever risk is involved with marijuana is within the range normally permitted in our society. The U.S. Government's chief drug expert, Dr. Robert L. DuPont, Director of the National Institute on Drug Abuse, recently announced that following massive federal research efforts, he now concludes that marijuana presents far less of a health hazard than either alcohol or tobacco.

We should continue to look for potential ill effects from the use of marijuana -- especially the chronic, heavy use. But any findings of potential harm should be used to discourage use, not to justify treating the user as a criminal. As Dr. Tom Bryant, president of the Drug Abuse Council recently stated:[10]

> ". . . we should not permit a medical debate to frustrate the decriminalization policy recommended by the Marijuana Commission. Even if marijuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."

This past couple of years we have heard several new claims of potential harm from marijuana use. These claims have received widespread media exposure, often far greater than the substance of the study warranted. Because of inadequate controls, excessive dosage levels, the known bias of the researchers, or for other reasons, the claims often fall flat under close objective examination. Unfortunately the public is left only with the original, unfounded impression.

A glaring recent example is the Report of the U.S. Senate Subcommittee on Internal Security entitled "Marijuana-Hashish Epidemic and its Impact on United States Security." Subcommittee Chairman James O. Eastland talked of a "marijuana-hashish epidemic," a pending "national disaster," and "a large population of semi-zombies."

The senator's answer to this percieved threat: wage an all-out propaganda campaign, beginning with the distribution of his admittedly unbalanced one-sided Report. Senator Eastland refused to permit anyone to testify unless their testimony would support his premise -- that marijuana was highly dangerous, medically and morally. The result is a biased, frightening document offering little scientific value and no solutions.

Each year the Department of H.E.W. attempts to summarize the research on marijuana and to reach some conclusions about the potential dangers. In their Report for 1975, N.I.D.A. Director Dr. DuPont discusses the recent claims:

> "This report does not give marihuana a 'clean bill of health,' as some would hope. Nor does it support the fear and irrationality that still characterize some of the public debate about marihuana. Instead, it is a progress report on our effort to understand a challenging health problem with immense social, political, and economic implications."

Dr. Dupont also endorsed the Oregon approach to marijuana decriminalization, suggesting a $25.00 civil fine for minor offenses. Dr. DuPont said he believes we should continue to discourage marijuana smoking, but opposes the use of the criminal law for possession of small amounts.

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10 "Furor Created By Recent Marijuana Studies Questioned," Release of the Drug Abuse Council, July 17, 1974.

It should be stressed that the National Commission on Marijuana and Drug Abuse, when they recommended decriminalizing the user, did not presuppose marijuana would be harmless. And several members of the Commission have reiterated their conclusions since the Eastland Hearings.

> "No drug is totally safe or harmless. In a sense, there is no human activity which is totally harmless. However, it is my opinion that marijuana involves only a minimal risk of harm to the user. Clearly the potential harmfulness of marijuana to the user is on a much lower order of magnitude that the potential harmfulness of such other drugs as alcohol, tobacco, amphetamines, barbiturates, and hallucinogens." J. Thomas Ungerleider, M.D., Presidential Appointee to the National Commission.

> "Since publication of the Commission's Report in March 1972, numerous studies have been reported, some suggesting that the dangers from marijuana are far greater than the Report indicated, others demonstrating that its use produces relatively little harm. In short, work in the last two years has not fundamentally changed the data base on which the recommendations were made." Dr. Dana Farnsworth, Presidential Appointee to the National Commission.

In response to the flurry of contradictory medical claims, the Drug Abuse Council sponsored a January 1975 seminar to discuss methodological issues of recent research. Participating in the Conference were 19 scientists, representing the disciplines of genetics, immunology, endocrinology, pharmacology, internal medicine, psychiatry, neurology, and psychology, including some of the most vocal opponents of marijuana. At the conclusion of the conference, following closed-door meetings involving critiques of the major work by peers, and Executive Summary Report[11] was released, having this to say:

> "Our present state of knowledge indicates that although there are always ample reasons to be concerned about the use of any drug, there are no new reasons to be especially disturbed by the use of marihuana."

The Drug Abuse Council Seminar also concluded that certain of the widely circulated claims should not have been released without more careful review by other researchers.

> "Also of importance in the emotionally charged area of drug use is utilizing the final check process of presenting research results to the scrutiny of scientific colleagues, before demonstrating them to a non-scientific audience who do not have always the background to make critical assessments."

This is also the conclusion of a detailed critique of the recent medical reports by award winning science writer Ed Brecher and the editors of Consumer Reports, in an update of their excellent work Licit and Illicit Drugs. The March and April 1975 issues of Consumer Reports[12] conclude that "recent reports, like past reports, fail to prove that marijuana is either harmful or harmless." C.U. reiterated their belief that "no drug is harmless to all persons at all dosage levels or under all conditions of use."

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11 Drug Abuse Council Conference on Methodological Issues In Recent Cannabis Research, An Executive Summary Report, January 5-6, 1975.

12 Marijuana, The Health Questions, Consumer Reports, March 1975 and Marijuana, The Legal Questions, Consumer Reports, April, 1975.

Of the recent alarmist reports, C.U. had this to say:

> "Out of all of these many studies (and others not reviewed here), a general pattern is beginning to emerge. When a research finding can be readily checked -- either by repeating the experiment or by devising a better one -- an allegation of adverse marijuana effects is relatively short-lived. No damage is found -- and after a time the allegation is dropped (often to be replaced by allegations of some other kind of damage due to marijuana)."
>
> "If the test procedure is difficult -- like the air encephalograms thta Dr. Campbell employed, or like Dr. Heath's work with electrodes implanted deep in the brain -- independent repeat studies are not run in other laboratories. So these allegations of damage continue to be cited in the scientific literature and in the lay press. Then they, too, are eventually replaced by fresh allegations of marijuana damage."

The results of a federally funded study of long term (17.5 years average use) users of very strong marijuana in Jamaica indicate no serious physiological or neurological harm. The Jamaican Study[13], the first intensive, multidisciplinary study of actual marijuana smokers, found no significant differences in health or motivation between smokers and non-smokers, concluding that even heavy marijuana use

> . . . "does not diminish work drive or work ethic"
> . . . "There is no evidence of any causal relationship between cannabis use and mental deterioration, insanity, violence or poverty."

The Jamaican results were recently checked against similar studies of long-germ marijuana smokers in Costa Rica and Greece.[14] Despite extremely heavy usage for up to 20 years, these U.S. federally funded researches were unable to distinguish between the health or work performance of smokers and non-smokers. These longitudinal studies of actual marijuana smokers are convincing evidence that marijuana is relatively harmless.

The potential harm from marijuana has been greatly exaggerated by those who wish to maintain criminal penalties against the user. The thrust of this campaign has been to allege that new research, unavailable when the Marijuana Commission Report was released in 1972, renders their recommendations invalid. This is an attempt to use the medical/health questions as a "red herring."

Marijuana should be decriminalized, even if it were eventually shown to be dangerous. Giving an arrest record to the user only exacerbates the potential for harm.

And while marijuana may not be harmless, neither is it a terribly dangerous drug. Certainly it presents far less of a health hazard than alcohol or tobacco, and a host of other drugs available in our society. Any risk to the user falls within the ambit of choice the informed individual should be allowed in a free society. So long as the research results warrant it, we should warn against the use of marijuana, but we should not exaggerate the dangers nor should we criminalize those who ignore our advice.

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13 Ganja in Jamaica, Vera Rubin and Lambros Comitas, Mouton and Co., The Hague, Paris, 1975.

14 Marijuana and Health, Fifth Annual Report to the U.S. Congress, from the Secretary of H.E.W., 1975.

IV. The Legal Options

There are three general approaches to marijuana available to society.

A. Continued Criminal Prohibition

Even those who oppose decriminalization (e.g. Senator James Eastland) no longer want the marijuana smoker sent to jail. They claim the criminal law should be maintained as discouragement, though only enforced with fines and suspended sentences, with jail saved for repeat offenders or exceptional circumstances.

Costs of Continued Criminal Prohibition

But the costs of continued criminal prohibition are great.

1. ARRESTS

According to the F.B.I., more than one and a half million persons have been arrested for marijuana offenses in this country in the last five years.

TOTAL MARIJUANA ARRESTS NATIONALLY

Year	Total Marijuana Arrests	Increase Over Prior Year	% of Total Drug Arrests	Total Drug Arrests
1970	188,682	--	45.4%	415,600
1971	225,828	19%	45.9%	492,000
1972	292,179	29%	55.4%	527,400
1973	420,700	43%	66.9%	628,900
1974	445,600	6%	69.4%	642,100
TOTAL	1,572,989			2,706,000

Source: Uniform Crime Reports, F.B.I.

A statistical analysis of state marijuana arrests by the Shafer Commission uncovered the unsettling fact that 93% were for possession -- not sale -- and two-thirds of these involved the quantity of one ounce or less. Only 7% of the arrests were against the commercial trafficker.

And note that 52% of those arrested were under the age of 21 and 88% of those arrested were under the age of 26.

In sum, what we're doing in this country is arresting more than 400,000 mostly young people each year, the vast majority possessing small quantities of marijuana for their personal use.

2. LAW ENFORCEMENT RESOURCES

The use of the criminal law is a costly and ineffecient instrument of enforcing moral standards or combatting different life styles. The marijuana laws stifle the already overburdened and overcrowded criminal justice system with the processing of hundreds of thousands of minor arrests. A vast amount of valuable police and prosecutorial time and resources are used to prosecute marijuana cases, diverting law enforcement resources away from the control of serious crime. Nationally, it is estimated that 600 million dollars is spent annually enforcing the marijuana laws.

3. RESPECT FOR THE LEGAL SYSTEM

To the millions of young people who are defined as criminals, the marijuana laws engender disrespect and bitterness for the entire legal system. They resent being defined as criminal for their use of marijuana in a system which permits, and it often seems encourages, the use of such proven dangerous drugs as tobacco and alcohol.

The enforcement of the marijuana laws is often selective, applied only to those whose life style or political views are not popular. Thus the marijuana laws are viewed as mostly political, a threat to apply when the offender gets "out of line."

Alleged Benefit from Criminal Prohibition

The primary benefit of criminal prohibition is the alleged deterrent effect of the threat of criminal prosecution. This assumes that if we removed the criminal penalties, marijuana usage would increase greatly. Thus, it is reasoned, the costs of criminal prohibition are justified in our fight against drug abuse in this society.

First, one cannot help but conclude that 35 years of criminal prohibition have failed miserably as a deterrent to use. In 1937, when the federal law was passed, it is estimated that there were, at most, 50,000 smokers in the country. Today there are 13 million regular smokers. Consumers Union recently concluded, in Licit and Illicit Drugs:

> "It is now much too late to debate the issue: Marijuana versus no marijuana. Marijuana is here to stay. Non conceivable law enforcement effort can curb its availability."

Also, the change to a deciminalization approach in Oregon was effected without any apparent increase in usage. The Drug Abuse Council surveys taken after one year, and again after two years, uncovered the following:

1) there has been no increase in persons smoking marijuana in Oregon; less than one-half of one percent of the adults began smoking marijuana during the first year after criminal laws were removed; and there was an apparent 1% decrease in smoking during the second year.

2) those who do smoke marijuana actually reported a decrease in usage (40% the first year and 35% the second reported a decrease; only 5% an increase).

Therefore, decriminalization should not be seen as leading inevitably to increased usage. In fact, in Oregon, where we have accumulated some experience, that has not been the result.

B. Legalize the Sale and Use of Marijuana

There are those who favor the adoption of a legal market in order to exercise control over the currently uncontrolled, black market.

With a black market, there is no way to impose age, strength or quality controls. With proper controls, the potential harm from marijuana might be minimized. The country made this decision with alcohol in 1931, and will likely eventually reach the same conclusion as to marijuana.

However, this is not currently a political option. First, the concept of legal marijuana is still opposed strongly by the public. Misunderstood, legalization is seen as a permissive step, opposed by around 80% of the population. Second, our international treaty obligations, under the Single Convention Treaty of 1961, would appear to conflict with such a system. These obligations could be redefined, and probably will be evenually, but this argument would be immediately raised should a legalization bill be introduced either federally or by a state.

The Marijuana Commission rejected this option on the basis that such a system would institutionalize marijuana use. They said they preferred to continue to discourage marijuana use and to see if its popularity diminished. That was their rationalization for decriminalizing use without providing a legal market.

C. Decriminalize the User

Decriminalization was the brainchild of the Marijuana Commission (Shafer Commission). It was intended to balance the potential harm to society from marijuana, or the perceived threat to society's value system from its use, with the need to eliminate the social costs in wrecked lives and careers from bringing criminal charges against so many of our citizens.

Decriminalization, by eliminating criminal penalties from the user, allows the police resources to be concentrated against the commercial seller. This is consistent with a discouragement effort, and morally more defensible.

Since the Marijuana Commission made its recommendation in March of 1972, the concept of decriminalization has been endorsed by a growing list of organizations, including:

American Bar Association
Consumers Union, publishers of Consumer Reports
National Conference of Commissioners on Uniform State Laws
American Public Health Association
National Advisory Commission on Criminal Justice Standards & Goals
National Council of Churches
The Governing Board of the American Medical Association
National Education Association
B'nai B'rith
Canadian Commission of Inquiry into the Non-Medical Use of Drugs (Le Dain Commission)
San Francisco Committee on Crime
Mayor's Advisory Committee on Narcotics Addiction (District of Columbia)
American Academy of Pediatrics
State Bar Associations in Illinois, New York, Washington, Massachusetts, California, Arizona and Minnesota.

In addition, nine states have made their own studies (California, Illinois, Maine, Massachusetts, Michigan, New Jersey, Pennsylvania, Virginia and Wisconsin) and all have recommended decriminalization.

The concept has been endorsed editorially by William F. Buckley, Jr., James J. Kilpatrick, Ann Landers, The Washington Post, The New York Times, The Boston Globe, The Los Angeles Times, The Chicago Sun-Times, and a host of others.

OREGON

In October, 1973, the state of Oregon adopted a modified form of decriminalization which defined possession of up to one ounce of marijuana as a violation, subjecting the violator to a maximum $100 civil fine. Criminal penalties were retained for all other categories.

A report by the Legislative Research Office of the Oregon Legislature concluded after one year that:

> "it appears that the laws have not caused the major problems for the state which some had predicted, and that the laws have for the most part, been accepted or approved of by those officials who are responsible for enforcing and administering them"

Mr. Pat Horton, District Attorney for Lane County Oregon, agrees. After one year, Mr. Horton said,

> "Decriminalization has, in fact, prioritized police work into areas of violent crime and crime against property. . . .Currently law enforcement officers spend more time in the area of violent crimes and, thus, better serve their community. . . . The relationship between the youth in the community and the police has improved substantially. . . .It has removed from the docket approximately one-third of the total number of cases awaiting trial."

"Acceptance of the new legislation in Oregon has been overwhelmingly positive," Horton observes. "By all measurable standards, decriminalization was a comfortable transition, signifying fair play to the individual and widespread acceptance by our electorate."

And Consumer Reports, in the April 1975 issue, offers the following opinion of the Oregon experience:

> "CU's research for "Licit and Illicit Drugs" impelled us to be among the first national organizations to recommend marijuana decriminalization -- that is, the removal of all criminal penalties for marijuana possession and personal use."
>
> "Oregon's experience with the practical results of decriminalization buttresses our decision to remain on that list."

And perhaps most importantly, the Drug Abuse Council Surveys indicated that there had been absolutely no increase in marijuana smoking following two years of decriminalization. The use of small civil fines instead of arrest and jail has not led to a greater number of users, as some had feared.

Based upon the favorable Oregon experience, similar citation bills have now been introduced in more than half the state legislatures, and in Congress. And seven states have recently joined Oregon in this approach -- Alaska, Maine, Colorado, California, Ohio, South Dakota and Minnesota.

SUMMARY CHART - MARIJUANA CITATION LAWS

State	Max. Fine Imposed	Max. Amount Possessed	Criminal or Civil Violation	Effective Date
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$100.00	Any amount in private for personal use or 1 oz. in public	Civil	Mar. 1, 1976
Maine	$200.00	Any amount[a] for personal use	Civil	Mar. 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense - no criminal record	July 1, 1975
California[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (approx. 3½ oz.)	Minor misdemeanor - no crim. record	Nov. 22, 1975
South Dakota	$ 20.00	1 oz.	Civil	April 1, 1977
Minnesota[b]	$100.00[c]	1½ oz.	Civil	April 10, 1976

[a] There is a rebuttable presumption that possession of less than 1½ oz. is for personal use, and possession of more than 1½ oz. is with an intent to distribute.

[b] Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in four states: California (for up to 1 oz.), Colorado (up to 1 oz.), Ohio (up to 20 gr.), and Minnesota (up to 1½ oz.).

[c] Only Minnesota provides for increased penalties for second offense: 0-90 days in jail and/or a $300 fine for second offense within a two year period.

This concept, classifying marijuana as a civil-fine offense, was a minority recommendation of the Marijuana Commission, favored by the Commission's only two House members, Congressmen Tim Lee Carter (D-Ky) and Paul Rogers (D-Fl), and by former director of the Illinois Bureau of Investigation, Mr. Mitchell Ware.

V. Conclusion

Public attitudes towards marijuana smoking have changed dramatically over the past few years. Where once stiff jail penalties were demanded for someone caught with a small amount of marijuana, small fines are now favored by a majority of our citizens, and are routine in almost all jurisdictions today.

But the laws remain, and so do the arrests. In fact, the number of young people arrested grows each year, and that means costly attorney's fees, life-long criminal arrest records with their debilitating impact on one's educational and career opportunities, as well as the costly drain on law-enforcement resources, badly needed to combat serious crime.

Decriminalization represents a "cease-fire," a compromise measure to stop the senseless and tragic arrest of hundreds of thousands of marijuana smokers each year, while we develop a rational, well thought out, long-term marijuana policy in this country.

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[Testimony continued from page 51.]
Mr. STROUP. Thank you, Mr. Chairman.
Senator BAYH. Thank you, Mr. Stroup.
Mr. Horton, will you proceed with your testimony?

STATEMENT OF J. PAT HORTON, DISTRICT ATTORNEY, LANE COUNTY, EUGENE, OREG.

Mr. HORTON. Good morning, Mr. Chairman.
Thank you for the opportunity of appearing this morning.
As you know, Oregon decriminalized marihuana—the possession of small amounts under an ounce, and the use thereof—about October 1973.
If I may, I would like to share with you some of the events leading up to that legislation, as well as the effects that this has had on Oregonians for the last year and a half, and get my biases out of the way and put into perspective, perhaps, my comments.
I advocate the reduction of the penalties of marihuana. And I tell you that, sir, that you can put in perspective what I am about to say. I assure you that I will endeavor to be as frank and precise and candid, on both the strengths and weaknesses of the Oregon legislation, as I can be.
First, we went through a process of trying to identify what the issue was before our legislature—starting about January of 1973, as I remember. We utilized information from both the Shafer Commission study and the Le Dain Commission study—done in Canada, which was corroborative of the earlier study.

PURPOSE OF MARIHUANA CRIMINAL SANCTIONS

From these we attempted to focus upon the true issue, which led us to this question. If marihuana did not cause crime, if marihuana did not casually relate to hardcore drug addiction such as heroin, if marihuana was not one of the most socially damaging drugs to the individual—that is not to say that it is harmless; no doubt it is probably harmful in some degree, but certainly not as harmful as alcohol and possibly not as harmful as tobacco—what was the real purpose to maintain criminal laws for the possession or use of small amounts of marihuana?
In analyzing that ultimate question, we started to look, first, at the social impact on the community. It did not cause crime, it did not cause addiction, it was relatively harmless to the individual.
What about as a law enforcement tool, could we use possession of marihuana to interdict the flow of hard-core narcotics in the community? We started analyzing police practices and we came up with some very startling information, some of which you have already imparted in your statement. Also, the old concept of arresting the marihuana user and in turn granting him or her immunity to determine the source of supply of marihuana, did not complete the drug triangle to the heroin importer or trafficker. Most of the time we found a lot of lateral movement. We found that the possessor of small amounts of marihuana probably got it from his friend or roommate or associate and probably most often in a nonprofit type of trans-

fer. We found that we could not vertically get to the trafficker of heroin by arresting the marihuana user.

We then asked: Why, then, are there so many thousands of arrests for possession of small amounts of marihuana? A pragmatic answer was found by the fact that it is an easy arrest to make; it is an ever-present drug; it is easy to find and prosecute. Police narcotic units can make a statistical basis of success by a lot of marihuana cases.

MARIHUANA LAWS AS ENFORCEMENT TOOL

Those answers are, I believe, reinforced by Mr. Miller as he pointed out in his statement that, as far as the Department of Justice was concerned, the criminal sanction for simple possession under the Controlled Substances Act have not been applied as an enforcement measure against marihuana users. I think that is tacitly an admission that we do not really interdict the flow of hardcore narcotics by concentrating on the marihuana user—that myth has been dispelled in more progressive law enforcement departments. But, it is being retained and used by many law enforcement agencies that are not as progressive as the U.S. Department of Justice.

So, as a law enforcement tool, there is not much good that can be accomplished by strict enforcement of marihuana laws.

What about the deterrent aspect? Can we truly deter others from engaging in the use of and possession of marihuana by harsh enforcement penalties? Probably not. In 1965 there were about 18,800 arrests for possession of marihuana or marihuana-related cases. Of course, in 1973 there were 420,000 arrests.

I can assure you that law enforcement has given its best to enforcing the marihuana laws. And with the idea, of course, that it is going to deter. But it does not deter.

Senator BAYH. In the Oregon experience, have you had more arrests under the new law than under the old? Can you bring your Oregon experiences into the picture?

Mr. HORTON. Our State police have statistics which indicate more citations are issued today than before the law was changed. The Drug Abuse Council[1] indicates there is not, statistically, any significant measurable increase in marihuana use since the passage of the new law.

Senator BAYH. How many more citations?

Mr. HORTON. Approximately 30 percent more citations are issued now. Our citation program is an important vehicle for the decriminalization effort. It answers a lot of the objections that the Department of Justice has to face in its enforcement problems. In Oregon a violation is still an offense under our criminal code. Our police have discretion to issue a citation, a summons, or take into custody for further identification a person accused of possessing marihuana.

This citation system is applicable not only to the violation but it is applicable to any other type of crime, excluding the various, serious felonies. So, if a police officer comes into contact with a person who has some amount of marihuana, regardless of whether it is under an ounce or over an ounce, he has the opportunity of giving that person

[1] See p. 100.

a ticket after he has been technically arrested. For a citation is in lieu of custody, it is not in lieu of arrest. An arrest, technically, must take place first. The citation, then, is a vehicle to dispense with the bail, with the lockup and with the pretrial incarceration that take place in so many States. So, regardless of the amount, if it appears likely the person will show up in court the officer gives him a citation and the marihuana is then sent to the laboratory. It is confiscated, sent to the laboratory for analysis to determine the content and the amount. The prosecutor then decides what to do with the case.

Is he going to issue a criminal type of a charge against him or is he going to issue a civil-type violation offense? Our exclusionary rule applies, for example, if an officer illegally searches a car and finds marihuana, and then searches the trunk and finds heroin. Motions to suppress, and other exclusionary type remedies are available to that defendant to suppress the heroin charge.

You cannot use subterfuge under the marihuana statute to spinoff to have an illegal type of advantage over a suspect. So, those provisions remain intact in Oregon.

Senator BAYH. What is the benefit of that kind of suppression?

NEED TO ASSURE BASIC PRINCIPLES OF LAW ENFORCEMENT

Mr. HORTON. Well, it reaffirms the basic principle that police are to use a certain amount of dignity and fair play in the enforcement of the criminal law. Just because we decriminalized marihuana does not mean that the police may use that as a vehicle to either surreptitiously or in other illegal manners gain an unconstitutional advantage over the suspect in a related or nonrelated offense.

Senator BAYH. It would be an illegal search and seizure.

Mr. HORTON. That is correct. And subject to suppression.

But, of course, what keeps the officer honest is the fact that when he starts to conduct an illegal search and seizure, he has no idea, probably, what he is going to find. It could be less than an ounce of marihuana, it could be a machine gun, it could be heroin.

Thus, in practice, it reenforces the concept that you are going to need probable cause or a warrant to search. Decriminalizing marihuana does not weaken that constitutional protection. I think by any measurable standard, it has had good success in Oregon. It has reaffirmed a lot of the hopes about what it would do to our docket.

I remember a few years ago, nearly one-third of our docket in the courtroom was composed of marihuana cases. What a drain on a valuable resource of judicial time, prosecutor time, for such an innocuous type of offense.

It has reaffirmed, really, a practice that has taken place not only in law enforcement circles, but certainly on the bench, by most members of our judiciary today. And that is to treat marihuana offenses with either a fine or a suspended sentence.

What a waste of time it is to spend 2 days in court before a jury, prosecuting someone for possession of marihuana, to have the court impose a $50 fine.

Our priorities are messed up when we continue to do that. Recognizing that practice, police have started to lay off. The Department of

Justice affirms that laying off. The decriminalization of marihuana is an official legislative recognition of a practice that is going on in the country today.

There is still the tremendous disadvantage that marihuana arrest has on the individual. For nearly a full generation it has disenfranchised young Americans from engaging in certain practices or professions.

In Oregon, I believe, we have about 23 professions that are regulated by statutes. Thus, if you are convicted of a crime, admission to certain professions may be barred. Therefore, the mark of a criminal conviction can have serious consequences. When we talk about the 420,000 to 500,000 marihuana arrests in a year, the effect on our coming generation is a significant one. Even though young people do not get sent to jail as frequently as previously, this is not a realistic appraisal of the true punishment for their "crime."

I believe the laws must be changed to affirm what is a social practice. Certainly, legislation should conform to judicial and law enforcement practice.

[Testimony continues on page 109.]

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MARIJUANA SURVEY - STATE OF OREGON

Attached are the results of the Drug Abuse Council's survey of marijuana use in the State of Oregon taken one year after the abolition of criminal penalties for simple possession of marijuana. Oregon is the first of the fifty states to abolish such criminal penalties.

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December 15, 1974

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SURVEY OF MARIJUANA USE - STATE OF OREGON

A majority (58 percent) of the State of Oregon residents favor the elimination of criminal penalties for the possession of small amounts of marijuana. Three out of every 10 Oregon adults approve of their state law that makes simple possession of marijuana a civil "offense"--akin to a parking ticket--carrying a fine but no jail term or criminal record. An additional 26 percent favor changes making sale and/or possession of small amounts of marijuana legal.

Oregon is the first state to abolish criminal penalties for possession of one ounce of marijuana or less and to replace them with a maximum civil fine of $100. The independent Drug Abuse Council commissioned a survey in October 1974--the first anniversary of the new legislation--to assess what changes have occurred in marijuana usage during that year and to find out what impressions Oregonians have of their new law.

The Oregon survey consisted of 802 personal interviews with adults 18 years or over, representing a balanced sample of the state's population. As might be expected, young adults--ages 18 through 29--took a more liberal view on the four legal choices regarding sale and/or possession of small amounts of marijuana. The division is sharp between those who either have or currently use marijuana and those who have never used marijuana.

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CONTINUED

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ATTITUDE TOWARD MARIJUANA LAW

	Civil penalties, as is	Possession of small amounts legal	Sale and possession of small amounts legal	Stiffer penalties
	%	%	%	%
Total adults	32	15	11	39
By Age				
18-29	36	26	17	19
30-44	38	13	8	40
45-59	25	13	7	51
60 & over	27	5	9	53
By Usage				
Have used	26	37	29	7
Currently use	14	53	33	0
Never used	33	11	6	46

Two out of every ten Oregon adults have at least tried marijuana, with one out of every ten reporting that they currently use marijuana. Again, a sharp difference in marijuana usage is observed between younger adults and older adults.

MARIJUANA USAGE

	Have ever used	Never used
	%	%
Total adults	19	81
By Age		
18-29	46	54
30-44	15	85
45-59	4	96
60 & over	2	98

It appears that the number of individuals using marijuana has not significantly increased in Oregon during the year since it has removed criminal penalties for simple possession of one ounce or less. Nineteen percent of Oregon adults report that they have used marijuana at least once; 9 percent of total adults say that they currently use marijuana. Of those currently using marijuana, only 6 percent report that they have used it for less than one year, 91 percent for more than one year. All of the less-than-one-year users are between 19 and 29 years of age.

Of those individuals currently using marijuana, a large number report a decrease in usage during the last year, while only a small number report an increase.

CHANGE IN MARIJUANA USAGE

	Current users %
Decreased usage	40
Increased usage	5
No change	52

Lack of interest and possible health dangers are the most important reasons chosen for not using marijuana by those who have either never used it or those who have stopped using it. The possibility of legal prosecution and the lack of marijuana availability rank low as reasons for not currently using marijuana.

REASON FOR NOT CURRENTLY USING MARIJUANA

	Current non-users %
No interest	53
Health danger	23
Possibility of legal prosecution	4
Not available	2
Other reasons	9
Undecided	9

The federal National Commission on Marijuana and Drug Abuse, after an exhaustive two-year study, estimated in 1972 that 26 million Americans had tried marijuana, with 8 million of these using it regularly. The Commission recommended that possession of marijuana for personal use no longer be a criminal offense and that casual distribution of small amounts of marijuana not involving profit no longer be an offense. Oregon is the only state to adopt, in part, this recommendation, although many other states are presently considering it.

"It is disturbing to note the dramatic increase in arrests for simple possession of marijuana," according to Thomas E. Bryant, M.D., President of the Drug Abuse Council. "In 1973 alone, state arrests are reported by the FBI to be in excess of 400,000.

"It seems clear that marijuana has been established as the recreational drug of choice by many Americans, youth as well as adults, and that its prohibition has had little effect upon its availability and use. Other states should take a careful look at what has happened in Oregon since it has removed its criminal penalties for small amounts of marijuana and consider moving in the same direction."

The Oregon survey was conducted by Bardsley and Haslacher, Inc., of Portland, Oregon, a marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues.

The Drug Abuse Council, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation and research funding in the field of drug use and misuse.

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SURVEY OF MARIJUANA USE AND ATTITUDES:
STATE OF OREGON

New survey results in Oregon show continuing public support for the elimination of criminal penalties for the possession of small amounts of marijuana and an apparent stabilization of marijuana usage among adults.

The Oregon survey, a follow-up of one taken in 1974, reports the latest public attitudes and patterns of marijuana usage since criminal penalties were removed in that state two years ago. Both surveys were commissioned by the independent Drug Abuse Council, a Washington, D.C. based policy evaluation and research group, established in 1972 by a consortium of private foundations.

The latest survey found that a majority of Oregonians (58 percent) continue to favor the approach of the new law that makes simple possession of marijuana a civil "offense"--akin to a parking ticket --carrying a maximum fine of $100 but no jail term or criminal record. Younger adults--ages 18 through 44--share a more lenient view of the four legal choices regarding sale and/or possession of small amounts of marijuana. The division remains sharp between those who either have used or currently use marijuana and those who have never used marijuana.

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ATTITUDE TOWARD MARIJUANA LAW
1975

	Civil penalties, as is	Possession of small amounts legal	Sale and possession of small amounts legal	Stiffer penalties
	%	%	%	%
Total Adults	31	18	9	40
By Age				
18-29	27	30	17	26
30-44	35	21	8	34
45-49	42	9	5	41
60 & over	23	6	5	63
By Usage				
Have used	23	44	24	9
Currently use	9	54	35	2
Never used	34	11	5	48

In the year since the first survey, there are no significant differences among adults who say they have ever used marijuana or that they currently use it. It would appear that marijuana usage has stabilized among adults in the two years since criminal penalties were removed for simple possession of one ounce or less.

MARIJUANA USAGE

	Adults who have ever used	Adults who currently use
	%	%
October 1974	19	9
October 1975	20	8

Of those currently using marijuana, only 3 percent report that they have used it for less than one year, with an additional 8 percent reporting using it for less than two years. All of the less-than-one-year users are between 19 and 29 years of age.

HOW LONG USED

	Current Users
	%
Less than one year	3
1 year to one year.11 months	8
2 years or more	87
Undecided	2

Of those individuals currently using marijuana, a large number report a decrease in consumption during the past two years, while only a small number report an increase.

CHANGE IN MARIJUANA USAGE

	Current Users
	%
Decreased usage	35
Increased usage	9
No change	54

The survey again found that the non-users gave lack of interest and fear of possible health hazards rather than punishment as the dominant reasons for not currently using marijuana.

REASON FOR NOT CURRENTLY USING MARIJUANA

	1974	1975
	%	%
Not interested	53	65
Health danger	23	28
Legal prosecution	4	3
Not available	2	1
Other reasons	9	3
Undecided	9	0

Oregon is the first state to abolish criminal penalties for possession of one ounce of marijuana or less and to replace them with a maximum civil fine of $100. In five other states the possession of small amounts of marijuana is now subject to small fines, with little or no prospect of jail sentences or criminal records. Oregon first changed its law in 1973 and was followed in 1975 by Alaska, Maine, Colorado, California and Ohio.

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The 1975 Oregon survey consisted of 800 personal interviews with adults 18 years or over, representing a balanced sample of the state's population. It was conducted by Bardsley and Haslacher, Inc., of Portland, Oregon, a marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues.

The survey is part of an on-going series of activities sponsored by the Drug Abuse Council to provide public information on current drug issues. Similar surveys have recently been completed on the national level and in the State of California. The Council is supported by the Ford Foundation, Commonwealth Fund, Carnegie Corporation, Henry J. Kaiser Family Foundation and the Equitable Life Assurance Society of the United States.

[Testimony continued from page 99.]
Senator BAYH. Thank you, Mr. Horton.
Mr. HORTON. Thank you, Mr. Chairman.
Senator BAYH. Mr. Bonnie.

STATEMENT OF RICHARD BONNIE, ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA.

Mr. BONNIE. Thank you, Mr. Chairman. I would like to submit my prepared statement for the record[1] and keep my opening comments brief. I know you will have some questions for all the witnesses.

I would like to begin by pointing out what I think is a basic and important inconsistency in Mr. Miller's testimony.

I think this bears directly on the issue before this subcommittee. He indicated at various points that adoption of a bill like this—and by "like this," I mean anything that is not a misdemeanor, because that seems to be what he said—would tie the hands of law enforcement in enforcing the marihuana law; that it would impair the deterrent value of the prohibition which has so successfully deterred so many people from using marihuana; and also that it might impair the "comity of nations"—other nations, seeing that we did not arrest and jail people who use marihuana or possess a couple of cigarettes for their own use, are somehow going to be let down in their effort to root out drug abuse and fulfill their international obligations. Mr. Miller suggested that all of these things would happen if we adopted a bill like this.

But on the other hand, Mr. Miller also said, with equal conviction, that the Federal Government does not enforce Federal laws against possession and personal use anyway.

So, the net result is that we have to keep it on the books and yet we do not try to enforce it. I think that here is the germ of this matter. The marihuana issue is confounded by this notion that disapproved behaviors must be crimes in order to preserve public morality.

Thurmond Arnold said, at one point, with regard to the adultery laws and laws against all other consensual sexual misconduct that we so heartily disapprove of in this society that these laws "are unenforced because we want to continue our conduct, and unrepealed because we want to preserve our morals." And I think that that is really the essence of it.

We have here the clear statement of the symbolic value of the criminal law. And under some circumstances, it seems to me that the Nation pays a heavy price for symbolism. Of course, we have a little bit more than symbolism in the case of the marihuana laws, because we also make 500,000 arrests per year for the possession of marihuana for personal use. I suppose you could count the number of arrests for adultery on the fingers of one hand. All over the country, the incidence of that disapproved behavior may parallel the incidence of marihuana use according to various studies that have been run.

Senator BAYH. Do you have any statistics?

Mr. BONNIE. No; I suppose I should have prepared myself for that. That is a harder one to get people to admit than the possession of marihuana.

[1] See p. 113.

Which, of course, leads me to my next point. Mr. Miller on behalf of the Department of Justice, had admitted that the purposes of the criminal sanction here really do come down to symbolism and deterrence. And I think that is an important admission because it brings into clearer focus the role of criminal law in a society.

The omissions are significant. He did not mention that perhaps the reason that we want to have a law against the possession of marihuana for personal use is because it is an immoral and unacceptable behavior that we want to punish; this is important because according to most of the philosophers and theoreticians about the criminal law, moral outrage really ought to be the germ of the criminal law. The criminal law should cover the behavior that tears at the very fabric of the society. And for that reason, the perpetrators of such behavior ought to be punished.

I do not mean to include in this only the notion of retribution. There is something more than that, really, because this is why deterrence is important to begin with; and this sentiment is the source of the deterrent value of the criminal sanction itself.

Clearly, there is not a body of opinion anywhere in this society that we want to punish people who use marihuana. Their behavior is disapproved, but we do not wish to punish them. That was not true, of course, when the laws first appeared on the books. Marihuana users were the "outsiders" of society—those whom society wanted to punish for almost any reason because of who they were, and their marihuana use was a convenient excuse.

Senator BAYH. Mr. Bonnie, let me suggest to you that this may be your assessment and most of the witnesses; it may be the conclusion I reach; it may be that most of the people in this room reach the same conclusion. However, I am not too sure you can't say that there are also Americans that still believe it is immoral; that it is a sin against society. Maybe the lack of informed knowledge is what we need to deal with, rather than a full assault on those who possess the drug.

Mr. BONNIE. You make a very good point. I ought to separate two points. I think that public attitude is still infected with the notion that the use of marihuana brings you several steps closer to the devil. Although perhaps not as close as heroin does. And I think that there is a great deal of public education that has to go on.

I had hoped that the establishment of the National Commission by this committee, by the Senate, and by the Congress, and the issuance of the commission's report had gone a long way toward educating the public and exposing some of the myths. And I think that some of that has occurred.

I think another point though, and the point I guess I would want to emphasize here, is that those persons like Mr. Miller, who are in a position of defending the current law before legislative committees and in the public forum, particularly from a legal side, no longer contend that the reason for doing this is because the users of marihuana are immoral and we must punish them.

Nor, do they contend, by the way—although we heard some of this during the Commission hearings—that the reason that we need to make

possession of marihuana a criminal offense is because we need a "detection device" to identify people, particularly young people, who are in emotional and psychological trouble with regard to their use of drugs. And that we need to exert some leverage over them for purposes of treating them. So, it is not that we want to punish them. We want to treat them. And there is an awful lot of this kind of defense for the criminalization, particularly for young offenders. But, as applied to marihuana use, you do not hear that anymore either.

"DETERRENCE AT WHAT COST?"

Nor, do you hear, of course, another reason for criminalization—we need to use the criminal law as a device for defining, detecting and isolating those people who are dangerous to society. And I think that we ought to recognize that there is a component of the preventive confinement in the criminal law, but it surely does not apply to marihuana users.

So, we are left with the deterrence and symbolism.

The question then becomes "deterrence at what cost"? And it seems to me that the other witnesses have elaborated a great deal on the significant price that this society now pays for whatever deterrent effect we now can get out of a law which is enforced, to be sure, but where the probability of apprehension, the probability of conviction, and surely the probability of incarceration is nowhere near what is threatened in the law books. And I think that this is an important point to make with regard to respect for law—we endanger the law as an institution by having laws like this on the books, that are enforced in the sporadic and selective way in which these laws are.

EMERGENT CONSENSUS FOR SHAFER APPROACH

This leads to my own suspicion that despite all the apparent disagreement, there is really an emerging consensus about the marihuana issue. The debate is about whether or not these laws ought to remain on the books, whether we ought to continue to keep the symbol of disapproval on the books. But beneath this dispute, I do believe that there is an emergent consensus in favor of the national policy toward marihuana use recommended by the National Commission in 1972.

This policy is essentially discouragement of use, but without criminalization of the user and all of the attendant costs. And I do believe that Mr. Miller's comments indicate how widely shared this opinion is, particularly when we look at the basic inconsistency that I pointed out earlier.

POLICY OF DISCOURAGEMENT WITHOUT CRIMINALIZATION

Now, I would like to turn to the bill that the subcommittee now has before it. I view the issue raised by the bill as how to implement the basic policy of discouragement without criminalization. How are we to go about removing the costs of criminalization and still retain whatever deterrent value we think the law carries?

Essentially there are two general alternatives. The approach recommended by the Commission, on the one hand, is to utilize the

symbolic value of the law in its statement that the cultivation and distribution of marihuana are criminal offense. And indeed, they are among our most serious criminal offenses—felonies punished by 5, 10, 20, 25 years in jail.

That is a statement, surely, that the use of marihuana is disapproved. We do not want you to have the drug. We are going to do whatever we can to keep it out of your hands. No one here is contending that the laws against distribution are not meant to be enforced. And surely this is a very potent statement of social disapproval when we enforce those laws. That was exactly the approach, of course, during alcohol prohibition when society said we disapprove of the use of alcohol and we will make it a crime to manufacture and distribute alcohol.

That is one way of stating social disapproval and implementing a policy of discouragement. The Commission said, however, that we should not follow forward with using the law as a symbol when we get to the user, and that the costs of applying the criminal sanction to the user are simply not worth it. So, remove the criminal sanction and do not make it an offense.

That is one possibility. The other approach is to extend the symbolic value of the law just one step further, and make it a civil offence to possess marihuana for one's own use. Use that particular statement of disapproval and whatever deterrent value you get by making it a $100 fine to possess marihuana.

In terms of the "deterrence at what cost" notion, I should emphasize that if we adopt the civil fine approach, we would try as best we can to remove all of the cost of criminalization. When this subcommittee gets down to the drafting the details of the civil fine approach, this kind of issue that the subcommittee might want to look at, assuming that the civil fine alternative is the one adopted.

I have some comments about questions of detail that perhaps the subcommittee would want to consider. I will be glad to submit them in writing.

Senator BAYH. I wish you would proceed with your assessment for the record.

Mr. BONNIE. I will close by indicating my own preference with regard to those two alternatives.

I favor the one recommended by the Commission. Similarly, I believe that the proposal enunciated by Senator Hart earlier—his proposed amendment to S. 1—is an appropriate implementation of the committee's recommendations. And I will support that as well.

On the other hand, I also recognize, as Mr. Stroup has indicated that sometimes reform has to be an incremental process. It perhaps may not be politically feasible to secure majority support for total withdrawal of legal sanctions. Under certain circumstances, it seems to me that a civil fine is an acceptable approach.

Thank you.

[Testimony continued on page 155.]

Statement

of

Richard J. Bonnie

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Before The

Subcommittee to

Investigate Juvenile Delinquency

of the

Committee on The Judiciary

United States Senate

May 14, 1975

It is my understanding that the subcommittee is stipulating for purposes of today's hearings that the appropriate national policy toward the use of marihuana is that recommended in March 1972 by The National Commission on Marihuana and Drug Abuse--discouragement of use without criminalization of the user. The subcommittee is not inviting debate or testimony on the merits or demerits of this approach but rather wishes to probe technical legal questions regarding its implementation.*

In particular, the Subcommittee wishes to focus on S. 1450, which provides that consumption-related activity would be punishable by a "civil fine" of $100 rather than by a criminal penalty.

I am pleased to have this opportunity to address the many interesting and difficult questions involved in drafting a civil fine statute; before doing so, however, I wish to express, for the record, my own skepticism about the "civil fine" device as a means of implementing the decriminalization approach.

The National Commission considered the civil fine alternative in 1972, concluding:

> Another means of symbolizing the discouragement policy which has been suggested is the imposition of a civil fine on those possessing marihuana outside the home for personal use. Under such an approach, a fine would be levied and processed outside the criminal justice system. Essentially, possession of marihuana would be the equivalent of a traffic offense in those jurisdictions where such an offense is not criminal.

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* A summary of my views on the merits of decriminalization was presented to the Subcommittee on Alcoholism and Narcotics of the Committee on Labor and Public Welfare of the United States Senate on November 20, 1974. This statement appears on pages 134-174 of the Subcommittee's Hearings, Marihuana Research and Legal Controls, 1974.

> Such a scheme would accomplish little more than that achieved under a partial prohibition scheme. Warrants would presumably not be issued for searches of private residences, and possession offenses would be detected only by accident or if the offender uses the drug in public. The more direct way to confront such behavior is a penalty against public use.

The Commission's position is a sound one. The civil fine is not an essential ingredient of the discouragement policy, its enforcement would consume administrative resources unjustified by its deterrent value and it would be a convenient tool for harassment of the unconventional. The Commission concluded that all legitimate state interests can be served by appropriate prohibitions of public use. Accordingly, since 1972 I have been urging state legislatures to withdraw legal sanctions of any description from private consumption-related activity.

It has become clear, however, that reform is an incremental process. The state legislatures are attracted to the presumed deterent value of the civil sanction, and its potency as a symbol of social disapproval. For this reason, I do not oppose civil fine proposals under state law. However, I would respectfully suggest to the Subcommittee that none of the reasons offered in favor of the civil fine concept under state law are applicable under federal law.

Surely no one really expects DEA agents to begin issuing citations to persons in possession of marihuana cigarettes and ordering them to appear before federal magistrates. The very image is almost comical, and illustrates the absurdity of continuing to make possession of marihuana a federal offense. Indeed sub-

section 404(A)(b) of S. 1450 indicates that the drafters anticipating that through administrative edict, possession of marihuana might become an offense in name only. If this is so, S. 1450 and this body's deliberations are aimed not at marihuana users but at state legislatures. And the task of this subcommittee is to draft model legislation for adoption by the states.* It is from this perspective that I view the subcommittee's inquiry this morning.

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*Promulgating "model" state legislation is a unique role for federal lawmakers, and Congress should not do so lightly. To assist the subcommittee's efforts to fix the appropriate role for federal law, I have attached a separate statement on this matter.

Statement of Richard J. Bonnie: Attachment

FEDERAL LAW AND MARIHUANA POSSESSION

The purpose of this statement is to establish the context of Congressional action by identifying the federal interests affected by marihuana use and by the current penalties against this behavior.

National Policy Toward Marihuana Use

For purposes of this statement four introductory assumptions will be made regarding national policy toward marihuana use and implementation of that policy at the national level.

First, the overall objective of national policy is to minimize the consumption of marihuana for non-medical, non-scientific purposes, and to curtail the availability of the substance outside authorized scientific or medical channels.

Second, federal law will continue to prohibit importation, cultivation and distribution[1] of the substance with narrowly defined exceptions for research and scientific purposes; if medical uses are established, it is assumed that regulatory provisions of the law will be strictly applied to limit the conditions of legitimate medical availability.[2]

Third, the prohibitions against importation, cultivation and distribution outside the authorized channels will continue to be enforced by federal officials, with priority being place on substantial commercial activity. In short, it is assumed that enforcement

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1. "Distribution" is intended to encompass "possession with intent to distribute" as well and should be so construed throughout the statement.

2. The important point is that even if marihuana were to become legitimately available for medical purposes (in addition to research and scientific purposes), the issues concerning implementation of the discouragement policy toward non-medical use would be the same.

efforts will remain allocated as they are now, with primary federal competence in the contexts of smuggling and wholesale distribution, while state and local personnel concentrate on retail distribution.

Fourth, the formulation and application of legal sanctions for consumption-related activity will remain a matter primarily for state and local determination. While the national government has the constitutional power to reach the personal possession of marihuana obtained outside the authorized channels,[3] and exercised this power in the 1970 Controlled Substances Act, the actual responsibility for applying legal sanctions to consumption-related behavior lies with local police enforcing state laws and local ordinances. This is in keeping with the operational meaning of federalism -- that behavior with primarily local effects should be regulated by local government. The public consequences of consumption-related behavior (possession, use, casual non-profit distribution, being under the influence) inevitably come to the attention of local police; for this reason it is not surprising that the federal government has consistently left enforcement of the "simple" possession laws to the states and localities despite the fact that this same behavior violates federal law as well.

The National Interest in State Law and Local Enforcement

This is not to say, however, that the federal government is without interest in the manner in which state and local governments

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3. This has not always been so clear, of course. The Harrison Act and the Marihuana Tax Act were framed as regulatory measures, using complex presumptions in lieu of outright possession offenses, precisely because of the doubts about the constitutionality of direct regulation and prohibition of purely local conduct. See U.S. v. Doremus, 249 U.S. 86 (1919).

choose to respond to consumption-related behavior. Indeed, authoritative National Commissions[4] have thrice recommended non-criminal approaches to possession and use of marihuana, thereby attesting to the depth and breadth of national concern. The locus of this national concern, as a matter of political and historical reality, has been the disastrous impact of this criminal prohibition on the criminal justice system and the perceived injustice of its application to individual violations.

These concerns also have a constitutional dimension. The 14th Amendment establishes national standards of fairness in the administration of criminal justice and also imposes substantive limits on the type of conduct which may be proscribed and on the severity of sanctions which may be imposed. If the courts or Congress determine that these standards are being offended by state and local law and practice, corrective national action is indicated.

We begin with the clearest cases of national limits on state efforts to implement a policy of discouraging marihuana use. In the effort to curb the "spread" of marihuana use, the state surely may not make it a crime to associate with a person known to be a marihuana user, even though this is probably a most effective means for curbing the initiation process. Such a law would undoubtedly violate the free association aspects of the due process clause.[5]

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4. The National Commission on Reform of the Federal Criminal Code (1971); The National Commission on Marihuana and Drug Abuse (1972); The National Advisory Commission on Criminal Justice Standards and Goals (1973).

5. The state and lower federal courts are now grappling with the broader argument that the private possession prohibition is itself unconstitutional, offending the right of privacy and depriving the user of liberty without "good reason" (i.e., without "due process of law.") See Griswold v. Connecticut, 381 U.S. 479 (1965); Stanley v. Georgia, 394 U.S. 557 (1969); Roe v. Wade, 410 U.S. 113 (1973).

Similarly, the state probably may not seek to maximize the deterrent value of the legal threat by prescribing a long mandatory prison term for simple possession. Such a penalty would be unconstitutionally excessive under emerging doctrine.[6] Nor may the state search every person in a particular public place, or in a certain kind of vehicle, or wearing a particular type of clothes, on the ground of the enhanced likelihood of marihuana possession among such persons. Such enforcement behavior would offend several constitutional principles. So too would the systematically selective application of the possession laws to offenders of a particular racial or ethnic background or a particular social class; this would violate the equal protection clause.

It is clear, then, that the judicial branch of the federal government will enforce national standards of criminal justice, procedural fairness and personal privacy, invalidating state and local marihuana enforcement policies which violate section 1 of the 14th Amendment. And it is also clear that the Congress, under § 5 of the 14th Amendment has the authority to impose further limits on the range of state and local enforcement choices in order to protect these important national values of fairness, privacy and justice. Katzenbach v. Morgan, 384 U.S. 641 (1966).

Within this context, neither the executive nor the legislative branches of the national government can be oblivious to the wide diversity of enforcement policies in the 50 states and their political

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6. Constitutional challenges are being levied not only against mandatory jail terms, People v. Sinclair, 194 N.W.2d 878 (Mich. 1972), but also against any jail term at all. Conceivably a disproportionality argument may be made against the criminal stigma itself.

subdivisions. Nor can they ignore the impact of 400,000 annual marihuana arrests on the administration of criminal justice or on the respect for law. Nor can the national policymakers ignore the subjectivity of the process by which these offenders are chosen from among the millions of marihuana users for application of criminal sanctions, and by which some of these are convicted and some are not, and by which some of these are jailed and others not. Indeed, Congress might even conclude that the uneven application of local possession laws actually subverts rather than aids the national discouragement policy by increasing the visibility of marihuana use, inflating consumer demand and eroding respect for law.

These national concerns justify and invite national efforts to influence the formulation of state and local law regarding consumption-related activities. Congress might easily conclude that satisfactory pursuit of the discouragement policy, effective protection of fundamental standards of criminal justice and a sensitivity to the right of privacy all require a non-criminal sanctioning structure for consumption-related behavior (including possession for one's own use as well as casual, non-profit distribution). Although Congress might determine that the national objectives do not require drastic measures undercutting state responsibility,[7] it might wish to influence state and local decision-makers to adopt a civil sanction for these offenses. One mechanism for doing so would be by symbolic legislative action

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7. The factors described in the text may be of sufficient weight to support unprecedented federal legislation under § 5 of the 14th Amendment pre-empting the field or establishing maximum penalties for state law. See generally Marihuana: A Signal of Misunderstanding, Appendix Volume II, pages 1135-1144 (1972).

which would simultaneously serve the national interest and preserve local prerogatives.

Alternative Congressional Actions

The primary value of congressional action would be symbolic. Because the federal authorities do not enforce against consumers the extant misdemeanor provision, substitution of a non-criminal sanction would not actually reduce the social costs of criminalization. Moreover, the issue of federal competence is highlighted by the recognition that any offense so petty as to demand only a civil sanction should not be in the federal criminal code anyway. The more direct federal action would be outright repeal of the possession offense, even if the national policy-makers preferred that the state and local governments substitute a civil sanction.

Be that as it may, the federal government could symbolize its preference for the non-criminal sanction by amending the Controlled Substances Act to substitute a civil fine for the present misdemeanor penalty. (See, e.g., S.1450) The historical experience with the penalty provisions of federal drug laws (in 1951, 1956 and 1970) suggests that the state legislatures are heavily influenced by congressional action.[8]

Another legislative context for modifying the federal marihuana penalty is the current effort to enact a comprehensive federal criminal code. The national Commission on Reform of Federal Criminal Laws (Brown Commission) recommended in its 1971 Report that possession

8. See generally, Bonnie and Whitebread, The Marihuana Conviction (University Press of Virginia 1974) pp. 204 et seq.

of marihuana be an "infraction" (§ 1824) which was defined as a non-criminal offense (§ 109(e)) for which imprisonment is not authorized (§ 109(s)).

The federal code reform effort (S.1) is currently proceeding before the Senate Judiciary Committee's subcommittee on Criminal Laws and Procedures. In its current form S.1 classifies possession of marihuana as a Class C Misdemeanor (See § 1813) permitting up to 30 days imprisonment (see § 2301). However, consideration of this bill provides another vehicle for marihuana law reform by reviving the Brown Commission's infraction recommendation.

Two points should be noted in connection with these options regarding modifications of federal law. First of all, there are many other provisions of federal law under which prohibited conduct is punishable by non-criminal "civil" fines. In connection with its proposal (§ 1006) that "regulatory offenses" ordinarily be regarded as "infractions," the Brown Commission surveyed the provisions of existing federal law. Some examples of conduct punishable by civil fine are violation of regulations concerning railroad passengers and employees (46 U.S.C. § 155 and § 156) failure by railroad, pipeline carriers and motor carriers to keep and submit records (49 U.S.C. § 20(7)(a), § 322(h)) false advertising of seeds (7 U.S.C. § 1596) and failure to file motor carrier rates (49 U.S.C. § 322(h)).

The Brown Commission's working papers elaborate on the rationale for distinguishing between regulatory offenses and "traditional" offenses:

> Criminal law has always differentiated between two kinds of punishable behavior. On the one hand, homicide, rape, robbery and the other common law crimes are universally recognized outrages and threats to common security. Common morality forbids such behavior, and there is little possibility of innocent transgression. Commission of

> offenses of this sort evidences a serious disregard for the rights of other individuals, and identifies the offender as dangerous because of his lack of inhibitions and distorted system of values. Traditionally, offenses of this first type have been designated "mala in se", that is, "evil in themselves", in contrast with the other category of offenses, "malum prohibitum", that is, "bad because forbidden".
>
> The regulatory statutes, which are the concern of section 1006, belong in the "malum prohibitum" class. The behavior is not immediately recognizable as evil or dangerous, and does not necessarily identify the actor as immoral. In a complex modern society, there are hundreds of thousands of legal commands and prohibitions, violation of which may incur criminal liability. The motor vehicle laws offer the best examples: driving over the speed limit or without a license, failure to carry a registration card or a safety inspection certificate, parking in a prohibited zone, passing a stopped school bus, and a host of others. The conduct of businesses is often minutely controlled by statute and by rules and orders issued by administrative agencies. . . .
>
> There are other touchstones by which to distinguish regulatory offenses, in addition to the distinctions between malum in se and malum prohibitum. It is characteristic of regulatory controls that they are prophylactic in purpose. . . .
>
> The prophylactic purpose means that the rules are designed to prevent harms from occurring, rather than to punish perpetrators of actual harms. If the forest rules forbid or restrict campfires, it is to cut down even remote possibilities of conflagration. The rule may prevent ten perfectly safe fires in order to avert the possibility of one unsafe fire. It makes no difference what precautions a particular camper takes with his fire. . . . So, also, rules against conflicts of interest by public servants inhibit many innocent relationships in order to forestall corruption by a few. The fact that prophylactic controls inevitably affect many more law-abiding people than evildoers dictates a policy of relatively low maximum penalties for regulatory offenses.[9]

These observations are equally applicable to prophylactic prohibitions of all marihuana possession. The recreational use in which the great majority of marihuana possessors engage is private,

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9. Schwartz, "Regulatory Offenses," Working Papers of the National Commission on Reform of the Federal Criminal Code, pp. 403-417 (1971).

inoffensive, morally neutral and without direct social consequence. But possession offenses proscribe all consumption-related behavior in the interest of preventing the injurious behavior which might occur while a person is "under the influence" of the substance, and of preventing the potential social harms associated with widespread heavy use. It is clear, then, why the Brown Commission also recommended that marihuana possession be classified as an "infraction" together with non-"willful" regulatory violations.[10]

The current version of S.1 includes the infraction concept which is not a "crime" (§ 111) but is punishable by up to 5 days in jail. Under §§ 1861-62, disorderly conduct and failing to obey a public safety order are classified as infractions. A minor change to § 1813 would convert possession of marihuana to an infraction as well.

One type of congressional action which would symbolize the decriminalization policy and yet serve a meaningful statutory purpose would be to include the civil fine provision in the federal criminal code, but limit its applicability to violations committed on federal enclaves. This device would adapt the law to the realistic reaches of federal competence; while removing the superfluous federal possession offense, it would also indicate congressional preference for the civil sanctioning concept by applying it to violations prosecuted by federal officials. (Compare the many provisions of the proposed federal criminal codes--Brown Commission draft and S.1 which pertain to offenses of a purely local nature and are therefore applicable only to violations committed on federal enclaves.)

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10. S.1 does not include the regulatory offense notion in the form recommended by the Brown Commission. However, the policy is easily achieved through appropriate amendment of other law to classify these offenses as infractions.

Supplemental Statement on the Decriminalization of Possession of Marihuana for Personal Use

Submitted to the Subcommittee
to Investigate Juvenile Delinquency
of the
Committee on the Judiciary
United States Senate

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June 2, 1975

DECRIMINALIZATION OF POSSESSION OF MARIHUANA FOR PERSONAL USE: SOME CONCEPTUAL AND DRAFTING ISSUES

By Richard J. Bonnie

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This memorandum is in four parts. Part I presents seven alternative approaches for implementing the same basic policy choice -- withdrawing the criminal sanction from possession of marihuana for personal use. The focus is on defining the scope of conduct prohibited and the type of sanctions applicable. Part II presents some specific comments on this aspect of S. 1450. Part III presents various ancillary issues raised by the "civil fine" concept. And Part IV presents three alternative drafts of decriminalization legislation, two of which incorporate "civil fine" approaches and one of which incorporates the central recommendation of The National Commission on Marihuana and Drug Abuse.

I

Prohibitions and Sanctions Relating to Possessory Conduct

A. General Concepts

1. Under any of these approaches "possession-with-intent-to-distribute" is a serious crime -- a felony intent-to-distribute applies only to commercial intent; donative transfers and accommodation, not-for-profit sales are not included. (See § 40(b)(4) of the Controlled Substances Act.)

2. The residual notion under the Controlled Substances Act in § 404(a) is "simple possession," which includes, as a conceptual matter, all other possessory activity; thus it includes, but, as a matter of social reality may not be limited to, possession for personal use. In the decriminalization legislation, the criminal sanction can be withdrawn from all residual possessory behavior. In every case, the legal issue would be whether the prosecution can prove intent-to-distribute; as always, appropriate inferences regarding the presence of such an intent may be drawn from possession of large amounts.

Another approach is to withdraw the criminal sanction from only part of the residual "simple" possessory activity. In theory, this can be done in either of two ways. First, the sanction can be withdrawn only from possessory conduct if the defendant can prove that the drug was held for personal use (or use by immediate others). This would shift the burden of proof to the defendant in all cases (in the nature of an affirmative defense). In so doing, however, it would constitute a substantial deviation from the basic principles of criminal law because the notion is inherently unprovable.

Ordinarily affirmative defenses involve evidence peculiarly within the control of the defendant, such as a prescription; imposing on the defendant the burden of proving intent-to-consume would undermine the reform altogether.

The second approach to subdividing "simple possession" is to draw a statutory amount line. Possession of less than a specified amount is conclusively presumed, as it were, to be for personal use; whereas possession of more than the specified amount constitutes prohibited "simple" possession, even though the prosecution may not be able to prove that it was held with intent to sell, and even though the defendant may be able to prove that his intent was to consume. A less rigid approach would permit an affirmative defense of intent-to-consume in all possession cases even if they involve more than the specified amount.

3. Whenever the basic grading distinction is "amount" possessed, the legislation must specify the statutory amount. In terms of the basic conceptual issues, the amount chosen is of secondary interest, and I have not addressed this choice in this statement (referring instead to "the specified amount"). However, as a substantive matter, the choice is obviously a crucial one; there is clearly a big difference between one ounce and eight ounces.

For present purposes, let me note only that I have perceived two fundamentally different motivations in legislative efforts to define the statutory amount: one approach seeks to approximate the amount which would ordinarily be held for distribution (the higher amounts); whereas the more niggardly approach seeks to approximate the smallest amount which a reasonable marihuana user would regard

as an acceptable effort to remove the criminal stigma from his consumption related conduct. The choice between these two approaches is clearly rooted in political and philosophical considerations. I personally believe the former is the more meaningful approach to the issues at stake in the reform effort.

4. Under any approach, public use of marihuana is a misdemeanor; one might debate whether or not this offense should be punishable by a jail term or only by a fine.

5. To the extent that a statutory distinction is drawn between possession-in-private and possession-in-public, these terms must be defined. A private dwelling is undoubtedly "private," and a public place (street, public building) is undoubtedly "public." The central issue here is whether a vehicle, which bears similarities to both, ought to be defined as "public" or "private." Arguments can be made for both results, and distinctions can be drawn according to whether the vehicle is in transit or at rest, etc. I will not attempt to resolve this issue here and will assume, instead, that "in private" is limited to private dwellings.

6. Under all approaches "casual" distribution (donative transfers or not-for-profit accommodations) of less than a specified amount would be regarded as the functional equivalent of non-criminal possessory activity.

B. Alternative Approaches

Approach #1.

(a) Non-criminal Conduct:

No sanction for simple possession, whether public or private.

(b) Criminal Conduct:

(1) possession-with-intent-to-distribute

(2) use in public

(c) Comment.

The net effect is to place the burden of proof on the prosecution in any "possession" case to prove intent to distribute, relying on any inferences that may appropriately be drawn from the amount possessed. This is the purest reform in a conceptual sense; commercial intent would become the operative element in the criminal offense, a notion in keeping with the basic purposes and reach of the criminal law.

Approach #2.

(a) Non-criminal Conduct:

No sanction for possession of less than a specified amount (1 ounce, 2 ounces, 4 ounces, 8 ounces, 100 grams, 30 grams, etc.), whether in public or private.

(b) Criminal Conduct:

(1) possession-with-intent to distribute

(2) public use

(3) possession of more than the specified amount

(c) Comment.

Possession of more than the specified amount should be a felony if a larger amount is chosen to approximate a presumption regarding intent to distribute. If a smaller amount is chosen, the offense should be a misdemeanor, and the defendant should be permitted to prove, as an affirmative defense, that his was an intent-to-consume.

The net effect under this approach is to remove the subjectivity

and inequality of enforcement which might inhere in an "intent" formulation and adopt in its stead a conclusive statutory line based purely on amount.

Approach #3.

(a) Non-criminal Conduct:

(1) No sanction for simple possession in private.

(2) No sanction for possession of less than a specified amount in public.

(b) Criminal Conduct:

(1) possession of more than the specified amount in public

(2) possession-with-intent to distribute

(3) public use

(c) Comment.

This approach recognizes a need for a per se rule in public (where most marihuana arrests actually are made) but retains the commercial intent-personal use line for private possession (as in Stanley v. Georgia for pornographic materials).

Approach #4.

(a) Non-criminal Conduct:

(1) Civil sanction for possession of less than a specified amount in public

(2) No sanction for "simple possession" in private

(b) Criminal Conduct:

(1) Possession of more than a specified amount in public

(2) Possession with intent to distribute

(3) Public use

(c) Comment.

This approach would make all public marihuana-related activity a violation of law, but would decriminalize the sanction applicable to possession of less than the specified amount; however, no sanction would be applicable in private in recognition of the fundamental distinction between public and private conduct, the improbability of enforcement of a civil sanction in private, and the many difficulties arising under search and seizure law if enforcement were actually attempted. Assuming that the "civil fine" concept is attractive as a deterrent or for purely symbolic reasons, I would strongly urge that private possession be exempted on both constitutional and practical grounds.

Approach #5.

(a) Non-criminal Conduct:

(1) Civil sanction for possession of less than a specified amount in public

(2) No sanction for possession of less than a specified amount in private

(b) Criminal Conduct:

(1) possession of more than the specified amount in public or private

(2) possession-with-intent-to-distribute

(3) public use

(c) Comment.

The only difference between this approach and #4 is the use of an amount device for drawing the line between non-criminal private possessory activity and residual criminal simple possession. The

statutory amounts could well differ for public (1 ounce) and private (4 ounces) possessory activity.

Approach #6.

(a) Non-criminal Conduct:

(1) Civil sanction for possession of less than a specified amount in public

(2) Civil sanction for simple possession in private

(b) Criminal Conduct:

(1) Possession of more than specified amount in public

(2) Possession-with-intent-to-sell

(3) Public use

(c) Comment.

All marihuana-related behavior remains prohibited. The line between conduct subject to civil and criminal behavior is an amount line if the behavior is in public; but the operative line in private is an intent line. Again the sanctity of the home is the key to this approach; an important device for buttressing this choice would be to provide that a magistrate should not issue a warrant for searching a private residence for marihuana possessed in violation of the "simple possession" provision. Only probable cause to believe that a criminal offense was being committed would be sufficient grounds for issuance of the warrant.

Approach #7.

(a) Non-criminal Conduct:

Civil sanction for possession of less than a specified amount, whether public or private (amounts could differ).

(b) Criminal Conduct.

(1) Possession of more than the specified amount in public or private

(2) Possession-with-intent-to-distribute

(3) Public use

(c) Comment.

This is the approach taken in S. 1450. See Comment to Approach §6 regarding the grounds for issuance of a search warrant.

C. Choosing Among the Alternative Approaches

I personally prefer Approaches #1, #2 and #3. As I indicated in my testimony before the Subcommittee on May 14, I believe that the symbolic and deterrent value of a civil sanction is outweighed by the costs of enforcement and the probable use of the violation as a device for harassment.

Assuming that a civil sanction is regarded as desirable, I would limit it to public activity as provided in Approaches #4 and #5.

Assuming that symbolism prevails and the decision is made to prohibit all possessory activity, I would strongly urge Approach #6 in lieu of #7.

II.

Comments on the Scope of Criminal Conduct and Sanctions Applicable Under S. 1450

The sponsors of S. 1450 have adopted an approach like either #6 or #7 (all possessory behavior remains prohibited). As between the two, I would strongly urge #6. Because S. 1450 adopts #7, I will assume that this is the final choice and will comment briefly on the details of the presently drafted provisions:

1. I see no reason to distinguish between public and private behavior in subsections (a)(1) and (2). The net result is the same.

2. The language "if such marihuana is not possessed with intent to distribute . . ." is unnecessary unless the drafters intend to place the burden of proof of lack of such an intention on the defendant. If this is the drafter's intent, it would undercut the purpose of the reform. I assume that this is not the intent, and would therefore delete this language.

3. The language "if the possession . . . is incident to private use . . ." suggests that the burden of proof is on the defendant to demonstrate not only that he intends to use the marihuana himself and perhaps share it with friends, but also that he intends to do so in his own private dwelling. This is incapable of being proved. If a one ounce line is being drawn, it should be left at that.

4. Subsection (a)(1) apparently leaves it open to the prosecution to prove (assuming the burden of proof is on the

state) in any case that less-than-one ounce is held for sale. I think that once the drafters have chosen the amount line (and such a low one at that), possession of less than specified amount ought to be regarded as conclusive on the intent issue.

5. I applaud the purpose of subsection (a)(3). Not-for-profit accommodation transfers should be regarded as the functional equivalent of possession for personal use, and should therefore be decriminalized. However, contrary to line 16, marihuana cannot be "lawfully possessed" under S. 1450. I think there is an easier way to draft this provision, as I have indicated in the attached draft bill.

III

Ancillary Issues Relating to the Legal Consequences of a Civil Fine

If the decriminalization concept is implemented by substituting a civil fine for the present criminal sanction, a number of complicated issues are raised under the law of arrest, search and seizure. Most of these issues can be clarified and resolved by explicit statutory drafting.

1. Arrest and Custody

This is one of the most crucial aspects of this reform. Much of the legal benefit of the "civil fine" concept derives from the removal of this class of law-violators from the criminal process. S. 1450 declares that the offender "shall not be subject to arrest"; but much more is needed.

The objectives of this reform, as I understand them, are:

(a) to limit the circumstances under which the violator can be taken into physical custody;

(b) to limit the legal consequence flowing from the "apprehension" for the violation; and

(c) to minimize the possible friction in citizen-police encounters involving marihuana violations.

"Arrest" is a term of art. The general understanding is that a person lawfully arrested may be taken into custody, searched incident to the "arrest," subjected to identification and investigative procedures, "charged" with a criminal offense, and detained and taken before the appropriate judicial officer. The concept of "arrest" includes some or all of these aspects depending on what source is consulted. The key point for present purposes is that

apprehension for a civil violation of the marihuana laws should not result in any of these consequences.

The statute should specifically provide that a person "apprehended" or cited for a violation is not subject to being taken into custody under any circumstances* and that the police, upon detection, should issue a citation or a notice of violation, including a summons to appear in court. The commentary should make clear that the citation procedure is not merely a substitute for arrest (as are the usual misdemeanor citation provisions) but rather that the citation is the only authorized procedure upon detection of a violation.

Under United States v. Robinson, 414 U.S. 218 (1973), a person may be fully searched incident to a "full-custody arrest." One of the most important reasons for careful drafting on this point is to assure that the mere fact that a policeman has discovered one ounce or less of marihuana does not authorize a full search of the person as if he had been "arrested for a criminal offense." No violation of the person's privacy rights should be permitted that does not come within the rule set out in Terry v. Ohio, 392 U.S. 1 (1968), which permits a frisk for weapons in a non-arrest context.

2. Posting Collateral

The statute should expressly provide that collateral may be

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*Alternatively, the statute could permit temporary custody for purposes of establishing identification (e.g., by fingerprinting) only, and not for purposes of "arrest." This is probably permissible under dictum in Davis v. Mississippi, 394 U.S. 721 (1969). The statute must be explicit that this is "not for purposes of arrest," therefore limiting the authority of the police to detain and to search incident to the "apprehension."

posted in lieu of appearance (as for traffic violations in most states).* In connection with the effort to minimize the expenditure of criminal justice resources, I would applaud § A(b) of S. 1450 which authorizes discretionary enforcement through warnings or notices rather than citations/summonses/appearances.

3. Status of Juveniles

There are good arguments on both sides of the issue whether civil marihuana violations by juveniles over a certain age, e.g., 14 or 16, should be processed in the "adult" court or whether they should come within the jurisdiction of the juvenile court. (A similar issue is currently being debated regarding traffic violations.)

On balance, I believe the juvenile court should retain jurisdiction over these offenses essentially for two reasons. First indiscrete marihuana-using behavior may, in some cases, be symptomatic of difficulties in social or psychological adjustment; in these cases the juvenile system serves as a detection device and exerts leverage for providing the necessary social and therapeutic services. Second, to the extent that the social aim is to discourage marihuana use, the price of involvement in the juvenile system is not too high in light of the "specific deterrent" value of a stern judicial lecture and perhaps an education program.

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*If juvenile court retains jurisdiction over marihuana violations, then this provision need cover only adults since juvenile law does not permit juveniles to post collateral.

However, to prevent unfairness to juvenile "violators," a determination of delinquency or that the youngster is a "person in need of supervision" which is based only on violation of the marihuana possession provision should be punishable only by fine not by a deprivation of liberty either by total confinement or through probationary supervision.

4. Police Records

The statute should specifically provide that the records maintained by the police regarding violations of this section, including detentions or citations thereunder, are not records of arrest, shall be separately compiled and maintained apart from records of arrest (compare juvenile records and traffic records), shall not be disseminated in an identifiable way to any person or agency for any purpose other than research and shall be destroyed or sealed after a certain time (e.g., one year).

5. Contraband

The intent of the drafters of S. 1450 is not clear. Because any possessory activity remains an offense, I would ordinarily assume that the marihuana possessed is contraband and remains subject to seizure under § 511 of the Controlled Substances Act. However subsection A(a)(3) at line 16 refers to marihuana "lawfully possessed" under subsection 404A(a). This leaves me a bit perplexed.

If possession is always a violation, then the marihuana is always contraband. Even if the possession were not an offense (as recommended by the National Commission), the marihuana would still be contraband because it was illegally cultivated and distributed. A person cannot, in theory, have a lawful property interest in an illicit article. Conceptually, the contraband concept hinges on what

the substance is, not where it is or whether or not possession is a crime.

If the statute said nothing at all (and private possession were not an offense), the marihuana would still be contraband and subject to seizure wherever found. Indeed, a warrant could probably be obtained to authorize a search of a private dwelling if the police demonstrated probable cause to believe the illegal substance was possessed. Compare Camara v. Municipal Court, 387 U.S. 523 (1967) and Lee v. City of Seattle, 387 U.S. 541 (1967).

Thus, if, as a matter of policy, the legislature wanted to limit the authority of the police to search private residences, the appropriate method would be to declare that a warrant to search a private residence could not be issued solely on the basis of allegations that marihuana was possessed unless there was probable cause to believe that possessory activity was occurring which itself would be a criminal offense.

IV.

Alternative Drafts of Decriminalization Legislation Amending the Controlled Substances Act

Introduction and General Comments

This Part is composed of three alternative drafts of decriminalization legislation. "Alternative Draft #1" incorporates Approach #7, one version of the policy choice reflected in S. 1450. Alternative Draft #2 incorporates Approach #6, a preferable version of this same policy choice. Alternative Draft #3 incorporates Approach #2, which reflects the policy recommended by the National Commission on Marihuana and Drug Abuse and proposed by Senator Hart at the Hearings on May 14.

Under Alternative Draft #1 "simple" possession of one ounce or less, whether in public or private, would be a civil violation. Residual "simple" possession of more than one ounce would be a crime, punishable by a fine only, not by incarceration.

Under Alternative Draft #2 (Approach #6), simple possession in private and possession of one ounce or less in public would be a civil violation. Residual simple possession of more than one ounce in public would be a crime punishable only by a fine, not by incarceration.

Finally, under Alternative Draft #3, possession of one ounce or less would not be an offense, and residual simple possession would be a crime punishable only by a fine, not by incarceration.

As a matter of drafting, it is substantially easier to amend the penalty language of the simple possession proscription

of section 404(a) than to add an entirely new section as is done in S. 1450. All of the language which purports to establish that this new provision doesn't supercede the intent-to-sell provision (section 401(a) would not be necessary under my proposed approach.

Alternative Draft #1

Proposed Amendment to The
Controlled Substances Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Controlled Substances Act be amended as follows:

SEC. 1. Section 401(b)(4) of the Controlled Substances Act is amended by deleting the words "a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of Section," and substituting in lieu thereof:

> "not more than one ounce of marihuana for no remuneration or insignificant remuneration not involving a profit shall be treated as provided in subsection (a)(2) of Section 404."

SEC. 2. Section 404(a) of the Controlled Substances Act is amended by deleting the second sentence and substituting in lieu thereof:

> "Any person who violates this subsection shall be penalized as follows:
>
> (1) If the person possessed more than one ounce of marihuana, he is guilty of a criminal offense and shall be sentenced to a fine of not more than [$500].
>
> (2) If the person possessed one ounce or less of marihuana, he is guilty of a civil violation and shall be subject to a civil penalty of not more than $100. Whenever [an officer of the United States] has determined that a person has committed a civil violation under this paragraph, he may issue a citation or a notice of violation summoning the person to appear before a magistrate, on a date certain, for proceedings in accordance with the [Rules of Procedure for the Trial of Minor Offenses before United States Magistrates]. A person to whom a citation or notice of violation is issued under this paragraph may not be taken into custody and may post collateral in lieu of appearance before the magistrate. Issuance of a citation or notice of violation

under this paragraph is not an arrest and imposition of a civil penalty under this paragraph is not a conviction for a criminal offense and shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense. Records maintained by [officers of the United States] regarding citations or notices of violations issued and penalties assessed under this paragraph are not records of arrest or conviction, and such records shall be maintained in a separate place from records of arrest and conviction, shall not be disseminated or disclosed to any person or agency except for purposes of research and shall be sealed after one year.

(3) If the person possessed a controlled substance other than marihuana, he is guilty of a criminal offense and shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000 or both."

Alternative Draft #2

Proposed Amendment to The
Controlled Substances Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Controlled Substances Act be amended as follows:

SEC. 1. Section 401(b)(4) of the Controlled Substances Act is amended by deleting the words "a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of Section," and substituting in lieu thereof:

> "not more than one ounce of marihuana for no remuneration or insignificant remuneration not involving a profit shall be treated as provided in subsection (a)(1) of Section 404."

SEC. 2. Section 404(a) of the Controlled Substances Act is amended by deleting the second sentence and substituting in lieu thereof:

> "Any person who violates this subsection shall be penalized as follows:
>
> (1) If the person possessed marihuana, he is guilty of a civil violation and shall be subject to a civil penalty of not more than $100, provided that if he possessed more than one ounce of marihuana in a public place he is guilty of a criminal offense and shall be sentenced to a fine of not more than [$500]. Whenever [an officer of the United States] has determined that a person has committed a civil violation under this paragraph he may issue a citation or a notice of violation summoning the person to appear before a magistrate on a date certain for proceedings in accordance with the [Rules of Procedure for the Trial of Minor Offenses before United States Magistrates]. A person to whom a citation or notice of violation is issued under this paragraph may not be taken into custody and may post collateral in lieu of appearance before the magistrate. Issuance of a

citation or notice of violation under this paragraph is not an arrest and imposition of a civil penalty under this paragraph is not a conviction for a criminal offense and shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense. Records maintained by [officers of the United States] regarding citations or notices of violations issued and penalties assessed under this paragraph are not records of arrest or conviction, and such records shall be maintained in a separate place from records of arrest and conviction, shall not be disseminated or disclosed to any person or agency except for purposes of research and shall be sealed after one year.

(2) If the person possessed a controlled substance other than marihuana, he is guilty of a criminal offense and shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000 or both."

Alternative Draft # 3

Proposed Amendment to The
Controlled Substances Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Controlled Substances Act be amended as follows:

SEC. 1. Section 401 of the Controlled Substances Act is amended by deleting subsection (b)(4) and substituting in lieu thereof the following:

> "(b)(4) Notwithstanding paragraph (1)(B) of this subsection, it is not a violation of this section to distribute or possess with intent to distribute not more than one ounce of marihuana for no remuneration or insignificant remuneration not involving a profit."

SEC. 2. Section 404 of the Controlled Substances Act is amended by modifying the first sentence of subsection (a) as follows:

> "It shall be unlawful for any person knowingly or intentionally to possess a controlled substance other than marihuana unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice or except as otherwise authorized by this title or title III.

SEC. 3 The Controlled Substances Act is amended by inserting immediately after Section 404 thereof the following new section:

> "Sec. 404A. It shall be unlawful for a person knowingly or intentionally to possess more than one ounce of marihuana unless the marihuana was obtained directly, or pursuant to a valid presumption or order, from a practitioner, in the course of his professional practice or except as otherwise authorized by this title or title III. A person who violates this section is guilty of a criminal offense and shall be sentenced to a fine or [$500].

(Exhibit No. 6)

Calendar No. 609

91ST CONGRESS } SENATE { REPORT
1st Session } { No. 91-613

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

TOGETHER WITH ADDITIONAL VIEWS

TO ACCOMPANY

S. 3246

DECEMBER 16, 1969.—Ordered to be printed

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(Excerpt from page 10)

TITLE VIII—COMMITTEE ON MARIHUANA

This title authorizes the Attorney General and the Secretary of Health, Education, and Welfare to appoint a committee of experts to carry out a study covering all aspects of marihuana use.

The study shall include, but need not be limited to, the following matters:

1. Identification of existing gaps in our knowledge of marihuana.
2. An intensive examination of the important medical and social aspects of marihuana use.
3. Surveys of the extent and nature of marihuana use.
4. Studies of the pharmacology and effects of marihuana.
5. Studies of the relation of marihuana use to crime and juvenile delinquency.
6. Studies of the relation between marihuana and the use of other drugs.

The study is to be completed within 2 years at which time the committee will submit a report of its findings and recommendations to the President and the Congress.

TITLE IX—MISCELLANEOUS

This title repeals essentially all of the existing narcotic and dangerous drug laws and sets forth changes in the United States Code required to conform its terminology to that contained in this legislation.

The title also provides that it does not affect proceedings pending under previous laws. It also establishes severability of the provisions of the act, provides appropriations, and sets forth the effective date of the act.

(Excerpt from page 34)

TITLE VIII—COMMITTEE ON MARIHUANA

Section 801

This section provides for the appointment of a committee of experts by the Attorney General and the Secretary of Health, Education, and Welfare to advise them with respect to all aspects of marihuana use.

Subsection (a) of this section authorizes and directs the committee to review all existing information on marihuana and to execute a study covering all aspects of marihuana use.

Section 801 (a)(1) sets forth the scope of the study to include but not limit it to (*a*) an identification of existing gaps in our knowledge of marihuana; (*b*) an intensive examination of the important medical and social aspects of marihuana use; (*c*) surveys of the extent and nature of marihuana use; (*d*) studies of the pharmacology and effects of marihuana; (*e*) studies of the relation of marihuana use to crime and juvenile delinquency; and (*f*) studies of the relation between marihuana and the use of other drugs.

Subsection (b) of this section provides for the completion of the study within 24 months of the effective date of the act and for the submission of a report to the Congress and to the President with recommendations as to the control of marihuana.

Subsection (*c*) of this section provides for the composition of the committee selected by the Attorney General and the Secretary of Health, Education, and Welfare and sets a minimum of five members therefor.

Subsection (d) of this section provides for the compensation of committee members, for the furnishing of clerical and other assistance to the committee by the Attorney General and the Secretary and for the procedures to be followed by the committee.

Subsection (e) provides for the retention of consultants on a temporary or intermittent basis, and for their compensation while so retained.

PART F—ADVISORY COMMISSION

ESTABLISHMENT OF COMMISSION ON MARIHUANA AND DRUG ABUSE

SEC. 601. (a) There is established a commission to be known as the Commission on Marihuana and Drug Abuse (hereafter in this section referred to as the "Commission"). The Commission shall be composed of— Membership.

(1) two Members of the Senate appointed by the President of the Senate;

(2) two Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(3) nine members appointed by the President of the United States.

At no time shall more than one of the members appointed under paragraph (1), or more than one of the members appointed under paragraph (2), or more than five of the members appointed under paragraph (3) be members of the same political party.

(b)(1) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Seven members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Quorum.

(2) Members of the Commission who are Members of Congress or full-time officers or employees of the United States shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission. Members of the Commission from private life shall receive $100 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties. Travel expenses, etc. Compensation.

(3) The Commission shall meet at the call of the Chairman or at the call of a majority of the members thereof. Meetings.

(c)(1) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. Personnel. 80 Stat. 443, 467. 5 USC 5101, 5331.

(2) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants. Persons so employed shall receive compensation at a rate to be fixed by the Commission, but not in excess of $75 per diem, including traveltime. While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently. 35 F. R. 6247. Experts and consultants. 80 Stat. 416. Travel expenses, etc. 80 Stat. 499; 83 Stat. 190.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to Information, availability.

carry out its duties under this section. Upon request of the Chairman of the Commission, such department or agency shall furnish such information to the Commission.

Marihuana, study.

(d)(1) The Commission shall conduct a study of marihuana including, but not limited to, the following areas:

(A) the extent of use of marihuana in the United States to include its various sources, the number of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;

(B) an evaluation of the efficacy of existing marihuana laws;

(C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;

(D) the relationship of marihuana use to aggressive behavior and crime;

(E) the relationship between marihuana and the use of other drugs; and

(F) the international control of marihuana.

Report to President and Congress.

(2) Within one year after the date on which funds first become available to carry out this section, the Commission shall submit to the President and the Congress a comprehensive report on its study and investigation under this subsection which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

Drug abuse, study and investigation. Interim reports. Final report to President and Congress. Termination. Expenditures, limitation.

(e) The Commission shall conduct a comprehensive study and investigation of the causes of drug abuse and their relative significance. The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

(f) Total expenditures of the Commission shall not exceed $1,000,000.

[Testimony continued from page 112.]

Senator BAYH. Mr. Bonnie, what was your role?

Mr. BONNIE. I was associate director of the National Commission.

Senator BAYH. I understand the Shafer Commission came to the conclusion that as far as harm to the individual or to society, by the use of marihuana, this was not sufficiently significant to continue to criminalize the users. Since that time there have been some medical studies that caused some concern. Did these issues enter into your assessment of the degree of deterrence that should be utilized? Do we need absolute scientific certainty? I do not think we are there yet, are we?

COMPARE ALCOHOL AND MARIHUANA CONTROL POLICIES

Mr. BONNIE. No, I think the best way to deal with that question is to consider the comparison with alcohol. I think I speak on behalf of a substantial majority if not all of the members of the National Commission. Let us assume that the use of marihuana is as harmful as the use of alcohol, which it demonstrably is not. Even if all of the scientific studies that suggested possible harms were accepted and were confirmed by subsequent research, marihuana would not turn out to be as harmful as alcohol if used heavily over a long term. The Commission so stated. Nonetheless, even if we were to assume that marihuana were to be proven as harmful as alcohol, that would not affect the basic issue before this subcommittee and the more specific issues raised by S. 1450. The issue before the subcommittee is not a health issue. It is an issue regarding the proper use of the criminal law—whether or not the criminal sanction ought to be extended to the user of a substance which maybe is as harmful as alcohol, which as I say, it is not.

Senator BAYH. No, but it raises the question of whether a felony penalty for the distribution is sufficent deterrence or whether you should also include a civil fine for possession.

Mr. BONNIE. I think that the issue, the scientific evidence with regard to the possible impact of a long-term use on the individual would be probative on the question whether or not the drug ought to be legitimately available.

This indeed, was essentially the Commission's operating premise in rejecting the legalization approach, in rejecting the regulatory scheme.

The Commission essentially adopted a very cautious, a very conservative view—that we do not know enough about the use of marihuana, and that it is possible that studies will indicate that heavy use of marihauna over a long term does involve serious deleterious consequences to the individual, perhaps even as serious as those associated with alcohol use. Under those circumstances, the Commission concluded that society simply ought not to institutionalize the availability of the drug.

But even assuming this posture toward availability, the Commission concluded that under no conceivable formulation of the scientific findings about the effects of marihuana use, should the criminal sanction be applied to the user. And I think that would apply to the civil sanction notion as well.

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I think on this latter point the issue is drawn between the deterrent effects of the civil sanction versus no sanction, on the one hand, and the possible costs involved in applying such a sanction on the other.

I suppose, and I see one of the Senator's points now, that uncertainty about the effects of use might enter into the determination about the importance of deterrence. It is my own view that it would not—that the possible dangers are simply not great enough to warrant any law enforcement resources in that area.

Senator BAYH. I read the Commission report and have been concerned about its policy recommendations.

CONCERN ABOUT INCONSISTENCY IN SHAFER COMMISSION REPORT

As a lawyer, are you at all concerned about the apparent inconsistency of the Commission report that reached that conclusion that individual possession of the substance would be permissible; but, that a serious criminal sanction should be retained for those who sell the substance?

Mr. BONNIE. As a lawyer, I was not disturbed by the inconsistency. I think it is only an apparent inconsistency. With regard to the position that the Commission adopted, the Commission did not say that it was okay to use it. The Commission did not say that we approve, or that the society ought to approve people using it.

The Commission said we want to discourage the public from using the drug. But the Commission also said we should not be myopic. The law does not stand alone. Consider the arsenal of social control that we have at our disposal, which are in fact "working" for some, I do not know what the number would be, 150 million teenage and adult Americans who are "deterred." Consider those who have not experimented and have been discouraged from using the drug, not by the law, but by other factors—perhaps their notions of individual morality; perhaps, their fear of the harmful effects. This society has a tremendous arsenal of institutions and social control devices to discourage people from using marihuana—the churches and the families and the schools and so on.

The Commission simply said the criminal law is too big a bat to use for this particular fly in the social ointment. And when viewed in that way, I do not believe that that is an inconsistency at all.

Senator BAYH. I would not want to put words into Mr. Stroup's mouth, as I am sure that he could express it better than I. But, it would seem to me, the reason we have laws is to affect the relationship between individuals; and that the net effect of the given laws, is how it affects a citizen.

Thus, if the Commission came to the conclusion that a certain substance does not detrimentally affect an individual citizen, to the extent that we should have penalties, then, I suppose Mr. Stroup would argue, why do we say that someone who sells it should have that kind of penalty imposed?

Mr. BONNIE. I guess I had better put on my other hat at this point. My previous answer was essentially the position, I think, the Commission espoused and the reasons it gave for rejecting the regulatory approach.

SUPPORTS NEUTRALITY POLICY

My own view on that issue is that if, as the Commission found—and I think that there is no evidence to the contrary and never will be—if the use of marihuana in moderate amounts for one's own use, for recreational purposes—exactly the way the overwhelming majority of marihuana users use the drug—if this kind of use carries no possibility of harm to the individual and certainly not to society, then the official social policy toward the recreational use of marihuana ought to be one of neutrality.

We ought to say, that is your business and we ought not to intervene. And if you do begin at that point and say essentially, that the policy ought to be the same as for alcohol, then, naturally, the purpose of legal intervention is not to inhibit a person from obtaining the drug, but to insure that the product that he gets is one that will be the most healthy one.

Thus I think that if you begin from that premise—neutrality toward recreational use—then you are inevitably led to a regulatory model. I think the Commission began at a different point. And I guess, my personal view at the moment is that for any number of reasons, the regulatory approach is not feasible. It does conflict with international obligations. It is not politically acceptable. And for any number of reasons I do not think that the State legislatures or the Congress are about to go that route.

It is crucial, at this stage to get the Commission's recommendations implemented. To do this, it is important to emphasize that this was an extremely cautious, conservative body that began at exactly the opposite position from the one which I just articulated. The Commission's position is that we want to discourage the use of this drug.

COMMISSION'S MEMBERS DECRIED BY LIBERALS

The Senator will perhaps remember that at the time that the Commission was appointed there was an outcry from the liberals. Mr. Stroup was one of those who was making the point that this body was preordained to reach the most conservative possible conclusions on this issue. Most of the commissioners had already made their positions known on the public record. I think it was said by Bill Hines in the Chicago Sun Times in 1971 that their average age was 54, and the color of their hair was white. And under no circumstances would this group, have anything in common with or any solicitude for the long-haired users of marihuana that would appear before them.

Well, the Commission recommended decriminalization despite that, and despite President Nixon's statements at the time that it did not make any difference what the Commission said, anyway, and that he opposed the legalization of marihuana and that meant legalization of use, that is decriminalization. This conservative body, taking an extremely cautious approach, as I have indicated, said that this society pays a devastating price for criminalizing the possession of marihuana for personal use. The marihuana laws cause more harm to the social fabric, particularly the legal system than the use of marihuana. And I think that is the essential conservatism of the Commission position

as the commentary of William Buckley or James J. Kilpatrick and other conservative commentators have indicated. The position of decriminalization is a conservative position. And that is why I recited the Commission's position rather than my own.

Senator BAYH. Sitting here now, I confess I am not prepared to go as far as you would go; that is my own personal opinion.

I must say I am persuaded that there is some inconsistency between the policy, as it affects the individual as far as use is concerned and how you affect others up the chain. We will have to deal with that, considering the practical aspects as best we can, and to be honest with ourselves.

DOES FORD NOW REJECT THE NIXON POSITION?

Let me address some questions.

Mr. Miller, President Nixon did appoint this very prestigious Commission. It did make recommendations which he summarily rejected, indicating that he had already made up his mind about what he thought was the correct policy.

Then in your statement, you had a rather equivocal statement that says that the Department opposes, and then you asked us to strike that.

I believe you are trying to say that your fixed position on that is rather ambivalent. Is there any reason behind that, as far as the Justice Department policy right now?

I do not want to put you in any position that is personally embarrassing; but, is there anything happening in the Justice Department right now that might lead us to believe that they are studying the policy?

Mr. MILLER. Only to the extent that the Department of Justice is always considering policy of this type as to which direction to go in regard to all criminal offences.

There is not a task force, a working party or whatever you might want to call it presently considering making a determination as to what should be the policy of the Department of Justice. There are many of us within the Department who have views that will be made known to the Attorney General. But, I have seen no pronouncements from the Attorney General as to what position he personally takes on the matter.

Attorney General Saxbe made a statement a time or two in public. I have heard none by the new Attorney General.

DEA POSITION ON MARIHUANA QUESTION

Senator BAYH. As you know, our committee has had a number of opportunities to discuss the overall drug problem with DEA. In fact Mr. Bartels earlier stated that DEA was in the process of studying the marihuana question.

Have you reached a conclusion? If not, who now is in charge of that study?

Mr. MILLER. I am.

Senator BAYH. You are.

Mr. MILLER. Yes, sir.

Senator BAYH. Then I think you have more than a passing interest in this problem; and are more than just a conveyor of the opinion of the Justice Department. Where is the DEA, now, in their marihuana study?

Mr. MILLER. I have assigned an attorney to study all the various State laws to find out where we are in regard to what the States have done and are doing.

Something along the line of saying "about 44 of the States do this, and about 48 of the States do that."

Senator BAYH. Is this only an inventory study, to compile statistics?

Mr. MILLER. No, this would be a proposal to send forward to the Department for its consideration, a model statute that could be adopted, perhaps by the Commission on Uniform State Laws by the States.

So far as the position of DEA is concerned, we have already pointed out that the States are now taking adequate action. The States are not sitting still on this matter. They have made many, many changes.

I feel personally, that there is no need for the Federal Government to step in, preempt, lead the way for the States. The States are already examining ways to cope with the matter.

It is the position of DEA there should be a status quo at the Federal level. There should be sufficient experiment at the State level to make a determination as to the best way of controlling this matter before the Federal Government steps in.

People look to the Oregon experience and say: "Well, it is very good; the results are tremendous. It is working."

I do not know whether or not the sociologists have said that yet. I have heard Mr. Stroup say it. But, I do not know what an anthropologist would say or other people who know how to conduct studies of this type, as to whether 18 months is sufficient experience to determine what the consequences of that law will be.

RESPONSIBILITY TO REASSESS FEDERAL PRIORITIES

Senator BAYH. Are we going to wait for the 300 million-year-old man to determine the impact of marihuana?

We have here, Mr. Horton, who is in charge of law enforcement in one of the counties in Oregon; is that not relative evidence, as far as what we should consider here?

I might suggest, your idea of allowing the States to pursue this matter is consistent with division of responsibilities as far as law enforcement is concerned; but we are in the process of considering the reclassification of all the laws codified by the U.S. Government. This is the committee that has the responsibility to assess penalties at the Federal level.

Under the present statutes there is a penalty clause we must assess as far as the use of marihuana is concerned. Thus, as we prepare to codify and assess criminal laws at the national level, I think we have to ask these questions. And I might suggest you, as a representative of the Justice Department, have a responsibility of addressing yourself to these questions as well—not just say we are going to pass the buck.

Senator Hart and I are faced, within the next few weeks, of having to deal with this question in full committee. That is why these hearings are timely.

I do not want to put you over a barrel here, and say that you must answer right now. However, I must say, I cannot accept that we do not have responsibility at the Federal level to look at these laws, just because our predecessors have already looked at them and already assessed the penalty. Thus, they are being reviewed now. I believe we have a responsibility to look at it, in the light of today's facts.

DEA AGAINST BILL AS UNENFORCEABLE

Mr. MILLER. I suppose what I am saying is that we are not sitting on our hands over in the Department of Justice. The Department is fully aware of this hearing. After all, you did send notice to the Attorney General inviting somebody to testify, and I am here. The only thing I am saying right now is that the Department has not yet worked up a final decision as to the concept of so-called decriminalization.

I am here today, testifying against the bill because mainly, it is a poorly drafted bill. And if it stays the way it is and is enacted by the Congress of the United States, in my opinion, it cannot be enforced.

I am not ready to say that since we have a law that is not now enforced, what is the matter with substituting a law that cannot be enforced?

That seems like a very stupid logic to me. Unless a law can be passed that is usable, that can be enforced, then I do not think the Congress of the United States should enact it.

Senator BAYH. I think that is a very responsible position. There is no need in replacing a law that appears in question with another one that is equally at question.

I am not being critical with your assessment of this particular proposed bill. In fact, that is one of the reasons we wanted you to be here. But, I would hope that you and DEA—with the marihuana study that is presently being conducted should go beyond looking at what the States are doing—would address yourselves as to what you feel is the right Federal policy in regard to the use of small amounts of marihuana.

Let me ask you, what is the latest figure, as far as Justice is concerned, about how many users we have of marihuana?

Mr. MILLER. The Justice Department is getting out of the guessing game, sir. Even so far as heroin users are concerned, we do not have the slightest idea how many heroin users there are. We only have reported active addicts.

Scientists make attempts to——

Senator BAYH. Did I ask heroin? I believe I asked about marihuana users.

NO ESTIMATE ON MARIHUANA USERS

Mr. MILLER. I know. I was just going into the whole subject of how difficult it is to compile figures of this type. Getting right down to your answer, we do not know how many marihuana users there are in the country.

Senator BAYH. Do you have an estimate?

Mr. MILLER. Regrettably, we sometimes must rely on imprecise data such as Mr. Stroup who comes up with 13 million. If we have no reason to disbelieve it and it is said more than two times and finally winds up in the Congressional Record, it is accepted as fact.

Senator BAYH. You have no assessment then, that you care to make.

Mr. MILLER. No, sir. The only thing that we can estimate it runs into the millions, obviously, as a result of what we see coming across the border. Tons and tons are coming across the border. Obviously somebody is using it.

Senator BAYH. How many arrests?

Mr. MILLER. I will have to get the figures on that, sir.

I must apologize. I left my statistics back in the office when I left for this meeting.

Senator BAYH. Our estimate is about 500,000. I do not know whether that is close to yours.

Mr. MILLER. As to the number of arrests, I have heard this figure of 420,000 last year. I think that came from the FBI's 1973 crime reports.

The Uniform Crime Reports for 1974 have not been released yet by the FBI. I am puzzled as to where this half a million figure came from.

Senator BAYH. You're positive where the 420,000 figure came from?

Mr. MILLER. I know where that came from. It came from an estimate of the FBI Uniform Crime Reports for 1973.

Senator BAYH. It is reasonably accurate.

Mr. MILLER. I would assume it is reasonably accurate. However, I have not taken a position on how many of those 420,000 were for simple possession only.

The chief of police of Los Angeles Police Department, Edward Davis, indicates from a study of the arrests in Los Angeles in 1972 approximately 85 percent of all marihuana possession cases were incident to some other investigation the officer was conducting at the time, rather than simply waiting behind a bush for a marihuana possessor to come along, grabbing him, searching him, and taking him off to jail. Most arrests were as a result of loitering charges, as a result of speeding charges, where the marihuana was in plain sight, and as a result of disorderly conduct charges.

Many, many violations were involved that officers were looking at, rather than just possession of marihuana per se.

I am not sure that by decriminalizing marihuana the police officers are not going to make arrests for disorderly conduct as they intend to do when they begin investigating the individual's activities. They will still bring people in for loitering. They will still subject those people to many other aspects of the law. They just simply will not charge them with possession of marihuana.

DENVER'S MARIHUANA CITATION ORDINANCE

Senator BAYH. Mr. Wood, I believe you have pointed out that there has been no reluctance to cite people in Colorado, for the specific use of marihuana.

Now, would your Colorado experience lead you to believe that the citations for the use of marihuana were confined to those who were loitering or doing other kinds of illegal activity? I am sure that there is a combination of those instances. However, does that mean that everybody that is assessed a penalty for marihuana use is also doing something else that is illegal? What has been the Colorado experience?

Mr. Wood. I think I mentioned it. And I think also Mr. Horton mentioned that the incidence of ticketing has gone up in Oregon too, the number of arrests. At least that was my understanding of his testimony. And that is consistent. He said something like 30 percent.

Senator Bayh. I think I asked him the question.

Mr. Wood. Thirty percent increase. I think that is probably consistent with what we have seen in Denver. I am not in the position, I do not have the statistics to say for sure, but I think the majority of the marihuana arrests, the ticket arrests under our ordinance in Denver, are either for that charge, itself, primarily, or for a traffic charge, and then for the smaller charge.

Senator Bayh. For example, after the individual suspect is apprehended for a traffic violation then the possession of marihuana is discovered.

Mr. Wood. I think that happens fairly frequently. I would guess that the majority would still be where marihuana would be the prime charge. But I do not have the figures on that.

ENFORCEMENT AND MARIHUANA TRAFFICKING

Senator Bayh. Mr. Miller, despite the fact—since we have had these laws on the books, and have made a major enforcement, public relation effort called, I believe, "Operation Intercept" with legitimate tourist and commercial traffic tied up along the border, and national attention called to the dramatic efforts being made to stop the trafficking over the border—you still point out that tons and tons of marihuana are coming in.

We really have not been successful despite the fact that it is illegal, as far as marihuana entering the country.

Mr. Miller. Mr. Chairman, philosophers and legal scholars certainly will not agree on the use of punishment as a deterrent of crime. Mr. Bonnie has pointed that out very skillfully.

As for me, I find it difficult to prove a negative. I simply cannot answer the question of how many people are deterred from using marihuana as a result of the fact that there is a law against it. There are many people who fear suffering the consequences of the law and that deters countless hundreds of thousands of people. Avoidance of punishment and disgrace are very decisive reactions in the lives of normal people.

I do not believe the law that we now have is an artificial danger. It is true, in comparision with millions of people who are possessing marihuana, at one time or another, actual enforcement of the law seems to be insignificant.

But, Mr. Chairman, there the law is. There it stands. Many people use it as a guide to their behavior, in making a decision as to whether they will or will not use marihuana.

S. 1450 most certainly would do away with whatever preventative

value there is in the law. It would be nothing but a bluff. The bat would be full of escapes and uncertainty and imprecision. It would be recognized as such.

Senator BAYH. Let me ask you another question. Then I am sure my colleague, Senator Hart, has some he would like to ask the members of the panel.

I would hope those of us who are trying to make a judgment about a question as important as this will not respond the same just because of someone's response. With all respect to our witnesses, here, I think we all have to make our own judgments on the subject.

We have talked about the Shafer Commission study. Does it create some interest in your mind about examining the position of the Federal law, now, since organizations such as the American Bar Association, the Consumer Union, the National Congress of Commissioners for Uniform State Laws, the American Public Health Association, the National Advisory Commission on Criminal Justice Standards and Goals, the National Council of Churches, the Governing Board of the American Medical Association, the National Educational Association, the San Francisco Commission on Crime, and Mayors' Advisory Committee on Narcotics Addiction—even James J. Kilpatrick, who is a rather conservative syndicated columnist, William Buckley, John Finlator, our Deputy Director of Narcotics and Dangerous Drugs have endorsed the Shafer Commission Report? Does that have any influence to cause you to have reason to think, perhaps, we ought to take a good look at where we are now, and what is the total impact of continuing that direction?

Mr. MILLER. Yes, sir. Those are very prestigious groups. I do not doubt for a minute that we should take a look at where we are. In fact, that is what we are doing.

Senator BAYH. We are interested to find out what you would recommend, as quickly as we can.

Senator Hart, I will yield to you.

Senator HART. I think I have no questions.

I apologize for my absence during a period of time, compelled by a meeting of another committee.

I appreciate, professor, your endorsement of the amendment. I am encouraging anybody to say so.

Mr. STROUP. You may be sure that our organization will be endorsing it, Senator. I think it is an excellent proposal and I prefer it to the civil fine approach. I think it is a much preferable position. As I explained in my brief presentation, being realistic, and recognizing that somewhere in excess of 400,000 people who occasionally use marihuana are arrested every year, we are willing, if necessary, to accept a "cease-fire" proposal as a compromise. But the eventual marihuana policy we are aiming at is more in line with what you suggested.

Senator HART. And I think that I would just generally agree with Mr. Miller's statement that as long as the law says that this is unacceptable conduct, in terms of sanction, it does deter some people. But it sure does not deter, where there is 13 million regular users, an awful lot of other users and the damage, in my mind, the damage it does to the general public's concept of the justice of the system is so overwhelming that I am game to eliminate the deterrence to the extent that it applies.

MARIHUANA LAWS CREATE DISRESPECT FOR LAWS OF THE LAND

Senator BAYH. I concur that there is some deterrent. But, that deterrence is offset if there is minimal deterrence by a major recognition of the fact that the law either is not being enforced or is incapable of being enforced. That also increases disrespect for the law.

And this feeling of disrespect for our laws and that our law enforcement officers are filled with hypocrisy contributes to continuing the frustration of disbelief in our institutions. I think the disbelief that exists today for our institutional structure is reaching dangerous proportions. If we can strike a blow, even a step at a time, to root out those laws that lend to this belief—that the laws are not honest in their application or their effect—in the final analysis we are going to help clean up our institutional belief which is in grave disrepute at this time.

Mr. MILLER. Mr. Chairman, if the present law is in disrespect, and indeed, it may be, I cannot see how the law would gain any respect by substituting a law that could not be enforced, or is intended by the Congress of the United States not to be enforced. That law would be in more disrepute than the one we have.

Senator HART. If I could interrupt it, then you would be for my amendment in preference to the one you are in here representing.

Senator BAYH. You had better give him some legal advice, Mr. Bonnie.

Mr. MILLER. Senator, I do not have the ability that Mr. Bonnie does, when it comes to a tough question; I cannot put on my other hat.

Mr. HORTON. Mr. Chairman, I might indicate that the Drug Abuse Council in their year-long survey in Oregon, was very concerned with this precise question; namely, is there measurable deterrent effect that laws which made possession illegal have any comity?

They found that only 4 percent of the people, who were interviewed, indicated that the fact that it was illegal to use marihuana, deterred them.

The vast majority of people, as Mr. Stroup indicated, cited reasons they were not interested for fear of personal health as to deterrence for not smoking marihuana. Insofar as, in Oregon at least, whether or not there is more disrespect for the law; I can assure you that there is probably more respect, at least no less, between the law enforcement community and the youth of our cities and our State than ever before. And demonstrably it is because, at least in part, of the realistic approach that we took about marihuana. And that has been personally conveyed to me by numbers of young people. They have affirmatively made that point.

CREDIBILITY OF INSTITUTIONS QUESTIONED

Senator BAYH. I think that factor is an important subject for us to consider. It is hard to define, I am sure. It will not be found anywhere in the FBI statistics or any congressional report.

But, most of us here who have been involved in this business of Government, as long as my colleague from Michigan and I have, develop almost a visceral feeling for these things. One is the sense

of justice that the people, of all ages, wonder whether there is any honesty, responsiveness, and credibility about our institutional system. We have to reverse this trend because it certainly ought to be a government for the people.

Mr. Wood, you mentioned that this position was supported by your police department in Denver, and then you pointed out why.

Do we have evidence that the use of marihuana in your individual jurisdiction does, indeed, lead to the use of barbiturates, amphetamines, cocaine, or heroin? Do we have evidence that the use of marihuana leads to an assortment of other crimes that are associated, say, with the cost of heroin?

Mr. Wood. Let me say, first, that the Denver Police Department supported the Denver City ordinance. I don't know how they feel about Senator Javits' bill. I did not mean to imply they were supporting it.

Senator Bayh. I understand.

Mr. Wood. I do not think the causal connection has ever been established, at least to my satisfaction, on the relationship between marihuana use, or alcohol use, or use of any substance and subsequent use of heroin or cocaine.

I think that a number of heroin and cocaine users have used marihuana. But likewise, they have used alcohol, typically. And, I do not know, I do not believe that the causal connection has been made, as far as effect on crime. The only drug that I have been able to ascertain which has any appreciable effect on crime, is heroin. And that is because of the tremendous cost of heroin.

Senator Bayh. I will ask you to contemplate—was there an established relationship between certain amounts of use of alcohol and the barbiturate-amphetamine syndrome to some people, as far as criminal activity?

Mr. Wood. Yes; I think there is.

Senator Bayh. They are able to get themselves hyped up—this kind of thing. Do we have any statistics on that?

DENVER STUDY RELATED ALCOHOL TO CRIMINAL ACTIVITY—ESPECIALLY ASSAULT AND HOMICIDE

Mr. Wood. We attempted to do a study by interviewing city jail population. And this was done several years ago. I do not know if the figures are still reasonably valid today.

The result of the study was that about two-thirds of all the people who are arrested for various types of violent crimes, assaults, homicides, and things of that sort, were under the influence of alcohol at the time the incident took place. The alcohol seemed to be something that precipitated a good many assaults and homicides.

Senator Bayh. Your study showed no relationship with marihuana?

Mr. Wood. That is correct. Marihuana, we have no study that would show how it fits into there. And I do not say that I know personally of any connection that has been made to that. Heroin, apparently, causes people to commit burglary. It costs $100 or $200 today. The lifestyle does not fit in too well with the workingman's life. So, they generally turn to theft or burglary to support it. There is a link there that is very clearly established.

Mr. HORTON. Mr. Chairman, I think it is tempting to infer that marihuana leads to hard-core drug addiction, because of the fact that so many addicts, or so many people who regularly use barbiturates or amphetamines also use marihuana.

But, of course, I defer, here, to Mr. Bonnie for elaboration on this point. But, I think the Shafer Commission study as well as the Le Dain Commission study showed clearly that there was no causal connection.

By using that type of logical inference, we are truly being very illogical. It would be just as illogical to say that Crest toothpaste or tobacco or alcohol had the causal connecting point between whatever you start with heroin.

But, I think, all these studies that have been done clearly show there is no casual connection.

Senator BAYH. Mr. Stroup and Mr. Bonnie both referred to this aspect as far as studies are concerned.

I was wondering whether, in your roles as law enforcement officials, you had any instances where, for example, you have busted someone for the use of marihuana; then that lead to finding a cache of heroin.

FEW ARRESTEES HAVE PRIOR RECORDS

Mr. HORTON. Absolutely not. We found most marihuana users who are brought into the criminal justice system are not the traditional stereotyped criminal, namely, they have no prior record, they are not involved with crimes of violence.

Most of the young people are either working or going to school. But that is not to say when we arrest a person who has a cache of heroin, we do not find some marihuana. I would not infer that. But the vast majority, you cannot say that 13 million people are going to get turned on to heroin because they occasionally smoke marihuana.

Mr. WOOD. I think it is safe to say that there is no significant correlation. It may occur, as Mr. Horton said, but not to a significant degree.

Senator BAYH. Mr. Miller, do you have any thoughts on that?

Mr. MILLER. Yes, sir. I do.

You know, it is amazing how we can begin to discuss nonsequiturs and then because we cannot disprove it, it winds up to be a virtue for marihuana.

Senator BAYH. That is not the way I asked the question.

ILLEGAL MARIHUANA CAUSES ILLEGAL ASSOCIATIONS

Mr. MILLER. We are talking about the escalation phenomenon that people have discussed since the old Indian cannabis report in the 1800's, which put this down saying that there is no such thing. Now, the only phenomenon that I have ever seen is that a person who uses marihuana is alining himself with the subculture, wherein all drugs are used. The more he uses marihuana, the more he will become a target of people who will introduce him into the culture that uses stronger drugs.

That does not say there is any sort of a chemical within marihuana itself that compels a person to use a more potent substance. It is only his association with the drug culture that may cause him to experiment with other drugs.

Senator BAYH. Let me ask you—since you are quick to suggest that we stick directly to facts as far as the FBI statistics are concerned—what do the facts show? Is there any causal relationship as far as enforcement is concerned?

Mr. MILLER. The only thing it shows is that by far the largest majority of heroin users first started using marihuana. But of course, Mr. Keith Stroup is going to say that the majority of them started also on milk and——

Mr. STROUP. I was going to say alcohol, that is the first drug most of them used. It was not marihuana.

I think it is time you quit saying that. That is "the big lie" put out by the Bureau of Narcotics.

Senator BAYH. This whole DEA responsibility is a very thankless job.

FOCUS SHOULD BE ON DANGEROUS DRUGS, NOT MARIHUANA

We say: Why, in the world, can we not plug up the loophole in our law enforcement system that lets in this heroin? There is no question about what it is doing to us. It is still going up—it is going up at an alarming rate. Yet, he and other law enforcement people in this country, right now, are—either by choice or by lack of choice—spending a significant amount of the enforcement resources chasing marihuana users and enforcing marihuana laws.

Is it not reasonable to assume—if one weighs off the deteriment to society of marihuana via-a-vis the detriment to society of heroin—that we might be a lot better off if we took the law enforcement moneys and personnel to intensify our effort to stop the increase of this heroin poison, about which we are making no appreciable headway?

Does that sound reasonable?

Mr. MILLER. I simply challenge your basic assumption. Your basic assumption is that we are spending an inordinate amount of time chasing marihuana users.

We are not. I do not think I know of a single case where a special agent of the Drug Enforcement Administration set out on a course specifically, deliberately intending to make a small possession of marihuana investigation, or to prosecute him for simple possession under section 404 of the Controlled Substances Act. The attempt of the DEA is to hit at the supply of marihuana.

So far as our congressional mandate is concerned, we think this is what we are supposed to do. The Oversight Committee of the Senate and the Oversight Committee of the House have agreed with us again and again that this is what we should be doing.

IS FEDERAL MARIHUANA POLICY BENEFICIAL FOR THE NATION?

Senator BAYH. That is what the law says. I am not quibbling with the fact that you ought to be out there trying to enforce the law.

What I hope we are trying to do is to look and see whether this law is really effecting something that is in the Nation's good. And, whether the resources we are spending to try to enforce this law are making it more difficult to enforce laws directed at another problem—which is causing a significant greater damage.

You have to recognize that when your people stop users, coincidental to other searches and the other problems, you turn those individuals over to local law enforcement officials. Thus the cost and the amount of time is spent by these local law enforcement officials. That is where the tremendous cost of all this effort—that these prosecutors and their law enforcement officials spend time trying to prosecute people busted for small amounts of marihuana. Also, this detracts—not only from the effort they can make to try to get hard-drug pushers—but rapists, burglars and other major felons. That is what really concerns me. We are proliferating our law enforcement effect.

Mr. MILLER. The whole system, I think, Senator, has to be examined at one time. I do not think we should examine it piecemeal; I do not think we should single out marihuana and independently work on that only.

We also have many other laws that are so-called victimless crimes, that are in fact, minor offenses. The Congress of the United States and the various legislatures around the country should examine the whole judicial system, the whole spectrum of crimes, and perhaps, make a decision as to how many of these minor offenses they want to continue to carry within the criminal justice system. But I would object to just singling out marihuana without also looking at all of the other various minor offenses as well.

WHY PUNISH SUCH VICTIMLESS CONDUCT?

Senator BAYH. With the exception of, perhaps, gambling—most of the other victimless crimes that have been referred to here, adultery, prostitution, and other things that offend our moral sensitivities—I know of no effort the Federal Government has made to punish those participants. Whereas they do punish marihuana users.

That is why we are addressing our attention to this subject right now.

Mr. HORTON. Mr. Chairman, I think it is important to point out that decriminalizing small amounts of marihuana in no way inhibits or disturbs the priorities as established by the Department of Justice. Namely, to go after the importer or smuggler of marihuana. All it does is to prioritize officially the police work at the State level. Police work which, perhaps, is not as enlightened as the policies as enumerated by the Department of Justice today. Namely, it is a big temptation for local police to go after the user and the possessor of small amounts of marihuana.

REDIRECT DECRIMINALIZATION PRIORITIES OF DRUG LAW ENFORCEMENT

By decriminalizing, we are statutorily taking away a big temptation to waste resources, to concentrate on the meaningless area of the law. And we are encouraging local law enforcement especially, in a very positive way, to redirect their priorities to the most serious forms of drug abuse.

So, I do not think what we are proposing here today in any way disturbs the philosophy or the policy that has been enumerated here by the Justice Department.

Senator BAYH. Another question I would like to direct to you and Mr. Wood, because it is a law enforcement kind of question.

During the last year, the FBI crime report shows we have had the biggest increase in crime since they have been keeping records. During that same period of time, both of your jurisdictions have had a different policy in the way marihuana users are treated, compared to most of the rest of the country.

Have you noticed any increase in crime in your jurisdictions that have a relationship to your new policy? Have you had significant criminal activity in Denver or in Oregon—in view of the alarming national statistics—which show is there any causal relationship there?

Mr. HORTON. No. 1, reported crime has been increased and I think we can differentiate that from crime in the raw sense. We do not know what that is: the latter. But we can statistically make some comparisons about recorded crime.

We have had some various plans in Oregon. For example, revising our rape laws encouraging women to report the crime of rape. We have had an intensive impact on burglary through either burglary prevention or reporting crimes of burglary. We have done a lot of victimization studies which show that a lot of people in the past have not reported crimes, so we have made an honest, concerted effort to get the community to have them report crimes to the police, so that we can respond in some way.

So, to that extent, it is working. More people are reporting crimes than ever before. But we say, OK, there are a lot of incidents of reporting major crimes in Oregon. Can that be attributed to decriminalizing marihuana? No, I do not think so.

We have an increase in crime throughout the United States. I read in Time, the magazine, a few months ago that heroin is on the increase. Reported abuse of heroin in Oregon. There is also an increase in Louisville and Des Moines, Iowa. Both those jurisdictions have harsh criminal laws about marihuana. We do not. What is the difference? Crime increases. No causal connection between what they do with possession of small quantities of marihuana and how many burglaries or rapes or robberies were committed by other offenders.

Mr. WOOD. Mr. Chairman, in Denver we were the beneficiaries several years ago of an impact grant from LEAA in the amount of $20 million, which has had some impact, I am sure, on the crime figures in Denver. And it is hard to understand exactly which element produced the reduction in crime that has occurred in most categories.

DECRIMINALIZATION MEANS MORE PERSONNEL AVAILABLE FOR MAJOR FELONY CRIMES

I agree with Mr. Horton, in that it is hard to say, if a reduction in crime occurs, what to pin it to. One thing I can say for sure is that with respect to our office, which prosecutes all felonies and misdemeanors for the city and county of Denver, as a result of the change in the marihuana law, we have established a program to specialize and put additional personnel on the crimes of homicide, robbery, rape, assault, and burglary. And we have been able to do that, in part because we no longer have to deal with the large volume of small amount

of marihuana cases that were just flood'ng us. And those are now no longer a significant problem with us. So, we have additional lawyers, additional prosecutors, ready to take cases to trial, quickly.

We have a speedy trial rule we are trying to meet. We have a speedy filing rule we are trying to meet. And one of the reasons we are able to do that I think is because we are no longer bogged down with, as I mentioned, some 1,800 since this law was in effect, just a little over a year ago, some 1,800 cases that otherwise would have came through our office, clogging up our office, which have been handled as a city ordinance violation in the municipal court. And that is a significant number of cases. We only filed 2,000 felony cases.

Senator BAYH. Some 1,800 cases cleared?

Mr. WOOD. That is right, 1,800 marihuana ordinance violations that would have otherwise gone to our office, and would have had to have been processed by our office and handled as municipal ordinance violations. And we have not had to deal with those. We have been able to concentrate our efforts on those other crimes that I mentioned.

Senator BAYH. Now, the total amount is about 2,000 felony cases?

Mr. WOOD. We file less than 3,000 felony cases a year and about 15,000 misdemeanor cases a year. So, maybe make the total including juvenile cases, 20,000 cases. We have gotten rid of maybe 10 percent, thanks to this ordinance.

Drug cases are often more productive of litigation than other types of cases, because, as a former defense lawyer, I know my part was always, in a drug case, pro forma, to file a motion to suppress. And that does not occur in many other types of cases. And that may be followed by other types of motions, for disclosure of the informants, and so on. Drug cases are productive of seemingly endless litigation. We have been able to avoid that.

Senator BAYH. I certainly believe that one of the things we can do, to help clear this litigation aspect of the crime problem, is to have an early trial. This conduct is generally recognized as a type of a conspiracy to perpetuate a blocked court system. To the extent it would free the dockets and move trials more quickly through the system, this could have a salutory impact on decreasing crime.

Mr. WOOD. I think that is a very worthy goal. And we are doing the best we can. We generally now can set a felony trial within 90 days in our jurisdiction.

Senator BAYH. I want to thank you gentlemen.

I hope we can feel free to call on you as we go ahead with our study. you have been very helpful. We will recess our hearings, subject to the call of the Chair.

[Whereupon the subcommittee was recessed, subject to the call of the Chair.]

APPENDIX

Additional statements and material supplied for the record

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Part 1—Statements, Comments, and Correspondence Regarding Marijuana Control

[From the Congressional Record, Aug. 3, 1976]

BAYH CALLS FOR SENSIBLE FEDERAL DRUG CONTROL PRIORITIES

Legislative Strategy Targeting Drug Traffic Kingpins

Mr. Bayh. Mr. President, last week the Subcommittee to Investigate Juvenile Delinquency began its assessment of President Ford's April 27, 1976, drug abuse message to the Congress and the accompanying proposal for fighting drug abuse. The Narcotic Sentencing and Seizure Act of 1976, S. 3411, which was introduced on May 11, 1976, by Senators Hruska, Eastland, Hugh Scott, Thurmond, and Buckley.

Since this Presidential proposal was introduced in mid-May, other committee business, and my illness coupled with recent recesses made immediate hearings impossible. We are especially appreciative that Majority Leader Mansfield and Minority Leader Scott permitted us to proceed with these vital hearings late in the session.

We intend to give specific attention to the stark reality that many who sustain the flow of heroin and equally dangerous drugs such as barbiturates do so while on bail and that when convicted only a few spend substantial time in custody. To add insult to injury these same high-level traffickers manage to avoid the tax collector while law-abiding citizens carry their share of the tax burden. It is intended that these hearings will help refocus national concern and stimulate fair, but firm Federal response to those who profit from the havoc wrought by drug traffic.

Last week we heard impressive and alarming testimony about our Nation's inability to even focus our drug law enforcement apparatus and our criminal justice resources on these "kingpin" profiteers. While I am especially concerned that the constitutional rights of criminal defendants are fully secured, I am likewise concerned that within such a framework our citizens are fully protected. We must reallocate our resources and sharpen our prosecutorial tools and strengthen our criminal justice system so that it deters, disrupts, and detains these criminals.

Since the pasage of the Comprehensive Drug Abuse Prevention and Control Act—Public Law 91-513—in 1970, our subcommittee to investigate juvenile delinquency, which developed this measure, has monitored its implementation and sought to assure that the Federal agencies responsible for its enforcement acted appropriately to curb the illegal importation, manufacture, and distribution of controlled drugs.

The 1970 act also established a comprehensive scheme for the regulation and control of dangerous drugs manufactured for legitimate purposes. It was to more specifically address this facet of the 1970 act—the Controlled Substances Act and the Controlled Substances Transport and Export Act—that the constitutional cornerstone became the commerce clause rather than the taxing authority. In any case, regarding illegal traffic in natural opiates—heroin, morphine—whether under the tax authority approach or the commerce clause it is difficult to hypothesize a case with no interstate aspect.

Regarding the dimension and abuse or domestic legally manufactured controlled substances we have made considerable progress in the last several years. We have obtained a drastic, but necessary, 95-percent reduction in domestic amphetamine production. We have secured more appropriate control over our production and distribution of other drugs with high abuse potential, including the barbiturates and methaqualone. And to prevent illegal traffic and abuse of methadone we have obtained stricter controls over its storage and distribution.

In short, these and similar important steps have effectively helped to reduce illicit traffic and clandestine manufacture of controlled drugs.

Our efforts aimed at curbing illegal traffic in illegal drugs have not experienced the same degree of success.

The subject of extensive hearings by the subcommittee last year on the effectiveness of the Nation's drug control laws—the opium poppy—is not of domestic origin, but its byproducts, or at least one of them—heroin—is certainly familiar to every American.

Indeed, we are all too familiar with the devastating effects of heroin on the individual addict, their families, and society at large. We know that heroin abuse has destructive physiological consequences, debilitating the health of the abuser and impairing an addict's ability to lead a normal productive life. The social consequences are equally devastating. In order to support a habit, the addict is driven to engage in criminal activities which threaten the safety and well-being of all our citizens. The costs in human and economic terms are enormous:

Billions of dollars are expended each year to protect our citizens from drug-related crime;

Billions of dollars of merchandise are stolen each year to support heroin habits;

Billions of dollars are invested annually in drug prevention, treatment, and rehabilitation programs;

Many innocent people are physically assaulted and even killed in the course of drug-related crime; and

Hundreds of thousands of otherwise productive lives are lost to the destructive and often endless cycle of heroin addiction.

We have learned—and through the course of our recent hearings are still learning—from bitter experience that there are no simple solutions to the epidemic of narcotic addiction nor to the ever-escalating levels of illegal narcotic traffic. There are no panaceas—no magic wands.

In fact, opium control presents especially difficult and complex considerations. The plant which spawns heroin to which our citizens succumb likewise issues drugs to ease the misery of the terminal cancer patient and, ironically, provides us with the antagonist medication necessary to treat those suffering acute narcotic overdose. There is little doubt that the opium poppy is a double-edged sword, life threatening and life saving.

We have made some progress in curbing narcotic traffic and addiction, but we must be forever vigilant that rhetoric about "the light at the end of the tunnel" or "turning the corner" on any problem not delude us into believing that we have actually accomplished our objectives.

One thing that we established through our hearings last year was that the White House was less than candid with Congress and the American people regarding their assessment of the importance of the Turkish ban on the cultivation of opium poppies in the effort to curb heroin traffic and addiction.

Former Presidential assistants with special responsibilities in the area of drug control and abuse told the subcommittee that in October 1971 shortly after the Turkish Government announced the ban, that the plan was ill-conceived.

Dr. Jerome Jaffe, former Director of the White House Special Action Office testified that he never believed that a ban on the growth of opium poppies would be effective in stopping the spread of heroin in the United States.

Mr. Walter Minnick, former White House Staff Assistant to the President for Domestic Affairs and Staff Coordinator for the Cabinet Committee on International Narcotics Control, told the subcommittee, quite candidly, that:

"The Congress and the American people were led to believe that the ban was an indispensable part of getting on top of heroin addiction."

Throughout 1972 the White House produced release after release, heralding the Turkish ban as a major breakthrough in the fight against heroin addiction and as clear evidence that the battle was well on its way to being won. This "hoopla" about the ban stepped up markedly during the fall of that year.

Apparently the Nixon administration was more concerned in 1972 with the re-election campaign than they were about controlling poppy production and solving the heroin problem.

The record developed to date by the subcommittee leaves little doubt that the Nixon administration not only created a misimpression about the ban and the policy of eradication, but that it had little time, if any, to heed the caution and advice of medical experts and others who warned that such policies could have long-term damaging ramifications including possible shortages and the emergence of a strong, viable Mexican connection along our southwestern border.

Even prior to former President Nixon's message to the Congress in June 1971, which set out the duel objectives of a ban on poppies and the development of synthetic alternatives to opiates, agencies experts in a confidential memorandum had alerted the White House to these likely ramifications.

Testimony presented to the subcommittee, however, revealed that White House advisers including Mr. John Ehrlichman, reportedly had decided that the poppy ban was "good politics" in that it would provide a high-profile, simple, ostensible answer to the crime problem with which heroin addiction and traffic are so intimately associated.

Even in late 1972 and 1973 when the prospect of an opiate shortage was rapidly becoming a reality, the White House ignored warnings by the medical community and others that White House "poppy politics" was responsible for the shortage as well as the failure to effectively focus on heroin traffic.

In a very short period of time Mexico had become the primary supplier of heroin to the United States, and although the Turkey ban did cause a shortage of heroin it was, as General Accounting Office investigators told the subcommittee, limited to major cities in the East and "a temporary thing at best."

The heroin problem now is worse than it was before the ban.

The American people are sick and tired of being sold a bill of goods.

As a Member of Congress who has, likewise, relied on less than candid representations at the highest levels of the executive branch in recent years, I know we were sold a bill of goods in this instance.

We are interested in developing a full and complete understanding of these issues so that sound national policies in the area can be substituted for past mistakes.

As late as February 21, 1974, President Nixon concluded his drug abuse in America message to the Congress by saying in part:

"Drug abuse is a problem that we are solving in America. We have already turned the corner on heroin."

Now, even White House officials, as they announce that all indicators of heroin abuse are up again, are cautioning others about claiming victory in the war against the poppy and heroin. In fact, on March 5, 1975, Dr. Robert Dupont then Director of the White House Special Action Office on Drug Abuse Prevention, told the subcommittee that "we can no longer talk about having turned the corner on heroin anywhere."

Similar discouraging observations were contained in the recently released National Institute on Drug Abuse publication "Heroin Indicators Trend Report." Director Dupont reiterated the mistake that was made in interpreting what proved to be a regional, temporary downtrend in usage in 1973 as a turning point in the national antidrug fight and revealed that the evidence is now clear that since 1973 the heroin use problem in the United States had deteriorated.

Maps provided for the subcommittee use in December 1974 by GAO graphically illustrate the source of what Dr. Dupont termed the deteriorating heroin problem: Mexico.

Mexico has become a significant supplier of the heroin reaching United States markets for illicit distribution. DEA statistics show that in the year ending June 30, 1972, 8 percent of the heroin seized in the United States was Mexican. By June 30, 1973, the amount of seized heroin from Mexico had more than quadrupled and accounted for 37.2 percent of all heroin seized in the United States. In March of 1975 DEA informed the subcommittee that 65 percent of the heroin reaching the United States comes from Mexican peoples.

By last fall Mexico had taken over as the dominant or nearly exclusive source for illegal heroin throughout the Nation, overshadowing Europe, the Near East, and Southeast Asia. According to a special October 19, 1975, DEA report to the subcommittee during the first months of 1975, 90 percent of 305 heroin samples confiscated in 13 major cities by the DEA were Mexican processed.

The special DEA report confirms the view that the route that brought French-processed Turkish heroin has been effectively blocked. Less than 2 percent of the confiscated heroin analyzed between January and June 1975, came from Europe or the Near East. In 1972, 44 percent of the sample came from those areas. During the period, Turkey halted the growing of the opium poppy from which heroin is made. Earlier last year Turkey resumed cultivation. Let us hope that the use of the poppy-straw process of harvesting the opium will effectively prevent resurrection of the infamous "French Connection".

Thus I am extremely concerned that all necessary steps be taken to prevent the diversion and traffic in Turkish opium that has formerly contributed so heavily to the destruction of so many thousands of lives and was so intimately linked to the ever-escalating levels of violent crime.

The Turkish Government claims that it will prevent the new opium crop from getting into criminal channels. The resort to the poppy straw method of processing will help to assure the desired objective, but much more is necessary. To date slightly more than 300 agents are reportedly available to monitor 50,000 acres of poppies being cultivated in small plots. The jeeps necessary to reach remote areas as I understand it have not yet arrived. To get the job done will require a dedicated and committed effort by the Turkish Government.

I urge the President to monitor the harvesting and processing of the new crop very carefully, so that if necesary he can take appropriate action under the Foreign Assistance Act to suspend economic and military aid.

When drastic action was taken to rescue American seaman seized by Cambodia, the President stressed the importance of showing that the United States intends to remain strong. If and when the lives of thousands are threatened by diverted Turkish opium, I hope that the President is at least equally committed and willing to show the strength of the United States.

Already the Turkish decision to again cultivate the poppy has made some impact on the illicit market. In Seattle, for instance, the resumption reportedly prompted many distributors to release "stockpiled" Mexican heroin which had been withheld from the market in an attempt to force the price up. This surge in supply has lead to more narcotic seizures in January of this year than in all of 1974 in that area. Similar reports are being received from around the Nation.

Whether the Turkish Government fails to hold to their commitments or not, we are again confronted with a horrendous heroin trafficking problem.

The increasing flow of Mexican heroin toward the major cities of the Northeast and the drying up of the European supply are the most startling aspects of the first half of 1975 DEA figures. A survey completed early in 1972, showed that the furthest penetration of Mexican-processed heroin eastward was an irregular line running from Detroit to the Florida Panhandle. The GAO maps supplied to the subcommittee also illustrate the significant Mexican heroin market during the same period.

For instance, in Boston 100 percent of all confiscated samples came from Mexico in 1975 and none from Europe. In 1974, 50 percent of the Boston samples had come from Mexico and 17 percent from Europe.

In New York City, 83 percent of the samples were Mexican-processed in the first half of 1975 compared with 10 percent from Europe in 1974. 21 percent of the samples were Mexican and 67 percent were European.

For Philadelphia, 83 percent of the samples were Mexican in 1975 and none were from Europe in 1975. In 1974, 50 percent of the samples were Mexican and 17 percent were from Europe.

The new figures show that Mexican-processed heroin has even established itself for the first time in the Pacific Northwest, replacing heroin from Southeast Asia.

The already entrenched position of Mexican-processed heroin in the Middle West and the Southwest was further confirmed by the new figures. For instance Detroit samples were 93 percent Mexican in 1974 and 94 percent in 1975, while Chicago remained at 100 percent Mexican for both years.

However, in 1972, Detroit samples showed 58 percent of the heroin was processed in Europe and 30 percent in Mexico. For Chicago, 44 percent in 1972 was European and 33 percent was Mexican.

The Midwest, and the Chicago area in particular, has become the main line of distribution for the Mexican brown heroin. The DEA deputy regional director in Chicago relates that "we are up to our ears in Mexican heroin." It is estimated that between 3.8 and 7.5 tons of heroin arrive in this principal U.S. marketplace for Mexican brown.

Renewed diplomatic steps are required. Mr. Bensinger, the DEA Administrator and Executive Director of the New Cabinet Committee for Drug Law Enforcement and U.S. Ambassador Sheldon Vance, Senior Adviser and Coordinator for International Narcotics Matters to the Secretary of State have kept the subcommittee appraised of important diplomatic efforts, including the recent June 8. 1976, meeting between Attorney General Levi and Mexican Attorney General Pedno Ojeda-Paullada on the apparently successful opium poppy eradication program, but much more must be done.

I ask unanimous consent that four charts illustrating the extensive impact of Mexican heroin be printed at this point in the Record.

There being no objection, the charts were ordered to be printed in the Record, as follows:

HEROIN SOURCE IDENTIFICATION FOR THE U.S. HEROIN MARKET

DEA region headquarters	Number of samples	Origin: Europe/Near East Number	Europe/Near East Percent	Southeast Asia Number	Southeast Asia Percent	Mexico Number	Mexico Percent	Unknown Number	Unknown Percent
January to June 1975:[1]									
1. Boston	10					10	100		
2. New York	30	3	10	2	7	25	83		
3. Philadelphia	18			3	17	15	83		
4. Baltimore	29	1	3	9	31	19	66		
5. Miami	10			2	20	8	80		
6. Detroit	34			2	6	32	94		
7. Chicago	25					25	100		
8. New Orleans	16			3	19	13	81		
10. Kansas City	17			2	12	15	88		
11. Dallas	36					35	97	[2] 1	3.0
12. Denver	28	1	4	1	4	26	93		
13. Seattle	15			2	13	13	87		
14. Los Angeles	37					37	100		
U.S. total	305	5	2	26	9	273	90	1	.3
In 1974:[3]									
1. Boston	6	1	17	2	33	3	50		
2. New York	24	16	67	2	8	5	21	1	4
3. Philadelphia	18	3	17	3	17	9	50	3	17
4. Baltimore	27	10	37	9	33	8	30		
5. Miami	12			1	8	11	92		
6. Detroit	30			2	7	28	93		
7. Chicago	24					24	100		
8. New Orleans	21			6	29	15	71		
10. Kansas City	18			3	17	15	83		
11. Dallas	39					39	100		
12. Denver	28			1	4	27	96		
13. Seattle	18	1	6	7	39	10	56		
14. Los Angeles	36			1	3	35	97		
U.S. total	301	31	10	37	12	229	76	4	1
1973:[4]									
1. Boston	12	9	75	2	17	1	8		
2. New York	36	20	56	11	30	3	8	2	6
3. Philadelphia	18	12	67			4	22	2	11
4. Baltimore	24	9	38	5	20	10	42		
5. Miami	12	2	17	4	33	5	42	1	8
6. Detroit	34	1	3	1	3	32	94		
7. Chicago	21	1	5	10	48	10	48		
8. New Orleans	10			2	20	8	60		
10. Kansas City	18	1	6			17	94		
11. Dallas	33	1	3	2	6	30	91		
12. Denver	27					27	100		
13. Seattle	15			6	40	9	60		
14. Los Angeles	39			6	15	33	85		
U.S. total	299	56	19	49	16	189	63	5	2
1972:[5]									
1. Boston	15	10	67			1	7	4	27
2. New York	51	26	51	15	29	4	8	6	12
3. Philadelphia	9	6	67					3	33
4. Baltimore	18	15	83	1	6	2	11		
5. Miami	27	17	63	3	10	3	11	4	15
6. Detroit	31	18	58	1	3	12	39		
7. Chicago	18	8	44	1	6	6	33	3	17
8. New Orleans	18	10	56			4	22	4	22
10. Kansas City	27	3	11			24	89		
11. Dallas	16	3	19	1	6	12	75		
12. Denver	20	2	10			18	90		
13. Seattle[6]									
14. Los Angeles	30	5	17			25	83		
Total	280	123	44	22	8	111	40	24	

[1] Estimate based on 305 in depth analyses, which constitute a 10.5 percent stratified sample of 2,893 DEA heroin records for the first half of 1975.
[2] Sample contained both Mexican type and Southeast Asia #3 type heroin.
[3] Estimate based on 301 indepth analyses, which constitute a 7 percent stratified, sample of 4,216 DEA heroin records for 1974.
[4] Estimate based on 299 indepth analyses, which constitute a 6-percent stratified, sample of 1,973 DEA heroin records.
[5] Estimates based on a random sampling of 280 indepth analyses which represent a 6-percent stratified, sample of 1,972 DEA heroin records.
[6] No exhibits available for Seattle region.

Mr. BAYH. Since the subcommittee's extensive hearings on "poppy politics" in March 1975, I have been encouraged by the work of the Domestic Council Drug Abuse Task Force. In the fall of 1974 and early 1975 the subcommittee staff had detected signs of enlightenment regarding Federal drug enforcement policy in the approach of several individuals, including the chairman of the White House Opium Policy Task Force, Mr. Johnson, who in turn became the Director of the Working Group that developed the "White Paper on Drug Abuse." At our March 1975 hearings we were pleased to learn that this important project was well underway and that they intended to give special attention to the lack of Federal drug law enforcement coordination.

The widely publicized "tug of war" between DEA or its predecessor BNDD and the Bureau of Customs regarding jurisdiction on narcotics investigation has been at best a grave disappointment. I am confident that my colleague, Senator Nunn, and others on the Senate Government Operations Committee are dedicated to assuring that the proper governmental structure is devised to assure integrity and streamlined narcotics law enforcement.

The Government Operations Committee Interim report, "Federal Narcotics Enforcement," raises important issues regarding the respective DEA-Customs roles. It concludes that reorganization plan No. 2 of 1973, which created DEA "caused a break in the jurisdictional authority of this Government to combat drug smuggling." This less than satisfactory result followed after the approval of plan No. 2. The interim report leaves the impression that Congress had little or nothing to do with the approval of the reorganization plan No. 2, and that its role was "sharply limited," because if after 60 days from the date of submission of the plan, Congress had done nothing, the plan would be implemented.

My recollection was that another lengthy discussion and debate accompanied the consideration of reorganization plan No. 2—the vehicle that created DEA and a review of the record supported this view.

A Senate Government Operations Committee Report entitled "Reorganization Plan No. 2 of 1973, Establishing a Drug Enforcement Administration in the Department of Justice" documents the extensive review given the proposed plan No. 2. It reveals that "nearly 3 months before the President submitted reorganization plan No. 2, this committee's Subcommittee on Reorganization, Research, and International Organizations began an investigation of Federal drug law enforcement" and that they conducted "more than 100 staff interviews of current and former law enforcement officials and prosecutors at the Federal, State, and local levels, of other present and past Government officials, including former Cabinet Officers and White House aides, and of drug abuse prevention and treatment specialists."

A central aspect of this inquiry was the "uncontrolled bitter feuding and the actual sabotaging of each other's investigations" by BNDD and Customs. The report notes that "by mid-March representatives of the Nixon administration informed * * * the * * * members of the subcommittee that the President would soon submit a reorganization plan to bring the primary drug enforcement efforts together in a single agency in the Justice Department."

According to the report, testimony was taken regarding plan No. 2 in Washington from Mr. Kleindienst, Attorney General; Roy Ash, Director of the Office of Management and Budget; John Ingersoll, Director of BNDD; Vernon Acree, Commissioner of Customs; Miles J. Ambrose, Director of ODALE and Special Consultant to the President for Drug Abuse Law Enforcement. When coupled with field hearings held around the country on plan No. 2 "a total of 158 witnesses were heard in 11 hearings."

The report on plan No. 2 reveals that the Government Operations Committee found that there was a strong need for the new superagency and it endorsed the reorganization plan and cited, among several, the following advantage expected to be derived from the reorganization:

"(1) It will put an end to the interagency rivalries that have undermined Federal drug law enforcement, especially the rivalry between BNDD and the Customs Bureau."

It is interesting to note that the actual plan No. 2 submitted by the President to the Congress (H. Doc. No. 93-69, March 28, 1973) stressed the need to strengthen our narcotics law enforcement effort at our borders. It proposed in fact, in order to reduce the possibility that narcotics will escape detection at ports of entry because of divided responsibility, and to enhance the effectiveness of the DEA that all functions vested in the Justice Department respecting the inspection of persons or the documents of persons be transferred to Treasury to augment the effort of the Bureau of Customs at our borders.

According to the 1973 committee report, the hearings on plan No. 2 "did not dwell on the BNDD-Customs dispute because the chairman and members felt that no legislative purpose would have been served in as much as the plan acknowledged and remedied the problem by uniting the rival agencies." Apparently because President Nixon proposed the transfer of Immigration and Naturalization Service inspectors to Customs to accomplish the renewed focus at the border—thus possibly jeopardizing the rights and benefits of the inspectors—Customs lost out.

The new agency—DEA—would absorb virtually all of the Customs Service's drug enforcement functions except at the border and ports of entry. It would appear that no attention was given to beefing up Customs in a manner consistent with the rights of the Immigration and Naturalization inspectors, for example providing Customs with 1,000 additional positions. Consistent with such an approach former Assistant of the Treasury Mr. Eugene Rossides in a memorandum he submitted for my review, April 2, 1974, recommended the return of antidrug-smuggling responsibilities, including related intelligence collection, to Customs. The Government Operations Committee should give serious consideration to this recommendation.

Thus the reorganization plan No. 2 apparently did not resolve the "tug-a-war" between DEA and Customs. The Domestic Council in the white paper, however, has called for a settlement of the jurisdictional dispute between DEA and Customs. At the subcommittee hearing last week, both Administrator Bensinger and Commissioner Acree expressed strong support for the December 11, 1975, memorandum of understanding between their two agencies. I ask unanimous consent that the memorandum and attached guidelines be printed at this point in the Record.

There being no objection, the report and guidelines were ordered to be printed in the Record, as follows:

MEMORANDUM

To Principal Field Office (U.S. Customs Service/Drug Enforcement Administration).

From Commissioner of Customs/Acting Administrator, Drug Enforcement Administration.

Subject Memorandum of Understanding Between U.S. Customs Service/Drug Enforcement Administration.

As the Commissioner of Customs and the Acting Administrator, Drug Enforcement Administration, we wish to assure all personnel of both agencies that this Memorandum of Understanding was signed in good faith by both parties and it is our intention to insure that the relationships between our agencies are conducted according to these operational guidelines in both a coordinated and professional manner.

It is of the utmost importance that the U.S. Customs Service and the U.S. Drug Enforcement Administration work together in an atmosphere of harmony and efficiency in combatting the illegal importation and trafficking in illicit drugs. It is essential that each agency complement and support the other in fulfilling their respective obligations.

The attached policy guidelines have been established between the Drug Enforcement Administration and the U.S. Customs Service for the purpose of clarifying the respective operations of each agency in respect to drug related enforcement activities. It is anticipated that the guidance established in this agreement will promote and insure that the inter-agency relationships are in the best interests of the United States and will result in effective and efficient law enforcement.

A copy of this memorandum and the attached Memorandum of Understanding is being sent directly to all field offices of both agencies so that all personnel will be immediately aware of the agreed upon operational guidelines. We expect all principal field offices to insure that meetings are arranged at the earliest date between U.S. Customs Service and Drug Enforcement Administration counterparts at the various managerial and working levels to develop the closest possible working levels to develop the closest possible working relationship within these operating guidelines.

VERNON D. ACREE,
Commissioner of Customs.
HENRY S. DOGIN,
Acting Administrator, Drug Enforcement Administration.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CUSTOMS SERVICE AND THE DRUG ENFORCEMENT ADMINISTRATION ON OPERATING GUIDELINES

The purpose of this memorandum is to emphasize and clarify the roles and the need for cooperation between the respective agencies. Under the broad guidelines of Reorganization Plan No. 2, the Drug Enforcement Administration has been assigned the primary responsibilty for ". . . intelligence, investigative and law enforcement functions . . . which relate to the suppression of illicit traffic in narcotics, dangerous drugs or marihuana . . ." Under the plan and delegations, Customs retains and continues to perform those functions ". . . to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, marihuana or to the apprehension or detention of persons in connection therewith at regular inspection locations at ports-of-enry or anywhere along the land or water borders of the United States . . ."

Both agencies have vital roles to perform within the Federal drug enforcement program. Customs, as part of its overall responsibility for interdicting the smuggling of contraband, retains the full responsibility for searching, detecting, seizing smuggled narcotics, and arresting suspected smugglers of any contraband. DEA has the full responsibility for any narcotic-related follow-up investigation, as well as for providing Customs with information related to narcotics interdiction. Clearly, for the Federal effort to accomplish its enforcement goals related to reducing narcotics trafficking, both agencies must cooperate and provide appropriate mutual assistance in performing their respective functions. It is mutually agreed that an employee who willfully violates the intent and conditions of this agreement will be subject to firm disciplinary action.

To implement the above, the Commissioner of Customs and the Administrator of the Drug Enforcement Administration jointly approve the following guidelines for dealing with specific operational problems.

(1) OPERATIONAL ROLES OF CUSTOMS AND DEA

Customs is the agency with primary responsibility for interdiction of all contraband, including all drugs at the land, sea, and air borders of the United States.

DEA is the agency with primary responsibility for investigation and intelligence gathering related to drug smuggling and trafficking.

The Drug Enforcement Administration will notify the U.S. Customs Service of information from its narcotic investigations which indicates that a smuggling attempt is anticipated at or between an established port-of-entry as soon as possible after the information is received. Such information may result in a cooperative joint interdiction effort but shall in no case result in uncoordinated unilateral action.

Within the limitations of its resources, Customs will cooperate when requested to support DEA operations and ongoing investigations, including interception of aircraft suspected of drug smuggling and convoys.

For purposes of this agreement an ongoing investigation includes only those cases in which information indicates a seizure and/or arrest should not occur at the initial point of contact in the United States, but should continue as a convoy to the final delivery point. The mere fact that a suspect or vehicle is known to DEA does not constitute an ongoing investigation.

(2) LAW ENFORCEMENT COORDINATION

Whenever Customs has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in drug smuggling or trafficking, DEA will be the first agency contacted by Customs. DEA will then have primary responsibility for the coordination of all investigative efforts.

Whenever DEA has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in the smuggling of contraband, Customs will be the first agency contacted by DEA. Customs will then have primary responsibility for interdiction if a seizure or arrest is to occur at the initial point of contact in the United States except in those cases under the control of DEA.

(3) PLACING OF TRANSPONDERS ON AIRCRAFT AND TRANSPONDER ALERTS

Transponders will not be utilized by Customs in drug related activity without prior advice to DEA of the aircraft's identity and suspects involved. If DEA has an ongoing investigation, DEA will make the tactical decision as to the course of action to be taken.

Both agencies will expeditiously advise each other of all transponders placed on aircraft, and immediately upon receiving signals therefrom.

Customs will normally respond to all specially coded transponder alerts crossing the border. DEA will be given immediate notification whenever Customs responds to a drug-related transponder alert.

(4) COMBINED SEIZURES OF NARCOTICS AND OTHER GENERAL CONTRABAND

Where both narcotics and general contraband are seized in the same case, the Customs Office of Investigations is to be notified and they will coordinate with DEA on a joint investigation.

Investigative efforts will be dependent upon the magnitude of the violations and/or the value of the general merchandise seized.

(5) VIOLATIONS TO BE REPORTED TO THE U.S. ATTORNEY

DEA case reports will include any customs reports related to the drug violation. Customs will furnish their reports to DEA in an expeditious manner. DEA will present the violations to the concerned prosecutor for determination of charges.

(6) INTERNATIONAL AND DOMESTIC DRUG INTELLIGENCE GATHERING, COORDINATION

DEA is the agency with primary responsibility for gathering intelligence on drug smuggling and trafficking, including air trafficking.

Customs has primary responsibility for intelligence gathering of smuggling activities and also a supportive role to DEA in drug smuggling and trafficking. Nothing in this agreement precludes Customs from gathering information from the air and marine community related to the smuggling of contraband. Customs will continue to maintain liaison and gather information from foreign Customs services on all smuggling activities.

Customs will expeditiously furnish all drug-related information to DEA. DEA will expeditiously furnish drug smuggling intelligence to Customs. Unless immediate action is required, such drug smuggling intelligence collected will not be subjected to enforcement action prior to coordination between Customs and DEA.

DEA and Customs will refrain from offering or lending support to any derogatory remarks regarding the other agency. When dealing with other law enforcement agencies, Federal, state and local officials should not be misled as to DEA and Customs respective responsibilities.

Neither Customs nor DEA will discourage potential sources of information from working for the other agency. The promising of rewards to informants for intelligence shall not be competitively used to increase the price of information and knowingly encourage the source of information to "Agency Shop."

Under no circumstances will Customs officers employ a participating informant for drug-related matters unless prior agreement and concurrence is obtained from DEA. Both agencies recognize that the identity of an informant may have to be revealed in court and that the informant may have to testify.

In those drug smuggling cases involving a DEA confidential source, Customs will be promptly notified of the role of the informants so that the safety of the cooperating individual is not jeopardized. Customs officers will not attempt to debrief DEA informants.

None of the foregoing is intended to limit total resource utilization of DEA and Customs law enforcement capabilities, but rather to insure coordination, elimination of duplication of effort, and prevention of counter-productive or potentially dangerous enforcement activities.

At the field level, Customs and DEA officers will identify specific persons or organizational units for the purpose of information referral and to coordinate enforcement matters.

(7) PROCEDURES TO BE FOLLOWED WHEN DEA HAS INFORMATION THAT AN AIRCRAFT, VEHICLE, VESSEL, PERSON, ETC., WILL TRANSIT THE BORDER CARRYING NARCOTICS

For criminal case development purposes, DEA may request that such persons or conveyances be permitted to enter the United States without enforcement intervention at that time. These requests will be made by DEA supervisory agents at the ARD level or above to District Directors or their designated representative. Such requests will be rare and made only when DEA intends to exploit investigations of major traffickers.

Customs officers will participate in the enforcement actions until the initial seizure and arrest. The number of Customs personnel and equipment needed will be decided by the Customs supervisor with input from the DEA Case Agent, subject to the limitations of available Customs resources, not to exceed the number recommended by the DEA Case Agent.

On drug-related joint enforcement actions, no press releases will be made by Customs or DEA without the concurrence of each other.

(8) DRUG SEIZURE PROCEDURES

Customs responsibility for interdiction of contraband, including illegal drugs, remains unchanged. Using every enforcement aid and technique available to them, Customs officers will continue to search for illicit drugs. Each time any drugs are discovered, they will be seized and the nearest DEA office will be immediately notified unless otherwise locally agreed upon. Questioning of arrested violators will be limited to obtaining personal history and seizure information for Customs forms. Further questioning is the responsibility of DEA. Chain of custody forms or receipts are required for transfers of all seized items.

Customs will take every step possible to preserve all evidentiary material and not remove suspected drugs from original containers when such action compromises evidentiary and investigative potential.

In these instances where DEA will not accept custody of detained persons or seizure of drugs due to U.S. Attorney prosecutive policy, DEA will notify local enforcement authorities for prosecutive consideration. Otherwise DEA will request Customs to notify these authorities. When local enforcement authority declines, Customs will proceed to assess administrative and civil penalties, as appropriate. Otherwise, administrative and civil penalties should be held in abeyance until local prosecution is completed.

(9) CONVOY OPERATIONS AFTER CUSTOMS SEIZURES

In those instances where DEA decides to convoy the contraband seized by Customs to the ultimate consignee, Customs personnel will fully cooperate, and will withhold publicity. All seized vehicles or conveyances will be included in a chain of custody receipt.

The weighing of the contraband may be waived when the method of concealment makes it impractical. At the termination of the convoy, an accurate weight will be supplied by DEA to the originating district director, and the chain of custody will be annotated with the correct weight. Customs officers will not normally participate in this type of convoy operation.

At the termination of this type convoy operation, involved vehicle or conveyance shall be released to the custody of the nearest district director of Customs.

(10) DISPOSITION OF VEHICLES, VESSELS, AIRCRAFT AND SEIZURES IN JOINT ENFORCEMENT

All vehicles, vessels, and aircraft involved in joint smuggling cases will be seized and forfeited by Customs. Final disposition of the conveyance will be determined by a joint Headquarters review board comprised of Customs and DEA personnel. Guidelines governing disposition will be developed.

Upon prior DEA request in writing, Customs will not administratively dispose of seized aircrafts or other conveyance until it is no longer required for evidence by the courts or termination of DEA investigation.

(11) REFERRAL TO OTHER AGENCIES (CHAIN OF CUSTODY AND LABORATORY SAMPLING)

Customs will continue, in the case of seized heroin and cocaine, weighing two ounces or more, to make samples not to exceed 7 grams. However, the Customs laboratory will not perform the quantitative and qualitative analysis until completion of the prosecutive action, except for special contingencies.

(12) DEA ACCESS TO CUSTOMS PERSONNEL AND CONTROLLED AREAS

Designated Customs areas are not normally accessible to others. Access to Customs controlled areas and Customs personnel on an as needed basis will be obtained from the officer-in-charge of the Customs facility in each instance. Customs will honor such requests, provided that DEA personnel in no way interfere in examination and inspection processes.

(13) PROCEDURES WHEN DISCOVERY OF DRUGS IS MADE BEFORE ACTUAL VIOLATORS HAVE BEEN IDENTIFIED AND GOODS OR CONVEYANCES ARE STILL IN CUSTOMS CUSTODY

When Customs officers discover the presence of concealed drugs in imported goods, and the goods or conveyances are still under Customs custody or control, and they have been claimed by a consignee or reached their ultimate destination, Customs shall maintain control of the drugs, but DEA will be notified immediately. Customs officers will cooperate with DEA and be guided by DEA's tactical-decisions regarding investigative development, arrest and seizure.

Any representation made to Federal, State or local prosecutors for mitigation of sentence or other consideration on behalf of a defendant who has cooperated in narcotic cases or investigations will be made by DEA. DEA will bring to the attention of the appropriate prosecutor cooperation by a narcotic defendant who has assisted Customs.

There are existing DEA/Customs agreements not covered in this document that pertain to cross-designation of DEA agents, mail parcel drug interdiction and other matters. DEA and Customs mutually agree to review each of these and amend where appropriate for consistency with the cooperative intent of this agreement.

No guidelines are all encompassing and definitive for all occasions. Therefore, the appropriate field management of both agencies are directed to establish communication with their respective counterparts to better coordinate their respective operations. Similar cooperation and harmonious working relationships should be implemented at all subordinate levels. It must be recognized that good faith as well as mutual respect for the statutory responsibilities of our agencies and for the employees are the cornerstones upon which full cooperation must be established. To this end, Customs and DEA personnel must take the appropriate affirmative actions to minimize conflict and develop a combined program which adequately serves the interests of the United States of America and its citizenry.

HENRY S. DOGIN,
Acting Administrator, Drug Enforcement Administration.
VERNON D. ACREE,
Commissioner, U.S. Customs Service.

Mr. BAYH. I was impressed by the sincerity of these two men at our hearing last week, but in light of the failure of a similar prior agreement to resolve jurisdictional problems, I urge the President to clearly delineate a White House level monitoring system to assure that our drug law enforcement agencies get on with their mandates namely to curb the flow of heroin and other dangerous drugs into this country.

Whatever agency or agencies are eventually assigned the drug law enforcement responsibilities it is my subcommittee's mandate to assure that the Controlled Substances Act and the Controlled Substances Import and Export Act, that were drafted by the subcommittee after extensive hearings in 1969 and enacted in 1970, provide the Nation's drug law enforcement officers and our criminal justice system with the most effective constitutionally sound tools to help take the profit out of heroin and other illegal dangerous drug traffic.

Through our 1975 hearings on opium policy and presently on legislation introduced by the President the subcommittee intends to develop a better understanding of the ramifications of the public policy developed by the Nixon administration to curb heroin traffic and abuse and whether or not the current administration has learned from their mistakes .

I agreed with the President when he stressed in his April 27, 1976, message that "drug abuse constitutes a clear and present threat to the health and future of our Nation" that we must "refocus and revitalize the Federal effort," especially with regard to those who accumulate substantial wealth through such tainted trade.

This is not the first time, since 1968 that the administration has expressed support for congressional effort to curb drug traffic. Earlier proposals lacked focus and did not reflect the judicious use of limited public resources. Thus, although I am encouraged by some recent remarks, I would be less than candid if I did not admit that the earlier rhetoric and indifference about these important issues only reaffirms former Attorney General Mitchell's enjoinder that it was more important to watch what is done than what is said. You do not help take the easy profits out of drug traffic with tought talk and hollow promises.

MANDATORY PENALTIES

I believe that firm and certain punishment must be the response to drug traffickers. Because of the understandable concern and debate regarding Senate bill 1, a rewrite of the entire Federal Criminal Code, I agree with the President and the distinguished Senator from Nebraska (Mr. Hruska) that we not delay the enactment of appropriate measures to curb narcotics traffickers. Thus I intend to report a separate drug bill this year.

Although there seems to be a bandwagon syndrome regarding the application of mandatory minimum penalties to all crimes I agree with Prof. James Vorenberg "that the rush to mandatory minimum sentences distracts attention from a general restructuring of senencing laws as well as from the futility of efforts to run our criminal justice system 'on the cheap'." But I concur with the distinguished executive director of the American Civil Liberties Union, Mr. Aryeh Neier, that:

"Some people who have committed very serious crimes of violence should be given incapacitating sentences to protect everyone else."

The 1970 act eliminated most mandatory sentences. As the former President said in his June 17, 1971, drug abuse message to Congress:

"The act contains credible and proper penalties against violators of the drug law. Several punishments are invoked against the drug pushers and peddlers while more lenient and flexible sanctions are provided for the users."

The President continued:

"These new penalties allow judges more discretion, which we feel will restore credibility to the drug control laws and eliminate some of the difficulties prosecutors and judges have had in the past arising out of minimum mandatory penalties for all violators."

The only provision of the 1970 act providing minimum mandatory sentences is the continuing criminal enterprise provision, section 408, which was intended to serve as a strong deterrent and to keep those found guilty of such violations out of circulation.

It provides that persons engaged in continuing criminal enterprises involving violations of the bill, from which substantial profits are derived, shall, upon conviction, be sentenced to not less than 10 years in prison, and may be imprisoned up to life, with a fine of up to $100,000, plus forfeiture of all profits obtained in that enterprise. A second conviction under this section will lead to a mandatory sentence of not less than 20 years and up to life imprisonment, a fine up to $200,000, and forfeiture of all such profits.

Except when continuing criminal enterprises serve as the basis for an indictment, manufacture, sale, or other distribution of controlled drugs will carry penalties which vary, depending upon the danger of the drugs involved. If the drugs are narcotic drugs listed in schedules I or II, which have the highest probability of creating severe physical as well as psychological dependence, the penalties which may be imposed are up to 15 years imprisonment and a fine of up to $25,000 for a first offense. If the drug involves nonnarcotic substances listed in schedules I or II, or any substance—whether or not a narcotic—included in schedule III, the penalties for a first offense are up to 5 years imprisonment, plus a fine of not more than $15,000. If the drug is a schedule IV substance the penalty is up to 3 years imprisonment and a fine of $10,000, and if a schedule V substance is involved, the penalty is up to 1 year imprisonment, plus a fine of not more than $5,000.

Where a violation of the bill involves distribution to a person below the age of 21 by a person who is 18 or more years of age, the penalty authorized is twice the penalty otherwise authorized for a first offense, with substantially increased penalties for second and subsequent violations.

The President's proposed legislation would require mandatory minimum sentences for all persons convicted of trafficking in heroin and similar narcotic drugs. It calls for a 3-year mandatory sentence for the first offense, and at least 6 years for any subsequent offenses or selling illegal drugs to a minor, subject in each instance to exceptions.

This approach does not focus on the financier, importer, or organized criminal leaders who control drug traffic—it does not focus on these kingpins. What we need is meaningful sentencing for major traffickers. The problem with current Federal policy and focus was clearly presented to the subcommittee last week by Hon. Sheldon B. Vance, Senior Advisor to Secretary Kissinger for International Narcotics Matters, when he told the subcommittee that—

"While we can point with some satisfaction to our efforts toward improving the effectiveness of international narcotics control over the past several years, our own efforts to deal with traffickers has acquired a reputation of leniency. Minimal sentences, liberal parole policies and prosecutorial bargaining with cooperating defendants have caused some foreign officials to criticize the United States judicial system, often referring to it as a "revolving door." Specific complaints have been registered, primarily from Latin American countries, about low bail, release on personal cognizance, plea bargaining, lenient sentences, and early parolling of traffickers apprehended following close collaboration with foreign law enforcement officials."

Ambassador Vance cited an especially illustrative case. He explained that—

"It concerned two individuals arrested in November 1972 in New York subsequent to their delivery from Singapore of 2.5 kilos of #4 heroin to Special Agents of the Drug Enforcement Administration. The exhibit was delivered as a free sample toward a 23 kilo delivery scheduled for the future. They were tried without a jury in the Southern District of New York and in March 1973 were given sentences of 15 years for each of two counts, to run consecutively. On June 26, 1974, the judge reduced their sentences pursuant to their motions, making them eligible for parole.

"On August 30, 1974, one of them filed an application for parole. His application was heard on October 16, 1974. An Institutional Review Hearing was held in March 1976 and parole was granted. He was delivered to the U.S. Immigration and Naturalization Service Authorities on July 15, 1976 for deportation.

"On July 17, 1976, upon his arrival in Singapore, he was arrested by officers of the Singapore Central Narcotics Bureau. On July 20, 1976, the Assistant Director, Central Narcotics Bureau requested the High Court Magistrate to order his detention for the remainder of his U.S. prison sentence."

Ambassador Vance commented that—

"These developments have caused the Singapore authorities seriously to question the commitment and sincerity of the United States in its efforts against the international trafficking of narcotics."

And that—

"Such cases and other indicators clearly show a soft and imprecise handling of narcotics offenders. This inhibits our ability to obtain cooperation from foreign governments."

We need to restore credibility to the sentencing process to assure that the "kingpins" are disrupted. I endorse the Domestic Council White Paper recommendation regarding sentencing of drug traffickers to require "minimum mandatory sentences for persons convicted of high-level trafficking in narcotics and dangerous drugs." I took particular note of the task force recommendation that the President's proposal be expanded to include high-level traffickers of barbiturates and amphetamines.

The most effective way to curb the flow of illicit drugs is to immobilize substantial trafficking networks through the prosecution and conviction of their leaders. I concur in the White Paper recommendation that:

"Federal law enforcement efforts should focus on the development of major conspiracy cases against the leaders of high-level trafficking networks, and should move away from "street-level" activities."

In calendar year 1974, DEA special agents in the United States spent 28 percent of their time in pursuit of class I violators, or those at the high level of traffic; 19 percent investigating class II's; 45 percent of their time on class III's; and 8 percent of their time on IV's. Even fewer of the arrests made were class I or II violators.

According to DEA Administrator Bensinger, however, the trend has improved. He told the subcommittee last week that class I, major, heroin violator arrests have increased by 106 percent in the 9-month period ending March 31, 1976, and Class IV street-level arrests have decreased significantly.

These are encouraging signs but only time will determine whether DEA has finally focused its limited resources on the class I violators. The New York Drug legislation was recently amended to reflect this priority. The so-called Rockefeller shotgun approach clogged the courts but failed to sharpen the system's focus on major traffickers. To help assure this long-term objective the subcommittee is considering provisions that would restrict Federal drug control jurisdiction and authority to major interstate and international cases.

In 1973, the subcommittee desired to significantly strengthen the hand of

our law enforcement officials in dealing with one of the most dangerous types of criminals in our society—major dealers who are the purveyors of heroin to our young people. This concern was reflected in the public menace amendment to S. 800, introduced by Senators Bayh and Talmadge. This amendment was aimed at the backbone of heroin trade and discribution in this country, not addicts who are supporting a habit, for whom current laws are adequate, but the high-level traffickers who hook others. The Senate passed the amendment on April 3, 1973. It was not favorably reported from the House Judiciary Committee before the close of the 93d Congress. Similar provisions are included in S. 1880 the Violent Crime and Repeat Offender Control Act of 1975, which I introduced last June.

There is no criminal element in this country which is more dangerous and despicable than those who are the purveyors of heroin to our young people. My approach is not aimed at addicts who are already hooked and who are trying to support their habits. For such people laws already on the books and adequate treatment—together with the capture and imprisonment of big time dealers—offer the best hope. My target is those who have hooked others and not themselves.

Under my bill persons convicted of manufacturing, distributing, or dispensing heroin or morphine in amounts equal to or in excess of one-tenth of an ounce of pure narcotic would receive, on the first offense, a mandatory minimum sentence of 10 to 30 years. For second convictions, these pushers would get a mandatory life sentence. In neither case would the offender be eligible for probation, suspended sentence or parole—except after serving 30 years of a life sentence. In both cases the mandatory minimum sentence would have to be imposed in addition to the sentence provided under existing law, and in both cases the additional sentence would have to be consecutive to, not concurrent with, the existing punishment.

One-tenth of an ounce of heroin or morphine may seem to be a tiny amount, Mr. President, but it is as deadly as it is small. It can and is turned into a large number of bags of heroin on the street, and is worth a handsome sum. As a measure of the seriousness of the criminal conduct it is preferable to the President's bill which applies to any detectable amount of opiate. It best assures that we reach the high-level dealers who handle very pure and very valuable heroin. This test also assures that we do not bring under these very severe penalties a person with a mixture which contains only traces of a narcotic. Under this approach the volume of the material sold or manufactured would not matter; the only question would be whether it contained the equivalent of one-tenth of an ounce or pure heroin or morphine.

The following table, prepared by subcommittee staff, illustrates graphically the amount of heroin involved in the application of my bill:

ESTIMATES OF HEROIN DOSAGE UNITS DERIVED FROM 1/10 OUNCE OF PURE HEROIN OR MORPHINE

	Unit size (milligram bags)	Percent of heroin or morphine
Total units:		
a. 2,835	100	1
b. 1,417.5	100	2
c. 945	100	3
d. 708.7	100	4
e. 567	100	5
f. 472.5	100	6
g. 405	100	7
h. 354.3	100	8
i. 315	100	9
j. 283.5	100	10

Note: 0.1 ounce equals 28.35 grm. or 28,350 mgms. 0.2 ounce equals 2.835 grm. or 2,835 mgs.

Any nonaddict who manufactures, distributes, or dispenses one-tenth of an ounce of heroin or morphine is, we can be confident, a high-level trafficker who is rationally and for profit pushing drugs. Such a person deserves no quarter.

The President's bill neither distinguishes as to amount or purity of the drug involved, it would even mandate a 3-year jail term for one who illegally transfers a portion of a methadone maintenance patient's average 100 milligram dosage.

Although we have not received an assessment from the Bureau of Prisons as to the impact of the President's proposal, we can rest assured that multimillions of nonexistent dollars would be required for new prisons. This shotgun-nonspecific approach should be rejected.

While I believe present statutes are adequate for addicts, the subcommittee is considering an amendment to the 1970 act to include an "attempt" section punishable by up to 5 years imprisonment, that would apply to nonaddict traffickers; such provision may provide the necessary impetus for such nonaddicts to cooperate in the prosecution of major trafficking cases.

A sound drug enforcement policy must reflect the reality that all drugs are not equally dangerous, and all drug use is not equally destructive. The Domestic Council White Paper on Drug Abuse stresses this theme when it concludes that enforcement efforts should therefore concentrate on drugs which have a high addiction potential, and treatment programs should be given priority to those individuals using high-risk drugs, and to compulsive users of any drugs.

I ask unanimous consent that chart 12 from the Domestic Council's White Paper, A Summary of Drug Priorities and accompanying text—pages 32–34—be printed at this point in the Record.

There being no objection, the chart and text were ordered to be printed in the Record, as follows:

SUMMARY: DRUG PRIORITIES

Chart 12 ranks the various drugs according to the following criteria: (1) likelihood that a user will become physically or psychologically dependent; severity of adverse consequences, both (2) to the individual and (3) to society; and (4) size of the core problem.

SUMMARY OF DRUG PRIORITIES

		Severity of consequences		
	Dependence liability	Personal	Social	Size of care problem
Heroin	High	High	High	High/400,000.
Amphetamines:				
Needle	High	High	High	High/500,000.
Oral	Low	Medium	Medium.	
Barbiturates:				
Mixed	High	High	High	Medium/300,000.
Alone	Medium	High	Medium.	
Cocaine	Low	Low	Medium	Low.
Marihuana	Low	Low	Low	Low.
Hallucinogens	Medium	Medium	Medium	Low.
Inhalants	Medium	High	Medium	Low.

Though the data are flawed and the rankings therefore imprecise, a clear pattern emerges.

Heroin ranks high in all four categories;

Amphetamines, particularly those injected intravenously, also rank high in all four categories;

Mixed barbiturates rank high three out of four categories;

Cocaine,* hallucinogens, and inhalants rank somewhat lower; and

Marihuana is the least serious.

On the basis of this analysis, the task force recommends that priority in Federal efforts in both supply and demand reduction be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines (particularly when used intravenously), and mixed barbiturates—and toward compulsive users of drugs of any kind.

This ranking does not mean that *all* efforts should be devoted to the high priorty drugs, and none to the others. Drug use is much too complicated and our knowledge too imprecise for that. Some attention must continue to be given to all drugs both to keep them from exploding into major problems and because there are individuals suffering severe medical problems from even a low priority drug, such as marihuana.

*This ranking is on the basis of current patterns. As mentioned earlier, if intensive use patterns develop, cocaine could become a considerably more serious problem.

However, when resource constraints force a choice, the choice should be made in favor of the higher priority drugs. For example:

In choosing whom to treat, we should encourage judges and other community officials not to overburden existing health facilities with casual users of marihuana who do not exhibit serious health consequences. (But, a person who is suffering adverse consequences because of intensive marihuana use should have treatment available.)

In assigning an additional law enforcement agent, preference might be given to Mexico, which is an important source of both heroin and "dangerous drugs", rather than to Miami, where an agent is more likely to "make" a cocaine or marihuana case.

This drug priority strategy is essential to better targeting of limited resources and it will be further addressed in relation to supply and demand reduction activities in chapters 3 and 4. Further, the process of assessing the current social costs of drug abuse should be a continuing one, to ensure that resources are allocated on the basis of priorities which reflect current conditions and current knowledge.

Mr. BAYH. Our priorities in drug law enforcement must reflect reasoned judgments based on the facts. The fact is that nationally, arrests for marihuana violations have escalated from 188,682 in 1970 to 450,000 in 1974. This is not nearly as dramatic as the 1,000-percent increase between 1965–70 from 18,815 to 188,682, but it is rather astonishing that this 4-year increase is more than 12 times the total marihuana arrests just 10 years ago.

The fact is that the number of marihuana arrests as a percentage of all drug arrests has increased substantially. In 1970 these arrests amounted to 45.4 percent of total drug arrests. During the 1970–73 period 1,127,389 of the total 2,063,900 drug arrests were for marihuana. And in 1974, the most recent year for which records are available, 70 percent of all drug arrests were for marihuana.

Available studies and research to date have found that the majority of those arrested are otherwise law-abiding young people in possession of small amounts of marihuana. In fact, a Presidential commission found that the vast majority of users are essentially indistinguishable from their nonuser peers by any criteria other than its use.

In 1969 and 1970 the subcommittee considered the adequacy of penalties for marihuana with the result that the new Controlled Substances Act provided that simple possession or distribution of a small amount of marihuana for no remuneration were both designated misdemeanors, not felonies, punishable by up to 1 year in jail and/or up to a $5,000 fine. It was the view of many Members that the sanctions should be further reduced. Some suggested that the sanction be eliminated for such conduct.

In order to permit a thorough assessment of these issues the subcommittee recommended the creation of a Presidential commission. The Congress agreed and provided for the establishment of the Commission on Marihuana and Drug Abuse in part F of the Controlled Substances Act.

This body, known as the Shafer Commission, after its distinguished chairman, conducted an indepth study of the issues and concluded that marihuana was not dangerous enough to the user or to the general public for its private possession and use to remain a criminal offense.

In the last several years a growing list of States, organizations, and individuals have endorsed and adopted approaches comparable to the Shafer Commission recommendations.

Rather than ignore the law on marihuana or prosecute possession cases selectively as some would suggest, I believe that: We must recognize that the $600 million invested annually to prosecute marihuana cases can be used in a manner more consistent with the protection of property and safety of the taxpayers who must sustain our severely overburdened criminal justice agencies; we must recognize that public interest is not served by arresting annually 500,000, mostly young people, for simple possession of small amounts of marihuana and thereby assuring that they are inhibited for life—in their education and careers—by the unrelenting stigma of a criminal record; and we must recognize that the public is not going to get the highest return on their tax dollars in the national effort to curb drug traffic and drug-related crime when 7 in 10 drug arrests are for predominantly simple marihuana possession. We must reject such counterproductive drug law enforcement policy.

Thus an integral title of the bill we plan to report from the subcommittee will provide for the decriminalization of marihuana. I will recommend an approach

similar to that undertaken by the State of Oregon which abolished criminal penalties for simple possession and substituted a civil fine up to $100 for possession and nonprofit transfers of up to 1 ounce of marihuana. Criminal penalties for the sale of the drug for profit would remain intact. This approach maintains a policy of discouragement toward marihuana use while recognizing the current inappropriate use of law enforcement resources and the destructive impact of potentially 30 million criminal records for such common conduct.

The fact of the matter is that if the American public knew that more dollars are spent each year to prosecute marihuana cases than the Federal Government expends on its combined drug law enforcement and drug treatment program with the results I have outlined, I would speculate that rather than the near deadlock of opinion reflected in the most recent Harris poll—January 26, 1976—on decriminalization showing 43 percent in favor and 45 percent opposed a clear majority would support my approach. Concentrating our Federal drug enforcement resources on high-level heroin and dangerous drug traffickers is sound policy, but will call for a shift in the standards for measuring success. We in Congress should deemphasize the number of arrests as a criterion of success. And as the Assistant Attorney General for the Criminal Division concluded in his July 22, 1976, speech before the fifth Controlled Substances Conference in Minneapolis, Minn.: "No statistical striving or" seizure syndromes can or will substitute for the quality, prosecution of those cases which place behind bars for extended jail sentences individuals responsible for the plan of illegal drugs into American communities. Such a strategy applies limited public resources more judiciously and simultaneously reflects sensible priorities.

REFORM OF BAIL LAWS FOR DRUG TRAFFICKERS

Another serious problem with current Federal law and practice is that even the most notorious drug traffickers are often released on bail. I agree with the President's concern about bail jumpers. He emphasized in the April 22, 1976, message one aspect of the problem when he stated:

"These offenders simply flee to their homelands upon posting bail. Then, they serve as walking advertisements for international traffickers attempting to recruit other couriers."

Yet, title II of the President's legislation, S. 3411, would enable judges to deny bail to almost anyone arrested for a drug offense if otherwise suspected, such as nonresident aliens. Thus, the nearly 7 million aliens admitted last year under nonimmigrant status whether foreign government officers, temporary visitors for business, or pleasure, and a myriad of other bases for admission become suspect under S. 3411.

Rather than resort to preventive detention which would reverse the basic tenet of our criminal justice system—the presumption of innocence—what we lack today is a realistic application of bail within the confines of the constitutional protection of the eighth amendment. We need full and expeditious implementation of the Speedy Trial Act to assure that justice is not only fair but swift and certain.

Incidentally, I recently reviewed the status of the 540 Americans in Mexican jails, mostly on drug offenses, with an eye to numerous allegations of torture and police brutality and general outrage at the fact that these Americans were "languishing" in foreign jails. The impact and significance of our cherished presumption of innocence was unmistakably clear when juxtaposed to the plight of these persons. The reliance in Mexico on the Napoleonic Code's "guilty until proven innocent" had assured that some innocent persons could be held as long as a year and that many would not be able to prepare an adequate defense. It is ironic that the White House is recommending a similar denial of basic rights for suspected citizens and nonresident aliens.

Aside from constitutional and humanitarian objections, preventive detention has failed to accomplish its goals in the District of Columbia. The 1972 Vera Institute-Georgetown University Law Center Study as well as testimony before the subcommittee last week supported this conclusion. Earl Rauh, the Chief Assistant U.S. Attorney, testified that of the more than 30,000 felony cases handled by the District of Columbia criminal justice system the preventive detention procedure has been used only 70 times in the last 5 years. Even on practical grounds such a track record hardly bespeaks adoption of this approach on a national basis.

The subcommittee will carefully consider for incorporation in the drug legisla-

tion, however, provisions that mandate the denial of bail when necessary to prevent the flight of major drug traffickers. These provisions will include specific judicial guidelines. DEA Administrator Bensinger discussed what appeared to be an appropriate case for the mandatory denial of bail with the subcommittee last week. He set out the case as follows:

"In Miami in 1975, two defendants were arrested at the Miami International Airport for smuggling 13½ pounds of pure Asian heroin. Initial bond was set at $500,000 surety bond for each defendant, but was later reduced to $100,000 surety bond each despite the following facts; (1) At the time of their arrest, each defendant possessed false identification; (2) they were operating a smuggling conspiracy bringing in 35–40 kilos of Asian heroin per month; (3) they had access to Swiss bank accounts of several million dollars; (4) one defendant was under a murder indictment in Southern California, and both were under other Federal narcotic indictments in California; (5) they were extensive international travelers. Both defendants posted the surety bonds by paying a $10,000 premium. Both are now fugitives, and have since withdrawn $400,000 from their Swiss bank accounts."

An additional reform under consideration by the subcommittee concerns major narcotics traffickers who jump bail.

To help remedy this growing problem we may amend the Federal law to make the penalty for bail jumping equal to that of the underlying substantive offense.

These are the type of realistic changes we need to more effectively combat those who accumulate incredible profits from the misery of hundreds of thousands.

NARCOTICS AND PROFITS

A primary premise of the legislation that the subcommittee intends to report is that the Federal Government must act more decisively to attempt to take the easy profits out of major drug trafficking. I support provisions that would require the forfeiture of the proceeds used or intended to be used in illegal narcotic or dangerous drug transactions.

These forfeiture provisions should apply to subsequent profits or value generated by the investment of the tainted proceeds. We must disrupt major narcotic distribution lines and attempt to provide a greater degree of deterrence and risk for those kingpins.

As policymakers we must place the nature and extent of heroin traffic in perspective. As Assistant Secretary of the Treasury David Macdonald told the subcommittee last week, it is important to recognize that what we are talking about "is big business. In terms of dollars, it is one of the larger industries in the United States and exceeds the gross sales of many multinational corporations."

The Treasury Department estimates that the retail value of heroin sold in the United States each year is in the neighborhood of $7 billion. In my view this is a conservative estimate. Others speculate that the domestic heroin market sales are in excess of $10 billion annually. In 1972, the entire domestic prescription drug industry accounted for $5.4 billion in sales, or significantly less than the domestic heroin industry, which incidentally pales by comparison with our legitimate domestic narcotic market. The drug industry employed 143,985 persons in the United States and in the latest year for which data are available paid a total of nearly a billion dollars in taxes. The outlaw drug industry paid negligible taxes, if any.

What does it mean when one says that high level drug dealing is very profitable? According to analysis of the distribution hierarchy gross profits are considerable at every level. At the higher levels of the distribution systems, however, the operating costs—basically wages and stock finance costs—are claimed to be a larger percentage of the value added than at lower levels. So-called average profits in this market would be considered astronomical in most markets with which I am familiar. The rate of return on investment is approximately as follows: 300 percent for the importer; 100 percent for the kilo connection; 145 percent for the connection—or ounce man; 114 percent for the weight dealer; 124 percent for the street dealer; and 50 percent for the juggler or the seller from whom the average street addict buys heroin.

According to Sterling Johnson, Jr., Special Narcotics Prosecutor for New York City, an active seller at a level comparable to the street dealer—one-eighth ounce of diluted heroin selling for an average price of $55—can clear $500 to $1,000 profit a day. A key dealer in the Baltimore, Md., area was recently sent to prison for a 15-year term. As the No. 2 person in Baltimore heroin trade he was clearing

$140,000 a week in 1973. Kilo importers in Harlem are reportedly clearing $150,000 a week and their distributors a paltry $50,000 a week. It is estimated that these dealers take home more than $4 million every week in this one community. These figures are all "before taxes" for little revenue is collected from this multi-billion-dollar-a-year business.

Obviously these illicit activities generate large flows of money, both domestically and internationally. Secretary Macdonald reported to the subcommittee that "hundreds of millions of dollars, usually in the form of currency, are moved out of the United States annually to pay foreign producers and processors for their services." He went on to say that "within the United States, drugs are also a cash-and-carry business." In a recent case a major trafficker was arrested with $1 million in cash in his possession.

I believe that as a basic theme of our drug law enforcement strategy we should attack drug smugglers and traffickers through the currency and profits generated by their illegal activity.

High-level traffickers, who may be insulated from the illegal merchandise and consequently cannot readily be convicted for drug violations are often vulnerable to financially oriented investigations. As Secretary Macdonald pointed out last week such an approach "could have greater impact than by concentrating solely on the drug transactions themselves." In this connection the United States-Swiss Mutual Assistance Treaty in Criminal Matters, recently ratified by the Senate should help to expedite the exchange of information relative to the international aspects of this dirty, tainted trade. By carefully monitoring the vast flow of currency and monetary instrument important information is developed with respect to narcotics trafficking.

To help facilitate the prosecution of major trafficker couriers, I intend to amend current law to clarify the time frame for violations relating to traffickers' proceeds and by granting additional authority to search persons suspected of smuggling tainted drug proceeds in excess of $5,000 out of the country. These provisions will include fines that are far more than those under present law which any major traffickers could assume as a cost of doing business.

The subcommittee is concerned that DEA reliance on techniques in which their agencies and informants use Federal moneys to purchase illegal narcotics or information may be far to costly and even counterproductive. There is some evidence that these practices, known as PE—purchase of evidence—and PI—purchase of information—may actually expand the narcotic trade.

We intend to address this problem, to the extent necessary, in the subcommittee legislation.

To even the casual student of the activities of those who control the flow of heroin and other dangerous drugs in the United States one think is strikingly clear: they take in exhorbitant profits and pay no income tax.

I was especially pleased that the President stressed, in his April drug message, the need to reestablish the Internal Revenue Service tax enforcement program aimed at high-level drug traffickers. In reaffirming his support for this vital program the President said:

"We know that many of the biggest drug dealers do not pay income taxes on the enormous profits they make on this criminal activity. I am confident that a responsible program can be designed which will promote effective enforcement of the tax laws against these individuals who are currently violating these laws with impunity."

The IRS program aimed specifically at major drug traffickers was announced by the former President in June 1971, and the Congress then voted emergency funds for this vital and worthwhile initiative. Though a recent review of the impact of this program by the Domestic Council Drug Abuse Task Force characterized it as "extremely successful," all is not well with this special attempt to tax narcotics merchants. In fact, since 1973, after an impressive 18-month track record, the current IRS Commissioner downgraded and eventually deemphasized—some would assert dismantled—the program.

An especially articulate supporter of this innovative program, who played a major role in its establishment is former Assistant Secretary of the Treasury, Mr. Eugene Rossides. In the past we have worked together to help curb the unrestricted availability of nonsporting handguns as well as on efforts to curb drug traffic. I recall that my good friend Congresman Paul Rogers, chairman of the House Interstate and Foreign Commerce Subcommittee on Public Health and Environment, brought to my attention the impressive and persuasive October 27, 1971, testimony of Mr. Rossides regarding the narcotics trafficker tax program.

He set ou the program for tax investigators of major narcotics traffickers as follows:

"Included in the June 17, 1971, Presidential message, which announced the administration's expanded effort to combat the menace of drug abuse, is a high priority program to conduct systematic tax investigations of middle- and upper-echelon narcotics traffickers, smugglers and financiers. These are the people who are generally insulated from the daily operations of the drug traffic through a chain of intermediaries. This program will mount a nationally coordinated effort to disrupt the narcotics distribution system by intensive tax investigations of these key figures. By utilizing the civil and criminal tax laws, our objective is to prosecute violators and to drastically reduce the profits of this criminal activity by attacking the illegal revenues of the narcotics trade.

"Reflecting the high priority given this program by the President, Congress has provided financial support for the program amounting to $7.5 million in fiscal 1972 and authorization for 541 additional positions—200 special agents, 200 revenue agents, and 141 support personnel.

"Certain major features of this program should be noted:

"(1) Treasury will not only coordinate its efforts with all other interested Federal agencies, but will actively seek the maximum cooperation of State and local enforcement agencies as well. This is a vital feature of this program:

"(2) With the manpower provided, our goal is to have at least 400 full-scale ongoing IRS investigations;

"(3) In line with the high priority given this program by the President, the Internal Revenue Service has already assigned more than 100 experienced special agents and more than 100 experienced revenue agents, full time to this program. Additional experienced agents are presently being phased into the program."

Mr. Rossides has recently expounded upon the need to revitalize this effort to remove the caiptal and the profit from the drug trafficking business by utilizing the Federal tax laws, and I ask unanimous consent that these pertinent and timely remarks regarding the IRS NTTP be printed at this point in the Record.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

REMARKS OF EUGENE ROSSIDES

It seemed clear to me in 1969 that from an enforcement point of view the Achilles heel of the illicit drug trafficking business was its financing and its illegal but taxable income or profits.

Obtaining evidence against major drug dealers on drug charges is one of the most difficult law enforcement jobs. They can easily insulate themselves from the street-level pusher and minor dealers. It is a rarity to catch them in possession of drugs. The crime is victimless in the enforcement sense in that the addicts and users are not interested or willing to give evidence. They don't consider it a crime. They want the drugs. They want to protect their source of supply, not turn him in.

This is the key reason why I felt it was a necessity to develop a tax enforcement program against the illicit drug traffickers.

I tried unsuccessfully in mid-1960 to get the Organized Crime Strike Forces to accept illicit drug trafficking as a priority item, if not the priority item. I then recommended that Treasury initiate its own special Narcotics Trafficker Tax Program for two reasons: (1) jurisdiction over the tax laws was in Treasury, and (2) from the time of Al Capone, the tax laws have proven to be an effective tool to put major crime figures out of business.

In the short period the Treasury/IRS Narcotics Trafficker Tax Program,* was active—from July 1, 1971 to early 1974, it proved to be one of the most successful enforcement efforts in Federal history. (I happen to believe it is the finest from the point of view of results, professionalism, and costs.)

The NTTP was designed to take the illegal profit out of drug trafficking and to disrupt the distribution system. In th short period of its active existence, the IRS initiated full tax audit investigations of over 1800 upper and middle level drug traffickers and dealers; found tax deficiencies totaling $200 million; it paid for itself or practically paid for itself in taxes and penalties collected; and its impact put drug dealers out of the illicit drug business.

The essence of the NTTP was (1) the careful selection of targets utilizing the talents and information of Federal, state and local enforcement agencies, and (2) the use of both the criminal and civil sections of the IRS Code against major

*The abbreviation most often used is NTP. I prefer NTTP because it emphasizes that it is a tax program.

drug distributors and financiers who are often insulated from the traffic and, therefore, in effect, immune from prosecution under the drug laws.

The Treasury Department developed through the target selection system of the NTTP a comprehensive nationwide list of over 1800 major drug traffickers and financiers who were put under full tax audit investigations; gathering information from the then BNDD, Customs, IRS, the Bureau of Alcohol, Tobacco & Firearms, and of substantial importance from state and local police.

The importance of this substantial list of major drug dealers cannot be overemphasized. While DEA and its predecessors tried, with little success, to bring drug cases against major drug dealers (there were not more than a handful of successful cases), the NTTP, within its first twelve months, identified and put under tough tax investigation 793 major targets in 53 metropolitan areas in 40 states!

State and local police agencies and personnel welcomed the NTTP because it helped them get immediate, short-term, and long-term results, they could see and feel the almost immediate effect of their activities, and of great significance, the NTTP did not encroach on their jurisdictions.

The NTTP was downgraded by IRS Commissioner Donald Alexander shortly after he assumed his duties in mid-1973 and by 1974 it was gutted, despite the clear Congressional and Executive policy, and specific earmarked appropriations. Although Commissioner Alexander has unjustifiably criticized the NTTP, the fact remains it was a most successful tax program which had an extraordinary impact on the illicit drug traffic. Fortunately, the NTTP has now been revived by Presidential directive.

The importance of NTTP to our nation's efforts to reduce the illicit drug traffic and bring it within manageable proportions is overriding and requires a detailed analysis of the program.

I state to this Subcommittee and to the Congress that without an effective Treasury/IRS Narcotics Trafficker Tax Program we will fall in our efforts to reduce the illicit drug traffic. In view of the overriding importance of this program, I would like to describe in some detail its theory and practice.

The NTTP was initiated as part of the overall effort to crack down on the illegal traffic in narcotics. Recognizing that the huge profits of the drug trafficking business are largely unreported and therefore untaxed, in late 1969 I recommended to the Secretary of the Treasury, David M. Kennedy, and to Under Secretary Charles E. Walker, who had the responsibility for direct supervision of IRS, that the Treasury develop a tax program aimed at the drug trafficking business.

Preliminary surveys in 1970 showed that among a group of suspected narcotics traffickers several patterns could be observed. First, there was a high incidence of nonfiling of income tax returns. Second, a large number appeared to have life styles which would require income far in excess of that on which taxes were being paid.

As a result of these findings and our general studies and review, in the late spring of 1971, Secretary John B. Connally obtained White House and Congressional approval for the program and $7½ million in appropriations for the first year of operation.

Thus, this program had the full backing of the Congress and the Executive Monies were appropriated specifically for the NTTP—monies and manpower which would not have been authorized or appropriated but for this program and were not authorized and appropriated for any other IRS activity.

The Narcotics Trafficker Tax Program is an income tax program. The goal of the NTTP is to tax the illegal profits of the drug trafficking business, a major area of tax noncompliance. The program was carefully developed over a two-year period and the results during the short time it was active—from July 1, 1971, to some time in 1974, including substantial start-up and training time—demonstrate that it was extremely successful.

It is important and central to the NTTP program to understand that the income from the illegal narcotics traffic business is taxable. And it is the responsibility of the Treasury Department to go after this taxable income. Drug trafficking is a business. It is not some isolated activity.

It is damaging to the "voluntary compliance" concept of tax administration to suggest that income from illegal activity should be given a lower priority than income from lawful activity. The narcotics trafficking business is a highly organized criminal activity which requires a sophisticated and comprehensive program to identify the individuals involved and to determine the income which is taxable. Are we to encourage unlawful activity of the most serious kind by our failure to enforce the tax laws against the narcotics traffickers?

The enormous profits of the narcotics trafficking business constitute taxable income to traffickers. To develop a program to identify major narcotics traffickers and tax them is part of administering the tax laws. There is no meaningful distinction between this type of activity and the ordinary IRS methods of identifying what is referred to as "pockets of noncompliance."

There is no difference in concept in deciding to select suspected major drug traffickers for tax audit and in deciding to select waitresses and taxicab drivers regarding gratuities income, corporate executives, individuals regarding interest and dividends payments or tax resister groups, and other classifications of taxpayers. Indeed, the incidence of tax noncompliance by drug traffickers is, I submit, higher than other noncompliance groups.

The significant point with respect to the NTTP was that under such a tax program we were able for the first time on an organized and comprehensive basis to get at major drug traffickers, persons who use intermediaries to insulate themselves from the day-to-day operations of the drug traffic. In this way, they achieve virtual immunity from prosecution under the substantive narcotics laws. The Narcotics Trafficker Tax Program was able to get at many of the "Kingpins" of the traffic.

In developing the original program and thereafter while I served at the Treasury, the program had the full bipartisan support of the Congress; the full support of three Secretaries of the Treasury, David M. Kennedy, John B. Connally, and George P. Shultz; the excellent cooperation and leadership of two Commissioners of IRS, Randolph Thrower and Johnnie M. Walters; and the full support of the Tax and Criminal Divisions of the Department of Justice and the various U.S. Attorneys.

Important and central to the NTTP was the policy decision to stress civil as well as criminal enforcement. This policy decision was a significant improvement on previous uses of tax administration to go after profits from criminal activity. It was our position that the illegal profits must be taxed and should be attacked either by civil enforcement or criminal enforcement. If a criminal case could be made, fine. If not, then the decision should be made as soon as possible and appropriate civil action pursued vigorously. It can be argued that in many cases the greater punishment and deterrent is taking the illegal profits from the illicit drug trafficker.

A critical innovation in federal law enforcement, and essential to the success of NTTP, was the development of the major drug traffickers target selection procedure—a coordinated and cooperative selection of persons to be audited.

As of July 1, 1971, the paucity of information identifying known major drug traffickers was appalling.

We developed a program for selection of targets, which once selected would be turned over to the IRS for audit. We organized field target selection committees throughout the country and developed guidelines for target selection. The persons selected had to be considered major traffickers and there had to be an indication of assets to warrant a full audit.

The field target selection committees were composed of professional career personnel from federal, state and local agencies. On the federal level, the committees included personnel from IRS, the then BNDD, and Customs. On the state and local levels, it included representatives from the local and state police. The committees would meet periodically and pool their knowledge.

Targets selected would then be sent to Washington, D.C. for review and final selection by an inter-agency target selection committee composed of personnel from IRS, BNDD and Customs and chaired by the Deputy Assistant Secretary for Enforcement. This Treasury committee would meet periodically to review the field recommendations and decide to accept, reject, or hold for further consideration each field recommendation.

Once a person was accepted the file would be sent to IRS and from that point on in the investigative process, it was an IRS tax case and handled in accordance with IRS operating procedures. After investigation if the decision was that the evidence justified a criminal prosecution it was referred to the appropriate U.S. attorney's office. Otherwise it was pursued civilly by IRS.

Important byproducts of multi-agency analyses and review of potential targets, supervised by the Office of the Secretary and not at IRS or other agency level, are that it insures selection of high-level targets, increases cooperation and efficiency, and reduces the possibilities of corruption in the selection process to a minimum. I want to stress my belief that this interdepartmental and interagency activity must be supervised by the Office of the Secretary of the Treasury and not at an agency level.

We also developed a minor drug trafficker tax program designed to go after the profits of the minor dealer and pusher. The individuals involved were primarily lower-level drug traffickers—dealers and pushers—who were arrested by state, local and federal officials on substantive drug charges and where there was cash found. We decided against a full audit of these individuals but instead we took tax action; we stressed a tax check type of investigation—did they file a return—and the use of tax year termination and jeopardy assessment procedures on these individuals to reach their large, conspicuous assets. Such tax action was taken on over 3,300 minor dealers and pushers.

This part of the program achieved outstanding success in taxing and reducing the working capital and street-level profits and, thereby, in disrupting the distribution system.

A monthly report system was developed to monitor the progress of this tax program. That report system enabled the Secretary and me to follow the progress of each element of the program. The monthly report listed the number of cases by states and metropolitan areas and the status of the cases.

Within the first twelve months of the NTTP, 793 major targets in 53 metropolitan areas in 40 states were selected for intensive tax investigation and 565 minor traffickers were put under tax action. Within seventeen months 1,175 major targets were selected for intensive tax investigation and 1,239 minor traffickers were put under tax action * * *.

The extraordinary success of the program stems from three groups of dedicated personnel: (1) the target selection efforts of Federal, state and local officials; (2) the several hundred men and women in IRS—tax specialists performing a tax function—who took this program to heart and dedicated themselves to it; and (3) the attorneys in the Department of Justice and the U.S. attorneys' offices throughout the country.

I strongly recommend that the NTTP be reactivated quickly and given the highest priority possible under the overall supervision of the Assistant Secretary of the Treasury for Enforcement, Operations and Tariff Affairs.

This highly successful program was unique in the spirit of cooperation it engendered among state, local and Federal officials and among Federal agencies. No jealousies and no infringement of jurisdiction existed among the various agencies cooperating in the NTTP. I submit that it ranks as one of the finest, if not the finest, cooperative law enforcement programs in our history from the point of view of results, professional performance, and costs. It can be put back in operation and effective within months with strong supervision from the Office of the Secretary of the Treasury.

Mr. BAYH. It appears that the Internal Revenue Service is in the processes of reconsidering the viability of the NTTP. Whether this apparent reassessment was voluntary or not should be left to the speculators; but, coincidentally, the day before our first hearing on the President's drug message, July 27, 1976, the Administrator of DEA and the Commissioner of the Internal Revenue signed a memorandum of understanding regarding the Presidential directive to reestablish a tax enforcement program aimed at high level drug trafficking. Though the ink had actually dried when the memorandum was presented in testimony to the subcommittee by DEA Administrator Bensinger, the Executive Director of the newly appointed Presidential Cabinet Committee for Drug Law Enforcement—members are the Secretary of the Treasury, the Attorney General, and the Secretary of Transportation—we did not have the opportunity to inquire as to the details of this July 27, 1976, agreement.

The ostensible objectives of the new agreement as well as the development and track record of the NTTP will be diligently assessed at the subcommittee hearing on August 5, when IRS Commissioner Donald Alexander and others will appear before the subcommittee.

NARCOTICS SMUGGLING

In addition to provisions which will assist the detection of couriers smuggling tainted proceeds out of the country, the subcommittee legislation will incorporate sections to facilitate the detection and prosecution of narcotics smugglers who use seagoing vessels, including private yachts and pleasure boats. The so-called deep-six connection has developed into an integral conduit for major narcotics smugglers and distributors.

The Commissioner of Customs, Mr. Vernon Acree, explained this growing problem to the subcommittee, in part as follows:

The high speed and fuel carrying capabilities of today's small boats permits

them to travel distances which were not envisioned when the vessel reporting requirements were enacted in 1930. Thus, a small boat can journey from our eastern coast to larger vessels hovering off-shore outside the 12 mile Customs waters, or to the Bahamas or other nearby foreign islands for the purpose of picking up narcotics. They may then return to the U.S., pull into a small cove or marina and unload the drugs. Some of these boats will then call Customs to report their arrival, while others will ignore this requirement. In either case, the present reporting requirements are virtually useless since any contraband will have been removed before Customs officers arrive to inspect the vessel.

This problem has become particularly acute in Florida where private yachts and pleasure vessels, with easy access to nearby foreign islands, the high seas and the United States' inland waterways, complicate detection. Further magnifying the problem is the fact that hard evidence has been developed establishing that foreign flag vessels are moving multi-ton loads of marijuana and smaller portions of hashish to positions on the high seas adjacent to the United States eastern and gulf coasts. At a position usually between 40 and 60 miles offshore, the mother ship—or hovering vessel—is met, under cover of darkness, by small vessels that take on a portion of the load for introduction into the United States. The mother ship then moves to the next rendezvous point where similar discharges are made. When the mother ship is empty it returns to its country of origin without ever having entered U.S. waters.

To respond more effectively to these special distribution channels and to address the fact that many vessels consistently ignore current law the subcommittee intends to amend the relevant reporting requirements.

As I mentioned earlier we are concerned that the reorganization plan No. 2 proceessed by the Government Operations Committee in 1973, though not without merit, has resulted in the under utilization or misdirection of intelligence gathering and dissemination, especially at our borders and most importantly our Southwestern border. The full utilization of Customs intelligence and investigative resources is a necessary step in bringing Federal narcotics enforcement effectiveness to its highest possible level. It should be recalled that narcotics traffic is a giant, incredibly profitable industry. Even if it were taxed comparable to the level of our domestic prescription drug industry—it would owe the American taxpayers at least $1 billion or every American citizen $5 each year. Thus these merchants of death—by the most conservative and cautious assessment—would owe more in taxes than the combined Federal drug abuse law enforcement and Federal drug abuse prevention budgets. I ask unanimous consent that two tables prepared by Peter Goldberg of the Drug Abuse Council be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record as follows:

TOTAL FEDERAL DRUG ABUSE PREVENTION FUNDING

[In millions of dollars]

	Fiscal year—								
	1971 actual	1972 actual	1973 actual	1974 actual	1975 actual	1976 estimated	TQ estimated	1977 estimated	Total 1971–77
SAODAP		1.5	39.9	27.3	13.0				81.7
DHEW	69.7	193.1	255.1	349.4	320.1	338.4	46.4	359.0	1,931.2
NIDA	56.2	116.7	181.4	[2] 272.9	220.1	232.2	21.2	247.8	1,348.5
NIMH				4.5	5.2	4.2		4.3	18.2
NIH				3.3	3.0	3.2		3.5	13.0
SRS	3.6	18.0	53.0	54.0	79.0	88.0	23.0	94.0	452.6
OE	5.4	13.0	11.9	5.7	4.0	2.0			42.0
OHD	4.5	5.4	8.8	9.0	8.8	8.8	2.2	9.4	56.9
OEO	12.8	18.0	(2)						30.8
VA	1.1	15.2	27.7	30.3	33.2	36.7	9.4	38.0	192.6
DOD	1.1	58.7	73.0	68.6	64.0	61.3	14.3	57.8	398.8
Justice	40.3	36.5	33.5	34.5	26.6	46.4	6.7	24.3	248.8
State		1.0	1.0	.9	.7	.8		.8	5.2
HUD	8.7	13.0	6.3	1.6	2.9	4.0	.9	4.8	42.2
USDA		2.5	1.9	1.8	1.6	1.6		1.0	10.4
Other Federal [3]	.2	1.4	2.9	2.8	9.0	3.5	1.3	4.0	25.1
Total	133.9	341.9	441.3	517.2	471.1	492.7	70.0	489.7	2,968.8

[1] High because of supplemental received in fiscal year 1973, and not obligated until fiscal year 1974.
[2] Total of $23,000,000 included in NIDA funds.
[3] Includes amounts of less than $1,000,000 each year in DOL, DOC, CSC, DOT, ACTION, other.

CONSOLIDATED DRUG ABUSE LAW ENFORCEMENT BUDGET, IN OBLIGATIONS

[In millions of dollars]

	Fiscal year—		
	1975	1976	1977
SUPPLY REDUCTION			
Justice:			
Drug Enforcement Administration	139.4	[1] 156.4	160.8
LEAA and other Justice	67.2	43.6	40.9
Treasury:			
Customs	39.1	[1] 43.2	43.4
IRS	20.0	20.0	15.0
State	32.0	43.4	34.0
Other	1.9	2.1	2.1
Total	294.6	308.7	296.2

[1] Both DEA and Customs have applied for a supplemental appropriatini in local year 1976. DEA asked for $2,200,000, primarily for salary and insurance increases. Customs asked for $4,000,000, $2,000,000 of which would be carried over into fiscal year 1977. These funds are for the Customs drug interdiction program.

Source: OMB, Federal Drug Management Division.

Mr. BAYH. There is little doubt that the drug law enforcement task at hand is substantial. Thus, it is even more essential than ever to focus resources at our borders where high purity narcotics are traded in volume. It is with this focus that we can most effectively disrupt key distribution networks.

Another unfortunate aspect of reorganization plan No. 2 is that though the Government Operations Committee cited the benefit of a single focal point for coordinating Federal drug enforcement with that of State and local authorities, the plan as approved did not contain stipulations to prevent Federal interference with State and local drug law enforcement activities.

As I indicated, in the discussion of Federal drug control jurisdiction, the subcommittee will consider restricting Federal enforcement agencies statutorily to interstate and international trafficking cases. While we are concerned that Federal efforts do not erode local initiative and accountability, we believe that the Federal Government should expand its programs of assistance to State and local drug enforcement officials. The controlled substance units and diversion investigation units should be expanded to assist State and local investigation and prosecution of major diversion and trafficking cases.

The subcommittee is exploring the possible use of forfeited assets of drug traffickers and moneys collected by IRS under a revitalized NTTP to support the expansion of these successful efforts to assist State and local governments.

I intend to incorporate other salutory provisions in the legislation which I will soon ask the subcommittee to consider, including crucial enabling legislation to permit Senate ratification of the psychotropic treaty and sections addressing the problem of pharmacy related crime and more adequate controls for some barbiturates. I especially appreciate the enthusiastic support of the Senate leadership for our efforts and invite my colleagues to assist us in the enactment of a sensible statutory response to high risk drugs and to major drug traffickers. It is about time and it is clear that the taxpayers of this country demand and deserve no less.

[From the Congressional Record, Apr. 17, 1975]

STATEMENT OF SENATOR JAVITS INTRODUCING S. 1450

MARIHUANA CONTROL ACT OF 1975

Mr. JAVITS. Mr. President, I send to the desk for myself, Mr. Cranston, Mr. Brooke and Mr. Nelson for appropriate reference, a bill respecting the decriminalization of personal, private use of marihuana.

Two million or more Americans it is estimated are using marihuana today. As many as 400,000 of them may be arrested this year. For many of them their lives will be irrevocably changed.

CONTINUED

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According to the FBI, more than 1 million persons have been arrested for marihuana offenses in this country in the last 4 years. Sixty-two percent of those arrested were under the age of 21, and 83 percent of those arrested were under the age of 26. Ten years ago there were less than 18,000 marihuana arrests Nationwide.

A statistical analysis of State marihuana arrests by the Shafer Commission uncovered the unsettling fact that 93 percent were for possession—not sale—and two-thirds of these involved the quantity of one ounce or less. Only 7 percent of the arrests were against the commercial trafficker.

Yet, it has now been almost 3 years since the first report of the National Commission on Marihuana and Drug Abuse was made to the American people. Following an exhaustive study of the subject, the Commission produced an extraordinary body of information, documentation and original research probing every aspect of marihuana use in our society. The principal conclusion of its extensive report is that marihuana is not sufficiently dangerous to the user or to our society for its private possession and use to be a criminal offense. That conclusion has been endorsed by the Washington based drug abuse council and by many other organizations.

Established by Congress in 1970, the Commission was charged with the responsibility for analyzing and illuminating an area of our public policy which for 40 years had been charged with emotion and predicated upon misinformation. The Commission consisted of a broadly representative group of persons from all sectors of American life with diverse experiences, professional backgrounds, and points of view, and as the Senate knows, with former Senator Harold Hughes and I, and Congressman Paul Rogers and Tim Lee Carter as members.

Based upon the impressive record made by the Commission, Senator Hughes and I on April 20, 1972, introduced the first bill (S. 3517) to decriminalize the personal possession and use of small amounts of marihuana. We reintroduced that bill in the 93d Congress as S. 746. Congressman Ed Koch introduced the bill in the House. I am today reintroducing that bill, but with an additional feature. The bill would decriminalize small amounts of marihuana for personal use, but would substitute for any criminal penalty a system of civil fines of up to $100. This is the basic approach adopted by the State of Oregon which in 1973 became the first State in the Nation to abolish criminal penalties for simple possession of marihuana. Similar measures are currently being considered by more than 20 State legislatures, with perhaps as many as 6 of them expected to pass this year. I am hopeful that the bill can be the subject of early hearings.

I was pleased to learn that California is expected to adopt the civil fine approach in the near future and that New York's Governor Hugh Carey recently stated that he is seriously considering recommending removal of criminal penalties for possession of small amounts of marihuana in New York and replacing them with "a system of fines or mandatory attendance at health clinics." A partial list of the many organizations and individuals supporting decriminalization are:

American Bar Association.
New York State Bar Association.
Consumer Union, publishers of Consumer Reports.
National Conference of Commissioners on Uniform State Laws.
American Public Health Association.
National Advisory Commission on Criminal Justice Standards and Goals.
National Council of Churches.
The Governing Board of the American Medical Association.
National Education Association.
B'nai B'rith.
Canadian Commission of Inquiry into the Non-Medical use of Drugs (Le Dain Commission).
San Francisco Committee on Crime.
Mayor's Advisory Committee on Narcotics Addiction (Washington, D.C.).
John Finlator, retired Deputy Director, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice.
William F. Buckley, Jr., syndicated columnist, author, TV host and editor of National Review.
James J. Kilpatrick, syndicated columnist, Washington Evening Star.

Mr. President, this bill would not change the Federal law regarding criminal penalties which apply to the sale of the drug for profit. Its main objective, decriminalization of personal possession of smell amounts of marihuana, makes sense for the following four reasons:

First. It recognizes that criminal penalties for its use and possession in private are so disproportionate to the degree of mental and physical risk involved that there can no longer be any justification for their imposition in view of the Commission's findings.

To equate the risk of using marihuana—which the Commission found to be a relatively benign drug—with the risk inherent in the use of hard narcotics is in my view totally indefensible. Yet in many jurisdictions throughout the country, this equation is written into the criminal law.

Second. It recognizes that casual marihuana usage is so common—the Commission found that 24 million Americans have tried marihuana at least once, and that 8.3 million are current users—that fair and impartial enforcement and prosecution are impossible. Updated national surveys indicate that these totals have increased to 30 million and 13 million respectively.

In some States, a first offender can be jailed for 10 to 20 years. In others, he may be placed on probation. Yet, in most, he will not enter the criminal justice system at all.

Third. It recognizes that use of the drug has reached such proportions that the present law is clearly ineffective as a deterrent.

Fourth. It recognizes that the "rhetoric and emotion" generated by the use of the criminal sanction in cases of personal marihuana use is severely impairing the fight against more dangerous drug abuse.

Mr. President, S. 1450, "the Marihuana Control Act of 1975, would change existing Federal law in that it would no longer be a criminal offense for a person to possess within a private dwelling up to 1 ounce of marihuana for his own use, or for the use of others, so long as it is not possessed with the intent to sell it for profit.

It would also no longer be a criminal offense to possess in public an amount not to exceed 1 ounce of marihuana, if such possession is incident to a private use and is not with the intent to sell it for profit. In the prosecution of any person charged with a violation of Federal law, the fact that such person was under the influence of marihuana would not be a defense to that charge.

Most importantly, our bill would implement the civil fine approach which has met with demonstrated success in the State of Oregon. In that jurisdiction marihuana offenders are given citations that are processed like traffic tickets. If the approach followed in Oregon and in the bill we introduce today were adopted throughout the Nation, 90 percent of all marihuana arrests would be eliminated and nearly half a billion dollars now being spent on those arrests would be saved. More importantly, the indiscriminate wrecking of people's lives and careers brought about by these unjust laws would end.

Following 1 year's experience with the Oregon law, a statewide survey by the Drug Abuse Council, a research organization funded by the Ford Foundation, revealed several interesting findings:

Forty percent of the respondents who said they had used pot said they had decreased their consumption.

Fifty-two percent reported no change and only 5 percent increased use.

Fifty-eight percent favored the new law or a more lenient one; only 39 percent thought the law was too lenient.

Mr. President, I ask unanimous consent that the summary of the Drug Abuse Council survey, entitled "Survey of Marihuana Use—State of Oregon," be printed in the Record.

Mr. President, I wish to reiterate that I do not support and this bill does not provide for the legalization of marihuana, and I wish to clarify the distinction between legalization and decriminalization.

Legalization, as the term is used in the drug field, means that marihuana could be legally sold, under appropriate governmental controls. This could, though not necessarily would, be similar to alcohol licensing. The important concept here is that both use and sale would be legal.

Decriminalization only pertains to the user. The user is taken out of the criminal justice system, although selling remains illegal. This concept is intended to continue a discouragement policy against marihuana; thus no legal market is

permitted. By focusing the law enforcement attention against the commercial traffickers, rather than the user, over 90 percent of the marihuana arrests can be eliminated.

I oppose legalization because such action may be inconsistent with our current treaty obligations under the Single Convention of 1961.

Second, legalization might institutionalize marihuana and give it the status of official approval, thus making its use more inviting and widespread.

Third, there are still unanswered questions about the effects of long-term chronic use, and there is still considerable moral opposition to making marihuana available legally.

It has been suggested that decriminalization is illogical since it only applies to the user, leaving penalties against the seller. This is not the case. Criminal penalties are retained against the seller as a means of discouragement. This is consistent with the way we treat such other "victimless crimes" as pornography, gambling, and prostitution.

It balances the right of the individual in a free society to remain free from governmental interference in his private life, with society's right to protect itself against those who would purvey something society deems potentially detrimental.

Mr. President, although the entire report of the National Commission deserves the careful reexamination of every Member of the Senate, there are several important statements which I wish to call to the Senate's attention:

A. Medical and Health Data: "the most notable statement that can be made about the vast majority of marihuana users—experimenters and intermittent users is that they are essentially indistinguishable from their non-marihuana using peers by any fundamental criterion other than their marihuana use." (p. 41)

"From what is known about the effects of marihuana, its use at the present level does not constitute a major threat to public health." (p. 90)

"No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana." (pp. 56–57)

"Although a number of studies have been performed, at present no reliable evidence exists indicating that marihuana causes genetic defects in man." (p. 84)

"No objective evidence of specific pathology of brain tissue has been documented. This fact contrasts sharply with the well-established brain damage of chronic alcoholism." (p. 85)

"In a word, cannabis does not lead to physical dependence." (p. 87)

"Research has not yet proven that marihuana use significantly impairs driving ability or performance." (p. 79)

B. Public Safety: "neither the marihuana user nor the drug itself can be said to constitute a danger to public safety." (p. 78)

"In sum, the weight of the evidence is that marihuana does not cause violent or aggressive behavior." (p. 73)

C. Marihuana and Hard Drugs: "marihuana use per se does not dictate whether other drugs will be used; nor does it determine the rate of progression, if and when it occurs, or which drug might be used." (p. 88–89)

"The fact should be emphasized that the overwhelming majority of users do not progress to other drugs." (p. 87)

D. Extent of Marihuana Use: 26 million Americans, or 16% of the adult population, have tried marihuana at least once. This represents an increase of 2 million people over 1971. (Marihuana Commission, News Release, February 13, 1973)

18 million Americans smoke marihuana on a regular basis. This figure was 8.34 million in 1971. (Ibid.)

E. Arrest Statistics. more than 706,000 persons were arrested for marihuana-related offenses during the period 1970–72. Arrests have increased steadily from a low of 18,815 in 1965. (p. 106)

In 1972 there were 292,000 marihuana arrests, an increase of 29% over 1971. (Uniform Crime Reports, 1972, Federal Bureau of Investigations, p. 119)

93% of all arrests are for possession, with only 7% for sale. 67% of those arrested possessed less than one ounce of marihuana. (p. 10)

88% of those arrested are under the age of 26. (p. 111)

62% of those arrested are under the age of 21. (Uniform Crime Reports, 1972, Federal Bureau of Investigation, p. 34)

53% of all young people 16 and 17 years old know someone who has been arrested for possession of marihuana. (p. 121)

Mr. President, it should not be necessary to emphasize once again that neither I, nor any other member of the Commission would encourage the use of marihuana. We all believe that the Government should not encourage the use of any drug or hallucinogen, no matter how mild, for recreation purposes.

The Commission conducted an exhaustive study of marihuana from the medical, legal, social, and political standpoints. As a result of this study, even the most conservative members of the Commission reached the conclusion that our criminal penalties against marihuana were based largely on sheer myth.

It is not a physically addictive substance and of those who do use it, only a very small number develop any psychic dependency. That small number for whom marihuana becomes a device for avoiding reality would, in all probability, find some other substance, perhaps a very harmful one, to obtain the same objective if they were not using marihuana.

At the same time, Mr. President, we recognize that although it has not been possible to identify physically harmful effects of marihuana, more research is needed in order to be certain that there are not incipient effects which might not appear until after long usage.

Mr. President, we all have heard recent claims that marihuana may be more dangerous than we originally thought.

No drug is totally harmless, including marihuana. But the evidence strongly suggests no significant harm is caused by the occasional use of marihuana and whatever risk is involved with marihuana is far less than the demonstrated harm from a number of other drugs permitted in our society.

We should continue to look for potential ill effects from the use of marihuana especially the chronic, heavy use. But any findings of potential harm should be used to discourage use, not to justify treating the user as a criminal. As Dr. Tom Bryant, president of the Drug Abuse Council recently stated:

"We should not permit a medical debate to frustrate the decriminalization policy recommended by the Marihuana Commission. Even if marihuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."

This past year we have heard several new claims of potential harm from marihuana use. These claims have received widespread media exposure, often far greater than the substance of the study warranted.

Each year the Department of HEW attempts to summarize the research on marihuana and to reach some conclusions about the potential dangers. In their recently released report for 1974, National Institute for Drug Abuse—NIDA—Director Dr. Robert L. DuPont discusses the recent claims:

These more recent studies deal with three areas of concern. They are: effects on male sex hormone levels, interference with the body's immune response and effects on fundamental cell metabolism. *The implications of these preliminary studies are, at this point, speculative.* There is concern that alteration in hormone levels as a result of chronic use may interfere with normal adolescent development or with sexual differentiation of male fetuses if cannabis is used by pregnant women at critical periods of fetal development. Effects on the immune response and on cell metabolism might seriously affect resistance to disease or result in a variety of degenerative or genetic changes. *Thus far there is no clinical evidence indicative of such consequences although continuing research is obviously required.* (emphasis added)

Dr. DuPont also cautioned:

We must also recognize that no drug with major pharmacological action—including marihuana—can ever be truly safe. It it inevitable that further research will disclose additional hazards. In developing rational social policy, scientific evidence of a health hazard must be balanced against social and economic costs incurred by possible alternative strategies for discouraging drug abuse.

Dr. DuPont, who also serves as chief Presidential drug adviser in his capacity as Director of the White House Special Action Office for Drug Abuse Prevention, recently endorsed publicly the Oregon approach. He believes marihuana presents health risks to the user, and should be actively discouraged, but opposes the use of the criminal law for possession of small amounts.

It should be stressed that when the National Commission on Marihuana and Drug Abuse recommended decriminalizing the user it did not presuppose marihuana would be harmless. And several members of the Commission have reiterated their conclusions:

No drug is totally safe or harmless. In a sense, there is no human activity which is totally harmless. However, it is my opinion that marihuana involves

only a minimal risk of harm to the user. Clearly the potential harmfulness of marihuana to the user is on a much lower order of magnitude than the potential harmfulness of such other drugs as alcohol, tobacco, amphetamines, barbiturates, and hallucinogens. J. Thomas Ungerleider, MD, Presidential Appointee to the National Commission.

Since publication of the Commission's Report in March 1972, numerous studies have been reported, some suggesting that the dangers from marihuana are far greater than the Report indicated, others demonstrating that its use produces relatively little harm. In short, work in the last two years has not fundamentally changed the data base on which the recommendations were made. Dr. Dana Farnsworth, Presidential Appointee to the National Commission.

However, treating the user of marihuana as a criminal, can and has had a shattering effect upon the lives of thousands of individuals who are otherwise law-abiding citizens. The consequences of such a policy for the individual and society are more serious than any personal or societal harm resulting from the use of the drug itself.

The penalties do not fit the crime. The time has come for us to decide honestly what the crime is. If we decided that certain private conduct is not a crime, then we should eliminate the penalties for it, and to the extent that we believe that criminal sanctions should be retained for conduct then we should measure the penalties in relation to the seriousness of the conduct.

As I nave in the past, I wish to acknowledge once again the extraordinary work of the National Organization for the Reform of Marihuana Laws—NORML—and its able executive director, Mr. Keith Stroup. His efforts combined with the dedicated work of hundreds of interested citizens in States throughout the country have had a significant impact in changing attitudes as well as laws on this subject.

Mr. President, the laws we seek to change are indefensible. Logic, commonsense, and honesty have had very little to do with the evolution of national drug policy in the last 40 years, and these failings are rooted in the current law. I think we have ignored for far too long the consequences of that failure for our society. I urgently request the Senate Judiciary Committee to act on this bill at the earliest possible time. There are several articles and editorials which have appeared in the media in recent months on the subject of decriminalization and I ask unanimous consent that the following be printed in the Record at the conclusion of my remarks:

"Harsh Penalties for 'Pot'," an editorial in the New York Times, December 28, 1974.

"Legal Hostility to Pot Fades," an article by Al Parachini in the New York Times; December 8, 1974.

"The limits of the Criminal Sanction," an editorial in the Washington Post; November 18, 1974.

"Shifting Emphasis on 'Pot,'" an editorial in the Buffalo Evening News; November 30, 1974.

"End the Pot Penalties," an article by William F. Buckley; Novembber 10, 1974.

"Reefer," a column by Ann Landers; November 14, 1974.

"Thoughts on Marihuana," a column by James J. Kilpatrick, Washirgton Star News; December 4, 1974.

"Pot: Long Smouldering Issue May End in Decriminalization," an article by William Hines, Chicago Sun-Times; December 1, 1974.

A column by Richard C. Cowan, "About Marihuana"; November 6, 1974.

An article by Susan Fogg, Newhouse News Service concerning the therapeutic uses of marihuana.

"A Change in Policy on Pot?" an article by William J. Lanouette, The National Observer; November 30, 1974.

"Carey Considers Dropping Harsh Marihuana Penalty," an article in the New York Times, January 29, 1975.

There being no objection, the articles and editorials were ordered to be printed in the Record, as follows:

HARSH PENALTIES FOR "POT"

Two years ago the National Commission on Marijuana and Drug Abuse reported that marijuana was a "low priority" risk compared with other drugs, including alcohol, and recommended the elimination of legal penalties for private possession and use while retaining stiff criminal penalties for marijuana traffickers.

This carefully considered proposal got short shrift from then President Nixon, who promptly denounced it. Efforts to liberalize drug laws along lines recommended by the commission so far have been stymied in Congress and in the Legislature of New York which retains some of the toughest antimarijuana legislation in the country.

Private possession of small amounts of marijuana, which would be subject to no criminal charges under the commission's proposals, still can invoke penalties of up to fifteen years in jail in this state. Only last March, a man in Buffalo was sentenced to five years in prison for possessing 1.9 ounces of "pot." Last year in New York City alone there were nearly 6,800 arrests on marijuana charges, mostly of young people who were stigmatized for life because they were caught with less than one-quarter of an ounce of this drug.

Fears that liberalizing the law would encourage the use of "pot" and compound police problems do not appear to be borne out by the experience of at least one state that has pioneered in this area. In October, 1973, Oregon abolished criminal penalties for marijuana use, substituting civil fines of up to $100. After the law's first year, a statewide evaluation found that 40 per cent of respondents who acknowledged they had used "pot" said they had decreased their consumption; 52 per cent reported no change and only 5 per cent had increased use.

No one should underestimate the potential risks in marijuana use which are still incompletely understood.

The question is whether the harsh legal sanctions against marijuana prevailing in this and most other states really serve as a deterrent. The evidence is that they do not. Public attempts to control private vices through excessive and heavily punitive laws only undermine respect for law and divert law enforcement agencies from more urgent tasks.

Legal Hostility to "Pot" Fades

(By Allan Parachini)

Despite recent medical studies purporting to show evidence of physiological risks to smokers of marijuana, there is a clear and growing trend toward decriminalizing the drug. Opposition to "pot," once centered in the law-enforcement community, seems to be crumbling.

Either by statute or de facio means, police and prosecutors seem prepared to accept the fact that marijuana use now is widely accepted and that continued stringent enforcement of antimarijuana laws is unrealistic.

Decriminalization would mean the easing or elimination of penalties for private use or possession of marijuana. Penalties vary widely at present, ranging from a $100 fine in Oregon to a possible 15-year prison term in New York.

Captain Jerry Kennedy, commander of the Denver, Colo., vice squad, recalls that his officers at first opposed a Denver marijuana ordinance easing penalties, but have changed their minds. "Before," he says, "we were bogged down in marijuana arrests. We could never get on to the quality cases."

The New Jersey Narcotics Officers Association has backed decriminalization in that state. In many cities, police arrest users only, as one New York City policeman has said, "If they blow smoke in your face." When Los Angeles Police Chief Edward M. Davis issued a statement opposing, on moral grounds, any statute change, the local police commission forced him to distribute a cover letter saying he had spoken as an individual and not on behalf of the department.

"The simple fact is that there is a tremendous number of people using marijuana these days," says Wesley Pomeroy, police chief in Berkeley, Calif., and a former Justice Department official, "and from a pragmatic point of view, the police ought not to be put in the uncomfortable position of having to enforce an unenforceable law."

In Washington, D.C., United States Attorney Earl J. Silbert announced last month that his office would no longer prosecute, and capital police should not arrest, users in possession of five or fewer marijuana cigarettes. Mr. Silbert canceled the order before it was to go into effect last Monday, however, because of the controversy that developed over the issue.

Prospects for widespread easing of marijuana laws appear greater now than ever before. Federal decriminalization legislation is expected to be introduced in the next session of Congress in the Senate by Jacob K. Javits, Republican of New York; and in the House by Representative Edward I. Koch, Democrat of New York. Mr. Javits has said that "it's time to do something" about marijuana laws to make them conform to what has become accepted social behavior.

CHANGING STANCES

At the Federal level, the change in administration seems to have had a pronounced effect. Former President Richard Nixon repeatedly told aides there was "no way" he would ever support less stringent marijuana penalties, even after the National Commission on Marijuana and Drug Abuse called for such a change in 1972.

Betty Ford, the new President's wife, has publicly said she is certain her three children have tried "pot." One of the Fords' two sons has reportedly met several times with officials of the National Organization for the Reform of Marijuana Laws (NORML). Offspring of public officials, including Oregon's Gov. Tom McCall and former Presidential counsel J. Fred Buzhardt, have been arrested on marijuana charges.

Mr. Ford's chief policy adviser, Dr. Robert L. DuPont, said publicly in recent Senate subcommittee hearings and at a NORML-sponsored conference what he has long told intimates privately—that there is little point in continuing to jail marijuana users.

Keith Stroup, who as NORML's director keeps close watch on the legal aspects of marijuana, believes that several states are almost certain to decriminalize it next year. They are Colorado, California, Hawaii, Minnesota, New Jersey, Vermont and Massachusetts.

Various cities and states have already chosen to remove marijuana from criminal law enforcement:

In October, 1973, Oregon abolished criminal penalties for marijuana use, substituting civil fines of up to $100. Marijuana offenders are given citations that are processed like traffic tickets.

After the law's first year, a statewide evaluation was conducted by the Drug Abuse Council, a privately funded Washington, D.C., research organization. Forty per cent of the respondents who said they had used "pot" said they had decreased their consumption; 52 per cent reported no change and only 5 per cent had increased use. And 58 per cent of all respondents favored the present law or a more liberal statute; only 39 per cent thought the law was too lenient.

In Denver, the City Council last spring passed its ordinance overriding the state marijuana law, which had held possession to be a misdemeanor. The new ordinance treats possession of up to a half-ounce as a noncriminal violation. In October, the State District Attorneys Association approved, by a 31 margin, a resolution to support a change in the state law to conform with the Denver experiment. The measure will be introduced next year.

The so-called "parking ticket model" was first introduced in Ann Arbor and Ypsilanti in Michigan. A year ago, voters in the two neighboring cities approved a referendum providing for a maximum $5 fine in marijuana cases. The referendum reimplemented a system initially approved in Ann Arbor three years ago but briefly eliminated by the City Council.

In New York City, District Attorney Richard Kuh last summer instituted a circumvention of the potential 15-year prison term for possession of more than a quarter-ounce of marijuana. Under the Kuh plan, which also has the backing of three of the other four district attorneys in the city (Staten Island declined to participate), persons accused of "simple possession" of up to two pounds of marijuana are permitted to plead guilty to a single misdemeanor count.

Decriminalization ferment might seem to be contradicted by arrest statistics, which continue to show an upward trend. In 1973, for instance, 420,700 persons were arrested nationally on marijuana charges, up from 188,682 in 1970 and as few as 18,815 in 1965. Many observers believe the increase is the result of more uninhibited and widespread use. Though few of the offenders ever go to jail and many cases are dismissed, suspects retain their arrest records for life in most states.

Significantly, none of the proposed state and federal statute changes goes beyond the elimination of penalties for private use and possession of marijuana. The sale and distribution of marijuana would still be illegal.

THE LIMITS OF CRIMINAL SANCTION

Over the last several years, most states have reduced the felony statutes for possession of small quantities of marijuana to misdemeanors. One state, Oregon, has made simple possession of the drug the legal equivalent of a traffic offense.

It was only a matter of time before the federal government would begin to move in the same direction. A presidentially appointed commission argued in 1972 for "decriminalization" and although President Nixon simply rejected the recommendation, a number of federal officials have since taken the position that making marijuana possession a federal felony offense serves no useful purpose.

The latest federal official to take that position is Dr. Robert L. DuPont, President Ford's chief adviser on drug abuse control. Significantly, Dr. DuPont chose a meeting here of the National Organization for the Reform of Marijuana Laws to endorse the Oregon solution. In doing so, Dr. DuPont took the same stance that many responsible officials in federal and state government have taken: Marijuana is potentially dangerous to the individual smoker, but smoking by individuals poses no threat to the society that justifies locking up those unlucky enough to be caught.

The marijuana laws, because they proscribe a "crime" that has no victim, are ordinarily enforced against those whose "criminality" comes to the attention of the authorities by accident. Thus, the other day, a federal official whose home here had been burglarized was arrested the same day for possession of an ounce of marijuana found by the police officers investigating the burglary. But for that accident, we can assume his private use of marijuana would have remained his private affair.

That is how it is with most of the 20 million Americans estimated to have smoked marijuana. There is hardly a legal restraint that compares with the law on marijuana for inconsistency of enforcement. Most people who smoke never are caught. About a half million people will probably be arrested this year. Many of those will be released as first offenders without any action having been taken against them, particularly if they are juveniles. The application of the law is selective in many parts of the country. Young people the police may wish to detain for other reasons often go to jail because they happen to have a small quantity of marijuana on their persons during encounters with police.

Under those circumstances, the logic of Dr. DuPont and those other federal officials who have called for "decriminalization" makes sense. It is unwise for a society to permit the creation of so large a class of presumptive criminals when their crime can be of no demonstrable harm to anyone other than themselves. This is especially so when other recreational drugs are readily available and legal. The danger to the individual who drinks alcohol is at least as great as the danger of smoking marijuana, and may be far more so. Yet, it is perfectly legal for persons who are not minors to buy all the alcohol they wish. If the theory behind proscribing marijuana was that its use would diminish, the policy has been a failure. When the substance was made illegal in 1934, it was estimated that 50,000 Americans used it. The figure could be as high as 25 million today. "Marijuana," said a study by Consumers Union several years ago, "is here to stay."

Since there is little evidence to contradict that conclusion, and since many prosecutors—most recently the U.S. Attorney for the District of Columbia—have argued that they would like to get marijuana out of the way so they and the police can concentrate on real crime, it makes sense to support Dr. DuPont and those who argue for "decriminalization." But "decriminalization" should be recognized for what it is. It is a politically delicate way of saying that you are taking a first step toward the day marijuana will be legal. That is apparent on its face. Dr. DuPont says that "decriminalization" should be accompanied by programs that educate the public to the dangers of marijuana use. Despite such programs, it is doubtful that the use of marijuana is going to decline. If there is merit in relaxing the rules on possession, simple logic dictates that it makes sense eventually to legalize its sale and use and control its quality. That is the way to keep some of the more harmful and dangerously potent forms of the drug off the market. It is also a way of separating marijuana from some of the much more dangerous substances, such as cocaine, LSD and heroin, that now circulate through the same channels as marijuana.

For many young people, the illegality of marijuana makes a mockery of the law. Despite what those who seek to justify the criminal sanction might argue, the logic of the matter causes many youngsters to see duplicity in the current state of affairs. It is perfectly legal for their parents to drink alcohol but an indictable offense for them to possess marijuana. That kind of double standard is corrosive of the principle of the rule of law. The value of the criminal sanction in a society rests on the foundation of fairness. For that reason, the criminal sanction is most effective when it is limited to proscribing those offenses of genuine danger to the society. Possession of marijuana does not meet that test.

Shifting Emphasis on "Pot"

It is evident from the renewed debate on marijuana penalties, and from the reduction of them in some states and localities, that public attitudes are becoming increasingly receptive to a shift in policy emphasis toward eliminating criminal penalties for casual use even while continuing public discouragement of the traffic in a medically risky substance.

Significantly, much of the current talk about "decriminalizing" the personal use of marijuana comes, not from the social apologists for "pot," but from some of the very reputable medical researchers who are voicing new concern about the health impairment potentially associated with marijuana overuse.

The latest to advocate a balanced new approach to the medical and legal aspects of marijuana is none other than the Ford administration's drug-policy spokesman. While raising new questions about the health risks incurred by marijuana smokers, Dr. Robert L. DuPont makes clear his own doubt that prevailing criminal penalties constitute a fair or effective way to deter the spread of marijuana smoking.

From the health standpoint, Dr. DuPont finds enough basis from the implications of animal research—bearing upon the potential marijuana link with chromosome damage and lowering of disease resistance—to advocate social policies of discouragement and restraint.

But such deterrence, in his view, can be achieved "at a lower cost than the current criminal sanction" which constitutes a case of overkill, when those convicted for possession of minor quantities of pot "may bear forever the stigma of an arrest record which can affect their employment opportunities and their entire future."

What this distinction between education programs and criminal penalties reflects is a growing body of opinion—shared by many philosophical conservatives and liberals alike—that prevailing reliance on Prohibition-style criminal prosecution is a poor way to cope with what is essentially a health problem involving risks much like those of overdependence or overuse of alcohol or tobacco.

For one thing, there is simply no way to enforce criminal penalties against the estimated 25 million or so who are said to have been tempted by the forbidden fruit. And the effort to do so is inevitably selective, capriciously discriminatory against the young, and a costly diversion of limited police manpower and resources better reserved for apprehending the peddlers of hard drugs as well as burglars, rapists, and other serious threats to public safety.

In this regard, the approach taken by such states as Oregon in treating minor marijuana possession as a "violation" roughly equivalent to a traffic offense, is seen by decriminalization advocates as perfectly consistent with "law and order" concern for stern policing against the hard-drug traffic.

The difference between "legalization" and "decriminalization" is in our view an entirely tenable one, and not mere semantics. For legalization would imply a social tolerance equivalent to that for liquor, and this is not warranted by the present ambiguous medical evidence, nor have any practical means been suggested for regulating marijuana traffic in the thorough way the liquor industry is regulated. Decriminalization for possession and use of minor quantities, however, need not let down the bars at all to criminal prosecutions for large-scale possession or selling to minors. This would tend to shift the focus from controversy over unfair effects of present criminal laws to rational social measures of deterrence, including educational programs and credible controls against marijuana use among minors.

Much as a persuasive case has been made for a sensible "decriminalizing" of first drunk-driving offenses as an effective remedy for laws that now remain notoriously ill-enforced, so is there a gathering consensus that excessive and unenforceable penalties for pot-smoking are no effective way to deal with any of the possibly serious adverse effects that medical science is beginning to worry about in the case of marijuana.

End the Pot Penalties

(By William F. Buckley, Jr.)

A couple of years ago Johnny Carson turned suddenly to me, in a general discussion of the drug laws, and asked me pointblank. "Have you ever tried pot?" I said, yes, I had. And added primly that I was on my boat, outside the

3-mile limit, so that I wasn't breaking any law. (He went on to ask: "Did it do anything for you?" And I replied, "No.")

Now as a matter of fact, Carson should not have asked that question. It is in the category of questions you do not ask, like: "Have you ever cheated on your wife?" The rule is that you should never ask somebody a question if there is a high probability that the answer will reveal the questionee to be either a law-breaker or a liar. And of course for some questions there is no escape clause. There is no such thing as cheating on your income tax outside the 3-mile limit.

But Carson did ask me, and my reply was truthful, and I have been plagued by it ever since. I seldom address a college audience without somebody bringing it up in some way or other during the question period. Example: "Mr. Buckley, how did pot get into your boat in the first place?" (My answer: Parthenogenesis.) Or: "Do you think it's fair that only people who have yachts can smoke pot legally?" (My answer: "Anybody can rent a boat. They come as low as ten, 15 bucks a day.") The audience is good-humored, mostly because if you are addressing a college audience, you are talking to a group 95 percent of which has experimented with pot. College students recognize that to experiment with pot is extremely safe, and you don't have to go out into the ocean to do it with impunity.

I say extremely safe with sharp reservations, having read the figures for the arrests during 1973, and the projected arrests for this year. These come to 400,000 and a half-million respectively. The figures are appalling, and I pass them along only because there is no reason to distrust the author of them. But what they seem to suggest is that although the typical campus is nowadays never, ever raided, still there are busts, hundreds of thousands of them, and a continuation of those preposterous penalties which are indefensible.

It is widely noticed that the Senate Internal Security Subcommittee has been transcribing a lot of anti-pot material offered by various doctors and scientists. It has not been widely noticed that the head of that committee, the draconian Senator James Eastland, has himself come out against any penalties for the users of marijuana (as distinguished from purveyors of it).

But somewhere along the line, the American public decided not to legalize pot. This conclusion it reached, in my opinion, on the grounds that any different conclusion would appear to be a capitulation to the counterculture.

But at the same time, American parents reached the conclusion, or such is my reading of it, that they did not desire their 18-year-old boys and girls to be sent to jail for smoking pot which said parents had every reason to suppose they were experimenting with at school.

If the awful figures are correct—a half-million arrests—there has been a breakdown in communication between the public and the police.

The old adage is that the best way to get a bad law repealed is to enforce it. Perhaps this is what the police are trying to effect: the repeal of the law by the enforcement of it. In which event it is paradoxical that the police do not interfere with the colleges. Or is the problem that there aren't enough police to arrest the guilty students?

Little by little, the distinctions emerge, Richard Cowan, a young journalist from Texas, makes them most neatly, in my judgment. They are: Pot is harmful; but people shouldn't go to jail for smoking it. The difficulty is in trying to take the two positions simultaneously. The art of communication seems to break down. It is instantly supposed that if you desire decriminalization, you are saying there is nothing wrong in smoking pot. Or that if you disapprove of pot, you must be in favor of illegalizing it.

But there is a book in prospect on the subject, being written by the aforesaid Mr. Cowan, and it will be a blessing. In his case, frustration has been the mother of invention: he cannot communicate these simple disjunctions, so he is writing a book.

Meanwhile, the apparent indifference of parents to other parents' children being sent to jail for smoking pot, speaks poorly of our sense of community.

Ann Landers: Reefer

Dear Ann Landers: I figured that all those loony letters would get to you sooner or later, but I didn't expect it to happen so soon. I honestly believe you've gone off your rocker.

I just read where you and some other odd-balls have signed sort of endorsement for marijuana. Now you say it is "normal" for kids to use it and all the scare stories about marijuana are nonsense and actually turning kids to harder stuff because they don't believe any of the propaganda about drugs.

I always thought you had good common sense, and I was pleased you were against pot because it helped me make a case with my own children. They have faith in what you say and will take it from you, but not from me.

Now, what am I to tell them when they catch up with your latest? Please explain, I am—Dumbfounded.

Dear Founded—or perhaps I should say Dear Dumb:

Talk about getting facts twisted, you win the cutglass fly swatter. My position on marijuana is unchanged. I haven't budged an inch. I still believe that marijuana is not harmless. I continue to be opposed to any mind-altering drug—including alcohol, especially for teen-agers.

I did sign a statement declaring that I am in favor of the decriminalization of marijuana. This does not mean that I want to see it legalized. I do not. But I do want to see the laws in regard to possession changed.

The name of the organization whose statement I endorsed is "NORML." It is The National Organization for the Reform of Marijuana Laws. The state volunteer coordinator is Paul H. Kuhn Jr., a highly respected gentleman.

The other "oddballs" (your term, not mine) who have endorsed the decriminalization statement are John Finlator, William F. Buckley Jr., James J. Kilpatrick, Sens. Barry Goldwater, Jacob Javits, Harold Hughes, Charles Percy and Adlai Stevenson II, and Joel Fort, M.D.

You write better than you read—and your apologies are accepted.

THOUGHTS ON MARIJUANA

(By James J. Kilpatrick)

Proposals for the "decriminalization" of marijuana once again are being heard. The proposals make sense—much sense that they ought to be seen as a first step toward reconsideration of public policy on the whole field of victimless crime.

Granted, "criminalize" and "decriminalize" are verbs that make a man wince, and "decriminalization" is a noun that would have driven H. L. Mencken up the wall. Yet the words are useful, all the same, in defining an area of the law in which an act is illegal but not criminal. Overparking is a familiar example. If I recall my dog Latin correctly, such an offense once was known as "malum prohibitum" as distinguished from "malum in se."

Over the past 40 years, most states have treated even the mere possession and use of marijuana as crimes—as felonies or grave misdemeanors, punishable by both fine and imprisonment. Here and there, as reason has replaced emotions, attitudes have moderated. Oregon now treats simple possession as a "violation," usually punished by a $25 fine.

Dr. Robert L. DuPont, chief White House spokesman on drug abuse, last month recommended that possession of marijuana (as distinguished from sale) be decriminalized at the federal level. His predecessor, Dr. Jerome H. Jaffe, concurred. Here in Washington, U.S. Atty. Earl J. Silbert announced that his office no longer would prosecute cases in which the evidence indicated possession of five or fewer cigarettes. Chief Judge Harold H. Greene backed him up. (Silbert later backed down.) On Capitol Hill, Rep. Edward Koch, D-N.Y., said he would reintroduced a discriminalization bill next month. In Miami, Atty. Gen. William Saxbe said he would welcome a change in the law.

For the most part, the recommendations draw support fron iberals. Such conservatives as James Eastland, chairman of Senate Judiciary main stoutly opposed. Yet carefully examined, the idea of decriminalizing arijuana precisely accords with conservative thinking.

Conservative doctrine holds that to the greatest degree possible, consistent with a demonstrably overriding public interest, the individual citizen should be both free and responsible—free to do what he pleases, responsible for the harm he himself may suffer. Unless it can be demonstrated convincingly that marijuana constitutes a health hazard to society, conservatives cannot consistently support the criminal sanctions that now apply.

No such evidence has been brought forward. Even as to individual harm, medical testimony is in conflict. The notion that most or all pot smokers proceed

from marijuana to heroin has been exploded. As a hazard to public health, marijuana plainly does not qualify.

There is a second, pragmatic reason for abolishing criminal prosecution of marijuana users. It is a foolish and wasteful use of the time of both policemen and judges to continue the spasmodic and capricious enforcement of the marijuana law.

Half a million such arrests will be made this year. The cases divert police from such truly serious crimes as burglary and robbery, and they clog the courts with defendants—mostly young defendants—not guilty of any true offense against society.

To be sure, only 2 or 3 percent actually wind up in jail, but all of them suffer the strain of a criminal arrest on their records.

The same considerations ought to be applied to many other "crimes." Distasteful as the process may be, conservaties should reexamine their hostility to repeal of laws that make it criminal for adults to engage in homosexual relationships.

Why is simple drunkenness a "crime"? Why are those who gamble still lawfully subject to arrest and imprisonment?

We need to think on these things. The decriminalization of marijuana offers a fine place to start.

POT: LONG SMOLDERING ISSUE MAY END IN DECRIMINALIZATION

(By William Hines)

WASHINGTON.—For the first time since ex-Commissioner of Narcotics Harry J. Anslinger trumped up a marijuana crisis in 1935, a real possibility exists that jail terms for pot users will be eliminated from Federal law. It could happen before another year has passed.

In turn, it is widely believed that if Congress acts to decriminalize marijuana, the 49 states that still hold the threat of jail over users (as opposed to peddlers) of the drug will soon fall in line.

Oregon has pointed the way in a law that went into effect last fall. Under its statute, possession of less than an ounce of pot—a misdemeanor in the Federal code and in all other states—is redefined as a "violation" to be dealt with through tickets and fines.

Already preliminary skirmishes are taking place on Capitol Hill, foreshadowing a serious legislative battle in the next Congress, whose coloration will be substantially more liberal.

Last week, a Senate alcoholism and narcotics subcommittee headed by Sen. Harold E. Hughes (D-Iowa) held two days of hearing aimed at showing that present punitive policies directed at minor pot offenders were doing the nation more harm than good and developing a generation not of "semi-zombies" but of cynics and scofflaws.

Hughes, who has heard and heeded a religious evangelical call, will not be in the Senate next year, but Jacob K. Javits (R-N.Y.), re-elected this month, will. And Javits has sworn an all-out effort to decriminalize pot.

As Javits and others of like mind see it, decriminalization is the way off the horns of a dilemma that bothers those in this country (probably a majority) who do not want to sanction the smoking of grass, but who, at the same time, dislike the idea of young lives being ruined by a criminal record imposed for an impulsive, and ultimately trivial offense.

Decriminalization in the Oregon manner recognizes that public acceptance of marijuana as a major recreational drug has passed the point of no return.

When Anslinger created his pot scare in 1935, he estimated (probably overestimated) that 50,000 persons in the United States were smoking the devil weed. The best estimate now is than 13 million Americans—260 times as many—smoke it occasionally, and that about 2,500,000 smoke "regulary" (say twice a week or more). And 26 million are estimated to have "tried" marijuana at least once.

These numbers probably represent a greater proportion of the population than was guzzling illicit hootch while the writ of Andrew J. Volstead was running (1919–1933) during the "noble experiment" of Prohibition. Sociologists and law enforcement officers are virtually unanimous in agreeing that when an illegal activity achieves this wide an acceptance, there is no stamping it out.

So what to do?

The alternative, in the case of the Volstead Act and the 18th Amendment, was repeal with subsequent legalization of beverage aclohol under state and local controls.

As long as the two sides had to fight about the hazards of marijuana, they never could reach a definitive conclusion.

That has changed recently, but such results as have been reported are either inconclusive, controversial or both. The latest Health, Education, and Welfare Department report on "marijuana and health" (the government persists in spelling marijuana with an "h") was delayed for several months to obtain and inculde some new experimental data, but much of these results left a lot to be desired scientifically.

As far as the relative hazards of the three most widely used recreational drugs—alcohol (95 million users), tobacco (55 million) and marijuana—are concerned, Federal mortality statistics on the first two are revealing.

The National Clearinghouse on Smoking and Health identifies 92,000 deaths a year attributable to cigarettes .The Clearinghouse on Alcoholism has statistics that suggest something in the order of 20,000 deaths a year from alcohol abuse (not including vehicular and other forms of homicide perpetrated by drunks.)

By contrast, Sen. Hughes in sharp questioning of Dr. Robert L. DuPont, head of the special Action Office for Drug Abuse Prevention, drew from the psychiatrist-bureaucrat the admission that he knows of not one death directly attributable to marijuana abuse. It is on these statistics that the pro-reform element will test its case about relative health hazards.

But this is not the real ace-in-the-hole of Javits. Rep. Edward Koch (D-N.H.) and ohers who will be sponsoring decriminalization legislation in the next Congress. They offer two intriguing arguments—one philosophic, the other pragmatic. The philosophic argument is directed at conservatives, the pragmatic at every person preoccupied with crime, taxes and inflation.

To the true conservative (and such conservatives as William F. Buckley and James J. Kilpatrick are on written record to this effect), there is no justification for the law stepping in to save the fool from his own folly. It is bad public policy to punish crimes without victims.

This goes hand-in-hand with the pragmatic argument that great deal of law enforcement effort is being frittered away in combatting the ubiquitous, victimless crime of marijuana use.

Another Column Not About Marijuana

Fort Worth.—When a writer fails to get his point across he would naturally like to blame the obtuseness of his readers, but that doesn't do anyone any good. From time to time, perhaps too often, I attempt to convey my views on the subject of marijuana, and I can't say that I feel exactly triumphant.

Actually, I do not write so much about the weed itself, as about the controversy surrounding it. There are several reasons for this approach. First, it is difficult and really pointless to try to critique a research report in a seven hundred word column for general readers. Secondly, I hope that younger readers who know what a mess the government has made of the "drug problem" will be consequently less anxious for the government to "solve" other problems, if this question is handled in a general way. (Of course, I run the risk of turning off conservatives who will simply put me down as a pot-head.) Finally, I don't go into specifics, because the arguments for decriminalization of possession (or legalization of sale) do not rest at all on the "alleged harmlessness" of pot. Not at all, but simply on the harm done by the laws.

Recently, however, we have been inundated by a new wave of anti-pot propaganda which is the grand finale of two years of hearings by the Senate Internal Security Subcommittee, headed by Sen. James O. Eastland, D-Miss.

There are several points about these hearings that are interesting. First, Senator Eastland seems to have endorsed the decriminalization of possession of small quantities. Thus, supposedly his objective is not to support the jailing of your kids, but to warn America about the dangers of marijuana. There is an interesting twist here. While many conservatives and even one tired old liberal (on whom I will pounce in a moment) have seen fit to report the "findings" of the hearings, few have mentioned the seemingly newsworthy endorsement of decriminalization by the senator.

What makes this even stranger is that invariably the columns assert that the "harmlessness of pot" has been argued by those favoring decriminalization, and

even that the burden of the argument for decriminalization somehow rests on the "alleged harmlessness." Well, the National Organization for the Reform of Marijuana Laws (the only pot lobby in Washington), the Shafer Commission, William Buckley, and James Jackson Kilpatrick, and yours truly, have never said that pot is harmless. Maybe someone's favorite hippy says so, but that would hardly be representative of the "national debate" if there is such a debate. It is just the old "strawman" technique, of misrepresenting the opposition, subversive of the truth, i.e., a lie.

Secondly, following the press releases of the Subcommittee, writers frequently start with some statement to the effect that "pot isn't harmless, after all, like everyone thought." Not just pot-heads like Kilpatrick, but the general population of America has thought for forty years that pot is harmless. Sure. This is a "news" lead in for a column. "Contrary to popular misconception" keeps propaganda from looking like propaganda.

Well, if you can find me a person who, one, thinks that pot is harmless and, two, thinks that Senator Eastland is an authority on the subject, I'll roll him in your newspaper and smoke him. The point is that the only people who will be influenced by this propaganda will be those seeking to justify the laws.

Senator Eastland has been attacked for his efforts, but he has in fact been more honest than those who bought his story. The old senator never made any bones about it. He carefully admits that these hearings have been open only to known antimarijuana crusaders most of whom had testified before the Shafer Commission. Generally, however, the results of the hearing have been presented as "new research" when in fact much was old and no actual research was done by the Sub-Committee.

I have been disappointed, of course, that a number of conservative columnists have fallen for the "new evidence" bit, but the really incredible all-time sucker has to be John P. Roche, former head of the super-liberal Americans for Democratic Action. Professor Roche was turned off by the New Left, which turned on, so in the Oct. 5 issue of TV Guide he saluates NBC news for overcoming liberal inhibitions about believing Eastland, just this once, of course. For some reason Roche finds all this "authoritative" (such interesting epistemology), but that's okay. What really got me, though, was that he says that, "Except in rare cases, the police simply ignored pot parties." After one million arrests, the former head of the ADA can say that?

Another half million Americans will be arrested this year, and if you think that this column is pro-pot, or even about pot, I have struck out again.

A Change in Policy on Pot?

(By William J. Lanouette)

More than two million Americans will smoke some marijuana today. Maybe 2,000 of them will be arrested.

For some very different reasons, those statistics are beginning to disturb a growing number of people and their elected representatives here. And if this concern spreads, as now appears likely, it could produce a fundamental shift in the nation's policy toward pot.

Attitudes are quite dissimilar. Some people are annoyed because they think that all pot smokers should be arrested. Some think no pot smokers should be arrested. Some think that pot smoking is wrong—for medical or moral reasons—but also that laws applied so selectively are unfair. And some think that regardless of the arguments for or against pot smoking, the police should be battling more serious crimes.

SEPARATE CONCERNS

These varied concerns were focused here recently by a series of loosely related events that together renewed debate about the public and political response to pot. From this debate emerges one fundamental shift in attitudes; a tendency to separate concern about the possible medical harm of pot from the legal harm caused by enforcing the present laws.

Marijuana is still a long way from being "legalized," that is, sold commercially as a legitimate product. Yet the chances that the possession and use of

small amounts will be discriminalized—publicly discouraged but not punished by jail terms—may be only months away. And oddly enough, the move to decriminalize pot could be boosted by a widespread concern for "law and order."

The shift in public attitudes began at the top. Although former President Nixon wouldn't even read the 1971 commission report recommending decriminalization, President Ford and the First Family have taken a different approach. "I'm sure the children have tried it," Betty Ford said in September. "I think children try everything, don't they?"

"THE KEY QUESTION"

Columnists, including William F. Buckley, Jr., Ann Landers, and James J. Kilpatrick have supported decriminalizing pot. Attorney General William Saxbe said he would not lobby for a change in marijuana laws on Capitol Hill, but "neither will I block any efforts to make the changes."

Last week the Ford Administration's chief drug-policy spokesman edged close to advocating decriminalization without explicity saying so. Dr. Robert L. DuPont, director of both the White House Special Action Office for Drug Abuse Prevention and of the National Institute on Drug Abuse, said: "The key question today is whether the benefits of deterrence are available at a lower cost than the current criminal sanction. I think that they are."

THE COST OF JAIL

With this shift in attitudes, New York Democratic Rep. Edward Koch is trying to muster support for his pot-decriminalization bill. "While many thousands are being arrested for possessing marijuana, many millions are not," Koch said in an interview last week. "I think that both Constitutional liberals and Constitutional conservatives will want to rally around this issue—because of the unfairness of it. By an estimate I've seen it would cost $79 billion a year to put every pot smoker in jail. And even assuming pot's as vile as its worst critics say, so do you correct that by putting everybody in jail?"

Sen. Harold Hughes, Iowa Democrat, is now posing two questions to witnesses before his subcommittee on alcoholism and narcotics, which is examining current pot policies. "Is the health hazard so great as to endanger society or is it so minimal that government should refrain from interfering with the individual user? Do the criminal laws impose on the individual and on society a burden which is so great and so unfair that they are far more damaging than the use of marijuana itself could be.

"Even if we find that marijuana does present serious health hazards," Hughes says, "are we justified in using the criminal law to solve a health problem when we do not use it in any similar way to solve the very well-known problems created by the use of such substances as alcohol and nicotine?"

THE OREGON APPROACH

Committee witnesses, including narcotics agents from New Jersey, urged a reassessment of national marijuana laws. Most favored an approach begun last October in Oregon, whose possession of 10 ounces or less is a "violation," like a traffic ticket, punishable by a maximum fine of $100.

Also last week, Dr. DuPont presented to Congress his agency's fourth annual "Marijuana and Health" report. It was due in March but delayed, he said, "to include new findings from several important studies in order that the report would accurately reflect the present state of our full scientific knowledge." He conceded, however, that "there are more unanswered than answered questions. But these recent findings give reason for concern in several areas."

SEX AND DRIVING

Among those he highlighted were: depressed levels of the male sex hormone testosterone in heavy users of marijuana, possible interference with the body's immunity responses, and adverse effects on driving skills while high on marijuana. Yet, he warned, "we do not know today that *cannabis* [marijuana] use definitely is more dangerous in all respects than we previously thought. Much of the research reported is very preliminary, involving testing in animals, not man. Some of it is contradictory."

New Federal Report Outlining Medical Applications of Pot

(By Susan Fogg)

Almost lost amid reports on the ill effects of marijuana on human health were findings that the drug shows some promise as a medical application to a variety of physical and emotional ailments.

The bulk of the official federal report on "Marijuana and Health" (the government continues to favor the "h" spelling) released last week was devoted to detailing the latest research on the dangers of pot smoking.

But the report also outlined some of the therapeutic applications of marijuana that researchers have been testing. These findings are tentative, and have little or no application to recreational use of the drug.

Perhaps the most striking study was conducted with 34 cancer patients at the Medical College of Virginia, where patients receiving marijuana showed a number of benefits.

Marijuana apparently served as an appetite stimulant which helped check weight loss. The drug also helped suppress nausea, and worked as a pain killer.

Marijuana also served as a mood elevator and tranquilizer, but without giving the cancer patients the "high" experience by street users.

The researchers attributed this lack of a high both to the hospital setting and to the fact that the patients did not know what drug they were taking.

Other tests on lab animals indicated that marijuana may have some potential as an adjunct to anesthesia during surgical procedures. Initial studies show, according to the federal report, that use of marijuana as a sedative may reduce the amount of anesthesia needed.

Other research into the usefulness of marijuana as a sedative in treating disorders like insomnia and emotional depression has shown mixed results, but the federal report said further investigation was warranted.

In one study five retarded children with grand mal epilepsy were treated with a synthetic drug based on the active ingredient in marijuana, with results as good or better than conventional medications.

However, animal studies indicate that the anti-convulsive properties of marijuana may be limited by an apparent increase in tolerance for the drug, so that doses must be increased for it to continue to work.

Traditionally, marijuana was used in Western medicine as a treatment for convulsions, chronic pain, opiate and alcohol addiction, and asthma.

Over the past two years, researchers have again been looking at marijuana in the treatment of asthma, on the basis that in normal users, smoking marijuana dilates the major airways into the lungs.

However, scientists are concerned with other findings that smoking can cause respiratory damage. Nonetheless, the report concluded that "further investigation is desirable."

Other studies reported in "Marihuana and Health" indicate that the drug can impair driving ability, temporarily lower male sex hormone level and possibly bring about changes in cell structure that could lead to lowered body resistance to infection or genetic damage.

These hormonal and cellular effects of marihuana—still unconfirmed—could have especially serious effects on either the young adolescent or on the old, the federal report said.

Survey of Marihuana Use—State of Oregon

A majority (58 percent) of the State of Oregon residents favor the elimination of criminal penalties for the possession of small amounts of marihuana. Three out of every 10 Oregon adults approve of their state law that makes simple possession of marihuana a civil "offense"—akin to a parking ticket—carrying a fine but no jail term or criminal record. An additional 26 percent favor changes making sale and/or possession of small amounts of marihuana legal.

Oregon is the first state to abolish criminal penalties for possession of one ounce of marihuana or less and to replace them with a maximum civil fine of $100. The independent Drug Abuse Council commissioned a survey in October 1974—the first anniversary of the new legislation in marihuana usage during that year and to find out what impressions Oregonians have of their new law.

The Oregon survey consisted of 802 personal interviews with adults 18 years or over, representing a balanced sample of the state's population. As might be ex-

pected, young adults—ages 18 through 29—took a more liberal view on the four legal choices regarding sale and/or possession of small amounts of marihuana. The division is sharp between those who either have or currently use marihuana and those who have never used marihuana.

ATTITUDE TOWARD MARIHUANA LAW

[In percent]

	Civil penalties, as is	Possession of small amounts legal	Sale and possession of small amounts legal	Stiffer penalties
Total adults	32	15	11	39
By age:				
18 to 29	36	26	17	19
30 to 44	38	13	8	40
45 to 59	25	13	7	51
60 and over	27	5	9	53
By usage:				
Have used	26	37	29	7
Currently use	14	53	33	0
Never used	33	11	6	46

Two out of every ten Oregon adults have at least tried marihuana, with one out of every ten reporting that they currently use marihuana. Again, a sharp difference in marihuana usage is observed between younger adults and older adults.

MARIHUANA USAGE

Total adults: Have ever used, 19 percent; never used, 81 percent.

By age: 18–29 have ever used, 46 percent; never used, 54 percent; 30–44 have ever used, 15 percent; never used, 85 percent; 45–59 have ever used, 4 percent; never used, 96 percent; 60 and over have ever used, 2 percent; never used, 98 percent.

It appears that the number of individuals using marihuana has not significantly increased in Oregon during the year since it has removed criminal penalties for simple possession of one ounce or less. Nineteen percent of Oregon adults report that they have used marihuana at least once; 9 percent of total adults say that they currently used marihuana. Of those currently using marihuana, only 6 percent reoprt that they have used it for less than one yar, 91 percent for more than one year. All of the less-than-one-year users are between 19 and 29 years of age.

Of those individuals currently using marihuana, a large number report a decrease in usage during the last year, while only a small number report an increase.

Change in marihuana usage

Current users:	*Percent*
Decreased usage	40
Increased usage	5
No change	52

Lack of interest and possible health dangers are the most important reasons chosen for not using marihuana by those who have either never used it or those who have stopped using it. The possibility of legal prosecution and the lack of marihuana availability rank low as reasons for not currently using marihuana.

Reason for not currently using marihuana

Current non-users:	*Percent*
No interest	53
Health danger	23
Possibility of legal prosecution	4
Not available	2
Other reasons	9
Undecided	9

The federal National Commission on Marihuana and Drug Abuse, after an exhaustive two-year study, estimated in 1972 that 26 million Americans had tried marihuana, with 8 million of these using it regularly. The Commission recom-

mended that possession of marihuana for personal use no longer be a criminal offense and that casual distribution of small amounts of marihuana not involving profit no longer be an offense. Oregon is the only state to adopt, in part, this recommendation, although many other states are presently considering it.

"It is disturbing to note the dramatic increase in arrests for simple possession of marihuana," according to Thomas E. Bryant, M.D., President of the Drug Abuse Council. "In 1973 alone, state arrests are reported by the FBI to be in excess of 400,000.

"It seems clear that marihuana has been established as the recreational drug of choice by many Americans, youth as well as adults, and that its prohibition has had little effect upon its availability and use. Other states should take a careful look at what has happened in Oregon since it has removed its criminal penalties for small amounts of marihuana and consider moving in the same direction."

The Oregon survey was conducted by Bardsley and Haslacher, Inc., of Portland, Oregon, a marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues.

The Drug Abuse Councils, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation and research funding in the field of drug use and misuse.

For further information contact: Robert Carr, Carl Akins, Drug Abuse Council, (202) 785-5200.

[From the New York Times, Jan. 29, 1975]

Carey Considers Dropping Harsh Marihuana Penalty

(By Alfonso A. Narvaez)

Albany, Jan. 28.—Governor Carey said today that he was considering the removal of criminal penalties for possession of small amounts of marihuana and replacing them "with a system of fines or mandatory attendance at health clinics" for treatment.

He said that two panels he had appointed—one on health and the other on law enforcement—were studying the entire question of drug abuse with an eye toward a major revamping of the state's stringent narcotic laws, which went into effect in 1973.

The Governor's proposal for an easing of the marihuana statutes, which he first broached during the gubernatorial campaign, came as two Democratic legislators proposed complete legalization of its use by people over 18 years of age. They also called for state control of the raising and sale of marihuana similar to state controls over alcohol.

The two, Senator Franz S. Leichter, of Manhattan, and Assemblyman Alan G. Hevesi of Queens, said at a news conference that they would reintroduce a bill to create a state marihuana control authority to license and regulate growers, producers, manufacturers and distributors of marihuana.

The proposed authority would enforce regulations setting the strength of marihuana, which could be sold at licensed liquor stores, and the state would impose a tax on the product.

The Governor made his comments during a walk to the Camelot Restaurant, for a luncheon speech to members of the Maritime Port Council of Greater New York and Vicinity.

He said that present indications were that judges were dismissing cases involving the use of marihuana because of the severity of the penalties and that the police were not arresting people who had minor amounts of marihuana in their possession.

The Governor quickly added that his proposal for the decriminalization of the possession of small amounts of the drug "does not mean legalization."

Mr. Carey reiterated the theme of what he had said during the campaign, that the state's drug laws had to be revamped "because the law doesn't seem to be working" and because "it is not being enforced."

He said that "any law on the books that is not being enforced becomes a mockery" and that he favored the imposition of "appropriate" penalties for drug abusers, but that he was more inclined toward treatment programs rather than long-term incarceration.

STUDY BEING PREPARED

Governor Carey forecast that the health panel would come up with a program that "would lead youngsters and depressed adults away from the use of drugs." He added that the panel was preparing a comprehensive study of the effects of the use of marihuana, hard drugs and alcohol so as to provide a basis for drawing up the new drug proposals.

The Governor's proposals, when they are offered, are expected to receive a warm reception in the Democratic-controlled Assembly but continued resistance in the Republican-controlled Senate.

Warren M. Anderson, Republican of Binghamton, the majority leader of the Senate, has expressed reservation about changing the present drug laws, saying that such action would be premature. He also said that easing penalties for marihuana might lead people on to experiment with harder drugs, adding that he would have to see exactly what Governor Carey's proposals were before commenting further.

[From Tuesday, Jan. 28, 1975]

CAREY MOVES TO EASE DRUG LAW

(By Josh Friedman)

ALBANY.—The Carey Administration is seeking a major overhaul of the tough drug laws put into effect in 1973 at the insistence of Gov. Rockefeller, The Post has learned.

The Carey plans would include reducing the penalty for possession of marihuana from imprisonment to a fine.

"The judges aren't sentencing people for marihuana possession anymore because of the severity of the law. We want some from of penalties that would work, such as fines," Carey explained in a recent interview.

Since his election, Carey has been working closely with his personal physician and adviser, Dr. Kevin Cahill, to devise a replacement for the current law—which he promised to do during his campaign.

The Administration intends to have the state Dept. of Mental Hygiene prepare a comprehensive study on the effects of marihuana, hard drugs and alcohol as a basis for drawing up its new drug law proposals.

Such proposals, leaning away from punishment and toward medical treatment, are expected to get Democratic support in the Legislature. Their fate among Republicans is uncertain.

In an interview last night, Senate majority leader Warren Anderson, whose support would be crucial, said a change in the current law would be premature.

Anderson also expressed doubt about creating milder penalties for marihuana possession.

"I still think marihuana might open the door to hard drug use, but would have to see more medical evidence. I would want to see what the Governor is proposing before I say anthing," Anderson said.

Assembly minority leader Perry Duryea, denying he was making a pun, said he could not comment on changing the law "until the medical people give us some more dope on the problem."

If New York changes its treatment of marihuana possession, it would be joining a trend in several other states.

The California Legislature is expected to vote within weeks on a law to set a $100 fine for possession of up to two ounces. The bill has the support of Gov. Brown.

Oregon already has such a law. The Vermont, Minnesota and Massachusetts legislatures are considering them. In Nebraska, the penalty for possession of up to one pound of marihuana is seven days in jail.

There is widespread agreement the current drug law does not work.

Because the law does not allow prosecutors to offer reduced sentences for possession of very small amounts of hard drugs, virtually every person arrested has demanded a trial, and the courts are swamped with their cases.

According to Special Narcotics Prosecutor Frank Roger, who enforces the law in New York City, 1297 accused narcotics users or sellers are out on bail in Manhattan alone, a number growing by as much as 200 each month.

"They're out on the streets, so this does not attack the drug problem," Rogers said.

He said the legislature would either have to reduce the harshness of the law or add 30 more judges in the city—at an estimated annual cost of $18 million.

More than 7000 persons were arrested for marihuana use or sale in the city last year. Almost all of those accused were released without jail sentences. Upstate, penalties for marihuana possession are more strictly applied, with some users now serving jail sentences of up to 15 years.

Meanwhile, State Sen. Franz Leichter (D-Man.) is introducing a bill today that would completely decriminalize marihuana possession and set up a regulation system for legalized marihuana sales similar to that governing the sale of alcohol.

Leichter first proposed the law four years ago, when he was hissed on the Assembly floor as he explained it.

"I can't believe my bill will pass this year. I can't believe the legislature is so enlightened," Leichter said, even though, he comments, those who hissed him now favor some lesser form of penalty.

The only other proposal for a change in marijuana penalties is being drawn up by the National Organization for the Reform of Marijuana Laws (NORML). The measure is expected to be sponsored by Assemblyman Richard Gottfried (D-Man.).

The NORML proposal would eliminate penalties for possession of up to four ounces of marihuana, but would not allow use of the drug in public.

Sale of marihuana would be a misdemeanor, carrying a sentence of up to one year in jail. Sale to a minor under 16 would be an E felony, with a sentence of up to four years.

Mr. JAVITS. I ask unanimous consent that a statement by Senator Brooke in respect of the matter may be part of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR BROOKE

Today I have joined Senator Javits as a co-sponsor of the legislation to remove the cruel and unrealistic penalties existing law sets for private possession of marihuana. Irreparable damage is done to the half million people who are arrested on marihuana charges annually. The vast majority of these are very young, and they will have to bear serious criminal records and perhaps even the pain of serving time. Their lives and their futures will thus be devastated. Simple private use of marihuana, which long study has shown is not addictive and does not cause hard drug use, cannot justifiably be punished so severely.

This legislation does not legalize marihuana use. There is still a $100 fine imposed on persons carrying the drug. Furthermore, the sale and distribution of marihuana remain serious felonies punishable by the full weight of the law.

A comparable law has been in effect in the state of Oregon for a year and a half. Careful study by the Drug Abuse Council has shown that the law has the intended effect. Law enforcement agencies are free to pursue more serious drug offenses. There has been no increase in the number of users of marihuana, nor any increase in the amount of the drug used by the people who are already using it. Other state legislatures are currently considering such sane and humane reforms in their drug laws, and I hope many will adopt similar statutes. The time has come for the Federal laws to change.

This is not an easy position for me to take. Many persons will misinterpret the legislation and believe it legitimizes the use of marihuana, although it does not. I am personally deeply repelled by the idea of using any drug. I wish Americans would give all these up together with smoking of any kind. I firmly believe the medical evidence shows marihuana may have harmful long term effects and that it therefore must be controlled like other hazardous substances. My position is that it just does not belong in a legal category with heroine, opium or cocaine, the "hard" or addictive drugs. I do, however, feel that this bill will not lead to any increase in marihuana use and that it provides the first realistic move to control that drug.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. JAVITS. Mr. President, I also ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Marihuana Control Act of 1975.

That the Controlled Substances Act is amended by inserting immediately after section 404 thereof the following new section:

"SEC. 404A. (a) Notwithstanding the provisions of section 308, 401(a)(1), 404, or any other provision of this title or any other Federal law, any person who

"(1) possess not more than one ounce of marihuana within a private dwelling or other residence for his own use, or for the use of others, within any such residence or dwelling, if such marihuana is not possessed with the intent to distribute, transfer, or sell such marihuana in violation of this title or any other Federal law; or

"(2) possess in a public area, not more than one ounce of marihuana if the possession of such marihuana is incident to a private use within the purview of subparagraph (1) of this paragraph, and is not with the intent to distribute, transfer, or sell such marihuana for profit in violation of this title or any other Federal law; or

"(3) distributes or transfers, in public or private, any marihuana lawfully possessed, to any person for a private use within the purview of subparagraph (1) of the first paragraph of this subsection, if such distribution or transfer is not made for profit—

Shall be guilty of an offense, for which such person shall be subject to a civil fine of not more than $100. Such acts shall not constitute crimes against the United States and such person shall not be subject to arrest or suffer any disadvantage or disability except that specified in this section.

"(b) nothing in this section shall be construed as requiring the Attorney General to initiate proceedings involving violations of this section whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

"(c) In the prosecution of any person charged with an offense in violation of any Federal law, the fact that such person was suffering from marihuana intoxication at the time of the commission of that offense shall not be a defense to that charge or any element thereof, unless such intoxication was not self-induced.

STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am delighted to have an opportunity to testify before your committee on the decriminalization of marihuana use. As a principal sponsor, along with Senator Javits, of S. 1450, the Decriminalization of Marihuana Act of 1975, I am very pleased that this issue is being given a full airing by the Judiciary Committee's Subcommittee on Juvenile Deliquency—and so soon after we introduced the bill on April 17, 1975.

As you know, S. 1450 would remove the criminal sanctions in Federal law applying to the possession of small amounts of marihuana, and make the offender subject to a civil fine of not more than $100. Arrest for violations of the offense would be prohibited. The bill would not change the Federal law regarding criminal penalties for the sale of marihuana for profit, or for possession of more than 1 ounce.

Under present Federal law, marihuana offenses can be treated either as a felony or misdemeanor, depending on whether or not the defendant intended to sell the drug. Thus, even though a conviction for simple possession without intent to sell is a Federal misdemeanor, a defendant often ends up with a felony arrest record.

The legislation Senator Javits and I have introduced proposes a moderate reform of our outmoded laws on the possession of small amounts of marihuana. The state of Oregon took this approach in 1973. Similar legislation has passed the State Senate in California and is pending in over twenty other state legislatures. Public opinion polls show growing support for decriminalization.

The time has come to legislate like it is. When we brand as "criminal," private behavior which has become socially acceptable, we undermine the credibility of law and justice in our Nation. To brand as a criminal act private conduct 29 million Americans at one time or another have engaged in, perpetuates an ivory tower approach to criminal justice.

According to the FBI, more than one million persons have been arrested for marihuana offenses in this country in the last four years. Eighty-eight percent were young adults under the age of 26; 62 percent were under the age of 21. Furthermore, ⅔ of all marihuana arrests were for possession of one ounce or less.

I can think of no area of criminal law where so-called crime and punishment are in such imbalance. Hundreds of thousands of young lives have been marked indelibly with criminal arrest or conviction records for the simple possession of marihuana. The injustice is compounded every time one of these young people sits down to apply for a job, membership in a professional organization, or even a driver's license.

For those punished with prison terms and denied civil liberties, the tragedy is deeper and the scars even greater.

In California alone, each marihuana arrest costs enforcement authorities approximately $1,400. At this rate, California spends more than $100 million annually trying to enforce unenforceable marihuana laws. The costs nationally are probably in excess of $600 million. In addition, marihuana prosecutions jam our courts, thereby effectively prohibiting due process of law for thousands of other cases and undermining by delay the deterrent effect sought by our criminal justice system.

This legislation proposes an important step toward restoring a reasonable balance between an individual's right to be free from government interference in private matters and society's right to protect itself from activities clearly detrimental to the common good.

In sponsoring this legislation, I am cognizant that the health hazard of marihuana use remains controversial. Several research findings reported in the past year have pointed to possibly damaging consequences for heavy users. However, much of the research conducted to date, according to Dr. Robert DuPont, Director of the National Institute of Drug Abuse (NIDA) and the Special Action Office on Drug Abuse (SAODAP), "is of a preliminary nature . . . (and) some of the findings are frankly contradictory." There is accumulated evidence in one area—the effect that marihuana use has on driving—which does demonstrate that marihuana has a detrimental effect. But findings dealing with reduction in marihuana smokers' immunity system to disease, or lowered production of the male hormone testosterone, are not conclusive. In fact, according to Dr. DuPont's November 1974 testimony, other studies attempting to duplicate these findings have produced different results.

It should be stressed that the National Commission on Marihuana and Drug Abuse, when they recommended decriminalizing the user in 1972, did not presuppose marihuana would be harmless. And several members of the Commission have reiterated their conclusions since the Eastland hearings last fall.

"No drug is totally safe or harmless. In a sense, there is no human activity which is totally harmless. However, it is my opinion that marihuana involves only a minimal risk of harm to the user. Clearly the potential harmfulness of marihuana to the user is on a much lower order of magnitude than the potential harmfulness of such other drugs as alcohol, tobacco, amphetamines, barbiturates, and hallucinogens." J. Thomas Ungerleider, M.D., Presidential Appointee to the National Commission.

"Since publication of the Commission's Report in March 1972, numerous studies have been reported, some suggesting that the dangers from marihuana are far greater than the Report indicated, others demonstrating that its use produces relatively little harm. In short, work in the last two years has not fundamentally changed the data base on which the recommendations were made." Dr. Dana Farnsworth, Presidential Appointee to the National Commission.

While marihuana may not be harmless, it certainly presents far less of a health hazard when used to excess than does alcohol, tobacco, and a host of other drugs available in our society. Any risk to the user falls within the ambit of choice the informed individual should be allowed in a free society. So long as the research results warrant it, we should warn against the use of marihuana, but we should not criminalize those who choose to ignore our advice.

It has been over 3 years since the National Commission on Marihuana and Drug Abuse urged decriminalization. So I don't in any way underestimate the difficulty of our task.

Simple justice is never simply achieved. But we owe it to our young people and we owe it to society as a whole to make this fight. I can think of no other single action which would more enhance the credibility of our criminal justice system and our overall law enforcement efforts. And I can think of no other single act which would more symbolically reach out to our youth, to tell them that our eyes and ears are open; that we are trying to conform our laws to what we see and hear, and to remove one unnecessary and heavy-handed governmental incursion into individual freedom.

Enactment of this legislation is one important way to rebuild faith in our government of laws so recently shattered by the harsh hypocrisies of Watergate.

MATTHEW F. MC HUGH
27TH DISTRICT, NEW YORK

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July 9, 1975

Hon. Birch Bayh
United States Senate
363 Russell Senate Office Building
Washington, D. C. 20515

Dear Senator Bayh:

Mr. Ronald Gaetano, Director of the Broome County Drug Awareness Center in Johnson City, New York, has recently written you requesting an opportunity to have an input in your hearings on the marijuana bill, S. 1450. I personally know Mr. Gaetano and believe he is very knowledgeable about the drug abuse problem.

I would appreciate it if you would give his request every consideration.

With regards.

Yours truly,

Matthew F. McHugh

MFM:dmm

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Edwin L. Crawford, County Executive
Ronald J. Gaetano, Director

July 21, 1975

Senator Birch Bayh, Chairman
United States Senate, Committee on the Judiciary
Subcommittee to Investigate Juvenile Delinquency
Washington, D.C. 20510

Dear Senator Bayh:

Thank you for your response to my letter of June 23, 1975. Although I appreciate you having our report added to the files on Drug Thoughts for research, your response did not address my inquiry regarding how I might offer input regarding the Senate hearings on the Marijuana Bill S1450. Congressman Matthew F. McHugh, 27th District, New York, informed me that the Subcommittee on Juvenile Delinquency of the Judiciary Committee, which you chair, is conducting the hearings. I believe you have received a letter from the Congressman substantiating my credibility. As I stated in my previous letter, if there is some reason I could not offer oral testimony to these hearings, I would at least like to submit a written statement for the record. Please advise me as to what steps I might take to arrange this.

Thank you for your consideration.

Respectfully,

Ronald J. Gaetano
Director
Broome County Drug Awareness Center

CC: Congressman Matthew McHugh

RJG:smp

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Edwin L. Crawford, County Executive
Ronald J. Gaetano, Director

August 18, 1975

Senator Birch Bayh, Chairman
United States Senate, Committee on the Judiciary
Subcommittee to Investigate Juvenile Delinquency
Washington, D.C. 20510

Dear Senator Bayh:

Thank you for your invitation to submit this letter regarding the concerns we have with the decriminalization of marijuana bill, S-1450.

A quick review of that bill will show that the chief impetus behind it is to prevent "the indiscriminate wrecking of people's lives and careers" as a result of the hundreds of thousands of arrests relating to marijuana.

The evidence presented to support decriminalization all sounds very good; of course a new means of dealing with marijuana use must be substituted and Senator Javits states that the civil fine approach, which he believes has met with "demonstrated success" in Oregon, should be implemented. Senator Javits does not go into detail in discussing the "demonstrated success" in Oregon. He does say that:

Forty percent of the respondents who said they had used pot said they decreased their consumption while only five percent reported increased use. There is no mention of how many people are now using marijuana who did not use it before its decriminalization. This figure would be interesting since <u>there was a 63.1% increase in arrests for marijuana after it was decriminalized</u> in Oregon although the police were devoting no additional effort toward enforcing the marijuana laws. (Report Enclosed - I) Since those who were using marijuana prior to its decriminalization report an overall reduction in their use, the logical deduction is that there are <u>many</u> new marijuana users since the drug's decriminalization. This fact should make a reasonable person question Senator Javits' statement that the present law is clearly ineffective as a deterrent.

We would think that if the objective of S-1450 is to <u>decrease</u> the number of arrests for marijuana, then the Oregon experience which demonstrated a substantial <u>increase</u> in those arrests

would show that the bill is, in fact, counter-productive. How Senator Javits can substantiate his statement that this type of bill would eliminate 90% of the marijuana arrests is, in light of the Oregon report, beyond our statistical reasoning. Although we would hope that this very plain fact would be enough to warrant the scrapping of that bill, we would like to address other concerns we have regarding it. First, so that you understand our philosophy, we would like to make several statements that we are sure you can agree with.

- We are both opposed to harsh laws that put non-threatening users of marijuana behind bars.

- We are both opposed to the use of marijuana by the young (under the age of 18).

- We are both opposed to those people who deal with and sell marijuana in large quantities.

1. One of the problems we have with S-1450 is its failure to provide any measures for keeping marijuana out of the hands of the young. In introducing the bill, Senator Javits quoted statistics showing that 53% of all 16 and 17 year olds know someone who has been arrested for possession of marijuana and that 62% of all those persons arrested for marijuana possession in the past four years are younger than 21. The questions that these statistics should prompt are: "How many of those arrested were under the age of eighteen?"; "How prevalent is marijuana use by those under the age of 18?"; "What percentage of the new users of marijuana in Oregon are under the age of 18?" Nationwide research shows that drug usage is continuing to spread into younger age brackets. For the nearly 250 persons referred to our criminal justice program this past year, over 42% were seventeen or younger! Although over 90% of the referrals from the criminal justice system to our program were charged with possession of marijuana, 63% of these referrals admitted they had used more drugs than just alcohol and marijuana and 44% were currently using other drugs in addition to marijuana and alcohol. Polydrug use is widespread among persons using marijuana. Indeed, the Oregon report notes that <u>since the decriminalization of marijuana there has been a corresponding increase in the use of other drugs as well as with marijuana.</u> The enclosed report (II) shows the high percentage of referrals to our program involved in polydrug abuse. All these facts should be taken into consideration when evaluating Senator Javit's statement that "the overwhelming majority of users do not progress to other drugs." Additionally, although we make no pretense that use of marijuana or any other drugs <u>causes</u> one to advance to use of narcotics, our figures (III) show that individuals we have worked with who are using narcotics have a long history of non-narcotic polydrug use before their involvement with narcotics.

2. We assume you realize that there are some people who cannot handle marijuana just as there are some people who cannot handle alcohol. For every quote Senator Javits offers espousing the harmlessness of marijuana, we can provide a statement to the

contrary and can document cases in which people have encountered problems. Although we are sure you have read many reports regarding marijuana, we are enclosing two more which should be of interest to you (IV - the first is particularly relevant). The Oregon report did not report on any change in health-related problems, either emotional or physical, as a result of the decriminalization, and subsequent increase in the use, of marijuana. Perhaps such statistics would take several years to compile; however, it is our belief that such a study would show an increase in these problems. The fact that, as Senator Javits points out, "casual marijuana usage is so common" does not mean that since its usage is popular that there are no problems with marijuana. Our history of problems with the two most widely accepted drugs in our society, alcohol and tobacco, should have taught us that. We challenge Senator Javits' statement that marijuana is a device for avoiding reality for "only a small number." We think research would show that a large percentage of users, particularly among the young, use marijuana and other drugs specifically for that purpose.

3. Although Senator Javits is opposed to legalization because it would "institutionalize marijuana and give it the status of official approval, thus making its use more inviting and widespread," it is obvious that the decriminalization of marijuana in Oregon has had the same effect. The deterrent effect of any law is difficult to measure; however, the fact that the use of marijuana has increased substantially in Oregon since its decriminalization demonstrates the law did have a substantial deterrent effect. Additionally, the very fact that possession of marijuana is illegal provides the youngster with another reason to resist peer pressure to experiment with it.

4. Senator Javits is evidently very concerned with the disrespect for the criminal justice system which has been fostered by harsh laws against marijuana. We concur but question whether the appropriate corrective measure shouldn't be a reduction of the penalties rather than the outright decriminalization of marijuana. While he attempts to mitigate the illogical factor in applying decriminalization only to the user, leaving penalties against the seller, (he reminds the reader that this "Catch 22" is consistent with our handling of other "victimless crimes" such as pornography, gambling and prostitution), that factor is inherent. Certainly he could not deny the disrespect that is generated for those other "victimless crimes" despite their decriminalization for the "user" of the service. The disrespect for the law would no doubt be just as great, if not greater, due to increased arrests as a result of the decriminalization of marijuana (as has happened in Oregon).

5. It seems to us that if Senator Javits' bill was to be considered despite its obvious shortcomings, that something more appropriate than a civil fine could be used. Everyone agrees the public should be educated regarding the possible dangers of the drug so why not at least institute a policy of mandatory attendance at a "health clinic" for violators, as suggested by Governor Carey of New York. As you know, our agency has been,

in effect, providing this service for Broome County and the results have been impressive.

6. S-1450 refers to certain quantities of marijuana (e.g. - one ounce) without mentioning the T.H.C. (the psychoactive drug in marijuana) content. We are very aware of the ability of those who deal in drugs to adapt to loopholes in the law and there are already procedures for extracting a potent percentage of T.H.C. from cannabis sativa in order to carry it in small amounts. There is a drug around currently called "Number One" which is made in this way and which averages 65% T.H.C. (a normal marijuana plant may have around 1% T.H.C.; See V). Individuals using this drug have had trouble all too often with LSD-type reactions.

Without controlling the potency of the drug you are not effectively controlling the true amount an individual possesses.

7. Bill S-1450 has no provisions for the problem of dealing with drivers under the influence of marijuana. Oregon officials admit they have a problem in this area since there is no known standard for marijuana intoxication and no test to indicate when the defendant is under the influence of marijuana. Yet studies have shown that use of marijuana alters depth perception and does affect one's driving abilities. Oregon is side-stepping the issue by charging those possessing less than one ounce or for using marijuana when the intoxicated individual is encountered on the highways. (They do not say how they know he is intoxicated). But is such a charge sufficient if a driver, intoxicated by the use of marijuana, is responsible for an accident and subsequent loss of another's life? Clearly a solution needs to be found before marijuana is decriminalized and usage increases.

We feel that we should offer an alternative to S-1450, as we feel it is a very inept solution to a very real problem.

In our recent experience we have found that the jailing of persons for possession of small amounts of marijuana is the exception rather than the rule. We realize our awareness of practices is necessarily limited since such practices, at least as they stand in law, vary widely. However, in Broome County, and in New York State in general (which is known to have one of the toughest drug laws in the nation) we have a procedure by which persons arrested for possession of small amounts of marijuana almost always receive an Adjournment in Contemplation of Dismissal, at least on the first charge. This "ACD" allows for a probationary-type period of up to a year in which the individual must stay out of trouble and abide by the stated conditions. If the individual abides by the conditions of the ACD all records of his arrest are destroyed, and therefore, he is not labelled as a criminal for the rest of his life. In this county, one of the conditions has often been attendance at our program at the Drug Awareness Center. Our program, on an out-patient, drug-free basis, consists of a drug and law educative process and of individual "counseling" which is essentially a joint venture in problem solving. The Center offers such services as emergency food, clothing and shelter, job placement, tutoring, etc. in an attempt to meet all of our clients' needs. We have had documented success in substantially reducing drug use with two-thirds of these clients. The Center is a com-

munity agency which depends in large part on volunteers and is therefore fiscally responsible. A system of this type avoids arrest records yet at the same time maintains the illegality of marijuana and addresses the needs of those abusing drugs.

The answer to the dilemma over marijuana is not decriminalization. An editorial in the Washington Post on 11/18/74 entitled "The Limits of the Criminal Sanction" (included in S-1450) states that: ".....decriminalization should be recognized for what it is. It is a politically delicate way of saying you are taking a first step toward the day marijuana will be legal...If there is merit in relaxing the rules on possession, simple logic dictates that it makes sense eventually to legalize its sale and use and control its quality."

This statement seems quite reasonable. The problem with decriminalization then is crystallized when one reads on to the next article in S-1450, "Shifting Emphasis on Pot", an editorial from the Buffalo Evening News, which states that:

> "....legalization would imply a social tolerance equivalent to that of liquor, and this is not warranted by the present ambiguous medical evidence."

Why are we going to decriminalize marijuana when it is a step toward legalization which we are not willing to support and when, in fact, decriminalization itself will imply a social tolerance of marijuana as shown by the Oregon experience?

We suggest that the federal government take the initiative by reducing penalties for possession of less than one ounce and implementing a policy of referral to a health/education program under the criminal law. We cannot be swayed by those mis-informed or selfish people who would handle marijuana as alcohol is currently being handled. Everyday we read about the immense alcohol problem which is prevalent in this country; do we want to repeat our past mistakes?

The marijuana issue should be approached slowly and cautiously and we should, in Senator Javits' own words, "continue to look for potential ill effects from the use of marijuana, especially with chronic, heavy use".

If, after all the evidence is in, it is decided that marijuana is not sufficiently harmful to be illegal, it should be legalized, not decriminalized. For, as pointed out in this paper, decriminalization in Oregon has not only involved more people in the criminal justice system but has also introduced more people to another psychoactive drug and one we are not yet fully knowledgeable of.

Senator Bayh, we realize decriminalization is quite popular politically, or at least seems to be. But we think you will act on the evidence and, in our opinion, (and as the polls demonstrate) there is a silent majority who are not in favor of completely discarding the criminal law regarding marijuana.

If you truly believe that marijuana is harmless enough to warrant the dropping of the criminal law against it, we would urge you then to pursue its legalization. Decriminalization in our opinion is a "cop-out" and, rather than solving anything, will merely aggravate the problem. If the time ever does arise for legalization of marijuana we would like to offer you a means for regulating marijuana traffic and sale in a way which we hope would be more efficient and responsible than the way we have handled alcohol. However, from the problems we have seen as a result of marijuana use and in light of the growing body of medical evidence against the drug, we do not believe the criminal law should be dropped.

Thank you for your consideration. If you desire any more input from us, or would like clarification on any of the points we have made, please contact us. We would also be willing to offer verbal input for your subcommittee's hearings on this matter.

Sincerely,

Ronald J. Gaetano
Director

David J. Dooling
Administrative Supervisor

cc: Governor Hugh Carey
Senator Jacob Javits
Congressman Matthew McHugh
Assemblyman James McCabe
Assemblyman James Tallon
Richard Parsons, Associate Director, White House Domestic Council
Carl Atkins, Senior Program Officer, Drug Abuse Council, Inc.
Michael Benjamin, National Association of Counties

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

FOR IMMEDIATE RELEASE
12:00 NOON E.S.T.
OCTOBER 8, 1975

"YOUTH AND CRIME RESISTANCE"

AN ADDRESS

BY

CLARENCE M. KELLEY

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

AT A LUNCHEON

SPONSORED BY ATLANTA METROPOL

ATLANTA, GEORGIA

OCTOBER 8, 1975

It is a pleasure to be in Atlanta again and especially to visit with our partners in the Crime Resistance Program in De Kalb County. Each time I am in the Atlanta area, the hospitality of the people makes me feel more at home.

What makes this occasion particularly pleasant is that I have the opportunity to address others in the law enforcement profession as well as the distinguished community leaders who are present today.

It is hardly necessary to mention to this audience that cooperation is essential to the fight against crime.

The successes achieved in the Atlanta area through Metropol are a splendid example of the fact that we in law enforcement have learned to work together and have been rewarded with significant results.

But law enforcement alone, despite the professional level it has achieved and the sophisticated equipment and techniques it employs, can do little more than keep crime from rising at an even greater rate.

We will experience a reduction in crime only when every American pitches in to work shoulder to shoulder with their police to accomplish this end. A united front is the key to crime reduction.

It is this message that we are hoping to spread through the Crime Resistance Program--the joint endeavor of the FBI, the Police Foundation, and police departments in four communities, including your own De Kalb County.

The FBI is involved in this program because we are concerned about the effect that crime is having on the quality of life in this Nation.

Uniform Crime Reports figures released just a week ago reflected that serious crimes increased 13% during the first half of 1975 over the corresponding period a year ago.

Recent public opinion polls reflected that crime heads the list of those problems of concern to the American public.

And particularly distressing is the fact that too often it is our young people who are victimized. Violent crimes--robberies, assaults, extortions, homicides--strike our children even in their schools.

These are indications that we are losing the fight against crime and we have no alternative but to try in new ways to reverse this trend.

We in the FBI chose not to sit back idly and adopt the attitude that the type of crime which is of most concern--street crime--is for the most part a matter outside our jurisdiction and therefore not our responsibility.

We elected instead to contribute what influence and expertise we could to an effort to mobilize Americans against crime.

The FBI does not in any way seek to extend its jurisdiction into that reserved for our states and municipalities. I am dead set against any program which would constitute a step toward nationalizing police.

Our objective is to provide assistance in creating the impetus for a sustained effort to convince citizens they must work with their police to fight crime at the community level.

On both the national level and the community level, we must promote the idea that there are things each citizen can and must do to reduce crime.

First, it is necessary for each of us to practice crime safety to avoid becoming the victims of crime.

Crime safety begins with an analysis of our individual vulnerabilities to crime. These must be determined according to the types of crime peculiar to our community and the segment of the population to which we belong--women, children, elderly persons, for example. It is particularly helpful to seek information from local crime prevention programs as to the types of crimes to which we must be most alert.

Once we have determined our vulnerabilities, we must be wary and adopt preventive measures so that

we do not fall victim to these crimes. Many of these preventive measures are the products of common sense but many others can be learned through local crime prevention projects which disseminate such information.

I think that it is particularly desirable that we practice crime safety as a family by holding family councils. In this way the vulnerabilities of the family as a whole and those of the individual members can be discussed along with preventive measures to be employed.

The crime resistance programs to which I have been referring should be conducted under the auspices of the local police departments because of the expertise they can provide.

A number of these programs already exist and have been very successful, but many more people must participate in these programs. Moreover, where such a program does not exist, citizens should insist that one be initiated.

These community programs can help not only in promoting crime safety but also in helping citizens to learn another way in which they can act to reduce crime. That is to participate in a responsible fashion with their police in the law enforcement process.

All of us should understand that we must assist in investigations, report suspicious activities, and testify as witnesses when the need arises. These are civic duties--duties which must be performed if we are to keep our communities safe.

Through community programs, citizens can learn the types of suspicious activity they should report, to whom they should report this activity, and the way to obtain useful descriptions of suspects.

A third thing that we all must do in order to reduce crime is to familiarize ourselves with the functions of each element of the criminal justice system. Only through such an understanding can we as citizens effect useful changes if we believe that any one of these elements is failing to deal effectively with crime and criminals.

For example, we should begin to concern ourselves more with recidivists or career criminals. These individuals commit a substantial portion of our crime despite repeated efforts to rehabilitate them.

I believe that we will all begin to realize that the criminal justice system must discover more effective ways of dealing with such criminals.

The need for desired changes in the criminal justice system must always be brought to the attention of those in Government who can effect such changes.

As an essential aspect of the Crime Resistance Program, two police officers and two FBI Agents are working under the direction of the chiefs of police in each of four communities.

They are attempting to elicit citizen participation in a community effort to reduce a specific type of crime--trafficking in stolen property in Birmingham, Alabama; crimes against women in Norfolk, Virginia; crimes aginst the elderly in Wilmington, Delaware; and, of course, crimes against youths in De Kalb County.

In the De Kalb County project, under the direction of Chief Hand, we have a fine example of what can be done when we all work together as members of a community and as Americans. The county government, the school system, civic organizations, and individual citizens are all pitching in to meet the challenge.

I am particularly gratified that in De Kalb County young people are being viewed as victims. Normally, because of the proportion of crime committed by youths, we have a tendency to emphasize their role as offenders.

When I was a youth growing up in a small town near Kansas City, we didn't worry about crime because it was something almost foreign to us. Now even in the

small towns our young people have reason to fear crime. Maybe we can't reduce crime to the level of yesteryear, but for the sake of our children we should certainly make every effort in that direction.

The effect of crime on youthful victims is particularly great. Fear and a loss of self-esteem--the latter often a consequence of crimes such as sex offenses--are the obvious results.

But over and above these, I think that in many cases crime has an even more insidious effect on young victims. There is a real danger that as they are victimized they will begin to view crime, or at least certain crimes, as an acceptable form of behavior.

A friend who is an educational psychologist told me of a study done in a school located in a disadvantaged area. The study concerned the extortion of money by older or larger children from others.

Through the study, it was discovered not only that a great percentage of the offenders were unaware that they were doing anything wrong, but that many had previously been victims of such extortions. They had come to believe that these extortions were permissible activity in which they could engage when they were old or large enough to do so.

We must come to understand these attitudes and to see that our young people are exposed to influences which will enable them to form a sense of right and wrong along with a respect for life under law.

The causes of crime are many but I believe that chief among them is an unfortunate lack of the stabilizing influences to which the previous generations were exposed.

Whereas the family, the church, and the school once provided this stabilizing influence to a great degree, there are now many other elements--particularly in the area of entertainment--which have a profound influence on our children. Unfortunately, much of this influence is not good.

Many of our crime problems will disappear when we see a return to a closer family unit wherein the principles of ethics and the law are fostered, to be bolstered thereafter by training received in our churches and schools.

Our young people are impressionable and carry the values they learn with them throughout their lives. We must do more than talk to them, we must set an example.

Through our examples, young people can first learn the value of crime safety.

They can learn, too, how they might act as responsible citizens and act together with their police in the law enforcement process.

Young people should, for example, be shown that they must report crimes. They must understand that in doing so they increase the chances that the perpetrators will be caught and prevented from victimizing others.

Finally, our youth can be taught to take an interest in the criminal justice system so that they are in a position to understand its operation and later to assess its performance.

Our young people must learn to resist crime. Our future, and more importantly, their future, depend on this.

We must insure that our children learn to avoid becoming victims while they are growing up as responsible Americans.

The project in De Kalb County holds great promise as an example for others to follow in furthering this ideal.

WILLOUGHBY, OHIO, *February 28, 1975.*

HON. BIRCH BAYH,
Chairman, Subcommittee To Investigate Juvenile Delinquency, U.S. Senate, Washington, D.C.

To Whom It May Concern:

I write my feelings as a father of a 20-year-old son who has fallen victim to an imperfect system of justice. The time is a few hours after my son, Jimmy, was sentenced to prison. Perhaps I am still in shock!

The incredible punishment visited upon my son is wholly irrational and disproportionate to the imprudent, foolish, and victimless act of a 20-year-old boy. (An informer for the Lake Geauga narcotics unit asked Jimmy, as a friend, to obtain an ounce of marijuana for him. Unfortunately, Jimmy did so and when his so-called friend showed up to receive it, an undercover agent was with him. By exchanging the ounce for what he paid for it, Jimmy technically committed a crime).

While the court has called my son a criminal and has sentenced him to from one-to-five years in prison, he has the consolation of knowing that his parents, seven brothers and sisters, relatives, friends, and understanding neighbors in no way consider him to be a criminal. Immature and foolish? Yes! Criminal? No!

Should I, as a father, feel a sense of shame or responsibility for a son caught in an activity engaged in by a vast number in his peer group? I think not! Many parents reading this will silently say, with a sigh of relief, "there but for the grace of God go I."

As long as none of our children commits a malicious act, causing harm or injury to others, then my wife and I take satisfaction in knowing that our children have been responsive to our example and teaching.

My most intense feeling is one of righteous anger with a system which allows a punishment which inflicts real harm and injury on Jimmy who has harmed no one and who lacks the capacity to do so. I worry about how this traumatic experience will affect Jimmy. I believe he has the strength to endure it for a while, but I am not sure for how long.

I now also worry about Jimmy's brothers and sisters and their attitude toward the law! As they see their brother sentenced to jail they also see a motor company official and a judge, charged with drunken driving, given their freedom to drink and drive again . . . perhaps killing someone the next time. If the judge, the corporate executive, and my boy were made to spend thirty (30) days in jail they undoubtedly would be more cautious and prudent in the future, society in general would be better off, and my children would be impressed with a system of justices designed to correct or discourage reckless anti-social behavior.

As a father who, in his every act, has tried to exemplify the virtues of liberty and justice for his children, I fear my children's view of justice as applied to their brother will undermine my example and cast me as a harmless Don Quixote!

Victims of this imperfect legal system are a small minority and, like all minorities, lack a spokesman. Correcting the system is a prime responsibility of bar associations, but most lawyers are either too busy handling cases on an ability-to-pay basis or striving for a judgeship to leave them much time to devote to this work of civilization. Perhaps hope lies in those few law schools which still teach the philosophy of law along with its principles and practices.

Tragic as we consider Jimmy's plight to be, I know there are many more victims suffering far greater injustices. My heart goes out to them and to their parents.

I am completely helpless! I have neither wealth nor means to protect or save my son from the heavy hand of society's police power. There is, however, no power on earth which can strip my son of the love that his family and friends have for him. It is this love which I pray will help Jimmy tough it out!

These are my feelings which I had to get out of me by expressing them in writing. Perhaps the reading of them by a few with time and money will prompt them to help correct this system which harshly punishes young people who have harmed no one!

ROBERT P. WOODMAN.

Part 2—The History, Development and Current Status of Marijuana Control Policy

VIRGINIA LAW REVIEW

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THE FORBIDDEN FRUIT AND THE TREE OF KNOWLEDGE: AN INQUIRY INTO THE LEGAL HISTORY OF AMERICAN MARIJUANA PROHIBITION

Richard J. Bonnie & Charles H. Whitebread, II***

Mr. Snell. *What is the bill?*

Mr. Rayburn. *It has something to do with something that is called marihuana. I believe it is a narcotic of some kind.*

Colloquy on the House floor prior to passage of the Marihuana Tax Act.

*Assistant Professor of Law, University of Virginia. B.A., 1966, Johns Hopkins University; LL.B., 1969, University of Virginia.

**Assistant Professor of Law, University of Virginia. A.B., 1965, Princeton University; LL.B., 1968, Yale University.

We wish to express our sincere appreciation to the students who assisted us in the preparation of the tables at Appendix A. Because the drug statutes of the several states are particularly confusing and difficult to find, and because so many jurisdictions have recently changed their drug laws, the preparation of the chart required long, tedious work which so many were kind enough to perform. To them, our most sincere thanks.

We should like to thank especially Michael A. Cohen, John F. Kuether, W. Tracey Shaw, Alan K. Smith, and Allan J. Tanenbaum, all students at the University of Virginia School of Law, whose research assistance and tireless effort were invaluable.

We are particularly indebted to Professor Jerry Mandel who supplied us with much of the raw data used in the historical case studies in this Article. In his excellent article on drug statistics in the *Stanford Law Review, Problems with Official Drug Statistics*, 21 STAN. L. REV. 991 (1969), Professor Mandel suggested in a footnote that someone should attempt a history of the passage of anti-marijuana legislation. We have followed his suggestion and earnestly hope that our product will fill this gap.

A modified and expanded version of this Article will be published in book form in the spring of 1971.

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I. Introduction

LAW may be rooted in fiction as well as fact. Indeed, a public policy conceived in ignorance may be continuously reaffirmed, ever more vehemently, so long as its origins remain obscure or its fallacy unexposed. Yet once a spark of truth ignites the public opinion process, the authority of time will not stay the flames of controversy. In stable times the policy may soon be reversed or modified to comport with reality. In volatile times, however, a single controversy may lose its urgency. Fueled by flames generated by related public issues, the fire may spread; truth may again be consumed in the explosive collision of competing cultural ideologies.

So it has been with marijuana.[1] Suppressed for forty years without significant public attention, the "killer weed" has suddenly surfaced as the preferred euphoriant of millions of Americans. Hardly a day passes without public exposure to propaganda from one side or the other. Hardly a day passes without arrests of newsworthy figures for violations of marijuana laws. Before legislatures and courts, the law is attacked and defended with equal fervor. Sociological, medical and

[1] Throughout its tumultuous history, the common name of the cannabis drug has been spelled in numerous ways—marihuana, meriguana, mariguana, marijuana. We will use the last spelling because it appears most often in modern publications and conforms more nearly to the Spanish.

police testimony regarding the drug's effects is delivered feverishly to an attentive public.

Yet, apart from some expedient peripheral actions, little has been done. Detailed studies have been commissioned, but there has been no significant reconsideration of basic assumptions. Because the marijuana issue has become ensnared in broader social polemics, it has been stalemated. Stability and change, defiance and repression, hippieism and middle-Americanism, "law and order" and protest politics define the cultural milieu of which the marijuana issue is viewed as but a symptom.

This Article is motivated by twin concerns: that the flagrant disregard of marijuana laws bespeaks a growing disenchantment with the capacity of our legal system rationally to order society, and that the assimilation of the marijuana issue into larger social conflicts has consigned the debate to the public viscera instead of the public mind. Through a historical analysis of the marijuana laws we hope to refocus the debate. An understanding of the origins of the laws might modulate the challengers' hostile accusations and at the same time promote in legislators an awareness of their own responsibility.

For the purposes both of description and evaluation, law is inseparable from the process by which it is adopted and the values it manifests. Accordingly, our history focuses both on the public policy formation process and on evolving patterns of our culture. With respect to policy formation, marijuana's legal history is a significant illustration of the interaction of the public opinion, legislative and judicial processes, and, in a broader sense, the relation between folkways and stateways. With respect to its value-content, the evolution of marijuana policy reflects quite precisely emerging cultural attitudes toward pluralism, privacy and individual pursuit of pleasure in an increasingly mechanized and depersonalized technological society.

II. The Antecedents: Criminalization of Narcotics and Alcohol

The restrictive public policy with respect to marijuana, initiated in the late twenties and thirties and perpetuated to the present day, has never been an isolated phenomenon. At each stage of its development marijuana policy has been heavily influenced by other social issues because the drug has generally been linked with broader cultural patterns. Particularly at its inception, nationwide anti-marijuana legis-

lation and its fate in the courts were inseparably linked with the earlier anti-narcotics and prohibition experiences. In fact, the facility with which marijuana policy was initiated is directly related to the astoundingly sudden and extreme alteration of public narcotics and alcohol policy between 1900 and 1920.

In 1906 there were only three dry states, and judicial precedent abounded for the proposition that the right to possess alcohol for private consumption was an inalienable right. Yet, by 1917, twenty states had enacted prohibitionary legislation and most others were contemplating it. Two years later the eighteenth amendment and the Volstead Act had been enacted, and it was a federal crime to possess alcohol even for the purpose of drinking it within the home. Similarly, in 1900 only a handful of states in any way regulated traffic in narcotic drugs—opium, cocaine, morphine and heroin—even though all but heroin had been available for a decade or more. Yet, by 1914, all states had enacted some type of prohibitionary legislation, and the national government had enacted the Harrison Narcotic Act.

There were many major differences between the temperance and anti-narcotics movements. The temperance movement was a matter of vigorous public debate; the anti-narcotics movement was not. Temperance legislation was the product of a highly organized nationwide lobby; narcotics legislation was largely ad hoc. Temperance legislation was designed to eradicate known evils resulting from alcohol abuse; narcotics legislation was largely anticipatory.

On the other hand, there were striking similarities between the two movements. Both were first directed against the evils of large scale use and only later against all use. Most of the rhetoric was the same: These euphoriants produced crime, pauperism and insanity. Both began on the state level and later secured significant congressional action. Both ultimately found favor with the courts, provoking interchangeable dissenting opinions.

We do not propose to unearth new truths about the events of this period. However, we do believe that a familiarity with the political and judicial response to the alcohol and narcotics problems is essential to an understanding of the eventual suppression of marijuana. We believe further that an understanding of the relation between public opinion and any sumptuary law is germane to a discussion of the predicament of current marijuana legislation. Finally, since much of the current debate about marijuana is focused on its harmful effects as

compared with those of narcotics and alcohol, the evolution of public policy in those areas is particularly material.

A. A Review of the Temperance Movement

Although aggressive prohibition campaigns had been mounted in every state in 1851-69,[1] and again in 1880-90,[2] in 1903 only Maine (1884), Kansas (1880) and North Dakota (1889) were completely dry states.[3] Ernest Cherrington, the chronicler *par excellence* of the Prohibition movement, blamed the failure of the first thrust in part on the intervention of the slavery question, which siphoned the moral fervor of the people from the temperance movement.[4] The failure of the second campaign he attributed to the inability of the prohibition activists to compete politically with growing liquor interests that dominated state and local governments.[5]

By 1906, however, the progress of the anti-saloon arm of the temperance movement in local option contests[6] and the adoption of alcohol prohibition by the people of Oklahoma in a provision of their constitution ratified upon admission to statehood[7] signalled a new crusade for state prohibitionary legislation. The Oklahoma vote so "electrified the moral forces of other states" [8] that by 1913 six additional states had enacted statewide prohibition, and half of the remaining states were contemplating action.[9]

Perhaps the most significant development during this period occurred on the national level. The Supreme Court had earlier declared the police powers of the states, under which state prohibition laws were enacted, impotent to prevent importation of liquor from a wet state, of which there were still many, into a dry state and to stay the sale and delivery of such liquor to the buyer while in the original package.[10]

[1] E. Cherrington, The Evolution of Prohibition in The United States of America 135-45 (1920) [hereinafter cited as Cherrington].

[2] *Id.* at 176-84.

[3] *Id.* at 180-81; Safely, *Growth of State Power Under Federal Constitution to Regulate Traffic in Intoxicating Liquors*, 3 Iowa L. Bull. 221, 222 (1917).

[4] Cherrington 139.

[5] *Id.* at 181-82.

[6] *Id.* at 280.

[7] *Id.* at 280-81.

[8] *Id.* at 281.

[9] *Id.* at 284.

[10] Leisy v. Hardin, 135 U.S. 100 (1890).

After a congressional attempt to deal with this decision in 1890 aborted in the courts,[11] the buyer of liquor shipped in interstate commerce still had the right to receive and therefore to use such liquor. But in 1913 Congress, by the Webb-Kenyon Act,[12] filled the gap by prohibiting the *shipment* of liquor from one state to another to be used in violation of the laws of the latter; dry states could thus enforce their prohibition laws against imported liquor.[13] The mere passage of this law, according to Cherrington, committed Congress to a policy that recognized the liquor traffic as an outlaw trade and indicated congressional desire to assist the dry states.[14]

By November 1913, the tide had decidedly turned. More than half the population and 71 percent of the area of the United States were under prohibitionary laws.[15] Accordingly, the Fifteenth National Convention of the Anti-Saloon League of America unanimously endorsed immediate passage of National Constitutional Prohibition, whereupon the National Temperance Council was formed to combine the forces of the various temperance organizations toward this end.[16]

By April 4, 1917, when a joint resolution was introduced in the Senate proposing an amendment to the Constitution prohibiting the manufacture, sale or transportation of intoxicating liquors within the United States for beverage purposes,[17] eighty percent of the territory of the United States was dry.[18] Adopted by the constitutional majorities of both houses on December 18, 1917, the eighteenth amendment was ratified by the thirty-sixth state on January 16, 1919, and became effective on January 16, 1920.[19] The Volstead Act,[20] passed on October 28, 1919, pursuant to section 2 of the eighteenth amendment, outlawed

[11] Four months after *Leisy* Congress enacted the "Wilson Law," designed to make all intoxicating liquors subject "upon arrival" to the laws of the state into which they were sent. Act of Aug. 8, 1890, ch. 728, 26 Stat. 313. In Rhodes v. Iowa, 170 U.S. 412 (1898), however, the Supreme Court held that "upon arrival" meant *after delivery* to the consignee. Thus the right to receive the liquor and the attendant enforcement problems remained.

[12] Act of Mar. 1, 1913, ch. 90, 37 Stat. 699.

[13] The Act was upheld in Clark Distilling Co. v. Western Md. Ry., 242 U.S. 311 (1917).

[14] CHERRINGTON 285-86.

[15] *Id.* at 320.

[16] *Id.* at 321-22.

[17] *See* H.R. Doc. No. 722, 71st Cong., 3d Sess. 5 (1931) [hereinafter cited as WICKERSHAM COMMISSION].

[18] *Id.*

[19] *Id.* at 8.

[20] Act of Oct. 28, 1919, ch. 85, 41 Stat. 305.

possession of intoxicating liquor and therefore went significantly beyond the amendment itself.

The National Commission on Law Observance and Enforcement (the Wickersham Commission) attributed the passage of the eighteenth amendment not to public opposition to use of intoxicating beverages,[21] although this was indeed the view of many of the leaders of the movement, but rather to antipathy to three major related evils: excessive consumption, political corruption and licensed saloons.[22] Excessive use increased with the commercialization of production and distribution, and the expansion of saloons. Public resentment against the corrupting influence of the large liquor dealers in local politics, especially in the larger cities, tended to focus public attention on removing a cancer from the body politic. Finally, the institution that most strongly aroused public sentiment against liquor traffic was the licensed saloon, itself the symbol of intemperance and corruption. Owned or controlled by the large brewers or wholesalers, centers of political activity, homes of commercialized vice, the saloons were the *bêtes noires* of middle-American public opinion.

Because public opinion was largely opposed only to the socio-political consequences of massive liquor traffic, the enforcement of total abstinence under the eighteenth amendment became increasingly difficult. By 1931 it was an accepted fact that the upper and middle classes were "drinking in large numbers in quite frank disregard of the declared policy" of the Volstead Act.[23]

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[21] In 1904 Ernst Freund had noted, quoting from an article on "personal liberty" in the *Cyclopedia of Temperance and Prohibition:*

> Even the advocates of prohibition concede that the state has no concern with the private use of liquor. "The opponents of prohibition misstate the case by saying that the state has no right to declare what a man shall eat or drink. The state does not venture to make any such declaration. . . . It is not the private appetite or home customs of the citizen that the state undertakes to manage, but the liquor traffic. . . . If by abolishing the saloon the state makes it difficult for men to gratify their private appetites, there is no just reason for complaint."

E. FREUND, POLICE POWER 484 (1904).

[22] WICKERSHAM COMMISSION 6-7.

[23] *Id.* at 21. In 1929 President Hoover had devoted a major part of his inaugural address to the "disregard and disobedience" of the eighteenth amendment. He attributed to the ordinary citizen "a large responsibility" for a "dangerous expansion in the criminal elements." Attempting to generate moral support for the law, he chastised the citizenry:

> No greater national service can be given by men and women of goodwill—who, I know, are not unmindful of the responsibilities of citizenship—than that they should, by their example, assist in stamping out crime and outlawry by refusing participation in and condemning all transactions with illegal liquor. Our whole

The difficulties of securing compliance in such circumstances were aggravated by an inadequately designed enforcement strategy,[24] public resentment of the lawless tactics of prohibition agents,[25] and the lack of any sustained attempt at public education.[26] For twelve years, however, millions of dollars were spent by federal and state governments in a fruitless effort to secure compliance with the law. Contemporary legal observers were particularly incensed by the dilution of constitutional protections, especially those provided by the fourth amendment, which was sanctioned by the courts in response to the "felt needs" of securing compliance through enforcement alone.[27]

Although many plans were advanced for changing the prohibition laws to mitigate the lawlessness rampant during this period, as late as

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system of self government will crumble either if officials elect what laws they will enforce or citizens elect what laws they will support. The worst evil of disregard for some law is that it destroys respect for all law. For our citizens to patronize the violation of a particular law on the ground that they are opposed to it is destructive of the very basis of all that protection of life, homes and property which they rightly claim under laws.

INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES 227 (Gov't Printing Off. 1969). The President's sermon fell on deaf ears.

[24] President Hoover also noted in his inaugural address:

Of the undoubted abuses which have grown up under the eighteenth amendment . . . part are due to the failure of some States to accept their share of the responsibility for concurrent enforcement and the failure of many State and local officials to accept the obligation under their oath of office zealously to enforce the laws.

INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES 277 (Gov't Printing Off. 1969). *See generally* WICKERSHAM COMMISSION 10-20, 22-43.

[25] WICKERSHAM COMMISSION 44-46.

[26] *Id.* at 48.

[27] The Wickersham Commission noted:

Some advocates of the law have constantly urged and are still urging disregard or abrogation of the guarantees of liberty and of sanctity of the home which had been deemed fundamental in our policy. . . . High-handed methods . . . even where justified, alienated thoughtful citizens, believers in law and order. Unfortunate public expressions by advocates of the law . . . deprecating the constitutional guarantees involved, aggravated this effect. Pressure for lawless enforcement, encouragement of bad methods and agencies of obtaining evidence, and crude methods of investigation and seizure on the part of incompetent or badly chosen agents started a current of adverse public opinion in many parts of the land.

Id. at 46.

Many legal commentators thought that the courts, manned by "fanatically dry" judges, succumbed to these pressures, especially in the fourth amendment area. *See, e.g.*, F. BLACK, ILL STARRED PROHIBITION CASES (1931), where the author criticizes, among other cases, Olmstead v. United States, 277 U.S. 438 (1928) (upholding wiretapping), and Carroll v. United States, 267 U.S. 132 (1925) (upholding warrantless search of automobile).

1931 even its most vigorous opponents felt that repeal of the eighteenth amendment was politically unfeasible.[28] By 1932, however, public opinion had become so inflamed that the Democratic National Convention included repeal in the party platform.[29] Proposed by Congress on February 20, 1933, the twenty-first amendment was ratified by the thirty-sixth state on December 5, 1933.

B. Anti-Narcotics Legislation to 1914

For our purposes, the major feature of temperance history is the responsiveness of the political process to public opinion. Whether or not a majority of Americans ever favored prohibition and whether or not the thrust of public opinion was ever accurately assessed, the public opinion *process* was attuned to the question for half a century. The alleged evils of alcohol abuse were matters of public knowledge; the proper governmental response was a subject of endless public debate; enactment and repeal of Prohibition were attended by widespread public participation.

In contrast, the early narcotics legislation was promulgated largely in a vacuum. Public and even professional ignorance of the effects of narcotic drugs contributed both to the dimensions of the problem and the nature of the legislated cure. The initial legislation was attended by no operation of the public opinion process, and instead generated a new public image of narcotics use. Only after this creation of a public perception occurred did the legislative approach comport with what we shall call latent public opinion.

1. Narcotics Use at the Turn of the Century: A Growing Problem

Although estimates have varied widely regarding the number of persons regularly using cocaine, opium, morphine and heroin during the pre-criminalization period, a sufficiently accurate figure can be drawn from a composite of contemporary surveys[30] conducted between 1878 and 1924.[31] Estimates range from 182,215 (1884) to 782,118 (1913). We

[28] F. BLACK, *supra* note 27, at 149-50.

[29] R. CHILDS, MAKING REPEAL WORK 12 (1947).

[30] The earliest surveys employ a methodology much less sophisticated than those conducted after 1914. The later studies, however, suffer from a time lag which inevitably detracts from accuracy. In any event, taken together, these surveys adequately describe the contours of the phenomenon under consideration.

[31] The earliest attempt at a compilation of addiction figures was undertaken by O. Marshall in 1878. Marshall, *The Opium Habit in Michigan*, 1878 MICH. STATE BD. OF

can safely estimate that there were between one-quarter and one-half million Americans addicted to narcotics around the turn of the century, comprising at least one percent of the population.[32]

This rather large addict population included more females than males.

HEALTH ANN. REP. 61-73. From questionnaires sent to doctors, Marshall found 1,3 users of opium or morphine and concluded therefrom that there were 7,763 addicts the state. Dr. Charles Terry later concluded that, if Marshall's figures were representative, total incidence of addiction in the United States in 1878 was 251,936. C. TERRY & M. PELLENS, THE OPIUM PROBLEM 15 (1928) [hereinafter cited as TERRY & PELLENS]. Marshall was unable fully to take into account the fact that the incidence of drug abuse in the cities was much higher than that in the rural areas he studied; accordingly, his figures probably underestimate the extent of addiction in the state.

In a similar study of Iowa in 1884, J. M. Hull found 5,732 addicts which, if representative, would reflect a national addict population of 182,215. Hull, *The Opium Habit*, 1885 IOWA STATE BD. OF HEALTH BIENNIAL REP. 535-45, *quoted in* TERRY & PELLENS 16-18.

In 1900 the author of a Vermont study sent 130 questionnaires to various druggists in an attempt to determine the monthly sales of various drugs. His 116 replies indicate that 3,300,000 doses of opium were sold every month, or enough for every person in Vermont over the age of 21 to receive 1½ doses per day. Grinnel, *A Review of Drug Consumption and Alcohol as Found in Proprietary Medicine*, 23 MEDICO-LEGAL J. 426 (1905), *quoted in* TERRY & PELLENS 21-23.

Perhaps the best pre-1914 estimate was made by Dr. Charles Perry who, as Health Officer of Jacksonville, Florida, compiled data for that city in 1913. He found that 541 persons, or .81% of the city's population, used opium or some preparation thereof in 1913. Nationwide, this incidence would be 782,118. 1913 JACKSONVILLE, FLA., BD. OF HEALTH ANN. REP., *quoted in* TERRY & PELLENS 25.

A researcher in 1915 found 2,370 registered addicts in Tennessee and put the national addict population at between 269,000 and 291,670. Brown, *Enforcement of the Tennessee Anti-Narcotic Law*, 5 AM. J. PUB. HEALTH 323-33 (1915), *quoted in* TERRY & PELLENS 27-29.

The first post-Harrison Act study, and perhaps the most reliable of all research during this period, was done by Lawrence Kolb and A. G. DuMez of the United States Public Health Service. Utilizing previously computed statistics together with information regarding the supply of narcotics imported into the United States, these authors concluded the addict population never exceeded 246,000. KOLB & DUMEZ, THE PREVALENCE AND TREND OF DRUG ADDICTION IN THE UNITED STATES AND FACTORS INFLUENCING IT 1-20 (39 Public Health Reports No. 21) (May 23, 1924).

At the same time the Narcotic Division of the Prohibition Unit of the IRS estimated that there were more than 500,000 drug addicts in America. Narcotic Division of the Prohibition Unit, Bureau of Internal Revenue, Release (May 4, 1924), *quoted in* TERRY & PELLENS 42 n.25.

For more recent estimates of drug addiction in America, see W. ELDRIDGE, NARCOTICS AND THE LAW 49-103 (2d rev. ed. 1967); A. LINDESMITH, THE ADDICT AND THE LAW 99-134 (1965); ARTHUR D. LITTLE, INC., DRUG ABUSE AND LAW ENFORCEMENT A1-21 (1967).

[32] *But see* M. NYSWANDER, THE DRUG ADDICT AS A PATIENT 1-13 (1956) (the author suggests that perhaps 1 to 4% of American adult population was addicted in 1890).

[33] Of the 1,313 addicts in Marshall's Michigan study, 803 were females and only

more whites than blacks,[34] and was confined neither to particular geographical regions nor to areas of high population concentration.[35] Its most significant characteristic was its predominantly middle-class composition.[36] Such attributes contrast starkly with the overwhelmingly black, lower-class male addict population that today inhabits our major urban centers.

Nineteenth century narcotics addiction was generally accidental. It is widely believed that medical addicts far outnumbered "kicks" or "pleasure" addicts.[37] Medical addiction stemmed from many sources. The first was overmedication. Civil War hospitals used opium and morphine freely and many veterans returned addicted to the drugs.[38] Overmedication continued long after peace had been restored, due to the ready availability of these drugs with and sometimes without prescription. Since physicians were free to dispense these drugs as painkillers, persons given morphine first for legitimate therapeutic purposes often found themselves addicted.[39] This problem was exacerbated by the absence of restrictions upon druggists in refilling prescriptions containing extensive amounts of morphine and other opiates[40] and by the introduction of the hypodermic syringe.[41] The danger of overmedication increased in 1884 when cocaine was first introduced into the prac-

510 males. TERRY & PELLENS 11. In the Florida study, there were 228 men and 313 women. *Id.* at 25. Of the 2,370 registered addicts in the Tennessee study, 784 were men and 1,586 women. *Id.* at 27. A modern observer has concluded that there were at least as many and probably twice as many women addicts as men. O'Donnell, *Patterns of Drug Abuse and Their Social Consequences*, in DRUGS & YOUTH 62, 64 (J. Whittenborn ed. 1969). For the last thirty years, male addicts have probably outnumbered female addicts by four or five to one. *Id.*

[34] Of the 228 men included in the Florida study, 188 were white and 40 black; of the women 219 were white and 94 black. TERRY & PELLENS 25. At that time the white and black populations in Jacksonville were equal. Of those covered in the Tennessee study, 90% were white. *Id.* at 28.

[35] The Michigan, Iowa and Vermont studies covered primarily rural areas.

[36] *See, e.g.*, Eberle, *Report of Committee on Acquirement of Drug Habits*, AM. J. PHARMACY, Oct. 1903, at 474-88. "While the increase is most evident with the lower classes, the statistics of institutes devoted to the cure of habitues show that their patients are principally drawn from those in the higher walks of life." *Id., quoted in* TERRY & PELLENS 23.

[37] *See, e.g.*, O'Donnell, *supra* note 33, at 64.

[38] TERRY & PELLENS 69.

[39] Stanley, *Morphinism*, 6 J. CRIM. L. & CRIMINOLOGY 586, 588 (1915).

[40] See the resolution of the Narcotics Control Association of California, 13 J. CRIM. L. & CRIMINOLOGY 126-27 (1922), calling for stricter laws regulating prescriptions and prescription order forms.

[41] TERRY & PELLENS 66.

tice of medicine, and again in 1898 when an advance in Germ... chemistry produced heroin, a partially synthetic morphine derivativ... For a time recommended as a treatment for morphine addiction, heroin was also widely used for medicinal purposes.

A second source of accidental addiction was the use and popular... of patent medicines. Exotically labeled elixirs were advertised as ge... eral cures for ills ranging from snake bite to melancholia. By contain... ing up to thirty or forty percent morphine or opiates by volume, m... patent medicines fulfilled their cure-all promises. However, a hea... price was exacted for such cures. In the absence of a requirement th... contents be printed on the label, many an unsuspecting person becam... addicted without ever knowing the medicine that worked so well co... tained dangerous narcotics.[44]

Thus, careless prescription, incessant dispensation and hidden distri... bution of harmful drugs, the addictive effects of which were unknown until too late, fostered a large addict population which continued t... increase in the early twentieth century. The increase in narcotic... consumption, and therefore addiction, is well illustrated by the fac... that 628,177 pounds of opiates were brought into this country in 190... three times the amount imported thirty years earlier.[45] Governmental and medical default explains the innocent nature of nineteenth century narcotics addiction and therefore its predominantly middle-class, nationwide character.

Not all addiction was accidental and private. It has been suggested that both medical knowledge and governmental regulation occurred only when each narcotic drug achieved a significant degree of "street" use. Our research supports this thesis, especially when "street" use is identified with the poor and with racial minorities. For example, opium, the drug first determined addictive and first identified with "pleasure" use, was the earliest prohibited. Legislation was first passed in the west coast states with newly immigrated Chinese populations among whom its use was prevalent. Heroin early achieved a widespread nonmedical or "street" use, especially in large urban centers among lower-class males.[46]

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[42] Brill, *Recurrent Patterns in the History of Drug Dependence and Some Interpretations*, in DRUGS AND YOUTH 18 (J. Whittenborn ed. 1969).

[43] TERRY & PELLENS 76-82.

[44] *See* S. ADAMS, THE GREAT AMERICAN FRAUD (1913).

[45] TERRY & PELLENS 44.

[46] *Id.* at 84-87.

Nevertheless, addiction, even to opium,[47] was predominantly involuntary until 1900. Professional attention was not focused directly on "street" use until after two developments had significantly reduced the possibility of medical addiction. First, the passage of the Pure Food and Drug Act[48] in 1906 led to the demise of the patent medicine industry, one of the primary causes of medical addiction. The labelling requirements of the Act, coupled with the later regulation of the production and distribution of the opiates, protected the public from the dangers of ignorance and virtually put the patent medicine industry out of business.[49] Second, the discovery of new nonaddictive pain killers and anesthetics reduced the likelihood of post-operative addiction since physicians no longer needed to rely so heavily on morphine and opium preparations to reduce and control pain.

2. State Legislative Response Before 1914

Although many states regulated narcotics indirectly through their general "poison laws" before 1870,[50] the first anti-narcotics legislation did not appear until the last quarter of the nineteenth century. Most of the early legislation focused primarily on crime prevention[51] and public education regarding the dangers of drug use.[52] The spread of opium-smoking, especially in the western states with high oriental populations,[53] provoked legislation in eighteen states between 1877 and 1911 designed

[47] *See* H. KANE, OPIUM-SMOKING IN AMERICA AND CHINA (1882), in which the author supports the contention that by approximately 1890 narcotic addiction had become widespread among the respectable and professional classes. He states:

> The practice [opium smoking] spread rapidly and quietly among this class of gamblers and prostitutes until the latter part of 1875, at which time the authorities became cognizant of the fact, and finding, upon investigation, that many women and young girls, as also young men of respectable family, were being induced to visit the dens . . . .

Quoted in TERRY & PELLENS 73.

[48] Ch. 3915, 34 Stat. 768 (1906).

[49] "The peak of the patent medicine industry was reached just prior to the passage of the federal Pure Food and Drug Act in 1906." TERRY & PELLENS 75.

[50] U.S. TREASURY DEP'T, STATE LAWS RELATING TO THE CONTROL OF NARCOTIC DRUGS AND THE TREATMENT OF DRUG ADDICTION 1 (1931) [hereinafter cited as STATE LAWS].

[51] The first drug legislation enacted in eight states outlawed the administering of a narcotic drug to any person with the intent to facilitate the commission of a felony. These states were California (1872), Idaho (1887), New York (1897), North Dakota (1883), Pennsylvania (1901), South Dakota (1883), Utah (1876) and Wisconsin (1901). *Id.* at 1-2.

[52] Twenty-two states made such legislation their first laws concerning the drug problem. *Id.* at 2.

[53] *Id.* at 3-4.

to eradicate the practice either by preventing the operation of opium dens or by punishing the smoking of opium altogether.[54] As the addictive qualities of opium, cocaine, morphine and later heroin became known, primarily through observation of "street" use, concerned physicians finally began to agitate for stricter regulation than that provided by the "poison laws," even though such laws included opium and cocaine. Nevada enacted the first law prohibiting the retail sale of opiates for nonmedical purposes in 1877.[55] In 1887, Oregon prohibited sale of cocaine without a prescription,[56] and seven states followed suit by the turn of the century,[57] as did thirty-nine more by 1914.[58] However, only twenty-nine states had included opiates in their prohibitionary legislation by 1914.[59]

With the exception of the Oregon scheme,[60] nineteenth century narcotic laws did not attempt to restrict or prohibit possession of narcotics, and were directed solely at distribution and sale. By 1913, only six states had prohibited the mere possession of restricted drugs by unauthorized persons.[61] Three additional states prohibited possession with intent illegally to dispense such drugs.[62]

3. *Watershed: The Passage of the Harrison Act*

The first national legislation designed to regulate narcotics distribution, the 1909 "Act to Prohibit Importation and Use of Opium,"[63] barred the importation of opium at other than specified ports and for other than medicinal use. The law further required the keeping of import

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[54] States with such legislation were Arizona (1883), California (1881), Georgia (1895), Idaho (1887), Maryland (1886), Missouri (1911), Montana (1881), Nevada (1877), New Mexico (1887), North Dakota (1879), Ohio (1885), Pennsylvania (1883), South Dakota (1879), Utah (1880), Wisconsin (1891) and Wyoming (1882). *See id.* pt. III.

[55] *Id.* at 5.

[56] *Id.* at 5, 251.

[57] Arizona (1899), Arkansas (1899), Colorado (1897), Illinois (1897), Mississippi (1900), Montana (1889) and New York (1893). *Id.*, pt. III.

[58] *See id.*

[59] *Id.*

[60] *Id.* at 251.

[61] California (1909), Maine (1887), South Carolina (1911), Tennessee (1913), West Virginia (1911) and Wyoming (1903). *Id.*, pt. III.

[62] Maryland (1912), Ohio (1913) and Virginia (1908). *Id.*

[63] Act of Feb. 9, 1909, ch. 100, 35 Stat. 614, *as amended*, 21 U.S.C. § 173 (1964). This act was revised by Act of Jan. 17, 1914, ch. 9, 38 Stat. 275, in the same wave of reform that produced the Harrison Act.

records. The main force behind the passage of this statute was a desire to bring the United States into line with other nations that had signed international conventions against the use of the drug.[64] However, as state anti-narcotics legislation began to take on crusade proportions, pressure was generated for federal regulation of the importation of opium for medicinal purposes and of the interstate trade in cocaine, morphine and heroin. Consequently, the Harrison Act, until this year the foundation of federal law controlling narcotic drugs, was passed in 1914.[65]

The Harrison Act, a taxing measure, required registration and payment of an occupational tax by all persons who imported, produced, dealt in, sold or gave away opium, cocaine or their derivatives. The Act required all legitimate handlers of these narcotics to file returns setting forth in detail their use of the drugs. Each legitimate handler was required to use a special order form in making any transfer of narcotics. Since the Act also provided that only legitimate users could register and no one but a registered user could obtain the specified form, any transfer by an illegitimate user was a violation of the Act. For those failing to comply with its registration requirements, the original Harrison Act provided penalties of not more than $2,000 in fines or more than five years imprisonment, or both.

The passage of the Harrison Act was the culmination of increasing concern in the medical profession[66] about the freedom with which physicians prescribed and druggists dispensed addictive drugs, primarily morphine and heroin. During the period of little or no regulation, the innocent addicts were regarded as victims of an unfortunate sickness in need of treatment; usually they could find a friendly physician or druggist willing to sustain their habits. The passage of the Harrison Act, however, by imposing a stamp of illegitimacy on most narcotics use, fostered an image previously associated primarily with opium—that of the degenerate dope fiend with immoral proclivities. As the regulation of physicians and druggists became more stringent, especially after the Supreme Court held that prevention of withdrawal was not a legitimate medical use that justified a prescription to an unregistered

[64] *Hearings on the Importation and Use of Opium Before the House Comm. on Ways and Means*, 61st Cong., 2d Sess. *passim* (1910).

[65] 38 Stat. 785 (1914), *as amended*, 26 U.S.C. §§ 4701-36 (1964).

[66] *See, e.g.*, Stanley, *supra* note 39, at 587; *Fixes Blame for Dope Fiend Evil*, Boston Herald, Jan. 5, 1917.

person,[67] this image fulfilled itself. All addicts, whether accidental pleasure-seeking, were shut off from their supply and had to turn underground to purchase the drugs. Inflated underground prices often provoked criminal activity and this activity in turn evoked in the public moral response, cementing the link between iniquity and drug addiction.[68]

The early clinical experiments dealing with narcotics addiction were inevitable victims of enforcement of the Act.[69] The concept that underlay the clinical effort—that addiction was a medical problem to be dealt with by sustaining the addict cheaply while trying to induce gentle withdrawal—was antithetical to the attitude provoking the criminal classification of unlawful possessors of narcotic drugs.[70] Clinics were run in such cities as New York, Shreveport and Jacksonville,[71] but by 1923 all were closed, thus removing still another legitimate source of supply for the addict. Again, the crimes committed to enable these people to tap the illicit sources increased public hysteria and misunderstanding about the link between the opiates and crime.[72]

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[67] Webb v. United States, 249 U.S. 96 (1919).

[68] *See* Weber, *Drugs and Crime*, 44 A.B.A. Rep. 527 (1919). Kolb, *Factors That Have Influenced the Management and Treatment of Drug Addicts*, in Narcotic Drug Addiction Problems 23, 26 (R. Livingston ed. 1958) states:

> Another result of the physicians' resignation to pressure was that addicts to the opiates began to commit petty crimes in order to secure the drugs which could prevent their suffering. These inevitable law-induced crimes greatly accentuated the general public belief that opiates had some inherent sinister property which could change normal people into moral perverts and criminals.

See generally T. Duster, The Legislation of Morality 3-28 (1970).

[69] *See generally* A. Lindesmith, *supra* note 31, at 135-61; King, *Narcotic Drug Laws and Enforcement Policies*, 22 Law & Contemp. Prob. 113, 124-26 (1957); King, *The Narcotics Bureau and the Harrison Act*, 62 Yale L.J. 736 (1953); Note, *Narcotic Regulation*, 62 Yale L.J. 751, 784-87 (1953).

[70] For a savage attack on the clinic system by a well-known supporter of the law enforcement model of the Harrison Act, see Stanley, *Narcotic Drugs and Crime*, 12 J. Crim. L. & Criminology (1921).

[71] Lindesmith reports that for a brief period of time from 1919 to 1923 some forty clinics of this type existed in the United States. A. Lindesmith, *supra* note 31, at 136.

[72] The closing of the New York Clinic in 1919 was an especially potent factor in promoting hysteria about heroin. More than 7,400 addicts, about 90 percent of whom were users of heroin, were thrown on the streets of the city. Driven to commit crimes, including those of narcotic violations, many of these addicts were arrested. The increased number of arrests was widely interpreted as an indication of moral deterioration due to narcotics instead of evidence of maladministration of what could have been a useful law. There were, of course, physicians who dissented both as to the wisdom of closing the clinics and as to the harmful effect of the drugs. Many of those who persisted in helping their patients were arrested. Kolb, *supra* note 68, at 27.

In addition to redefining the public conception of narcotic addiction in a way that would not be seriously challenged for half a century, the Harrison Act also provided a strange model for the administration of narcotics laws which would significantly affect future developments. Drafted as a tax law rather than an outright criminal statute, the Act was intended to do indirectly what Congress believed it could not do directly—regulate possession and sale of the opiates. Indeed, congressional caution was justified. A five-to-four decision by the Supreme Court in the 1903 *Lottery Case*[73] suggested what later became fact—the Court, as self-appointed arbiter of the federal system, would plant the tenth amendment in the path of congressional regulation of "local" affairs. That direct regulation of medical practice was indeed considered beyond congressional power under the commerce clause is clearly indicated in contemporary opinions. First, in its 1918 decision in *Hammer v. Dagenhart*,[74] the Court held the Child Labor Act unconstitutional. Second, the Court ultimately upheld the Harrison Act as a valid exercise *of the taxing power*[75] only by a five-to-four margin. Finally, there is some fairly explicit language about congressional regulation of medical practice in subsequent Harrison Act opinions.[76]

This indirect regulation of narcotics traffic under the pretext of raising revenue had a number of significant consequences. First, since the Act could not penalize users or addiction directly, there was an immediate need for complementary residual state legislation in order to deal effectively with the drug problem. Second, the enforcement of the

[73] 188 U.S. 321 (1903).

[74] 247 U.S. 251 (1918).

[75] United States v. Doremus, 249 U.S. 86 (1919). The four dissenters asserted that "the statute was a mere attempt by Congress to exert a power not delegated, that is, the reserved police power of the States." *Id.* at 95. It is interesting to note, however, that a subsequent congressional attempt to regulate child labor through the taxing power was also invalidated. Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922).

[76] Justice McReynolds stated for the Court in Linder v. United States, 268 U.S. 5, 18 (1925):

> Obviously, direct control of medical practice in the States is beyond the power of the Federal Government. Incidental regulation of such practice by Congress through a taxing act cannot extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure.

The Court also held that the Harrison Act did not apply to mere possession of opium. In reaching this conclusion the Court pointed out that any congressional attempt to punish as a crime possession of any article produced in a state would raise the gravest questions of power. United States v. Jin Fuey Moy, 241 U.S. 394, 401 (1916).

Act was necessarily assigned to the Internal Revenue Service in the Treasury Department.

The first enforcement agency for the Harrison Act was the Narcotics Division of the Prohibition Unit of the Internal Revenue Service created in 1920.[77] This division was incorporated in the Prohibition Bureau which was created in 1927.[78] In 1930, the enforcement of the narcotics laws was severed from the Bureau of Prohibition and established as the separate Bureau of Narcotics in the Treasury Department.[79] The existence of this separate agency anxious to fulfill its role as crusader against the evils of narcotics has done as much as any single factor to influence the course of drug regulation from 1930 to 1970.[80] Although the impact of the Bureau on the passage of the Uniform Narcotic Drug Act and the Marihuana Tax Act will be explained in detail in subsequent sections, it is important here to note that the existence of a separate bureau having responsibility only for narcotics enforcement and for educating the public on drug problems inevitably led to a particularly prosecutorial view of the narcotics addict. Moreover, this creation of the Bureau separate from the newly created FBI in the Justice Department unnecessarily bifurcated federal law enforcement operations in this area.

C. The Judicial Role and the Constitutional Framework: The Police Power and Intoxicant Prohibition to 1920

It is not novel to suggest that the fate of contemporary constitutional challenges to marijuana prohibition depends in part on a judicial reading of public opinion as well as on the availability of a constitutional peg on which to hang an "activist" judicial inquiry. Since contextual pressure and analytical conflict were also central elements of the judicial response to alcohol and narcotics prohibition between 1850 and 1920, it is worthwhile to trace that response.

As in today's court battles over marijuana laws, the clash then was between two polar constitutional concepts—the police powers of the state and allegedly "fundamental" personal constitutional rights. The

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[77] Schmeckebier, *The Bureau of Prohibition*, in BROOKINGS INST. FOR GOV'T RESEARCH, SERVICE MONOGRAPH No. 57, at 143 (1929).

[78] An Act to Create a Bureau of Customs and a Bureau of Prohibition in the Department of the Treasury, ch. 348, 44 Stat. 1381 (1927).

[79] Act of June 14, 1930, ch. 488, 46 Stat. 585.

[80] *See generally* King, *The Narcotics Bureau and the Harrison Act*, 62 YALE L.J. 736 (1953).

conflict opened on state constitutional grounds and was continued in the realm of the fourteenth amendment. On the issues of alcohol and "hard" narcotics, the police power was triumphant. In the light of the comparisons drawn in current constitutional arguments among marijuana, alcohol and narcotics, an inquiry into the long struggle is informative.

1. Phase One: Prohibition of Sale and Manufacture of Alcohol

During the first wave of prohibitionist legislation in the 1850's, thirteen states outlawed manufacture[81] and sale of intoxicating beverages.[82] The constitutionality of such laws under the commerce clause of the Federal Constitution had been presaged in the *License Cases*[83] in 1847, where in six separate opinions the Supreme Court upheld Massachusetts, New Hampshire and Rhode Island laws regulating wholesale and retail sales of liquor. Chief Justice Taney's famous dictum stated:

> And if any State deems the retail and internal traffic in ardent spirits injurious to its citizens, and calculated to produce idleness, vice, or debauchery, I see nothing in the constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether, if it thinks proper.[84]

Armed with this pronouncement, the courts of eight states rebuffed challenges under their own constitutions.[85] Some of these decisions gave scant attention to the constitutional argument but simply defined the police power in broad terms[86] and perhaps cited the Taney dictum.[87]

[81] The primary objective of prohibitionary legislation was to suppress all traffic in intoxicating beverages. Accordingly, most states prohibited both manufacture and sale. However, New Hampshire's law, in effect from 1855 through 1903, forbade only sale.

[82] Sixteen states passed prohibitionary legislation for the whole territory of the state. However, twelve of them had repealed this legislation by 1903, and a thirteenth, Maine, had repealed its statute before 1884 when prohibition was embodied in a constitutional amendment. E. FREUND, POLICE POWER 202, 203 (1904).

[83] 46 U.S. (5 How.) 504 (1847).

[84] *Id.* at 577.

[85] State v. Paul, 5 R.I. 185 (1858); State v. Wheeler, 25 Conn. 290 (1856); State v. Allmond, 7 Del. 612 (1856); People v. Gallagher, 4 Mich. 244 (1856); Santo v. State, 2 Iowa 165 (1855); Lincoln v. Smith, 27 Vt. 328 (1855); People v. Hawley, 3 Mich. 330 (1854); Commonwealth v. Kendall, 66 Mass. (12 Cush.) 414 (1853); Jones v. People, 14 Ill. 196 (1852).

[86] State v. Paul, 5 R.I. 185 (1858); Commonwealth v. Kendall, 66 Mass. (12 Cush.) 414 (1853); Jones v. People, 14 Ill. 196 (1852).

[87] State v. Wheeler, 25 Conn. 290 (1856); State v. Allmond, 7 Del. 612 (1856); Santo v. State, 2 Iowa 165 (1855); Lincoln v. Smith, 27 Vt. 328 (1855).

However, the rationale and rhetoric of those decisions squarely rejecting the constitutional objections merit a detailed comparison with that of two decisions, in New York[88] and Indiana,[89] declaring the statutes void.

Even the opponents of the laws acknowledged the potential public evils of intemperance[90]—crime, pauperism and vice—the eradication of which was the objective of prohibitionary legislation. Yet they argued that the means employed to accomplish this end—prevention of sale—was beyond the police power. Alcohol had admittedly beneficial uses[91] and was harmful only when abused.[92] In order to eliminate it from channels of commerce, thereby depriving its owners of a fundamental incident of ownership—the right to sell[93]—a more pernicious character had to be shown.[94] Accordingly, the public benefit did not justify the

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[88] Wynehamer v. People, 13 N.Y. 378 (1856).

[89] Beebe v. State, 6 Ind. 501 (1855).

[90] Dissenting in People v. Gallagher, 4 Mich. 244 (1856), Justice Pratt noted: "That intemperance is a great evil, no sane man can doubt." *Id.* at 284. The Iowa court asserted:

> There is no statistical or economical proposition better established, nor one to which a more general assent is given by reading and intelligent minds, than this, that the use of intoxicating liquors as a drink, is the cause of more want, pauperism, suffering, crime and public expense, than any other cause—and perhaps it should be said, than *all* other causes combined.

Santo v. State, 2 Iowa 165, 190 (1855).

[91] Dissenting in People v. Gallagher, 4 Mich. 244 (1856), Justice Pratt stated: "Spiritous liquors are necessary in the prosecution of many of the most valuable arts, as well as for mechanical, manufacturing and medicinal purposes." *Id.* at 260.

[92] The Indiana Court noted "as a matter of general knowledge . . . that the use of beer &c. as a beverage, is not necessarily hurtful, any more than the use of lemonade or ice cream. . . . It is the abuse, and not the use, of all these beverages that is hurtful." Beebe v. State, 6 Ind. 501, 519-20 (1855).

[93] Justice Pratt reasoned:

> Liquors, then, whether produced by fermentation or distillation, do legally constitute property of use and value; and the owner of this species of personal property, when lawfully acquired, is, upon every principle, . . . entitled to the possession and use of it. This legally includes the right of keeping, selling or giving it away, as the owner may deem proper. This is a natural primary right incident to ownership . . . .

People v. Gallagher, 4 Mich. 244, 263 (1856); *accord*, Wynehamer v. People, 13 N.Y. 378, 396-98 (1856) (Comstock, J.).

[94] Said the Indiana Court:

> [T]he legislature enacted the law in question upon the assumption that the manufacture and sale of beer . . . were necessarily destructive to the community, and in acting upon that assumption, in our judgment, has unwarrantably invaded the right to private property, and its use as a beverage and article of traffic.
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> . . . We repeat, the manufacture and sale and use of liquors are not necessarily hurtful, and *this the Court has a right to judicially inquire into* and act upon in deciding upon the validity of the law in question—in deciding . . . whether it is

restriction of private rights. The criminalization of sale of alcohol beverages constituted a deprivation of "property" without due process;[95] or, failing that, it constituted an infringement of the inalienable right of life, liberty and the pursuit of happiness rooted in the precepts of natural justice that the people reserved to themselves when they entered into the social compact.[96] New York, in *Wynehamer v. People*,[97] accepted the due process argument, at least with respect to alcohol lawfully acquired, and Indiana endorsed the inalienable rights argument in *Beebe v. State*.[98]

The virtues of judicial restraint were vehemently defended in the decisions rejecting these arguments: The courts uniformly refused to interfere with the discretionary exercise of the police power in the absence of a specific constitutional prohibition. The Vermont Supreme Court view was typical:

> The legislature in passing the law in question doubtless supposed that the traffic and drinking of intoxicating liquors went hand in hand . . . and that by cutting off the one, the other would also fall with it. Whether the drinking of intoxicating liquors tends to produce intemperance and whether the intemperance is a gangrene, tending to corrupt

an indirect invasion of a right secured to the citizen by the Constitution. Beebe v. State, 6 Ind. 501, 520-21 (1855) (emphasis added).

[95] In an opinion often cited as the first to invoke the substantive construction of "due process of law," Judge Comstock in Wynehamer v. People, 13 N.Y. 378, 392-93, 398 (1856), stated:

> To say . . . that "the law of the land" or "due process of law", may mean the very act of legislation which deprives the citizen of his rights, privileges or property, leads to a simple absurdity. The Constitution would then mean, that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong, and this would be throwing the restraint entirely away. The true interpretation of these constitutional phrases is, that where rights are acquired by the citizen under existing law, there is no power in any branch of the government to take them away.
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> . . . .
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> When a law annihilates the value of property, and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the spirit of a constitutional provision intended expressly to shield private rights from the exercise of arbitrary power.

[96] The Indiana court held the prohibitionary legislation in contravention of a provision in the state constitution declaring that "all men are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." Beebe v. State, 6 Ind. 501, 510 (1855). Dissenting in People v. Gallagher, 4 Mich. 244, 258 (1856), Justice Pratt conducted an identical natural rights inquiry without the benefit of Thomas Jefferson's penmanship.

[97] 13 N.Y. 378 (1856).

[98] 6 Ind. 501 (1855).

> the moral health of the body politic, and to produce misery and lamentation; and whether the law in question is well calculated to cut off or mitigate the evils supposed to flow directly from intemperance and indirectly from the traffic in intoxicating liquors, were questions to be settled by the lawmaking power; and their decision in this respect is final and not to be reviewed by us.[99]

Under this view, societal self-protection, the essence of the police power, is broadly defined.[100] So long as the *legislature determines* that the use of alcoholic beverages exerts an adverse effect on public health, safety or morals, the courts may question neither the factual determination nor the means employed to restrict that use. In answer to the argument that the courts have a special obligation to review the relation between means and ends where personal liberties are curtailed, these courts disavowed any power "to annul a legislative Act upon higher grounds than those of express constitutional restriction," [101] or, after assuming for sake of argument the existence of such power, they declined to exercise it.[102] In response to the argument accepted by Judge Comstock in *Wynehamer v. New York*—that prohibition of sale of legally acquired alcohol was a deprivation of property without due process of law—most courts distinguished *Wynehamer* on its facts,[103] held that no essential "property" right had been violated,[104] or construed "due process" to refer only to due procedure and not to the "power . . . to create and define an offense." [105]

Two polar conceptions of the scope of judicial review clashed over a subject of intense public interest. The immediate question was settled in favor of the constitutionality of prohibiting manufacture and sale of alcoholic beverages; in fact, the Indiana court itself disavowed its contrary decision in *Beebe* three years after rendering it.[106] However, the jurisprudential dialogue[107] had merely begun. Today, *Wynehamer* is

[99] Lincoln v. Smith, 27 Vt. 328, 337-38 (1855).

[100] *See* State v. Guerney, 37 Me. 156, 161 (1853).

[101] State v. Allmond, 7 Del. 612, 639 (1856); *see* Lincoln v. Smith, 27 Vt. 328, 338-39 (1855).

[102] People v. Gallagher, 4 Mich. 244, 255 (1856); State v. Wheeler, 25 Conn. 290, 297-98 (1856).

[103] State v. Wheeler, 25 Conn. 290, 297 (1856); State v. Allmond, 7 Del. 612, 642 (1856).

[104] State v. Allmond, 7 Del. 612, 692 (1856).

[105] State v. Paul, 5 R.I. 185, 197 (1858); Lincoln v. Smith, 27 Vt. 328, 360 (1855).

[106] Meshmeier v. State, 11 Ind. 482 (1858).

[107] In People v. Gallagher, 4 Mich. 244 (1856), the majority stated:

> The legislature has said that . . . no man shall sell liquors to be used as a

regarded as the initial step on the road to the vested rights conception of due process. Similarly, *Beebe* is the philosophical ancestor of all challenges to prohibition of intoxicants—alcohol,[108] narcotics and marijuana.

With the passage of the fourteenth amendment, the Supreme Court was called upon to determine whether prohibitionary exercises of the state police powers were now limited by federal law. The battle fought in the 1850's on state constitutional grounds was refought in the 1870's and 80's on federal territory—with the same outcome. In a series of cases culminating in *Mugler v. Kansas*,[109] it slowly became settled that the manufacturer or seller of intoxicating liquors had no constitutional rights under either the privileges and immunities or due process clauses that could prevent the operation of the police power of the state, regardless whether the liquor was bought or manufactured before passage of the law or even whether it was manufactured solely for personal use.[110]

> beverage, because by so doing, he inflicts injury on the public; but, says the defendant, irrespective of the evil, this right to sell liquors is a *natural right*, and you have no power to pass a law infringing that right. How does he prove it? Not by any adjudged cases; there are none, nor by anything in the constitution preserving to him this right; but it is to be determined by the nature and character of the right. . . . [The manner in which the determination is to be made is] a question very suitable and proper for the discussion and deliberation of a legislative body, but one which cannot be entertained by this court.

Id. at 257. Judge Pratt replied:

> If the doctrine is true that the legislature can, by the exercise of an implied discretionary power, pass any law not expressly inhibited by the constitution, then it is certain that a hundred laws may be enacted by that body, invading directly legitimate business pursuits, impairing and rendering worthless trades and occupations, and destroying the substantial value of private property to the amount of millions of dollars. . . . But who, I ask, believes that the legislature possesses the power, or that the people, in their sovereignty, ever intended to confer on that body such unlimited omnipotence? As appears to me, no man of reason and reflection can believe it.

Id. at 277-79 (dissenting opinion).

[108] Mere possession or consumption of alcohol was not prohibited during this phase of temperance legislation. Many of the courts were careful to allude to this feature and to note that forfeiture could result only from illegal possession—possession with intent to sell in violation of the law. *See, e.g.*, Santo v. State, 2 Iowa 165 (1855); Commonwealth v. Kendall, 66 Mass. (12 Cush.) 414 (1853).

[109] 123 U.S. 623 (1887).

[110] In Bartemeyer v. Iowa, 85 U.S. (18 Wall.) 129 (1873), the Supreme Court held that the prohibition of traffic in intoxicating drinks violates no privilege and immunity of United States citizenship; the Court avoided the question whether a law prohibiting sale of liquor owned before the law was passed was a deprivation of property without due process. Four years later, in Beer Co. v. Massachusetts, 97 U.S. 25 (1877), the Court sustained a prohibition law against a challenge under the obligation of contracts clauses but still deferred consideration of the *Wynehamer* question. In upholding

Thus, as a matter of both state and federal constitutional law, the courts required no more, and probably less, than that legislation be designed to retard a public evil—here pauperism and crime—and be rationally related to that end.[111] Absent a specific constitutional limitation, it did not concern the courts that such regulations affronted personal liberty and property rights. The theoretical justification of incidental curtailment of private liberties in the public interest was that the legislature must conduct the balancing; if the balance is unsound, the law will be repealed. Indeed, the courts were probably willing to indulge that presumption as a practical matter since the passage of the prohibition laws was preceded by vigorous public debate. In fact, the public opinion process did work in reaction to these curtailments of private liberty, and most such laws were subsequently repealed[112] in the ensuing decade.

2. *Phase Two: Prohibition of Sale of Opium*

As noted above, the first prohibitionary narcotics legislation was enacted on the west coast in the 1880's in order to prohibit sale and distribution of opium for nonmedical purposes. The racial overtones

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the seizure and forfeiture of liquors belonging to the petitioner, Justice Bradley stated:

> If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State.

97 U.S. at 32.

Finally, in Mugler v. Kansas, 123 U.S. 623 (1887), *Wynehamer* was slain. The Court sustained a conviction for selling beer manufactured before the passage of the law. The Court even held that, in order to make effective its regulations against sale, the State might forbid manufacture for personal use. *Id.* at 662. The only constitutional inhibitions remaining after *Mugler* emanated from the commerce power. For a discussion of the gradual elimination of these restrictions by congressional action, see Safely, *Growth of State Power Under Federal Constitution to Regulate Traffic in Intoxicating Liquors*, 3 IOWA L. BULL. 221, 229-34 (1917).

[111] In *Mugler*, Justice Harlan stated:

> There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights. . . . If, therefore, a state deems the absolute prohibition of the manufacture and sale, within her limits, of intoxicating liquors for other than medical, scientific, and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation.

123 U.S. at 662.

[112] See note 82 *supra*.

of this legislation were self-consciously acknowledged by the initial Oregon and Nevada decisions. Sustaining the conviction of an alien for selling opium in *Ex parte Yung Jon*,[113] the Oregon district court noted:

> Smoking opium is not our vice, and therefore it may be that this legislation proceeds more from a desire to vex and annoy the "Heathen Chinee" in this respect, than to protect the people from the evil habit. But the motives of legislators cannot be the subject of judicial investigation for the purpose of affecting the validity of their acts.[114]

The opium laws were attacked on precisely the same grounds as had been the alcohol prohibition legislation. The Nevada court had no trouble in *State v. Ah Chew*,[115] it simply cited the *License Cases*, the Delaware decision sustaining prohibition of alcohol sale, and distinguished *Wynehamer* as holding only that the sale of lawfully acquired property could not be prohibited. Within this framework, the result was obvious:

> It is not denied that the indiscriminate use of opium . . . tends in a much greater degree to demoralize the persons using it, to dull the moral senses, to foster vice and produce crime, than the sale of intoxicating drinks. If such is its tendency, it should not have unrestrained license to produce such disastrous results. . . . Under the police power . . . in the interest of good morals, the good order and peace of society, for the prevention of crime, misery and want, the legislature has authority to place such restrictions upon sale or disposal of opium as will mitigate, if not suppress, its evils to society.[116]

The Oregon court, in the *Yung Jon* decision five years later, did not take the easy way out. The court was apparently not disposed to imply that sale of previously owned alcohol and cigarettes could be prohibited, and thus reject outright the *Wynehamer* conception of due process;[117] instead it chose to hold that sale of opium for nonmedical purposes was

[113] 28 F. 308 (D. Ore. 1886). The prisoner had been convicted in an Oregon court and was being heard on petition for habeas corpus.

[114] *Id.* at 312.

[115] 16 Nev. 50 (1881).

[116] *Id.* at 55-56.

[117] The Supreme Court rejected it one year later in Mugler v. Kansas, 123 U.S. 623 (1887).

not an incident of ownership and, since the law did not prohibit sale for medical purposes, no property right was deprived. Not as cautious as his brethren, Judge Deady inquired more actively into the nature of opium before upholding the legislation. Whether a legislative act is "prohibitory" (and by implication whether it violates the due process clause) "must depend on circumstances, and particularly the character of the article, and the uses and purposes to which it has generally been applied in the community." [118] He then noted that opium was primarily a medicinal drug; that although used in the East for centuries as an intoxicant, that use was new in the United States and confined primarily to the Chinese; that it was classed as a poison and was less easily detected than alcoholic intoxication, "which it is said to replace where law and custom have made the latter disreputable;" and that its "evil effects" were manifest upon the nervous and digestive systems, resembling delirium tremens. Thus, there was no longstanding regard of opium as a legitimate article of property except for medical use. Accordingly,

> the act does not in effect prohibit the disposition of the drug, but allows it under such circumstances, and on such conditions, as will, according to the general practice and opinions of the country, prevent its improper and harmful use.[119]

Thus, whatever the judicial propensity to limit the police power in the interest of property rights, prohibition of traffic in opium—worse than alcohol and confined to aliens—violated no implied or express constitutional limitations.

3. Phase Three: Prohibition of Possession of Alcohol to 1915

At this stage of constitutional jurisprudence, criminalization of pos-

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[118] *Ex parte* Yung Jon, 28 F. 308, 311 (D. Ore. 1886).

[119] *Id.* In defining property essentially in terms of habits of the community, Judge Deady was leaving room for the "natural" rights argument with regard to alcohol and tobacco:

> True, we permit the indiscriminate use of alcohol and tobacco, both of which are classed by science as poisons, and doubtless destroy many lives annually. But the people of this country have been accustomed to the manufacture and use of these for many generations, *and they are produced and possessed under the common and long-standing impression that they are legitimate articles of property*, which the owner is entitled to dispose of without any unusual restraint. . . . On the other hand, the use of opium, otherwise than as this act allows, as a medicine, has but little, if any, place in the experience or habits of the people of this country, save among few aliens.

Id. at 311-12 (emphasis added).

session or consumption of alcohol or narcotics was arguably a deprivation of property without due process of law. The first wave of prohibition cases had held only that the right to sell even previously acquired liquor was not an essential element of ownership. They had not held that the state could forbid the essential attribute of ownership—the right to use. In fact, many courts had expressly noted that alcohol was still a legitimate article of property.[120]

Until 1915 the weight of authority was that it was beyond the police power to prohibit mere possession of alcoholic beverages unless the quantity justified an inference that they were held for sale. A few cases so held;[121] many courts so stated in dictum, while holding the laws either in conflict with particular constitutional provisions regarding the "sale" of liquor[122] or in excess of the power of municipal corporations;[123] and many contemporary commentators so stated.[124]

Although the due process rationale was sometimes employed,[125] the preferred approach was "inherent" limitation. In his 1904 treatise, *Police Power*, Ernst Freund premised the "inherent" limitation of noninterference with purely private conduct not on any inalienable natural right but on the requirement that interference be justified on grounds of the public welfare.[126] This and the "practical difficulties of enforce-

[120] State v. Wheeler, 25 Conn. 290 (1856); Lincoln v. Smith, 27 Vt. 328 (1855); Commonwealth v. Kendall, 66 Mass. (12 Cush.) 414 (1853); *cf.* State v. Clark, 28 N.H. 176, 181 (1854) (ordinance that prohibited using or keeping intoxicating liquors in any refreshment saloon or restaurant "not unreasonable," since it did not "profess to prohibit either the use or sale of liquor altogether").

[121] *Ex parte* Wilson, 6 Okla. Crim. 451, 119 P. 596 (1911); Titsworth v. State, 2 Okla. Crim. 268, 101 P. 288 (1909); State v. Williams, 146 N.C. 618, 61 S.E. 61 (1908); *Ex parte* Brown, 38 Tex. Crim. 295, 42 S.W. 554 (1897) (alternative holding). *Contra*, Cohen v. State, 7 Ga. App. 5, 65 S.E. 1096 (1909); Easley Town Council v. Pegg, 63 S.C. 98, 41 S.E. 18 (1902).

[122] Commonwealth v. Campbell, 133 Ky. 50, 117 S.W. 383 (1909); *Ex parte* Brown, 38 Tex. Crim. 295, 42 S.W. 554 (1897); State v. Gilman, 33 W. Va. 146, 10 S.E. 283 (1889).

[123] Eidge v. City of Bessemer, 164 Ala. 599, 51 So. 246 (1909); Sullivan v. City of Oneida, 61 Ill. 242 (1871). *But see* Town of Selma v. Brewer, 9 Cal. App. 70, 98 P. 61 (Dist. Ct. App. 1908).

[124] H. Black, Intoxicating Liquors 50 (1892); E. Freund, Police Power 484 (1904); H. Joyce, The Law Relating to Intoxicating Liquors § 85 (1910); Rogers, *"Life, Liberty and Liquor": A Note on the Police Power*, 6 Va. L. Rev. 156, 174 (1919).

[125] *E.g.*, State v. Williams, 146 N.C. 618, 61 S.E. 61 (1908).

[126] E. Freund, Police Power 486 (1904):

> Under these circumstances it seems impossible to speak of a constitutional right of private consumption. There seems to be no direct judicial authority for declaring private acts exempt from the police power, and the universal tolerance with regard to them should be ascribed to policy. Like any other exercise of the

ment, coupled with the constitutional prohibition of unreasonable searches," [127] would sufficiently deter legislative abuse.

Absent the addition of a natural rights notion, however, this decisional frame becomes ambivalent on the dispositive question in an adjudication questioning such legislative "abuse": Can the mere "policy" of nonintervention with private conduct justify a more rigorous judicial inquiry into the relation between the prohibited private acts and the alleged *public* evil? If it cannot, the constitutional attack on prohibition of possession is no stronger than that on prohibition of sale. If it can, is not the judicial role subject to the same charge of usurpation as it would be if the courts employed a pure natural rights approach?

In any event, when the courts first confronted possession prohibition, the rhetoric was varied—due process,[128] natural rights[129] and private liberty[130]—but the approach was the same—a refusal to accept the legislative findings as to the relation between private act and public harm and a refusal to defer to the legislative balance of private liberty and public need. For example, in one of the leading cases, *Commonwealth v. Campbell*,[131] the Court of Appeals of Kentucky cited Cooley, Mill and Blackstone for the proposition that

> [i]t is not within the competency of government to invade the privacy of the citizen's life and to regulate his conduct in matters in which he alone is concerned, or to prohibit him any liberty the exercise of which will not *directly* injure society.[132]

Noting next that defendant was "not charged with having the liquor in his possession for the purpose of selling it, or even giving it to another" and that "ownership and possession cannot be denied when that ownership and possession is not in itself injurious to the public," [133] the court concluded that

> [t]he right to use liquor for one's own comfort, if the use is without

police power, control of private conduct would have to justify itself on grounds of the public welfare.

[127] *Id.*

[128] *E.g.*, State v. Williams, 146 N.C. 618, 61 S.E. 61 (1908).

[129] *E.g.*, State v. Gilman, 33 W. Va. 146, 10 S.E. 283 (1889).

[130] *E.g.*, Eidge v. City of Bessemer, 164 Ala. 599, 51 So. 246 (1909); Commonwealth v. Campbell, 133 Ky. 50, 117 S.W. 383 (1909).

[131] 133 Ky. 50, 117 S.W. 383 (1909).

[132] *Id.* at 58, 117 S.W. at 385 (emphasis added).

[133] *Id.* at 63, 117 S.W. at 387.

> direct injury to the public, is one of the citizen's natural and inalienable rights . . . . We hold that the police power—vague and wide and undefined as it is—has limits . . . .[134]

The key to this reasoning, of course, is the court's insistence that the injury be *direct* as measured according to a judicial yardstick. Although the court devoted little attention to the question, it implicitly rejected arguments that the only way to exorcize the public evils attending excessive use and adequately to enforce prohibitions against sale was to prevent any private use at all. The court impliedly held that the posited connection, albeit rational, was "remote" or "indirect" or "unreasonable" and therefore entitled to no deference.[135]

4. *Phase Four: Prohibition of Possession of Narcotics*

This active judicial role in alcohol cases should be compared with the courts' simultaneous refusals to second-guess legislative "findings"

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[134] *Id.* 63-64, 117 S.W. at 387.

[135] Similarly, in State v. Gilman, 33 W. Va. 146, 10 S.E. 283 (1889), the court stated:

> It can hardly be questioned that the right to possess property is [an inalienable] right, and that that right embraces the privilege of a citizen to keep in his possession property for another. It is not denied that the keeping of property which is injurious to the lives, health, or comfort of all persons may be prohibited under the police power. . . . [I]t must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others. *But it does not follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exercise of the police power of the State* . . . .
>
> The keeping of liquors in his possession by a person, whether for himself or for another, unless he does so for the illegal sale of it, or for some other improper purpose, can by no possibility injure or affect the health, morals, or safety of the public; and, therefore, the statute prohibiting such keeping in possession is not a legitimate exertion of the police power.

Id. at 148-49, 10 S.E. at 284 (emphasis added); *accord, Ex parte* Brown, 38 Tex. Crim. 295, 42 S.W. 554 (1897).

In *Ex parte* Wilson, 6 Okla. Crim. 451, 119 P. 596 (1911), the court, after quoting extensively from *Commonwealth v. Campbell*, noted, "The only conclusion that we can legitimately arrive at is that the act in question is not within a *reasonable* exercise of the police powers of the state—is unconstitutional and void." 6 Okla. Crim. at 475, 119 P. at 606 (emphasis added). Finally, the Alabama Supreme Court stated, in striking down a local ordinance prohibiting possession by beverage dealers of alcoholic beverages:

> [The ordinance] can be justified only, if at all, on the ground that it sustains some reasonable relation to the prohibition law in the way of preventing evasions of that law by trick, artifice, or subterfuge under guise of which that law is violated. But it has no such relation. It undertakes to prohibit the keeping in any quantity and for any purpose, however innocent, of intoxicating liquors and beverages in places which are innocent in themselves.

Eidge v. City of Bessemer, 164 Ala. 599, 606, 51 So. 246, 249 (1909).

with regard to the criminalization of possession of opium. In a series of cases decided in Washington, Oregon and California[136] in 1890, 1896 and 1911 respectively, courts held that the relation between narcotics use and public harm was to be drawn by the legislature.

In answer to the argument, accepted in the alcohol cases, that despite the absence of explicit constitutional limitations the police power of prohibition was inherently limited to acts which "involve direct and immediate injury to another," [137] the courts replied in predictable fashion: The state may prevent a weak man from doing injury to himself if it determines that such injury may cause the individual to become a "burden on society;" [138] the state could find that excessive use of opium, an active poison, would debase the moral and economic welfare of the society by causing ill health, pauperism and insanity;[139] the state could find that the potential for and evils attending excessive use demand a prohibition also of nondeleterious moderate use.[140] Accordingly, in the words of the Supreme Court of Washington,

> [i]t is for the legislature to place on foot the inquiry as to just in what degree the use is injurious; to collate all the information and to make all the needful and necessary calculations. These are questions of fact with which the court cannot deal. The constitutionality of laws is not thus to be determined.[141]

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[136] *Ex parte* Yun Quong, 159 Cal. 508, 114 P. 835 (1911); Luck v. Sears, 29 Ore. 421, 44 P. 693 (1896); Ah Lim v. Territory, 1 Wash. 156, 24 P. 588 (1890).

[137] Ah Lim v. Territory, 1 Wash. 156, 163, 24 P. 588, 589 (1890).

[138] If the state concludes that a given habit is detrimental to either the moral, mental or physical well being of one of its citizens to such an extent that it is liable to become a burthen upon society, it has an undoubted right to restrain the citizen from the commission of that act; and fair and equitable consideration of the rights of other citizens make it not only its right, but its duty, to restrain him.

Id. at 164, 24 P. at 590; *accord, Ex parte* Yun Quong, 159 Cal. 508, 515, 114 P. 835, 837 (1911); Luck v. Sears, 29 Ore. 421, 426, 44 P. 693, 694 (1896).

[139] *Ex parte* Yun Quong, 159 Cal. 508, 515, 114 P. 835, 837 (1911); Luck v. Sears, 29 Ore. 421, 425, 44 P. 693, 694 (1896).

[140] But it is urged . . . that a moderate use of opium . . . is not deleterious and consequently cannot be prohibited. We answer that this is a question of fact which can only be inquired into by the legislature.

Ah Lim v. Territory, 1 Wash. 156, 164, 24 P. 588, 590 (1890). The dissent argued that moderate use by some could not be punished to prevent excessive use by others. *Id.* at 172-74, 24 P. at 592-93.

[141] *Id.* at 165, 24 P. at 590.

> [W]hether [opium's] nature and character is such that for the protection of the public its possession by unauthorized persons should be prohibited is a ques-

The California court had more difficulty with the argument that punishment of possession of alcohol had been held beyond the police power. Despite its rhetoric regarding the wide bounds of legislative fact-finding, the court actually made its own determination that public injury from private abuse was more likely with narcotics than alcohol. The lower court had said so overtly:

> But liquor is used daily in this and other countries as a beverage, moderately and without harm, by countless thousands . . .; whereas it appears there is no such thing as moderation in the use of opium. Once the habit is formed the desire for it is insatiable, and its use is invariably disastrous.[142]

The California Supreme Court shied away:

> We do not understand this to have been intended to declare an established or conceded fact. So interpreted, the expression would be, perhaps unduly sweeping. But the validity of legislation which would be necessary or proper under a given state of facts does not depend upon the actual existence of the supposed facts. It is enough if the law-making body may rationally believe such facts to be established. If the belief that the use of opium, once begun, almost inevitably leads to excess may be entertained by reasonable men—and we do not doubt that it may—such belief affords a sufficient justification for applying to opium restrictions which might be unduly burdensome in the case of other substances, as, for example, intoxicating liquors, *the use of which may fairly be regarded as less dangerous to their users or to the public.*[143]

What the court said is unobjectionable. What it did not say, however, is significant. This reasoning implies that if the legislature should determine that the potential for excessive use of alcohol—and consequently for the public evils of pauperism, crime and insanity—is great enough to prohibit all use, that judgment would have to stand. Probably not intending so to suggest, the court really held that *it* thought that opium use was more likely adversely to affect the public welfare

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tion of fact and of public policy, which belongs to the legislative department to determine.

Luck v. Sears, 29 Ore. 421, 426, 44 P. 693, 694 (1896).

[142] *Ex parte* Yun Quong, 159 Cal. 508, 514, 114 P. 835, 838 (1911) (quoting lower court opinion) (citations omitted).

[143] *Id.* at 515, 114 P. at 838 (emphasis added).

than alcohol use; accordingly, paternal criminal legislation was "reasonable" in the former case and not in the latter, even though they were identically "indirect." It helped, perhaps, that the legislature was not telling the judge and his white, middle-class colleagues that *they* shouldn't smoke opium, and that the objective was merely to prevent a few "Heathen Chinee" from hurting themselves through their stupidity and from spreading their nasty habit to the whites.[144]

The only astounding thing about the opium possession cases is that there was at least one dissenting opinion. In the Washington case, *Ah Lim v. Territory*,[145] Judge Scott, for himself and another judge, insisted on either a more conclusive demonstration that the private act of smoking opium "directly and clearly affected the public in some manner" or a more narrowly drawn statute. He catalogued the alleged public justifications:

> That smoking or inhaling opium injures the health of the individual, and in this way weakens the state; that it tends to the increase of pauperism. That it destroys the moral sentiment and leads to the commission of crime. In other words, that it has an injurious effect upon the individual, and, consequently, results indirectly in an injury to the community.[146]

After noting the insufficiency of all of the justifications including the argument that the moderate desires of some must be sacrificed to prevent abuse by others,[147] the judge concluded:

> [The Act] is altogether too sweeping in its terms. I make no question but that the habit of smoking opium may be repulsive and degrading. That its effect would be to shatter the nerves and destroy the intellect; and that it may tend to the increase of pauperism and crime. But there is a vast difference between the commission of a single act, and a confirmed habit. There is a distinction to be recognized between the use and abuse of any article or substance. . . . If this

[144] "It must be conceded that its indiscriminate use would have a very deleterious and debasing effect upon our race . . . ." *Id.* at 514, 114 P. at 838.

[145] 1 Wash. 156, 24 P. 588 (1890).

[146] *Id.* at 168, 24 P. at 591.

[147] Individual desires are too sacred to be ruthlessly violated where only acts are involved . . . which do not clearly result in an injury to society, unless, possibly, thus rendered necessary in order to prevent others from like actions which to them are injurious.

Id. at 173, 24 P. at 592. He concluded, however, that the statute was too broad and that this question need not be reached.

> act must be held valid it is hard to conceive of any legislative action affecting the personal conduct, or privileges of the individual citizen. that must not be upheld. . . . The prohibited act cannot affect the public in any way except through the primary personal injury to the individual, if it occasions him any injury. It looks like a new and extreme step under our government in the field of legislation, if it really was passed for any of the purposes upon which that character of legislation can be sustained, if at all.[148]

The sanctity of "the personal conduct or privileges of the individual citizen" had suffered its first blow. The knockout was only a few rounds away.

5. *Phase Five: Prohibition of Possession of Alcohol After 1915*

The year 1915 was the watershed year for prohibitionists in the courts. By 1913, the tide had finally turned in the state legislatures, many of which prohibited possession of more than a certain quantity of alcoholic beverages. The first of these statutes to reach the courts was that of Alabama in *Southern Express Co. v. Whittle*.[149]

Overruling its earlier decision in *Eidge v. City of Bessemer*,[150] one of the leading cases during the earlier phase, the Alabama court swept away all restraints on the police power. So long as the legislation was directed at some legitimate purpose and was not arbitrary, the court should not interfere.[151] Whether or not the Supreme Court had so intended, the Alabama court, like other state courts, relied heavily on Justice Harlan's opinion in *Mugler v. Kansas*,[152] and gave its legislature a blank check when exercising police powers:

> If the right of common law to manufacture an intoxicating liquor for one's own personal use, out of one's own materials by the application of one's own personal effort, may be forbidden by appropriate legislation under the police power, as was expressly ruled in *Mugler v. Kan-*

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[148] *Id.* at 174-75, 24 P. at 593.

[149] 194 Ala. 406, 69 So. 652 (1915).

[150] 164 Ala. 599, 51 So. 246 (1909).

[151] It is the peculiar function of the lawmakers to ascertain and to determine when the welfare of the people requires the exercise of the state's police powers, and what are appropriate measures to that end, subject only to the power and authority of the courts to see, when assured to the requisite certainty, that the measures of police so adopted do not arbitrarily violate rights protected by the organic laws.
194 Ala. at 421, 69 So. at 656.

[152] 123 U.S. 623 (1887), *quoted in* 194 Ala. at 428-33, 69 So. at 659-60.

> *sas* . . . , it cannot be logically or soundly asserted that the receipt or possession of more than a specified quantity at one time may not be forbidden by a statute . . . .[153]

The alleged sanctity of private conduct gave the court little pause; this was just one of a number of instances

> where ancillary prohibitions of acts and conduct, innocent in themselves, have been sustained and confirmed as an exercise of the police power of the state; and so upon the theory that some valid legislative purpose might be more certainly made effective, or that evasions of the laws might be prevented or hindered of accomplishment.[154]

Though the Alabama court did not do so, it could have cited the opium possession cases as authority. Most courts did.

The Alabama decision was quickly followed in Idaho[155] and in nine other states.[156] When the Idaho case, *Crane v. Campbell*,[157] came before the Supreme Court, Justice McReynolds dealt the knockout blow:

> As the state has the power . . . to prohibit [sale and manufacture], it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective. And, considering the notorious difficulties always attendant upon efforts to suppress traffic in liquors, we are unable to say that the challenged inhibition of their possession was arbitrary and unreasonable or without proper relation to the legitimate legislative purpose.[158]

The principle noted by Freund,[159] that the police power did not easily extend to matters of private conduct, was ignored:

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153 194 Ala. at 433, 69 So. at 660.

154 *Id.* at 434, 69 So. at 660.

155 *Ex parte* Crane, 27 Idaho 671, 151 P. 1006 (1915), *aff'd sub nom.* Crane v. Campbell, 245 U.S. 304 (1917).

156 *Ex parte* Zwissig, 42 Nev. 360, 178 P. 20 (1919); Fitch v. State, 102 Neb. 361, 167 N.W. 417 (1918); State v. Brown, 40 S.D. 372, 167 N.W. 400 (1918); Liquor Transportation Cases, 140 Tenn. 582, 205 S.W. 423 (1918); State v. Certain Intoxicating Liquors, 51 Utah 569, 172 P. 1050 (1918); Delaney v. Plunkett, 146 Ga. 547, 91 S.E. 561 (1917); State v. Carpenter, 173 N.C. 767, 92 S.E. 373 (1917); City of Seattle v. Brookins, 98 Wash. 290, 167 P. 940 (1917); Brennan v. Southern Express Co., 106 S.C. 102, 90 S.E. 402 (1916) (dictum).

157 245 U.S. 304 (1917).

158 *Id.* at 307-08 (citations omitted).

159 See text at note 126 *supra*.

> [I]t clearly follows from our numerous decisions upholding prohibition legislation that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no State may abridge. A contrary view would be incompatible with the undoubted power to prevent manufacture, gift, sale, purchase or transportation of such articles—the only feasible ways of getting them. An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the State.[160]

Given the restrictive interpretation of the privileges and immunities clause[161] and the refusal to extend substantive due process outside the economic area,[162] there was no existing federal constitutional pigeonhole for "private conduct" as a principle of constitutional limitation. And on the state level the courts ignored the "intrinsic limitation" argument and discarded the direct-indirect yardstick in the wake of the temperance movement.

The commentators were outraged. Again and again the courts were indicted for interpreting constitutional precepts to correspond with public opinion.[163] The judicial retreat on the temperance question coincided perfectly with the final success of the Prohibition movement. And the commentators were quite justified in so noting.

It was merely icing on the cake when the Supreme Court upheld the provision of the Volstead Act[164] outlawing possession of intoxicating liquor. The Court predictably rebuffed[165] an argument that it was beyond congressional power under section 2 of the eighteenth amendment to prohibit possession for personal consumption of liquor owned before the passage of the Act.[166]

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160 245 U.S. at 308.

161 *E.g.*, Slaughter House Cases, 83 U.S. (16 Wall.) 36 (1873).

162 Substantive due process was slowly being watered down even in the economic area during this time. *See, e.g.*, Muller v. Oregon, 208 U.S. 412 (1908).

163 *E.g.*, Bronaugh, *Limiting or Prohibiting the Possession of Intoxicating Liquors for Personal Use*, 23 LAW NOTES 67 (1919); Rogers, *"Life, Liberty & Liquor": A Note on the Police Power*, 6 VA. L. REV. 156 (1919); Safely, *Growth of State Power Under Federal Constitution to Regulate Traffic in Intoxicating Liquors*, 3 IOWA L. BULL. 221 (1917); Vance, *The Road to Confiscation*, 25 YALE L.J. 285 (1916).

164 Ch. 85, 41 Stat. 305 (1919).

165 Corneli v. Moore, 257 U.S. 491 (1922).

166 This argument was accepted in United States v. Dowling, 278 F. 630 (S.D. Fla. 1922).

6. A Postscript on the Police Power: The Cigarette Cases

Interestingly, the legislative solicitude for the health of the citizenry during the period under discussion also extended to the prohibition of cigarette smoking in several jurisdictions. In 1897, the General Assembly of Tennessee made it a misdemeanor to sell, give away or otherwise dispose of cigarettes or cigarette paper.[167] The Supreme Court of Tennessee upheld the statute under the police power on the grounds that cigarettes were not legitimate articles of commerce, being "inherently bad and bad only."[168] The United States Supreme Court affirmed in *Austin v. Tennessee*,[169] primarily on the authority of the alcohol and opium cases, noting that there need be only a rational basis for the legislative determination that the commodity is harmful to justify its prohibition.[170] The Court did not even mention any objection based on deprivation of property rights or personal liberty.

The issue was posed more directly in Kentucky and Illinois cases[171] regarding the validity of local ordinances prohibiting smoking of cigarettes "within the corporate limits" in one case and "in any street, alley, avenue . . . park . . . or [other] public place" in the other. Both courts held the ordinances unreasonable interferences with personal

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167 Law of Feb. 11, 1897, ch. 30, [1897] Tenn. Acts 156.

168 Austin v. State, 101 Tenn. 563, 48 S.W. 305 (1898), *aff'd*, 179 U.S. 343 (1900).

169 179 U.S. 343 (1900).

170 The primary issue before the Court was whether the statute infringed the exclusive power of Congress to regulate interstate commerce. *Id.* at 344. However, before turning to the "original package" questions, the Court first had to conclude that the statute was a legitimate exercise of the police power, for only then could an indirect interference with interstate commerce be sustained. *Id.* at 349. The Court noted on this point:

> Cigarettes do not seem until recently to have attracted the attention of the public as more injurious than other forms of tobacco; nor are we now prepared to take judicial notice of any special injury resulting from their use or to indorse the opinion of the Supreme Court of Tennessee that "they are inherently bad and bad only." At the same time we should be shutting our eyes to what is constantly passing before them were we to affect an ignorance of the fact that a belief in their deleterious effects, particularly upon young people, has become very general and that communications are constantly finding their way into the public press denouncing their use as fraught with great danger to the youth of both sexes. Without undertaking to affirm or deny their evil effects, we think it within the province of the legislature to say how far they may be sold, or to prohibit their sale entirely . . . provided . . . there be no reason to doubt that the act in question is designed for the protection of the public health.

Id. at 348-49; *cf.* Gundling v. City of Chicago, 177 U.S. 183 (1900) (affirming validity of licensing sale of cigarettes).

171 City of Zion v. Behrens, 262 Ill. 510, 104 N.E. 836 (1914); Hershberg v. City of Barbourville, 142 Ky. 60, 133 S.W. 985 (1911).

liberty.[172] The argument that the ordinances were calculated to insure the public safety by preventing fire hazards was held to be too remote and the argument accepted in *Austin* regarding potential injury to the smoker's health apparently was not made or at least went unacknowledged by both courts.

These decisions, rendered in 1911 and 1914, were probably consistent, under a direct-indirect injury to society theory, with *Austin* and with the alcohol and narcotics cases up to that time. The post-1915 alcohol possession cases, however, undermined any such distinction, insofar as it authorized a more active judicial inquiry into the relationship between the private conduct and the public need. At least at this stage of its development it may be fruitless to seek out a "neutral principle" beyond common sense regarding the undefined constitutional limitations on the police power. Professor Brooks Adams noted in 1913 that the scope of the police power

> could not be determined in advance by abstract reasoning. Hence, as each litigation arose, the judges could follow no rule but the rule of common sense, and the Police Power, translated into plain English, presently came to signify whatever, at the moment, the judges happened to think reasonable. Consequently, they began guessing at the drift of public opinion, as it percolated to them through the medium of their education and prejudices. Sometimes they guessed right and sometimes wrong, and when they guessed wrong they were cast aside, as appeared dramatically enough in the temperance agitation.[173]

And Justice Holmes noted:

> It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned

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[172] In the broad language in which the ordinance is enacted it is apparently an attempt on the part of the municipality to regulate and control the habits and practices of the citizen without any reasonable basis for so doing. The ordinance is an unreasonable interference with the private rights of the citizen . . . .
262 Ill. at 513, 104 N.E. at 837-38.
The ordinance is so broad as to prohibit one from smoking a cigarette in his own home or on any private premises in the city. To prohibit the smoking of cigarettes in [such circumstances] is an invasion of his right to control his own personal indulgences.
142 Ky. at 61, 133 S.W. at 986 (1911). By holding that the ordinance applied in the home, the Kentucky court avoided the question raised in the Illinois case. The reasoning would appear to compel the same result, however.

[173] B. Adams, The Theory of Social Revolutions 94 (1913).

> by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.[174]

Whether the development of the judicial response to exercises of the police power at the time was the result of the changing public opinion or a changing analytical framework, trends in that response were evident. It remains to be seen whether any trends are evident today to indicate how marijuana users will fare in the future.

III. The Genesis of Marijuana Prohibition

Until the inclusion of marijuana in the Uniform Narcotic Drug Act in 1932 and the passage of the Marihuana Tax Act in 1937, there was no "national" public policy regarding the drug. However, as early as 1914 the New York City Sanitary Laws included cannabis in a prohibited drug list and in 1915 Utah passed the first state statute prohibiting sale or possession of the drug. By 1931 twenty-two states had enacted such legislation. In the succeeding section, we shall delve into the circumstances surrounding the passage of several of these early laws and the ensuing judicial acquiescence in the legislative value judgments concerning marijuana. We conclude that the legislative action and judicial approval were essentially kneejerk responses uninformed by scientific study or public debate and colored instead by racial bias and sensationalistic myths.

A. Initial State Legislation: 1914-1931

As indicated above, the Harrison Act, a regulatory measure in the garb of a taxing statute, left many gaps unfilled in the effort to prohibit illegal or nonmedical use of opiates and cocaine. Although Commissioner Anslinger of the Federal Bureau of Narcotics stated in 1932 that few states had responded to the Harrison Act,[1] most states had in fact enacted or reenacted narcotics laws in the period from 1914 to 1931.[2] In so doing, twenty-one states had also restricted the sale of marijuana as part of their general narcotics articles, one state had prohibited its use for any purpose, and four states had outlawed its

[174] Noble State Bank v. Haskell, 219 U.S. 104, 111 (1911).

[1] Anslinger, *The Reason for Uniform State Narcotic Legislation*, 21 Geo. L.J. 52, 53 (1932).

[2] State Laws 35-327.

cultivation.[3] Our objective in this section is to determine why these states chose to include cannabis in their lists of prohibited drugs.

The first consideration was the increasing public awareness of the narcotics problem. As noted above, the Harrison Act engendered a shift in public perception of the narcotics addict. With ever-increasing frequency and venom, he was portrayed in the public media as the criminal "dope fiend." This hysteria, coupled with the actual increases in drug-related criminal conduct due to the closing of the clinics,[4] was the basis for a good many of the post-Harrison Act narcotic statutes.[5] Other forces such as lurid accounts in the media,[6] publications of private narcotics associations,[7] and the effective separation of the addict and his problems from the medical profession[8] all pressed legislatures into action to deal more effectively with what was perceived as a growing narcotics problem.

Despite the increasing public interest in the narcotics problem during this period, we can find no evidence of public concern for, or understanding of, marijuana, even in those states that banned it along with the opiates and cocaine. Observers in the middle and late 1930's agreed that marijuana was at that time a very new phenomenon on the national scene.[9] The perplexing question remains—why did some states include marijuana in their prohibitive legislation a decade before it achieved any notice whatsoever from the general public and the overwhelming majority of legislators?

From a survey of contemporary newspaper and periodical commentary we have concluded that there were three major influences. The most prominent was racial prejudice. During this period, marijuana legislation was generally a regional phenomenon present in the southern and western states. Use of the drug was primarily limited to Mexican-Americans who were immigrating in increased numbers to those states. These movements were well noted in the press accounts

[3] *Id.* at 14.

[4] For a discussion of the change in the public image of addicts and the closing of clinical experiments, see p. 988 *supra*.

[5] *See* TERRY & PELLENS 877-919.

[6] *See, e.g.*, text at notes 24-25 *infra*. For somewhat more clinical discussions, see TERRY & PELLENS 877-919.

[7] *See* Weber, *Drugs and Crime*, 10 J. CRIM. L. & CRIMINOLOGY 370 (1919).

[8] A. LINDESMITH, THE ADDICT AND THE LAW 3-35 (1965); King, *Narcotic Drug Laws and Enforcement Policies*, 22 LAW & CONTEMP. PROB. 113, 120-26 (1957).

[9] *Hearing on H.R. 6385 Before the House Comm. on Ways and Means*, 75th Cong., 1st Sess. 20 (1937) [hereinafter cited as *Tax Act Hearings*].

of passage of marijuana legislation. A second factor was the assumption that marijuana, which was presumed to be an addictive drug, would be utilized as a substitute for narcotics and alcohol then prohibited by national policy. This factor was particularly significant in the New York law, the forerunner of nationwide anti-marijuana legislation. Finally, there is some evidence that coverage of the drug by the Geneva Conventions in 1925 was publicized in this country and may have had some influence.

1. Rationale in the West: Class Legislation

Geometric increases in Mexican immigration after the turn of the century naturally resulted in the formation of sizeable Mexican-American minorities in each western state.[10] It was thought then[11] and is generally assumed now[12] that use of marijuana west of the Mississippi was limited primarily to the Mexican segment of the population. We do not find it surprising, therefore, that sixteen of these states prohibited sale or possession of marijuana before 1930.[13] Whether motivated by outright prejudice or simple discriminatory disinterest, the result was the same in each legislature—little if any public attention, no debate, pointed references to the drug's Mexican origins, and sometimes vociferous allusion to the criminal conduct inevitably generated when Mexicans ate "the killer weed."

In Utah, for example, the nation's first statewide prohibition of marijuana[14]—in 1915—was attended by little publicity. The combina-

[10] The Bureau of Immigration recorded the entry of 590,765 Mexicans into the United States between 1915 and 1930. Of these, upwards of 90% in each year were to be residents in the 22 states west of the Mississippi, and more than two-thirds were to reside in Texas alone. Information compiled from Tables, Immigrant Aliens, By States of Intended Future Residence and Race or Peoples, published yearly for each fiscal year from 1915 to 1930 in COMM'R GEN. OF IMMIGRATION ANN. REP.

[11] *Tax Act Hearings* 20, 33.

[12] THE MARIHUANA PAPERS at xiv (D. Solomon ed. 1966).

[13] *Id.* at xv.

[14] At its 1915 session, the Utah legislature passed an omnibus narcotics and pharmacy bill which included under it the cannabis drugs. Ch. 66, §§ 7, 8, [1915] Utah Laws 77. The law forbade sale and possession of the named drugs, and provided for medical use under a system of prescriptions and order blanks. Interestingly, clinical treatment of addicts was allowed. *Id.* at 77-80. The law also prohibited possession of opium and marijuana pipes. *Id.* at 80. Violations were misdemeanors punishable by fines and/or imprisonment for terms up to six months, but third offenders faced prison terms from one to five years. The statute made no distinction between sale and possession, nor among the various drugs. The law was revised in 1927. Ch. 65, [1927] Utah Laws 107.

tion of increasing Mexican immigration[15] and the traditional aversion of the Mormons to euphoriants of any kind[16] led inevitably to the inclusion of marijuana in the state's omnibus narcotics and pharmacy bill. Similarly, when the New Mexico and Texas legislatures passed marijuana legislation in 1923, the former by separate statute[17] and the latter by inclusion,[18] newspaper reference was minimal despite coverage in both states of legislative action.[19] The longest of the *Santa Fe New Mexican* references noted:

> The Santa Fe representative, however, had better luck with his bill to prevent sale of marihuana, cannabis indica, Indian hemp or hashish as it is variously known. This bill was passed without any opposition. Marihuana was brought into local prominence at the penitentiary board's investigation last summer when a convict testified he could get marihuana cigarets anytime he had a dollar. The drug produces intoxication when chewed or smoked. Marihuana is the name commonly used in the Southwest and Mexico.[20]

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[15] See note 10 *supra*.

[16] *See* THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, CONTAINING THE REVELATIONS GIVEN TO JOSEPH SMITH, THE PROPHET § 89, at 154 (1921) (¶¶ 5, 7, wine or strong drink) (¶ 8, tobacco) (¶ 9, hot drinks) (revelations given through Joseph Smith the Prophet, at Kirtland, Ohio, February 27, 1833, known as the Word of Wisdom).

[17] The statute made importation of cannabis illegal and established a presumption of importation whenever a person was found to possess the drug. Ch. 42, §§ 1-2, [1923] N.M. Laws 58-59. Violations were punishable by fine and/or imprisonment from one to three years. Cultivation, sale or giving away cannabis except for use by physicians and pharmacists was also prohibited, and violations were punishable on first offense by one to three years in prison and on subsequent offenses by three to five years imprisonment. *Id.* §§ 3, 4.

[18] The Texas general narcotics statute, ch. 150, [1919] Tex. Gen. Laws 277-79, *as amended*, ch. 61, [1919] Tex. Special Sess. Laws 156-57, similar in format to the Utah statute and the Harrison Act, included "any drug or preparation known or sold under the Spanish name of 'Marihuana' . . . ." *Id.* at 278. Unlike the Utah and New Mexico statutes, Texas prohibited only selling, furnishing or giving away marijuana. Except for the exempted medical purposes, such divestment of any of the listed narcotics could have resulted in a fine and/or imprisonment from one month to one year. *Id.* at 279.

[19] The *Santa Fe New Mexican*, hometown paper of the bill's sponsor, made only one mention of marijuana at the time of passage, and that was to note that the drug was being smuggled into the state prisons. Santa Fe New Mexican, Feb. 1, 1923.

The *Austin Texas Statesman* gave heavy coverage to legislative news at this time because the legislature was in special session called by the Governor to deal with a budgetary problem.

[20] Santa Fe New Mexican, Jan. 31, 1923. The statute was passed on February 27, 1923; during the period from January 20 to February 28, there were only three other

In its only direct reference to marijuana, the *Austin Texas Statesman* stated:

> The McMillan Senate Bill amended the anti-narcotic law so as to make unlawful the possession for the purpose of sale of any marihuana or other drugs. Marihuana is a Mexican herb and is said to be sold on the Texas-Mexican border.[21]

The discriminatory aspects of this early marijuana legislation, suggested only obliquely by origin and apparent disinterest in Utah, New Mexico and Texas, are directly confirmed in Montana and Colorado. Montana newspapers gave relatively "full" coverage to a proposal to exclude marijuana from the general narcotics law and to create a separate marijuana statute.[22] On seven different days from January 24 to February 10, 1929 (the date of the bill's passage), the *Montana Standard* succinctly noted the progress of the bill through the legislature. The giveaway appeared on January 27 when the paper recorded the following:

> There was fun in the House Health Committee during the week when the Marihuana bill came up for consideration. Marihuana is Mexican opium, a plant used by Mexicans and cultivated for sale by Indians. "When some beet field peon takes a few rares of this stuff," explained Dr. Fred Fulsher of Mineral County, "He thinks he has just been elected president of Mexico so he starts out to execute all his political enemies. I understand that over in Butte where the Mexicans often go for the winter they stage imaginary bullfights in the 'Bower of Roses' or put on tournaments for the favor of 'Spanish Rose' after a couple of whiffs of Marijuana. The Silver Bow and

references to marijuana. The newspaper first noted the bill in a one sentence report that a ban on sale of marijuana was to be discussed. *Id.*, Jan. 20, 1923. Finally, in articles entitled "A Day In The Legislature," the progress of the bill (H.B. 56) was noted on February 21 and 27 in simple lists of bills enacted. *Id.*, Feb. 21, 27, 1923. So inconsequential was the bill that it was not even mentioned in two stories describing the activities of the legislature for that session. *Id.*, Feb. 27, 1923, at 1, col. 1.

[21] Austin Texas Statesman, June 19, 1923. Despite heavy coverage of legislative news and of narcotics generally, the *El Paso Times* made no reference to marijuana between June 10 and June 25. The *Texas Statesman* mentioned the "McMillan Bill" only two other times, each time without direct reference to marijuana.

[22] Unlike most states that passed laws early in the 1920's against marijuana use, Montana in 1927 passed a statute which merely amended the first section of its general narcotic law, Rev. Code of Mont. ch. 227, § 3186 (1921), to include marijuana. Ch. 91, § 1, [1927] Mont. Laws 324. The new law, ch. 6, [1929] Mont. Laws 5, made use, sale or possession without a prescription a misdemeanor.

> Yellowstone delegations both deplore these international complications." Everybody laughed and the bill was recommended for passage.[23]

The same year, a change in Colorado's marijuana law was precipitated by less comic apprehensions of the drug's evil effects. On April 7, 1929, a girl was murdered by her Mexican step-father. The story was lead news in the *Denver Post* every day until April 16, probably because the girl's mother was white. On the 16th it was first mentioned that this man might have been a marijuana user. Headlined "Fiend Slayer Caught in Nebraska[;] Mexican Confesses Torture of American Baby," and subheaded "Prisoner Admits to Officer He is Marihuana Addict," the story relates in full the underlying events:

> "You smoke marihuana?"
> "Yes"
> The Mexican said he had been without the weed for two days before the killing of his step-daughter.[24]

On April 17, the story on the Mexican included the following:

> He repeated the story he had told the Sidney Chief of Police regarding his addiction to marihuana saying that his supply of the weed had become exhausted several days before the killing and his nerves were unstrung.[25]

With regard to the legislative news there is no mention at any time of a bill to regulate marijuana; however, on April 21, the *Denver Post* noted the Governor had signed a bill increasing penalties for sale, possession or production of marijuana.[26]

The reader should note that public perception of marijuana's ethnic origins and crime-producing tendencies often went hand in hand, especially in the more volatile areas of the western states. Stories such as the one appearing in the *Denver Post*, where defendants charged with

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[23] The Montana Standard, Jan. 27, 1929, at 3, col. 2.

[24] Denver Post, April 16, 1929, at 2, col. 1.

[25] *Id.*, April 17, 1929, at 2, col. 1.

[26] *Id.*, April 21, 1929. Ch. 95, [1927] Colo. Laws 309, penalized possession, sale, gift, or cultivation of any of the cannabis drugs as a misdemeanor. Offenses carried a fine and/or imprisonment in the county jail for not less than one or more than six months. The new law, ch. 93, [1929] Colo. Laws 331, increased the penalties for second offenders to one to five year terms in the penitentiary.

violent crimes attempted to blame their actions on the effects of marijuana, were primarily responsible for the drug's characterization as a "killer weed." In any event, from this brief survey of marijuana prohibition in the western states, we have concluded that its Mexican use pattern was ordinarily enough to warrant its prohibition, and that whatever attention such legislative action received was attended by sensationalist descriptions of crimes allegedly committed by Mexican marijuana users.

2. *Rationale in the East: Substitution*

The first significant[27] instance of marijuana regulation appeared in the 1914 amendments to the New York City Sanitary Laws. The inclusion by the New York legislature of marijuana in its general narcotics statute in 1927 was the precursor of nationwide legislation.[28] For these reasons, we have chosen New York as the most likely source of information regarding the rationale for marijuana prohibition in Maine, Massachusetts, Michigan, Ohio, Rhode Island and Vermont, all of which had acted before 1931.[29]

In January 1914 the New York legislature passed its first comprehensive statute—The Boylan Bill—regulating the sale and use of habit-forming drugs[30] and did not include marijuana among its list of pro-

[27] Although Commissioner Anslinger stated in the 1937 Tax Act Hearings that the District of Columbia had no law regulating marijuana, Dr. Woodward of the AMA refuted the Commissioner's statement by citing a 1906 provision which limited the sale of cannabis to pharmacists and regulated sale of the drug by such pharmacists to the public. *Tax Act Hearings* 92-93. The D.C. provision, Act of May 7, 1906, ch. 2084, § 13, 34 Stat. 175, is typical of early attempts to deal with the drug under the general poison laws, but it is noteworthy in its treatment of marijuana separately from opiates.

[28] See pp. 1030-33 *infra*.

[29] In 1913, Maine prohibited the sale of *cannabis indica* without a prescription. STATE LAWS 137. Massachusetts passed a similar law in 1917, *id.* at 150, and Michigan forbade possession in 1929, *id.* at 161. A 1923 Ohio law prohibited sale or possession with intent to sell, *id.* at 242; Rhode Island prohibited sale in 1918, *id.* at 263; and Vermont barred sale without a prescription in 1915, *id.* at 296.

[30] Ch. 363, [1914] N.Y. Laws 1120. The first narcotics legislation in New York was enacted in 1893. Ch. 661, art. XII, § 208, [1893] N.Y. Laws 1561. The 1893 law provided that no prescription containing opium, morphine, cocaine or chloral could be filled more than once. Two years later, the legislature enacted a provision requiring that the effect of narcotics on the human system be taught in the public schools. Ch. 1041, § 1, [1895] N.Y. Laws 972. In 1897, a law was passed making it a felony to possess any narcotic "with intent to administer the same or cause the same to be administered to another" without his consent. Ch. 42, § 1, [1897] N.Y. Laws 21. The first provision aimed at the sale of narcotics was passed in 1907 and

nibited narcotics. It appears that the Board of Health of New York City then amended its Sanitary Code adding "Cannabis indica, which is the Indian hemp from which the East Indian drug called hashish is manufactured," [31] to the City's list of prohibited drugs. Violation of this provision of the City Sanitary Code was a misdemeanor punishable by a small fine and/or a jail term of up to six months. On July 29, 1914, an article reporting the amendment appeared in the *New York Times* wherein the drug was described:

> This narcotic has practically the same effect as morphine and cocaine, but it was not used in this country to any extent while it was easy to get the more refined narcotics.[32]

The next day the editors of the *Times* commented:

> [T]he inclusion of cannabis indica among the drugs to be sold only on prescription is only common sense. Devotees of hashish are now hardly numerous enough here to count, but they are likely to increase as other narcotics become harder to obtain.[33]

From these observations, it would appear (1) that there were few marijuana users at the time; and (2) that use of the drug was expected to increase as a direct result of the restriction of opiates and cocaine.

Despite New York City's early classification of cannabis with known narcotics, New York State did not prohibit sale and possession of the drug for other than medicinal purposes until 1927.[34] And this was true despite a great deal of activity on the narcotics front from 1914 to 1927, when the legislature acted four different times.[35] Throughout

provided that the sale or distribution of cocaine without a prescription was unlawful. Ch. 424, § 1, [1907] N.Y. Laws 879. This provision was subsequently amended to provide for the keeping of records of sales and of transactions between dealers. Ch. 470, § 2, [1913] N.Y. Laws 984; ch. 131, § 1, [1910] N.Y. Laws 231; ch. 277, § 1, [1908] N.Y. Laws 764.

[31] N.Y. Times, July 29, 1914, at 6, col. 2.

[32] *Id.*

[33] *Id.*, July 30, 1914, at 8, col. 4.

[34] Ch. 672, [1927] N.Y. Laws 1695-1703.

[35] The 1914 act was amended by the Whitney Act in 1918 which also provided for the repeal of the 1914 act. Ch. 639, [1918] N.Y. Laws 2026. In 1921 an act was passed that in effect repealed all the legislation relating to the narcotics problem. Ch. 709, [1921] N.Y. Laws 2496. The measure made no provision for other laws on the subject. This surprising move was made in the interests of economy, N.Y. Times, Jan. 6, 1921, at 1, col. 8, and with the belief that the drug problem could be better handled by local authorities working in concert with federal agencies. *See id.*, Jan. 9.

all this tumult and in the variety of narcotics proposals suggested ... enacted,[36] marijuana or cannabis was not classified among the restricted drugs until the drafting of the 1927 Act. This act[37] defined cannabis as a "habit-forming drug," [38] and accordingly punished as misdemeanors[39] the control, sale, distribution, administration and dispensing[40] of cannabis except for medical purposes. The penalty provision of the statute did not discriminate among types of offenses, first or subsequent violations, or the prohibited narcotic drugs.[41]

There is no apparent indication in the contemporary commentary of the reasons for inclusion of marijuana in the New York laws. When the 1927 law was passed, public concern was focused on the general need to reduce narcotic addiction; none of the commentators were concerned about marijuana.[42] While there were numerous articles in the media dealing with the problems of the opiates, morphine, cocaine and heroin, only four articles about marijuana appeared in the major New York newspaper during the entire period from 1914 until 1927. In 1923 the *New York Times* noted that the "latest habit forming drug . . . marihuana, which is smoked in a cigarette" was exhibited at a women's club meeting.[43] In 1925 the same paper reported that the drug had been banned in Mexico.[44] One year later, the paper reported the results

1921, § 2, at 1, col. 7; *id.*, May 22, 1921, § 2, at 11, col. 3. An act making illegal the sale of cocaine without a prescription was enacted in 1923. Ch. 130, [1923] N.Y. Laws 160. The possession of opium or cocaine without a prescription was outlawed in 1926. Ch. 650, § 2. [1926] N.Y. Laws 1198.

[36] As late as 1918, a legislative committee that had exhaustively studied the narcotics problem in New York did not mention the use of marijuana and concluded: "The drugs which are the sources of the difficulty are cocaine and eucaine with their salts and derivatives and opium and its derivatives, codeine, morphine and heroin." JOINT LEGISLATIVE COMM. TO INVESTIGATE THE LAWS IN RELATION TO THE DISTRIBUTION AND SALE OF NARCOTIC DRUGS, FINAL REPORT, NEW YORK SENATE DOC. No. 35 (1918), *quoted in* TERRY & PELLENS 833.

[37] The Act of April 5, 1927, repealed both the 1923 and 1926 laws and replaced them with a comprehensive narcotic control scheme. Ch. 672, [1927] N.Y. Laws 1695. This act contained provisions relating to the control and use of narcotic drugs and treatment of addicts; it also exempted certain preparations from its coverage. The act furnished the model for the Uniform Narcotic Drug Act. *See* pp. 1030-31 *infra*.

Subsequently, in 1929, unlawful sale of narcotics was made a felony and all other violations of the 1927 act were made misdemeanors. Ch. 377, [1929] N.Y. Laws 881.

[38] Ch. 672, § 421(14), [1927] N.Y. Laws 1697.

[39] *Id.* § 443, at 1702.

[40] *Id.* § 423, at 1697.

[41] *See id.* § 443, at 1702.

[42] *See* N.Y. Times, Mar. 25, 1927, at 4, col. 6.

[43] *Id.*, Jan. 11, 1923, at 24, col. 1.

[44] *Id.*, Dec. 29, 1925, at 10, col. 7.

of testing in Panama on the effects of marijuana. The article noted that as a result of these tests the study group concluded marijuana smoking was relatively safe; thus, it was "recommended that no steps be taken by the authorities of the Canal Zone to prevent the sale or use of marijuana and that no special legislation on that subject was needed." [45] Finally, in July 1927, the *Times* reported that a Mexican family was said to have gone insane from eating marijuana.[46] Perhaps the clearest indication of the absence of notice given the marijuana section of the 1927 Act is that none of the articles discussing the Act after its passage refer to marijuana.[47]

It is likely, then, that the inclusion of cannabis in the state law was motivated primarily by the same fear that had provoked the Sanitary Law Amendment in 1914. Use, though still slight, was expected to increase. Throughout the entire New York experience the main argument was preventive: Marijuana use must be prohibited to keep addicts from switching to it as a substitute for the drugs which had become much more difficult to obtain after the enactment of the Harrison Act, and for alcohol after Prohibition.[48] Accordingly, the passage of the Harrison and Volstead Acts were direct causes of the preventive inclusion of marijuana among prohibited drugs. In fact, it has been observed that marijuana use *did* increase during this period.[49]

Another factor that may have influenced the passage of the 1927 Act was the Second Opium Conference at Geneva in 1925,[50] which included Indian hemp within the Convention against Opium and other Dangerous Drugs, even though the United States had withdrawn in

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[45] *Id.*, Nov. 21, 1926, § 2, at 3, col. 1.

[46] *Id.*, July 6, 1927, at 10, col. 6.

[47] *See id.*, Mar. 25, 1927, at 4, col. 6; *id.*, April 6, 1927, at 13, col. 2.

[48] *See* Simon, *From Opium to Hash Eesh*, SCI. AM., Nov. 1921, at 14-15. *See also* N.Y. Times, Jan. 11, 1923, at 24, col. 1. A similar argument was made with respect to cocaine:

> Cocaine in particular is greatly in demand. When prohibition is in force, persons, especially drinkers from compulsion of habit who have been robbed of their daily drink, will naturally resort to cocaine . . . .

Weber, *supra* note 7, at 372.

[49] B. RENBORG, INTERNATIONAL DRUG CONTROL 216 (1947):

> As the campaign against the illicit traffic in opium, morphine, and cocaine drugs made progress and gradually resulted in diminution of the supplies on the illicit market, a marked increase in the illicit traffic and the use of Indian hemp drugs was noticed, more particularly on the North American Continent (the problem of marihuana) and in Egypt (the hashish problem).

[50] See Second Geneva Opium Conference, Convention, Protocol and Final Act, *quoted in* W. WILLOUGHBY, OPIUM AS AN INTERNATIONAL PROBLEM, 534-70 (1925).

1925 from the League of Nations deliberations on controlling and regulating the international traffic in dangerous drugs.[51]

3. The International Scene

The first mention of marijuana on the international front came with the preliminary negotiations for the Hague Conference of 1912. In preparing for this Conference, which represented an attempt to deal with the international opium traffic, the government of Italy proposed that the production and traffic in Indian hemp drugs be included as part of the agenda of the Conference.[52] During the Conference itself, there was no mention of the drug, and the Convention did not include cannabis in its provisions. In addition to the Convention, however, the delegates signed a closing protocol:

> 2. The Conference considers it desirable to study the question of Indian hemp from the statistical and scientific point of view, with the object of regulating its abuses, should the necessity thereof be felt, by internal legislation or by an international agreement.[53]

It was not until just before the Geneva Conference of 1925 that the proposal was mentioned again. In 1923 the following resolution was passed by the Advisory Committee on Traffic in Opium and Other Dangerous Drugs of the League of Nations:

> IV. With reference to the proposal of the Government of the Union of South Africa that Indian hemp should be treated as one of the habit-forming drugs, the Advisory Committee recommends the Council that, in the first instance, the Governments should be invited to furnish to the League information as to the production and use of, and traffic in, this substance in their territories, together with their observations on the proposal of the Government of the Union of South Africa.[54]

At the 1925 meeting in Geneva, the Egyptians led the way in proposing that hashish be included within the Convention.[55] An Egyptian dele-

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[51] *Id.* at 344-46.

[52] Wright, *The International Opium Conference*, 6 AM. J. INT'L L. 865, 871 (1912).

[53] Addendum and Final Protocol of The International Opium Conf., The Hague, 1912, *quoted in* W. WILLOUGHBY, *supra* note 50, at 492.

[54] ADVISORY COMM. ON TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS, REPORT TO COUNCIL ON THE WORK OF THE SIXTH SESSION (1924), *quoted in* W. WILLOUGHBY, *supra* note 50, at 374.

[55] *See* W. WILLOUGHBY, *supra* note 50, at 251.

gate presented a paper on the effects and use of hashish in Egypt. Mr. El Guindy's study is so typical of the so-called scientific or empirical evidence that has been presented to justify the drug's prohibition that the following excerpt must be included. In stating that the real danger of hashish is that it will produce insanity, the Egyptian delegate presented the following:

> The illicit use of hashish is the principal cause of most of the cases of insanity occurring in Egypt. In support of this contention, it may be observed that there are three times as many cases of mental alienation among men as among women, and it is an established fact that men are much more addicted to hashish than women.[56]

The Egyptian proposal was referred to a subcommittee for study and later in the Conference this group reported that the use of Indian hemp drugs should be limited to medical and scientific purposes. The proceedings contain no record of what medical or scientific evidence might have been brought forward to support the inclusion of the Indian hemp drugs in the Convention.[57] Nevertheless, they were the subject of Chapters IV and V of the Convention.[58]

4. Conclusion

The early laws against the cannabis drugs were passed with little public attention. Concern about marijuana was related primarily to the fear that marijuana use would spread, even among whites, as a substitute for the opiates and alcohol made more difficult to obtain by federal legislation. Especially in the western states, this concern was identifiable with the growth of the Mexican-American minority. It is clear that no state undertook any empirical or scientific study of the effects of the drug. Instead they relied on lurid and often unfounded

[56] *Quoted in id.* at 378. Mr. El Guindy concludes by saying: "Generally speaking, the proportion of cases of insanity caused by the use of hashish varies from 3 to 60 percent of the total number of cases occurring in Egypt." *Id.* at 379.

[57] There are no records of these subcommittee hearings, so we can only surmise that the quality of the evidence might have been about as bad as that presented in the floor report of the Egyptian delegation.

[58] Geneva Convention of 1925, *quoted in* W. WILLOUGHBY, *supra* note 50, at 539. Moreover, the Convention defines Indian hemp as follows:

> "Indian hemp" means the dried flowering or fruiting tops of the pistillate plant *Cannabis sativa L.* from which the resin has not been extracted, under whatever name they may be designated in commerce.

Id. at 535

accounts of marijuana's dangers as presented in what little newspaper coverage the drug received. It was simply assumed that cannabis was addictive and would have engendered the same evil effects as opium and cocaine. Apparently, legislators in these states found it easy and uncontroversial to prohibit use of a drug they had never seen or used and which was associated with ethnic minorities and the lower class.

B. Judicial Corroboration

Two significant conclusions appear from a study of the few cases[59] involving convictions for marijuana offenses under the initial wave of state laws. First, the argument regarding a private conduct limitation on the police power had been so discredited it was not even made. Second, the courts, like the legislatures, relied on nonscientific materials to support the proposition that marijuana was an addictive, mind-destroying drug productive of crime and insanity.

In only one case was there a serious constitutional challenge to the validity of the legislation. Appealing a Louisiana conviction for possession of five hundred plants of marijuana, the defendant in *State v. Bonoa*[60] argued not that the state could not punish mere possession but rather that the statute was overbroad, since aside from its use as an intoxicant the marijuana plant was employed in the manufacture of hemp line, in the preparation of useful drugs and for the production of bird seed for canaries. Defendant's contention was that only possession, sale or use for deleterious purposes could be prohibited.

The court's reply was that the drug's deleterious properties outweighed its uses, especially since "[t]he Marijuana plant is not one of the crops of this state."[61] Defendant also offered the *reductio ad absurdum* argument that if possession of the marijuana plant may be prohibited simply because intoxicating resin may be extracted from the flowering tops, then the possession of corn or grapes may be prohibited

[59] In an extensive survey of cases appearing in the Fourth Decennial Digest for the years 1926 to 1936, we could find only eight cases dealing with marijuana under laws enacted prior to the Uniform Narcotic Drug Act. In chronological order: Gonzales v. State, 108 Tex. Crim. 253, 299 S.W. 901 (1927); State v. Franco, 76 Utah 202, 289 P. 100 (1930); State v. Bonoa, 172 La. 955, 136 So. 15 (1931); Santos v. State, 122 Tex. Crim. 69, 53 S.W.2d 609 (1932); Baker v. State, 123 Tex. Crim. 209, 58 S.W.2d 534 (1933); Horton v. State, 123 Tex. Crim. 237, 58 S.W.2d 833 (1933); State v. Navaro, 83 Utah 6, 26 P.2d 955 (1933); People v. Torres, 5 Cal. App. 2d 580, 43 P.2d 374 (Dist. Ct. App. 1935).

[60] 172 La. 955, 136 So. 15 (1931).

[61] *Id.* at 964, 136 So. at 18.

because whiskey and wine may be made from them, or possession of poppies because opium may be extracted from them. To this the court replied that alcohol was less injurious than marijuana and that both alcohol and opium were difficult to prepare from these sources while the marijuana plant was easily converted into tobacco and cigarettes.

The court's reasoning is admirable if we accept the basic premise that the marijuana drug is deleterious. To support this conclusion the court quoted from Solis Cohen Githens' *Pharmacotheraupeutics:*

> The first symptom is usually an exaltation of the mind . . . . The ideas are joyous . . . . Sleep follows . . . . When aroused from sleep . . . the mind . . . passes into the same somnolent condition, which lasts for several hours and is followed by a sense of weakness and extreme mental depression. In certain eastern people . . . perhaps because of continued use, the somnolent action is replaced by complete loss of judgment and restraint such as is seen more often from alcohol. An Arab leader, fighting against the crusaders, had a bodyguard who partook of haschisch, and used to rush madly on their enemies, slaying everyone they met. The name of "haschischin" applied to them has survived as "assassin."
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> The habitual use of cannabis does not lead to much tolerance, nor do abstinence symptoms follow its withdrawal. It causes, however, a loss of mentality, resembling dementia, which can be recognized even in dogs.[62]

The court also quotes Rusby, Bliss & Ballard, *The Properties and Uses of Drugs:*

> The particular narcosis of cannabis consists in the liberation of the imagination from all restraint . . . . Not rarely, in [the depression] state, an irresistible impulse to the commission of criminal acts will be experienced. Occasionally an entire group of men under the influence of this drug will rush out to engage in violent or bloody deeds.[63]

On these two sources, the entire opinion stands. The allegedly deleterious consequences—criminal activity and insanity—are supported only by the mythical etymology of the word "assassin." The marijuana user's purported propensity toward crime, based on similar and often

[62] *Id.* at 961-62, 136 So. at 17-18.

[63] *Id.* at 962-63, 136 So. at 18.

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weaker authority, was the primary rationale underlying passage of the Marihuana Tax Act.[64] So preposterous is this assertion that even the proponents of criminalization—including the Commissioner of the Bureau of Narcotics—later implicitly rejected it.[65]

In any event, the courts were as willing to accept such evidence as the legislatures. In a Utah case, *State v. Navaro*,[66] where the court cited the acknowledged evils of marijuana to repel a vagueness attack,[67] it relied on another set of dubious authorities. First, the court referred to the case of *State v. Diaz*[68] wherein a defendant in a first degree murder prosecution tried to disprove the requisite mens rea by showing that he was under the influence of marijuana at the time of the offense. Diaz had claimed that "his mind was an entire blank as to all that happened to him and stated that after smoking the marijuana he became 'very crazy.' "[69] To corroborate his assertion, defendant summoned a physician whose testimony was summarized in *Diaz* in a passage quoted in full in *Navaro:*

> He stated that [marijuana] is a narcotic and acts upon the central nervous system affecting the brain, producing exhilarating effects and causing one to do things which he otherwise would not do and especially induces acts of violence; that violence is one of the symptoms of an excessive use of marijuana. . . . That the marijuana produces an "I don't care" effect. A man having used liquor and marijuana might deliberately plan a robbery and killing and carry it out and escape, and then later fail to remember anything that had occurred . . . .[70]

Thus an attempt in an adversary setting by an accused to escape criminal responsibility by blaming his offense on marijuana intoxication

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[64] See pp. 1055-57 *infra*.

[65] See pp. 1072-73 *infra*.

[66] 83 Utah 6, 26 P.2d 955 (1933).

[67] Appellant, convicted on an information charging "possession of marijuana," contended that the statute prohibited only possession of the flowering tops and leaves of the marijuana plant. The court held that marijuana was the popular name for the drug, not just the plant, and that the information accordingly charged an offense. For this proposition, it cited dictionaries, other state statutes, articles, cases and texts. It is the court's familiarity with the articles describing the allegedly evil effects of the drug with which we are concerned.

[68] 76 Utah 463, 290 P. 727 (1930).

[69] *Id.* at 469, 290 P. at 729.

[70] 83 Utah at 12, 26 P.2d at 957, *quoting* 76 Utah at 469-70, 290 P. at 729.

became medical authority for the scientific hypothesis that marijuana use causes crime.

The second source of support in *Navaro* for the allegedly deleterious effects of marijuana was a 1932 article by Hayes and Bowery (the latter a member of the Wichita, Kansas, Police Department) entitled *Marihuana*.[71] Calling for stricter penalties for marijuana use, the authors stated that during the exhilaration phase, the user is likely to have increased sexual desires[72] and to commit "actions of uncontrollable violence, or even murder." [73] For these propositions, they cited newspaper accounts of crimes the causes of which the reporter attributed to marijuana[74] and police testimony to the same effect.[75] For example, the Chief Detective of the Los Angeles Police Department was quoted as saying:

> In the past we have had officers of this department shot and killed by Marihuana addicts and *have traced the act of murder directly to the influence of Marihuana, with no other motive.* Numerous assaults have been made upon officers and citizens with intent to kill by Marihuana addicts which were directly traceable to the influence of Marihuana.[76]

It should be noted that Hayes and Bowery attributed the violent impulse to the absence of restraint engendered during the so-called exhilaration phase, while each of the authorities cited by the Louisiana court in *Bonoa* attributed the same impulse to the sufferings experienced during the "depression" phase.[77]

The authors also asserted that habitual use leads to a "loss of mental activity, accompanied by a general dullness and indolence, like that of chronic alcoholics or opium eaters," to "destruction of brain tissues" and inevitably to insanity. For this proposition, the authors merely said that "seventeen to twenty per cent of all males admitted to mental hospitals and asylums in India have become insane through the use of this drug." [78]

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[71] Hayes & Bowery, *Marihuana*, 23 J. CRIM. L. & CRIMINOLOGY 1086 (1932).
[72] *Id.* at 1087, 1089.
[73] *Id.* at 1088.
[74] *Id.* at 1093.
[75] *Id.* at 1088, 1090-91.
[76] *Id.* at 1088 (emphasis added).
[77] Compare text at note 72 *supra* with text at notes 62-63 *supra*.
[78] Hayes & Bowery, *supra* note 71, at 1090.

Finally the court cited an article by Eugene Stanley, the District Attorney of New Orleans, entitled *Marihuana as a Developer of Criminals*.[79] The title conveys the message. We will return to Mr. Stanley in the succeeding section.[80]

The nonchalance with which Utah and Louisiana courts cited sensationalistic, nonscientific sources to support the proposition that marijuana produced crime and insanity suggests how widely accepted this hypothesis was among decision-makers, both judicial and legislative, prior to 1931. Given the prevalence of this attitude, the noninvolvement of the middle class, and the precedent established in the earlier alcohol and narcotics cases, it is not surprising that constitutional challenges were either not made or easily rebuffed. Nor is it surprising that challenges regarding the ambiguity of the word "marijuana" were unsuccessful.[81] The courts, like the legislatures, assumed marijuana caused crime and insanity, and assumed that had public opinion crystallized on the question, it would have favored the suppression of a drug with such evil effects.

IV. Passage of the Uniform Narcotic Drug Act: 1927-1937

Our conclusions to this point bear summarization. During the first two decades of the twentieth century, state as well as national policy was steadfastly opposed to manufacture, sale and consumption of narcotics and alcohol except for medical purposes. Constitutional objections were uniformly ignored, in the narcotics cases primarily because the nexus between the private conduct and public harm was *in fact* a close one, and in the alcohol cases primarily because the legislation was in response to full operation of the public opinion process, to which the courts were willing to defer.

We have also found that public opinion had not crystallized against

[79] Stanley, *Marihuana as a Developer of Criminals*, 2 Am. J. Police Sci. 252 (1931), *cited in* State v. Navaro, 83 Utah 6, 14-15, 26 P.2d 955, 958 (1933).

[80] See p. 1044 *infra*.

[81] *E.g.*, State v. Navaro, 83 Utah 6, 15, 26 P.2d 955, 959 (1933); State v. Bonoa, 172 La. 955, 959, 136 So. 15, 17 (1931). The Texas court was somewhat stricter in a series of cases charging simply sale or possession of "narcotic drugs" without specifying marijuana. On the same day, the court reversed convictions in Baker v. State, 123 Tex. Crim. 209, 58 S.W.2d 534 (1933) (possession); Baker v. State, 123 Tex. Crim. 212, 58 S.W.2d 535 (1933) (sale or possession); and Horton v. State, 123 Tex. Crim. 237, 58 S.W.2d 833 (1933) (possession). On the other hand the court held that an indictment charging "possession of marijuana" is sufficient even though it does not allege that marijuana is a narcotic drug. Santos v. State, 122 Tex. Crim. 69, 53 S.W.2d 609 (1932).

intoxicants generally, although public policy was moving rapidly in that direction. Ultimately, the mere existence of that public policy—even in the form of criminal law—was not sufficient to convert a public antipathy toward the evils of commercial alcohol traffic into opposition to moderate use of alcohol. On the question of private use, the public policy was unenforceable and eventually abandoned. However, with respect to narcotics, the public policy, also expressed through the criminal law, effectively converted narcotics use, in the public view, from a medical problem to a legal-moral problem. Sympathy for unfortunate victims turned into moral indictment. Because other laws and medical advances had reduced the number of accidental addicts, the number of addicts decreased; in this sense the public policy was successful. However, to the extent that this policy effectively ostracized a group of users from the rest of society, drove them to criminal activity to sustain their habit, and engendered a moralistic public image, the stage was set for many ensuing problems the consequences of which have only recently become matters of public debate.

Ancillary to these developments during this period was the classification of marijuana in some half the states as an addictive drug that produced the same evils as the opiate and cocaine—crime, pauperism and insanity. The users, few in number, were primarily Mexicans. But as Mexican immigration increased and the legitimate supply of narcotics and alcohol disappeared, a fear developed, particularly in the western states, that marijuana use would increase, particularly among the white youth. As a result, some twenty-two states restricted marijuana use to medical channels. The private conduct objection having evaporated, the courts uncritically affirmed the legislative classification, accepting on faith nonscientific opinion that marijuana was a "killer weed."

Even though the public opinion process did not operate on the issue during this period, the decision-makers in all probability thought that their actions comported with latent public attitudes. If indeed marijuana caused crime and insanity, of course the public would oppose its use, as it presumably did use of opium and cocaine. Because the users were few in number and confined primarily to a suppressed social and economic minority, there was no voice *which could be heard* to challenge these assumptions. To put it another way, the middle class had successfully frustrated alcohol prohibition because the public opinion process came to reflect its view that the law should not condemn intoxication. Yet because marijuana use was primarily a lower class phenomenon, the middle class was generally unaware of the proposed leg-

islation. The public opinion process did not operate, and decision makers remained uninformed about the drug. Quickly and with neither consideration nor dissent, the laws were enacted, thus establishing a deliberative format followed often in the succeeding decades.

Although the groundwork had been laid, denigration of the "loco weed" was primarily a regional phenomenon until 1932. Nationalization ensued in two fell swoops in the 1930's. First, cannabis was included in an optional provision of the Uniform Narcotic Drug Act proposed in 1932. Second, Congress enacted the Marihuana Tax Act in 1937. In the following sections we shall scrutinize these two watershed developments.

A. Origins of the Uniform Law

As we have suggested, the Harrison Act's masquerade as a revenue measure required residual state legislation in order to effectuate full prohibition of the narcotics trade in America.[1] After its passage most states obediently marched to the tune played in Washington. By 1931 every state had restricted the sale of cocaine and, with the exception of two, the opiates.[2] Thirty-six states had enacted legislation prohibiting unauthorized possession of cocaine[3] and thirty-five prohibited unauthorized possession of the opiates and other restricted drugs.[4] Eight states also prohibited possession of hypodermic syringes.[5] Perhaps the most significant feature of the state response to the Harrison Act was the sharp increase in penalties between 1914 and 1931.[6] Even these penalties, however, seem light in comparison with current penalties.[7]

On the other hand, some influential legislators thought that the Federal Act was sufficient to deal with the problem.[8] And there was a con-

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[1] See p. 989 *supra*.

[2] STATE LAWS 13.

[3] *Id.* at 8.

[4] *Id.*

[5] *Id.* at 21.

[6] For example, *compare* ch. 337, [1929] N.Y. Laws 881 *with* ch. 363, [1914] N.Y. Laws 1120.

[7] See Appendix A, Tables II, III.

[8] For example, in 1921 New York had repealed its general narcotics provision, ch. 708, [1921] N.Y. Laws 2496. See note 35 at pp. 1017-18 *supra*. Governor Miller of New York at that time stated:

> *Being unable to resolve that conflict of opinion,* I have deemed it the *safest course* to leave the subject to be governed by the Federal statute *until such time at least as it shall more clearly appear in what way that statute may be wisely supplemented by the State.*

48 REPORT OF THE NEW YORK STATE BAR ASS'N 133 (1925) (emphasis original). Com-

siderable lack of uniformity regarding the offenses prohibited and the penalties imposed by the several states. Finally, there was little attention devoted to development of enforcement patterns within and among the states.[9]

With such a variety of state legislation, it is not surprising that little data is available on the enforcement of these laws. Since the *Uniform Crime Statistics*, currently the most reliable source for enforcement data, were first compiled in 1932, there are no figures on the number of drug arrests by state authorities in the 1920's. One commentator asserts:

> As of June 30, 1928, of the 7738 prisoners in federal penitentiaries, 2529 were sentenced for narcotics offenses, 1156 for prohibition law violations, and 1148 for stolen-vehicle transactions. Data are not available for approximately the same number in state institutions at this time.[10]

Despite the significant degree of federal enforcement activity evidenced by the above data, state law enforcement agencies seldom involved themselves with narcotics.[11] Perhaps the best evidence of the lax enforcement of state narcotic laws from 1914 to 1927 is the 1921 call for more effective enforcement of the 1917 Massachusetts anti-narcotic law by the Medical Director of the Boston Municipal Court:

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missioner Anslinger felt that the states had failed to do their part during this period:

> Notwithstanding the limited power of the Federal Government, state officers immediately became imbued with the erroneous impression that the problem of preventing abuse of narcotic drugs was one now [after the Harrison Act] exclusively cognizable by the National Government, and that the Federal Law alone, enforced, of course, by Federal agencies only, should represent all the control necessary over the illicit narcotic drug traffic.

Anslinger, *The Reason for Uniform State Narcotic Legislation*, 21 GEO. L.J. 52, 53 (1932).

[9] TERRY & PELLENS 969-91. *See also* 1928 HANDBOOK OF THE NAT'L CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS 77-78 [handbooks hereinafter cited as 19— HANDBOOK].

[10] King, *The Narcotics Bureau and the Harrison Act*, 62 YALE L.J. 736, 738 n.12 (1953). *See also* Schmeckbier, *The Bureau of Prohibition* in BROOKINGS INST. FOR GOV'T RESEARCH, SERVICE MONOGRAPH No. 57, at 143 (1929).

[11] *See* JOINT LEGISLATIVE COMM. TO INVESTIGATE THE LAWS IN RELATION TO THE DISTRIBUTION AND SALE OF NARCOTIC DRUGS, FINAL REPORT, NEW YORK SENATE DOC. No. 35 (1918):

> No fixed policy exists for the enforcement of the State statutes except in the larger cities of the State but their enforcement has been left to the desultory or spasmodic efforts of local police officials . . . .

Quoted in TERRY & PELLENS 834. *See also* H. BECKER, OUTSIDERS 137-38 (1963).

> Our laws aiming at the suppression of morphinism could perhaps be better, but, no matter whether they be improved or not, they will not have their maximal efficiency without *adequate appropriations* for their enforcement. Even with the insufficient funds now available, more could be reached. I understand, for instance, that there is a *special police force* (white squads) entrusted with the detection and arrest of cases of V.D.L. [Violation of the Drug Law] and that officers are very much hampered by not being allowed to follow suspected persons outside their particular districts.[12]

The general lack of uniformity in anti-narcotic legislation,[13] the weakness of state enforcement procedures,[14] and the growing hysteria about dope fiends and criminality[15] converged in several requests beginning as early as 1927 for a uniform state narcotic law.[16]

The drafting process of the Uniform Narcotic Drug Act must also be viewed against the backdrop of two larger movements: (1) the trend toward the creation and dissemination of uniform state laws by the National Commissioners on Uniform State Laws, a group to which each state sent two representatives appointed by the governor; and (2) the general concern in the late 20's and early 30's about controlling interstate crime, manifested, for example, in the creation of the nearly autonomous Federal Bureau of Investigation in 1930.

Because the concepts of states rights and narrowly construed federal power held such sway in this period, appeal to the National Commissioners was the inevitable recourse for those pressing for uniform anti-narcotic regulations.

B. Drafting the Law

A committee of Commissioners in conjunction with Dr. William C. Woodward, Executive Secretary of the Bureau of Legal Medicine and Legislation of the American Medical Association, prepared and submitted at the 1925 meeting of the Commissioners the First Tentative Draft.[17] The Committee report stated: "It occurs to your committee

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[12] Sandoz, *Report on Morphinism to the Municipal Court of Boston*, 13 J. CRIM. L. & CRIMINOLOGY 10, 54 (1922) (emphasis original).

[13] *See* STATE LAWS 31-34.

[14] *Id.* at 28.

[15] *See* SPECIAL COMMITTEE TO INVESTIGATE THE TRAFFIC IN NARCOTIC DRUGS, U.S. TREASURY DEP'T, REPORT (1919).

[16] H. ANSLINGER & W. TOMPKINS, THE TRAFFIC IN NARCOTICS 159 (1953).

[17] 1925 HANDBOOK 977-85.

that the New York Act should be taken as a basis for framing a Uniform Act, and the draft submitted herewith is largely a copy of the New York Act." [18] It appears that the First Draft was drawn up by the Chairman of the Committee alone.[19] It was never presented on the floor of the full meeting but was recommitted for further study.[20] The First Draft included the following definitions:

> (12) "Cannabis indica" or "cannabis sativa" shall include any compound, manufacture, salt, derivative or preparation thereof and any synthetic substitute for any of them identical in chemical composition.
>
> (13) "Habit forming drugs" shall mean coca leaves, opium, cannabis indica or cannabis sativa.[21]

Nowhere in the Committee report or in the Proceedings does there appear an explanation of the inclusion of cannabis under the prohibited or regulated drugs.

The Second Tentative Draft was presented in 1928,[22] and again the draft was not discussed at the Conference but recommitted for further study.[23] The Second Draft was an exact copy of the 1927 New York statute.[24] It retained cannabis in the class of "habit forming drugs." [25] The lack of concern on the part of the Commissioners themselves for the whole narcotics matter is reflected in the remarks of the President of the Conference in introducing a brief statement to the Conference by Dr. Woodward:

> *President Miller:* In view of the importance of the act I think it would not be amiss to listen to the Doctor for a few minutes, that he may point out to us why it is important. In some of the states we do not recognize the importance because it has not been called to our attention.[26]

Moreover, the statements of Dr. Woodward point out that one of the major forces supporting the drafting of the Uniform Act was the

[18] *Id.* at 975.
[19] *Id.* at 305.
[20] *Id.*
[21] *Id.* at 978.
[22] 1928 HANDBOOK 323-33.
[23] *Id.* at 75-78.
[24] Ch. 672, [1927] N.Y. Laws 1695-1703.
[25] 1928 HANDBOOK 325.
[26] *Id.* at 76-77.

AMA. The doctors not only wanted to protect the public from drug addiction but also sought uniformity among state laws "in order that the profession may have a better understanding of its obligations and duties and of its rights in the use of narcotic drugs." [27]

Two Third Drafts were submitted. The initial one closely resembled the first two Tentative Drafts and was presented in 1929.[28] Again, it was recommitted for further study.[29] The second Third Tentative Draft[30] was the first to remove cannabis from the definition of "habit forming drugs" and to include only a supplemental provision for dealing with the drug.[31] The explanation for this change from the first two drafts is contained in this note following the supplemental section

> *Note:* Because of the many objections raised to the inclusion of cannabis indica, cannabis americana and cannabis sativa in the general list of habit-forming drugs, no mention is made of them in other sections of this act. The foregoing section is presented in order to meet an apparent demand for some method of preventing the use of such drugs for the production and maintenance of undesirable drug addiction. It may be adopted or rejected, as each state sees fit, without affecting the rest of the act.[32]

Judge Deering, the Chairman of the Committee on the Uniform Narcotic Drug Act, recommended recommission for further study because the committee had not yet had a chance to consult with the newly created Bureau of Narcotics. At the time of this conference (August 14, 1930) no one had yet been appointed to fill the office of Commissioner of the Bureau.[33]

After receiving suggestions from the newly appointed Commissioner

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[27] *Id.* at 77.

[28] 1929 HANDBOOK 332-40.

[29] *Id.* at 83.

[30] 1930 HANDBOOK 485-97.

[31] The provision, which made an exemption for medicinal or scientific use, read in part as follows:

> Section 12. (*Cannabis Indica, Cannabis Americana and Cannabis Sativa.*) No person shall plant, cultivate, produce, manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound cannabis indica, cannabis americana, or cannabis sativa, or any preparation or derivative thereof, or offer the same for sale, administering dispensing or compounding . . . .

Id. at 493.

[32] *Id.* There is no evidence of what objections had been raised. The authors feel certain that the dissenters were birdseed and hemp growers who also objected to the passage of the Marihuana Tax Act. See pp. 1054, 1059 *infra.*

[33] 1930 HANDBOOK 126-27.

Anslinger; the Committee presented a Fourth Tentative Draft to the national conference in September 1931.[34] The section dealing with marijuana was identical to that included in the 1930 revised version of the Third Tentative Draft.[35] The national conference directed the Committee to return the next year with a Fifth Tentative or Final Draft.[36]

The Fifth—and final—Tentative Draft was adopted by the National Conference of Commissioners on October 8, 1932.[37] There were some major changes in the Uniform Act between the Fourth and the Fifth Tentative Drafts with regard to the regulation of marijuana. Although the marijuana provisions remained supplemental to the main body of the Act, any state wishing to regulate sale and possession of marijuana was instructed to simply add cannabis to the definition of "narcotic drugs," in which case all the other provisions of the Act would apply to marijuana as well as the opiates and cocaine.[38] It appears that the change from a supplemental section to a series of amendments to the relevant sections of the Act was preferred by the Narcotics Bureau.[39] The only opposition to adoption of the Final Draft came from some Commissioners who objected to tying the uniform state law to the terms of the Federal Harrison Act.[40] This last obstacle to adoption of the Act was overcome by the argument that a number of states had already passed such legislation so that the federalism problem should not stand in the way; the Act was adopted 26-3.[41] These floor arguments at the national conference are a most important indication that no one challenged or even brought up the issue of the designations of the drugs to be prohibited. Moreover, this brief debate confirms the notion that the Act received very little attention of any of the Commissioners other than those sitting on the committee that drafted it.[42]

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[34] 1931 HANDBOOK 390-402.

[35] *Id.* at 398-99.

[36] *Id.* at 127-28.

[37] 1932 HANDBOOK 95-107.

[38] *Id.* at 326.

[39] *See* Tennyson, *Uniform State Narcotic Law*, 1 FED. B. ASS'N J., Oct. 1932, at 55; *Illicit Drug Traffic*, 2 FED. B. ASS'N J. 208-09 (1935) (indicating that the simple amendments for marijuana were designed by the Bureau so that other drugs could be added in the same way).

[40] 1932 HANDBOOK 95-107.

[41] *Id.* at 107.

[42] From our own computations, the total time spent by all the Commissioners discussing this Act from 1927 to 1932 could not have exceeded one hour. Moreover, the small number of states present at the time of the roll call, as compared with the

Examination of the annual proceedings of the Commissioners immediately suggests several conclusions about the drafting and proposal of the Uniform Narcotic Drug Act. (1) It was drafted in conjunction with the American Medical Association and, after 1930, Commissioner Anslinger of the Federal Bureau of Narcotics. (2) It was not one of the more controversial uniform laws and it was given little consideration during the full meetings of the Commissioners. (3) Impetus for the legislation, especially the optional marijuana provisions, came from the Bureau of Narcotics itself. (4) No scientific study of any kind was undertaken before the optional marijuana section was proposed. (5) The first three tentative drafts included marijuana within the general part of the Act while the last two (including the one finally adopted by the Commissioners) made marijuana the subject of a separate, optional provision. (6) The model for all the drafts of the Uniform Act was the 1927 New York State statute.

C. Passage of the State Laws

By 1937 every state had enacted some form of legislation relating to marijuana, and thirty-five had enacted the Uniform Act.[42] The process by which a previously regional phenomenon became nationwide closely parallels that which characterized the earlier state-by-state developments. The major difference is that the Bureau of Narcotics sought to insure passage of the Act in each state through lobbying and testifying before the legislatures and by propagandizing in channels of public opinion. The Bureau's role has been overstated, however. The same factors that combined to produce the earlier legislation were exacerbated during the nationalization period, 1932-1937, and the legislation probably would have passed just as easily without the efforts of the Bureau.

Use of the drug was still slight and confined to underprivileged or fringe groups who had no access either to public opinion or to the legislators. The middle class had little knowledge and even less interest in the drug and the legislation. Passage of the Act in each state was attended by little publicity, no scientific study and even more blatant ethnic aspersions than the earlier laws. In short, the laws went unnoticed by legal commentators, the press and the public at large, despite the propagandizing efforts of the Bureau of Narcotics.

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48 that voted on the Uniform Machine Gun Act the day before, indicates that concern for this Act was less than overwhelming.

42 *Tax Act Hearings* 25-26.

1. Use Patterns and Public Knowledge: 1931-1937

As we noted earlier, marijuana use began in this country in states near the Mexican border,[44] "marijuana" in fact being a Mexican label for the cannabis drug. Throughout the 1920's marijuana use was confined primarily to the Mexican-American community; however, by the late 20's use of this drug had spread to many of the larger cities and had become quite popular among some elements in the Black ghettoes.[45] Jazz musicians, dancers and others found the drug a cheap and readily available euphoriant.[46]

Nevertheless, use still remained slight even in 1934. Commissioner Anslinger himself asserted in 1937: "Ten years ago we only heard about it [marijuana] throughout the Southwest . . . . [I]t has only become a national menace in the last 3 years." [47] Still another commentator has written:

> Only in the 1920's was there any significant usage even by the Mexican-American communities in border cities, and only in the mid and late 1920's did Negro, jazz musicians and "degenerate" bohemian sub-cultures start smoking marijuana. Even the most lurid journalists did not claim marijuana "seeped" into society at large until the 1930's and usually the mid-30's.[48]

As late as 1928, the arrest of one Harlem youth for possession of a small amount of marijuana was news.[49] Thus, we conclude that the number of users was still small, although it may have begun to grow around 1935, and that these users were still concentrated regionally in the West and Southwest and socio-economically within the lower-class Mexican-American and Black communities.

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[44] *See* H. BECKER, OUTSIDERS 135 (1963).

[45] NEW YORK CITY MAYOR'S COMMITTEE ON MARIHUANA, REPORT, *reprinted in* THE MARIHUANA PAPERS 277-307 (D. Soloman ed. 1966) [hereinafter cited as LAGUARDIA REPORT].

[46] *Id.* at 292-94. The following exchange from the Hearings on the Marihuana Tax Act indicates the low cost of the drug in 1937:

> Mr. Thompson: What is the price of marijuana?
>
> Mr. Anslinger: The addict pays anywhere from 10 to 25 cents per cigarette. In illicit traffic the bulk price would be around $20 per pound. Legitimately, the bulk is around $2 per pound.

Tax Act Hearings 27.

[47] *Tax Act Hearings* 20.

[48] Mandel, *Hashish, Assassins and the Love of God*, 2 ISSUES IN CRIMINOLOGY 149 (1966).

[49] N.Y. Times, Oct. 7, 1928, § 2, at 4, col. 6.

At the same time, the overwhelming majority of middle-class Americans in the 1930's knew nothing of marijuana use—they had never seen marijuana and knew no one who used the drug. Prior to 1935 there was little, if any, attention given marijuana in major national magazines[50] and the leading national newspapers.[51] That few middle class Americans in this period knew anything of marijuana or its effects is best illustrated by the fact that the Bureau of Narcotics conducted a campaign to alert people to the dangers of marijuana. The Bureau as early as 1932 began arousing public opinion against marijuana by "an educational campaign describing the drug, its identification and its evil effects." [52] In July 1936, the New York City police were shown marijuana so that they would recognize it growing or in dried, smokeable form.[53] Thus, even policemen had to be shown the plant as late as 1936 to permit effective enforcement of the New York state law. We may accordingly infer that the level of public familiarity with the drug was quite low indeed.[54]

What little information filtered to the middle class was generated by sporadic campaigns by local newspapers detailing the potential evils of marijuana; the accounts, as before, were sensationalistic and tended to exacerbate latent ethnic prejudices. For example, a 1934 newspaper account linked crime in the Southwest with marijuana smoking Mexican-Americans in the region.[55] In a 1935 letter to the editor of the *New York Times*, a Sacramento, California, reader asserted:

> Marijuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration . . . . Mexican peddlers have been caught distributing sample marijuana cigarettes to school children.[56]

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[50] There is only one article even vaguely related to marijuana listed prior to 1935—*Our Home Hasheesh Crop*, LITERARY DIGEST, Apr. 3, 1926, at 64. *See* H. BECKER, OUTSIDERS 141 (1963).

[51] From 1923 to 1935 there were only thirteen short articles related in any way to marijuana in the New York Times, even though New York City had banned marijuana as early as 1914 and the state legislature had acted in 1927.

[52] BUREAU OF NARCOTICS, U.S. TREASURY DEP'T, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 59 (1937). *See also* H. BECKER, OUTSIDERS 140 (1963).

[53] N.Y. Times, July 24, 1936, at 6, col. 3.

[54] In 1923 the *New York Times*, in a short article, reported: "The latest habit forming drug . . . marijuana, which is smoked in a cigarette—was exhibited" at a women's club meeting. N.Y. Times, Jan. 11, 1923, at 24, col. 1.

[55] N.Y. Times, Sept. 16, 1934, § 4, at 6, col. 3.

[56] *Id.*, Sept. 15, 1935, § 4, at 9, col. 4.

The writer went on to demand a quota on Mexicans permitted to enter the country. In testifying in favor of the Marihuana Tax Act, Commissioner Anslinger submitted a letter he had received from the editor of a Colorado newspaper asking the Bureau to help stamp out the marijuana menace. After describing an attack by a Mexican-American, allegedly under the influence of marijuana, on a girl of his region the writer stated:

> I wish I could show you what a small marijuana cigaret can do to one of our degenerate Spanish-speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish-speaking persons, most of whom are low mentally, because of social and racial conditions.[57]

Again, in the testimony at the hearings on the Marihuana Tax Act the following is excerpted from an article included in the record:

> We find then that Colorado reports that the Mexican population there cultivates on an average of 2 to 3 tons of the weed annually. This the Mexicans make into cigarettes, which they sell at two for 25 cents, mostly to white school students.[58]

Thus, not only did few middle-class Americans know about marijuana and its use, but also what little "information" *was* available provoked an automatic adverse association of the drug with Mexican immigration, crime and the deviant life style in the Black ghettos. Naturally, the impending drug legislation, as had the earlier state legislation, became entangled with society's views of these minority groups.

2. *Role of the Federal Bureau of Narcotics*

It has become quite fashionable among critics of existing marijuana legislation to assert that the sole cause of the illegal status of marijuana has been the crusading zeal of the Federal Bureau of Narcotics and especially of its long-time head, Harry J. Anslinger. Some observers have suggested that the Bureau's activity was produced by bureaucratic exigencies and the need to expand;[59] others have said the Bureau was

[57] *Tax Act Hearings* 32.

[58] Gomila, *Marijuana—A More Alarming Menace to Society Than All Other Habit Forming Drugs, quoted in Tax Act Hearings* 32-33. *See also* Gusfield, *On Legislating Morals: The Symbolic Process of Designating Deviance*, 56 CALIF. L. REV. 54, 69 (1968).

[59] Dickson, *Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade*, 16 SOCIAL PROB. 143 (1968).

on a moral crusade;[60] still others have asserted that the Bureau believed its own propaganda about the link between criminality and dope fiends.[61] While much of this may be true, it is clear that the Bureau did not single-handedly conjure up the idea of banning marijuana use. Since many states had already undertaken the regulation of marijuana before the creation of the Bureau in 1930, we cannot credit the Bureau alone with the pressure to outlaw the drug.

At the same time, it is certain that the Federal Bureau of Narcotics' actions quickened the pace of the passage by state legislators of the Uniform Narcotic Drug Act. The Bureau saw the passage of state narcotics laws as one of its primary objectives. To this end we have detailed how directly the Bureau was involved in the creation of the Final Draft of the Uniform Act. After approval of the Final Draft, the Bureau began a significant campaign in the newspapers and legal journals to boost public support for the Uniform Act.[62] By detailing the inability of federal enforcement agencies to deal with the burgeoning narcotics traffic, the Bureau continued to press for passage of the Uniform Act by creating a felt need in the public for such legislation.[63] Despite the efforts of the Bureau, the Uniform Act went virtually unnoticed by legal commentators and periodicals, and by the public media.

3. Legislative Scrutiny and Media Coverage

The Uniform Act was passed by the legislatures of most states without scientific study or debate and without attracting public attention. In examining in detail the passage of the Uniform Act in Virginia and some other selected states, it will be clear that public concern over marijuana succeeded the outlawing of the drug and did not precede it. Our methodology to determine the extent of public attention in a given state at the time of the passage of the act was to review the newspapers of larger cities for the two weeks before and after passage.[64]

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[60] H. BECKER, OUTSIDERS 137-45 (1963); *see* T. DUSTER, THE LEGISLATION OF MORALITY 17-19 (1970).

[61] King, *The Narcotics Bureau and the Harrison Act*, 62 YALE L.J. 736, 737-39 (1953).

[62] *E.g.*, Anslinger, *The Reason for Uniform State Narcotic Legislation*, 21 GEO. L.J. 52 (1932); Tennyson, *Uniform State Narcotic Law*, 1 FED. B. ASS'N J., Oct. 1932, at 55 (Mr. Tennyson was Legal Advisor, Bureau of Narcotics).

[63] *See, e.g.*, N.Y. Times, Sept. 16, 1931, at 37, col. 2.

[64] It seems that if there were any public concern at all about the Uniform Act and its adoption, it should appear at those times in mention of the bill, marijuana or narcotic drugs in general. We used the papers of the larger cities under the assumption

In Virginia the Uniform Narcotic Drug Act passed the House 88-0 on February 16, 1934,[65] and was approved 34-0 by the Senate on February 22.[66] Although the Act as passed in Virginia contained no marijuana provisions, the same legislature the next month passed a bill (H.B. 236), prohibiting "use of opium, marijuana [and] loco weed . . . in the manufacture of cigarettes, cigars" and other tobacco products.[67] This law, which amended a 1910 Virginia statute prohibiting the use of opium in the manufacture of cigarettes,[68] was the first mention of marijuana or any of its derivatives in the Virginia Code.

An examination of the *Richmond Times-Dispatch*, the newspaper of the state capital and perhaps the most influential newspaper in the state at that time, for the period surrounding the enactment of these two provisions (February 1 to March 15, 1934) shows clearly that little, if any, public attention attended their passage. There is no mention at any time of H.B. 236.[69] As for H.B. 94 (the Uniform Act), the *Times-Dispatch* reported on February 7 that the bill had been introduced. This announcement was buried among the list of all bills introduced and referred on February 6.[70] In a February 12 article dealing with "controversial" bills before the House and Senate that week no mention was made of H.B. 94. On March 6, the newspaper recorded: "Among the important bills passed were: . . . [far down the list] the Scott bill, mak-

that they would usually contain the fullest and most accurate account of the business of state legislatures.

[65] VA. HOUSE JOUR. 324 (1934).

[66] VA. SENATE JOUR. 308-09 (1934).

[67] Any manufacturer or manufacturers of cigarettes who shall employ opium, marihuana, loco weed, or any other sedative, narcotic or hypnotic drug, like chemical or substance, either in the tobacco used or paper wrappers of cigarettes, cigars, tobacco or any otherwise undiluted foodstuff or beverage, other than that advertised, sold and used as a drug or medicine, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail not less than six months nor more than twelve months, or both, for each offense.
Ch. 268, [1934] Va. Acts of Assembly 411 (H.B. 236).

[68] Ch. 246, [1910] Va. Acts of Assembly 358 (codified as amended in VA. CODE ANN. §§ 18.1-345, -346 (Supp. 1970)).

[69] On March 11, 1934, the day after the prohibition of use of opium in cigarettes was amended to include marijuana, the *Richmond Times-Dispatch* did not mention the action, and an article entitled "Bills Passed by Assembly" did not mention any marijuana or narcotic laws. Richmond Times-Dispatch, Mar. 11, 1934, at 4, col. 2. A March 12, six-column article, entitled "Vital Measures Passed in Busy 1934 Assembly" also did not mention either the narcotics legislation or the marijuana amendment. *Id.*, Mar. 12, 1934, at 1, col. 2.

[70] *Id.*, Feb. 7, 1934, at 4, col. 1.

ing the State narcotic law conform to the Federal statute."[71] That the sum of the publicity received by the Uniform Act and the statute that first regulated marijuana in any way in Virginia.

In 1936, the legislature passed a separate statute prohibiting the sale and use of marijuana. This bill—S.B. 289—passed the House and Senate unanimously.[72] The Act prohibited, except for a narrow medical exception, sale, possession, use and cultivation of marijuana.[73] The penalties for violation, interestingly, were more severe than those for violation of the 1934 Uniform Act. Looking again at the *Times-Dispatch* for the period from February 15 to March 19, 1936, we find only one brief article on the new marijuana legislation. After the Senate passed the measure on February 29, the following appeared:

> Among the bills passed by the Senate was the Apperson measure prohibiting the cultivation, sale or distribution of derivatives of the plant cannabis sativa, introduced as an outgrowth of alleged traffic in marihuana cigarettes in Roanoke. It fixes punishment for violation of its provisions at from one to 10 years in the penitentiary, or by confinement in jail for 12 months and a fine of not more than $1,000 or both.
>
> Charges that school children were being induced to become addicts of marihuana cigarettes and that the weed was being cultivated in and near the city on a wide scale were laid before the Roanoke City Council last year. A youth who said he was a former addict of the drug testified before the Council that inhalation of one of the cigarettes would produce a 'cheap drunk' of several days' duration.[74]

No further mention of this statute was made after the House passed it or after the Governor signed it into law.

In order to determine whether the lack of public attention in Virginia was common to other states when the first prohibition of marijuana took place, we have surveyed the leading newspapers of several other states at the times encompassing passage of the law. We tried to select states that had not previously regulated use of the drug under the assumption that more publicity would attend initial legislation than an amendment of existing law.

In New Jersey, Rhode Island, Oregon and West Virginia, for ex-

[71] *Id.*, Mar. 6, 1934, at 2, col. 5.

[72] VA. HOUSE JOUR. 827 (1936); VA. SENATE JOUR. 498 (1936).

[73] Ch. 212, [1936] Va. Acts of Assembly 361.

[74] Richmond Times-Dispatch, Mar. 1, 1936, at 12, col. 3.

ample, the major newspapers of Newark,[75] Providence,[76] Salem[77] and Charleston,[78] respectively, referred to the Uniform Act only once and to marijuana not at all. In Kentucky, the *Louisville Herald Post* printed only two short references to the Uniform Act,[79] one of which referred to marijuana:

> [Congressman] Kramer added that boys and girls of school age are being led into the use of habit forming drugs by underworld leaders. . . . "[M]uggles" or cigarettes made from marijuana, commonly called loco weed or hemp, are also tabooed under the new state law, it was learned.[80]

Typical of both legislative and newspaper concern about the new law is the following *Charleston Daily Mail* comment:

> A Narcotic Bill
>
> Inconspicuously upon the special calendar of the house of delegates—rather far down upon it—is Engrossed S.B. No. 230, lodging specific powers in the hands of state authorities for the control of the traffic in narcotics. It has passed the Senate unanimously. It should pass the

[75] The *Newark Star Ledger* was surveyed from May 20 to June 10, 1933, a period surrounding the passage of the statute, ch. 186, [1933] N.J. Acts 397, on June 5, 1933. On the day of the signing of the bill, there appeared a short article noting that the Uniform Narcotic Drug Act had become law. Newark Star Ledger, June 5, 1933, at 2.

[76] The statute, ch. 2096, [1934] R.I. Acts 101, was approved April 26, 1934. The *Providence Journal* was surveyed from April 10 to April 28, 1934, and on April 12 there appeared five sentences on the Uniform Act. Providence Journal, Apr. 12, 1934, at 8. On April 21, the law was described in a short article summarizing the business of the legislative session. *Id.*, Apr. 21, 1934, at 7. Neither article mentioned marijuana.

[77] The *Salem Oregon Statesman* in the period from February 8 to February 28, 1935, had only one article dealing with drugs. Salem Oregon Statesman, Feb. 21, 1935, at 2, col. 2.

[78] The Uniform Act was passed in West Virginia on March 8, 1935. Ch. 46, [1935] W. Va. Acts 179. The *Charleston Daily Mail*, which carried detailed legislative news, was surveyed from March 1 to March 20, 1935. On March 1, the legislature reconvened under a special calendar including the Uniform Act. During this period, the Act attracted little attention except for an editorial on March 7. Charleston Daily Mail, Mar. 7, 1935, at 10, col. 1. The bill was mentioned in passing in two other stories on upcoming legislation, and in a report that a federal judge criticized West Virginia's failure to enact the Act. *Id.*, Mar. 6, 1935, at 6, col. 4.

[79] The *Louisville Herald Post* was surveyed from April 15 to June 15, 1934. The marijuana section of the Uniform Act became effective on June 14, 1934. Ch. 142, [1934] Ky. Acts 562. The only reference to the Act was Louisville Herald Post, June 6, 1934, at 10.

[80] *Id.*

> House, and its only danger of defeat there is the very real one that it will become lost in the shuffle of adjournment now but a few hours away.
>
> The bill goes under the name of the uniform narcotic drug act and it is just that. Identical measures for the control by the states of illicit traffic on drugs have been passed by other states, notably the Southern group. Its passage here would result in a broad territory in which there are corresponding laws . . . .[81]

The editorial nowhere mentions marijuana. The bill itself passed in the waning hours of the special session with no subsequent attention given it.[82]

From our survey of these and other states, we have concluded that with but one exception[83] the Virginia experience was the norm. (1) The laws prohibiting use, sale, possession, and distribution of marijuana passed unnoticed by the media. There was no public outcry for such legislation. (2) Quite often the bill was buried beneath more controversial bills in a busy legislative session. (3) In many states the Act was passed late in the session along with myriad other "uncontroversial" laws. (4) Finally, no state undertook independent study to determine the medical facts about marijuana—they relied on information supplied by the Federal Bureau of Narcotics[84] or a few lurid newspaper stories.[85]

4. *Available Medical Opinion*

In conjunction with the fourth conclusion from our state case histories of the passage of this Act, we should examine the extent of medical knowledge that might have been available to legislators had they wanted to conduct an independent evaluation of the dangers of the hemp drugs.

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[81] Charleston Daily Mail, Mar. 7, 1935, at 10, col. 1.

[82] *Id.*, Mar. 11, 1935, at 1, col. 1, reports: "In the confusion of the closing hours Saturday night the legislature passed many bills, many of them unread and unprinted and not understood."

[83] In Missouri, the passage of the Uniform Act was attended by pressure on the legislature stemming from a hysteria campaign in the *St. Louis Star Times* which contained 5 major articles urging the outlawing of marijuana and presenting lurid case studies of the evils of the drug. These articles were quoted in the *Tax Act Hearings*. *See* St. Louis Star Times, Jan. 17-Feb. 19, 1935.

[84] *See, e.g.*, N.Y. Times, Sept. 15, 1931, at 37, col. 2 (recording Commissioner Anslinger's statements on the need for uniform state laws to regulate marijuana).

[85] In the Missouri case, the legislature, in response to the scare stories in the *St. Louis Star Times*, took only 10 days to present the law, hold quick hearings, and unanimously pass the anti-marijuana legislation.

There were five influential sources for information about the effects of marijuana and hemp on humans. None of these were conducted with the scientific precision characterizing modern studies of drug effects. However, they each deserve mention here either because they deserved attention then or because they heavily influenced later commentators.

The first exhaustive study of the effects of cannabis and the other hemp drugs was done by the British in India. Their Indian Hemp Drugs Commission studied cannabis use among the native population in India in 1893 and 1894,[86] and submitted its conclusions in a 500-page report. The Commission received evidence from 1,193 witnesses, including 335 doctors, and studied the relevant drug-related judicial proceedings and the intake records of every mental hospital in British India. As a result they concluded:

> In regard to the moral effects of the drugs, the Commission are of opinion that their moderate use produces no moral injury whatever. There is no adequate ground for believing that it injuriously affects the character of the consumer. Excessive consumption, on the other hand, both indicates and intensifies moral weakness or depravity. Manifest excess leads directly to loss of self-respect, and thus to moral degradation. In respect to his relations with society, however, even the excessive consumer of hemp drugs is ordinarily inoffensive. His excesses may indeed bring him to degraded poverty which may lead him to dishonest practices; and occasionally, but apparently very rarely indeed, excessive indulgence in hemp drugs may lead to violent crime. But for all practical purposes it may be laid down that there is little or no connection between the use of hemp drugs and crime.[87]

It is quite clear, however, that the Indian Hemp Drug Commission Report was not disseminated in the United States until 1969.[88]

On the other hand, periodic reports of the Panama Canal Zone Governor's Committee to study the physical and moral effects of the use of marijuana *were* available to legislators before the passage of the Uniform Act. After an investigation extending from April to December 1925, the Committee reached the following conclusions:

> There is no evidence that marijuana as grown here is a "habit-forming" drug in the sense in which the term is applied to alcohol,

[86] INDIAN HEMP DRUGS COMMISSION 1893-94, REPORT: MARIJUANA (J. Kaplan ed. 1969).
[87] *Id.* at 264.
[88] *Id.* at vi.

> opium, cocaine etc. or that it has any appreciable deleterious influence on the individual using it.[89]

In 1933, a similar Panama Canal Zone committee reported:

> Delinquencies due to mariajuana smoking which result in trial by military court are negligible in number when compared with delinquencies resulting from the use of alcoholic drinks which also may be classed as stimulants and intoxicants.[90]

About the time that the final Governor's Committee Report from the Canal Zone was completed, a New Orleans physician, Dr. Fossier, completed a study from which he concluded that marijuana was a highly dangerous drug with habit-forming properties.[91] This piece would have remained relatively unnoticed due to the obscurity of the journal in which it was published had it not been picked up by the New Orleans District Attorney, Eugene Stanley, and made the basis for his own article—*Marihuana as a Developer of Criminals*[92]—which appeared in a law enforcement journal. Mr. Stanley stated:

> It is an ideal drug to cut off inhibitions quickly. . . .
>
> At the present time the underworld has been quick to realize the value of this drug in subjugating the will of human derelicts to that of a master mind. Its use sweeps away all restraint, and to its influence may be attributed many of our present day crimes. It has been the experience of the Police and Prosecuting Officials in the South that immediately before the commission of many crimes the use of marihuana cigarettes has been indulged in by criminals so as to relieve themselves from the natural restraint which might deter them from the commission of criminal acts, and to give them the false courage necessary to commit the contemplated crime.[93]

Mr. Stanley's article, based on no empirical data whatsoever, was widely used by courts to corroborate early legislation and by lobbyists to justify the later prohibitive legislation against the hemp drugs.[94]

In 1933 the following colloquy appeared in the Journal of the American Medical Association:

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89 *Quoted in Mariajuana Smoking in Panama*, 73 THE MILITARY SURGEON 274 (1933).
90 *Id.* at 279.
91 Fossier, *The Marijuana Menace*, 84 NEW ORLEANS MEDICAL & SURGICAL J. 247 (1931).
92 Stanley, *Maribuana as a Developer of Criminals*, 2 AM. J. POLICE SCI. 252 (1931).
93 *Id.* at 256.
94 *See Tax Act Hearings* 23-24, 37.

Effects of Cannabis

To the Editor:—I have been hearing about the smoking of cigarets dipped into or medicated with fluidextract of Cannabis americana. I can find nothing about the use of the drug by addicts. What is its immediate effect? What are its late effects? What is the minimum lethal dose? In what way does it differ from or resemble "muggles" in its action? While in Louisiana I was told that the use of marihuana causes dementia. Is this true? Please omit name.

M.D., Illinois.

ANSWER.—The effect of Cannabis americana is the same as that of Cannabis indica; and, of the effect of the latter, the books are so full that it is hardly necessary to detail them here. It must suffice here to say that cannabis, at the height of its action, usually produces hallucinations, with or without euphoria, and that these are followed by a deep sleep. Its most marked after-effect is the liability to the establishment of a craving for the drug, the habitual use of which undermines the intellectual qualities and the social value of the victim and leads to general physical deterioration. It is stated that smokers nearly always become imbecile in time. The minimum lethal dose is unknown, no fatalities having been reported in man. In view of the fact that one dose may kill one dog that has no marked effect on another, one must admit the possibility of a lethal effect on man. In view of what has been said, it must be admitted that "marihuana," which is merely another name for Cannabis indica, may cause dementia.[95]

The reply contains no indication how or where the persons who answered the question got their data. It seems clear from the nature of the response that the medical community was quite uncertain as to the effects of the drug in 1933.

In 1934, Dr. Walter Bromberg, senior psychiatrist at Bellevue Hospital, reported that marijuana was not a habit-forming drug and was far less responsible for crime than other drugs such as alcohol. In this study, Bromberg drew his data from examination of 2,216 inmates convicted of felonies.[96] Dr. Bromberg pointed out that marijuana users tend to be passive in comparison to users of alcohol and that the hemp drugs

[95] 100 J.A.M.A. 601 (1933).

[96] Bromberg, *Marijuana Intoxication: A Clinical Study of Cannabis Sativa Intoxication*, 91 AM. J. PSYCHIATRY 303 (1934).

should lead to crime only in cases of use by already psychopathic types.[97]

This then was the extent of medical evidence available to laymen and legislators alike at the time the Uniform Narcotic Drug Act and the first prohibitions of marijuana were enacted in most states. We can conclude the following from our brief review of the medical literature: (1

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[97] *Id.* at 309; *see Facts and Fancies About Marijuana*, LITERARY DIGEST, Oct. 24, 1936, at 7-8. This presentation begins by digesting Dr. Bromberg's article for laymen:

> It is clear from this study [of 2,216 criminals convicted of felonies] that in this region the drug is a breeder of crime only when used by psychopathic types in whom the drug allows the emergence of aggressive, sexual or antisocial tendencies. . . . It is quite probable that alcohol is more responsible as an agent for crime than is marihuana.

The article continues:

> The following facts stand out in social and medical reports:
>
> 1. Marihuana is not a habit-forming drug, as is heroin or opium.
>
> 2. It prolongs sensations; it is in high favor as an aphrodisiac.
>
> 3. It is the most inexpensive of drugs; marihuana cigarettes usually selling at from three to twenty-five cents each.

The article then describes the effects of marijuana:

> After smoking from one to three "reefers," if one has not been told what to expect, the first effects of the drug pass almost unnoticed—nothing, perhaps, but a slight twitching of muscles of the neck, back or legs. The mind remains calm and clear. Suddenly, without apparent cause, a chance remark . . . sends the subject into a spasm of violent laughter.
>
> Becoming calm again, while the drug continues to exert its weird effects, the smoker finds ideas crowding through his brain with bewildering rapidity; those around him become slow—dull. Nor is the language of his own tongue swift enough to keep pace with his lightning thoughts.
>
> Soon the self-esteem of the smoker begins to grow in like proportion. . . .
>
> Paradoxically, trifling discomforts become unbearable evils; the flare of a match near-by brings a resentment that is immediately transformed into an overwhelming desire for revenge. But before the "reefer man" could possibly climb to his feet, or even reach a hand for a gun or knife, new thoughts have come crowding in. . . .
>
> Above all other distinguishing effects of marihuana intoxication is the fact that all normal conceptions of time and space are lost.
>
> As in the split-second dream that seems to last the night through, time seems of interminable length; the clock stands still for days.
>
> Vision, too, takes on new concepts. Inconsiderable distances become tremendous. . . .
>
> . . . .
>
> Yet, throughout the intoxication, there is constant awareness that the strange fancies rushing through the mind are not natural, but purely the effects of the drug; unlike the opium-eater, he is acutely conscious of those about him. He has many of the sensations of the gay "drunk" at the ball.

Describing a pot-party:

> There is little noise; windows are shut, keeping the smell of smoking weeds away from what might be curious nostrils.
>
> Nor is there any of the yelling, dashing about, playing of crude jokes or physical violence that often accompany alcoholic parties; under the effects of marihuana, one has a dread of all these things.

Little was really known about the effects of marijuana use—there were few studies and what studies there were had serious methodological flaws. (2) Even if the studies we record had been adequate methodologically, they appeared generally in obscure medical journals not widely read by laymen. (3) Of these studies, most found marijuana relatively harmless especially in contrast to use of alcohol. (4) None of these studies were considered in either the formulation or the passage of the Uniform Act in the states examined. And what is more astounding is that instead of consulting medical opinion, legislators relied on lurid newspaper accounts of marijuana, often provided by defendants in criminal prosecutions whose motivation was to use marijuana to escape criminal responsibility.

5. *Provisions of the Uniform Narcotic Drug Act and Supplemental Virginia Marijuana Statute*

Having studied the circumstances surrounding passage of the Uniform Act and similar legislation in several states between 1932 and 1937, we shall briefly summarize the provisions of those laws.

(*a*) *Classification and Offenses.*—The Virginia legislature made no changes in the Uniform Act as drafted by the Commissioners and did not include the supplementary marijuana provisions in passing that Act.[98] In 1936, Virginia passed special marijuana legislation[99] which defined cannabis exactly as did the definitional provision of the Uniform Act. Both the special marijuana statute in Virginia and the Uniform Act prohibited possession, transfer and cultivation of the drug[100] but did not refer to the more specific acts that later came to be separated and punished more heavily, such as sale to a minor and possession of more than a certain amount.

(*b*) *Penalties.*—The Uniform Act contained no specific penalties for its violations; the matter of supplying the appropriate penalties was left to each state. Virginia punished first violations of its Uniform Act by a fine not exceeding $100 and/or imprisonment in jail not exceeding one year, and second and subsequent offenses by a fine not exceeding $1,000 and/or imprisonment for not more than five years in the penitentiary.[101] The penalties for violation of Virginia's 1936 marijuana

[98] Ch. 86, [1934] Va. Acts of Assembly 81.
[99] Ch. 212, [1936] Va. Acts of Assembly 361.
[100] *Id.*
[101] Ch. 86, § 20, [1934] Va. Acts of Assembly 90.

statute were *stiffer* than for violation of its Uniform Act. Each offense was punishable by imprisonment in the penitentiary for from one to ten years or by confinement in jail for not more than twelve months and/or by a fine up to $1,000, in the discretion of the court or jury.[102]

An analysis of penalties for violation of the marijuana statutes enacted in other states at about the same time indicates Virginia's penalties were atypically harsh. In New Jersey, for instance, the penalty for unlawful possession and sale of marijuana was that attaching to a high misdemeanor.[103] In Rhode Island the penalty for unlawful possession was a fine of not more than $1,000 or imprisonment for not more than three years or both.[104] For unlawful selling, Rhode Island provided a fine of not more than $2,000 or imprisonment for not more than five years or both.[105] In Kentucky the penalty for a first offense violation was a fine of not less than $100 and not more than $500 or jail for not less than thirty days nor more than one year or both. For second and subsequent offenses the statute required imprisonment in the penitentiary for not less than one nor more than five years.[106] Finally, West Virginia penalized a first offender by a fine not exceeding $100 or jail for not exceeding one year or both, and subsequent offenders by fine not exceeding $1,000 or imprisonment in the penitentiary not exceeding five years or both.[107]

This comparison indicates that Virginia penalties could be more severe than the average. Moreover, Virginia did not distinguish in penalty between possession and sale of the drug, and violation of Virginia's separate marijuana law could be more heavily penalized than violation of the Uniform Act.

V. Passage of the Marihuana Tax Act of 1937

The first assertion of federal authority over marijuana use was the Marihuana Tax Act, passed in 1937. The obvious question, from a historical point of view, is why such legislation was thought to be nec-

[102] Ch. 212, § 1(c), [1936] Va. Acts of Assembly 362. The penalty for violation of ch. 268, [1934] Va. Acts of Assembly 411, which prohibited the use of marijuana in the manufacture of cigars and cigarettes, was confinement in jail for from 6 to 12 months and/or a fine of from $100 to $1000.

[103] Ch. 186, § 12, [1933] N.J. Laws 411.

[104] Ch. 2096, § 14, [1934] R.I. Acts 111.

[105] *Id.* § 15.

[106] Ch. 142, [1934] Ky. Acts 562.

[107] Ch. 46, § 23, [1935] W. Va. Acts 192.

essary, especially after the brushfire passage of the Uniform Act and related legislation in every state in the previous few years. Enforcement difficulty and public hysteria are two reasons which have been propounded for the federal action. We subscribe to a third, one which we rejected with respect to the uniform acts—Congress was hoodwinked by the Federal Bureau of Narcotics.

A. State Enforcement of the Uniform Law

One of the primary arguments in support of the Marihuana Tax Act was that the legislation was required to permit and facilitate adequate enforcement of the Uniform Narcotic Drug Act.[1] Initial examination of enforcement statistics after passage of the Uniform Act suggests that marijuana seizures and arrests in most states rose dramatically.

[1] The best example of this argument is contained in Commissioner Anslinger's statement to the congressional committee hearings on the Marihuana Tax Act:

> STATE LAWS
>
> All of the States now have some type of legislation directed against the traffic in marijuana for improper purposes. There is no legislation in effect with respect to the District of Columbia dealing with marijuana traffic. There is unfortunately a loophole in much of this State legislation because of a too narrow definition of this term. Few of the States have a special narcotic law enforcement agency and, speaking generally, considerable training of the regular peace officers will be required together with increased enforcement facilities before a reasonable measure of effectiveness under the State laws can be achieved.
>
> NEED FOR FEDERAL LEGISLATION
>
> Even in States which have legislation controlling in some degree the marijuana traffic, public officials, private citizens, and the press have urged or suggested the need for national legislation dealing with this important problem. A partial list of States wherein officials or the press have urged the need for Federal legislation on the subject are Colorado, Kansas, New Mexico, Louisiana, and Oklahoma.
>
> The uniform State narcotic law has now been adopted by some 35 States, many of these including cannabis or marijuana within the scope of control by that law. However, it has recently been learned that the legislative definition of cannabis in most of these laws is too narrow, and it will be necessary to have the definition amplified in amendatory legislation in most of the States, to accord with the definition in the pending Federal bill. As is the case at present with respect to opium, coca leaves, and their respective alkaloids, the uniform State law does not completely solve the enforcement problem with respect to marijuana but it will provide the necessary supplement to the Federal act and permit cooperation of State and Federal forces, each acting within its respective sphere, toward suppression of traffic for abusive use, no matter in what form the traffic is conducted. The Bureau of Narcotics, under the Marijuana Taxing Act, would continue to act as an informal coordinating agency in the enforcement of the Uniform State law, exchanging information as between the respective State authorities in the methods of procedure and attempting to secure true uniformity in the enforcement of the act in the various States which have adopted it.

Tax Act Hearings 31.

However, we should be careful to note at the outset the inadequacies of most drug statistics, which, especially during this period, do not permit conclusive analysis regarding the extent of enforcement.

Reporting officials frequently do not differentiate among the drugs. Different jurisdictions employ different measures of enforcement—number of arrests, convictions, kilograms of the drug seized, or number of seizures; even where the same measures are used, statistics are often compiled for different time frames. In addition, changes in the definitions in the laws—such as a change from considering cannabis as only the flowering top of the plant to considering it the whole plant—can wildly distort the statistics from year to year. To add to the confusion, enforcement agencies can manipulate the data for their own uses; if they must appear to be attacking the drug problem or to need more resources, they can change radically the statistical appearance of the enforcement problem by using, for example, arrests as their enforcement measure. Finally, the mere passage of prohibitive legislation will in itself be reflected in the enforcement data. This is especially important for our study of enforcement patterns in the states before passage of the Marihuana Tax Act. As one commentator has explained:

> A point that should be obvious but that is sometimes overlooked is that there are no official statistics relating to violations of a drug law until the drug law is enacted. To compare official preenactment and postenactment data is to compare nothing to something, and naturally drug use will appear to rise.[2]

For all these reasons, the drug statistics from the period of the 1930's must be used somewhat hesitantly to support any contention about the extent of state enforcement before the enactment of Marihuana Tax Act. With this caveat in mind, we shall proceed, nevertheless, to do so.

Although Commissioner Anslinger testified at the hearings on the Tax Act that state officials frequently asked for federal assistance,[3] it appears from the Federal Bureau's own statistics that state and municipal agencies were proceeding with vigor to stamp out marijuana use.[4] We

[2] Mandel, *Problems with Official Drug Statistics*, 21 STAN. L. REV. 991, 1002 (1969). This article is the most complete discussion of the present inadequacies of all official drug statistics.

[3] *Tax Act Hearings* 26-27.

[4] The FBN statistics for 1935 through 1937 on quantities (in pounds) of harvested marijuana seized by state and municipal authorities in the major states are as follows:

do not have fully accurate data, but there are indications that both New York and Louisiana were moving against marijuana use. In 1934, the New York police discovered a large field of marijuana growing near the Brooklyn Bridge. In making a related raid, the police also seized 1,000 marijuana cigarettes.[5] In 1935, the police burned a marijuana crop found growing on the grounds of the Welfare Island penitentiary.[6] Throughout 1936, the narcotics division of the New York police found and destroyed several marijuana crops growing in and around the city.[7] Fragmentary figures are available on law enforcement in Louisiana which indicate there were 219 arrests or marijuana charges in New Orleans alone from 1930 until April of 1936.[8] In Louisiana as a whole for 1936 over 1,195 pounds of bulk marijuana were seized.[9]

This evidence suggests that state authorities in areas where marijuana use had become common at all were dealing fairly effectively with the trade in the drug. Although some states may have hoped that passage of a federal law dealing with marijuana would reduce the enforcement burden on state and local police and bring additional federal services and money,[10] the law cannot really be justified as filling an enforcement void. Nevertheless, this was one of the most effective arguments advanced by Commissioner Anslinger in the halls of Congress.

	1935	1936	1937
Louisiana	20	1,196	30
Mississippi	5	1,309	*
New York	372,000	1	*
Ohio	17,314	431	86
Texas	216	463	20
All other states	2,232	1,972	120
TOTALS	391,787	5,372	256

BUREAU OF NARCOTICS, U.S. TREASURY DEP'T, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 63 (1935) [hereinafter cited as TRAFFIC IN OPIUM]; *id.* at 90 (1936); *id.* at 81 (1937); Part of the erratic quality of these figures may stem from failure to weigh only the dried flowering tops of the plants seized. For example, 256 pounds seized in 1937 may represent a larger quantity of total plants than 391,787 pounds seized in 1935. *See* Mandel, *supra* note 2, at 999.

[5] N.Y. Times, Oct. 18, 1934, at 4, col. 4. The article goes on to refer to "mariajuana [*sic*], or loco weed, which produces a pleasant, relaxed sensation when smoked, and eventually drives the habitual user insane . . . ."

[6] *Id.*, July 17, 1935, at 8, col. 8.

[7] *See id.*, Aug. 19, 1936, at 16, col. 3; *id.*, July 28, 1936, at 11, col. 6.

[8] *See Tax Act Hearings* 35.

[9] TRAFFIC IN OPIUM 90 (1936).

[10] *See Tax Act Hearings* 26.

Second, since cannabis had been removed from the *United States Pharmacopoeia* and had no recognized medicinal uses, the variety of medical exceptions in the Harrison Act were inapplicable.[21] Third, even though the Supreme Court had upheld the Harrison Act's prohibition against *purchase* by unregistered persons of the designated drugs, there was some uncertainty whether the earlier 5-4 decision[22] would be followed. Accordingly, the Marihuana Tax Act imposed a prohibitive tax of $100 an ounce on the designated transactions, rather than prohibit the purchases directly.[23]

The brief three days of hearings on the Act[24] present a case study in legislative carelessness. At no time was any primary empirical evidence presented about the effects of the drug, and the participating congressmen seem never to have questioned the assumed evils. Furthermore, the only real concerns seem to have been that farmers would be inconvenienced by having to kill a plant which grew wild in many parts of the country, and that the birdseed, paint and varnish, and domestic hemp industries would be damaged by passage of the law.[25] Finally, the one witness appearing in opposition to the bill, Dr. William C. Woodward, legislative counsel of the American Medical Association and an early and respected participant in the drafting of the Uniform Narcotic Drug Act,[26] was roundly insulted for his audacity in daring to question the wisdom of the Act.

We reproduce in the following few pages some of the dialogue from the hearings, to give the reader the flavor of these ramshackle proceedings, and to allow him to understand more fully the pyramiding of absurdity represented by the amendments of the 1950's. From the hearings we extract contemporary perception of use patterns and harmful effects of marijuana, the quality of medical and other evidence presented, and a short glimpse at how the witnesses were treated by the committee.

1. Who Were Users?

The record of the hearings indicates quite clearly that the Federal

[21] *Tax Act Hearings* 13-14. Earlier state statutes, particularly Virginia's, had taken great pains to outline medical exemptions from the marijuana prohibition. See p. 1040 *supra*.

[22] United States v. Doremus, 249 U.S. 86 (1919).

[23] *Tax Act Hearings* 13-14.

[24] The hearings, including all material not actively discussed but merely read into the record, cover only 124 pages.

[25] *Tax Act Hearings* 77-86; *see* State v. Bonos, 172 La. 955, 136 So. 15 (1931).

[26] See pp. 1030-32 *supra*.

Narcotics Bureau was anxious for the committeemen to believe marijuana use was a relatively new phenomenon that was on the increase in America.[27] Once again, marijuana use and the Mexican minority were closely linked: "The Mexican laborers have brought seeds of this plant into Montana and it is fast becoming a terrible menace, particularly in the counties where sugarbeets are grown."[28] Again, also, marijuana was presented as the agent by which the underworld class hoped to enslave American youth.[29] The youth of the marijuana users was contrasted with the increasing age of the usual opiate addict. Perhaps most interestingly for later developments, Commissioner Anslinger succinctly noted that heroin addicts and marijuana users came from totally different classes and that the use of one drug was unrelated to use of the other:

> Mr. Anslinger. This drug is not being used by those who have been using heroin and morphine. It is being used by a different class, by a much younger group of people. The age of the morphine and heroin addict is increasing all the time, whereas the marihuana smoker is quite young.
>
> Mr. Dingell. I am just wondering whether the marihuana addict graduates into a heroin, an opium or cocaine user.
>
> Mr. Anslinger. No sir; I have not heard of a case of that kind. I think it is an entirely different class. The marihuana addict does not go in that direction.[30]

The hearings shed no more light on who was using the drug and in what numbers.

2. *What's Wrong with Marijuana?*

If the proceedings did not shed light on the patterns of usage, this in no way was an obstacle to unanimity on the evils of the drug—insanity, criminality and death. Three major sources were relied on to support

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[27] *See Tax Act Hearings* 30-31.

[28] *Id.* at 48.

[29] Quoting Dr. Walter Bromberg, Mr. Anslinger stated:

> Young men between the ages of 16 and 25 are frequent smokers of marihuana; even boys of 10 to 14 are initiated (frequently in school groups); to them as to others, marihuana holds out the thrill. Since the economic depression the number of marihuana smokers was increased by vagrant youths coming into intimate contact with older psychopaths.

Tax Act Hearings 24. *See also id.* at 32-35, 39, 45.

[30] *Id.* at 24.

this consensus: (1) a variety of horror stories from newspapers cited by Mr. Anslinger and others about atrocious criminal acts committed by individuals under the influence of the drug;[31] (2) studies by Eugene Stanley, the District Attorney of New Orleans, linking the drug and the population of the Louisiana jails;[32] and (3) some inconclusive experimentation on dogs.[33] As we noted earlier, the newspaper stories about crimes committed under the influence of marijuana have two things in common: The reports are unsubstantiated, and many of the accused invoked their use of marijuana as a defense to the charge.[34]

The New Orleans report concluded: "After an exhaustive research on marijuana from its earliest history to the present time, this drug is in our judgment the one that must be eliminated entirely." [35] What was this exhaustive research? It appears to have been nothing but quotations from the most hysterical series of newspaper articles to appear at that time[36] and reports of the number of marijuana addicts to be found in the prison population.[37] The relation of these figures to the conclusion that the drug must be regulated was never established.

The Stanley study[38] was even less well documented and even more outrageous in its description of the effects of marijuana use. "It is an ideal drug to quickly cut off inhibitions." [39] For this proposition Stanley relied on the story of the Persian "Assassins" who allegedly committed

[31] *Id.* at 22-23.

[32] *Id.* at 32-37.

[33] *Id.* at 50-52.

[34] *See id.* at 22-23. It is entirely likely that some of these particularly lurid stores were the product of desperate defendants, who, upon being caught red-handed in the commission of crime, sought mitigation of their penalties by claiming to be under the influence of the drug. *See* Bromberg, *Marijuana: A Psychiatric Study*, 113 J.A.M.A. 4 (1939). Bromberg cautions, "The extravagant claims of defense attorneys and the press that crime is caused by addiction to marihuana demands [*sic*] careful scrutiny, at least in this jurisdiction [New York County]." *Id.* at 10.

[35] *Tax Act Hearings* 35.

[36] A good example is the series run by the *St. Louis Star-Times* in early 1935 which featured such articles as the one entitled "Young Slaves to Dope Cigaret Pay Tragic Price for Their Folly" on Jan. 18, 1935.

[37] *See* Gomila & Gomila, *Marihuana—A More Alarming Menace to Society Than All Other Habit-Forming Drugs, quoted in Tax Act Hearings* 32, 34. Mr. F. R. Gomila was public safety director of New Orleans.

[38] Stanley, *Marihuana as a Developer of Criminals*, 2 AM. J. POLICE SCI. 252 (1931). *quoted in Tax Act Hearings* 37-42, is based on, and indeed is nearly a word-for-word paraphrase of, Fossier's article in the *New Orleans Medical Journal*, *supra* note 91 at p. 1044. As we have seen, Fossier, in reaching his conclusions, overlooked the Panama Canal Zone study.

[39] *Tax Act Hearings* 39.

acts of terror while under the influence of hashish. Although Stanley included in his list of references the Indian Hemp Drugs Commission Report, it is clear he made little effort to catalogue the then available data but contented himself with a number of bold and undocumented assertions. In reading the hearings, one continues to expect some report of a medical or scientific survey, and instead one finds these two reports by New Orleans law enforcers. The contrary conclusions of the Canal Zone studies were not even mentioned.

Finally, a scientific study of the effects of marijuana was presented, but, in keeping with the overall tone of the hearings, this was the most preposterous evidence of all. The Treasury Department presented a pharmacologist who had tested the effects of the cannabis drugs on dogs.[40] He concluded that "[c]ontinuous use will tend to cause the degeneration of one part of the brain."[41] One paragraph later, however, this scientist stated: "Only about 1 dog in 300 is very sensitive to the test."[42] Later in the doctor's testimony, after he had stated over and over the potential evils found from the testing on dogs, he was unable to make the crucial link between a dog's response to the drug and the human response. More incredibly, as the following exchange points out, the doctor really had no knowledge of what effect the drug had on the dogs, since he was not familiar with the psychology of dogs:

> Mr. McCormack. Have you experimented upon any animals whose reaction to this drug would be similar to that of human beings.
>
> Dr. Munch. The reason we use dogs is because the reaction of dogs to this drug closely resembles the reaction of human beings.
>
> Mr. McCormack. And the continued use of it, as you have observed the reaction on dogs, has resulted in the disintegration of the personality?
>
> Dr. Munch. Yes. So far as I can tell, not being a dog psychologist . . . .[43]

Dr. Woodward, the sole witness representing the American Medical Association, noted the inadequacy of these medical statistics. We include his statement on that point in full:

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[40] One assumes the drug was thought to be too dangerous to risk experimentation on people.

[41] *Tax Act Hearings* 48.

[42] *Id.*

[43] *Id.* at 51.

> That there is a certain amount of narcotic addiction of an objectionable character no one will deny. The newspapers have called attention to it so prominently that there must be some grounds for their statements. It has surprised me, however, that the facts on which these statements have been based have not been brought before this committee by competent primary evidence. We are referred to newspaper publications concerning the prevalence of marihuana addiction. We are told that the use of marihuana causes crime.
>
> But yet no one has been produced from the Bureau of Prisons to show the number of prisoners who have been found addicted to the marihuana habit. An informal inquiry shows that the Bureau of Prisons has no evidence on that point.
>
> You have been told that school children are great users of marihuana cigarettes. No one has been summoned from the Children's Bureau to show the nature and extent of the habit, among children.
>
> Inquiry of the Children's Bureau shows that they have had no occasion to investigate it and know nothing particularly of it.
>
> Inquiry of the Office of Education—and they certainly should know something of the prevalence of the habit among the school children of the country, if there is a prevalent habit—indicates that they have had no occasion to investigate and know nothing of it.
>
> Moreover, there is in the Treasury Department itself, the Public Health Service, with its Division of Mental Hygiene. The Division of Mental Hygiene was, in the first place, the Division of Narcotics. It was converted into the Division of Mental Hygiene, I think, about 1930. That particular Bureau has control at the present time of the narcotics farms that were created about 1929 or 1930 and came into operation a few years later. No one has been summoned from that Bureau to give evidence on that point.
>
> Informal inquiry by me indicates that they have had no record of any marihuana or Cannabis addicts who have even been committed to those farms.
>
> The Bureau of the Public Health Service has also a division of pharmacology. If you desire evidence as to the pharmacology of Cannabis, that obviously is the place where you can get direct and primary evidence, rather than the indirect hearsay evidence.[44]

Dr. Woodward's testimony clearly manifests the deficiencies of the hearings, for at no time did the congressional committee hear primary sources of competent medical evidence before labeling cannabis the producer of crime and insanity.

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[44] *Id.* at 92.

5. How Dare You Dissent!

Following the testimony of the Treasury Department and its witnesses, the only witnesses who came forward were representatives of legitimate industries that feared the Tax Act would damage their businesses, because manufacture of their products required some part or parts of the cannabis plant.[45] These witnesses were assured that the Tax Act would have little if any impact on their operations.[46]

The one witness who opposed the adoption of the Act was roundly accused of obstructionism and bad faith. Dr. Woodward, one of the chief drafters of the Uniform Narcotic Drug Act, appeared on behalf of the AMA to suggest that, if there was to be any regulation of the cannabis drugs at all, it should be added to the Harrison Act and not be the subject of this separate, and he felt inadequately considered, legislative proposal.[47] We have already examined Dr. Woodward's skepticism on the dangers of the drug. He added to this a thinly veiled attack on the lack of cooperation the AMA had received from the Federal Bureau of Narcotics.[48] Finally, he advocated either assisting state enforcement of their existing laws dealing with the drug or at most including marijuana as a regulated and taxed drug under the Harrison Act.

Either because of antipathy to the AMA or because of the audacity of these suggestions, the Committee members savagely attacked both Dr. Woodward and the AMA. Witness the following exchange, starting with the doctor's answer to questions why he had not proposed marijuana legislation:

> Dr. Woodward. In the first place, it is not a medical addiction that is involved and the data do not come before the medical society. You may absolutely forbid the use of Cannabis by any physician, or the disposition of Cannabis by any pharmacist in the country, and you would not have touched your Cannabis addiction as it stands today,

[45] Thus, the following witnesses appeared: Hon. Ralph E. Lozier, General Counsel of the National Institute of Oilseed Products; Raymond G. Scarlett of the birdseed industry; and Joseph B. Hertzfeld, Manager, Feed Department, The Philadelphia Seed Co.

[46] *See id.* at 74.

[47] *Id.* at 87-121.

[48] *Id.* at 87-88 ("During the past 2 years I have visited the Bureau of Narcotics probably 10 or more times. Unfortunately, I had no knowledge that such a bill as this was proposed until after it had been introduced").

because there is no relation between it and the practice of medicine or pharmacy. It is entirely outside of the those two branches.

The Chairman. If the statement that you have just made has any relation to the question that I asked, I just do not have the mind to understand it; I am sorry.

Dr. Woodward. I say that we do not ordinarily come directly to Congress if a department can take care of the matter. I have talked with the Commissioner, with Commissioner Anslinger.

The Chairman. If you want to advise us on legislation, you ought to come here with some constructive proposals, rather than criticism, rather than trying to throw obstacles in the way of something that the Federal Government is trying to do. It has not only an unselfish motive in this, but they have a serious responsibility.

Dr. Woodward. We cannot understand yet, Mr. Chairman, why this bill should have been prepared in secret for 2 years without any intimation, even, to the profession, that it was being prepared.[49]

After accusing Dr. Woodward of obstruction, evasion and bad faith, the Committee did not even thank him for his testimony.[50]

D. Congressional "Deliberation" and Action

We noted earlier that the marijuana "problem" and the proposed federal cure were virtually unnoticed by the general public. Unable to arouse public opinion through its educational campaign, the Bureau of Narcotics nevertheless pushed the proposed legislation through congressional committees. The Committee members were convinced by meaningless evidence that federal action was urgently needed to suppress a problem that was no greater and probably less severe than it had been in the preceding six years when every state had passed legislation to suppress it. The Committee was also convinced, incorrectly, that the public was aware of the evil and demanded federal action.

The debate on the floor of Congress shows both the low public visibility of the legislation and the nonchalance of the legislators. The bill passed the House of Representatives in the very late afternoon of a long

[49] *Id.* at 116.

[50] *See id.* at 121. There is some indication in Fred Vinson's questioning of Dr. Woodward that one cause of the hostility directed at the witness was the growing disfavor with which the New Deal Congress viewed the fairly conservative AMA. Vinson was particularly pointed when he said that the AMA was trying to obstruct here as it had with the Health Care provisions of the Social Security Act. *Id.* at 102-04.

session; many of the members were acquainted neither with marijuana nor with the purpose of the Act. When the bill first came to the House floor late on June 10, 1937, one congressman objected to considering the bill at such a late hour, whereupon the following colloquy occurred:

> Mr. DOUGHTON. I ask unanimous consent for the present consideration of the bill (H.R. 6906) to impose an occupational excise tax upon certain dealers in marihuana, to impose a transfer tax upon certain dealings in marihuana, and to safeguard the revenue therefrom by registry and recording.
>
> The Clerk read the title of the bill.
>
> Mr. SNELL. Mr. Speaker, reserving the right to object, and notwithstanding the fact that my friend, Reed, is in favor of it, is this a matter we should bring up at this late hour of the afternoon? I do not know anything about the bill. It may be all right and it may be that everyone is for it, but as a general principle, I am against bringing up any important legislation, and I suppose this is important, since it comes from the Ways and Means Committee, at this late hour of the day.
>
> . . . .
>
> Mr. RAYBURN. Mr. Speaker, if the gentleman will yield, I may say that the gentleman from North Carolina has stated to me that this bill has a unanimous report from the committee and that there is no controversy about it.
>
> Mr. SNELL. What is the bill?
>
> Mr. RAYBURN. It has something to do with something that is called marihuana. I believe it is a narcotic of some kind.
>
> Mr. FRED M. VINSON. Marihuana is the same as hashish.
>
> Mr. SNELL. Mr. Speaker, I am not going to object but I think it is wrong to consider legislation of this character at this time of night.[51]

On June 14 when the bill finally emerged on the House floor, four representatives in one way or another asked that the proponents explain the provisions of the Act. Instead of a detailed analysis, they received a statement of one of the members of the Ways and Means Committee repeating uncritically the lurid criminal acts Anslinger had attributed to marijuana users at the hearings. After less than two pages of debate, the Act passed without a roll call.[52] When the bill returned as amended from the Senate, the House considered it once again, and adopted as

[51] 81 CONG. REC. 5575 (1937).

[52] *Id.* at 5689-92.

quickly as possible the Senate suggestions, which were all minor.[53] The only question was whether the AMA agreed with the bill. Mr. Fred Vinson not only said they did not object when in fact their committee witness had dissented strenuously, but he also claimed that the bill had AMA *support*. After turning Dr. Woodward's testimony on its head, he also called him by another name, Wharton.[54]

In summary, the Act passed the Congress with little debate and even less public attention. Provoked almost entirely by the Federal Bureau of Narcotics and by a few hysterical state law enforcement agents hoping to get federal support for their activities, the law was tied neither to scientific study nor to enforcement need. The Marihuana Tax Act was hastily drawn, heard, debated and passed; it was the paradigm of the uncontroversial law.

E. Provisions of the Act

Except for the three differences noted above, the Marihauna Tax Act is modelled directly after the earlier federal tax act regulating the opiates —the Harrison Act. As with that Act, the enforcement of the new marijuana tax was left to the Bureau of Narcotics in the Treasury Department. Thus, as a result of the 1937 statute, the jurisdiction of the Bureau was increased substantially.[55]

The Marihuana Tax Act deals specifically with the seeds, resin and most other parts and derivatives of the plant *Cannabis Sativa L.* The Act requires persons importing, producing,[56] selling or in any other way dealing with the drug to pay an occupational tax and to register with the Internal Revenue Service. In addition, all transferees of marijuana are required to file a written order form and to pay a transfer tax, $1 per ounce if registered and a prohibitive $100 per ounce if not registered.[57] Possession of the drug without a written order form constitutes presumptive evidence of noncompliance with the Act. It is also unlawful for a transferor to transfer the drug to a person who has not secured the

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[53] *Id.* at 7624-25.

[54] *Id.* at 7625.

[55] *See* Dickson, *Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade*, 16 SOCIAL PROB. 143 (1968) (relating this expansion of the Bureau's area of enforcement to their solid support for the need of such federal legislation).

[56] Section 4(b) of the Act (now INT. REV. CODE of 1954, § 4755(a)(2)) gives rise to a presumption that one is a producer of marijuana within the terms of the Act if marijuana is found growing on his property.

[57] The Act does not prohibit possession or purchase of marijuana per se.

order form and paid the tax. As originally enacted, section 12 of the Act assessed a fine of not more than $2,000 and/or imprisonment for not more than five years for violation of each provision of the Act.

VI. The 1950's: Harsher Penalties and a New Rationale—The "Stepping Stone" Theory

The 1950's witnessed the advent of an extremist legislative policy with respect to drugs generally and marijuana in particular. For the first time in our national history, there was public interest in narcotic drugs. Apparently there had been an increase in narcotic drug abuse in the late 40's, and the public mind was ripe for the FBN propaganda. In the paranoid atmosphere of the times, the call for harsher penalties was soothing. Unfortunately, marijuana was caught in the turbulence of this era. Although the pharmacological facts about the drug were beginning to emerge, congressional furor was aroused by the novel assertion, rejected by Commissioner Anslinger in 1937, that use of marijuana led to use of harder drugs. This new plateau of misinformation was to provide the base for continual escalation of penalties and proliferation of offenses throughout the decade.

A. The Boggs Act and Its Progeny: The First Escalation

In 1951 Congress passed the next major piece of federal narcotics legislation[1]—the Boggs Act.[2] The importance of this legislation is that it provided much harsher penalties for all drug violators. Also, for the first time on the federal level, marijuana and other narcotics were lumped together as a result of the Act's provision for uniform penalties for violators of either the Narcotic Drugs Import and Export Act[3] or the Marihuana Tax Act.[4] This indiscriminate treatment of marijuana as just another narcotic drug flew in the face of contemporary testimony challenging the assumption that the hemp drugs were addictive, crime-producing, and likely to lead to insanity and death. New testimony that marijuana was unlikely to be addictive was buried under the new rationale for harsh penalties against offenders of the marijuana laws—that the drug

[1] Between 1937 and 1951, the Uniform Narcotic Drug Act was amended to change the definition of cannabis from the flowering or fruiting tops of just the female plant to include the corresponding parts of the male plant. *See* 1942 Handbook 172-73.

[2] Act of Nov. 2, 1951, ch. 666, 65 Stat. 767.

[3] 21 U.S.C. § 174 (1964).

[4] 26 U.S.C. §§ 4741-76 (1964).

inevitably is the stepping stone to heroin addiction. Eventually, the states followed the federal lead in striking out against drug violators with the same mindless fervor that characterized their anti-communist campaigns.

1. The Problem: Increased Narcotics Use

The hearings before the Subcommittee of the House Ways and Means Committee and the floor debate show that the primary reason for passage of the Boggs Act was the increase in narcotic use in the period 1948-1951. Testimony and evidence from a wide variety of sources indicated an abrupt and substantial increase in addiction, especially among teenagers, between 1947 and 1951.[5] Young people under 21 who had rarely been addicts suddenly became a predominant group involved in addiction and narcotics crimes.[6] Representative Boggs, speaking during the congressional debates on his bill, enunciated a concern which was reflected in many other quarters. After noting that there had been a 24 percent increase in arrests for narcotics violations between 1949 and 1950 and a 77 percent increase between 1948 and 1950, Representative Boggs stated:

> The most shocking part about these figures is the fact that there has been an alarming increase in drug addiction among younger persons. In the first 6 months of 1946, the average age of addicted persons committed . . . at Lexington, Ky. was 37½ years. Only 3 patients were under the age of 21. During the first 6 months of 1950, only 4 years later, the average had dropped to 26.7 years, and 766 patients were under the age of 21. . . .

[5] *Hearings Before the Special Senate Comm. to Investigate Organized Crime in Interstate Commerce*, 82d Cong., 1st Sess., pt. 14, exhibit 1, at 131, 240-41, 266 (1951) [hereinafter cited as *Kefauver Committee Hearings*]. Senator Kefauver stated at the June 26, 1951, session of the hearings:

> Illegal drug use has reached epidemic proportions, according to information secured by this committee from different parts of the country. One of the most alarming aspects is the reported increase in addiction among the younger generation, some of school age.

Id., pt. 14, at 235. *See also* N.Y. Times, June 19, 1951, at 25, col. 1 ("the present wave of juvenile addiction struck us with hurricane force in 1948 and 1949, and in a short time had the two Federal hospitals bursting at the seams") (statement of Commissioner Anslinger).

[6] A 57 year-old addict witness, who had started smoking opium around 1912, stated that he had never seen significant use of drugs by young people until recently and theorized that marijuana was the cause. *Kefauver Committee Hearings*, pt. 14, at 382.

> . . . [I]n New York City alone it has been estimated that 1 out of every 200 teen-agers is now addicted to some type of narcotics.[7]

Later he said, "We need only to recall what we have read in the papers in the past week to realize that more and more younger people are falling into the clutches of unscrupulous dope peddlers . . . ." [8]

Representative Boggs then proceeded to insert in the record eleven newspaper and magazine articles dated between May 2 and July 16, 1951.[9] The *Washington Evening Star* of July 16 (the day of the debate) carried a story on the results of a mayor's committee report on drug addiction in New York City. According to the newspaper, "between 45,000 and 90,000 persons in New York City are using illicit dope. . . . Based on the city's population of 7,835,099, that would be 1 out of every 87 or 1 out of 174 persons." The paper indicated that the report showed an increase in addiction among teenagers, and it called for "more severe penalties for dope sellers, and for wholesale revisions of Federal and State penal statutes relating to sale."

An article in *Time* magazine of June 25, 1951, inserted by Mr. Boggs, related New York City School Superintendent William Jansen's statement that one out of every 200 high school students in the city was a user of habit forming drugs. The article went on to describe the "alarming increases in dope consumption" in other major cities and the ease with which school children obtained narcotics. Another article, in the *Washington Evening Star* of June 12, 1951, contained statements by a member of the staff of the Attorney General of New York to the effect that between 5,000 and 15,000 of New York City's 300,000 high school students were drug addicts. To supplement the stock figures, these articles included the testimony of witnesses who described their own acts of prostitution and thievery, the loss of educational opportunities, the death of addicts from "hot shots," the horrors of withdrawal, and a wide variety of other aspects of drug abuse.

This evidence of increasing use of narcotics, especially among the young, and the fear that narcotics use would continue to spread, presented a problem that Congress felt needed a quick and effective solution.

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[7] 97 CONG. REC. 8197 (1951).

[8] *Id.* at 8198.

[9] *Id.* at 8198-8204.

2. The Solution: Harsher Penalties

In the same way that the congressional hearings, investigations and debates reflect the impetus for enactment of the Boggs Act, they also reveal the official and public consensus as to the solution—harsher penalties. Perhaps Commissioner Anslinger best described the prevailing climate when he stated:

> Short sentences do not deter. In districts where we get good sentences the traffic does not flourish. . . .
>
> . . . .
>
> There should be a minimum sentence for the second offense. The commercialized transaction, the peddler, the smuggler, those who traffic in narcotics, on the second offense if there were a minimum sentence of 5 years without probation or parole, I think it would just about dry up the traffic.[10]

This statement before the Committee was quoted by Representative Boggs during the congressional debate on his bill, along with the Kefauver Committee's recommendation that "mandatory penalties of imprisonment of at least 5 years should be provided for second offenders." [11] Representative Boggs indicated that his bill was intended to incorporate the Kefauver Committee recommendations of mandatory minimum sentences for drug peddlers and had as its

> principal purpose . . . to remove the power of suspension of sentence and probation in the cases of second and subsequent offenders against the narcotics and marijuana laws, and to provide minimum sentences . . . .[12]

Moreover, Representative Boggs and others supported the mandatory minimum sentences because they felt some federal judges had been lax in enforcing the narcotic laws[13] and because they believed harsher penalties had reduced crimes, particularly kidnapping and the white slave trade, in other areas.[14] Representative Edwin Arthur Hall of New

[10] *Id.* at 8198 (as quoted by Representative Boggs). *See also Kefauver Committee Hearings*, pt. 14, at 430-31 (testimony of Commissioner Anslinger).

[11] 97 CONG. REC. 8198 (1951).

[12] *Id.* at 8196.

[13] *See id.* at 8197, 8207. One of the most critical statements on this point came from Representative Harrison of Virginia who, after noting that narcotics laws violations had been increasing "only" in those jurisdictions where federal judges had failed to impose adequate sentences on recidivists, stated: "Where the judiciary is abusing its discretion, it is the duty of the law-making body to limit the discretion in order that the public may be protected." *Id.* at 8211.

[14] *Id.* at 8207.

York urged substitution of his bill, which provided for minimum sentences of 100 years for dope peddlers.[15] Although there was some opposition to the Boggs Act, notably by Representative Celler, who thought that the mandatory minimum sentence provision would be unjust for addicts,[16] the majority opinion was clearly that mandatory minimum sentences were necessary to insure punishment of peddlers.[17] In response to Mr. Celler's contention that young addicts could be subjected to long prison terms because of the loss of judicial discretion in sentencing, Representative Jenkins stated:

> The enforcing officers will always have sympathy for the unfortunate consumer, especially if he is harmless. These enforcing officers are going to protect the little boys and little girls. They are not going to drag the high school boys and girls before the criminal courts until they know that they are collaborating with the peddlers.[18]

Mr. Boggs presented a more reasonable justification for mandatory minimums:

> [I]t is not the intention of this legislation to affect a teen-ager or any such person who has possession of narcotics. But the gentleman also knows that if we try to make a distinction between possession and peddling that we immediately open the law to all types of abuses.[19]

The Act as passed provided uniform penalties for violations of the Narcotic Drugs Import and Export Act and the Marihuana Tax Act. The penalties prescribed were:

First offense	2 - 5 years
Second offense	5 - 10 years
Third and subsequent offenses	10 - 20 years
Fine for all offenses	$2,000.00

The relatively low fines reflected a congressional belief that monetary penalties were an insignificant deterrent.[20] An essential provision of the

[15] *Id.* at 8209.

[16] *Id.* at 8210.

[17] Representative Celler suggested that harsh mandatory sentences would have "two results: grand juries will refuse to indict and petit juries will refuse to convict." *Id.* at 8206.

[18] *Id.* at 8207.

[19] *Id.* at 8206.

[20] *Id.* at 8197.

Act removed judicial discretion in sentencing by providing that upon conviction for a second or subsequent offense the imposition or execution of the sentence could not be suspended nor probation granted. As in the nontax predecessors of the Boggs Act since 1909 and the Marihuana Tax Act, possession of a narcotic drug was sufficient for conviction unless the defendant could explain the possession to the satisfaction of the jury.[21]

3. Marijuana and the Boggs Act

Congressional and public attention was clearly focused on hard narcotics use, primarily the opiates. Judging from the recorded proceedings, especially the floor debate in the House, marijuana seems to have been along for the ride, much as it had been during enactment of the Uniform Narcotic Drug Act. However, here there was a conscious decision to include marijuana violations in the new penalty provisions. Underlying this decision were determinations that marijuana use had also increased during the later 1940's, that it too was spreading to white teenagers, and that the drug's dangers warranted the harsh treatment contemplated by the Act.

(*a*) *Increased Use.*—To test the allegation of an increase in marijuana use during this period, we have used the seizure and enforcement figures used by the proponents of the legislation. These figures tend to sustain the hypothesis that marijuana traffic increased from 1948 to 1951, following a decline throughout the early 40's. However, the figures are also consistent with other hypotheses, for example that improved enforcement techniques and increased state-federal cooperation had increased arrests.

Federal agents of the Narcotics Bureau began vigorously enforcing the Marihuana Tax Act almost as soon as President Roosevelt signed it into law. From October 1 to December 31, 1937, alone, the FBN made 369 seizures totaling 229 kilograms of the drug.[22] Moreover, state

[21] Representative Keating questioned the constitutionality of the provision. *Id.* at 8206. Apparently Keating accepted Representative Harrison's statement that the language had been in the statutory predecessors for years and had been passed on by the Supreme Court. *Id.* at 8211.

[22] TRAFFIC IN OPIUM 80 (1937). For a full and effective discussion of the flaws in these drug statistics from 1937 until the mid 1940's due to a confusion over what parts of the marijuana plant were to be weighed in determining how much of the drug had been seized, see Mandel, *Problems with Official Drug Statistics,* 21 STAN. L. REV. 991, 998-99 (1969).

officials made extensive seizures either in conjunction with FBN agents or in pursuance of their newly-passed state controls over marijuana.[23]

Marijuana seizures by federal authorities hit their low point in 1945 when only 257 kilograms were taken, 128 of which were seized by the FBN and the rest by United States Customs agents.[24] At this time the FBN had approximately 180 agents.[25] This low seizure figure suggests a decrease in marijuana use throughout the early 1940's.[26]

Beginning in about 1948, however, the arrest and seizure[27] figures rose

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[23] The following figures are available from 1936 to 1941. After 1941 the FBN ceased publication of the number of seizures by state and municipal authorities:

Year	*Number of seizures*	*Amount seized*
1935	unreported	195 + tons
1936	377	386 tons
1937	335	116 Kg.
1939	289	22,807 Kg.
1940	433	71,129 Kg.
1941	193	19 Kg.

TRAFFIC IN OPIUM 63 (1935); *id.* at 57 (1936); *id.* at 81 (1937); *id.* at 80 (1939); *id.* at 73 (1940); *id.* at 38 (1941). The great discrepancy in these numbers may be one reason the FBN ceased their publication in 1941.

[24] *Id.* at 80 (1945).

[25] *Hearings on Dep'ts of Treasury and Post Office Appropriations for 1951 Before a Subcomm. of the House Comm. on Appropriations*, 81st Cong., 2d Sess., pt. 1, at 128 (1950).

[26] The figures on the amount seized by federal agents from 1939-1945 are as follows:

Year	*No. of Kgs. Seized*	
	FBN	*Customs*
1939	419	63
1940	495	100
1941	396	212
1942	289	44
1943	150	168
1944	247	78
1945	128	129

TRAFFIC IN OPIUM 78 (1939); *id.* at 72 (1940); *id.* at 37 (1941); *id.* at 49 (1942); *id.* at 42 (1943); *id.* at 34 (1944); *id.* at 23 (1945).

[27] The figures for the period 1946-1951 are as follows:

Year	*No. of Kgs. Seized*		*No. of Arrests for Violations of Marijuana Laws*
	FBN	*Customs*	
1946	293	331	953
1947	307	466	911
1948	422	1023	1278
1949	384	1165	1643
1950	323	933	1490
1951	447	558	1177

TRAFFIC IN OPIUM 23, 27 (1946); *id.* at 23, 29 (1947); *id.* at 23, 28 (1948); *id.* at 22, 26 (1949); *id.* at 29, 33 (1950); *id.* at 25, 29 (1951).

dramatically, the arrest figures rising 33 percent from 1947 to 1948. These figures tend to corroborate the Commissioner's assertion that there was a drastic increase in narcotics use between 1948 and 1951[28] and to justify the simultaneous calls for amendment of the narcotics and marijuana laws.[29] On the other hand, these figures could reflect increased or improved enforcement. For example, in 1949 the FBN had begun to encourage the largest cities to form special narcotics squads to deal especially with the drug problem.[30] By 1951, however, only New York and Los Angeles had formed the separate police detail the FBN had requested.[31] Thus even if one were tempted to try to correct for improvements in the law enforcement machinery, the seizure figures for the late 40's and 50's do sustain the notion that the traffic in marijuana increased from 1948 to 1951.

(*b*) *Youthful Users.*—As with the hard narcotics, Congress was especially alarmed by the alleged spread of marijuana to white teenagers and school children. Militating against this proposition is evidence that marijuana use was not widespread among the young as late as 1944. In that year, the famous La Guardia Report reached the following conclusions among others: Marijuana use was widespread in the Borough of Manhattan but tended to be limited to certain areas, notably Harlem; the majority of marijuana smokers were Negroes and Latin-Americans; and marijuana smoking was *not* widespread among school children.[32]

[28] *See Teen-Age Dope Addicts New Problem?*, U.S. NEWS & WORLD REPORT, June 29, 1951, at 18 (interview with Commissioner Anslinger).

[29] See text at note 10 *supra*.

[30] *See Teen-Age Dope Addicts New Problem?*, *supra* note 28, at 19.

[31] Anslinger, *The Facts About Our Teen-Age Addicts*, READERS DIGEST, Oct. 1951, at 139.

[32] The conclusions of the La Guardia Report are discussed in THE MARIHUANA PAPERS 277-410 (D. Solomon ed. 1966). The thirteen conclusions on the sociology of marijuana use are so significant we include them in full:

> From the foregoing study the following conclusions are drawn:
> 1. Marihuana is used extensively in the Borough of Manhattan but the problem is not as acute as it is reported to be in other sections of the United States.
> 2. The introduction of marihuana into this area is recent as compared to other localities.
> 3. The cost of marihuana is low and therefore within the purchasing power of most persons.
> 4. The distribution and use of marihuana is centered in Harlem.
> 5. The majority of marihuana smokers are Negroes and Latin-Americans.
> 6. The consensus among marihuana smokers is that the use of the drug creates a definite feeling of adequacy.
> 7. The practice of smoking marihuana does not lead to addiction in the medical sense of the word.
> 8. The sale and distribution of marihuana is not under the control of any single

The La Guardia study portrays marijuana use in this period as a rather casual adjunct to ghetto life. Since it was not costly, this euphoriant was well within the reach of ghetto residents. It appears that throughout the early 40's marijuana use in the West as well as in the East continued to be associated with the ethnic minorities, especially in the inner city.[33]

The fear that marijuana use would spread to white teenagers is one that has recurred since the earliest legislative cognizance. In fact, it was probably a factor in the early opium laws.[34] We have been unable to confirm whether the fear was justified at this time, but in light of the documentation of increased narcotics use among the young, we shall presume the same use patterns to be true of marijuana.

(*c*) *The Danger: A New Rationale.*—The FBN had begun its educational campaign for harsher marijuana penalties immediately after passage of the Tax Act.[35] In the early years, the campaign was particularly effective with judges. For example, in one of the first cases under the Tax Act, a Colorado judge stated:

> I consider marihuana the worst of all narcotics—far worse than the use of morphine or cocaine. Under its influence men become beasts, just as was the case with [the defendant]. Marihuana destroys life itself. I have no sympathy with those who sell this weed.
>
> In the future I will impose the heaviest penalties. The Government is going to enforce this new law to the letter.[36]

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organized group.

9. The use of marihuana does not lead to morphine or heroin or cocaine addiction and no effort is made to create a market for these narcotics by stimulating the practice of marihuana smoking.

10. Marihuana is not the determining factor in the commission of major crimes.

11. Marihuana smoking is not widespread among school children.

12. Juvenile delinquency is not associated with the practice of smoking marihuana.

13. The publicity concerning the catastrophic effects of marihuana smoking in New York City is unfounded.

Id. at 307.

[33] The New York trend was also typical of Los Angeles. California Division of Narcotic Enforcement, Marijuana—Our Newest Narcotic Menace, April 1, 1940, at 12. *See also* Note, *Youth and Narcotics*, 1 U.C.L.A.L. REV. 445, 453 (1954) (reporting a breakdown by race of narcotics arrests by the Oakland police department).

[34] For example, in 1895 New York had passed a statute, ch. 1041, § 1, [1895] N.Y. Laws 972, requiring instruction in public schools on the effect of narcotics.

[35] For full accounts of the FBN "educational campaigns" up through the present day, see TRAFFIC IN OPIUM from 1937 to the present. For the full exposition of the FBN's position on the drug user as a criminal before he becomes an addict, see *Recidivism on Narcotic Law Violators*, in TRAFFIC IN OPIUM for each year.

[36] Judge J. Foster Symes of Denver, Colorado, *quoted in* TRAFFIC IN OPIUM 57 (1937).

The crime, pauperism and insanity rationale was accepted unquestioningly as late as 1951.[37] Under this rationale, harsher penalties were certainly as imperative for marijuana offenders as they were for opiate offenders. However, in a paper filed as an exhibit to the hearings[38] on the Boggs Act, Dr. Harris Isbell, Director of Research at the Public Health Service hospital in Lexington, Kentucky, exploded the traditional rationale. He stated that marijuana was not physically addictive.[39] Although he postulated a definition of addiction which amounts to nothing more than chronic intoxication[40] and noted the possibility of "temporary psychoses" in "predisposed individuals," Isbell's description of marijuana was extraordinarily favorable. Before the Kefauver Committee he testified:

> [M]arijuana smokers generally are mildly intoxicated, giggle, laugh, bother no one, and have a good time. They do not stagger or fall, and ordinarily will not attempt to harm anyone.
>
> It has not been proved that smoking marijuana leads to crimes of violence or to crimes of a sexual nature. Smoking marijuana has no unpleasant after-effects, no dependence is developed on the drug, and the practice can easily be stopped at any time. In fact, it is probably easier to stop smoking marijuana cigarettes than tobacco cigarettes.
>
> In predisposed individuals, marijuana may precipitate temporary psychoses and is, therefore, not an innocuous practice with them.[41]

Dr. Isbell's statements that marijuana does not cause a physical dependence were supported by other doctors,[42] prison officials,[43] and per-

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[37] *See, e.g.*, G. CREIGHTON, NARCOTICS: THEIR LEGITIMATE AND ILLICIT USE (1951).

[38] *Hearings on H.R. 3490 before the Subcomm. on Narcotics of the House Comm. on Ways and Means*, 82d Cong., 1st Sess. 147 (1951) [hereinafter cited as *Boggs Act Hearings*].

[39] Dr. Isbell's paper stated:

> Any definition [of addiction] which makes dependence an essential feature will also not include intoxications with such substances as cocaine, marijuana, and amphetamine, because dependence on these substances is no more marked than is dependence on tobacco and coffee and yet, in some ways, intoxication with cocaine or marijuana is more harmful than is addiction to morphine. Furthermore, definitions which exclude cocaine and marijuana from the list of addicting drugs would cause endless confusion because, in common parlance and legally, both drugs are regarded as addicting.

Id. at 147-48.

[40] *Id.* at 148.

[41] *Kefauver Committee Hearings*, pt. 14, at 119.

[42] *Id.* at 136. *See also Boggs Act Hearings* 101.

[43] *Boggs Act Hearings* 96.

haps most significantly by the statement of a number of narcotics addicts.[44]

Despite this testimony the legislators approved greatly increased penalties for marijuana users. The crucial reason for this severe treatment can be seen in the following colloquy during the House subcommittee hearings:

> Mr. Boggs. From just what little I saw in that demonstration, I have forgotten the figure Dr. Isbell gave, but my recollection is that only a small percentage of those marijuana cases was anything more than a temporary degree of exhiliration . . . .
>
> Mr. Anslinger. The danger is this: Over 50 percent of those young addicts started on marijuana smoking. They started there and graduated to heroin; they took the needle when the thrill of marijuana was gone.[45]

Many others—doctors,[46] crime prevention experts,[47] police and narcotics bureau officials[48]—testified to the link between marijuana use and ultimate heroin addiction. Representative Boggs himself summed up this novel danger of marijuana in one of the few statements even to mention marijuana in House floor debate:

> Our younger people usually start on the road which leads to drug addiction by smoking marijuana. They then graduate into narcotic drugs—cocaine, morphine, and heroin. When these younger persons become addicted to the drugs, heroin, for example, which costs from $8 to $15 per day, they very often must embark on careers of crime . . . and prostitution . . . in order to buy the supply which they need.[49]

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[44] *Kefauver Committee Hearings*, pt. 14, at 73, 101, 109 (statements of three addicts). *See also id.* at 190, 204 for statements by addicts to the effect that upon moving from marijuana to hard drugs they did not know that the latter were addictive. The implication is clear that marijuana is not addictive. *See id.* at 91.

[45] *Boggs Act Hearings* 206.

[46] *Kefauver Committee Hearings*, pt. 14, at 133.

[47] *Boggs Act Hearings* 105.

[48] *Kefauver Committee Hearings*, pt. 14, at 449; *Boggs Act Hearings* 62.

[49] 97 CONG. REC. 8197-98 (1951). The linkage of marijuana use to heroin was also supplied by some of the testimony by addicts themselves. Of 27 addicts interviewed in part 14 of the *Kefauver Committee Hearings*, 15 testified that they had started their drug use with marijuana. This figure is misleading because a substantial majority of the 12 who had not used marijuana were addicts because of illness or were older addicts who had begun using drugs before marijuana was readily available. *See Kefauver*

The passage of this new Federal Act marked a significant shift in rationale for the illegal status of marijuana; that status became more entrenched by the indiscriminate lumping of marijuana with the other narcotic drugs.

4. The State Response: Mindless Escalation

While the Boggs Act was still pending in Congress, the Bureau of Narcotics encouraged the states to modify their existing narcotic and marijuana legislation to enact "penalties similar to those provided for in the Boggs bill [which] would be of material assistance in the fight against the narcotic traffic." [50] Seventeen states (including Virginia) and the Territory of Alaska responded by passing "little Boggs Acts" by 1953, and eleven other states increased their penalties by 1956.

In 1951, seven states and the Territory of Alaska passed penalty provisions similar to those contained in the Boggs Act.[51] In addition, nine other states amended their drug laws to provide for more severe penalties, but the provisions were neither uniform nor identical to those provided for under the federal measure.[52] In 1952, four more states, including Virginia, amended the penalty provisions of their drug laws

Committee Hearings, pt. 14, at 11, 29, 54, 62, 71, 84, 93, 99, 104, 108, 153, 157, 160, 162, 167, 171, 182, 189, 194, 203, 211, 216, 220, 367, 380, 432, 436. Approximately 5 of the addict witnesses indicated that marijuana did in fact lead to the use of the harder drugs but only one gave definite reasons why he thought this transition inevitably took place. One male addict, after stating that the average age of marijuana smokers was 13 or 14, stated:

> You would very seldom find a person smoking marijuana who does just that, he keeps on, and he gets to the point where he does not have the same drive or feeling that he first had, and it is like a stepping stone, he graduates to heroin.

Kefauver Committee Hearings, pt. 14, at 199-200.

Note that among many of these addicts curiosity and peer group pressure was the primary factor in starting them into the use of hard drugs. *Id.* at 12, 32, 94, 109, 254. Moreover, Representative Boggs introduced some mystery into his statements during the House debates by stating:

> A study in February of 1950 of 602 case reports indicates that 53 percent . . . started their addiction to drugs by reason of association with other addicts, and 7 percent of them started on marijuana.

97 CONG. REC. 8197 (1951). This study is cited on the same page with Representative Boggs' statement that our young people usually start on the road to drug addiction by smoking marijuana.

[50] TRAFFIC IN OPIUM 6 (1950).

[51] Alabama, Indiana, Maryland, New Jersey, Oklahoma, Tennessee and West Virginia. *Id.* at 8 (1951).

[52] Connecticut, Illinois, Louisiana, Michigan, New York, Pennsylvania, Utah, Washington and Wisconsin. *Id.* at 8-9.

to bring them in line with the Boggs Act.[53] Six more states followed suit in 1953.[54] Finally, in 1955 and 1956 two states, Ohio and Louisiana respectively, enacted penalty provisions which were substantially more severe than those passed previously in any jurisdiction.[55]

The Virginia "little Boggs Act" was signed into law on April 1, 1952,[56] after having passed both houses unanimously.[57] The measure was regarded as routine, and as one of the "less controversial" proposals to come before the legislature during the 1952 session.[58] It cleared the House on a day when bills were being passed "at the rate of about one a minute during some periods" [59] and won Senate approval during the final rush to complete business in the waning hours of the 1952 General Assembly.

The Act produced three basic changes in Virginia's scheme of narcotics control. It added marijuana to those drugs whose sale was forbidden under the state's version of the Uniform Narcotic Drug Act; it created the new substantive crime of sale to a minor; and it provided for harsher penalties for violations of the drug laws.

Prior to 1952, the Virginia anti-marijuana provision[60] was separate from those provisions governing the sale of "hard" drugs. But the 1952 Act repealed this provision and included marijuana under the state's general narcotic control law. As a result, a person illegally selling marijuana became subject to the same penalties imposed upon a person illegally vending such drugs as heroin, morphine and cocaine.[61]

The heart of the 1952 Act was the provision for stiffer penalties for the violation of Virginia's general narcotic laws prohibiting the sale of drugs without a prescription. For the first offense, the penalty was im-

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[53] Colorado, Georgia, Kentucky and Virginia. *Id.* at 6 (1952).

[54] Delaware, Iowa, Minnesota, Nebraska, Pennsylvania and Wyoming. *Id.* at 9 (1953).

[55] The Ohio law, approved June 16, 1955, provided for imprisonment of any one found guilty of illegally selling narcotic drugs for a period of not less than twenty nor more than forty years. *Id.* at 7 (1955). The Louisiana measure, adopted the following year, provided severe prison sentences without parole, probation or suspension for the illegal sale, possession or administration of a narcotic drug. Sentences ranged from a five year minimum to a ninety-nine year maximum. *Id.* at 28 (1956).

[56] Ch. 451, [1952] Va. Acts of Assembly 736.

[57] The bill, H.B. 132, passed the House 65-0 on February 23, 1952, and the Senate 34-0 on March 7, 1952.

[58] Richmond Times-Dispatch, Mar. 2, 1952, § 2, at 1, col. 6.

[59] *Id.*, Feb. 24, 1952, § 2, at 5, col. 3. The House passed fifty bills and advanced thirty-five more during its session of February 23, 1952. *Id.*

[60] Ch. 212, [1936] Va. Acts of Assembly 361.

[61] Ch. 451, [1952] Va. Acts of Assembly 736.

prisonment in the penitentiary for not less than three nor more than five years plus a fine of not more than $1,000. For the second offense, the penalty was imprisonment for not less than five nor more than ten years and a fine of not more than $2,000. For the third and succeeding offenses, the penalties were fines of not more than $3,000 and imprisonment for not less than ten nor more than twenty years.

The 1952 Act also made it a felony to sell, barter, peddle, exchange or otherwise dispense marijuana or any other narcotic drug to a minor. Any person found guilty of such offense was subject to imprisonment for a term of not less than ten years nor more than thirty years, no part of which could be suspended, and a fine of not more than $1,000 for the first offense, $2,000 for the second offense and $3,000 for the third and subsequent offenses. Such a provision exemplifies the increased sophistication of anti-narcotic legislation during the 1950's. Thus, the continued escalation of penalties for drug law violators was followed in Virginia. Moreover, despite the public concern and attention in the national media, in Virginia it is plain that the 1952 amendments to the narcotic laws passed virtually unnoticed in the press.[62]

B. The Late 1950's: Another Escalation of the Penalties

Whether because use had decreased or because the propagandists had accomplished their main mission, the narcotics problem dropped almost entirely from public view after the Boggs Act was passed. Nevertheless, state and federal police authorities, armed with data suggesting that the strengthening of the drug laws had at least halted the increase in drug use, pressed for further increases in penalties in order entirely to root out the drug menace.[63] Without significant debate or public

[62] *See also* Proffit, *An Analysis of the Missouri Narcotic Drug Laws*, 17 Mo. L. Rev. 252 (1952), in which the author shows that narcotic hysteria was closely linked to the general hysteria and "Red Scare" of the early fifties: "The opinion has been advanced that the recent upsurge in consumption [of drugs] is fostered by Communists in an effort to undermine the morals of our youth." *Id.* at 252-53. He cites a Missouri official who so testified before a state legislative committee. For more of the same, see W. Oursler & L. Smith, Narcotics: America's Peril 266 (1952). The Missouri case parallels the Virginia data in that great public concern is expressed about the possible spread of narcotics addiction but little if any separate notice was given marijuana. Everywhere the narcotics evil was linked by veiled references to international communism, especially that of China, the traditional home of the opium habit.

[63] *Hearings on Illicit Narcotics Traffic Before the Subcomm. on Improvements in the Federal Criminal Code of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess. 57 (1955) [hereinafter cited as *Daniel Committee Hearings*]; *see* H. Anslinger & W. Oursler, The Murderers (1962).

interest, Congress responded by passing the Narcotic Control Act of 1956.[64]

Although the legislators paid even less attention to marijuana than they had in 1951, the precedent there established of classifying marijuana with hard narcotics resulted in a proliferation of marijuana offenses and a further increase in penalties. In some ways, this legislation represents the high-water mark of uninformed public policy regarding marijuana. In almost every respect, the provisions of the Act and the legislative motivation bear absolutely no rational relation to marijuana's pharmacology and to the drug's actual use and traffic patterns.

1. Provisions of the Narcotic Control Act of 1956

Public Law 728, an act intended to make more effective control of the narcotic drugs and marijuana, was approved on July 18, 1956. It amended the Internal Revenue Code of 1954 and the Narcotic Drugs Import and Export Act[65] primarily in the direction of increasing still further the penalties for violation of those acts and proliferating the scope of federal control over the use, possession and sale of narcotic drugs and marijuana.

The new law raised the potential fine for all narcotics and marijuana offenses to $20,000[66] and increased the mandatory minimum sentences for offenses in the prescription, registration and possession categories to two, five and ten years for successive offenses.[67] No distinction was made between addicts and traffickers with regard to these types of violations. Violations of the sale, transfer and smuggling provisions of the Act carry a minimum sentence of five years for first offenses and ten years for all subsequent offenses.[68] In this connection the Act created a new offense by prohibiting illegal importation of marijuana and forbidding knowing receipt, concealment, purchase, sale, and facilitation of transportation or concealment of such illegally imported marijuana.[69] Simple possession was by statute sufficient evidence of guilt to convict.[70] This provision, now 21 U.S.C. § 176a, paralleled a similar importation provision for narcotics originally passed in 1909.

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64 Ch. 629, 70 Stat. 567.

65 Ch. 202, 42 Stat. 596 (1922).

66 Ch. 629, §§ 103, 105-06, 108, 70 Stat. 568, 570, 571 (codified at 26 U.S.C. § 7237 (1964); 21 U.S.C. §§ 174, 176a, 184a (1964)).

67 *Id.* § 103, 70 Stat. 568 (codified at 26 U.S.C. § 7237 (1964)).

68 *Id.*

69 *Id.* § 106, 70 Stat. 570 (codified at 21 U.S.C. § 176a (1964)).

70 *Id.* (declared unconstitutional in Leary v. United States, 395 U.S. 6 (1969)).

In addition, any sale or transfer of any drug by an adult to a juvenile was made punishable by a minimum ten-year sentence.[71] Finally, the Act made suspension, probation and parole unavailable to all offenders except those convicted of a first offense for possession, prescription or registration.[72]

In addition to the increases in offenses and penalties, the law contained a wide variety of provisions relating to enforcement. Customs and Narcotics Bureau agents were authorized to carry weapons and to make arrests without a warrant on belief that a drug violation had been committed.[73] The Government was allowed to appeal unfavorable decisions suppressing evidence[74] and to compel testimony from witnesses by a grant of immunity.[75] In a concession to those legislators who favored a wiretapping provision, the new law created a category of offense based on the use of communications instrumentalities in violation of the drug laws.[76] This provision carried penalties of a minimum two-year sentence and up to a $5,000 fine. The Act required that citizens who are drug users and drug law violators must register with the immigration authorities upon entering or leaving the United States.[77] The Act also amended the Immigration and Nationality Act to provide for deportion of alien drug users and drug law violators.[78]

2. *Marijuana—Along for the Ride*

The Narcotic Control Act of 1956 was premised on the same beliefs as was the Boggs Act. Few if any of the legislators recognized that marijuana was in any way different from the physically addictive narcotics.[79] The stepping stone concept was now so widely accepted that only once

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[71] *Id.* § 103, 70 Stat. 568 (codified at 26 U.S.C. § 7237(b)(1) (1964)). The statute also provided that a seller peddling heroin to a minor may be subject to a sentence of life imprisonment imposed by a court, or to a death sentence imposed by a jury. *Id.* § 107, 70 Stat. 571 (codified at 21 U.S.C. § 176b (1964)).

[72] *Id.* § 103, 70 Stat. 569 (codified at 26 U.S.C. §7237(d) (Supp. III, 1966)).

[73] *Id.* § 104, 70 Stat. 570 (codified at 26 U.S.C. § 7607 (1964)).

[74] *Id.* § 201, 70 Stat. 573 (codified at 18 U.S.C. § 1404 (1964)).

[75] *Id.*, 70 Stat. 574 (codified at 18 U.S.C. § 1406 (1964)).

[76] *Id.*, 70 Stat. 573 (codified at 18 U.S.C. § 1403 (1964)).

[77] *Id.*, 70 Stat. 574 (codified at 18 U.S.C. § 1407 (1964)).

[78] *Id.* § 301, 70 Stat. 575 (codified at 8 U.S.C. §§ 1182(a)(5), (23) (1964)).

[79] The House Subcommittee on Narcotics, which produced what became the essentials of the Narcotic Control Act of 1956, revealed its knowledge of the distinction between marijuana and narcotics solely by a footnote to the major heading "Narcotics" which stated in fine print that the term narcotics included marijuana. *See* U.S. Code Cong. & Ad. News 3294 (1956).

during the extensive congressional debates on the House and Senate versions of the bill was the subject of marijuana as a separate substance even raised. In a statement reflecting both ignorance of the basic characteristics of marijuana and naive acceptance of the stepping stone concept, Senator Daniel, Chairman of the Senate subcommittee that investigated the drug problem, described marijuana:

> That is a drug which starts most addicts in the use of drugs. Marihuana, in itself a dangerous drug, can lead to some of the worst crimes committed by those who are addicted to the habit. Evidently, its use leads to the heroin habit and then to the final destruction of the persons addicted.[80]

Because Congress bought the FBN's propaganda lock, stock and barrel, it is not surprising that there was no dissent from the proposition that harsher penalties were the means to eliminate illicit use and sale of all drugs.[81]

3. *Trafficking Patterns*

The 1956 Act reflected an unsupported conception of the nature of the marijuana traffic. Under the assumption that "peddlers" of all drugs, marijuana included, are controlled by organized crime, the Act assessed

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[80] 102 CONG. REC. 9015 (1956).

[81] Representative Boggs, father of the Boggs Act and Chairman of the Subcommittee on Narcotics of the House Ways and Means Committee, stated that "[e]ffective steps to eliminate the unlawful drug traffic requires . . . the imposition of severe punishment by the courts." *Id.* at 10689. The subcommittee, which had set out to determine the effect of the Boggs Act on narcotics traffic, U.S. CODE CONG. & AD. NEWS 3291 (1956), began its recommendations with calls for further increases in the penalties for narcotics law violations. *Id.* at 3309. In fact, the subcommittee felt that this was the only way to eliminate the drug menace, and recommended that educational programs on the evils of narcotics *not* be instituted in the schools for fear of exciting the curiosity of young people. *Id.* at 3305. Both the House Ways and Means Committee report and the subcommittee report are filled with statements to the effect that harsher penalties are the most effective weapons in the war against illicit narcotics. *Id.* at 3281-3303 *passim*. The Ways and Means Committee conclusion was succinct: "Experience with the Boggs law . . . has clearly demonstrated the efficacy of severe punishment in reducing the illicit commerce in drugs." *Id.* at 3286.

Finally, Senator Daniel, speaking for the Senate subcommittee investigating the drug situation in the United States, found "it absolutely necessary for the Congress of the United States to strengthen the hands of our law enforcement officers and provide higher penalties if we are to stop the narcotics traffic in this country." 102 CONG. REC. 9014 (1956). His subcommittee also recommended the kind of across-the-board increases in penalties that the Act eventually contained.

extremely heavy penalties for sale, especially to minors. For example, the House Ways and Means Committee report noted that "narcotic traffickers . . . are in most cases well organized professional racketeers." [82] Similarly, in recommending prohibition of probation or suspension of sentence for first-offender peddlers, the House subcommittee had asserted that if the first offender peddler problem was not solved, there would eventually be "large scale recruiting of our youth by the upper echelon of traffickers." [83]

While the reference to organized crime was undoubtedly valid with respect to hard drugs, the assumption that marijuana traffic was controlled by large-scale racketeers was completely unsupported. The marijuana distribution pattern today is far different than the distribution pattern for "hard" drugs. On college campuses today, the marijuana seller is likely to be a smoker who has a small amount he wants to sell. Unless one is to believe that organized crime has abdicated a distribution role to "amateurs," it is difficult to imagine that it controlled the distribution of marijuana in 1956. Accordingly, the 1956 Act's widely divergent treatment of sale and use of marijuana may not have been justified at the time of enactment, and it certainly makes little sense today.

4. Origin and Use

A related misconception about the marijuana trade concerns the new importation offenses. Underlying the presumption of knowing concealment of smuggled marijuana arising from possession are two findings—that the mainstay of marijuana traffic is imported from Mexico and that possessors are likely to be aware of that fact. Even in 1956, such findings were dubious.[84] As to the presumption of importation, Commissioner Anslinger's estimate that 90 percent of all marijuana seized by federal authorities had been smuggled from Mexico[85] was grossly misleading. The Federal Bureau of Narcotics had practically abandoned the responsibility for marijuana control to increasingly effective state

[82] U.S. Code Cong. & Ad. News 3283 (1956); *see id.* at 3302.

[83] *Id.* at 3304.

[84] In holding unconstitutional the presumption of knowledge that marijuana was smuggled, the Supreme Court in Leary v. United States, 395 U.S. 6 (1969), relied on the change in use patterns from 1959 to 1967. We think the presumption was unconstitutional when passed in 1956, both as to importation and knowledge.

[85] *Daniel Committee Hearings* 18.

narcotics squads and to the Customs agents.[86] Of course, federal figures taken alone would suggest a high percentage of importation. Furthermore, the Commissioner's conclusion was inconsistent with an essential premise of the Tax Act[87] and with other materials before the Congress,[88] all of which emphasized the large degree of domestic cultivation.

As to the possessor's knowledge, the underlying assumption again was that there was an organized trade pattern so that each user knew where his drug came from. As we know, marijuana was then a casual adjunct to ghetto life. It was a social, rather than an economic, phenomenon limited almost exclusively to unemployed or menially employed members of racial minorities in the center cities.[89] As applied to such a class of people, the presumption is farcical.[90]

5. *Enforcement Patterns*

Although the proliferation of federal offenses suggests on its face that state enforcement was inadequate to cope with marijuana trade or that increased use of the drug presaged increased narcotics addiction, nothing could be farther from the truth. Considering marijuana alone, the 1956 legislation was passed in response to no need at all. The enforcement statistics confirm our hypothesis that marijuana was simply "along for the ride."

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[86] The decline in the number of FBN arrests and seizures is directly related to the increase in local and state enforcement personnel. This thesis is supported by data from California where statewide arrests soared while federal arrests remained stable. Bureau of Criminal Statistics, California Dep't of Justice, Crime in California (1956). *See also* A. LINDESMITH, THE ADDICT AND THE LAW 238 (1963). One commentator has suggested that except for the years immediately after the passage of the Marihuana Tax Act, when the Bureau wanted to concentrate on its newly acquired enforcement field, the FBN arrest data show clearly its emphasis on the hard narcotics. Mandel, *Problems with Official Drug Statistics*, 21 STAN. L. REV. 991, 1019-20 (1969).

[87] See note 20 at p. 1053 *supra*.

[88] Written materials inserted into the record of the Senate hearings included the testimony of an experienced federal Customs official that high quality marijuana was being grown near the Texas cities of Laredo and Brownsville. *Daniel Committee Hearings* 3488-89. In addition, the Attorney General of Ohio noted that marijuana "may grow unnoticed along roadsides and vacant lots in many parts of the country." *Id.* at 4814. Also, a bulletin issued by the Philadelphia Police Academy recited that "[p]lenty of marijuana is found growing in this city." *Id.* at 599.

[89] Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*, in THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 21, 24 (1967); Bouquet, *Cannabis*, 3 U.N. BULL. ON NARCOTICS, Jan. 1951, at 22, 32-33.

[90] This is especially true with respect to the young and black minorities. The

First, as we noted above, federal arrests declined continually after 1952.[91] Although attributable in part to increased state enforcement and to a conscious FBN decision to concentrate on narcotics, the figures do suggest a decline in or at least a stabilization of marijuana use by the middle fifties, even in areas in which narcotics use continued unabated. Second, the class of users does not seem to have changed at all during this period. Arrest statistics still indicate that use was centered in the ghetto areas of major cities[93] in California, Texas, Louisiana, Michigan, New York and Illinois.[94] However, because statistics were not refined according to race, age, sex and often even the drug used,[95] we cannot state categorically that there was no change in use patterns.[96]

6. The Epitome of Irrationality: Virginia's 1958 Amendment

In 1958, Virginia's Uniform Drug Act was further amended to make the "possession of illegally acquired narcotic drugs [which included marijuana] in any quantity greater than twenty-five grains, if in solid form, or eight ounces, if in liquid form," a crime punishable by a fine of not more than $5,000 and imprisonment for not less than twenty nor more than forty years.[97] The effect of this enactment was to provide a penalty for illegal possession that was more than twice as severe as the penalty for unlawful sale and one and one-half times more stringent than that for sale to a minor. It is incredible that despite the extreme

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presumption has validity only as applied to recently immigrated Mexicans. *Cf.* Chein, *The Status of Sociological and Social Psychological Knowledge Concerning Narcotics*, in NARCOTIC DRUG ADDICTION PROBLEMS 146, 155 (R. Livingston ed. 1963). Mr. Chein reports a shift in drug use from 1930-1960 from old to young and a continued increase in the percentage of drug users who are Black or Spanish-speaking.

[91] The number of federal arrests for marijuana violations fell from 1288 in 1952 to 169 in 1960. TRAFFIC IN OPIUM 26 (1952); *id.* at 69 (1960).

[92] By 1954, many major states and cities had special narcotics squads. *See Daniel Committee Hearings* 13-14, 110.

[93] *Cf.* TRAFFIC IN OPIUM 66 (1956); *id.* at 41 (1959). The FBN charts show clearly the extraordinary incidence of drug abuse among Blacks, Mexican-Americans and other minority communities.

[94] *Daniel Committee Hearings*, exhibit 7, at 267-71. Local arrests in those six states accounted for 2,822 of the 3,205 marijuana arrests made by local law enforcers in 1954.

[95] For example, the statistics in TRAFFIC IN OPIUM seldom even distinguish among the drugs involved, and the FBI Uniform Crime Statistics frequently report all drug related arrests together, with no delineation of the type of drug used or the nature of the offender.

[96] Chein, *supra* note 90, at 152, suggests that whatever patterns of drug use existed in the fifties were merely continuations of patterns observed in the thirties.

[97] Ch. 535, [1958] Va. Acts of Assembly 675.

harshness of this penalty, the measure passed both houses of the General Assembly with but one dissenting vote, and no mention was made of it in the *Richmond Times-Dispatch* during the period of February 14 to April 7, 1958.

In conclusion, the Federal Narcotic Control Act of 1956 and subsequent state legislation reflect the same basic congressional and public misconceptions about the nature and dangers of marijuana that characterized the early fifties. Even more unchanged, and in fact strengthened by results under the Boggs Act, was the assumption that the key to the solution of the narcotic drug problem was the imposition of harsher penalties on both users and traffickers in illicit drugs. Classification of marijuana with narcotic drugs was now a foregone conclusion. In fact, legislators seemed less aware that marijuana was a distinct substance than they had been in 1951.

VII. Marijuana Users in the Courts: 1930-1965

Having studied the evolution of legislative hostility to marijuana from a regional phenomenon with racial overtones to a nationwide paranoia, it is worthwhile to consider the fate of marijuana users in the courts during this evolutionary period. After the courts had summarily rejected the substantive constitutional arguments, appeals in marijuana cases tended to focus on three contentions particularly germane to drug violations: procedural objections arising from interrelated statutory schemes on the state and federal levels punishing essentially the same conduct; objections to police conduct intrinsic to victimless crimes; and objections to sufficiency of evidence at trial. Like their legislative colleagues, state and federal judges translated what they knew of the drug's mythical effects into overt hostility. Coupled with the traditionally conservative treatment afforded the rights of criminal defendants, especially in state prosecutions, this judicial hostility produced ever-lengthening sentences and few reversals.

A. Statutory Fantasies: The Complications of Federal Legislation

1. Quadruple "Jeopardy" and the "Killer Weed"

When Congress passed the Marihuana Tax Act in 1937, marijuana had already been included in the Uniform Narcotic Drug Act and every state had enacted some form of marijuana prohibition.[1] In addition to

[1] See p. 1034 *supra*.

its ostensible revenue-raising function, the Act was obviously designed both to deter further use of the drug[2] and to facilitate enforcement of the state laws.[3] The statute assured the availability to state prosecutors of the order forms filed with the IRS at the time of payment of the tax.[4] Congress had thought that the order forms and registration requirements would develop an "adequate means of publicizing dealings in marihuana in order to tax and control the traffic effectively."[5]

Thus, after 1937, possession of marijuana without filing the transfer form and paying the federal tax constituted a violation of both state and federal law;[6] yet filing the form and paying the tax would probably not have eliminated the buyer's exposure to prosecution under state law. Indeed, compliance would probably have readily identified the buyer to state officials. To this unfairness the courts paid no heed, noting that exposure to state and federal prosecution for the same act did not constitute double jeopardy[7] and that the fifth amendment did not protect defendants from prosecution for violation of state law.[8]

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[2] *See, e.g., Hearings on H.R. 6506 Before a Subcomm. of the Senate Comm. on Finance*, 75th Cong., 1st Sess. 5-7 (1937); H.R. Rep. No. 792, 75th Cong., 1st Sess. 1-3 (1937).

[3] *See* Leary v. United States, 395 U.S. 6, 26-27 (1969).

[4] 26 U.S.C. § 4773 (1964).

[5] H.R. Rep. No. 792, 75th Cong., 1st Sess. 2 (1937); S. Rep. No. 900, 75th Cong., 1st Sess. 3 (1937).

[6] With minor exceptions, the Marihuana Tax Act requires all transactions in marijuana to be carried out by written order form. 26 U.S.C. §§ 4741-44 (1964). It is unlawful for a transferor to transfer except by such form obtained by the transferee, 26 U.S.C. § 4742 (1964), and for the transferee to acquire, transport or conceal marijuana without filing the transfer form, registering with the IRS and paying the applicable transfer tax. 26 U.S.C. § 4744(a) (1964). For heretofore unregistered persons, that tax is $100 an ounce. 26 U.S.C. § 4741 (1964). Since marijuana was excised from the United States Pharmacopoeia, there have been few legitimate transactions by registered persons. The President's Commission on Law Enforcement and Administration of Justice, Report: The Challenge of Crime in a Free Society 214 (1967). Since the tax is otherwise prohibitive, the Act is in effect almost entirely a criminal law; the crime is having anything to do with marijuana—possession, sale, acquisition or importation—since proof of possession coupled with failure, after reasonable notice and demand by the Secretary of the Treasury or his delegate, to produce the transfer form is "presumptive evidence" of guilt. 26 U.S.C. § 4744(a) (1964).

[7] *Cf.* Abbate v. United States, 359 U.S. 187 (1959); Bartkus v. Illinois, 359 U.S. 121 (1959); United States v. Lanza, 260 U.S. 377 (1922). One state court held, as an interpretation of state legislative policy rather than under constitutional compulsion, that acquittal of a federal marijuana possession charge would constitute a defense to the same state charge. State v. Wortham, 63 Ariz. 148, 160 P.2d 352 (1945).

[8] *See* Leary v. United States, 383 F.2d 851, 870 (5th Cir. 1967), *rev'd*, 395 U.S. 6 (1969); Haynes v. United States, 339 F.2d 30, 31-32 (5th Cir.), *cert. denied*, 380 U.S. 924 (1965).

After passage of the 1956 federal narcotic drug legislation,[9] possession of marijuana constituted at least one, and often two, additional crimes. First, the Narcotic Drugs Import and Export Act was amended[10] in 1956 to punish directly illegal importation[11] of marijuana or other dealings in the drug with knowledge that it had been illegally imported. Since mere possession was sufficient evidence to convict under the Act,[12] possession without registration and order form now constituted three crimes, and compliance with the filing and tax provisions would have exposed the defendant to liability under state law and under the importation provision if the original importation was illegal. Again the courts saw no fifth amendment violation.[13] Second, another provision of the 1956 package required every person addicted to or using narcotics or convicted of a violation of the narcotics or marijuana laws punishable by over one year's imprisonment to register upon leaving the country.[14] Designed to aid the Government in identifying potential smugglers, the statute was upheld, as a strict liability offense,[15] against a multitude of constitutional challenges.[16] Since penalties for marijuana possession almost uniformly exceeded one year's imprisonment during this period, a first offense possession conviction by either sovereign triggered the registration provision.

2. *Statutory Presumptions*

Because the federal statutes punished sale and possession of marijuana only indirectly, each had to bridge the gap between those acts and the

[9] See pp. 1077-78 *supra*.

[10] 21 U.S.C. § 176a (1964).

[11] Importation "contrary to law" was that in violation of the Marihuana Tax Act, 26 U.S.C. § 4755 (1964), or the Customs Act, 19 U.S.C. §§ 1496-97 (1964).

[12] See note 19 *infra* and accompanying text.

[13] *See, e.g.*, Rule v. United States, 362 F.2d 215 (5th Cir. 1966), *cert. denied*, 385 U.S. 1018 (1967).

[14] 18 U.S.C. § 1407 (1964).

[15] Application of the statute was particularly harsh. Even though defendant, found guilty of a drug offense and sent to the California Youth Authority for several months, had been told upon release that his record was clean, the court held that he had violated the statute by failing to register. Adams v. United States, 299 F.2d 327 (9th Cir. 1962).

[16] *See* Palma v. United States, 261 F.2d 93 (5th Cir. 1958); Reyes v. United States, 258 F.2d 774 (9th Cir. 1958); United States v. Eramdjian, 155 F. Supp. 914 (S.D. Cal. 1957). The courts struggled mightily with arbitrariness, vagueness, right to travel, self-incrimination, and equal protection arguments, but upheld the statute. *But cf.* Russell v. United States, 306 F.2d 402 (9th Cir. 1962) (gun registration requirement unconstitutional since it required admission of presumptively unlawful possession).

technical crimes—tax violations and importation-related acts. As a bootstrap from the federal taxing power to a federal police power, Congress chose presumptions. Thus, under the Marihuana Tax Act, possession plus failure to produce the required forms was presumptive evidence of the criminal act—failure to pay the tax[17]—and the courts had no trouble upholding this provision.[18] In addition, under the Import and Export Act possession of marijuana constituted presumptive evidence of illegal importation and of defendant's knowledge of such importation.[19]

Against a rash of attacks on the rationality of this presumption, the lower federal courts[20] noted that the Supreme Court had upheld the same statutory language in the original Federal Import and Export Act with respect to opium,[21] and that there was sufficient general knowledge that most marijuana was imported from Mexico to make the presumption rational. Although the Ninth Circuit at one time indicated that a defendant could rebut the presumption by showing that the marijuana in his possession was manicured and therefore more likely to have been domestically grown,[22] that court later held that such proof was insufficient and that the defendant must also show actual domestic production.[23]

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[17] 26 U.S.C. § 4744(a) (1964).

[18] *E.g.*, Manning v. United States, 274 F.2d 926 (5th Cir.), *rev'd on other grounds on rehearing*, 280 F.2d 422 (5th Cir. 1960).

This provision was early interpreted *not* to require government agents to request the transfer form at the time of arrest, the courts holding that possession of the form was an affirmative defense. *E.g.*, Hill v. United States, 261 F.2d 483 (9th Cir. 1958); Hensley v. United States, 160 F.2d 257 (D.C. Cir.), *cert. denied*, 331 U.S. 817 (1947).

[19] 21 U.S.C. § 176a (1964).

[20] Leary v. United States, 383 F.2d 851, 869 (5th Cir. 1967), *rev'd*, 395 U.S. 6 (1969); Borne v. United States, 332 F.2d 565 (5th Cir. 1964); United States v. Gibson, 310 F.2d 79 (2d Cir. 1962); Claypole v. United States, 280 F.2d 768 (9th Cir. 1960); Butler v. United States, 273 F.2d 436 (9th Cir. 1959); Caudillo v. United States, 253 F.2d 513 (9th Cir.), *cert. denied*, 357 U.S. 931 (1958).

[21] Yee Hem v. United States, 268 U.S. 178 (1925).

[22] Caudillo v. United States, 253 F.2d 513 (9th Cir.), *cert. denied*, 357 U.S. 931 (1958). Implying that the presumption of importation was a rule of evidence, not of substantive law, the court noted that imported marijuana was ordinarily composed of mixed twigs and stems since the growers waited until maturity before harvesting. In the United States, on the other hand, growers avoided police detection by picking individual leaves before the plant matured. Since appellant possessed mixed twigs and stems, the court upheld application of the presumption; the clear suggestion, however, was that the presumption would not be applied to manicured marijuana.

[23] Costello v. United States, 324 F.2d 260 (9th Cir. 1963), *cert. denied*, 376 U.S. 930 (1964).

B. Attacks on State Legislation

Most attacks on the state statutes focused on the vagueness of statutory terms—marijuana, however spelled, or cannabis or Indian Hemp[24]—both as a scientific matter and in terms of common experience.[25] Predictably, however, few state courts were of a mind to inhibit legislative proscription of the "killer weed." Due in part to greatly exaggerated conceptions about the effects of the drug[26] and in part to the ease with which the mature plant is processed for the outlawed purposes,[27] the courts construed these statutory definitions as broadly as possible,[28] despite the traditional rule of strict construction of criminal statutes.

With the progressive increase in the severity of penalties which accompanied adoption of the Uniform Act in the 1930's and 1940's and the surge of amendments in the 1950's in the wake of the Boggs Act,[29]

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[24] Use of the Latin word "cannabis" was challenged as an unconstitutionally vague definition of the prohibited substance in People v. Oliver, 66 Cal. App. 2d 431, 152 P.2d 329 (Dist. Ct. App. 1944), on the basis of an early holding that the use of Latin to define a sex crime was unconstitutionally vague, *Ex parte* Lockett, 179 Cal. 581, 178 P. 134 (1919) (fellatio and cunnilingus). In rejecting the vagueness argument, the court held that "cannabis" was later explained in the statute by the use of the word "marijuana" and that the two words were synonymous. *See* People v. Martinez, 117 Cal. App. 2d 701, 256 P.2d 1028 (Dist. Ct. App. 1953) ("Indian Hemp" not unconstitutionally vague); *cf.* People v. Johnson, 147 Cal. App. 2d 417, 305 P.2d 82 (Dist. Ct. App. 1957) ("lophophora" not unconstitutionally vague reference to peyote).

[25] A related issue was whether the charge of possession of "marijuana" was specific enough where there were statutory exceptions to protect the bird seed and hemp industries. The general rule was that the state need not allege that the parts possessed were not within the statutory exceptions. *E.g.*, Simpson v. State, 129 Fla. 127, 176 So. 515 (1937). *Contra*, People v. Sowrd, 370 Ill. 140, 18 N.E.2d 176 (1938).

[26] *See, e.g.*, Simpson v. State, 129 Fla. 127, 131, 176 So. 515, 517 (1937) (marijuana causes erotic hallucinations, loss of sense, false conviction, loss of values, a general weakening of powers, making it dangerous to mind and body). In Commonwealth v. LaRosa, 42 Pa. D. & C. 34, 36-37 (Fayette County Dist. Ct. 1941), the court stated:

> The deleterious, even vicious, qualities of the plant which render it highly dangerous to the mind and body, upon which it operates to destroy the will, to produce imaginary delectable situations, and gradually to weaken the physical powers, reside in a sticky resin of great narcotic power that pervades the entire plant . . . .

[27] State v. Bonos, 172 La. 955, 136 So. 15 (1931).

[28] *See* State v. Hall, 41 Wash. 2d 446, 249 P.2d 769 (1952); Commonwealth v. LaRosa, 42 Pa. D. & C. 34 (Fayette County Dist. Ct. 1941). *LaRosa* held that the statute, passed two years earlier, created a duty to cut down marijuana plants before they could seed and that defendant had no right to plant marijuana even if he meant to cut the plants before maturity. Defendant's conviction for possession of two thousand mature plants and one hundred fifty thousand immature plants was accordingly affirmed.

[29] See pp. 1074-75 *supra*.

some problems of application arose. Interestingly enough, some courts applied the lesser penalty where one of two penalties could be imposed.[30] Similarly many courts tended to impose minimum sentences until the late 1950's when they, too, lost all sense of proportion.[31]

C. *Procedural Defenses and Entrapment*

Statutory attacks during this period tended to reflect the complicated interrelation of state and federal law and the scientific imprecision of legislative drafting. These attacks were usually rebuffed, and defendants, caught in a squeeze of judicial and legislative hostility, had few, if any, viable defenses based on whether or not they had violated the regulatory scheme. Both state and federal statutes merely required the prosecution to prove that the particular defendant was found in possession of a substance which when chemically tested was found to be marijuana. There were few tricky problems of proof, and the prose-

[30] *E.g.*, State v. Economy, 61 Nev. 394, 130 P.2d 264 (1942).

[31] This was particularly true in the Southwest, where use cases were more numerous and appeals more frequent. Indicative of this trend are the following Texas cases in chronological order: Gonzales v. State, 108 Tex. Crim. 253, 299 S.W. 901 (1928) ($25 fine); Baker v. State, 123 Tex. Crim. 209, 58 S.W.2d 534 (1933) (5-year sentence reversed); Horton v. State, 123 Tex. Crim. 237, 58 S.W.2d 833 (1933) (2-year sentence reversed); Spangler v. State, 135 Tex. Crim. 36, 117 S.W.2d 63 (1938) (1-year sentence affirmed); Ramirez v. State, 135 Tex. Crim. 442, 125 S.W.2d 597 (1938) (3-year sentence affirmed) (possession of a crop of 300 plants); Fawcett v. State, 137 Tex. Crim. 14, 127 S.W.2d 905 (1939) (2-year sentence reversed); Anderson v. State, 137 Tex. Crim. 461, 131 S.W.2d 961 (1939) (5-year sentence affirmed) (defendant tried to dispose of marijuana in station house); Martinez v. State, 138 Tex. Crim. 51, 134 S.W.2d 276 (1939) (6-year sentence reversed); Carrizal v. State, 138 Tex. Crim. 103, 134 S.W.2d 287 (1939) (2-year sentence affirmed); Lufkin v. State, 144 Tex. Crim. 501, 164 S.W.2d 709 (1942) (2-year affirmed); Cornelius v. State, 158 Tex. Crim. 356, 256 S.W.2d 102 (1953) (2-year sentence affirmed); Sparks v. State, 159 Tex. Crim. 111, 261 S.W.2d 571 (1953) (2-year sentence reversed); Rao v. State, 160 Tex. Crim. 416, 271 S.W.2d 426 (1954) (2-10 year sentence); Brewer v. State, 161 Tex. Crim. 28, 274 S.W.2d 411 (1954) (8-year sentence affirmed); Torres v. State, 161 Tex. Crim. 480, 278 S.W.2d 853 (1955) (3-year sentence affirmed); Gomez v. State, 162 Tex. Crim. 30, 280 S.W.2d 278 (1955) (5-25 year sentence affirmed); McWhorter v. State, 163 Tex. Crim. 318, 291 S.W.2d 329 (1956) (2-3 year sentence affirmed); Orosco v. State, 164 Tex. Crim. 257, 298 S.W.2d 134 (1957) (2-year sentence affirmed); Garcia v. State, 166 Tex. Crim. 482, 316 S.W.2d 734 (1958) (life sentence affirmed); Sherrad v. State, 167 Tex. Crim. 119, 318 S.W.2d 900 (1958) (13-year sentence reversed); Leal v. State, 169 Tex. Crim. 222, 332 S.W.2d 729 (1959) (75-year sentence affirmed) (one prior conviction); King v. State, 169 Tex. Crim. 34, 335 S.W.2d 378 (1959) (7-year sentence affirmed); Locke v. State, 169 Tex. Crim. 361, 334 S.W.2d 292 (1960) (15-year sentence affirmed); Massiate v. State, 365 S.W.2d 802 (Tex. Crim. App. 1963) (life sentence affirmed) (two prior burglary convictions).

curion usually had a clear case. If these offenders were caught dead to rights on the merits, the energetic attorney had to look elsewhere for his defense.

Fortunately, the exigencies of police practice in the field of narcotics law enforcement provided a defendant's attorney with a new area of attack—procedural irregularities in the arrest and apprehension of his client. The possession and sale of marijuana epitomize the crime without a victim; neither seller nor buyer is apt to complain of the transaction. In order to promote vigorous law enforcement in this area, the police have had to use a series of undercover agents, surprise raids and often questionable search and arrest techniques. Because of the nature of the conduct they are trying to stifle, the police must intrude into a private social relationship where none of the parties wants it; thus, the police have found it essential to employ highly secretive and often patently deceitful practices. It is no coincidence that the vast developments in the law of criminal procedure—especially in the fourth amendment area—have been outgrowths primarily of narcotics and marijuana cases.

1. Search and Seizure

Today the major remedy for an illegal search is exclusion of the seized items as evidence. Some states and the federal courts have used this exclusionary rule since early in the twentieth century. However, before the 1961 decision in *Mapp v. Ohio*[32] required all states to adopt this remedy, many state courts did not exclude illegally seized evidence. In jurisdictions without the rule, it scarcely helped the victim of an illegal search to raise the point. So, for example, in a 1945 Louisiana case, the court permitted introduction of marijuana seized without a warrant from defendant's room while he was out of town.[33]

Because of the scope permitted the searching officer, things were not much better in jurisdictions adhering to the exclusionary rule. In states using the rule before *Mapp*, the crucial issue when the lawfulness of a search was questioned was whether or not the search was reasonable under the circumstances.[34] One might expect, in view of the

[32] 367 U.S. 643 (1961).

[33] State v. Shotts, 207 La. 898, 22 So. 2d 209, *cert. denied*, 326 U.S. 730 (1945).

[34] *See, e.g.*, United States v. Rabinowitz, 339 U.S. 56 (1950). The Court here upheld the search of a one-room office on the grounds that the search was incident to a lawful arrest, and said that the scope of such searches must turn on the reasonableness of the search considering all the underlying circumstances.

judicial hostility toward marijuana defendants, that the reasonableness standard provided sufficient leeway for circumvention of the exclusionary rule in more than a few cases.[35] Other end runs around the rule were developed in the federal system and in the states purporting to apply the rule to evidence seized in an illegal search. First, courts upheld searches if there was arguably an untainted source for seizure of the evidence. For example, a court might admit marijuana seized in a concededly illegal search where a police officer saw the marijuana before beginning the illegal search.[36] Second, in order to have standing to assert the inadmissibility of seized items, one had to admit the narcotics in question belonged to him.[37] Third, courts often permitted searches pursuant to a warrant to extend far beyond the items named in the warrant[38] under what came to be known as the contraband theory. This theory reasoned that certain items could never lawfully be pos-

[35] *Cf.* Anderson v. State, 137 Tex. Crim. 461, 131 S.W.2d 961 (1939). *See also* Leal v. State, 169 Tex. Crim. 222, 332 S.W.2d 729 (1959), holding it reasonable for a policeman to search defendant's shorts where he suspected from an informer's tip that the "out of the ordinary bulge" in defendant's pants concealed marijuana.

[36] Ramirez v. State, 135 Tex. Crim. 442, 125 S.W.2d 597 (1938). Eventually, courts began to allow the admission of illegally seized evidence if there was any untainted source whatsoever. Thus, where defendant testified that the police had found marijuana in a dresser drawer in his house, the court permitted the state to introduce the marijuana based on the untainted source of defendant's own statements in court. Rao v. State, 160 Tex. Crim. 416, 271 S.W.2d 426 (1954).

[37] *See* Connolly v. Medalie, 58 F.2d 629 (2d Cir. 1932). In that case Judge Learned Hand wrote:

> Men may wince at admitting that they were the owners, or in possession, of contraband property; may wish at once to secure the remedies of a possessor, and avoid the perils of the part; but equivocation will not serve. If they come as victims, they must take on that role, with enough detail to cast them without question. The petitioners at bar shrank from that predicament; but they were obliged to choose one horn of the dilemma.

Id. at 630.

[38] *See* King v. State, 169 Tex. Crim. 34, 335 S.W.2d 378 (1959). Here the Texas court held, with one dissent, that a search warrant for the premises of the husband authorized a search of the wife's bag in the house; her conviction for the materials found in the bag was affirmed.

In the field of search incident to an arrest, courts went even farther. Thus, a Texas court affirmed a conviction based upon the arrest and search of a defendant, even though the police officer admitted he had arrested the defendant solely for the purpose of searching him. The officer ostensibly arrested the defendant for a knife fight, but later admitted that he had arrested him because he suspected him of possession of marijuana. The court noted that the defendant was unable to give any authority for his contention that the state should be bound by the officer's statement as to the purpose of the arrest. Gonzales v. State, 160 Tex. Crim. 548, 272 S.W.2d 524 (1954).

sessed and belonged only to the government; thus any seizure of these items was permissible.[39]

2. Entrapment

In order for federal and state agents to detect narcotics traffic and use, it is essential that they infiltrate the drug culture. Obtaining this inside information may often involve police use of special employees—informers—or may require that the police become directly involved in the commission of the criminal act.[40] Many defendants in narcotics cases have claimed that they were forced into sales or purchases of narcotics by the police or their agents. These charges led to the affirmative defense of entrapment, first recognized in federal courts by the Supreme Court in *Sorrels v. United States*.[41] Since that time, the principles of the defense, as stated in that decision, were reaffirmed by the Supreme Court in *Sherman v. United States*.[42] In *Sherman*, a government informer induced the defendant, who was trying to quit his use of narcotics and was undergoing treatment at a narcotics rehabilitation center, to resume his use and supply the informer. The Court held that the conduct of the police informer constituted entrapment.

The entrapment defense would seem the ideal defense tactic in marijuana cases, because so often the defendant has been apprehended due to some police informer or police trick.[43] However, the theoretical and practical outlines of the defense narrowly restrict its scope and make it rarely successful. Moreover, because it may entail an admission that defendant committed the act charged,[44] it is usually the last resort.

From the beginning there have been two conflicting views of the entrapment defense. The majority view has considered entrapment an exception to the given criminal statute on the ground that the legislature could not have intended entrapment to fall within the statutory defi-

[39] It had been held that contraband may be seized in a search incident to arrest although the items taken had no relationship to the crime for which the arrest was made. Harris v. United States, 331 U.S. 145 (1947), *overruled*, Chimel v. California, 395 U.S. 752 (1969).

[40] THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 8. *See also* MASS PRODUCTION JUSTICE AND THE CONSTITUTIONAL IDEAL 52-53 (C. Whitebread ed. 1970).

[41] 287 U.S. 435 (1932).

[42] 356 U.S. 369 (1958).

[43] *See* A. LITTLE, DRUG ABUSE AND LAW ENFORCEMENT (1967).

[44] *See* Henderson v. United States, 237 F.2d 169, 172 (1956); State v. Taylor, 375 S.W.2d 58, 62 (Mo. 1964). *But see* People v. Perez, 62 Cal. 2d 769, 401 P.2d 934, 44 Cal. Rptr. 326 (1965) (Traynor, C.J.).

nition of the crime. With this as the theoretical justification of the defense, the inquiry focuses on the innocence of the defendant but for the police conduct. The practical question is whether the police merely supplied an opportunity for a person with a pre-existing predilection to the criminal act. In the majority view this question of fact is to be resolved by the jury.[45]

Throughout the years a substantial minority position has contended that the entrapment defense should be considered a police control mechanism. Under this view, the focus is on the police and their conduct rather than on the character of the defendant. This rationale is premised on the court's supervisory powers over the administration of justice, and the question of entrapment is one of law to be decided by the judge, not by the jury.[46]

The focus of the defense on the character of the defendant and the use of usually unsympathetic juries to decide the issue have greatly hindered the successfulness of the entrapment defense. Since the defense must be raised affirmatively, the defendant bears a heavy burden in proving that he would not have committed the crime but for the police inducement. Thus, in *Gilmore v. United States*[47] the defendant was unable to carry the burden of proving that he would not have otherwise committed the marijuana offense. A government agent approached the defendant and requested marijuana, but the jury found no entrapment and the court could not declare that there was entrapment as a matter of law.

With the entrapment defense, as with illegal searches, the court has a known lawbreaker before it and for this reason is reluctant to free him unless there is an overwhelming reason to dismiss the charges. As a California court stated, "It is not the entrapment of a criminal upon which the law frowns . . . ."[48] The focus upon the defendant and his

[45] Sherman v. United States, 356 U.S. 369, 377 & n.8 (1958) (Warren, C.J.).

[46] *Id.* at 378 (Frankfurter, J., concurring); Sorrells v. United States, 287 U.S. 435, 453-59 (1932) (Roberts, J., dissenting).

[47] 228 F.2d 121 (5th Cir. 1955). *See also* United States v. Davis, 272 F.2d 149 (7th Cir. 1959). *Davis* was not strictly an entrapment case; the government agents had arranged for the transportation of a bag of marijuana from Texas to Chicago. The defendant argued that the agents' activities were illegal, and for that reason, the government was estopped from prosecuting him and that the evidence was inadmissible. The trial court found that the defendant had arranged for the deal and instructed the jury to acquit if the agents had illegally caused the importation. As in *Gilmore*, the jury was not willing to condemn the police.

[48] People v. Branch, 119 Cal. App. 2d 490, 494, 260 P.2d 27, 30 (Dist. Ct. App. 1953), where the police had their witness call the defendant and ask to buy some

mental state, rather than a focus on the government enforcement practices and their possible effect of creating a particular crime, places an incredible burden on the defendant to try to convince the jury that he is otherwise blameless. The use of informers and special agents who become friendly with those suspected of dealing in marijuana, and the use of this friendship to try to purchase marijuana, often by supplying the cash,[49] are bound to have a detrimental effect on the lay enforcement officers as well as to assure a slight increase in the supply of marijuana which would otherwise not have entered the trade. Nevertheless, the defense as presently structured remains virtually impossible for the defendant to raise with any real hope of success.

D. The Pro Forma Trial

When the marijuana defendant had exhausted his motions for dismissal or suppression of the evidence and was brought to trial, he was usually in deep trouble, faced with judicial hostility, lax methods of identification, and loose standards of proof. Convictions were rarely reversed for any reason and especially not for insufficient evidence. And penalties, no matter how harsh, were never set aside.

The first line of defense in the marijuana trial often involved the defendant's claim that the substance seized from him was not really marijuana. In general, the state had no difficulty proving the substance to be marijuana. In the important case, expert evidence of chemical tests may have been introduced,[50] but more commonly courts permitted the testimony of police officers,[51] undercover agents and other lay witnesses[52] to be sufficient to create a question of fact for the jury to decide.[53] Thus, when chemical evidence was not introduced, juries

marijuana and then accompanied the witness to the defendant's home.

[49] *See* People v. Williams, 146 Cal. App. 2d 656, 304 P.2d 100 (1956); Commonwealth v. Jones, 46 Dauph. 300 (Dauphin County, Pa., Dist. Ct. 1938).

[50] *See, e.g.*, People v. Agajanian, 97 Cal. App. 2d 399, 218 P.2d 114 (Dist. Ct. App. 1950); People v. Oliver, 66 Cal. App. 2d 431, 152 P.2d 329 (Dist. Ct. App. 1944); Valdez v. State, 135 Tex. Crim. 201, 117 S.W.2d 459 (1938).

[51] McWhorter v. State, 163 Tex. Crim. 318, 291 S.W.2d 329 (1956).

[52] People v. Sanchez, 197 Cal. App. 2d 617, 17 Cal. Rptr. 230 (Dist. Ct. App. 1961); People v. Haggard, 181 Cal. App. 2d 38, 4 Cal. Rptr. 898 (Dist. Ct. App. 1960); People v. Janisse, 162 Cal. App. 2d 117, 328 P.2d 11 (Dist. Ct. App. 1958). Even minors who receive the marijuana from the defendant are competent to identify the substance. People v. Sanchez, *supra*.

[53] *See* Hernandez v. State, 137 Tex. Crim. 343, 129 S.W.2d 301 (1938).

were strongly inclined to believe the policeman or a disinterested prosecution witness as against the defendant.[54]

This ease of identification combined with the uncritical acceptance of uncorroborated testimony[55] produced what amounted in fact to a very low standard of proof. Thus, in a California case, *People v. Janiss*,[56] the conviction was upheld on the testimony of teenage boys, though the defendant's co-workers testified for an alibi. The evidence of rookie police officers who later failed their civil service exams[57] has been accepted over the word of the defendant. Finally, even the testimony of witnesses who stand to benefit only from the conviction of the defendant has been accepted without corroboration, whether the benefit was indirect[58] or direct.[59] The wisdom of allowing such testimony by itself to be legally sufficient for a conviction is doubtful.

Although in theory the state must prove the defendant's possession was knowing,[60] through the use of circumstantial evidence the state usually encountered few problems in meeting its burden of proof. The state was permitted to use circumstantial evidence to link the defendant to a quantity of marijuana, but where only circumstantial evidence existed there must have been an instruction to the jury that all other

[54] *See, e.g.*, cases cited at note 52 *supra*.

[55] *See, e.g.*, People v. Ballejos, 216 Cal. App. 2d 286, 30 Cal. Rptr. 725 (Dist. Ct. App. 1963); People v. Johnson, 99 Cal. App. 2d 559, 222 P.2d 58 (Dist. Ct. App. 1950), *overruled*, People v. Perez, 62 Cal. 2d 769, 401 P.2d 934, 44 Cal. Rptr. 326 (1965) (Traynor, C.J.). *See also* People v. Sanchez, 197 Cal. App. 2d 617, 17 Cal. Rptr. 230 (Dist. Ct. App. 1961); People v. Mimms, 110 Cal. App. 2d 310, 242 P.2d 331 (Dist. Ct. App.), *cert. denied*, 344 U.S. 846 (1952).

[56] 162 Cal. App. 2d 117, 328 P.2d 11 (Dist. Ct. App. 1958) (it was not too improbable that defendant would have given marijuana away to a near stranger). *But see* People v. MacCagnan, 129 Cal. App. 2d 100, 276 P.2d 679 (Dist. Ct. App. 1954) (evidence of sale price admitted to show the unlikelihood that defendant was given the marijuana).

[57] People v. Gebron, 124 Cal. App. 2d 675, 268 P.2d 1068 (Dist. Ct. App. 1954).

[58] People v. Mimms, 110 Cal. App. 2d 310, 242 P.2d 331 (Dist. Ct. App.), *cert. denied*, 344 U.S. 846 (1952).

[59] People v. Winston, 46 Cal. 2d 151, 293 P.2d 40 (1956) (witnesses against defendant for sale to minor were due to go on trial themselves); People v. Ballejos, 216 Cal. App. 2d 286, 30 Cal. Rptr. 725 (Dist. Ct. App. 1963) (agent alleged to be paid by government if successful was only witness against defendant).

[60] *See* People v. Carrasco, 159 Cal. App. 2d 63, 323 P.2d 129 (Dist. Ct. App. 1958); People v. Antista, 129 Cal. App. 2d 47, 276 P.2d 177 (Dist. Ct. App. 1954) (defendant never reported having previously used marijuana and apartment used by many other persons); People v. Candiotto, 128 Cal. App. 2d 347, 275 P.2d 500 (Dist. Ct. App. 1954); People v. Savage, 128 Cal. App. 2d 123, 274 P.2d 905 (Dist. Ct. App. 1954) (maid found marijuana wrapped in napkins two days after a party held to be insufficient evidence) (trial judge held to be prejudiced); Fawcett v. State, 137 Tex. Crim. 14, 127 S.W.2d 905 (1939) (reversed for failure to give instruction on ignorance as a defense).

reasonable inferences of innocence had been overcome.[61] For example, behavior such as running away from police, if marijuana was found along the path run, was sufficient to link the defendant to possession,[62] though mere proximity without other guilty behavior was not enough to prove possession.[63]

Finally, judicial hostility to the "morally depraved" marijuana user was so strong that often judges condoned inflammatory statements by the prosecution to the jury about the nature of the drug and its users. Indeed, some judges themselves often participated in these highly emotional statements. For example, one judge in *instructing a jury* announced:

> Marijuana is a vicious, demoralizing substance that robs a person of morality, honor, integrity, decency, and all the virtues that are the foundation of good character and good citizenship. The Government is constantly engaged in an effort to stamp out traffic in this and in narcotic drugs. Officers of the Government are employed in this effort usually and are entitled to credit for their loyalty and integrity.[64]

In the same way, direct aspersions toward a defendant's character were tolerated.[65] For instance, courts overlooked prosecution comments

[61] Gonzales v. People, 128 Colo. 522, 264 P.2d 508 (1953); State v. Walker, 54 N.M. 302, 223 P.2d 943 (1950).

[62] Perez v. State, 34 Ala. App. 406, 40 So. 2d 344 (Ct. App. 1949) (paper in apartment matched paper on marijuana). *See also* People v. Rodriguez, 151 Cal. App. 2d 598, 312 P.2d 272 (Dist. Ct. App. 1957) (defendant knowingly helping owner move marijuana is sufficient for possession).

[63] People v. Miller, 162 Cal. App. 2d 96, 328 P.2d 506 (Dist. Ct. App. 1958) (reversible error to introduce marijuana found down the street from the defendant's apartment without further proof of defendant's ownership). In Sherrad v. State, 167 Tex. Crim. 119, 318 S.W.2d 900 (1958), defendant's conviction was reversed for the failure of the prosecutor to connect the payment to the defendant with the later payment to another defendant who made delivery of the marijuana to the agent. The court noted that defendant had been charged as the principal, and that no proof of any conspiracy had been made. *See also* People v. Vasquez, 135 Cal. App. 2d 446, 287 P.2d 385 (Dist. Ct. App. 1955) (defendant chargeable with transporting, not possession, where he told co-defendant to throw marijuana away and co-defendant did not do so).

[64] Lake v. United States, 302 F.2d 452 (8th Cir. 1962).

[65] *See, e.g.*, People v. Sykes, 44 Cal. 2d 166, 280 P.2d 769, *cert. denied*, 349 U.S. 934 (1955) (evidence of defendant's activities as a pimp admissible in a trial on charge of marijuana sale to minor in order to prove that there was a plot to subjugate both the body and mind of the minor) (Traynor, C.J., dissented, stating that the evidence was prejudicial and of no probative value); Escamilla v. State, 162 Tex. Crim. 346, 285 S.W.2d 216 (1955) (permissible for prosecutor to call defendant a peddler and then to withdraw statement); People v. Salo, 73 Cal. App. 2d 685, 167 P.2d 269 (Dist. Ct. App. 1946);

that the defendant sold his drugs near a junior high school[66] or that drug use among teenagers must be stopped.[67]

In sum, then, defendants in marijuana cases had great difficulties at trial during this period. Easy identification methods, jury acceptance of uncorroborated testimony, use of circumstantial evidence to prove defendant's possession was knowing, and the judicial participation in inflammatory statements to the jury made defense success at trial a virtual impossibility.

VIII. The Public Discovers the Truth About Marijuana

We need not belabor the point, but sometime after 1965 the wisdom of the marijuana laws suddenly became dinner-table conversation in most American middle-class homes along with the Indochina war and campus dissent. Many sons and daughters, and even mothers and fathers, of the middle class had tried the drug, and those who had not were certainly familiar with "pot" and the law. The medical profession finally commenced a research effort to determine who was right—the user who said the drug was a harmless pleasant euphoriant or the lawmakers, who by their actions had condemned it as a noxious cause of crime, addiction and insanity.

A. Marijuana and the Masses

Although marijuana arrests and seizures hit their all-time low point in 1960,[1] the middle and late sixties witnessed a revolution in marijuana use. Vast numbers of people have recently adopted the drug as their principal euphoriant; however, by all estimates, the new users are the sons and daughters of the middle class, not the ethnic minorities and ghetto residents formerly associated with marijuana.[2] Student marijuana

Medina v. State, 149 Tex. Crim. 249, 193 S.W.2d 196 (1946) (no error to call defendant a dealer in marijuana in possession trial).

[66] Torres v. State, 161 Tex. Crim. 480, 278 S.W.2d 853 (1955).

[67] People v. Head, 108 Cal. App. 2d 734, 239 P.2d 506 (Dist. Ct. App. 1952).

[1] Traffic in Opium 69 (1960).

[2] In reporting the marijuana arrests of Robert Kennedy, Jr., and R. Sargent Shriver, Jr., Walter Cronkite noted that "[t]his case is not unusual; more and more parents across the nation find themselves going to court with their children on drug charges. It's becoming an incident of modern living." CBS Evening News, Aug. 6, 1970. *See also* J. Goldsevear, Pot: A Handbook of Marihuana 117-31 (1967); Traffic in Opium 2, 40 (1966).

use is now so common that it has been associated in the public eye with the overall campus life style.[3] Accompanying the growth of widespread marijuana use on campus has been an increasing experimentation with the drug by intellectuals, professors, young professionals and members of several other social groups who would never have considered using the drug ten years ago.[4]

Dr. Stanley F. Yolles, former Director of the National Institute of Mental Health, testifying before a Senate subcommittee, said, "A conservative estimate of persons in the United States, both juvenile and adult, who have used marihuana, at least once, is about 8 million and may be as high as 12 million people."[5] Other estimates have run as high as twenty to twenty-five million users.[6] This vast increase in the number of people using marijuana seems to have begun in the early and middle sixties. It is likely that this new use pattern was initially precipitated by the publicity surrounding the LSD experimentation of Doctors Alpert and Leary at Harvard in 1963.[7] As a growing segment of the academic fringe began to preach consciousness-expansion, students began to find marijuana available on campus. From that point the phenomenon snowballed. As more novice marijuana users reported no ill effects from its use, more students tried it, and in turn those who used and enjoyed the drug began to "turn on" those who had not. By 1970, some campuses reported that over seventy percent of the student body were users.[8] More recently, marijuana use spread beyond the student subculture; reportedly its use has become common even among young professionals on Wall Street.[9] Moreover, since it is readily available and widely used in Vietnam, marijuana has become popular with many soldiers.[10]

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[3] *See, e.g.*, R. DeBold & R. Leaf, LSD, Man and Society (1967); R. Goldstein, One in Seven: Drugs on Campus (1966); K. Kenniston, The Uncommitted: Alienated Youth in American Society (1967); D. Louria, The Drug Scene (1968); L. Simmons & B. Winegrad, It's Happening (1967).

[4] *See* Malabre, *Drugs on the Job*, Wall St. J., May 4, 1970, at 1, col. 6. This article deals not only with drug use by professionals but also details the increasing trend of drug use on the job.

[5] *Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 267 (1969) [hereinafter cited as *Narcotics Legislation Hearings*].

[6] *Id.* at 268.

[7] *See* R. DeBold & R. Leaf, LSD, Man and Society 130-31 (1967).

[8] Time, Sept. 26, 1969, at 69; Yale Daily News, Jan. 14, 1970.

[9] Malabre, *supra* note 4.

[10] D. Louria, The Drug Scene 10 (1968).

The general public is clearly aware that there has been both a vast increase in the number of users and a shift from lower- to middle-class use of the drug. These great changes in the nature of marijuana use have had important social consquences. First, with the sharp rise in the number of users and the tendency of marijuana users to share common life styles and often political opinions, the drug has become associated in the past few years with a major counter-culture. Many proponents of that counter-culture have contended that the illegal status of marijuana —which puts large numbers of people on the wrong side of the criminal law—is the most significant unifying and recruiting agent for the New Left and the other political and social causes of the late sixties.[11] Some New Left leaders have gone so far as to oppose reduction in the penalties for marijuana possession because they feel severe penalties aid their recruiting ends by making marijuana users outraged against a society that overacts so strongly to a nonexistent danger.[12] We feel the general disrespect for marijuana laws may be causing a dangerous disrespect for all laws in a sizeable segment of the population. The credibility of government suffers on all issues when its handling of the use of this drug seems to so many so far removed from reality. This opinion is supported by the increasing medical evidence that the dangers of the drug are *de minimus*.

Secondly, the new middle-class use of marijuana has induced the first significant medical inquiry into the nature of the drug, has spawned increasing numbers of challenges to the constitutionality of marijuana laws and penalties, and has spurred the passage of more lenient legislation. One commentator has stated:

> Nobody cared when it was a ghetto problem. Marijuana—well, it was used by jazz musicians or the lower class, so you didn't care if they got 2-to-20 years. But when a nice, middle-class girl or boy in college gets busted for the same thing, then the whole community sits up and takes notice. And that's the name of the game today. The problem has begun to come home to roost—in all strata of society, in suburbia, in middle-class homes, in the colleges. Suddenly, the punitive, vindictive approach was touching all classes of society. And now the

[11] Perhaps the best statement the authors have yet encountered to this effect was made by Jerry Rubin, one of the Chicago Seven, in Charlottesville, Virginia, on May 6, 1970, when he said: "Smoking pot makes you a criminal and a revolutionary—as soon as you take your first puff, you are an enemy of society." *See also* J. RUBIN, Do It! (1970).

[12] Wash. Post, Feb. 24, 1970, at B1, col. 3.

> most exciting thing that's really happening is the change in attitude by the people. Now we have a willingness to examine the problem, as to whether it's an experimentation, or an illness rather than "an evil." With this change I think we can come to a more rational approach to methods of drug control.[13]

Without doubt, the new class of users has successfully demanded more favorable attention from the legislatures and the courts than the lower class could have attracted. In fact, even the slightest circumscription of the reach of a state marijuana law is now national news.[14]

A third result of the widespread use of marijuana has been a substantial challenge to the traditional picture of the national marijuana trade. Over the past three decades, law enforcement officials continued to convince legislators that the traffic in marijuana was controlled by professional criminals.[15] Confronted with this portrait of the marijuana trade, legislators naturally stereotyped the "seller" as the vicious criminal pushing his wares for high profit and felt that extraordinarily harsh penalties were justified for sellers.[16] From several recent studies it appears that the structure of marijuana traffic bears little or no relation to the traditional stereotype. In a recent survey of 204 users it was found that 44 percent had sold to friends at least once. Many casual users sell to leave themselves enough profit to cover the amount of their own use.[17] The study further finds that even at the very top, profits are too small and the product too bulky to interest the criminal class that probably underwrites sales of heroin and other "hard drugs."[18] Thus even at the top, amateurs—composed generally of the students, young professionals and soldiers who constitute the users—are the main source of the drug.[19] It is also important to note that marijuana is typi-

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[13] N.Y. Times, Feb. 15, 1970, § 6 (Magazine), at 14 (statement of Dr. Stanley Yolles).

[14] *See, e.g.*, Wash. Post, May 16, 1970, at A3, col. 8 (reporting a Minnesota Supreme Court decision holding that possession of small amount of marijuana does not necessarily justify conviction). This case is discussed at p. 1122 *infra*.

[15] N.Y. Times, Oct. 19, 1969, § 4, at 8, col. 2.

[16] *Narcotics Legislation Hearings* 4 (statement of Senator Dodd).

[17] Goode, *The Marijuana Market*, 12 COLUM. F., Winter 1969, at 7.

[18] *Id.* at 8.

[19] *Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess. 4510 (1968) [hereinafter cited as *Juvenile Delinquency Hearings*]. At these hearings, former Commissioner of the Bureau of Narcotics, Henry Giordano, stated: "We have not seen any evidence of criminal syndicates such as the Mafia being involved [in the marijuana trade]." *Id.*

cally sold by the ounce[20] rather than by the cigarette as was traditionally assumed. Thus, even the relatively casual experimenter is likely to have at least an ounce of the drug in his possession.

B. Enforcement of the Marijuana Laws: 1960-1970

As a result of the rapid spread of marijuana use, full enforcement of the marijuana laws has become impossible.[21] By 1967 the Federal Bureau of Narcotics had 299 agents, roughly 50 more than in 1956;[22] in the same period the use of marijuana probably increased 1,000 fold. It seems obvious from both FBN statistics and the best available state and local statistics that two enforcement patterns emerged in the sixties: concentration on "sellers" and selective enforcement.

Since 1960 the FBN and major state and municipal narcotic squads have concentrated on the larger sellers. In the early sixties this trend was less pronounced,[23] but by 1968 the Commissioner of the FBN said that 75 percent of federal marijuana arrests were of dealers and that even the remaining 25 percent were sellers but were charged with possession as a result of plea bargains.[24] Statistics from California show the same concentration on sellers;[25] nevertheless the California bureau found that most of these sellers were young and first offenders.[26] Thus, at least by 1968 it became clear that sellers were quite often neophytes.

At the same time that the police have abandoned full enforcement for concentration on dealers, enforcement of the laws has remained necessarily haphazard and somewhat selective. Since marijuana use has become so common, there are certain student and hippie communities

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[20] Goode, *supra* note 17, at 4, 5. *See also* Leary, *The Politics, Ethics and Meaning of Marijuana*, in THE MARIJUANA PAPERS 121 (D. Solomon ed. 1966).

[21] *See* Los Angeles Times, Dec. 4, 1967, § 2, at 6, col. 1 (statement by Los Angeles police chief).

[22] *See* Mandel, *Problems with Official Drug Statistics*, 21 STAN. L. REV. 991, 1021 n.114 (1969).

[23] *See* TRAFFIC IN OPIUM 72 (1960); *id.* at 65 (1961); *id.* at 78 (1963).

[24] *Hearings on Dept's of Treasury and Post Office and the Executive Office Appropriations for 1969 Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 2d Sess., pt. 1, at 624 (1968).

[25] The state of California has kept excellent statistics since 1959. In 1968, as a typical year of the late sixties, the police seized over 30,000,000 grams of marijuana of all kinds in only 10,000 arrests. The high amount seized relative to the number of arrests seems to indicate the concentration on dealers. BUREAU OF CRIMINAL STATISTICS, DEP'T OF JUSTICE, STATE OF CALIFORNIA, DRUG ARRESTS AND DISPOSITIONS IN CALIFORNIA 41, 43 (1968).

[26] *Id.* at 37-39.

in which the police could arrest nearly everyone. Here the problem of selective enforcement necessarily arises—the police arrest those they dislike for other reasons, either political disagreement or suspicion of use of other drugs. This inevitable practice, although perhaps not consciously planned, has brought outcry from some victimized communities.[27] This policy—if not a policy by the police at least a perception by the hippies—of selective enforcement has provided them increased impetus toward the anti-establishment life style they have adopted. Their attitude is aggravated when the police engage in particularly aggressive tactics, such as use of informers, to trap the offenders.[28]

By 1970, the unenforceability of the marijuana laws was most clearly evidenced by the failure of President Nixon's Operation Intercept which was designed to seal off the Mexican border and the supply of marijuana coming into the United States from Mexico.[29] Both national and international tensions led to the failure of the "Noble Experiment." By now, the marijuana trade is so scattered and at the same time so fragmented (with no real hierarchy in the trade) that the unenforceability of these laws has reached Prohibition proportions.

C. *Emergence of Medical Opinion*

One of the most significant causes of widespread middle-class use of marijuana was the lack of any medical proof of the allegedly evil effects of its use.[30] In fact, what authoritative studies had been conducted up to this time were inconsistent with the assumptions underlying anti-marijuana legislation. In this situation, users viewed themselves as experimenters with a mild euphoriant, not criminals endangering themselves or society at large. The inevitable consequence was increased medical inquiry into the effects of the drug, beginning in about 1967.[31]

[27] *See* Fort, *Social Problems of Drug Use and Drug Policies*, 56 CALIF. L. REV. 17, 23 (1968). *See also* H. BECKER, OUTSIDERS 159 (1963); T. DUSTER, THE LEGISLATION OF MORALITY: LAW, DRUGS AND MORAL JUDGMENT (1970).

[28] *See* LITTLE, DRUG ABUSE AND LAW ENFORCEMENT 1313-15 (1967); Project, *Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A.L. REV. 1507, 1522-31 (1968).

[29] TIME, Sept. 26, 1969, at 70.

[30] One commentator has charged that those most knowledgeable about marijuana have "dodged" the topic. Kaplan, *The Special Case of Marihuana (Or, It's the Doctor's Fault)*, 9 J. CLINICAL PHARMACOLOGY 349, 351 (1969).

[31] At the end of 1968 there existed only four known studies on human subjects conducted by Americans. *See* Weil, Zinberg & Nelson, *Clinical and Psychological Effects of Marihuana in Man*, 162 SCIENCE 1234, 1235 (1968) [hereinafter cited as Weil

Concurrently, the National Institute of Mental Health significantly increased its funding for grants and contracts for marijuana research.[32]

Despite this intensified inquiry, uncertainty about the effects of the drug persists. There are several major research obstacles responsible for continued absence of reliable research. After outlining the impediments to conclusive findings, we shall extract from the existing studies the present state of medical knowledge.

1. Research Obstacles

The major obstacle is the nature of the marijuana plant itself. Marijuana is a derivative of the plant *Cannabis Sativa*, commonly denoted the hemp plant. It is classified as a dioecious plant, that is, the male reproductive parts are on one individual plant and the female parts are on another. The differentiation of the male and female plants is exceedingly significant because the chemical compounds responsible for the euphoric effect of marijuana are found primarily in the sticky resin that covers the unfertilized female flowers and adjacent leaves. The male plant may contain a small amount of this active resin, but it is grown mainly for hemp fiber.[33]

The hemp plant yields three rough grades of intoxicating substances, the least potent of which is "marijuana."[34] Yet, because the classifica-

Study]. The previous lack of concern with marijuana can also be observed by an examination of the number of articles appearing in medical periodicals. During the decade between 1942 and 1951, only six articles dealing with the subject are listed in the index for medical journals. Eleven reports were noted as being published in the next ten years. From 1962 to 1966, an average of three materials per year were available. It was not until 1967 that the subject became of sufficient interest to occupy the time of a reasonable number of medical authors. In that year, eleven articles appeared in medical periodicals. By 1968, this number had increased to 30, and in 1969 more than 60 articles dealing with the topic of human marijuana consumption have appeared. In other words, more than three times the number of articles appeared in the last three years than in the 25 preceding years.

[32] "In Fiscal year 1967, NIMH obligated $786,000 for marihuana research grants and contracts. Comparable figures for 1968 and 1969 respectively were $1,239,000 and $1,330,000. In Fiscal year 1970, if funds are available, the Institute proposes to obligate $2,550,000 to support grant and contract studies of marihuana, which means that there will have been a more than three-fold increase for support of these studies in the last four years." Statement by Dr. Roger O. Egeberg, Assistant Secretary for Health and Scientific Affairs, M.S. Dep't of HEW, before the Select Committee on Crime, U.S. House of Representatives (mimeographed press release).

[33] Weil Study 1234.

[34] The three substances are charas—pure unadulterated resin that has been scraped from the leaves and flowering tops of the female plant; hashish or ganja—an agglomeration of female flowering tops and stems with whatever resin is attached to their surfaces,

tions are imprecise, confusion is engendered by attributing to "marijuana" the effects produced by the excessive use of the more potent forms of cannabis.[35] In addition, the psychic potency of the plant differs depending upon where the marijuana is grown,[36] and upon cultivation variables such as occurrence of fertilization and time of harvesting:

> If the male plants are not removed and fertilization occurs, the female plants which carry the main intoxicating properties are considerably weakened in that respect. In addition, unless harvesting is carried out immediately before the blossoming of the flowers there is further weakening and variation in the potency of the produce.[37]

It is interesting to note in this connection that the marijuana used in the United States is among the weakest in the world.[38] These factors frus-

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thought to contain about 40% resin; and marijuana—a low potency preparation consisting of dried mature leaves and flowering tops of both male and female plants, thought to contain between 5 and 8% resin. Schwarz, *Toward a Medical Understanding of Marihuana*, 14 CAN. PSYCHIATRIC ASS'N J. 591, 592 (1969).

[35] As long as the term *marihuana* is used indiscriminately to refer to cannabis of all kinds and potencies, confusion will continue. . . . In this country some of the vigorous opponents of marihuana seem to foster this confusion by attributing to any use of marihuana the effects produced primarily by the excessive use of the more potent forms of cannabis in an attempt to preserve a strongly negative public image of marihuana.

H. NOWLIS, DRUGS ON THE COLLEGE CAMPUS 93 (1969).

[36] "The major botanical feature of the plant is the extreme variability in its appearance, characteristics and properties when grown in different geographical and climatic condition." Schwarz, *supra* note 34, at 591. In the United States and Mexico, for example, the production of the more potent forms is relatively uncommon, and there appears to be no demand for them. J. ROSEVEAR, POT: A HANDBOOK OF MARIHUANA 31-33 (1967).

[37] Schwarz, *supra* note 34, at 592.

[38] Zunin, *Marijuana: The Drug and the Problem*, 134 MILITARY MED. 104, 106-07 (1969). According to the author, several factors contribute to this phenomenon:

(1) The amount of resin found in the flowering tops markedly decreases as the plants are grown in more temperate areas. It is estimated that the resin content of Indian cannabis is 20%; Mexican 15% or less; that grown in Kentucky 8%; and that found in Wisconsin 6% or less.

(2) The activity of the resin in the female is greatly reduced if fertilized by the male. In this country, because of an inability to distinguish between the two plants, inattention to cultivation and lack of knowledge, the female plants are fertilized.

(3) The resinous content is highest prior to "going to seed" of the female plant. The marijuana in this country has gone to seed prior to harvesting.

(4) The male plant contains little or no resin content. In this country, the male plant is indiscriminately mixed with the female plant in the final preparation.

(5) The most active portion of the plant is the flowering top. In this country,

trate the creation of a standardized dosage in any given experiment and preclude the comparison of the results of independent studies.[39]

In addition to the problems engendered by the great variance in potency and dosage, meaningful marijuana research is also inhibited by differences in means of consumption. Since standardized doses are generally considered impossible if the drug is smoked,[40] most studies, including the La Guardia Report, are based upon oral administration of marijuana to the subjects. Yet smoking is the method of consumption among nearly all American users. Furthermore, standardized dosage is not even assured by the oral method since "little is known about the gastrointestinal absorption of the highly water-soluble cannabinals in man." [41] Finally, "[t]here is considerable indirect evidence from users that the quality of the intoxication is different when marijuana or its preparations are ingested rather than smoked. In particular, ingestion seems to cause more powerful effects . . . ." [42]

2. *Current Medical Knowledge*

It is perhaps best to begin with the medical data concerning the traditional allegations about marijuana.

(*a*) *The Myths.*—First, it is universally accepted among medical

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preparations of marijuana are composed primarily of leaves, twigs and seeds which are crushed.

(6) The potency of marijuana decreases with time. It is reduced at the end of one year, markedly reduced at the end of two years, and nonexistent at the end of three years. In addition, it keeps better in cold, dry climates. Most of the marijuana in the United States is several months to several years old by the time it has been harvested and has passed through the smuggling operation.

[39] Given the above variations in the plant and in its products and extracts, together with the continuing ignorance of its chemistry, it is not surprising that it is virtually impossible to make direct comparisons between the various studies on the effects of *cannabis* on human beings who are even more individually variable.

Schwarz, *supra* note 34, at 593.

Recently, what is believed to be the active ingredient in marijuana has been isolated and synthesized. However, this substance, denominated tetrahydrocannabinal (THC), is only available for research in very limited quantities. Weil Study 1235. Furthermore, it has not been proven that THC is the sole ingredient contributing to the effects caused by marijuana.

[40] "[M]any pharmacologists dismiss the possibility of giving marihuana by smoking because, they say, the dose cannot be standardized." Weil Study 1235.

[41] *Id.*

[42] *Id.*

authorities that marijuana is not physically habit-forming.[43] Although some researchers have asserted that a psychological dependence may result from continued use of the drug, this hypothesis has not been established and its relevance has been questioned. One authority has noted that "habituation to marihuana is not as strong as to tobacco or to alcohol." [44] Another has commented that "[a] psychological dependence and desire for the drug may occur, but this is inconsistent and is not uncontrolable. . . . Perhaps the dependence is even less than the dependence on cigarettes." [45]

Second, there is no evidence whatsoever that the use of marijuana has a direct relationship to the commission of crime. One commentator has noted that "[d]uring the high the marihuana user may say things he would not ordinarily say, but he generally will not do things that are foreign to his nature. If he is not normally a criminal, he will not commit a crime under the influence of the drug." [46] In fact, it is entirely likely that the characteristic passive reaction to the use of marijuana tends to inhibit criminality. A recent study has shown that juvenile "potheads" tend to be nonaggressive and to stay away from trouble.[47] Similarly, there is no scientific evidence for the proposition that marijuana is an aphrodisiac. It has been suggested to the contrary that the most potent form of cannabis, pure ganja, has the reverse effect, being taken by Indian priests to quell the libido.[48]

Finally, the evidence is at best inconclusive regarding the contention that use of marijuana leads to the use of "hard" narcotics. Some of the early studies claiming to have established a valid connection were scientifically unreliable. One authority has observed in this regard:

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[43] "There is now an abundance of evidence that marihuana is not an addictive drug. Cessation of its use produces no withdrawal symptoms, nor does a user feel any need to increase the dosage as he becomes accustomed to the drug." Grinspoon, *Marihuana*, 221 Sci. Am. 17, 21 (1969).

[44] *Id.*

[45] Zunin, *supra* note 38, at 108.

[46] Grinspoon, *supra* note 43, at 22.

[47] McGlothlin & West, *The Marihuana Problem: An Overview*, 125 Am. J. Psych. 370, 372-73 (1968). This supports the finding of the La Guardia Report that marijuana is not a direct causal factor in criminal misconduct, but that the "high" leads to sociable attitudes.

[48] The Marihuana Papers 44 (D. Solomon ed. 1966). Since marijuana has a tendency to produce drowsiness, it is difficult to see how it could lead to an act of violent sex. J. Roszevear, *supra* note 36, at 61. *See also* La Guardia Report, in The Marihuana Papers 296-97 (D. Solomon ed. 1966).

> Supposedly scientific studies of this problem have been conducted in the past, such as the one done in a deprived area of a large city where the use of heroin was widespread, and indicating that many users of marijuana went on to the use of more hazardous drugs. I am sure that without previous marijuana, the use of such drugs in that environment would be just as high, and that if such a study were done on a college population, it would be found that the subsequent use of "hard" drugs would be negligible.[49]

Referring to a presidential task force investigation, another authority has commented:

> It is true that the Federal study showed that among heroin users about 50% had had experience with marijuana; the study also found, however, that most of the heroin addicts had been users of alcohol and tobacco. There is no evidence that marijuana is more likely than alcohol or tobacco to lead to the use of narcotics.[50]

On the basis of the available information, most authorities have concluded that there is no scientific basis for the theory that the use of marijuana is a causal factor in the use of "hard" narcotics.[51] In any event, as a matter of common sense, it would appear that the phenomenon in dispute is very complex, including both individual personality features and environmental factors. As one commentator put it, "Several of the studies indicate that the previous statistics have been misleading and exaggerated." Whether or not the proposition can be scientifically established, "there is probably a slightly greater chance that an individual who has used marijuana could go on to opiates, but statistically this is not . . . an important social consideration." [52]

Thus it appears that none of the traditional allegations about marijuana has been scientifically established, that its allegedly addictive qualities have been disproved, and that the overwhelming weight of authority disputes its allegedly crime-producing and stepping stone tendencies. We will now briefly survey the medically recognized effects of the drug, physical, psychomotor and psychological.

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[49] Radoosky, *Marihuana Foolishness*, 280 New Eng. J. Med. 712 (1969).

[50] Grinspoon, *supra* note 43, at 21-23.

[51] The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse 13-14 (1967); Council on Mental Health and Committee on Alcoholism and Drug Dependence, *Dependence on Cannabis (Marijuana)*, 201 J.A.M.A. 368-71 (1967).

[52] Zunin, *supra* note 38, at 108.

(*b*) *Physical Effects.*—The acute physical effects of marijuana are the subject of much debate. Various studies have reached different conclusions. Nearly all authorities, however, are in agreement that the bodily symptoms accompanying the "high" are very slight. The most commonly noted effects are a slight rise in blood pressure, conjunctival vascular congestion, slight elevation in blood sugar, urinary frequency and an increase in pulse rate.[53] In general, these acute symptoms are relatively short-lived, and there are no known lasting physical effects.[54] On the other hand, there is evidence that prolonged smoking could lead to "marijuana bronchitis," and that communal smoking has the tendency to encourage the spread of communicable diseases.

(*c*) *Psychomotor Effects.*—Varying results have also been reported in studies of the acute effects of marijuana upon psychomotor functions. Although the researchers have sometimes found some slight impairment in performance tests,[55] there is apparently no general depressing or stimulating effect on the nervous system and no influence on speech and coordination.[56] In the most recent study, Doctors Weil, Zinburg and Nelson of the Boston University School of Medicine found that marijuana users are able to compensate nearly 100 percent for whatever adverse effects may result on ordinary psychomotor performance.[57]

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[53] L. Goodman & A. Gilman, The Pharmacological Basis of Therapeutics ch. 16 (3d ed. 1965). Nausea, vomiting and diarrhea have also been reported, but it is felt that these symptoms are mainly the result of oral administration. Grinspoon, *supra* note 43, at 20. Increased appetite and dryness of the mouth are also said to be common.

[54] Usually the reports of chronic ill effects are to be found in Eastern studies of individuals using the stronger *hashish* or pure resinous substances over prolonged periods of time and are complicated by the immeasurable effects of many other social, economic, personality and cultural factors.
Schwarz, *supra* note 34, at 595.

[55] Tests by Robert S. Morrow in the 1930's revealed that even large doses of marijuana did not affect performances on tests of the speed of tapping or the quickness of response to simple stimuli. Grinspoon, *supra* note 43, at 20. "The drug did affect steadiness of the hand and body and the reaction time for complex stimuli." *Id.* The most recent study in this area was done by Andrew Weil, Norman Zinburg and Judith Nelson of the Boston University School of Medicine. Their conclusions were that regular users of marijuana may show some slight degree of impairment in performance tests, but that the aptitude of the subjects may even improve slightly after smoking marijuana. Weil Study 1242. Marijuana-naive subjects tended to show some impairment in performance. *Id.*

[56] N.Y. Times, May 11, 1969, § 6 (Magazine), at 92, col. 2.

[57] We were struck by the difficulty of recognizing when a subject is high unless he tells you that he is . . . . It seems possible to ignore the effects of marihuana on consciousness, to adapt to them, and to control them to a significant degree.
Id.

Such findings suggest that marijuana is not likely to be a causal factor in driving accidents, a hypothesis that is supported by a recent simulated driving test comparing the performance of subjects under the influence of marijuana and alcohol.[58] There seems to be no contention in the medical field that there are any lasting effects from marijuana in the psychomotor area. The Weil study reported that noticeable effects "were diminished between 30 minutes and 1 hour, and they were largely dissipated 3 hours after the end of smoking. No delayed or persistent effects beyond 3 hours were observed or reported." [59]

(*d*) *Psychological Effects.*—The acute psychological effects of the use of marijuana are more complex. At the outset, it can be stated with certainty that "marijuana is definitely distinguishable from other hallucinogenic drugs such as LSD, DMT, mescaline, peyote, and psilocybin. Although it produces some of the same effects, it is far less potent than these other drugs. It does not alter consciousness to nearly so great an extent as they do nor does it lead to increasing tolerance to the drug dosage." [60] Furthermore, the subjective effects of cannabis are dependent upon the personality of the user, his expectations, and the circumstances under which the drug is taken, as well as learning to smoke marijuana properly.[61]

There is general agreement about the pleasurable psychological effects. Users uniformly experience greatly enhanced perception—whether real or delusory—of visual, auditory, taste and touch effects, increased sense of humor or hilarity, feelings of well-being or wonderment, and distorted time and space perceptions.[62] In this connection, it is interesting to note that even the pleasurable phenomena are dependent on individual circumstances, particularly when the drug is taken for the first time. Many, if not most, people do not become "high" on their first exposure to marijuana even if it is smoked correctly.[63] The probable explanation for

[58] *Comparison of the Effects of Marijuana and Alcohol on Simulated Driving Performance*, 164 SCIENCE 851 (1969) (concluding that subjects under a "social marijuana high" showed no significant differences from control subjects in accelerator, brake, signal, steering, and total errors). In addition, "unlike alcohol drinkers, most pot smokers studiously avoid driving while high." J. ROSEVEAR, *supra* note 36, at 135.

[59] Weil Study 1238.

[60] Grinspoon, *supra* note 43, at 19.

[61] H. NOWLIS, DRUGS ON THE COLLEGE CAMPUS 96-101 (1969).

[62] L. GOODMAN & A. GILMAN, *supra* note 53, at ch. 16; *Dependence on Cannabis (Marijuana)*, *supra* note 51, at 368-71.

[63] Weil Study 1241; Wash. Post, May 24, 1970, at A26, col. 1.

this curious phenomenon is that repeated exposure to marijuana reduces psychological inhibition, as part of, or as a result of, a learning process.[64]

Medical knowledge is most tentative with reference to adverse psychological effects. Recent studies, however, have vehemently disputed an earlier tendency to attribute psychoses and severe panic reactions to marijuana use.[65] As Dr. Weil has noted:

> Because reliable information about the acute effects of marijuana has been as scarce within the medical profession as without, many of these reactions have been misinterpreted and incorrectly treated. For example, simple panic states, which doubtless would be properly diagnosed in other circumstances, are often called "toxic psychoses" when doctors elicit immediate histories of marijuana use.[66]

Medical experts now generally agree that the possibility of depression, panic and psychoses depends entirely on the circumstances of use and the personality of the user.[67] In his most recent study, Dr. Weil concluded that "serious adverse reactions are uncommon in the 'normal' population," [68] but noted three exceptions. First, simple depressive reactions which rarely occur in regular users may occur in novices who approach their initial use ambivalently.[69] Second, the most frequent adverse reaction is apprehension, more often described as anxiety, and sometimes reaching a degree of panic. Again, such reactions are closely related to the attitude of the user and to the social setting.[70] The social setting also influences the frequency of panic reactions, suggesting again that this phenomenon correlates with the degree of reluctance with which people approach initial use of the drug:

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[64] "The subjective responses of our subjects indicate that they had imagined a marihuana effect to be much more profoundly disorganizing than what they experienced." Weil Study 1241. This subjective control over the effects extended as far as the reporting of no effects when in actuality the subject had received a large dose. *Id.*

[65] Grinspoon, *supra* note 43, at 23-24.

[66] Weil, *Adverse Reactions to Marijuana*, 282 NEW ENG. J. MED. 997 (1970).

[67] *See, e.g.*, Schwarz, *supra* note 34, at 595; Weil, *supra* note 66.

[68] Weil, *supra* note 66, at 997.

[69] Marihuana depressions I have seen have occurred mainly in obsessive-compulsive persons who are ambivalent about trying the drug or who invested the decision to experience marihuana with great emotional meaning. In interviewing these patients, I have thought that they used marihuana as an excuse for letting themselves be depressed, not that their depressions were psycho-pharmacological.

Id. at 998.

[70] Dr. Weil has stated that "panic reactions occurred most often among novice users of marijuana—frequently older persons who are ambivalent about trying the drug in the first place." N.Y. Times, May 1, 1970, at 18C, col. 2.

> In a community where marijuana has been accepted as a recreational intoxicant, they may be extremely rare (for example, one per cent of all responses to the drug). On the other hand, at a rural Southern college, where experimentation with the drug may represent a much greater degree of social deviance, 25 per cent of persons trying it for the first time may become panicked.[71]

The panicked person normally believes that he is either dying or losing his mind, and simple reassurance will end most such reactions.[72] The reaction normally is short-lived, but it may be prolonged by an attitude encouraging the underlying fears.[73] In short, "panic reactions . . . seem more nonpharmacologic than pharmacologic." [74]

Third, psychotic reactions occur rarely, if at all, in normal users,[75] and occur mainly in persons with a low psychosis threshold or a history of psychosis[76] or hallucinogenic drug experimentation.[77] Even in such cases, marijuana is a precipitant rather than a primary cause of this type of reaction[78] which lasts at most a day or two.[79]

IX. Marijuana Legislation Clashes with Judicial Skepticism and Emerging Values—Piecemeal Judicial Response: 1965-1970

The dramatic increase in marijuana use during the latter 1960's and the consequent increase in prosecution[1] were matters of high public visibility. Judicial response at both the trial and appellate levels was in-

[71] *Id.* These panic reactions may emulate acute psychoses in hospital emergency wards "where the patient may feel overwhelmed, helpless and unable to communicate his distress." Weil, *supra* note 66, at 998.

[72] *Id.*

[73] N.Y. Times, May 1, 1970, at 18C, col. 3.

[74] Weil, *supra* note 66, at 1000.

[75] Dr. Weil is of the opinion that "all adverse reactions to marihuana should be considered panic reactions until proven otherwise," *id.* at 998, and that he has never seen a toxic psychosis following the smoking of marijuana by a normal user. *Id.* at 999.

[76] *Id.* at 1000.

[77] *Id.* at 999-1000.

[78] H. Nowlis, Drugs on the College Campus 96-101 (1969); Schwarz, *supra* note 34, at 595.

[79] McGlothlin & West, *The Marijuana Problem: An Overview*, 125 Am. J. Psych. 370, 372 (1968).

[1] See pp. 1096-1101 *supra*. *See also* People v. Patton, 264 Cal. App. 2d 637, 70 Cal. Rpt. 484 (Dist. Ct. App. 1968), where the arresting officer testified that he had made about 1,000 marijuana arrests.

fluenced by a combination of powerful forces, none of which had been present in the preceding years. The 1960's saw a revolution in the law of criminal procedure, and in few areas were police practices more suspect than in the enforcement of the drug laws. The latter part of the decade witnessed widespread dissent against the political and legal systems; this protest milieu gave an added dimension to marijuana use as more and more people smoked, oftentimes overtly, in order to defy a seemingly ignorant law. Faced with this unusual conjunction of widespread political and social eccentricity, the courts—institutional protectors of political deviants—were inevitably pressed into institutional sympathy for social deviants. A third force was the revitalized judicial interest in the value of privacy in a highly automated, technological society; more and more people went to the courts to question long-standing governmental prohibitions against essentially private decisions and acts—homosexuality, abortion, contraception and drugs. Together with the well-publicized medical skepticism about the soundness of the nation's drug laws, particularly those regulating marijuana, these forces moved the courts to scrutinize enforcement practices and consider a new wave of constitutional objections to state and federal marijuana legislation.

A. Multiple Offenses: Untying the Statutory Knots

1. Federal Developments

In the major decision during this period, the United States Supreme Court voided the federal provisions most often employed to prosecute the possessor (buyer) of marijuana. In the first arm of *Leary v. United States*,[2] the Court held that the fifth amendment relieves unregistered buyers of any duty to pay the transfer tax and to file the written order form as required by the Marihuana Tax Act.[3] The Court reasoned that, since filing such a form would expose a buyer to liability under state law, under the occupational tax provisions of the Tax Act, and perhaps under the marijuana provision of the Import and Export Act,[4] the filing

[2] 395 U.S. 6 (1969).

[3] Although *Leary* involved only the concealment and transportation provision, 26 U.S.C. § 4744(a)(2) (1964), the Eighth Circuit has held, correctly, that *Leary* also covers the acquiring provision, § 4744(a)(1), "since a person obviously would have to acquire the marijuana to knowingly transport or conceal it." United States v. Young, 422 F.2d 302, 304 (8th Cir.), *cert. denied*, 398 U.S. 914 (1970).

[4] Because the "danger of incrimination under state law" was "so plain," the Court did not pursue the additional question of a buyer's exposure to liability under the Import and Export Act. 395 U.S. at 16 n.14.

provisions violated the fifth amendment guarantees against self-incrimination. On the other hand, the Court held in a later case that the fifth amendment does not relieve the marijuana seller of the duty to confine his sales to transferees who are willing to comply with the order form requirements.[5] Similarly, the Eighth Circuit recently held[6] that *Leary* does not compel invalidation of Tax Act section 4755(b), which prohibits the interstate transportation of marijuana, because a conviction under that section is not really a conviction for failing to register and pay the occupational tax and, even if it were, registration under section 4753 is not necessarily incriminating as was the written order form requirement struck down in *Leary*.[7]

The second arm of *Leary* reversed the long line of decisions[8] upholding the presumption of knowing concealment of illegal importation arising from possession under section 176a of the Import and Export Act.[9] The Court held that, in light of the ease with which marijuana was domestically cultivated and the number of users, the presumption of knowledge could not rationally be drawn from possession;[10] it could not be said "with substantial assurance that the presumed fact [knowing concealment of illegally imported marijuana] is more likely than not to flow from the proved fact [possession] on which it is made to depend." [11] Although there is authority to the contrary,[12] the Ninth Circuit has held this part of *Leary* retroactive, thereby invalidating all prior section 176a convictions in which the defendant did not admit

[5] Minor v. United States, 396 U.S. 87 (1969).

[6] United States v. Young, 422 F.2d 302 (8th Cir.), *cert. denied*, 398 U.S. 914 (1970).

[7] "Although we need not reach the question, we feel that the Fifth Amendment is not violated by the insubstantial hazards of incrimination posed by § 4753." *Id.* at 306.

[8] See p. 1086 *supra*.

[9] Anticipating the *Leary* decision on the § 176a presumption was United States v. Adams, 293 F. Supp. 776 (S.D.N.Y. 1968).

[10] 395 U.S. at 52-53. Having found the "knowledge" presumption unconstitutional, the Court avoided consideration of the "illegal importation" presumption. *Id.* at 38. The knowledge presumption has also been held invalid as applied to hashish, United States v. Maestri, 424 F.2d 1066 (9th Cir. 1970); *cf.* United States v. Cepelis, 426 F.2d 134 (9th Cir. 1970) (remanded for factual determination on whether *Leary* applies to hashish).

In Turner v. United States, 396 U.S. 398 (1970), the Court upheld the presumption in 21 U.S.C. § 174 (1964) (direct ancestor of § 176a as applied to heroin but declared it irrational as applied to cocaine. It has been held that *Turner* is retroactive. United States v. Vallejo, 312 F. Supp. 244 (S.D.N.Y. 1970).

[11] 395 U.S. at 36.

[12] Rivera-Vargas v. United States, 307 F. Supp. 1075 (D.P.R. 1969).

knowledge and the jury was instructed as to the applicability of the statutory presumption.[13]

A serious dispute remains as to what the Government will have to prove in subsequent prosecutions under section 176a. Assuming that the entire provision does not violate the privilege against self-incrimination,[14] it is likely that the prosecution will have to prove actual knowledge of illegal importation in the future.[15] Since it is highly improbable that such proof will be forthcoming, section 176a has probably been rendered useless as applied to possessors. It should be clear that the entire series of decisions under the Tax Act and section 176a has an air of unreality about them because Congress probably has Article I power directly to prohibit possession and sale of marijuana and has now exercised that power in the Comprehensive Drug Abuse Prevention and Control Act of 1970.[16] This new legislation, although stopping short in some respects, discards many of the fictions perpetuated by earlier legislation. The *Leary* decision was at least partially responsible for forcing Congress to rationalize the federal role in the drug field, particularly with respect to marijuana.

Another manifestation of judicial dissatisfaction with the extreme nature of existing drug legislation is the apparent reversal of the trend of decisions upholding the strict liability of one-time drug offenders, users

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[13] United States v. Scott, 425 F.2d 55 (9th Cir. 1970). We think the Ninth Circuit is right, at least with respect to convictions secured after marijuana achieved high public visibility in the 1960's. Since the number of people still incarcerated for earlier convictions is minimal, complete retroactive effect is in order. Essential to the *Leary* decision was a determination that the presumption was factually unsupportable; it therefore constituted a material flaw in the fact-finding process and seriously impaired the right to jury trial.

[14] Absent the written order form requirement of the Marihuana Tax Act, we do not see how prosecution under § 176a involves the fifth amendment at all. Neither did the Ninth Circuit. *Id.* at 61.

[15] *See* United States v. Martinez, 425 F.2d 1300 (9th Cir. 1970); McClain v. United States, 417 F.2d 489 (9th Cir. 1969). A mere inference of importation is clearly not enough to sustain a conviction since it would nullify *Leary*. *Cf.* United States v. Ramos, 282 F. Supp. 354 (S.D.N.Y. 1968) (where Government failed to prove possession beyond reasonable doubt, court could not infer knowledge of importation). It is difficult to see how the Government could raise an inference of knowledge without proving actual knowledge. If, however, such can be done, it is clear that the defendant has a right to prove that the marijuana was not imported. United States v. Espinoza, 406 F.2d 733 (2d Cir.), *cert. denied*, 395 U.S. 908 (1969) (retrial ordered for failure of trial judge to allow defendant to prove that marijuana came from California).

[16] Pub. L. No. 91-513 (Oct. 27, 1970). *See also* Leary v. United States, 395 U.S. 6, 54 (1969) ("We are constrained to add that nothing in what we hold today implies any constitutional disability in Congress to deal with the marijuana traffic by other means").

and addicts for failure to register when leaving the country.[17] The Ninth Circuit held the phrase "uses narcotic drugs" unconstitutionally vague.[18] Taking a more direct approach, the Second Circuit found knowledge of the registration requirement to be an element of the crime.[19] Thus construed, the statute precludes any due process challenge to the sufficiency of the notice.[20] Although a self-incrimination issue remains,[21] the Second Circuit's decision removed the most serious defect in the statute, one that had become intolerable as the number of marijuana convictions escalated in the late 1960's.

2. State Developments

The erosion of the archaic federal criminal statutes for marijuana-related offenses has been accompanied by a similar, albeit limited, development on the state level. The major issue in state litigation concerns so-called "drug-proximity" offenses which are generally employed as plea-bargaining tools or to prevent the release of a suspect when evidence was illegally seized or when the evidence is insufficient to secure a conviction under the substantive drug offense. Typical ancillary offenses are loitering in the common areas of a building for the purpose of unlawfully using or possessing any narcotic drug;[22] loitering in public by a user, addict or convicted drug offender without lawful employment;[23] presence in an establishment where narcotic drugs are dispensed;[24] and presence of a user or drug offender in a private place where drugs are kept.[25]

The decisional trend seems to point to the unconstitutional vagueness of simple loitering and vagrancy statutes.[26] Because of the nexus between

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[17] See p. 1085 *supra*.

[18] Weissman v. United States, 373 F.2d 799 (9th Cir. 1967). Struggling to confine its holding, the court distinguished an apparently contradictory case, United States v. Eramdjian, 155 F. Supp. 914 (S.D. Cal. 1957), on the ground that it involved "addiction" rather than use of narcotic drugs.

[19] United States v. Mancuso, 420 F.2d 556 (2d Cir. 1970).

[20] *See* Lambert v. California, 355 U.S. 225 (1957) (application of city ordinance requiring convicted felons to register within five days after arrival in city where there is no actual notice or knowledge of ordinance is unconstitutional).

[21] The *Mancuso* court did not discuss the issue.

[22] N.Y. Penal Law § 1533(5) (McKinney 1967).

[23] D.C. Code Ann. § 22-3302 (1967).

[24] *Id.* § 22-1515(a).

[25] *Id.* § 33-416(a).

[26] *E.g.*, Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969), *appeal docketed*, 38 U.S.L.W. 3409 (U.S. Apr. 21, 1970) (No. 1273, 1969 Term; renumbered No. 102,

narcotics and crime, however, the courts are struggling to redefine narcotics-proximity statutes to avoid the vagueness objection.[27] It might appear that where "good account" provisions give the arresting police officer too much discretion the statute will fail.[28] On the other hand, courts generally avoid vagueness objections based on lack of notice by reading in knowledge elements wherever necessary.[29] Because of the tenuous relation between marijuana and crime, the courts should construe "narcotics" in such statutes not to include marijuana.

Similar restriction of marijuana-related offenses has been accomplished by holding that charges of possession and sale will not both lie where the only possession is incident to sale,[30] and by tightening the requirements of specificity in the indictment regarding the proscribed parts of the plant.[31]

1970 Term); Lazarus v. Faircloth, 301 F. Supp. 266 (S.D. Fla.) *appeal docketed*, 38 U.S.L.W. 3225 (U.S. Dec. 16, 1969) (No. 630, 1969 Term; renumbered No. 45, 1970 Term; Broughton v. Brewer, 298 F. Supp. 260 (S.D. Ala. 1969).

[27] In People v. Pagnotta, 25 N.Y.2d 333, 253 N.E.2d 202, 305 N.Y.S.2d 484 (1969), the New York Court of Appeals upheld a statute making it illegal to loiter about any "stairway, staircase, hall, roof, elevator, cellar, courtyard, or any passageway of a building for the purpose of unlawfully using or possessing any narcotic drug." The court distinguished the ordinary vagrancy and loitering cases on the ground that the conduct punished in the narcotics vagrancy statute is directly related to the commission of crime *against others:*

> [P]rotection of innocent citizens from drug users is a very crucial problem. As has recently been pointed out by several newspaper articles, in some of our poorer urban areas where drug use is high, innocent citizens are often beaten, robbed and even murdered by drug addicts . . . . It is completely reasonable and proper for the Legislature to protect these citizens from accidentally stumbling into the midst of such miscreants in the common areas of buildings.

Id. at 338, 253 N.E.2d at 206, 305 N.Y.S.2d at 489.

[28] Ricks v. District of Columbia, 414 F.2d 1097, 1104-05 (D.C. Cir. 1968). *But cf.* United States v. McClough, 263 A.2d 48 (D.C. Ct. App. 1970) (upholding statute prohibiting presence in an establishment where defendant knows narcotics are being dispensed).

[29] *E.g.*, United States v. McClough, 263 A.2d 48 (D.C. Ct. App. 1970) (reading scienter provision into statute prohibiting prior drug users or offenders from being "found in any place . . . building, structure . . . in which any illicit narcotic drugs are kept"); *cf.* People v. Brim, 257 Cal. App. 2d 839, 65 Cal. Rptr. 265 (Dist. Ct. App. 1968) (interpreting statute outlawing knowingly being in a place where narcotics are being used as charging defendant with intentional involvement with the unlawful use of marijuana).

[30] State v. Duplain, 102 Ariz. 100, 425 P.2d 570 (1967); People v. Theobald, 231 Cal. App. 2d 351, 41 Cal. Rptr. 758 (Dist. Ct. App. 1964).

[31] *See, e.g.*, State v. Haddock, 101 Ariz. 240, 418 P.2d 577 (1966) (seeds contain no cannabin, therefore no crime charged); State v. Curry, 97 Ariz. 191, 398 P.2d 899 (1965) (marijuana refers to the parts of the plant containing cannabin). *Contra*, State v. Ringo, 5 Conn. Cir. 134, 246 A.2d 208 (Cir. Ct. 1968) (possession of seed, residue in

B. Procedural Objections to Enforcement Practices

The law of criminal procedure underwent a major revolution in the 1960's. The Bill of Rights was applied piece by piece to the states through the fourteenth amendment. The Supreme Court focused its concern on protecting the rights of the criminal defendant. The earlier philosophy had been that, so long as the defendant's rights at trial were guaranteed, the Court should not, and did not need to, intrude into the pretrial stages of the criminal process. For a variety of reasons it became clear in the 1960's that in a system where between 75 and 90 percent of all defendants bargain and enter guilty pleas, rights must be assured well before trial if they are to have any real meaning to the average person caught in the net of the criminal process. Thus, step by step the Court began to regulate police practices—search, arrest and interrogation techniques—and the conduct of the early stages of the criminal process. This substantial change in attitude meant that more marijuana defendants could successfully raise procedural objections.

1. Search and Seizure

The most important development for the marijuana offender has been the close judicial scrutiny of police searches as a result of Supreme Court rulings under the fourth amendment. More stringent standards have been established for the police to obtain search warrants,[32] and the proper scope of searches incident to a lawful arrest has been narrowed substantially.[33]

Although courts have refused to exclude any evidence that was in plain sight when seized, such as a bag of marijuana in a school satchel voluntarily opened by a student,[34] or marijuana thrown out of a window by a defendant trying to dispose of it,[35] they have narrowed the per-

pipes and a small package of marijuana); Commonwealth v. Cunningham, 35 Pa. D. & C.2d 527 (O. & T. Allegheny 1964) (possession of marijuana seeds); *cf.* State v. Everidge, 77 N.M. 505, 424 P.2d 787 (1967) (defendant required to raise defense that marijuana possessed was within statutory exception); State v. Mudge, 69 Wash. 2d 861, 420 P.2d 863 (1966) (same).

[32] Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964).

[33] Chimel v. California, 395 U.S. 752 (1969) (search incident to a lawful arrest limited to an area within immediate control of the suspect). *See also* Terry v. Ohio, 392 U.S. 1 (1968).

[34] People v. Bloom, 270 Cal. App. 2d 731, 76 Cal. Rptr. 137 (Dist. Ct. App. 1969).

[35] State v. Garcia, 76 N.M. 171, 413 P.2d 210 (1966).

missible time and area in which a car may be searched.[36] Moreover, the difficult standing problem posed by the requirement that one had to admit possession or ownership of the seized property in order successfully to challenge the search was alleviated in cases involving group arrests by permitting all those on the premises to challenge a given search.[37]

The new requirements for procuring search warrants led to a number of technical defense victories. For example, searches of defendants' residences were successfully challenged in two Montana marijuana cases[38] because the warrants were issued by a justice of the peace, rather than by a district judge, as required by the state law. These holdings were premised on the sanctity of private residences, and they suggest a growing reluctance to countenance "reasonable" warrantless searches, especially of the home. Similarly, Maryland struck down the fruits of a search of defendant's guests and their automobiles on the ground that the permissible search was limited to the areas described in the warrant.[39] An Illinois court has held that property not included in the warrant must be returned to the defendant.[40] This return to a more stringent view of particularity requirements of warrants stands in stark contrast to the willingness of courts to overlook these requirements in the late fifties.[41]

Likewise, courts now scrutinize more closely police claims of probable cause for expanding the area of the search. A California court held that even though defendant was lawfully arrested, search of his luggage in a friend's apartment was justified neither by the friend's consent nor by the officer's having seen the defendant swallow something.[42] The search was especially unjustifiable since the defendant had been arrested in his automobile. In another California case, the presence of peculiar odors did not constitute probable cause for the search of a footlocker.[43]

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[36] Preston v. United States, 376 U.S. 364 (1964). *See also* Cooper v. California, 386 U.S. 58 (1967). The holdings in both these cases are probably limited by *Chimel*.

[37] Jones v. United States, 362 U.S. 257 (1960).

[38] State v. Kurland, 151 Mont. 569, 445 P.2d 570 (1968); State v. Langan, 151 Mont. 558, 445 P.2d 565 (1968).

[39] Haley v. State, 7 Md. App. 18, 253 A.2d 424 (1969).

[40] People v. Hartfield, 94 Ill. App. 2d 421, 237 N.E.2d 193 (1968).

[41] See pp. 1089-91 *supra*.

[42] People v. Cruz, 61 Cal. 2d 861, 395 P.2d 889, 40 Cal. Rptr. 841 (1964); *accord*, People v. Patton, 264 Cal. App. 2d 637, 70 Cal. Rptr. 484 (Dist. Ct. App. 1968). In *Cruz* the court stated that it was reasonable for the officers to try to dislodge the suspected marijuana from the defendant's mouth.

[43] People v. McGrew, 103 Cal. 3d 404, 462 P.2d 1, 82 Cal. Rptr. 473 (1969), *relying on*

An airline had detained the footlocker since it corresponded to a police description. The officers had smelled the marijuana and then searched the footlocker before sending it on its way and tracing it. The California Supreme Court held that the smell alone was not sufficient cause to search without a warrant.

Despite judicial narrowing of the scope of searches with or without a warrant, the easing of the standing requirements, and the closer scrutiny on the probable cause issue, courts continue to permit police to enter dwellings without knocking or by force where circumstances indicate such action is reasonable and necessary. For example, a California court upheld a marijuana search, even though the police entered without knocking, because the police heard people running around inside yelling, "It's the police," and thought they heard a shot fired.[44] The court held that the statutory knocking requirement was subject to exception when there was danger of destruction of evidence and danger to the police. Closely related to no-knock entry is forcible entry, upheld in an Illinois case[45] where the police broke into the defendant's residence when he did not immediately respond to their knocks. The necessity for forced entry is essentially the same as for unannounced entry, but forced entry adds the danger of causing fright and damage.

Another search area that has not been substantially liberalized is that of the border search. Customs officials have a much more extensive right to search than their police colleagues. Mere suspicion is sufficient to justify a border search.[46] Even though the jurisdiction of customs agents ends once entry into the country is completed, the courts have allowed border guards great discretion in determining what constitutes completed entry. In *Thomas v. United States*,[47] the Fifth Circuit held admissible evidence seized an hour and a half after the appellant had reentered the United States because he was only six blocks from the border. Although there is an inevitable problem of how far the jurisdiction of the customs agent extends, *Thomas* suggests clearly that it is not limited to border crossings.

People v. Marshall, 69 Cal. 2d 51, 442 P.2d 665, 69 Cal. Rptr. 585 (1968) ("'In plain smell,' therefore, is plainly not the equivalent of 'in plain view'").

[44] People v. Clay, 273 Cal. App. 2d 279, 78 Cal. Rptr. 56 (Dist. Ct. App. 1969).

[45] People v. Hartfield, 94 Ill. App. 2d 421, 237 N.E.2d 193 (1968).

[46] United States v. Glaziou, 402 F.2d 8 (7th Cir. 1968), *cert. denied*, 393 U.S. 1121 (1969); Henderson v. United States, 390 F.2d 805 (9th Cir. 1967).

[47] 372 F.2d 252 (5th Cir. 1967). The customs agents had searched the defendants belongings at the time he had entered the country and had not discovered the marijuana and heroin he possessed. They came into town and searched the defendant when they were notified by an informer that he was carrying the contraband.

2. *Entrapment*

Although the majority opinions in *Sorrells v. United States*[48] and *Sherman v. United States*,[49] remain the leading statements on entrapment, some courts have recently permitted expansion of the defense. In California a defendant may plead not guilty and still raise the entrapment defense in some cases. The court in *People v. Perez* stated:

> To compel a defendant to admit his guilt as a condition of invoking the defense of entrapment would compel him to relieve the prosecution of its burden of proving his guilt beyond a reasonable doubt at the risk of not being able to meet his burden of proving entrapment.[50]

The defendant must, however, still raise the defense at trial to be determined as a matter of fact by the jury.[51] There is no right to raise the defense in a pretrial motion to suppress the evidence.[52] Most courts continue to focus on the moral culpability of the accused[53] in determining whether or not entrapment has been successfully shown. Recent Arkansas[54] and Nevada[55] cases, however, suggest that the courts are in-

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[48] 287 U.S. 435 (1932).

[49] 356 U.S. 369 (1958).

[50] 62 Cal. 2d 769, 776, 401 P.2d 934, 938, 44 Cal. Rptr. 326, 330 (1965). The decision overturned a long series of precedents. That all justices concurred is indicative of the sentiment for change. The court required the prosecution to disclose the identity of the informant because he was essential to the defenses of entrapment and lack of knowledge. The decision was immediately implemented in People v. Marsden, 234 Cal. App. 2d 796, 44 Cal. Rptr. 728 (Dist. Ct. App. 1965). There, defendant was repeatedly requested to furnish marijuana to a government agent and finally purchased and gave the agent one marijuana cigarette. The court noted that the case was close to entrapment as a matter of law.

[51] People v. Oatis, 264 Cal. App. 2d 324, 70 Cal. Rptr. 524 (Dist. Ct. App. 1968), *cert. denied*, 393 U.S. 1108 (1969).

[52] State v. Folsom, 463 P.2d 381 (Ore. 1970).

[53] Commonwealth v. Harvard, 253 N.E.2d 346 (Mass. 1969); Glosen v. Sheriff, 451 P.2d 841 (Nev. 1969).

[54] Peters v. State, 450 S.W.2d 276 (Ark. 1970). Here the defendant gave some marijuana free of charge to the agent after repeated requests. The marijuana had been left in the defendant's shop by others. In remanding the case for consideration by the jury whether entrapment existed the court stated:

> Perhaps, neither the persistent solicitation, the use of an alias, the misrepresentation of the purposes for which [the agent] wanted to acquire the marijuana nor the use of friends of appellant for an entree, standing alone, would have been sufficient to raise a fact question as to entrapment, but when taken together along with the total lack of evidence that [the defendant] had possessed or sold marijuana before, there was such an issue.

Id. at 278.

[55] Froggatt v. State, 467 P.2d 1011 (Nev. 1970) (reversed for failure to give entrapment

creasingly concerned about the conduct of law enforcement agents, especially in marijuana cases.

3. Other Prosecution Practices

Several major abuses, although judicially recognized, remain largely uncorrected. Long delay between offense and arrest is common in narcotics offenses because the police desire to expose the full extent of distribution and to maintain a cover for the undercover agent as long as possible. Yet any substantial delay will prejudice the defendant since the prosecution continues to gather evidence while the defendant may forget exact circumstances and possibly exculpating facts. Judicial response has been inconsistent, focusing primarily on the purposefulness of the delay.[56] In light of the recent rejuvenation of the speedy trial requirement by the Supreme Court,[57] there is some hope that this abuse may be corrected.

A more serious abuse with which state and federal prosecutors have been charged is politically-motivated discretionary enforcement.[58] Although the courts can do little to remedy this state of affairs, it forms the basis for one of our basic contentions: The political-social overtones of the marijuana problem may inhibit a rational political and prosecutorial response and at the same time may provoke a protective judicial response. One judge, particularly expert with regard to contemporary drug problems, has acknowledged the partial truth of the charges of political prosecution against hippies, long-hairs and draft-card burning college students.[59] To the extent that other trial and appellate judges recognize

instruction where policeman placed marijuana in defendant's car and then defendant sold it to another officer).

[56] *Compare* Jordan v. United States, 416 F.2d 338 (9th Cir. 1969), *cert. denied*, 397 U.S. 920 (1970) (since three-month delay was not purposeful, defendant must show actual prejudice), *with* Ross v. United States, 349 F.2d 210 (D.C. Cir. 1965) (charges dismissed since seven-month delay found purposeful).

[57] Smith v. Hooey, 393 U.S. 374 (1969).

[58] *E.g.*, J. KAPLAN, MARIJUANA—THE NEW PROHIBITION 40-42 (1970).

[59] Oliver, *Assessment of Current Legal Practices from the Viewpoint of the Courts*, in DRUGS AND YOUTH 229 (J. Wittenborn ed. 1969). Judge Oliver tried to minimize the seriousness of the problem, however:

> I think that as judge I must be interested in what might appear to be a pattern of discriminatory law enforcement, but I . . . consider much of this talk must be viewed with the same critical eye which most other talk about drug abuse must be viewed.

Id. at 233.

these prosecutorial tendencies, we can expect some judicial compensation either in fact-finding, in sentencing, or in response to substantive challenges to the law. It is our contention, of course, that such judicial reaction has already begun.

C. *Sufficiency of the Evidence*

The ease of identifying marijuana in conjunction with the use of uncorroborated testimony and circumstantial evidence continues to require of the prosecution only a very low burden of proof. Nevertheless, appellate decisions are gradually beginning to tighten these requirements, and active judicial hostility at trial has all but disappeared.

Although the use of uncorroborated testimony to convict continues to be upheld by the courts,[60] an Illinois appellate court has reversed a conviction because of the behavior of the testifying officer.[61] Noting that the officer had repeatedly pressured the defendant to become an informer, the court held that the uncorroborated testimony of this officer was not sufficient to support a conviction. The court did not make clear whether it exercised a weight of the evidence review of the trial judge's fact-finding, or whether it applied an exclusionary evidence rule pursuant to its inherent powers over the administration of criminal justice. Whatever the case, judicial perspective in the clash between marijuana defendant and police officer has clearly shifted.

The amount of marijuana required to uphold a conviction is undergoing substantial change. The California Supreme Court held in *People v. Leal*[62] that to be sufficient for conviction, the amount of narcotics must be enough for sale or consumption, the rule generally applied where the statute does not specify a minimum quantity.[63] In *Eckroth*

[60] *See, e.g.*, Winfield v. State, 248 Ind. 95, 223 N.E.2d 576 (1967).

[61] People v. Quintana, 91 Ill. App. 2d 95, 234 N.E.2d 406 (1968). The court was greatly displeased with the continuing misbehavior of the officer: "[The 5-8 previous arrests and shakedowns] were a high-handed display of police power which completely disregarded the defendant's constitutional rights." *Id.* at 98, 234 N.E.2d at 408.

[62] 64 Cal. 2d 504, 413 P.2d 665, 50 Cal. Rptr. 777 (1966) (heroin).

[63] People v. Villalobos, 245 Cal. App. 2d 561, 54 Cal. Rptr. 60 (Dist. Ct. App. 1966) (50 milligrams insufficient); *see* Tuttle v. State, 410 S.W.2d 780 (Tex. Crim. App. 1967) (63 milligrams sufficient, enough to make a very small cigarette); People v. Hokuf, 245 Cal. App. 2d 394, 53 Cal. Rptr. 828 (Dist. Ct. App. 1966) (reversible error for the court not to instruct the jury that fragments of marijuana cannot support conviction). *But see* Franklin v. State, 8 Md. App. 134, 258 A.2d 767 (1969) (heroin), in which the court upheld a conviction for possession where the defendant went to the hospital with an overdose. Although recognizing that once the drug is inside the body there is no possession because there is no control, the court felt that prior possession and

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v. State[64] a Florida court ruled that the taking of a drug from a passing pipe is not sufficient to constitute possession where the defendant did not own the pipe, the drug or the premises. Similarly, in a case that received national publicity,[65] the Minnesota Supreme Court held that if the state defines marijuana as a narcotic, it cannot punish possession of what could be native cannabis in amounts too scanty to produce a "narcotic" effect. Accordingly, exiguous traces of the drug found in the crevices of defendant's brief case left in his mistress' car did not constitute an amount sufficient for conviction.[66]

Other problems remain unsolved. Circumstantial evidence continues to link defendants to seized marijuana. Constructive possession was found where the defendant's daughter was the actual possessor,[67] and the fact that marijuana was found where an informer said she had seen defendant smoking it the previous day was sufficient to support the defendant's conviction.[68] There is a split as to whether a conviction can be upheld where the defendant gratuitously brings the buyer and seller together. Massachusetts upheld the conviction for possession where the defendant's only contact with the marijuana was passing it to the state's agent,[69] ruling that the facilitation of the sale added enough to the act of passing to allow the court to find possession. In a similar case, however, a New York court held that there was not present the required involvement or concert of action to uphold a conviction for sale.[70]

Nevertheless, courts have refused conviction on numerous occasions in which the defendant was not linked exclusively with the marijuana that was found,[71] and have generally required an outside linking factor before upholding the possession.[72] However, the element that can tip the

self-administration could be inferred. The decision should do much to discourage addicts from receiving any medical treatment that might expose them to criminal penalties.

[64] 227 So. 2d 313 (Fla. Dist. Ct. App. 1969).

[65] See p. 1099 & note 14 *supra*.

[66] State v. Resnick, 177 N.W.2d 418 (Minn. 1970).

[67] People v. Thomas, 76 Ill. App. 2d 42, 221 N.E.2d 800 (1966).

[68] State v. Mantell, 71 Wash. 2d 768, 430 P.2d 980 (1967).

[69] Commonwealth v. Harvard, 253 N.E.2d 346 (Mass. 1969).

[70] People v. Hingerton, 27 App. Div. 2d 754, 277 N.Y.S.2d 754 (1967).

[71] *See, e.g.*, State v. Oare, 249 Ore. 597, 439 P.2d 885 (1968) (one marijuana cigarette found in bathroom with two people, home owner convicted); People v. Van Syoc, 269 Cal. App. 2d 370, 75 Cal. Rptr. 490 (Dist. Ct. App. 1969) (marijuana found on right-hand side of the dashboard in defendant's car while parked in public lot); People v. Evans, 72 Ill. App. 2d 146, 218 N.E.2d 781 (1966) (marijuana found under bar where defendant had been sitting).

[72] State v. Faircloth, 181 Neb. 333, 148 N.W.2d 187 (1967) (defendant had dufflebag

scales in favor of conviction is often unrelated to the possible possession of the marijuana. For example, a California court[73] upheld the finding of possession of marijuana discovered along with a purse the defendants had stolen. The defendants contended that the marijuana was not theirs and must have been in the purse when stolen. That the defendants were thieves probably played more heavily in the conviction than any evidence of their connection with marijuana.

Where marijuana is found on the premises of the individual, possession is presumed, although the courts have read in a defense of ignorance of the presence of the marijuana.[74] Nevertheless, in a New Hampshire case[75] the court upheld a possession conviction premised on the defendant's knowledge of presence of the drug on the premises even though the court apparently believed the defendant's story that it belonged to a third party. Ordinarily there is direct corroborating evidence to indicate the defendant's knowledge.[76]

Along with the gradual thaw on these points in state courts, the late sixties witnessed a total absence of the outrageous judicial participation in inflammatory statements about the dangers of the drug and its users which we saw was typical of the late fifties. To the contrary, the appellate opinions, at least, are replete with skeptical references to the inclusion of marijuana in the narcotics classification.[77]

D. Sanction

Nowhere has judicial disenchantment with the drug laws, especially marijuana, been greater than in the area of punishment. Preference for civil treatment of drug abuse,[78] disgust with severe mandatory sentencing that deprives the judiciary of its traditional function of weigh-

full of marijuana between his legs in automobile); People v. Blunt, 241 Cal. App. 2d 200, 50 Cal. Rptr. 440 (Dist. Ct. App. 1966) (defendant only one who had sat in back of police car where marijuana found).

[73] People v. Irvin, 264 Cal. App. 2d 747, 70 Cal. Rptr. 892 (Dist. Ct. App. 1968).

[74] *See* Commonwealth v. Buckley, 354 Mass. 508, 238 N.E.2d 335 (1968); People v. Mitchell, 51 Misc. 2d 82, 272 N.Y.S.2d 523 (Sup. Ct. 1967). *Contra*, State v. Givens, 74 Wash. 2d 48, 442 P.2d 628 (1968).

[75] State v. Colcord, 109 N.H. 231, 248 A.2d 80 (1968).

[76] The evidence of fragments of marijuana on the defendant often provides this evidence. *See, e.g.*, People v. Slade, 264 Cal. App. 2d 188, 70 Cal. Rptr. 321 (Dist. Ct. App. 1968); People v. Haynes, 253 Cal. App. 2d 1060, 61 Cal. Rptr. 859 (Dist. Ct. App. 1967), *cert. denied*, 392 U.S. 914 (1968); People v. Hurtt, 238 Cal. App. 2d 162, 47 Cal. Rptr. 580 (Dist. Ct. App. 1965).

[77] See 1131-32 *infra*.

[78] *E.g.*, Oliver, *supra* note 59.

ing the culpability of the individual offender,[79] and skepticism about a statutory scheme which catches the user or small scale distributor and misses the major trafficker[80] have all found their way into judicial opinions.

This dissatisfaction with legislative inaction in the area of de-escalating punishment has already begun to provoke remedial[81] judicial action. In a landmark decision[82] receiving national attention,[83] the Supreme Court of New Jersey recently held that any prison sentence imposed for first-offense possession of marijuana for personal use "should be suspended." [84] While the court based its holding on the judiciary's statutory authority to suspend sentences in "the best interests of the public as well as of the defendant," [85] and on the appellate court's power to review for abuse of discretion trial court sentencing decisions, it appears that the true locus of the opinion is the eighth amendment. That is, the court really determined that any prison sentence for first-offense possession of marijuana for personal use is unreasonably excessive. Accordingly, the decision will be discussed in more detail in the following section.[86]

[79] *See, e.g.*, United States v. Kleinzahler, 306 F. Supp. 311 (E.D.N.Y. 1969) (Weinstein, J.); Oliver, *supra* note 59, at 230:

> In most other areas of the law, however, legislatures have freely granted judges the power and discretion within quite flexible limitations, to determine appropriate sentences for all particular defendants before them that may or may not, dependent upon the particular case, include committment to a penal institution. . . . In the field of drug abuse, quite contrary to that experience, mandatory prison sentences apparently reflect a legislative conviction that all drug offenders are so alike that sending all to prison is, in fact, a real solution to what must have been viewed as a relatively simple problem. They also seem to reflect a certainty and righteousness that can hardly be said to be justified by our present scientific knowledge.

[80] For example, in Aguilar v. United States, 363 F.2d 379 (9th Cir. 1966), the court, affirming the smuggling conviction of a Mexican mechanic driving a car containing marijuana back to the United States, noted:

> Here was a young man with a previous clean record, and there was no indication he was a user of narcotics or inside a narcotics ring. Apparently he was a victim of his personal economics. When the law gets no closer than this to the real rascal, one must wonder about the policy of it, although it be beyond our function.

Id. at 381. *See also* Oliver, *supra* note 59, at 233.

[81] What Justice Jackson said about adjudicative mood when the death penalty hangs in the balance is equally appropriate with regard to harsh marijuana penalties:

> When the penalty is death, we, like state judges, are tempted to strain the evidence and even, in close cases, the law in order to give a doubtfully condemned man another chance.

Stein v. New York, 346 U.S. 156, 196 (1953).

[82] State v. Ward, No. A-9 (N.J., Oct. 26, 1970).

[83] N.Y. Times, Oct. 27, 1970, at 1, col. 4.

[84] State v. Ward, No. A-9, at 9.

[85] N.J. STAT. ANN. § 2A:168-1 (1969).

[86] See pp. 1138-39 *infra*.

X. The Heart of the Matter—Substantive Constitutional Challenges to the Marijuana Laws: 1965-1970

Perhaps the most significant legal development engendered by the new class of marijuana users and shift in medical opinion is the vigorous wave of substantive constitutional attacks on the marijuana laws launched in 1965. Although the challengers have employed many labels, the essence of their attacks is an insistence on rationality in the legislative process. Contending that marijuana is a harmless euphoriant, the challengers have questioned governmental authority to prohibit its use at all. Arguing that it is no more, and perhaps less, harmful than alcohol and tobacco, the challengers have indicted as irrational the total prohibition of one coupled with permissive regulation of the others. Conversely, the challengers have vigorously attacked the arbitrary inclusion of marijuana in the legislative classification "narcotics" with admittedly harmful opiates and cocaine. Finally, the severity of the punishments imposed for marijuana violations has been attacked as violative of the eighth amendment cruel and unusual punishment clause. A potent weapon in advancing these attacks has been the fact that the state and federal legislatures never conducted meaningful investigation into the effects of the drug, but relied instead on hearsay and emotional pleas.

Although the judiciary has become increasingly sympathetic to these challenges, to date it has left the legislation intact. As we inquire into the reasons for this recalcitrance, the reader should recall the nature of the judicial debate about intoxicants a half century ago. As the scope of the due process and equal protection clauses was substantially broadened over the years, the free-form "pursuit of happiness" and "inherent limitations" approaches were laid on the ash heap of constitutional history. As a result of the incorporation of Bill of Rights guarantees into the fourteenth amendment, there now exist a plethora of more or less "explicit" constitutional limitations upon which the challengers have relied. Analytically, however, the marijuana challengers have asked the courts to fit square pegs into round constitutional holes. The dynamism of recent constitutional interpretation has not yet eroded the obstacles in the challengers' path. But this is not to say that this erosion should not, and will not, eventually occur. In the succeeding pages, we shall evaluate the merits of the various arguments and the adequacy of the judicial responses.

A. The Burden of Justification: The Importance of Having a Presumption on Your Side

The mortar in the wall separating judicial from legislative power is the presumption of constitutionality of legislative action. Although this presumption evaporates where "legislation appears on its face to be within a specific prohibition of the Constitution," [1] or where it affects adversely other fundamental rights,[2] the courts ordinarily will defer to the rationality of legislative proscriptions, classifications and sanctions. When legislation is attacked as irrational, arbitrary or factually groundless, the pertinent questions are whether the judiciary should conduct its own factual inquiry, and how groundless the legislation must be to earn the "arbitrary" or "irrational" designation (or its contextual equivalent).

Because of the placement of the burden of (dis)proof, legislation is not "arbitrary" simply because the legislature did not conduct a fact-finding investigation.[3] When the legislation is attacked, the courts will assume that it was based on the collective knowledge and experience of the legislators. In short, the legislature, as a matter of constitutional law, has no affirmative duty to utilize the trappings of rationality.

Furthermore, legislation is not irrational simply because a factual hypothesis upon which it is premised cannot be proven. The legislature is entitled to guess and act upon the contemporary state of knowledge or ignorance. The generally accepted "facts" about marijuana in the 1920's and 30's, when the drug's possession and use were criminalized, were that it was physically addictive, caused insanity, and gen-

[1] United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938).

[2] Gomillion v. Lightfoot, 364 U.S. 339 (1960) (voting rights); United States v. O'Brien, 391 U.S. 367 (1968) (dictum) (free speech).

[3] Although a requirement of fact-finding investigations for all legislation is desirable, judicial enforcement would reward persuasive legislative history and shake the separation of powers doctrine to its very roots. The spectre of judicial surveillance of everyday legislating, albeit by method and not substance, is one not likely to enthuse either legislators or judges.

Counsel for defendants in Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898 (1969), contended that the notable lack of legislative investigation into medical and scientific evidence concerning marijuana "violates certain minimum standards of rationality which must be part of the legislative process." Oteri & Silverglate, *The Pursuit of Pleasure: Constitutional Dimensions of the Marihuana Problem*, 3 Suff. L. Rev. 55, 60 (1968). However, the trial court and the Supreme Judicial Court both responded correctly that the nature of the legislative records was not the issue before the court. The question was whether the facts today are inconsistent with assumptions necessary to the rationality of the legislation. Commonwealth v. Leis, Nos. 28841-2, 28844-5, 28864-5 (Suffolk Super. Ct. 1968), *excerpted in* 3 Suff. L. Rev. 23, 35 (1968) (Tauro, C.J.), *aff'd*, 355 Mass. 189, 243 N.E.2d 898 (1969).

erated crimes of violence. Later, in the 1950's, legislation was premised on the hypothesis that marijuana was the stepping stone to heroin and the other opiates. Since the assumptions could not be conclusively disproved, the legislation was rationally related to the legitimate objectives of preventing crime, pauperism and disease. As the California court in *Ex parte Yun Quong* had noted in 1911 in response to an attack on the early anti-opium laws:

> [B]ut the validity of legislation which would be necessary or proper under a given state of facts *does not depend upon the actual existence of the supposed facts.* It is enough if the law-making body may rationally believe such facts to be established.[4]

Between 1950 and 1965 attacks on the marijuana laws were repelled in this manner since medical inquiry had not yet produced affirmative evidence of irrationality. Challenges to the classification of marijuana as a narcotic were rebuffed either by citing *Navaro* and the other cases first upholding the marijuana laws,[5] or by quoting *Ex parte Yun Quong*.[6]

By 1965, however, the revolution in marijuana use was underway, and independent medical researchers had begun to challenge the venerable assumptions. Armed with an increasing volume of scientific literature in their favor,[7] challengers have assaulted the legislation in court in an effort to prove that "facts judicially known or proved *preclude*" the legislation's rationality.[8] Several trial judges have taken evidence on the physiological, psychological and sociological effects of marijuana,[9] and some appellate courts have suggested that such steps be taken in their respective inferior courts.[10] In Colorado, trial judges have twice declared

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[4] 159 Cal. 508, 515, 114 P. 835, 838 (1911) (emphasis added).

[5] *E.g.*, Gonzalez v. State, 168 Tex. Crim. 49, 323 S.W.2d 55 (1959), *citing* Gonzalez v. State, 1963 Tex. Crim. 432, 293 S.W.2d 786 (1956); Miller v. State, 50 Del. 579, 137 A.2d 388 (1958), *citing* State v. Navaro, 83 Utah 6, 26 P.2d 955 (1933).

[6] People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (Dist. Ct. App. 1965), *cert. denied*, 385 U.S. 880 (1966); People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (Dist. Ct. App. 1952).

[7] See pp. 1104-10 *supra*.

[8] South Carolina Hwy. Dep't v. Barnwell Bros., Inc., 303 U.S. 177, 191 (1938) (emphasis added).

[9] *See* United States v. Drotar, 416 F.2d 914 (5th Cir. 1969); Raines v. State, 225 So. 2d 330 (Fla. 1969); People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965); Commonwealth v. Leis, Nos. 28841-2, 28844-5, 28864-5 (Suffolk Super. Ct. 1968), *aff'd*, 355 Mass. 189, 243 N.E.2d 898 (1969); *cf.* People v. McKenzie, 458 P.2d 232 (Colo. 1969).

[10] *E.g.*, Scott v. United States, 395 F.2d 619, 620 (D.C. Cir. 1968); People v. Walton, 116 Ill. App. 2d 293, 296, 253 N.E.2d 537, 539 (1969).

that state's marijuana laws unconstitutional on the basis of such evidence, only to be reversed both times.[11] Again and again, the verdict has been the same: Despite the substantial weight of authority regarding the mildness of the drug, enough doubt remains and enough rational men still consider the drug harmful that the courts cannot say the legislation is irrational.[12] Some judges have expressed their own doubts about the accuracy of the factual premises and the wisdom of the legislative judgments pertaining to marijuana,[13] but even they have been constrained to uphold the legislation. At the other extreme, some courts continue to rely on the old myths, considering the question well settled[14] and rebuffing the challengers' attacks with a swish of the robed forearm:

> Clearly, the use of marijuana and other drugs . . . presents a danger to the public safety and welfare of the community since they are clearly related to each other and to the commission of crime.[15]

Many legislators hesitate to revise the marijuana laws drastically, because they feel the data is not yet complete. For the same reason, the courts have been even more reluctant to find that present legislation has no rational basis in fact, a finding made only in the rarest circumstances. Assuming for present purposes that the legislation is entitled to the traditional presumption, we believe that attacks grounded in the due process and equal protection clauses should fail. On the other hand, we are not convinced that challenges grounded in a rationality arm of the eighth amendment prohibition against cruel and unusual punishment are without merit. This argument has the advantage of acknowledging the rationality of criminalization while indicting the severity of the sanction.

1. Due Process and Equal Protection: Rationality of the Classification

The concurrent classification of marijuana as a "narcotic" with the

[11] People v. McKenzie, 458 P.2d 232 (Colo. 1969); People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965).

[12] See cases cited notes 28-31 *infra*.

[13] *E.g.*, United States v. Kleinzahler, 306 F. Supp. 311, 317 (E.D.N.Y. 1969) (Weinstein, J.); People v. McKenzie, 458 P.2d 232, 236 (Colo. 1969).

[14] Robinson v. United States, 327 F.2d 618, 624 (8th Cir. 1964) (Blackmun, J.) ("the boundary line, if any, between narcotics and marijuana is indistinct and . . . statutes and interpreting courts do not give much emphasis to it"); Spence v. Sacks, 173 Ohio St. 419, 420, 183 N.E.2d 363, 364 (1962) ("There is no question that the state had, under its police power, the right to classify cannabis as a narcotic drug."); People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (Dist. Ct. App. 1965), *cert. denied*, 385 U.S. 880 (1966).

[15] People v. Stark, 157 Colo. 59, 66, 400 P.2d 923, 927 (1965).

"hard drugs" and the permissive treatment of alcohol form the basis of the "irrationality" argument. Whether grounded in the minimum substantive content of the due process clause, in the overinclusive and underinclusive aspects of the equal protection clause, or in an independent limitation on the police power, the contention is the same: The legislative classification is not reasonably related to a valid legislative purpose.

The initial inquiry ought to focus on the nature of the state's objective. The first possible objective we will call the "rationality" rationale. The state's aim may be to promote productivity, rationality and participation in social processes, and conversely to prevent the citizen from "turning off" or frustrating his ability to function in socially desirable ways. Under this rationale, prohibition of *all* drug use would be rationally related to the state's objective. Similar treatment of "hard" narcotics and marijuana would be justified, since no distinctions need be drawn between moderate and chronic use or between divergent ancillary social and physical effects. The real issues are whether this is a legitimate objective and whether the permissive treatment of alcohol invalidates the scheme.

As to the first issue, we do not believe that American governmental institutions are empowered to impose the Protestant Ethic upon a free people. Although we will explore this question in some detail below from another perspective,[16] we note for now that opposition to mere *use* of euphoriants has never been the focus of legislative inquiry or the public opinion process in the entire history of drug regulation in this country. As we noted earlier,[17] although total abstension was a peripheral concern of some proponents of Prohibition, that movement was directed primarily at the evils associated with excessive use and commercial distribution. Some judges recently have upheld marijuana legislation simply because marijuana is a "mind-altering drug," [18] but it is unlikely that they perceived the implications of their statements.

As to the second issue, if we assume that rationalism is a legitimate objective of drug legislation, it is a long-standing constitutional principle that the legislature need not "cover the waterfront." If the law-makers determine, as a result of the failure of Prohibition for example, that "regulation" is the only feasible approach to alcohol, that judgment does

[16] See text at notes 132-35 *infra*.

[17] See p. 979 *supra*.

[18] *E.g.*, Raines v. State, 225 So. 2d 330 (Fla. 1969).

not vitiate a prohibitionary approach to other intoxicants. That the legislature acts piecemeal does not make its actions any less "rational."[19]

The state's objective in drug legislation may be to prevent excessive or chronic use on the ground that such use totally destroys the user's social utility and is likely to render him dependent on the state for subsistence. Although this "dependency" rationale is designed immediately to protect each citizen from himself, its mediate aim is the public good. In this respect marijuana prohibition resembles legislation requiring motorcycle users to wear crash helmets.[20] Again, there is some dispute regarding the legitimacy of this objective, a question to which we will return below.

Assuming the validity of the "dependency" rationale, however, the relevant factual inquiry focuses on the respective use patterns and effects of "hard" narcotics, marijuana and alcohol. The challengers contend that it is scientifically established that marijuana is not physically addictive, causes no permanent harm, and that its users do not develop a tolerance to the drug. The irrationality of classifying marijuana with the opiates and cocaine is aggravated, they contend, by the fact that there are six million chronic alcoholics in this country. In response to these arguments, some courts have noted that there is *some evidence* for the proposition that marijuana produces a "serious degree of psychological dependence, that it encourages experimentation with other drugs and that it may lead to addiction of narcotics."[21] Accordingly, since "reasonable men may entertain the belief that the use of [marijuana], once begun, almost inevitably leads to excess, such belief affords a sufficient justification for applying restrictions to these drugs."[22] In addition some courts have noted that there is *some evidence* that the smoking of marijuana may induce acute (albeit temporary) "psychotic breaks" in predisposed individuals.[23]

Although the logic of the stepping stone and psychotic break arguments is suspect in determining valid state interest, we believe that contrary medical findings are still too tentative with respect to the psychological effects of marijuana use to sustain an irrationality challenge under the "dependency" rationale. In addition, the piecemeal principle once

[19] *See, e.g.*, Commonwealth v. Leis, 243 N.E.2d 898, 905 (Mass. 1969).

[20] *See* Borras v. State, 229 So. 2d 244, 246 (Fla. 1969).

[21] People v. Aguiar, 257 Cal. App. 2d 597, 602-03, 65 Cal. Rptr. 171, 174-75 (Dist. Ct. App.), *cert. denied*, 393 U.S. 970 (1968).

[22] *Id.* at 600, 65 Cal. Rptr. at 173.

[23] Commonwealth v. Leis, 243 N.E.2d 898, 902 (Mass. 1969).

again counters the challengers' underinclusive equal protection argument with respect to alcohol or LSD,[24] allegedly more harmful drugs not classified as "narcotics." To the extent that some courts have searched for differences between alcohol and marijuana to defend directly the legislative scheme, they have usually been on shaky ground. For example, Massachusetts Superior Court Judge Tauro stated in *Commonwealth v. Leis*, after a full factual inquiry on the effects of marijuana:

> The ordinary user of marijuana is quite likely to be a marginally adjusted person who turns to the drug to avoid confrontation with and the resolution of his problems. The majority of alcohol users are well adjusted, productively employed individuals who use alcohol for relaxation and as an incident of other social activities.[25]

Such statements misconstrue prevalent use patterns of both alcohol and marijuana. Moreover, such differentiation is grounded not in the "dependency" rationale but in the dubious "rationality" rationale. Judge Tauro would have been better advised to stick to the piecemeal principle, as have the California intermediate appellate courts.[26]

The third possible objective of marijuana legislation is to prevent harm to others. For four decades, prohibition of marijuana has been based primarily on the "other-regarding" rationale. The relevant factual hypotheses are that marijuana use causes violent crime directly, that it leads to use of hard drugs and thereby causes violent crime indirectly, and that it causes "psychomotor discoordination" and thereby causes accidents by those under its influence.

Contemporary challengers have charged that these assumptions are completely without merit in light of contemporary medical knowledge. Although some courts continue to intone the old myths, relying on police testimony correlating marijuana use and violent crime,[27] others

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[24] Defendant in People v. McKenzie, 458 P.2d 232 (Colo. 1969), varied the traditional underinclusiveness argument. He contended that the continued classification of marijuana as a "narcotic" drug after a legislative revision in 1968 could not be defended, since LSD, clearly a more harmful drug, was classified as a "dangerous" drug. Possession of LSD was a misdemeanor while possession of marijuana was a felony. Citing its decision in People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965), the Colorado Supreme Court deferred to the unusual classification.

[25] 3 SUFF. L. REV. 23, 31 (1968).

[26] *See, e.g.*, People v. Oatis, 264 Cal. App. 2d 324, 329, 70 Cal. Rptr. 524, 529 (Dist. Ct. App. 1968), *cert. denied*, 393 U.S. 1108 (1969); People v. Aguiar, 257 Cal. App. 2d 597, 602, 65 Cal. Rptr. 171, 176 (Dist. Ct. App.), *cert. denied*, 393 U.S. 970 (1968).

[27] People v. Stark, 157 Colo. 59, 67, 400 P.2d 923, 927-28 (1965); *cf.* People v.

have openly recognized the unsubstantiated character of each of these hypotheses.[28]

Nevertheless, these courts have sustained the legislation because of the continuing uncertainty about the drug's effects.[29] Rather than supporting the hypothesis that marijuana intoxication independently causes violence, the courts have focused on the unpredictable effects of the drug depending on the psychological predisposition of the user. Since there is some evidence that marijuana can be especially volatile when used by despondent, hostile or unstable persons, a prophylactic approach is rational.[30]

Similarly, while recognizing that there is no support for a direct causal link between marijuana use and hard narcotics use, the courts have held that some marijuana users' graduation to more dangerous drugs due to environmental conditions is enough to uphold the legislation.[31] Finally, recognizing that the possibility of reckless use of dangerous instruments while under the influence of marijuana might not ordinarily justify its total prohibition, the courts have relied instead on evidence that there is no scientific means of detecting whether or not a person is under the drug's influence, as there is with alcohol.[32]

Taken individually, each of these justifications leaves something to be desired. First, individuals psychologically predisposed to violent conduct will, in all likelihood, snap under the influence of some other catalyst even if deprived of marijuana. Second, the stepping stone theory is a self-fulfilling prophecy even to the extent that there is a correlation between marijuana use and hard narcotics use. Were it not for prohibitionary marijuana legislation, users of that drug would not come into contact with illegal activity and perhaps consequently with narcotics pushers. Finally, there is persuasive evidence for the proposition that marijuana users are ordinarily rendered immobile and are unlikely to endanger others by driving automobiles.[33]

Oatis, 264 Cal. App. 2d 324, 70 Cal. Rptr. 524 (Dist. Ct. App. 1968), *cert. denied*, 393 U.S. 1108 (1969).

[28] E.g., People v. Aguiar, 257 Cal. App. 2d 597, 602-03, 65 Cal. Rptr. 171, 174-75 (1968); People v. Stark, 157 Colo. 59, 66, 400 P.2d 923, 927 (1965).

[29] People v. Aguiar, 257 Cal. App. 2d 597, 603, 65 Cal. Rptr. 171, 175 (1968).

[30] Commonwealth v. Leis, Nos. 28841-2, 28844-5, 28864-5 (Suffolk Super. Ct. 1968), *excerpted in* 3 Suff. L. Rev. 23, 27-28 (1968), *aff'd*, 355 Mass. 189, 243 N.E.2d 898 (1969).

[31] E.g., Commonwealth v. Leis, 243 N.E.2d 898, 903 (Mass. 1969).

[32] *Id.*

[33] See p. 1105 *supra*.

Taken collectively, however, these hypotheses provide a rational basis for prohibitionary legislation, the objective of which is to prevent harm to others. We conclude that there is not yet sufficient uniformity of medical opinion to overcome any presumption of rationality attaching to marijuana legislation. Those courts directly confronting the issue have responded correctly, regardless of the precise constitutional framework within which they have worked.

2. *Cruel and Unusual Punishment: Rationality of the Sanction*

Since marijuana penalties were drastically increased in the 1950's, the marijuana laws have been attacked repeatedly on the ground that high mandatory minimum sentences without parole or probation are cruel and unusual punishment. The starting point for resolution of this question is the Supreme Court's highly ambiguous decision in 1910 in *Weems v. United States*.[34] The Court struck down a fifteen-year sentence at "hard and painful labor" imposed under Philippine law for falsifying a public document because the sentence was "cruel in its excess of imprisonment" as well as "unusual in its character."[35] The punishment was condemned "both on account *of* . . . [its] degree and kind."[36] Because the incidents of the challenged imprisonment were particularly abhorrent—"a chain at the ankle and wrist of the offender, hard and painful labor, no assistance from friend or relative, no marital authority or parental rights or rights of property"[37]—some courts and commentators believe that *Weems* does not depart from the traditional view that the eighth amendment speaks only to mode of punishment, not to length.[38] Yet some members of the Court have stated that the amendment was directed "against all punishments which by their excessive length or severity are greatly disproportioned to the offenses charged."[39] And the Court in *Weems* stated that the punishments there in question came "under the condemnation of the bill of rights, both on account of their degree and kind."[40] Accordingly, although the jurisprudence of

[34] 217 U.S. 349 (1910).

[35] *Id.* at 377.

[36] *Id.*

[37] *Id.* at 366.

[38] *E.g.*, Packer, *Making the Punishment Fit the Crime*, 77 HARV. L. REV. 1071, 1075-76 (1964).

[39] 217 U.S. at 371, *quoting* O'Neil v. Vermont, 144 U.S. 323, 339-40 (1892) (Field, J., dissenting).

[40] 217 U.S. at 377.

the eighth amendment is virtually nonexistent, courts and commentators have assumed that the amendment has a proportionality dimension.[41]

The difficult question is the proper standard for testing the constitutionality of allegedly excessive sentences. Although detailed inquiry into the subtleties of this issue is beyond the scope of this Article, the battle is between those who would apply a fringe "decency" test[42] and those who would apply a "rationality" test that essentially extends the minimum substantive content of the due process clause to the relation between crime and punishment.[43] As applied to marijuana legislation, a "decency" inquiry would have been fruitless in the 1950's and 1960's but may yet succeed in the 1970's. Under that test, a punishment is unconstitutional only if "so aberrational as to violate 'standards of decency more or less universally accepted.' " [44] Since the history of marijuana legislation has again and again been characterized by varying degrees of hysteria in differing jurisdictions, there is no available measure of human decency against which to test the action. Moreover, if the legislatures are uniformly harsh, the judicial conscience is not likely to be shocked. However, as increasing numbers of state legislatures and the Congress finally begin to de-escalate the penalties for marijuana offenses, those states that maintain the 1950 punishment levels are likely to find themselves lagging behind "the evolving standards of decency that mark the progress of a maturing society." [45]

One contention that can, and has, been raised in the drug context has been that the penalty must bear a reasonable relation to the seriousness of the offense when compared with the punishments for more serious crimes in the same jurisdiction and for the same crime in other jurisdictions. The evolution of judicial response to this argument in marijuana cases has followed a path consistent with the change in use patterns and in public response.

In the first case raising this cruel and unusual punishment issue, *State v. Thomas*,[46] the Louisiana Supreme Court upheld in 1953 that state's

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[41] *See, e.g.*, Gallego v. United States, 276 F.2d 914 (9th Cir. 1960); Turkington, *Unconstitutionally Excessive Punishments*, 3 CRIM. L. BULL. 145 (1967); Note, *The Cruel and Unusual Punishment Clause and the Substantive Criminal Law*, 79 HARV. L. REV. 635 (1966).

[42] *See* Packer, *supra* note 38.

[43] *Cf.* Rudolph v. Alabama, 375 U.S. 889, 889-91 (Goldberg, J., dissenting from denial of certiorari).

[44] Packer, *supra* note 38, at 1076.

[45] Trop v. Dulles, 356 U.S. 86, 100-01 (1958).

[46] 224 La. 431, 69 So. 2d 738 (1953).

mandatory minimum sentence of ten years without parole for unlawful possession. The court said that the eighth amendment did not apply to the states and that similar state provisions spoke only to "form or nature of the punishment rather than its severity in respect of duration and amount." [47] Finally, the court noted that, even if *Weems* applied, "[i]n view of the moral degeneration inherent in all aspects of the crime denounced by the Narcotics Act, it cannot be said that the length or severity of the punishment here prescribed is disproportioned to the offense." [48] Five years later, the Texas Supreme Court upheld a life sentence for first offense possession, and stated that the legislature was solely responsible for assessing the permissible limits of punishment and that the jury was solely responsible for affixing sentence in a particular case.[49]

In 1960, the Ninth Circuit in *Gallego v. United States*[50] upheld the provision of the 1956 Narcotic Drugs Import and Export Act imposing a five-year mandatory minimum sentence without suspension, probation or parole for unlawful importation of marijuana. Assuming an excessiveness holding to be implicit in *Weems*, the court noted nevertheless that the penalty was not "so out of proportion to the crime committed that it shocks a balanced sense of justice. At worst," the court continued, "it merely forbids in this kind of case and for good reason the discretionary granting of special benefits which Congress did not have to permit in the first place." [51] The summary treatment of the issue is easily explained by the court's apparent lack of sympathy with marijuana users; it quoted approvingly the moral denouncement delivered in *Thomas*.[52]

Slowly the tide began to turn. A California court recently blanched at upholding the five-year minimum sentence imposed for giving away

[47] *Id.* at 435, 69 So. 2d at 740.

[48] *Id.* In State v. Bellam, 225 La. 445, 73 So. 2d 311 (1954), the court rebuffed a similar challenge to a seven-year sentence without parole for a second offense of possession of marijuana by simply citing *Thomas*.

[49] Garcia v. State, 166 Tex. Crim. 482, 316 S.W.2d 734 (1958). The statute provided that a first offense was punishable by not less than two years nor more than life. The court applied the hands-off principle common to state courts, according to which any sentence within the statutory limits is valid. *See, e.g.*, Perkins v. North Carolina, 234 F. Supp. 333 (W.D.N.C. 1964); Saunders v. State, 208 Tenn. 347, 345 S.W.2d 899 (1961); State v. Jiles, 230 S.C. 148, 94 S.E.2d 891 (1956).

[50] 276 F.2d 914 (9th Cir. 1960).

[51] *Id.* at 918.

[52] *Id.* The Ninth Circuit reaffirmed *Gallego* in Halprin v. United States, 295 F.2d 458 (9th Cir. 1961), and Bettis v. United States, 408 F.2d 563 (9th Cir. 1969).

one marijuana cigarette, especially when the case had entrapment overtones.[53] But in 1967 the defendant in *United States v. Ward*[54] asked the Seventh Circuit to declare unconstitutional, as applied to marijuana, the sentencing provisions of the 1956 Act previously upheld by *Gallego* and subsequent cases. The no parole provision was indicted as inconsistent with current medical knowledge. After quoting at length from the then recently released Report of the President's Commission on Law Enforcement and Administration of Justice and from the Task Force Report on Drug Abuse, the court concluded:

> [T]he progress of scientific research in the whole area of narcotics and drug abuse, during the eleven years since [passage of the 1956 Act] has not resulted in the establishment of scientific knowledge to the extent that would enable us to nullify [section 7237] on constitutional grounds, even if we deemed it appropriate to do so.[55]

Thus appeared the perpetual fate of rationality arguments, whether applied to sanction or to classification. Two years later the Fifth Circuit still found the medical data inconclusive[56] and Massachusetts[57] and California[58] courts both summarily dismissed eighth amendment arguments.

Then, in 1968 the Court of Appeals for the District of Columbia took a significant step. In its decision in *Watson v. United States*[59] (*Watson I*), a three-judge panel in an opinion by Judge Bazelon held that a mandatory ten-year sentence for appellant's third conviction for possession of heroin constituted excessive punishment in violation of the eighth amendment.[60] The significance of *Watson I* was shortlived, however, because

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[53] People v. Marsden, 234 Cal. App. 2d 796, 798, 44 Cal. Rptr. 728, 729 (Dist. Ct. App. 1965).

[54] 387 F.2d 843 (7th Cir. 1967).

[55] *Id.* at 848.

[56] United States v. Drotar, 416 F.2d 914 (5th Cir. 1969).

[57] Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898 (1969).

[58] People v. Sheridan, 271 Cal. App. 2d 429, 76 Cal. Rptr. 655 (Dist. Ct. App. 1969); *cf.* United States *ex rel.* Fink v. Heyd, 287 F. Supp. 716 (E.D. La. 1968) (deprivation of bail pending appeal for person convicted of sale of marijuana to person over twenty-one and sentenced to five year incarceration does not violate eighth amendment).

[59] No. 21,186 (D.C. Cir., Dec. 13, 1968) (panel), *modified*, No. 21,186 (D.C. Cir., July 15, 1970) (en banc). *Watson I* is excerpted in 37 U.S.L.W. 2352 (Dec. 24, 1968) and reprinted in 4 CRIM. L. REP. 3051 (Dec. 25, 1968).

[60] Since the court identified numerous factors germane to its decision, delineation of a precise holding is difficult and the court probably so intended. We would suggest, however, that the court held that the imposition of rigid severe sentences, identified by

upon a rehearing en banc, the court avoided the eighth amendment issue and set aside the sentence on other grounds.[61] In the en banc opinion (*Watson II*), the court does make a strong eighth amendment argument based on *Robinson v. California*.[62] Since this important constitutional point was not fully litigated below, the court did not believe it could adequately rule on the question. Although most of Judge McGowan's opinion in *Watson II* is thus dicta, it does lay the foundation for future overturnings on eighth amendment grounds of possession sentences when applied to addicts.[63]

An additional indication of both the sympathetic attitude of the federal courts and the expanding dimensions of the eighth amendment "excessiveness" argument appears in a recent opinion by Judge Weinstein of the Eastern District of New York. In *United States v. Kleinzahler*,[64] the issue was the applicability of the ameliorative provisions of the Youth Corrections Act[65] to violations of the federal narcotic drug and marijuana laws. Defendant, a college graduate and highly salaried white collar worker, pleaded guilty to acquisition of marijuana without payment of the transfer tax (by any other name, possession for personal use). He was sentenced to a mandatory term of two years' imprisonment, which was suspended, two years' probation and a fine of $1,000. If the Youth

comparison with other offenses and by the absence of sentencing discretion to tailor the penalty to the culpability of the offender, is unreasonable *either* in the context of offenses closely related to if not compelled by disease *or* in the context of victimless crimes.

[61] The court upheld Watson's conviction but remanded for resentencing in light of the Narcotic Rehabilitation Act of 1966. In so doing, the court declared unconstitutional a provision of that Act which exempts addicts with two prior narcotics convictions, holding such a provision to be a denial of equal protection. No. 21,186, at 29 (D.C. Cir., July 15, 1970) (en banc).

[62] 370 U.S. 660 (1962). Judge McGowan noted that

> if *Robinson's* deployment of the Eighth Amendment as a barrier to California's making addiction a crime means anything, it must also mean in all logic that (1) Congress either did not intend to expose the non-trafficking addict possessor to criminal punishment, or (2) its effort to do so is as unavailing constitutionally as that of the California legislature.

No. 21,186, at 19 (D.C. Cir., July 15, 1970) (en banc).

[63] For the future, the addict, whose acquisition and possession of narcotics is solely for his own use and who wishes to defend on these grounds, is surely not at a loss to know how to do so. . . . To the extent that he wishes to assert that the statutes are not to be read as applicable to him . . . [he should] make an alternative claim of the constitutional defectiveness, under *Robinson*, of the statutes as applied to him.

Id. at 21-22.

[64] 306 F. Supp. 311 (E.D.N.Y. 1969).

[65] 18 U.S.C. §§ 4209, 5010(a) (1964).

Corrections Act had applied, he would have been entitled to have the conviction set aside upon successful completion of his period of probation.

The problem was that the Youth Corrections Act was expressly inapplicable to statutes with mandatory penalties. In light of the legislative history of the Narcotics Control Act of 1956, Judge Weinstein felt constrained to hold that the narcotics and marijuana laws imposed mandatory penalties within the meaning of the Youth Corrections Act.[66] He noted, however, that he thought the result absurd.[67] In a passage particularly germane to the constitutional issue and the meaning of *Watson I*, he stated:

> While the result is harsh, it does not appear to rise to the kind of cruel and unusual punishment proscribed by the Constitution, *in light of the possibilities of probation and suspension of sentence here present.* The wisdom or justice of treating those young adults convicted of possession of marijuana in the same way as those convicted of armed bank or mail robbery or those convicted of selling narcotic drugs is doubtful. But revision of the law in this field must be left to Congress.[68]

Unlike Judge Weinstein, however, the Supreme Court of New Jersey was not satisfied with the mere *possibility of suspension* of prison terms meted out to first-offense possessors of marijuana for personal use. In its landmark decision in *State v. Ward*,[69] the supreme court held as a matter of law that prison "sentences for first offenders should be suspended."[70] The court strove manfully to base the decision on its statutory authority to review sentencing suspension decisions for abuse of discretion. However, both the breadth of the holding and its reasoning suggest constitutional underpinnings.

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[66] Judge Weinstein noted:

> In light of the unique structure and harshness of the penalty provisions of the narcotics and marijuana laws—almost byzantine in their complexity—and previous interpretations of related statutes, it is clear that the penalties are "mandatory" within the meaning of [the Youth Corrections Act].

306 F. Supp. at 315.

[67] *Id.* at 317.

[68] *Id.* (emphasis added).

[69] State v. Ward, No. A-9 (N.J., Oct. 26, 1970). The court affirmed the conviction but modified the sentence. Two justices dissented from the affirmance on the grounds that the defendant did not receive a fair trial. They concurred in the sentencing modification on the grounds that the sentence was "grossly excessive."

[70] *Id.* at 9. Although the court devoted some attention to the defendant's particular record and probation report, *id.* at 7, it did not pretend to limit the decision to the

In the first place, taken on its face, the court's opinion appears to hold that trial court denials of motions to suspend prison sentences for first offenders will always be reversed for abuse of discretion. However, such a "guidance" flies in the face of two basic procedural concepts: the sentencing authority is generally free to impose any penalty within the range permitted by the legislature; and to the extent that an appellate court reviews such judgments, it customarily defers to the proximity of the trial judge and reverses, on a case by case basis, only for gross disregard of the trial record and presentence reports. In effect, the New Jersey Supreme Court determined that where youthful marijuana users are concerned, imprisonment is an excessive sanction even though within the statutory range of alternatives. This is no ordinary decision.

Although the court sloughed over the analytical problem, it did not disguise its rationale. The disturbing number of users, the ambiguous nature of the wrong, and the counterproductive effect of imprisonment each played a part:

> We cannot escape the unhappy fact that our youth have been involved with marihuana in disturbing numbers. That this is so does not palliate the wrong. Nor should we be thought to encourage or condone such conduct. The statute should and will be enforced. But it remains the policy of the law to reform the youthful offender. Sentencing judges should direct the punishments they impose to the goal of reformation. Too severe a punishment will do little towards advancing this goal. Incarceration is a traumatic experience for anyone. The effect must be particularly devastating upon young persons such as the defendant here. A sentence of two to three years in State Prison in a case like this will probably be more detrimental to both the offender and society than some other discipline.[71]

In essence, the court held that incarceration was not a rational sanction for this particular crime.

The sixteen years between *Thomas* on the one hand and *Watson I*, *Kleinzahler* and *Ward* on the other have witnessed a significant expansion of the contours of the eighth amendment and a noticeable change in judicial attitude toward defendants charged with marijuana violations. As constitutional lawyers, we must acknowledge the difficulty of halting a

case at bar. At one point the court stated that it was establishing "guidelines for the sentencing of first offenders who were found guilty of possessing marijuana for their own use." *Id.*

[71] *Id.* at 8.

rationality-excessiveness inquiry, once begun. For this reason, the New Jersey court's end run around the constitutional issue is a defensible approach. In any event, we think that the courts will continue to enter this thicket unless the legislatures reduce marijuana penalties to comport with reality.

B. Should the Burden Be Shifted?—Marijuana and Fundamental Rights

The Supreme Court's 1938 decision in *United States v. Carolene Products Co.*[72] is the most frequently cited authority for the presumption of constitutionality, the implications of which were explored in the preceding section. However, Justice Stone's famous footnote four, tentatively cataloging exceptions to the rule of judicial deference, is the philosophical forebear of contemporary contentions that marijuana legislation cannot be presumed constitutional. Recent constitutional history has been characterized by a new judicial activism in defense of "fundamental" human rights.[73] Footnote four was a tentative attempt to anticipate and rationalize that activism while retreating from the old economic activism and its major vehicle—substantive due process.

Still allergic to the substantive due process label and to any form of judicial review not tied to more or less specific constitutional provisions, the modern Court has utilized the doctrine of incorporation and the once dormant equal protection clause to fill in the contours of footnote four. For some of the Justices, substantive due process is limited, theoretically at least, to the specific guarantees of the first eight amendments, and perhaps their collective penumbra. To others, that phrase has an independent potency, sometimes more, sometimes less, than the Bill of Rights, including rights essential to a concept of ordered liberty. In either event, the "rights" protected must have the trappings of permanence. Frequently, however, pressures of new social developments have led the Court to expand the coverage of the specific provisions through unadulterated, but unlabeled, substantive due process. A similar development is the active judicial enforcement of the mandate of the equal protection clause to legislation involving "suspect classifications" or sensitive subjects. In either case, the Court is called upon to define and separate that "fundamental" area of human conduct, the regulation of

[72] 304 U.S. 144 (1938).

[73] *See generally* A. MASON, THE SUPREME COURT FROM TAFT TO WARREN (1969); Mason, *Judicial Activism: Old and New*, 55 VA. L. REV. 385 (1969).

which must be justified by the government, and that area where legislative action carries the protection of the deferential presumption.

As advocates, the challengers of marijuana legislation must fit their contentions within the current patterns of constitutional pigeon-holing. To cast off the shackles of the stultifying presumption, they must persuade the courts that marijuana use somehow constitutes a fundamental right. Utilized, thus far unsuccessfully, for this purpose have been the eighth amendment, the first amendment free exercise of religion clause and the penumbral right of privacy. Failing with these approaches, the challengers have found in the ninth amendment a "right to get high."

1. The Robinson-Powell Argument

In *Robinson v. California*,[74] clearly a substantive due process decision cloaked in the protective garb of the eighth amendment,[75] the Supreme Court held that the status of being a narcotics addict could not be made a crime. The Court was careful to note in dictum that the state legislatures were still free to punish addicts for possessing drugs.[76] Subsequent courts found this distinction untenable[77] and the Supreme Court addressed it again in its 1968 decision in *Powell v. Texas*.[78]

Powell, a chronic alcoholic, had been convicted for public drunkenness. His conviction was affirmed in three separate opinions. However, five members of the Court, as then constituted, disavowed the *Robinson* dictum. The four dissenting Justices found it "cruel and unusual" to punish an alcoholic "for a condition—being 'in a state of intoxication' in public—which is a characteristic part of the pattern of his disease and which, the trial court found, was not the consequence of appellant's volition but of 'a compulsion symptomatic of the disease of chronic alcoholism.'" [79] Justice White, casting the deciding vote for affirmance, asserted nevertheless that, "[u]nless *Robinson* is to be abandoned, the use of narcotics by an addict must be beyond the reach of the criminal law." [80]

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[74] 370 U.S. 660 (1962).

[75] *Id.* at 685 (White, J., dissenting).

[76] *Id.* at 665, 666, 667-68.

[77] *See, e.g.*, Watson v. United States, No. 21,186 (D.C. Cir., July 15, 1970) (en banc); Castle v. United States, 347 F.2d 492, 495 (D.C. Cir. 1964), *cert. denied*, 381 U.S. 929 (1965).

[78] 392 U.S. 514 (1968).

[79] *Id.* at 558 (Fortas, J.).

[80] *Id.* at 548-49. Although Justice White dissented in *Robinson*, he saw no distinction between the status of addiction and acts compelled by that status. He voted to affirm

Assuming for present purposes that a majority of the newly-constituted Supreme Court adheres to the principle that the state may not punish conduct performed under direct compulsion of a disease, application of the principle to marijuana use is extremely unlikely.[81] The challengers themselves assert that marijuana has been scientifically proven not to be addictive, either physically or psychologically. They can nevertheless argue that the state may not have its cake and eat it too: The rationality of the legislation rests upon the allegation that marijuana is at least psychologically "addictive," and the state may not now defend the punishment by arguing that it is not addictive. Superficially appealing, this argument must falter for two reasons. First, the state's interest in prohibiting marijuana use *may* rest on deleterious effects unrelated to psychological dependency. Second, defendants invoking the *Robinson-Powell* argument, even if it is applicable, are unlikely ever to prove by clear and convincing evidence, as they must, that they were without "free will" to desist from using marijuana.[82]

2. Free Exercise of Religion

Several major challenges to marijuana legislation, premised on the first amendment, have relied heavily on the California Supreme Court's 1964 decision in *People v. Woody*.[83] Finding that sacramental use of peyote, a hallucinogenic drug, constituted the cornerstone of Peyotism both as symbol and object of worship, the California Supreme Court held that prohibition of possession constituted a direct burden upon the free exercise of the defendant's religion, as practiced by the Native American Church. Since freedom of religious practices is not absolute, however, the court inquired whether the state had shown a "compelling interest" sufficient to justify the infringement.

First, the state could not support its allegations that use of peyote would lead to use of more dangerous drugs or would cause permanent injury to the user.[84] Assuming such a state interest to be legitimate, it was never proven, and could scarcely be labeled compelling. Second,

the conviction in *Powell* because he found nothing in the record to support a finding that Powell had a compulsion to "frequent public places when intoxicated." *Id.*

[81] The contention has already been rejected out of hand in Commonwealth v. Leis, 243 N.E.2d 898, 906 (Mass. 1969), and United States v. Drotar, 416 F.2d 914, 916 (5th Cir. 1969).

[82] *See* Powell v. Texas, 392 U.S. 514, 524-26 (1968).

[83] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964). *Contra*, State v. Big Sheep, 75 Mont. 219, 243 P. 1067 (1926).

[84] 61 Cal. 2d at 722, 394 P.2d at 818, 40 Cal. Rptr. at 74.

the state insisted that fraudulent claims of religious immunity would frustrate enforcement of the state's narcotics laws. Again, the court found that the state had produced no evidence to that effect.[85] Accordingly, since California had not shown that these presumably "compelling" state interests would be frustrated by the immunity, the narcotics statute was unconstitutional as applied to possession of peyote for religious purposes.

The court distinguished *Reynolds v. United States*,[86] where the Supreme Court had ruled that Congress could constitutionally apply to Mormons a prohibition against polygamy. First, said the California court, polygamy was not essential to the practice of Mormonism, as was use of peyote to the practice of Peyotism. Second, the Supreme Court in *Reynolds* viewed polygamy as destructive of basic tenets of a democratic society, as dangerous and repulsive as human sacrifices. The state interest was therefore compelling and unavoidable.

Several defendants in recent marijuana cases, Dr. Timothy Leary among them,[87] have strenuously contended that the first amendment similarly requires immunity for users who seek in good faith the "religious experience" induced by marijuana and other psychedelic substances. Some users incorporated in 1965 the Neo-American Church, claiming a nationwide membership of twenty thousand.[88] According to the tenets of the faith, psychedelic substances, particularly marijuana and LSD, are the "True Host," and it is the religious duty of all members to partake of the sacraments on regular occasions.[89]

Judicial response to the free exercise argument has been uniform only in result. Some courts, including the Fifth Circuit in the *Leary* case, have simply held that passage of a criminal law per se constitutes a compelling state interest overriding any free exercise claims.[90] These courts think *Reynolds* indistinguishable, and cite the following language:

> Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices . . . .

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[85] *Id.* at 723, 394 P.2d at 819, 40 Cal. Rptr. at 75.

[86] 98 U.S. 145 (1878).

[87] Leary v. United States, 383 F.2d 851, 857-58 (5th Cir. 1967), *rev'd*, 395 U.S. 6 (1969).

[88] *See* United States v. Kuch, 288 F. Supp. 439, 443 (D.D.C. 1968).

[89] *See id.*; State v. Ballard, 267 N.C. 599, 602, 148 S.E.2d 565, 568 (1966), *cert. denied*, 386 U.S. 917 (1967).

[90] 383 F.2d at 860-61. *See also* State v. Ballard, 267 N.C. 599, 602, 148 S.E.2d 565, 568 (1966), *cert. denied*, 386 U.S. 917 (1967).

> . . . To permit . . . [a man to execute his practices because of his religious beliefs] . . . would be to make the professed doctrines of religious belief superior to the law of the land, and in effect permit every citizen to become a law unto himself. Government could exist only in name in such circumstances.[91]

The net result of such an approach is that criminalization of conduct which for some is a required religious practice is presumed constitutional. "Congress," said the Fifth Circuit, "has demonstrated beyond doubt that *it* believes marijuana is an evil in American society and a serious threat to its people." [92] Accordingly, "it [is] not incumbent upon the Government to produce evidence to controvert the testimony of witnesses on the controversial question whether use of the drug is relatively harmless." [93]

Other courts have assumed that the *Woody* interpretation of *Reynolds* is correct, but have found that the Neo-American Church is not a bona fide religion[94] and that personal use of psychedelic drugs, untied to a bona fide organized church, cannot constitute the religious exercise protected by the first amendment.[95] Alternatively, these courts have determined that marijuana use is not essential to religious practice as was peyote in *Woody* and that the compelling interests in prevention of violence and self-destruction are rationally supported by current medical knowledge.[96]

We think the courts have correctly rebuffed the free exercise argument but not for the right reasons. First, we do not agree that *Reynolds* holds all criminal legislation to be outside the balancing test ordinarily employed in free exercise cases.[97] Second, we believe that if marijuana use were essential to the practice of a bona fide religion, it *would* be

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[91] 98 U.S. 145, 166, 167.

[92] 383 F.2d at 861 (emphasis added).

[93] *Id.* at 860-61.

[94] *E.g.*, United States v. Kuch, 288 F. Supp. 439, 452 (D.D.C. 1968).

[95] People v. Mitchell, 244 Cal. App. 2d 176, 52 Cal. Rptr. 884 (Dist. Ct. App. 1966).

[96] United States v. Kuch, 288 F. Supp. 439, 452 (D.D.C. 1968).

[97] Judge Gasch in the *Kuch* case apparently assumed that the customary balancing test would be applicable if the Neo-American Church were a bona fide religion. Before applying the "prevailing doctrine," however, he criticized the Supreme Court:

> No United States District Judge who must act within the confines of a record and available judicial time has the wisdom or means of doing adequately what the cases appear to require. It is to be hoped that there will develop a constitutional doctrine in this field that more closely approximates that contemplated by the framers of the Constitution and that leaves the balancing function in all but obvious cases of clear abuse in the hands of Congress, where it belongs.

Id. at 446.

incumbent on the state to demonstrate that use of the drug would frustrate its interests in preventing violence and individual harm to the user. More than a rational basis would be required. However, we agree with Professor Donald Giannella that the free exercise clause would become dysfunctional were psychedelic philosophy to qualify as a religion.[98] As we will suggest below, there should be some degree of constitutional protection for this allegedly "religious" personal behavior,[99] but severe perversion of the principle embodied in the free exercise clause would occur were it to become a sanctuary for all colorably spiritualistic conduct that otherwise stands condemned.

3. *Right of Privacy*

Any litigant attempting to secure recognition of any right as "fundamental," no matter how remote, will likely cite *Griswold v. Connecticut*.[100] Marijuana advocates are no exception. Like *Robinson*, *Griswold* was essentially a substantive due process decision.[101] In a decision rationalized by Justice Douglas under the rubric of penumbral rights tied to specific guarantees of the Bill of Rights, the Court held that the states were substantively barred from prohibiting the use of birth control devices. Together with *Stanley v. Georgia*,[102] where the Court held that private possession of obscene material may not be punished, *Griswold* serves as the basis for an argument that private possession and use of marijuana, at least in the home, may not be punished.

Because of the "chilling effect" on privacy necessitated by enforcement techniques where crimes are ordinarily committed in private, the *Griswold-Stanley* argument is appealing. The problem, however, is one of limitation. Surely it cannot be contended that private acts cannot ever constitute crimes. The Court specifically refuted this notion in *Stanley:*

> What we have said in no way infringes upon the power of the State or Federal Government to make possession of other items, such as narcotics, firearms, or stolen goods, a crime. Our holding in the present case turns upon the Georgia statute's infringement of fundamental

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[98] Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development. Part 1: The Religious Liberty Guarantee*, 80 HARV. L. REV. 1381, 1426-27 (1967).

[99] See note 5 at p. 1175 *infra*.

[100] 381 U.S. 479 (1965).

[101] *See id.* at 507 (White, J., concurring).

[102] 394 U.S. 557 (1969).

liberties protected by the First and Fourteenth Amendments. No First Amendment rights are involved in most statutes making mere possession criminal.[103]

As precedents and on their own terms, *Griswold* and *Stanley* are not enough to support the proposition that private marijuana possession cannot be punished. "Fundamental" rights other than simple privacy were involved—marital freedom and the "right to receive" [104] written materials. In each case the Court was dealing with isolated problems. In *Griswold*, the Court finally grappled with an issue it had avoided for a decade;[105] the multiplicity of opinions and labels manifest the reason for its reluctance.[106] In *Stanley*, the Court probably took a tentative step toward a revision of the obscenity doctrine. The Court may eventually abandon the notion that obscenity is not constitutionally protected, and may establish instead that it may be prohibited only when it is distributed, displayed, or employed in such a way as to create a nuisance to others.[107] Holding that private possession may not be prohibited may represent the first step along that path.

In any event, so long as the fundamental rights framework is utilized, *Griswold* and *Stanley* do not alone make the challengers' case. State and federal courts confronted with the privacy argument have found it lacking.[108] Within the current matrix of constitutional doctrine, the privacy factor functions as a catalytic rather than an active force. Substantive freedoms that may be qualified in public are absolute in private in the same way that exercise of religious beliefs is a relative freedom while freedom of belief is absolute. Marital and perhaps consensual sexual freedom and intellectual liberty were the substantive

[103] *Id.* at 568 n.11.

[104] *Id.* at 564.

[105] *See, e.g.*, Poe v. Ullman, 367 U.S. 497 (1961); Tileston v. Ullman, 318 U.S. 44 (1943).

[106] The six *Griswold* opinions are particularly notable for the light they shed on each author's conception of his role in the constitutional system. The philosophical parameters of the marijuana problem and the birth control problem are identical. For this reason alone, *Griswold* is essential reading for all advocates seeking to break new constitutional ground.

[107] *See The Supreme Court, 1968 Term*, 83 HARV. L. REV. 147-54 (1969); Comment, *Karalexis v. Byrne and the Regulation of Obscenity: "I Am Curious (Stanley)"*, 56 VA. L. REV. 1205 (1970).

[108] United States v. Drocar, 416 F.2d 914, 917 (5th Cir. 1969); Borras v. State, 229 So. 2d 244, 246 (Fla. 1969); People v. Aquisr, 257 Cal. App. 2d 597, 65 Cal. Rptr. 171 (Dist. Ct. App.), *cert. denied*, 393 U.S. 970 (1968).

forces in *Griswold* and *Stanley*. In order for privacy to affect the marijuana equation, a right to pursue sensual individuality must pre-exist.

4. The Ninth Amendment—The Forgotten Kitchen Sink

Unable to tie marijuana use to an established "fundamental right," the challengers have resorted to the ninth amendment as a vehicle for defining the necessary protected right. Their advocacy for a "right to get high" [109] or a right "to use one's body as one wishes" [110] is essentially an attempt to equate sensual with intellectual and spiritual freedom. Although there may be some merit in such a contention, its advocates have not yet established a sound constitutional basis. The typical approach is to catalog all civil liberties cases, ignoring the precise constitutional principles involved, and to suggest that rights reserved to the people by the ninth amendment amount to the constitutional equivalent of "personal liberty." [111] Accordingly, any legislation which restricts individual pursuit of happiness must be necessitated by sound state interests.

Obviously the ninth amendment is, in such a context, merely a launching pad for the free-form pursuit of happiness inquiry utilized in the early alcohol Prohibition cases. It surely does not function as an "explicit" constitutional limitation, nor does it suggest a judicial limitation. The challengers scarcely serve their cause well by asking the courts to discard a century and a half of constitutional doctrine as a price for the desired decree.

Even former Justice Goldberg, whose requiem for the ninth amendment in *Griswold* induced the argument, noted that the fundamental rights existing apart from the Bill of Rights must be found in the "traditions and [collective] conscience of our people." [112] In other words, the ninth amendment is simply another way of avoiding the due process label while applying the incorporation doctrine and an expanded version of the traditional historically rooted due process test. "Fundamentality" must have the appearance of permanence. History and perhaps contemporary positive morality provide an acceptable index of permanence.

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[109] *See, e.g.*, People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (Dist. Ct. App. 1965), *cert. denied*, 385 U.S. 880 (1966); Oteri & Silverglate, *supra* note 3; Note, *Substantive Due Process and Felony Treatment of Pot Smokers*, 2 Ga. L. Rev. 247, 252-59 (1968).

[110] See note 118 *infra*.

[111] *E.g.*, Note, *supra* note 109, at 257.

[112] 381 U.S. at 493, *quoting* Snyder v. Massachusetts, 291 U.S. 97, 105 (1934) (brackets by Goldberg, J.).

Historical inquiry might well reveal a traditional acceptance of the right to become intoxicated so long as others are left alone, and the rash of contrary decisions after 1915 might have constituted temporary constitutional madness. The research reported earlier in this Article provides tentative support for this hypothesis.[113] Further digging into historical sources would appear warranted. At least a palatable constitutional framework would be employed.

Similarly, developing notions of positive morality might provide an acceptable basis for the "right to use one's own body." Laws regarding abortion,[114] nudism,[115] homosexuality[116] and motorcycle crash helmets[117] are already receiving adverse judicial treatment, usually on other grounds. The American Civil Liberties Union plans a continued campaign against these laws and against drug legislation under the "body use" umbrella.[118] Although an extended critique of this approach is beyond the scope of this Article, we do not believe, as a general matter, that the courts are properly advised to keep the legislatures in touch with evolving positive morality, at least while social mores are in a state of transition. Another question would be presented if that evolution had rendered current legislation aberrational, but that is not yet the case with respect to the issues noted above. Abortion, homosexuality and drug abuse are currently being addressed by the public opinion process. In such circumstances, where an articulation of positive morality would be the gravamen of judicial interference, we believe judicial restraint to be in order.

In any event, neither the historical nor the positive morality approach has been utilized and supported by those attacking the marijuana laws. Instead they have been content to cry "fundamental right," "ninth amendment" and "right of privacy," and have expected the courts to go along. Much as we doubt the wisdom of current marijuana legisla-

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[113] See pp. 1005-10 *supra*.

[114] *E.g.*, Babbitz v. McCann, 310 F. Supp. 293 (E.D. Wis.), *appeal dismissed*, 39 U.S.L.W. 3144 (U.S. Oct. 12, 1970).

[115] *E.g.*, Roberts v. Clement, 252 F. Supp. 835 (E.D. Tenn. 1966).

[116] *E.g.*, People v. Roberts, 256 Cal. App. 2d 488, 64 Cal. Rptr. 70 (1967) (sodomy prohibition void as to consenting married couples, questionable as to consenting male adults).

[117] American Motorcycle Ass'n v. Davis, 11 Mich. Ct. App. 351, 158 N.W.2d 72 (1968). *Contra*, Commonwealth v. Howie, 354 Mass. 769, 238 N.E.2d 373, *cert. denied*, 393 U.S. 999 (1968).

[118] The Board of Directors of the ACLU is now contemplating a policy recommendation that the organization press for judicial recognition of the right to do with one's body whatever he wishes, including using drugs. Washington Post, June 8, 1970, § A, at 3, col. 5.

tion, we think such a facile perversion of constitutional doctrine too large a price to pay for its invalidation.

C. *Another Constitutional Perspective: The Police Power*

All this is not to say, however, that we do not think marijuana legislation to be susceptible to an acceptable constitutional attack. To the contrary, our objections to the usual arguments emanate from a concern for institutional responsibility. So long as the "fundamental rights" perspective is invoked—despite the extant divergent notions of fundamentality—we believe that only extensive historical and philosophical inquiry could and should now persuade a diligent judiciary, conscious of its limited role, that freedom of marijuana use is "essential for the orderly pursuit of happiness by free men." [119] To put it quite simply, the drug revolution is generally perceived as a contemporary phenomenon. When roaming in the vague expanse of substantive due process, however labelled, the courts should continue seeking to root their response in the mandate of history or in some other indicium of the "collective conscience of the people." Fundamentality suggests permanence, and drug use too much resembles a transient social problem to qualify.

At the same time, however, we believe that our central objection to the marijuana laws is of constitutional dimensions. We believe that those laws are irrational. We noted above that if they are entitled to the presumption of rationality, they should stand, at least at the present time. We do *not* think they are entitled to that presumption. We would impose the burden of justification on the state not because any fundamental "right" is affected but because the conduct prohibited is on its face private or self-regarding. Because the police power is designed to promote the *public* health, safety, welfare and morals, it can reach private conduct only if a public detriment is thereby avoided. On the one hand, if the conduct proscribed on its face involves other people or property, the courts must presume that the legislature rationally found an injurious effect. On the other hand, if the conduct proscribed does not prima facie affect others, the state must demonstrate a rational basis in fact.

It should be apparent that this is a modified version of the "inherent limitations" approach popular in the nineteenth century. Unlike the earlier conception, it does not preclude the state from reaching private conduct. Unlike the "rights" framework, it does not impose a heavy

[119] Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

burden on the state to justify legislation affecting the protected right, nor does it burden the courts with the onerous balancing responsibility. It simply shifts to the state the original burden of demonstrating a rational factual nexus between the proscribed private activity and the public weal. If the state can sustain that burden, the inquiry is terminated. This requirement would not represent a significant change in current doctrine. First, it affects only a limited class of situations where the physical and social sciences have not yet established the relevant factual propositions but where the hypotheses regarding public effect that underlie the legislation have no rational basis in current data. In short, given the "no-evidence" situation with respect to prima facie private conduct, the state is not entitled to guess. Moreover, the principle is limited to legislation prohibiting allegedly injurious private conduct, and does not extend to a public policy that seeks to deter such conduct through nonprohibitive regulation or taxation.

It should also be noted that this "inherent limitation" approach, which has lain dormant for half a century, has already begun to forge its way into modern constitutional reasoning, especially on the state level. Particularly relevant are the motorcycle helmet cases,[120] to which we will return later.[121] In a recent case[122] holding unconstitutionally vague a Tennessee statute prohibiting nudist colonies,[123] a concurring[124] member of the three-judge district court located the true parameters of the decision:

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[120] See note 117 *supra*.

[121] See text at note 131 *infra*.

[122] Roberts v. Clement, 252 F. Supp. 835 (E.D. Tenn. 1966).

[123] The court used an increasingly popular escape valve, holding the terms "nudist colony" and "nudist practices" unconstitutionally vague since, in light of the dictionary definition of "nude" and "nudity," they literally might be construed to "prevent nudism in health clubs, YMCA's school gymnasiums or other recreational systems, and possibly in the home." *Id.* at 843.

[124] Concurring in a separate opinion, Judge Darr correctly noted that "nudism" and "nudist" are distinguishable, grammatically and in common parlance, from "nude" and "nudity," and that it is inconceivable that the statute covers people who are temporarily nude. *Id.* at 846-47. Instead he opined that the statute constituted unwarranted invasion of the rights of privacy and of association of those who wish to engage in the cult of nudism. He employed the ninth amendment and the equal protection clause as well, cataloging all the recent Supreme Court cases speaking to privacy and association to support his holdings. But as we noted earlier, context is extremely important in constitutional decision-making, especially in an area as open-ended as "privacy." The sanctity of the marital relation—under any view of fundamentality—and the structural significance of political association and free expression of ideas are the dispositive overtones in the privacy cases. The "right to privacy" is a dependent concept, and this part of the judge's opinion, standing alone, is unconvincing.

> There is nothing in the record to indicate directly or by inference that any nudist colony or member thereof is the source of any injury whatever to the public welfare, health, or morals. To the contrary, the proof in the record asserts that the prime purpose of the nudist movement is to promote health of the body and mind.
>
> . . . .
>
> There is nothing in the proof whatever to indicate that nudism is other than an idiosyncratic, though innocuous, practice which engenders no harm or danger either to its members or society in general.[125]

It is in this "power" rather than the traditional "rights" framework[126] that statutes involving private consensual sexual conduct, abortion and drug abuse should be tested at both state and federal levels of government. Such an approach was theoretically unnecessary at the federal level until quite recently. Unlike the states, the federal government did not possess plenary police powers; since Congress had only delegated powers, it could not conceivably reach private conduct without exceeding permissible Article I bounds. Both the Harrison Act and the Marihuana Tax Act made the prohibited acts revenue-related to avoid this difficulty. However, it would be foolish to suggest in 1970 that there is no federal police power. The Article I grants of power have now become analytical equivalents of "promotion of public health, safety and morals," and the necessary and proper clause imposes no more than the traditional rational basis in fact requirement. The new Comprehensive Drug Abuse Prevention and Control Act of 1970 illustrates the

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[125] *Id.* at 850.

[126] We do not pretend that the sought-after principle could not be expressed in terms of a right. Indeed the temptation is great to limit the government to the "other-regarding" rationale and to enunciate a correlative right to pursue happiness as one pleases as long as others are not harmed. *See* Note, *supra* note 109, at 254-55.

The difference in attitude is more significant than the semantic difference. The "power" approach in effect demands of the government, "Why on earth do you want to proscribe the conduct; why do you care?" The "right" approach suggests, "You can't do this unless . . . ."

In a highly complex society where little that we do and consider personal does not potentially affect other persons and the environment, a freewheeling statement of personal freedom is dangerous. For the same reasons that it was unwise to shackle the government between 1890 and 1937 so that it was unable to deal with complex economic problems, it would be foolhardy now to adopt a constitutional framework which might inhibit an attempt to deal with complex environmental and social problems. We subscribe to the contention that the police power is inherently limited but we are wary to overemphasize the nature of this limitation.

disappearance of the early limitations by abandoning the revenue masquerade and reaching drug use directly.[127]

If, under the intrinsic limitation theory or some other rationale, the state and federal governments were called upon to establish a rational scientific basis for marijuana legislation, we believe they would fail.[128] If the governmental objective were to prevent harm to others, they would be able to find no reliable scientific support for the proposition that marijuana use itself leads to violent crime or to use of hard narcotics which in turn leads to crime. Although they could prove that the drug has some adverse effect on psychomotor functions, the relationship between this fact and harm to others through automobile accidents is tenuous at best, especially when compared with alcohol.

If the state's objective were to prevent the user from injuring himself on the ground that he would otherwise become a drain on the state's resources rather than a contributor, the essential scientific hypothesis is that marijuana use "inevitably leads to excess" or to permanent physical or psychological incapacitation and therefore to dependency. Again, however, the government would be unable to establish a rational factual basis for this hypothesis. First, marijuana is not physically addictive and creates no serious psychological dependence, at least not as much as alcohol or tobacco. We do not believe the "addictive" qualities of alcohol are "inevitable" enough to justify prohibition and that the harm engendered by tobacco dependence is too remote to justify prohibition under the "dependency" rationale. Moreover, even if the addictive qualities of hard narcotics justify their prohibition, there is insufficient support for the "stepping stone" hypothesis to sustain marijuana prohibition on that ground.

Second, marijuana users do not run a significant risk of physical or psychological harm. Use of the drug produces no significant acute adverse psychological effects and probably contributes to no chronic ill effects as great as those produced by alcohol or tobacco. Nor would the government be able to establish a significant risk of psychological incapacitation. As to the hypothesis that the drug precipitates "psychotic breaks," the evidence is slight and at best establishes the proposition that the drug is not itself a creative force, perhaps accentuating psychological tendencies already present in predisposed individuals. There is no re-

[127] Pub. L. No. 91-513 (Oct. 27, 1970).

[128] The medical and sociological conclusions used in the following discussion are examined in depth and documented in pt. VIII, *supra*.

...ible evidence that marijuana smoking produces any chronic psycho-...gical ill effects.

Some commentators have urged that the state has no power to protect the individual from his own stupidity and that the dependency rationale is merely a cover for unwarranted paternalism.[129] We are not prepared to go so far as a matter of constitutional law;[130] there may be circumstances where the risk of incapacitation is so substantial that criminal legislation is warranted. In fact, the line between self-regarding harm and societal harm, drawn in the breach by the dependency rationale, is increasingly difficult to draw as society becomes more complex and its members more interdependent. Moreover, whenever the subject conduct is colored by moral considerations, as are drug practices, where that line is drawn is determined not so much by logic or precedent as by the degree to which the society at a given time is willing to tolerate deviance. The difference between social tolerance in 1915 and 1970 is the best possible proof of this proposition. In short, this is not fertile ground for a neutral principle.

At the same time that we reject the general rule, we contend that in many individual cases the state cannot bear its burden of affirmative proof of the risk of incapacitation or other adverse social effect, albeit indirect. Setting aside for a moment the possible moral considerations, we do not think that either marijuana prohibition or the compulsory motorcycle helmet laws[131] can be justified on this basis. However, even if marijuana use is an appropriate matter for criminal legislation, the

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[129] See articles cited at notes 109, 118 *supra*.

[130] See note 126 *supra*.

[131] States that have upheld helmet laws have attempted to do so on an "other-regarding" rationale. We believe that such a justification is absurd. Unlike goggle requirements, helmet laws do not increase the motorcyclist's ability to maintain lookout and control. To the contrary; helmets tend to curtail hearing, peripheral vision and comfort. Feeling that persons should be protected whether they care to be or not, courts have fabricated very tenuous arguments to justify these laws.

> It does not tax the intellect to comprehend that loose stones on the highway kicked up by passing vehicles, or fallen objects such as windblown tree branches, against which the operator of a closed vehicle has some protection, could so affect the operator of a motor cycle as to cause him momentarily to lose control and thus become a menace to other vehicles on the highway.

State *ex rel.* Colvin v. Lombardi, 241 A.2d 625, 627 (R.I. 1968). Other courts have not attempted to raise hypotheticals but have merely stated that the law "bears a real and substantial relation to the public health and general welfare and is thus a valid exercise of the police power." Commonwealth v. Howie, 354 Mass. 769, 770, 238 N.E.2d 373, 374, *cert. denied*, 393 U.S. 999 (1968). So too would laws requiring citizens to brush their teeth three times daily.

rationality arm of the eighth amendment should prohibit imprisonment for violation of that legislation, even for five minutes.[132]

Now we come to the heart of the matter. It is the so-called "moral" considerations which we believe truly motivated the preceding generations of legislators responsible for marijuana prohibition. Once the Harrison Act converted narcotics abuse from a medical to a moral problem, marijuana was easily superimposed on the existing framework because of mistaken factual assumptions. At the same time, the undercurrent of American culture opposed to intoxicant use in any form reached the level of positive morality when combined by *criminal law* with the early twentieth century preference for cultural homogeneity. That is, because of the ethnic identity and small number of users, the stamp of illegitimacy successfully made the use of marijuana immoral; at the same time the stamp of illegitimacy had to be withdrawn from alcohol use because the large number of middle-class users were unwilling to comply.

It is because the law created for a half century a positive morality opposed to drug use that the state, defending its laws in court, might now rely on its duty to protect the spiritual and moral well-being of the community. The core of the police power being self protection, the state would adopt Lord Devlin's argument that where societal opposition to certain conduct on moral grounds is so pervasive that its widespread commission would weaken the social fabric and facilitate the breakdown of societal institutions, the society is justified in suppressing that conduct.[133] As applied to marijuana, the law's defense is that marijuana use frustrates productive participation in social, economic and political processes and that its widespread use would bring society grinding to a halt.

Even if we accepted Lord Devlin's justification for the legal enforcement of positive morality, which we do not,[134] it still would not justify marijuana prohibition. In the first place, as we shall note in the concluding section, the moral judgments supporting the early marijuana laws are no longer predominant. Especially at a time when a sizeable segment of society attributes many social ills to a mindless pursuit of material values

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[132] See text at and following notes 59-71 *supra*.

[133] Sir P. Devlin, The Enforcement of Morals 9-13 (1965).

[134] In H. L. A. Hart's debate with Lord Devlin on this general question, the specific issue being the defensibility of homosexuality laws, we think Hart was victorious. *See* H.L.A. Hart, The Morality of the Criminal Law (1965); Hart, *Social Solidarity and the Enforcement of Morality*, 35 U. Chi. L. Rev. 1 (1967).

and when that society becomes increasingly depersonalized, there is a growing preference for individual search for identity and spiritual renaissance. Second, in light of current use patterns, the effect of marijuana use on productivity and therefore on the social fabric is too speculative to justify criminal sanctions. In fact, the social fabric may suffer greater damage through continued prohibition than from legalization; that is, as the number of deviants continues to increase, the law cannot be successfully enforced and the authority of all law is endangered. As a larger and larger segment of the society ceases to view marijuana use as a moral question (except insofar as it is against the law), marijuana prohibition, like alcohol prohibition before it, cannot be sustained.

In conclusion, we do not believe that a state can sustain its burden of establishing a rational nexus between a person's private use of marijuana and either harm to others or incapacitating harm to himself. Moreover, the state may not legitimately rely on alleged harm to public morals. Public opinion, properly informed, would oppose marijuana no more than it opposes alcohol. And to the extent that marijuana use is inconsistent with prevailing positive morality, compliance with that morality is not a legitimate aim of the criminal law as a matter of political philosophy or constitutional law. As Justice Brandeis eloquently noted in his famous dissent in *Olmstead v. United States:*

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.[135]

XI. Legislative Reconsideration: 1965-1970

With the public opinion process in full operation for the first time in the fifty-year history of American marijuana prohibition, great pressure for legislative reform developed at both state and federal levels.

[135] 277 U.S. 438, 478 (1928).

Innumerable public[1] and private[2] organizations have advocated reduction of marijuana penalties; some have urged that the drug be legalized.[3] Several states and the District of Columbia have responded by de-escalating penalties, especially for first offense possession.[4] Unfortunately, however, most of these "reforms" smack of tokenism. On the federal level, the Dodd bill[5] now pending before Congress incorporates many major reforms, but it too remains grounded in many of the old misconceptions and outworn phrases that characterize the earlier legislation.

On the state level, the issue has become stalemated because of growing legislative distaste for student unrest. Consequently, the legislatures have simply reformed the most obnoxious parts of the old laws—the outrageous penalties. Apparently the law-making bodies feel that even an open inquiry into less restrictive legislation would resemble capitulation to another "nonnegotiable demand." The new rationale for this resistance is the possibility that some of the questions unanswered today will be answered tomorrow. As of this writing, the legislatures have stiffened against public opinion in preservation of the status quo.

There are two conspicuous examples of this political retrenchment. In 1968 the Governor of California appointed a blue-ribbon commission to study the state's drug laws. When the news leaked that the commission intended to recommend legalization of marijuana, the commission was forthwith disbanded.[6] Similarly, the National Commission on Reform of Federal Criminal Laws performed the monumental tasks of identifying the governmental interests in drug prohibition and integrating existing drugs into the scheme according to their effects. The Commission classified drugs as dangerous, abusable and restricted on the basis of their potential for harm, requiring an affirmative demonstration of such potential as a precondition for classification. Yet after objectively reviewing the scientific data on marijuana and concluding, "*candidly, we do not know how harmful marijuana is*,"[7] the Commission recom-

[1] *See, e.g.*, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 27 (1967); Washington Post, June 20, 1970, § A, at 17, cols. 5-8 (Canadian drug commission).

[2] *See, e.g.*, J. KAPLAN, MARIJUANA—THE NEW PROHIBITION (1970); Washington Post, May 23, 1970, § B, at 9, cols. 7-8 (United Presbyterian Church General Assembly).

[3] J. KAPLAN, *supra* note 2, at 2; Washington Post, *supra* note 1.

[4] See Appendix A.

[5] S. 3246, 91st Cong., 2d Sess. (1970).

[6] San Francisco Chronicle, Aug. 17, 1970, at 4, cols. 1-3.

[7] II WORKING PAPERS OF THE U.S. NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS, STUDY DRAFT OF A FEDERAL CRIMINAL CODE 1090 (1970) (emphasis original).

mended its inclusion as an abusable drug. Political acceptability is the only possible explanation for this ruse.

In the succeeding pages, we shall briefly analyze the pending federal legislation and the provisions of the recently enacted Virginia law as illustrations of current legislative response, reserving our suggestions for a desirable legislative approach for our concluding section.

A. Virginia Legislative "Reform": Publicity Begets Tokenism

It is fitting that the most objectionable provision contained in Virginia's drug laws, that pertaining to the illegal possession of marijuana, sparked a controversy which eventually culminated in a general reform of the state's entire scheme of drug control in the spring of 1970.

The controversy centered around a twenty-year-old ex-University of Virginia student, Frank P. LaVarre, who, on February 24, 1969, was arrested in a Danville, Virginia, bus station while enroute to Atlanta from Charlottesville, Virginia.[8] In his possession were four plastic containers of marijuana valued at $2,500 plus smaller amounts in a tobacco pouch and a shoe. Refusing to "cooperate" by disclosing the names of all university students whom he knew were using drugs, LaVarre's bond was set at $50,000.

Following a plea of guilty to possession of marijuana, LaVarre was sentenced on July 31, 1969, in the Danville Corporation Court to twenty-five years in the state penitentiary, five years suspended, and fined $500. The sentencing judge admonished him, "Now I want to say to you, young man, that you still have time to mend your ways and make a useful citizen out of yourself." [9] Presumably this meant that under Virginia law LaVarre, "who had never so much as stolen a hubcap," [10] would be eligible for parole in five years.

Although the trial was reported on the front page of the *Richmond Times-Dispatch,* the conscience of the citizens of Virginia was not awakened until several months later following the publication of an article in *Life* magazine,[11] which used the LaVarre case as an illustration of the nation's antiquated and inhumane drug laws. One suspects that

[8] The following account is taken from LIFE, Oct. 31, 1969, at 30-31; N.Y. Times, Jan. 3, 1970, at 14, cols. 1-2; Richmond Times-Dispatch, July 31, 1969, at 1, col. 6; *id.*, Dec. 19, 1969, § B, at 1, cols. 1-2; *id.*, Jan. 3, 1970, at 1, cols. 4-6; *id.*, Jan. 5, 1970, at 12, cols. 1-2 (editorial).

[9] LIFE, *supra* note 8, at 30.

[10] *Id.* at 31.

[11] *Id.*

all this publicity embarrassed the people of Virginia,[12] thus fostering general agreement that marijuana penalties were far too harsh.[13]

Such was clearly the belief of the Governor, who pardoned LaVarre on January 2, 1970, placing him on five years probation. This act was noted nationally[14] and applauded locally.[15] The existing law was criticized and reform was urged.[16]

The General Assembly responded, and a subcommittee of the House General Laws Committee held hearings.[17] At these hearings, both legislators and experts generally agreed that drug laws should be aimed primarily at dealers and should allow more leeway "for youngsters caught following a current fad." [18] Testimony also indicated that many persons arrested were never prosecuted because some Commonwealth's Attorneys felt that even the minimum penalty for unlawful possession was too great.[19] Many of the legislators believed that lighter penalties would encourage more uniform enforcement of the law.

Responding to these and similar pressures, the General Assembly enacted the Drug Control Act,[20] which was signed into law on April 5, 1970. The Act replaces the old Uniform Narcotic Drug Act[21] and is itself a comprehensive narcotic control measure. We shall deal here only with those provisions of the Act pertaining to cannabis sativa. The Act defines as separate substances marijuana and hashish. The former includes all parts of the plant, excluding the resin extracted from any part thereof; the latter is defined to include only such resin.[22] Such drugs may be manufactured and sold only subject to certain restrictions.[23]

The Act further provides for penalties for the unlawful manufacture,

[12] Mention was made of it in the Richmond Times-Dispatch, Dec. 19, 1969, § B, at 1, col. 1; *id.*, Jan. 3, 1970, at 1, col. 1.

[13] In December 1969 the Virginia Commission for Children and Youth recommended that penalties for the possession, use and sale of marijuana be sharply reduced and that the substance not be classified with "hard" drugs such as heroin. *Id.*, Jan. 15, 1970, § C, at 1, col. 7.

[14] N.Y. Times, *supra* note 8.

[15] Richmond Times-Dispatch, Jan. 5, 1970, at 12, col. 1 (editorial entitled "The Pardon").

[16] *Id.*

[17] *Id.*, Feb. 26, 1970, § B, at 4, col. 1.

[18] *Id.*, col. 3.

[19] *Id.*, Mar. 3, 1970, § B, at 1, col. 5.

[20] Va. Code Ann. § 54-524 (Supp. 1970).

[21] Ch. 86, [1934] Va. Acts 81, *formerly* Va. Code Ann. §§ 54-487 to -519.

[22] Va. Code Ann. § 54-524.2(h)(16) (Supp. 1970).

[23] *Id.* § 54-524.58:1.

sale and possession of marijuana and hashish. Section 54-524.101 prohibits the knowing or intentional manufacture, sale or possession with intent to sell of a controlled drug, except as authorized under the Act. A conviction for a violation of this provision "may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed." [24] The penalty for first violation of this provision is imprisonment in the penitentiary for not less than one nor more than forty years, or a fine of not more than $25,000, or both. A second or subsequent offender is subject to imprisonment for not less than ten years to life, or a fine of up to $50,000 or both.[25]

The Act also prohibits the unlawful possession of marijuana and hashish; possession of hashish carries a more severe penalty than possession of marijuana. The initial conviction of any person illegally possessing marijuana is a misdemeanor punishable by a fine of not more than $1,000, or confinement in jail not to exceed twelve months, or both. Unlawful possession of hashish is designated as a felony carrying a penalty of not less than one nor greater than ten years in the penitentiary or, at the discretion of the jury or the court sitting without a jury, confinement in jail not to exceed twelve months and a fine of up to $5,000. A conviction for a second or subsequent offense involving the unlawful possession of either marijuana or hashish is punishable by imprisonment in the penitentiary for between two and twenty years or, at the discretion of the jury or the court sitting without a jury, confinement in jail up to twelve months and a fine of not more than $10,000.[26] The sale of marijuana or hashish by any person over eighteen to one below that age is punishable by imprisonment in the penitentiary for not less than five nor more than forty years, or a fine of not more than $50,000, or both.[27]

Although the Act has remedied the worst provision under the Virginia drug laws—that governing first offense penalties for the unlawful possession of marijuana—it did little else. The most disturbing aspect of the legislation is its continuation of one classification that includes both cannabis and the "hard" drugs. With the exception noted above, the illegal manufacture, sale (including sale to those under eighteen) and possession of marijuana and hashish are treated with equal severity as violations involving heroin, opium, morphine or cocaine. Only con-

[24] *Id.* § 54-524.101(a)(2).
[25] *Id.* § 54-524.101(b)(1).
[26] *Id.* § 54-524.101(c).
[27] *Id.* § 54-524.103.

tinuing ignorance about the pharmacological effects of marijuana could explain the failure to declassify. Embarrassed by the LaVarre case and its attendant publicity, Virginia legislators took the smallest possible step. They clearly continue to view the drug as vicious and consider those using it highly culpable.[28]

The legislation has two additional weaknesses even on its own terms. One of the main criticisms of the old law was that it was inflexible; in an obvious attempt to relieve the prosecution of proving intent to sell, the law provided that a person who unlawfully possessed more than 25 grains of the forbidden drug was subject to the most severe penalties.[29] Although the new Act requires an intent to distribute for possession offenses with severe penalties and does not stipulate a presumptive quantity, it too is bound to produce "embarrassing" results, since a conviction may be "based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."[30] To avoid unjust punishment, such modifying language should be deleted, thus rightly placing upon the state the burden of proving intent to sell beyond a reasonable doubt.

Finally, the sentencing discretion left to the finder of facts has no meaningful bounds. The legislation reflects one of the most abominable conjunctions of mandatory minimum sentences and excessive, discretionary maximums that could have been devised. What can be said of legislative rationality when sale of marijuana is punishable by one to forty years at the whim of the trier of fact?

Similarly, by escalating the penalty drastically between first and second offense possession and retaining a distinction between possession and sale, the legislation reflects a continuing misconception about marijuana use and traffic patterns. Finally, the perpetuated severity of penalties is totally unsupportable under any interpretation of modern medical data. Only if marijuana use caused the user to murder instan-

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[28] Delegate Walter B. Fidler summed up the argument for relatively light sentences for first offense possession and extremely tough ones for second and subsequent violation:

> This misdemeanor penalty on the first offense will straighten out most of the kids fooling with it . . . make them stop and think . . . scare them. . . .
>
> The ones who are really hooked on it will be back . . . we'll get them on repeat business [and imprison them upon a second offense].

Richmond Times-Dispatch, Mar. 3, 1970, § B, at 4, col. 6. *See also id.*, Mar. 15, 1970, § F, at 6, col. 1 (editorial).

[29] Ch. 535, [1958] Va. Acts 674-75, *formerly* VA. CODE ANN. § 54-516 (1966).

[30] VA. CODE ANN. § 54-524.101(a)(2) (Supp. 1970).

taneously would a second possession offense justify a twenty-year sentence and a first sale offense justify a forty year jail term.

B. The Dodd Bill: Half a Loaf

The House version[31] of the Dodd bill,[32] which had been shepherded through the Senate by Senators Dodd and Hruska in February, finally passed the House of Representatives on September 24, 1970.[33] If a conference version of the Dodd bill is enacted, it will take several small steps toward sanity in the area of narcotics abuse. Beginning with the Narcotics Rehabilitation Act of 1966,[34] Congress began reversing the progressively absurd extensions of the Harrison Act's original conversion of drug abuse from a medical problem to a law-enforcement problem. The 1966 Act included extensive provisions regarding the care and rehabilitation of the narcotics addict.[35] To a lesser degree the Dodd bill continues this trend of viewing drug abuse as a medical problem.[36]

The bill abandons the traditional method of control—taxation—in favor of direct regulation under the interstate commerce clause.[37] Dangerous substances are classified in different schedules according to criteria such as potential for abuse, acceptability for medical use, and degree of safety in use.[38]

The Attorney General, acting on the medical and scientific advice of the Secretary of Health, Education and Welfare, and a special Scientific Advisory Committee created by the law has complete power to remove or reclassify drugs within the four different schedules.[39] Each schedule has its own set of criteria for determining which drugs it should include. The schedules not only classify drugs but also determine, by reference to Title V of the bill, what penalties will be incurred by violators of the laws dealing with drugs of a particular schedule. Marijuana is included within Schedule I and is subject to the most stringent controls, largely on the grounds that it and the other drugs of Schedule I,

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[31] H.R. 18583, 91st Cong., 2d Sess. (1970).

[32] S. 3246, 91st Cong., 2d Sess. (1970).

[33] 116 CONG. REC. 9162 (daily ed. Sept. 24, 1970).

[34] Narcotic Addict Rehabilitation Act of 1966, Pub. L. No. 89-793, 80 Stat. 1438 (codified in scattered sections of 18, 26, 28, 42 U.S.C.).

[35] 42 U.S.C. §§ 3401-42 (Supp. V, 1970).

[36] See note 47 *infra* and accompanying text.

[37] S. 3246, 91st Cong., 2d Sess. § 101 (1970).

[38] *Id.* § 202.

[39] *Id.* § 201. The Attorney General's power is limited in the House version. H.R. 18583, 91st Cong., 2d Sess. § 201(b) (1970).

like heroin and LSD, have little medical value and a high abuse potential.[40] The law does provide lower maximum penalties for trafficking in nonnarcotic Schedule I and II drugs, such as marijuana, than narcotic drugs—five years and $15,000 instead of twelve years and $25,000.[41] In addition, there is a special provision stating that distribution of a "small amount of marihuana for no remuneration" is punishable by imprisonment for a maximum of one year, a fine of $5,000, or both.[42] Possession offenses are divided into two types: simple possession, which is treated as a misdemeanor regardless of the drug involved,[43] and possession with intent to distribute, which is a felony and treated as a trafficking offense.[44] The bill also provides for controls on import and export[45] and for industry regulation.[46]

With respect to marijuana, the bill finally acknowledges the need for medical research and establishes a Committee on Marihuana to study the drug's pharmacological effects.[47] Second, with respect to drugs generally, and marijuana in particular, the bill reduces the outrageous penalties enacted in the 1950's. It would appear that Congress has finally recognized that severe punishments have little or no deterrent value.[48] The lawmakers may also have abandoned the "stepping stone" notion. The testimony of Dr. Stanley Yolles, former Director of the National Institute of Mental Health, that less than five percent of marijuana smokers go on to hard drugs, was stressed during debate on the bill.[49] The fact that this testimony was not seriously challenged indicates that Congress has finally focused on the possible harm *of marijuana* to the user as the primary rationale for its prohibition.

It is precisely on this point, however, that we find the first major defect in the Dodd bill. Marijuana continues to be classified with hard narcotics as a Schedule I drug, contrary to repeated testimony that marijuana is not a narcotic drug and has little or no harmful effects on the user.[50] Dr. Yolles, although opposed to legalization on the ground that

[40] 116 Cong. Rec. 797 (daily ed. Jan. 28, 1970).
[41] S. 3246, 91st Cong., 2d Sess. §§ 501(c)(1), (2) (1970).
[42] *Id.* § 501(c)(4).
[43] *Id.* § 501(e).
[44] *Id.* § 501(a)(1), (5), (e)(1), (2).
[45] *Id.* §§ 401-04.
[46] *Id.* §§ 301-09.
[47] *Id.* § 801.
[48] 116 Cong. Rec. 798 (daily ed. Jan. 28, 1970). *See also* Washington Post, July 25, 1970, § B, at 4, cols. 2-6.
[49] 116 Cong. Rec. 781 (daily ed. Jan. 28, 1970).
[50] *Id.* at 790-91.

medical knowledge was too tentative, particularly with regard to the drug's effects on a chronic adolescent user, stated:

> To equate its risk—either to the individual or to society—with the risks inherent in the use of hard narcotics is—on the face of it—merely an effort to defend an indefensible, established position that has no scientific basis.[51]

Our second major objection to the bill is its perpetuation of grossly dissimilar penalties for possession and sale.[52] As we noted above, users and traffickers tend to be the same people, and the professional pusher has little if any place in the distribution of marijuana, as the pattern of hand-to-hand exchange among friends is repeated on college campuses throughout the country. The relative fortuity that law enforcement officers may be able to obtain evidence of intent to sell in some instances of possession does not justify the disparity of penalties. Third, we agree with Senator Hughes that in matters of scheduling and in certain other areas, the Attorney General should not have the power to classify drugs without the permission of the Department of Health, Education and Welfare.[53] The classification of drugs as dangerous substances is a medical-scientific question, not a law enforcement problem. Although the Dodd bill calls for the Attorney General to act with the advice of HEW and the Scientific Advisory Committee, it does not require him to heed that advice.[54] Under the Dodd scheme the law enforcement mentality continues. An amendment, such as the one that was proposed by Senator Hughes during the Senate debate on the bill, allowing the Attorney General to reschedule only on a recommendation by HEW and the Scientific Advisory Committee, would insure that medical and scientific considerations would be definitive. The defeat of that proposal was a serious setback in making this bill a meaningful reform. The House version, however, includes most of the Hughes amendment, making HEW's recommendations binding on medical findings and expressly forbidding the Attorney General from overriding an HEW

[51] *Id.* at 791.

[52] *Compare* S. 3246, 91st Cong., 2d Sess. § 501(c) (1970) (possession) (one year, $5,000, or both) (probation without entry of judgment available under § 507 for those guilty of a first offense), *with id.* § 501(a)(1), (c)(2) (sale or possession with intent to sell) (five years, $15,000, or both).

[53] 116 CONG. REC. 770 (daily ed. Jan. 28, 1970).

[54] S. 3246, 91st Cong., 2d Sess. § 201 (1970).

recommendation that a drug not be controlled.[55] We can only hope that the House version prevails in conference.

In conjunction with a requirement that HEW have the ultimate control over essentially scientific and medical questions, the Committee on Marihuana which the bill would establish should be composed of individuals chosen by HEW with the advice of the Attorney General, instead of jointly.[56] The function of the Committee would be almost exclusively medical, social and scientific, and as such it should be constituted under the direction of HEW. The subjects of the Committee's research as outlined by the Dodd bill[57] should include a more definite set of matters on which the Committee must report including a specific determination about the real nature of marijuana and the degree of control, if any, required. It is absolutely necessary, given the tremendous public and official concern about marijuana, that we have a definitive statement on the drug as quickly as possible so that an intelligent public policy might finally be designed. Simple ignorance about the drug persists in the United States Congress, despite the overwhelming evidence of the relatively harmless nature of marijuana. Even the bill's sponsor went overboard: "Certain types of marihuana do dreadful things to people . . . . Marihuana is a personality changer. It is a mind destroyer." [58] Senator Dodd supported his statement by the latest sensationalist accounts of marijuana's crime-provoking and incapacitating tendencies—case studies on toxic psychoses suffered by soldiers in Vietnam.[59]

In conclusion, the Dodd bill, when compared with earlier statutes, reflects some of the major changes in the official view of marijuana which took place during the sixties. By 1970 it has been almost universally recognized that the number of users of marijuana has increased tremendously and that harsh penalties, including minimum mandatory sentences, do not deter. Also abandoned is the notion that marijuana is the "stepping stone" to hard drugs. Unfortunately the Dodd bill fails to reflect many other findings. There still persists a strong feeling that marijuana is seriously harmful, evidenced by the bill's classification of marijuana with heroin. Furthermore, the bill's punishment of "traffick-

[55] H.R. 18583, 91st Cong., 2d Sess. § 201(b) (1970).

[56] *See* S. 3246, 91st Cong., 2d Sess. § 801 (1970).

[57] *Id.* § 801(a)(1).

[58] 116 CONG. REC. 782 (daily ed. Jan. 28, 1970).

[59] *Id.* at 783. These studies may be meaningless. At one point Senator Hughes commented that under combat conditions he had become trigger happy without the aid of marijuana. *Id.* at 782.

ers" in marijuana more harshly than possessors reflects a continued misapprehension about the nature of the marijuana trade.[60] However, despite its shortcomings, the Dodd bill, especially through its Committee on Marihuana, leaves open the possibility of substantial changes in the legal status of marijuana in the future.

C. Postscript: The Dodd Bill Becomes the Comprehensive Drug Abuse Prevention and Control Act of 1970

As this Article was going to press, the House version of the Dodd bill was enacted by Congress and signed into law by the President as the Comprehensive Drug Abuse Prevention and Control Act of 1970.[61]

XII. Conclusion: Before the Fall

Many pages ago we promised that the legal history of marijuana prohibition was in itself an interesting story; we hope we have kept that promise. We also suggested that marijuana prohibition would be an appropriate vehicle for study of two broader phenomena—the public policy formation process and the evolution of American cultural values in the twentieth century. Having indulged, insofar as law review style would permit, in the sheer joy of telling a good story, we now turn to the more pretentious purposes of our Article.

A. Public Policy Formation Process

The legal history of marijuana prohibition may reasonably be divided into four phases. The first phase, roughly from 1915 to 1930, witnessed sporadic localized legislation in a substantial number of states criminalizing sale and/or possession of marijuana. This phase followed hard on the heels of nationwide anti-narcotics legislation and coincided almost perfectly with the ascendency of alcohol prohibition. During the second phase, from 1932 to 1937, the drug was suppressed nationally, by every state and by the federal government. The third phase, the decade of the 1950's, was characterized primarily by escalation of the

[60] *See* Joint Legislative Committee for the Revision of the Penal Code, California Legislature, Drugs—Part I: Marihuana (Proposed Tent. Draft & Commentary 1968). Our data indicate that over 20% of the users of marihuana have sold the drug on occasion in small quantity to friends who tacitly agree they will return the favor if the drug becomes available to them in the future.
Id. at 153.

[61] Pub. L. No. 91-513 (Oct. 27, 1970).

penalties. The final phase, beginning around 1965 and still continuing, is characterized by vigorous public debate and deescalation of the penalties, and may eventually result in legalization.

During the first phase, the initial emergence of the anti-marijuana public policy, the public opinion process was inoperative. Since the group of people directly affected was small and inaccessible, the matter attained the lowest possible visibility in the decision-making process.[1] Yet the early marijuana legislation probably comported with latent public opinion, or perhaps even general community consensus, in several respects.

In the first place, the lawmakers assumed that the drug was addictive and that its consumption precipitated crime, pauperism and insanity. Accordingly, public interest in, and desire for, its suppression might well have been considered settled by the earlier anti-narcotics legislation. At the same time, however, there does not appear to have been any interest in substantiating these assumptions. Although primary source materials on the question are scarce and difficult to locate, we have found no indication that the legislators consulted scientific data; instead they relied on sensationalistic police and newspaper identification of marijuana with crime. Naturally these assumptions went unchallenged; the only segment of the public likely to challenge them was small and outside the public opinion process.

From another perspective, however, the true pharmacological effects of the drug may have been immaterial to a decision to suppress it. Since marijuana was an intoxicant consumed only by immigrant Mexicans in the South and West and by ghetto Blacks in the East, the legislators might have accurately reflected a public hostility to the drug wholly without regard to its pharmacological effects. It should be noted in this respect that this first phase of marijuana prohibition occurred simultaneously with the successful thrust of alcohol prohibition. During this period, the legislators might well have assumed that public policy condemned the use of intoxicants in any form.

Moreover, to the extent that alcohol prohibition was motivated, or at least quickened, by ethnic prejudice against the Irish, marijuana prohibition, once proposed, was an inevitable by-product of anti-Mexican

[1] Either a large number of affected persons or high public visibility, and usually both, is a necessary condition for public interest. And, of course, public interest is a necessary condition for the operation of the public opinion process by which the interested segment of the public communicates its opinions or attitudes directly or indirectly to the decision-maker.

feeling. In fact, the ethnic factor might well have been the *primary* force. Since marijuana was so strongly tied to the newly immigrant Mexican minority, and to a lesser degree to urban Blacks, the melting-pot syndrome, so prevalent at this stage of American history, predisposed the issue without regard to the drug's effects. Designed to foster cultural homogeneity, and in particular the Protestant Ethic, marijuana legislation may well have reflected an automatic public antipathy to any deviant tendency of newly immigrant, sometimes despised, minorities.

At the time of its passage, therefore, early marijuana legislation may have fit well in a society assigning moral condemnation to use of narcotics, apparently opposing any consumption of intoxicants, and striving either to suppress or to assimilate deviant minorities. With the repeal of Prohibition, however, the bubble of the anti-intoxicant rationale burst. Too many people who acquiesced in alcohol prohibition to eliminate the abuses of excessive consumption were unwilling to comply with a public policy prohibiting any use at all. Perpetuation or extension of marijuana prohibition in light of this new alignment of public attitudes now depended either on the drug's allegedly insidious effects or on the melting-pot syndrome. Yet, there was still no visible public interest in marijuana, and the courts were moved neither to scrutinize the legislatures' factual suppositions nor to question their motives.

And so it was that by 1931, twenty-two states had enacted prohibitionary marijuana legislation. It was during the ensuing decade—what we have labelled the second phase of this history—that this primarily regional phenomenon twice achieved national proportions. That is not to say, however, that the question even once received national *attention;* in fact, anti-marijuana public policy was established on a national scale even more effortlessly than it had been on the local scale.

The first of these two events was the inclusion of marijuana in the Uniform Narcotic Drug Act, submitted for state adoption by the National Commissioners on Uniform State Laws in 1932. The war against the evils of narcotics had by now become old hat and was waged in this forum by a few doctors interested in establishing uniform obligations and by the newly created Federal Bureau of Narcotics. A low-keyed, uncomplicated drafting process transpired in committee, the basic provisions having been appropriated from the 1927 New York narcotics statute. The final committee draft, including an optional marijuana provision, was rubber-stamped by the Commissioners and subsequently

passed as a uniform afterthought by thirty-five states in the succeeding five years.

The same factual suppositions and ethnic aspersions characterizing the earlier state laws now colored the limited references to marijuana accompanying passage of the Uniform Act. There were two significant differences, however. First, legislative unawareness of marijuana as a separate substance was exacerbated by its inclusion as just another "narcotic" in everyone's new anti-narcotics law. Second, although the Federal Bureau of Narcotics played a superfluous role in the passage of the Uniform Act, it initiated an educational campaign against narcotic drugs, and included marijuana.

Once the Uniform Act had been successfully inscribed on the statute books, the Bureau turned its propaganda arsenal on marijuana alone. Although largely unsuccessful in arousing public interest in the marijuana "problem," the Bureau created *in the Congress* a "felt need" for federal legislation.[2] Again the public opinion process remained dormant while Congress passed still another law, the Marihuana Tax Act—this time to fill a nonexistent enforcement void against the abuse of a drug known only to a small, isolated segment of the population. Once again, the republic's duly authorized decision-makers nonchalantly criminalized possession of a drug without a factual inquiry even though this shortcoming was brought to their attention. The Act was hastily drawn, heard, "debated" and passed.

Thus, by 1937, marijuana had joined heroin, cocaine, morphine and opium in state and federal codes as a prohibited substance. As in 1914, new "stateways" were created and "folkways" gradually followed; users of the "killer weed" joined the despicable "dope fiend" as purveyors of evil in the public mind as well as in the public law.

The 1950's witnessed an explosion of the psychology of fear—repression of political and cultural deviation was the order of the day. It is not surprising, then, that the criminal law orientation toward drug

[2] Differences in intensity of commitment can explain how stateways can create new folkways. For example, the many may have no view at all and be influenced by intense leaders. Such was the case with Congress, and in turn the public in 1937, when the intensely committed Bureau of Narcotics singlehandedly created the Marihuana Tax Act. One scholar of the public opinion process has stated that even where many people have convictions opposed to the law,

> the law may be carried through by a comparatively small body of very earnest men, who produce a disproportionate effect by the heat of their conviction; while the bulk of the people are apathetic and unwilling to support the effort required to overcome a steady passive resistance to the enforcement of the law.

A. LOWELL, PUBLIC OPINION AND POPULAR GOVERNMENT 15 (1926).

use, initiated with regard to narcotics at the turn of the century and to marijuana two decades later, reached full cresendo at the same time.

For the first time in our national history, there was public interest in narcotic drugs. There apparently was an increase in drug abuse in the late forties, and the public mind was ripe for the onslaught of propaganda disseminated by the Bureau of Narcotics. In the paranoid atmosphere of the period, the Bureau's call for harsher penalties was a soothing one. Congress responded with the Boggs Act and many states followed suit.

At the same time, however, the primary rationale for the illegal status of marijuana—the assumption that it was an addictive, debilitating drug—was disproved. In its stead, a new factual premise appeared—that the use of marijuana was a stepping stone to the use of heroin and other "hard" drugs—a rationale that the Bureau had expressly rejected in 1937.[3] Despite medical testimony unequivocally differentiating marijuana from hard narcotics, the legislatures were in no mood to quibble; marijuana's pernicious effects, although once removed, equally warranted escalated penalties. The peak was reached with the passage of the Narcotic Control Act of 1956. This time public interest had disappeared, earlier doubts about the nature of marijuana had subsided, and Congress mindlessly escalated the penalties indiscriminately for narcotics *and* marijuana laws. Several states followed suit, and the courts, both state and federal, unquestioningly administered these harsh laws and sanctioned the dubious techniques by which they were enforced.

Thus, by 1956, possession of marijuana was a felony practically everywhere, and judges were generally precluded from mitigating the long prison terms prescribed by statute. Such legislation had never been supported by authoritative scientific inquiry regarding the pharmacological effects of the drug.

Then it was 1965. As more and more middle-class campus youths experimented with the drug with no apparent ill effects, so did their friends . . . and theirs . . . and so on. By 1970 between ten and fifteen percent of the American middle class had violated the marijuana laws, sometimes overtly.[3] For the first time since the anti-marijuana policy initially appeared, a substantial segment of the public was directly affected. Public interest naturally increased even beyond those immediately affected as the marijuana issue achieved higher visibility. The public opinion process had finally lurched into motion.

[3] See pp. 1096-1100 *supra*.

In calmer times, the authors believe that legislators would not be resisting reconsideration of the marijuana issue to the degree that they have thus far. A significant crosscurrent of public opinion, colored by preference for individuality and privacy, has swept aside many of the public policies which took root in the same soil as twentieth century drug policy. Today while we have expanded government's role in the economy of the nation, we have seen a consistent retreat from the glib paternalism that underlay laws restricting sexual practices among husband and wife, harsh definitions of pornography and the development of specialized courts for juveniles in which the state would, without benefit of established legal procedures, guard and protect the best interest of the child. To a large degree, the federal courts have been the vehicle by which this crosscurrent has affected public policy. Yet, in deference to the political process, the courts have thus far refused to intervene on the marijuana issue.

As the number of deviants continues to increase, fundamental alteration of drug policy, particularly with regard to marijuana, is inevitable. Because of the volatility of the issue and the current overextension of the courts, we believe that such alteration should be achieved in the legislatures. Yet despite an overwhelming volume of scientific criticism of existing law, legislatures have taken only token action. The source of the law is now its defense—ignorance. Even though independent researchers have disproved all of the old assumptions, the status quo is maintained on the ground that the evidence is not yet in on long-range effects of repeated use. A poor basis for a criminal law in any case, this argument is defectively open-ended. Because concerted scientific research is occurring only for the first time, waiting for these conclusions could preserve the status quo for a decade or more, even though no positive evidence supports prohibition.

If the legislative process continues to stall, however, we predict that the judiciary will no longer restrain itself. As some comments and peripheral rulings from the bench have already demonstrated, the courts too have been affected by the changing use patterns, media commentary, and commission and academic recommendations. Although we would prefer that the courts not be forced to enter still another political thicket, we do believe, as illustrated above, that a declaration of unconstitutionality is analytically justifiable.

To summarize, during the two criminalization stages, 1915 to 1937, the public opinion process was not invoked because of the number and

identity of marijuana users. Accordingly, the political decision-makers made incorrect factual assumptions which went unquestioned by the judiciary and the general public. Nevertheless, criminalization probably comported with general community values if those assumptions were made, and even perhaps if they were not.

Apart from its general consistency with community instincts for paternalism and preference for cultural homogeneity, the new law had a significant independent effect. As had been the case with the earlier anti-narcotics laws, the very existence of a criminal law generated a positive morality where none had existed before. In Sumner's terms, the new stateway *did* create a new folkway with respect to marijuana. This could occur with regard to marijuana and not to alcohol precisely because of the wholly different number and character of the users. We conclude that where a deviant group is outside the public opinion process and the dominant group is unfamiliar with their deviant conduct, stateways, in the form of prohibition of such conduct, *can create folkways* because of the presumption of immorality attaching to violation of the criminal law.

So long as the class of users remained constant, the public opinion process remained inoperative, the factual assumptions remained unquestioned (or new ones were advanced to support the law), and the moral judgment fed upon itself. Thus, the 1950's witnessed an incredible escalation of penalties and withdrawal of judicial discretion unmatched at any other time in American jurisprudence.

In the late 1960's, however, the number and social identity of the deviants changed radically. The public opinion process became operative on the marijuana issue for the first time in its history, generating massive scientific inquiry into the drug's effects. As a product of this process, it is at least clear that there is no longer a community consensus in favor of marijuana prohibition. First, the continuing consensus regarding narcotics use has been demonstrated conclusively to be factually inapposite to marijuana. Second, there is a strong crosscurrent of cultural values preferring privacy, individuality and cultural pluralism inconsistent with the value preferences underlying the marijuana laws. Although we will explore the effect of this phenomenon below, it is important to note now the growing legal recognition of these values in related substantive areas like sexual practices and in the rules of criminal procedure.

It is too soon to state with any assurance that the crosscurrent will

become the consensus. The law itself still exerts a continuing influence; many a middle-class parent intones haplessly that marijuana use is against the law and must therefore be bad; indeed, so does the Attorney General of the United States.[4] The current polarization of society has tended to defer final resolution of this value clash and therefore of the marijuana problem.

Nevertheless, we do not believe that the broader social polemics should obscure rational consideration of the marijuana problem. This Article was designed to provide the historical perspective which we believe so material to this consideration; hopefully, an understanding of the origins of the law will set aside some irrelevant issues and permit incisive consideration of the core issues, one of which is the nature of the contemporary value crosscurrent, to which we now turn.

B. Twentieth Century Values and the Marijuana Laws

As we suggested at the outset and again in the preceding discussion of the policy formation process, the history of marijuana regulation presents an ideal case study of the evolution of American cultural values in the twentieth century. Basically it describes an alteration in the individual's sphere of independence in the society.

In a time when the individual's economic and political independence had not yet been suffocated by the weight of massive impersonal institutions, society insisted on conformity to the dominant personal moral code. Because of the blessings of a free economy, economic eccentricity was encouraged in the ideological trappings of the self-made man. Similarly, the political reforms of this period—the initiative, referendum and recall—manifested faith in individual political judgments of every man.

At the same time, however, each individual's fulfillment of his political and economic promise demanded his adherence to the tenets of the Protestant Ethic—hard work and productivity. To insure a continuing march toward political and economic progress, society tightened the reins on personal behavior. Every new immigrant class had to be integrated into the system, to learn the American way. There was no room for "misfits." Society had the *duty* to keep the individual from

[4] "One thing young people should really recognize is the fact that marijuana is illegal, even possession is illegal, and they should realize that their future in society can be damaged severely." Attorney General John N. Mitchell, *quoted in* NEWSWEEK, Sept. 7, 1970, at 22.

falling by the wayside. Thus, the juvenile court movement began in 1899 to reach out early and reform the errant youth; society was his true parent. Similarly, the temperance and anti-narcotics movements, and the later anti-marijuana "movement," were designed to protect the individual, particularly the new immigrant classes, from inhibiting their own capacity to reap the benefits of the American economic and political system.

Naturally, restraints on individuality were not always rationalized in this way. There was a certain self-righteousness about the moral superiority of the American way. Thus, the insistence on assimilation of immigrant ethnic groups was designed not only to stimulate their own success but also to protect the superior, divinely inspired, American way from contamination. For example, as we noted above, many Americans who supported alcohol prohibition were opposed not so much to the drinking of alcohol but rather to the licensed saloon and the political power of the Italian and Irish minorities who used the saloons as the center of their social orders in the new country. In the same way strong ethnic bias against the Chinese on the West Coast was the prime motivation for those states' early anti-opium laws. Likewise in the Southwest the primary impetus for the criminalization of marijuana use was prejudice against the growing Mexican communities in those states. Laws were passed against the Mexicans and "their weed."

The point cannot be understated that much of the "reform" legislation at the turn of the century, including the sumptuary laws, was designed to protect and extend the dominant way of life—that of Protestant, rural, white, Scotch-Irish and English America. That way of life was making the country great, and the succeeding waves of immigrants had to be assimilated as quickly as possible, for they posed a threat to the dominant order. Much of the prohibitionary movement was designed to meet that threat—to root out cultural differences and impose the dominant values. Open prejudice and public ethnic slurs commonly accompanied passage of the drug and liquor laws and other paternal legislation. Similarly, in 1912, Theodore Roosevelt could run for President with "Onward Christian Soldiers" as his campaign song.

Utilizing a police power defined broadly in terms of self-protection, the dominant segment of society sought to protect itself from contamination and to promote homogeneity. Legislatures and reviewing courts focused only on society's interests, not on the "right" of the individual to deviate from the majority's cultural norms; the courts were

essentially closed to assertions of minority rights. Similarly, the criminal process was administered not from the perspective of protecting the "rights" of the criminal defendant but rather of protecting the society against deviance. Thus, during the period of Prohibition enforcement, fourth and fifth amendment rights were consistently ignored.

This, then, was the cultural milieu in which early twentieth century drug legislation took root and the continuing effect of which also fostered the later suppression of marijuana. The society imposed severe restraints on individual personal and social conduct in order both to reap the societal benefits from the individual's supposed economic and political independence and to perpetuate the dominant cultural outlook.

In contemporary society, however, the perspective is quite the reverse. Economic and political institutions have become increasingly omnipotent; the individual is increasingly dependent on the system rather than the system dependent on him. More and more the individual views himself as a cog in the massive, impersonal, technological machine, the gears for which are beyond his grasp. Consequently, a higher value has been placed on personal fulfillment in the noneconomic, nonpolitical sphere; a new emphasis has been placed on personal identity, and the individualized, deinstitutionalized pursuit of happiness. Concurrently, as economic productivity demands less of each individual's time and energy, and the work-week continues to shorten, a leisure value has emerged. The society has less and less economic interest in what the individual does with his leisure time.

Particularly in the last decade, this new value preference has been recognized in laws and judicial decisions recognizing the individual's right to differ—intellectually, spiritually, socially and sensually. A new, sometimes extreme, emphasis is placed on individual privacy; as an incredibly sophisticated technology continually expands society's control over the individual, he is insisting that the wall around his private life be fortified. Similarly, the search for identity has extended to groups of individuals; in stark contrast to the fervent implementation of the melting-pot syndrome fifty years ago is the increasing group awareness in an admittedly pluralistic society. The proliferation of Black and "Chicano" awareness groups and the resurgence of the American Indian testify to the renaissance of group identity and the bankruptcy of the assimilation ideology.

We believe that marijuana prohibition is as inconsistent with this new cultural climate as it was predictable under the old. As illustrated in

related areas, the focus has shifted decidedly from society's interest in protecting itself from deviance to the individual's right to deviate. Laws proscribing deviant forms of private sexual conduct—nudism, homosexuality—are being repealed or invalidated. Laws interfering with familial decision-making—abortion, contraception, miscegenation—are meeting the same fate. Laws rigidly defining the woman's place in the society and restricting her individual pursuit of happiness are under attack. Society's highly paternalistic treatment of adolescents—reflected in the pre-1967 juvenile court system and in the hands-off policy regarding school administration—is being reversed. Society's highly moralistic treatment of narcotics addiction, generated by the Harrison Act in 1914, is being replaced by a more humane medical outlook. Finally, official and unofficial suppression of ethnic and racial differences—and the related prejudice—has been replaced by official encouragement of such differences and suppression of discrimination, both public and private.

In sur[illegible]hen, we believe that values which fostered and sustained the crimina[illegible]ation of marijuana have changed radically in the last decade. In fact, the widespread violation of the marijuana laws is itself proof of that proposition; the users and many nonusers see no possible societal objection to an individual's use of an apparently harmless euphoriant. In the words of Leroy Mitchell, whose combat with the law provides an interesting comment on the modern dangers of the "killer weed," [8]

[8] People v. Mitchell, 244 Cal. App. 2d 176, 52 Cal. Rptr. 884 (Dist. Ct. App. 1966). Advised by Leroy's distraught wife that he smoked marijuana every evening, the police, with her consent, entered the house and arrested Leroy. He was very cooperative with the officers, showing them his hidden supply and his growing plants. Forgiving his wife, Leroy readily admitted using and growing marijuana. At trial, his sole defense was that marijuana was an integral part of his daily life, forming the crux of his religious practice.

> "In the sense that I believe that religion is related to law or constitutionality, I was exercising freedom in my own home to smoke something actually better than tobacco." His religious ritual was, "Get up in the morning and have breakfast, lunch at 12:30 evening meal, say between 6:00 and 7:00 and a pipe of marijuana about 8:00 or 9:00."

Id. at 180-81, 52 Cal. Rptr. at 885.

To Leroy's free exercise claim, the court responded that he had "offered no evidence that his use of marijuana is a religious practice in any sense of that term." *Id.* at 182, 52 Cal. Rptr. at 886. The first amendment protects only institutionalized religion. Poor Leroy. "In defendant's discourse to the jury," the court continued, "he did refer to the Bible and to the practices of some Hindus, but in essence *he was expressing only his own personal philosophy and way of life.*" *Id.* (emphasis added).

In Leroy's defense, we might then ask, why not? Is there no constitutional precept that the state cannot make his "way of life" a crime, much less a felony unless his private

> I have heard the problems of marijuana discussed many times and it has come to my attention that actually the only problem that we are having with marijuana is that young people are being faced with the attitude of criminality . . . .[6]

As we noted above, there is not yet a community consensus on this new value crosscurrent, and there probably will be none until the society becomes depolarized. At the same time, we do predict that the marijuana laws will not long exist in the current climate of changing values *and* increased use among a sizeable segment of the "respectable" public. We should emphasize this latter point. As lawyers by profession, we may tend to focus on and occasionally overestimate the force of the evolution of statutory and case law in changing the legal and social order. For that reason, we note without hesitation that the most potent force for change in the drug laws is the incredible increase in drug use, especially among the middle-class young. No society can long afford to define so large a segment of its population as criminal. It is highly unlikely that this one will continue to do so. This current increase in marijuana use stands in stark contrast to the public attitudes and opinions about drug use which were prevalent as late as 1956. And it is this phenomenon which in turn will hasten a wider community recognition of the emerging values.

Perhaps the single best illustration of the mutual influence of these two factors on public attitudes toward drug use in the last ten years is a recent broadcast commentary on the apprehension of Robert Kennedy, Jr. and R. Sargent Shriver, III, for possession of marijuana. After showing pictures of the boys and their prominent families emerging from a Massachusetts juvenile court, the commentator noted[7] that this case was unusual only in that famous families were involved. He continued that today it is commonplace indeed for parents to accompany their children to court on drug charges. Today a drug charge is "com-

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pursuit of happiness bears some reasonable relationship in fact to some public evil. Sure, Leroy might have been bugging his wife. But she had recourse to civil remedies. Is the chance that Leroy's social and personal use of marijuana would hurt him or anyone else great enough to warrant a felony conviction? We think not; at least we think the courts should ask.

[6] *Id.* at 180, 52 Cal. Rptr. at 898.

[7] "This case is not unusual; more and more parents across the nation find themselves going to court with their children on drug charges. It's becoming an incident of modern living." Walter Cronkite, CBS Evening News, August 8, 1970.

monplace;" in 1958, it was unthinkably criminal. A later commentator wondered whether we could afford "a whole generation of criminals." [8]

As must be clear by now, we do not think this society will or ought to perpetuate this disastrous situation. Either by nonenforcement, repeal or judicial invalidation, the law will be changed. Throughout the earlier discussion of possible constitutional objections to the marijuana laws we expressed our policy preference for judicial restraint in this area; although existing constitutional doctrines would support a judicial invalidation, we prefer legislative reevaluation. We believe that rational legislative reconsideration would result in partial or total repeal and that this task should be commenced immediately. For that reason we will suggest what we consider the minimal acceptable legislative response and the optimum response.

1. The Premise

Whatever the constitutional mandate, we believe legislators ought to begin as a matter of policy with the assumption that conduct harmful only to the actor is not a legitimate subject for the criminal law. In the first place, notions of blameworthiness, if not immorality, should underlie any criminal statute. Yet contemporary western man increasingly regards as blameworthy only that which directly or indirectly harms others; the presumption ought therefore to be that conduct harmful only to the actor should be deterred through means other than the criminal law.

Second, to the degree that the society continues to render moral judgments regarding purely personal conduct, we do not agree with Lord Devlin that the criminal law is ever the appropriate vehicle for the imposition of the dominant personal moral code. In this day of rampant relativism, imposition on the minority of the dominant personal morality is presumptuous and suspicious.

We subscribe the emergent value preference for individuality and freedom of choice described above and share Justice Brandeis' warning that government is most dangerous when it purports to "help" the individual citizen.[9] In fact, we believe that contemporary society is ill advised to insist on homogeneity of conduct, even where the majority continues to attach moral blame. The danger of regimentation and stul-

[8] CBS Evening News, August 19, 1970. *See also* K. Erickson, Wayward Puritans (1966).

[9] Olmstead v. United States, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

tifying conformity is one of the paramount disutilities of modern technological society. We feel it encumbent on the legislators as designers of the social order to promote the widest possible latitude for private conduct so as to encourage the diversity that fosters the creative element in any productive society.

A third related reason for this policy premise is that the benevolent societal goal of protecting the actor from his own folly, if it should be effectuated at all, can be achieved by means other than the criminal law. Indeed, use of the criminal law for this purpose is generally less effective than other means because of the difficulty of enforcement, which itself is our final rationale for the initial premise. Laws prohibiting purely personal or consensual conduct have an ancillary effect which causes more harm to the social fabric than the mere offensiveness of deviant personal conduct—the inevitable collision of law enforcement techniques with constitutional limitations. Sacred protection of the individual's right to privacy is, to us, a far more noble end than the protection of the individual from his own folly, as defined by the dominant segment of society.

We do not pretend to have settled or even enriched the continuing philosophic debate regarding "crimes without victims." However, since the only rationale remaining for marijuana prohibition is that it is harmful to the user, legislative adoption of our position on this issue would dictate partial or total repeal of existing law. It should be noted that an increasing number of lawyers, philosophers and social scientists have taken this position. We recommend it to the state and federal legislatures.

2. Statutory Recommendations

We offer first a statutory scheme which might be palatable to legislators who still fear that further study will reveal that marijuana use has long-range ill effects. While we do not think this fear justifies perpetuation of the existing statutes, it will justify a scheme which permits those who choose to smoke marijuana to do so but which inhibits spread of the conduct; that is, it simply takes the user of marijuana out of the criminal process.

For this minimal solution, we propose:

a) prohibiting possession of more than four ounces of marijuana unless the defendant can show that it was possessed solely for personal use;

b) prohibiting public use of the drug;

c) proscribing driving or operating any other dangerous machine while under the influence of the drug;

d) proscribing transfer to any one party of more than four ounces of marijuana;

e) prohibiting transfer of any amount to persons below the age of sixteen;

f) punishing all violators as misdemeanants.

The prohibition of possession or sale of more than four ounces of the drug fulfills the possibly justified legislative goal of limiting mass distribution and proselytizing the use of marijuana. We feel that none of the important values of right to privacy or individual freedom are involved when one individual goes beyond his own private use of the drug to proselytize. However, as we have seen above, the realities of the marketplace are such that the average user might sell to friends to support his own use. Our arbitrary choice of four ounces as the cut-off point for the criminal process reflects an assumption, based on current trade practices, that it will keep the small seller out of the criminal process while ensnaring the mass distributor. Of course, this figure should be raised or lowered if prevalent market conditions change.

Two explanatory notes are in order. First, we choose a presumptive amount approach in order to avoid the complexities of affirmative proof of intent to sell and yet to allow some flexibility for the court to release a defendant unjustly trapped by our arbitrary figure. Second, we acknowledge the inconsistency of legalizing possession for personal use and yet criminalizing conduct which must necessarily precede such possession at some point. However, we believe that this inconsistency is justified as an interim measure both by the need to keep users out of the courts and by the salutary effect of keeping most users out of contact with organized dealers through legitimization of some channels of distribution.

Similarly, the provision outlawing public use, driving under the influence and transfer to minors each serve legitimate public interests. These provisions and the penalty provision are each designed to reflect the treatment accorded the alcohol offender.

It should be reiterated that we view the above statutory scheme as a minimal response that protects what might be perceived as legitimate public goals while not infringing the right to privacy. However, some form of legal dissemination of the drug accords philosophically and practically with the logic of the authors' views. To this end we both

predict and urge that each state adopt a regulatory scheme—either the licensing or state monopoly models—to control cultivation, distribution and consumption of marijuana in the same way those states now regulate the use of alcohol. The benefits of such a system, especially if a state monopoly controls cultivation and distribution, are manifold. First, the state can regulate the quantity and the potency of the drug produced. Second, the state can restrict the age and other eligibility of the purchaser. Third, and most important, the state can tax the purchaser providing a valuable source of revenue to the states in a time when lack of revenues is becoming a more and more serious problem. As a corollary, to the limited extent that organized crime is involved in the marijuana trade, any such regulatory scheme would both divert the revenue from the coffers of the Mafioso and eliminate possible contact between the marijuana user and its henchmen.

APPENDIX A*

TABLE I. STATUTORY SCHEMES FOR MARIJUANA PROHIBITION

Jurisdiction	*Distinction between marijuana and other narcotics*	*First offense possession classified as felony*	*Suspended sentences, parole, and probation*
Alabama	Yes	Yes	Only for 1st offense possession
Alaska	Yes	No	Only for 1st offense possession
Arizona	Yes	No	Only for 1st offense possession
Arkansas	No	Yes	Only for 1st offense
California	Yes	No	Only for 1st offense possession
Colorado	No	Yes	No parole
Connecticut	Yes	No	Only for 1st three offenses
Delaware	No	No	Only for 1st offense
Florida	No	Yes	Only for possession and 1st offense sale
Georgia	No	Yes	Only for 1st offense
Hawaii	No	No	Only for 1st offense possession
Idaho	No	Yes	No prohibition
Illinois	No	No	Only for 1st offense possession
Indiana	No	Yes	Only for 1st offense
Iowa	No	No	Only for 1st offense possession
Kansas	No	Yes	No prohibition
Kentucky	No	Yes	Only for 1st offenses, except sale to a minor—no probation
Louisiana	No	Yes	Only for 1st offense possession
Maine	Yes	No	No prohibition
Maryland	No	Yes	Only for possession and 1st offense sale
Massachusetts	No	No	Only for possession and 1st offense sale
Michigan	No	Yes	Only for 1st offense possession
Minnesota	No	Yes	No prohibition

* The data appearing in these tables is current as of June 1970. Since that time, some states, such as New Jersey, Georgia and California, have amended their marijuana laws. It should be noted that, in condensing complicated statutory schemes to tabular form, many of the nuances of these schemes are not reported.

TABLE I. STATUTORY SCHEMES FOR MARIJUANA PROHIBITON—CONTINUED

Jurisdiction	*Distinction between marijuana and other narcotics*	*First offense possession classified as felony*	*Suspended sentences, parole, and probation*
Mississippi	No	Yes	Only for 1st offense possession
Missouri	No	Yes	Only for 1st offense possession
Montana	Yes	Yes	No prohibition
Nebraska	Yes	No	No prohibition
Nevada	No	Yes	Only for possession and 1st offense sale (except by an adult to a minor)
New Hampshire	Yes	No	No prohibition
New Jersey	No	Yes	No prohibition
New Mexico	No	No	Only for 1st offense possession of less than one ounce
New York	No	No	No prohibition
North Carolina	No	No	Only for possession and 1st offense sale (except by an adult to a minor)
North Dakota	Yes	No	No prohibition
Ohio	No	Yes	Sale offenses not probational
Oklahoma	Yes	Yes	No prohibition
Oregon	No	Yes	No prohibition
Pennsylvania	No	Yes	Only for 1st offense
Rhode Island	No	Yes	No probation for sale to a minor
South Carolina	No	Yes	Only for 1st and 2d offenses
South Dakota	Yes	No	Only for 1st offense
Tennessee	No	Yes	Only for 1st offense
Texas	No	Yes	Only for 1st offense
Utah	No	No	Only for possession offenses
Vermont	Yes	No	No prohibition
Virginia	Yes	No	No prohibition
Washington	Yes	No	No prohibition
West Virginia	No	Yes	Only for 1st offense
Wisconsin	Yes	No	Only for 1st offense
Wyoming	No	No	No prohibition
District of Columbia	No	No	No prohibition

TABLE II. PENALTY PROVISIONS FOR MAJOR MARIJUANA OFFENSES

A. POSSESSION

	1st Offense	*2d Offense*	*Subsequent Offense*
Alabama	2-10 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	10-40 yrs./$20,000 maximum
Alaska	0-1 yr./$1,000 or rehabilitation treatment by state for 1 year	— —	— —
Arizona	0-1 yr. in county jail/$1,000 max. or 1-10 yrs.	2-20 yrs.	5-life
Arkansas	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 maximum
California	County jail for up to 1 year or 1-10 years	2-20 yrs.	5-life
Colorado	2-15 yrs./$10,000 maximum	5-20 yrs./$10,000 maximum	10-30 yrs./$10,000 maximum
Connecticut	0-1 yr./$1,000 max. or up to 3 yrs. to cust. of commissioner	— —	— —
Delaware	0-2 yrs./$500 maximum	0-5 yrs./$3,000 maximum	— —
Florida	0-5 yrs./$5,000 max. or hospital until cured	0-10 yrs./$10,000 max. or hospital until cured	0-20 yrs./$20,000 maximum or hospital until cured
Georgia	2-5 yrs./$2,000 maximum	5-10 yrs./$3,000 maximum	10-20 yrs./$5,000 maximum
Hawaii	0-5 yrs.	0-10 yrs.	— —
Idaho	0-10 yrs.	— —	— —
Illinois	Less than 2.5 grams 0-1 yr./$1,500 max., over 2.5 grams, 2-10 yrs./ $5,000 maximum	Less than 2.5 grams 2-10 yrs./$5,000 max., over 2.5 grams, 5-life	— —
Indiana	2-10 yrs./$1,000 maximum	5-20 yrs./$2,000 maximum	— —
Iowa	Personal use, 0-6 months/$1,000 max., otherwise, 2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 maximum
Kansas	0-7 yrs.	— —	— —
Kentucky	2-10 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	— —
Louisiana	Under 21, 0-10 yrs.; over 21, 5-15 yrs.	— —	— —
Maine	0-11 mos./$1,000 maximum	0-2 yrs./$2,000 maximum	— —
Maryland	2-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$3,000 maximum
Massachusetts	0-3½ yrs. (prison), or 0-2½ yrs. (jail)/$1,000 maximum	— —	— —
Michigan	0-10 yrs./$5,000 maximum	0-20 yrs./$5,000 maximum	20-40 yrs./$5,000 maximum
Minnesota	5-20 yrs./$10,000 maximum	5-20 yrs./$10,000 maximum	— —

TABLE II. PENALTY PROVISIONS FOR MAJOR MARIJUANA OFFENSES—CONTINUED

A. POSSESSION

	1st Offense	*2d Offense*	*Subsequent Offense*
Mississippi	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 mandatory fine
Missouri	6 mos. to 1 yr. in county jail or 20 yrs. max. in state penitentiary	5 yrs.-life	10 yrs.-life
Montana	If person is under 21 and 1st offense then gets deferred imposition of sentence, 0-5 yrs.	0-5 yrs. maximum	
Nebraska	25 or more cigarettes, 1-5 yrs. Less than 25, 7 days	1-5 yrs.	— — — —
Nevada	1-6 yrs./$2,000 maximum	1-10 yrs./$2,000 maximum	1-20 yrs./$5,000 maximum
New Hampshire	0-1 yr./$500 maximum	0-3 yrs./$1,000 maximum	— —
New Jersey	2-15 yrs./$2,000 maximum	5-25 yrs./$5,000 maximum	10-life/$5,000 maximum
New Mexico	Possession of 1oz. or less, 0-1 yr. in county jail/$1,000 maximum 2-10 yrs./$2,000 maximum	1-5 yrs./$5,000 maximum 5-20 yrs./$2,000 maximum	2-10 yrs./$5,000 maximum 10-40 yrs./$2,000 minimum fine
New York	Less than 25 cigarettes up to 1 yr., 25-99, 1-7 yrs., 100, 1-15 yrs.	— —	— —
North Carolina	Less than 1 gm., misdemeanor with fine or imprisonment left to court 0-5 yrs./$1,000 maximum	— — 5-10 yrs./$2,000 maximum	— — 15-life/$3,000 maximum
North Dakota	6 mos. min. in county jail/$2,000 max. or 0-2 yrs. in penitentiary/ $2,000 maximum	0-5 yrs./$2,000 maximum	— —
Ohio	2-15 yrs./$10,000 maximum	5-20 yrs./$10,000 maximum	10-30 yrs./$10,000 maximum
Oklahoma	0-7 yrs./$5,000 maximum	— —	— —
Oregon	0-1 yr./$5,000 maximum or 0-10 yrs./ $5,000 max.	— —	— —
Pennsylvania	2-5 yrs. separate or solitary confinement and $2,000 maximum	5-10 yrs. separate or solitary confinement and $5,000 maximum	10-30 yrs. separate or solitary confinement and $7,500 maximum
Rhode Island	0-15 yrs. and $10,000 maximum	0-20 yrs. and $10,000 maximum	0-30 yrs. and $10,000 maximum
South Carolina	0-2 yrs./$2,000 maximum	2-5 yrs./$2,000-$5,000	10-20 yrs.

South Dakota	Less than 1 oz.—0-1 yr. in county jail/$500 max. More than 1 oz.—2-5 yrs./$5,000 maximum	10-15 yrs./$10,000 maximum	15-40 yrs./$20,000 maximum
Tennessee	2-5 yrs./$500 maximum	5-10 yrs./$500 maximum	10-20 yrs./$500 maximum
Texas	2 yrs.-life	10 yrs.-life	— —
Utah	6 mos. min. in county jail	— —	6 mos. min. in county jail or 1-5 yrs. in penitentiary
Vermont	0-6 mos./$500 maximum	0-2 yrs./$2,000 maximum	— —
Virginia	0-12 mos./$1,000 maximum	0-12 mos./$10,000 max. or 2-20 yrs./$10,000 max.	— —
Washington	0-6 mos./$500 maximum	0-1 yr./$1,000 maximum	0-10 yrs./$10,000 maximum
West Virginia	2-5 yrs./$1,000 maximum	5-10 yrs./$5,000 maximum	10-20 yrs./$10,000 maximum
Wisconsin	0-1 yr. in county jail/$500 maximum	0-2 yrs./$1,000 maximum	— —
Wyoming	0-6 mos./$1,000 maximum	0-5 yrs./$2,000 maximum	0-10 yrs./$2,000 maximum
District of Columbia	0-1 yr./$100-$1,000	0-10 yrs./$500-$5,000	— —

B. POSSESSION WITH INTENT TO SELL

	1st Offense	2d Offense	Subsequent Offense
Alabama	No such offense		
Alaska	0-25 yrs./$20,000 maximum	0-life/$25,000 maximum	0-life/$25,000 maximum
Arizona	2-10 yrs.	5-15 yrs.	10-life
Arkansas	No such offense		
California	2-10 yrs.	5-15 yrs.	10-life
Colorado	10-20 yrs.	15-30 yrs.	20-40 yrs.
Connecticut	5-10 yrs./$3,000	10-15 yrs./$5,000	25 yrs.
Delaware	No such offense		
Florida	No such offense		
Georgia	No such offense		
Hawaii	0-10 yrs./$1,000 maximum	0-20 yrs./$2,000 maximum	— —
Idaho	0-15 yrs.	— —	— —
Illinois	No such offense		
Indiana	5-20 yrs./$2,000 maximum	5 yrs.-life/$5,000 maximum	— —
Iowa	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000	10-20 yrs./$2,000 maximum
Kansas	No such offense		
Kentucky	No such offense		
Louisiana	No such offense		
Maine	No such offense		
Maryland	No such offense		
Massachusetts	5-10 yrs.	10-25 yrs.	— —
Michigan	No such offense		
Minnesota	No such offense		
Mississippi	No such offense		
Missouri	No such offense		
Montana	No such offense		
Nebraska	1-5 yrs.	— —	— —
Nevada	1-6 yrs./$2,000 maximum	1-10 yrs./$2,000 maximum	1-20 yrs./$5,000 maximum
New Hampshire	0-10 yrs./$2,000 maximum	0-15 yrs./$5,000 maximum	— —
New Jersey	No such offense		
New Mexico	10-20 yrs./$5,000 maximum	20-40 yrs./$10,000 maximum	life/$20,000 maximum
New York	1-4 yrs.	— —	— —
North Carolina	0-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	15-life/$3,000 maximum
North Dakota	No such offense		

Ohio	10-20 yrs.	15-30 yrs.	20-40 yrs.	
Oklahoma	0-7 yrs./$5,000 maximum	— —		— —
Oregon	No such offense			
Pennsylvania	No such offense			
Rhode Island	0-20 yrs.	0-30 yrs.	0-40 yrs.	
South Carolina	No such offense			
South Dakota	No such offense			
Tennessee	No such offense			
Texas	No such offense			
Utah	2-10 yrs.	5-15 yrs.		— —
Vermont	100 cigarettes or more 0-5 yrs./ $5,000 max., 25 cigarettes or more 0-2 yrs./$2,000 maximum	— —		— —
Virginia	1-40 yrs./$25,000 maximum	10-life/$50,000 maximum		— —
Washington	3-10 yrs./$5,000 maximum	— —		— —
West Virginia	No such offense			
Wisconsin	0-5 yrs./$5,000 maximum	0-10 yrs./$5,000 maximum		— —
Wyoming	0-6 mos./$1,000 maximum	0-5 yrs./$2,000 maximum	0-10 yrs./$2,000 maximum	
District of Columbia	No such offense			

C. SALE

	1st Offense	2d Offense	Subsequent Offense
Alabama	5-20 yrs./$20,000 maximum	10-40 yrs./$20,000 maximum	— —
Alaska	0-25 yrs./$20,000 maximum	0-life/$25,000 maximum	— —
Arizona	2-10 yrs.	5-15 yrs.	10-life
Arkansas	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000	10-20 yrs./$2,000 maximum
California	5-life	— —	10-life
Colorado	10-20 yrs.	15-30 yrs.	20-40 yrs.
Connecticut	5-10 yrs./$3,000 maximum	10-15 yrs./$5,000 maximum	25 yrs.
Delaware	3-10 yrs./$500-$3,000	7-12 yrs./$1,000-$3,000	10-20 yrs./$2,000-$5,000
Florida	0-10 yrs./$10,000	0-20 yrs./$20,000 maximum	20-life/$20,000 maximum
Georgia	2-5 yrs./$2,000 maximum	5-10 yrs./$3,000 maximum	10-20 yrs./$5,000 maximum
Hawaii	0-10 yrs./$1,000 maximum	0-20 yrs./$2,000 maximum	— —
Idaho	0-10 yrs.	— —	— —
Illinois	10-life	life	— —
Indiana	5-20 yrs./$2,000 maximum	20-life/$5,000 maximum	— —
Iowa	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 maximum
Kansas	0-7 yrs.	— —	— —
Kentucky	5-20 yrs./$20,000 maximum	10-40 yrs./$20,000 maximum	— —
Louisiana	Seller under 21, 5-10 yrs., Seller over 21, 10-50 yrs.	— —	— —
Maine	To people over 21, 1-5 yrs., By people under 21, 1-5 yrs.	4-10 yrs.	— —
Maryland	2-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$3,000 maximum
Massachusetts	5-10 yrs.	10-25 yrs.	— —
Michigan	20 yrs.-life	— —	— —
Minnesota	5-20 yrs./$10,000 maximum	— —	— —
Mississippi	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 mandatory fine	life
Missouri	5 yrs.-life	10 yrs.-life	— —
Montana	1 yr.-life	— —	— —
Nebraska	2-5 yrs.	— —	— —
Nevada	By minor then 1-20 yrs. w/possible probation	No difference for minor	No difference for minor
	1-20 yrs./$5,000 maximum	life/$5,000 maximum	— —
New Hampshire	0-10 yrs./$2,000 maximum	0-15 yrs./$5,000 maximum	— —
New Jersey	2-15 yrs./$2,000 maximum	5-25 yrs./$5,000 maximum	10-life/$5,000 maximum

New Mexico	10-20 yrs./$5,000 maximum	20-40 yrs./$10,000 maximum	life/$20,000 maximum
New York	1-15 yrs.	— —	— —
North Carolina	0-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	15-life/$3,000 maximum
North Dakota	6 mos. min. in county jail/$2,000 maximum or 0-2 yrs. in penitentiary/$2,000	0-5 yrs./$2,000 maximum	— —
Ohio	20-40 yrs.	— —	— —
Oklahoma	0-7 yrs./$5,000 maximum	— —	— —
Oregon	0-1 yr./$5,000 maximum or 0-10 yrs./$5,000 max.	— —	— —
Pennsylvania	5-20 yrs. separate or solitary confinement and $5,000 maximum	10-30 yrs. separate or solitary confinement and $15,000 maximum	life/$30,000 maximum
Rhode Island	40 yrs. maximum	— —	— —
South Carolina	0-2 yrs./$2,000 maximum	5-10 yrs./$2,000-$5,000	10-20 yrs.
South Dakota	5-10 yrs./$5,000 maximum	10-15 yrs./$10,000 maximum	15-40 yrs./$20,000 maximum
Tennessee	2-5 yrs. and $500 maximum	5-10 yrs. and $500 maximum	10-20 yrs. and $500 maximum
Texas	5 yrs.-life	10 yrs.-life	— —
Utah	5 yrs.-life	— —	10 yrs.-life
Vermont	0-5 yrs./$10,000 maximum	10-25 yrs./$25,000 maximum	— —
Virginia	1-40 yrs./$25,000 maximum	10-life/$50,000 maximum	— —
Washington	3-10 yrs./$5,000 maximum	— —	— —
West Virginia	2-5 yrs./$1,000 maximum	5-10 yrs./$5,000 maximum	10-20 yrs./$10,000 maximum
Wisconsin	0-5 yrs./$5,000	0-10 yrs./$5,000	— —
Wyoming	0-10 yrs.	0-25 yrs.	— —
District of Columbia	0-1 yr./$100-$1,000	0-10 yrs./$500-$5,000	— —

D. SALE TO A MINOR

	1st Offense	2d Offense	Subsequent Offense
Alabama	10-40 yrs./$20,000 maximum	— —	— —
Alaska	0-life/$25,000 maximum	— —	— —
Arizona	10-life	— —	15-life
Arkansas	No such offense		
California	10-life	— —	15-life
Colorado	life	life or death	— —
Connecticut	No such offense		
Delaware	No such offense		
Florida	10-life/$10,000 maximum	10-life/$20,000 maximum	20-life/$20,000 maximum
Georgia	life or 10-20 yrs.	death or 10-20 yrs.	— —
Hawaii	0-20 yrs./$1,000 maximum	life/$2,000 maximum	life/$2,000
Idaho	0-15 yrs.	— —	— —
Illinois	10-life	life	— —
Indiana	No such offense		
Iowa	5-20 yrs.	— —	— —
Kansas	No such offense		
Kentucky	20-life/$20,000 maximum	— —	— —
Louisiana	Seller over 21, death or 30-99 yrs.	— —	— —
Maine	To people 18-20, 2-5 yrs. To people under 18, 3-8 yrs.	4-10 yrs.	— —
Maryland	5-20 yrs./$1,000 maximum	— —	— —
Massachusetts	10-25 yrs.	20-50 yrs.	— —
Michigan	20 yrs.-life	— —	— —
Minnesota	10-40 yrs./$20,000 maximum	— —	— —
Mississippi	20 yrs.-life/$20,000 maximum	— —	— —
Missouri	5 yrs.-life or death	10 yrs.-life or death	— —
Montana	1 yr.-life	— —	— —
Nebraska	2-5 yrs.	— —	— —
Nevada	If sold by minor 1-20 yrs. with possible probation life/$5,000	Minor receives no privileges after 1st offense life	— —
New Hampshire	0-10 yrs./$2,000 maximum	0-15 yrs./$5,000 maximum	— —
New Jersey	2-life/$2,000-$10,000 maximum	— —	— —
New Mexico	20-life/$10,000 maximum	— —	— —

New York	1-25 yrs.	— —		— —
North Carolina	10-life/$3,000 maximum	— —		— —
North Dakota	5-10 yrs.	— —		— —
Ohio	30 yrs.-life	— —		— —
Oklahoma	0-20 yrs.	5 yrs.-life		— —
Oregon	No such offense			
Pennsylvania	No such offense			
Rhode Island	0-life	— —		— —
South Carolina	(To a minor under 18 only) 0-5 yrs./ $5,000 maximum	(To a minor under 18 only) 10 yrs.		— —
South Dakota	10-20 yrs./$10,000	20-30 yrs./$20,000	30-80 yrs./$40,000	
Tennessee	No such offense			
Texas	5 yrs.-life	10 yrs.-life or death		— —
Utah	10 yrs.-life	— —	15-life	
Vermont	0-5 yrs./$10,000 maximum	10-25 yrs./$25,000 maximum		
Virginia	5-40 yrs./$50,000 maximum	— —		
Washington	0-20 yrs./$50,000 maximum	— —		
West Virginia	No such offense			
Wisconsin	0-15 yrs.	30-life	life	
Wyoming	0-20 yrs.	0-50 yrs.		— —
District of Columbia	No such offense			

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TABLE III. COMPARISON OF PENALTY PROVISIONS FOR MAJOR MARIJUANA OFFENSES

	POSSESSION		SALE	
Jurisdiction	*1st Offense*	*2d Offense*	*1st Offense*	*2d Offense*
Alabama	2-10 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	10-40 yrs./$20,000 maximum
Alaska	0-1 yr./$1,000 max. or rehabilitation treatment by state for 1 year	— —	0-25 yrs./$20,000 maximum	0-life/$25,000
Arizona	0-1 yr. in county jail/$1,000 max.; or 1-10 yrs.	2-20 yrs.	2-10 yrs.	5-15 yrs.
Arkansas	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum
California	County jail for 1 yr. max. or 1-10	2-20 yrs.	5-life	— —
Colorado	2-15 yrs./$10,000	5-20 yrs./$10,000	10-20 yrs.	15-30 yrs.
Connecticut	0-1/$1,000 max. or no more than 3 yrs. to custody of commissioner of correction	— —	5-10 yrs./$3,000 maximum	10-15 yrs./$5,000 maximum
Delaware	0-2 yrs./$500 max.	0-5 yrs./$3,000 maximum	3-10 yrs./$500-$3,000	7-12 yrs./$1,000-$3,000
Florida	0-5 yrs./$5,000 or confinement in hospital until cured	0-10 yrs./$10,000 max. or confinement in hospital until cured	0-10 yrs./$10,000 maximum	0-20 yrs./$20,000 maximum
Georgia	2-5 yrs./$2,000 maximum	5-10 yrs./$3,000 maximum	2-5 yrs./$2,000 maximum	5-10 yrs./$3,000 maximum
Hawaii	0-5 yrs.	0-10 yrs.	0-10 yrs./$1,000 maximum	0-20 yrs./$2,000 maximum
Idaho	0-10		0-10	— —
Illinois	Less than 2.5 grams 0-1 yrs./$1,500 max.; over 2.5 grams 2-10 yrs./$5,000 max.	Less than 2.5 grams 2-10 yrs./$5,000 max.; over 2.5 grams 5 yrs.-life	10-life	life
Indiana	2-10 yrs./$1,000 maximum	5-20 yrs./$2,000 maximum	5-20 yrs./$2,000 maximum	20-life/$5,000 maximum

Iowa	Personal use, 6 mos./$1,000; max.; otherwise, 2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000
Kansas	0-7 yrs.	— —	0-7 yrs.	— —
Kentucky	2-10 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	10-40 yrs./$20,000 maximum
Louisiana	Under 21, 0-10 yrs.; over 21, 5-15 yrs.	— —	Seller under 21, 5-10 yrs. Seller over 21, 10-50 yrs.	10-50 yrs.
Maine	0-11 mos./$1,000 maximum	0-2 yrs./$2,000 maximum	To people over 21, 1-5 yrs. To people 18-20, 2-6 yrs. To people under 18, 3-8 yrs. By people under 21, 1-5 yrs.	4-10 yrs.
Maryland	2-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	2-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum
Massachusetts	0-3½ yrs. (prison), 0-2½ yrs. (jail)/ $1,000 maximum	— —	5-10 yrs.	10-25 yrs.
Michigan	0-10 yrs./$5,000 maximum	0-20 yrs./$5,000 maximum	20 yrs.-life	— —
Minnesota	5-20 yrs./$10,000 maximum	— —	5-20 yrs./$10,000 maximum	— —
Mississippi	2-5 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	5-10 yrs./$2,000 maximum	10-20 yrs./$2,000 maximum
Missouri	6 mos.-1 yr. in county jail or 20 yrs. max. in state penitentiary	5 yrs.-life	5 yrs.-life	10 yrs.-life
Montana	5 yrs. max. prison under 21 gets a deferred imposition of sentence	0-5 yrs. maximum	1 yr.-life	— —
Nebraska	25 or more cigarettes-1-5 yrs. Less than 25, 7 days	1-5 yrs.	2-5 yrs.	— —
Nevada	1-6 yrs./$2,000 maximum	1-10 yrs./$2,000 maximum	By minor 1-20 yrs. w/ possibility of probation 1-20 yrs./$5,000 maximum	No difference for this offense Life and $5,000 maximum
New Hampshire	1 yr. max./$500 maximum	3 yrs. max./$1,000 maximum	10 yrs. max./$2,000 maximum	15 yrs. max./$5,000 maximum
New Jersey	2-15 yrs./$2,000 maximum	5-25 yrs./$5,000 maximum	2-15 yrs./$2,000 maximum	5-25 yrs./$5,000 maximum

TABLE III. COMPARISON OF PENALTY PROVISIONS FOR MAJOR MARIJUANA OFFENSES—CONTINUED

	POSSESSION		SALE	
Jurisdiction	*1st Offense*	*2d Offense*	*1st Offense*	*2d Offense*
New Mexico	Possession of 1oz. or less, up to 1 yr. in county jail and $1,000 max.	1-5 yrs./$5,000 maximum	10-20 yrs./$5,000 maximum	20-40 yrs./$10,000 maximum
New York	Less than 25 cigarettes up to 1 yr.; 25-99, 1-7 yrs.; 100, 1-15 yrs.	— —	1-15 yrs.	— —
North Carolina	Less than one gm., misdemeanor with fine or imprisonment left to court. More than 1 gm., 0-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum	0-5 yrs./$1,000 maximum	5-10 yrs./$2,000 maximum
North Dakota	6 mos. min. county jail or 0-2 yrs. penitentiary/ $2,000 maximum	0-5 yrs./$2,000 maximum	6 mos. min. county jail or 0-2 yrs. penitentiary/ $2,000 maximum	0-5 yrs./$2,000 maximum
Ohio	2-15 yrs./$10,000 maximum	5-20 yrs./$10,000	20-40 yrs.	— —
Oklahoma	0-7 yrs./$5,000 maximum	— —	0-7 yrs./$5,000 maximum	— —
Oregon	0-1 yr./$5,000 max. or 0-10 yrs./$5,000	— —	0-1 yr./$5,000 max. or 0-10 yrs./$5,000 maximum	— —
Pennsylvania	2-5 yrs. separate or solitary confinement and $2,000 maximum	5-10 yrs. separate or solitary confinement and $5,000 maximum	5-20 yrs. separate or solitary confinement and $5,000 maximum	10-30 yrs. separate or solitary confinement and $15,000 maximum
Rhode Island	0-15 yrs. and $10,000 maximum	0-20 yrs. and $10,000 maximum	40 yrs. maximum	— —
South Carolina	0-2 yrs./$2,000 maximum	2-5 yrs./$2,000-$5,000	0-2 yrs./$2,000 maximum	5-10 yrs./$2,000-$5,000
South Dakota	Less than 1 oz., 0-1 yr. county jail/$500 max. More than 1 oz., 2-5 yrs./$5,000 maximum	10-15 yrs./$10,000 maximum	5-10 yrs./$5,000 maximum	10-15 yrs./$10,000 maximum
Tennessee	2-5 yrs. and $500 maximum	5-10 yrs. and $500 maximum	2-5 yrs. and $500 maximum	5-10 yrs. and $500 maximum
Texas	2 yrs.-life	10 yrs.-life	5 yrs.-life	10 yrs.-life

Utah	6 mos. min. county jail	— —	5 yrs.-life	— —
Vermont	0-6 mos./$500 maximum	0-2 yrs./$2,000 maximum	0-5 yrs./$10,000 maximum	10-25 yrs./$25,000 maximum
Virginia	0-12 mos./$1,000 maximum	0-12 mos./$10,000 max. or 2-20 yrs./$10,000 maximum	1-40 yrs./$25,000 maximum	10 yrs.-life/$50,000 maximum
Washington	0-6 mos./$500 maximum	0-1 yr./$1,000 maximum	3-10 yrs./$5,000 maximum	— —
West Virginia	2-5 yrs./$1,000 maximum	5-10 yrs./$0-$5,000	2-5 yrs./$1,000 maximum	5-10 yrs./$5,000 maximum
Wisconsin	0-1 yr./$500 maximum	0-2 yrs./$0-$1,000	0-5 yrs./$5,000 maximum	0-10 yrs./$5,000
Wyoming	0-6 mos./$1,000	0-5 yrs./$0-$2,000	0-10 yrs.	0-25 yrs.
District of Columbia	0-1 yr./$100-$1,000	0-10 yrs./$500-$5,000	0-1 yr./$100-$1,000	0-10 yrs./$500-$5,000

TABLE IV. MARIJUANA PROHIBITION CITATIONS

Jurisdiction	*Anti-Marijuana Statute Citation*	*General Drug Statute Citation (if different from anti-marijuana statute)*	*Most Recent Amendment*
Alabama	ALA. CODE tit. 22, §§232-258 (1958), *as amended*, (Supp. 1969).	Same	1969
Alaska	ALASKA STAT. §§17.10.010-.240 (1953), *as amended*, (Supp. 1970)	Same	1968
Arizona	ARIZ. REV. STAT. ANN. §§36-1001 to -1002.10,-1017 (Supp. 1969).	Same	1961
Arkansas	ARK. STAT. ANN. §§82-1001 to -1020 (1937), *as amended*, (Supp. 1969).	Same	1955
California	CAL. HEATLH & S. CODE §§11530-11533 (West 1964), *as amended*, (Supp. 1970).	Same	1968
Colorado	COLO. REV. STAT. ANN. §§48-5-1 to -21 (1963).	Same	1963
Connecticut	CONN. GEN. STAT. ANN. §§19-443 to -455 (1958). Conn. Pub. Act No. 753, §§ 1-42 (1969).	Same	1969
Delaware	DEL. CODE ANN. tit. 16, §§4701-4722 (1953), *as amended*, (Supp. 1968).	Same	1969
Florida	FLA. STAT. ANN. §§398.01-.24 (1959), *as amended*, (Supp. 1969).	Same	1965
Georgia	GA. CODE ANN. §§79A-802 to -822, -9910, -9911 (Supp. 1969).	Same	1967
Hawaii	HAWAII REV. LAWS §§329-1 to -32 (1968).	Same	1969
Idaho	IDAHO CODE ANN. §§37-2701 to -3321 (Supp. 1969).	Same	1967
Illinois	ILL. ANN. STAT. ch. 38, §§22-1 to -53 (Smith-Hurd 1964), *as amended*, (Supp. 1970).	Same	1970
Indiana	IND. ANN. STAT. §§10-3519 to -3552 (1956), *as amended*, (Supp. 1970).	Same	1969
Iowa	IOWA CODE ANN. §§204.1-.23 (1969), *as amended*, (Supp. 1970).	Same	1969
Kansas	KAN. STAT. ANN. §§65-2501 to -2522 (1964).	Same	1959

Kentucky	KY. REV. STAT. ANN. §§218.010-.245 (1969).	Same	1966
Louisiana	LA. REV. STAT. ANN. §§40.961-.984 (1965).	Same	1963
Maine	ME. REV. STAT. ANN. tit. 22, §§2381-2386 (Supp. 1970).	ME. REV. STAT. ANN. tit. 22, §§ 2361-2380 (1964), *as amended*, (Supp. 1970).	1969
Maryland	MD. ANN. CODE art. 27, §§276-302 (1957)	Same	1964
Massachusetts	MASS. GEN. LAWS ANN. ch. 94, §§197-217E (1958), *as amended*, (Supp. 1970).	Same	
Michigan	MICH. COMP. LAWS ANN. §§335.51-.77 and 335.151-.154 (1967), *as amended*, (Supp. 1970).	Same	1952
Minnesota	MINN. STAT. ANN. §§618.01-.25 (1964), *as amended*, (Supp. 1970).	Same	1957
Mississippi	MISS. CODE ANN. §§6844-6869 (1942), *as amended*, (Supp. 1969).	Same	1966
Missouri	MO. REV. STAT. §§195.010-.210 (1970).	Same	1957
Montana	MONT. REV. CODES Ann. §§54-129 to -138 (Supp. 1969).	Same	1969
Nebraska	Ch. 197, [1969] Neb. Acts	Same	1969
Nevada	NEV. REV. STAT. §§453.010-.240 (1967).	Same	1969
New Hampshire	Ch. 421, [1969] N. H. Laws	Same	1969
New Jersey	N. J. REV. STAT. §§24.18-1 to -47 (1937), *as amended*, (Supp. 1969).	Same	1966
New Mexico	N. M. STAT. ANN. §§54-7-1 to -51 (1962), *as amended*, (Supp. 1969).	Same	1965
New York	N. Y. PENAL LAW §§220.00-.95 (1967), *as amended*, (Supp. 1970).	Same	1969
North Carolina	N. C. GEN. STAT. §§90-86 to -113 (1965), *as amended*, (Supp. 1969).	Same	1969
North Dakota	N. D. CENT. CODE §§19-03-01 to -32 (1960), *as amended*, (Supp. 1969).	Same	1969
Ohio	OHIO REV. CODE §§3719.01-3719.99 (Page 1953), *as amended*, (Supp. 1969).	Same	1969
Oklahoma	OKLA. STAT. ANN. tit. 63, §§451-457 (1961).	OKLA. STAT. ANN. tit. 63, §§ 401-425 and 461-470.12 (1961), *as amended*, (Supp. 1970-71).	1970
Oregon	ORE. REV. STAT. §§474.010-.990 (1969).	Same	1969
Pennsylvania	PA. STAT. tit. 35, §780 (1964), *as amended*, (Supp. 1970).	Same	1963

TABLE IV. MARIJUANA PROHIBITION CITATIONS—CONTINUED

Jurisdiction	*Anti-Marijuana Statute Citation*	*General Drug Statute Citation (if different from anti-marijuana statute)*	*Most Recent Amendment*
Rhode Island	R. I. GEN. LAWS ANN. §§21-28-1 to 21-28-68 (1956), *as amended*, (Supp. 1969).	Same	1962
South Carolina	S. C. CODE Ann. §§32-1461 to -1495 (1962), *as amended*, (Supp. 1969).	Same	1958
South Dakota	S. D. COMP. LAWS ANN. §§39-17-44 to -155 (Supp. 1970).	Same	1970
Tennessee	TENN. CODE ANN. §§52-1301 to -1323 (1966), *as amended*, (Supp. 1969).	Same	1955
Texas	TEX. PEN. CODE art. 725b (1960), *as amended*, (Supp. 1969-70).	Same	1969
Utah	UTAH CODE ANN. §§58-13a-1 to -44 (1963), *as amended*, (Supp. 1969).	Same	1969
Vermont	VT. STAT. ANN. tit. 18, §§4201-25 (1968), *as amended*, (Supp. 1970).	Same	1969
Virginia	VA. CODE ANN. §§54-524.1 to .109 (Supp. 1970).	Same	1970
Washington	WASH. REV. CODE ANN. §§69.40.1-69.40.100	WASH. REV. CODE ANN. §§69.33.010-69.33.060 (1962), *as amended*, (Supp. 1969).	1969
West Virginia	W. VA. CODE §§16-8A-1 to -24 (1966).	Same	1963
Wisconsin	WIS. STAT. ANN. §§161.01 to .275 (1957), *as amended*, (Supp. 1969).	Same	1969
Wyoming	WYO. STAT. §§35-348 to -371 (1957), *as amended*, (Supp. 1969).	Same	1969
District of Columbia	D. C. CODE ANN. §§33-401 to -425 (1968).	Same	1966

TABLE V. STATUTES AMENDED SINCE 1967

Jurisdiction	Year	1ST OFFENSE POSSESSION		1ST OFFENSE SALE	
		Old Statute	*New Statute*	*Old Statute*	*New Statute*
Alabama	1969	5-20 yrs./$20,000 maximum	2-10 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum	5-20 yrs./$20,000 maximum
Alaska	1968	2-10 yrs./$5,000 maximum	0-1 yr./$1,000 maximum or treatment in hospital for 1 yr.	2-10 yrs./$5,000 maximum	0-25 yrs./$20,000 maximum
California	1968	1-10 yrs.	County jail for 1 year maximum or 1-10 yrs.	5-life	5-life
Connecticut	1969	0-10 yrs./$3,000	0-1 yr./$1,000 max. or no more than 3 yrs. custody of comm'r.	5-10 yrs./$3,000	5-10 yrs./$3,000 maximum
Delaware	1969	3-10 yrs./$500-$3,000	0-2 yrs./$500 maximum	3-10 yrs./$500-$3,000	3-10 yrs./$500-$3,000
Georgia	1967	Same	2-5 yrs./$2,000 maximum	Same	2-5 yrs./$2,000 maximum
Hawaii	1969	0-5 yrs.	0-5 yrs.	To a minor 0-20 yrs./$1,000 max. otherwise, 0-10 yrs./$1,000 maximum	0-20 yrs./$2,000 maximum
Idaho	1967	1-14 yrs./$1,000 maximum	0-10 yrs.	1-14 yrs./$1,000 maximum	0-10 yrs.
Illinois	1970	2-10 yrs./$5,000 maximum	Less than 2.5 grams 0-1 yr./$1,500 max. over 2.5 grams, 2-10 yrs./$5,000 maximum	10-life	10 yrs.-life
Indiana	1969	2-10 yrs./$1,000 maximum	2-10 yrs./$1,000 maximum	5-20 yrs./$2,000 maximum	5-20 yrs./$2,000 maximum
Iowa	1969	2-5 yrs./$2,000 maximum	Personal use, 0-6 mos./$1,000 max., otherwise, 2-5 yrs./$2,000 max.	2-5 yrs./$2,000 maximum	10-20 yrs./$2,000 maximum
Maine	1969	2-8 yrs./$1,000 maximum	0-11 mos./$1,000 maximum	2-8 yrs./$1,000 maximum	To people over 21, 1-5 yrs.; to people 18-20, 2-6 yrs.; To people under 18, 3-8 yrs.
Montana	1969	1-5 yrs.	5 yrs. max. Person under 21 gets deferred imposition of sentence	1-5 yrs., 5-life for sale to minor	1 yr.-life. Person under 21 gets deferred imposition of sentence for 1st offense

TABLE V. STATUTES AMENDED SINCE 1967—CONTINUED

		1ST OFFENSE POSSESSION		1ST OFFENSE SALE	
Jurisdiction	*Year*	*Old Statute*	*New Statute*	*Old Statute*	*New Statute*
Nebraska	1969	2-5 yrs./$3,000 maximum	25 or more cigarettes-1-5 yrs.; less than 25-7 days	2-5 yrs./$2,000 maximum	2-5 yrs.
New Hampshire	1969	2-5 yrs./$2,000 maximum	1 yr. maximum/ $500 maximum	5-10 yrs./$2,000 maximum	10 yrs. maximum/ $2,000 maximum
Nevada	1967	2-5 yrs./$2,000 maximum	1-6 yrs./$2,000 maximum	To 21 yr. old or over, 20-40 yrs.; to under 21 yrs., life/$10,000	To 21 yrs. or over, 1-20 yrs./$5,000 maximum; to under 21 yrs., life/$5,000
North Carolina	1969	0-5 yrs./$1,000 maximum	Misdemeanor at discretion of court	0-5 yrs./$1,000 maximum	0-5 yrs./$1,000 maximum
North Dakota	1969	0-5 yrs./$2,000 maximum	6 mos. min. county jail/ $2,000 max. or 0-2 yrs./ $2,000 maximum	0-5 yrs./$2,000 maximum	6 mos. min. county jail/ $2,000 max. or 0-2 yrs./ $2,000 maximum
Ohio	1969	2-15 yrs./$10,000 maximum	2-15 yrs./$10,000 maximum	2-15 yrs./$10,000 maximum	20-40 yrs.
Oregon	1969	0-10 yrs./$5,000 maximum	0-1 yr./$5,000 max. or 0-10 yrs./$5,000	0-10 yrs./$5,000 maximum	0-1 yr./$5,000 max. or 0-10 yrs./$5,000 maximum
South Dakota	1970	0-90 days/$500 maximum	Less than 1 oz.-0-1 yr. county jail/$500 max. More than 1 oz.-2-5 yrs./$5,000 maximum	0-20 yrs.	5-10 yrs./$5,000 maximum
Texas	1969	2 yrs.-life	2 yrs.-life	2 yrs.-life	5 yrs.-life
Utah	1969	0-5 yrs./$1,000 minimum	6 mos. min. in county jail	0-5 yrs./$1,000 minimum	5 yrs.-life
Vermont	1969	N/A	0-6 mos./$500 maximum	N/A	0-5 yrs./$10,000 maximum
Virginia	1970	3-5 yrs./$1,000 maximum	0-12 mos./$1,000 maximum	3-5 yrs./$1,000 maximum	1-40 yrs./$25,000 maximum
Washington	1969	5-20 yrs./$10,000 maximum	0-6 mos./$500 maximum	5-20 yrs./$10,000	3-10 yrs./$5,000 maximum
Wisconsin	1969	2-10 yrs.	0-1 yr./$500 maximum	2-10 yrs.	0-5 yrs./$5,000 maximum
Wyoming	1969	2-5 yrs./$2,000 maximum	0-6 mos./$1,000 maximum	2-5 yrs./$2,000 maximum	0-10 yrs.

APPENDIX B: BIBLIOGRAPHY

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Control of Marihuana, Alcohol, and Tobacco

This chapter traces the legislative histories of marihuana, alcohol, and tobacco.

In the first section, "History of Marihuana Legislation," the origins of the intoxicant use of cannabis in this country during the early 20th century are noted along with the subsequent state and federal statutes enacted prohibiting use, distribution, production and sale.

Proscriptions began appearing on the books after about 1914 and continued through 1971, which brings the reader to the point subsequently covered by the rest of this Appendix.

Early colonial laws regarding alcohol are described in the beginning of the next section, "History of Alcohol Prohibition." From that point in history, the national movements which spread over the next two centuries, culminating in the enactment of National Prohibition from 1920 to 1933, are described.

The various state modes of control which appeared after Repeal are then briefly enumerated along with a discussion of the present state controls over production, distribution, and sale of intoxicating beverages.

The introduction of tobacco cultivation in 1613 in the colony of Virginia opens the third section, "History of Tobacco Regulation." The widespread use of tobacco in the latter 1800's into the first half of the 20th century is traced along with the increasing pressure from groups fearful of tobacco's deleterious effects on health.

Federal sumptuary regulations are outlined along with a discussion of the impact further federal controls might have on the tobacco economy.

History of Marihuana Legislation*

"Marihuana" or Indian hemp, labeled *Cannabis Sativa L.* by Linneas in 1753, has been used for centuries in Asia and Africa for its intoxicant properties. It was cultivated as a source of fiber in North America in the early 17th century. Yet, cannabis was not used as an intoxicant in North America until the late 19th century, and in the United States until the early 20th.

Cannabis use was prevalent in Mexico by 1898. Widely cultivated and growing wild, the drug was readily available for eating, drinking, or smoking, the latter being by far the most common method of ingestion. Soldiers in Pancho Villa's army are reputed to have used the drug freely. The path of the introduction of marihuana smoking for pleasure into the United States was not via Europe, which transmitted the fiber, oil, and medicinal uses of hemp, but via Mexica and the West Indies.

The plant and its intoxicant use in the United States in the first decades of the 20th century encountered a political and social climate which was not particularly conducive to hearty growth. Gradually criminal prohibitions appeared on the statute books of nearly every state where the drug was used.

Well into the thirties, however, marihuana smoking attracted little attention from the national policy and opinion apparatus which was deeply ensnared in drug matters of much wider social impact than the limited, regional use of this new drug.

The "villian" theory of American marihuana prohibition—attributing the drug's illegal status to the Federal Bureau of Narcotics and its longtime head, Harry J. Anslinger—has been particularly popular in recent years.

Although the federal narcotic bureaucracy, with Commissioner Anslinger at the helm, was to become marihuana's leading antagonist in the midthirties, a restrictive public policy toward the drug was well-rooted locally before that time. During the "local" phase of marihuana prohibition, lasting roughly from 1914 to 1931, practically every state west of the Mississippi, except for two, had prohibited use of the drug for non-medical purposes.

The real story of marihuana policy in the United States begins as a series of distinctly local tales.

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*This section is drawn from the manuscript of *The Marihuana Consensus: A History of American Marihuana Prohibition*, in press 1972, by Professors Charles H. Whitebread II, and Richard J. Bonnie of the University of Virginia Law School.

Marihuana use was a familiar phenomenon in the border towns of Texas and New Mexico after 1910. First to note the use of the drug were El Paso law enforcement officials who quickly secured a local ordinance in 1914 banning sale and possession of the drug. El Paso officials and local representatives of the Customs and Agriculture Departments of the Federal Government agitated for state and federal legislation to combat the "killer weed."

After an official request by the Secretary of Agriculture, the Secretary of the Treasury issued a decision under the Food and Drug Act prohibiting importation of cannabis after 1915 for other than medical purposes.

On the state level in Texas, legislation was slow in coming. Marihuana use was still a local problem in the border towns and it attracted little statewide interest. The Texas Legislature included marihuana when it passed a general narcotics statute in 1919, prohibiting transfer of listed narcotics except for medical purposes (Texas, 1919: 278). In 1923, the statute was tightened to prohibit possession with intent to sell (Texas, 1923: 156–157). The legislature's failure to prohibit simple possession or use reflected an objection to interfering with private conduct.

The degree of public interest in narcotics and marihuana is well-illustrated by the limited newspaper coverage. In its only direct reference to the 1923 marihuana legislation, the *Austin Texas Statesman*, which had given the legislature extensive coverage, stated:

"The McMillan Senate Bill amended the anti-narcotic law so as to make unlawful the possession for the purpose of sale of marihuana or other drugs. Marihuana is a Mexican herb and is said to be sold on the Texas-Mexican border (*Austin Texas Statesman*, 1923.)"

Even more surprising is the fact that the *El Paso Times* did not mention the McMillan bill before or after its passage.

New Mexico in the same year prohibited sale, cultivation and importation of cannabis. Mere possession was not expressly prohibited but anyone found in possession was presumed to have imported the marihuana illegally (New Mexico, 1923: 58–59). The *Santa Fe New Mexican*, hometown newspaper of the bill's sponsor, paid scant attention, noting only that:

"The Santa Fe representative, however, had better luck with his bill to prevent sale of marihuana, cannabis indica, Indian hemp or hashish as it was variously known. This bill was passed without any opposition. Marihuana was brought into local prominence at the penitentiary board's investigation last summer when a convict testified he could get marihuana cigarettes anytime he had a dollar. The drug produces intoxication when chewed or smoked. Marihuana is the name commonly used in the Southwest and Mexico (*Santa Fe New Mexican*, 1923)."

In addition to coming in via Mexico, marihuana was being smuggled in by sailors from Cuba and other points in the Indies via New Orleans. Dr. Frank Gomila, Commissioner of Public Safety of New Orleans, began his campaign for federal legislation which would later bear fruit. He observed that the traffic was quite organized amounting to thousands of kilograms a year:

". . . [T]he custom was to keep [marihuana] in warehouses or storerooms for further distribution. It was sold by the wholesaler to the retailer who in turn put the 'weed' through a process known as 'sweating.' The dried leaves and stems were soaked in sugar water and dried on butcher's brown papers (Gomila and Lambow, 1938: 29)."

According to Dr. Gomila and the newspapers, the demand in New Orleans in the mid-twenties was so great that the "peddlers" were able to become exceptionally prosperous by dividing the market. One had exclusive jurisdiction over the blacks unloading the fruit boats, another over the lobby in a certain hotel, and so forth. It should be noted that marihuana was also available at the local pharmacy without a prescription before 1923 in Texas and 1924 in Louisiana. After that marihuana had to be bought on the street unless the user could successfully forge a prescription.

Different pictures emerge of the marihuana user in El Paso and San Antonio on one hand and New Orleans and Galvestton on the other. In the border towns, he was a Mexican laborer, indolent to some, volatile to others. Local authorities were, by and large, unable to generate any significant public or political interest, although there were no political objections to making the Mexican weed illegal.

In the port cities, however, the marihuana user was a "dope fiend," the basest element of American society. He was a narcotics addict, a pimp, or a gambler; she was a prostitute. In New Orleans, marihuana was simply another narcotic in a city with a major narcotic problem. It was always open to sensationalism.

Even before public attention was excited, however, the prevalence of marihuana use came to the attention of the President of the Louisiana State Board of Health, Dr. Oscar Dowling. On August 21, 1920, he advised the Government of the increasing availability of marihuana, a "powerful narcotic, causing exhilaration, intoxication, delerious hallucinations, and its subsequent action, drowsiness and stupor. . . ." (Jones, 1920).

At the same time, Dr. Dowling wrote to the Surgeon General of the United States, Dr. Hugh Cummings, to advise him of the increasing traffic in morphine, opium, and marihuana, and to seek federal cooperation.

An interesting sidelight of this request for assistance from Washington is that four months later Dr. Dowling was to become embroiled in a bitter battle with the Federal Government over an order to close his pet project, the New Orleans morphine clinics (Dowling, 1920). Ultimately he would lose, and one of the earliest attempts to deal with narcotics addiction would be suppressed for a half-century (Lindesmith, 1967: 135–161).

Very little, however, was done about the marihuana issue until the press seized upon it. In the fall of 1926, the *New Orleans Item* dispatched an army of reporters among the smoking and selling population.

A series of articles published by the more widely circulated *Morning Tribune* (both the *Item* and the *Tribune* were owned by the same publishing company) exposed the immense profits being made and commented upon the volatile effects of the drug upon its "addicts." It was reported that marihuana:

"Numbs the sense, creates wild fancies and has a hypnotic effect upon the user, making his will easily subordinated to that of others."

What emerged from these articles, however, was not a vision of addicts on the streets and pushers on the docks but rather peddlers who lurked on playgrounds seeking to entrap young minds. "Over two hundred children under fourteen are believed to be addicted to the marihuana habit," the paper reported, and "at least 44 schools were definitely being infected" (Gomila and Lambow, 1938:29–31).

Local policy-makers wasted no time. The New Orleans Police Department immediately launched a round-up. They arrested more than 150 persons for violation of a law which had lain dormant for two years (Gomila and Lambow, 1938: 20–31; WCTU, 1928).

Dr. Dowling soon circulated "a warning to parents, guardians, and teachers of children against this menace" (WCTU, 1928: 1). The Women's Christian Temperance Union jumped on the bandwagon, focusing its attacks on the "soft drink" bars which had sprung up all over New Orleans during Prohibition:

"The soft drink stand and the corner drug store have taken the place of the saloon as a social meeting place. Here is where marihuana and liquors can sometimes be bought (WCTU, 1928: 3)."

Beyond these immediate effects, a more substantial impact of the local policy reaction in New Orleans was the formation of a tightly knit coterie of New Orleans law enforcement, public health, and social welfare officials who would carry their campaign to Washington, with ultimate success.

The drug and the practice of smoking it spread during the mid-twenties from the Gulf Coast and border town points-of-entry in two directions—north and west from the border together with its ethnic identity and north and east from New Orleans with its identity as a narcotic and enslaver of youth.

Practically every state west of the Mississippi River prohibited the possession or sale of marihuana during the period 1915 to 1930. Most of them acted by 1930: California (1915), Iowa (1921), Nevada (1923), Washington (1923), Arkansas (1923), Nebraska (1927), and Wyoming (1929).

The Bureau of Immigration records the entry of 590,765 Mexicans during this period, two-thirds of them remaining in Texas, the others settling in states in the Rocky Mountain area, most of them as farm laborers (U.S. Bureau of Immigration, 1915 to 1930).

Whether motivated by outright ethnic prejudice or by simple discriminatory disinterest, the proceedings before state legislators resembled those in Texas in 1923. There was little, if any, public attention and no debate. Pointed references were made to the drug's Mexican origins and sometimes to the criminal conduct which inevitably followed when Mexicans ingested the "killer weed."

The Colorado Legislature first prohibited possession, cultivation and sale of the drug in 1927, the year after the use of marihuana noticeably increased Colorado, 1927: 309). At that time, according to a subsequent newspaper report, the drug was "used almost exclusively . . . by the Mexican population employed in the beet fields" (*Rocky Mountain News*, 1931).

Similarly, in 1929, the Montana Legislature amended its general narcotic law to include marihuana, prohibiting use, sale or possession without a prescription (Montana, 1929: 5). On seven different days from June 24 to February 10, the date of the bill's passage, the *Montana Standard* succinctly noted the progress of the bill through the legislature. The legislature's attitude was characterized in the January 27 issue:

"There was fun in the House Health Committee during the week when the marihuana bill came up for consideration. Marihuana is Mexican opium, a plant used by Mexicans and cultivated for sale by Indians. "When some beet field peon takes a few rares of this stuff," explained Dr. Fred Fulsher of Mineral County, "he thinks he has just been elected President of Mexico so he starts out to execute all his political enemies. I understand that over in Butte where the Mexicans often go for the winter they stage imaginary bullfights in the 'Bower of Roses' or put on tournaments for the favor of 'Spanish rose' after a couple of whiffs of marijuana The Silver Bow and Yellowstone delegations both deplore these international complications." Everybody laughed and the bill was recommended for passage (*Montana Standard*, 1929:3)."

About the same time, Mexican laborers had begun to appear in Idaho and the mayor of Boise remarked:

"The Mexican beet field workers have introduced a new problem—the smoking in cigarette or pipes of marihuana or grifo. Its use is as demoralizing as the use of narcotics. Smoking grifo is quite prevalent along the Oregon Short Line Railroad: and Idaho has no law to cope with the use and spread of this dangerous drug (WCTU, 1928: 3)."

Idaho passed a law in 1927 (Idaho, 1927: 98). By 1931, the Texas Legislature finally got around to prohibiting possession of marihuana. By now alcohol prohibition had withdrawn any philosophical barrier to making possession illegal. The *San Antonio Light* reported that:

"At last the state legislature has taken a definite step toward supression of traffic in a dangerous and insanity-producing narcotic easily compounded of a weed (marihuana) indigenous in this section. This newspaper has urged the passage of prohibitory legislation and is gratified that the solons at Austin have acted, even if tardily, in the suppression of traffic in a drug which makes the addict [read Mexican] frequently a dangerous or homicidal maniac (*San Antonio Light*, 1931)."

In the East, appearance of the practice was not a necessary prerequisite for prohibition. That Maine (1913), Massachusetts (1914), Vermont (1915), and Rhode Island (1918) barred the sale of cannabis without a prescription before 1920 does not indicate that marihuana smoking had appeared there on any significant scale. Rather, in the course of anticipating and implementing the national anti-narcotics policy declared by the Harrison Act in 1914, medical representatives on the drafting committees recommended the inclusion of "another narcotic" to which addicts could resort once the other opiates became difficult to obtain.

The *New York Times* in 1914 described cannabis as a "narcotic [having] practically the same effect as morphine and cocaine," (*New York Times*, 1914:8) and it noted in an editorial that:

"[T]he inclusion of cannabis indica among the drugs to be sold only on prescription is only common sense. Devotees of hashish are now hardly numerous enough here to count, but they are likely to increase as other narcotics become harder to obtain (*New York Times*, 1914:8)"

By 1923, the *New York Times* referred to marihuana as the city's "latest habit-forming drug" when reporting its exhibition at a Women's Club meeting (*New York Times*, 1923: 24). Finally, in 1927, whether responding to an increase in use or to the substitution admonition, the legislature included marihuana in its definition of "habit-forming drugs" in a comprehensive narcotics bill (New York, 1927: 1965).

The situation in Chicago paralleled that in New York until 1927. Large Mexican communities developed in Chicago and Gary, Indiana, during the twenties and marihuana smoking became common in these areas and among journey-

men musicians as well. As in New York, there was little public concern. The New Orleans patern took over around 1927, however, when the attention of local law enforcement officials was suddenly drawn to the Mexicans and their "muggles." One law enforcement official reported that:

"There are about 7,000 Mexicans in Gary, 10,000 in Indian Harbor and 8,000 in South Chicago. . . . The Mexicans depend on the steel mills, railroads, and construction gangs for employment. Many are drifters when slack labor conditions prevail. . . . [T]wenty-five percent of these Mexicans smoke marihuana. In fact, many of them make their living by raising and peddling the drug (Paul: 1929: 4)."

A situation perceived to be so widespread was naturally considered likely to infect the rest of the community. As in New Orleans, reports started to appear that high school students were smoking the weed (Paul, 1929: 1; *Chicago Tribune*, June 3, 1929).

Since there was then neither state nor federal legislation prohibiting sale of marihuana, the local United States attorney declared war armed with an Internal Revenue statute prohibiting production and transfer of "a cigarette substitute" on which tax had not been paid. In June 1929, he raided wholesale houses "believed to have disposed of large quantities of marihuana cigarettes, sold to school pupils and other youthful thrill-seekers." He arrested nine men "most of them Mexicans" (*Chicago Examiner*, June 22, 1929). At the same time, local officials began to use a statute which prohibited transfer of "any cigarette containing any substance deleterious to health" (*Chicago Examiner*, June 19, 1929).

The *Chicago Tribune*, lobbying heavily for anti-marihuana legislation then pending before the Illinois Legislature, reported the day-to-day progress of the enforcement activity (*Chicago Tribune*, July and October, 1929). Every stall in the legislature earned a banner heading such as:

Ban on Hashish Blocked Despite Ravages of Drug

In an article appearing in June, 1929, the paper noted:

"The number of addicts is growing alarmingly according to authorities, because of the ease with which [marihuana] can be obtained. The habit was introduced a dozen years ago by Mexican laborors . . . but it has become widespread among American youths and girls even among school children."

The legislation, however, was killed.

Marihuana prohibition had become widespread. In states where either Mexicans or the drug had appeared, its use was quickly suppressed.

Soon after being apprised of its presence, local lawmakers invoked the criminal law. In New Orleans, Denver, and Chicago the spectre of a doped school population was the cornerstone of the prohibitory effort.

And, during alcohol prohibition, paralleled by the local phase of marihuana prohibition, it was naturally imperative to suppress a drug which frustrated alcohol users might substitute for their customary intoxicant.

THE UNIFORM NARCOTICS DRUG ACT

Following the *ad hoc* local phase of marihuana legislation in the United States was the nationalization phase. During this period marihuana became integrated at both the state and federal levels with the nation's narcotics policy which had been manifested forcefully in Congress' adoption of the Harrison Narcotics Act in 1914.

The Harrison Act, a taxing measure, required registration and payment of an occupational tax by all persons who imported, produced, dealt in, sold or gave away opium, cocaine or their derivatives. The Act required all legitimate handlers of these narcotics to file returns setting forth in detail their use of the drugs.

Since the Act also provided that only legitimate users could register and no one but a registered user could obtain the specified form, any transfer by an illegitimate user was a violation of the Act. For those failing to comply with its registration requirements, the original Harrison Act provided penalties of not more than $2,000 in fines or more than five years imprisonment, or both.

Drafted as a tax law rather than an outright criminal statute, the Act was intended to do indirectly what Congress believed it could not do directly: regulate possession and sale of the opiates. However, because the Act essentially was a revenue-raising measure imposing a tax on transfers of narcotics, it could not effectively prohibit the possession of drugs.

This indirect regulation of narcotics traffic had a number of significant consequences. First, since the Act could not penalize users of addiction directly, there was an immediate need for complementary residual state legislation in order to deal effectively with the drug problem.

Second, the enforcement of the Act was assigned to the Internal Revenue Service in the Treasury Department. The first enforcement agency for the Harrison Act was the Narcotics Division of the Prohibition Unit of the Internal Revenue Service created in 1920 (Schmeckebier, 1920: 43). This division was incorporated in the Prohibition Bureau which was created in 1927 (Act, 1927: 1381).

In 1930, the enforcement of the narcotics laws was severed from the Bureau of Prohibition and established as the separate Bureau of Narcotics in the Treasury Department (Act, 1930: 585). The existence of this separate agency has done as much as any single factor to influence the course of drug regulation from 1930 to 1970 (King, 1953: 736).

Although the impact of the Bureau on the passage of the Uniform Narcotic Drug Act and the Marihuana Tax Act will be explained in detail in subsequent sections, it is important here to note that the existence of a separate bureau having responsibility only for narcotics enforcement and for educating the public on drug problems inevitably led to a particularly pro-centorial view of narcotics addiction and the use and abuse of all drugs.

After the passage of the Harrison Act in 1914, there remained a considerable lack of uniformity regarding the offenses prohibited and the penalties imposed by the several states.

In 1919, the American Medical Association asked the Commissioner of Internal Revenue to call a conference to consider better control of traffic in narcotic drugs. The profession was uncertain of its obligations in the matter because they were faced with an amalgam of conflicting laws. The A.M.A. asked that the wholesale, retail, and manufacturing drug interests be among those attending, along with delegates from the medical profession in each state. The proposal received no official or unofficial response either from the Commissioner of Internal Revenue or the Bureau of Prohibition.

Nevertheless, the American Medical Association, through its own Council on Health and Public Instruction, did hold a conference in early 1922 during which a uniform state narcotic control law was presented. At the November meeting of that conference, there were present 15 representatives of 10 pharmaceutical organizations and two representatives of the medical profession.

The draft of a uniform law was approved unanimously by all present. The American Medical Association set out to codify the draft and to send it for approval to each of the constituent organizations (White, August 3, 1932; Woodward, August 6, 1932). After securing approval, all the associations agreed to pursue enactment first in New York.

The general lack of uniformity in anti-narcotics legislation, the weakness of state enforcement procedures, and the growing hysteria about dope fiends and criminality converged in several requests outside the medical community for a uniform state narcotic law (Anslinger and Tompkins, 1953: 159).

The drafting of the Uniform Narcotic Drug Act must also be viewed against the background of two larger movements: (1) the trend toward the creation and dissemination of uniform state laws by the National Commissioners on Uniform State laws, a group to which each state sent two representatives appointed by the governor; and (2) the general concern in the late 1920's and early 1930's with interstate crime, manifested, for example, by the creation in 1930 of the nearly autonomous Federal Bureau of Investigation. Because the concept of States' rights and narrowly construed federal power was then so powerful, an appeal to the National Commissioners was the inevitable recourse for those pressing for uniform anti-narcotic regulation.

DRAFTING THE UNIFORM ACT

By 1924, the Commissioners had appointed a Committee to draft a uniform narcotic drug act. At the 1925 meeting of Commissioners, the chairman of the Committee reported that he himself had prepared a first tentative draft based on the New York Act, the Washington state legislation, the Harrison Act, and a bill then before the New York Legislature. Presumably this was the one drafted by the A.M.A. Conference after its 1922 meeting.

The chairman noted, however, that Dr. William Woodward, head of the A.M.A.'s Bureau of Legal Medicine and Legislation, with whom he had only recently conferred, had made "some very valuable suggestions." Because the tentative draft had already been printed before these suggestions, he requested that it "not be read but re-committed to the Committee" (*1925 Handbook:* 977–985). This first draft included cannabis in the list of "habit-forming drugs," although all such drugs could be distributed and used for medical purposes (*1925 Handbook:* 978).

A second tentative draft was presented in 1928 and again the draft was not discussed at the conference but recommitted for further study. The second draft was essentially an exact copy of the 1927 New York Statute. It also included cannabis in the class of habit-forming drugs (*1928 Handbook:* 75–78, 323–333).

There was a lack of concern on the part of the Commissioners themselves with the whole narcotics problem between 1924 and 1928. The President of the Conference, introducing Dr. Woodward, said:

"In view of the importance of the act I think it would not be amiss to listen to the Doctor for a few minutes, that he may point out to us why it is imporant. In some of the states we do no recognize the importance because it has not been called to our attention (*1928 Handbook:* 76–77)."

Nor was the Bureau of Prohibition particularly concerned at this time with the cannabis provision. Lack of official concern and interest continued to be the Bureau's attitude toward the second tentative draft (Nutt, June 13, 1929).

Since neither the Commissioners nor federal narcotics officials were particularly concerned about state and local control of narcotics generally, and marihuana in particular, it seems clear that neither was responsible for the inclusion of marihuana in the category of "habit-forming drugs." Rather, it would appear that it was included in the first draft because that had been drawn from the 1923 Washington statute which had listed cannabis.

Insofar as the second draft was a copy of the 1927 New York Act, inclusion of cannabis in this draft is not unusual. Few, if any, of the persons involved in the drafting were concerned about marihuana smoking or even aware of its use.

Two third drafts were submitted, the first in 1929 and the second in 1930. The initial one closely resembled the second tentative draft, and once again it included cannabis in the category of "habit-forming drugs." Again, the growth, distribution, and possession of cannabis was prohibited except for medical purposes.

The nascent Congressional interest in marihuana in 1929 and the Bureau of Prohibition's subsequent resistance to amending, and thereby endangering, the Harrison and Export and Import Acts, caused the Bureau to take full notice of this 1929 third draft. Like its predecessors, however, the initial third draft was recommitted for further study (*1929 Handbook:* 43, 332–346).

The second third tentative draft, submitted in 1930, was the first to remove cannabis from the definition of "habit-forming drugs" and to include only a supplemental provision for dealing with the drug (*1930 Handbook:* 485, 97).

When the Conference of Commissioners met to consider the second third tentative draft, Judge Deering, the Chairman of the Committee on the Uniform Narcotic Drug Act, recommended its recommission for further study because the Committee had not yet had an opportunity to consult the newly created Bureau of Narcotics.

At the time of this conference, August 14, 1930, no one had yet been appointed Commissioner of the Bureau, although Harry J. Anslinger was Acting Commissioner (*1930 Handbook:* 126–127). The Senate confirmed Anslinger's appointment as Commissioner on December 18, 1930.

The Bureau of Narcotics then became actively involved in the drafting process. Commissioner Anslinger was pressing for inclusion of the cannabis provision. He stated that he felt the limited medical use for cannabis was far outweighed by the need to control potential cannabis addiction (Anslinger, July 28, 1930).

Dr. Woodward and the pharmaceutical industry advocated optional inclusion of marihuana on the one hand, and federal narcotics representatives urged not only inclusion but elimination of medical use, on the other.

The fourth tentative draft retained the optional cannabis provision. At a session before the convening of the full Conference of Commissioners from September 9–12, 1931, Commissioner Anslinger and A. L. Tennyson of the Bureau met with Judge Deering to discuss the Bureau's feelings about the fourth tentative draft.

At this time Commissioner Anslinger stated that the Bureau felt strongly that inclusion of cannabis in the state law ought to be mandatory. Moreover, the Bureau urged that the only successful way to deal with the marihuana drug traffic, because of its domestic nature and the easy availability of the weed, was to prohibit the cultivation of the plant altogether and to find some substitute for its limited medical use (Tennyson, September 16, 1931). However, the fourth tentative draft presented to the Conference of Commissioners included the optional marihuana provision. And, the Conference tentatively approved the fourth tentative draft and directed the Committee to prepare a final draft (*1931 Handbook:* 127–128, 390–402).

The American Medical Association played a key role in the drafting process prior to 1931. Their efforts had been largely responsible for consideration of the Uniform Drug Act in the first place. From the beginning in 1925, Dr. William Woodward, the Director of the A.M.A.'s Bureau of Legal Medicine and Legislation, actively assisted in the drafting of the Act and widely circulated the drafts to interested persons for their comments.

It appears, however, that Dr. Woodward's personal style and the preeminent position of the American Medical Association in the drafting process were resented by the two remaining interest groups—the Federal Bureau of Narcotics and the retail and wholesale pharmaceutical associations. The Bureau had been commenting on drafts only *after* they had been drawn by the A.M.A. and did not feel it was playing an active role in the drafting process. The pharmaceutical industry felt that their interests were considered only peripherally and that they had been excluded from the heart of the drafting process.

As a result of the dissent, a conference of interested parties was scheduled before the final draft was to be presented to the Conference of Commissioners.

Present at this preliminary conference on September 15, 1932, were representatives of the Drug Committee, the Federal Bureau of Narcotics, the Department of State, the Public Health Service, the American Medical Association, and delegates from the drug industry and other medically-related industries and organizations. *The final version of the Uniform Narcotic Drug Act was hammered out at this session.* The Bureau was central to the drafting process and Commissioner Anslinger made a major effort to involve the drug manufacturers and the wholesale and retail drug trade in it to protect the Act from possible subsequent political disagreement (Anslinger, August 1, 1932). Finally, the conference agreed on a draft to be presented to the National Conference.

The manufacturers of drug products were strongly opposed to the inclusion of cannabis under any criminal regulatory scheme. Representatives of the industry opposed a mandatory cannabis provision. The final conclusion reached by all the parties present was:

"After considerable comment, it was decided to eliminate Section 12 (Cannabis) and leave it to the Conference of Commissioners as to whether it should be included under the general provisions of the Act (Report of Preliminary Conference, 1932: 23)."

The Bureau was no longer insisting on the mandatory inclusion of an absolute marihuana prohibition; it did not want to risk the opposition of the drug industry to the entire Act.

The fifth tentative draft did, however, include a significant change in form which would have important consequences in the decades to come. Although the marihuana provision remained supplemental to the main body of the Act, any state wishing to regulate the sale and possession of marihuana was instructed simply, to add cannabis to the definition of "narcotic drugs." All the other provisions of the Act would then apply to marihuana as well as to the opiates and cocaine. The Commissioners adopted this form as it had been prepared at the September 15, 1932, preliminary Conference.

The only recorded opposition to the adoption of the final draft came from some Commissioners who objected to tying the Uniform State Law to the terms of the federal Harrison Act. This last obstacle was overcome by the argument that a number of states already had passed such legislation so that the states' rights problem need not stand in the way. The Act was adopted 26 to 3 (*1932 Handbook:* 107).

ENACTMENT OF THE UNIFORM ACT BY THE STATES

After final acceptance of the Uniform Act, the Bureau set to work at once to secure state enactment—including an adequate marihuana provision. A com-

prehensive campaign was undertaken in the press, in legislative chambers, and in any other forum to gain public support for the Uniform Act.

In addition, perceiving the absence of public awareness of marihuana and needing to encourage positive action to overcome the drug's optional status, the Bureau also sought to arouse public interest in marihuana through "an educational campaign describing the drug, its identifications and its evil effects" (Federal Bureau of Narcotics, 1937: 59).

That there was little general knowledge about cannabis is illustrated by the fact that as late as 1934, it was necessary to show marihuana to the New York police so that they could recognize it growing or in dried, smokable form (*New York Times*, 1931:6).

The Bureau's district supervisors and local agents were campaigning actively in the legislatures before which the Act was pending. A press campaign was conducted across the country to gain the support of civic groups and other interested parties. Mr. Anslinger sought editorial support in newspapers (Anslinger, October 22, 1936) and assisted in the drafting of articles for popular magazines (Anslinger, December 23, 1936). To mobolize the Bar, Bureau officials wrote an article for law journals explaining the need for the Uniform Narcotic Drug Act (Anslinger, 1932: 52; Tennyson, 1932: 55).

Despite these efforts, it appears that the Uniform Act had a rough time in state legislatures during its early life. By April 26, 1933, only two states had enacted it in full. As late as March 1935, only 10 states had enacted the Uniform Law.

A number of significant objections had emerged in the state legislatures considering the passage of the Uniform Narcotic Drug Act. First among these was the potential cost to the state of enforcing the Act. Second, there was concern over the number of registrants who would have to be licensed due to the belief that the Uniform Act would require special licensing of doctors, dentists, and veterinarians. Third, the limit on the amount of exempt preparations which could be sold caused a great deal of technical difficulty with the Act. Fourth, many criticized the right of the court to revoke or suspend the license to practice medicine or pharmacy. And finally, there seemed to be widespread misunderstanding of the record-keeping requirements of the Act.

Although these objections were largely administrative, they nevertheless posed what appeared to be serious stumbling blocks to the successful passage of the Uniform Law in all the states.

The combination of public apathy and administrative resistance necessitated a new approach in generating public interest. Beginning in late 1934, Commissioner Anslinger gradually shifted the focus of the FBN's educational campaign away from the inability of federal law enforcement agencies to deal effectively with the local drug problems to the need to cope with the new drug menace—marihuana.

The clearest reflection of the change in Bureau policy is found in two official statements of Commissioner Anslinger, one made in 1933 and the other in 1936.

The 1933 statement explains the need for a Uniform Narcotic Drug Law and emphasizes United States international obligations, the need for more effective coordination in law enforcement, and the impact the law will have on the dangers of morphine, cocaine, and opium addiction (FBN Paper, July 1933). In the later statement, however, more than half of the time is devoted to a discussion of the "worst evil of all," the marihuana problem.

To aid the new approach's objective, Commissioner Anslinger made speeches and contributed articles to journals. The most influential of his effort was "Marihuana—Assassin of Youth" which appeared in the widely circulated *American Magazine* in July 1937 (Anslinger and Cooper, 1937).

The FBN files contain more than 50 letters addressed to the Commissioner which say: "Your article was the first time I ever heard of marihuana."

Among the most effective proponents of the Uniform Act was the Hearst newspaper chain. These papers began editorializing in favor of enactment within days after the Act had been approved in 1932.

The Hearst chain was not alone. A Birmingham, Alabama, paper on August 22, 1935, emphasized the need to control marihuana as a reason for adopting the Act (*Birmingham Age-Herald*, August 22, 1935). A *Washington Post* columnist in September, 1934, devoted three-quarters of his article to marihuana with quotes from Anslinger and Stanley urging adoption of the Uniform Act (*Washington Post*, September 20, 1934).

Other large-city newspapers such as the *Cleveland Plain Dealer* and the *St. Louis Star Times* kept a steady, if intermittent, stream of anti-marihuana articles flowing in the period just before the passage of the Uniform Act in those areas. In Missouri, especially, local concern generated by the extensive coverage in the *Star Times* speedily pushed the legislature to adopt the Uniform Act.

Often it has been supposed on the basis of this increased coverage that the use of marihuana increased around 1935. Since there was some larger design involved, however, a firm conclusion is unwarranted. At the same time, it is possible that use did spread after the publicity campaigns, especially among the young.

Judging from the tremendous expansion in coverage by the *New York Times* beginning in 1935, the evidence supplied by the LaGuardia Commission in its 1944 Report and the leap in enforcement activity, marihuana finally came to New York City in the 1930's, though then probably on a smaller scale than in Denver and the border towns of Texas.

Apart from the press, another influential participant in the marihuana campaign, especially after the Repeal of Prohibition, was the Women's Christian Temperance Union. Although the WCTU had distributed a pamphlet on marihuana as early as 1927, their publication, the *Union Signal*, does not reflect any significant interest either in the Uniform Act or marihuana until 1934. Before that year the "narcotic" receiving the most attention was nicotine. Beginning in 1936, however, the *Union Signal* had a direct line to the FBN national office, and from then on every issue contained material on marihuana (WCTU bound volumes, yearly).

The World Narcotic Defense Association and its head, Richmond P. Hopson, were also involved in the drive for state enactment. They were continually in postal contact with almost every state legislator in the country (WNDA, 1937). The most well-financed group in the campaign, the Association underwrote national broadcasts and distributed a lengthly pamphlet on marihuana in 1936.

The General Federation of Women's Clubs also contributed energetically. The Federation educated its membership about the need for the Uniform Act and about the evils of marihuana in particular. The Chairman of the Federation's department of legislation noted:

"The situation concerning club women particularly is the accessibility of the frightening degenerating marihuana weed, which is rolled in cigarettes . . . and has been playing such havoc with young high school boys and girls (WCTU, 1936: 285.)"

The state and local clubs immediately began to unite local legislators and to conduct educational campaigns for parents, teachers and children (WCTU, 1937: 36; Wood, January 13, 1936). An FBN agent appeared at a New York meeting of the local Federation, with two marihuana plants, They were exhibited at a local flower show:

> Marihuana Plant exhibit at Flower Show of Katrina Trask Garden Club, Tomorrow, 3 P.M. on at the Casino.
>
> This plant is the cause of a dread menace which is being fought by the State Department of Health. Public Invited to Show—25¢ (*Saratogian*, 1936: 5)

Other groups such as the YWCA, the National PTA and the National Councils of Catholic Men and Women were all in touch with the Bureau and were made aware of the Bureau's dual aims of "influencing and creating public opinion in favor of the passage of the Uniform Narcotic Drug Act and awakening the parents of the country to the increasing danger of the use of marihuana. . ." (Anslinger, March 28, 1935).

However, arousing public opinion alone was not the ultimate goal of the campaign. The FBN was interested in the enactment of the Uniform Act along with prohibitory marihuana legislation in all the states.

By early 1935, only 10 states had adopted the Uniform Act. And, three of these states had not included marihuana (Anslinger, March 1, 1935). The Bureau embarked upon its marihuana strategy in 1935, the turning point in state enactment. Whether or not public interest actually existed, public opinion-makers influenced legislative opinion and created a "felt need" for legislation.

Within the next year, 18 more states adopted the Act and every one of them which did not have previous legislation included marihuana (Anslinger, January 13, 1936; WCTU, 1937: 75).

ENACTMENT OF THE MARIHUANA TAX ACT

Despite the public opinion campaign conducted in the early 1930's the general public was largely unaware of the drug, its use, or its alleged effects; only regional interest was aroused.

A change seems to have occurred after 1935. The increased national awareness played a significant role in the decision of the Treasury Department to seek federal legislation. On April 14, 1937, the "Secretary of the Treasury, on behalf of the Commissioner of Narcotics," submitted the "administration proposal to Congress to impose an excise and transfer tax on dealings in marihuana" (Schaller, 1970: 70).

The scheme of the Marihuana Tax Act was threefold: a requirement that all manufacturers, importers, dealers, and practitioners register and pay a special occupational tax; a requirement that all transactions be accomplished through use of written order forms; and the imposition of a tax on all transfers in the amount of $1 per ounce for transfer to registered persons and a prohibitive $100 per ounce for transfers to unregistered persons.

The key departure of the marihuana tax scheme from that of the Harrison Act is the notion of the prohibitive tax. Under the Harrison Act, a person not required to register, that is, a non-medical user, could not legitimately buy or possess narcotics. To the dissenters in the Supreme Court decisions upholding the Act, this clearly demonstrated that Congress motive was to prohibit conduct rather than to raise revenue.

The seemingly bizarre legal formulation of this tax measure was precipitated by the recognized need for the Federal Government to take action forbidden to it under prevailing constitutional doctrine.

Hearings on the proposed marihuana taxation were held before the House Ways and Means Committee. During five mornings of testimony by FBN officials, government witnesses, and industry representatives, the Bureau presented the following four-fold argument: (1) marihuana was a disastrous drug; (2) its use was increasing was alarmingly and had generated public hysteria; (3) state legislation was incapable of meeting the threat posed by the drug, thus, federal action was required; and (4) the government might best act through separate legislation rather than through an amendment to the Harrison Act.

No definite scientific study of the effects of marihuana were presented to Congress to substantiate the position that marihuana was a dangerous drug. No synthesis of available scientific information was submitted nor was there any statement by the Public Health Service. Neither of the government's own public health experts, Assistant Surgeon General, Dr. Walter Treadway, and Dr. Lawrence Kolb, testified, nor did Drs. Walter Bromberg or J. F. Siler who had recently published scientific articles on the effects of cannabis in humans (Siler, et al., 1933: 269–280; Bromberg, 1934).

Instead, the scientific aspects were presented by a law enforcement agency, the FBN:

"Despite the fact that medical men and scientists have disagreed upon the properties of marihuana, and some are inclined to minimize the harmfulness of this drug, the records offer ample evidence that it has a disastrous effect upon many of its users. Recently we have received many reports showing crimes of violence committed by persons while under the influence of marihuana.

"The deleterious, even vicious, qualities of the drug render it highly dangerous to the mind and body upon which it operates to destroy the will, cause one to lose the power of connected thought, producing imaginary delectable situations and gradually weakening the physical powers. Its use frequently leads to insanity.

"I have a statement here, giving an outline of cases reported to the Bureau or in the press, wherein the use of marihuana is connected with revolting crimes (U.S. Congress, 1937: 30)."

Instead of having one of the few researchers who had done any significant research into the effects of cannabis on humans, the Bureau chose a Temple University pharmacologist, Dr. James Munch, whose experience was confined to experimentation of the effects of cannabis on dogs.

The second component of the Bureau's case was the contention that marihuana use had spread alarmingly in recent years, provoking a public outcry. To demonstrate this, the Bureau submitted, for the record, the Gomila article cited earlier, and a 1936 letter from the city editor of the *Alamoosa Daily Courier* (U.S. Congress, 1937: 32–37.) The letter described an attack by a Mexican-American, allegedly under the influence of marihuana, on a girl of his region:

"I wish I could show you what a small marihuana cigaret can do to one of our degenerate Spanish speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish-speaking persons most of whom are low mentally, because of social and racial conditions (Baskette, September 4, 1936)."

The third component of the Bureau's case was that even though every state now had marihuana legislation, local authorities could not cope with the marihuana menace. To support this proposition editorial pleas from the Washington newspapers were offered along with Bureau testimony that officials of several states had requested federal help.

Senator Brown asked Commissioner Anslinger "to make clear the need for Federal legislation." He continued:

"You say the states have asked you to do that. I presume it is because of the freedom of interstate traffic that the states require the legislation."

Anslinger agreed:

"[W]e have had requests from the states to step in because they claimed it was not growing in that state, but that it was coming in from another state (U.S. Congress, 1937: 16)."

Nothing was presented to support that statement; no letters from local authorities and no investigative reports by FBN agents describing the trafficking apparatus.

The congressmen and senators participating in the hearings accepted the Bureau's argument. In fact, Senator Brown, Chairman of the subcommittee which considered the legislation in the Senate, and Chairman Doughton of the Ways and Means Committee, had been thoroughly briefed by the Bureau in advance of the hearings. There was no probing of the Government witnesses. In fact, the Government made its case in the House in one session, and the next three sessions were devoted to countering the technical objections of the oilseed, birdseed, and hemp industries (U.S. Congress, 1937: 59–65, 67–86).

On the last morning of scheduled hearings, Dr. William C. Woodward appeared on behalf of the AMA to oppose the bill. Dr. Woodward objected to H.R. 6385 because he believed that its ultimate effect would be to so restrict medical use by redtape that any medical use would be impossible. He admitted that there were currently few therapeutic applications but he observed that the bill inhibited further research which might bear fruit. He went even further to imply that the bill was designed with this objective in mind. He noted that if federal legislation was considered necessary, it could be achieved without sacrificing medical usage by simply amending the Harrison Act.

Dr. Woodward's most pointed attack was directed against the assumption that federal legislation was needed to control the marihuana habit. He argued that existing state legislation was more than sufficient if properly enforced and that if lack of coordination was the problem, that was the FBN's fault.

Noting that the FBN already had the authority to "arrange for the exchange of information concerning the use and abuse of narcotic drugs in [the] states and for cooperation in the institution and prosecution of suits . . .," he asserted that the Bureau had not done its job:

"If there is at the present time any weakness in our state laws relating to cannabis or to marihuana, a fair share of the blame, if not all of it, rests on the Secretary of the Treasury and his assistants who have had this duty imposed upon them for 6 and more years (U.S. Congress, 1937: 93)."

Dr. Woodward also contended that the law would be a useless expense to the medical professsion and unenforcible. He noted: "Since marihuana grows so freely, and every landowner was a potential producer, whether wittingly or unwittingly, full enforcement would require inspection of the entire land area of the country, a task which would be unseemly for the Federal Government to undertake" (U.S. Congress, 1937: 94–95).

Finally, Dr. Woodward wondered why, if federal legislation was considered necessary, the Congress did not simply amend the Harrison Act. To the Bureau's argument that such a course would be unconstitutional, he inquired how Treasury's counsel could argue that the present bill was constitutional since the technique was identical. Dr. Woodward's own view was that the amendment of the Harrison Act would be constitutional and that such a course would dispel the professional objections which he raised (U.S. Congress, 1937: 97).

After accusing Dr. Woodward of obstructionism, evasiveness, and bad faith, the Committee did not even thank him for his testimony (U.S. Congress, 1937: 121). When the Senate Finance Committee conducted hearings on the bill, now

styled H.R. 6906, two months later, Dr. Woodward submitted instead a short letter which stated the AMA's reasons for opposing the bill (U.S. Congress, 1937: 33–34).

Both Committees reported the bill favorably despite Woodward's objections. The Ways and Means Report stated:

"Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, it appeared from testimony produced at the hearings that many violent crimes have been and are being committed by persons under the influence of the drug. Not only is marihuana used by hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high school children in the form of marihuana cigarettes by unscrupulous peddlers. Cases were cited at the hearings of school children who have been driven to crime and insanity through the use of the drug. Its continued use results many times in impotency and insanity (U.S. Congress, 1937: 1–2)."

The Marihuana Tax Act passed the House of Representatives very late in the afternoon of a long session on June 14, 1937; the only opposition came from congressmen who had no idea what marihuana was and desired further information before voting (*Congressional Record*, 1937: 5575, 5689). Instead of a detailed analysis they received a statement of one of the members of the Ways and Means Committee which repeated uncritically the lurid criminal acts attributed to marihuana users at the hearings. After less than two pages of debate, the Act passed without a roll call (*Congressional Record*, 1937: 5575).

TIGHTENING THE LAW

After the passage of the Marihuana Tax Act, the FBN began with a four-pronged enforcement policy:

1. Control of cultivation of the plant for legitimate purposes and eradication of wild growth;
2. Pacification of marihuana-sensationalism in the press;
3. Education of the federal judiciary toward strict application of the law; and
4. Allocation of federal enforcement resources toward major trafficking rather than petty possession offenses.

The scope of the plant's growth, the transportability of the seeds, the dormancy of the seeds, and the lack of a highly efficient herbicide militated against a comprehensive eradication program. The cost of such a program would have been substantial even if success were assured. No active effort was undertaken to conduct an acre-by-acre survey of the United States.

The eradication "program" became simply a matter of reaction to routine information—letters from farmers who had identified the plant and discoveries of acreage by law enforcement agents.

As the Bureau's interest in marihuana subsided during the 1940's, so did the effort to eradicate the wild growth. In fact, the Federal Government encouraged the cultivation of hemp during the war, even though an inactive strain had not been developed, because sources of sisal rope had been severed by Japan's occupation of the Philippines. All over the United States, the weed remained plentiful and largely undetected.

After passage of the Act, Commissioner Auslinger directed his agents to discourage local officials from playing up any alleged involvement of marihuana with crime to the press. On April 11, 1938, the Commisioner told his New York District Supervisor that:

"Our present policy is to discourage undue emphasis on marihuana for the reason that in some sections of the country recently press reports have been so exaggerated that interest in the subject has become almost hysterical and we are therefore trying to mold public opinion along more conservative and saner lines (Anslinger, April 11, 1938)."

Immediately following passage of the Act, the FBN also directed an "educational" effort toward the federal judiciary to emphasize the need for severe sentences for marihuana offenders. The Bureau also concentrated on the stifling of suppliers, large interstate traffickers, and smugglers. Small possesion cases were to be left to local authorities.

Several factors, however, served to frustrate this policy. First, marihuana traffic was highly disorganized and there was no national or regional network as such (New York City, 1945). Second, use was still concentrated geographically and socio-economically and was not a major enterprise. Finally, during the war

years, the Bureau abandoned responsibility for most marihuana law enforcement to the states, where the disorganized traffic and regional use could be most effectively controlled. The FBN chose instead to concentrate on the opiates.

After the relative quiet of the war years there was apparently a significant increase in narcotic drug abuse in the late 1940's and the public began to be concerned with the spread of narcotic addiction, particularly among young persons. Congressional furor was aroused by the assertion that the use of marihuana inevitably led to the use of these harder drugs, particularly heroin.

The new legislation came in two waves. In 1951, Congress passed the Boggs Act (Boggs Act, November 2, 1951: 767) which increased penalties for all drug violators. For the first time in federal drug legislation marihuana and the narcotic drugs were lumped together, since the Act provided uniform penalties for the Narcotic Drugs Import and Export Act (Boggs Act, November 2, 1951: 767) and the Marihuana Tax Act (21 U.S.C. 1964). The states followed the federal lead. Then, in 1956, Congress passed the Narcotic Control Act, escalating the penalties still further. Once again the states responded in kind.

The hearings before the Subcommittee of the House Ways and Means Committee and the floor debate indicate that the Boggs Act was motivated by a perceived increase in narcotic use in the period 1948 to 1951 (Kefauver Committee Hearings, 1951 : 240–241 : *New York Times*, 1951).

Representative Boggs, speaking during the Congressional debate on his bill, enunciated a concern which was reflected in many other quarters. After noting that there had been a 24% increase in arrests for narcotic violations between 1949 and 1950 and a 70% increase between 1948 and 1950, Representative Boggs stated:

"The most shocking part about these figures is the fact that there has been an alarming increase in drug addiction among younger persons. In the first six months of 1946, the average age of addicted persons committed . . . at Lexington, Kentucky, was 37.5 years. Only three patients were under the age of 21. During the first six months of 1950, only four years later, the average had dropped to 26.7 years and 766 patients were under the age of 21 . . . (*Congressional Record*, 1951: 8197)."

Representative Boggs and others supported the mandatory minimum sentences for drug peddlers because they felt that some federal judges had been lax in enforcing the narcotic laws (*Congressional Record*, 1951: 8197, 8207, 8211). Public opinion was overwhelming that harsh sentences, including the death penalty for peddling narcotics to minors, would strangle the drug monster then stalking the American youth (Kefauver Committee Hearings, 1951: 430–431).

The Boggs Act was directed in large part at the federal judiciary since a key provision removed judicial discretion in sentencing by providing that upon conviction for a second or subsequent offense the imposition or execution of the sentence could not be suspended nor probation granted.

There had been no concerted lobbying effort by the judicial community during the legislative process; however, James V. Bennett, Director of the U.S. Bureau of Prisons, aroused the judges in the Fifth U.S. Circuit District into eventually recommending the amendment of the law to remove provisions for mandatory minimum sentences (*New Orleans Statesman*, May 28, 1954; *New Orleans Times-Picayune*, May 28, 1954).

Even while the Boggs Act was still pending in Congress, the Bureau of Narcotics encouraged the states to modify their existing narcotic and marihuana legislation to enact "penalties similar to those provided in the Boggs Bill [which] would be of material assistance in the fight against the narcotic traffic" (Federal Bureau of Narcotics, 1950 :6).

Seventeen states and the territory of Alaska responded by passing "little Boggs Acts" by 1953 and 11 other states increased their penalties by 1956. Two of the latter group, Ohio and Louisiana, enacted penalty provisions which were substantially more severe than those passed previously in any jurisdiction (Federal Bureau of Narcotics, 1956 :28).

The Ohio law, approved June 16, 1955, provided a 20 to 40 year sentence for the sale of narcotic drugs. The Louisiana measure, adopted the following year, provided severe prison sentences without parole, probation, or suspension for the illegal sale, possession, or administration of a narcotic drug. The sentences ranged from a five-year minimum to a 99-year maximum (Federal Bureau of Narcotics, 1951 :8).

Underlying the inclusion of marihuana in the scheme of increased penalties was the progression theory. In the Boggs hearings many witnesses testified to the

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link between marihuana use and ultimate heroin addiction. Commissioner Anslinger, for example, testified:

"The danger is this: Over 50 percent of these young addicts started on marihuana smoking. They started there and graduated to heroin; they took the needle when the thrill of marihuana was gone (Boggs Act Hearings 1951:206)."

Representative Boggs himself summed up the stepping-stone thesis in House floor debate:

"Our younger people usually start on the road which leads to drug addiction by smoking marihuana. They then graduate into narcotic drugs—cocaine, morphine, and heroin. When these younger persons become addicted to the drugs, heroin, for example, which costs from $8 to $15 per day, they very often must embark on careers of crime . . . and prostitution . . . in order to buy the supply which they need (*Congressional Record*, 1951: 8197–8198)."

The stepping-stone theory thus supplanted the older hypotheses which had linked marihuana to addiction, insanity and violent crime.

In a paper filed as an exhibit to the hearings on the Boggs Act, Dr. Harris Isbell, Director of Research at the Public Health Service Hospital in Lexington, Kentucky, stated that marihuana was not physically addictive, although he paid lip service to the psychological dependence hypothesis (Boggs Act Hearings, 1951: 147, 148).

Acknowledging the possibility of "temporary psychosis" in "predisposed individuals," Isbell otherwise disputed the crime and insanity thesis. Before the Kefauver Committee in the Senate he testified that:

"[M]arihuana smokers generally are mildly intoxicated, giggle, laugh, bother no one, and have a good time. They do not stagger or fall, and ordinarily will not attempt to harm anyone.

"It has not been proven that smoking marihuana leads to crimes of violence or to crimes of a sexual nature. Smoking marihuana has no unpleasant aftereffects, no dependence is developed on the drug, and the practice can easily be stopped at any time. In fact, it is probably easier to stop smoking marihuana cigarettes than tobacco cigarettes (Kefauver Committee Hearings, 1951: 119)."

Some observers felt that the narcotics problem had disappeared almost entirely from the national scene after the Boggs Act was passed. Nevertheless, state and federal law enforcement authorities, armed with data suggesting that the strengthening of the drug laws had at least halted the increase in drug use, pressed for further increases in penalties in order to root out the drug menace entirely (Federal Bureau of Narcotics, 1956: 28). Without extended debate or widened public interest, Congress passed the Narcotic Control Drug Act in 1956 (Daniel Committee Hearings, 1955: 57).

There was less attention paid to marihuana during Congressional debate in 1956 than had been the case in 1951. But, the established precedent of classifying marihuana with hard narcotics continued and resulted in a proliferation of marihuana offenses and a further increase in penalties based on the theory that the end of the American narcotics experience could thereby be assured.

However, efficacy of still higher penalties was not uniformly accepted among law enforcement officials; the Deputy Commissioner of the FBN suggested that more severe penalties might press grand juries not to indict and the petty juries not to convict in drug cases. Others rejected this view and felt strongly that more severe penalties were imperative if society was to be rid of its present peddlers and if new entrants into the narcotics business were to be deterred (Good, July 31, 1954).

Among congressmen considering the Bill, there was no dissent from the proposition that harsher penalties were the means to eliminate the illicit use and sale of all drugs (*Congressional Record*, 1956: 10689).

In addition to facilitating enforcement of narcotics laws through a number of ancillary provisions, the Narcotics Control Act of 1956 established the following penalties:

	Minimum sentence
Possession:	
First offense	2 years
Second offense	5 years
Third and subsequent offense	10 years
Fine	$20,000
Sale:	
First offense	5 years
Second offense	10 years
Sale to minor by adult	10 years

Parole or probation were made unavailable to all except first offenders in the possession category (26 USC, 1964).

The Act also created a new offense by prohibiting illegal importation of marihuana. Simple possession was by statute sufficient to convict the possessor of knowingly receiving illegally imported marihuana (21 USC, 1964).

Few legislators recognized that marihuana was in any way different from the physically addictive narcotics. The House Subcommittee on Narcotics, which produced what became the essentials of the 1956 Act, had inserted a footnote in the major heading "Narcotics" which stated in fine print that the term narcotics included marihuana (U.S. Code Cong. and Ad. News, 1956: 3294). Only once during the Congressional debates on the House and Senate versions of the Bill was the subject of marihuana as a separate substance even raised.

Moreover, in a statement reflecting the general acceptance of the stepping-stone concept, Senator Daniel, Chairman of the Senate Subcommittee that investigated the drug problem, described marihuana:

"That is a drug which starts most addicts in the use of drugs. Marihuana, in itself a dangerous drug, can lead to some of the worst crimes committed by those who are addicted to the habit. Evidently, its use leads to the heroin habit and then to the final destruction of the persons addicted (*U.S. Code Cong. & Ad News*, 1956: 3294)."

By the fifties, marihuana had been fully integrated into the narcotics legislation of every state in the Union and of the national government. Possession of the drug, even for one's own use, was a felony everywhere, and the user was subject to long periods of incarceration as punishment for his indulgence.

1960–1970: NEW LEGISLATIVE APPROACH

From the mid-fifties to the mid-sixties, federal activity in marihuana and narcotic law enforcement was relatively stable. The number of offenders apprehended and convicted in both areas remained constant (U.S. Courts, 1956–1964).

However, in the early and mid-sixties a new phenomenon was occurring. Drug abuse began to spread. It no longer confined itself to the ghettos and certain socioeconomic and ethnic groups; the new users were the sons and daughters of the middle class. It began striking home at the average American and became a national, major issue of concern (Rosevear, 1967: 117–131; U.S. Bureau of Narcotics, 1966: 40).

The new middle class use of marihuana induced significant medical inquiry into the nature of the drug and spurred a new legislative approach. One commentator stated:

"Nobody cared when it was a ghetto problem. Marihuana—well, it was used by jazz musicians or the lower class, so you didn't care if they got 2 to 20 years. But when a nice middel-class girl or boy in college gets busted for the same thing, then the whole community sits up and takes notice. And that's the name of the game today. The problem has begun to come home to roost—in all strata of society, in suburbia, in middle-class homes, in the colleges. Suddenly, the punitive, vindictive approach was touching all classes of society. And, now the most exciting thing that's really happening is the change in attitude by the people. Now we have a willingness to examine the problem as to whether it's an experimentation, or an illness rather than 'an evil' (*New York Times*, Feb. 5, 1970: 14)."

Congress initially acted by passage of the Drug Abuse Control Amendments of 1965 (Public Law 89–74, 1965). This legislation established a Bureau of Drug Abuse Control within the Food and Drug Administration and created criminal, misdemeanor penalties for the illegal manufacture and sale of depressant and stimulant drugs and hallucinogens.

The dramatic increase in the use of marihuana and other drugs during the latter 1960's was a matter of high public visibility. In response, President Johnson offered Reorganization Plan No. 1 of 1968 (H. Doc. No. 249, 1968). This reorganization was effective on April 8, 1968 and placed the Federal Bureau of Narcotics (of Treasury) and the Bureau of Drug Abuse Control (of FDA) in the Department of Justice and designated it the Bureau of Narcotics and Dangerous Drugs.

What had been obvious with the passage of the 1965 Drug Amendments became glaring with this reorganization, that is, the tremendous disparity in penalties for violations involving dangerous drugs as opposed to narcotics and marihuana. As a result of increased medical and scientific inquiry, LSD and several other drugs were acknowledged as being more powerful hallucinogens than marihuana.

To compound the disparity, tetrahydrocannabinol (THC), the major active ingredient in marihuana, was placed under controls whereby someone in unauthorized possession of THC was subject to no penalty, but someone in possession of marihuana was subject to a minimum mandatory penalty of two years imprisonment (*Federal Register*, 1968: 14880). Congress then charged the possession penalty, under the Drug Abuse Control Amendments, to a misdemeanor and increased the penalties for sale or manufacture of LSD and the other controlled drugs to up to five years (Public Law 90–639, 1968).

Nevertheless, a great disparity regarding penalties for these substances still existed. The atmosphere for change was ripe. Adding pressure to the situation was the criminalization of increasing numbers of young persons whose sole crime was possession of marihuana for their own use.

In late 1968, the newly formed Bureau of Narcotics and Dangerous Drugs drafted legislation which would nationalize control of the drugs under the Bureau's jurisdiction. The proposal law vested on the commerce clause rather than on the taxing powers.

The change in authority was prophetic because the *Leary* decision, which was handed down by the Supreme Court on May 19, 1969, held that the order form procedure necessary to meet the requirements of the Marihuana Tax Laws, forced an individual to incriminate himself in violation of the Fifth Amendment (*Leary* v. *U.S.*, 1969). Ostensibly, this decision left BNDD with no marihuana possession law and was another factor in evidence of the need for a revision of the law.

This new bill, H.R. 13742, covered the regulation of narcotic drugs, "dangerous drugs" and marihuana. It was transmitted by President Nixon on July 14, 1969.

Emerging from this legislation was an overall balanced scheme of criminal penalties. Minimum mandatory offenses were essentially abolished and the offense of possession of a controlled substance for one's own use was made a misdemeanor. Further, in first-offense, simple possession cases, the court was given the discretion to place a defendant on probation, for up to one year. If, at the end of the probation period, the defendant had not violated any of the conditions of the probation, his conviction could be expunged.

The same misdemeanor penalty and opportunity for first offender treatment was provided for the distribution of a small amount of marihuana for either: (1) no remuneration; or (2) the cost of the drug.

This provision was included in recognition of the large number of such transactions which take place among youth and in recognition of a phenomenon which surfaced as a substantial challenge to the traditional picture of the national marihuana trade. Legislators had formerly stereotyped the "seller" as the vicious criminal pushing his wares for high profit and felt that extraordinarily harsh penalties were justified for sellers (Narcotics Legislation Hearings, 1969: 4).

But several studies showed that the structure of marihuana traffic bore little or no relation to the traditional stereotype. One survey of 204 users found that 44% had sold to friends at least once. Many casual users sold to leave themselves enough profit to cover the amount of their own use (Goode, 1969: 7). Under the new Act, they would not be punished as distributors.

The new legislation also made a distinction between marihuana and narcotic drugs. Marihuana was placed in a category with hallucinogenic drugs and their difference from narcotics was emphasized by the difference in penalties as follows:

	Maximum sentences			
	Marihuana and other non-narcotic controlled substances		Narcotics	
	1st offense	2d offense	1st offense	2d offense
Simple possession: [1]				
Years	1	2	1	2
Dollars	5,000	10,000	5,000	10,000
Unlawful distribution, possession with intent to distribute, manufacture, importation or exportation:				
Years	5	10	15	30
Dollars	15,000	30,000	25,000	50,000

[1] Distribution of small amounts of marihuana for no remuneration is treated the same as simple possession.

The bill was passed by Congress (and signed into law by President Nixon) on October 27, 1970, as the Comprehensive Drug Abuse Prevention and Control Act of 1970.

In conjunction with this new federal law, a uniform state act was drafted by the National Conference of Commissioners on Uniform State Laws and approved by them as the Uniform Controlled Substances Act at their annual conference August 1–7, 1970.

The following statement in the preface of the Act explains its purpose:

"This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal Government. It has been designed to complement the new federal narcotic and dangerous drug legislation and provide and interlocking trellis of Federal and state law to enable government at all levels to control more effectively the drug abuse problem."

The Uniform Act does not recommend penalties except with respect to possession for one's own use. For such offenses, the Conference recommended that it be treated as a misdemeanor.

To date, 26 states and three territories have adopted the Act in its entirety or in varied form. Currently, 10 to 15 states are considering it.

The most recent chapter in the legal history of marihuana appears in other pages of this Appendix. The appointment of the National Commission on Marihuana and Drug Abuse and the issuance of its Report are themselves significant events from an historical point of view.

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REFERENCES TO THE GROWING OF HEMP IN THE UNITED STATES

FROM THE DIARIES OF GEORGE WASHINGTON, EDITED BY JOHN C. FITZPATRICK, VOL. I—1748–1700, HOUGHTON-MIFFLIN CO., P. 213

PULLING HEMP (AUGUST 1765)

* * * * * * *

7. began to separate the Male from the Female hemp[1] at Do—rather too late
9. Abt. 6 oclock put some Hemp in the Rivr. to Rot—
10. Separated my Ewes and Rams—but I believe it was full late—many of the Ewes having taken Ram.—
13. finish'd Sowing Wheat at the Rivr. Plantn, i.e. in ye corn ground 123 Bushels it took to do it
15. the English Hemp i.e. the Hemp from ye English Seed was pickd at Muddy hole this day and was ripe
15. Began to separate Hemp in the Neck—
17. finishd Sowing Wheat in the Corn field which lyes over ye Run at ye Mill 27 Bushl.
22. put some Hemp into the Water about 6 oclock in the Afternoon—note this Hemp had been pulled the 8th. Inst. and was well dryed and took it out again ye 26th.

SEPTEMBER

4. Began to pull the Seed Hemp—but was not sufficiently ripe.—

* * * * * * *

FROM DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES, VOL. II, P. 1500

HOUSE OF REPRESENTATIVES, TUESDAY, MARCH 16, 1790

The engrossed bill making appropriations for the support of Government for the year 1790, was read the third time and passed.

[1] To pull?

A message was received from the President, with a letter and representation from the Supreme Executive Council of Pennsylvania, on the subject of Indian hostilities, committed in the county of Washington, in that State.—Ordered to lie on the table.

A petition from the importers of hemp and the manufacturers of cordage of New York, was read, praying that the duty on hemp imported prior to December, 1790, may be taken off, and a prohibition laid on the importation of foreign cordage.—Referred.

* * * * * * *

FROM DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES, 11TH CONGRESS, 1ST AND 2D SESSIONS

HOUSE OF REPRESENTATIVES, WEDNESDAY, JUNE 7, 1809

* * * * * * *

Mr. HOWARD presented a petition of sundry manufacturers of hemp into linen, residing in the State of Kentucky, praying that such additional duties may be imposed by law upon the importation of hemp and coarse linens from foreign countries, as will effectually encourage the manufacture of those articles within the United States, and prevent their introduction into the United States from abroad.—Referred to the Committee of Commerce and Manufactures.

* * * * * * *

AMERICAN MANUFACTURES

The House proceeded to consider the resolution proposed by Mr. BACON, on the thirty-first ultimo, to wit:

Resolved, That the Secretary of the Treasury be directed to prepare and report to this House, at their next session, a plan for the application of such means as are within the power of Congress, for the purpose of protecting and fostering the manufactures of the United States; together with a statement of the several manufacturing establishments which have been commenced, the progress which has been made in them, and the success with which they have been attended; and such other information as in the opinion of the Secretary shall be material in exhibiting a general view of the manufactures of the United States.

Mr. BACON remarked that if the House had any disposition to do anything towards the advancement of manufactures of the country, the proper course would be to call for information on which they could act, as proposed by the resolution. For himself, however desirous to aid manufactures without information on which he could rely, he did not feel himself prepared to act.

Mr. LYON remarked that twenty years ago a similar reference of the subject had been made to the Secretary of the Treasury, and a long report had been received, on which no proceedings were had. And this would be the case with the proposed report. It was intended but to allay by procrastination the little zeal which was now displayed by some members in favor of manufactures. If nothing was done now, he said he should despair of anything ever being done to encourage manufactures; and this motion was evidently intended to give the subject the go-by.

Mr. LYON moved to amend the resolution by striking out the words "at their next session," the time at which the Secretary of the Treasury is directed to report to the House a plan for the encouragement of manufactures; with a view to make the resolution obligatory on the Secretary to report during the present session.

The motion was negatived without a division.

Mr. VAN HORN moved to amend the resolution by striking out all that part requiring the Secretary of the Treasury to report a plan. He stated his reasons to be that he wished not to vote upon a plan reported by any Head of Department, however great confidence he might have in them; for he thought the House were competent themselves to originate a plan. He feared too that some plan might be proposed which would injure the agricultural interest; and the weight of a recommendation from so respectable an authority he well knew. He thought that Congress could themselves, by amending and regulating duties and drawbacks, sufficiently encourage manufacturers, without any specific plan being laid down.

Mr. BACON said it had long ago been decided in this Government that when a call was made for information on the Heads of Departments, it was also within the rules of correct proceeding to require the officer so called upon to prepare and digest a plan on the subject on which information was called for. And he feared no injury which would result from such a course, though much good might.

After some observations from Messrs. QUINCY and DANA, against the amendment, and Mr. BIBB in support of it, Mr. VAN HORN'S motion was negatived, ayes 19.

Mr. KENNEDY having called for the yeas and nays, on the passage of the resolution—

Messrs. GARDENIER and RANDOLPH opposed it at length, on the general ground of the inexpediency of legislative interference for the encouragement of manufactures; each gentleman appearing to consider it as a pledge, or commencement of a system, for fostering manufactures by legislative acts.

Mr. QUINCY supported it, as calling for information on which the House might legislate; as they could not properly legislate on any subject without information.

The question was then taken to agree to the said resolution, as originally proposed, and resolved in the affirmative—yeas 93, nays 38, as follows:

* * * * * * *

FROM DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES, 11TH CONGRESS, 3D SESSION

HOUSE OF REPRESENTATIVES, DECEMBER 1810

* * * * * * *

CULTURE OF HEMP

Mr. SHEFFEY remarked that the interruption of commerce to the Baltic had given a spring to the culture of hemp in this country, which would be much relaxed if the commerce should be opened. He was, he said, one of those who had always considered the encouragement of agriculture as one of the first objects of a good Government. He, therefore, proposed, with a view to ascertain how far it was proper to encourage the culture of hemp, to offer a resolution to inquire into the subject. He did not know how far it would be proper to adopt the measure which he contemplated; he was not advised whether the culture in the United States was sufficient for the consumption. If so, he should feel disposed to restrict the importation from abroad. The Committee of Commerce and Manufacturers would be best able to ascertain how far it was proper to protect the culture of our own raw material. He, therefore, submitted the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of encouraging the culture of hemp, by protecting impost duties, or prohibiting the importation of that article into the United States; and that the Committee have leave to report by bill or otherwise.

Mr. MITCHILL said he had no inclination to oppose the passage of the resolution, its object being merely to inquire; and resolutions for inquiry, generally speaking, were those which, of all others, the House ought to pass. He would just mention, however, his perfect conviction that the resources for the supply of this article were ample, and that enough could be raised on the Genessee flats and Wallkill River in the State of New York, to supply the North, and in the State of Kentucky, to supply the South. The interruption of commerce with the Baltic, created an extraordinary price, which was bounty enough for the present. How far it might be necessary to extend the principle during free commerce, he did not say.

The resolution was agreed to without a division.

* * * * * * *

HOUSE OF REPRESENTATIVES, FEBRUARY 1811

* * * * * * *

CULTURE OF HEMP

Mr. NEWTON laid before the House a letter from the Secretary of the Navy to the Committee of Commerce and Manufactures, on the propriety of encouraging

the culture of hemp, by protecting impost duties, or by prohibiting its importation from foreign countries; which was referred to a Committee of the Whole.

The letter is as follows:

NAVY DEPARTMENT, *Jan. 21, 1811.*

SIR: I have had the honor of receiving your letter of the 17th instant.

As to the expediency of encouraging the culture of hemp, by protecting impost duties, or by prohibiting the importation of that article into the United States and its Territories, it is not, I presume, expected of me, to make any observations—as these are subjects appertaining peculiarly to the Treasury Department; and no doubt the Secretary of the Treasury can afford all the information necessary to enable you to form a satisfactory opinion upon them.

Without venturing an opinion upon the expediency of either of these provisions, I will submit for your consideration the following observations relative to the culture and dressing of hemp, &c.

In the essays first made by our countrymen in the culture of hemp, and in dressing it for market, the disadvantages of inexperience were sensibly felt.—Many errors, added to the dissuasives of previous habit, discouraged its culture. Doubts, too, whether the climate or soil of our country was adapted to the raising of hemp, were entertained. But very few, indeed, indulged the expectation that we should ever be able to make hemp equal to that of Russia. Hence, for many years, the culture of this important article progressed slowly; our countrymen, however, stimulated by their characteristic enterprise, and by hopes of ultimate success, persevered in repeated experiments, and have at length acquired that practical information which has corrected many of their first errors, and now enables them to raise hemp in such quantity, and of such quality, as to compensate them amply for their trouble. Still, however, they have not yet acquired that extensive information upon the subject which would assure to them all the advantages arising from the culture of this valuable article.

As to the certainty and profit of a crop of hemp, it is believed that no crop is more certain when sown in ground adapted to it, and to the grower it yields a profit superior to most articles, and exceeded but by few; an acre of ground well ploughed, harrowed, and manured, will yield a thousand pounds of clean hemp, worth, when properly cured and dressed, from $100 to $150—sometimes $200. The labor and necessary buildings required, in the sowing, preserving and preparing for market a crop of hemp, are inconsiderable when compared with some other articles, and especially tobacco, while the profit is greater and the injury done to the soil much less.

From a disposition to encourage the culture of hemp, cordage made of American hemp has been brought into use in our Navy. For standing and running rigging, and indeed for most other purposes, excepting cables, it is found to answer very well, even when made of "dew-rotted" hemp. Of the "water-rotted" hemp, we have not yet been able to procure a sufficient quantity to justify our excluding the use of Russia hemp, especially for cables. American "water-rotted" hemp is no doubt equal in all respects to the best Russia hemp; indeed, I rather incline to think it superior. Upon this point, however, the samples herewith sent will enable you to form an opinion.

No. 1 is a sample of American "water-rotted" hemp grown on Blannerhassett's island.

No. 2 is a sample of Russia hemp, delivered to me by a ropemaker as the *best* kind of Russia. In this, however, I incline to think there must be some mistake, though it is certainly good hemp.

No. 3 is a sample of American "dew-rotted" hemp, grown in Botetourt county, Virginia.

Upon examining these samples, you will, I believe, find the opinion which I have ventured to express with respect to the mode of dressing hemp confirmed in a great measure. The great difference between "water-rotted" and "dew-rotted" hemp, will be obvious to you from such examination.

American "dew-rotted" hemp, being of a dark color, frequently neither broke nor scutched as it ought to be, and brought to market without being properly embaled, does not, in such cases, command a good price in our markets. These are the causes, and this is the effect. The growers of hemp ought not, however, to be discouraged by this circumstance. They should remember that, in removing the cause, the effect will cease; and they may be assured that, if their hemp is properly prepared, it will always command a price equal to the hemp of Russia, probably superior. For my own part, as Secretary of the Navy, I can only say, that in such case I should feel it to be my duty to give a decided preference to hemp of our own growth.

The quantity of hemp raised in our country increases every year, and no doubt exists, that in a very short period of time, enough will be raised to supply every public and private demand for all the purposes to which it is applicable.

The desiderata to be obtained appear to me to be, to persuade our countrymen to relinquish the prevailing pernicious practice of "dew rotting," and to adopt that practice which the experience of other nations has approved, namely, the steeping in water: this done, they will soon find their advantage in the change, and thus a new and powerful impulse will be given to the culture of this valuable article.

In preparing the hemp for breaking, the pernicious practice of what is commonly called "dew rotting," still prevails to a great extent—a practice tedious in its process, partial and unequal in its effects upon the fibre, and destructive of considerable quantities of hemp by the unavoidable exposure of it to the winds, which blow it about and entangle it. Hemp thus prepared is, in some places, strong, in others, weak, and has moreover a dark color—all which materially affect its value.

In hemp there is a viscous, gummy substance, by which the fibres of the bark are bound together and to the body of the plant, and all that is necessary to prepare it for breaking is to dissolve this substance. The experience of other nations has long since decided that this dissolution can best be effected by immersing or steeping the plant in pure, clear, running water, which, in a much shorter period of time than any other system heretofore practised, produces this dissolution over all parts of the plant equally; makes it equally strong in all places, renders it more flexible, gives it a lively bright color, and, what is an object of vast importance, especially as respects durability under water, it will receive and retain a greater portion of tar than when prepared by "dew rotting." It may be here further remarked, that the more clear and pure the stream of water, the brighter will be the color of the hemp.

"Dew rotting" requires many weeks of constant attention; but practical men affirm, that, in a pure warm stream of water, the process of dissolution will frequently be completed in five or six days.

In Russia three weeks are allowed for steeping where the water is not very cold; but if cold, as in rivers and springs, five, and sometimes six weeks are found to be necessary. To ascertain whether the hemp be sufficiently steeped, a head is taken out of the pound, dried, and beat, and if the husk comes off, the hemp is considered as having been sufficiently steeped. It is, then, taken out of the pound and suspended upon sticks placed horizontally for the purpose of drying; after remaining in the open air in this situation about a fortnight, it is removed and put into a kiln, where it is suffered to remain twenty-four hours. It is then ready for breaking, which operation is performed by means of a hand mill; after this is done, the husk is beaten off by striking the heads obliquely with iron and wooden instruments of the shape of a large two-edge knife; finally, it is drawn through a wooden comb, with one row of wide wooden teeth, for the purpose of unravelling and cleaning it.

As to the climate and soil best adapted to the culture of hemp, it may be observed that it is raised both in the frigid and torrid zone, and that any soil, if not wet, may be made to yield hemp, although the richer the soil the better, and a flat country is, for this purpose, to be preferred. On the waters of the Ohio, Mississippi, Susquehanna, Potomac, James river, and other parts of the United States, there is an abundance of land peculiarly adapted to the culture of hemp.

Should you think it expedient to offer any inducements to produce this change in the manner of dressing our hemp, whence would flow such happy effects, permit me to observe, that the only one which, at this time, occurs to me as coming within the range of my official duties to execute, would be an annual appropriation by Congress of a sum of money enabling me to contract for a supply of American hemp and canvass for the use of our Navy. Should this plan be approved, the appropriations should be made in time to admit of contracts being formed prior to the commencement of the season for cropping; and the first appropriation should be made distinct from other appropriations, or it might be added to the estimates for the current year in the first instance. This would involve an appropriation in the first year exceeding the amount required in that year for the expenses of the Navy, but it would be a provision for the ensuing year, and the amount might be deducted from the estimates of the ensuing year. The propriety of this provision will readily occur to you, when I state the fact, that it would not be possible, at this time, to contract for these articles, deliverable in time to be used within the year; they could not be delivered till after the crops of this year shall have been gathered and prepared for market. In the contracts which might thus be made, it would become my duty, in execution of the

object of Congress, to stipulate that the hemp should be steeped in water instead of being exposed to dews; and, upon good security being given, a portion, not exceeding one-fourth or one-third of the amount of each contract, might be advanced. These contracts being judiciously distributed in different parts of the country, and, what would be just, a higher price being given than "dew-rotted" hemp would command, it would not be unreasonable to expect that a spirit of emulation—always useful to public improvements—would be excited, and powerfully assist in exploding present errors and in producing the change in the dressing of hemp; which, in my opinion, would essentially promote individual and national prosperity.

Some few of our countrymen do, at this time, I am told, entertain apprehensions that our markets will be overstocked with American hemp, and that the price will be greatly diminished. This admitted, they have it in their power to prevent the importation of all foreign hemp, by making theirs, in all respects, equal to foreign hemp. This, indeed, in a national view, would be an important point gained. But when it is considered to what a variety of purposes hemp is applicable; that we are at this time greatly dependent upon foreign countries for hemp, for canvass, and linens of various kinds made of hemp; that there exists a spirit of patriotism and of preserving industry ready to be exerted, when fit opportunities shall present, to shake off this dependence; that if more hemp should be raised than will be required for cordage, factories of canvass and linens will necessarily be established. Such apprehensions lose their force, and yield to reflections and anticipations of the most agreeable nature.

A comprehensive view of this subject leads us to cherish the expectation that the United States will, at no very distant period, become exporters of hemp, as they now are of every other description of naval stores and of cotton; and that the individuals who raise it will, like those who raise other naval stores and cotton, experience all the beneficial effects resulting therefrom.

These observations are submitted to you, sir, with all the diffidence which the novelty of the subject naturally excites, and with the hope that they may be useful in aiding your deliberations upon the highly interesting question now under your consideration.

I have the honor to be, &c.

PAUL HAMILTON.

Hon. THOMAS NEWTON, &c.

Mr. LYON, after some preliminary remarks submitted the following resolution:

Resolved, That additional or original duties ought to be laid on the importation of card wire, hemp, lead, and cotton, and upon all manufacturers of which those articles constitute the chief materials.

Mr. EPPES suggested a reference of the resolution to the Committee of the Whole, to whom was referred a bill on the subject of additional duties.

Mr. NEWTON stated that a resolution on the subject of hemp having been referred to the Committee of Commerce and Manufactures, they had applied to the Secretary of the Navy on the subject, from whom a report had been received of considerable interest, which ought to be referred to the same committee.

Mr. LYON's resolution was referred as moved.

* * * * * * *

[From the Washington Post, Mar. 23, 1972]

MARIJUANA PENALTY END SUPPORTED

(By Carl Bernstein)

Al Linden, one of four candidates seeking the Democratic nomination to Congress from Virginia's Eighth District, has called for an end to criminal penalities for the possession of marijuana.

"Let's let the police, the courts and the prisons deal with the real criminals, people who are truly dangerous," Linden said at a press conference at Falls Church Democratic headquarters Monday. "Let's stop breaking down doors to see what people are doing in the privacy of their homes, and let's get . . . the muggers, the rapists, the murderers, the heroin pushers off the streets."

Describing marijuana use as a petty vice, Linden asserted at his press conference that George Washington, whose Mount Vernon home is in the Eighth District, ocassionally smoked home-grown marijuana.

"It is ironic that the Father of our Country . . . would be a criminal under today's unrealistic legislation, for he grew hemp at Mount Vernon," Linden said.

"And our first President's diary, dealing specifically with separating the female plants from the male before pollination, shows that he wasn't harvesting the stuff for rope."

Linden, a personnel consultant, described criminal penalties for marijuana possession as "an out-and-out failure that is costing society far more than the minimal benefits they are said to return."

It is "a national tragedy and a travesty of justice," he said, that "unless current laws are changed nearly 100,000 young people . . . will acquire criminal records this year for simple possession of marijuana."

The candidate added that he does not personally advocate the use of marijuana, "just as I do not advocate the use of alcohol, cigarettes, tranquilizers, caffeine, sleeping pills or any other of the myriad of drugs—many of which cause . . . much greater harm than marijuana."

Linden is one of four Democrats seeking the Democratic nomination for the congressional seat now held by Rep. William L. Scott, a Republican. Scott, whose district encompasses 463,000 residents in Alexandria, Prince William and Fairfax County, is seeking his party's nomination for the U.S. Senate seat now held by Democrat William B. Spong Jr.

Also seeking the Democratic eighth district nomination in a June 13 primary are Fairfax Commonwealth's Attorney Robert F. Horan Jr., Fairfax Supervisor Herbert E. Harris II, and Jim Burch, a management consultant.

[From the Washington Post, Mar. 28, 1972]

GEORGE WASHINGTON AS A HEMP FARMER

Your March 23 story by Carl Bernstein on Virginia Democratic candidate Al Linden's calling for legalization of marijuana performed a public service by giving us a chance to refute Linden's horrendous libel on George Washington.

Seeking historic precedent for his pot position, Linden digs into the personal diary of the Father of Our Country and cites a passage wherein Washington-the-farmer refers to his handling of the hemp crop. Linden says the diary entries "show that he wasn't harvesting the stuff for rope." And he then asserts that George Washington occasionally smoked marijuana.

Here are the verbatim quotations from Volume I of "The Diaries of George Washington, 1748–1799 " (Houghton Mifflin) :

August 7, 1765—"Began to seperate the Male from the Female hemp at D9—rather too late."

August 9—"Abt. 6 oclock put some Hemp in the Rivr. to Rot."

August 15—"The English Hemp i.e. the Hemp from ye English seed was picked at Muddy Hole this day and was ripe."

August 15—"Began to seperate Hemp in the Neck."

August 22—"Put some Hemp into the Water about 6 oclock in the Afternoon—note this Hemp had been pulld the 8th. Inst. and was well dryed and took it out again ye 26th."

September 4—"Began to pull the Seed Hemp—but was not sufficiently ripe."

Hemp is grown both for its seeds and its fiber which makes into rope, twines, carpet thread, sailcloth and coarse sheeting. But it is an annual plant, so one must save seeds from each year's crop for subsequent plantings. Hence Washington's reference to "seed hemp." The seed is also used for bird feed. It makes them sing happily.

If used for its fiber, the hemp is soaked and then beaten with a club to separate the fibers. If used as marijuana, it is dried. Washington's references to putting it in the river to rot clearly indicate he was soaking, not smoking, his pot.

True, there is one reference to the hemp being "well dryed," but this was only in reference to how dry it was before its immersion.

Mount Vernon is located in the Eighth Congressional District, which is the district that Linden wants to represent. Yet his ambition impels him to blacken the name of the Eighth's most illustrious constituent. George Washington is a pothead? Utterly ridiculous. Ask anyone who knew him.

Now, if Linden cares to make a case for heroin, I can steer him to a paragraph from the diary of the father of the Democratic Party, Thomas Jefferson, which refers to "the very serious shortage of good needles." This clearly proves Tom was a mainliner who had probably been turned on by George at the Philadelphia rock festival.

JACK D. DAUM.

Alexandria.

MARIJUANA—THE RIGHT TO TRUTH*

DR. NICHOLAS N. KITTRIE**

THE INTENSIFIED WAR ON MARIJUANA

I remember a few years back, when for the first time I taught the basic course in criminal law at the Law School, raising in class the question of criminality and the causes of crime. Some students suggested it was the social environment that breeds criminals, "the underprivileged deprivations and the social compulsion to imitate criminality in the peer group." A few students suggested heredity as a cause: envy, greed, uncontrolled drives and innate aggressiveness. We had Marxists in the group. They pointed to capitalism's insistence upon competition and material gains as accentuating the selfish streak in man, making him even more callous to his fellow man.

It was at that time that one of the women students, a young lady who had been holding her own in the predominantly male class, offered yet a different approach. "We often have crime," she said, "because there are laws. If we had fewer laws, if we were less regulative and more tolerant—we would have less crime."

At first blush the observation seemed almost irreverent and produced little response. But as the course in criminal law progressed through the semester, the participants were increasingly coming to realize that crime is not only a function of heredity and environment, but also a product of law-making. The more you regulate human conduct, the more fertile becomes the field for law breakers.

All this came to mind recently as I was reading about the nine cadets of the Coast Guard Academy, including four varsity athletes, who resigned after being charged with smoking marijuana in their rooms.[1] The cadets were given the choice of resigning or being dismissed. One academy officer noted that seven of the cadets were seniors and that the group included "some of our best students and

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* Based on Paper Delivered at the Fourth Law-Psychiatry Institute of the William S. Hall Psychiatric Institute of the South Carolina Department of Mental Health and the School of Law of the University of South Carolina, March 13, 1970.

** Professor of Law and Director of Research, The American University Law School.

1. The New York Times, March 25, 1970, at 50, col. 4.

athletes."Rear Admiral Arthur B. Engel, the superintendent, agreed: "They weren't bad kids," he stated. "This is just a sign of the times."

The story of nine cadets, whose whole life was disrupted for one deviant act in the privacy of their quarters, was difficult to digest. The charge suddenly seemed so remote and irrelevant; almost like an accusation of witchcraft. Slowly, as I was still staring at the paper, all these words were beginning to fall into some new order. If the kids are not bad, I thought, is it only the law that makes them criminals?

My concern about the marijuana laws kept growing as press coverage of marijuana use and abuse increased. One recent public drive against marijuana was disclosed in a news story dated March 10, 1970,[2] reporting a United States grant to the Mexican government in the amount of $1 million for planes, helicopters, communications systems and equipment for the "remote sensing" of marijuana—all designed to assist the Mexican efforts at curbing the flow of marijuana across the United States border.

In the face of this escalated war on marijuana, with the typical American emphasis upon "hardware," I felt an urgent need to look at the historical, social and medical data underpinning this effort.

The Right to Marijuana?

A few days later I participated in a symposium on marijuana sponsored by the School of Law of the University of South Carolina. My assigned topic was "Marijuana—The Right to Its Use." Billing my paper in this titillating manner was apparently designed to appeal to the audience's prurient interest in pot. It was intended also to suggest marijuana's affinity to a broader class of newly asserted legal rights to privacy: the right to use contraceptives, to have an abortion, to view pornography and to engage in consensual homosexuality.

It was only five years ago, that the United States Supreme Court gave recognition to the constitutional "right to privacy" in the *Griswold* case[3]—striking down the Connecticut statute punishing the prescription and use of contraceptives. (Similarly, a federal court recently struck down Wisconsin's prohibition of abortions as unconstitutional, on the ground that "a woman's right to refuse to

2. The Washington Post, March 10, 1970, § A, at 4, col. 6.
3. Griswold v. Connecticut, 381 U.S. 479 (1965).

carry an embryo during the early months of pregnancy may not be invaded by the state.")[4] Yet the original credit for the privacy right must go to Justice Brandeis who described it at the turn of this century as the individual's right to be let alone as long as he was posing no direct danger to the life, limbs or property of another human being.[5]

How far an individual may go in asserting his right to live and act differently from accepted social norms—is a most fascinating question in a democratic society. At a recent Washington, D.C. symposium on narcotics I heard one of my colleagues, Joseph S. Oteri of Boston, assert that constitutionally it was none of the state's business what one does with his own body or health—as long as others don't get hurt. I am certainly not willing to go that far. I have serious doubts about the claim that society has no right to intervene when one choses to immolate himself, starve himself or amputate his own limbs.

But I do not believe that a discussion of marijuana need to be that inextricably tied up with the more complex question of man's entitlement to total liberty over the disposition of his body and personality. Instead, I believe that the social and legal status of marijuana can be resolved on a different level of discussion, where not constitutional theories, but plain facts are allowed to formulate conclusions. What I am suggesting is that a more rational resolution of the marijuana issue could take place if we merely stopped long enough for an honest appraisal of known facts, which have long gone unnoticed in the national political game surrounding marijuana.

I therefore prefer to discuss not man's absolute right to seek artificial euphorias or to withdraw from society, but the more limited question of the citizens' right to sensible, responsible, reasonable and truthful legislation.

THE INTRANSIGENT LAW

The state marijuana laws came into being in the early nineteen thirties. It was only in 1937 that the federal narcotics law was extended to include marijuana (which is known scientifically as *cannabis sativa* and colloquially as "weed," "reefer," "hay," "Mary Jane" and

4. The Washington Post, March 7, 1970, § A, at 5, col. 1.

5. Warren and Brandeis, *The Right to Privacy*, 4 HARVARD L. REV. 193 (1890); Olmstead v. United States, 277 U.S. 438 (1928).

"pot"). Marijuana is now prohibited by both state and federal laws. A survey of current state laws, placed in the Congressional Record[6] on January 20, 1970, by United States Senator Charles McC. Mathias, Republican of Maryland, testifies to the fundamental unreasonableness of our laws.

The analysis reports that 39 states draw no distinction in their laws between marijuana and the other "harder" addictive, and more dangerous narcotics. Consequently, such diverse states as Colorado, Florida, Georgia, Maryland, Ohio, Hawaii and South Carolina group marijuana and heroin in the same class and subject them to identical sanctions. Similarly, twenty states, as different as Arkansas, Minnesota, New Jersey and West Virginia, apply the same penalites to the experimental, one-time user and possessor of marijuana and any other drug, as to offenders charged with their sale and exploitation.

In Alabama, for example, a juvenile first charged with possession of marijuana is subject to imprisonment for 5 to 20 years and a 10 to 40 year sentence for subsequent offenses. A first marijuana offense in Maryland brings 2 to 5 years imprisonment and fine of not more than $1,000; the second offense is punishable by 5 to 10 years and a $2,000 fine, and subsequent convictions bring 10 to 20 years imprisonment and a $3,000 fine.

Yet the commercial pusher and exploiter of harder narcotics, including heroin and cocaine, is subject to no stricter penalties in these states.

Although the penalties prescribed for the possession and sale of marijuana are unusually severe, most states leave it within the discretion of the courts to impose lesser sentences, especially for first offenses involving possession only. Forty-eight states thus allow suspended sentences and probation for first offenses of possessing marijuana.

The federal laws are similar to the states' statutes in that they make no distinction between marijuana and harder narcotics, providing punishments ranging from 2 to 10 years imprisonment for the first offense to 10 to 40 years in prison for third offenders. Moreover, federal laws provide mandatory minimum sentences for

6. 116 CONG. REC. §§ 240-245 (daily ed. Jan. 20, 1970).

violations and prohibit the mitigation of punishment through suspended sentences, probation or parole.[7]

THE RECENT NEWS OF MARIJUANA

It is implicit in this harsh federal and state regulation of marijuana that its use poses a serious danger to the public health and safety. Yet it has been repeatedly pointed out, and by authoritative sources, that the regulation of pot as a narcotic is sheer historical accident or error.

Dr. Stanley Yolles, former director of the National Institute of Mental Health, (N.I.M.H.), testified recently before the House subcommittee on Public Health and Welfare that to equate the risks of marijuana—to either the individual or to society—with the risks of hard narcotics "is neither medically nor legally defensible."[8] It has long been known that marijuana is not an addictive narcotic: it neither causes physical dependance nor does it develop a dosage tolerance requiring increased consumption in order to maintain its pleasurable effects. It is no more difficult to give up marijuana than to stop smoking. Yet marijuana's listing as a narcotic under the law persists.

To the Congressional committee having a new look at the law, the chief of the N.I.M.H. presented a table listing fables and facts regarding marijuana. In response to the assertion that marijuana leads to increase in sexual activity the official answer is that this substance "has no aphrodisiac property." Speaking to the fear that marijuana causes violence and crime, the answer is that "persons under the influence of marijuana tend to be passive."[9] (Indeed, marijuana has been found to calm mice that have been made aggressive by isolation, and it has been suggested that it might protect some people from psychosis and melancholia.)[10] More emphatic yet has been the Medical Society of the County of New York which stated flatly that there is no evidence of the causal connection between marijuana use and crimes of violence in this country.[11]

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7. 26 U.S.C. § 7237.

8. Statement of S.F. Yolles, *Hearings on H.R. 11701 and H.R. 3743 before the Subcommittee on Public Health and Welfare of the House Interstate and Foreign Commerce Committee* [hereinafter cited as Yolles].

9. *Id.* at 19.

10. Grinspoon, *Marijuana*, 221 SCIENTIFIC AMERICAN 19, 24 (No. 6, Dec. 1969) [hereinafter cited as Grinspoon].

11. NEW YORK MEDICINE, May 5, 1966, at 3.

Others assert that sometimes a crime may be committed by a person while under the influence of marijuana. Any drug which relaxes one's day-to-day inhibitions may provide an outlet for the user's pent-up personality.[12] Yet with regard to marijuana this release of inhibition is reported to result in verbal rather than behavioral expressions.[13]

To the allegation that marijuana use is medically harmful, the answer is that the effects of long-term use are unknown; and to the warning that marijuana use may lead to heroin, the clear N.I.M.H. reply is that "we know of nothing in the nature of marijuana that predisposed to heroin abuse."[14] Recent research by the Bureau of Motor Vehicles of the State of Washington, has demonstrated further that self control and coordination of drivers are much less affected by marijuana than by alcohol.[15]

Most dramatic have been the findings last year of a British government advisory committee on drugs which concluded that smoking marijuana appeared to be no more harmful—and in some ways, less harmful—than drinking liquor.[16]

After nearly two years of study, the 12-member group said flatly that "the long-term consumption of marijuana in moderate doses has no harmful effects."[16.1] No evidence was found by the committee that marijuana makes the body crave even stronger drugs or that it causes violent crime or aggressive behavior. The evidence of a link with violent crime, the group concluded, "is far stronger with alcohol than with the smoking of *cannabis*."[16.2]

The Ignored History

This recent news of marijuana is indeed not new. The fact is that we have been ignoring very similar information which has long been available. (For example, an intensive study conducted in the 1930's by a committee appointed by New York Mayor Fiorello La Guardia found no mental or physical decline in a group of chronic users who

12. Yolles, *supra* note 8, at 19.
13. Grinspoon, *supra* note 10, at 22.
14. Yolles, *supra* note 8, at 19.
15. Grinspoon, *supra* note 10, at 25.
16. The Washington Post, Jan. 8, 1969, § A, at 6, col. 5.
16.1. *Id.*
16.2. *Id.*

had averaged about seven marijuana cigarettes a day over a period of eight years.)[17] The resultant American lapse into the dark ages of marijuana is one more proof of the proverb that those who ignore history are condemned to repeat it.

The recent re-issue in the United States of the 1893-94 Report of the Indian Hemp Drugs Commission provides a full documentation of our historical neglect.[18] It demonstrates how thorough was the information available in 1894 regarding marijuana—the product of *cannabis sativa*, the Indian Hemp plant—and how carelessly the United States Congress acted some forty years later in making marijuana illegal.

One day in 1893 a member of the British Parliament rose to inquire whether the Secretary of State for India would instruct the Government of India to create a commission of experts to inquire into, and report on, the cultivation of, and trade in, all preparations of hemp drugs, "the effect of their consumption upon the social and moral condition of the people, and the desirability of prohibiting its growth and sale . . . ."[19] The Secretary of State promptly complied. The resultant study and report were instrumental in the decision not to outlaw the drug.

To this day, the Indian Hemp Commission Report remains the most thorough collection of information on marijuana. The resolution setting up the Commission contained a broad mandate for fact finding not only regarding the effects of the drug, its cultivation and preparation but also several especially relevant issues for today's setting: (1) the possibilities of controlling drug abuse by licensing, taxation or other non-criminal methods; (2) "the danger lest prohibition or restrictive measures . . . may give rise to serious discontent and be resented by the people . . ." and (3) "the probability or possibility that if the use of hemp drugs is prohibited, those who would otherwise continue to use them may be driven to have recourse to alcohol or to other stimulants or narcotics which may be more deleterious."[20]

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17. Grinspoon, *supra* note 10, at 23.

18. MARIJUANA, REPORT OF THE INDIAN HEMP DRUGS COMMISSION, (The Jefferson Law Book Co., 1969).

19. 9 PARL. DEB., H.C. (4th Ser.) 822 (1893).

20. MARIJUANA, REPORT OF INDIAN HEMP DRUGS COMMISSION 3 (The Jefferson Law Book Co., 1969).

After receiving evidence from 1,193 witnesses, including 335 medical practitioners, and scrutinizing numerous courts and mental hospital records in British India, the Commission published its report with six accompanying volumes of appendices totalling 3,000 pages. These deal carefully and intelligently not only with the history and effects of marijuana but also with the social costs and likely side effects of its criminalization.

In the traditional fashion of British Royal Commissions, the hemp group set out to find detailed answers to many questions which remain relevant to this day. In a craftsman-like manner it sought to determine not only the immediate effects of marijuana use on the consumer (a. is it refreshing? b. does it produce intoxication? c. does it create an appetite? d. how long does the effect last?) but also the medical and social after-effects (a. does it impair the constitution in any way? b. does it cause dysentery, bronchitis, or asthma? c. does it impair the moral sense or induce laziness or habits of immorality or debauchery?). Seeking knowledge, the Commission overlooked little that might be of current interest. It inquired whether these drugs are useful as aphrodisiacs, whether they tend to produce impotence and whether they are used by criminals to fortify themselves to commit premeditated crimes.

The Hemp Commission not only solicited information about the alleged connection between marijuana use, crime and mental illness, but also attempted to determine whether there was any causal connection between the three. There was no denying that people who smoke marijuana might commit violent and aggressive acts or become insane—just as people who smoke cigarettes or drink alcohol may, and for that matter, even those who indulge in neither. Possibly, marijuana users may even be more prominently obvious in the ranks of crime or mental illness—but is this attributable to the consumption of "pot" or to some other innate personal or social characteristics of which drug consumption itself is a manifestation?

The Cost-Benefit Analysis of Criminalization

Reaching the conclusion that the allegations of a connection between marijuana and crime were unsupported, the Commission noted that "preconceived notions based on rumor and tradition tend to

preserve the impression" of causality.[21] The Commission concluded further—and no research to date had cast any doubt upon this conclusion—that the moderate use of marijuana usually relieves anxieties and produces no adverse effects upon the character of the consumer.

Excessive consumption, on the other hand, is likely both to indicate and to intensify moral weakness or depravity. But with respect to his conduct in society, however, even the excessive consumer of hemp drugs is ordinarily inoffensive. "His excesses may indeed bring him to degraded poverty which may lead him to dishonest practices . . . [b]ut for all practical purposes it may be laid down that there is little or no connection between the use of hemp drugs and crime."[22]

Similarly negative was the Commission's conclusion regarding the relation between marijuana and mental illness. The acute toxic reaction of pot smoking is equivalent to the state of alcoholic intoxication, but it rarely leads to a lasting psychosis.

John Kaplan, professor of law at Stanford University, in a recent introduction to a new reprint of the Indian Hemp Drugs Commission report notes that the most important conclusions of the document relate to the adverse social effects that were likely to be produced by the outlawing of marijuana. The Commission was much concerned with the problems of enforcing marijuana prohibitions—"the fact that since there is no victim to complain about this type of offense, the police will necessarily have to proceed by using informers and invading the citizens' privacy."[23]

The Commission worried also about the public resentment that inevitably was to result from an attempt to use criminal sanctions in order to enforce consensual moral offenses and also the adverse attitude towards law likely to be "caused by any law which turns a sizable percentage of the population into criminals—whether or not they are apprehended."[24]

The Commission found no evidence or hypothesis to support the suspicion that marijuana was a stepping stone to opiate use. On the

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21. *Id.* at 263.
22. *Id.* at 264.
23. *Id.* at xiii (introduction).
24. *Id.*

other hand, it gave serious credence to another fear that if marijuana were to be made illegal, a substantial number of its users might turn to more harmful drugs. One of these drugs was considered to be alcohol.

The 1937 Noble Experiment

The United States Congress in 1937 demonstrated most dramatically the difference in governmental processes between Britain and its new world descendant. In a total reversal of the impartiality of the Indian fact-finding process, the American Congress relied most heavily upon the self-serving testimony of the Bureau of Narcotics in order to extend the Bureau's then existing narcotic jurisdiction to include marijuana. The Hemp Commission Report was not once mentioned as a worthy resource for determining the effects of marijuana on a large population of users. The only reference to this most exhaustive document on the topic was its inclusion without comment in a long bibliography submitted to Congress by the Bureau of Narcotics.

Contrasted with the Hemp Drug Commission's 1,193 witnesses, the United States Congressional inquiry into the need to outlaw marijuana was much more limited. The committee hearings in the House of Representatives consumed parts of five days. Of the twelve witnesses heard, three represented the hemp seed industry. Four others represented the United States Treasury Department which was proposing the law. The United States Senate Committee required less than two hours for its decision. Of seven witnesses heard, five represented the hemp seed industry.

Henry Anslinger, Director of the Bureau of Narcotics, was the chief spokesman urging the passage of the new bill and even though only five years had passed since the repeal of prohibition, there was little concern for this new venturing into moral legislation.

Professor John Kaplan has ironically pointed out that the major concern of Congress was not to determine the justification for the proposed outlawing of marijuana, but rather how to do so while at the same time protecting the paint manufacturer who used the oil of the hemp plant, the producers of birdseed to use hemp seeds as prime ingredients and diverse other legitimate businessment who required these products.[25]

25. Statement of Ralph Lozier, General Counsel, National Institute of Oilseed Products, *Hearings on H.R. 6385, before the House Comm. on Ways and Means*, 75th Cong., 1st Sess., at 59 (1937).

Congress did have the benefit of testimony by Dr. William C. Woodward, Legislative Counsel of the American Medical Association, who asserted that there was no evidence to support the need for the porposed federal legislation and furthermore that the new law would likely prove even more unenforceable than the existing Harrison Narcotics Act.[26] But even this limited suggestion of dissent on the issue of marijuana criminalization was denounced as typical of the conservative American Medical Association's opposition to all new deal laws.

The major plea of the Bureau of Narcotics was that marijuana should be outlawed because of its two adverse effects: first, it induced its users to commit violent crimes, and second, it produced insanity. The Commissioner of Narcotics did however disavow the most common reason currently given for the prohibition of marijuana—that it provides a stepping stone for heroin or cocaine use and that its users graduate to harder narcotics.

> Congressman Dingell: I am just wondering whether marijuana addict graduates into heroin, or opium, or a cocaine user.
>
> Mr. Anslinger: No Sir, I have not heard of a case of that kind. I think it is an entirely different class. The Marijuana addict does not go in that direction.[27]

To support the claim of marijuana's propensity to cause crime and insanity, Mr. Anslinger had no independent research findings or reports equivalent to the unbiased Indian Hemp Commission. Instead, he relied on history, diverse supporting newspaper editorials and several letters from law enforcement officials and others. The scientific reliability of the Anslinger testimony is typified by his assertion that "in Persia, a thousand years before Christ, there was a religious and military order . . . called the Assassins, and they derived their name from the drug called hashish which is now known . . . as marijuana . . . they were known for their acts of cruelty . . ."[28] The Government's chief witness was thus at least two thousand years off-base in his dating of the assassins—who came into being in 1090 A.D.

The overall tone of the Congressional inquiry is illustrated by several exchanges between witness Anslinger and his senatorial questioners.

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26. *Id.* at 87-121.
27. *Id.* at 24.
28. Grinspoon, *supra* note 10, at 18.

> Senator Davis: How many cigarettes would you have to smoke before you got this vicious mental attitude toward your neighbor?
> Mr. Anslinger: I believe in some cases one cigarette might develop a homicidal mania, probably kill his brother . . . . Probably some people could smoke five before it takes effect, but the experts agree that the continued use leads to insanity. There are many cases of insanity.
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>
> Senator Davis (viewing a photograph of an alleged murder victim presented by Mr. Anslinger): Was there in this case a blood or skin disease caused by marijuana?
> Mr. Anslinger: No. This is a photograph of the murdered man.
> Senator: It shows the fury of the murderer.
> Senator Brown: That is terrible.[29]

Moreover, it was the position of the assistant general counsel of the Treasury Department, C. M. Hester, that as long as the marijuana law proclaimed to be a tax measure, its validity would be upheld by the courts without any other evidence: "if on the face of the bill it appears to be a revenue bill, the courts will not inquire into any other motives that the Congress may have . . . ."[30]

It was on this meager evidence that the 1937 marijuana act was ushered in. "[T]he Congressional Hearings, is valuable reading even for those relatively few in our society who are uninterested in the drug problem since the stark contrast between the way the American and British governments went about deciding whether to criminalize marijuana is an object lesson in the right way and the wrong way to approach just about any legislative problem."[31]

Whence To?

The Marijuana Tax Act of 1937, by and large little modified, has had a life-span considerably longer than that of prohibition. Yet its popularity has not much improved with time. Dr. Yolles' recent testimony before the House Subcommittee on Public Health and Welfare claims that from collegiate studies and other sources it can be estimated that the number of people who have smoked marijuana at least once is somewhere between 8 and 12 million, and it may be closer to 20 million.[32]

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29. *Hearings on H.R. 6906, before the Subcommittee of the Senate Comm. on Finance*, 75th Cong., 1st Sess., at 11, 14 (1937).
30. *Id.*
31. *Supra* note 18, at vi (introduction).
32. Yolles, *supra* note 8, at 21.

Reportedly, about sixty five percent of those who have smoked marijuana are experimenting users who subsequently discontinue its use. Some twenty five percent become social users who smoke marijuana on occasion, usually in group settings. Only ten percent are classified as chronic users who devote significant time to obtaining and using the drug.[33]

The use of marijuana is most common in depressed urban areas, on one hand, and in academic and artistic communities, on the other. Recent reports of widespread use on campuses claim that twenty percent or more of the college population has been exposed to it. Relatively inexpensive, compared with heroin, marijuana is easily accessible to large numbers of grownups and youths. The Chicago police reported in 1966 that the local price for a single cigarette ranged between 50 and 75 cents. Lower prices were reported nearer to the Mexican border. With inflation and stricter enforcement—prices have gone up.

Several recent research studies have failed to cover new and more ominous data regarding possible long range effects of marijuana. While direct evidence of a causal relation between marijuana and crime remains lacking—and it is doubtful that a rational connection will ever be supplied—it is being pointed out that as an intoxicant the drug produces changes in human consciousness and therefore requires similar supervision to that accorded to alcohol. Driving under the influence of marijuana is thus hazardous and instances of panic, depression and psychotic states have been reported, though infrequently, by consumers.

Only the new widespread use of marijuana in the United States is finally producing the intensive clinical and community inquiries which should have been undertaken prior to the 1937 law. The National Institute of Mental Health reports that marijuana—not surprisingly for an intoxicant—has been found to interfere with the thinking process and with recent memory. It weakens the concentration power and slightly retards speech. Instead of stimulating conviviality it can stimulate anxieties and guilty feelings and develop introversion.

But while it appears that the pleasurable effects of marijuana may

33. NARCOTICS, LSD, MARIJUANA AND OTHER DANGEROUS DRUGS, RECENT RESEARCH 7 (N.I.M.H., Pub. 1961, Oct. 1969).

at times be countered by feelings of discomfort, dizziness and sluggishness, the long-term effects still remain uncertain. The most adverse recent report is that "There is a growing body of evidence that the continuing user, or 'pothead', becomes so involved in the process of securing and using the drug that his drive and motivation toward any other activities are impaired. Additionally, since the drug appears to attract youngsters who already have emotional problems, it may aggravate those conditions . . ."[34] Yet in the final analysis all that this suggests is that excessive involvement with the drug—much as any other excess including sex, alcohol or overweight—is likely to interfere with a healthy and balanced life and personal growth.

It is in the face of this still uncertain and bland record or marijuana as a personal and social threat that the justification for its criminalization and its subsequent channelling into underworld markets and profits must be tested. Indeed, it is this very criminalization which may contribute to one of marijuana's manifested ills: the fact that the difficult process of securing and using the drug may impair one's drive and motivation toward other activities. Certainly no one has ever seriously charged that the process of securing and using tobacco in an open society has a significant effect upon the smoker's role in the community. Yet in a prisoner of war camp or among reformatory inmates, access to prohibited or stringently supplied cigarettes may become a major pre-occupation.

In 1937, before the Senate subcommittee considering the outlawing of marijuana, the representative of the American Medical Association questioned the validity of criminal sanctions in curing vices. Once a given substance is prohibited, substitutes always spring forth. A narcotic officer in Egypt thus reportedly recounted how people were using tea for the purpose of getting a jab, by "boiling that tea, day after day, and day after day, until they got a hyperconcentrated extract, and then sitting up all night to drink it, and spending their money for tea, rendering themselves unfit and unable to work."[35]

Inherent in a democratic society is a commitment to as much social diversity and pluralism as can be tolerated without direct harm to others. Implicit in this commitment is the requirement that governmental regulations be reasonably imposed and be supported by

34. Yolles, *supra* note 8, at 22.
35. Woodward, Statement, in Senate Hearings, *supra* note 29 at 96.

a compellingly demonstrated need. The test should not be: why not governmental restrictions upon the individual? The democratic requirement instead, must be no criminalization without responsible proof.

The case for the total outlawing marijuana falls much too short of this standard. I have no doubt that with present knowledge as compelling a case could be made for outlawing the consumption of alcohol or the sale and smoking of cigarettes as could be made against marijuana.

A reporter for the South Carolina press asked me: "We know that liquor and tobacco are vices. We have nevertheless tolerated them in this country. But why should we expand the list of tolerated vices when we know that none of these is particularly beneficial?" The answer must be based on diverse considerations. Honesty requires that we admit to our youth that marijuana is no more dangerous than adult vices. Realism requires that we admit that the total abolition of vices is unlikely unless we order a society of intolerable conformity. Pragmatism requires rational priorities in our search for law and order—certainly the control of such dangerous crimes as murder, robbery and rape justifies a greater police effort than the suppression of vices, which now requires an inordinate amount of money and manpower.

As the history of prohibition has hopefully demonstrated the best route to greater public health and welfare does not necessarily travel through the territories of criminal justice. There are other avenues for social and behavioral influence, control and engineering—with a lesser price tag in terms of costs to individual liberty and social diversity.

Viewing the evidence in its totality, the conclusions that one must inescapably draw today with regard to marijuana are not much different from the conclusions reached in the Report of the Indian Hemp Drugs Commission of 1893-94.

Total legal prohibition of the cultivation, manufacture, sale or use of marijuana is neither justified nor expedient on the basis of existing knowledge. This conclusion must rest not only on the lack of ascertained ill effects, but also upon the prevalence of the habit, the social feelings on the subject and the possibility of driving the consumers to more deleterious stimulants or narcotics.

Since marijuana is an intoxicant and its excessive use is likely to produce adverse effects somewhat similar to those of alcohol and

tobacco, a public policy must be developed to restrain and restrict its use—aimed at the suppression of excessive use and at keeping the moderate use within confined limits, such as limiting it to adults.

The most proper and effective means for attaining such a social program would be mainly non-criminal measures. Needed instead is a system which utilizes appropriate taxation, requires that cultivation be under government licensing, and imposes careful licensing for both wholesale and retail sales. To further curtail the underworld trade, the unlicensed grower and seller should be subject to even stricter penalties.

Once the profit bottom has been knocked out from under the illicit marijuana market, public health and welfare measures designed to educate consumers against excesses would be commenced. Parental influence could be as readily exercised with regard to marijuana as it is used in connection with the other vices of adulthood. And for the adult who despite all knowledge and education prefers to seek out his artificial euphoria, there ought to be the liberty to smoke pot and pay for the consequences—if any are discovered—much as the cigarette smoker is given the opportunity to test out his chances against lung cancer.

This is neither a recommendation nor a plea for indulgence in marijuana. I certainly would not urge any person to smoke tobacco, drink alcohol or use other drugs—whether tranquilizers, pep-up or sleeping pills. For my minor children I shall continue to exercise my parental responsibility: in telling them what is right and tolerable within the family circle and what is not. Equally, I believe it is the duty of the mass media to continue reporting the updated facts regarding alcohol, tobacco and drugs.[36] But laws which turn into criminals some twenty million Americans, for the use of a substance the chemical qualities of which are comparatively mild—are a national mistake.

Some will persist: you are merely giving in to the pressures of youth for the legitimization of one more vice. I must respond that if pressure for change is to be resisted it must be so only in those areas where change is not justified. As adults we must not allow marijuana to become a test case for adult ignorance, inconsistency and arbitrariness.

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36. In his 1937 opposition to the federal marijuana law, the representative of the A.M.A. noted: "Newspaper expolitation of the habit has done more to increase it than anything else." Woodward, *Id.* at 118.

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MARIHUANA AS MEDICINE: AN HISTORICAL PERSPECTIVE

Within the last few years, scientists have generated a number of experimental studies investigating the potential therapeutic uses of marijuana. This research is not so much innovative research, as an attempt to systematically study some of the early claims about the medicinal properties of cannabis. We tend to forget that cannabis has been used for centuries as a medicine in the non-Western world and that it was used extensively by physicians in Europe and the United States during the late 1800's. The focus of this *Capsules* is the early Western uses of marijuana.

Some examples suggest the diverse uses cannabis found in early non-Western medicine. In 200 A.D. the use of cannabis as an analgesic was described by a Chinese physician Hoa-tho (Mikuriya 1969). Another early reference to the analgesic properties of cannabis comes from the *Herbal of Dioscordies*, written around the first century A.D.

"Cannabis (some call it Cannabium, some Schoenostrophon, some Asterion, Ye Romans Cannabis) is a plant of much use in this life for ye twisting of very strong ropes, it bears leaves like to the Ash, of a bad scent, long stalks, empty, a round seed, which being eaten of much doth quench geniture, but being juiced when it is green is good for pains of the ears."

Other accounts of medical utilization of cannabis may be found in Indian medical literature. According to one source, cannabis was used as an anesthetic in ancient Indian surgery (Kabelik, Drejei, Santavy 1960). It was also used extensively in religious ceremonies. The following reference is made to cannabis in the Hindu scriptures (Snyder 1970):

"To the Hindu, the hemp plant is holy. A guardian lives in bhang . . . Bhang is the joy giver, the sky flier, the heavenly guide, the poor man's heaven, the soother of grief . . . No god or man is as good as the religious drinker of bhang. The students of the scriptures of Benares are given bhang before they sit to study. At Benares, Ujjain, and other holy places, yogis take deep draughts of bhang that they may center their thoughts on the Eternal . . . By the help of bhang, ascetics pass days without food or drink. The supporting power of bhang has brought many a Hindu family safe through the miseries of famine."

Knowledge about the properties of cannabis did not become widespread in the Near and Middle East until after the fifth century A.D., when travelers, traders and adventurers began to carry knowledge of the drug westward to Persia and Arabia. In *Mekhsanul Aldawiya*, which is an Arabic book on materia medica, one finds the following entry under cannabis indica:

"The leaves of the plant make a good snuff for deterging the brain, the juice of the leaves applied to the head as a wash remove dandruff and vermin; drops of juice thrown into the ear allay pain and destroy worms and insects. It checks diarrhea, is useful in gonorrhea, restrains seminal secretions and is diuretic. The bark has a similar effect. The powder is recommended as an external application to fresh wounds and sores . . ."

In Africa, cannabis has also been used for centuries in medicine. For example, in Southern Rhodesia, the plant has been recommended as a remedy for malaria, black water fever, dysentery, blood poisoning and wart medicine. In addition cannabis has been frequently used to help relieve labor pains. The National Commission on Marihuana and Drug Abuse (1972) also reports that marijuana was used in African countries to restore appetite, relieve pain of hemorrhoids, treat tetanus, hydrophobia, delirium tremens, infantile convulsions, neuralgia, rheumatism, hay fever, asthma and skin diseases.

According to Kabelik, Krejei, and Santavy (1960) cannabis has also been used extensively in Latin American folk medicine. For example, in Argentina, cannabis has been considered a panacea for tetanus, swelling of the liver, gonorrhoea, sterility, impotence, abortion, tuberculosis of the lungs and asthma. Kabelik *et al*, wrote "Even the root bark has been collected in spring and employed as tonic for the treatment of dysentery and gastralgia, either pulverized or in forms of decoctions. The root when ground and applied to burns is said to relieve pain. Oil from the seeds has been frequently used in the treatment of cancer."

Until the middle of the 19th century, medical uses of marijuana were practically unknown in Western medicine. However between 1850 and 1937, a large number of Europeans and Americans prescribed cannabis indica for different ills. For example, Grinspoon (1972) reports that in the period from 1840 to 1900, over 100 articles were published, all recommending cannabis for various ailments and discomforts.

In the 19th century, cannabis was introduced into the Western medical awareness by two pathways. First the British colonization of India brought a number of English physicians into contact not only with the uses of hemp as cordage and textile, but also with its medicinal properties. One of these was Dr. W. B. O'Shaugnessy, who studied the botanical nature of the plant, described its various popular preparations and reviewed the historical literature. In addition he experimented with the drug in numerous animals and then used it on a select group of patients suffering from rabies, rheumatism, epilepsy and tetanus. In an 1842 paper he describes the ameliorative effects of marijuana extract on infantile convulsions, hydrophobia and lockjaw. He also notes that moderate doses of the drug stimulate the appetite.

Cannabis was also introduced into Western medicine through France. During the Napoleonic campaigns, particularly in Egypt, the drug reappeared on the scientific scene. In 1810 Rouyer, an apothecary to the Napoleonic troops, published a paper that started a small trend of French literature on the drug. Later French interest was fostered by Dr. Jacques Moreau de Tours, a physician at Bicetre. This French doctor learned of cannabis during a visit to Egypt in 1837 and believed that the drug could be used therapeutically to manage the emotionally disturbed Moreau de Tours' 1845 book, *Du Hachish et de l'Alienation Mentale: Etudes Psychologiques*, along with O'Shaugnessy's writings introduced the therapeutic use of cannabis to Western medicine.

TREATMENT OF THE MENTALLY ILL

Carlson (1974) comments that the introduction of reserpine and chlorpromazine into clinical psychiatry early in the 1950's led many writers to herald the age of tranquilizers, if not tranquility. However, he also notes that "it is an error to think drugs have only recently played a role in the treatment of emotional problems." For example, George Beard (1880), an eminent American neuropsychiatrist praised one psychotropic drug:

Another remedy that perhaps will become, if it is not already, one of the major divinities of neurology is cannabis indica. This remedy has the reputation of untrustworthiness and unreliability, both of preparation and action. This reputation is very fortunately losing. I find that for some conditions cannabis indica is one of the most reliable and valuable of remedies.

One psychiatric complaint that marijuana was recommended for was insomnia. Gray (1860) wrote that cannabis quieted more and was less stupifying than opium. Cannabis gave a "more natural and refreshing sleep", that was allegedly close to the sleep induced by hyoscyamine. In the same year, Dr. R. R. McMeens, reporting about the Committee on Cannabis Indica of the Ohio State Medical Society, reviewed the symptoms and conditions for which hemp was found useful; among these was insomnia.

Similarly, Reynolds (1890) reports on his 39 years of clinical experience with cannabis. He claimed to have found it useful as a nocturnal sedative in senile insomna, writing "in this class of cases, I have found nothing comparable in utility to a moderate dose of hemp." He also notes that it is effective for months, even years, without requiring higher dosages. As late as 1924, there is another reference to marijuana's sleep-inducing properties. In Charles Sajous' *Analytic Cyclopedia of Practical Medicine* (1924) Indian hemp is said to be useful for insomnia due to nervous exhaustion, although it is somewhat of an uncertain remedy. The cyclopedia also notes that the drug has been found to be useful in the treatment of senile insomnia.

Numerous psychiatrists recommended cannabis for the treatment of mania and melancholia. Moreau de Tours (1845) for example, wrote:

One of the effects of hashish that struck me most forcibly and which generally gets the most attention is that manic excitement always accompanied by a

feeling of gaiety and joy inconceivable to those who have not experienced it. I saw it as a means of effectively combatting the fixed ideas of depressives, of disrupting the chains of their ideas and of unfocusing their attention on such and such a subject. It was perhaps of no less appropriate to arouse the drowsy intelligence of mute psychotics or even to return a little energy and resiliency to the demented.

Moreau de Tours reports that he administered hashish in gradually larger doses to demented, depressive, mute psychotics and manic patients. The only success he had was in the cases of manic patients, which are persons, according to Moreau de Tours, who exhibit a form of "delirium which is strikingly similar to the effects of hashish." He concluded:

"Unfortunately, I have only a few cases to present and I am not ready to assert that the cases can justify an opinion concerning the effectiveness of extract of Indian hemp upon a specific mental illness. I believe, I know as well as anyone the cogent reasons for not drawing precise conclusions. I report them here only to call attention to the prophylactic action of a substance that could offer valuable therapeutic resources."

Other writers also reported their impressions about the effects of cannabis on the treatment of mania. For example, Gray (1860) reported using marijuana successfully in religious mania. On the other hand Reynolds (1890) called it "worse than useless" in such treatments. C. W. Suckling (1891), a professor of medicine at Birmingham, England thought that cannabis deserved a "better report than it had obtained." He found it useful in certain cases of mental confusion brought on by a moral shock such as illness of a close relative. He reported that this particular condition occurred more often in women and that he cured several cases within a fortnight.

With widespread reports of the pleasant and cheerful effects of cannabis, it was inevitable that cannabis be used in the treatment of melancholia. Brigham (1846) found that cannabis "caused an exhiliration of spirits for a short time in melancholics but that it had not lasting effect." Most writers seemed to agree that it was useful only sometimes (Carlson 1974).

The neurological profession also found a use for marijuana in its practice during the last half of the 19th century. Neurologists saw many patients who did not require hospitalization but who had a myriad of complaints often with an emotional or psychophysiological origin. Cannabis was used in the treatment of this newly diagnosed condition of neurasthenia which was accompanied by marked fatigue and various physical complaints.

TREATMENT OF LOSS OF APPETITE

One of the many drug effects which has achieved a certain amount of notriety among marihuana users is appetite stimulation. As early as 300 A.D., cannabis was recommended in India for persons suffering from loss of appetite. One study by Siler *et al.* (1933) of soldiers in Panama, indicated that all the persons interviewed felt hungry after smoking marijuana. There was, however, no data in the paper. After reviewing the early literature on the effects of cannabis on hunger, Abel (1975) concludes:

"In summary the general impression from the early clinical and anecdotal literature is that cannabis and its homologs stimulate the desire for food in humans. However, it should also be noted that in nearly all of the instances in which cannabis was studied clinically in this manner, the observations were conducted under conditions which would not be acceptable by present day scientific observations."

TREATMENT OF MIGRAINE HEADACHES

Dr. Reynolds (1890) wrote about the benefits of cannabis in the treatment of headaches: "Very many victims of this malady (migraines) have for years kept their sufferings in abeyance by taking hemp at the moment of threatening or onset of attack."

In 1887, an article in the *Journal of the American Medical Association* by Mackenzie suggests that if continued for some time cannabis is the most valuable remedy there is for the treatment of persistent headache. Also Osler and McCrae's *Principles and Practice of Medicine* (1916) states that cannabis is probably the most satisfactory remedy in the treatment of migraine headaches.

TREATMENT OF PAIN

The early literature also makes numerous references to the general analgesic and anesthetic properties of cannabis. McMeens, in a report on the Committee on Cannabis Indica (1860), cites a Dr. Fronmueller of Furth, Ohio who summarized his experience with hemp before the committee:

"I have used hemp many hundred times to relieve local pain of an inflammatory as well as neuralgic nature and judging from these experiments I have to assign to the Indian hemp a place among the so called hypnotic medicines next to opium; its effects are less intense and the secretions are not so much suppressed by it. Digestion is not disturbed, the appetite rather increased; sickness of the stomach is seldom induced, congestion never. Hemp may consequently be employed for inflammatory conditions. It disturbs the expectoration far less than opium; the nervous system is also not so much affected. The whole effect of hemp being less violent and producing a more natural sleep without interfering with the actions of the internal organs, it is certainly often preferable to opium, although it is not equal to that drug in strength and reliability. An alternating course of opium and Indian hemp seems particularly adapted to those cases where opium alone fails in producing the desired effect."

Hare (1887) also noted the drug's usefulness in topical analgesia, particularly with respect to the mucous membrane of the tongue. Dentists until about 1937 took advantage of this property of cannabis. According to Sajous' *Analytic Cyclopedia of Practical Medicine* (1924) to relieve dental pain, the physician should dilute the tincture of marihuana with three to five parts alcohol and then introduce it into the tooth cavity with a bit of cotton.

Another medical writer, Mattison (1891), gave his endorsement of cannabis indica as an anodyne and hypnotic:

"With a wish for speedy effect, it is so easy to use that modern mischief-maker hypodermic morphia, that they (young physicians) are prone to forget remote results of incautious opiate giving. Would that the wisdom which has come to their professional fathers though, it may be a hapless experience, might serve them to steer clear of narcotic shoals on which many a patient has gone awreck.

"Indian hemp is not here lauded as a specific. It will, at times, fail. So do other drugs. But the many cases in which it acts well entitle it to a large and lasting confidence. My experience warrants this statement; cannabis indica is often a safe and successful anodyne and hypnotic."

Throughout the 1900's references were made to the pain-relieving properties of cannabis. Mercer and Tiffin (1901) recommended that cannabis be used in cases where opium would prove objectionable. They describe the effects in the following manner:

"The breathing becomes regular, the pulse and skin remain normal; there is no arrest of secretions nor loss of appetite under its influence and while it does not arrest pain it has a special power over spasmodic pain."

Sajous' *Analytic Cyclopedia of Practical Medicine* (1924) also recommended cannabis as an analgesic. It was recommended for a variety of pains including headaches, eyestrain, menopause, brain tumors and uremia. "It is especially useful in pain due to direct involvement of the nerves rather than in the pain associated with inflammatory conditions in general."

As late as 1935 there was an article in the prestigious *Journal of the American Medical Association* describing the effects of cannabis during labor. The unsigned article suggested:

"The sensation of pain is distinctly lessened or entirely absent and the sense of touch is less acute than normally. Hence a woman in labor may have a more or less painless labor. If a sufficient amount of the drug is taken, the patient may fall into a tranquil sleep from which she will awaken refreshed. . . . As far as is known, a baby born of a mother intoxicated with cannabis will not be abnormal in any way."

The article goes on to suggest, however, that a requisite for the successful use of marihuana in labor is previous experience with the drug.

"The Africans (who frequently use marihuana in labor) no doubt use the drug at other times and accordingly are not as likely to be distressed by the occassionally terrifying phases of the episode. Also some experience is needed in order to regulate the dose when used in this way."

Walton (1938) suggests some reasons for the popularity of the hemp drugs as pain killers. Chloral hydrate was not introduced until 1869 and was followed in the next 30 years by paraldehyde, and the barbitals. Antipyrine and acetanilide, the first of their group of analgesics, were introduced about 1884. In other words, in the late 1800's the major drugs used for general sedative and analgesic purposes were morphine derivatives. Because their disadvantages were well known and because the other drugs were not widely available, cannabis was frequently used. For example, Walton writes:

"In fact, the most attractive feature of the hemp narcotics was probably the fact that they did not exhibit certain of the notorious disadvantages of the opiates. The hemp narcotics do not constipate at all, they more often increase than decrease the appetite, they do not particularly depress the respiratory center even in large doses, they rarely or never cause puritus or cutaneous eruptions and more important the liability of developing addiction is much less than with the opiates."

The Demise of Cannabis as a Medicine

By 1938, cannabis had fallen into disfavor with the medical profession. The passage of the 1937 Marihuana Tax Act meant that eventually most physicians completely abandoned marihuana as a medicinal drug. The disadvantages of the drug were such that when aspirin, barbiturates and the synthetic analgesics and sedatives became available the medical use of cannabis indica faded.

One disadvantage of marijuana was that it could not be injected into the blood stream because of poor water solubility. Further, when marijuana is ingested by mouth its effect is very slow, so that the peak takes two to four hours to attain. In addition, the effects are hard to predict for a given dose. This was due in part to lack of control over the potency of preparations sold to and by pharmacists. There is evidence that the concentration of 300 odd cannabinoids in cannabis varies as a function of temperature, water, soil conditions and the genetic strain of the plant. Also there is considerable individual variation in reactions to marijuana. Finally, Hollister (1971) points out that doses high enough to produce a marked hypnotic effect are almost always accompanied by some degree of psychotomimetic-like perceptual disorders which many patients might find disagreeable. This disadvantage was noted by the physician recommending the use of marijuana in labor.

The physicians practicing in the 1800's and early 1900's were aware of these disadvantages. For example, Reynolds (1890) suggested the following cautions should be observed when administering marijuana:

The dose should be given in minimum quantity, repeated in not less than four or six hours and gradually increased by one drop every third or fourth day, until either relief is obtained or the drug is proved, in such case to be useless. With these precautions, I have never met with any toxic effects and have rarely failed to find a comparatively short time either the value or the uselessness of the drug.

Currently, there has been a renewed interest in the potential therapeutic benefits of cannabis. There are certain advantages that this drug has over substances such as analgesics, sedatives and hypnotics. First, the prolonged use of cannabis does not lead to the development of physical dependence. In addition, there is a minimal development of tolerance to cannabis products. Finally, cannabis products have exceedingly low toxicity levels. Mikuriya (1969) reports that the oral dose required to kill a mouse has been found to be about 40,000 times the dose required to produce typical symptoms of intoxication in man. Finally cannabis produces no disturbance of vegetative functioning, while the opiates inhibit the gastrointestinal tract, the flow of bile and the coughing reflex. In addition, a recent article (1973) in the *Journal of Anesthesiology* points out:

With current availability of pure synthetic cannabinoids, water soluble crystalline derivatives, highly active homologs and distinctly related benzopyrans and with the availability of more precise methods of pharmacologic study in animals and man, the earlier problems of identifying or discovering new therapeutic applications are being overcome.

In the last few years, scientific methods have been systematically applied to the study of the possible uses of cannabis in medicine. Although the findings are tentative, there is some evidence that the early clinical recommendations are being partly validated in the laboratory.

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Man and Marijuana

RICHARD E. SCHULTES

Strange things often happen to plants after a long and intimate association with man: they travel around the world; they grow in unusual and sometimes inhospitable soils and environments; and they often hybridize. They may escape cultivation and become weeds, or they may be altered by selection for characteristics associated with specific uses. These interacting forces frequently result in an organism greatly changed from its wild progenitor. To unravel and understand such changes, the biology and economic history of these plants must be considered together. Consequently, the investigation of the biological evolution of a cultivated plant and the evolution of its uses cannot be divorced from a study of the natural forces that may have shaped its new and perhaps unnatural role.

A prime example of this interplay between man and his useful plants is the relationship between man and *Cannabis*, known in the United States, according to its use, as hemp or marijuana. Marijuana has been around for thousands of years and has earned deep respect in many different societies. Botanists have usually considered *Cannabis* a single species, *C. sativa*, but recent research indicates that there may well be several species. The present biological variability of the genus may be traced in part to the complicated history of its various uses.

Cannabis has long been cultivated for five principal purposes: for hempen fibers; for its oil; for its achenes, or "seeds," which man has consumed as a food; for its narcotic properties; and as a therapeutic agent in folk medicine and modern pharmacopoeias.

Despite its long history as one of the major crop plants and its utilization by millions of people in many parts of the world, *Cannabis* is still characterized more by what is not known about its biology than by what is known. This lack of knowledge creates serious obstacles to an understanding of the moral, social, and legal aspects of its contemporary use or abuse and is the basis of many contradictions in the botanical, chemical, medical, and pharmaceutical literature.

There is no way of knowing which use of *Cannabis* represents the earliest. Plant uses normally proceed from the simpler to the more complex. Early man could hardly have missed seeing fibers exposed in naturally retted stems, and the production of hemp goes far back in the archeological record. *Cannabis* is probably man's oldest cultivated source of fiber and the first to have spread so widely. Remains of hempen fibers have been found in several of the earliest centers of civilization.

Curious stone beaters and crude tools for pounding hemp, as well as pottery in which impressions of cords were baked, have been discovered at an ancient riverside fishing site in Taiwan. There is evidence from several localities in China and Chinese Turkestan that nearly 5,000 years ago Neolithic man made thread and rope from hemp. In fact, the oldest known name of *Cannabis* is the Chinese *ta-ma*, which originally meant hemp. The character for the word represents plants growing near a house and would seem to indicate that the earliest and most important use of hemp in China was as a source of fiber. The Chinese believe that the legendary emperor Shen Nung, patron of medicine and inventor of agriculture, first taught cultivation of hemp in the twenty-eighth century B.C. Hempen fabrics have been excavated from sites in Turkey dated to the

late eighth century B.C., older than the Taiwan finds, and an Egyptian tomb of between 3,000 and 4,000 years of age has yielded specimens of fabric thought to be hemp.

Ancient sites in the Altai Mountains of central Asia have provided remains of clothing made of hempen fibers. In 500 B.C. the Greek historian Herodotus stated that the Scythians, who originated in this mountainous area, grew hemp for its fiber and that the Thracians made garments of hemp that closely resembled linen.

Cannabis arrived as a fiber plant in Europe from the north, not from the south. The Greeks and Romans of classical times did not cultivate it, although it had arrived in Europe from Asiatic regions to the east before the Christian era. Fiber for ropes and sails was apparently imported into Sicily from Gaul as early as the third century B.C., and the Roman writer Lucilius mentioned the plant in 120 B.C. There is little evidence that *Cannabis* was cultivated as a major crop in western Europe before the Christian era. In the first century A.D., the Roman historian Pliny the Elder detailed the preparation and grades of hempen fibers, and hempen rope has been recovered in England from the site of a Roman fort dated A.D. 140-180, suggesting its introduction by the Romans from Gaul. Pollen studies have shown that there was a continuously increasing cultivation of hemp in England from the early Anglo-Saxon period into late Saxon and Norman times, from about 400 to 1100. Whether Viking sailors used hemp is not certain, but hempen fabrics and fishing lines have been retrieved from Viking graves in Norway, and the plant was grown in Iceland in the early Middle Ages.

In medieval England Henry VIII required English farmers to plant hemp, and in Elizabethan times England's maritime supremacy created such demand for the fiber that it was always in short supply, thus encouraging the cultivation of *Cannabis* in the New World. It was first introduced to North America apparently at Port Royal, Canada, in 1606. In Virginia the first crop of hemp was planted in 1611, and the Pilgrims brought it to Plymouth in 1632. Hemp was exported to England by the colonies, and in pre-Revolutionary America the fiber was used in making clothing.

There were undoubtedly a number of independent introductions of hemp into the Spanish and Portuguese colonies of the New World. *Cannabis* was known in Chile as early as 1545, and seeds were sent from Spain to Peru in 1554, but it never became a major crop.

The fiber became increasingly important in the United States. Extensive hemp plantations, centered around Kentucky, enjoyed prosperity until the middle of the last century, when disruption during the Civil War and rising labor costs killed the industry. By the 1870s, little hemp was being commercially produced in this country, but *Cannabis* seeds had spread from the abandoned plantations. The plant is now found as a weed mainly in the north-central area and the Middle Atlantic and New England states. Today hempen fiber is produced mainly in Russia and Poland, although the finest quality comes from Spain and Italy.

While the production of hemp represents one of the earliest uses of *Cannabis*, it is possible that consumption of the roasted achenes for food occurred even earlier. The ripened achenes are extremely nutritious and have undoubtedly been ingested as a fat-rich food by many peoples, especially in times of famine.

Archeologists have found hemp achenes in a receptacle excavated near Berlin, Germany, dated, with some reservation, at about 500 B.C. Since the mature achenes are devoid of the intoxicating principles, this find would seem to suggest their use as a food or their burial as a source of nourishment for the dead.

Sometimes eaten in eastern Europe, hemp is today cultivated for its seeds, especially in the Ukraine and Manchuria. In the United States hemp seeds are valued as a feed ingredient for birds and poultry.

It is as a substitute for linseed oil in the paint and varnish industry, in soap making, and as a lubricant that hemp seed oil has been chiefly used. The achenes contain from 19 to 35 percent of a drying oil, a greenish yellow fluid, which is also used for emulsions in pharmacy. In many areas of Russia peasants burn hemp oil in lamps to light their homes, but there is little evidence that oil production represents an early or widespread folk use of the plant.

Today it is seldom realized that, from the earliest periods of primitive cultures to modern times, hemp has been one of the world's major medicinal plants. Furthermore, many contemporary investigators believe that in the future wholly new therapeutic agents will come from *Cannabis* or from some of its chemical constituents.

The medicinal value of hemp--often, of course, closely related to its psychoactive properties--is perhaps its most significant, and was possibly even its earliest, role in cultural history. The oldest known record of *Cannabis* as a medicine goes back 5,000 years to Shen Nung, who prescribed hemp for malaria, beriberi, constipation, rheumatic pains, absentmindedness, and female disorders; an ancient Chinese physician, Hoa-Gho, recommended a mixture of hemp resin and wine to deaden pain during surgery.

In Indian mythology, hemp was a gift of the gods; its medicinal virtues lowered fevers, fostered sleep, relieved dysentery, and cured sundry other ills; it also stimulated the appetite, prolonged life, quickened the mind, and improved the judgment. In ancient India especially, the true medicinal use of *Cannabis* was closely associated with its magico-religious functions. As in many cultures, narcotics or hallucinogens represented the medicines par excellence, assuming, because of their psychoactive power, a far more important role than the merely physically active medicines. The several systems of Indian medicine valued hemp. The medical work *Sushruta*, for example, recommended hemp as an antiphlegmatic, as a treatment for catarrh accompanied by diarrhea, and even as a cure for leprosy. The *Bhavaprakasha*, written about A.D. 1600, termed the drug antiphlegmatic, digestive, bile affecting, pungent, and astringent and recommended it to arouse the appetite, improve the digestion, and heighten the power of the voice. At one time or other, Indian medicine ascribed curative properties for almost all ills to hemp; it was reputed to control dandruff and relieve headaches, mania, insomnia, gonorrhea, whooping cough, earaches, and consumption. *Cannabis* is still widely used in Indian medicine.

As hemp spread, its fame as a panacea spread with it. When it penetrated Africa, it became in some areas the preferred drug for treating malaria, dysentery, anthrax, and tropical fevers. Across Africa today, the most varied medicinal

properties are ascribed to hemp. The Mfengu and Hottentots, for example, value the plant for snakebite; before childbirth Sotho women partially stupefy themselves by smoking the plant.

Even though *Cannabis* was used for a greater variety of medical purposes in India, it was in medieval Europe that it assumed most importance in both folk and "professional" medicine. Many of these European uses vary greatly from the Indian uses and can be traced directly to such early classical physician-writers as Dioscorides and Galen. Medieval herbals usually classified hemp as "hot and dry in the third degree." They distinguished the cultivated ("manured hempe") from the weedy ("bastard hempe") plant.

Little use was apparently made of bastard hempe, except as a remedy "against nodes and wennes and other hard tumours." Manured hempe, on the other hand, had a host of therapeutic applications. Boiled in milk, the achene was thought to alleviate a hot, dry cough. Crushed in white wine, it was held to relieve symptoms of jaundice. Fed to hens, the achenes were credited with increasing egg laying.

The medieval herbalists cautioned, however, that excessive use of hemp might bring on sterility. Parkinson, for example, stated in 1640 that "the seed . . . consumeth wind, and by much use thereof, doth disperse it so much that it dryeth up the naturall seed of procreation," while in 1619, Dodoens asserted that "it drieth up . . . the saede of generation" in men "and the milke of women's breasts."

Although not precisely a therapeutic use, it is worth noting the sixteenth-century report that a decoction of hemp "poured into the holes of earthwormes will draw them forth, and that fishermen and anglers have used this feate to get wormes to baite their hooks." This curious use acquires added interest in view of the suggestion that in some Asiatic localities early man may have valued hemp as a fish-stupefying plant, a use that may have led to its domestication.

In spite of the plant's long role in medieval medicine, modern European and American medicine did not become seriously interested in the medicinal potentialities of *Cannabis* until the nineteenth century. During the last half of the century, more than a hundred articles on hemp appeared in medical journals. The principal effects of *Cannabis*, except for minor local irritant activity, concern the higher nerve centers. Consequently, in modern medicine the drug has been employed mainly as an analgesic, as a relief for insomnia and to calm nervous restlessness. It usually takes the form of a tincture. It has also had limited use in inducing a euphoric condition helpful in reducing the pain of migraine headaches. Recently, hemp preparations have been shown to have antibacterial activity.

Cannabis is a difficult drug to use, since individual doses can be determined only by continued administration in increasing amounts until a desired effect is experienced. The most serious handicap in using hemp is difficulty in standardizing it, that is, the lack of certainty about the potency of the preparations.

At the present time, preparations of *Cannabis* are not available. It was included in the United States Pharmacopoeia and the National Formulary until 1937, but has been dropped from these American, as well as from most European, lists of official drugs.

Hemp's value in folk medicine was obviously associated closely with discovery of its euphoric and hallucinogenic properties, and knowledge of the narcotic effects of *Cannabis* may date almost as far back as its discovery as a fiber. Beset by hunger, early man experimented with all plant materials that he could chew. He could not have avoided discovering the intoxicating properties of *Cannabis*, for in his quest for the nutritious seeds and oil, he certainly ate the sticky tops of the plant, the most narcotic part. The euphoric, ecstatic, and hallucinatory aspects of the intoxication may have introduced him to an otherworldly plane from which emerged religious beliefs, perhaps even the concept of deity. The plant became accepted as a special gift of the gods, a sacred medium for communion with the spiritual world. And such it has remained in some cultures to the present.

While today *Cannabis* represents one of the most widely disseminated hallucinogens, its use as a narcotic, except in localized parts of Asia, seems to be relatively recent. As early as 5,000 years ago, Shen Nung, recommending hemp as a medicine, recognized its narcotic properties. One of its Chinese names meant "liberator of sin," indicating early condemnation of its use as an intoxicant. Eventually, however, its euphoric effects were accepted in China, as evidenced by a later name meaning "delight giver." A fourth-century report asserts that eating hemp causes the user to see spirits, and several hundred years later the Chinese were taking *Cannabis* for "the enjoyment of life."

The barbarian hordes of central Asia who lived west of China knew of the intoxicating properties of hemp. It was undoubtedly these nomadic tribes that spread the narcotic use of the plant. Among these people were the Scythians, who wandered widely in central Asia and southeast Europe, from the Altai Mountains to the Black Sea. There is evidence that they had a profound cultural influence on early Greece and eastern Europe.

Five hundred years before Christ, Herodotus described the Scythian use of *Cannabis:* "They make a booth by fixing in the ground three sticks inclined towards one another, and stretching around them woollen felts which they arrange so as to fit as close as possible: inside the booth a dish is placed upon the ground into which they put a number of red hot stones and then add some hemp seed. . .immediately it smokes, and gives out such a vapour as no Grecian vapour-bath can exceed; the Scyths, delighted, shout for joy. . . ."

Recent archeological finds in the Altai Mountains have validated this curious report. Frozen Scythian tombs dated 500 to 300 B.C. have yielded a miniature, tripodlike tent over a copper censer--a contrivance for the inhalation of *Cannabis* vapors. Hempen clothing and the remains of *Cannabis* achenes were also found at the site.

All classes of Hindus now consume *Cannabis* in such preparations as bhang, a decoction made from powdered hemp fermented in milk or water, and ganja, the form in which it is usually smoked. But the plant may not have been widely used as a narcotic until a relatively late date in India. Indian society, as can be adduced from oral folklore, often condemned the secular use of hemp. There are references stating that one's learning is diminished with the use of *Cannabis* and that he who smokes ganja forgets even his own father's name.

Hemp was one of the most sacred plants in India.

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Knowledge of its psychoactive effects seem to go far back in history, as suggested by the deep mythological and spiritual beliefs about the plant. In ancient India, bhang was so sacred that it was reputed to deter evil, bring luck, and cleanse the user of sin. Harm and disaster visited those who trod upon the holy leaves of the hemp plant, and the most sacred oaths were taken on the hemp leaf.

The favorite drink of Indra, god of the firmament, was prepared from *Cannabis*. The Hindu god Siva taught that the word *bhungi* must be chanted prayerfully over and over at the time of sowing, weeding, watering, and harvesting the holy plant.

Thirty-five hundred years ago, the *Rig Veda* extolled the spiritual use of the narcotic god-plant soma, the identity of which has remained a deep mystery until recently. There was some suspicion that soma could be *Cannabis*, but recent studies by R. Gordon Wasson have identified it as the hallucinogenic mushroom *Amanita muscaria*.

Folklore holds that during the reign of Khusru (A.D. 531-79) the narcotic use of hemp was introduced to Persia by a pilgrim from India.The Assyrians, however, did employ hemp as an incense in the first millennium B.C., an indication that they may have used the drug for intoxication.

Knowledge and use of the inebriating properties eventually spread across Asia Minor. One of the enigmas of historical botany in this part of the world lies in the apparent absence of any direct mention of *Cannabis* or its products in the Bible. There are, however, several obscure passages in the Old Testament that have been interpreted as possible references to the intoxicating effects of hashish, the pressed, pure resin from the flowering tops of female plants.

Although at first prohibited among Islamic peoples, hashish spread widely. In 1378, the Emir Soudaun Sheikhouni tried to extirpate the plant from Arabian territory and imposed harsh punishments for the eating of hemp, but his efforts were in vain. As early as 1271, the use of hashish was so well known that Marco Polo described its consumption among the secret order of Hashashins, who used the narcotic to experience the rewards in store for them in the afterlife. Under the leadership of Hasan-Ibn-Sabbah, a Persian nobleman, this group of fanatics was dedicated--even to the point of committing murder--to the spread of an agnostic religious philosophy. Some philologists believe that the word *assassin* came into European languages from the Arabic *hashashin*, "eaters of hashish."

Although *Cannabis* was recommended as a medicine in classical Greece and Rome, its purposeful use as an intoxicant was apparently rare. By the first century A.D., however, the Romans customarily ate cakes containing hemp, which, according to Galen, were taken to promote hilarity but which, in excess, produced torpor.

Cannabis extended widely into Africa, partly under the pressures of Islamic influence. But the use of hemp far transcends Mohammedan areas and is found in primitive native cultures in such ingrained social and religious contexts that its arrival clearly predated that of Islam. In the Zambezi Valley, for example, there was an ancient tribal ceremony in which the participants inhaled the vapors from a pile of smoldering hemp; later, reed tubes and a variety of pipes were used, and the plant material was burned on an altar. The Kasai tribes of the Congo have revived the Riamba cult, a sect in which hemp, replacing ancient fetishes and symbols, became a god, a protector against physical and spiritual harm. Treaties and business transactions are sealed with puffs of smoke from a yard-long calabash pipe. In many parts of East Africa, especially near Lake Victoria, hemp-smoking and hashish-snuffing cults exist, and the plant is cultivated on a grand scale for its narcotic use. In southern Africa, the Hottentots, Bushmen, and Kaffirs customarily inhale the smoke of *Cannabis*, either burned free on the ground or in special pipes of horn and calabash.

Hemp has spread to many areas of the New World inhabited by large aboriginal groups, but the plant seems not to have penetrated significantly into native American religious life and beliefs. This may be because of the great number of native hallucinogens already firmly established in their magico-religious practices. Sixty years ago, when Mexican laborers introduced the smoking of marijuana, it spread across the south, and by the 1920s it was firmly established in new Orleans. In those early years, its use was confined mainly to the poor, especially to minority groups. The spread of the custom has resulted in a still unresolved controversy, despite the enactment, in 1937, of the Marijuana Tax Act, which made it illegal to grow or possess *C. sativa*.

What lies ahead for the man-hemp association? Certainly, the relationship will continue. There can be no doubt that a plant that has been in partnership with man since the beginnings of agricultural efforts, that has served man in so many ways, and that, under the searchlight of modern chemical study, has yielded many new and interesting compounds will continue to be a part of man's economy. It would be a luxury that we could ill afford if we allowed prejudices, resulting from the abuse of *Cannabis*, to deter scientists from learning as much as possible about this ancient and mysterious plant.

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IV. SUNDAY MORNING

[The panel discussion was preceded by a presentation of the motion picture *Reefer Madness*]

A. Legislative Process and Social Reform: Marihuana Reconsidered

MR. LEVIN: Ladies and gentlemen, the subject of this morning's panel discussion is Legislative Process and Social Reform: Mari-

huana Reconsidered. We are fortunate to have an attorney who is one of Philadelphia's foremost defense lawyers in drug abuse cases and is counsel to the Governor of Pennsylvania's Council on Drug and Alcohol Abuse to preside over this panel. It is my pleasure to introduce Mr. Richard Atkins.

MR. RICHARD ATKINS: We are going to examine the legislative process and the changes in medical, legal, and political thought that led to the development of the marihuana and other associated laws.

I think it is appropriate, before I introduce our first speaker, to give you an example to show that the movie we just saw was typical of the mid and late 1930's. An article entitled, *Marihuana, Assassin of Youth,* by Harry J. Anslinger, the U.S. Commissioner of Narcotics, appeared in the February 1938 edition of *Reader's Digest.* In the article, Mr. Anslinger described all the people who had killed their mothers, fathers and others while under the influence of marihuana; the mother who complained about her daughter's death as a result of marihuana addiction; and how people will crawl on the floor and bark like a dog, etc., all as a result of marihuana use.

Even more unbelievable was a book from the late 1930's called *On the Trail of Marihuana, the Weed of Madness* by Earle and Robert Rowell, two opponents of liquor and cigarettes, who had, at that time, turned their attention to marihuana. They published what was then considered by many to be the latest authority on marihuana. In the book, they said:

> We now know that marihuana (1) destroys the will-power, making a jellyfish of the user — he cannot say no; (2) eliminates the line between right and wrong and substitutes one's own worst desires or the base suggestions of others as the standard of right. Above all, it leads to crime and fills the victim with an irrepressible urge to violence. It incites him to revolting immorality, including rape and murder, and finally it causes insanity as a speciality.
>
> We saw that the subject in the earlier stages of marihuana use could be compared to a coiled rattlesnake, something that may turn dangerous in a split second. In the latter stages, he is completely a madman on the loose. Actually, he is temporarily insane. Although there are no real brain lesions as in insanity, there is an artificial insanity which in all other characteristics resembles the manifestations of genuine insanity. The marihuana addict may run amuck and wreak havoc. There is absolutely no predicting the results but of one thing you can be sure: He is not a safe person to be near under such a condition.

In another section they said:

> 'Kill, kill,' cries the native of Malay as he dashes down the street with a dagger in his hands, maddened by hashish. Under its influence, the crazed user develops the urge to kill just for the sake of killing. Destruction is the keynote and homicide the polestar guiding him in his maniacal acts. There is born a sadistic lust to kill for murder's own sake. Marihuana is rightly called the killer drug.

That was the attitude in the mid 1930's. We will try to trace all of the types of influences that went into the laws — the influences of the physicians, the medical societies, the lawyers, the legal societies, and politics.

I think it is very appropriate for us to start with Dr. Lester Grinspoon. Dr. Grinspoon is considered by many to be the foremost medical authority on marihuana in the United States. He is the author of *Marihuana Reconsidered* and is an Associate Professor of Psychiatry at Harvard Medical School. I think that he certainly needs no further introduction.

DR. LESTER GRINSPOON: Thank you, Dick. I think the program committee has done somewhat of an injustice putting us on after *Reefer Madness*. That makes it more difficult to present a dull, tedious, serious paper on the subject, but I beg your indulgence.

There now appears to be little doubt that among the commonly used psychoactive drugs, the amphetamines have a formidable potential for harm, psychological, physical and social. It is clear that while they may be used, particularly in small doses over limited periods of time, without creating dependency, their use imposes the risk of severe dependency on many, and outright addiction on some. Animal data indicates that their chronic high-dose use may lead to cell damage in several organs, including the brain. In humans, chronic high-dose use often leads to short- and sometimes long-term psychoses. Even brief episodic exposure to moderate to high doses involves a significant degree of risk with respect to some physical disorders (*e.g.* cerebral hemorrhage) and psychoses. Furthermore, while it has not been conclusively established, there is a high degree of suspicion that prolonged high-dose use may lead, in some, to a global deterioration of mental functioning. There is, however, no doubt that the amphetamine abuser is more likely to become involved in destructive, often violent and impulsive, antisocial behavior.

There is a curious, albeit not perfect, mirror image relationship between some aspects of cannabis and the amphetamines. Marihuana is not an addicting drug, and there are no serious sequelae upon cessation of chronic use; speed is addicting, and there is a withdrawal

syndrome which often includes severe depression. While there is no convincing evidence that cannabis damages tissue, amphetamines appear to have that capacity; while there are no well documented cases of death from marihuana, it is becoming increasingly clear that speed can indeed kill. Pot is not criminogenic and, in fact, being high on this drug probably diminishes the likelihood that a person may become engaged in violence and crime; just the opposite is the case with amphetamines. Cannabis in very large (usually ingested) doses is capable of producing toxic psychoses and in smaller smoked doses may rarely precipitate functional psychoses in individuals who are already vulnerable to psychoses, that is, people whose psychosis might be precipitated by such events as an alcoholic debauch, an automobile accident, a surgical procedure, or a severe loss. It has been demonstrated that a psychosis which is all but indistinguishable from a schizophrenic reaction can be induced with amphetamines in "normal" subjects in the laboratory and paranoid reactions are not uncommon among speed freaks on the street. Speed quite clearly leads to the use of other psychoactive drugs; cannabis does not.

This is not to say that cannabis is a harmless drug; quite obviously it is not. Some people experience adverse reactions and some of the factors which seem to play a part in that are individual susceptibility, dose (particularly high doses of ingested cannabis), and unfavorable set and settings. However, the risk involved in using marihuana, excluding those which derive from its legal status, are of a different magnitude from those which arise from the psychopharmacologic properties of amphetamines. In fact, the widely believed, largely mythological dangers of cannabis comprise a shoe which more nearly fits the amphetamines. Yet, the astonishing fact is that there has been an enormous concern and near hysterical outcry over the use of marihuana, while attitudes — public, governmental and medical — toward the use of amphetamines have generally ranged from actual enthusiasm to complacency and, only recently, some degree of concern.

To attempt to understand how attitudes toward these two classes of psychoactive agents became so divergent and so divorced from their actual relative potentials for harm, it may be instructive to review some aspects of what may be referred to as the social histories of these two drugs. Cannabis has an ancient history as a medicinal agent; its first recorded use is to be found in the *Herbal,* an ancient equivalent of the United States *Pharmacopoeia,* written about 400 to 500 B.C. (It is often, and probably erroneously, dated at 2737 B.C.). But its entry into Western medicine occurred in 1839 when W. B. O'Shaughnessy, a 30-year-old assistant surgeon and professor of chemistry in the

Medical College of Calcutta, reported on his experiments in treating patients with rabies, rheumatism, epilepsy, and tetanus with tincture of hemp. He found it to be an effective analgesic and to have impressive anticonvulsant and muscle relaxing properties. Stimulated by O'Shaughnessy's report, a number of Western physicians proceeded to explore the clinical possibilities of cannabis, and, within the next few decades, scores of papers on the medical usefulness of cannabis were to be found in the medical literature. Before long, it was fairly widely used in the United States in the treatment of a variety of ailments, many of which were symptomatically benefited, particularly by its analgesic and soporific effects. Several major limitations on its usefulness were imposed by the facts that it was not soluble in water and, therefore, could not be given parenterally, and that cannabis indica (the alcoholic tincture of cannabis, the form in which it was dispensed as a medicine) was notoriously unstable and, physicians therefore, could never be certain of dosage. Its uses as an analgesic began to be superseded by the opiates which were being used increasingly in the United States in the second half of the 19th century. When the hypodermic syringe was introduced from England in 1856 that use was accelerated, for the water-soluble opiates could be conveniently administered parenterally with predictable and rapid relief of pain. In fact, their use for the relief of pain became so widespread during the Civil War that opiate addiction became known as the "soldier's disease." With the development of synthetic analgesics such as aspirin, and synthetic hynotics such as chloral hydrate and barbiturates, physicians lost interest in cannabis indica for its analgesic and hypnotic properties, for it was far less stable and, primarily for that reason, less reliable than the synthetics. Thus, in the early decades of the 20th century its use as a medicine declined rapidly and its death knell was sounded with the passage of the 1937 Marihuana Tax Act.[29]

Curiously, during the heyday of its use, in America, as a medicine, there was only a very narrow appreciation of the fact that cannabis could be used as an intoxicant. Those who were aware of this property were largely intellectual and literary-minded readers of those writers of the French Romantic movement who together comprised the mid-nineteenth century Le Club des Haschischins. The two most important, where cannabis is concerned, were Theophile Gautier and Charles Baudelaire. Their effusive accounts were very influential, even though Gautier was describing the toxic psychosis induced by the very large doses of hashish he ingested, and even though there is considerable question as to whether what Baudelaire wrote about

29. Act of Aug. 2, 1937, ch. 553, 50 Stat. 551.

as hashish experiences were not, in fact, more truly Thomas De Quincey influenced accounts of the effects of chronic use of laudanum (a mixture of opium and alcohol) on his very fertile and highly imaginative mind. The American counterpart to these authors was Fitz Hugh Ludlow, whose book *The Hasheesh Eater: Being Passages from the Life of a Pythagorean* was published in 1857. While, as with Baudelaire, there is some question as to how uncontaminated with De Quincey the descriptions provided by Ludlow are, there can be no doubt, that his book was a success and excited the interest of intellectuals although apparently not to the point where large numbers of them were turning on with cannabis. One way in which Ludlow differed from his European colleagues was that while they generally used hashish as the source of the drug, his was generally obtained from his "friendly apothecary" in the form of "Tilden's Extract" or some other brand of cannabis indica.

The writings of Fitz Hugh Ludlow were distinctive in that they provided one of the few connections in the American public mind (and a narrow segment of it at that) between cannabis the medicine and cannabis the intoxicant. Furthermore, to the extent that general knowledge of the relationship between the medicine and the euphoriant existed at all, it had all but vanished during the half century that passed before cannabis in a different form (what we now know as marihuana, grass, dope, pot — the dried leaves and flowering tops of the Cannabis sativa plant) began to come into this country from below the southern border.

A good deal of mystery surrounds the story of the "reefer's" debut in the United States. It is generally assumed that in the early decades of this century the custom of smoking the weed in cigarette form traveled with groups of itinerant Mexican workers across the Texas border into the southwestern and southern states. In 1910 the reefer began attracting some slight attention in New Orleans. By 1926, according to R. P. Walton, who studies the problem "on location," the city was wet with the habit. Supplies of marihuana came occasionally from Texas and more often by boat from Havana, Tampico, and Vera Cruz. Using New Orleans as a distributing center for the intoxicant, enterprising sailors became traffickers. The dried plant leaves were shipped from New Orleans up the Mississippi to various river ports and thence cross-country to large cities. It is said that by 1930 there was not one major American city which did not have a few marihuana smokers among its ranks.

In its early American years the reefer did not cause a great deal of consternation. However, as it became more popular among Mexican-

Americans and a favorite of Blacks, particularly jazz musicians in urban centers, and awareness of this use among these minority groups became more widespread, marihuana use began to arouse concern. In Louisiana, the *New Orleans Item* pointed a critical finger at the "moota" and hostilely claimed that the habit seemed to be most widespread among groups of foreign extraction. Clearly, the early fury aroused by marihuana can largely be attributed to the fact that it was introduced by Spanish speaking people and Blacks and that it was, therefore, considered an alien and un-American drug which was a particularly dangerous and degenerate intoxicant. Reflections of this increasingly widespread attitude were occasionally to be found even in the medical literature. In 1931, the *New Orleans Medical and Surgical Journal* stated that:

> The debasing and baneful influence of hashish and opium is not restricted to individuals but has manifested itself in nations and races as well. The dominant race and most enlightened countries are alcoholic, whilst the races and nations addicted to hemp and opium, some of which once attained to heights of culture and civilization have deteriorated both mentally and physically.

In 1930, less than 2 years before the Benzedrine inhaler first became available to the public, the Federal Bureau of Narcotics was founded. The bureau under the leadership of its first director, H. J. Anslinger, undertook an "educational program" which must be some sort of landmark for its success in converting the general lack of concern with and ignorance about marihuana to widespread alarm and misinformation. In the year of the bureau's founding, only 16 states had laws prohibiting the use of marihuana. By 1937, the year it succeeded in getting the congress to adopt the Marihuana Tax Act,[30] nearly every state had adopted legislation outlawing marihuana. The lay press, with the help of the bureau, contributed to the campaign with its frequent publication of alarmist stories of violent behavior, usually of a sexual nature, which they asserted all but invariably resulted from use of the weed. By 1950 the bureau, which had theretofore denied that the use of marihuana led to the use of opiates, embraced the so-called "stepping-stone hypothesis" which was to become the major argument against liberalization of the marihuana laws. A number of articles appeared in the early 1950's in support of that contention. The authors of the articles offered no supporting data; apparently they realized that the mass media audience had been sufficiently propagandized to accept the "stepping stone" theory as self-

30. *Id.*

evident. Had they presented what little data was available — for example, the rise in cannabis use was simultaneous with a leveling off or even a declining rate of opiate addiction over the preceding twenty years — they would have done little to support their claims.

At about the same time the American Medical Association was undergoing a remarkable shift in attitude toward cannabis. Prior to the passage of the 1937 Marihuana Tax Act, the American medical establishment had been quite interested in, and knowledgeable about, cannabis as a medicine, and had been sensible about its capacity for abuse. The change in attitude was symbolized by the fact that the only seriously dissident voice heard during the hearings before the House Ways and Means Committee which preceded passage of the act was that of Dr. W. C. Woodward, Legislative Counsel for the American Medical Association. While he acknowledged a limited medical use for cannabis, he attempted to persuade the congressmen to initiate less restrictive legislation because of the possibility "that future investigators may show that there are substantial uses for cannabis." Dr. Woodward then went on to attack the evidence proffered by the Treasury Department on the "marihuana problem," particularly the claim that it was addicting, that it led to crime, and that its use was widespread among children. With the completion of his initial statement, the committee began questioning Dr. Woodward in a most hostile fashion concerning his educational background, his relationship to the American Medical Association, and his views on the medical legislation of the previous 15 years. Mr. Dingell chided Dr. Woodward: "The medical profession should be doing its utmost to aid in the suppression of this curse that is eating the very vitals of the Nation . . . . Are you not simply piqued because you were not consulted in the drafting of the bill?" Dr. Woodward was told that he was trying to throw obstacles in the federal government's way and, of course, none of his testimony was harkened to.

The House hearings were concluded without any substantial changes in the proposed bill, and the Senate hearings were conducted in a similar way. The bill became law on October 1, 1937, and, in its wake, many state laws, just as punitive and hastily conceived, were legislated. While its clinical use was already declining somewhat in the earlier part of this century, primarily because of the introduction of synthetic hypnotics and analgesics, the difficulties imposed on its use by the Tax Act completed the medical demise of cannabis, and it was removed from the *United States Pharmacopoeia* and *National Formulary* in 1941. While, as previously mentioned, there had never been much of a public consciousness of the relationship between can-

nabis the medicine and marihuana the weed-like intoxicant that Blacks and Spanish-speaking people used, the dropping of cannabis from the listings of legitimate medicines set the stage for the ignorance of doctors and for the change in their attitudes toward cannabis over the next 30 years. In protesting the impending 1937 Marihuana Tax Act legislation, members of the Committee of Legislative Activities of the American Medical Association, wrote "Cannabis at the present time is slightly used for medicinal purposes, but it would seem worthwhile to maintain its status as a medicinal agent for such purposes as it now has. There is a possibility that a restudy of the drug by modern means may show other advantages to be derived from its medicinal use." Thirty years later a *Journal of the American Medical Association* position paper, written by men who have apparently had little, if any, experience with the use of cannabis drugs and apparently as little familiarity with the medical literature asserted: "Cannabis (marihuana) *has no known use in medical practice in most countries* of the world, including the United States."

This remarkable transformation of attitude toward cannabis is illustrated in the changing editorial policy of the American Medical Association. In September 1942, the *American Journal of Psychiatry* published a paper by Drs. S. Allentuck and K. M. Bowman entitled *The Psychiatric Aspects of Marihuana Intoxication* in which they asserted, among other things, that habituation to cannabis is not as strong as to tobacco or alcohol. Their report grew out of the studies they had carried out under the auspices of the La Guardia committee. The *Journal of the American Medical Association* subsequently published (in December 1942) a reasoned, informative editorial on their work which was described as "a careful study." In reviewing the major findings of the study, the editorial proceeded to mention some possible therapeutic uses that might be made of the drug's properties. Those mentioned were the treatment of depression, the treatment of loss of appetite, and the possible treatment of addicts to opiate derivatives. However, following the *Journal's* publication of letters from H. J. Anslinger (January 1943) and R. J. Bouquet, Expert on the Narcotics Commission of the League of Nations (April 1944), both of which denounced the La Guardia Report, the American Medical Association made an extraordinary about-face and joined the Federal Bureau of Narcotics in the denunciation of the report. The switch was heralded by an editorial which appeared in the *Journal of the American Medical Association* in April 1945:

> For many years medical scientists have considered cannabis a dangerous drug. Nevertheless, a book called "Marihuana Prob-

> lems" by the New York City Mayor's Committee on Marihuana submits an analysis by seventeen doctors of tests on 77 prisoners and, on this narrow and thoroughly unscientific foundation, draws sweeping and inadequate conclusions which minimize the harmfulness of marihuana. Already the book has done harm. . . . The book states unqualifiedly to the public that the use of this narcotic does not lead to physical, mental or moral degeneration and that permanent deleterious effects from its continued use were not observed on 77 prisoners. This statement has already done great damage to the cause of law enforcement. Public officials will do well to disregard this unscientific, uncritical study, and continue to regard marihuana as a menace wherever it is purveyed.

With this editorial the *Journal of the American Medical Association,* in the words of A. S. deRopp,

> abandoned its customary restraint and voiced its editorial wrath in scolding tones. So fierce was the editorial that one might suppose that the learned members of the mayor's committee . . . had formed some unhallowed league with the "tea-pad" proprietors to undermine the city's health by deliberately misrepresenting the facts about marihuana.

Over the past 25 years the American Medical Association has been steadfast in maintaining a position on marihuana closely allied to that of the Federal Bureau of Narcotics. A great deal of misinformation and fear-generating mythology has come to surround this drug, and, judging by the published statements of the Council on Mental Health of the American Medical Association, the medical community has been both a victim and an agent of this unfortunate process. This position is reflected in the editorial policy of the *Journal of the American Medical Association* which apparently "disregards" as "unscientific" and "uncritical" any study that does not demonstrate marihuana to be "a menace wherever it is purveyed." Thus the *Journal* has over recent years, with respect to cannabis, departed from the policy of accepting papers solely on the basis of criteria of medical importance and scientific soundness; clearly it has consistently accepted papers, one which from a scientific point of view have been of questionable worth but which tend to confirm the American Medical Association's view of marihuana as a great menace, and rejected those, regardless of scientific merit, which presented data and results which contradicted this view.

Thus the medical establishment's view of cannabis has over the course of little more than a century come full turn. The same drug that had excited physicians' interest in 1839 and become a respected

and much used therapeutic tool during the remaining decades of the 19th century had increasingly, from the 1940's on, come to be regarded by American medicine with the same bias, fear and ignorance as by the Federal Bureau of Narcotics. By the 1960's the American Medical Association had completely denied the medical heritage and potential of cannabis and its only interest in it appeared to be in providing quasi-scientific underpinnings to some of the now widely held myths.

Amphetamine, on the other hand, came into being as a medicine and has for most of its short history enjoyed the unequivocal enthusiasm of the pharmaceutical industry and the medical profession. Only in the past several years has the medical establishment begun to be concerned about the consequences of its romance with the amphetamines. Let us briefly review the history of this class of psychoactive agents in the United States.

In 1887, the German pharmacologist, L. Edeleano, first synthesized the drug which would eventually become famous as "Benzedrine," but he was uninterested in exploring its pharmacological properties and put this extraordinary stimulant back on the shelf. Not until 1910, did G. Barger and Sir H. H. Dale investigate the effects on experimental animals of this and a series of closely related chemical compounds, which they called "sympathomimetic amines." However, no one in America or England grasped the implications of their findings for another 17 years, when Gordon Alles who was looking for a synthetic amine substitute for epherdrine concluded that the most effective such substitute was the original amphetamine synthesized by Edeleano. Because of his willingness to use himself as a human guinea pig, Alles not only discovered, very quickly, that amphetamine was active whether inhaled or taken orally, but also found that "Benzedrine" was surpassed by its dextro isomer (later known as Dexedrine) in its ability to alleviate fatigue, increase or intensify his alertness, and make him feel euphorically confident even when it kept him awake long into the night.

When F. P. Nabenhauer, the chief chemist at the drug house of Smith, Kline & French, found out about Alles' work he began to experiment with various commercial applications of amphetamine in conjunction with his firm's patented inhaling device. Realizing what a potential bonanza this "new" class of synthetic "ephedrine substitute" represented, the executives at Smith, Kline & French persuaded Alles to sell them all his patent rights, and in 1932 their "Benzedrine" inhaler was first made available to the public by non-prescription, over-the-counter sale in drug stores across the country. The American Medical Association issued a mild parenthetical warning note in which

it cautioned that "continued over-dosage" might cause "restlessness and sleeplessness," but, at the same time, assured physicians that "no serious reactions have been observed." In late 1937, the American Medical Association approved the new drug in tablet form, recognizing it as an acceptable therapeutic medication for the treatment of narcolepsy and postencephalitic parkinsonism. The American Medical Association further stated that "Benzedrine" was "useful" in the treatment of "certain depressive psychopathic conditions," and even that persons "under the strict supervision of a physician" could take amphetamine in order to capture "a sense of increased energy or capacity for work, or a feeling of exhilaration."

Complementing the enthusiastic over-prescribing of amphetamines by physicians is the fact that since the 1930's there have been ways in which the public could procure these euphoriants with little or no assistance or interference from organized medicine, the Food and Drug Administration, or any state or federal drug abuse control authorities. First, of course, there were the inhalers. Although Smith, Kline & French held the patent on the "Benzedrine" inhaler until 1950, other drug companies quickly realized that they could sell their own imitations without fear of patent-infringement suit, because "Benzedrine" was only one of an almost unlimited variety of equally stimulating, euphorigenic, and toxic amphetamine congeners. By the end of World War II, there were at least seven different inhalers on the market containing large amounts of these drugs, and all of them could be purchased at drug or grocery stores without a prescription. All of these products were very easy to break open, and the number of different techniques of ingestion was limited only by the ingenuity of the abusers. Although dissolving the fillers in alcohol or coffee produced the desired effects, a much stronger kick could be obtained by chewing these bits of cotton, or simply swallowing them whole.

While the inhalers introduced millions of young people to the amphetamines, most users found that it was just as easy to procure the pills. In the first three years after "Benzedrine" was introduced in tablet form, sales rose to over 50 million units. The outbreak of World War II gave perhaps the greatest impetus to date to both the legal, medically authorized use and the illegal, black market abuse of these drugs. When German Panzer troops invaded Poland, obliterated Warsaw, and turned west to rush through Belgium and France, they were taking large doses of methamphetamine to eliminate fatigue and maintain physical endurance. But the German Army was by no means the only large-scale consumer of amphetamines during World

War II; Japanese warriors and factory workers used as much or more. Nor was use of these stimulants limited to the Axis powers. According to British war statistics, 72 million standard dose amphetamine tablets were distributed to the British Armed Forces alone. Although the United States Armed Forces did not authorize the issue of amphetamines on a regular basis until the Korean "conflict," "Benzedrine" was used extensively by Army Air Corps personnel stationed in England, and it was an open secret that many pilots were engaged in a mammoth bootlegging operation. Amphetamines were also easily obtainable from military medical officers and aides. If only 10 per cent of the American fighting men ever used amphetamines during this war, over 1.5 million men returned to the country in 1945 with some first-hand knowledge of the effects of these drugs. Indeed, in recent years, the Armed Forces have constituted a veritable breeding ground for the abuse of all kinds of drugs, and especially the amphetamines.

In recent years amphetamine prescriptions have accounted for between 6 to 10 per cent of all prescriptions for *any* drugs, including non-pharmaceuticals like penicillin, and a group of researchers in California have recently reported that at least one out of every five adults *admits* to long-term or habitual use of amphetamines. By 1946, Smith, Kline & French had been so successful in its amphetamine promotion campaign that a paper by W. R. Bett listed 39 generally accepted "clinical uses" for the drug, including treatments of schizophrenia, morphine and codeine addictions, "nicotinism" (tobacco smoking), heart block, head injuries, infantile cerebral palsy, irradiation sickness, and hypotension. Bett, who further recommended the drug for ailments like sea sickness, persisted hiccup, and even "caffeine mania," was only one of a huge number of physicians who regarded amphetamines as "versatile remedies" which were second only to a few other extraordinary drugs like aspirin in terms of the scope, efficacy, and safety of their effects.

Today, even though the Food and Drug Administration officially recognizes only "short-term appetite reduction," narcolepsy, some types of parkinsonism, and certain "behavioral" disorders in hyperkinetic young children as valid "therapeutic indications" for the amphetamines, the federal agency has no real power to limit the drug industry's advertising claims, and amphetamines continue to be prescribed by many physicians for nearly as many different reasons as Bett mentioned.

By 1958 the annual legal United States production of amphetamines had risen to 75,000 pounds, or 3.5 billion tablets — enough to supply every man, woman, and child with about 20 standard (5 mg)

doses. Less than 10 years later, the drug industry *admitted* it was pouring out 160,000 pounds — about 8 billion amphetamine tablets — per year, or enough for 35 to 50 pills for every living American. By 1970 *reported* legal amphetamine production had risen to over 10 billion tablets and in 1971 it rose again to over 12 billion.

While the national media, particularly in the late 1930's and early 1940's, were giving amphetamine a tremendous amount of publicity, even referring to the new drug as "poisonous," this did nothing to discourage use. Quite to the contrary, the numerous references to these "brain," "pep," and "superman" pills in popular press "news" stories and feature articles, even when ostensibly phrased as warnings, acted mainly to arouse the curiosity and interest of the American people. But the most important factor was the quick and amazingly enthusiastic reception accorded these inhalers and pills by the medical profession. The American Medical Association was especially influential in reinforcing the general impression that this was indeed a new wonder drug.

Public attitudes toward the amphetamines were initially, and for many years, either positive, neutral, or merely humorous, and the people who used them did not, in the tremendous majority of cases, fit into any traditional stereotypes of "dope fiends." As long as the medical community was willing to accept the manufacturers' claims, no one was going to question why in 1932 practically any new psychoactive "medicine" could be marketed without any proof of either safety or efficacy. Nor did the American Medical Association, the Food and Drug Administration, or the Federal Bureau of Narcotics have any legal or sub-legal authority to deny a drug company the right to sell practically any chemical not specifically forbidden by the Harrison Act of 1914.[31] All the Food and Drug Administration could do was recommend appropriate therapeutic indications; it had absolutely no power to limit or warn against consumer purchasing of drugs for which prescriptions were not required. Furthermore, the amphetamines clearly demonstrated the ease with which drug manufacturers could expand claims for their products and advertise their usefulness in an unlimited range of areas. Some drug firms obtained patents for their amphetamine congeners and combinations on the basis of these drugs' alleged "antidepressant" actions, and then expanded their advertising claims to include the "treatment" of conditions as disparate as obesity, alcoholism, enuresis, and so on; others took different tacks, starting from the claim that their product was "uniquely effective" in the treatment of obesity, but employing the same basic tactics.

31. Act of Dec. 17, 1914, ch. 1, 38 Stat. 785.

Thus in the mid 1930's, while marihuana was beginning to be brought to the public's attention through vilification, as a menace capable of wreaking great havoc, amphetamine was introduced and then promoted as perhaps the earliest technology-derived exemplar of better living through chemistry. Marihuana, having long since lost what little public awareness it once had as a medicine, was now identified with Spanish-speaking and black people. In view of the widespread bigotry and the attitudes towards and beliefs about these minority peoples which then existed, the mythology which grew up around marihuana is not surprising. Perhaps through the unconscious process of displacement it became particularly easy for people to believe that the drug of the Blacks and the Spanish-speaking must have something to do with crime, violence, sexual excess, addiction, personality deterioration, amotivation, etc. By the same token, to the extent that this kind of bigotry is still a vital force in the United States today we would expect that it would be difficult, despite the increasingly widespread dissemination of eviden to the contrary, for people to give up these false beliefs; this certainly appears to be the case. On the other hand, there are some facets of amphetamines and their history which may have made it more difficult for people to perceive them as more harmful than they are generally thought to be. They are, after all, products of modern technology and like many other such products this fact, at least until very recently among a growing number of consumer skeptics, lent them a certain degree of legitimacy. Furthermore, whenever one picks up a trade journal in a doctor's office he sees impressive, multicolor advertisements for the many amphetamine congeners. Perhaps most important, the crucial link in the selling of this drug (with respect to "legitimate" distribution) is the physician. The drug companies do not direct their enormous advertising campaigns to the consumer, but, because the various amphetamines are prescription drugs, the doctors are the recipients of countless pieces of promotional mail, medical journals are peppered with advertisements, and there are even outright gifts. When the doctor recommends a drug, he confers on it a great deal of legitimacy — so much so that the psychoactive agents that doctors recommend are medicines, not "drugs." What is more, beyond the fact that he is a physician and, therefore, an expert on drugs, the doctor is a figure in whom people have great trust. A recent public survey conducted by psychologists at the University of Connecticut listed 20 major occupations and asked participants to rate each from the standpoint of truthfulness, competence, and altruism; physicians came out on top with clergymen second.

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(Car salesmen were rated last, just one place behind politicians who were 19th.) To the extent that the doctor has been an unwitting pusher of this drug, he has also been a most trusted one.

Finally, cultural factors also appear to play an important role in the perpetuation of the mirror-image relationship that exists with regard to general views, attitudes, and beliefs about cannabis and amphetamine. Societies and cultures have certain norms for acceptable behavior and performance and tend to sanction, for social use, those drugs whose psychopharmacological properties are in accord with these norms. Cannabis has been accepted for centuries among the Brahmins in India whose cultural background and religious teaching support introspection, meditation, and bodily passivity while eschewing the life of action and individual achievement. Clearly this more introspective, meditative, nonaggressive stereotype associated with marihuana goes against the Western cultural mainstream, perhaps particularly in the United States. The West, with its emphasis on achievement, activity, efficiency, speed, and aggressiveness finds amphetamine much more culturally compatible than cannabis. Beyond this very general way in which the psychopharmacologic properties of amphetamines make it fit so neatly to the fast-moving American culture template, there are some specific societal values and goals whose achievement is commonly thought to be abetted through the use of this drug. Thus, the many Americans who have been propagandized into placing great value on being energetic, confident, vitally dynamic, and very thin are particularly susceptible to the lure of a drug with a grossly unappreciated potential for harm.

MR. ATKINS: Thank you, Dr. Grinspoon. We will now hear from Mr. John Finlator. Mr. Finlator is presently a private consultant on drug abuse problems and the author of a book, *Nark,* which will be published in the fall. That is an appropriate title. Mr. Finlator worked for a number of years with various federal law enforcement agencies, and most recently was the Deputy Director of the Federal Bureau of Narcotics and Dangerous Drugs. I think it would be most appropriate for him to comment on the changing attitude of the Federal Bureau of Narcotics, and possibly on his own changing attitude as an individual concerned with law enforcement.

MR. JOHN FINLATOR: Thank you very much. I was going to tell you about the evils of marihuana but I was preempted by the film. I was going to tell you a little about the Bureau, but I was preempted by Dr. Grinspoon on that. So, I think I will take about sex if it is all right with you.

Mr. Raymond Shafer, who was head of the Marihuana and Drug Abuse Commission, tells a story that he says is true. I do not know if it is, but I would like to pass it along to you. He tells about one nice spring morning at Camp LeJeune when this lady Marine got up — I guess I should now call her a Ms. Marine. It was a beautiful day. She walked out through the woods, through the trees and shrubbery, and saw a little lake. She decided that she would take a bath in the altogether, which she promptly decided to do. She took her clothes off, dropped them on the edge of the water and was playing around like a little mermaid when all of a sudden she heard a strong male voice give a command and all the trees and bushes walked away, leaving just one Marine standing there by her clothes. She started to stand up but quickly got back into the water. She said, "Sir."

"Yes, ma'am."

"Will you get the hell out of here?"

He said, "No, ma'am."

By this time, she knew she was in trouble and so she fished around in the water and finally found a dishpan. She pulled it up, stood up with it in front of her and said, "I'm so mad. Do you know what I am thinking?"

He said, "Yes, ma'am, you think there is a bottom in that dishpan, don't you?"

Seriously, I recommend Dr. Grinspoon's book, *Marihuana Reconsidered* to you. For those of you who have not looked at it, it is the most scholarly work I have read which discusses the medical side of marihuana, and my reading in the area has been considerable. There is a "companion piece" by John Kaplan, Professor of Law at Stanford University, called *Marihuana, the New Prohibition*. From both the legal and the medical points of view, these are two of the most outstanding works I have seen.

Professor Kaplan studied the members of the football team at Stanford University and their drug use. He found that 73 per cent of the football team that beat Ohio State in the Rose Bowl 3 or 4 years ago had used marihuana at one time or another. As a matter of fact, he found there was more marihuana use by members of the first team than by those who sat on the bench, but he did not know what the correlation was between the two.

I talked to Professor Kaplan about that one day and asked, "How in hell did that team ever beat Ohio State University?" He replied, "I do not know, but I suspect that somebody ought to study the drug usage of that particular football team."

Most of you know the problems that the Bureau I at one time represented has had, and the stance that it took. I am not going to discuss that except to say that most of it was born in ignorance. The Bureau did what it did because you let it happen; because the medical profession and the scientific community let it happen. It was a wide open field — they grabbed the ball and ran with it.

We all know the story and history of marihuana, so I will not go into that, but even at the hearings on the Marihuana Tax Act,[32] Congressman Snell asked what the bill was about and Sam Rayburn said that it had something to do with something called marihuana, which he believed was a narcotic of some kind.

At that time, Harry Anslinger had become Commissioner of Narcotics and had already made his stamp on the world. He bulled through the stories about marihuana. You have heard some of them today and I could quote them by the millions. They were not all his fault. As Dr. Musto tells you in his book, the administration itself actually pushed the horrors of marihuana. Harry Anslinger was the man with the charisma, the personality, the ringmaster, the clown. He was the one who could speak, and speak he did; he just overwhelmed the House and the Senate on every bill that considered marihuana and in nice, sweet, docile compliance they did what he said. The scientific world never spoke up, nor did the medical or legal professions with the exception of that poor little guy, Dr. Woodward, of whom Dr. Grinspoon reminded us, who went to Washington and was berated because Harry Anslinger passed the word, "Kill him." That was the kind of man we had running the Bureau at that time.

Marihuana, however, is not really our worst problem. Our worst problem is something that the President's Commission has just told us about — alcohol. Dr. Joel Fort, who is on the program, has a new book called *Alcohol, America's Biggest Drug Problem*. But alcohol does not bother us anymore, although it should. We have settled that one. We have gone through alcohol prohibition and no one really gives a damn about that problem anymore.

The first national legislation to regulate narcotic distribution was the Act of 1909,[33] which was an act that prohibited the importation and use of opium. It was very ineffective. There was no way to enforce it. It just floundered around and nothing happened.

In 1914, we became even more concerned about the narcotic problem and passed the Harrison Act.[34] It provided for fines up to

32. Act of Aug. 2, 1937, ch. 553, 50 Stat. 551.
33. Act of Feb. 9, 1909, ch. 100, 35 Stat. 614.
34. Act of Dec. 17, 1914, ch. 1, 38 Stat. 785.

$2,000 and 5 years in jail, but was unenforceable, although they tried to enforce it with the Narcotic Division, which was in the Prohibition Unit of what was then the IRS.

By 1930, though, we had severed that little unit and created something called the Federal Bureau of Narcotics. That was when the hard push against marihuana began. Actually, the effort was not all at the federal level. At one time 31 states had laws against marihuana before there was any federal law concerning it. Some of the reasons for the drive against marihuana have been explained by Dr. Grinspoon — racial prejudice and the fear that it was addictive. The stories that came out of the Geneva Convention of 1925 had their effects on the states, but it was the Bureau that took up the cudgel and really made marihuana the killer weed. When those words were coming from our federal government they became important; it was out of the mouth of the Great White Father — when he said something, people believed it.

As a matter of fact, close to 80 per cent of the people believe that crap right now. Mr. Nixon knows that and that is why he acts as he does.

The Narcotics Control Act of 1956[35] imposed stronger penalty structures on narcotics and included marihuana within its coverage. Again, there was no opposition from the medical profession, the scientific world, nor the legal profession. It just rolled through.

Then in the 1960's, marihuana became the thing. The Bureau still fought hard against it, but something else happened — the law enforcement bureau of the Food and Drug Administration, HEW, called the Bureau of Drug Abuse Control (BDAC), of which I was named director was established. We took a rather soft line on marihuana. We did not think that it was that bad, and we realized that there were many other things that were much worse. That position got me into a lot of trouble. However, in 1968, we amalgamated the old FBN and BDAC and put them into the President's Bureau of Narcotics and Dangerous Drugs. The "merger" resulted in a change of attitude. In one of the bureaus we had a chief medical officer, we had a staff of pharmacologists and scientists. They had an effect upon the new Bureau, so by the time we got past the Controlled Substances Act of 1970,[36] the Bureau itself had proposed lessening the penalties on first-time marihuana offenses. That was not enough for many people but the proposal did come from a law enforcement bureau — something they would have considered strange had they considered it.

35. Narcotics Control Act of 1956, ch. 629, 70 Stat. 567.
36. 21 U.S.C. § 801 (1970).

So, today we see that the Bureau has changed to the extent that it spends very little time or manpower on the marihuana problem. The Bureau is still officially against it and the laws are still against it, but a real metamorphosis has taken place. That is where we are today, sir.

MR. ATKINS: Thank you. Since we are running behind in time, I will quickly introduce our next speaker, Mr. Keith Stroup, an attorney. Some of you may have read a feature article on him several weeks ago in *The New York Times Magazine*. He is the founder and now the Executive Director of the National Organization for the Reform of Marihuana Laws (NORML). Keith will give us a few comments on some of the legal changes in, and some of the political influence on, the marihuana laws.

MR. R. KEITH STROUP: Thank you.

It is important to understand that the marihuana issue is not, in fact, a smoker's issue. At NORML we spend a lot of time trying to impress that on people. The fact is that people in this country now smoke marihuana in great numbers as a matter of personal choice. We, in the panel today, have pretty well established that the laws are wrong. They originated in prejudice and ignorance, but we still have them, and they exist on the federal level. There are 26 million Americans who have smoked marihuana at least once and there are 13 million who consider themselves regular smokers. That means that 16 per cent of the adult population in this country break the law. Sixty-seven per cent of all college students have smoked marihuana — that is two out of three. There are 280,000 retail "dealers" in this country, all of whom are outlaws. They import approximately 4 tons of marihuana everyday. An estimated 13 per cent of it is confiscated and 87 per cent gets through to the consumer.

It is estimated that there were 226,000 marihuana-related arrests in this country last year, over a quarter of a million, and yet, we hear the police tell us confidently (and as was just indicated, at least, at the federal level) that the emphasis is no longer on marihuana. The police often tell us that they are only after the pusher, not the user, yet the statistics do not back that up. Of those 226,000 arrests, most of which were on a state level, 93 per cent were for possession and use, while only 7 per cent were for sale. Of those arrests that were for possession and use, two thirds were for possession of less than 1 ounce — hardly what I would consider a big dealer.

The State of Texas still has a law that permits from 2 years to life in prison for simple possession of even the smallest amount of

marihuana. In Texas right now there are over 700 people locked up for possession and use of marihuana with the average length of sentence 9½ years. If you will think about that, you will agree that it is incredibly shocking. Those people have done nothing that most of you have not done, that I have not done, and that 15 per cent of our adult population does not do now; but they were caught and, more than that, they were caught in the wrong place.

We are trying to get the government to understand that once there is a significant, although minority, portion of your population that is determined to use a drug like marihuana as a recreational drug, and once it has been established that marihuana does not present any significant threat to the society as a whole, or to the individual user, the government's role should be the same as it is with other "legal" drugs — to minimize the potential for abuse. That is really what we should be talking about. The government's role is not to lock up people who differ in their choice of drugs, whether they choose alcohol or marihuana.

As I said, the government's role should be to minimize the potential for abuse and I think that there are two areas in which it can contribute to that. One is the age area. There is no doubt that a lot of people 13, 14, 15 years old, get marihuana and smoke it. Even Dr. Grinspoon and others who have come out strongly in favor of legalizing marihuana agree that that is a potential for hazard that we should not permit. The Canadian Commission, which was the equivalent of our National Commission on Marihuana and Drug Abuse recommended, in its report, the decriminalization of marihuana in Canada and indicated that the only area of concern they had was adolescent use and abuse. It is not that marihuana is particularly harmful to the adolescent who occasionally gets it; it is rather that the adolescent does not necessarily have the maturity to know when or to what extent to use it, and may end up basing his life on marihuana or other drugs and may not develop, as I have heard Dr. Grinspoon say, his coping mechanisms. The only way you can control that sort of problem is through a regulatory system, some form of governmental regulation over the distribution which would require that a person be a certain age, probably 18, before he could get it.

We know the "alcohol age" doesn't work perfectly — most of us managed to get alcohol before we were 18 or 21. However, such regulation does have the effect of creating a policy of social discouragement. Most older Americans do not understand that it is more difficult today for adolescents to get alcohol than it is for them to get marihuana.

The second area in which the government can validly act to curb the potential for abuse is with adulteration. While it may not yet be a major problem — and I hope it does not develop into one — there are indications that some marihuana grown, say in Kansas, may not be very strong and sometimes is adulterated with much more potentially harmful drugs such as the hallucinogens, acid NBA, and strychnine. The person who has decided to smoke marihuana should not have to take the added risk of not knowing what has been added to it. Clearly, the government should realize that it is not in its interest to have a marihuana consumer playing a grabbag game. When you buy marihuana, testing it before you buy by smoking a joint, your decision to buy is, assumedly, based on whether or not you think it is good, whether or not you get high from smoking the joint. The consumer has no way of knowing whether he is getting high from good marihuana, or whether it is weak marihuana that has had LSD added to it. The government must understand that we are only going to be able to control adulteration and will only have any impact on adolescent drug use by having some system of distribution other than the black market.

However, that would mean some form of legalization, and legalization, in the public mind, has numerous bad connotations. It means no control and often means commercialization, although it does not necessarily have to result in either. Legalization does not mean that the cigarette companies will automatically enter the market and make millions of dollars.

The point is that, at this time, we need to minimize the areas in which the potential for abuse is greatest.

I would like, now, to read the end of a statement that I had prepared because I think that it is appropriate.

It would be impossible to read the proposals which President Nixon recently made concerning drugs, including mandatory life sentences, selective use of the death penalty, and a general overall reliance on the deterrent effect of criminal penalties to combat all unwanted drug use without thinking back to the drug legislation passed in the 1930's. In particular, the President's willingness to ignore the many excellent studies which have been made available to him, including the results of the National Commission on Marihuana and Drug Abuse, and to cling to his long-standing reliance on the criminal approach for use and even possession of marihuana, is reminiscent of the 1930's.

If the Congress and the state legislatures were to consider marihuana prohibition today, with no prior history of emotionalism and prejudice, I believe that not a single one would prohibit its use with

criminal sanctions. Most would probably discourage its use, regulate its distribution and sale, control purity to avoid problems of adulteration, and add a tax as a means of raising needed revenues. Those were precisely the recommendations of the new comprehensive report by the Consumers Union in *Licit and Illicit Drugs*.

Today, we seem to be at a social impasse. Everyone is willing to say we were wrong in the 1930's, that we overestimated marihuana's potential for harm, and that we probably legislated out of ignorance. Yet, marihuana prohibition continues out of a general fear that public misinformation and morality are rooted so deeply as to spell political defeat for anyone who would challenge it.

At NORML we perceive our job as principally twofold. On one hand, we spend as much time as possible with legislators and their staffs in an attempt to be sure that they are well informed about marihuana and its potential effects on the user. We want to be sure that whatever stand they take, albeit shaped by the politics of reality, is an informed stand.

On the other hand, a major portion of our work has to do with public re-education. We must demonstrate to the elected officials that significant segments of the population have changed their mind about marihuana prohibition and are now willing to experiment with a non-criminal approach. In a country as big as this, that necessarily requires the involvement of opinion-makers, both individually and institutionally. It is obviously impossible to personally discuss the issues with over 200 million people. We are all busy and all have a myriad of issues fighting for our attention.

For most people, the marihuana laws simply do not merit high enough priority to permit firsthand investigation, so they look for signposts, for indications that they can use to form their personal position. That is where you can be of great help.

As Dr. Grinspoon has excellently documented in his paper and his book, *Marihuana Reconsidered*, the American Medical Association has been particularly at fault in the continuation of an ill-advised drug policy in this country. After its lonely opposition to the earlier legislative efforts, the AMA quickly fell in line, and up to the present time has supported the status quo. It would appear that their interest in the marihuana issue has been limited to the periodic publication of articles purporting to show the harmful effects of its use. Last year, after the governing board of the AMA recommended a policy which would have endorsed the Marihuana Commission's recommendations, the AMA House of Delegates refused to adopt it. They backed off,

opting instead for a statement in vague terms which seemed to approve the use of misdemeanor penalties.

A misdemeanor in this country permits one year in jail and/or a $1,000 fine. If you have any idea of the conditions of our jails and of the natural consequences of spending a year locked up, you will understand that that is no light penalty. Certainly, it is progress, better than life imprisonment, which is still the maximum permissible sentence for possession of marihuana in Texas, but the person who goes to jail in this country, even for a year, may find the truly dangerous drugs more available there than on the street. He will likely be subjected to homosexual attack, and will surely leave his prison experience with considerable alienation and bitterness for the system which unfairly defined him as a criminal. For what reason? What has he done that is so harmful that we cage him like an animal? Who are we helping by making him a criminal? Obviously, we are only exacerbating the situation. So this year at the AMA convention, let us support a resolution endorsing decriminalization. It can be done if you want to make it a big enough issue. The medical evidence is so conclusive and the evils of unnecessarily criminalizing people so obvious that the AMA can no longer refuse to act.

The same applies to the ABA. It appears that 1972 was the first year that the ABA has ever taken a stand of any kind concerning mirahuana prohibition. Since most legislators are lawyers, it is incredible that the bar association has chosen to ignore the issue so long. Despite the recommendations of two separate committees that the ABA endorse decriminalization, the House of Delegates like the AMA, backed off at their convention. Apparently not wanting to appear to be acting in haste, they offered a resolution that condemned excessive penalties but clearly left open the possibility of misdemeanor sanctions. I challenge the law students here to make sure that that does not happen this summer at the next annual ABA meeting.

Let us get decriminalization endorsements this year from both groups. We at NORML are available to work with you, we can help you, we can equip you with the facts to make a convincing argument for the need to decriminalize the personal use of marihuana.

Our government has a policy of discouraging all recreational drug use. That includes alcohol, tobacco, and marihuana. We concur in this policy and we are willing to work hand in hand with the government toward that goal. But the campaign should be honest, it should be factual, and it should avoid the mythology of the 1930's. Most importantly, it should altogether avoid the use of criminal pen-

alties for those who, despite our advice to the contrary, continue to smoke marihuana.

We must continue research into the potential ill effects of long-term marihuana use. If there is anything harmful about marihuana, certainly we smokers want to know. We should warn the consumer of the potential harm, as we now do with cigarettes, but, while we are warning we should stop making criminals out of those who simply ignore our advice.

There is still much debate about how we should handle legal marihuana, whether it should be available through liquor stores, whether private companies should be allowed to sell it, what type of government controls should be imposed, etc. Of course, there is a need for more study in many of these areas, but, in the meantime, let us stop focusing our law enforcement efforts on the users. Twenty-six million Americans have now tried marihuana, including two-thirds of the nation's college students; 13 million use it regularly — it is time we changed the laws.

MR. ATKINS: During the past year or so, I had the opportunity to work with the Pennsylvania Legislature. At first, I was involved with testimony taken before the House committees. The committees started working towards a full revision of the laws about three and a half years ago. I remember some people who, at that time, recommended that marihuana should be legalized, but I also remember getting telephone calls from people, such as one particular woman, who called me and then called the attorney general and said that she thought that the death penalty should be imposed on people who were arrested on marihuana charges. What was most remarkable and frightening was that the woman did not even care if the person had a trial, mere arrest was enough.

Faced with such pressures from all sides, the House first came up with one bill, then the Senate, and then the Conference Committee. There were many proposals that were considered, with the final result that the possession of a "small" amount of marihuana was unanimously declared a misdemeanor with a maximum of 30 days' imprisonment, whether it involved first or second or multiple arrests. That was a significant change from the prior 5 year maximum. The legislators realized that in college and high school settings, most users of marihuana occasionally distribute it to friends or that one person may purchase it one time and another the next. Since that casual delivery, without remuneration, was the equivalent of possession, the 30 day penalty was also applied to possession with intent to deliver a small

amount, and for delivery of a small amount without remuneration. That contrasts with the previous penalty which was 20 years for the first offense and mandatory life for a third offense.

The legislature then considered the quantity that should be considered a "small" amount. It had to be an amount which would be appropriate for the entire state, and while it was felt that in Philadelphia 3 to 6 ounces, or even half a pound might be considered "small," some of the representatives felt that, in other areas of the state, one or two joints would be a small amount. It was finally determined that approximately an ounce would be a proper amount to consider "small" throughout the Commonwealth. Some questioned what would happen if someone unwillingly purchased an ounce and got a gram or so more. The legislature, therefore, declared that instead of 28.375 grams as the limit of a "small" amount, the limit should be set at 30 grams to protect the purchaser. Similarly, when it was determined, after listening to all the evidence, that hashish was approximately three to five times as potent and approximately four times as expensive, a quarter of an ounce was set as the "small" amount limit for it. Instead of setting that limit at 7.205 grams, it was set at 8 grams — again to protect someone who might purchase slightly more than the true "small" amount.

Another area of concern was the position marihuana should occupy on the schedule of controlled drugs. The original bills gave the Drug, Device and Cosmetics Board and the Secretary of Health the power, once a drug was scheduled, to reschedule it from the higher, more tightly controlled schedules or to remove the penalties entirely — remove it from control, based on the scientific and other evidence. The members of the House decided that was inappropriate and the power of removal from complete control was retained by the legislature. The compromise finally reached on all substances was that they can be changed from schedule to schedule by the Secretary and the Board, but that all penalties and all control can be removed only by the Legislature.

Finally, I want to say that if I am asked whether marihuana will ever be legalized in this state or elsewhere, I would say that it will not depend, that much, on chemical and scientific studies as to its harmfulness. It was clear to me that, in 1972, in Pennsylvania, it was public opinion that demanded that marihuana possession be reduced to a misdemeanor. The legislators received a great deal of pressure from their constituents because sons, daughters, and friends were getting involved.

A few years from now, if the Legislature reconsiders, I believe that, even if all the tests show that marihuana is relatively benign and very safe, even in its long-term effect, if the majority of the people, at that time, think that it should not be legalized, it will not be legalized. If, in a few years, there are studies which show that marihuana is very dangerous, but the majority of people are smoking it or are sympathetic to its use, then it will become legal. The legislative process is partly political, partly social, and certainly not all scientific.

B. General Discussion

MR. ATKINS: We now have time for a few questions.

PARTICIPANT: I would like to ask Mr. Stroup what NORML is doing in terms of influencing public opinion, especially with regard to the media.

MR. STROUP: There is a prejudice in the media against legalization because of the control of older people who went through thirty-five years of indoctrination and who are frightened by it. We find that numerous times people are afraid to allow us to present our views because they assume that we are screaming radicals who will wreak havoc on their program. What we try to do to offset that impression is to explain that the issue has very little, if anything, to do with smoking marihuana; it has to do with people's freedom. We are generally finding that there is a second reaction. The media is fascinated by the subject of marihuana and there are times when we have been allowed to explain the process in which we are involved. I think that there are times that the issue may be given more media play than it deserves because of that fascination.

I know it may surprise you, but the truth is that state legislators are not generally ignorant about marihuana. They have staffs, they read books, and they know now that marihuana does not present a significant threat. But is it not an issue like Vietnam and they are not going to make or break their careers over the marihuana law. So, while privately, both in Washington and on the state level, they will assure you that they understand and would be delighted if they could remove criminal penalties altogether, the fact is that until we can demonstrate to them that such a stand will not throw them out of office, most will not have the courage to act. Javits and Hughes, on the federal level, are obvious exceptions.

I suspect that the manner in which public opinion will be best affected is by working through groups like the Jaycees. We have a

group in Dallas, Texas, called Concerned Parents for Marihuana Reform. They represent parents of kids who have been arrested and some still have kids in jail. These are people who are not generally involved in the political system. But, when the suburban housewife goes down and talks to the Governor of Texas about her son who is locked up for 23 years in a Dallas jail, he listens, and much more so than he does to us.

Specifically, the answer to your media question is that we have not been able to bring suit against the FCC because we honestly do not feel that we have a case to make at this point. We did file a protest with the FCC when they covered something Nixon said about marihuana and we wanted equal time. They documented, convincingly to me, that marihuana had been given quite a bit of time on the evening news.

PARTICIPANT: I have a question for Mr. Finlator. Yesterday you spoke to Mr. Sonnenreich about methaqualone, which is becoming the new marihuana in terms of abuse. He said that last Thursday a recommendation to control that substance was submitted to the BNDD. I asked how long he thought that process would take and when the drug would be controlled. He replied that it would take 3 to 6 months. It seems clear that the bureaucracy in Washington is extremely prone to pressures from the pharmaceutical industry. I wonder what the procedure of study is and why it is that when the dangers have been known for at least a year, there is still no pressure being applied to control the use, etc., of the drug.

MR. FINLATOR: The reasons are many. First, the government has to determine that the drug is abused. One cannot say so just because that is read in the news. The point must be proved. Once that is done, then a hearing must be held. The manufacturers can come in and object to any proposal. If they do, then the BNDD has to get the permission or advice of the Secretary of Health, Education and Welfare (HEW), and sometimes it takes time for those two organizations to come to an agreement. When they do, the drug is placed on the schedule. Sometimes they can move pretty fast, and I think that they are going to move pretty fast on this one.

I hate to give you an evasive answer like that but it is a long process. Each step has to be taken before the next one, and very often there are arguments between the scientific side of the government, HEW, and the enforcement side — the Justice Department.

MR. ATKINS: I think there is full agreement on the federal level on methaqualone. The BNDD has just recommended, very strongly, that it be scheduled as a controlled substance.

In Pennsylvania, in January the Drug, Device and Cosmetic Board met and recommended that methaqualone be scheduled as a controlled substance and it looks as though, in Pennsylvania, it may, and probably will be, controlled in the next few weeks. There has been an all-out effort to have the serious potential for abuse of methaqualone recognized.

PARTICIPANT: I have a question for Dr. Grinspoon and Mr. Finlator. In view of what Dr. Grinspoon said about the wisdom of the AMA and what Mr. Finlator said about the rate of motion of most of the federal government, I would like to know what steps they would recommend for the regulation of drugs — how they would evaluate and regulate drugs in a wiser way.

DR. GRINSPOON: That is an enormous question and one, of course, with which we are all struggling. As far as the AMA part of the problem is concerned, I tried to point out how the AMA has been remiss in its approach. It strikes me that the AMA has allowed itself to be used as an instrument to provide a kind of quasi-scientific rationale for various attempts at moral hegemony. The literature on masturbation at the turn of this century, when there was a great moral concern about that "evil" practice, indicated that a person who masturbated would shrink his brain, would become demotivated, and would have sexual difficulties. Clearly physicians allowed themselves to be used in a moral issue. Similarly, I think that has happened with regard to marihuana. As I say, there are other motivations for the AMA's approach to such other drugs as amphetamines.

Generally, I would recommend a total ban on the advertising of all drugs as one step towards a more rational approach to the use of drugs. I am concerned that we are providing a kind of drug "education" to everybody in this country which, unfortunately, is a kind of education in which we tell youngsters who watch the television (some surveys indicate that children watch television more hours than they go to school) and see pills go into a little plastic man, that their problems, whatever they may be, get solved through drugs.

I am interested in control and decriminalization of marihuana, legal availability with control, but I would certainly not allow the tobacco or alcohol industries to become involved. I would rather marihuana simply be not advertised and not promoted.

MR. FINLATOR: I would like to answer your question, if I can, by really avoiding it. I do not want to make it too easy for the government to put things under its control. I think we have too much control already. Let me give you a good example, if I may. Most of you will remember the banana peel bit in 1966 or 1967 when we got stories from the West Coast that you could take a banana peel, scrape it, do certain things with it, and smoke it and, man, you had a real high. The AP and UPI picked the story up, and it went all over the nation. I was head of the Bureau of Drug Abuse at the time. We bought 30 pounds of bananas, brought them into the laboratory, cooked them, steamed them, and smoked them. We did everything we could to those things for about 60 days, trying to arrive at a real conclusion. When we finally came to the real conclusion, the put-on was all over. We put out a nice press release which nobody picked up.

I think it should remain difficult to put drugs under control and I hope it will remain that way.

MR. ATKINS: We are beyond our time and I think this is a good place for us to conclude. Thank you, very much.

THE EVOLUTION OF FEDERAL DRUG CONTROL LEGISLATION†

THOMAS M. QUINN**

GERALD T. McLAUGHLIN***

INTRODUCTION

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CONCLUSION

The federal government entered the field of drug control in response to the growing incidence of addiction in the United States at the turn of the 20th century. The reasons for the increased number of addicts are not hard to find. First, morphine was freely dispensed to the wounded during the Civil War. It was estimated at the time that thousands of veterans were becoming addicted to the drug,[1] and after the war began to pass on the "pleasures" of morphine to friends and relatives. Second, opium smoking was quite popular among Chinese immigrants imported to help build the American railroads.[2] As they settled in the Western states, the practice began to spread beyond their ranks.[3] Third, in 1898 heroin was introduced to the medical world as the cure for morphine addiction.[4] Far from being a cure, however, heroin was soon found to cause even greater problems of addiction. Fourth and most important, opium and cocaine were common ingredients in various patented medicines and sodas which were marketed widely throughout the country prior to the early 1900's.[5]

The actual number of addicts at the turn of the century is a subject of debate. The first reported attempt to determine the extent of drug addiction in the United States was undertaken in 1878 by O. Marshall. In a report entitled "The Opium Habit in Michigan," Marshall estimated that there were 7,763 drug addicts in the state.[6] Six years later, J. M. Hull estimated that there were 5,732 addicts in Iowa.[7] If these figures reflected a national pattern, there were approximately 180,000 to 250,000 addicts in the country at that time. A Vermont study in 1900 indicated that approximately 3,300,000 doses of opium were sold monthly, enough to supply each Vermont adult, with 1½ doses per day.[8]

Early studies in the twentieth century showed no appreciable decrease in addiction. In 1913, Dr. Charles Perry conducted an exhaustive study of

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1. T. DUSTER, THE LEGISLATION OF MORALITY 6 (1970), *citing* TERRY & PELLENS, THE OPIUM PROBLEM 66 (1928).

2. R. KING, THE DRUG HANG-UP 10 (1972) [hereinafter cited as KING] *See also* Cabinet Committee on International Narcotics Control, World Opium Survey 1972 p. 1. For a brief discussion of the opium problem among Chinese imported to build railroads in Panama, *see* N. TAYLOR, NARCOTICS, NATURE'S DANGEROUS GIFTS 52 (1966).

3. The use of opium by the Chinese led to specific statutory controls. For instance, the importation of opium into the United States by "any subject of the Emperor of China" was forbidden by ch. 210, 24 Stat. 409 (1887).

4. T. DUSTER, THE LEGISLATION OF MORALITY 8 (1970).

5. TERRY & PELLENS, THE OPIUM PROBLEM 66 (1928).

6. MARSHALL, THE OPIUM HABIT IN MICHIGAN, 1878 MICH. STATE BD. OF HEALTH ANN. REP. 61-73; *cited* in Bonnie and Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, at 981-82, n.31 (1970) [hereinafter cited as Bonnie].

7. HULL, *The Opium Habit*, 1885 IOWA STATE BD. OF HEALTH BIENNIAL REP. 535-45, *cited* in Bonnie, *supra*, note 6, at 981-82, n.31.

8. Grinnel, *A Review of Drug Consumption and Alcohol as Found in Proprietary Medicine*, 23 MEDICO LEGAL J. 426 (1905).

drug addiction in Jacksonville, Florida. His report indicated that 541 persons, or .81 percent, of the city's population used opium in one form or another.[9] If Perry's sample in Jacksonville was representative of the rest of the country, there would have been approximately 782,118 addicts in the country in 1913—a staggering figure to say the least. Perhaps the most comprehensive early study, however—that done in 1924 for the United States Public Health Service by Laurence Kolb and A.G. Du Metz—estimated that the addict population of the United States "never exceeded 246,000."[10]

Although these various reports disagreed on the actual number of addicts, they all seemed to agree on one point—drug addiction was a widespread phenomenon in the United States. This fact soon became apparent to the Congress and led to the passage of Federal laws aimed at controlling the drug problem.

In order to trace the development of Federal drug control legislation this paper will divide the topic into five parts:

> Part I will treat pre-1970 Federal legislation dealing with narcotic drugs;
> Part II will focus on pre-1970 legislation dealing with non-narcotic dangerous drugs, such as barbiturates and amphetamines;
> Part III will discuss the Controlled Dangerous Substances Act of 1970;
> Part IV will outline the structure of the Special Action Office for Drug Abuse Prevention and the Office of Drug Abuse Law Enforcement;
> Part V will present separately an historical treatment of Federal penalties for drug offenses.

PART I—*Federal Regulation of Narcotic Drugs Prior to 1970*

A. Federal Narcotic Legislation to 1922

1. *Opium Tariff Statutes*

The earliest mention of opium (or for that matter, any narcotic drug) in Federal legislation appears in the Tariff Act of 1832.[11] The Act—exempting opium from all import duties—attempted neither to interdict the flow of drugs nor produce substantial revenue. Ten years later in 1842, however, the narcotic was placed on the tariff lists for the first time and a duty of

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9. 1913 JACKSONVILLE, FLA., BD. OF HEALTH ANN. REP., cited in Bonnie, supra, note 6, at 981, n.31.
10. KOLB & DUMEZ, *The Prevalence and Trend of Drug Addiction in the United States and Factors Influencing It*, 1-20 (39 Public Health Reports No. 21) (May 23, 1924), cited in Bonnie, *supra* note 6, at 981-82, n. 31.
11. Ch. 227, § 3, 4 Stat. 590 (1832).

seventy-five cents per pound was levied on all imported opium.[12] In 1862, morphine was added to the tariff list and taxed at the rate of two dollars per pound.[13] The tariff rates on medicinal or raw opium and morphine fluctuated throughout the nineteenth century. Raw opium even reappeared on the duty free list in 1890.[14] This use of imported opium as a source of governmental revenue was consistent with the flourishing international opium traffic of the nineteenth century. British traffic in opium had led to the Opium Wars with China and generated a series of diplomatic concessions extorted from the Chinese, concessions which assured continuance of the lucrative opium trade.[15] For example, in an 1858 treaty between China and the United States, China agreed to remove opium from its list of contraband items, permitting American merchants to sell the drug at various Chinese ports.[16] With opium traffic so open and obvious, it was not surprising that the United States government should view opium as nothing more than another imported item to be taxed.

Smoking opium, however, was singled out for special treatment during this earliest period of federal concern. As previously mentioned, smoking opium was first associated with the Chinese immigrant but gradually, as the practice spread, it became a national concern. The response was an eighty per cent ad valorem tax on all imported smoking opium.[17] In succeeding years, it continued to be taxed at ever increasing rates, reflecting the growing fear with which the practice was regarded.[18] The magnitude of the problem is suggested by one commentator who observed that between 1860 and 1913 approximately $27 million in revenue was collected from import duties on smoking opium alone.[19]

2. *Pure Food and Drug Act*

A second and quite different theme in federal narcotic drug control appeared

12. Ch. 270, § 8, 5 Stot. 548 at 558 (1842).
13. Ch. 163, § 5, 12 Stat. 543 at 548 (1862).
14. Ch. 1244, 26 Stat. 567 at 608 (1890).
15. J. FAIRBANK, TRADE AND DIPLOMACY ON THE CHINA COAST: THE OPENING OF THE TREATY PORTS 1842-1854 151 (1953).
16. Convention with China, November 8, 1858. 12 Stat. 1069 (1858). Opium had been considered contraband under an earlier treaty between the United States and China. Treaty with China, July 3, 1844, 8 Stat. 592, 599, 605 (1844).
17. Ch. 163, § 5, 12 Stat. 543 at 548 (1862).
18. From 1864 to 1890 the tax on smoking opium rose from two dollars and fifty cents per pound to twelve dollars per pound. Ch. 171, § 11, 13 Stat. 202 at 212 (1864); ch. 255, Sec. 21, 16 Stat. at 265 (1870); ch. 121, § 2502, 22 Stat. 488 at 495 (1883); ch. 1244, 26 Stat. 567 at 569 (1890). In 1897, however, the tax on smoking opium was reduced to $6 a pound. Ch. 11, 30 Stat. 153 (1897). Note also that, at the time the tax on smoking opium was twelve dollars per pound, raw opium (now called medicinal opium) appeared on the duty free list. *Id.* at 608.
19. W. ELDRIDGE, NARCOTICS AND THE LAW: A CRITIQUE OF THE AMERICAN EXPERIMENT IN NARCOTIC DRUG CONTROL 8 (1961).

on the scene in 1906.[20] It came in response to a growing national concern with the use of patent medicines. These commodities—heavily laced with opium, morphine and cocaine—were widely sold throughout the country and served as familiar preparations for such ailments as headaches, menstrual pains, cold symptoms, alcoholism, and general fatigue. What resulted from the heavy dependence on such patented medicines was a widespread pattern of national addiction. The federal response conceived of the patent medicine problem as one of consumer deception. Thus, to control the trade in these medicines, Congress enacted labelling regulations in 1906, the idea being that an informed consumer could protect himself if he chose to do so.

The Pure Food and Drug Act of 1906 prohibited the interstate shipment of misbranded or adulterated food and drugs.[21] An article of food or drugs was considered to be misbranded if it contained any alcohol, morphine, cocaine, heroin, or any derivatives or preparations of these substances where such ingredients were not clearly marked on the label. Similarly, confectionaries were considered to be adulterated if they contained any narcotic drug as an ingredient. The Act also provided that food would be considered adulterated if it contained any added poisonous or deleterious ingredients which might be injurious to health. By requiring labelling of medicines which contained opium and cocaine, and by prohibiting outright the interstate shipment of food containing deleterious substances, the Act exposed to public view the dangerous and addictive capacities of non-prescription medicines and sodas being marketed in the country. It should be noted, however, that this legislation was entirely consistent with a legitimate domestic traffic in opium, morphine, heroin, and cocaine. Indeed, heroin was sold by one pharmaceutical company under the heroin trade name and widely touted; morphine could be purchased over the counter along with opium or cocaine.[22] While the Pure Food and Drug Act alerted consumers to the presence of narcotic drugs in various products, the sales of these drugs continued to flourish. For example, a 1910 pharmaceutical journal reported that one drug store earned a profit of $60 a day from sales of cocaine alone.[23]

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20. At one earlier point, the narcotics menace seemed to be viewed as an educational problem by the federal government. In 1886, a law was enacted to include the study of narcotics in the curriculum of federal schools. Ch. 362, 24 Stat. 69 (1886).

21. Ch. 3915, 34 Stat. 768 (1906). Many states had adopted narcotic control laws prior to the federal government. This article does not attempt to study these various state regulations. For a good synopsis of early state drug legislation, *see* U.S. Treasury Department, State Laws Relating to the Control of Narcotic Drugs and the Treatment of Drug Addiction (1931).

22. *See* Cabinet Committee on International Narcotics Control, World Opium Survey 1972, at 2. For an early report of how easily cocaine could be purchased, *see* 75 Am. J. Pharm. 474, 486 (1903).

23. 81 Am. J. Pharm. 35 (1910).

3. *Import and Export Regulations*

In 1909 the federal government shifted from its earlier pattern of taxing opium to outright suppression of the traffic in the drug. In response to the Shanghai Opium Conference in 1909, the United States banned the importation of all smoking opium and restricted the importation of all other opium except for limited amounts authorized by the Secretary of the Treasury for medical purposes.[24] This had the effect of closing the United States ports of entry to the legal flow of opium except in controlled quantities for regulated purposes. Since the Act also forbade any person from receiving or selling illegally imported opium knowing it to be illegally imported, the Act represented the first serious federal attempt to use the criminal law to curtail domestic trafficking in opium.

Five years later, the United States took a second major step in the border control of opium traffic when it set controls on the export of opium. With these controls, Congress effectively took the United States out of the international drug traffic by prohibiting the use of its ports for either the import or export of opium and other harmful drugs. Controls on export, like the earlier controls on import, came in response to international pressures. At the Hague International Opium Conference in 1912, the signatory powers, including the United States, had agreed to place various restrictions on prepared opium, cocaine, and morphine—one of these restrictions was to align export controls with the import controls of other nations.[25] Consequently, Congress enacted the Narcotic Drug Export Act,[26] absolutely prohibiting any smoking opium from being admitted into the United States for transshipment to another country and, more importantly, banning the export of cocaine and opium—other than smoking opium, the export of which was absolutely forbidden—to any country which did not regulate the importation of these drugs. On the very same day that it passed the Narcotic Drug Export Act, Congress also adopted a statute which levied a prohibitive tax of $300 per pound on all opium manufactured in the United States for smoking purposes.[27] Thus, Congress had now forbidden the import or export of smoking

24. Ch. 100, 35 Stat. 614 (1909). Early attempts at combatting drug addiction in the United States were doubtlessly influenced by the American experiences handling the drug situation in the Philippines. After the Spanish-American War of 1898, the United States took control of the Islands and faced a growing drug epidemic. For a brief discussion of the American experiences with the drug situation in the Philippines, *see* KING, *supra* note 2, at 10-14.

25. International Opium Convention, The Hague, Jan. 23, 1912. 38 Stat. 1912 (1915). On the early international opium conferences, *see* W. WILLOUGHBY, OPIUM AS AN INTERNATIONAL PROBLEM, THE GENEVA CONFERENCE (1925).

26. Ch. 9, 38 Stat. 275 (1914).

27. Ch. 10, 38 Stat. 277 (1914).

opium, heavily taxed its domestic manufacture, and severely restricted the import of other forms of opium.

4. *Harrison Act*

With the Harrison Act the federal government interjected itself decisively into the domestic traffic in narcotic drugs.[28] This statute was by far the most significant of all the early federal drug control laws, setting the main lines for domestic narcotic control and regulation which persisted until 1970. The thrust of the Harrison Act was twofold. First the Act sought to expose to federal surveillance the legal traffic in narcotics from its point of entry or manufacture to its point of consumption. Second, the Act provided criminal penalties for any trafficking in narcotics outside the legally established patterns. The stage was thus set for the regulation of the legal narcotic flow and the suppression of the illegal flow.

To achieve such broad purposes, the actual legislative scheme of the Harrison Act might be considered cumbersome to say the least. Congress chose to assert jurisdiction through its revenue powers rather than through its power to regulate interstate commerce. This rather curious approach was justified, however, since in 1914 the interstate commerce clause was still read rather restrictively by the courts. In all probability, that clause would not have supported any congressional controls over local drug manufacturers or distributors.[29] Of course, Congress' decision to use its revenue powers placed the domestic control of narcotics in the hands of the Internal Revenue Service, then deeply involved in the enforcement of the newly created federal income tax, and later the Prohibition laws. Contrary to certain state patterns of narcotic control, this placed enforcement of the Harrison Act in the hands of a special enforcement unit rather than in the hands of general law enforcement officers.

By its terms, the Harrison Act required registration with the local Internal Revenue Collector and payment of a special occupational tax by every person, with certain exceptions, who produced, imported, manufactured, compounded, dealt in, dispensed, sold, distributed, or gave away opium or coca leaves or any compound or preparation of these drugs.[30] The Act also stipu-

28. Ch. 1, 38 Stat. 785 (1914).

29. Manufacturing was considered a subject for local rather than national regulation. *See, e.g.*, Kidd v. Pearson, 128 U.S. 1 (1888); Parker v. Brown, 317 U.S. 341 (1943). The constitutionality of the Harrison Act was upheld in United States v. Doremus, 249 U.S. 86 (1919).

30. The Harrison Act did not apply to the sale, distribution or possession of preparations containing minimal amounts of narcotic drugs, *i.e.* less two grains of opium, ⅛ of a grain of heroin. Ch. 1, § 6, 38 Stat. 785 (1914).

lated that any sale, exchange, or transfer of these drugs must be pursuant to the *written order* of the person to whom the drugs were to be transferred. Written orders could only be executed on forms specially provided by the Commissioner of Internal Revenue and the forms themselves could only be purchased by a registered person. Everyone in the drug distribution system was subject to stringent record-keeping. Finally, it was unlawful for any unregistered or unpaid person to possess or control any restricted drug; such possession or control was presumptive evidence of failure to register and pay the occupational tax.

The Harrison Act was amended in 1919 by increasing the rate of the annual occupational tax and by imposing a new commodity tax of one cent per ounce on all opium or coca leaves produced in or imported into the United States.[31] This commodity tax was in addition to any existing import duties. The 1919 amendments made it unlawful for any person to purchase, sell, dispense or distribute any of the aforementioned drugs or their compounds except in the original stamped packages or from the original stamped packages. The absence of appropriate tax-paid stamps became prima facie evidence of a violation of the Harrison Act.

From the viewpoint of federal law enforcement officers, there was one glaring gap in the coverage of the Harrison Act—the medical profession. Section 2 of the Act specifically exempted from its coverage the dispensing or distribution of drugs "to a patient by a physician . . . in the course of his professional practice only."[32] With narcotics tightly regulated, the physician represented the sole legitimate source of supply open to the addict. For the unscrupulous doctor, this presented a lucrative opportunity to push drugs legitimately under the guise of practicing medicine. Huge profits could be made. The "script doctor," as he came to be called, became a prime concern of the early Internal Revenue Service personnel charged with enforcement of the Harrison Act. For the responsible physician, the Harrison exemption was not a source of new income; if anything, it was a source of unexpected problems. As long as an addict was not confined to a hospital for treatment, a doctor could minister to him in one of two ways—either by personally administering the drug to the addict in his office or by prescribing the drug for the addict to administer to himself at home. If he treated the addict in his office, the physician could minimize possible drug diversion into the illicit market but at the expense of turning his office into a drug clinic with long lines of addicts awaiting treatment.[33] If he prescribed drugs for self admin-

31. Ch. 18, § 1006, 40 Stat. 1057, at 1130 (1919).
32. Ch. 1, § 2(a), 38 Stat. 785 at 786 (1914).
33. *See* LINDESMITH, THE ADDICT AND THE LAW 142 (1965) [hereinafter cited as

istration, the doctor created serious problems of illegal diversion. The dilemma was real and with no apparent solution. Because of the possibility of diversion, law enforcement officials soon began to move to curtail the medical profession's freedom to prescribe narcotics in the treatment of addicts. The unfortunate consequence of this policy was to drive from the field of drug treatment not only the unethical "script doctor" but the legitimate doctor as well.

At the outset, the Harrison Act was not interpreted as interfering with the physician's medical treatment of the addict, whether by prescription or otherwise. Thus, for example, providing an addict with morphine in the treatment of his addiction was considered valid medical treatment to the extent that it suppressed and alleviated withdrawal symptoms. In 1919, however, with the Supreme Court's decision in *Webb v. United States*,[34] a series of cases maintained otherwise. Although Webb was a "script doctor," the Court was asked to decide whether a practicing physician's order for morphine was exempt as a physician's prescription within the meaning of section 2 where the order was not in the course of professional treatment in an attempt to cure the addict but solely to keep the addict comfortable by maintaining his customary use? The Court said no:

> [T]o call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required.[35]

One year later, in *Jin Fuey Moy v. United States*,[36] the Supreme Court was faced with another case involving a "script doctor." In elaborating on its holding in *Webb*, the Court stated that the Harrison Act's immunity for physicians dispensing or distributing drugs in the course of their professional practice did not

> include a sale to a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drug. A "prescription" issued for either of the latter purposes protects neither the physician who issues it, nor the dealer who knowingly accepts and fills it.[37]

The most controversial decision in this area, however, was neither *Webb*

LINDESMITH]. For a brief discussion of the drug clinics which were operated in various parts of the country, *see* KING 33-39; LINDESMITH 135-161.

34. 249 U.S. 96 (1919). For a further discussion of this series of cases, *see* KING 40-58; R. King, *The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick*, 62 YALE L. REV. 736-749 (1953); LINDESMITH 5-17.

35. 249 U.S. at 99.

36. 254 U.S. 189 (1920).

37. *Id.* at 194.

nor *Jin Fuey Moy*, but *United States v. Behrman*,[38] decided in 1922. Behrman, a physician like Webb and Jin Fuey Moy, dispensed drugs indiscriminately. *At one time*, for instance, he had given an addict prescriptions for 150 grains of heroin, 360 grains of morphine and 210 grains of cocaine.[39] The Government, however, grounded its indictment on a holding that "prescribing drugs for an addict was a crime regardless of the physician's intent in the matter."[40] Although the Supreme Court stressed the large amount of the drugs dispensed by Behrman, the decision could be read by nervous physicians as prohibiting all doctors from prescribing, in good faith, even small quantities of narcotics for self-administration in an attempt to treat an addict. After *Behrman*, it seemed that a physician could only prescribe narcotics for conditions such as ulcers or cancer, but not for relief of addiction itself.[41]

The *Behrman* holding was soon tested in *Linder v. United States*.[42] Dr. Linder had personally dispensed to one of his patients one tablet of morphine and three tablets of cocaine. Limiting the *Behrman* rationale, the Court stated:

> [The Harrison Act] says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment, and we cannot possibly conclude that a physician acted improperly or unwisely or for other than medical purposes solely because he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of conditions incident to addiction.[43]

The Court further asserted that *Behrman* could not be interpreted as precluding a physician, acting in good faith and according to fair medical standards, from ever giving an addict moderate amounts of drugs for self-administration in order to relieve the conditions incident to addiction.

Although the language in *Linder* could be read to repudiate *Behrman*, doctors were genuinely afraid to treat addicts. This fear increased as lower federal courts seemingly disregarded the clear intent of the *Linder* rationale.[44] Now the addict could no longer turn to the medical profession for help: he was forced to turn to a new source of supply—the growing illicit

38. 258 U.S. 280 (1922).
39. *Id.* at 288-89; KING 42.
40. KING 42.
41. *Id.* at 43.
42. 268 U.S. 5 (1925).
43. *Id.* at 18.
44. Teter v. U.S. 12 F.2d 224 (7th Cir. 1926); Bush v. U.S., 16 F.2d 709 (5th Cir. 1927); DuVall v. U.S., 82 F.2d 382 (9th Cir. 1936); Hawkins v. U.S., 90 F.2d 551 (5th Cir. 1937).

drug market. As Rufus King remarks: "The addict-patient vanished; the addict-criminal emerged in his place."[45]

On the whole the Harrison Act has been criticized as an unenlightened approach to a difficult social problem. One European commentator summarized the situation in this way:

> The Harrison Narcotic Law was passed in 1914 by the Federal Government of the United States with general popular approval. It placed severe restrictions upon the sale of narcotics and upon the medical profession, and necessitated the appointment of a whole army of officials. In consequence of this stringent law a vast clandestine commerce in narcotics has grown up in that country. The small bulk of these drugs renders the evasion of the law comparatively easy, and the country is overrun by an army of peddlers who extort exorbitant prices from their hapless victims. It appears that not only has the Harrison Law failed to diminish the number of drug takers—some contend, indeed, that it has increased their numbers—but, far from bettering the lot of the opiate addict, it has actually worsened it; for without curtailing the supply of the drug it has sent up the price tenfold, and this has had the effect of impoverishing the poorer class of addicts and reducing them to a condition of such abject misery as to render them incapable of gaining an honest livelihood.[46]

5. *The Narcotic Drug Import and Export Act*

In 1922, Congress passed the Narcotic Drug Import and Export Act[47] which continued the existing ban on opium importation while adding cocaine to the list of drugs which were forbidden entry into the country. Limited amounts of crude opium and coca leaves, however, were permitted to be imported for medical and other legitimate needs. It is interesting to note that, for the first time, all restricted drugs were classified under the generic category of "narcotic drugs." A Federal Narcotics Control Board (composed of three Cabinet members) was created to administer various provisions of the Act. For instance, the Board was empowered to determine exactly what amounts of crude opium and coca leaves were needed to be imported for legitimate and medical purposes.[48]

1924 saw one important amendment to the Act. Although a certain amount of crude opium could be legally imported for medical or other legiti-

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45. KING 43.

46. H. Campbell, *The Pathology and Treatment of Morphia Addiction*, BRITISH JOURNAL OF INEBRIETY, 147-48 (1923), *cited in* Lindesmith, *Dope Fiend Mythology*, 31 J. CRIM. LAW & CRIMINOLOGY 199, 204 (1940-41).

47. Ch. 202, 42 Stat. 596 (1922).

48. This function was later transferred to the Surgeon General of the United States. Ch. 488, § 4(b) 46 Stat. 585 at 587 (1930).

mate uses, Congress now prohibited the importation of any crude opium for the purposes of manufacturing heroin.[49]

There is one provision of the Narcotic Drugs Import and Export Act, however, which merits close scrutiny. Under the Act, possession of narcotics gave rise to a two-fold statutory presumption—namely, that the narcotics were illegally imported and that the defendant had knowledge of their illegal importation.[50] This presumption has been the subject of a vast amount of litigation, culminating in the recent cases of *Leary v. United States*[51] dealing with its applicability to marihuana, and *Turner v. United States*,[52] dealing with its applicability to heroin and cocaine.

In *Leary*, the Supreme Court refused to reach the question of the validity of the inference but held unconstitutional that part of the presumption which related to defendant's knowledge of illegal importation. The Court reasoned that inasmuch as some of the marihuana consumed in the United States is domestically grown, it would be no more than speculation to say that even a majority of possessors knew the source of their marihuana.[53] Consequently, absent proof that the particular possessor had actual knowledge of illegal importation, the statutory presumption was not sufficient to uphold a conviction. In effect, the Court found no rational connection between the fact proved—possession—and the fact to be presumed—knowledge of illegal importation.

In *Turner*, the Court upheld the entire presumption as applied to heroin but declared it unconstitutional as applied to cocaine. As for heroin, the overwhelming evidence showed that heroin consumed in the United States is illegally imported and that anyone in possession of such heroin is aware of the "high probability" that it had originated in a foreign country.[54] In the case of cocaine, on the other hand, it was determined that more cocaine is lawfully produced in this country than is smuggled into the country.[55] Hence, the Court could not be sure whether the cocaine that the defendant possessed came from abroad or that the defendant knew of its illegal importation. In such a situation, the presumption of illegal importation could not be applied.

49. Ch. 352, 43 Stat. 657 (1924).
50. Ch. 202, § 2(f), 42 Stat. 596 (1922).
51. 395 U.S. 6 (1969). For a further discussion of this case and statutory criminal presumptions *see* Note, *The Unconstitutionality of Statutory Criminal Presumptions*, 22 STAN. L. REV. 341 (1970); Comment, *Statutory Criminal Presumptions: Reconciling the Practical with the Sacrosanct*, 18 UCLA L. REV. 157 (1970); and 83 HARV. L. REV. 103 (1969).
52. 396 U.S. 398 (1970). For a further discussion of this case as well as *Leary*, *see* Comment, *Statutory Criminal Presumptions: Reconciling the Practical with the Sacrosanct*, 18 U.C.L.A. L. REV. 157 (1970).
53. 395 U.S. 6, 46 (1969).
54. 396 U.S. 398, 416-418 (1970).
55. *Id.* at 423-24.

B. *Federal Narcotic Legislation From 1922 to 1970*

1. *Porter Act of 1929*

By the late twenties, the federal government was faced with a new problem—large numbers of addicts in its prison system. As the patterns of addiction grew and became associated with domestic crime, it was perhaps inevitable that the addict population in prisons would increase. Congress responded to the problem by enacting the Porter Act in 1929.[56] The Act established two United States Narcotic Farms designed to provide care and treatment of convicted addicts. The first was opened in Lexington, Kentucky in 1935; the second at Fort Worth, Texas in 1938.

2. *The Federal Bureau of Narcotics*

The growing narcotic problem also led to the emergence of a new federal agency within the Treasury Department. Enforcement of the Harrison Act of 1914 was entrusted to the narcotics division of the prohibition unit of the Internal Revenue Service.[57] In 1927 this division was incorporated into the newly created Prohibition Bureau of the Treasury Department.[58] In 1930 law enforcement in the federal narcotics field was further developed and consolidated into its own separate agency, the Federal Bureau of Narcotics.[59] Of equal importance with the establishment of the agency was the appointment of Harry J. Anslinger as the new agency's first commissioner. Anslinger had risen through the diplomatic service and established himself later at the Department of the Treasury as Assistant Commissioner of Prohibition.[60] With the establishment of the Bureau of Narcotics, Anslinger shifted his main concern from prohibition to narcotic law enforcement. Under his vigorous leadership the Bureau of Narcotics was shaped and developed into a powerful law enforcement agency.

3. *Informers Act of 1930*

While the Harrison Act was cast in terms of a regulatory statute designed to publicly expose the legitimate narcotic drug flow on the domestic scene, its collateral and less obvious goal was to interdict the domestic flow of illegal narcotics. This latter purpose obviously led to heavy criminal law enforce-

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56. Ch. 82, 45 Stat. 1085 (1929).
57. *See* King, *The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick*, 61 YALE L.J. 736, 737, n.9 (1953).
58. Ch. 348, 44 Stat. 1381 (1927). King, *The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick*, 61 YALE L. J. 736, 737 n.9 (1953).
59. Ch. 488, 46 Stat. 585 (1930).
60. *See* KING 70.

ment work. To facilitate this effort the Commissioner of Narcotics was empowered by Congress in 1930 to pay informers for information concerning violations of the drug laws.[61]

4. Marihuana Tax Act

Although early federal legislation was mainly concerned with controlling opium and cocaine, a new "drug menace" had appeared by the 1930's—that "menace" was marihuana.[62] In 1937, under the prodding of the newly created Federal Bureau of Narcotics, Congress passed the Marihuana Tax Act—which was similar, in many respects, to the Harrison Act.[63] The Marihuana Tax Act required those in the chain of marihuana distribution to register and pay an occupational tax. A commodity tax of $1.00 per ounce was levied on transfers of marihuana to persons registered under the Act. Unlike the Harrison Act where transfers could only be made to registered persons, the Marihuana Tax Act allowed transfers to non-registered persons but provided ample deterrents to such transfers by a prohibitive tax of $100 an ounce. To effect a legal transfer both registered and non-registered persons were required to file special order forms. Increasing federal control over marihuana distribution even further, various reports and record-keeping requirements were mandated. In short, Congress placed virtually identical controls over marihuana as over the narcotic drugs.

5. Vehicle Seizure Act of 1939

Like the Informers Act of 1930, the Vehicle Seizure Act of 1939[64] attested to the continuing efforts of the Bureau of Narcotics to extend its control over the growing black market in illegal drugs. By its terms, the Act made it unlawful to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft. A contraband article was defined as any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of the law, or which is sold in violation of the law, or which does not bear appropriate tax paid Internal Revenue Stamps. Any vessel, vehicle, or aircraft (with certain exceptions) which has been or is being used in violation of the Act was subject to seizure and forfeiture.

6. Opium Poppy Control Act

The outbreak of World War II disrupted the flow of opium to the United

61. Ch. 829, 46 Stat. 850 (1930).
62. It seems that Mexican immigrants and West Indian sailors introduced the practice of marihuana smoking into the border and Gulf states during the decade following the Harrison Act. *See* MARIHUANA: A SIGNAL OF MISUNDERSTANDING, FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE 13 (1972).
63. Ch. 553, 50 Stat. 551 (1937).
64. Ch. 618, 53 Stat. 1291 (1939).

States. There were those who decided that profit could be made by growing the opium poppy domestically—ostensibly to provide necessary opium for medical needs. A 1942 Act, however, prohibited any person who was not the holder of a license authorizing him to produce the opium poppy, duly issued by the Secretary of the Treasury, to produce or attempt to produce such poppies.[65] The Secretary, it should be noted, has never issued such a license.[66]

7. Drug Legislation of 1946

The increased availability of *synthetic* opiates—such as methadone—led Congress to bring these drugs within the ambit of federal controls in 1946.[67] Specifically, any drug which was found to have an addiction forming or addiction sustaining potential similar to morphine or cocaine came within the purview of the federal statutes governing natural opium.

8. Increased Penalties—1951 and 1956

The unintended effect of the Harrison Act and its subsequent enforcement was the closing of legitimate sources of supply to the addict, resulting in the rise to a flourishing black market in illegal drugs. With the repeal of Prohibition, organized crime in turn became more involved with the illegal distribution of drugs. The inevitable result was an expanding drug problem. The years between 1946 and 1960 were times of a rising drug trade in the United States and, equally important, times of growing fears regarding the drug problem.[68]

Not the least of these fears was that drug use was reaching epidemic proportions among minors. In 1951, for example, a Special Senate Committee on Organized Crime became concerned with the increasing number of drug addicts among young people. The Committee found that, in 1946, only three percent of the patient-addicts at the United States Public Health Service Hospital at Lexington, Kentucky, were below the age of 21, while just five years later the percentage had increased to eighteen percent.[69] Congress responded with the escalation of penalties for narcotic violations, first in 1951[70] under the vigorous leadership of Congressman Hale Boggs, and again in 1956.[71]

65. Ch. 720, 56 Stat. 1045 (1942).
66. H. ANSLINGER & W. TOMPKINS, THE TRAFFIC IN NARCOTICS 137 (1953).
67. Ch. 81, 60 Stat. 38 (1946).
68. *See* Note, *Narcotics Regulation*, 62 YALE L. REV. 751 and n.1 (1953).
69. SEN. REP. No. 725, 82d Cong., 1st Sess. 27 (1951).
70. Ch. 66, 65 Stat. 767 (1951).
71. Ch. 629, 70 Stat. 567 (1956).

The Harrison Act and subsequent statutes established the basic approach to drug control by the federal government. The legislation of the 1950's did not alter that approach. What prompted this legislation was the belief that tougher penalties would deter involvement in the traffic by severely punishing those who did not heed the warning. To this end, penalties were sharply increased. Mandatory minimum sentences were instituted to prevent "soft" judges from ameliorating the harshness of these strictures. In addition, a drug offender's right to a suspended sentence or probation was curtailed. These statutes will be discussed in greater detail in Part V of this article.

9. Narcotics Manufacturing Act

In 1960 the federal government once again broke new ground in the field of narcotics control. For approximately forty years, the United States had closed its ports of entry to the import and export of narcotic drugs and then regulated and controlled the internal distribution processes with the Harrison Act. However, the Act exercised no direct control over the quantities of narcotic drugs legally manufactured within the country itself. The Narcotic Manufacturing Act of 1960 sought to remedy this.[72] Under this Act the Secretary of the Treasury was empowered to license manufacturers of narcotic drugs and to set an individual quota for each drug classification. The Government could not be assured that only those quantities of narcotic drugs actually required for legitimate needs would be domestically manufactured.

This Act was significant in another respect. Before 1960, licensing was always viewed as a peculiarly local concern left to the several states.[73] Now Congress asserted jurisdiction over licensing and, interestingly enough, based its power—at least in part—on the interstate commerce clause, an approach which had been rejected in 1914 when the Harrison Act was enacted. The cumbersome fiction of a tax statute to justify local control over drug distribution was no longer needed.

10. Narcotic Addict Rehabilitation Act of 1966 (NARA)

Still more new ground was broken with the Narcotic Addict Rehabilitation Act of 1966.[74] This Act, patterned on state legislation found in California[75] and New York,[76] was based on two existing approaches to drug rehabilitative

72. Pub. L. No. 86-429, 74 Stat. 55 (1960).

73. *For example, see* the Uniform Narcotic Drug Act, §§ 3, 4 which provided for state licensing. The Uniform Act was eventually adopted by almost every state.

74. Pub. Law No. 89-793, 80 Stat. 1438 (1966).

75. California Welfare & Institutions Code §§ 3200-3305 (West, 1966) *as amended*, (West Supp. 1968).

76. L. 1962, c.204, § 1. As codified in Article 9, McKinney's Consol. Laws of New York, Mental Hygiene Law, *as amended* L. 1966, c.192.

treatment. The first, embodied in the Porter Act of 1929, had led to the creation of federal hospitals at Lexington and Fort Worth as places for confinement and treatment of the addict-criminal. The second was the long-standing concept that the mentally ill, the alcoholic, and the addict could be legally confined and treated even in the absence of overt criminal behavior. NARA was designed to funnel accused and convicted criminals out of the court and prison systems and into rehabilitative confinement. Even where no overt criminal conduct was involved, the Act provided rehabilitative confinement for addicts who voluntarily committed themselves or who were involuntarily committed by relatives.

PART II—*Federal Regulation of Dangerous Drugs Prior to 1970*

Dangerous drugs are not to be confused with narcotic drugs which have been previously discussed in Part I. Dangerous drugs include basically three categories of drugs—depressants [including barbituates and tranquillizers], stimulants, and hallucinogens.

When compared to narcotics, dangerous drugs became subject to federal regulation rather late in time. It was not until 1965—with the amendments to the Federal Food, Drug and Cosmetic Act—that Congress imposed controls on the distribution of these drugs comparable to those in the Harrison Act.[77] Before this time, individuals who unlawfully dispensed dangerous drugs could only be prosecuted through certain misbranding provisions of the Food, Drug and Cosmetic Act.[78]

The 1965 amendments cover all dangerous drugs—whether in interstate or intrastate commerce. Unlike the Harrison Act which was based on federal taxing powers, Congress justified intrastate regulation of dangerous drugs on interstate commerce theories. In the findings and declaration preceding the amendments, one finds the following language:

> The Congress hereby finds and declares that there is a widespread illicit traffic in depressant and stimulant drugs moving in or otherwise affecting interstate commerce; that the use of such drugs, when not under the supervision of a licensed practitioner, often endangers safety on the highway (without distinction of interstate and intrastate traffic thereon) and otherwise has become a threat to the

77. Drug Abuse Control Amendments of 1965, Pub. L. No. 89-74, 79 Stat. 226 (1965). For an excellent general discussion of these amendments, *see* Rosenthal, *Dangerous Drug Legislation in the United States*, 45 TEX. L. REV. 1037 (1967) [hereinafter cited as Rosenthal].

78. 21 U.S.C. §§ 331, 352, 355 (1970). Rosenthal, *supra* note 77, at 1051 n.86. The government was required to prove "that the drug was introduced or received into interstate commerce, delivered for introduction into interstate commerce or misbranded in interstate commerce." *Id.* This is no longer necessary under the 1965 amendments since they apply to drugs in interstate commerce.

> public health and safety, making additional regulation of such drugs necessary regardless of the intrastate or interstate origins of such drugs; . . .[79]

For purposes of discussion, the 1965 amendment can be conveniently outlined in the following fashion:

A. Definition of Dangerous Drugs

The amendments categorize dangerous drugs as either depressants or stimulants. Depressant drugs include all drugs containing "any quantity of barbituric acid or any of the salts of barbituric acid" (a definition which does not encompass many common tranquilizers); stimulant drugs are those containing "any quantity of amphetamine, any of its optical isomers, or any salt of amphetamine."[80] The definition of a depressant or stimulant drug, however, includes the following significant language:

> any drug which contains any quantity which the Secretary, after investigation, has found to have, and by regulation designates as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect. . . .[81]

This language is the authority for controlling hallucinogens and nonbarbituric tranquilizers under the amendments. The Secretary of Health, Education, and Welfare is granted discretion to exempt certain drugs from the coverage of the amendments.

B. Acts Forbidden

With certain exceptions the 1965 amendments forbade the manufacture of depressant or stimulant drugs.[82] Permitted to manufacture, however, were manufacturers who were properly registered and who produced drugs for use in research, teaching, medicine or for chemical analysis.[83] Sales were prohibited except by those legitimately in the chain of distribution and only in the ordinary and authorized course of their business. Finally, possession (a) other than for personal use of the possessor or a member of his household or (b) for administration to an animal owned by him or by a member of his household, was forbidden.[84]

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79. Pub. L. No. 89-74, § 2, 79 Stat. 226 (1965).
80. Pub. L. No. 89-74, § 3a; Rosenthal 1052.
81. Pub. L. No. 89-74, § 3a.
82. *Id.*, § 3(b).
83. *Id.*, § 3b; Rosenthal 1056-57.
84. *See generally* Pub. L. No. 89-74, § 3b; Rosenthal 1057-57. In 1968 possession of dangerous drugs for personal use was made a crime. Pub. L. No. 90-639, 82 Stat. 1361 (1968). This change in the law was largely occasioned by the growing use of LSD.

C. *Registration, Records and Enforcement*

The federal law was changed in 1962 to prescribe annual registration with the Food and Drug Administration for those manufacturing *any* drug, no matter what its type or character.[85] The 1965 amendments, however, further required manufacturers to include in their registrations whether they were manufacturing or processing any dangerous drugs.[86] In addition, the amendments demanded registration for wholesale distributors of dangerous drugs.[87] With certain exceptions, however, pharmacies, hospitals, clinics, and physicians did not have to register.

Registration was not the only requirement of the 1965 amendments. Individuals who manufactured or disposed of dangerous drugs had to prepare a record of each drug on hand when the amendments went into effect and continue to keep future records of the manufacture and handling of such drugs. These files were subject to inspection and copying by the appropriate officials of the Food and Drug Administration.[88] Again, with certain exceptions, licensed physicians were exempted from all record-keeping provisions contained in the amendments.

It is interesting that enforcement of the dangerous drug laws was first placed in the hands of the Food and Drug Administration in the Department of Health, Education, and Welfare—an agency responsible for the general health and not particularly involved with law enforcement. In 1968, however, jurisdiction over dangerous drugs was transferred from the FDA to the Justice Department.[89]

These amendments were the final piece of legislation which preceded the Comprehensive Drug Abuse Prevention and Control Act of 1970, with Title II of that Act otherwise known as the Controlled Substances Act.

PART III—*The Controlled Substances Act of 1970*

The Comprehensive Drug Abuse Prevention and Control Act of 1970[90] repealed almost all prior federal drug legislation and created a new and comprehensive scheme for federal drug control. For the first time, one statute governed both narcotics and dangerous drugs. Enforcement of all drug laws was placed in the hands of the Bureau of Narcotics and Dangerous Drugs (BNDD)—an agency created in the Justice Department in 1968 to combine

85. Drug Amendments of 1962, Pub. L. No. 87-781, Title III, § 302, 76 Stat. 780 at 795 (1962), 21 U.S.C. § 360(b) (1970); Rosenthal 1055.
86. Pub. L. No. 89-74, § 4. Rosenthal 1056.
87. Rosenthal 1056.
88. *See generally* Rosenthal 1058-59.
89. Reorganization Plan No. 1 of 1968, § 2(a), 28 USC § 509 (1970).
90. Pub. L. No. 91-513, 84 Stat. 1236 (1970), 21 USC §§ 801 et. seq. (1970).

the enforcement powers of the Bureau of Narcotics in the Department of Treasury and the Drug Abuse Control Bureau of the FDA in the Department of Health, Education, and Welfare.[91] Although the 1970 Act totally revamped the existing pattern of drug control, a great deal was borrowed from prior legislation—a fact that will become apparent as the provisions of the Act and the federal regulations implementing it are analyzed.

A. Jurisdiction to Legislate

As had been forecast by the Narcotics Manufacturing Act of 1960 and the 1965 amendments to the Federal Food, Drug and Cosmetic Act, authorization for the new legislation was found in the interstate commerce clause and not in Congress' power to collect revenue. The cumbersome system of taxes established by the Harrison Act and the Marihuana Tax Act was thus abrogated.

B. Controlled Substances

The Act establishes five schedules of controlled substances which include all of the substances previously defined as either narcotic or dangerous drugs.[92] Because the schedule I substances have a high potential for abuse, have no currently accepted medical use for treatment in the United States, and cannot be used safely even under medical supervision, they are subject to rigid controls. Drugs in schedule I include certain opium derivatives—such as heroin and hallucinogens—such as LSD, marihuana, and mescaline. Schedule II substances are also rigidly controlled since they too have a high potential for abuse and may lead to severe psychological and physical dependence. Unlike schedule I substances, however, they do have a currently accepted medical use in this country. In this schedule are included, among others, the synthetic opiates such as methadone, the opium poppy and poppy straw, coca leaves, and their derivatives, and any injectable liquid containing methamphetamine.

Substances in schedule III have a potential for abuse less than the substances in the first two schedules and a currently accepted use in medical treatment. Abuse may lead only to moderate or low physical dependence or high psychological dependence. This schedule includes stimulants, depressants, nalorphine, and substances containing certain limited quantities of specific narcotic drugs.

Schedule IV substances also have a currently accepted medical use for

91. Reorganization Plan No. 1 of 1968, 28 U.S.C. § 509 (1970).
92. 21 U.S.C. § 812 (1970).

treatment, but they have a low potential for abuse in comparison to those substances in schedule III. That is not to say that the use of schedule IV substances cannot lead to limited physical or psychological dependence. Schedule IV contains such drugs as phenobarbitol and chloral hydrate.

Schedule V substances, like substances in the prior three schedules, have a currently accepted medical use for treatment in the United States; but when compared to any of these other substances, those in schedule V have an even lower potential for abuse. This schedule consists of substances which, even though they may contain small quantities of specific narcotics, also contain enough non-narcotic medicinal ingredients to confer upon the compound or mixture valuable medicinal qualities other than those possessed by the narcotic content alone. Thus, paregoric or cough medicines containing small amounts of codeine would presumably be considered a schedule V controlled substance.

The 1970 Act also includes detailed criteria for the classification of controlled substances into schedules. It gives the Attorney General rule-making power to add a substance to a schedule or transfer substances between schedules if, after making the appropriate findings prescribed for each schedule, he determines that any substance has the requisite potential for abuse.[93] Conversely, the Attorney General may remove a drug from all schedules if his findings do not warrant inclusion of the drug in any of the five schedules. Proceedings to make such determinations may be initiated by the Attorney General on his own motion, at the request of the Secretary of HEW or on the petition of any interested party.

Before initiating such proceedings, however, the Attorney General must request scientific and medical evaluations and recommendations from the Secretary of HEW. The Secretary will recommend whether or not the substance should be controlled, and, if so, in what schedule it should be included. In making his decision, the Secretary will consider, among other things, the state of current scientific knowledge regarding the drug, scientific evidence of its pharmacological effects, the risks to the public health, and its psychic or physiological dependence potential. Although the ultimate decision on control lies with the Attorney General, he is bound by the findings of the Secretary of HEW. For instance, if the Secretary recommends that a substance not be controlled, the Attorney General may not control it.

The above described procedure is slightly modified when United States international obligations existing on the effective day of the Act require that a substance be controlled. In that case, the Attorney General may control a

93. 21 U.S.C. § 811 (1970).

substance under any schedule he deems appropriate without first consulting the Secretary of HEW.

Before concluding this discussion, two final points should be mentioned. First, the Secretary of HEW must inform the Attorney General whenever a new drug application for a stimulant, depressant, or hallucinogenic drug is presented and the drug appears to have an abuse potential. Second, although the distinctions between narcotic and dangerous drugs have been somewhat blurred by the 1970 Act, certain of its provisions continue to distinguish between them, resulting in the need to define a "narcotic drug." Unfortunately, the definition provided by the Act is not sound from a pharmacological viewpoint. It encompasses not only true narcotics such as opium and its derivatives, but also cocaine, a drug which cannot be classed as a narcotic under any medical definition of that term.[94]

C. *Requirements for Individual Registrants*

Although registration requirements may sometimes be waived, those who manufacture, distribute or dispense substances controlled by the Act must register annually with the Bureau of Narcotics and Dangerous Drugs in accordance with the regulations of that agency.[95]

A separate registration must be filed for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances. To assure proper registration, the BNDD is empowered to conduct administrative inspections of the "controlled premises"—the physical plant of a registrant or applicant—to see that the statutory standards are being met. The Bureau may also conduct investigations to verify or copy various records required to be kept by the Act. In most cases, an administrative warrant is required.[96]

In certain respects, however, the provisions of the Act differ slightly with regard to manufacturers, distributors and dispensers. Accordingly, each category of registrant must be separately analyzed.

1. *Manufacturers*

The 1970 Act repealed the Narcotics Manufacturing Act of 1960, which pre-

94. A narcotic drug is defined, at least pharmacologically, as one that depresses the central nervous system producing stupor, insensibility or sleep. Upton, *Narcotics and Other Drugs Susceptible to Abuse and Their Regulation*, 10 N.H.B.J. 264, 265 (1968). Cocaine is a stimulant, not a depressant.

95. 21 U.S.C. §§ 821-24 (1970). The Attorney General delegated his authority under the Act to the Bureau of Narcotics and Dangerous Drugs. BNDD acts under the general supervision of the Attorney General, however, see 28 C.F.R. Sec. 0.100. Procedure governing the registration of manufacturers, distributors and dispensers of controlled substances are set forth in 21 C.F.R. Part 301.

96. 21 U.S.C. § 880 (1970).

viously governed the licensing of manufacturers and the setting of manufacturing quotas. According to the 1970 Act, the term "manufacture" means:

> . . . the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis . . . and includes the packaging or repackaging of such substance or labeling or re-labeling of its container; except that such term does not include the preparation, compounding, packaging or labeling of a drug or other substance in conformity with applicable state or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice.[97]

With respect to controlled substances in schedules I and II, BNDD will register a manufacturer-applicant only if it finds that registration is *consistent* with both the public interest and any international obligations of the United States. In determining the public interest, certain factors must be considered, among which are.

> a) the maintenance of effective controls against diversion of controlled substances by limiting the importation and bulk manufacture of these substances to the number of establishments which can produce an adequate supply for legitimate medical, scientific, research, and industrial purposes;
> b) an applicant's prior conviction record under federal and state drug laws; and.
> c) an applicant's past experience in the manufacture of controlled substances.

Registration requirements for the manufacture of substances in schedules III, IV and V are somewhat less stringent. These manufacturers will be registered *unless* it is determined that it would be *inconsistent* with the public interest. This places the burden of proof with respect to the public interest on the applicant who wishes to manufacture controlled substances in schedules I or II, but shifts the burden to BNDD with respect to applicants who wish to manufacture substances in the last three schedules.

In addition to meeting stringent registration requirements, manufacturers of substances in schedules I and II must obtain an individual production quota before they can manufacture.[98] Each year BNDD determines the total quantity of each basic class of schedules I and II substances required to be manufactured in order to provide for estimated domestic, export, and reserve needs. Based on this overall production quota, individual production quotas are set so that the aggregate of individual quotas will not exceed

97. 21 U.S.C. § 802(14) (1970).
98. 21 U.S.C. § 825 (1970). For detailed requirements, *see* 21 C.F.R. Part 303.

the total amount of the substances needed annually. The Act specifies the requisite factors which BNDD should consider in setting individual quotas. Quotas are not required for substances in schedules III, IV and V.

Once he is registered and, if necessary, has received his manufacturing quota, the Act requires that a manufacturer make a biennial inventory of his stock of controlled substances on hand. Additionally, every registrant must currently maintain a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of by him. All such inventories or other records must be kept available for two years for copying and inspection by BNDD officials. In the case of controlled substances which are also narcotics, the records must be kept separate from all other records; in the case of non-narcotic controlled substances, the records need not be separate but must be in such form that information is readily retrievable from the ordinary business records of the registrant. Finally, manufacturers are required to make periodic reports to BNDD of every sale, delivery, or other disposal of any controlled substance.[99]

2. *Distributors*

According to the Act, the term "distribute" means the delivery of a controlled substance, other than by dispensing or administering.[100] Distributors are thus to be considered as wholesalers of controlled substances.

The requirements for registration are essentially those for manufacturers of schedules III, IV and V controlled substances. With respect to a distributor of any controlled substance, BNDD will register him unless the agency determines that the registration is *inconsistent* with the public interest.

Once registered, a distributor may not distribute a controlled substance in a commercial container unless such container bears a label with the proper identifying symbol.[101] A different symbol is required for each *schedule* of controlled substances. In addition, if a substance is included in schedules II, III or IV, the label must contain a clear concise warning that it is a crime to transfer the drug to any other person. With exceptions, distributions of controlled substances in schedules I and II may only be lawfully made pursuant to the written order of the person to whom the substance is distributed.[102] The written order must be on a form provided by BNDD and can only be issued to persons validly registered (or exempt from regis-

99. 21 U.S.C. § 827 (1970). 21 C.F.R. Part 304 sets the detailed requirements for records, reports and inventories.
100. 21 U.S.C. § 802(11) (1970).
101. 21 U.S.C. § 825 (1970).
102. 21 U.S.C. § 828 (1970).

tration) under the Act. Like the Harrison Act before it, the 1970 Act envisions a distribution system which is regulated by BNDD at every step.

By and large, a distributor must take biennial inventories and keep adequate records just as the manufacturer. His reporting requirements are slightly less burdensome, however. He is required to make periodic reports only with respect to narcotic controlled substances and not with respect to all controlled substances.

3. *Dispensers*

The 1970 Act also applies to those who dispense controlled substances. The term "dispense" means:

> . . . to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery.[103]

In effect, dispensers are the retailers of controlled substances.

As with distributors and manufacturers, each dispenser of controlled substances must annually register with BNDD. The four largest groups of dispensers or practitioners, as they are called, are physicians, pharmacists, researchers, and hospitals.

In order to dispense or conduct research with controlled substances in schedules II, III, IV and V, practitioners will be registered if they are authorized to dispense or conduct research under the laws of the state in which they practice.[104] As for research with schedule I controlled substances, an application must be referred to the Secretary of HEW who determines (a) the qualifications and competency of each research applicant and (b) the merits of each research proposal. Even if the Secretary of HEW approves, BNDD may deny the request for specified reasons.[105] Pharmacies—as distinguished from pharmacists—engaged in commercial activities, must be registered to dispense controlled substances in schedules II to V if they are authorized to dispense under state law. Each location must be registered separately, except that a practitioner need not obtain a registration for an

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103. 21 U.S.C. § 802(10) (1970).
104. 21 U.S.C. § 823(f) (1970).
105. Even though drug abuse is a centuries old problem, there is a serious lack of information about how drugs work and their long term effects on the body. In the past there have been strong federal policies against certain types of research. *See* DEALING WITH DRUG ABUSE, A REPORT TO THE FORD FOUNDATION 14-15 (1972). In the past there has been little federal money spent on drug research, *see id.* at 13. There are recent indications, however, that the federal government is encouraging increased drug research.

office at which he does not dispense or administer controlled substances, but where he only prescribes them and where no supplies of these substances are kept.[106]

Like manufacturers and distributors, dispensers have the obligation to make biennial inventories and keep continuing records of all controlled substances received, sold, delivered, or otherwise disposed of. There are various exceptions to this rule, however, one of which will be discussed here.[107] Under the Harrison Act, a physician was required to keep records of narcotic drugs dispensed showing the amount dispensed, the date, and the person to whom the drugs were dispensed. The physician did not have to keep these records with respect to drugs dispensed to a patient whom he "personally attended."[108] The new law substantially changes these rules. With respect to narcotic drugs in schedules II, III, IV and V, a practitioner need not keep records if he prescribes or administers such drugs in the lawful course of his professional practice.[109] What is significant about the section is the use of the words "in the lawful course of his professional practice." This is the same type of ambiguous language used in the Harrison Act as a qualification of physicians' exemptions from using the special order forms and which led to the *Webb-Linder* line of cases.[110] Whether the 1970 Act exemption will cause an equal amount of litigation remains to be seen. It should be noted that the section does not grant an exemption for dispensing schedule I substances or for anything other than prescribing or administering narcotic substances in schedules II, III, IV or V. Thus, a pharmacist who fills a prescription for such drugs must keep adequate records.

Finally, dispensers, unlike manufacturers and distributors, are not required to make periodic reports to BNDD. Except in an emergency or when dispensed by a doctor, the Act also requires that no schedule II controlled substance which is a prescription drug may be dispensed without the doctor's

106. 21 C.F.R. 301.23(h)(3).
107. 21 U.S.C. § 827(c) (1970). *See also* 21 C.F.R. Part 304.
108. Ch. 1, § 2(a), 38 Stat. 785 (1914).
109. Under the new law, it would seem that there is no requirement for methadone maintenance programs to maintain records of the amount of the drug dispensed and the recipients of the drug, since the methadone would be administered in the lawful course of medical practice. An argument could be made, however, that records might have to be kept if the methadone is given to the patient for self-administration—such treatment might not be considered "prescribing or administering" methadone under the meaning of the Act. *See* Whitford, *The Physician, The Law, and The Drug Abuser*, 119 U. PA. L. REV. 933, 956 and n.96 (1971). In any event, the Food and Drug Administration separately requires methadone maintenance programs to maintain records on patients treated in order to be allowed to use methadone, a drug which has not yet been approved as fully safe and effective. *Id.* at 954-57.
110. *See* discussion *supra*, and accompanying text.

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written order.[111] Schedules III and IV substances may be dispensed pursuant to either oral or written prescriptions.

D. Import and Export

Title III of the 1970 Act—known as the Controlled Substances Import and Export Act—deals with the export and import of controlled substances.[112] Prior federal law, including the Narcotic Drug Import and Export Act of 1922, prohibited the importation of narcotics such as opium and coca leaves except for limited amounts needed for medical or scientific uses. The new Act forbids the importation of all substances in schedules I and II and narcotic drugs in schedules III, IV and V. The Attorney General, however, may allow the importation of such amounts of crude opium and coca leaves as he finds necessary to provide for the medical, scientific and other legitimate needs of the country. In an emergency when domestic supplies are found inadequate or when there is inadequate competition among domestic manufacturers, the Attorney General may also permit the importation of other prohibited drugs if he finds it necessary to provide for the country's legitimate needs. Crude opium, may not, however, be imported for the manufacture of heroin.

To import a non-narcotic controlled substance in schedules III, IV and V, it must be shown that the drug is imported for a legitimate purpose and pursuant to various requirements prescribed by BNDD.

The export of a narcotic drug in schedules I, II, III and IV is forbidden unless the destination country is a party to certain international conventions on narcotics, maintains a system to control narcotics importation which is deemed adequate by BNDD, the person to whom the narcotic is delivered is licensed by the country of importation, and a proper export permit has been issued.[113] Similarly, BNDD must be satisfied that the narcotic drug is to be applied to medical or scientific uses within the country of import or that there is an actual medical or scientific need for the drug in that country. The statutory provisions governing the export of non-narcotic substances and the transshipment of all controlled substances are less rigid than the export restrictions placed on the export of narcotics.

As in Title II, there are annual registration requirements for importers and exporters.[114] With respect to controlled substances in schedules I or II, an

111. 21 U.S.C. § 829 (1970). *See also* 21 C.F.R. Part 306.
112. 21 U.S.C. § 951 (1970). The authority and functions of the Attorney General under Title III were delegated to the Director of BNDD under the Attorney General's supervision. 21 C.F.R. Sec. 0.100. Regulations are to be found in 21 C.F.R. Part 312.
113. 21 U.S.C. § 953 (1970).
114. 21 U.S.C. §§ 957-58 (1970).

importer or exporter will be registered if such registration is *consistent* with the public interest and with the international obligations of the United States. Such registration, however, only authorizes import or export of the substances specified in the registration. Alternatively, an importer of a controlled substance in schedules III, IV, or V or an exporter of a controlled substance in schedules III or IV will be registered unless it is *inconsistent* with the public interest. As with manufacturers, distributors, and dispensers under Title II, separate registration is required for each principal place of business where the applicant imports or exports controlled substances.

Title III makes it unlawful for a person to manufacture or distribute a schedule I or II substance with the intent or knowledge that it will be illegally imported into the United States.[115] This provision is intended to reach those who manufacture or distribute these substances outside the United States intending that they ultimately reach the United States. The United States District Court at the point of the offender's entry into the United States has jurisdiction to hear the case.

PART IV—*Special Action Office for Drug Abuse Prevention and Office for Drug Abuse Law Enforcement*

On June 17, 1971, by Executive Order,[116] President Nixon established, in the Executive Office of the President, the Special Action Office for Drug Abuse Prevention, the Director of which was to be his official representative in matters concerning drug abuse prevention. In March of 1972, Congress gave the Special Action Office for Drug Abuse Prevention a statutory existence and expanded the responsibilities of its Director, Dr. Jerome H. Jaffe.[117]

A. Special Action Office for Drug Abuse Prevention (SAODAP)

The Special Action Office for Drug Abuse Prevention[118] is given jurisdiction over all federal programs in the area of drug *abuse*—as distinct from drug *traffic*—prevention. Drug abuse prevention includes programs relating to education, training, treatment, rehabilitation, and research in the field of drug abuse, while drug traffic prevention covers law enforcement activities and diplomatic or international efforts relating to drug traffic. Thus, since the Bureau of Narcotics and Dangerous Drugs primarily enforces federal drug laws, these law enforcement functions are not under the jurisdiction of

115. 21 U.S.C. § 959 (1970).
116. Exec. Order No. 11,599, June 17, 1971.
117. Drug Abuse Office and Treatment Act of 1972. Pub. L. No. 92-255, 86 Stat. 65.
118. *See id.*, Title II, §§ 201-255.

the Special Action Office. BNDD's educational materials, however, are subject to the control of the Special Action Office.

Within the field of drug abuse prevention, the Special Action Office is charged with (a) focusing the comprehensive resources of the federal government on drug abuse with the immediate objective of significantly reducing the incidence of drug abuse within the shortest period of time; and (b) developing a comprehensive, coordinated strategy to combat drug abuse. One of its main tasks will be to eliminate duplication, overlap, or conflict among federal drug abuse programs and ensure that all federal drug abuse laws, guidelines, regulations, and standards are consistent with each other and with overall national policy. Congress has given the Special Action Office three years in which to accomplish its mission. As of June 30, 1975, the Office is abolished unless, of course, its life is extended by Congress. By that time, it is hoped, the separate federal agencies will be able to proceed in concert in the field of drug abuse prevention.

B. Functions of the Director of the Special Action Office for Drug Abuse Prevention

The Director of the Special Action Office for Drug Abuse Prevention is appointed by the President with the advice and consent of the Senate. The main responsibilities of the Director are briefly summarized below:[119]

1. The Director establishes the overall planning and policy objectives for federal drug abuse prevention efforts. He reviews all existing guidelines, regulations, procedures and criteria of federal agencies to insure that they are consistent with his policies, priorities and objectives. If necessary, the Director may recommend that an agency effect changes in its organization, management and personnel.

2. The Director reviews all federal laws relating to health, education, and welfare and assures that the agencies who administer these laws view drug abuse as a health problem.

3. The Director may review implementation plans and budget requests of any federal agency for all federal drug abuse programs. He also has the power to place someone from his office or from some other federal agency in any federal drug abuse program for a short period of time to evaluate the performance of that program.

4. The Director is to encourage certain research and to create, develop and test:

   i. non-addictive synthetic analgesics to replace opium and its derivatives in medical use;

119. *See generally, id.* §§ 221-223.

ii. long-lasting non-addictive blocking or antagonistic drugs or other pharmacological substances for the treatment of heroin addiction; and
iii. detoxification agents which, when administered, will ease the physical effects of withdrawal from heroin addiction.

5. The Director may make recommendations to the President in connection with any federal *drug traffic program*. One of the Assistant Directors of the Special Action Office is to maintain liaison with respect to all federal drug traffic programs.

6. Before any controlled substance is transferred, added, or removed from any of the schedules under the Controlled Substances Act of 1970, the Attorney General must notify the Director. Similarly, the Secretary of HEW must notify the Director, as well as the Attorney General, of any new drug applications which may pose a potential for abuse.[120]

7. The Director is to give technical assistance to state and local agencies in the field of drug abuse, to maintain a clearinghouse for all information on drug abuse, and to draft model legislation for state and local purposes.

8. The Director must report to the President annually, specifying the objectives, activities, and accomplishments of the Special Action Office and accounting for all funds expended.

In carrying out his various responsibilities and functions, the Director has the authority to make grants and contracts with federal departments and agencies and with non-profit private agencies.[121] Similarly, the 1972 Act establishes a National Advisory Council for Drug Abuse to make recommendations to the Director with respect to overall planning and policy and the objectives and priorities of federal drug abuse prevention functions.[122] The Council is composed of the Secretaries of HEW and Defense, the Administrator of Veterans' Affairs and twelve individuals appointed by the President.

C. Relation to HEW

In addition to creating the Special Action Office, the 1972 Act has important consequences for various programs administered by the Secretary of HEW.[123] For instance, the Secretary:

1. may not approve an application for a community mental health center grant unless the application provides for a treatment and rehabilitation program for drug addicts where such a program is feasible and needed;

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120. *Id.* § 209.
121. *Id.* § 210.
122. *Id.* §§ 251-255.
123. *Id.* Title IV §§ 401-413.

2. must require that drug treatment and rehabilitation programs be established in appropriate Public Health Service facilities unless he determines that there is not a sufficient need for such a program in a particular institution;

3. is authorized to suspend Federal support to any private or public hospital which refuses to treat a drug abuser in need of emergency medical help;

4. is authorized to make grants to states which submit plans for establishing and coordinating projects for the development of more effective drug abuse prevention methods in the state; and

5. is authorized to make similar grants to public and private non-profit organizations to carry on training, education, research or rehabilitation programs in the field of drug abuse. In addition to his existing responsibilities, the 1972 Act confers additional drug abuse prevention responsibilities on the Secretary of HEW, such as operating an information center for drug abuse matters, publishing statistical data on drug abuse, etc. To assist the Secretary in carrying out his duties, the National Advisory Council on Drug Abuse makes recommendations to the Secretary on matters pertaining to drug abuse. Finally, effective December 31, 1974, the Act establishes, in the National Institute of Mental Health, a National Institute on Drug Abuse to administer the various HEW programs concerned with drug abuse prevention.[124]

Two final aspects of the 1972 Act are worth mentioning. First, in order to coordinate long term federal strategy in the areas of both drug abuse and drug traffic prevention, the Act establishes a high level Strategy Council comprised of the Director of the Special Action Office, the Attorney General, the Secretaries of State, HEW, and Defense, the Administrator of Veterans' Affairs, and other officials as the President may deem appropriate. Second, the 1972 Act recognizes the importance of the confidentiality of patients' records. Thus, records of the identity, diagnois, prognosis, or treatment of a patient kept in connection with any drug abuse prevention function authorized or assisted under the provisions of the 1972 Act or any act amended by it must be kept confidential.[125]

D. Office for Drug Abuse Law Enforcement (ODALE)

On February 1, 1972 by Executive Order President Nixon created a new office within the Department of Justice to coordinate the drug law enforcement efforts of the federal government.[126] In a sense, the new office was the

124. *Id.* Title III §§ 301-305.
125. *Id.* Title IV § 408.
126. Exec. Order No. 11,641, February 1, 1972.

counterpart on the law enforcement side of the Special Action Office for Drug Abuse Prevention. Myles J. Ambrose, former Commissioner of Customs, was appointed Director with a title of Special Assistant Attorney General.

By the terms of the Executive Order, the Director of the Office will advise the President on all matters relating to the more effective federal enforcement of laws relating to illegal drug traffic and on methods by which the federal government can assist state and local governments in strengthening the enforcement of their laws relating to illegal drug traffic. The Director is also mandated to recommend plans, programs, legislation, techniques, and other measures to maximize the country's war on drugs. Specifically, the Director is empowered to develop a concentrated law enforcement program in the federal government and cooperate with state and local governments in enforcing their drug laws.

In operation, the Office of Drug Abuse Law Enforcement has concentrated its efforts at the street level drug trade.[127] Before ODALE, there was little federal participation in enforcing drug laws against the ordinary street pusher. Under Mr. Ambrose's leadership, however, a nationwide network of prosecutors, investigators, and special grand juries has been created to assist state and local authorities in detecting, arresting, and convicting "hard drug" pushers. Presently the Office is operating in at least 33 cities throughout the country.

PART V—*Historical Development and Present Status of Federal Drug Penalty Provisions*

Over the past sixty years, Congress has constantly reacted to statistics showing increased drug abuse in America by increasing penalties for drug offenders. A review of the federal penalty provisions will show that the escalation has been consistent and, at times, even dramatic.[128]

A. Pre-1970 Narcotic Penalties

1. *Early Pattern*

Prior to 1951, there were basically two patterns of penalties depending on the act violated. For convenience, the two patterns can be called import-export penalties and Harrison Act penalties.

a) *Import-Export Penalties*: When the importation of opium was pro-

127. N.Y. Times, January 29, 1972, p.1.

128. *See* DEALING AND DRUG ABUSE, A REPORT TO THE FORD FOUNDATION, 300-328 for a discussion of federal expenditures on drug abuse control.

hibited in 1909, the offender was subject to fines "not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years or both."[129] An identical provision was contained in the 1914 Narcotic Drug Export Act.[130] By 1922, there had been a dramatic increase in import penalties. For violations of the import provisions of the Narcotic Drug Import and Export Act, the penalty was a fine of not more than five thousand dollars *and* imprisonment for not more than ten years.[131] Where prior drug laws had cast penalties in the alternative, either a fine or imprisonment or both, this Act mandated *both* a fine *and* a prison term. The penalties for illegal *export*, however, were not increased.

b) *Harrison Act Penalties*: When it was enacted in 1914, violators of the Harrison Act were subject to a fine of not more than two thousand dollars *or* imprisonment for not more than five years or both.[132] Identical penalties were provided for violations of the Marihuana Tax Act of 1937.[133]

2. *Unified Penalties of 1951*

In 1951, however, Congress totally revamped the then-existing penalty structure under prodding from the Bureau of Narcotics.[134] First of all, penalties for all drug offenses were made uniform, no matter how trivial or serious the offense. Thus, the penalties for failing to register as a drug distributor or for illegally importing drugs were made identical. Second, the severity of the penalties themselves was increased by requiring *mandatory* minimum prison terms and by lengthening the possible maximum sentence. A first offense entailed a fine of not more than two thousand dollars *and* a prison term of not less than two nor more than five years. For a second offense, the fine remained the same but the prison term jumped to not less than five nor more than ten years. For a third or subsequent offense, the prison term was increased to not less than ten nor more than twenty years. Of equal significance was a provision which denied both a suspended sentence and any form of probation to a second or subsequent offender.

3. *Ammendments of 1956*

By 1956, Congress had grown dissatisfied with its handiwork of five years

129. Ch. 100, § 2, 35 Stat. 614 (1909).
130. Ch. 9, § 7, 38 Stat. 275 (1914).
131. Ch. 202, § 2(c), 42 Stat. 596 (1922).
132. Ch. 1, § 9, 38 Stat. 785 (1914).
133. Ch. 553, § 12, 50 Stat. 551 (1937).
134. Ch. 666, §§ 1, 2, 3, 4, 65 Stat. 767 (1951).

before and decided to increase penalties yet again.[135] At least this time Congress did differentiate between serious drug offenses and those less serious in nature. For illegally importing narcotics or for transferring them without the required order form, the prison term was now set at not less than five nor more than twenty years for a first offense; and at not less than ten nor more than forty years for a second or subsequent offense. The possible fine for first or second offenses was raised to twenty thousand dollars. Penalities for sales of drugs to minors were set even higher; indeed, for a sale of illegally imported heroin to a minor, there was a possibility of the death penalty. Consistent with the increased severity of these penalties, Congress denied the right to a suspended sentence, probation, or parole to even the first offender convicted of a serious drug offense.

Even for less serious drug offenses, such as failing to register and pay the occupational tax, Congress increased existing penalties, although, in doing so, it did not set them as high as for illegal importation or similar offenses. Thus, for a first offense, the penalty was set at a prison term of not less than two nor more than ten years and a fine of not more than twenty thousand dollars. For a second offense, the prison sentence jumped to not less than five nor more than twenty years; and for a third or subsequent offense, to not less than ten nor more than forty years. A suspended sentence, probation and parole, however, were still available to the first offender convicted of these less serious offenses.

B. Pre-1970 Dangerous Drug Penalties

As mentioned above, depressant, stimulant, and hallucinogenic drugs were regulated by the 1965 amendments to the Federal Food, Drug and Cosmetic Act and not by the narcotic laws.[136] First offenders were punishable by imprisonment for not more than one year, or a fine of not more than one thousand dollars or both. For a second offense, the penalty was increased to not more than three years or a fine of not more than ten thousand dollars or both.[137] Stiffer penalties, however, were provided for selling dangerous drugs to persons under twenty-one years of age. In such cases, the penalty was a prison term of not more than two years or a fine of not more than five thousand dollars or both.

Just as in the case of narcotic drugs, however, Congress became dissatisfied with these penalties and enacted tougher ones three years later in

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135. Ch. 629, § 103, 70 Stat. 567 (1956).
136. Pub. L. No. 89-74, § 7, 79 Stat. 226 (1965).
137. Ch. 675, § 303(a), 52 Stat. 1043 (1938). For a full discussion of the penalty provisions of these 1965 amendments, *see* Rosenthal, *supra* note 77 at 1058.

1968.[138] The unlawful manufacture, sale or possession with intent to sell of a dangerous drug was made punishable by up to five years in jail, a fine of up to ten thousand dollars, or both. For selling to someone under twenty-one, the penalty was set higher—imprisonment for not more than ten years, a fine of not more than fifteen thousand dollars, or both. It must be said, however, that Congress did not set mandatory minimum sentences as it did for narcotic violations, nor did Congress deny an offender eligibility for a suspended sentence or probation.

C. *Present Penalty Provisions for Narcotics and Dangerous Drug Offenses*

The penalty provisions of the Controlled Substances Act of 1970 are complex and variegated, not lending themselves to easy analysis. Five different categories of penalties need be considered.

1. *Unlawful Manufacture, Trafficking and Similar Offenses*[139]

The 1970 Act imposes identical punishment for illegally manufacturing, distributing, dispensing, possessing with intent to manufacture, distribute or dispense, or attempting or conspiring to do any of these acts. The severity of the penalties, however, depends on the type of controlled substance involved.

a) In the case of a controlled substance in schedules I or II which is also a narcotic drug, the person is subject to a jail sentence of up to fifteen years, a fine of not more than twenty-five thousand dollars, or both. Any prison term imposed must be accompanied by a special parole term of at least three years in addition to a prison term. If, for any reason, parole is revoked, the original term of imprisonment is increased by the period of the special parole term.

b) In the case of a controlled substance in schedules I or II which is not a narcotic drug, or a controlled substance in schedule III, the person is subject to a prison term of not more than five years, a fine of not more than fifteen thousand dollars, or both. A special parole term of at least two years is also imposed.

c) In the case of a controlled substance in schedule IV, the prison term is lowered further still to not more than three years; the fine, to not more

138. Act of Oct. 24, 1968, Pub. L. No. 90-639, § 3, 82 Stat. 1361.

139. 21 U.S.C. § 841 (1970). It should be noted that the 1970 Controlled Substances Act permits search warrants to be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time. A judge or United States marshal may include a "no-knock" provision in the warrant. 21 U.S.C. § 879(a) and (b) (1970).

than ten thousand dollars. The special parole term is decreased to at least one year.

d) In the case of a controlled substance in schedule V, the prison term is lowered to not more than one year; the fine, to not more than five thousand dollars. No special parole term is imposed.

In each of these categories, the prison sentence, fine, and special parole term are doubled for a second offender. Penalties are also doubled for anyone eighteen years or older who distributes a controlled substance to someone under twenty-one.

These general penalty provisions applicable to manufacturing and trafficking offenses admit of many exceptions. These exceptions, however, fall into two basic categories. One scales down the criminal penalties; the other substitutes civil for criminal penalties.

The first category includes such offenses as: 1) a registrant's knowing and intentional distribution of a controlled substance in schedules I or II in the course of his legitimate business without a proper order form; 2) the use of a fictitious or revoked registration number; 3) the acquisition of a controlled substance by fraud, forgery, or misrepresentation; and 4) the use of the mails, telephone, radio, and all other means of communication to commit or to facilitate the commission of a felony under the Act.[140] For such offenses, the penalty is imprisonment for not more than four years, a fine of not more than thirty thousand dollars, or both. There is no special parole term imposed. For a second offense, the fine and jail term are doubled.

Only civil penalties are provided for the second group of offenses—offenses which are considered only minor infractions of the 1970 Act.[141] Thus, for a registrant who manufactures a controlled substance in schedules I or II which is either not expressly authorized by his registration or is in excess of his assigned manufacturing quota, the penalty is a fine of not more than twenty-five thousand dollars. The same penalty is provided for someone who removes or obliterates required symbols or labels on packages or who fails to keep, make, or furnish any record or report required by the Act. However, if any of these offenses (for which a civil penalty is provided) is committed knowingly or after a prior offense against the drug laws, the person convicted becomes liable for imprisonment as well as for a fine.

2. *Unlawful Possession*[142]

For unlawful possession of a controlled substance in any one of the five

140. 21 U.S.C. § 843 (1970).
141. 21 U.S.C. § 842 (1970).
142. 21 U.S.C. § 844 (1970). It should be noted that any person who distributes a

schedules the punishment is a prison term of not more than one year, a fine of not more than five thousand dollars, or both. Penalties double for a second offense.

A special procedure is available to the first offender. Where the offense is his first, the court is empowered to defer further legal proceedings and place the offender on probation. If he does not violate the conditions of his probation, the court will discharge the offender and dismiss the proceedings against him.

3. Continuing Criminal Enterprise[143]

For a person who engages in a continuing criminal enterprise, the 1970 Act changes its pattern somewhat, requiring (a) that a *mandatory* minimum sentence of ten years be imposed (life imprisonment is the maximum); (b) that a fine of not more than one hundred thousand dollars be assessed; (c) that a suspended sentence or probation not be granted; and, finally (d) that any profits garnered in the enterprise be forfeited to the United States. A person is considered to be engaged in a continuing criminal enterprise if he (a) commits a felony which is part of a continuing series of drug offenses; (b) acts in concert with at least five other persons to commit these offenses; (c) commands some organizational or supervisory position with respect to the group; and (d) obtains substantial income from the enterprise. The provision is clearly aimed at the importer and the high level dealer who commands a drug distribution network.

4. Dangerous Special Drug Offender

Special penalties are also singled out for the so-called "dangerous special drug offender."[144] A defendant who is over twenty-one years of age and has been convicted but not yet sentenced for a drug felony can be declared a dangerous special drug offender in a separate judicial hearing prior to sentencing. If he is determined to be such a dangerous special drug offender by a preponderance of the evidence, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for the felony which he committed. In other words, for the sake of protecting the public from further criminal conduct, the period of confinement imposed on a dangerous drug offender can exceed the period of con-

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small amount of marihuana for no remuneration shall be punished under § 844 and not under § 841, 21 U.S.C. § 841(b)4 (1970).

143. 21 U.S.C. § 848 (1970).

144. 21 U.S.C. § 849 (1970).

finement otherwise provided for the particular offense committed. In order to be classified as a dangerous special drug offender, the defendant must meet certain statutory requirements: (a) the defendant must have been previously convicted in a state or federal court of two or more offenses involving dealing in controlled substances—offenses which were committed at different times but each punishable by more than one year in jail; (b) the defendant must have been imprisoned for one of these prior offenses and less than five years must have elapsed between the present felony and his release from prison or the commission of a prior drug offense; (c) the defendant must have committed the present felony as part of a criminal pattern of dealing in controlled substances which constitutes a substantial source of his income; (d) the defendant must have committed his present offense as part of a conspiracy with at least three other persons to engage in a pattern of dealing in controlled substances, and the defendant must have agreed to initiate, organize, plan, finance, direct, manage, gove or receive a bribe, or use force in connection with such dealing.

5. Import and Export Penalties[145]

As in the case of unlawful manufacture, the penalties for unlawful import or export of controlled substances depends on the nature of the substance involved. Thus, if a narcotic drug in schedules I or II is illegally imported or exported, the penalty is severe—a prison term of not more than fifteen years, a fine of not more than twenty-five thousand dollars, or both. A special parole term of at least three years is also imposed. The penalties for illegal import of a controlled substance other than a narcotic drug in schedules I or II is imprisonment for not more than five years, a fine of not more than fifteen thousand dollars, or both. A special parole term is also imposed but the length of the term is determined by the type of controlled substance involved.

For a second offense, the statute generally provides double the penalty. Attempts and conspiracies are treated as if the offense attempted or planned had been committed. Finally, the 1970 Act provides civil penalties for transhipment of controlled substances to another country unless such offense was knowingly and intentionally committed, in which event criminal penalties are provided.

D. Interrelationship Between Penalty Provisions

For purposes of analysis, this article has separated penalties into varying categories, such as penalties for illegal importation, for illegal manufacture,

145. 21 U.S.C. §§ 960-963 (1970).

for possession, etc. From this it should not be inferred that these categories are separate and distinct. Quite the contrary. Any single offense against the drug laws as often as not involves multiple violations. Take, for example, someone arrested for illegally selling heroin.

1. Under the Harrison Act, there would have been an automatic three-count indictment, charging the defendant with the following violations: (1) selling narcotic drugs not in the original stamped package or from the original stamped package;[146] (2) selling narcotic drugs without the proper written order form;[147] and (3) selling illegally imported heroin, knowing it to have been illegally imported.[148] Possession of a narcotic drug at any time created a presumption that the drug had been illegally imported and the defendant had knowledge of the illegal importation.

2. Under the Controlled Substances Act of 1970, there is a two-count indictment, charging possession with intent to distribute a controlled substance and illegal distribution of a controlled substance.

Although beyond the scope of this paper, interesting comparisons can be drawn between the penalty provisions under the Harrison Act as amended in 1951 and 1956 and the new Controlled Substances Act of 1970. Under the old law a minimum mandatory prison sentence was imposed, while under present law there is generally no minimum required sentence. It would seem that the prosecutor was in a stronger bargaining position under the old law than he is now. Since the 1956 amendments to the Harrison Act imposed harsher mandatory sentences for some offenses than for others, the prosecutor could threaten an offender with the more serious charge unless he cooperated. Under the present law, the prosecutor can never be sure what penalty will be meted out by a judge. As a result, the federal drug offender today may be less disposed to plea bargain and more prone to take the risks incident to a full trial.

Conclusion

Until the turn of the century the basic federal attitude toward the distribution and use of narcotics by the general public was permissive. Narcotic substances and their use were regarded as a matter of personal choice not requiring the intervention of the federal government. This attitude was not inconsistent with a recognition that narcotics were far more dangerous than routine household items and that those who used them might be subject, per-

146. Act of Aug. 31, 1954, ch. 1147, §§ 6-7, 68 Stat. 1003.
147. Act of Aug. 31, 1954, ch. 1147, § 8, 68 Stat. 1004.
148. Act of Nov. 2, 1951, ch. 666, § (c), 65 Stat. 767.

haps, to moral censure. This general approach was dominant until well into the 1900's.

After the turn of the century there was a shift from a posture of permissiveness to one of repression which was characterized by a federal effort to proscribe the distribution and use of narcotics except within narrow and tightly controlled channels for recognized medical purposes. This approach developed slowly. First, there were the ever increasing tariffs on imported smoking opium, then the outright ban on all imported opium not needed for medical uses, and, finally, there were the regulatory provisions of the Harrison Act, effectively forcing the addict to turn not to the medical profession but to the illicit drug market for his daily supply. This black market became the mechanism by which drugs were distributed in the world of the drug user. Attempts by law enforcement agents to control this market have led to even more repressive federal regulation. Penalties were escalated, informers paid, vehicles seized. When these tactics showed little apparent success, suspicion grew that perhaps it was the local law enforcement systems which were partly to blame. There was talk of "soft judges" who misguidedly coddled criminals. This led to mandatory minimum sentences, thus preventing judges from ameliorating the harshness of the penalties. Most recently, federal agents, in such programs as ODALE, have begun to work directly with local police to combat distribution of drugs at the street level. The end result of this process is a comprehensive federal criminal statute limiting the use of controlled substances and significant federal intervention through the BNDD and ODALE at every level of international, national and local drug distribution.[149]

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149. Still a third federal approach can be termed "medical," for want of a better word. It has not been developed in this article which is designed to focus on federal control of the distribution and use of drugs rather than on the rehabilitation of the addict. This third federal approach categorizes the drug addict not as a criminal but as a patient and looks not to his imprisonment but to his treatment. One of the earliest efforts along these lines was the use of narcotics by the medical profession to treat the addict. This led, in the wake of the Harrison Act, to the creation of the clinics of the 1920's and the dispensation by private physicians of morphine, heroin and cocaine to the drug addict. These early efforts were short-lived due to the vigorous use of the Harrison Act by federal drug enforcement personnel. The same theme emerged again, however, some forty years later, in 1963, with the work of Doctors Dole and Nyswander. In this instance the narcotic substance was methadone but the medical concern was the same, *i.e.*, the use of a narcotic substance to treat the addict. Methadone treatment did not meet the fate of the clinics of the 1920's. Perhaps sobered by years of enforcement of the Harrison Act in the face of an ever-growing drug problem, methadone was accepted on an experimental basis. It rapidly became an important federal concern and found support in federal monies allocated under the NARA program of 1966 and later legislation. Its use is still technically "experimental" but it remains a strong national theme and is conceived by many as viable federal alternative to the use of the criminal law.

Another form of this medical approach has been to categorize drug addiction as a

Assessing the success of the repressive or drug suppression approach to the drug problem is not the object of this article which seeks only to describe. One observation, however, may be made by way of clarification. The use of criminal law sanctions in the suppression of narcotics operates in at least three different ways. For some, the presence of the law is enough to inhibit use of the interdicted item. The use of drugs is a crime and for many, indeed for most, that is enough.

A second effect of the law is to make drugs hard to obtain. The practical consequence of this is that drugs are not readily available—thereby reducing the possibilities of their use wholly apart from any moral or civic attitudes regarding either the law or the use of drugs. Here again the law succeeds.

The troublesome area of the law's operation is in its application to those in the drug subculture itself. In this area federal drug control legislation presents itself as an effort to prevent individuals who are strongly motivated and determined from buying and selling narcotics. Here the federal drug control legislation operates in much the same way as did prohibition legislation. The test of the effectiveness of the effort is only in part the law itself. Far more important are the national attitudes and infrastructures which apply the law to the problem—the police, the courts, the prisons. It is here that problems multiply, results discourage, and the urge to reassess takes its stand.

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type of character disorder. So conceived the drug addict found a place with the mental case and the alcoholic, all incapable of caring for themselves. This concept led to the authorization of Lexington and Fort Worth in 1929 and later came to full flower in the commitment provisions of the NARA of 1966. This same character disorder theme finds expression in the various therapeutic communities such as Synanon or Phoenix House, designed to get the addict to work through his "problem" in a supportive but drug free environment. This approach has also found federal support through the funding provisions of the NARA act of 1966 and later legislation.

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THE MARIJUANA MERRY-GO-ROUND

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The March 1975 issue of *The Police Chief* contains a "Position Paper on Marijuana," in which its author, Chief E.M. Davis of the Los Angeles Police Department suggested that:

> Decriminalization of marijuana is tantamount to abandonment of our citizens, particularly our youth, to psychological, physiological and sociological destruction.[1]

The author's position was to retain existing marijuana statutes based upon his experience as a big-city police chief and after a review of research on marijuana.

It is the intention of the paper to present a different perspective by identifying the issues in a rational, reasonable context, rejecting the emotionalism and misinformation that have guided how some people have come to regard this drug as the "killer weed." If our focus is on youth and our prime beneficiary is society, how can we expect the millions of marijuana users or potential users in our society to put any faith in our criminal justice system or in the scientific community when the enforcement point of view is largely made up of emotion and much of the scientific evidence is used primarily as a support of our existing, hypocritical laws?

THE ENFORCEMENT QUESTION

Over the last 60 years, drug abuse has been primarily a law enforcement problem in the United States. Whether it ever should have been, or whether it should now be, has been a subject of hot debate in this country for most of this century. The reality is that as long as the use of drugs, and more specifically marijuana, is either covered by criminal law, civil statutes, or no law at all, policemen, physicians and others need to be involved. This belief suggests there is no simple solution—legal, medical or social—to drug abuse in our society. To pretend there is ignores facts, denies history, and further misleads a frightened and confused society.

Unfortunately, law enforcement has all too often independently opted for the simple solution—retaining the marijuana laws as they stand today. The justification for this consists largely of billowing statistics on numbers of drug arrests, questionable calculations of the street value of such seizures and dramatized stories of crackdowns on distributors and traffickers. This is indeed unfortunate when in the last 10 years society has shown in numerous polls a steadily increasing tendency to favor elimination or reduction of penalties for possession of marijuana. Nevertheless, more persons are being arrested for marijuana possession than ever before. In 1965 the number of persons arrested on marijuana charges was 18,185; in 1970 it was 188,682; and in 1973, when it made up 67 percent of all drug arrests, it was 420,700, an increase of 31 percent over the previous year's figure and more than double the number five years ago.[2]

But what do these data really mean? If the enforcement aspects are so successful, why do drugs remain so plentiful, and why does supply hardly ever seem to run more than a step or two behind demand? What this data should reflect is how applications of uneven, unjust laws contribute to the erosion of respect for all laws. The lifelong stigma of criminal sentences is a punishment out of all proportion in respect to personal use of marijuana and this stigma exerts more social damage than the "crime" it was meant to deter. Each day in the United States, society indulges

[1] Ed Davis, "Marijuana: A Position Paper," *The Police Chief*, March 1975, pp. 34-35.

[2] "News and Notes," *Crime and Delinquency*, 21, (April 1975), p. 187.

itself in just this kind of abuse. Last year about 420,000 people in the United States were arrested for marijuana violations. How many of these were forced into contact with the criminal law for simple possession? This writer's subjective feeling is, "too many."

In addition, the rationale for advocating legal deterrents to drug use suggests that the more easily accessible a drug becomes, the more freely people will use it, and the more often they will run into problems. For example, in testifying late last year before a Senate subcommittee on narcotics, Dr. Robert S. Dupont, director of the White House's Special Action Office for Drug Abuse Prevention, said that there is evidence that marijuana is harmful and that the removal of penalties would lead many persons incorrectly to conclude that the drug is safe. Though a prison sentence for marijuana is wrong, he said, the existing law making marijuana possession illegal "is c early a deterrent to large numbers of potential users."

The writer concurs with the point made by *The Con umers Union Report—Licit and Illicit Drugs* in 1 /72. As Consumers Union pointed out, no drug is safe or harmless to all people at all dosage levels or under all conditions of use. But we may be missing the point. Consumers Union and others are not recommending decriminalization or legalization solely on the belief that marijuana is "safe" or "harmless." Their philosophy arises out of the conviction that an orderly system of legal distribution and licit use will have many advantages for both users and nonusers over the present marijuana black market. In particular it will separate the channels of marijuana distribution from heroin channels and from the channels of distribution of other illicit drugs, thereby limiting the exposure of marijuana users to other illicit drugs, a factor not recognized by many of today's "hold the line" advocates. Even more important, if our focus is truly on youth, it will end the criminalization and alienation of young people and the damage done to them by arrest, conviction, and imprisonment for marijuana offenses.

Dr. Jerome H. Jaffee, a predecessor of Dr. Dupont, also testifying before the Senate subcommittee on narcotics, said there was no longer any justification for imprisonment for marijuana use. He went on to suggest the law serves to clutter the courts, divert the police from more important responsibilities, and enrich the legal profession. But, agreeing with Dr. Dupont, he added that the liberalization of marijuana laws would be interpreted by many as a sign that marijuana was safe, with a consequent increase in use.

Finally, in following this line of reasoning, a *Reader's Digest* article last October on "The Great Debate over 'Victimless' Crimes," interpreted the case against a change in our existing marijuana laws as follows:

> If the weed has such overwhelming popular appeal—and the National Commission on Marijuana Drug Abuse reported two years ago that 24 million Americans had used it at least once despite the legal hazards—what can we expect when the bars are lifted? Certainly millions more are likely to experiment . . .[3]

If a legal deterrent could suppress this use, then the above-stated rationale would remain intact and supportable. But in the case of marijuana, this deterrent effect has never materialized. And the notion that liberalizing the law would vastly increase marijuana usage has recently been rebutted by the Oregon decriminalization experience.[4]

Concerning the deterrent strategy, there is considerable evidence that "get tough" criminal laws and policies do not curb drug abuse, including marijuana use. The most recent example of which is the New York Drug Law. On September 1, 1973, a law went into effect in New York State which became the harshest drug law in any state of the nation. The law was based on former Governor Nelson Rockefeller's contention that illegal drug use and related crime in New York State (and particularly New York City) had reached such epidemic proportions that nothing less than stricter controls could reduce the problem. Recent research findings on the New York experience suggests the law is not deterring New Yorkers from using and selling drugs, including marijuana.[5] This view is strongly supported by the present New York governor in the February 5, 1975, issue of *Narcotics Control Digest*. Governor Hugh Carey reiterated the theme of what he

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[3] Irwin Ross, "The Great Debate Over 'Victimless' Crimes," *Reader's Digest*, October 1974, p. 58.

[4] California State Department of Health, "Oregon Decriminalization Brings No Increase in Marijuana Use," *Joint Newsletter*, February, 1975, p. 2.

[5] Lawrence D'Amore, "An Empirical Study of New York State's 1973 Drug Law Through Police Attitudes and Impact Analysis," unpublished master's thesis, Sam Houston State University, 1975.

had said during his 1974 gubernatorial campaign, that the state's drug laws had to be revamped because "the law doesn't seem to be working and because it is not being enforced." [6]

Indeed, vigorous enforcement of marijuana possession laws may eventually make marijuana more generally available and encourage use, as Edward Brecher and the editors of *Consumer Reports* demonstrated in their report, *Licit and Illicit Drugs*, [7] and as has been confirmed by more recent evidence. [8] A related development is the possible negative side effects that occur from over-reliance on the criminal justice system to handle what is a broadly-based social phenomenon. Vigorous enforcement can raise the price because the publicity increases availability when rising prices attract additional entrepreneurs. The result may be an increase in the consumption of other, more dangerous drugs or the potential development of clandestine synthesis of THC (tetrahydrocannabinal, the active chemical ingredient in marijuana). A passage in a Drug Abuse Council pamphlet, entitled "A Perspective on 'Get Tough' Drug Control Laws," expresses a similar view:

> By enacting sweeping laws we often hope to reduce the supply of specific drugs. However, one unintentional effect of such a policy may be to lead drug users to use other, potentially more harmful drugs.
>
> The experience in this country has repeatedly taught us this principle.
>
> When we prohibited alcohol from being legally manufactured, massive increases took place in the use of illegally manufactured—more dangerous—alcohol. In Vietnam, when the Army effectively clamped down on marijuana use among soldiers, the nature of the demand for drugs was not affected, the reasons for using drug didn't change. The Drug Abuse Council supported eminent Harvard psychiatrist Dr. Norman Zinberg, in his travels in Vietnam, where he observed that the soldiers turned to another easily purchased, easily concealed substance —heroin.
>
> This does not imply that use of alcohol or marijuana was "good" or to be encouraged. It is rather to serve caution. We sought to control supply without effectively addressing demand—and what we got was much worse than what we had—and it wasn't what we expected. [9]

In regard to the notion that there would be a vast increase in the use of "pot" in the absence of arrests and criminal penalties, Oregon's decriminalization experience suggests the contrary. Oregon was the first state to act on the National Commission on Marijuana and Drug Abuse's recommendation to decriminalize the possession of marijuana for personal use. In October 1973, Oregon abolished criminal penalties for the possession of small amounts (one ounce or less) of marijuana, substituting civil penalties carrying a maximum fine of $100 but no jail term or criminal record. Violators are ticketed by police rather than formally arrested, and the courts have generally settled on a $25 fine. There is no recidivism provision; that is, like a parking ticket, the fine doesn't increase with multiple offenses.

To assess what changes have occurred in marijuana usage in Oregon during the first year of the new law, the Drug Abuse Council of Washington, D.C., was commissioned to do a survey consisting of personal interviews with 802 respondents—a cross-section of Oregon residents aged 18 and over and representing a balanced sample of the state's population.

Although the new law had been in operation for over a year, it appeared that there was no significant increase in marijuana use. Only 72 respondents (9 percent) reported currently using marijuana, and almost all of them reported that they had begun using marijuana before decriminalization. In fact, only four respondents (0.5 percent) reported that they had started smoking following decriminalization. Indeed, a large number (40 percent) of current users reported a decrease in use during the last year. Only 5 percent said they were smoking more. As Consumers Union recently noted: "This is certainly not the

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[6] *Narcotics Control Digest*, February 5, 1975, p. 3.

[7] Edward Brecher and the editors of *Consumer Reports*, "The Consumers Union Report on Narcotics, Stimulants, Depressants, Inhalents, Hallucinogens and Marijuana—Including Caffeine, Nicotine and Alcohol," *Licit and Illicit Drugs*, (Mount Vernon, New York: Consumers Union, 1972), pp. 434-450.

[8] See Canadian Commission of Inquiry into the Non-medical Use of Drugs, Ottawa, Canada, 1974 (Le Dain Commission).

[9] The Drug Abuse Council, Inc., "A Perspective on 'Get Tough' Drug Laws," p. 2.

'marijuana explosion' predicted by opponents of decriminalization."[10]

The aforementioned survey indicated lack of interest (53 percent) and possible health dangers (23 percent) as the reasons most frequently cited for not using marijuana. The possibility of legal prosecution (4 percent) and the lack of marijuana availability (2 percent) rank low as reasons for not currently using marijuana. In short, most respondents who were not smoking marijuana a year after decriminalization had enough persuasive reasons for refraining without the need to buttress their decisions with fear of criminal penalties.

J. Pat Horton, district attorney for the Eugene, Oregon, area, in a recent address to the third annual National Organization for the Reform of Marijuana Laws (NORML) convention, stated that decriminalization in Oregon has produced a comfortable transition with a widespread acceptance by the electorate. In a word, it is a success.

The prosecutor also made these significant points: (1) before decriminalization, police were spending a disproportionate amount of time chasing pot smokers who are an "easy arrest," and the change in laws has given them more time to pursue violent crimes and thus better serve the community; (2) one-third of the total number of cases awaiting trial have been removed from the docket, and the jail population is now made up of felons rather than young people whose marijuana-smoking "crime" was victimless; (3) the change in pot laws has removed the threat of a criminal arrest record that would affect a young person's future, preventing him from entering several of the professions, such as law or teaching. District Attorney Horton concludes by saying that "acceptance of the new legislation in Oregon has been overwhelmingly positive, not only with the young people, but especially among middle-aged people who have children in grade, junior, or the high school level."

It seems clear that marijuana has been established as the recreational drug of choice by a significant number of Americans, and that its prohibition has had little effect upon its availability and use. Other states should make a careful appraisal of what has happened in Oregon since decriminalization and consider moving in the same direction, as has been done in Alaska, California, Colorado, Maine and Ohio and as may soon be done in Minnesota, Hawaii, New York and the District of Columbia.

The Oregon experiment is also crucial to the federal position, since Dr. Dupont, chief White House spokesman on drugs, when addressing the NORML convention, told them the government wanted hard facts and results before following the Oregon lead with federal marijuana laws. Oregon's experience with the practical results of decriminalization suggests a federal consideration as well.

Marijuana decriminalization (the removal of all criminal penalties for marijuana possession and personal use) has been recommended by a number of national organizations besides Consumers Union. These other organizations include: American Bar Association, American Public Health Association, Governing Board of the American Medical Association, National Advisory Commission on Criminal Justice Standard and Goals, National Commission on Marijuana and Drug Abuse (The Shafer Commission), National Conference of Commissioners on Uniform State Law, National Council of Churches, and National Education Association.

Actually, Consumers Union recommends legalization, whereby the cultivation, processing, and orderly marketing of marijuana, subject to appropriate regulations, would be legalized. This would prevent the legal dilemma where purchase of a certain substance is noncriminal but sale of the same substance is a criminal offense. How can it be permissible to receive what is not permissible to give? As was recently noted in *Crime and Delinquency:*

> Last year a prostitute arrested and convicted in Albuquerque was defended by an American Civil Liberties Union lawyer who filed a motion for dismissal of the charges on the grounds that local police applied the law unequally: they arrested her but not her customers. On December 6, the jury, composed of six women and six men, returned to the court, after several hours of deliberation, with a six-to-six decision, and told the judge they were unable to reach agreement on whether men should be arrested for patronizing prostitutes. The judge declared a mistrial, and the district attorney's office indicated that the charges against the defendant would not be filed again. [11]

[10] Edward Brecher and the editors of *Consumer Reports*, "Marijuana: The Legal Question," *Consumer Reports*, April 1975, p. 266.

[11] "News and Notes," *Crime and Delinquency*, 21, (April 1975) p. 189.

THE HEALTH QUESTION

Over the past few years, a number of government reports, medical studies and newspaper stories have appeared concerning marijuana. They have been contradictory, argumentative, indecisive and, on the whole, provide little assistance in formulating rational decisions. This is partially the fault of scientists and a society that expects so much of science. It is simply not reasonable to expect one definitive answer to all inquiries that would categorically label marijuana "good" or "bad." As Richard Christie noted in a recent issue of *New Times:*

> All drugs are damaging and lethal in sufficient amounts; aspirin, for example, causes massive bleeding from the intestines, irreversible kidney damage and toxic psychosis. [12]

Christie suggests that, used in moderation, marijuana will not make one impotent, damage one's memory, or kill. In fact, he explains, marijuana has many positive medical properties and, if further research is encouraged, might prove to be a wonder drug of the future.

The literature has consistently demonstrated that drugs are neither "good" nor "bad" but derive their values from individual and societal use and misuse. When it comes to marijuana, science is being compromised and scientists are seen as a suspect quasipolitical group. Many scientists have precipitated the controversy over marijuana by joining camps, by becoming missionaries for a cause, by seeking to con the public by outshouting the opposition. (And misconceptions about marijuana seem to be the loudest school of though on the subject today.) Naturally, research which implies that marijuana is "good" or "bad" deserves further study, but it should be noted that virtually all research to date has been based on finding harm. Dr. Thomas E. Bryant, president of the Washington-based Drug Abuse Council, noted the fallacy in this approach:

> We have sought to avoid our responsibility to suggest reasonable and rational approaches to the use of marijuana, waiting for positive proof of health hazard to bolster society's preconceived notions. I believe this is unwise.
>
> We possess biomedical proof that alcohol—the misuse and abuse of it—can injure the human liver, the brain, the kidney, the body's resistance to disease. But we do not jail those who simply use alcohol. We do not confuse potential health hazard with criminality. We attempt to educate people as to potential risks. [13]

An example that might strike closer to home for most people concerns the hot dog. Information reveals that deaths have been reported from sodium nitrite residue in food. Sodium nitrite, it should noted, is a color fixative found in nearly all hot dogs. The U.S. Food and Drug Administration has given top priority to the testing of sodium nitrite for cancer-causing effects and for mutagenic, teratogenic, subacute and reproductive effects. What if the research reports harm? Will our prison populations be increased with numerous life-long hot dog eaters?

Nevertheless, the mounting evidence that marijuana is not a benign weed has become a compelling argument for many against any change in the existing marijuana laws. [14] However, much of this evidence has been manipulated to support the current legal status and classification of marijuana. Let's review those scientific findings discussed in the March issue of *The Police Chief* that disclosed "the dire consequences of even infrequent marijuana use." The author of the article suggested that marijuana "has been shown to disintegrate mental and physiological functions, making the marijuana user's behavior and health undeniable social concerns, [16] even though commissions in 1894 (The Indian Hemp Drugs Commission Reports), 1931 (The Panama Canal Zone Military Investigations), 1944 (The La Guardia Committee Report), 1968 (The Baroness Woolton Reports), and the contemporary Le

[12] Richard Christie, "Attention: Smoking Grass May Be Good for Your Health," *New Times*, December 13, 1974, p. 26.

[13] Addiction Research Foundation, *The Journal*, Toronto, Canada, April 1, 1975, p. 3.

[14] For a good summary of the case against marijuana presented to the public, see Edward Brecher and the Editors of Consumer Reports, "Marijuana: The Health Question," *Consumer Reports*, March 1975, pp. 143-145.

[15] For a complete review of the conflict in evidence, see "Marijuana: The Health Question," *Consumer Reports*, March 1975, pp. 147-149. Also, see Christie, pp. 24-32.

[16] Davis, p. 35.

Dain Commission in Canada and the United States National Commission on Marijuana and Drug Abuse substantially agree that the "experimental," "intermittent," or "moderate" use of marijuana has not proven to be injurious physically or psychologically to the human body.

The first research noted by Chief Davis was the 1971 report by Dr. Harold Kolansky and William T. Moore in which they concluded:

> It is our impression that our study demonstrates the possibility that moderate to heavy use of marijuana in adolescents and young people without predisposition to psychotic illness may lead to ego decompensation ranging from mild ego disturbance to psychosis. [17]

Kolansky and Moore are convinced the chronic smoking of marijuana produces that pattern of behavior known as the "amotivational syndrome" and suggest the implications of organic brain damage.

The allegations of an "amotivational syndrome" and of brain damage are challenged by University of Pennsylvania scientists and U.C.L.A. scientists. [18] A team of researchers headed by Dr. Igor Grant at the University of Pennsylvania administered a battery of the most sensitive neuropsychological tests now available and numerous measures specifically designed to reveal brain damage to 29 marijuana smokers and 29 non-smokers. They found essentially no difference between the two test groups.

Dr. Norman Q. Brill and his associates at the UCLA School of Medicine conducted a longitudinal study (1970-1972) on six groups of students: those who had never smoked marijuana; those who began smoking during the study; those who increased use during the study; those whose usage remained stable throughout the study; those who decreased use; and those who had quit marijuana altogether. This team of researchers checked college grades and other factors for evidence of the "amotivational syndrome" or brain damage. They concluded that "the dire consequences that were predicted have not materialized."

[17] Harold Kolansky, M.D., and Willitam T. Moore, M.D., "Effects of Marijuana on Adolescents and Young Adults," *Journal of the American Medical Association*, 216(1971).

[18] For a discussion of these studies, refer to *Consumer Reports*, March, 1975, pp. 143-149.

Also quoted in the Davis article is the 1973 book, *Marijuana: Deceptive Weed* by Dr. Gabriel Nahas:

> The most serious vascular complications allegedly associated with the smoking of cannibis extracts has been described as progressive obliterative arterial inflamation of the lower extremities of young males who were heavy smokers. [19]

Unfortunately, many feel Dr. Nahas is not the best source to cite in proof of anything. For years he has crusaded against marijuana, and has tended to accept uncritically almost any anti-marijuana claims that support the position that persons who use it should go to jail. His 1973 book has been denounced in the scientific community as distorted, inaccurate propaganda. In a review of the book by Barry Liskow, M.D., in the *Journal of the American Medical Association*, it was noted that:

> To support his essentially moralistic viewpoint that marijuana is evil, examples of biased selection and interpretation of studies and omissions of facts abound in every chapter . . . so much of the volume is distorted that one must know the marijuana literature in order to judge the accuracy of each statement. [20]

More recently, Dr. Nahas has been criticized for his finding that smoking marijuana lowers the body's immunity to disease. Dr. Nahas' methodology and his dramatic manner of releasing the findings to the public prior to its review by the scientific community have been severely criticized and suggest the possibility that an unacceptable degree of bias was present during the research. Similar research replicated by others does not concur with the Nahas findings. [21]

Another work cited by Chief Davis was that conducted by Dr. Morton Stenchever of the University of Utah College of Medicine in which it was concluded that smoking marijuana increases the likelihood of birth defects and of

[19] Gabriel G. Nahas, OBE, M.D., Ph.D., "Marijuana: Toxicity, Tolerance, and Therapeutic Efficiency," based on *Marijuana—Deceptive Weed*, (New York: Raven Press, 1973) p. 112.

[20] Barry Liskow, M.D., *Journal of the American Medical Association*, April 30, 1973, p. 631.

[21] Brecher, et al, *Consumer Reports*, March 1975, p. 148.

hereditary diseases. It should be noted that the Stenchever report is being heavily challenged by contradictory evidence. In fact, the "box score" on studies of chromosome damage from marijuana is now 1:5:1; that is, there is one study (Dr. Stenchever's) "for" marijuana use being related to chromosome breakage, five studies "neutral" in finding no relationship in humans, and one study (the Jamaica Study) using the quivalent of 27 joints of American-grade marijuana a day for an average of 17 years finding a lower rate of chromosome damage in users than in a matched group of nonusers. [22]

Edward Brecher and the editors of *Consumer Reports* suggest an interesting thought:

> Out of all of those many studies (and others not reviewed here), a general pattern is beginning to emerge. When a research finding can be readily checked—either by repeating the experiment or by devising a better one—an allegation of adverse marijuana effects is relatively short-lived. No damage is found—and after a time the allegation is dropped (often to be replaced by allegations of some other kind of damage due to marijuana.) [23]

After reviewing the medical research cited by Chief Davis, a comment is in order. The research studies should not be rejected out of hand; they simply should be greeted with cautious skepticism until the research can be replicated by researchers whose personal commitments and methodological soundness are less likely to influence the outcome of their experiments. Marijuana should not be considered "harmless," but those who use it should not be subjected to criminal penalties. Prison is a proven health hazard.

CONCLUDING REMARKS

It has become readily apparent that along with the passage of time comes an increase in drug abuse. As a deeply concerned society we have attempted to stop the epidemic in order to prevent future Americans from becoming hopelessly lost to drugs. Laws and the criminal justice system have been our primary vehicle to accomplish this end. However, it is becoming more apparent that the debilitating effect of laws is, at times, more detrimental to the individual than the drugs themselves. [24] This has been especially noted in the case of marijuana, in light of the constant debate over its inherent harm. Yet marijuana is included on most lists of restricted substances. New York, for example, lists the possession of more than one-quarter ounce of marijuana as a felony, punishable by up to seven years incarceration.

Since "clear and present danger" has not formed the basis for making marijuana illegal, then what has? Deterrence, morality, and health have all been given as arguments, but these arguments have of late received little support. Much of the research on marijuana is an excellent example of a frantic attempt to attach some harm to the plant in order to shore up some gaping holes in our intent to protect the victim. Have we not, in fact, dealt the victim a double blow, by subjecting him to twice as much misery, all in the name of humanitarianism? In the case of marijuana, how do we justify the thousands upon thousands who are being run through the criminal justice system yearly, subjected to its negative ramifications?

While Americans sit back and pretend to be oblivious to time, the assembly line continues. However, it is becoming alarmingly clear that we can no longer wait for future proof and support for our present policy. We have to act now, before the system and society suffer irreversible damage. We have to take another hard look and change our direction.

The Oregon and New York experiences afford just that opportunity. They provide excellent models that may be able to support one point of view or the other on the effect of laws on subsequent behavior, for the law cannot be either far ahead nor lag far behind the moral dictates of its society. [25] This is not only important now, but necessary to guide out future policy—that is, if our intention is to develop a viable solution to the drug problem and not to maintain the status quo as a monument to tenacity.

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[22] Christie, pp. 26-28.

[23] Brecher, et al, *Consumer Reports*, March 1975, p. 149.

[24] Jackwell Susman, *Drug Use and Social Policy*, (New York: AMS Press, Inc., 1972), p. 395.

[25] Roscoe Pound, *Law and Morals* (1924; rpt. New York: August M. Kelley: 1969), p. 22.

BUREAUCRACY AND MORALITY: AN ORGANIZATIONAL PERSPECTIVE ON A MORAL CRUSADE*

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Utilizing an organizational perspective, the impact of the Narcotics Bureau upon the enactment and expansion of narcotics legislation is examined as part of a larger discussion of the importance of bureaucratic and environmental factors in determining the course of moral crusades and social movements. While there is no attempt to refute Becker's "moral entrepreneur" explanation of the Marihuana Tax Act, certain inconsistencies and apparent misinterpretations are pointed out, and an alternative explanation is explored. It is argued that similar to the earlier expansion of narcotics legislation, the Marihuana Tax Act was the result of a bureaucratic response to environmental pressure--that the Narcotics Bureau, faced with a non-supportive environment and a decreasing budgetary appropriation that threatened its survival, generated a crusade against marihuana use which resulted in the passage of the act and the alteration of a societal value.

The occurrence of a moral commitment within a bureaucratic setting is not an uncommon phenomenon, especially in our federal bureaucratic system. Examples abound, including the Federal Bureau of Investigation, the Bureau of Narcotics, the Selective Service System, the Central Intelligence Agency, the Internal Revenue Service, and--on a different scale-- the Departments of State and Justice. In fact, one could argue that some sort of moral commitment is necessary for the effective functioning of any bureaucratic body. Usually this moral commitment is termed an "ideology" and is translated into goals for the bureaucracy. Anthony Downs suggests four uses for an ideology: 1) to influence outsiders to support the bureau or at least not attack it; 2) to develop a goal consensus among the bureau members; 3) to facilitate a selective recruitment of staff, that is, to attract those who will support and further the goals of the bureau and repel those who would detract from those goals; and 4) to provide an alternative

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in decision making where other choice criteria are impractical or ambiguous.[1]

While most if not all bureaucracies attempt to maintain this moral commitment or ideology for the above mentioned reasons, some go further and initiate moral crusades, whereby they attempt to instill this commitment into groups and individuals outside their bureaus. The Narcotics Bureau in its efforts to mold public and congressional opinion against drug use is one bureaucratic example, the F.B.I. in its anti-subversive and anti-communist crusades another.[2] The question then becomes, under what conditions does this transference of ideology from the bureaucracy to its environment or specific groups within its environment take place? Howard S. Becker supplies one answer to this, suggesting that this is the work of a "moral entrepreneur," either in the role of a crusading reformer or a rule enforcer.[3] In either role, the moral entrepreneur as an individual takes the initiative and generates a "moral enterprise."

This explanation has appeal. It is reminiscent of Weber's charismatic leader, and can be used to account for the genesis of most moral crusades and entire social movements. Further, it is very difficult to refute. A complete refutation would not only have to indicate an alternative, but also demonstrate that the bureaucratic leader is not a "moral entrepreneur"—is not a major factor in this transference of ideology. The purpose of this paper is to accomplish the former only—to provide an equally if not more persuasive alternative based upon organizational research and theory. The difficulty in separating the two approaches is similar to the historian's dilemma of whether the historical incident makes the man great or the great man makes the historical incident. Here the question becomes: does the moral crusader create the morally committed bureaucracy or is he a product of that bureaucracy?

The difference between the moral entrepreneur situation and a situation wherein the moral crusade results primarily from a bureaucratic response to environmental factors, is that in the latter instance moral considerations are secondary to bureaucratic survival and growth, while in the former instance moral considerations are primary. Further, the end results of either of these crusades may vary considerably since each is in response to different stimuli. Other conditions being equal, the bureaucratic crusade will continue only as long as bureaucratic considerations dictate, while the moral crusade will continue as long as the individual moral crusader's zealotry requires.

In this paper, the work of the Bureau of Narcotics and its former commissioner, Harry J. Anslinger, are examined in light of Becker's conclusion that Anslinger was a moral entrepreneur who led his Bureau on a moral crusade against the use of marihuana, culminating in an Anslinger-instigated publicity campaign that persuaded first the general public and then Congress that marihuana use was a vicious habit that should be outlawed and severely penalized.[4] Given the short time span Becker chose and his individualized focus, this seems to be a logical explanation of the Bureau's efforts. Given a broader organizational perspective,

[1] Anthony Downs, *Inside Bureaucracy*, Boston: Little, Brown, 1967.

[2] Fred J. Cook, *The FBI Nobody Knows*, New York: Macmillan, 1964.

[3] Howard S. Becker, *The Outsiders: Studies in the Sociology of Deviance*, New York: Free Press, 1963, esp. pp. 147-163.

[4] Becker, *op. cit.*, pp. 135-146.

however, the passage of the Marihuana Tax Act and the Bureau's part in that passage appear to be only one phase of a larger organizational process, that of environmental change. Using this focus it is necessary first to examine briefly the relationships between organizations and their environments with special emphasis on adaptation and to discuss a special case of these organizations, the public bureaucracy. The results of this analysis are then applied to the Narcotics Bureau and narcotics legislation in conjunction with an examination of Becker's findings. Finally, the implications of this analysis are examined.

Organizations and Environments

One on-going problem an organization must cope with is its relationship with its environment.[5] For the incipient organization this means an initial decision as to the type of relationship it desires to establish with its environment, an assessment of the type of relationship it is able to establish, and the working-out of some acceptable compromise between the two. For the established organization, this means maintaining this relationship either through normal boundary defenses or through other means, or establishing a more favorable one. The consequences of these—decision, assessment, and compromise—for the organization are far reaching; for if the organization wishes to grow and expand or even continue to exist, it must come to terms with its environment, and where necessary insure acceptance by it. No doubt a few organizations with substantial resources may exist for some time in a hostile environment, but the more normal case seems to be that an organization must at least establish an environmentally neutral relationship if not an environmentally supportive one.

Of course when the organization is in its incipient stages, the problems are magnified. Environmental support is more necessary, environmental hostility more of a threat to survival. Usually the organization will adapt to the demands of the environment, but occasionally Starbuck's observation, "Adaptation is an obvious precondition of survival,"[6] is ignored and the organization either chooses to attempt to alter these demands, or chooses to ignore them. Not uncommonly such a decision results in drastic consequences for the organization. The Women's Christian Temperance Union failed in its efforts to gain wide acceptance for its programs and has only been able to continue with its operations severely curtailed. The counseling organization at Western Electric that grew out of the Hawthorne Studies felt it could not function properly if it adapted to the requirements of the larger organization and was eventually discontinued, though adaptation was part of a more complex problem.[7]

An organization may attempt to alter the demands of its environment when such an attempt would not draw too

[5] See especially Peter M. Blau and W. Richard Scott, *Formal Organizations: A Comparative Approach*, San Francisco: Chandler, 1962, pp. 222-254; William H. Starbuck, "Organizational Growth and Development," in James G. March, editor, *Handbook of Organizations*, Chicago: Rand McNally, 1965, pp. 450-533; and Phillip Selznick, *TVA and the Grass Roots: A Case Study in the Sociology of Formal Organizations*, Berkeley: U. of California, 1949.

[6] W. Starbuck, *op. cit.*, p. 468.

[7] William J. Dickson and F. J. Roethlisberger, *Counseling in an Organization: A Sequel to the Hawthorne Researches*, Boston: Harvard Business School, 1966, Chap. 14 and 16.

heavily upon the organization's resources, or when the alternative, adaptation to the environment, would mean a substantial loss to the organization or perhaps dissolution. Selznick's study of the TVA and Clark's study of adult education in California are examples of organizations which chose to try to alter their environments rather than adapt to them.[8] In Selznick's case, the organization itself was altered through these efforts. Clark argues that a number of organizations undergoing a similar value transformation may alter the values of the society in which they exist. He focuses on what he calls "precarious values" and discusses under what conditions these may be changed.

It is clear then that some attempts to alter the environment succeed and others fail. Why is this so? An organization's environment may be very simple or highly complex, but in general every environment when viewed as a system will contain the following elements: 1) pragmatic day-to-day decisions categorized as policies or practices; 2) long-range goals; 3) a clearly defined normative system; and 4) a generalized value system.[9]

If placed in a hierarchy in this order, each succeeding category would influence its predecessors. That is, values in the environment are in part the basis of the other three, norms influence both goals and policies and practices, and so forth. Further, any member of any category may be strongly or weakly held. Some of the reasons for weakness are outlined by Clark—that is, not legitimated, undefined, or not widely accepted.[10]

Any organization that chooses to alter its environment will have to make a decision as to where along the hierarchy to focus its efforts. Attempts to alter some policy of an environmental element may be more successful and less costly than attempts to alter some value of an environment, but the latter might result in a long-term change while the former might be the more unstable—since the goals, norms, and values underlying it were not changed. A change in the value system, where possible, would eventually result in changes throughout the system.

Organizational attempts at environmental change will depend upon a number of factors:

(a) The necessity for change—is environmental change a prerequisite for organizational survival, or is it not necessary but merely desirable?

(b) The amount of resources available—can the organization afford to attempt the change effort?

(c) The size and complexity of the environment—would change be necessary in only a small element in the environment, or would a whole complex of elements need to be altered?

(d) The extent to which change must take place—is it necessary to change only some environmental policy or practice, or is it necessary to totally revamp the environmental structure from values on down?

(e) Is the policy, goal, norm, or value to be changed, strongly or weakly held—is it firmly entrenched and legitimated, or is it "precarious?"

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[8] Selznick, *op. cit.*; Burton Clark, "Organizational Adaptation and Precarious Values," *American Sociological Review*, 21 (1956), pp. 327-336.

[9] Adapted from Talcott Parsons, "An Outline of the Social System," in Talcott Parsons, Edward Shils, Kasper D. Nagele, and Jesse N. Pitts, editors, *Theories of Society: Foundations of Modern Sociological Theory*, New York: Free Press, Vol. I, pp. 30-79.

[10] Clark, *op. cit.*, pp. 328-329.

It is clear, then, that when one is talking about organizations changing their environment, one should make explicit what elements in the environment are being focused upon, how extensively they are being changed, and how strongly held they were to begin with. Clark's adult education study was concerned with weakly-held values. The W.C.T.U. as discussed by Gusfield was concerned with strongly-held values and this may in some degree account for its failure.[11] In his discussion of the Marihuana Tax Act as a "moral enterprise," Becker was concerned with a weakly-held value, as will be shown, though he did not discuss it in these terms.

A Case Study: The U.S. Bureau of Narcotics

The Bureau as a Public Bureaucracy

This case study will be limited to an analysis of the policies of the Narcotics Bureau and the effects of these policies on salient elements of its environment. This approach is preferable to a more general organizational analysis of the Bureau—examining its structure, recruitment, boundary defenses, and myriad environmental transactions—because in these respects the Bureau is not unlike most other governmental bureaucracies. Further, in its efforts to mold public opinion in support of its policies, it is not unlike many organizations, especially those with a moral commitment. The W.C.T.U. carried on the same sort of campaign—including propaganda, attacks on its critics, and legislative lobbying. What makes the Bureau unique from many other organizations which have tried to influence their environments is that the campaign was and is carried out by a governmental organ.

Several ramifications of this difference are immediately apparent. There is the element of legitimation. The public is far more likely to accept the pronouncements of a federal department than a voluntary private organization. There is the element of propaganda development. Due to its public nature, a federal department is more skilled in dealing with the public and in preparing propaganda for public consumption. There is the element of communication. A federal organization has far more means available for the dissemination of the information than a private one—by press releases, publications, or lectures and speeches—and it is likely to have representatives based in major population centers to disseminate the information. There is the element of coercion. A federal department can bring a wide range of pressures to bear on its critics.

Finally, at a different level, a federal bureau differs in the area of survival. Private organizations have considerable control over their future. They may decide to expand, continue as before, disband, merge, alter their aims, or reduce their activities. The attitude of their environments will have great bearing on this decision, to be sure, but the final decision rests with the organization. A federal department may go through any of the above stages, but frequently the final decision does not rest within the department but with the congressional, executive, or judicial body that created it. A bureau created by congressional enactment will continue to be unaltered except by internal decision only as long as Congress can be convinced that there is no need to

[11] Joseph R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement*, Urbana: U. of Illinois, 1963.

alter it. Although there may be some question of degree, there is no question that public opinion will be a major factor in the congressional decision.

Therefore the federal department must convince the public and Congress: 1) that it serves a useful, or if possible, a necessary function; and 2) that it is uniquely qualified to do so. The less the department is sure of its future status, the more it will try to convince Congress and the public of these.

Background to Environmental Change: The Emergence and Development of the Bureau

In the late nineteenth and early twentieth centuries, narcotics were widely available: through doctors who indiscriminately prescribed morphine and later heroin as pain killers, through druggists who sold them openly, or through a wide variety of patent medicines.

> The public . . . (in the early twentieth century) had an altogether different conception of drug addiction from that which prevails today. The habit was not approved, but neither was it regarded as criminal or monstrous. It was usually looked upon as a vice or personal misfortune, or much as alcoholism is viewed today. Narcotics users were pitied rather than loathed as criminals or degenerates . . . .[12]

In 1914 Congress through the passage of the Harrison Act attempted to exert some control over the narcotics traffic. This act remains today the cornerstone of narcotics legislation. Rather than eliminate the use of narcotic drugs, the act was passed in order to honor a previous international obligation stemming from the Hague Convention of 1912, and to control the criminal encroachments into the drug trade. Nowhere in the act is there direct reference to addicts or addiction.

> Its ostensible purport appeared to be simply to make the entire process of drug distribution within the country a matter of record. The nominal excise tax (one cent per ounce), the requirement that persons and firms handling drugs register and pay fees, all seemed designed to accomplish this purpose. There is no indication of a legislative intention to deny addicts access to legal drugs or to interfere in any way with medical practices in this area.[13]

Medical practices were specifically exempted:

> Nothing contained in this section . . . shall . . . apply . . . [to the dispensing or distribution of any drugs mentioned . . . to a patient by a physician, dentist, or veterinary surgeon registered under section 4722 in the course of his professional practice only.[14]

Thus, the act did not make addiction illegal. All it required was that addicts should obtain drugs from registered physicians who made a record of the transaction.

A narcotics division was created in the Internal Revenue Bureau of the Treasury Department to collect revenue and enforce the Harrison Act. In 1920 it merged into the Prohibition Unit of that department and upon its creation in 1927 into the Prohibition Bureau. In 1930 the Bureau of Narcotics was

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[12] Alfred R. Lindesmith, *Opiate Addiction*, Bloomington, Ind.: Principia, 1947, p. 183.

[13] Alfred R. Lindesmith, *The Addict and the Law*, Bloomington, Ind: Indiana U., 1965, p. 4. See also Rufus King, "The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick," *Yale Law Journal*, 62 (1953), p. 736; and William B. Eldridge, *Narcotics and the Law*, New York: American Bar Foundation, 1961. The Act is placed in a statutory perspective in "Note: Narcotics Regulation," *Yale Law Journal*, 62 (1953), pp. 751-787.

[14] 26 *U.S.C.* 4705(c) (1934 Code).

formed as a separate Bureau in the Treasury Department.

Legitimation: The Process of Changing an Environment

After 1914 the powers of the Narcotics Division were clear and limited: to enforce registration and record-keeping, violation of which could result in imprisonment for up to ten years, and to supervise revenue collection. The large number of addicts who secured their drugs from physicians were excluded from the Division's jurisdiction. The public's attitude toward drug use had not changed much with the passage of the Act—there was some opposition to drug use, some support of it, and a great many who did not care one way or the other. In fact, the Harrison Act was passed with very little publicity or news coverage.'[15]

Thus at this time the Narcotics Division was faced with a severely restricted scope of operations. Acceptance of the legislation as envisioned by Congress would mean that the Division would at best continue as a marginal operation with limited enforcement duties. Given the normal, well-documented bureaucratic tendency toward growth and expansion, and given the fact that the Division was a public bureaucracy and needed to justify its operations and usefulness before Congress, it would seem that increased power and jurisdiction in the area of drug control would be a desirable and, in fact, necessary goal. Adaptation to the Harrison Act limitations would preclude attainment of this goal. Operating under a legislative mandate, the logical alternative to adaptation would be to persuade the Congress and public that expansion was necessary and to extend the provisions of the Harrison Act.

Also at this point, the public's attitude toward narcotics use could be characterized as only slightly opposed. Faced with a situation where adaptation to the existing legislation was bureaucratically unfeasible, where expansion was desirable, and where environmental support—from both Congress and the public—was necessary for continued existence, the Division launched a two-pronged campaign: 1) a barrage of reports and newspaper articles which generated a substantial public outcry against narcotics use, and 2) a series of Division-sponsored test cases in the courts which resulted in a reinterpretation of the Harrison Act and substantially broadened powers for the Narcotics Division.[16] Thus the Division attained its goals by altering a weakly-held public value regarding narcotics use from neutrality or slight opposition to strong opposition, and by persuading the courts that it should have increased powers.[17]

Though the resources of the Division were limited, it was able to accomplish its goals because it was a public bureaucracy and as such had the aforementioned advantages which arise from that status. Since the ability to develop

[15] The *New York Times Index* for 1914 lists only two brief articles on the federal legislation, one in June and one in August when the Senate adopted the Act. It should be noted that there was also discussion of a broadened New York State narcotics act and articles publicizing the arrest of violators of an earlier New York statute at that time.

[16] King, *op. cit.*, pp. 737-748; Lindesmith, *The Addict . . .*, pp. 5-11.

[17] In focusing on judicial expansion of existing legislation rather than on further Congressional action, the Division was able to avoid the lobbies of doctors and pharmacists who strongly opposed the Harrison Act in the first place and who successfully lobbied for the medical exception. See the *New York Times*, June 28, 1914, Sec. II, p. 5.

propaganda and the means to communicate it were inherent in this status, as was the propensity by the public to accept this propaganda, environmental support could be generated with less resource expenditure. Further, the Division as a public bureaucracy would be assumed to have a familiarity with governmental processes not only in its own executive branch, but also in the congressional and judicial branches as well. This built-in expertise necessary for the Division's expansion might be quite costly in time and resources for the private bureaucracy but again was inherent in the Division's status.

One typical example of the public campaign was a report cited and relied upon by the Narcotics Division for some years. It is an interesting combination of truth, speculation, and fiction, a mix which the Division and the Bureau which succeeded it found to be an effective public persuader for many years. In a report dated June, 1919, a committee appointed by the Treasury Department to study narcotics reported *inter alia* that there were 237,665 addicts in the United States treated by physicians (based upon a 30 percent response by physicians queried), that there were over one million addicts in the country in 1919 (a figure based upon a compromise between projections based on the percentage of addicts in Jacksonville, Florida in 1913 and New York City in 1918), that there was extensive addiction among children, that narcotics were harmful to health and morals, and that they were directly connected with crime and abject poverty. Among the physical effects noted were insanity; diseased lungs, hearts, and kidneys; rotting of the skin; and sterility.[18]

[18] U.S. Treasury Department, *Report of Special Committee to Investigate the Traffic in Narcotic Drugs* (April 15, 1919).

This "scholarly report" is an interesting example of the propaganda effort, for it appears to the casual reader to be credible (especially given its source), and contains charges which seem to be designed to generate widespread public disgust toward narcotics users and support for the Division and its efforts. Many of the same charges were applied to marihuana when the Bureau campaigned against its use.

While the Division was carrying out its public campaign, it was also busy in the courts. Between 1918 and 1921 the Narcotics Division won three important cases in the Supreme Court and persuaded the Court, essentially, to delete the medical exception from the Harrison Act thereby broadening its position as an enforcement agency. In the first case, *Webb v. United States*,[19] the court held that a physician could not supply narcotics to an addict unless he was attempting to cure him and in so doing made illegal the work of a large number of physicians who were supplying addicts with drugs under the registration procedures of the Harrison Act. This decision was supported in the two following cases: *Jin Fuey Moy v. United States*[20] and *United States v. Behrman*.[21] In *Behrman*, it was held that physicians could not even supply drugs to addicts in an attempt to cure them. The medical exception was nullified. The cases were skillfully chosen and presented to the court. Each was a flagrant abuse of the statute—in *Webb*, the physician's professional practice seemed to be limited to supplying narcotics to whoever wanted them. In the other two cases, the physicians supplied huge amounts of drugs over short periods of time to a small number of patients—patently for resale at a later

[19] 249 *U.S.* 96 (1918).
[20] 254 *U.S.* 189 (1920)
[21] 258 *U.S.* 280 (1921).

time. Yet the Division did not argue for and the court did not rule on the cases as violations of the statute as it was intended, but instead regarded all of these as normal professional practices by physicians and held that, as such, they were illegal.

Three years after *Behrman*, the court somewhat reversed itself in *Linder v. United States*.[22] Here the doctor supplied a small dosage to a patient who was a government informer. The court rejected the government's case in a unanimous opinion, holding:

> The enactment under consideration . . . says nothing of "addicts" and does not undertake to prescribe methods for their medical treatment, and we cannot possibly conclude that a physician acted improperly or unwisely or for other than medical purposes solely because he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of condition incident to addiction.[23]

The court went on to warn the Division:

> Federal power is delegated, and its prescribed limits must not be transcended even though the ends seem desirable. The unfortunate condition of the recipient certainly created no reasonable probability that she would sell or otherwise dispose of the few tablets entrusted to her and we cannot say that by so dispensing them the doctor necessarily transcended the limits of that professional conduct with which Congress never intended to interfere.[24]

Though *Linder* might have reintroduced doctors into the area, the Narcotics Division successfully prevented this by refusing to recognize *Linder* in its regulations, thus creating a situation where few would accept the risks involved in testing the doctrine, and by launching an all-out campaign against doctors—closing the remaining narcotics clinics, imprisoning rebellious doctors, and publicizing records and convictions of physician addicts.[25]

Rufus King comments on this period of growth:

> In sum, the Narcotics Division succeeded in creating a very large criminal class for itself to police . . . instead of the very small one Congress has intended.[26]

The success of this campaign was reflected not only in the increased number of potential criminals, but in financial growth as well. Between 1918 and 1925, the Bureau's budgetary appropriations increased from $325,000 to $1,329,440, a rise of over 400 percent.[27]

The Marihuana Tax Act of 1937: A Bureaucratic Response

There are many other examples of efforts by the Bureau to create and maintain a friendly and supportive environment—through other publicity campaigns, through lobbying in Congress, and through continued and diligent attacks upon and harassments of its critics—which have been amply chronicled by others, although not as part of an organizational process.[28]

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[22] 268 *U.S.* 5 (1924).

[23] 268 *U.S.* 5 at 15 (1924).

[24] 268 *U.S.* 5 at 20 (1924).

[25] King, *op. cit.*, pp. 744-745; "Note: Narcotics Regulation . . .," pp. 784-787. The Bureau's yearly report *Traffic in Opium and Other Dangerous Drugs* carries numerous reports of addiction among physicians during this period. See also Lindesmith, *The Addict . . .*, pp. 135-161.

[26] King, *op cit.*, p. 738.

[27] See Table 1. During this period, two pieces of legislation were enacted that affected the Bureau's scope of operation: The Revenue Act of 1918, and the Narcotic Drug Import and Export Act of 1922.

[28] Along with the works of Lindesmith and King above, see the Bureau's publication, *Comments on Narcotic Drugs* (undated), the Bureau's reply to the A.B.A. — A.M.A. committee interim report "Narcotic

The Bureau's efforts to induce passage of the Marihuana Tax Act deserve special mention, however, in light of Becker's finding that the legislation was the result of what he terms a "moral enterprise."[29] Becker concludes that Narcotics Commissioner Anslinger and his Bureau were the motive forces behind the original 1937 legislation and the increasingly severe penalties which have since been imposed. This is readily conceded.[30] But he argues that the motivation behind this desire for the marihuana legislation was a moral one. He presents a picture of a society totally indifferent to the use of marihuana until Anslinger, in the role of a moral entrepreneur, "blows the whistle" on marihuana smoking. Again, it is conceded that Commissioner Anslinger throughout his long career with the Narcotics Bureau has opposed drug and narcotics use on moral grounds. This theme runs consistently through his writings.[31] What Becker ignores is that Anslinger was also a bureaucrat and thus responsive to bureaucratic pressures and demands as well. The distinction between these roles is difficult to make but it is fundamental in analyzing the legislation.

To understand whether the marihuana legislation was to a large degree the result of bureaucratic processes similar to the Bureau's expansion after the Harrison Act or whether it was instead the result of an individual's moral crusade, it is necessary to focus not only on the individual, as Becker has done, but upon the Bureau and its environment during this period. Through this method, certain parallels with the post-Harrison Act period become evident.

The Marihuana Tax Act which imposed a prohibitively costly tax on the sale of marihuana was passed by both houses of Congress with practically no debate[32] and signed into law on Au-

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Drugs." This publication was described by DeMott as "perhaps the crudest publication yet produced by a government agency . . ." and was later taken out of print. Benjamin DeMott, "The Great Narcotics Muddle," *Harpers Magazine*, March, 1962, p. 53. For a vivid account of the Bureau's methods with its critics, see Lindesmith, *The Addict . . .*, pp. 242-268.

[29] Becker, *op. cit.*, p. 135.

[30] It seems clear from examining periodicals, newspapers, and the *Congressional Record* that the Bureau was primarily responsible for the passage of the act, though Becker's almost exclusive reliance on the claims of the Bureau in its official publication *Traffic in Opium and Other Dangerous Drugs* does not seem warranted given the previously discussed tendency of a public bureaucracy to emphasize its necessity and successful functioning.

[31] See especially Harry Anslinger and Will Osborne, *The Murderers: The Story of the Narcotic Gang*, New York: Farrar, Straus, 1961, Chap. 1; and also the other writings of the Commissioner, among them: Harry Anslinger and William F. Tompkins, *The Traffic in Narcotics*, New York: Funk and Wagnalls, 1953; and Harry Anslinger and J. Gregory, *The Protectors: The Heroic Story of the Narcotic Agents, Citizens and Officials in Their Unending, Unsung Battle Against Organized Crime in America*, New York: Farrar, Straus, 1964.

[32] This is not unusual in the area of moral legislation, as Becker points out. Furthermore, unlike non-criminal legislation where the losing party still has a variety of remedies available to challenge the law, few remedies are available to those who are legislated against in criminal areas. Legitimate lobbies cannot be formed and test cases are dangerous.

However, Becker gives the impression that the only opposition to the marihuana legislation came from hemp growers, and that no one argued for the marihuana users (*Outsiders*, pp. 144-145). This is erroneous. The legislative counsel for the A.M.A., Dr. William C. Woodward, challenged the Bureau's conclusions that marihuana use was harmful to health and widespread among children, and demanded evi-

gust 2, 1937. While Becker seems to argue that the Bureau generated a great public outcry against marihuana use prior to the passage of the Act, his data supporting this argument are misleading if not erroneously interpreted.[83] While marihuana use seems to have increased since the early 1930's, there appears to have been little public concern expressed in the news media, even in 1937. Few magazine articles were written about the subject, and if the *New York Times* is any indication, newspaper coverage was also slight.[84] The final presidential signing of the act received minimal coverage from the *Times*.[85] In short, rather than the Bureau-generated public turmoil that Becker indicates, it seems that public awareness of the problem, as well as public opposition to it, was slight.

While it cannot be shown conclusively that the Marihuana Tax Act was the result of a bureaucratic response to environmental conditions, similarities between this period and the post-Harrison Act period are evident. Marihuana opposition, like narcotics opposition before, appears to have resulted from a weakly held value. In both situations, publicity campaigns were launched. In both cases, one through the courts and one through Congress, efforts were exerted to expand the power of the Bureau. In both cases, there were substantial numbers of potential criminals who could be incorporated into the Bureau's jurisdiction.

Perhaps more convincing than similarities are the budgetary appropriations for the Bureau from 1915 to 1944 presented in Table 1. In 1932, when the Bureau's appropriations were approaching an all time high, the Bureau stated:

> The present constitutional limitations would seem to require control measures directed against the intrastate traffic of Indian hemp (marihuana) to be adopted by the several State governments rather than by the Federal Government, and the policy has been to urge the State authorities generally to provide the necessary

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dence to support these assertions. While he was not representing the marihuana users, he was certainly arguing their case and questioning the need for the legislation. See *Taxation of Marihuana*, Hearings Before the Committee on Ways and Means of the House of Representatives, 75th Congress, 1st Session, on H.R. 6385, April 27-30 and May 4, 1937, esp. p. 92. It should be noted that this opposition was ignored by the committee members.

[83] Becker's data consist of a survey of the *Readers Guide to Periodical Literature*, in which he found that no magazine articles appeared before July, 1935; four appeared between July, 1935 and June, 1937; and 17 between July, 1937 and June, 1939 (*Outsiders*, p. 141). While this is correct, it is misleading due to the time intervals used. The four articles in the second period all appeared before 1937, no articles appeared in the five months preceding the House committee hearings on the act in late April and early May, one appeared in July, 1937, and the rest appeared after the bill was signed into law on August 2, 1937. In short, of the articles which Becker asserts provided the impetus to Congressional action, only one appeared in the seven months of 1937 before the marihuana bill was signed into law.

[84] A survey of the *New York Times Index* shows: one article discussed marihuana in 1936 and eight discussed the subject between January and August 1937. There were no articles about or coverage of any of the Congressional hearings. Contrary to Becker's assertion, perhaps the most significant thing about this period was the lack of publicity involved.

[85] The total coverage by the *New York Times* consisted of a four line AP dispatch near the bottom of page four, titled "Signs Bill to Curb Marihuana" and reading in its entirety: "President Roosevelt signed today a bill to curb traffic in the narcotic, marihuana, through heavy taxes on transactions." (August 3, 1937.)

TABLE 1
BUDGETARY APPROPRIATIONS FOR THE U.S. NARCOTICS BUREAU (1915-1944)*

Year**	Total Appropriation
1915	$ 292,000
1916	300,000
1917	325,000
1918	750,000
1919	750,000
1920	750,000
1921	750,000
1922	750,000
1923	750,000
1924	1,250,000
1925	1,329,440
1926	1,329,440
1927	1,329,440
1928	1,329,440
1929	1,350,440
1930	1,411,260
1931	1,611,260
1932	1,708,528
1933	1,525,000
1934	1,400,000
1935	1,244,899
1936	1,249,470
1937	1,275,000
1938	1,267,000
1939	1,267,600
1940	1,306,700
1941	1,303,280
1942	1,283,975
1943	1,289,060
1944	1,150,000

* Source: Appropriations Committee, U.S. Senate, *Appropriations, New Offices, etc., Statements Showing Appropriations Made, New Offices Created, etc.*, 1915-1923; U.S. Bureau of the Budget, *The Budget of the United States Government*, Washington: Government Printing Office, 1923-1945.

** Fiscal year the appropriation was made. Each sum was appropriated for the following fiscal year.

> legislation, with supporting enforcement activity, to prohibit the traffic except for bona fide medical purposes. The proposed uniform State narcotic law . . . with optional text applying to restriction of traffic in Indian hemp, has been recommended as an adequate law to accomplish the desired purpose.[86]

At this time, according to the Bureau, sixteen states had enacted legislation in which "the sale or possession (of marihuana) is prohibited except for medical purposes."[87] One year later, 18 more states had enacted the desired legislation, and by 1936, it appears that the Bureau's policy had succeeded completely for all 48 states had enacted legislation which governed the sale or possession of marihuana.[88]

Despite this apparent success and despite former questions concerning the constitutionality of the measure, the Bureau in 1937 pressed for the enactment of the federal marihuana act. For Anslinger, the moral entrepreneur, 1936 should have been a year of victory. In every state the marihuana menace was subjected to statutory control.[89] But for Anslinger, the bureaucrat, 1936 seems to have been another year of defeat. His budgetary appropriation remained near a low point that had not been seen in over a decade, which to some extent reflected the general economic conditions of the time. His request for fiscal 1933 had been cut $100,000 below the general Treasury Department reduction for all bureaus.[90] In succeeding years,

[86] U.S. Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs For the Year Ending December 31, 1932*, Washington: Government Printing Office, p. 43.

[87] *Ibid.*, p. 43.

[88] U.S. Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs . . .*, Washington: Government Printing Office, 1932-1936.

[89] It can be argued that a federal measure was still necessary because: 1) state legislation was poorly drawn, or 2) state enforcement was inadequate. The former is doubtful since by 1937, 39 states (as compared to four in 1933) had enacted the Uniform Narcotic Drug Act, the very legislation the Bureau felt would best control marihuana use. The latter situation, even if true, could have been rectified by means other than federal legislation.

[90] *Hearings Before the Subcommittee of the House Committee on Appropriations,*

reductions in actual operating expenses were greater than those reflected in Table 1, for varying sums were deducted from the appropriations and held in a general trust fund as part of the government's anti-depression program. The Bureau's actual operating funds remained at about one million dollars from fiscal 1934 to fiscal 1936.[41] In his appearances before the House Subcommittee of the Committee on Appropriations that considered the Treasury Department budget, Anslinger repeatedly warned that the limited budget was curtailing his enforcement activities.[42] By 1936, his budget had decreased over $450,000 from its high four years before, a fall of almost 26 percent.

Again in 1937 Anslinger, the moralist, would be expected first to convince the general public that marihuana use was evil and immoral, while Anslinger, the bureaucrat, would be more concerned with attaining passage of legislation which would increase the Bureau's powers and then proceed to generate environmental support for these powers. In fact, the latter occcurred. The great bulk of Bureau-inspired publicity came after the passage of the act, not before.[43]

Faced with a steadily decreasing budget, the Bureau responded as any organization so threatened might react: it tried to appear more necessary, and it tried to increase its scope of operations. As a result of this response, the Marihuana Tax Act of 1937 was passed.[44] Whether the Bureau's efforts were entirely successful is questionable. One beneficial result for the Bureau was that violations and seizures under the Marihuana Tax Act contributed substantially to the Bureau's totals, which had been declining for some time. (When arrests, convictions, and seizures were on the increase, these were faithfully reported to the House Subcommittee as evidence of the Bureau's effective use of funds.) In 1938, the first full year under the Marihuana Tax Act, one out of every four federal drug and narcotic convictions was for a marihuana violation.[45]

Financially, the enterprise was less

72nd Congress, 1st Session, in charge of the Treasury Department Appropriations Bill for 1933, January 14, 1932, pp. 375-393.

[41] *Hearings Before the Subcommittee of the House Committee on Appropriations, op. cit.*, for fiscal 1934: 72nd Congress, 2nd Session, November 23, 1932, pp. 171-180; for fiscal 1935. 73rd Congress, 2nd Session, December 18, 1933, pp. 178-198; for fiscal 1936: 74th Congress, 1st Session, December 17, 1934, pp. 201-225.

[42] Thus in the hearing for the 1935 appropriation:

> Mr. Arnold: How are you getting by with that $1,000,000 after those deductions?
>
> Comm. Anslinger: I am getting by, but I have had to cut back enforcement activities so sharply that it has reached a point where I think it has been harmful . . . (1935 Hearings, *op. cit.*, p. 189).

In his opening statement at the hearing for the 1936 appropriation, Anslinger stated "Mr. Chairman, and distinguished members of the committee, during the past fiscal year we have been operating under a very restricted appropriation. Our enforcement did not fall off too much although it did suffer somewhat." (1936 Hearings, *op. cit.*, p. 201). A decrease in seizures and fines levied was attributed to the limited budget, *ibid.*, pp. 213 214.

[43] See footnote 32.

[44] While Commissioner Anslinger as leader of this bureaucratic response might be characterized as a "bureaucratic entrepreneur," such characterization would be misleading, for similar to Becker's characterization it still simplifies the problem by emphasizing the individual's importance rather than that of the Bureau and its environment.

[45] U.S. Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs For the Year Ending December 31, 1938*, Washington: Government Printing Office, pp. 77-79.

successful. Though the budgetary decline was halted, expected increases for enforcing the new legislation did not immediately materialize. Anslinger pointed out this problem in a 1937 subcommittee hearing in connection with the fiscal 1939 appropriation:

> Comm. Anslinger: We took on the administration of the marihuana law and did not get any increase for that purpose. The way we are running we may have to request a deficiency of $100,000 at the end of the year; but I sincerely hope you will not see me here for a deficit. Beginning the first of the year, Mr. Chairman, I shall control all travel out of Washington. That is a hard job. I have to do that to make up some of this money. We went ahead at high speed and broke up ten big distributing rings, and now we find ourselves in the hole financially.
>
> Mr. Ludlow: You have to find some way to recoup?
>
> Comm. Anslinger: Yes; and keep the enforcement of the Marihuana Act going. Not a dollar has been appropriated in connection with the enforcement of the Marihuana law. We have taken on the work in connection with the Marihuana Act in addition to our other duties.[46]

While the Bureau's budgetary appropriations since that time have in general increased, the period of the late 1930's and early 1940's, where increases might be expected to be the largest, was a period of small advances and then a gradual decline. Of course the major factor in that period was the massive redirection of funds from non-military areas, and thus these figures do not accurately reflect the Bureau's enterprise.

In conclusion, it should be reiterated that this paper does not presume to refute the moral entrepreneur approach —for in many instances it is a valid and useful means of analysis—but rather it attempts to demonstrate an alternative explanation that may frequently be appropriate. It would be either naive or presumptuous to deny that some combination of both moral and bureaucratic factors exist in any given crusade. The problem for analysis is to determine the relative importance of each, and the consequences stemming from a particular combination. The utility of the organizational approach lies in that it can be extended to other similar moral crusades or to entire social movements, where the emphasis so far has been on the work of individual crusaders rather than on the organizations and their environments. Further, to the extent these movements follow the general societal pattern and become increasingly complex, organized, and bureaucratic, the organizational approach will become even more important in analysis and prediction.

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[46] *Hearings Before the Subcommittee of the House Committee on Appropriations, 75th Congress*, 3rd Session, in charge of the Treasury Department Appropriations Bill for 1939, December 14, 1937, p. 380.

THE sprawled body of a young girl lay crushed on the sidewalk the other day after a plunge from the fifth story of a Chicago apartment house. Everyone called it suicide, but actually it was murder. The killer was a narcotic known to America as marijuana, and to history as hashish. It is a narcotic used in the form of cigarettes, comparatively new to the United States and as dangerous as a coiled rattlesnake.

How many murders, suicides, robberies, criminal assaults, holdups, burglaries, and deeds of maniacal insanity it causes each year, especially among the young, can be only conjectured. The sweeping march of its addiction has been so insidious that, in numerous communities, it thrives almost unmolested, largely because of official ignorance of its effects.

Here indeed is the unknown quantity among narcotics. No one can predict its effect. No one knows, when he places a marijuana cigarette to his lips, whether he will become a philosopher, a joyous reveler in a musical heaven, a mad insensate, a calm philosopher, or a murderer.

That youth has been selected by the peddlers of this poison as an especially fertile field makes it a problem of serious concern to every man and woman in America.

THERE was the young girl, for instance, who leaped to her death. Her story is typical. Some time before, this girl, like others of her age who attend our high schools, had heard the whispering of a secret which has gone the rounds of American youth. It promised a new thrill, the smoking of a type of cigarette which contained a "real kick." According to the whispers, this cigarette could accomplish wonderful reactions and with no harmful aftereffects. So the adventurous girl and a group of her friends gathered in an apartment, thrilled with the idea of doing "something different" in which there was "no harm." Then a friend produced a few cigarettes of the loosely rolled "homemade" type. They were passed from one to another of the young people, each taking a few puffs.

The results were weird. Some of the party went into paroxysms of laughter; every remark, no matter how silly, seemed excruciatingly funny. Others of mediocre musical ability became almost expert; the piano dinned constantly. Still others found themselves discussing weighty problems of youth with remarkable clarity. As one youngster expressed it, he "could see through stone walls." The girl danced without fatigue, and the night of unexplainable exhilaration seemed to stretch out as though it were a year long. Time, conscience, or consequences became too trivial for consideration.

Other parties followed, in which inhibitions vanished, conventional barriers departed, all at the command of this strange cigarette with its ropy, resinous odor. Finally there came a gathering at a time when the girl was behind in her studies and greatly worried. With every puff of the smoke the feeling of despondency lessened. Everything was going to be all right—at last. The girl was "floating" now, a term given to marijuana intoxication. Suddenly, in the midst of laughter and dancing, she thought of her school problems. Instantly they were solved. Without hesitancy she walked to a window and leaped to her death. Thus can marijuana "solve" one's difficulties.

The cigarettes may have been sold by a hot tamale vendor or by a street peddler, or in a dance hall or over a lunch counter, or even from sources much nearer to the customer. The police of a Midwestern city recently accused a school janitor of having conspired with four other men, not only to peddle cigarettes to children, but even to furnish apartments where smoking parties might be held.

A Chicago mother, watching her daughter die as an indirect result of marijuana addiction, told officers that at least fifty of the girl's young friends were slaves to the narcotic. This means fifty unpredictables. They may cease its use; that is not so difficult as with some narcotics. They may continue addiction until they deteriorate mentally and become insane. Or they may turn to violent forms of crime, to suicide or to murder. Marijuana gives few warnings

of what it intends to do to the human brain.

THE menace of marijuana addiction is comparatively new to America. In 1931, the marijuana file of the United States Narcotic Bureau was less than two inches thick, while today the reports crowd many large cabinets. Marijuana is a weed of the Indian hemp family, known in Asia as *Cannabis Indica* and in America as *Cannabis Sativa*. Almost everyone who has spent much time in rural communities has seen it, for it is cultivated in practically every state. Growing plants by the thousands were destroyed by law-enforcement officers last year in Texas, New York, New Jersey, Mississippi, Michigan, Maryland, Louisiana, Illinois, and the attack on the weed is only beginning.

It was an unprovoked crime some years ago which brought the first realization that the age-old drug had gained a foothold in America. An entire family was murdered by a youthful addict in Florida. When officers arrived at the home they found the youth staggering about in a human slaughterhouse. With an ax he had killed his father, his mother, two brothers, and a sister. He seemed to be in a daze.

"I've had a terrible dream," he said. "People tried to hack off my arms!"

"Who were they?" an officer asked.

"I don't know. Maybe one was my uncle. They slashed me with knives and I saw blood dripping from an ax."

He had no recollection of having committed the multiple crime. The officers knew him ordinarily as a sane, rather quiet young man; now he was pitifully crazed. They sought the reason. The boy said he had been in the habit of smoking something which youthful friends called "muggles," a childish name for marijuana.

Since that tragedy there has been a race between the spread of marijuana and its suppression. Unhappily, so far, marijuana has won by many lengths. The years 1935 and 1936 saw its most rapid growth in traffic. But at least we now know what we are facing. We know its history, its effects, and its potential victims. Perhaps with the spread of this knowledge the public may be aroused sufficiently to conquer the menace. Every parent owes it to his children to tell them of the terrible effects of marijuana to offset the enticing "private information" which these youths may have received. There must be constant enforcement and equally constant education against this enemy, which has a record of murder and terror running through the centuries.

THE weed was known to the ancient Greeks and it is mentioned in Homer's *Odyssey*. Homer wrote that it made men forget their homes and turned them into swine. Ancient Egyptians used it. In the year 1090, there was founded in Persia the religious and military order of the Assassins, whose history is one of cruelty, barbarity, and murder, and for good reason. The members were confirmed users of hashish, or marijuana, and it is from the Arabic "*hashshashin*" that we have the English word "assassin." Even the term "running amok" relates to the drug, for the expression has been used to describe natives of the Malay Peninsula who, under the influence of hashish, engage in violent and bloody deeds.

Marijuana was introduced into the United States from Mexico, and swept across America with incredible speed.

It began with the whispering of vendors in the Southwest that marijuana would perform miracles for those who smoked it, giving them a feeling of physical strength and mental power, stimulation of the imagination, the ability to be "the life of the party." The peddlers preached also of the weed's capabilities as a "love potion." Youth, always adventurous, began to look into these claims and found some of them true, not knowing that this was only half the story. They were not told that addicts may often develop a delirious rage during which they are temporarily and violently insane; that this insanity may take the form of a desire for self-destruction or a persecution complex to be satisfied only by the commission of some heinous crime.

IT WOULD be well for law-enforcement officers everywhere to search for marijuana behind cases of criminal and sex assault. During the last year a young male addict was hanged in Baltimore for criminal assault on a ten-year-old girl. His defense was that he was temporarily insane from smoking marijuana. In Alamosa, Colo., a degenerate brutally attacked a young girl while under the influence of the drug. In Chicago, two marijuana-smoking boys murdered a policeman.

In at least two dozen other comparatively recent cases of murder or degenerate sex attacks, many of them committed by youths, marijuana proved to be a contributing cause. Perhaps you remember the young desperado in Michigan who, a few months ago, caused a reign of terror by his career of burglaries and holdups,

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MARIJUANA

Assassin of Youth

Marijuana, a stalk of which is shown above, is contributing to our alarming wave of sex crime, according to many police officials. The weed can be easily recognized by its seven-bladed, saw-tooth leaves. It grows in stalks from 3 to 8 feet high

finally to be sent to prison for life after kidnapping a Michigan state policeman, killing him, then handcuffing him to the post of a rural mailbox. This young bandit was a marijuana fiend.

A sixteen-year-old boy was arrested in California for burglary. Under the influence of marijuana he had stolen a revolver and was on the way to stage a holdup when apprehended. Then there was the nineteen-year-old addict in Columbus, Ohio, who, when police responded to a disturbance complaint, opened fire upon an officer, wounding him three times, and was himself killed by the returning fire of the police. In Ohio a gang of seven young men, all less than twenty years old, had been caught after a series of 35 holdups. An officer asked them where they got their incentive.

"We only work when we're high on 'tea,'" one explained.

"On what?"

"On tea. Oh, there are lots of names for it. Some people call it 'mu' or 'muggles' or 'Mary Weaver' or 'moocah' or 'weed' or 'reefers'—there's a million names for it."

"All of which mean marijuana?"

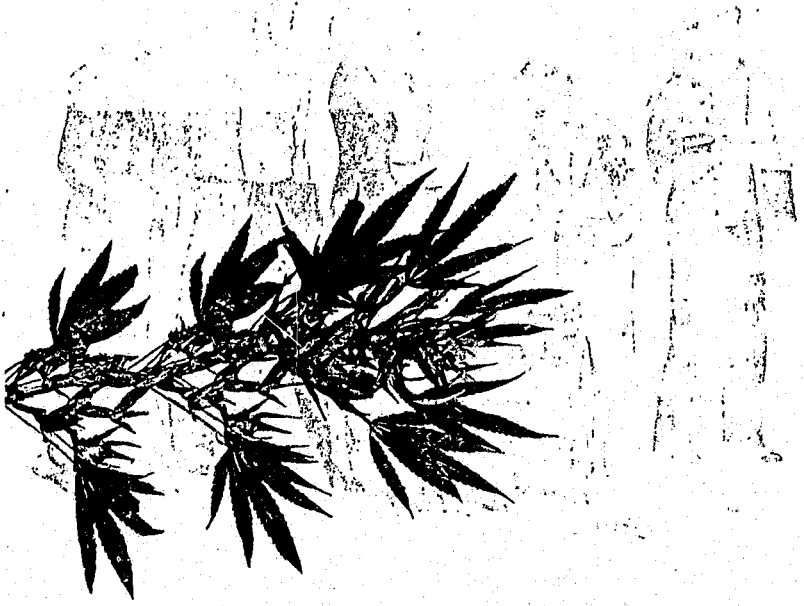
"Sure. Us kids got on to it in high school three or four years ago; there must have been twenty-five or thirty of us who started smoking it. The stuff was cheaper then; you could buy a whole tobacco tin of it for fifty cents. Now these peddlers will charge you all they can get, depending on how shaky you are. Usually though, it's two cigarettes for a quarter."

This boy's casual story of procurement of the drug was typical of conditions in many cities in America. He told of buying the cigarettes in dance halls, from the owners of small hamburger joints, from peddlers who appeared near high schools at dismissal time. Then there were the "booth joints" or Bar-B-Q stands, where one might obtain a cigarette and a sandwich for a quarter, and there were the shabby apartments of women who provided not only the cigarettes but rooms in which girls and boys might smoke them.

"But after you get the habit," the boy added, "you don't bother much about finding a place to smoke. I've seen as many as three or four high-school kids jam into a telephone booth and take a few drags."

The officer questioned him about the gang's crimes: "Remember that filling-station attendant you robbed—how you threatened to beat his brains out?"

The youth thought hard. "I've got a sort of hazy recollection," he answered.



A weed that grows wild throughout the country is making dope addicts of thousands of young people

BY H. J. ANSLINGER

U. S. Commissioner of Narcotics

WITH COURTNEY RYLEY COOPER

"I'm not trying to say I wasn't there, you understand. The trouble is, with all my gang, we can't remember exactly what we've done or said. When you get to 'floating,' it's hard to keep track of things."

From the other youthful members of the gang the officer could get little information. They confessed the robberies as one would vaguely remember bad dreams.

"If I had killed somebody on one of those jobs, I'd never have known it," explained one youth. "Sometimes it was over before I realized that I'd even been out of my room."

THEREIN lies much of the cruelty of marijuana, especially in its attack upon youth. The young, immature brain is a thing of impulses, upon which the "unknown quantity" of the drug acts as an almost overpowering stimulant. There are numerous cases on record like that of an Atlanta boy who robbed his father's safe of thousands of dollars in jewelry and cash. Of high-school age, this boy apparently had been headed for an honest, successful career. Gradually, however, his father noticed a change in him. Spells of shakiness and nervousness would be succeeded by periods when the boy would assume a grandiose manner and engage in excessive, senseless laughter, extravagant conversation, and wildly impulsive actions. When these actions finally resulted in robbery the father went at his son's problem in earnest—and found the cause of it a marijuana peddler who catered to school children. The peddler was arrested.

It is this useless destruction of youth which is so heartbreaking to all of us who labor in the field of narcotic suppression. No one can predict what may happen after the smoking of the weed. I am reminded of a Los Angeles case in which a boy of seventeen killed a policeman. They had been great friends. Patrolling his beat, the officer often stopped to talk to the young fellow, to advise him. But one day the boy surged toward the patrolman with a gun in his hand; there was a blaze of yellowish flame, and the officer fell dead.

"Why did you kill him?" the youth was asked.

"I don't know," he sobbed. "He was good to me. I was high on reefers. Sud-

denly I decided to shoot him."

In a small Ohio town, a few months ago, a fifteen-year-old boy was found wandering the streets, mentally deranged by marijuana. Officers learned that he had obtained the dope at a garage.

"Are any other school kids getting cigarettes there?" he was asked.

"Sure. I know fifteen or twenty, maybe more. I'm only counting my friends."

The garage was raided. Three men were arrested and 18 pounds of marijuana seized.

"We'd been figuring on quitting the racket," one of the dopesters told the arresting officer. "These kids had us scared. After we'd gotten 'em on the weed, it looked like easy money for a while. Then they kept wanting more and more of it, and if we didn't have it for 'em, they'd get tough. Along toward the last, we were scared that one of 'em would get high and kill us all. There wasn't any fun in it."

Not long ago a fifteen-year-old girl ran away from her home in Muskegon, Mich., to be arrested later in company with five young men in a Detroit marijuana den. A man and his wife ran the place. How many children had smoked there will never be known. There were 60 cigarettes on hand, enough fodder for 60 murders.

A newspaper in St. Louis reported after an investigation this year that it had discovered marijuana "dens," all frequented by children of high-school age. The same sort of story came from Missouri, Ohio, Louisiana, Colorado—in fact, from coast to coast.

In Birmingham, Ala., a hot-tamale salesman had pushed his cart about town for five years, and for a large part of that time he had been peddling marijuana cigarettes to students of a downtown high school. His stock of the weed, he said, came from Texas and consisted, when he was captured, of enough marijuana to manufacture hundreds of cigarettes.

In New Orleans, of 437 persons of varying ages arrested for a wide range of crimes, 125 were addicts. Of 37 murderers, 17 used marijuana, and of 193 convicted thieves, 34 were "on the weed."

ONE of the first places in which marijuana found a ready welcome was in a closely congested section of New York. Among those who first introduced it there were musicians, who had brought the habit northward with the surge of "hot" music demanding players of exceptional ability, especially in improvisation. Along the Mexican border and in seaport cities it had been known for some time that the musician who desired to get the "hottest" effects from his playing often turned to marijuana for aid.

One reason was that marijuana has a strangely exhilarating effect upon the musical sensibilities (Indian hemp has long been used as a component of "singing seed" for canary birds). Another reason was that strange quality of marijuana which makes a rubber band out of time, stretching it to unbelievable lengths. The musician who uses "reefers" finds that the musical beat seemingly comes to him quite slowly, thus allowing him to interpolate any number of improvised notes with comparative ease. While under the influence of marijuana, he does not realize that he is tapping the keys with a furious speed impossible for one in a normal state of mind; marijuana has stretched out the time of the music until a dozen notes may be crowded into the space normally occupied by one. Or, to quote a young musician arrested by Kansas City officers as a "muggles smoker":

"Of course I use it—I've got to. I can't play any more without it, and I know a hundred other musicians who are in the same fix. You see, when I'm 'floating,' I *own* my saxophone. I mean I can do anything with it. The notes seem to dance out of it—no effort at all. I don't have to worry about reading the music—I'm music-crazy. Where do I get the stuff? In almost any low-class dance hall or night spot in the United States."

Soon a song was written about the drug. Perhaps you remember:

> Have you seen
> That funny reefer man?
> He says he swam to China;
> Any time he takes a notion,
> He can walk across the ocean."

It sounded funny. Dancing girls and boys pondered about "reefers" and learned through the whispers of other boys and girls that these cigarettes could make one accomplish the impossible. Sadly enough, they can—in the imagination. The boy who plans a holdup, the youth who seizes a gun and prepares for a murder, the girl who decides suddenly to elope with a boy she did not even know a few hours ago, does so with the confident belief that this is a thoroughly logical action without the slightest possibility of disastrous consequences. Command a person "high" on "mu" or "muggles" or "Mary Jane" to crawl on the floor and bark like a dog, and he will do it without a thought of the idiocy of the action. Everything, no matter how insane, becomes plausible. The underworld calls marijuana "that stuff that makes you able to jump off the tops of skyscrapers."

REPORTS from various sections of the country indicate that the control and sale of marijuana has not yet passed into the hands of the big gangster syndicates. The supply is so vast and grows in so many places that gangsters perhaps have found it difficult to dominate the source. A big, hardy weed, with serrated, swordlike leaves topped by bunchy small blooms supported upon a thick, stringy stalk, marijuana has been discovered in almost every state. New York police uprooted hundreds of plants growing in a vacant lot in Brooklyn. In New York State alone last year 200 tons of the growing weed were destroyed. Acres of it have been found in various communities. Patches have been revealed in back yards, behind signboards, in gardens. In many places in the West it grows wild. Wandering dopesters gather the tops from along the right of way of railroads.

An evidence of how large the traffic may be came to light last year near La Fitte, La. Neighbors of an Italian family had become amazed by wild stories told by the children of the family. They, it seemed, had suddenly become millionaires. They talked of owning inconceivable amounts of money, of automobiles they did not possess, of living in a palatial home. At last their absurd lies were reported to the police, who discovered that their parents were allowing them to smoke something that came from the tops of tall plants which their father grew on his farm. There was a raid, in which more than 500,000 marijuana plants were destroyed. This discovery led next day to another raid on a farm at Bourg, La. Here a crop of some 2,000 plants was found to be growing between rows of vegetables. The eight persons arrested confessed that their main source of income from this crop was in sales to boys and girls of high-school age.

With possibilities for such tremendous crops, grown secretly, gangdom has been hampered in its efforts to corner the profits of what has now become an enormous business. It is to be hoped that the menace of marijuana can be wiped out before it falls into the vicious protectorate of powerful members of the underworld.

BUT to crush this traffic we must first squarely face the facts. Unfortunately, while every state except one has laws to cope with the traffic, the powerful right arm which could support these states has been all but impotent. I refer to the United States government. There has been no national law against the growing, sale, or possession of marijuana.

As this is written a bill to give the federal government control over marijuana has been introduced in Congress by Representative Robert L. Doughton of North Carolina, Chairman of the House Ways and Means Committee. It has the backing of Secretary of the Treasury Morgenthau, who has under his supervision the various agencies of the United States Treasury Department, including the Bureau of Narcotics, through which Uncle Sam fights the dope evil. It is a revenue bill, modeled after other narcotic laws which make use of the taxing power to bring about regulation and control.

The passage of such a law, however, should not be the signal for the public to lean back, fold its hands, and decide that all danger is over. America now faces a condition in which a new, although ancient, narcotic has come to live next door to us, a narcotic that does not have to be smuggled into the country. This means a job of unceasing watchfulness by every police department and by every public-spirited civic organization. It calls for campaigns of education in every school, so that children will not be deceived by the wiles of peddlers, but will know of the insanity, the disgrace, the horror which marijuana can bring to its victim. And above all, every citizen should keep constantly before him the real picture of the "reefer man"—not some funny fellow who, should he take the notion, could walk across the ocean, but—

In Los Angeles, Calif., a youth was walking along a downtown street after inhaling a marijuana cigarette. For many addicts, merely a portion of a "reefer" is enough to induce intoxication. Suddenly, for no reason, he decided that someone had threatened to kill him and that his life at that very moment was in danger. Wildly he looked about him. The only person in sight was an aged bootblack. Drug-crazed nerve centers conjured the innocent old shoe-shiner into a destroying monster. Mad with fright, the addict hurried to his room and got a gun. He killed the old man, and then, later, babbled his grief over what had been wanton, uncontrolled murder.

"I thought someone was after me," he said. "That's the only reason I did it. I had never seen the old fellow before. Something just told me to kill him!"

That's marijuana!

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MARIHUANA AS A DEVELOPER OF CRIMINALS

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Many prosecuting attorneys in the South and Southwest have been confronted with the defense that, at the time of the commission of the Criminal act, the defendant was irresponsible, because of being under the influence of Marihuana to such a degree he was unable to appreciate the difference between right and wrong, and was therefore legally insane. A great deal of difficulty has been experienced in combating this defense with the testimony of psychiatrists, for, while some of these experts are conversant with the nature and effect of this drug, it has been the experience of the author that many of them are without any information on the subject. This is probably due to the fact that this drug has come into wide use in certain parts of the South only within the last ten years.

It is the purpose of this article to give a brief outline of the nature and origin of Marihuana and the Legislation so far enacted concerning its sale and use; to recommend that this drug be placed within the provisions of the Harrison Anti-narcotic Act, and to give a list of some of the works which may be consulted by any person interested in making a thorough study of the situation.

Marihuana is the Mexican term for Cannabis Indica. The plant or drug known as *Cannabis Indica,* or Marihuana has as its parent the plant known as *Cannabis Sativa.* It is popularly known in India as *Cannabis Indica;* in America, as *Cannabis Americana;* in Mexico, as *Cannabis Mexicana,* or Marihuana. It is all the same drug, and is known in different countries by different names. It is scientifically known as *Cannabis Sativa,* and is popularly called *Cannabis Americana, Cannabis Indica,* or *Cannabis Mexicana,* in accordance with the geographical origin of the particular plant. In the East, it is known as Charras, as Ganga, as Hasheesh, as Bhang, or Siddi, and goes by a variety of names in the countries of continental Europe.

Cannabis Sativa is an annual herb from the "hemp" plant; it has angular, rough stems and deeply lobed leaves. It is derived from the flowering tops of the female plant of hemp grown in semi-tropical and temperate countries. It was once thought that only the plant grown in India was active, but it has been scientifically determined that the American specimen termed "marihuana" or "mug-

gles" is equal in potency to the best weed of India. The plant is a moraceous herb. In the South, amongst the negroes, it is termed "mooter." In India, where marihuana is scientifically cultivated on a wide scale for the drug obtained from it, the plants, when small, are separated, the female plant being used exclusively for the purpose of obtaining the drug. In Mexico and in America, the plants are permitted to grow together indiscriminately, without separating the male and female specimens, and as a result the potency of the female is lessened by the admixture of the male element. In semi-tropical climates, because of the fertility of the soil and the ease with which hemp seed may be procured, the plant can easily be cultivated, and prohibition of its cultivation is rendered practically impossible. It resembles a weed, and has been found growing in some of the back yards and lots of cities. Traffic in it, and in the drug derived from it, has been found to be considerable, particularly in the South and Southwestern States.

Cultivation of Hemp

Hemp is cultivated all over the world; its culture probably originated in China, from whence it spread. It is grown for three purposes; for the fibre, out of which rope, twine, cloth and hats are made; for the seed, from which a rapidly drying oil is obtained that is used in the arts and as a commercial substitute for linseed oil; and for the narcotic contained in the resin of the dried, flowering tops of the pistillate plant. The seed is also sold as a constituent of commercial bird seed.

Hemp was grown in the New England colonies for fibre to be used in the making of homespun. It was also grown in the Virginia and Pennsylvania colonies and cultivated at a very early date in the settlements of Kentucky, whence the industry spread to Missouri. It has been grown at various times in Illinois, near Champaign, in the Kankakee river valley, in Indiana; in Southeastern Pennsylvania and in Nebraska, Iowa and California. It is now abundant as a wild plant in many localities in Western Missouri, Iowa, Southern Minnesota and in the Southwestern and Western States, where it is often found as a roadside weed. It is not known when the plant was introduced into Mexico and the Southwest, but probably along with the early Spanish settlements. It was known in Chile in the 16th Century.

The hemp first cultivated in the United States was of the small European variety, but this has been replaced since 1857 by the larger

Chinese hemp. Practically all the seed for present day American hemp culture is grown in the Kentucky river valley.

Cannabis Indica or Sativa

Cannabis Sativa is designated as a "narcotic" in a number of State laws. It is sometimes mentioned in the law as "loco weed" because of its inebriate effect upon men and cattle; in others as "marihuana," "hemp," or "hashish"; in fact the drug is known by a wide variety of names. It is one of several drugs included under the anti-narcotic laws of 17 states, namely: Texas, Arkansas, Louisiana, New Mexico, Nevada, California, Oregon, Idaho, Washington, Utah, Maine, Vermont, Massachusetts, New York, Indiana, Wisconsin and Iowa. It is also prohibited under the laws of Mexico and England. In a great many of the States where this legislation was enacted, so wide-spread was the use of marihuana, and so terrific the result, that grave emergencies were declared to exist which justified the legislation taking effect immediately, and restrictions respecting the smoking of "hemp" are mentioned along with those restricting opium smoking.

Although the different forms of the plant have been described under various botanical names, there are no essential differences in any of their specific characteristics, and all cultivated or wild hemp is now recognized as belonging to one species--*Cannabis Sativa.*

The Origin of the Drug

The origin of the drug is very ancient.

In the year 1090, A. D., the religious and military order or sect of the Assassins was founded in Persia, and the numerous acts of cruelty of this sect was known not only in Asia, but in Europe as well. This branch of the Shiite sect, known as Ismalites, was called Hashishan, derived from Hashish, or the confection of hemp leaves (*Cannabis Indica*). In fact, from the Arabic "Hashishan" we have the English word "Assassin." It is mentioned in the Arabian Nights, and was known at the time of the crusades. It was known to the Greeks as "Nepenthe," and was lauded in the immortal Odyssey of Homer as a drug to lull all pain and anger, and to bring forgetfulness of all sorrow.

It was known in ancient times to the Egyptians, and its use in Egypt, at the present time, is wide-spread. In fact, it is presently as widely used amongst the Egyptians, and in the East, as opium is

used by the Chinese, and alcohol by the Americans and Europeans. Its effect upon the Malays has been terrific, and the natives of the Malayan Peninsula have been known, while under its influence, to rush out and engage in violent or bloody deeds, with complete disregard for their personal safety, or the odds arrayed against them. To run "amok" in the Malay Peninsula is synonymous with saying one is under the influence of this drug.

In America, particularly in the South and Southwestern portions of the United States, it is called marihuana. It is popularly known amongst the criminal element as "muggles," or "mooter" and addicts are commonly termed "muggle heads."

The Effect of the Use of the Drug

The flowering tops of the female plant are the source from which the drug is obtained, and in America these flowering tops are gathered and rolled into cigarettes and smoked, the smoke being inhaled. A favorite method of enjoying these cigarettes is for the user to draw the smoke into the mouth and then blow it out against the cupped hands, whence he inhales it.

In India, marihuana or "muggles" is mostly used in "ganja" form, which is the Indian name for a mixture of the stems, leaves and flowering tops of the cultivated female plant. It is smoked, as in America, in the form of cigarettes, or in a pipe; its smell is typically offensive, and is easily recognized by the initiated.

Bhang or *siddi*, are the Indian names for the mixture of these dry leaves and capsules without stems, whether male or female, cultivated, or in its wild state. It is the cheapest and the weakest of all the preparations of hashish, and is taken as "tea." In that country, the resinous substance which exudes from the flowering head of the female plant is called "charris," and is either smoked or taken in pills or in confections, or mixed with sugar or honey, and is commonly sold amongst the bazaars of Egypt and the far East.

In many respects, the action of *Cannabis Sativa* is similar to that of alcohol and morphine. Its toxic effects are ecstasy, merriment, uncontrollable laughter, self-satisfaction, bizzare ideas lacking in continuity, and its results are extreme hyperacidity, with occasional attacks of nausea and vomiting. It has also been described as producing, in moderate doses, anything from a mild intoxication to a dead drunk, a drowsy and semi-comatose condition, lapsing into a dreamy state, with a rapid flow of ideas of a sexual nature, ending in a deep sleep, interrupted by dreams. On awakening, there is a feeling of

great dejection and prostration. Large doses produce excitement, delusions, hallucinations, rapid flow of ideas, a high state of ecstasy, psychomotor activity with a tendency to wilful damage and violence, with a temporary amnesia of all that has transpired. In cases of prolonged addiction, especially in the Malays, the somnolent action of *Cannabis Indica* is replaced with complete loss of judgment and of restraint - the effect so frequently observed in alcoholic intoxication.

It is commonly used as an aphrodisiac, and its continued use leads to impotency. This has been observed amongst the natives of India.

It is an ideal drug to cut off inhibitions quickly.

At the time of the founding of the religious sect or order of "Assassins," in Persia, by Hassan Ben Sabbat, young men whom the Shiek desired to subjugate were given this drug, and when under its influence, were taken, blindfolded, into the garden of the Shiek, where every pleasure which appealed to the senses awaited them.

When complete indulgence in these pleasures had been had, they were taken from this garden, and so eager were they for a further opportunity to use the drug and for a repetition of the attendant pleasures, that they were under the complete domination of the Shiek, who alone knew its secret, and gladly followed his will, even to the extent of sacrificing their lives if so commanded, in order further to experience the pleasures to which they had been initiated.

At the present time, the underworld has been quick to realize the value of this drug in subjugating the will of human derelicts to that of a master mind. Its use sweeps away all restraint, and to its influence may be attributed many of our present day crimes. It has been the experience of the Police and Prosecuting Officials in the South that immediately before the commission of many crimes the use of marihuana cigarettes has been indulged in by criminals, so as to relieve themselves from the natural restraint which might deter them from the commission of criminal acts, and to give them the false courage necessary to commit the contemplated crime.

The Government's Attitude Towards Marihuana

Indian hemp (marihuana) addicts were made eligible for treatment in recent legislation enacted by the 70th Congress, approved January 19th, 1929, establishing narcotic farms for the confinement and treatment of persons addicted to the use of habit-forming narcotic drugs. This legislation is somewhat unique in Congressional legisla-

tion, since Indian hemp is not classified as a habit-forming drug or narcotic in other Federal narcotic laws.

Inasmuch as the harmful effects of the use of marihuana are daily becoming more widely known, and since it has been classed as a narcotic by the statutory laws of seventeen American States, England and Mexico, and since persons addicted to its use have been made eligible for treatment in the United States Narcotic Farms, the United States Government, will unquestionably be compelled to adopt a consistent attitude towards it, and include it in the Harrison Anti-narcotic Law, so as to give Federal aid to the States in their effort to suppress a traffic as deadly and as destructive to society as that in the other forms of narcotics now prohibited by this Act.

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"MARIHUANA," P. 327.

Criminal Law	507 (1)
	730 (2)
	569
	338 (7)
	1170—½ (2)
	1153 (6)
	814 (8, 9)
	459—
	741—(1)

POISONS, 9.

STATE v. DIAZ.

No. 4985.

Supreme Court of Utah.

Aug. 16, 1930.

1. Criminal law ⇐549.

It is jury's duty to consider whole evidence in case, not merely defendant's testimony.

2. Criminal law ⇐554.

In homicide case, jury had right to disbelieve defendant's testimony of intoxication and narcotic influence depriving him of knowledge of acts.[1]

Defendant testified that he was under the influence of whisky and especially of marijuana to such an extent that he could not recollect anything that occurred at the time of the homicide. A physician testified for defendant that marijuana is a narcotic and acts upon the central nervous system, affecting the brain, producing exhilarating effects, and causing one to do things which he otherwise would not do, and especially induces acts of violence; further, that such condition would be greatly aggravated where defendant had been using intoxicating liquors and thereafter took the narcotic.

3. Criminal law ⇐554.

Jury *held* not required to accept blindly defendant's testimony, especially where other evidence of circumstances attending crime and defendant's conduct immediately thereafter rendered story improbable.[2]

4. Homicide ⇐270.

As regards first degree murder, it was jury's duty, under instructions, to determine whether defendant was so intoxicated or faculties benumbed by marijuana that he was incapable of forming or had no premeditated design to kill.

5. Criminal law ⇐741(1), 742(1).

Credibility of witnesses and weight and value of testimony are questions exclusively for jury.

6. Homicide ⇐237.

Evidence *held* to support jury's conclusion that defendant was capable of forming premeditated intent to kill.

7. Criminal law ⇐1170½(2).

State's hypothetical question to state's narcotic expert, unfamiliar with marijuana, whether defendant's conduct was possible if under influence of narcotics, *held* not prejudicial, in view of affirmative answer.

The state's medical expert had previously stated that, although he was familiar with the effects of narcotics upon the human system, he had no experience with the use of marijuana. He was asked by the district attorney, in the form of a hypothetical question, whether defendant's conduct at the time of, and shortly after, the commission of the crime, could possibly be that of a person under the influence of narcotic drugs. His answer was "Yes"; thus favorable to defendant's contention. Even if the question was improper, it was therefore not prejudicial.

Appeal from District Court, Davis County; Geo. S. Barker, Judge.

Nicholas Diaz was convicted of murder in the first degree, and he appeals.

Affirmed and remanded, with instructions.

James S. Gregerson, of Salt Lake City, for appellant.

L. A. Miner, Asst. Atty. Gen., and Geo. P. Parker, Atty. Gen., for the State.

FOLLAND, J.

Defendant was convicted of murder in the first degree and sentenced to death. He appeals. Only two questions are presented on this appeal: First, it is contended that the defendant's motion for new trial should have been granted upon the alleged ground that the verdict is contrary to the evidence and the court's instructions with respect to the question of premeditation and intent. Second, that the court erred in overruling defendant's objection to the testimony in rebuttal of the state's medical expert, and particularly in permitting him to answer the hypothetical question propounded by the state.

Juan F. Martinez, a Mexican section hand in the employ of the Oregon Short Line Railroad Company, was found dead, lying upon a cot in his room in a bunkhouse near Kaysville, Davis county, Utah, about 5 o'clock p. m., May 10, 1929. The body was discovered by

[1] State v. Hitesman, 58 Utah, 262, 198 P. 769.

[2] State v. Allen, 56 Utah, 37, 189 P. 84.

other section workers upon their return from work. The deceased met his death as the result of a bullet wound in the top of his head. The physician who examined the body gave it as his opinion that death, which had been instantaneous, had occurred at about 10 o'clock in the morning, that the body had not been moved after life had passed, and that the wound could not have been self-inflicted. The deceased had been working night shift, and was last seen alive about 8 o'clock in the morning of May 10th as he left his work and was traveling toward the bunkhouse. His companions who slept in the bunkhouse with him were working day shift. These men, upon returning from work about 5 o'clock, found the outside door padlocked. They entered the house and found the body of Martinez lying upon a cot. There was nothing to indicate that the deceased had been engaged in any struggle immediately prior to being shot. He was lying upon his back, with his head turned to one side and the right hand elevated a little and bent over his body. He had on his pants and shirt, but shoes and socks had been removed. His face was partially covered by part of an old sweater. One pocket of his trousers had been turned inside out. There was a .22 caliber rifle leaning against the table in the kitchen. The rifle had an empty cartridge in the barrel and several loaded shells in the magazine.

Three other Mexicans lived in the section bunkhouse in which were two or more small bedrooms and a kitchen. Certain articles of clothing, shoes, mackinaw coat, and a suitcase belonging to one of these men, Zavalo, were found to be missing. Zavalo's trunk had been broken open, apparently by means of an ax which was lying by the side of the trunk. The tray was by the side of the trunk, and some articles of clothing had been scattered around. A pair of pants afterwards found upon the defendant had been taken from the trunk. The deceased had received two pay checks, Nos. 5554 and 5782, which were made out in the name of John Martinez. At about 10:45 a. m. of May 10th, the day of the homicide, the lawn tender of the Oregon Short Line Railroad Company observed a Mexican wearing a blue serge coat and pants and light cap, and carrying a suitcase in one hand and a large bundle in the other, walking northerly on the Oregon Short Line Railroad Company platform at Kaysville; that is, he was walking away from the direction in which the bunkhouse was located. At about 11:38 a. m. a Mexican wearing a blue coat, carrying a suitcase, went to the ticket window of the Bamberger Electric Railway Company at Kaysville and asked for a ticket to Salt Lake. Upon being told by the agent, "There is no train until twelve o'clock, it is a bus," he said, "Give me a ticket to Ogden." The agent sold him an Odgen ticket and the Ogden train was just then coming into the station. This man was sweating; sweat rolled down his face, and he had a strong odor about him; he seemed agitated and excited. The evidence shows that this defendant was in Ogden between 12 and 1 o'clock on that date; that he went to a clothing store operated by Max Ollash, where he bought a cap which was offered and received in evidence as Exhibit G, and in payment he tendered the Oregon Short Line pay check No. 5782 which was made payable to John Martinez. The check had already been indorsed, so the proprietor of the store required the defendant to sign his name on a card. The defendant told him his name was John Martinez, and he signed that name on the card given to him. At about the same time the defendant went into the clothing store operated by Glish Medoway in Ogden, where he purchased a pair of pants, a sweater, which was received in evidence as Exhibit H, and a shirt. In payment for these he tendered Oregon Short Line pay check No. 5554. This proprietor also had him sign a card for the purpose of identifying the signature on the check, which was already indorsed, and again he signed the name John Martinez. In each case he received money for the balance of the check. Each of these clothing merchants identified the defendant as the person who presented the checks and bought the articles, and said that at the time of the transaction defendant was not nervous, or groggy, or sick, that he acted in a normal manner. The manager of the Panama Hotel testified that a Mexican boy registered at her hotel between 11 and 12 o'clock on May 10th, and that he left the hotel about 8:30 p. m. and did not come back; that this man gave no indication of being drunk or under the influence of narcotics. At the time he left, he was wearing the cap and sweater which were identified as Exhibits G and H, respectively.

The defendant was apprehended in South San Francisco. A deputy sheriff of Davis county went to California for the purpose of bringing defendant back to Utah. The deputy sheriff testified that he saw the cap, Exhibit G, on the defendant in the county jail at South San Francisco, and also the sweater, Exhibit H, and that the trousers worn by him in the jail in California were the trousers identified as Exhibit B which were taken from the trunk in the bunkhouse, and that, when the defendant left with the sheriff, the defendant brought with him the mackinaw coat which was identified as Exhibit A, and which belonged to the witness Zavalo. Several conversations were had with the defendant by the officers and were testified to by them. These conversations, which were received in the nature of admissions, were shown to have been voluntarily made. There is no error assigned by the defendant with respect to the admission of this evidence. In one of these conversations the defendant stated that

he had cashed the checks at the places and in substantially the manner testified to by the merchants, and, when asked by the officer where he got the checks, he answered: "He said he got them off Juan—that is the way he said it, and that is as far as I went into details with him there."

The defendant further stated to the officers that he had taken the suitcase belonging to Zavalo. When asked how he came to kill the deceased, he said, according to one of the witnesses: "That the deceased had been sitting on the bed and that they had got into a quarrel and the deceased jumped up and grabbed the knife; that the defendant had taken the knife away from him and thrown it away; that the deceased then took the gun or 22 calibre rifle and he grabbed it from him, and then they wrestled, and the defendant got his hand onto the trigger of the gun and as they wrestled the gun went off and killed Martinez." and in answer to inquiry as to why he had done it, he said, "I had been drinking considerably."

The defendant went upon the stand and testified substantially as follows: that he was past 20 years of age, had been in the United States since 1924; that he had been working on the section and living in the same bunk house with Martinez; that on the 6th of May he, through Martinez, asked the foreman for his time and quit work, going to Salt Lake; that on the night of the 9th he returned to Kaysville and saw the deceased and the other Mexicans who lived at the bunk house and there visited with them; that he had a bottle of whisky which he passed around and that all drank together. Thus far his story is corroborated by other witnesses. The defendant said he then left Kaysville and came back to Salt Lake and that he drank considerable with some Mexican boys there. He was unable to give their names or where he met them or where he drank with them. He stated they drank all night and that toward morning he bought some cigarettes and that some one gave him marijuana which he smoked. He did not remember returning to Kaysville the next day nor anything else which happened until he was on the train on his way from Los Angeles to San Francisco, having first gone from Salt Lake to Los Angeles. He claimed his mind was an entire blank as to all that happened to him and stated that after smoking the marijuana he became "very crazy."

Two points are raised on this appeal. The first one urged by the appellant is that the court erred in denying defendant's motion for a new trial for the reason that "the verdict of the jury is against the weight of the evidence and against the instructions of the court." The only defense interposed at the trial was that at the time of the homicide the defendant was under the influence of intoxicating liquor and marijuana so that his mind "was in such a state as to preclude the existence of any purpose, motive or intent to commit the crime of which he was convicted." The defendant's testimony, as already indicated, was that he had been drinking whiskey on the night of the 9th and morning of the 10th; that he bought cigarettes and was given marijuana and that after he smoked the cigarettes and the marijuana that he was "very crazy." He did not know who the boys were with whom he drank except such drinking as he did at Kaysville when he and four or five others had a small flask of whiskey between them. There is nothing definite in his testimony as to the amount of liquor he drank nor the amount of marijuana he smoked. He said he did not remember returning to Kaysville on the 10th nor of seeing Martinez on that morning; did not remember shooting Martinez; did not remember cashing of checks or going to Ogden or anything else that happened on the day of the 10th. It is contended that this evidence shows conclusively that the defendant's mind was in such a state or condition as to preclude the existence of any particular motive or intent to commit murder in the first degree; that it would preclude the element of premeditation and thus require a verdict, if a verdict of guilty at all, in some degree less than murder in the first degree. A physician, called by the defendant testified as to the effect of the use of marijuana. He stated that it is a narcotic and acts upon the central nervous system affecting the brain, producing exhilarating effects and causing one to do things which he otherwise would not do and especially induces acts of violence; that violence is one of the symptoms of an excessive use of marijuana; that one who had used considerable liquor and also marijuana would have an aggravated condition as a result of the marijuana and that the effects of such use might last several days; that the mental condition would be very much aggravated if the individual had been using intoxicating liquor and thereafter had smoked a considerable amount of marijuana and would not be altogether accountable for what he did. That the marijuana produces an "I don't care" effect. A man having used liquor and marijuana might deliberately plan a robbery and killing and carry it out and escape, and then later fail to remember anything that had occurred. He might remember that he had committed a crime but probably would not know what crime. He might remember some of the incidents, but not all of them.

The court gave instructions which fairly presented to the jury the issues raised by the defense, among others, the following:

"No. 8. You are instructed that under the law no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition; but whenever the actual existence

of any particular purpose, motive or intent is a necessary element to commit any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive or intent with which he committed the act.

"That is to say, if you believe from the evidence that the defendant was intoxicated, either as a result of drinking intoxicating liquor or smoking marijuana, at the time of the commission of the alleged crime, if you find from the evidence that he did commit it, to such an extent that he was mentally incapable of deliberating or premeditating or entertaining malice aforethought, or to form a specific intent to take the life of the deceased, in such event the jury should find him not guilty of murder in the first degree.

"And you are further instructed that wherever as explained in these instructions any particular purpose, motive or intent is a necessary element to commit any particular species or degree of crime, you may take into consideration the fact that the accused was intoxicated at the time, if you believe he was intoxicated, in determining the purpose, motive or intent with which he committed the crime, if you believe from the evidence that he did commit it.

"However, if you believe from the evidence that the defendant's intoxication, or abnormal condition, if any, did not affect the mind of the accused to the extent herein stated, or at all, then it is your duty to disregard the matter of intoxication and not consider it."

"No. 10. After you have considered the case submitted to you, if you find from the evidence and according to the law given to you by the court that you are not convinced beyond a reasonable doubt that the defendant has committed the crime charged in the information, or any crime included within it, then you should acquit him; but if you find from the evidence beyond a reasonable doubt that any such crime has been committed by the defendant, without any justification therefor, you should next inquire as to the degree of the offense and determine such degree, and if you are convinced by the evidence beyond a reasonable doubt that the defendant has committed one of the crimes included within the information in this case, without any justification therefor, and there is in your mind a reasonable doubt as to which of said crimes or degrees he is guilty, you can only find him guilty of the lowest of such crimes or degrees, and if there is any reasonable doubt in your mind on the whole case as to whether the defendant is guilty of any crime charged in the information, you must find him not guilty.

"If there is any reasonable doubt as to premeditation, there can be no conviction of murder in the first degree. If there is a reasonable doubt as to whether the killing was with malice, there can be no verdict of murder in the second degree. If there is a reasonable doubt as to whether the elements which compose the crime of manslaughter have been proved, the defendant cannot be convicted of that offense. If there is any reasonable doubt on the whole case, the defendant must be found not guilty."

No objection was made or exception taken to these instructions. On the other hand, the defendant relies upon them as being an accurate statement of the law applicable to the case. The argument made by counsel for the defendant is, however, that the jury disregarded these instructions of the court and the evidence of the defendant and of the medical men. He says: "In the case at bar it is apparent that the appellant in this case was not only under the influence of intoxicating liquor, but that he was also under the influence of marijuana, and the jury in finding the appellant guilty of first degree murder, under the facts as shown by the records in this case, clearly show that such verdict is against the weight of the evidence and against the instructions of the court. The law being that the appellant is only required to show his lack of capacity to form an intent and to know right from wrong and to prove such facts, not beyond a reasonable doubt nor either by preponderance of the evidence, but only so far as to create a reasonable doubt in the minds of the jurors, whether the homicide in question was excusable or not."

[1-6] This argument, however, entirely fails to take into consideration the fact that it is the duty of the jury to consider all of the evidence in the case and not rest its verdict merely upon the testimony of the defendant. The jury had the right to disbelieve the testimony of the defendant as to the extent of intoxication or incapacity produced by drinking and smoking. There is nothing definite in his testimony as to the amount of liquor consumed by him or the amount of marijuana smoked by him. The only corroboration of his testimony with respect to drinking is that of the witnesses who drank with him at Kaysville, when a small flask of whisky was consumed by five or six persons prior to 10 o'clock on the night of the 9th. It is entirely uncertain how much marijuana was smoked. The defendant in one place stated that a cigarette of marijuana was given him by the dealer who sold him the package of cigarettes, and that he smoked this. In another place in his testimony he stated that marijuana was given him by the boys with whom he was drinking. He indicates in his testimony a failure to remember anything more definite than this. The testimony of the medical experts is likewise indefinite, because they could not be informed as to the amount of liquor consumed or the amount of marijuana smoked.

In their testimony it is clear that they based their conclusions upon the hypothesis that a "considerable amount" had thus been used. The jury is not bound to believe all that the defendant testified to. It is not required to blindly accept his testimony, as the truth, especially where, as here, the other evidence in the case as to the circumstances attending the commission of the crime and the conduct of the defendant immediately thereafter render his story improbable, or doubtful. State v. Allen, 56 Utah, 37, 189 P. 84. The jury had the right to disbelieve the testimony of the defendant that he had been drinking whisky and smoking marijuana to such an extent that he did not know what he was doing on May 10th. State v. Hitesman, 58 Utah, 262, 198 P. 769. It was the duty of the jury under the instructions given by the court to determine from the evidence whether the defendant was in fact so intoxicated by liquor or his faculties benumbed by the use of marijuana that he was incapable of forming or in fact had no premeditated motive or design to kill the deceased. Thomas v. State, 18 Okl. Cr. 648, 197 P. 853; Wharton on Homicide (3d Ed.) 809. The credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury. The jury had before it ample evidence from which it could find as it did that the defendant was capable of forming a premeditated intent to kill as defined in the instructions. There was the mute evidence of the homicide and the conditions attendant upon its commission, the testimony of the witnesses who saw him and transacted business with him a short time after the homicide, finding him then in an apparently normal condition, and also the explanations and admissions made by him as to the taking of the checks of the deceased and the manner in which the killing occurred as described to the officers after his arrest.

[7] The second and third assignments are based upon the overruling of defendant's objection to the testimony of the medical expert called by the state and his answer to a hypothetical question propounded by the district attorney, and are based upon the ground that this expert had previously stated that, although he was familiar with the effect of narcotics upon the human system, he had had no experience with the use of marijuana. The question asked by the district attorney, to which objection was made, is as follows:

"Assuming that an individual about twenty-one years of age was in Kaysville about ten o'clock p. m. on the 9th day of May, 1920, and about between nine and ten a. m. on the 10th day of May an individual was shot while lying on a bed in a bunkhouse in Kaysville, with no indications of a struggle; the place was ransacked and the clothing stolen and two checks were stolen from the body of the person killed, and the person committing the murder or the crime packed up the clothing and put part of it in a suitcase and part in a bundle and carried a coat away and went to the station, the Bamberger station, in Kaysville, and asked the ticket agent for a ticket to Salt Lake, or he asked when a train went to Salt Lake and he was told in about half an hour, and then he wanted a ticket to Ogden and said 'Give me a ticket to Ogden' and purchased a ticket to Ogden and he went on the train to Ogden and there went to a rooming house and left the suitcase there and went to a place of business and cashed one of the checks, representing himself to be the individual designated as payee in the check, that is, the deceased person; upon request signing his name on a card and tendering the check in payment for a cap which he had selected, taking the change for the amount of the check above the amount of the purchase, and going to another store and asking for and buying a certain amount of clothing and buying two shirts, a pair of pants and a sweater, and tendering the other check in payment and receiving the change on the check; going to a rooming house and putting on other clothes and some of the clothes purchased; bought a ticket and came to Salt Lake, and there bought a bus ticket to Los Angeles, and from Los Angeles to San Francisco; in your opinion, doctor, could a person under the influence of narcotic drugs, carry out a course of conduct such as I have outlined?"

The answer to this question was "Yes."

Defendant's expert had been asked a hypothetical question of substantially the same character and the answer given by him was "Yes." Even if it were conceded, which we do not concede, that it was improper to ask the state's witness this question because of his unfamiliarity with the use of marijuana, there clearly was no prejudice to the defendant, since the answer was favorable to his contention and entirely in harmony with the answer given by the expert produced by him. This testimony was relied on to support the argument of defendant's counsel on the other branch of the case.

No other questions are presented to us for review on this appeal. We have carefully scrutinized the record to determine whether or not any error appears therein which has not been called to our attention by defendant's counsel. We have found none. A reading of the record convinces us that the defendant had a fair trial and that the issues presented by him in his defense were fairly and adequately presented to the jury; that there is ample evidence to support the jury's verdict, and therefore there is nothing we can do but affirm the judgment.

The judgment is affirmed, and the cause is remanded to the district court of Davis coun-

ty, with instructions to fix the date of execution.

CHERRY, C. J., and ELIAS HANSEN, STRAUP, and EPHRAIM HANSON, JJ., concur.

STATE v. NAVARO.

No. 5430.

Supreme Court of Utah.

Nov. 17, 1933.

1. Statutes ⇐188.

In absence of statutory or established technical meaning, word in statute must be given its ordinary meaning, unless different meaning was intended.

2. Statutes ⇐188.

Meaning of word may depend on way it is used in statute.[1]

3. Poisons ⇐2.

"Mariguana," as used in statute penalizing sale, gift, or possession of certain narcotic drugs, means a drug prepared from "cannabis sativa," designated in technical dictionaries as "cannabis" and commonly known as marijuana, mariahuana, marajuana, maraguana, or marihuana, in Southern and Western states (Comp. Laws 1917, § 4432, as amended by Laws 1927, c. 65).[2]

"Cannabis" is the dried flowering tops of the pistillate plants of "cannabis sativa" Linne (Fam. Moraceæ). Indian hemp consists of the dried flowering or fruiting tops of the pistillate plant of cannabis sativa, Linn., grown in India; from which the resin has not been removed." The "cannabis sativa," or hemp plant, is a tall, rough annual, from four to sixteen feet or more in height, with erect, branching, angular stem, etc. "American cannabis" is yielded by cannabis sativa plants cultivated in various sections of the United States, and occurs on the market in the form of broken segments of the inflorescences and more or less crumpled and broken leaves, varying in color from brownish-green to light brown.

4. Indictment and Information ⇐110(3).

Information charging felonious possession of mariguana in language of statute *held* sufficient (Comp. Laws 1917, § 4432, as amended by Laws 1927, c. 65).

5. Statutes ⇐196.

Relative or qualifying words of statute must be applied to words immediately preceding or following, unless contrary legislative intent is indicated.

6. Statutes ⇐184.

In construction of statute, court must be controlled by evident purpose of Legislature to attain certain end.

7. Poisons ⇐2.

Where statute penalizing sale, gift, or possession of named narcotic drugs, "flowering tops and leaves, extracts, tinctures and other narcotic preparations of hemp or loco weed, or chloral hydrate," was amended by inserting "mariguana" before "or chloral hydrate," Legislature intended to prohibit unauthorized use of narcotic drug known as "mariguana" and not the flowering tops and leaves of mariguana (Comp. Laws 1917, § 4432, as amended by Laws 1927, c. 65).

8. Poisons ⇐9.

Where statute prohibited sale, gift, or possession of mariguana except on prescription of licensed physician, dentist, or veterinary surgeon, burden was on accused to bring himself within exception (Comp. Laws 1917, § 4432, as amended by Laws 1927, c. 65).

Appeal from District Court, Salt Lake County; Allen G. Thurman, Judge.

Pablo Navaro was convicted of unlawful possession of mariguana, and he appeals.

Affirmed.

Wm. Reger and David H. Oliver, both of Salt Lake City, for appellant.

Joseph Chez, Atty. Gen., and John D. Rice, Deputy Atty. Gen., for the State.

FOLLAND, Justice.

The defendant was convicted of the crime of unlawful possession of mariguana. He appeals and makes fourteen separate assignments of error which have been grouped and argued by appellant under two general heads: (1) Insufficiency of the information to charge a crime and of the evidence to support the verdict; and (2) failure of the state to prove the negative allegations of the information.

[1] State v. Hendrickson, 67 Utah, 15, 245 P. 375.

[2] State v. Diaz, 76 Utah, 463, 290 P. 727; State v. Tiernan, 76 Utah, 262, 289 P. 109.

The information charged: "That the said Pablo Navaro, on the 6th day of February, A. D. 1933, at the County of Salt Lake, State of Utah, did wilfully, unlawfully and feloniously have possession of marijuana, the said Pablo Navaro not then and there having possession of the said marijuana upon the written order or prescription of a reputable licensed practicing physician, licensed dentist, or licensed veterinary surgeon, and the said Pablo Navaro not then and there being a jobber, wholesaler, or manufacturer of marijuana to retail druggists, nor a retail druggist, nor a regular reputable licensed practicing physician, nor a dentist, nor a veterinary surgeon, nor a manufacturer of proprietary or pharmaceutical preparations which require marijuana in the manufacture of said preparations, nor the agent or officer of any hospital, college, scientific, or public institution, and the said marijuana not being a preparation recognized by the United States Pharmacopoeia or as a standard proprietary remedy. * * *"

The statute under which this charge was made is Comp. Laws Utah 1917, § 4432, as amended by Laws of Utah 1927, c. 65, and reads in part as follows: "It shall be unlawful for any person, firm, or corporation to sell, furnish, or give away, or offer to sell, furnish, or give away, or to have in possession, any cocaine, opium, morphine, codeine, heroin, peyote (mescal button), alpha eucaine, beta eucaine, nova caine, flowering tops and leaves, extracts, tinctures, and other narcotic preparations of hemp or loco weed, (cannabis sativa,. Indian hemp), mariguana, or chloral hydrate, or any of the salts, derivatives, or compounds of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts, derivatives, or compounds, excepting upon the written order or prescription of a physician, dentist or veterinary surgeon licensed to practice in this State. * * *"

The evidence shows that defendant was stopped on a public street in Salt Lake City by two police officers; that one of them pushed defendant's sweater open and drew from his shirt pocket a package containing ten cigarettes done up in brown papers. The officers testified that the defendant said in answer to their questions that the package belonged to him and that it contained marijuana. That he made such statements was denied by defendant testifying in his own behalf. The city chemist made an examination of the contents of the package and testified he found the cigarettes contained American cannabis or mariguana; that "cannabis is commonly known as a drug, but it is not a drug from a scientific standpoint. Cannabis is a scientific name of a genus of herbs. It is a Latin word meaning hemp." It was stipulated that the state chemist, if present, would testify that cannabis is a drug.

It is appellant's contention that the statute does not prohibit possession of mariguana itself, but that it prohibits possession of the flowering tops and leaves of mariguana, the tincture, extract, or other preparations of mariguana, and that the information, in order to charge an offense under the statute, should have charged unlawful "possession of the flowering tops and leaves of mariguana" instead of directly charging unlawful "possession of marijuana." This view is predicated on: (a) The grammatical construction of the first sentence of the statute above quoted, and (b) the definition of the word "mariguana" which appellant claims means or signifies a plant and not a drug.

Counsel for appellant filed helpful briefs which indicate an exhaustive study of and reference to substantially all the available literature on the subject of the plant scientifically known by the name of cannabis sativa, and otherwise referred to as hemp or loco weed, and the drug cannabis under the various names by which it is known. Whether "mariguana" is another name for the plant cannabis sativa or for the drug cannabis is the object of this investigation.

[1-3] The word "mariguana" is not found in most of the ordinary dictionaries of the English language, nor is it directly defined in any of the medical or scientific dictionaries available to us. It is, however, defined in the New Standard Dictionary (1928) p. 1514, as follows: "Marihuana, n. (Mex.) A narcotic plant reputed to cause insanity in persons drinking an infusion of its leaves or smoking them. Mariguana."

It is a word of Mexican origin and has come into common use in the south and west portions of the United States. It is found in the statutes of several of the states of the Union, including this state, and is variously spelled either mariguana, marijuana, marihuana, marajuana, maraguana, or marihuana. The word, however spelled, is the same word and refers to the same thing. No point is made by appellant that it is spelled differently in the information than in the statute. Under the ordinary canons of construction of statutes we are required to give the word its plain, natural, ordinary, and commonly understood meaning, in the absence of any statutory or well-established technical meaning, unless it is plain from the statute that a different meaning is intended. The definition may depend on the character of its use in the statute. 59 C. J. 974; State v. Hendrickson, 67 Utah, 15, 245 P. 375, 57 A. L. R. 786. There is a growing body of literature with respect to mariguana and its uses, but this is found mainly in magazines and newspapers rather than in the standard scientific works. The reason for this is that "mariguana" is not a scientific name either of a plant or a drug, but is a word in local use and of com-

paratively recent origin in the United States. From our reading on the subject we have reached the conclusion that as used in our statute it means or refers to the preparation or product from the plant scientifically known as cannabis sativa, and is the same product or preparation described in the technical dictionaries and books as cannabis; that it is a word of common use in this locality and its meaning is well understood.

In the United States Dispensatory (21st Ed., 1926), cannabis is defined as "Cannabis is the dried flowering tops of the pistillate plants of Cannabis sativa Linne (Fam. Moraceae). * * * Indian Hemp consists of the dried flowering or fruiting tops of the pistillate plant of Cannabis sativa, Linn., grown in India; from which the resin has not been removed." Br.

"Cannabis indica, Br.; Hemp, Indian Hemp; Guaza, Ganjah, Herba Cannabis Indicæ; Chanvre, Chanvre de l'Inde, Fr.; Indischer Hanf, G.; Canamo, Sp.; Marihuana, Mex.

"The Cannabis sativa, or hemp plant, is a tall, rough annual, from four to sixteen feet or more in height, with erect, branching, angular stem," etc.

"American cannabis is yielded by Cannabis sativa plants cultivated in various sections of the United States. It occurs on the market in the form of broken segments of the inflorescences and more or less crumpled and broken leaves, varying in color from brownish-green to light brown."

Similar definitions of cannabis are found in "Properties and Uses of Drugs" by Rusby, Bliss and Ballard (1930), The Tenth Decennial Revision Pharmacopœia of the United States, official from January 1, 1926, page 95, and Steadman's Medical Dictionary (1926 Ed.) p. 155.

Mariguana is referred to in 2 Encyclopædia Britannica (14th Ed.) p. 420, in the article entitled "Hemp," which it defines as "an annual herb (Cannabis sativa) having angular rough stems and deeply lobed leaves. The best fibres of Cannabis are the hemp of commerce, but the products from many totally different plants are often included under the general name of hemp. * * *

"Hemp is now cultivated for fibre production in Russia, Italy, Jugoslavia, Rumania, Hungary, Poland, Spain, Belgium, France, Turkey, China, Japan, the United States and Chile. Other forms are cultivated for the narcotic drug cannabin, known in different forms and in different countries as hasheesh, bhang, gunga, charras, kif, and marijuana, in India, Arabia, Africa and Mexico."

See, also, "The Opium Problem," by Terry and Pellens (1928) page 809, where it is said: "More recently, another group of drugs has found its way into the anti-narcotic laws of a number of the states. This group is included under the genus of cannabis sativa which includes the two species cannabis indica and cannabis americana. * * * This drug is also known under the Spanish name of Mariahuana."

The use of the word "mariguana" by physicians, chemists, police officers, persons who smoke it, and by this court is indicated in our decisions. In State v. Diaz, 76 Utah, 463, 290 P. 727, 729, the defendant, who was charged with murder, took the stand and testified, among other things, that prior to the homicide he had been drinking liquor and smoking mariguana, and that after the smoking of mariguana he became very crazy. We quote from the decision: "A physician, called by the defendant testified as to the effect of the use of marijuana. He stated that it is a narcotic and acts upon the central nervous system affecting the brain, producing exhilarating effects and causing one to do things which he otherwise would not do and especially induces acts of violence; that violence is one of the symptoms of an excessive use of marijuana; that one who had used considerable liquor and also marijuana would have an aggravated condition as a result of the marijuana and that the effects of such use might last several days; that the mental condition would be very much aggravated if the individual had been using intoxicating liquor and thereafter had smoked a considerable amount of marijuana and would not be altogether accountable for what he did. That the marijuana produces an 'I don't care' effect. A man having used liquor and marijuana might deliberately plan a robbery and killing, and carry it out and escape, and then later fail to remember anything that had occurred." See, also, State v. Franco, 76 Utah, 202, 289 P. 100.

It would seem from the above that the word, when used without qualifying or modifying words, indicates the product or preparation consisting of the flowering tops, leaves, and seeds of the plant, rather than either the whole plant, or the fibrous stalks thereof. That such is the meaning of the word elsewhere is clearly indicated by cases and statutes from other states. In State v. Bonoa, 172 La. 955, 136 So. 15, 16, the defendant was charged with having possession of 500 of "the plants known as marajuana" under a statute making it unlawful to possess, sell, etc., "the plant known as marajuana, or any of its derivatives, either dried, or in the form of cigarettes, tobacco or any other way whatsoever." The defendant there objected that there was no such plant known as mariguana, and hence the terminology used conveyed to the people of the state no conception of what was prohibited. The court in holding against defendant's contention said: "We do not find any difficulty in holding that the use of the word, 'marajuana,' in connection with

the word, 'plant,' conveys to the mind exactly what the Legislature intended to convey, namely the plant scientifically known as Cannabis Indica or Cannabis America, though there possibly may be some slight and unimportant botanical difference between the two, but apparently none in its effects upon the human system. It is true that the word is not found in dictionaries ordinarily used, but it is found in the American Illustrated Medical Dictionary, where it is spelt 'Marihuana,' and in the Encyclopedia Brittanica (1929, 14 Ed.), in the article on 'Hemp,' where it is spelt 'Marijuana,' and in the statutes of at least two other states, namely, New Mexico, where it is spelt, 'Mariguana' (Chapter 42 of Laws of New Mexico, 1923, p. 58), and Texas, where it is spelt 'Marijuana' (Vernon's Annotated Criminal Statutes, 1925, vol. 2, Pen. Code, chapter 3, art. 720). In these statutes the word seems to be used in reference to some drug or preparation from the plant Cannabis Indica or Cannibis Sativa. However, the application of the name of the drug or preparation to the plant, as, for instance, the 'plant known as Marajuana,' could hardly be misleading, even assuming that the word more properly refers to the drug or preparation than to the plant itself."

It is clear from the opinion, and particularly the part we have quoted, that in Louisiana the word "Maraguana" properly refers to the drug or product of the plant rather than to the plant itself. The same is true in Texas. Gonzales v. State, 108 Tex. Cr. R. 253, 299 S. W. 901; Santos v. State (Tex. Cr. App.) 53 S.W.(2d) 809.

Many of the states, by statute, prohibit possession or use of this drug under the name of cannabis, cannabis indica, or cannabis americana. In the states where the word "mariguana" is used in the statute, it is given the meaning we have attributed to it. Laws Colorado 1927, chap. 95, p. 309, § 1:

"That Cannabis Indica, or Cannabis Sativa, commonly known as Indian Hemp, Hasheesh, or Marijuana, is hereby found and declared to be a habit-forming drug, the unrestricted use of which is injurious to the well-being of the users."

The Texas statute (Complete Texas Statutes 1928, art. 720, p. 1107 [Vernon's Ann. P. C. art. 720]). "No person, firm or corporation shall sell, furnish, or give away cocaine, derivations of cocaine, preparations containing cocaine or derivatives of cocaine, morphine, derivations of morphine, preparations containing morphine or derivatives of morphine, opium, preparations containing opium, chloral hydrate or preparations containing cloral (chloral) hydrate, canabis (cannabis) indica, cannabis (cannabis) sativa or preparations thereof or any drug or preparation from any canabis (cannabis) variety, or any preparation known as marijuana."

The New Mexico statute (Laws New Mexico 1923, c. 42, § 1, p. 58): "It shall be unlawful to import into the State of New Mexico cannibas indica, also known as hashish and mariguana, in any form or any preparation or derivative thereof: Provided, That cannibas indica, also known as hashish and mariguana, may be imported for medicinal purposes only, and then only by licensed pharmacists and licensed physicians of the State of New Mexico."

The Montana act, Rev. Codes Mont. 1921, § 3186, as amended by Act of March 8, 1927, c. 91, § 1, reads as follows: "It shall be unlawful for any person to sell, furnish, or dispose of any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine, or heroin, or mariahnana (Cannabis Indica), or any derivative, mixture, or preparation' of any of them except upon the signed prescription of a physician or veterinarian duly licensed under the laws of the State. * * *"

In volume 23 of the Journal of Criminal Law and Criminology (1922), at page 1086, is an article entitled "marihuana" written by M. H. Hayes, of Friends' University, Wichita, Kan., and L. E. Bowery, of the Wichita, Kan., police department, from which we quote: "Marihuana is referred to by Brundage's Toxicology as a drug the use of which results in 'a sense of exhilaration; pleasurable intoxication; peculiar prolongation of time; sense of double consciousness followed by drowsiness; anaesthesia; loss of power, particularly of the lower extremities; pupils dilated; pulse rapid; respiration slow; may cause increased sexual desires; catalepsy; sometimes convulsions.' It is known most generally in the United States by the Mexican name, 'Marihuana,' because it was introduced into this country by Mexicans."

In volume 2, American Journal of Police Science, at page 252, is an article entitled "Marihuana as a Developer of Criminals" by Eugene Stanley, district attorney, parish of Orleans, New Orleans, La., wherein is contained a history of cannabis sativa, and, while he has not nicely distinguished as to the meaning of the word "Mariguana," he states:

"It is the purpose of this article to give a brief outline of the nature and origin of Marihuana and the Legislation so far enacted concerning its sale and use; to recommend that this drug be placed within the provisions of the Harrison Anti-Narcotic Act [26 USCA §§ 211, 691-707] and to give a list of some of the works which may be consulted by any person interested in making a thorough study of the situation.

"Marihuana is the Mexican term for Cannabis Indica. The plant or drug known as Cannabis Indica, or Marihuana, has as its parent the plant known as Cannabis Sativa. It is popularly known in India as Cannabis

Indica; in America, as Cannabis Americana; in Mexico, as Cannabis Mexicana, or Marihuana. It is all the same drug, and is known in different countries by different names. It is scientifically known as Cannabis Sativa, and is popularly called Cannabis Americana, Cannabis Indica, or Cannabis Mexicana, in accordance with the geographical origin of the particular plant. In the East, it is known as Charras, as Ginga, as Hasheesh, as Bhang, or Siddi, and goes by a variety of names in the countries of continental Europe.

"In America, particularly in the South and Southwestern portions of the United States, it is called marihuana. It is popularly known among the criminal element as 'muggles,' or 'mooter' and addicts are commonly termed 'muggle heads.'"

[4] While in some of the articles to which we have referred the word "mariguana" is used indiscriminately with reference to the plant, the drug, or the flowering tops and leaves of cannabis sativa, the preponderant use of the word, we think, is clearly with reference to the product which is used for smoking. Such use is so frequent and common that no one can misunderstand when the statute prohibits its unauthorized possession or sale as a drug. The information in this case charges the unlawful possession of mariguana in the language of the statute, and that is sufficient.

[5-7] The grammatical construction of the sentence in the statute does not require a different definition of the term. Appellant's position is stated in his brief:

"From a grammatical standpoint, the amended statute would seem to be correct, and bear out the construction placed thereon by appellant. It will be noted that the words, to-wit, 'Opium, morphine, codeine, heroin, peyote, alpha eucaine, beta eucaine, nova caine, flowering tops and leaves, extracts, tinctures, and other narcotic preparations,' are objects of the verbs, to-wit: 'Sell, give away, or offer to sell, furnish, or give away, or to have in possession.' While the words, to-wit, 'hemp or loco weed, (Cannabis sativa, Indian Hemp), mariguana, or chloral hydrate,' are the objects of the preposition 'of.' No other conclusion can be reached when it is once understood that marihuana is a plant and not a narcotic drug."

Counsel have worked out a diagram of this sentence according to the rules of grammarians by which it is claimed the words "flowering tops and leaves, extracts, tinctures, and preparations" are modified by the words "hemp, loco weed, (cannabis sativa, Indian hemp), mariguana and chloral hydrate." If their contention is correct, the statute must be construed to prohibit possession of the flowering tops and leaves of chloral hydrate as well as of mariguana. This, however, is an impossible construction because chloral hydrate is unquestionably not a plant, but is a drug. It is described in United States Dispensatory (21st Ed.) p. 323, as follows: "'Chloral Hydrate contains not less than 99.5 per cent. of $CCl_3CHO.H_2O$.' U. S. 'Chloral Hydrate, $C_2Cl_3H_3O_2$, may be obtained by the addition of water to the liquid chloral, C_2Cl_3HO, produced by the action of dry chlorine gas on ethylic alcohol.' Br."

Before the statute was amended in 1927 by the insertion of the word "mariguana" after the words "(cannabis sativa, Indian Hemp)," and before the words "or chloral hydrate," the phrase "flowering tops and leaves" etc., was clearly intended to modify or apply to "hemp or loco weed," and not to "chloral hydrate." Had it been the legislative intent by the amendment of 1927 when the word "mariguana" was inserted to use such word as the name of a plant instead of a drug, undoubtedly the Legislature would have used some such language as this, "The mariguana plant or weed," instead of merely inserting the word "mariguana," which, as we have seen, is commonly used to refer to the narcotic product of the plant cannabis sativa. By the rules of construction the relative or qualifying words are to be applied to the words immediately preceding or following, unless the legislative intent is indicated that a different application be made. 59 C. J. 985. There is not anything in the amendment of 1927 to indicate that the qualifying words were intended to be extended farther than in the original statute. Since the flowering tops and leaves of cannabis sativa, which is but the scientific name of the hemp plant or loco weed, constitute a drug known as cannabis and commonly known in this locality as mariguana, there was no necessity for the amendment except to clarify the statute by inserting the name by which the drug was commonly known by those who trafficked in, and used, mariguana. The character of its use in a section dealing with narcotic drugs indicates clearly that the word was intended to have its commonly understood meaning. We must be controlled by the evident purpose of the Legislature in view of the object sought to be attained. State v. Hendrickson, supra; Richardson v. Treasure Hill M. Co., 23 Utah, 366, 65 P. 74. It is obvious the Legislature intended to prohibit the unauthorized use of the narcotic drug or product known as mariguana. This being true, the court properly overruled the demurrer to the information and the objections made by the appellant on the ground of insufficiency of the information and of the evidence to sustain the verdict.

[8] On the second point made by the appellant he must also fail. He contends it was incumbent on the state to produce evidence to prove the negative allegations of the information to the effect that the defendant did not have possession of the mariguana on a written order or prescription of a licensed physi-

cian, dentist, or veterinary surgeon, and that he was not a jobber, wholesaler, manufacturer, or other person lawfully entitled under the statute to have possession of mariguana. The rule is well stated in 49 C. J. at page 1053: "Where the statute relating to poisons or narcotic drugs contains exceptions, a defendant desiring to avail himself of any of them by way of defense must show that he comes within its intent. Thus the burden is upon one accused of illegal possession to show that his possession was lawful under a proviso or exception of the statute under which he is being prosecuted, or, where the animus possidendi is an element of the offense, to show honest ignorance of the fact of possession." See, also, State v. Chin Gim, 47 Nev. 431, 224 P. 798; People v. Moronati, 70 Cal. App. 17, 232 P. 991; and People v. Montgomery, 271 Ill. 580, 111 N. E. 578. This case falls within the rule stated in Corpus Juris and the above cases.

We find no error in the record. The judgment of the district court of Salt Lake county is affirmed.

ELIAS HANSEN, EPHRAIM HANSON, and MOFFAT, JJ., concur.

STRAUP, Chief Justice.

I concur. The act in question deals with the possession and use of "narcotic drugs." It provides that "it shall be unlawful for any person * * * to have in possession * * * mariguana," except those specified in the act. The information charged that the defendant unlawfully had in his possession "mariguana" and negatived the exceptions enumerated in the statute. The evidence shows that the defendant on a public street was possessed of a package of cigarettes done up in brown paper. Evidence was given to show that the defendant stated that the package "contained mariguana." The state chemist stated that the "cigarettes contained American Cannabis or mariguana," commonly known as a drug.

The point made is that under the statute it was not unlawful for any one to have "mariguana" in his possession. The statute says it is unlawful. In such particular it is contended that under the act it is unlawful only to possess the "flowering tops and leaves of mariguana." Should that be conceded, that was what the cigarettes contained, that was what the defendant possessed. What is "mariguana"? Botanically or scientifically it is known as cannabis sativa. It is a plant. Cannabis often is spoken of as the dried flowering tops and the leaves of the plant. They contain the narcotic property or element of the plant. In different countries where the plant is cultivated it is known by different names. In Mexico it is known as "marihuana." The word "marihuana" often is spelled differently. I care not about that, they all mean the same thing. The proper spelling of the Mexican term probably is "marihuana," and is so spelled in the Standard Dictionary. It is there defined as "a narcotic plant reputed to cause insanity in persons drinking an infusion of its leaves or smoking them." It thus is the leaves and top blossoms of the plant which contain the narcotic properties of the plant, and it is the drinking of an infusion of them or smoking them which produces the injurious effects upon a person. To unlawfully possess them is unlawfully to possess mariguana. So, when the act deals with the general subject of the possession and use of "narcotic drugs" and declares it unlawful to possess "mariguana," it of necessity implies a possession of the narcotic properties and elements of the plant and not the possession of the mere stem or fiber of the plant from which coarse cloth and cordage are made.

Thus, when the term "mariguana," the name of which has its origin or derivation in Mexico, is used in the statute, it is there used in the popular sense of its narcotic properties or drug. Taking such view of the matter, I think the defendant was properly charged with having possession of mariguana, and upon the evidence properly convicted of having it in his possession.

legislative and judicial trends in marijuana controls

By Donald E. Miller,
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MARIJUANA abuse is literally first and foremost a legal problem. However you may choose to describe it—as a sociological, as a psychological or as a human problem—the fact remains that our society has decided to subject marijuana to controls through the use of criminal sanctions.

The prevailing philosophy in the United States, and I might add throughout the world, is based on the premise that it is better for persons to function without resorting to the abuse of a drug so dangerous as marijuana. Abuse of the drug has been considered to be a major social threat by our legislators, who have enacted and retained the anti-marijuana laws.

My topic will lead me to consider some of the patterns of legal controls, the application of those controls, and the need to retain rather stringent federal and state regulatory statutes.

Prior to the enactment of the Marijuana Tax Act of 1937 (the primary federal control), Congress was possessed of quite a lot of information concerning the social and physiological effects of marijuana. By today's standards, perhaps the evidence against it was not as strong as it might have been. Joseph Oteri has made a special point of this in his discussion, "A Look at the Passage of the Marijuana Tax Act."(1) But, in developing programs, our lawmakers are not required to rely on only uncontroverted factual propositions. Nevertheless, the hearings, including the secondary reference material, provided ample support for the proposition that marijuana had harmful effects and that it contributed to anti-social problems.

Interestingly enough, medical science all over the world has long recognized the damages of marijuana. There is not a single modern, responsible medical body (to my knowledge) that supports the legalization of marijuana. The American Medical Association opposes it—and the World Health Organization opposes it. Additionally, the nations of the world have long opposed the abuse of marijuana. In fact, the Single Convention on Narcotics Drugs (1961) obligates the 65 parties to maintain special measures of control on marijuana, and to prohibit the use of marijuana for other than medical and scientific purposes within 25 years.

It is ridiculous to conclude that the public health officials who helped formulate the health policies all over the world did so without adequate knowledge of marijuana's dangers. To conclude, as Mr. Oteri seems ready to do, that former Commissioner Harry J. Anslinger duped all the world's scientists, legislators, and public officials and that he alone "turned off the world," is equally contrary to common sense.

The impression is being created that virtually nothing is known about marijuana. This is false. Also, the impression is being created that there is nothing harmful about marijuana. This is equally false. Too many people seem to think that we should not pay any attention to the old studies. Too many permissivists argue that the studies of Benabud (2), Bouquet (3), Chopra (4), Gardikas (5), Joachimoglu (6), and Wolff (7) are not valid because they were not done in America, under American standards, using American subjects, and using "American-type" marijuana. I cannot dismiss those studies so lightly, and neither should you.

The real damage being done in this crisis of confidence is that some scholarly men are more willing to attack the marijuana controls than to justify them; that these persons are more concerned with deriding the public officials who are charged with enforcing the laws than in helping them prevent drug abuse; and that they are more interested in rationalizing the use of marijuana than in presenting reasons for controlling it.

It is true that we do not possess absolute knowledge of the effects of marijuana. However, let us remember that marijuana contains a very powerful ingredient, tetrahydrocannabinol, which is capable of producing many ill effects. Various studies from the Middle East, the Near East and in the United States indicate that the mental effects are very significant. Emotional balance is disturbed—waves of euphoria are often interspersed with phases of anxiety: paranoid episodes are frequent—giving rise to disturbances of conduct: volition and initiative are impaired: sensation is changed and distorted: and even the so-called "American-type" marijuana can produce full-fledged hallucinations and delusions.

Reported Effects

The formal list of reported physiological and psychological effects of the intake of marijuana is quite varied and lengthy. The 1965 report on Drug Dependence of the World Health Organization lists the following:

"Among the more prominent subjective effects of cannabis . . . are: hilarity . . . carelessness; loquacious euphoria . . . distortion of sensation and perception . . . impairment of judgment and memory; distortion of emotional responsiveness; irritability, and confusion. Other effects, which appear after repeated administration . . . include: lowering of the sensory threshold, especially for optical and accoustical stimuli . . . illusions, and delusions that predispose to antisocial behavior: anxiety and aggressiveness as a possible result of the various intellectual and sensory derangements; and sleep disturbances."

A problem in the United States in the field of research is the lack of a potent standard product. Significantly, about 50 per cent of novices report that they obtained no effects whatever the first time they used marijuana. They have not been the victims of a drug, but merely have been deceived with a hoax. There is

so much gyping going on that it helps support the notion that marijuana is innocuous. Chemically speaking, many persons who confess on questionnaires to have been "triers" of marijuana really have done nothing more than to become partially asphyxiated from polluted air.

There is a wide variance in the potency of black market marijuana. Although hashish is readily available in many parts of the United States, the majority of the marijuana is of the less potent variety. Also, we know that marijuana varies according to where it is grown, when and how it is harvested, and its age. Nevertheless, there is little doubt that marijuana contains a very powerful hallucinogen, and when potent substances are consumed, or the dosage of a weaker substance is increased, mental and physical reactions are intensified. The results of using the natural occurring tetrahydrocannabinol of marijuana seem to be conclusive. Dr. Harris Isbell concludes that in sufficient dosage, the properties of marijuana "can cause psychotic reaction in almost any individual."(8)

The isolation of the tetrahydrocannabinols and the promise of increasing availability of synthetic substances makes it possible for us finally to perform the vitally needed pharmacologic, biochemical, genetic and behavioral research necessary to answer the questions about the long-range effects of marijuana. More likely than not, the earlier failures in finding such effects in this country resulted from the unavailability of chronic users of high quality marijuana. Even the clinical studies in the highly regarded "LaGuardia Report,"(9) must be reviewed with the knowledge that marijuana of unknown potency was smoked, and that much of the research involved oral administration of a marijuana concentrate.

Hence, we find very adequate reasons for proscriptions against marijuana. Even if we were to accept the snobbish proposition that the children of our colleges today possess a superior sense of moral intelligence and are better able to deal sensibly with drugs, and even if we were to conclude that marijuana affects only the weak and the vulnerable, since when has our society stopped being concerned about a minority? The very purpose of many of our health laws is the protection of minorities. I am not impressed that a law student with a high I.Q. does not obtain a reaction from taking two or three puffs on a marijuana cigarette. I am concerned over the consequences of making the drug readily available in a society containing millions of persons predisposed to impulsive and aggressive behavior.

Question of Control

I believe that most of us involved in this symposium would oppose complete legalization of marijuana. The real issue seems to be the extent to which we should control it. The Marijuana Tax Act of 1937 (10) is a system of registration, occupational tax, transfer tax, and transfer forms. The law is designed to permit marijuana to be produced and used for industrial, scientific and medical purposes only. In determining which persons may become registered, and thereby sell or acquire marijuana, the regulatory scheme requires as a condition precedent that the applicant be qualified to engage in the activity according to the applicable state provisions. A typical "street peddler" could not become registered, because such a person is disqualified by state law. Lawyers will continue to argue that the federal government has no right to rely on such controls. Indeed, great stress has been put on certain aspects of such laws in recent Supreme Court decisions. (11) However, I take it that the major concern of this Symposium is in the area of penalties. So, I will try to ventilate the fog of misunderstanding in that area.

Penalties Severe

It is true that the federal law does have rather substantial sentencing provisions. The penalties provide not less than two years or more than 10 years for a possession offense, and not less than five years or more than 20 years for a sale offense. Perhaps, if the law had been designed for and applied against minor traffickers and so-called "users," there might be a need for adjustment of the penalties to fit the gravity of the offense. However, this is not the case. The mandate from Congress and the Executive policy makers is to concentrate our efforts on the larger international and interstate traffickers. Even if we were to obtain evidence against a mere possessor of marijuana for his own use, there are certain latitudes, such as charging the person as a "juvenile delinquent" or handling him under the Federal Youth Corrections Act rather than sentencing him under the regular penalty provisions. I can recall no case where a student was prosecuted in federal court based on mere evidence of possession of marijuana for his own use. It is interesting to note that Congress has looked at these penalty provisions on several occasions, and has not found a need to reduce them.

Why make possession a violation of law? Law professors will claim that in order for a law to be an effective prevention, its operation must be prompt, certain, efficient, and its threats must not be bluff—its club must not be stuffed with highly selective enforcement and frequent evasions. On the surface, this would not be true with the Marijuana Tax Act of 1937 in view of the manner in which the laws are administered. Nevertheless, it is reasonable to assume that the fear of suffering the consequences of the law does deter countless reasonable and responsible persons. Avoidance of punishment and disgrace is a very decisive reaction of normal people. It can be assumed that the vast majority of the people who have lived with the social contrivance of punishment, in the home, in the schools, at play and at work, will avoid certain courses of action which are potentially injurious. The big red apple on the tree in the field where the bull grazes may be enticing, but most of us are too afraid to go over the fence after it.

This, consequently, sets up a barrier, not only to unauthorized use, but more importantly against proselytizing. We can make one generalization: marijuana abuse spreads from person to person—the users who possess it are the ones who breed new users. To condone possession is to condone a ready source of marijuana for proselytizing. The result of "legalizing" possession can only be a more permissive attitude.

I believe a case has been made against marijuana. It is a harmful and dangerous substance which must be controlled. Further scientific studies are needed, and the National Institute of Mental Health is presently carrying on a complete plan of research, covering all aspects of marijuana use. The Bureau of Narcotics has been working with N.I.M.H. to develop procedures to facilitate research, and to obtain sufficient quantities of marijuana and tetrahydrocannabinol for the research. We are hoping that continual funds will be available for the next several years in order that we will be able to find the answers to the basic research questions which are being asked.

In the meantime, pending the results of the new studies, we should not make any off-the-cuff decisions. We should not take any action which will be seized upon as approval to use a debilitating drug. We now have more than 62,000 reported active addicts, we have untold thousands of amphetamine and barbiturate abusers, and we have millions of persons who drink too much alcohol. That seems to be quite enough.

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The Marihuana Tax Act of 1937

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The anti-marihuana law of 1937 was largely the federal government's response to political pressure from enforcement agencies and other alarmed groups who feared the use and spread of marihuana by "Mexicans." Recent evidence also suggests that the Federal Bureau of Narcotics resisted the enforcement burden of the anti-marihuana law until mounting pressure on the Treasury Department led to a departmental decision, probably in 1935, to appease this fear, mostly in the Southwest and West, by federal legislation. Previously unpublished documents clarify the role of medical research in the campaign for a federal anti-marihuana law and in the Treasury Department's preparation for congressional hearings.

SOCIAL reformers successfully initiated federal restrictions on cannabis, along with alcohol, opiates, cocaine, and chloral hydrate in the first decade of this century. The Pure Food and Drug Act of 1906 required that any quantity of cannabis, as well as several other dangerous substances, be clearly marked on the label of any drug or food sold to the public.[1] Early drafts of federal antinarcotic legislation which finally emerged as the Harrison Act in 1914 also repeatedly listed the drug along with opiates and cocaine (for example, H.R. 25,241 61st Cong., 2nd Sess. [1910] which was prepared and endorsed by the State Department and introduced April 30, 1910). Cannabis, however, never survived the legislative gauntlet, probably because of the pharmaceutical industry's opposition. At that time, and for at least a decade longer, the drug trades did not see any reason why a substance used chiefly in corn plasters, veterinary medicine, and other non-intoxicating forms of medicaments should be so severely restricted in its use and sale. Not even the reformers claimed, in the pre-World War I hearings and debates over a federal antinarcotic act, that cannabis was a problem of any major significance in the United States.

Dr. Hamilton Wright, a State Department official who from 1908 to 1914 coordinated the domestic and international aspects of the federal antinarcotic campaign, wanted cannabis to be included in drug abuse legislation chiefly because of his belief in a hydraulic model of drug appetites. He reasoned, along with numerous other experts, that if one dangerous drug was effectively prohibited, the addict's depraved desires would switch to another substance more easily available. He felt, therefore, that cannabis should be prohibited in anticipation of the habitual user's shift from opiates and cocaine to hashish. The narcotic reformer's task, then, was to prohibit and control as many dangerous and seductive substances as possible at one time.

Although congressional hearings rarely heard any witnesses defend opiates or cocaine, those against including cannabis in federal legislation spoke more openly. In January 1911 hearings were held on a federal antinarcotic law before the House Ways and Means Committee. The National Wholesale Druggists' Association (NWDA) representative protested, in addition to other aspects of the proposed legislation, the inclusion of cannabis alongside opiates and cocaine. Charles A. West, chairman of the NWDA Legislative Committee, complained that "cannabis is not what may be called a habit-forming drug."[2(p30)] Albert Plaut, representing the New York City pharmaceutical firm of Lehn & Fink, objected to including "insignificant articles, the habit-forming quality of which is more than doubtful."[2(p73)] In particular he objected to the inclusion of cannabis; he attributed its reputation more to literary fiction, such as the description of hashish in the *Count of Monte Cristo*, than to informed opinion. "Cannabis brought into this country," Plaut explained, "is used almost altogether for the manufacture of corn cures and in veterinary practice. As a habit-forming drug its use is almost nil."[2(pp72-74)] When questioned as to whether cannabis might be taken by those whose regular supply of opiates or cocaine is restricted, Plaut responded that the effects of cannabis were so different from those of opiates and cocaine that he would not expect an addict to find cannabis attractive.[2(pp77-78)]

The drug industry's complaints received stern rebuttals but no one denied that cannabis constituted at that time a very small part of drug abuse. Arguments for inclusion rested on the belief of such authorities as Dr. Alexander Lambert, of Bellevue Hospital and later President of the

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American Medical Association, that some of his patients were habitual users of cannabis and that, therefore, the drug was habit-forming.[2(p511)] One of the most stirring attacks on cannabis came from a comrade of Dr. Lambert, the lay proprietor of a profitable hospital for addiction treatment, Charles B. Towns. Towns' chief fame arose from his popularization of a supposed cure for the cravings of drug-users, but he made an active sideline out of appearing before committees of inquiry and drafting model legislation to combat the evils of drug abuse. He was an impressive witness in 1911, nearing the peak of his fame as one of mankind's benefactors.[3] He took a very uncompromising attitude toward drug use:

> To my mind it is inexcusable for a man to say that there is no habit from the use of that drug. There is no drug in the Pharmacopoeia today that would produce the pleasurable sensations you would get from cannabis, no not one—absolutely not a drug in the Pharmacopoeia today, and of all the drugs on earth I would certainly put that on the list.[2(p49)]

The "Father of the Pure Food Law," Dr. Harvey Washington Wiley of the Department of Agriculture, was no less adamant than Towns. Dr. Wiley favored prohibition of the drugs listed in the proposed legislation but if regulation was all he could get, he would settle for that. To his mind the list of drugs was too short and it should have included not only acetanilid, antipyrene, and phenacetin, but also alcohol and caffeine. Dr. Wiley declared alcohol to have no medicinal value and caffeine to be a habit-forming drug, sold indiscriminately even to children in cola and other drinks. The only value he saw to habit-forming painkillers was to permit an easy death; a patient who had a chance for recovery would be better off without them since he might establish a habit which could never be broken.[3(pp86-87)]

While most spokesmen for the drug trades opposed federal regulation of cannabis, one distinguished member favored its control and most of the other provisions of the new legislation: Dr. William Jay Schieffelin of New York, like Dr. Lambert, was prominent in the nation's social and political life as well as in his profession as the president of a wholesale drug house. He moved with the progressive and reform spirit of the era and was, therefore, somewhat separated from the rank and file as regards the acceptable burdens antinarcotic legislation would place on the drug trade. Schieffelin believed cannabis was "used only to a slight extent in this country," but he had heard that there was a demand for it in the "Syrian colony in New York" where he thought it was smoked like prepared opium. He concluded, "The evil is minute but it ought to be included in the bill."[4]

Cannabis was not included, though, and except for the Pure Food and Drug Act's provision as to labeling, no federal regulatory law was enacted until 1937. (By 1931 regulations under the Food and Drug Act had limited the importation of cannabis except for medical purposes.) Meanwhile the two contrasting attitudes toward cannabis remained pretty much the same: the reformers feared its use; the drug industry, which used it in rather minor preparations, felt less concern about possible misuse and opposed its regulation. Both sides seemed to agree that cannabis was not as threatening as other drugs and that its inclusion in regulatory laws would be for the purpose of anticipating its popularity once opiates and cocaine were brought under control.

Complaints about cannabis continued to come to the attention of the federal government, although without the frequency or insistence which was to occur in the 1930s. In preparation for the First Hague Conference, which led to the Hague Convention (1912) for the control of the world's narcotic traffic, one of the American delegates, Henry J. Finger of the California Board of Pharmacy, wished to draw particular attention to the dangers of cannabis. Many Californians, particularly in San Francisco, were frightened by the "large influx of Hindoos . . . demanding cannabis indica" who were initiating "the whites into their habit."[5] Finger wanted the world traffic in cannabis to be controlled.[5] The United States delegation, of which Dr. Wright was a member, gladly adopted Finger's goal, but did not find the Hague Conference favorably disposed to include cannabis in the Hague Convention. The best the United States could accomplish at this time was the adoption of a recommendation that nations look into the charter of the drug and see whether it merited regulation.[6] Agreement that international traffic in cannabis should be regulated did not come until the Second Geneva Convention in 1925.[7]

Domestic concern over cannabis seemed to originate in the Southwest and to begin increasing after the First World War. In 1919 the crucial Supreme Court decision outlawing addiction-maintenance for pleasure or comfort led to national restrictions on physicians, druggists, and other outlets for drugs believed to be responsible for America's many addicts. Such a time was also appropriate for control of other dangerous substances. Of course, alcohol was outlawed for convivial consumption when the 18th Amendment became effective in January 1920. Cannabis also ought to be controlled, argued the Governor of Louisiana and the president of Louisiana's Board of Health. Their contact with "marijuana" had elements which would become familiar in the 1930s. A white, 21-year-old musician in New Orleans had been arrested for forging a physician's signature in order to get some "mariguana" imported from Mexico. The musician said the substance was taken to "make you feel good," but the dangers of this substance were clear to Dr. Oscar Dowling and Governor John M. Parker. Dr. Dowling, who was also a member of and later chairman of the American Medical Association's Board of Trustees, warned the Governor that marihuana was "a powerful narcotic, causing exhilaration, intoxication, delirious hallucinations, and its subsequent actions, drowsiness and stupor."[8] He also urgently requested of the Surgeon-General of the Public Health Service that the federal government take "some action" to control the traffic in marihuana.[9] The Surgeon-General replied that he was in complete agreement with Dr. Dowling's concern.[10] Shortly thereafter Governor Parker claimed in a letter to Prohibition Commissioner John F. Kramer that "two people were killed a few days ago by the smoking of this drug, which seems to make them go crazy and wild" and he expressed his surprise that there were no restrictions against marihuana.[11] But the troubles the government was already having with enforcement of

the Harrison Act may not have encouraged addition of more drugs for control.

International Control of Cannabis: 1911-1925

Yet, the United States continued to press for international control of cannabis, as well as of other drugs. International drug control, if obtained, would have solved much of the American problem since opiates, coca leaves, and some cannabis were imported. The cool reception other nations gave the American proposals to control cannabis did not discourage the American delegation, but rather added one more proof of international perfidy. Since the earliest stirrings of an international campaign by the United States, American diplomats believed that other nations, some of whom received considerable revenue from the narcotic traffic, used various stratagems to discourage or nullify American efforts. That foreign governments should also oppose the inclusion of cannabis in a schedule of controlled drugs was almost a confirmation of the wisdom of controlling the cannabis market.

The United States, having started the antinarcotic campaign which resulted in the Hague Opium Convention of 1912, lost its premier role during the 1920s. The League of Nations assumed responsibility for the Hague Convention from the government of the Netherlands, a transfer which the United States would not recognize, Although the intricate formalities by which the State Department avoided any appearance of "recognizing" the League were certainly effective in achieving their goal, such actions also lost the United States its leadership in the world antinarcotic movement.

Repeatedly the League tried to involve the United States in planning for the international control of narcotics. While the United States maintained meticulously distant relations with the League's Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, American cooperation did emerge. These hopeful signs were reversed, however, by the walkout of the American delegation, led by the chairman of the House Committee on Foreign Affairs, from the Second Geneva Opium Conference in February 1925.[12]

The delegates' exit was based on righteous indignation at the weak will of other nations: they left behind an opportunity to sign the first Convention which sought to bring the cannabis traffic between nations under international supervision.

Five years would pass before the United States would again sit in such an international meeting.

Rising Domestic Fear of Cannabis: 1920-1934

Fear of cannabis, or as it was beginning to be known, marihuana, was minor throughout most of the nation in the 1920s. Nevertheless, it still concerned the federal government. For example, in January 1929 Congress authorized two narcotic farms to be operated by the Public Health Service largely for the treatment of addicted federal prisoners. The law specifically defined "habit-forming narcotic drug" to include "Indian Hemp" and made habitual cannabis users, along with opium addicts, eligible for treatment.[13] Although there seems to have been almost no transfer of cannabis users to the two "farms," later known as the Lexington and Fort Worth Hospitals, it is significant that congressional worry about cannabis continued after passage of the Pure Food and Drug Act and clearly was present before the Federal Bureau of Narcotics (FBN) was established in 1930.

In certain areas of the United States, however, the fear of marihuana was more intense. These areas mostly coincided with concentrations of Mexican immigrants who tended to use marihuana as a drug of entertainment or relaxation. During the decade Mexican immigration, legal and illegal, rapidly increased into the region from Louisiana to California and up to Colorado and Utah. Mexicans were useful in the United States as farm laborers, and as the economic boom continued they received inducements to travel to the Midwest and the North where jobs in factories and sugar beet fields were available.[14]

Although employers welcomed them in the 1920s, Mexicans were also feared as a locus of crime and deviant social behavior. By the mid-1920s horrible crimes were attributed to marihuana and its Mexican purveyors. Legal and medical officers in New Orleans began studies on the evil, and within a few years published articles claiming that many of the region's crimes could be traced to marihuana. They implicated it particularly in the most severe crimes, for they believed it to be a sexual stimulant which removed civilized inhibitions.[15] As a result, requests were made to include marihuana in the federal law which controlled similar substances, the Harrison Narcotic Act.[16]

When the great Depression settled over America, the Mexicans, who had been welcomed by at least a fraction of the communities in which they lived, became an unwelcome surplus in regions devastated by unemployment. Considered a dangerous minority which should be induced to return to Mexico by whatever means seemed appropriate, they dwelt in isolated living groups. A contemporary writer described their mood in 1930, the first year of the Depression:

> A . . . factor in decreasing Mexican immigration is what officials call "the fear of God." It may be indefinite, but it is real; and the quality is standard all the way from California to Texas.
>
> And that *fear* hovers over every Mexican Colony in the Southwest is a fact that all who come in contact with them can readily attest. They fear examination by the border patrol when they travel; they fear arrest; they fear jail; they fear deportation; and whereas they used to write inviting their friends, they now urge them not to come.[17]

Naturally, the cotton, fruit, and vegetable growers in the Southwest and sugar beet farmers in Colorado, Michigan, Montana, and the Northwest favored further immigration. On the other hand, the American Federation of Labor understandably favored strict bars against foreign labor. But another group which worked for an end to Mexican immigration as energetically as those with economic interests did so for social reasons, afraid that mixture with an "inferior race" was causing "race suicide." Citizens anxious to preserve what they believed valuable in American life banded together into "Allied Patriotic Societies," "Key Men of America," or the group which united many of these associations, the "American Coalition" whose goal was to "Keep America American."[18] One of

the prominent members of the American Coalition, C. M. Goethe of Sacramento, saw marihuana and the problem of Mexican migrants as closely connected (*New York Times*, Sept 15, 1935, section IV, p 9):

> Marihuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration. Easily grown, it has been asserted that it has recently been planted between rows in a California penitentiary garden. Mexican peddlers have been caught distributing sample marihuana cigarets to school children. Bills for our quota against Mexico have been blocked mysteriously in every Congress since the 1924 Quota Act. Our nation has more than enough laborers.

Southwest police and prosecuting attorneys likewise raised a continual protest to the federal government about the Mexicans use of the weed (H. J. Anslinger, oral communication, June 30, 1970).

In 1934 a US Marshall in Tulsa, Okla, wrote to the FBN, describing marihuana as a most dangerous and crime-causing drug which gave its users the feeling that they had "superman and superwoman" powers.[19] Newspapers occasionally headlined the weed as a cause of horrible crimes. For example, in 1933 the New York *Mirror* presented an article in its Sunday supplement on "Loco Weed, Breeder of Madness and Crime." That same year Dr. Walter Bromberg, a respected researcher, informed a meeting of the American Psychiatric Association that some authors had estimated the number of marihuana smokers in the southern states to be one out of four.[20] Dr. Bromberg, who did not subscribe to the alarm over marihuana displayed by some writers, nevertheless told of its spread from the South to the large cities and to New York, "where its use is widespread."[20](p317) He noted that marihuana's inclusion in the Harrison Narcotic Act had been requested. Although denying that crimes were directly and simply caused by marihuana and asserting that it was something like alcohol in its effect, nevertheless, on the basis of good physiological and psychological studies of cannabis, he was persuaded that it was "a primary stimulus to the impulsive life with direct expression in the motor field."[20](p320) Marihuana "releases inhibitions and restraints imposed by society and allows individuals to act out their drives openly," and "acts as a sexual stimulant," particularly to "overt homosexuals."[20](p320)

Dr. Bromberg's description of marihuana in 1933 differed in quality from the writings, for example, of New Orleans' Prosecuting Attorney who, in 1931 fearfully portrayed "Marihuana as a Developer of Criminals."[21] Yet, Dr. Bromberg's statements would not have calmed the apprehensive. Furthermore, neither the New Orleans studies, which began at least in the late 1920s nor Dr. Bromberg's research can be ascribed to any "campaign" by the FBN for a federal marihuana law. It is reasonable to assume that in the first few years of the 1930s, marihuana was known among police departments and civic leaders, particularly those connected with Mexican immigrants and even among scientific investigators as a drug with dangerous propensities. This situation led naturally to pressure on the federal government to take "some action" against marihuana. What was the attitude of the new Federal Bureau of Narcotics to the growing concern over marihuana?

The Decision To Seek a Federal Anti-marihuana Law: 1935-1937

During its first few years, the FBN, as judged from its annual reports, minimized the marihuana problem and felt that control should be vested in the state governments. The report published in 1932 commented that:

> This abuse of the drug is noted among the Latin-American or Spanish-speaking population. The sale of cannabis cigarettes occurs to a considerable degree in States along the Mexican border and in cities of the Southwest and West, as well as in New York City and, in fact, wherever there are settlements of Latin Americans.
>
> A great deal of public interest has been aroused by newspaper articles appearing from time to time on the evils of the abuse of marihuana, or Indian hemp, and more attention has been focused upon specific cases reported of the abuse of the drug than would otherwise have been the case. This publicity tends to magnify the extent of the evil and lends color to an inference that there is an alarming spread of the improper use of the drug, whereas the actual increase in such use may not have been inordinately large.[22]

That year the FBN strongly endorsed the new Uniform State Narcotic Act and repeatedly stressed that the problem could be brought under control if all the states adopted the Act.[23] As late as January 1937, Commissioner Anslinger was quoted as advising that the distribution of marihuana was an "intrastate problem" and that "hope for its ultimate control lies . . . in adoption by states of the Uniform Narcotic Act" (*New York Times*, Jan 3, 1937, section 3, p 6). Study of the annual reports reveal an increasing amount of space taken up by marihuana-associated crime after 1935, but the FBN continued to recommend the Uniform Act. There seem to be several reasons why the FBN delayed advocacy of a federal marihuana law.

The Commissioner recalls that marihuana caused few problems except in the Southwest and the Western states. There the growing alarm was directed at the "Mexicans" whom the "sheriffs and local police departments claimed got loaded on the stuff and caused a lot of trouble, stabbing, assaults, and so on." These states were "the only ones then affected . . . we didn't see it here in the East at all at that time." To Anslinger, the danger of marihuana did not compare with that of heroin and, after the Act's passage in October 1937, he states that he warned his agents to keep their eyes on heroin. If an agent started to make a series of arrests for marihuana possession, he was told to get back to "the hard stuff" (H. J. Anslinger, oral communication, June 30, 1970).

In addition to questioning whether a federal law would significantly ameliorate the "marihuana problem", the Commissioner also doubted the possibility of a law which would be constitutional. When the idea of a transfer tax was first broached to him by the Treasury's General Counsel, Herman Oliphant, he thought the notion was "ridiculous." Even after the decision was made to recommend the transfer tax to Congress, Anslinger "couldn't believe it would go through." It was not that he did not abstractly favor a marihuana law, but he had doubts about its constitutionality and about whether it would have any substantial effect on the problem of marihuana use (H. J. Anslinger, oral communication, June 30, 1970).

Lastly, the FBN had "put sandbags against the door" whenever anyone suggested it take over control of barbiturates and amphetamines. Such controls would mean very difficult problems in adjudicating "proper uses" and legitimate exceptions. The FBN preferred heroin as a target; it had no legal uses whatever. The whole question of enforcement was enormously simplified by tracking down a totally prohibited drug. Such an attitude would be consistent with hesitating to take on marihuana which, unlike heroin, was not imported but rather grew, as the Commissioner ruefully pointed out in 1936, "like dandelions," and which had a few legitimate uses.[11] It is significant that when marihuana was finally controlled by the federal government, almost all uses were outlawed with the exception of its use in bird seed (and then only if sterilized). The regulations for its use by physicians were so complicated that possibly no general physician has legally prescribed it since 1937.

The pressure for a federal anti-marihuana law was, Anslinger states, "political," traveling from local police forces in affected states to the governors, then to the Secretary of the Treasury, Henry Morgenthau, Jr., and from him to the General Counsel, and the Commissioner of Narcotics (H. J. Anslinger, oral communication, June 30, 1970). Apparently the decision to seek a federal law was made in 1935, since by January 1936 Anslinger was holding conferences on what course to take to accomplish that end. The FBN's search for grounds on which to base a federal law was almost unsuccessful. It first claimed that only the treaty-making power of the federal government could sustain an anti-marihuana statute. Such a treaty was then attempted, but with an appeal to other nations which had almost no chance of success. If the FBN did not actually want a federal marihuana law, it had performed faithfully the task it had been given and the effort was about to fall short, when, claims Anslinger, the Treasury's General Counsel ingeniously contrived the "transfer tax."

The pressure on the Treasury could well have been sufficient to induce such cleverness, as the following letter of 1936 (Anslinger papers, Box 6) from the editor of the Alamosa, Colo, *Daily Courier* suggests:

> Is there any assistance your Bureau can give us in handling this drug? Can you suggest campaigns? Can you enlarge your Department to deal with marihuana? Can you do anything to help us?
>
> I wish I could show you what a small marihuana cigarette can do to one of our degenerate Spanish speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish speaking persons, most of whom are low mentally, because of social and racial conditions.
>
> While marihuana has figured in the greatest number of crimes in the past few years, officials fear it, not for what it had done, but for what it is capable of doing. They want to check it before an outbreak does occur.
>
> Through representatives of civic leaders and law officers of the San Luis Valley, I have been asked to write to you for help.

It was this kind of attitude which the Tax Act was designed "to placate," according to Anslinger, although he felt that little besides a law on the books could be offered the fearful citizens of the Southwest and their importuning officials (H. J. Anslinger, oral communication, June 30, 1970).

The Marihuana Tax Act

With the goal of trying to figure out how the federal government could pass such a law, the Narcotics Commissioner traveled in January 1936 to New York. There he met with a group of distinguished experts—a representative of the Foreign Policy Association; Joseph Chamberlain, Professor of Law at Columbia; Herbert L. May, a member of the permanent Central Board of the League of Nations; and Stuart Fuller, Assistant Chief of the Division of Far Eastern Affairs of the State Department. They concluded, Anslinger reported to Assistant Secretary of the Treasury Stephen B. Gibbons in a confidential memorandum, "that under the taxing power and regulation on interstate commerce it would be almost hopeless to expect any kind of adequate control."[12]

The Commissioner's recommendation was to follow the example of the Migratory Bird Act which had been declared constitutional, although it entered into the police powers of the states, because it was enacted as a requirement of international treaties with Canada and Mexico vs Holland, 252 US 416). He suggested a treaty requiring the control of marihuana. Once the treaty was ratified by the Senate, a federal law could be enacted which would not meet the constitutional blocks which he felt sure an anti-marihuana law would face if based on federal tax or commerce powers. Otherwise, the various details which imperiled simple prohibitition of marihuana were coming near solution:

> The State Department has tentatively agreed to this proposition, but before action is taken we shall have to dispose of certain phases of legitimate traffic; for instance, the drug trade still has a small medical need for marihuana, but has agreed to eliminate it entirely. The only place it is used extensively is by the veterinarian, and we can satisfy them by importing their medical needs.
>
> We must also satisfy the canary bird seed trade, and the Sherwin Williams Paint Company which uses hemp seed oil for drying purposes. We are now working with the Department of Commerce in finding substitutes for the legitimate trade, and after that is accomplished, the path will be cleared for the treaties and for federal law.[13]

The Commissioner was permitted to try his idea in June of the same year when he and Fuller represented the United States at the Conference for the Suppression of Illicit Traffic in Dangerous Drugs, held in Geneva. The United States sought to incorporate a requirement for domestic cannabis control in a treaty with 26 other nations. Perhaps to have additional leverage, or perhaps to dramatize the opposition of other governments, the US delegation asked just before the conference opened for permission to walk out if the American proposals were turned down. Still recalling the regrettable isolation which followed American departure from a similar conference in 1925, the State Department refused permission. So, although their views were outvoted, the delegation stayed, but did not sign the Convention. It was the only nation represented which did not do so.[14]

In the summer of 1936, therefore, it became obvious that there would be no law to placate the police of the Southwest unless some federal legislation under the traditional legal powers was enacted. General Counsel Oliphant then suggested the marihuana transfer tax about

which the Commissioner had strong doubts. (H. J. Anslinger, oral communication, June 30, 1970). The FBN loyally went along with the plan, though, and did its best to present a very strong case to Congress so as to ensure the greatest chance of passage. To Anslinger, Congress did not seem very concerned and "the only information they had was what we could give them in our hearings" before the Appropriations Committee or when the Tax Act was pending (H. J. Anslinger, oral communication, June 30. 1970).

The Treasury Department collected and considered scientific and medical opinion prior to the Tax Act hearings. But the desire to present a solid front when the Department appeared before the committees of Congress caused the officials to ignore anything qualifying or minimizing the evils of marihuana. As suggested above, the political pressure to put "something on the books" and the doubt that it could be done combined to make the marihuana hearings a classic example of bureaucratic overkill.

For a balanced interpretation of the hearings it is necessary to keep in mind that marihuana had been extravagantly condemned in the halls of Congress at least as early as 1910 and that in some areas of the nation it was at that time an object of horror to respectable and vocal citizens. The Bromberg study would have offered ample reason for concern, although it can be read as reassuring about the dangers of marihuana. After the Tax Act was passed, even Dr. Lawrence Kolb, Sr., certainly no booster of the FBN, warned that "Continued use of the drug causes insanity in many cases, but very unstable persons may have a short psychotic episode from only a few doses. . . . No matter by what means taken marihuana is a dangerous drug . . . much more harmful in certain respects than opium. . . . Enough is known about the drug to brand it as a dangerous one that needs to be strictly controlled" (Federal Probation 2:22-25, 1938).

The Treasury presentation to Congress may, therefore, have been exaggerated, but it was not without foundation in the current thinking of medical research. The government's witnesses could also be fairly confident that the congressmen had no preconceived favorable, or even informed opinions.

In the tradition of federal departments, everyone from the Treasury Department who appeared for the Tax Act gave it full support, while those who might have had more moderate views remained in the background. In particular, the Public Health Service was not represented, although the opinion of its Division of Mental Hygiene (now the National Institute of Mental Health) was available to the Treasury Department months prior to the hearings in April. Like other authorities, Dr. Walter L. Treadway was asked a series of questions about marihuana, probably in late 1936, when the Treasury was gathering expert opinion on the botanical, chemical, pharmacological, and behavior-modifying characteristics of cannabis. To the question "What are the proofs that the use of marihuana in any of its forms is habit forming or addictive, and what are the indications and positive proofs that such addiction develops socially undesirable characteristics in the users?" Dr. Treadway replied in full:

> Cannabis Indica does not produce dependence as in opium addiction. In opium addiction there is a complete dependence and when it is withdrawn there is actual physical pain which is not the case with cannabis. Alcohol more nearly produces the same effect as cannabis in that there is an excitement or a general feeling of lifting of personality, followed by a delirious stage, and subsequent narcosis. There is no dependence or increased tolerance such as in opium addiction. As to the social or moral degradation associated with cannabis it probably belongs in the same category as alcohol. As with alcohol, it may be taken a relatively long time without social or emotional breakdown. Marihuana is habit forming although not addicting in the same sense as alcohol might be with some people, or sugar, or coffee. Marihuana produces a delirium with a frenzy which might result in violence; but this is also true of alcohol.[26]

Having received Dr. Treadway's opinion and that of other authorities, the Department held a conference in the Treasury Building on Jan 14, 1937. Attending were 14 government officials and consultants, many of whom would testify a few months later before the Congressional committees deliberating on the Tax Act.[27] The purpose of the conference was to prepare a satisfactory legal definition of marihuana for the proposed legislation and to make some final arrangements for the presentation to Congress. Dr. Treadway was not present, although Dr. Carl Voegtlin, Chief of the Division of Pharmacology of the National Institute of Health, was there to assist, along with some chemists, pharmacologists, and Commissioner Anslinger. Two members of the Department's General Council's Office of the FBN's General Counsel were also present.

Fortunately, the conference was stenographically transcribed so that we can gain some appreciation of the attitudes surrounding the proposed legislation by the individuals who would present it to the House and Senate. Most of the conference was devoted to which part of the marihuana plant was pharmacologically active and what should be the name of the soon-to-be-taxed substance. Conversation was chiefly between the scientists and the Treasury lawyers and reveals that the Department did take into consideration scientific and medical opinion in the preparation of the marihuana legislation.

The upcoming hearing was on the minds of the participants. They knew that they would have to be prepared to rebut any suggested valid use or to include it through some exemption. The goal, however, was to have a prohibitive law to the fullest extent possible. Exceptions, particularly trade or medical exceptions, would make enforcement considerably more expensive and the Act's future cost concerned the conference. Such a desire prior to the Act and the lack of any increased appropriations for several years after the Act are consistent with Anslinger's claim that the Tax Act was no boon to his bureaucratic structure.[27]

Tennyson, the FBN's Counsel, emphasized to the group that every detail of the legislation would have to be worked out well ahead of the hearings, because "we have to support it and everything in it when we go before the Committee."[27] Perhaps a little defensively, the Commissioner wanted the group to know that the enterprise was not "a fishing expedition"; 296 seizures had been made of cannabis in 1936 alone. "The illicit traffic", he complained, "shows up in almost every state."[27]

After about an hour the scientific evidence on the plant and its active principle had been exhausted and the group reverted to the hearings. With regard to the effects of marihuana on the personality, S. G. Tipton of the Department's General Counsel's Office asked the Commissioner: "Have you lots of cases on this–horror stories–that's what we want."[25] The Commissioner did indeed have a collection. Then, in one of the most significant moments in the meeting, Anslinger asked the opinion of Dr. Voegtlin on whether marihuana actuallly produces insanity. The NIH pharmacology expert replied: "I think it is an established fact that prolonged use leads to insanity in certain cases, depending on the amount taken, of course. Many people take it and do not go insane, but many do."[25] To which the Secretary of the Treasury's Consulting Chemist, H. H. Wollner, responded with a characteristic comparison of American frankness to foreign vacillation: "At the League of Nations they white-washed the whole thing."[25]

The hearings before the House were held in late April and early May.[26] They were curious events. The Treasury's presentation to Congress has been adequately described many times, although no retelling has equalled reading the original transcript. As anticipated, the Representatives accepted whatever the Treasury Department asserted. The only witness to appear in opposition to the administration's proposal, AMA spokesman William C. Woodward, was barraged with hostile questions. One member of the Committee even questioned whether the veteran of many legislative battles dating back to before the Harrison Act actually represented the AMA. Nevertheless, he was able to get his message across: there was no need to burden the health profession with the bill's restrictions, the states could handle the problem without any additional assistance from the federal bureaucracy than was already available, and, finally, the evidence against marihuana was incomplete. He pointedly asked where the Public Health Service and Children's Bureau experts were, if it were true that the weed did have horrible physiologic effects and was wreaking havoc among America's school children. Dr. Woodward's arguments were ignored. One reason for his poor showing was that the AMA had aroused a lot of hostility by its successful defeat of President Roosevelt's plan to include health insurance in the Social Security Act. In a way reminiscent of the battle lines over the Harrison Act, the most "liberal" spokesmen were among the most eager to effect the protection of the public through the prohibition of cannabis.[3]

After the House and Senate hearings the bill was passed by Congress with no difficulty and came into effect on Oct 1, 1937. One of the regrettable aspects of the Marihuana Tax Act was that its role as a symbolic legislative gesture toward fearful groups made any qualification or moderation of the drug's intrinsic dangers a threat to the FBN. Anything less than prohibition would greatly diminish its value as a symbol as well as making enormously more difficult legal control with no additional appropriations. As regards enforcement, this task continued to be primarily the responsibility of local police aided by the occasional efforts of FBN agents. The arrest of those who violated the marihuana law was not difficult when compared to the task of stopping heroin smuggling, and, with no more agents, the FBN was able to put an impressive number of arrests before the public. After the Act's passage the educational campaign of the FBN stepped up, but other publicity campaigns, by lay organizations who claimed that the menace was still out of hand, were muted by FBN opposition. For example, the creators of the often reprinted marihuana poster warning children of the "Killer Drug Marihuana" were in fact put out of business by the FBN because their tactics were beginning to alarm the citizens of Chicago.[3] It may surprise some to learn that the FBN attacked such apostles of fear and had only contempt for their profit making. One reason for the FBN's action may have been its policy of designing educational literature in such a way that no youth would be tempted to try the substance.[3] Another reason may have been a reflection of the Commissioner's belief that the problem was under control in the vast majority of the nation's communities and any impression that it was out of control would only embarrass the Treasury Department.

On the other hand, the FBN resented later medical rebuttal of claims that marihuana was not an extreme danger, as, for example, the LaGuardia Report (1944).[27] Two responses from the FBN–closing down the Inter-State Narcotic Association for spreading disturbing scare stories and a strong and publically effective attack on the medical criticism of the FBN's position on marihuana–demonstrate both the effectiveness and the philosophy of the FBN. Two goals seem to have guided the FBN's actions: to show (1) that the FBN fought a great menace and (2) that the menace was under control.

Why the marihuana law was so eagerly desired by some and, when enacted, so effectively placating are fundamental questions. From the evidence examined, the FBN does not appear to have created the marihuana scare of the early 1930s nor can the law be simply ascribed to the Commissioner's determined will. Such scapegoating offers no more than it did in the era when marihuana was blamed for almost any vicious crime. When viewed from the narrow goal of placating fears about an "alien minority," the Act was serviceable for more than a quarter of a century. For the broader significance of the marihuana law and an understanding of the dynamics involved in prohibitive legislation, the Tax Act must be placed in its cultural and institutional context.

This paper is abbreviated from a forthcoming study: *Narcotics and America: A Social History* (New Haven, Conn, Yale University Press, 1972).

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[PUBLIC—No. 238—75TH CONGRESS]
[CHAPTER 553—1ST SESSION]
[H. R. 6906]

AN ACT

To impose an occupational excise tax upon certain dealers in marihuana, to impose a transfer tax upon certain dealings in marihuana, and to safeguard the revenue therefrom by registry and recording.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(a) The term "person" means an individual, a partnership, trust, association, company, or corporation and includes an officer or employee of a trust, association, company, or corporation, or a member or employee of a partnership, who, as such officer, employee, or member, is under a duty to perform any act in respect of which any violation of this Act occurs.

(b) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(c) The term "producer" means any person who (1) plants, cultivates, or in any way facilitates the natural growth of marihuana; or (2) harvests and transfers or makes use of marihuana.

(d) The term "Secretary" means the Secretary of the Treasury and the term "collector" means collector of internal revenue.

(e) The term "transfer" or "transferred" means any type of disposition resulting in a change of possession but shall not include a transfer to a common carrier for the purpose of transporting marihuana.

SEC. 2. (a) Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall (1) within fifteen days after the effective date of this Act, or (2) before engaging after the expiration of such fifteen-day period in any of the above-mentioned activities, and (3) thereafter, on or before July 1 of each year, pay the following special taxes respectively:

(1) Importers, manufacturers, and compounders of marihuana, $24 per year.

(2) Producers of marihuana (except those included within subdivision (4) of this subsection), $1 per year, or fraction thereof, during which they engage in such activity.

(3) Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe

marihuana to patients upon whom they in the course of their professional practice are in attendance, $1 per year or fraction thereof during which they engage in any of such activities.

(4) Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, $1 per year, or fraction thereof, during which he engages in such activities.

(5) Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, $3 per year: *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by subdivisions (1) and (2) of this subsection, may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section.

(b) Where a tax under subdivision (1) or (5) is payable on July 1 of any year it shall be computed for one year; where any such tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

(c) In the event that any person subject to a tax imposed by this section engages in any of the activities enumerated in subsection (a) of this section at more than one place, such person shall pay the tax with respect to each such place.

(d) Except as otherwise provided, whenever more than one of the activities enumerated in subsection (a) of this section is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed.

(e) Any person subject to the tax imposed by this section shall, upon payment of such tax, register his name or style and his place or places of business with the collector of the district in which such place or places of business are located.

(f) Collectors are authorized to furnish, upon written request, to any person a certified copy of the names of any or all persons who may be listed in their respective collection districts as special taxpayers under this section, upon payment of a fee of $1 for each one hundred of such names or fraction thereof upon such copy so requested.

SEC. 3. (a) No employee of any person who has paid the special tax and registered, as required by section 2 of this Act, acting within the scope of his employment, shall be required to register and pay such special tax.

(b) An officer or employee of the United States, any State, Territory, the District of Columbia, or insular possession, or political subdivision, who, in the exercise of his official duties, engages in any of the activities enumerated in section 2 of this Act shall not be required to register or pay the special tax, but his right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

SEC. 4. (a) It shall be unlawful for any person required to register and pay the special tax under the provisions of section 2 to import, manufacture, produce, compound, sell, deal in, dispense,

distribute, prescribe, administer, or give away marihuana without having so registered and paid such tax.

(b) In any suit or proceeding to enforce the liability imposed by this section or section 2, if proof is made that marihuana was at any time growing upon land under the control of the defendant, such proof shall be presumptive evidence that at such time the defendant was a producer and liable under this section as well as under section 2.

SEC. 5. It shall be unlawful for any person who shall not have paid the special tax and registered, as required by section 2, to send, ship, carry, transport, or deliver any marihuana within any Territory, the District of Columbia, or any insular possession, or from any State, Territory, the District of Columbia, any insular possession of the United States, or the Canal Zone, into any other State, Territory, the District of Columbia, or insular possession of the United States: *Provided*, That nothing contained in this section shall apply to any common carrier engaged in transporting marihuana; or to any employee of any person who shall have registered and paid the special tax as required by section 2 while acting within the scope of his employment; or to any person who shall deliver marihuana which has been prescribed or dispensed by a physician, dentist, veterinary surgeon, or other practitioner registered under section 2, who has been employed to prescribe for the particular patient receiving such marihuana; or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

SEC. 6. (a) It shall be unlawful for any person, whether or not required to pay a special tax and register under section 2, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary.

(b) Subject to such regulations as the Secretary may prescribe, nothing contained in this section shall apply—

(1) To a transfer of marihuana to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 2, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such marihuana transferred, showing the amount transferred and the name and address of the patient to whom such marihuana is transferred, and such record shall be kept for a period of two years from the date of the transfer of such marihuana, and subject to inspection as provided in section 11.

(2) To a transfer of marihuana, made in good faith by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 2: *Provided*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who issues the same: *Provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled so as to be readily accessible for inspection by the officers, agents, employees, and officials mentioned in section 11.

(3) To the sale, exportation, shipment, or delivery of marihuana by any person within the United States, any Territory, the District

of Columbia, or any of the insular possessions of the United States, to any person in any foreign country regulating the entry of marihuana, if such sale, shipment, or delivery of marihuana is made in accordance with such regulations for importation into such foreign country as are prescribed by such foreign country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(4) To a transfer of marihuana to any officer or employee of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, District, county, or municipal or insular hospitals or prisons.

(5) To a transfer of any seeds of the plant Cannabis sativa L. to any person registered under section 2.

(c) The Secretary shall cause suitable forms to be prepared for the purposes before mentioned and shall cause them to be distributed to collectors for sale. The price at which such forms shall be sold by said collectors shall be fixed by the Secretary, but shall not exceed 2 cents each. Whenever any collector shall sell any of such forms he shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

(d) Each such order form sold by a collector shall be prepared by him and shall include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given by the collector to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of two years so as to be readily accessible for inspection by any officer, agent, or employee mentioned in section 11. The copy given to the purchaser by the collector shall be retained by the purchaser and preserved for a period of two years so as to be readily accessible to inspection by any officer, agent, or employee mentioned in section 11. The second copy shall be preserved in the records of the collector.

SEC. 7. (a) There shall be levied, collected, and paid upon all transfers of marihuana which are required by section 6 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Upon each transfer to any person who has paid the special tax and registered under section 2 of this Act, $1 per ounce of marihuana or fraction thereof.

(2) Upon each transfer to any person who has not paid the special tax and registered under section 2 of this Act, $100 per ounce of marihuana or fraction thereof.

(b) Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 6 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

(c) Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Secretary and said stamps shall be affixed by the collector or his representative to the original order form.

(d) All provisions of law relating to the engraving, issuance, sale, accountability, cancelation, and destruction of tax-paid stamps provided for in the internal-revenue laws shall, insofar as applicable and not inconsistent with this Act, be extended and made to apply to stamps provided for in this section.

(e) All provisions of law (including penalties) applicable in respect of the taxes imposed by the Act of December 17, 1914 (38 Stat. 785; U. S. C., 1934 ed., title 26, secs. 1040–1061, 1383–1391), as amended, shall, insofar as not inconsistent with this Act, be applicable in respect of the taxes imposed by this Act.

SEC. 8. (a) It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 7 to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the collector, to produce the order form required by section 6 to be retained by him, shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 7.

(b) No liability shall be imposed by virtue of this section upon any duly authorized officer of the Treasury Department engaged in the enforcement of this Act or upon any duly authorized officer of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States, who shall be engaged in the enforcement of any law or municipal ordinance dealing with the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana.

SEC. 9. (a) Any marihuana which has been imported, manufactured, compounded, transferred, or produced in violation of any of the provisions of this Act shall be subject to seizure and forfeiture and, except as inconsistent with the provisions of this Act, all the provisions of internal-revenue laws relating to searches, seizures, and forfeitures are extended to include marihuana.

(b) Any marihuana which may be seized by the United States Government from any person or persons charged with any violation of this Act shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States.

(c) Any marihuana seized or coming into the possession of the United States in the enforcement of this Act, the owner or owners of which are unknown, shall be confiscated by and forfeited to the United States.

(d) The Secretary is hereby directed to destroy any marihuana confiscated by and forfeited to the United States under this section or to deliver such marihuana to any department, bureau, or other agency of the United States Government, upon proper application therefor under such regulations as may be prescribed by the Secretary.

SEC. 10. (a) Every person liable to any tax imposed by this Act shall keep such books and records, render under oath such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

(b) Any person who shall be registered under the provisions of section 2 in any internal-revenue district shall, whenever required so to do by the collector of the district, render to the collector a true and correct statement or return, verified by affidavits, setting forth the quantity of marihuana received or harvested by him during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine. If such person is not solely a producer, he shall set forth in such statement or return the names of the persons from whom said marihuana was received, the quantity in each instance received from such persons, and the date when received.

SEC. 11. The order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 6, and the statements or returns filed in the office of the collector of the district under the provisions of section 10 (b) shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose, and such officers of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States as shall be charged with the enforcement of any law or municipal ordinance regulating the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. Each collector shall be authorized to furnish, upon written request, copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory, or political subdivision thereof, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested.

SEC. 12. Any person who is convicted of a violation of any provision of this Act shall be fined not more than $2,000 or imprisoned not more than five years, or both, in the discretion of the court.

SEC. 13. It shall not be necessary to negative any exemptions set forth in this Act in any complaint, information, indictment, or other writ or proceeding laid or brought under this Act and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 2 relating to registration or that he has complied with the provisions of section 6 relating to order forms, he shall be presumed not to have complied with such provisions of such sections, as the case may be.

SEC. 14. The Secretary is authorized to make, prescribe, and publish all necessary rules and regulations for carrying out the provisions of this Act and to confer or impose any of the rights, privileges, powers, and duties conferred or imposed upon him by this Act upon such officers or employees of the Treasury Department as he shall designate or appoint.

SEC. 15. The provisions of this Act shall apply to the several States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, and the insular possessions of the United States, except the Philippine Islands. In Puerto Rico the administration of this Act, the collection of the special taxes and transfer taxes, and the issuance of the order forms provided for in section 6 shall be

performed by the appropriate internal-revenue officers of that government, and all revenues collected under this Act in Puerto Rico shall accrue intact to the general government thereof. The President is hereby authorized and directed to issue such Executive orders as will carry into effect in the Virgin Islands the intent and purpose of this Act by providing for the registration with appropriate officers and the imposition of the special and transfer taxes upon all persons in the Virgin Islands who import, manufacture, produce, compound, sell, deal in, dispense, prescribe, administer, or give away marihuana.

SEC. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 17. This Act shall take effect on the first day of the second month after the month during which it is enacted.

SEC. 18. This Act may be cited as the "Marihuana Tax Act of 1937."

Approved, August 2, 1937.

MARIHUANA

The legitimate sources and uses of Cannabis have been controlled by law, but the drug will continue to jeopardize American children until the many illegal sources of production and the rampant illegal peddling of "reefers" are curbed

By GEORGE C. SCHICKS
Assistant Dean
Rutgers University College of Pharmacy

"Do you want to be happy?
Hey, kid! Do you want to be happy?"

AND so our children, homeward bound from school, are being introduced to the greatest curse today in the form of a drug—the deliriant narcotic—Cannabis.* Cannabis is so labelled, not because as a drug it is more dangerous than opium, cocaine, heroin or morphine, for it is not habit-forming in the same sense as are the aforenamed drugs, but by reason of the fact that smokers of Cannabis return to its use because of pleasurable sensations. The curse lies in the fact that this deliriant narcotic drug is practically uncontrolled in so far as its growth, cultivation, harvesting and peddling are concerned. Cannabis grows in practically every State in this country. It requires no special care, growing abundantly along roadsides, vacant lots, in fields, and rubbish heaps. The fact that it grows so readily with little or no attention makes its control very difficult.

Delusion, remorse, and insanity stalk in the wake of this drug. In the course of its action, Cannabis has been the excuse offered for atrocious attacks, for robberies, thefts, and murders. A drug which can cause persons to commit these acts without realizing they are wrong is as dangerous a weapon to humanity as has ever been used by man.

The effects of Cannabis may be obtained from smoking, chewing, or swallowing the drug. The quickest effect is probably obtained by smoking. The volatile principles enter the lungs and are then taken into the circulation. The drug acts by affecting the higher nerve centers in the brain. The action is different in different individuals. The first effect is usually one of exhilaration. The smoker becomes happy—a feeling of self-sufficiency engulfs him, and all is well with the world. The mind is free from restraint, imaginary experiences become as real as actual experiences. These may be of a pleasing or of a sensual nature, or may be gruesome. Self-control is lost. The sense of time and distance is greatly exaggerated. Minutes seem as hours or years, while objects near at hand may appear far away. If enough of the drug has been smoked, the exhilarating action soon wears off and depression sets in. There may be a fear of impending death. The temperament or idiosyncrasies of the person may assert themselves at this point, and the surroundings and environment may play an important part in the action of the addict. The person may be very susceptible to suggestion. There may be a strong urge toward the commission of criminal acts. The addict at this stage is dangerous. He may commit the most shocking or violent of crimes and not know what he is doing. Finally he falls into a stupor or deep sleep, wakens the next morning without a hangover, and perhaps realizes for the first time some unfortunate act he has committed. Fortunately, all excessive users of Cannabis do not commit crime, but more cases of crime as a result of the drug action are being reported. Prolonged use of the drug causes defective mentality. A letter which came to the author's office a few days ago relates the case of a young man who killed his best friend while under the influence of the drug. When he regained his normal consciousness he realized what he had done, and gave himself up to

* In a large eastern metropolitan district peddlers of Mexican Reefers solicit their trade by accosting prospective customers with "Do you want to be happy?"

. . . . depraver of youth

Photos by Rudy Arnold from Black Star

Left: The peddler rolls a "reefer" or marihuana cigarette which he will sell to a high school youth for twenty-five cents.

Above: Police officials destroying five acres of growing marihuana near New York City.

Right: A member of the New York City Police Department examines a marihuana plant.

the police. He has since been committed to a home for the insane, having been an addict for some time.

The man on the street has come to know this brain-twisting drug through the medium of the Mexican Reefer, the cigarette which changes paupers into kings, weaklings into giants, minutes into years, impossibility into possibility and wrong into right. The name given the same cigarette varies in different sections of the country, but whether it be Mary Warners, Goof Butts, Muggies, Tea, Gage, or Mexican Reefers, the little white fag, closed at either end, contains the same gloom-dispelling delirant narcotic—Cannabis.

Cannabis in many sections of the country is incorrectly termed Loco Weed. Botanically, Loco Weed is a legume, the chief Loco plants being Astragallus Lamberti and Astragallus Mollissimus.

Scientifically, Cannabis is known by many names; i. e., Cannabis Indica, because of its importation from India; Indian Hemp, American Hemp, Gauza, Ganjah, Churras, Hashish and Bhang. It is recognized in the Mexican Pharmacopoeia as Marihuana and in the United States Pharmacopoeia as Cannabis Sativa Linne.

Cannabis was first mentioned in the United States Pharmacopoeia of 1870, where two varieties were described—Cannabis Americana and Cannabis Indica. The 1880 editions of the United States Pharmacopoeia retained these varieties, but later editions dropped the American variety and gave recognition only to the Asiatic plant. In the 1910 edition no distinction is made between Cannabis Sativa and Cannabis Indica. The present Pharmacopoeia, 1930 (official 1936), recognized Cannabis as the dried flowering tops of the pistillate plants of Cannabis Sativa Linne belonging to the Moraceae Family.

Years ago it was thought that there were a great number of different species of Cannabis. The same plant grown in several different geographical locations proved that the plant changes its characteristics, which causes some confusion, but now it is agreed that all Cannabis belongs to the species Cannabis Sativa.

Herbs, shrubs and trees belonging to the Moraceae Family, of which Cannabis is a member, are characterized by a milky juice. This juice exists in laticiferous tubes and may be present in the entire plant or confined to fibrovascular regions, as in the fig. Cannabis, because of its dangerous properties, is quite generally considered as having no good use in medicine. It is seldom prescribed in the treatment of disease. In the United States Pharmacopoeia and National Formulary Prescription Survey the drug appeared in seven out of every 1,000 prescriptions. Other drugs with less harmful properties and with more satisfactory results are available to the medical profession.

Cannabis dates back to prehistoric times. Its use as an intoxicant is lost in antiquity. The name Cannabis, Hashish or Bhang, is commonly found in the literature of Arabia and India. Constant reference is made to this drug in Arabian Nights. Here it speaks of "Going up to Gharib, he blew the powdered bhang into his nostrils till he lost his senses." Galen makes mention of the intoxication caused by hemp. The "Bushman and other wild tribes of South Africa threw their Dakha (Cannabis Indica) on the fire and sat around it inhaling the intoxicating fumes." In the "Story of the Three Sharpers" the word referred to as "bast" is bhang or Cannabis. Flying bhang refers to the best quality; in other words, that which flows fastest to the brain. Quoting, "Lastly she brought them coffee, which they drank; but hardly had it settled in their maws when the forty thieves fell to the ground, for she had mixed up with it Flying Bhang, and those who had drunk thereof became like dead men." In the History of the Lovers of Syria, the Bhang mixture was probably concentrated Bhang with opium. A drachm or teaspoonful of it would overthrow an elephant. It states, "Hardly had it settled well in his stomach when his head farwent his feet and he was as though he had been a year asleep."

In Hindustan, Persia, and other Eastern parts, hemp, representing both male and female plants, is used for its narcotic and intoxicating effect. Bhang is made from the best larger leaves and tops of both plants. These are dried, but will lose their effect unless carefully preserved. In some places where the drug is cultivated, care is taken to destroy all the male plants. It is thought that by so doing the resinous content of the female plant is increased. At least a great production of seeds is eliminated. Both male and female plants may be physiologically active, but the female plant is preferred because of its greater resin content.

Ganjah or Gunjah represents the carefully dried female tops stuck together with resin from the plants. The product is marketed in round or flat bundles two to four feet long and three inches in diameter. That coming from Bengal is usually round, and considered a better grade than that from Bombay, which is marketed in flat bundles. These bundles are made to assume their shape by the feet of natives, who tread the plant, working the resin into the leaves and tops, and thus shaping them.

In India, Cannabis, known as Ganjah, deteriorates rapidly on keeping. After having been stored a year it is but one-fourth as active as the fresh drug. In two years time it is considered practically inactive. After two years the Indian Government requires that the drug be destroyed in the presence of government officers. Much of this older product probably finds its way into the world market.

The crude method in Baluchistan for collecting Charas or Churrus, the resin or oleoresin from Cannabis, is interesting if not altogether appealing to the senses. Munch and other authorities state that the fresh cut flowering tops are dried and beaten on woolen carpets. The dust which is shaken off contains the active principle called "rup." An inferior grade, "tahgalim," is obtained from shaking the rug a second time. The third shaking produces "Ganja," the poorest grade. The resin is said also to be collected by men clothed in leather suits who thrash around in the standing plants, the resin attaching itself to the leather, which resin is subsequently scraped off. Horses are also driven through the fields of living plants, rubbing and brushing over the leaves and stalks, with the result that the resin is deposited on their bodies and is then scraped off. After the resin has been collected in the aforesaid manner it is rolled into balls for convenience in use. This resin is also known as the Hashish (or Hasheesh) of the Arabs. Hashish is the name of the intoxicating confection made of hemp, aromatic roots and sugar and chewed by the Hashshashins in their escapades of daring, violence and murder. Through the atrocities of the Hashshashins they became known as Assassins.

Cannabis Sativa was first known in America about 1630. It is used commercially as a source of hemp rope and hemp cloth. The long, fibrous outer layers of the stem, easily separated, are tough and strong. Hemp may be either the male or female plant, but when used in official medicine as recognized by the United States Pharmacopoeia, only the flowering tops of the female plant are used.

A great many attempts have been made to isolate the active principle of Cannabis. This principle no doubt is contained in the resin. Many names have been given to principles extracted from the plant, but Cannabinol at present is quite generally accepted as

the active principle. It is a red oil separated by extraction from the plant.

A special color reaction test used to detect Cannabis and its preparations has been developed by William Beam of the Welcome Tropical Research Laboratories in Khartoum. A petroleum ether extract of the suspected material is prepared and evaporated to a dryness in a test tube. A few cubic centimeters of a reagent made by saturating absolute alcohol with dry hydrogen chloride gas is added to the residue in the tube. If Cannabis is present the liquid acquires a bright cherry red color, which is destroyed by adding either water or alcohol.

Viehoever states a special chemical field test for Cannabis in the presence of other substances in cigarettes:

> A portion, one-third or more, of a suspected cigarette (without the wrapper), or as little as one-tenth of a gram of the suspected weed, dried and somewhat comminuted, is placed in small, wide-mouthed containers. To it is added, followed by immediate shaking for five seconds, a small but excessive amount in volume of a test solution, consisting of benzene (nine parts) and sodium hydroxide (2 percent) dissolved in ethyl alcohol (one part). The liquid is then immediately decanted into an evaporating cup. Very satisfactory results have been obtained when Cannabis was extracted with benzene for fifteen to ninety seconds, the slightly yellowish benzene solution then immediately decanted and mixed with equal amounts of alcoholic sodium hydroxide (2 percent).
>
> Rapid removal of the solvent prevents the excessive extraction of green and yellow plant pigments (chlorophyll, etc.), which, more or less, interfere with the speedy and unmistakable color development of the test.
>
> A positive test, recognized by the appearance of a color change from slightly yellowish to pinkish within one to two minutes, becoming deeper red after standing a short time, indicated the presence of cannabinol. For its further characterization, spontaneous evaporation of the reddish liquid leaves a dry, partially pinkish to violet, rather persistent residue. This dissolves to an orange-red solution in strong ammonia and with a violet to almost bluish-violet color in acetone.

It is a difficult problem to standardize Cannabis or Marihuana for internal use in medicine. There is no chemical process by which the action of the drug can be determined. It was thought that the resin content could be depended upon to represent the degree of activity of the drug, but this has proven unsuccessful. The United States Pharmacopoeia X standardizes the drug by the physiological assay on dogs. This test is based on the degree of incoordination produced in dogs in comparison with that produced by a standard preparation. Fox terriers react well to this test, and can be used about once a week for perhaps a period of a year. After the dog is used for a period of time the detrimental effect of the drug on the brain demonstrates itself.

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The dog is used in this assay because it is an intelligent animal and possesses a central nervous system more like that of man than any other laboratory animal. The response of the dog to the action of Marihuana in many respects is similar to that produced in man. Despite the effect the drug has on the dog, the physiological test is not a satisfactory one, because the real potency of the drug cannot be accurately determined. For this reason the United States Pharmacopoeia XI dropped the test. The drug should be dropped from the pharmacopoeia altogether. A prescription calling for Cannabis or any of its preparations cannot be filled in most drug stores, for pharmacists are refusing to stock it under the new law. It is a drug which can wisely be discarded.

The United States Pharmacopoeia XI and National Formulary VI recognize the following preparations of the drug or preparations in which Cannabis is an ingredient: Extract of Cannabis, dose ¼ grain; Fluidextract of Cannabis, dose 1½ minims; Collodium Salicylicum Compositum for external use to remove warts or corns; Tincture of Cannabis, 10 minims, and Elixir Chloralis et Potassii Bromidi Composita, dose 1 drachm.

The potency of the official preparations of the drug may last indefinitely if properly protected and preserved. Under proper conditions these preparations may retain activity up to fifteen years or more. The crude drug, after having been stored from one to two years, has been found to have lost much of its potency.

Ten years ago the use of the drug in this country was confined almost entirely to its use in medicine, which use was never extensive, but the underworld has seen an opportunity to make money through its sale as a deliriant narcotic. Today it can be purchased with little difficulty throughout the width and breadth of our land.

An analysis of Mexican Reefers purchased in a large eastern city showed the cigarettes to be 100 percent Cannabis. There was an average of about 9 grains of Cannabis to each cigarette. In other words, each cigarette contained approximately 6½ times the average dose of the crude drug—1½ grains being the average internal dose. It is reported that the drug is considered more effective when smoked than when swallowed. If four or five marihuana cigarettes are smoked daily, a small average for a cigarette smoker, the user would soon become an addict and a danger to society. It is a smoker's desire to keep in "high," which eventually makes him a slave to the Mexican Reefer.

Since Cannabis can be grown with practically no cultivation, there is no cost of production. A current drug price list quotes Cannabis at 28 cents a pound. The average price of Mexican Reefers has been found to be 25 cents apiece, making the profit on the 28 cents a pound drug Cannabis, when put into cigarette papers, $194.

There have been campaigns, especially in larger cities, to eradicate the drug from vacant lots and door gardens, but the movement has not become general enough to be as effective as it should be.

The Federal government, in an attempt to safeguard the public from the spreading use of Cannabis, passed an act which was signed by President Roosevelt on August 2, 1937. This act—Public No. 238 under the Treasury Department, Bureau of Narcotics—relates to the importation, manufacture, production, compounding, sale, dealing in, dispensing, prescribing, administering and giving away of Marihuana. This law attempts to control the drug by taxing those who handle it. All persons dealing with the drug in any way are required to register with the government and pay a special tax. The list of persons who are required to pay the tax includes importers, manufacturers, compounders and producers of Marihuana, physicians, dentists, veterinary surgeons, pharmacists, laboratories and institutions doing research on the plant.

This law obviously controls the legitimate sources of the drug, but Marihuana will continue to be the greatest curse today in the form of a drug, unless the illegitimate sources of production and the illegal distribution of the drug in the form of cigarettes can be curbed.

Every State but one in this country has regulations pertaining to Marihuana, but the major portion of the legislation controls the legitimate sources of the drug. These same States will carefully search incoming motors in an attempt to stamp out the corn borer or the Japanese beetle in order that their citizen's foods supply might be preserved. Why will not those same States police a thousand times more effectively the illegal cultivation, distribution and consumption of a weed which is jeopardizing American youth—a weed which makes irresponsible, degenerate or criminal those young people who are attempted by the fag with the knockout punch?

It should be a challenge to the parents of every child in this land to demand that the voice be forever stilled that calls so temptingly,

"Do you want to be happy?
Hey, kid! Do you want to be happy?"

THE MARIAHUANA MENACE*

A. E. FOSSIER, M. D.,

NEW ORLEANS.

History tells us that about the year 1090 A. D., the military and religious order or sect of the Assasins was founded in Persia by Hassan ben Sabbat.

This diabolical, fanatical, cruel and murderous tribe, although isolated in the mountains of Lebanon, and in the valleys and glens of Persia and Syria became remarkable for its secret murders committed in blind obediance to the will of their chief, and the heniousness of its crimes was bruited the world over. Their numerous acts of cruelty cast dire panic and consternation in the stoutest hearts not only in Asia but in Europe as well. This branch of the shiite sect, known as Ismalites, was called Hashishan, derived from Hasish, a confection of hemp leaves, cannabis indica. From the Arabic "hashishan" we have the English word "Assasin".

It was their custom that whenever the Sheik required the services of an assasin, a distinctive class, the "fedais" were intoxicated with the hasish. When in this state they were introduced into the splendid gardens of the Sheik, and surrounded with every sensual pleasure. Such a foretaste of paradise only to be granted by the supreme ruler, made them eager to obey his command. With blind obediance to his slightest wish they willingly sacrificed their lives because of the belief, intensified by the influence of the weed, that the Holy Spirit resided in their chief, and that his wish was the will of God.

During the time of the Crusades, they resorted to every kind of violence. Their utter disregard for death and the ruthlessness of their atrocities presented a formidable obstacle to the arms of the Christians, because under the influence of hashish those fanatics would madly rush at their enemies, and ruthlessly massacre every one within their grasp. It was only about the year 1272 that they were conquered by the Sultan Bibars.

Although cannabis indica has been accused of exciting the basest and most criminal tendencies in the minds of its addicts, at the same time some of the most brilliant creations of the human intellect, especially erotic in character, have been conceived in brains under the influence of that nefarious weed. This may also be said of nearly every intoxicant or narcotic.

It is claimed that the various tenets of the school of the philosopher Pythagoras were inspired by the influence of hashish. This weed known to the Greeks as "nepenthe" was lauded in the immortal Odyssey as a drug to lull all pains and anger, and to bring forgetfulness to all sorrow. And but comparatively recently it was praised by, and was a source of inspiration to many of its illustrious devotees, among whom must be noted the great Theophile Gautier and the renown poet Charles Baudelaire.

The manifold action of Indian hemp has been attested to in history and romance. Under its addiction the most brutal and beastial crimes have been perpetrated, armies were transformed into fanatical hordes, dervishes have performed apparently impossible feats of human endurance, and intellectuals have soared to the heights of imagination; withal, nations and races in the grasp of its nefarious influence have degraded to the lowest plane of civilization.

Mariahuana, vulgarly called "muggles", is Cannabis sativa, derived from the flowering tops of the female plant of hemp grown in semi-tropical and temperate America. It was once thought that only cannabis indica grown in the far east was active, although the German hemp is inert, the American specimen, mariahuana, is equal in potency to the best weed of India.

*Read before the Louisiana State Medical Society, New Orleans, April 14-16, 1931.

Whilst the intoxicating and narcotic properties of Indian hemp have ben known and hashish has been in common use for time immemorial in the Orient, it was not until recently that this menace has assumed a formidable aspect in our southland. The facility with which it can be cultivated, because of the fertility of the soil, our semi-tropical climate and the ease with which seeds may be procured, make its prohibition practically impossible. The muggles habit once firmly established in this community will never be eradicated, and will quickly spread over the length and breath of this country. This weed has already been found in some of the back yards of this city, and we can only imagine the extent of its cultivation. Despite all the police regulations and the state laws concerning its cultivation, use and possession, the traffic in muggles seems to be thriving here. It is impossible to make even an approximate appraisement of the extent of its use in this community, but we can readily surmise the magnitude of this danger when we consider that it is estimated that over two hundred million people constantly indulge in it in some form or other. In fact it has been said that what alcohol is to the Europeans, hashish and ganja is to the Indians and Egyptians.

This intoxicating weed can be taken in many ways, its preparation most commonly used is "ganja," an indian name for a mixture of the stems, leaves and flowering tops of the cultivated female plant. Ganja is smoked in the form of cigarettes or with the pipe; its smell is typically offensive, and easily recognized by the initiated. It corresponds to what is locally known as muggles. Bhang or Siddhi, are also Indian names for the mixture of these dry leaves and capsules without stems, whether female or male, cultivated or in its wild state. It is the cheapest and the weakest of all the preparations of hashish, and it is taken as tea. The resinous substance which exudes from the flowering head of the female plant is called "choras." It is either smoked or is taken in pills or in confections, or mixed with sugar or honey.

Locally its addiction is in the form of smoking. When it is snuffed it is readily absorbed by the nasal mucosa and has a more profound effect than when it is smoked.

In many respects the action of cannabis sativa is similar to that of alcohol and morphine. Its toxic effects are, ecstacy, merriment, uncontrollable laughter, self-satisfaction, bizare ideas lacking in continuity, and its results are extreme hyperacidity with occasionally attacks of nausea and vomiting. It has also been described as producing, in moderate doses, from mild intoxication to a dead drunk, drowsy and semi-comotose condition, lapsing in a dreamy state with a rapid flow of ideas of a sexual nature, and ending in a deep sleep interrupted by dreams. On awakening there is a feeling of great dejection and prostration. Large doses produce excitement, delusions, halucinations, rapid flow of ideas, a high state of ecstasy, psychomotor activity with a tendency to willful damage and violence, and a temporary amnesia of all that has transpired. In cases of prolonged addiction especially in the Malays, the somnolent action of cannabis indica is replaced with complete loss of judgment and of restraint, the same effect so frequently observed in alcoholic intoxication.

Captain Dhunjibhoy, Superintendent of the Indian Mental Hospital in Ranchi, says: "I shall not hesitate to believe any one who commits acts of violence under the influence of the drug and pleads complete amnesia of the crime on recovery."

From the same authoritative source the following is quoted: "I put this drug above alcohol, opium and cocaine, with regards to injurious tendencies in the causation of insanity in India." He states that hemp is a direct cerebral poison which causes the following types of insanity: 1, acute delirious mania; 2, chronic mania; 3, dementia.

He claims that the prognosis in these forms of insanity is as a rule hopeful, for in the acute state 90 per cent and in the chronic cases 40 per cent recover.

The underworld was quick to realize that mariahuana was an ideal drug to quickly cut off the inhibition, especially in the type of inadequate personality. Under the influence of cannabis indica, these human derelicts are quickly subjugated by the will of the master mind. The moral principles or training inculcated in the mind from infancy deter from committing willful theft, murder or rape, but this inhibition for crime may be destroyed by the addiction to mariahuana. Kingman says that in the suggestibility resulting from hashish intoxication, the last vestige of man's artificially acquired restraint is swept away. Thus it can be readily seen how many of these unfortunates with inadequate personalities, laggards in the struggle for existence, the majority of whom are the victim of pyschesthenia, become engulfed in the abyss of drug addiction, and end their miserable existence either on the gallows, or in penal institutions and insane asylums. The moral and physical resistence to narcotics and alcohol is not only weakened but often destroyed in persons of stabilized personality, who are addicted, even to a moderate degree, to mariahuana.

I am indebted to Dr. George Roeling, coroner of the Parish of Orleans, for the following survey recently made in the parish prison of this city. The histories of four hundred and fifty prisoners show one hundred and twenty-five confirmed mariahuana addicts, from 18 to 31 years of age. Addiction was not found in any one beyond that age. It is twice more frequent in the whites than in the negroes.

The records of the district attorney during the past year reveal that 17 out of 37 murderers, 13 out of 145 forgers, 36 out of 195 imprisoned for grand larceny, and 21 out of 115 detained for assault and robbery were addicts of muggles, and that 68 arrests were made for the sale and possession of mariahuana.

This survey shows that approximately one out of every four persons arrested in this city is addicted to mariahuana. The sixty-eight arrests made last year for the violation of Act 41, 1924, relative to possession and sale of mariahuana, which is doubtless only a small percentage of those engaged in the traffic, attest quite a large consumption of the drug.

As far as it can be ascertained this addiction has assumed formidable proportions since the advent of that "noble experiment" that fiasco, prohibition. In fact it is the offspring which bids fair to surpass its dissembling parent in destroying moral inhibition. The lesser of the two evil is alcohol. Whilst both induce a feeling of pleasure and contentment, moral degradation is the most salient feature of mariahuana, for the concomitant loss of social position because of a loose, irregular and frequently criminal existence, make these unfortunates a curse to their families and to their communities.

The debasing and baneful influence of hashish and opium is not restricted to individuals but has manifested itself in nations and races as well. The dominant race and most enlightened countries are alcoholic, whilst the races and nations addicted to hemp and opium, some of which once attained to heights of culture and civilization have deteriorated both mentally and physically.

Whilst it is most unfortunate for humanity to be subjugated by intoxicants and narcotics of any kind, which at this stage of our civilization seems to be a necessary evil, the possible substitution of alcohol for a greater evil should be considered the greatest possible calamity that can befall a nation. It is not confined to the criminal class.

Mariahuana is a real menace to this community. Despite every precaution school

children of tender age, have been detected smoking muggles. Dhunjibhoy states that indulgence in hashish is usally confined to males between the age of twenty and forty. And here in our city jails, it was not found in any prisoner over thirty-one years of age.

Our city authorities are thoroughly aroused to the seriousness of the situation and are doing everything within their power to cope with this growing menace. It is rapidly reaching beyond the city and state and now demands national control. It behoves this society to give this matter its careful attention, and use every means in its power to induce the national government to include mariahuana in the Harrison Narcotic Act.

England has recognized the seriousness of the problem and in the year 1925 has included cannabis indica in its dangerous drug act.

The commissioner of public safety, Dr. Frank Gomila, has taken a deep interest in this subject and directed a great deal of time to its study. I feel much indebted to him and to Miss M. Gomila, assistant city chemist, for their valuable assistance.

DISCUSSION.

Dr. G. F. Roeling (New Orleans): I deem it a pleasure and privilege to be called upon to open discussion on so important a paper, and so timely and so ably presented as Dr. Fossier has presented here today.

Dr. Fossier has outlined to you the amount of menace mariahuana constitutes. It may be well that I relate to you briefly my experience, and I think it will forcibly impress upon you the importance of the mariahuana situation in this section here which I deem largely due to the fact of our seaport facilities for getting the drug.

When I was elected Cornor of tthe Parish of Orleans and during the period of awaiting my induction into office, I surrounded myself with medico-legal problems and studied them from various angles and various standpoints. I went into the study of every form imaginable that we would have to combat in safeguarding our people from crime producing individuals. I went into the study of drug addiction, and into the study of mental diseases from the criminal aspect, but at no time did the subject of mariahuana come into my consideration.

Hardly had a few hours passed after my induction into office when specimen was sent to me for identification of the drug. Individuals were sent to me for examination to determine whether they were mariahuana addicts or not. Attorneys began to use this type of drug addiction as a means of defense for their clients in criminal court procedures. This act was only originated in 1924 which made it a penalty to possess or sell mariahuana in the state of Louisiana. My induction into office was in May, 1925, so you can readily see what a short period of time existed between the origination of the law and my induction into office.

I immediately made a survey of the literature on the subject and found it to be nil. The nearest I could get to a subject of any satisfactory point was that of the United States Dispensary, and that was obsolete in its formation. I immediately called upon my old professor, Dr. A. L. Metz, who was about as limited in literature as I was but who had quite a bit of knowledge and experience because of his position in chemistry and otherwise in making a study of the drug. But neither of us knew very much of the physiological action of the drug until we combined our efforts in studying the actual physiological effect of the drug.

Dr. Fossier, in his paper, brought out a few interesting points in regard to the physiological action of the drug. We can consider the action of this drug upon the human mechanism as we would consider the acceleration of an automobile with the clutch out. We feel that this mariahuana drug stimulates the cortical cerebral centers and inhibits the controlling sub-cortical centers of our mechanism which is responsible for this rapid flow of ideas, the immense visualization of these individuals, the bolstering up of their courage, and the various phenomena which will eventually give them courage and lead them into the most crime producing individuals that we have.

Dr. Fossier gives you a memorandum of 200,000,000 people in the world using mariahuana. Dr. Fossier has brought out the striking statement that between the two evils, alcohol or mariahuana, the mariahuana is by far the greater menace. I agree heartily with Dr. Fossier.

I readily realize—I believe we all do—that we have certain types of individuals who live in our communities who are of such mechanism that they need some form of stimulation in order that they

may properly cope with their situation. Whether that be alcohol or whether that be mariahuana, they are going to consume the one that is the easies to be had and the cheapest and most accessible to their command.

Between the two, I would certainly much prefer having an alcoholic individual to contend with than I would a mariahuana individual. Yet in handling the mariahuana addict you can confine him to the Parish prison and take him off the use of the drug without any ill effects except a certain amount of craving, but there is no physiological disturbance in his mechanism after he has been taken off the drug.

I certainly want to compliment Dr. Fossier for the thoroughness with which he has presented his paper, and the interest he has given to this subject because I feel that we as medical men, and particularly myself in the position I hold, are confronted with this very important factor in our daily lives. I want to thank Dr. Fossier for presenting the subject.

Dr. F. R. Gomila (New Orleans): Mariahuana in our section is certainly beginning to give us a great deal of trouble. I have instructed the Police Department to pick up all of the vendors of the drug and to go further into details in attempting to find the location of the existence of mariahuana in our city. As you know, the Police Department is on edge attempting to destroy the sellers of the drug in the city.

Mariahuana, to my mind, should be put in the same class as heroin. It serves very little medical purpose and should be removed from the market. Before the conclusion of this session of the State Society I would like to have some definite action taken whereby the Society would go on record asking the Government to take cognizance of the situation as it is today.

Just outside of New Orleans on both the lower section and the upper section are vast fields of this weed that is growing, and unless something is done along the lines of gigantic enforcement (and I believe that could only be accomplished by the Government) mariahuana is going to continue to be a severe menace to our community and to these United States.

I want to say in conclusion that I will appreciate it if the Society will recognize the fact that mariahuana is in the same class with heroin and that an attempt should be made to remove it from the market.

Dr. F. F. Young (Covington): As the President has said, we are already over our time, I shall be brief. I would not have made any remarks had I not been requested to do so, by my friend, Dr. Fossier. It is not known apparently where the word marijuana or marihuana (both terms are correct) originated or its definition—a letter from the botanical division of the Department of Agriculture of the U. S. Government states that they have been unable to find anything on the subject, in the literature, in their possession. We must recognize that marijuana as grown in Mexico or Louisiana is in reality Cannabis sativa —Cannabis indica and the others are also Cannabis sativa. This plant grows from Africa to Russia and from the Alps to Kentucky, from Kentucky to Louisiana, from Louisiana to Mexico—if there is a plant indigenous to every part of the world, I suppose this one comes as near filling it as any. The lay term is hemp. In Russia the plant grows very vigorous and ordinary hemp rope is made from it—the products from Cannabis sativa grown in India, are those used entirely, almost, in medicine. There, as we know, it is called Cannabis-Indica. Fifty one years ago Dr. H. C. Wood, the author on a work on Materia Medica and Therapeutics, was invited from Philadelphia to Columbia University, New York, to describe his experiences upon himself, in the study of Cannabis Indica—I refer you to this work, if you wish to read something interesting and charmingly descriptive. Major S. A. Billings, who was in the Medical Corps, with Pershing's Army, on the border of Mexico, when an attempt was made to arrest Villa, has stated to me, that certain individual types of soldiers took to smoking Marijuana like ducks take to water. After smoking it, they would become hilarious and dangerous and had to be locked in cells until sobered up. In the last thirty eight years, we have treated approximately seven thousand drug addicts and my classifications of this disease today would be quite different from then. Thirty five years ago classifying addicts numerically, morphine would have gone down first, cocaine second, chloral third, bromide fourth, with a small number from other drugs. Today, I would be disposed to place at the head of the list, the barbatal group, marijuana second, etc. Regarding marijuana addicts, from what we have seen and from what we have gathered from authorative sources, it is exclusively used by smoking. All that such addicts we have seen were in young persons, under twenty five, who were defective in the brain and nervous structure before they began smoking this weed—they belong a type commonly called "moral imbaciles"—they give a history of being incorrigable at home and at school and as they grow into manhood become criminally inclined—the marijuana addiction aggravates this very much. From what we have seen, these smokers are criminals before they become addicted to the weed. There is a peculiar

laugh, of these addicts, that when once heard, can never be forgotten, I mean when they are on a drunk from its effects. In conclusion I want to state that the flowers of the female plant once pollenized by the male pollen has no longer any medicinal virtue. I enjoyed Dr. Fossier's paper very much—it is food for serious thought. I thank you.

Dr. Fossier (closing): I want to thank very much those who have discussed my paper.

If over night, after the advent of prpohibition, this nation became so adept in the brewing of beer, the making of wine and the distilling of alcohol, so much so that even children are adept in their manufacture, what will happen in the near future, with such a dangerous plant that may grow in our very back yards.

Dr. Roeling is correct when he said that marihuana is the accelerator to a criminal nature, especially when the inhibition of that individual is low.

I feel, gentlemen, that the Society should take an active part to eradicate this growing evil and it is for this reason that I am presenting a resolution to the House of Delegates, and I hope they will give this matter their kind attention.

FEDERAL LEGISLATION

THE REASON FOR UNIFORM STATE NARCOTIC LEGISLATION

HARRY J. ANSLINGER*

THE states which first legislated against the use of narcotic drugs prior to the enactment of any Federal Statute, were impelled to do so in order to secure their citizens against injury to their health, morals and general welfare. The earlier laws were designed to eradicate the evils of opium smoking and the maintenance of opium dens. Later, some of the states enacted laws covering other narcotic drugs and providing various penalties for their violation; but so little knowledge of the traffic was possessed by the drafters of the various acts, that a comparison reveals such a varied expression of ideas on a single subject as to create a situation which may only be classed as absurd.

Nevertheless, up to 1914, when the Harrison Act[1] became effective, there was a real effort, on the part of states which had enacted such legislation, however ill-advised, to enforce the provisions of their laws to the fullest extent.

The primary purpose of the Harrison Act, of course, was to create and protect revenues for the United States, and that Act has been so construed by the Supreme Court of the United States, with the added statement, however, that the law has a moral purpose also.[2] It was contemplated that the authorities of the various states and of the political subdivisions thereof would accept and discharge the responsibility of investigating, detecting and preventing or punishing the local retail illicit traffic conducted by the ordinary peddler, and the institutional care and treatment of drug addicts within their respective jurisdictions.

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*Commissioner, Bureau of Narcotics, U. S. Treasury Dept.

[1] 38 STAT. 785 (1914), as amended 26 U. S. C. § 211-691-707 (1926).

[2] United States v. Jin Fuey Moy, 241 U. S. 394, 402, 60 L. Ed. 1061 (1916).

United States v. Doremus, 249 U. S. 86, 63 L. Ed. 493 (1919).

This, however, did not prove to be the case. Notwithstanding the limited power of the Federal Government, state officers immediately became imbued with the erroneous impression that the problem of preventing the abuse of narcotic drugs was one now exclusively cognizable by the National Government, and that the Federal law alone, enforced, of course, by Federal agencies only, should represent all the control necessary over the illicit narcotic drug traffic. In very few states was any attempt made to accept a just part of the burden of enacting and enforcing laws to control the traffic.

This attitude on the part of the states has resulted in an anomalous situation. The public prints from day to day bring news of a number of banks that have been robbed by an organized gang; details of kidnappings and of gambling rackets; and articles concerning the operations of a lone bandit who has held up a number of stores and citizens. What is the result? Editorials criticise the police and clamorous demands are made calling upon them to apprehend these menaces to the community well-being. The police, ever active, are stirred to greater activity. The man-hunt is on. The offenders who have unlawfully taken the property of fellow citizens must be caught, prosecuted and punished. No one suggests that this is anything but a state problem. The person who would suggest that the Federal authorities be called upon to come into the state and catch this hold-up man would be ridiculed. But in this same community, the insidious, despicable drug peddler, carrying on his nefarious work of unlawfully taking away not only the property, but the peace of mind, the morals, the health of the citizens and undermining the general welfare of the community—what of him? Ah, that is different. In spite of the fact that the sole right to punish such criminals, under certain circumstances, lies only within the police power of the state, despite the fact that the founders of our country never contemplated that such activities should be dealt with by the National Government, enforcement officers as well as legislators in a number of states have decided that "Uncle Sam" is the proper person to cope with this particular menace to the community. This illogical attitude has not only prevented the passage of adequate laws which would be of inesti-

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mable benefit to the state's own citizens, but has resulted, in a number of the states, in an almost complete failure to enforce the laws already on their statute books, even in those aspects of the crime with which only the state itself may deal.

The dockets of the Federal courts have necessarily become flooded with cases of a minor character which should have been handled in the state courts, but which were not thus handled, either from lack of adequate laws, or for reasons put forth solely because the duties and responsibilities appear burdensome, expensive, or distasteful, resulting in a slowing-up of the prompt and orderly process of justice in major cases. And what is the result of this delaying of trials in the Federal courts? In many instances, if a plea of not guilty is entered, the case is continued from term to term because of the congestion, and is finally dismissed on account of the unavailability of witnesses or the unknown whereabouts of the defendant. If the defendant does plead guilty, he is often accorded so much consideration that a fine or a short sentence is imposed, and he immediately resumes his illegal activities. Yet in the states where the laws are adequate and where enforcement is reasonably rigid, the defendants in such cases would have been tried within a few days of the commission of the offense and, where guilt was established, immediately sentenced to the state's prison. Some of the reasons advanced by many state and municipal prosecutors, for their reluctance or open refusal to prosecute such cases, may be catalogued as follows:

> *First.* That sentences imposed in Federal courts are more severe than those imposed in state courts.

The sentences referred to are those given major violators. It is obvious that it does not lie within the power of state and municipal courts, where the state law has made the offense a misdemeanor, to impose sentences equal to those which are imposed in Federal courts in cases of greater magnitude, and where the offense is a felony.

> *Second.* That it is difficult to find a jury which will convict, because in the smaller communities the menace of narcotic drugs is not understood.

This argument is plainly fallacious. The general public is fully aware of the menace of such drugs, and in the smaller communities it is usually found that the violation of such a law is regarded as a graver criminal offense than in the urban districts.

> *Third.* That the accused is a woman and the state has no suitable institution in which to care for such prisoners.

This is but an added argument for the enactment of state legislation for the treatment and care of all addicts, men and women, and the excuse flows only from the desire to place the burden of the necessary financial outlay upon the shoulders of the Federal Government.

> *Fourth.* That voluntary applicants for treatment strenuously object to incarceration in a state prison.

This is but an added reason for the enactment of legislation by the states for the purposes set forth above.

> *Fifth.* In the State of Texas, because of an attack[3] on the validity of the state law, upon which no decision has been handed down, the Police Department throughout the state has disbanded their narcotic squads, leaving to the Federal Government the burden of taking all cases into the Federal Courts.

Examples of what became necessary in two Texas cases are cited. Carrie B., an addict was arrested and found to be in possession of one grain of heroin. Because of the necessity of placing a Federal charge, this woman was arraigned for the purchase and possession of this one grain of heroin. Thus it has become necessary, because of the failure of state enforcement, to invoke the majesty of the law of the Nation to decide what disposition shall be made of the case of this poor unfortunate.[4]

In the case of "Black ———," two narcotic agents and two city detectives arrested this man for the sale of two grains of morphine.[5] Here again the ponderous machinery of the Federal Courts must be resorted to, taking

[3] Texas case No. 7313—O. J. D. Mooneyham.
[4] Texas case No. 7339—Carrie Brown.
[5] Texas case No. 7315—James Blackwell.

up the time of two Federal officers, less than 250 of whom are assigned to guard the welfare of 122,000,000 people.

The proposition cannot be too forcefully expressed that the states, having supreme police power within their own boundaries to enact and enforce all laws necessary to the peace, health, morals and general welfare of their citizens, are not hampered by the narrow limitations that restrict the Federal Government in its fight to control the illicit narcotic traffic.

A few instances will be sufficient to plainly indicate the position occupied by the National Government as compared with that of the states:

The agents of the Federal Government call upon Dr. X, to check his records. The duplicate copies of his order forms show that in a comparatively short time he has ordered 50,000 one-half grain tablets of morphine. His dispensing record shows 4,000 tablets dispensed. He is asked to account for the balance. He replies that he has dispensed it to his patients in the course of his professional practice. The agent asks the doctor how many patients he has. The community is small and the list of patients limited. The Federal officer then calls the doctor's attention to the fact that with such a limited number of patients he surely could not have dispensed the amount unaccounted for and that the average physician in the same amount of time would dispense a very much smaller amount. The doctor finally admits that he is addicted to the use of morphine and has used the amount unaccounted for for the satisfaction of his own addiction. The Federal law, being only a revenue measure, does not prohibit self-administration. The state law either does not prohibit it or the Federal officer is met with an indifferent attitude on the part of the Medical Board of the State, the members of which are, of course, brother physicians. The need for uniform legislation and mandatory enforcement thereof is apparent. In such cases suspension and, for more serious cases, revocation, of the physician's license, should be a part of every state law. So long as the use of narcotics is considered essential to the exercise of a profession, and so long as a physician or other practitioner retains his state license to follow that profession, no matter how illegal his activities may be or how long he

may be imprisoned for violating the law, the Federal Government may not deprive him of his right to purchase narcotic drugs until the state has deprived him of his license to practice his profession.

In New York a known peddler, but one who is so cunning that he evades arrest on a charge of selling, is apprehended in possession of tax-paid codeine. Upon conviction for his unlawful possession in the state court a sentence of three years is imposed,[6] yet it would have been impossible to prosecute this man in the Federal court, such possession being no offense under the Federal law. Had this man been prosecuted in the State of North Carolina, the sale of the narcotic would have been only a misdemeanor and a jail sentence the maximum that could have been imposed.[7]

In Alabama "D" had robbed a drug store of tax-paid narcotic drugs. "B" and "C" were apprehended by Federal officers while in possession of such narcotics. From the foregoing it will be seen that this did not constitute a Federal offense. The state law of Alamaba, however, provides that it shall be unlawful for any person in the state to have in his possession or under his control any such drugs, except such as are procured upon a prescription or by virtue of a lawful occupation.[8] The state police were requested to and did adopt this case. B and C were convicted in the state court. Had this case occurred in the neighboring States of Florida or Georgia, no conviction could have been had in the state court, there being no provision in the laws of these states covering the illegal possession of narcotics.

In Arizona police officers arrested three addicts. A narcotic agent was notified. The agent interviewed the addicts, and they stated they had been purchasing smoking opium from the defendant for two or three weeks. One of them volunteered to introduce the agent to the defendant. His offer was accepted and he and the agent, under the surveillance of a police officer, went to the defendant, to whom the agent was introduced by the informer as an old friend who could be "trusted to the

[6] New York (So.) case No. 2021—Frank Van Bramer.
[7] N. C. CODE ANN. (Michie, 1927) § 6683k.
[8] ALA. CODE (Michie, 1928) § 4800 (16), (d).

limit." The agent ordered $3.00 worth of smoking opium, and the defendant delivered 35 grains direct to him fifteen minutes later. The informer was present during the entire transaction. An attempt was made the following day to make another purchase from the defendant, but when he was finally located by the informer he told the informer that the narcotic agent was a stool pigeon and he would have no more dealings with him. When arrested the defendant denied making the sale of smoking opium to the agent.

It will be noted from the amount sold that this case was not one of a grave character and prosecution in the Federal court would only have added to the overcrowded docket. Prosecution was, therefore, instituted under the state law. When the case came to trial the defendant changed his plea to guilty and was sentenced to 18 months to two years in the state prison.[9]

In certain jurisdictions the National Government is faced with the predicament of having a Judge of the Federal court who will sentence persistent violators to six months, one year on probation, or a year and a day. In such instances, where the state has an adequate law, it has been deemed necessary, in order to curb the traffic, to secure the trial of such cases in the state court. In New Jersey, for instance, sentences in many cases have been imposed running from three to as high as 14 years in state prison.

Another difficulty experienced in the prosecution of cases in the Federal courts is that it is necessary in order to prosecute persons found in possession of narcotic drugs, to charge illegal *purchase* and possession. There immediately arises the defense of venue—place of purchase. The material element of the offense is the venue, and the Government in many cases finds it impossible to prove that the purchase was made within the jurisdiction of the court, resulting in a failure to convict. In some of the states mere possession of narcotic drugs is made a felony and it is only necessary for the state to show that the defendant himself was within the jurisdiction of the court when apprehended, not where the purchase of the drugs

[9] Arizona case No. 287—Lee Roy Tarpley.

was made. This, of course, is a feature that should be covered in every state law.

A situation that has made necessary the prosecution of cases in state courts is the requirement of the Federal Constitution concerning search warrants. Local police officers in many states may, on suspicion of any offense, enter a house and search and seize narcotic drugs and arrest offenders without a search warrant. This procedure would violate the provisions of the Constitution if done either by Federal officers alone or jointly with state officers and such a defense would be sustained upon trial in a Federal court. This is a further argument for more adequate laws and more rigid enforcement by the states.

In the draft of proposed uniform state laws, prepared by the United States Commissioner of Narcotics, there was incorporated a section covering the care and treatment of addicts, which was proposed by the United States Public Health Service, after a thorough study of the situation covering a number of years. This section provides for the compulsory care and treatment of addicts.[10]

It should be apparent to the least uninformed that a

[10] THE FOLLOWING SECTION, WHICH HAS THE APPROVAL OF THE U. S. BUREAU OF NARCOTICS AND THE U. S. PUBLIC HEALTH SERVICE, BUT WHICH WAS NOT INCLUDED IN THE FINAL DRAFT APPROVED BY THE CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, IS RECOMMENDED FOR PASSAGE BY THE STATES:

Section 17. (Commitment of Addicts for Treatment).

(a) Whenever an affidavit duly verified by a person claiming to have knowledge of the facts and setting forth that any person named or described therein habitually uses any narcotic drug as defined in this Act, so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such drugs as to have lost the power of self-control with reference to his addiction, shall be filed with the county attorney of any county or the city attorney of any city, in which such alleged habitual user is or may be found, such attorney shall issue a notice requiring the person so named or described to appear before a judge of the ———— court in chambers at a time and place specified in such notice and shall cause a copy thereof to be served, by the sheriff or other court officer duly qualified to serve process in civil or criminal cases, upon the person so named or described. Copy of such notice shall be transmitted by mail to the (State Commissioner of Public Health). The affidavit, and the original notice shall be filed with the clerk of the court at or before the time specified for such appearance, but the same and all other records and

business, legal or illegal, is bound to fail if deprived of customers. So it is with the peddling of narcotic drugs. Deprive the peddler of a market for his illegal wares, cut to a minimum his illgotten gains and the peddler will cease to exist. As long as an addict is at liberty to come and go, the peddler has a steady and trustful customer. Experience has shown, except in some few instances, that treatment looking toward a cure of addiction, without confinement, is uniformly unsuccessful The mails of the United States Public Health Service and of the Bureau of Narcotics are burdened with pleas from frantic relatives of addicts requesting information as to where the latter may enter a public institution for treatment. The cure of such persons is as much the duty of the state as is the care of its insane, yet only one state (California) has made an honest effort to provide a remedy.

The Commissioner of Narcotics, while inspecting the

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files of the proceedings shall be open for inspection only to the person named or described therein or his counsel or by public officers.

(b) At the time and place specified in the notice, the person named or described in such notice, or his counsel being present, the judge shall hear the evidence presented, and may appoint a commission of two physicians who shall examine such person and certify to the court as to whether such person is an habitual user of habit-forming drugs as contemplated in sub-section (a). Upon being satisfied that the allegations contained in the affidavit are true, the judge shall make and file an order requiring the person named forthwith to take and continue treatment for the cure of such drug addiction at a private institution under medical jurisdiction to be selected by the person committed and approved by the (State Commissioner of Public Health) if such person is able to pay therefor, otherwise at some public hospital or institution under medical jurisdiction, other than a penal institution, selected by the (State Commissioner of Public Health), and at the expense of the (State, county, or city). In the event the judge is not satisfied from the evidence adduced that the person is an habitual user of habit-forming drugs as contemplated in sub-section (a), he may order the commitment of such person for observation for a period not exceeding ( ) days and upon expiration of that time shall consider the testimony of the superintendent or physician in charge together with the evidence theretofore presented in rendering decision on the commitment of such person. The order of commitment shall require reports to be made to the court and to the (State Commissioner of Public Health) at stated intervals therein specified by the physician or superintendent in charge, as to the effect and progress of the treatment. A copy of the order forthwith shall be served upon said person. The care and treatment of persons committed under this

New Orleans District, was approached by the sorrowing mother of two sons, 18 and 20 years of age, addicted to the use of heroin. When informed that the state had made no provision for the treatment of such cases, unable to bear the expense of private treatment, but believing that drastic measures were necessary for their future well being, she requested that they be incarcerated in a Federal penitentiary for treatment. This proposition the Judge and the District Attorney flatly refused to entertain. The only thing the state had to offer her was a 30-day sentence in jail, a proposal worse than useless.

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section shall be designed to rehabilitate them and restore them to mental and physical health; under regulations prescribed by the (State Commissioner of Public Health) the physician or superintendent in charge of the institution may parole inmates but such persons shall be finally discharged from further treatment and supervision only by the committing magistrate or his successor and only upon the recommendation of the superintendent or physician in charge of the institution to which committed.

(c) Any trial court having jurisdiction of a defendant in a criminal action or proceeding, if it appears that the defendant habitually uses narcotic drugs as contemplated in sub-section (a), may in its discretion likewise commit such person for treatment and rehabilitation to a public hospital or institution under medical supervision designated by the (State Commissioner of Public Health). In any case the court may in its discretion stay further criminal proceedings or defer the imposition of sentence pending the discharge of the patient from treatment in accordance with the procedure outlined in sub-section (b) of this section.

(d) Upon the recommendation of a duly licensed practicing physician or public health official that a person habitually uses narcotic drugs as contemplated in sub-section (a), a judge or magistrate of a ( ) court may commit to a public institution under medical supervision and duly approved by the (State Commissioner of Public Health) a person making voluntary application for treatment for drug addiction. A person so committed shall not be detained under such voluntary agreement more than ten days from and inclusive of the date of notice in writing of his intention or desire to leave such hospital or institution.

(e) Any person who shall fail, refuse, or neglect to comply with the terms and conditions of any order of a court duly issued and served in accordance with this section shall be deemed in contempt of court and shall be proceeded against accordingly.

(f) The ( ) court in each (county or city) may in any case of commitment under this section appoint guardians to such committed persons, following the procedure under which guardians of other persons under legal disability are appointed under the laws of this State.

SHOULD THE GOVERNMENT ESTABLISH A BANKRUPTCY BUREAU?

The bill pending in Congress known as the Hastings Bill, backed by the administration, for the complete revision of the bankruptcy law, seeks to establish a new government bureau. This bureau, if established, will be under the direction of the Attorney General, who will be assisted by ten administrators, ten assistant administrators and approximately three hundred examiners, together with a corps of salaried men and women who will do little more than gather a lot of worthless bankruptcy statistics, hold up a lot of discharges of bankrupts (which merely deny them the privilege of reengaging in business and leave them virtual charges on the communities) and here and there uncover some assets which a crooked bankrupt may have hidden out. The receivers or trustees themselves would probably have made the same recoveries. This constantly increasing army of government examiners will soon equal the prohibition forces of the government and will doubtless be about as popular.

There is no lack of machinery to meet the needs of the times with respect to the enforcement of the rights of creditors. Creditors, seeing around them all kinds of government subsidies, paternalism and the like, have concluded to let Uncle Sam collect their debts for them. They recklessly extend credit in the mad rush to sell more goods at high prices and then, when the poor debtor has to avail himself of the last straw which the constitution of the United States established for his benefit, they want to make it impossible for him to use that last straw.

What does this new bill do to help the poor debtor? What will it do to clear the already muddy stream of business progress? Certainly we cannot hope for business recovery until the deadwood caused by the present crisis has been removed and the channel cleared. Throwing more logs in the stream will not relieve the present unfortunate condition. This is no time to tinker with the machinery of so serious and important a law as the country's commercial code, that is, the bankruptcy law of the United States. At least the country should be given an opportunity to thoroughly analyze and study this far-

reaching measure, introduced during the spring of the present year and now likely to be acted upon by Congress at an early date. Lawyers are criticized for their handling of bankruptcy cases. But upon the shoulders of the lawyer falls the responsibility of seeing that no unjust or unfair law is placed upon the statute books. Business, too, will soon realize that it cannot bear the strain and responsibility of unwise, unjust and expensive bankruptcy legislation at this critical time. And the new bill seeks very materially to increase the cost of bankruptcy administration.

MAX ISAAC.*

THE PROPOSED TWENTIETH CONSTITUTIONAL AMENDMENT

THE acceptance by the United States Senate on March 2, 1932, of the conference report of the proposed Twentieth Amendment to the United States Constitution[1] marks the culmination of repeated efforts to have Congress act favorably on proposals changing the date for the convening of Congress and the inauguration of the President. At least 90 constitutional amendments with either or both of these objects in view have been proposed since 1795. In 1808 an Amendment was proposed which provided that the term of Congress should be limited to one year and that it should expire on the first Tuesday in April. No less than 18 amendments dealing with the length of the Congressional term were proposed in the period from 1876 to 1889. From 1889 to 1928, 93 attempts were made to alter the beginning and ending dates of Congress. That this subject has been one which has occupied the minds of our present legislators is evidenced by the fact that "during the last four Congresses (67th, 68th, 69th, and 70th) four resolutions affecting a change on the beginning date of Congress passed the Senate with

*Secretary-Treasurer, National Association of Federal Practitioners; Editor, AMERICAN BANKRUPTCY REVIEW, New York.

[1] S. J. Res. 14, 72 Cong. 1st Sess.

large majorities. Only one[2] of them came to a vote in the House and it failed of passage."[3]

This proposed Amendment, popularly called the "Lame Duck" Amendment, has for its primary object the abolishment of "lame ducks" and "lame duck" sessions of Congress. As is well known, this expression, "lame duck," is applied to any member of Congress who continues to serve in that body after he has been defeated at the polls or has retired. The "lame duck" session, in which these members serve, begins on the first Monday in December following the Congressional election and continues until the following March, at which time their term of office expires. Thus, the newly elected members of Congress do not assume office until the fourth day of March following their election, and cannot be seated in Congress until that body meets the following December.

The joint resolution proposing this amendment, having passed both Houses, was sent to the Department of State March 2, 1932, for submission to the states for ratification according to Article V of the United States Constitution. Three-fourths of the several states must ratify within the seven-year period provided for in the proposed Amendment. Resolutions proposing amendments to the Constitution are not submitted to the President of the United States,[4] and accordingly the resolution does not bear his signature.

Since the Constitution itself does not designate specifically the date when new members of Congress or when the President and Vice President shall take their oaths of office, the question naturally arises why it is necessary to amend the Constitution in order to bring about the desired change. Such an amendment is absolutely necessary, however, because the silence of the Constitution on the date for officials to take their oaths of office does not mean that the duration of the term has not been clearly defined. Members of the Senate are to serve for six years,[5] members of the House for two years,[6] and the President

[2] S. J. Res. 47, 69th Cong. 1st Sess.
[3] H. R. Doc. No. 551, 70th Cong. 3rd Sess.
[4] Hollingsworth v. Virginia, 3 Dallas 378, 1 L. ed. 644 (1798).
[5] Art. I, Sec. 3.
[6] Art. I, Sec. 2.

and Vice President for four years,[7] and, since the resolution of the Continental Congress provided that the proceedings under the Constitution should take effect the first Wednesday in March in 1789, it is quite apparent that March 4th must be the date of inauguration not only for the President and Vice President but also for the reception of the new members of Congress. The desired change, therefore, could not be effected by legislative enactment but only through a Constitutional Amendment, since its effect will be the shortening of the terms of the members of Congress and of the President and Vice President by exactly two months.

The proposed Amendment will have the following several important results:

1. The "lame duck" session of Congress will be abolished.
2. The new Congress may assemble two months after election.
3. The President and Vice President will be inaugurated approximately two months after election, namely on the 20th day of January.
4. The newly elected members of Congress will assume office two months after their election.
5. The newly elected members of Congress will assist in the counting of the electoral votes, and the House of Representatives and the Senate will choose a President and a Vice President, respectively, in the event of a tie or a majority not having been received.
6. In the event of the death of the President-elect before the time fixed for the beginning of his term, the Vice President-elect would become President.
7. The proposed Amendment gives Congress the power to provide by law what officer should act as President in situation which would arise where the election of a President had been cast upon the House of Representatives and the House had failed to elect a President and the Senate had failed to elect a Vice President before the time for the commencement of the new terms. Since the Twelfth Amendment, which specifies the procedure to be followed in electing a President and Vice President, makes no provision for such a situation, that Amendment would, in effect, be amended.

[7] Art. II, Sec. 1.

That the proposed Amendment will soon be a part of the Constitution of the United States seems most likely, in view of the fact that although only eight months have elapsed since it was submitted to the several states for ratification, the state legislatures of seventeen of them have acted favorably upon it.[8]

G. A. C., Jr.

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[8] Ratified by the following State Legislatures on the dates indicated:

	1932
Virginia	Mar. 4
New York	" 11
Mississippi	" 16
New Jersey	" 21
Arkansas	" 22
South Carolina	" 25
Kentucky	" 30
Michigan	" 31
Maine	Apr. 1
Rhode Island	" 14
Illinois	" 21
Louisiana	July 4
West Virginia	" 30
Pennsylvania	Aug. 11
Indiana	" 15
Texas	Sept. 7
Alabama	" 17

[From the Washington Post, Sept. 29, 1934]

THE POST IMPRESSIONIST

BACKYARD DRUG

Are you smoking much hashish these days? Lots of people are.

You thought it was a "dangerous drug," ranking with morphia and cocaine, and consequently forbidden? Well, it is indeed a dangerous drug that "maddens the senses and emaciates the body;" but as far as Federal legislation goes—and much State legislation—it isn't forbidden. Somehow or other, it was omitted from the Harrison Act, while the States——

But we'll talk about them in a minute.

The abuse of the weed—it has few uses save in corn-plasters, certain dyeing processes and as a substitute for linseed oil—is raging up and down these United States. Nor is the District of Columbia exempt.

Very infrequently can even this capable column beat The Post's vigiant news services. Yet here's a hashish beat:

The other day the Narcotics Bureau of the United States Treasury—probably the ablest agency of its kind conducted by any government—got a tip from Denver that a drug peddler had just left there for St. Louis "with a trunkful of dope." The Bureau's St. Louis "operatives" were told to "get" the fellow—and got him, and his trunk, when the two came off the train.

"But you guys can't do nothing," the peddler protested; "this here's just muggles."

He was nearly right, too. Hashish was all he had. Against its possession there was neither National nor State law. The utmost those "guys" could do was to secure his arrest under an ancient city ordinance which banned the carrying of poison without a license. The punishment? A mere $20 fine.

Hashish is made from Indian hemp, which is far from being confined to India. It has more aliases than any other drug. Botanically, it is Cannabis Indica, Cannabis Sativa, Cannabis Mexicans. Cannabis Americana. In India it is bhang, chang and ganja; in Iraq, South Africa, Sierra Leone, Somaliland, Australia and the Near East it is, respectively, charas, dagga, djamba, katta edulis, esur and datra, and in the U.S.A. it is marihuana, loco weed, reefer, mooter and muggles. It grows wild in almost every State." A while ago a luxuriant patch was discovered in the grounds of the Colorado Boys Reformatory, where nobody had dreamed of its pernicious character—except the boys.

The flowering top is the damagemaker, chewed or smoked in cigarette form, and "the female of the species is more deadly than the male." What she will do to you depends on your idiosyncrasies. Some she will stimulate, some depress. To many she brings homicidal mania: not long ago a boy smoked his first marihuana cigarette in a Florida school grounds—these cigarettes are frequently peddled in school neighborhoods—and went home and killed the only six members of his family of whom he could get hold. To nearly all users the drug extends time and distance; there are frequent cases of muggles-smoking automobile drivers who think they are a mile from a cliff or a red light—until the accident happens.

Eugene Stanley, district attorney of New Orleans, made a study of the habit as a developer of criminals. He writes:

"The underworld has been quick to realize the value of this drug in subjugating the will. . . . Its uses sweeps away all restraint."

Philadelphia and Pittsburgh authorities have said the same thing lately. It has been said in Maryland. Complaints come from New Mexico and the West, New York and the North.

According to one dryly condemnatory Federal report, "the drug is used . . . by the younger element in some of the larger cities, especially by high school youths. . . . (It) is most commonly used in the form of cigarettes, selling generally from 15 to 25 cents each, or from three for 25 cents to three for 50 cents, but it is also mixed with beer or other alcoholic beverages for its stimulating purposes."

Yet only 13 States have legislation controlling the growth of marihuana. Only 31 control production:

Alabama	Louisiana	Oklahoma
Arizona	Maine	Oregon
Arkansas	Michigan	Pennsylvania
California	Mississippi	Rhode Island
Colorado	Montana	Texas
Florida	Nebraska	Utah
Idaho	Nevada	Washington
Illinois	New Jersey	Wisconsin
Indiana	New York	Wyoming
Iowa	North Dakota	
Kansas	Ohio	

All these also have State laws to control the sale, and Massachusetts, New Mexico and Vermont also have sales-control laws, but no production-control.

"Moreover," Commissioner Anslinger told us the other day, "these States' laws aren't uniform, and now and again there will be a city ordinance—sometimes a very effective ordinance—in the chief city of a State which, in this respect, is lawless. The confusion is unbelievable—until you try to rationalize it."

"And what," we ventured, "is the cure?"

The Commissioner's answer wasn't delayed. "The confusion among the States' narcotic laws is today one of the greatest aids of the illicit traffic in every dangerous drug. It clogs all the machinery of detection, impedes all the processes of prevention and punishment. Put a uniform State Narcotic Act through every Legislature. That will not only cure the worst of the hashish evil; it will help to reduce the whole drug evil to a minimum."

JUVENILE DELINQUENCY

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 240

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

PART 19

L.S.D. AND MARIHUANA ABUSE AMONG YOUNG PEOPLE

MARCH 4, 5, AND 6, 1968

Printed for the use of the Committee on the Judiciary

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Chairman DODD. I take it from that statement there must be some law enforcement people, and I guess you think so too, who feel that you can't really dry up the sources of a drug like LSD or heroin unless you punish both the peddler and the user because if the peddler, who is only a peddler, has a diminishing market, certainly that is to some extent drying it up. Wouldn't you agree?

Dr. GODDARD. Well——

Chairman DODD. Don't you also think a youngster who also knew he was going to be hauled into court would be somewhat more reluctant to buy such a drug than one who felt he wouldn't be punished?

Dr. GODDARD. Maybe somewhat, but, Senator, I only have to point to the marihuana experience in this country, to say that this does not seem to be the case.

Chairman DODD. Well, I think——

Dr. GODDARD. Very heavy penalties, as you pointed out yourself, for possession are not effective deterrents.

Chairman DODD. My own judgment is that the marihuana situation is not comparable to the LSD or heroin situation.

Dr. GODDARD. Well, leaving the heroin aside because of its addictive properties and because it involves a different class of our society, a different group of people, I would say of the marihuana and LSD, that we quite commonly find these two drugs together in our activities.

Chairman DODD. Do you?

Dr. GODDARD. In about 94 percent of the instances we find that marihuana and LSD are being pushed together by the peddler.

Chairman DODD. Do you find that the marihuana user develops with the LSD user?

Dr. GODDARD. We find it is not uncommon that these drugs are abused by the same people.

Chairman DODD. What I meant was do you find they break in on marihuana and then move on to LSD?

Dr. GODDARD. No necessary correlation there has been demonstrated by our figures or anyone else's, that I know of, so far. It could exist, but I have no knowledge of data to substantiate that.

Chairman DODD. I don't know that you covered it, you may have in your statement, I don't recall, what is your view about the penalties with respect to marihuana?

Dr. GODDARD. Well, Senator, that is under the jurisdiction at the present time, as you know, of the Department of the Treasury, Bureau of Narcotics.

Chairman DODD. I know that.

Dr. GODDARD. I know you are aware of it. I think I have made my position clear on that.

Chairman DODD. Well, you left me hanging a little bit. You brought it up and I thought perhaps that I should ask you what your view was.

Dr. GODDARD. My view there isn't any different than on LSD.

Chairman DODD. From what you have said about the use of marihuana, is it more typical to find marihuana in connection with one of the hallucinogenic or stimulant and depressant drugs than it is to find it with heroin or other narcotic drugs?

Dr. GODDARD. This has been our experience, Senator. In 90 percent of the cases we investigate—LSD, marihuana, Speed—we find several drugs. Since they apparently are used by the same clientele, the pusher or peddler has both or several available.

Chairman DODD. You spoke about Speed. Are there any other such drugs?

Dr. GODDARD. Well, of course, Speed is one of the amphetamine drugs. The more common amphetamines, which are often prescribed for weight control or for mood elevation are better known, dextro amphetamine sulfate being the most common. There are many other amphetamine or stimulant kind of drugs now being seen. DMA or methylenedioxy-amphetamine; TMA, tri-methyloxy-amphetamine, STP (DOM) 2.5 diemethyloxy-4-methyl amphetamine. Now then, there are many hallucinogenic drugs too—DMT, dimethyl-tryptamine, DET diethyl-tryptamine, ibogaine, bufotenine, mescaline, psilocybin, psilocyn, peyote. These and many, many others, Senator, are found from time to time. The list is almost endless.

Chairman DODD. And being added to all the time?

Dr. GODDARD. And being added to monthly. The ingenuity of those who abuse drugs is a constant source of amazement. They use things such as asthmador, nutmeg, Hawaiian Rosewood seeds.

Chairman DODD. Yes, I have heard of that.

Dr. GODDARD. Even Jimson weed, I am told.

Chairman DODD. Is the source of these drugs generally the same, is that the right way to put it, it is not scientific, but do you know what I mean?

Dr. GODDARD. Yes; I believe I do, Senator.

Chairman DODD. All right.

Dr. GODDARD. Drugs such as LSD, DMT, DET which are not legally manufactured at the present time must be illicitly manufactured, thus there are clandestine laboratories involved in this activity.

Now, we have to date, as I recall, since the beginning of the program, knocked off 41 clandestine laboratories in our enforcement program.

We find, sir, that there is an increasing sophistication in these operations, that they are more knowledgeable of what they are up to. Apparently as they get involved in this illegal activity they learn more subtle ways of getting around the law, and they are also being forced to work with some of the earlier precursories of these drugs, because we, for example, brought lysergic acid under control through drug abuse control amendment authority, too, and this means they must work with some of the precursors.

Now, in connection with this we have been able to work out a program with the major chemical suppliers. There are certain chemicals that more commonly than not would be involved in the synthesis of say, for example, LSD. These companies voluntarily notify us when they have an unusually or suspicious purchase of one of these precursors, and this helps us in our surveillance activities.

But the other drugs that are legally manufactured, such as the amphetamine sulfate, barbiturates, we find are still being diverted from legal sources of supply, and so we have a higher priority on the accountability surveys in wholesalers, manufacturers, and on our work with the States for accountability through the local pharmacies. This has paid off. As I indicated, somewhere around 600 million dosage

So what I am saying, Senator, is that we are often using imperfect tools in evaluation of extent of usage. One must keep in mind also that there is great variability in usage patterns in different parts of the country.

On the west coast, for example, there was one high school surveyed where drugs had been tried by about 12 percent, as I recall.

Senator KENNEDY. Well, you are prepared to make an estimate on that, between 1 and 12 percent yourself?

Dr. GODDARD. Yes, 1 to 8 percent.

Senator KENNEDY. Yes, that is what I asked.

Dr. GODDARD. Yes.

Senator KENNEDY. To try to estimate the extent of this experimentation or usage, there has to be some kind of judgment made. It shows an extraordinary difference, I would think, trying to evaluate, which all of us are interested in doing, the extensiveness of the use or experimentation with these drugs. You have 1 to 8; the subcommittee has a third to 50 percent, and it makes it, it certainly does for me, somewhat confusing as to what the real situation is. I suppose if one technique is somewhat flimsier than another in trying to evaluate this problem, we would be compelled to feel that the better technique ought to be used if we are going to use one.

I would like to ask you why you think there is such a flagrant disregard by the young people of this country on the marihuana laws, by the possession of marihuana? They can receive, under the law, 10 years imprisonment. Why do you believe the young people of this country have shown such a flagrant disdain for that legislation?

Dr. GODDARD. It would be my opinion, Senator, that they do not view this drug as being dangerous; that in using it, perhaps, they are expressing their rebellion against our society and against the establishment, as they put it.

Now, I am not so certain that this is different from the youth of the twenties who expressed their rebellion, using alcohol which was forbidden under the Volstead Act at that time.

It is a different medium of expression, perhaps more significant than the fact that it occurs.

Senator KENNEDY. Well, now, what we are suggesting by the administration's legislation is that we are going to make possession of LSD a misdemeanor, is that correct?

Dr. GODDARD. Yes, sir.

Senator KENNEDY. So what you are really equivocating is the possession of marihuana and the possession of LSD would be misdemeanors and, by your own testimony, by the testimony of others, we find out that the use certainly of LSD, I believe, has been estimated as being anywhere from 100 to 1,000 times more dangerous than the use of marihuana.

Dr. GODDARD. I would say so.

Senator KENNEDY. Do you think that these kinds of laws are going to inspire confidence of young people; are they going to pay any more attention to this legislation than the one that is already on the books?

Dr. GODDARD. I do not believe they will.

I believe the educational approach will have the greater impact. I do not believe this will gain the respect of young people.

It may limit the usage of some people for—let me put it this way: There is always a group of people in our society who, if there is not a law, will carry out a certain act. But when a law does exist they will not engage in that act. So it is with that portion of society that the law may have the greatest impact.

Senator KENNEDY. Of course, what you have, as I understand the legislation itself, LSD will be a misdemeanor; marihuana is 10 years which, of course, is a felony.

Dr. GODDARD. Two to 10, as I understand it, with discretion provided.

Senator KENNEDY. It is a felony.

Dr. GODDARD. It is a felony.

Senator KENNEDY. So you would have marihuana, from your own testimony, marihuana, which is certainly less dangerous, would have the larger penalty than would LSD, which is more dangerous?

Dr. GODDARD. Yes, sir.

Senator KENNEDY. And what we are asking is for the young people to try to comply with this kind of legislative jumble and expect them to show some respect for the law.

Dr. GODDARD. Yes.

Senator KENNEDY. When, as far as your comments and the comments of other trained researchers, clinical analysts, show that really there is quite a contrast and difference certainly between these two elements, and that they should be treated differently.

Chairman DODD. I think it ought to be noted that the marihuana statute was passed in 1937.

Dr. GODDARD. 1937.

Chairman DODD. A long time ago, 30 years ago.

It ought to appear on the record. We have learned a lot about it since.

Dr. GODDARD. Senator, I am a little uneasy about testifying on marihuana. I trust you will also be talking to the Bureau of Narcotics. They have to live with the problem to a greater extent than we do.

Senator DODD. I just wanted to—I did not want to interrupt Senator Kennedy, but I wanted it on the record that it has been the law for 30 years.

I want to point out I have always had a question about the severity of the punishment. I do not know what they were thinking of in those days, but there must have been a lot of people who thought the other way.

Senator KENNEDY. You stated, I believe, in 1966 as well, Dr. Goddard, "We think the drug abuse control law is a good one, and we believe we can control LSD under it."

Do you still feel that way?

Dr. GODDARD. Well, I feel the law needs to be strengthened now by the provision of the felony penalties for manufacture, sale, distribution, possession for sale because our working experience has indicated that the lesser penalty of misdemeanor associated with those activities does not give us the tool that we, as an enforcement agency, need. That is a judgment we have reached from the operational experience of nearly 21 months.

I think the bill is still a good one, Senator; the basic intent of Congress, the basic provisions of the act are still sound, but simply that portion related to penalties needs improvement.

Senator KENNEDY. Yes.

Finally, as I understand from the thrust of your comments and testimony, you place a heavy reliance on the education of the young people of this country and the parents and church leaders and others in this whole field of drugs.

Dr. GODDARD. Let me make clear what I am talking about is a program which is comparable to a stool of three legs or, better still, a tripod. There needs to be a vigorous enforcement program aimed at those who manufacture, sell, and distribute, and I strongly support that effort.

Then, secondly, there needs to be a vigorous program aimed at those who use or abuse drugs, to get at their intellects, to get them to understand that drug abuse is inherently dangerous. This is much broader than just the drugs under control. Third, in order to properly support these activities, one needs to conduct a well-balanced program of research to feed into the enforcement and the educational activities.

Senator KENNEDY. Even with this three-legged stool, where do you really come out on the field, for example, in the use of these drugs? Are you trying to eliminate them from any kind of use in the United States? What are your goals and aims in this field?

Dr. GODDARD. I am trying to aim at a situation in which these drugs which have proper medical uses are restricted to those appropriate uses, and that drugs which are investigational drugs are limited to that field, and that we do not have misuse, self-medication, and abuse, which leads to hospitalization, which leads to psychiatric illnesses.

That, simply stated, is my objective. To do this we have to have a better program of drug information to young people starting as early as the third grade and not limit it to LSD and these kinds of drugs. Rather a proper respect for medicine as being something one only uses to correct an illness must be taught.

Senator KENNEDY. That applies to marihuana as well.

Dr. GODDARD. Yes, sir. It is not a medicine, however, so, perhaps, it is less appropriate there.

Senator KENNEDY. I think that is all.

Chairman DODD. Well, thank you very much, Doctor, and your associates. You have all been very helpful, and we appreciate your coming this morning.

Senator KENNEDY. Thank you very much.

Chairman DODD. Dr. Nowlis.

Dr. Helen H. Nowlis has served as Director of the National Association of Student Personnel Administrators' drug education project since 1966.

This project was a result of a contract with the Food and Drug Administration in which Dr. Nowlis worked with the officials from the National Institutes of Health and the Federal Bureau of Narcotics.

I think you are, Dr. Nowlis, one of the best qualified people in the Nation to outline for the subcommittee not only the extent and nature of drug use or abuse on the campus, but to present to the Congress the attitudes and current thinking of our educational, professional,

If we can remember this as a background, for instance, some of the figures that were mentioned this morning, one of which was based on a Gallup poll, which was reported to be a sampling of 426 colleges in this country, if you look at that Gallup poll, it consists of 520 interviews.

Chairman DODD. I do not remember a question about the Gallup poll.

Dr. NOWLIS. Well, some of the statistics that were mentioned this morning——

Chairman DODD. I see. Came from——

Dr. NOWLIS. Come from that kind of thing.

Another so-called national poll represents a sampling of 100 students, a probability sampling, from 12 institutions, and 12 institutions are a very small sample of the 2,567 or whatever the current figure is—it changes almost month to month—of institutions of higher education.

I think the one other thing that I would like to point out is that because some of us—and I think there are an increasing number of us—as we learn about and become more sophisticated about the whole problem of drugs, feel very strongly that the whole problem has underlying it a number of social issues, and because of controversy over these social issues it is extremely difficult to deal with drug as drug.

For instance, there are many young people in our colleges who do not use drugs, who do not intend to use drugs, who do not approve of drug use, who still defend the right of other young people to use drugs. In other words, they are bringing in many other social problems, and it is very difficult to get them to talk about drugs, what drugs are, how they act, and the dangers in every drug, and I would remind you that even aspirin is a dangerous drug.

Every drug, and I am talking now about alcohol, about nicotine, caffein, about medical drugs, all kinds of drugs, are potentially dangerous drugs, and I think this is the message that we must get to our young people.

Chairman DODD. You are such an intereseting witness I hesitate to tell you that we are told that we cannot sit after approximately 11:30. I am anxious to hear all you want to say, to pack a little more in in the remaining minutes.

Dr. NOWLIS. From my statement, perhaps, I can in a very short time get in a little bit more.

Chairman DODD. If you want to come back later, that is all right. But I would like to hear everything you can get in at this time.

Dr. NOWLIS. All right.

I feel that the Drug Abuse Control Amendments of 1965 represented a real step forward in their emphasis on the control of manufacture and distribution and their provision for a combined enforcement, education, and research bureau because, as Dr. Goddard has already stated, we do need the three-pronged effort.

On the basis of those amendments and its thriving infancy, the Bureau of Drug Abuse Control should continue to grow in strength and effectiveness. I feel very strongly the basic drug problem at the user level is a health and education problem and not primarily one of law enforcement. To put criminal sanctions on the user in order to

obviate the necessity for proving intent to sell and to force cooperation with the police is a serious infringement on the rights of the individual. It is police power which can be used to persecute, to gain vengeance, to gain political advantage, to silence opposition. The claim that criminal sanctions are a deterrent encounters much contrary evidence, as in the current increase in marihuana use. Marihuana arrests in California alone were 16,000 in the first 6 months of 1967, compared to 7,500 in the same period in 1966. The large majority of these arrests were for possession.

It must be obvious that I recommend drastic changes in the laws pertaining to marihuana. I feel strongly that all criminal sanctions for possession should be removed. The assumptions on which the laws were based have one by one been proved incorrect. They are not enforceable in the sense that any large portion of users can be arrested. There is little worse than a bad law which is widely ignored. I would think that our enforcement agencies and our courts have far more important concerns than marihuana possession. I am, however, against legalizing marihuana at this time, and endorse heartily the recommendation of the President's Commission of Crime and the Administration of Justice that the Government support, stimulate, and if necessary, do the research that is long overdue.

If you have time for questions I will be glad to answer them, and if you would like me to come back, I would be glad to come back.

Chairman DODD. I have a couple of questions I want to ask. I do not know how many Senator Kennedy will have. We will ask what we can.

First, is it possible for you to give us an estimate on the number of marihuana users; and, secondly, on the number of LSD users among the Nation's six and a half million college students?

Dr. NOWLIS. I have in my statement a very qualified estimate.

Chairman DODD. I noticed that.

Dr. NOWLIS. And this is based on a very inadequate national sampling. If we take the data that we have available, and recognize that it is not good data, I think we can state, taking the lowest figures, that there are at least 600,000 college students——

Chairman DODD. How many?

Dr. NOWLIS. 600,000 college students in this country using marihuana.

Now, some people would place that much higher and, as I say, I do not think the national polls that we have are adequate, but this would certainly be a minimum.

Chairman DODD. What would be the maximum, what would be the upper limit?

Dr. NOWLIS. I could not in all conscience answer that.

Chairman DODD. Why do you take the minimum?

Dr. NOWLIS. Because that is based on the only figures I have available, which I judge to be minimal figures. I have no figures for maximum.

Chairman DODD. I see.

Dr. NOWLIS. But I would like also to point out that if you think that the use of marihuana is purely a phenomenon of the college students, I think you are making a very great mistake.

Chairman DODD. I do not think that, and I do not think the members of the committee do.

Dr. NOWLIS. Pardon?

Chairman DODD. I do not think you should describe yourself that way, with the older generation.

Dr. NOWLIS. Oh, sir, I am a grandmother. I think that labels me, and I cannot get out of it no matter what.

Then, I think we turn to a second group of drug users, and those are the occasional users, who I think are using drugs primarily as an escape from boredom. I would like to come back to this a little later because I think when we talk about reasons, that we may have a little better understanding of what is going on.

Chairman DODD. Well, for example, we are told that some students use amphetamines so they can stay awake to prepare for an examination.

Dr. NOWLIS. We had student panels at some of our meetings and I have had them say, "You do not seem to realize if I walk into a group and say, 'Boy, I have got an exam tomorrow and I am going to be up all night,' I can almost predict 100 percent that somebody will reach in his pocket and say, 'Want a bennie?'." And strictly this, under the contemplated new legislation, if someone gives it to him, will be a misdemeanor.

But to get back to the casual or the occasional user, I think particularly in this group the social factors are very important and we make a mistake if we read more into it than the usual reasons for which people use alcohol, go to cocktail parties.

Now, alcohol is legal; marihuana is not. And I think a lot of these young people feel in their own minds—whether they are right or wrong—that the casual use of small amounts of marihuana is probably less dangerous than the use of alcohol.

Now, whether this is right or wrong I am not judging, but I think we have to accept what they feel as a beginning point, not as the answer.

Chairman DODD. Well, what do you feel?

Dr. NOWLIS. I am very uneasy about marihuana, even though with the possible exception of alcohol it is the most widely used drug throughout the ages and throughout the world. I think we probably know less about the effects of long-term very low dosage use than we do of any other drug. And, I really am more interested in the total impact on the student, with the relationship of the student to the law, than I am with what I see predominantly as minor drug use. I think this is one of the most serious problems we face.

Chairman DODD. Would you favor a reduction in the penalty?

Dr. NOWLIS. Definitely. This involves both my own personal social philosophy and my great concern for what seems to me the building up of a disrespect for law. To put criminal penalties on a law which even the President's Crime Commission has suggested may need looking at and to have the minority report of the President's Crime Commission suggest very strongly that we need to relook at the whole problem in this area. It is almost impossible in a confrontation with students to justify the fact that in many States, the penalties for the possession of five marihuana cigarettes are greater than those for second degree murder and that in many other States there are mandatory sentences with no opportunity for parole. This does not hold for what most of us consider crimes against society. It is this kind of

thing and its impact on the young person's respect for law that I think are far more important.

Chairman DODD. As you may know, there are bills pending before Congress now which propose to make unauthorized possession of LSD and other controlled drugs a misdemeanor.

Dr. NOWLIS. Oh, I think if this were passed it would be absolutely tragic.

Chairman DODD. You do?

Dr. NOWLIS. For one thing, I think that we have not quite been fair in the mass media and in most of the discourses that I have heard on the subject of penalties against LSD and other dangerous drugs.

The real drug problem in this country is not a very small minority of students who are misusing drugs. The real problem is a total society which is misusing drugs. I do not think many people realize that if this legislation goes through, it will have the effect of labeling as criminals a huge proportion of our society.

Now, let me give you an example. I was in Los Angeles last weekend. My plans changed and I had to fly overnight in order to make a 9 o'clock commitment in New York City. Now, when I am on a trip like that and know I am going to have to fly overnight I usually take one Seconal, prescribed by my physician. I had no intention of flying overnight. I do not carry these regularly. But I would have preferred to have one Seconal flying across the country between 11 p.m. and 6 a.m. If I had asked someone if he had a Seconal for me and he had given it to me, he would have been guilty of a felony and I would have been guilty of a misdemeanor.

Now, I think we make a great mistake when the only thing we think about is the number who are put in jail. I think we need to think carefully about merely labeling, whether they ever get caught or not, large portions of our population as guilty of misdemeanors or felonies. If you do this enough, you produce a disrespect for all laws because in a case like this, they do not really think it is that important a law, they do not really think it applies to them. But you run the risk of alienating large portions of the population. This is particularly true of the college student, and heavens knows, there is enough alienation now.

Chairman DODD. Well, do you think that as an expert—you certainly are an expert on this subject, certainly on the subject of the drug abuse problem—you would say that the consensus of scientific opinion in this country would support the proposals to increase drug penalties?

Dr. NOWLIS. The consensus of scientific opinion—do you know of any large group where you can get consensus?

One of the things we must realize is that just because one has doctor after his name, in this day of great specialization, he does not necessarily have any extra wisdom about all areas. I think that those people who know and understand drugs and know and understand young people would tend to agree with me. A large body of psychiatrists, a large body of psychopharmacologists——

Chairman DODD. Maybe I made the question too broad. That is really what I meant. Those researchers and scientists in your field.

Dr. NOWLIS. Yes, but I think it is important because there are many scientists not in the field who are expressing opinions and really if it

is not in your areas of expertise, it is more an expression of your personal opinion, your lay opinion, than it is of expertise.

Chairman DODD. This is not limited, I might say, to the field of drug abuse, is it?

Dr. NOWLIS. That is right. That is right. I think one of the great defaults of the scientific community is not to make it clear when they are speaking as scientists and as experts in a given area and when they are merely reflecting their lay personal opinion.

Chairman DODD. Well, what do you think about the academic community? Do you think it would support further penalties or not?

Dr. NOWLIS. I think we need to define support. I think the academic community is committed to supporting the law of the land, although it gets very, very, very difficult.

Chairman DODD. Well, I know. I am using words as I think most people use them. Would they approve of it?

Dr. NOWLIS. I think—again, you cannot speak for the whole academic community because we have all kinds of colleges.

Chairman DODD. Well, I do not expect you to, but you are in the field and you know a great many educators. What is their judgment?

Dr. NOWLIS. I think the majority of them who have studied the problem or have faced the problem would regret very much further penalties. I think that they have felt unanimously that the approach of the Drug Abuse Control Amendments of 1965 were a great step forward and gave us the framework within which we could work at an educational level, at a counseling level, even at an academic level, that we cannot do under these other penalties.

Chairman DODD. Now, you have worked with a great many law enforcement authorities across the country. Do you think they would agree with your position?

Dr. NOWLIS. No. I can state with great firmness that they do not agree. I have spent many hundreds of hours in dialogue with these people. They are honest people. They are sincere people. They believe in what they are doing and the place at which we differ is at a basic philosophy of social control.

Chairman DODD. Do you think the law enforcement position has any validity at all for increasing the penalties or preserving strong punishment in the case of marihuana?

Dr. NOWLIS. Well, one of the points on which we basically differ is the effect of strong penalties as a deterrent. I think if we look back on our social history, we can see that more often than not, it has not served, at least to the extent that they believe, as a deterrent. Again I have to mention marihuana which at a Federal level has stiff penalties and in many more States, as I have already mentioned, has even stiffer penalties. In the face of this, we see a rapid increase in use.

Chairman DODD. I get the impression that you agree that campus drug users are not what I would call criminal types.

Dr. NOWLIS. I think on a few large campuses in urban areas you may find people who become students or take advantage of being students for what I would consider criminal purposes.

Chairman DODD. I am speaking of the general group.

Dr. NOWLIS. I feel very strongly that unless one defines criminal in terms of the way in which you set up the law, in terms of the concept of criminal, that the overwhelming majority of them are not. If there

Mr. GIORDANO. A somewhat new and significant feature of the traffic is the appearance of increasing amounts of hashish. This is a very potent form of marihuana, and in the past was seldom available in this country. Today, however, we are making many hashish cases in some parts of the country. The extent of the hashish trade is not yet determined, but it is unquestionably growing. As more people use marihuana, the demand for the stronger substances will increase.

As I previously mentioned, most of the increases in marihuana abuse have been among young people, principally dropouts from work or school. By and large, these people come from middle- and upper-income families living in the suburbs, and I think we must realistically look at the problem in terms of several hundred thousand young marihuana users. But, in spite of these increases, I think it necessary to keep the problem in proper prospective. The best reports we have show that only a small percentage of our young people are currently abusing marihuana. A Gallup poll conducted in the fall of 1967 on some 426 college campuses found that only 6 percent of the students had ever used marihuana and 1 percent had used LSD. Many of these cases apparently involved mere experimentation and the number of chronic users is much smaller. The other study we consider authoritative was done by the New York County Medical Society in early 1966. It found a similar incidence of drug abuse in the colleges, gradually tapering off down through the high school levels.

In searching for the causes of this problem, I think it is clear that advocates who encourage others to experiment with the drugs are a major factor.

Chairman DODD. Who are these people? Can you define these people more accurately?

Mr. GIORDANO. Yes. I think I can, Mr. Chairman. I think this involves individuals such as Dr. Timothy Leary, Mr. Ginsburg, the poet, Dr. Fiedler from Buffalo, who has experimented, and, unfortunately, other people, professionals and educators, who should know better. They are encouraging young people by indicating there is nothing really wrong with finding out for yourself what this is all about. It reminds me a little bit of somebody pushing you into a fight with someone else and when you are lying on the ground and turn around to find your friend is long gone. I think that this is what we are finding today with a lot of people who are saying there is nothing wrong with marihuana, or that marihuana is not as bad as alcohol, or this drug is no more than that drug, and if you do not believe it, try it for yourself. A lot of these people who do not use it themselves are busy equating marihuana with alcohol or with something else. I am positive this has caused an upsurge in the use of marihuana. I think you can trace this upsurge in the use of marihuana to the time that Dr. Leary began speaking out on LSD and marihuana. Very soon there was another group; then the next thing we had the LeMar organization, which is a group dedicated to legalizing marihuana, and we had other organizations spreading around the country. As these people became more articulate, and as the newspapers, magazines, television picked this up, we had a concidental rise in the use of marihuana traffic.

Chairman DODD. Very well. Go right ahead.

Mr. GIORDANO. These persons have sought to associate marihuana abuse with all manner of personal and social virtues. Moreover, their

efforts have been aimed primarily at youth, and particularly at college students, who are, by and large, drawn from the middle-class suburbs. Therefore, they are not only responsible for increasing the problem, but also for helping to create it among socioeconomic groups where it did not formerly exist.

We are, in a sense, facing a new type of opposition. The people who are doing the "advertising" for marihuana and LSD peddlers usually are not criminals. They are often well educated and intelligent. They are talented in debate and in deception. All too often, their only vocal opposition is from police officers who do not possess their expertise in debate, or appeal to youth. However, we are undertaking to combat this propaganda with a suitable educational approach. We have participated in the production of an excellent film designed for young people. We have produced new educational booklets and speeches for distribution, and we are beginning a program to enlist the aid of major national organizations. Additionally, four of our most capable agents have been assigned to public educational work on a full-time basis.

The Bureau of Narcotics is seriously concerned over the increases in marihuana abuse on the Nation's campuses. Our principal mission is to concentrate our enforcement efforts on the major national and international traffickers and sources of supply. In this way, we are able to operate most effectively in reducing supplies and curtailing distribution to users. Since few major traffickers are actually operating on college campuses or in high schools, we are seldom involved at that level. However, we always try to assist local police agencies and school administrators in dealing with their problems. While we have read editorials in university papers opposing "snoopers" who come on the campuses to investigate law violators, we have found that most school authorities will not knowingly tolerate a drug problem and offer their full cooperation to our agents.

The current Federal marihuana laws provide penalties for the unlawful sale and possession of marihuana. A person found guilty of the illegal sale or transfer of marihuana may be sentenced to not less than 5 nor more than 20 years' imprisonment for the first offense. A person found guilty of illegal possession of marihuana may be sentenced to a term of not less than 2 nor more than 10 years for the first offense, or he may receive a suspended sentence and probation.

There has been some criticism of this penalty structure, particularly with regard to the penalty for possession. Some persons feel that this sentence is unduly harsh as applied to mere users of marihuana or youthful experimenters. However, this is not the manner in which the law is applied. Our thrust is aimed at the trafficking element and our conviction statistics bear this out. In 1967 about 60 percent of all our marihuana defendants had previous criminal records, usually for serious crimes. Their average age was 28 years. Nearly 70 percent of all of the cases were for sales violations. The remaining violations were for possession, but this does not mean that the individuals involved were not traffickers. We frequently apprehend violators in possession of large quantities of marihuana, clearly destined for the market. If there were no possession penalties, these persons would escape justice.

As you know, the functions of drug law enforcement are presently split between the Bureau of Narcotics in the Treasury Department and

the Bureau of Drug Abuse Control in the Department of Health, Education, and Welfare. At this point, I would like to deal briefly with the President's plan for the reorganization of these two agencies. Presently, the Bureau of Narcotics has jurisdiction over the narcotic drugs and marihuana, while the Bureau of Drug Abuse Control has jurisdiction over the barbiturates, amphetamines, tranquilizers, and hallucinogenic drugs. Under the President's plan, both agencies will be combined in a single agency under the Justice Department, to be known as the Bureau of Narcotics and Dangerous Drugs. This plan will have a great impact on the enforcement of the Nation's drug laws. It will combine the talents and efforts of both agencies in a unified attack on the traffic.

There are many important benefits to the Nation in this plan. In the first place, we must recognize the practical need for it. Patterns of drug abuse frequently involve the use of several drugs. We find that marihuana and LSD are often used by the same persons. The link between marihuana and heroin has been firmly established, but many authorities also agree that using marihuana frequently leads to LSD abuse. Even heroin addicts, in the early stages, use other drugs, such as barbiturates, tranquilizers, or amphetamines. Many traffickers, therefore, deal in a range of drugs. Some, of course, are exclusive dealers, such as the high-level heroin trafficker. Nevertheless, it is clear that patterns in the drug traffic often do not respect the division which we have made in our drug laws and enforcement agencies.

Another important area is the benefit we will gain by unifying our educational efforts. We will be able to undertake larger, more effective programs. It is necessary to present the whole spectrum of drug abuse to young people in the way that they find it in the streets. In short, our educational programs must reflect the broad perspective which only a unified approach can develop.

There are two final points with which I would like to deal.

Chairman DODD. Before you go to those final points, I want to interrupt you. Let me make an observation, first. I think this subcommittee is faced with a confusing situation. We are going to have more witnesses, and you are certainly one of the outstanding experts. Yesterday, Dr. Goddard was here, and he is an outstanding expert in his field. I asked him yesterday if he was against punishment for the possession of heroin and he said he was. He did not think the possessor of heroin should be punished.

Mr. GIORDANO. Should not be?

Chairman DODD. Should not be. I think his attitude is that he is a sick person who needs help rather than punishment. Dr. Nowlis, who was here this morning, feels generally of the same opinion. Now, you have a contrary view.

Mr. GIORDANO. Yes, I do.

Chairman DODD. Will you tell us a little more clearly why?

MR. GIORDANO. Yes, I will, Mr. Chairman, and I think there has to be a little bit of explanation. For the user of heroin or the user of marihuana, there is no State violation, there is no Federal violation. But there are penalties for possession. As I indicated earlier, I am in favor of a possession penalty for heroin. I am in favor of a possession penalty for marihuana. We have many, many cases involving an indi-

vidual in possession of quantities of marihuana. If we had no possession penalty, this individual who is a trafficker would go free.

I believe, Mr. Chairman, the last time I appeared before you was in connection with the Narcotic Addict Rehabilitation Act of 1966, which as I recall, you sponsored on the Senate side.

Chairman DODD. Yes.

Mr. GIORDANO. I supported that. I support treatment for addicts but, at the same time, we have to have a possession penalty for heroin and narcotics. We have to have a possession penalty for marihuana or we are not going to be able to control the traffickers and the sources.

Chairman DODD. I assume you include LSD and other similar dangerous drugs?

Mr. GIORDANO. I include LSD and I include dangerous drugs.

I think the congressional studies alone that have been made, starting with Congressman Boggs' committee and your study over the years in this area, have indicated that this dangerous drug problem is not going away. At the time of the drug amendments—I believe this was 1965—there was a lot of discussion that maybe there should be just a misdemeanor for the seller and no penalty for possession.

Well, these amendments have not improved the situation. At least California figures so indicate. The public does not want drugs used and abused. They want to keep them away from people, but you cannot reduce the availability without a penalty for someone who is in possession of large quantities.

Now to get back to the administration's bill—and just recently on this—it is my understanding that the bill that is before Congress is aimed at the trafficker and the large distributors.

Chairman DODD. Yes. I think that is accurate. We will be introducing our own subcommittee bill.

Mr. GIORDANO. That will be on LSD and dangerous drugs?

Chairman DODD. Yes.

Mr. GIORDANO. Mr. Chairman, there are two final points with which I would like to deal. They both involve legislation which will be proposed to the Congress in the near future. First is the matter of synthetic tetrahydrocannabinol, which is not covered by any of the existing laws. This is a new compound which has only recently been synthesized. It has not been found in the illicit traffic and, in fact, only a few scientists can make it, utilizing very sophisticated equipment. Nevertheless, it is a powerful and dangerous hallucinogenic drug which should be controlled now, in advance of potential abuse problems. The administration will soon offer an amendment to the Marihuana Tax Act for the purpose of including the substance within present controls.

The President has already offered new legislation to rectify the presently inadequate controls over LSD and other dangerous drugs. Under his proposal, unlawful sale or manufacture of these drugs will be made a felony and possession will be made a misdemeanor. At present, unlawful sale is usually a misdemeanor, and possession may carry no penalty at all. As a consequence, the sentences which have been meted out to traffickers and manufacturers are of no deterrent value. They have taken none of the incentives out of the business and do not even take the violators out of the business for long. Much of the effort of a fine team of investigators, therefore, has served little purpose. This piece of legislation is, in my opinion, of utmost importance.

In conclusion, I think that the existing laws, with the measures which are now being proposed, deserve the support of those who are concerned with effective law enforcement. It is a plan of positive action. Other changes may be needed later as we gain experience and knowledge from the consolidation of the whole drug problem in the new agency. But, at this time, I do not feel that any further changes in present laws are required.

Thank you, Mr. Chairman.

Chairman DODD. Thank you very much, Commissioner. We heard testimony yesterday and today from witnesses who seem to be very interested in comparing the use of alcohol with the use of marihuana. How do you equate the use of marihuana with the use of alcohol?

Mr. GIORDANO. Well, I think this is a most unfortunate comparison because, as far as I am concerned, they are totally different substances, pharmacologically. I think that one of the things that even the people who try to make a comparison will acknowledge is that a person drinking alcohol does not necessarily drink it to get intoxicated, but, for the majority of the individuals using marihuana, this is precisely the purpose: to become intoxicated. I would like to submit for the record here a report which I am sure the committee would be interested in reviewing. It is "Drug Dependence: Its Significance and Characteristics," prepared by Dr. Eddy, Dr. Halbach, Dr. Isbell, and Dr. Seevers. They were connected with the World Health Organization Expert Committee. Dr. Eddy and Dr. Isbell were on the Expert Committee at the time of the drafting of the Single Convention on Narcotic Drugs, 1961, when it was determined that marihuana was dangerous enough to be completely controlled by international controls and, in fact, even placed in a special category and, I think they explain here the effects of marihuana better than I could:

> The harm to society derived from abuse of cannabis rests in the economic consequences of the impairment of the individual's social functions and his enhanced proneness to social and antisocial behavior.

The report talks about the psychotic episodes that can be developed by cannabis. It talks about the distortion of space and time, and impairment of judgment and memory, distortion of emotional responsibility, irritability, and confusion.

Mr. GIORDANO. Also, Mr. Chairman, it describes drug dependence of the amphetamine type and barbiturate type.

Chairman DODD. Let me ask you a question. Do you think the penalties for possession of marihuana are reasonable?

Mr. GIORDANO. Yes, I do.

Chairman DODD. They are quite severe, are they not?

Mr. GIORDANO. They are severe, but marihuana has no medical use at this time. It has no commercial use. It has absolutely no use whatsoever. It is a dangerous drug; and in my opinion—and I am talking now of the Federal penalties—I do not think they are overly harsh. I may point out that some of the witnesses forget that, under the Federal statute, up to 18 years old, an individual is treated as a juvenile delinquent and there is no criminal record that would interfere with his future, so I think this must be taken into consideration.

Chairman DODD. What bothers me, and I expect other members of the subcommittee and staff, is that it is a matter of penalty. If you feel, as you say you do, that the penalty for possession of marihuana is not too severe, how would you feel about the penalty for possession of LSD, which is a much more dangerous drug?

Mr. GIORDANO. If we are talking about the marihuana that is available in the United States, most of it comes from Mexico. I think we have to consider that this is a very diluted substance as compared to hashish. It can be harvested in such a way that just the flowering tops are used and it is a much stronger substance. Or the active ingredient tetrahydrocannabinol can be produced, which is just as dangerous as LSD.

Chairman DODD. Well, I use the term LSD as it is commonly used.

Mr. GIORDANO. The question is why not stronger penalties for LSD. First of all, we have no possession penalties. I think the administration's bill is a step forward at least.

Chairman DODD. I do not think you get my point. Accepting your reasoning that marihuana is a dangerous drug and that penalties are not too severe for possession and sale, do you grade the danger of drugs with respect to the penalties imposed? If LSD is a much more dangerous drug, should not there be a much more severe penalty attached to practicing in it or possession of it?

Mr. GIORDANO. Well, I will have to answer it this way: I think myself that the penalties for LSD should be equivalent to marihuana, because the active ingredient in marihuana is somewhat less potent than LSD. As I indicated, the proposed penalties are a move up, a sort of a compromise from nothing to midway in the sentencing structure.

Chairman DODD. I wanted to get your view on the record. Can you tell us, in your judgment, what are the main reasons for the apparently increasing rate of marihuana use throughout the country?

Mr. GIORDANO. Well, I think again the main reason, as I indicated, is the growing permissive attitude.

Chairman DODD. You gave us some reason but I thought you might want to add to that.

Mr. GIORDANO. No. I think I pretty well covered it. I feel that the main reason for the increase is because of the views expressed by certain influential individuals as to the fact that marihuana is not a very dangerous drug and that every person should determine for himself whether he should use it.

Chairman DODD. You can see what a problem we have. Here is a man like Dr. Goddard who just takes a completely opposite view, and Dr. Nowlis, and I am sure there are others. Do you consider these two critics qualified to make judgments on this subject?

Mr. GIORDANO. Well, I certainly feel that they are qualified but, just like anything else, I do not necessarily agree with their conclusions.

Chairman DODD. Well, I did not mean to ask a question which would lead you to give the appearance of criticism. That was not my intention. But you are an expert, they are experts, and you come to entirely conflicting opinions. It is awfully hard for us to know what view to take.

Mr. GIORDANO. Well, all I can do, Mr. Chairman, is give you my views and my experience and what I believe is needed, and try to answer the questions to the best of my ability.

Chairman DODD. Do not misunderstand me. I highly value your opinion. As you know, we have worked with you and consider you an outstanding expert.

Is there any credible evidence that the Federal marihuana laws should be revised, that you know of; either be made more severe or less severe?

Mr. GIORDANO. No. I will say this, which is in the whole range of drug laws. The President in his message mentioned the reorganization and increasing the penalties on LSD and other drugs. He has also referred this whole problem to the National Commission on Reform of the Federal Criminal Laws which I believe is chaired by Governor Brown, and so this whole area is going to be evaluated again. In fact, as I think the chairman knows, these laws are constantly being reviewed, penalties and everything, and committees have been taking a second look every few years. Our last look at the marihuana law was in connection with your bill, Mr. Chairman, at which time the parole provision was restored for violation of the Marihuana Tax Act. Prior to 1966, for a seller or a second or a third offender, parole was not available. So, there was a modification at that time.

Chairman DODD. I have observed, and I am sure you have, too, that the State laws with respect to marihuana are being challenged in a number of instances in a way which I do not recall in the past. I am told that this is true in some 30 States.

Mr. GIORDANO. I think the main reason they are being challenged, although the defense attorneys are making other points in connection with it, I think the main reason for the challenge is because marihuana under the State laws is usually in the Uniform Narcotics Act and marihuana is defined as a "narcotic." It is not so under the Federal law.

Now, under the State laws, it is being challenged on the basis that it should not be classified as a narcotic. This is actually a legal definition, not necessarily a medical one, but they are still challenging it. I think the committee should have available a ruling in connection with a case in Boston involving two individuals named Leis and Weiss. The law was challenged as being unconstitutional. It was challenged on the fact that marihuana was called a narcotic. Judge Tauro gave his ruling, in which he went through all the challenges, and dismissed their motions. In this case, experts on both sides testified.

Chairman DODD. Getting back to the question of how severe the penalty should be for use and sale of marihuana, we have heard testimony here that, despite the severe penalties attached by law, there is an ever-increasing amount of abuse of this drug. That would suggest that the penalty is not very much of a deterrent. What about that?

Mr. GIORDANO. Well, I attempted to explain why I felt there was an increase and I suppose I should have added that this is in spite of the penalties. I think that if we did not have the penalties the problem would be 10 times worse than it is today.

Chairman DODD. And, do you think that if we made the penalty stronger it would be 10 times less?

Mr. GIORDANO. No. I am not saying that.

Chairman DODD. No, I am not saying you are saying it.

Mr. GIORDANO. No. What I said is this: that we have had this change. I think that the proper story will finally reach the young people and I am saying we should hold the line with what we now have.

Chairman DODD. You talked about, and others have talked about the traffic over the Mexican border. I think a great amount of this marihuana comes from there, does it not?

Mr. GIORDANO. Yes, sir.

Chairman DODD. I think you said that the border seizures grew from 6,000 pounds to something like 25,000 pounds in the course of 2 or 3 years. Does that indicate that there is a greater increase in the traffic or better enforcement of the laws?

Mr. GIORDANO. I think it is a combination, Mr. Chairman. There has been good enforcement and marihuana is available in Mexico. It is not very difficult to grow. The Mexican officials are attempting to eradicate it, but I think they are beset with problems of insufficient manpower.

We have increased our effort in working across the border. We have made large seizures there. The Bureau of Customs has increased its efforts. So, I think it is a combination of both.

Chairman DODD. I notice that you said that you are principally concerned with the bigtime operator, not the occasional user or the casual user. I am right about my understanding, am I not?

Mr. GIORDANO. Yes, sir.

Chairman DODD. Yet, the penalties are the same for the casual possessor or trafficker as they are for the bigtime operator. Do you think there is any sense or any validity in the idea that there might be a difference of penalty?

Mr. GIORDANO. I think, as I explained earlier, that our direction here was aimed at the trafficker and the sources of supply and not aimed at the user. None of the cases we made were cases made against the user. But I must say here again, this is something that will certainly be under study.

Chairman DODD. Do you think the possession laws are a deterrent to marihuana traffic and abuse?

Mr. GIORDANO. I think they are.

Chairman DODD. Your reason is that, if you did not have it, the traffic and abuse and possession would be much greater.

Mr. GIORDANO. I think the traffic, the possession, and abuse would be greater. Certain individuals recognize that there is a penalty, and I think this is a deterrent to them.

Chairman DODD. Well, this is an old problem of deterrents, of course. I wish you could tell us specifically how this provision of the law has acted as a deterrent when the abuse is on the increase. That is, something more than just your reasoning that it would be greater if there was no penalty. Do you have any more concrete information about that?

Mr. GIORDANO. I said I felt it would be greater if there were no penalty. I think one example of the fact that the penalties are a deterrent is the figures in relation to second and third offenders. At one time in the narcotic traffic, prior to the stronger penalties on narcotics, two-thirds of the violators were second and third and fourth offenders. That has been altered to where today the figure is 85 percent first offenders. So, we have discouraged these people from continuing to engage in the traffic. In the case of marihuana, in 1967, of the marihuana cases that we had, almost 96 percent were first offenders. Some of them have to be caught before they learn a lesson, but they spread the word, and I think this acts as a deterrent.

Chairman DODD. You do considerable work in the educational field in your Bureau, do you not?

Mr. GIORDANO. Yes, we do.

Chairman DODD. Do you think you ought to be doing more of it?

Mr. GIORDANO. We hope to do more. We have been increasing our activity in this, Mr. Chairman. In the past year, I think, as I mentioned, in cooperation with the International Chiefs of Police Association, we developed a film. We have a marihuana booklet that we just recently developed that I think the committee would like to have. And so we have been moving ahead in that area of education.

(The booklet referred to was marked "Exhibit No. 10" and is as follows:)

EXHIBIT No. 10

The Dangers of Marihuana... Facts You Should Know

An Educational Message on Marihuana Abuse and Control

from Henry L. Giordano
U.S. Commissioner of Narcotics

Recently, within the United States, we have witnessed an increasing abuse of marihuana as well as other hallucinogenic or "mind-changing" drugs. Regrettably this trend has been encouraged by a small number of misguided but highly articulate spokesmen, who have attempted either to justify or to excuse the use of such drugs. As a consequence of promotional activities by these spokesmen, many impressionable young persons have been led to experiment with marihuana. It is therefore wise for every citizen to acquaint himself with the basic medical and sociological facts concerning marihuana.

what is Marihuana?

The technical name of the plant from which all marihuana preparations are derived is *cannabis sativa* (L.), sometimes called cannabis indica, Indian hemp, or simply hemp. The cannabis plant is native to large areas of the world and its fibers have been used for the manufacture of twine, rope, bags, clothing, and paper. The sterilized seeds are occasionally used in various feed mixtures and particularly for bird seed. Marihuana has also been used in the treatment of a variety of clinical disorders as an analgesic, a poultice for corns and in other ways. All of these medical uses were found to be either unsound, inefficient, or without predictable effect. Hence, the drug has been removed from the U. S. Pharmacopeia as well as the official drug lists of nearly all other countries. However, legitimate medical

research into marihuana's possible utilization in a range of useful therapeutic functions continues. Such research has never been prohibited by Federal laws.

Under the Federal law, "marihuana" is defined to mean all parts of the cannabis plant except for the stalks and sterilized seeds. All other preparations of the plant, whether of leaves, flowers, resins, or chemical extracts, are various forms of marihuana. The best known of these is hashish, a concentrated preparation of marihuana. In this country, the term "marihuana" usually refers to a preparation of pulverized leaves, resins, flowers, or combination of these, also called "pot," or "grass," for smoking in pipes or homemade cigarettes (called "reefers," "sticks," or "joints"). We now know that marihuana contains a number of potent compounds called tetrahydrocannabinols which affect the mind and body in various ways.

The strength of any given preparation of marihuana depends upon the amount of tetrahydrocannabinol which is contained in it. The strongest preparations, such as hashish, are made in certain areas of the world, particularly India and the Near East. A substantial quantity of hashish finds its way into this country's illicit traffic; however, most marihuana users customarily must settle for more adulterated forms. This is primarily due to state and Federal policing activity plus the general air of social condemnation, all of which results in making it difficult, expensive, and dangerous to acquire and possess marihuana. Thus, American users accept whatever grade of marihuana they can get at whatever price it is offered and whenever it is available.

effects on the Mind & Body

The consumption of marihuana produces a variety of immediate mental and physical effects which become more pronounced with chronic use. The 1965 report on Drug Dependence for the World Health Organization describes the nature of the intoxication as follows:

> "Among the more prominent subjective effects of cannabis . . . are: hilarity . . . carelessness; loquacious euphoria . . . distortion of sensation and perception . . . impairment of judgement and memory; distortion of emotional responsiveness; irritability; and confusion. Other effects, which appear after repeated administration . . . include: lowering of the sensory threshold, especially for optical and acoustical stimuli . . . illusions, and delusions that predispose to antisocial behavior; anxiety and aggressiveness as a possible result of various intellectual and sensory derangements; and sleep disturbances."[1]

The effects of the drug on the nervous system and brain are undoubtedly the most profound and constitute the greatest problem for the user and the persons around him. These include the precipitation of psychotic episodes during which the user becomes mentally unbalanced for varying periods of time. A recent study which described the effect of the most active of the tetrahydrocannabinols (abbreviated as THC) reports the following:

> "It has long been known that marihuana and hashish can cause psychotic reactions, but usually such reactions are ascribed to individual idiosyncrasies rather than being usual or common reactions to the drug. The data in these experiments, however, definitely indicate that the psychotomimetic effects of Δ^1–THC are dependent on dosage and

1. Eddy, N. B.; Halbach, H.; Isbell, H., and Seevers, M. H.: Drug Dependence: Its Significance and Characteristics, Bull. World Health Organ. 32:721, 1965.

> that sufficiently high doses can cause psychotic reactions in almost any individual. Psychotic reactions after smoking marihuana under the usual conditions in the United States appear to be rare but the low incidence of such psychotic breaks may reflect nothing more than the low tetrahydrocannabinol content of most of the marihuana available in the United States."[2]

Those who have studied users of marihuana have found that:

> "Excessive indulgence in cannabis is apt to produce in healthy individuals and more so in susceptible individuals, mental confusion which may lead to delusions with restlessness and disordered movements. Intellectual impairment as well as disorientation may show itself in various ways."[3]

Prior to the studies showing that tetrahydrocannabinols in appropriate concentration cause psychotic reactions, there had been considerable controversy over the connections between marihuana use and criminality.

A recent report of the New York County Medical Society noted that habitual use of hashish is definitely associated with criminality, violence, and insanity.[4]

A sufficient dose of marihuana is capable of producing all of the effects of hashish and even of LSD,[5] which is conceded to be one of the most powerful drugs known to man. To resolve the dispute, it is enough to say that for certain individuals, a small dose, and for all individuals, a large dose of marihuana's active ingredients causes temporary insanity. What each individual does while in a psychotic state will vary with the individual and his circumstances at the time of the psychosis. The important question for society is no longer in what manner marihuana use causes crime, but rather how many crimes would not be committed but for the addition of this drug to the social environment.

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2. Isbell, H.; Jasinski, D.; Gorodetzky, C. W.; Korte, F.; Claussen, V.; Hoage, M.; Sieper, H., and von Spulak, F.: Method of Assay in Human Subjects and Results with Crude Extracts, Purified Tetrahydrocannabinols and Synthetic Compounds, National Academy of Science—National Research Council, Committee on Problems of Drug Dependence, Minutes, p. 4844, 1967.

3. Chopra, I. C., and Chopra, R. N.: The Use of the Cannabis Drug in India, Bull. Narcotics, p. 23, Jan.-Mar., 1957.

4. Report of the Subcommittee on Narcotic Addiction, The Dangerous Drug Problem, New York Med., Vol. 22, No. 9, p. 3, 1966.

5. Louria, D.: *Nightmare Drugs*, p. 32, 1966.

Marihuana vs. Alcohol

Some marihuana users have tried to excuse their indulgence by claiming that it is no worse than consuming alcohol. While alcoholism constitutes a major social problem, surely it is not valid to justify the adoption of a new abuse by trying to show that it is no worse than a presently existing one. The result could only be *added* social damage from a new source. Moreover, marihuana, unlike alcohol, is nearly always consumed by its users for the express purpose of attaining a "high," a disorientating intoxication. Evidence of studies of chronic marihuana users also indicates that a more dangerous psychosis may result.

Another significant difference between alcohol and marihuana which has been given considerable attention is that alcohol more rapidly impairs motor coordination, thus disabling the inebriate. Marihuana intoxication, on the other hand, does not result in such rapid motor incoordination. This difference becomes very important when the marihuana user operates a car, for cannabinol distorts time and space concepts very radically.[6]

6. Maurer, D. W., and Vogel, V. H.: *Narcotics and Narcotic Addiction*, p. 243, 1962.

Marihuana & Addiction

The question regarding the addiction liability of marihuana has been the subject of considerable debate among scientists, and research in the area still continues. Chopra found that, "Repetition of the dose developed into craving for the drug, and gradually there developed in such individuals habitual use and increasing tolerance which led to increase of dosage." However, he pointed out that this was in no way as significant as in the case of morphine-type drugs. Recent studies in England also uncovered a suggestion of tolerance and progressive dosage. Nevertheless, all agree that marihuana does not produce a dependence of the morphine type, and abstention does not result in the classic withdrawal symptoms which invariably accompany abstention from narcotic drugs. The World Health Organization has recently chosen to discontinue the use of the terms "addiction" and "habituation" and substitute the single term "dependence." Thus, one may speak of "marihuana dependence" or "morphine-type dependence" without confusion.

From a medical standpoint, this distinction cannot be overlooked, but it assumes less importance when considering the practical social dangers of the drug. Dr. David P. Ausubel, in his book, *Drug Addiction*, noted that chronic users of marihuana will go to great lengths to insure that they will not be without the drug. Deprivation, he says, may result in "anxiety, restlessness, irritability, or even a state of depression with suicidal fantasies, sometimes self-mutilating actions, or actual suicidal attempts." Other researchers have also observed that, from a psychiatric point of view, marihuana dependence is but little different from narcotic addiction.[7]

Another dangerous aspect of habitual marihuana use is the pattern of graduation to narcotic addiction. Of course, not all persons who use marihuana go on to use heroin, but actual experience leaves little doubt that a large majority of narcotic addicts began their drug-taking with marihuana. Intensive research conducted at the Public Health Service Hospital in Lexington, reported in 1967 by Dr. John C. Ball, disclosed that of 2,213 addicts examined, 70.4 percent had used marihuana prior to their addiction. This sample included addicts from all classes and professions, representing 46 states. Moreover, in those states classified as areas in which marihuana is often available, it was found that of 1,759 addicts, 80 percent had first used marihuana.

As a result of intensive psychiatric evaluation of 80 subjects, Dr. P. A. L. Chapple concluded that the connection between marihuana abuse and heroin addiction could not be accounted for simply on the basis that both drugs are often available from the same illicit source. The evidence is strong that the use of marihuana develops a taste for drug intoxication which, in turn, leads many people to the use of more potent drugs —even heroin.

7. Chapple, P. A. L.: Cannabis, a Toxic and Dangerous Substance—A Study of 80 Takers, Brit. J. of Addiction 61:269, 1966.

Control & Abuse in the United States Today

Marihuana is the subject of worldwide prohibition as expressed in the 1961 Single Convention on Narcotic Drugs. On the advice of the Expert Committee on Dependence-Producing Drugs of the World Health Organization, it was placed in a special category with heroin as being a drug "particularly liable to abuse and to produce ill effects." The United States, which acceded to the Single Convention in the spring of 1967, has controlled marihuana since the passage of the Marihuana Tax Act of 1937. Under this Act, the use of marihuana preparations is confined to bona fide medical research and industrial needs and all other uses are prohibited. A person found guilty of the illegal sale or transfer of marihuana may be sentenced to not less than 5 nor more than 20 years imprisonment for the first offense. A person found guilty of illegal possession of marihuana may be sentenced to a probationary term or not less than 2 nor more than 10 years imprisonment for the first offense.

The efficiency of Federal, state and local law enforcement agencies in coping with the illicit marihuana traffic has succeeded in preventing this abuse from becoming the major problem it is in some other countries.

This success has also, unfortunately, resulted in concealing from many observers the full dangers involved. The low potency of the marihuana which is available and the arrest of those who traffic in it have resulted in partially disguising its consumption as a causative factor in crime and psychosis; a connection which is more apparent in those countries where use has been widespread and has been effectively deterred.

In contrast to the social and scientific realities, the prophets of the drug experience make fantastic claims for the virtues of marihuana. They would have it regarded as a "benevolent herb" which may lead its users to profound philosophic truths, greater social intimacy and keener artistic expression. These claims are often accompanied by otherwise valid criticisms of society's ills and hypocrisies. Such observations are designed to enlist the individual's sympathies and thus to convince him that the claims are as justified as the criticisms. However, it takes little philosophic sophistication to recognize that such virtues do not reside in drugs but in men. They are the products of conscious labor, and cannot be attained on the peddler's prescription. At best, drugs provide only mechanisms to escape from problems and hence to escape from the character development which would ultimately permit their solution. The spread of marihuana abuse can only add to the difficulties which already plague our society, not solve them.

The Committee on Alcoholism and Drug Dependence of the Council on Mental Health of the American Medical Association in a recent article on dependence on cannabis stated: "Only an aroused and concerned public can create, mobilize and implement resources to deal adequately with as serious a problem as drug dependence in all its forms. . . . Frank and forceful public discussions, focusing on the futility and inherent dangers in experimentation with drugs such as marihuana and the consequences of any subsequent psychological dependence, can act as deterrents," and finally: "Marihuana is centuries old, but it represents a constant danger. The responsibilities of the citizen, including the physician, are clearly defined. The time to begin is now."[8]

8. J.A.M.A. 201: 368, August 7, 1967.

(The following documents, marked "Exhibits Nos. 11 through 20," were offered by Mr. Giordano as appendixes to his statement:)

EXHIBIT No. 11

Marihuana violators reported to the U.S. attorneys by the U.S. Bureau of Narcotics during calendar year 1966

POSSESSIONS OFFENDERS

Total violators reported	114
Age:	
Under 18	-----
18 years old	4
19 years old	3
20 years old	7
21 to 25 years old	35
26 to 30 years old	28
Over 30 years old	37
Average age (years)	28.9
Claimed occupation or avocation:	
Skilled workers	38
Clerical-administrative	18
Unskilled laborers	15
Salesmen	11
Job Corps	6
Entertainer	7
Student	8
Military	3
Other (includes unknown)	8
Quantity of marihuana involved per case:	
Average (pounds)	20
Median (ounces)	12
Prior criminal record:	
Yes (54.4 percent)	62
No	52
Prosecution action:	
Pending	42
Dispositions:	
Dismissed	28
Acquitted	4
Convicted	40
Sentenced under FYCA[1]	9
Received suspended sentence and/or probation	17
Reduced from offense calling for mandatory penalty	14
Sentence to be served in prison	14
90 days	1
2 years	4
3 years	2
5 years	6
10 years	1
Average sentence of imprisonment (months)	46.5

[1] Federal Youth Corrections Act prescribes an indeterminate term.

PROFILE OF POSSESSOR

28.9 years of age; resides in a large urban area; claims to be a skilled or administrative worker; is not a student (only 2 students were sentenced to imprisonment); possesses an average of 20 pounds, and a median of 12 ounces of marihuana; receives a prison sentence of 47 months; has a 64% chance of offense being reduced to one not calling for mandatory penalty; has 43% chance of receiving a suspended sentence and/or probation; has a 65% chance of receiving sentence not requiring imprisonment; has only a 15% chance of receiving a 5 year or more minimum mandatory sentence; and is eligible for release on parole.

EXHIBIT NO. 31

COMMISSION ON NARCOTIC DRUGS

Twenty-second session
24 January 1968

THE ABUSE OF CANNABIS AND THE
CONTINUING NEED FOR STRICT CONTROL

Canada, France, Ghana, Jamaica, Japan, Mexico, United Arab Republic, United States of America.

The Commission on Narcotic Drugs recommends the following draft resolution for adoption by the Economic and Social Council:

The Economic and Social Council,

Recalling that the Single Convention on Narcotic Drugs, 1961, obliges Parties to place cannabis under strict controls to prevent its abuse;

Considering that the problem of the traffic and abuse of cannabis remains serious in many areas where it has long been encountered;

Observing that the traffic and abuse of cannabis appears to be spreading to areas where it has not heretofore been encountered;

Noting that considerable publicity has been given to unauthoritative statements minimizing the harmful effects of cannabis and advocating that its use be permitted for non-medical purposes;

Recognizing that cannabis is known inter alia to distort perception of time and space, modify mood and impair judgment, which may result in unpredictable behaviour, violence and adverse effects on health, and that it may be associated with the abuse of other drugs such as LSD, stimulants and heroin;

Convinced that inefficient controls over, apathy towards and lack of public awareness of the dangers of cannabis and its continued abuse contribute to drug dependence, create law enforcement problems, and injure national health, safety and welfare;

1. Recommends that all countries concerned increase their efforts to eradicate the abuse and illicit traffic in cannabis;

2. Further recommends that governments should promote research and advance additional medical and sociological information regarding cannabis, and effectively deal with publicity which advocates legalization or tolerance of the non-medical use of cannabis as a harmless drug.

Chairman DODD. This has been a very interesting testimony, Mr. Giordano, and I am sure all members of the committee will find it informative and helpful. We are grateful to you for coming out so early this morning.

Mr. GIORDANO. Thank you very much, Mr. Chairman. It is always a pleasure to appear before you.

Chairman DODD. Mr. John Steinbeck?

STATEMENT OF JOHN STEINBECK IV, AUTHOR OF ARTICLE ALLEGING MARIHUANA USE AMONG U.S. SERVICE PERSONNEL IN VIETNAM

Chairman DODD. We're glad to have you here this morning. I look forward to hearing your testimony.

You returned in June of 1967, was it not, from Vietnam?

Mr. STEINBECK. Correct.

Chairman DODD. You were in the Army.

Mr. STEINBECK. Yes.

Chairman DODD. You worked then as a newspaperman and broadcast announcer for the Armed Forces radio and TV network. And, after your return in June, you worked as a writer in the Office of the Army's Chief of Information in Washington.

Mr. STEINBECK. Yes.

Chairman DODD. I think I should point out that we asked you to come because your views attracted considerable attention and they are respected by many people, I am sure, by those who are seriously questioning the laws on marihuana and their application. You have written a widely quoted article in the Washingtonian magazine about the use of marihuana by the Armed Forces abroad which certainly adds another dimension to the growing use of marihuana. So, we felt that it would be important to the committee and the Congress to invite you to come and we are pleased that you did.

I said yesterday and I want to reiterate today: this is an investigative hearing. We are trying to get the best information we can. It is not an adversary proceeding. I am not trying to get into an argument with you or Mr. Giordano or anybody else. We want to get the best information we can.

Mr. STEINBECK. I appreciate that.

Chairman DODD. I invite you to go right ahead and tell us what you would like to say.

Mr. STEINBECK. In the interest of time, Mr. Chairman, I am going to waive the vast bulk of my testimony and have it entered into the record. But I would like to read perhaps the major portions of it to get my position clear.

Chairman DODD. Go right ahead. I understand now that we may be allowed to sit. I understood yesterday that we would have to stop at 10 o'clock, but I am told we may be able to continue longer. So, you go right ahead.

Mr. STEINBECK. I have agreed to give testimony today concerning the use of the drug marihuana by service personnel in the Republic of Vietnam because I believe it is the sincere goal of this subcommittee to eventually arrive at a realistic view of the use of marihuana by Americans, a view unclouded by any particular moral opinion, to

couple this view with modern scientific inquiry and then, with this information, to instigate whatever legislation best reflects public morality, civil rights, and the national welfare.

None of this can be achieved, I think, without accurate information as to what marihuana is and especially what marihuana means to the people for whom the Government would be passing any legislation. To begin with, it seems that the prohibition of a substance or the lack of such a prohibition involves the weight of public opinion far more than commonsense or medical evidence either way.

The popular acceptance of cigarettes, while we know them to be a health hazard, is an example. I believe according to the American Cancer Society that it is a medical fact that marihuana is far less harmful than the cancer-feeding tars contained in the everyday cigarette which carries with it the very powerful addictive drug that is nicotine. Cigarette smoking, however, remains in the public domain of overall acceptance despite scientific evidence that the practice of smoking them is deadly. I believe that if marihuana becomes legal, it will probably be the weight of that same public opinion that matters again, far more than any medical or scientific justifications, either way pro or con. I say again, it is interesting that society is now embr ng a chemically dangerous drug in cigarettes and worried about what I believe and the public authorities believe is a relatively safe one. I say again that it is interesting to note how public opinion can change poison to water and water to poison and it really does not seem to make much difference what the chemical makeup is.

I do not completely believe that a Government or official survey into the use of an illegal substance like marihuana could possibly arrive at an accurate index or numerical figure indicating the extent of marihuana use in America or by Americans abroad. With all the extensive official literature and tests that I have heard recently on the subject, it is still almost impossible to get a vague picture of the widespread effects of the drug. This in itself demonstrates some of the haziness of most official publications concerning marihuana use.

In notifying me of the scope of this testimony, the subcommittee submitted a comprehensive list of questions which address themselves to the use of marihuana by American service personnel in Vietnam. I will begin to answer those now.

The result of what I believe to be my sophistication with many aspects of Vietnam tells me that about 60 percent of American soldiers between the ages of 19 and 27 have experienced marihuana by smoking it, and do smoke it whenever they think it is reasonable to do just that, taking into consideration their responsibilities at the moment. However, I think the figure daily approaches 75 percent of the previously mentioned age group as they become more sophisticated about the plant. I believe for the most part, and I understand the military concurs with me on this, that it is a relatively harmless practice both to the military at large and to the individual soldier.

The second question submitted to me refers to the obtainability of marihuana in Vietnam. Marihuana or *Cannabis sativa* flourishes throughout almost every portion of the world. This is true for Omaha, Nebr., not to mention the jungles and plains of Southeast Asia. The easy access of marihuana to American service personnel is mostly due to the American soldier's exposure to the Vietnamese national on all levels of his involvement in Vietnam.

Another question concerns the attitude of service personnel toward the use of marihuana. I assumed by this question you meant the average service personnel, and if they plan to continue its use upon their return to the United States. The attitude of most members of the Armed Forces to marihuana I believe to be a very casual one. A substance that might seem a momentous thing to a suburban family in the United States just is not to a sergeant first class serving in the delta. The younger soldier who probably has friends in the United States who smoke the drug certainly is as offhand about it as the rusty veteran. Soldiers who have started smoking marihuana in Vietnam may or may not continue its use when they return to the United States. However, I believe that it is more likely that they will. Under the articles of the Uniform Code of Military Justice it is illegal to possess marihuana. However, the violation of this code is noteworthy on the command level as an infraction of discipline rather than through any connotations of possessing drugs. There are too many military people for the command to deal with on a personal level, and so it becomes a matter of whether control of marihuana is a convenience or an inconvenience to the legal officer or company commander who has to make out the paperwork if any action is to be taken against any members of his command.

I have been among a great number of military police and legal officers who smoke marihuana, and so another enforcement problem arises right there. Also, if my figures are even nearly correct, then the enforcement of the law in any total measure would mean taking legal actions against tens of thousands of military personnel in a logistical area, Vietnam, where such a thing would be completely impossible.

Another question was, has the use of marihuana by service personnel impaired their effective functioning as combat personnel? I do not believe that marihuana has in any way significantly impaired the effectiveness of American combat personnel and again, I believe the military agrees with me on this point. The Vietcong, whom we know to be excellent fighters and skillful soldiers, have used marihuana almost to a man since early childhood. I have not made it clear, but I will now, that marihuana in Vietnam and by most people who use it is used mostly for relaxation, and a soldier with any respect for his own life would never be likely to endanger that life if he thought it affected his functioning. And, I do not think that there is anyone who is in a better position to judge whether a drug is debilitating or not than the individual himself is as, in the soldier's case, he is asked to continue to perform a series of tasks of a highly physical nature whether he uses the drug or not.

It must be added here that from all evidence at my disposal there is no indication that the effects of marihuana carry on over for any great length of time after smoking. Certainly, far less than the physical effects noticeable in having too many beers the night before or as much as 12 hours after ceasing to use that drug.

So you can get on perhaps with more detailed questions to me, let me just conclude with the recommendations. I would give the subcommittee with regard to the control of marihuana. I have to concur with Dr. Goddard and Dr. Nowlis about penalties being far out of proportion to the nature of the crime when we sentence the users of marihuana to jail. It seems to me to be ultimately ridiculous and

defeating to the philosophy behind any legal system to turn upward of what I believe to be 10 million or more people into criminals because of the provincial and prejudicial nature of our laws governing the use of the substance.

Chairman DODD. Thank you, Mr. Steinbeck.

Based on your personal knowledge, how many servicemen do you know who are smoking marihuana in Vietnam?

Mr. STEINBECK. I would say in my direct experience, from asking questions, and people that I knew by actually meeting them, about 300 American soldiers.

Chairman DODD. What percentage would that be of our total number of men there?

Mr. STEINBECK. Of the men in Vietnam?

It is a very minute percentage, sir, but I got the impression through interviewing these people, and I would only be exposed perhaps to one at a time while traveling throughout the Republic, that the vast majority of their units also smoke the drug.

Chairman DODD. I thought I read somewhere—correct me if I am wrong about this—you were quoted as saying that 75 percent of our servicemen in Vietnam smoke marihuana.

Mr. STEINBECK. I was misquoted, sir. My comments were that 75 percent of a certain age group, that would be that age group between 19 and 27, 75 percent of that group smoke marihuana. The age group of the American service personnel in Vietnam extends quite beyond that.

Now, what percentage that finally comes out to, I do not know exactly. However, whether this figure that I used of 60 percent going to 75 percent is accurate to a 10 percent figure or not is not actually very important to me. I use it mainly as an illustration in morality, that if these soldiers whom we know and continue to call American heroes, these men who are serving their country abroad, smoke the drug, if when they come home we call them criminals, I think there is a basic contradiction in our thinking about our fellow man.

Chairman DODD. I think you have a point there, but I think you would also agree that 60 percent would be alarming to the families and men generally in this country.

Mr. STEINBECK. I agree, sir.

Chairman DODD. If it is not accurate, it would be a disservice.

Mr. STEINBECK. The poll that you quoted yesterday which reported that 85 percent of parents replied "No" when asked whether they would like their children to be using marihuana is probably an accurate one. However, for the purposes of this committee, I think another poll probably should be administered asking how many of those parents would like to have their children put in jail for smoking marihuana. I dare say that the percentage would be equally high, that though they would not like their children smoking marihuana, they would prefer even less that their children go to jail for doing something which is basically very silly.

Chairman DODD. Would it not be better to ask them how they would feel about somebody else's child since they are so emotionally involved with their own children?

Mr. STEINBECK. Exactly, but I think we get to a minor point of hypocrisy if they would not like their own child to go to jail but they would think it was exactly proper for somebody else's to.

Chairman DODD. Well, have you got any suggestion or advice to give us as to why a considerable number of those you came in contact with in Vietnam use marihuana?

Mr. STEINBECK. I believe, sir, that the whole philosophy of this question, whether it be one of civil rights or not, is the fact that we as a government or as citizens are trying to protect our country's youth from any physical disability and the entire position of anybody against marihuana, outside of perhaps violating civil rights with selling and buying, is that we think they are going to hurt themselves by doing this.

In the opinion of most of the Nation's youth today, the major health hazard is the draft and not marihuana. Marihuana you can smoke and you will be awake tomorrow. However, these people see their brothers never coming back from Vietnam.

Now, if we condone a process which ultimately leads to the death, final death of vast numbers of our Nation's youth, then we are very petty and prejudiced about them hurting their health smoking marihuana, a fact that has never been proved. This poses a contradiction to the minds of the youth of America, and from their point of view, they would, I believe, like to know just exactly what the Federal Government means by saying "We want you to grow up and be healthy and psychologically happy" and at the same point exposing them to a violent death from a machinegun.

Also, if what we are worried about is the psychological deterioration of these people by the use of marihuana, I question whether it is better for their health or psychology to spend 10 years in jail. It seems to me there is a contradiction there. If what we really want with this legislation, and our interest in the subject is to protect our people from ill health, psychological disorders, then the penalties certainly do not do it.

Chairman DODD. If I understood you correctly, you said you came in personal contact with something like 300 or 350 who smoked marihuana.

Mr. STEINBECK. Sir, I became exposed to marihuana personally as a very young boy in New York City. In those days I was not particularly involved with obtaining the drug. The places where it was obtainable were particularly sordid and generally a nest of what we would consider to be actual criminal activity.

In the sixties, with the advent of marihuana use by most college students, the criminal element of it had been taken out and as a result, you find college students and most people who smoke marihuana in professional circles not out to make a profit but, as Dr. Nowlis said, merely to distribute the drug among their friends.

Chairman DODD. Well, I would like to stick to this question if we can, to get the answers on the record. Of the 350 whom you personally knew in Vietnam, were all of them in this age group that you spoke of?

Mr. STEINBECK. No, sir. I would say that about 80 percent of those 350 or so people were in this age group. However, there are many professional soldiers in the U.S. Army and the other military who spent great time in occupation duties in the Orient and throughout

the world. When the original buildup in Vietnam occurred, vast numbers of——

Chairman DODD. I know that. What I am trying to get at is what is the basis of your figure, 350? What percentage are in this age group that is most common in the Armed Forces in Vietnam?

Mr. STEINBECK. About 19 to 27, sir. Most common. However, this——

Chairman DODD. Nineteen to 27.

Mr. STEINBECK. Those 19 to 27 years of age represent, I would say, 60 percent of the people that use marihuana.

Chairman DODD. That is how you got at your 60 percent figure?

Mr. STEINBECK. And through investigation, sir. In my capacity as a newsman for Armed Forces radio and television I had the opportunity to travel throughout the Republic of Vietnam. I have come in contact, I believe, with personnel from at least every battalion-sized unit in the Republic. In traveling, and being an enlisted man at the time, I spent a great many hours in hospitals and flight sheds interviewing people about this very subject, and the impression I got——

Chairman DODD. How many of these people had used marihuana before entering the service, do you know?

Mr. STEINBECK. About half, sir. The availability of marihuana in Vietnam and the lack of any realistic controls whatsoever make it an environment where it is a lot easier for a young person to smoke marihuana.

Chairman DODD. I think you misunderstood me. How many of our people who are using marihuana in Vietnam were users before they entered the military?

Mr. STEINBECK. About 50 percent, sir. The other half started using marihuana in Vietnam or at some part of their time in the military. Since I made my statements about the use of marihuana in Vietnam, I received a number of letters, and whatnot, from personnel stationed in other parts of the world, particularly the Panama Canal Zone, Korea, and Japan, and all these people seem to give me the impression that exactly the same thing is going on there. I do not find this surprising because the age group merely reflects the same age group that we know to be smoking marihuana in the United States. So, the fact that they are in the military in no way robs them of their youth and the idea of rebelling with marihuana, and I believe this is a very significant cause as to why marihuana is being used.

In Vietnam marihuana has been used historically for centuries. However, we find in Vietnam the exact opposite trends to what is taking place in the United States today. Because marihuana is used almost 100 percent by the tribal people in the mountains of Vietnam and about 50 percent of the peasants, the youth in the cities, that is to say, the generation gap there, does not use marihuana for the very same reason that American youth uses marihuana, because the use of marihuana to them reminds them of their basically agrarian background and peasant background, and so they would much prefer to drink our scotch than smoke their marihuana.

I believe that at least 50 percent of the time in the United States, on college campuses, today's youth finds that marihuana offers various social and psychological outlets. They realize that marihuana, not being an addictive drug, can perhaps instill their individuality or offer them a relaxing experience. It is a way to channel a good deal of their rebellious feeling.

I say this only perhaps as an idea but if marihuana were widespread today among my generation as it is, it is quite possible that the natural reaction of my children and the generation gap that will follow this will be to not use marihuana because they do not want to seem like their parents. So, I think the problem is not one of the quality of the drug as much as the quality of the person who uses the drug.

Chairman DODD. By the way, what is the attitude of the military command toward the serviceman's using the marihuana?

Mr. STEINBECK. I believe the provost marshal in Saigon, in a very accurate statement said, "It is a damn nuisance."

Chairman DODD. It is what?

Mr. STEINBECK. "It is a damn nuisance," and I believe what he meant, not that it does not get in his way if he does not know about it, but the responsibility of making out paperwork or being asked to appear at Senate subcommittee hearings is to the military, faced with the problem of Vietnam to begin with, a damn nuisance and they would much prefer that it were not brought to the surface since it does not seem to be bothering anybody anyway.

It was my intention in bringing it to the surface not to aggravate them with controlling marihuana but again just paint the obvious paradox that if these people are smoking marihuana, then marihuana itself inherently cannot have anything to do with morality whatsoever.

Chairman DODD. How long were you in Vietnam?

Mr. STEINBECK. One year, sir.

Chairman DODD. One year. And how long were you free to move around the country?

Mr. STEINBECK. The entire year.

Chairman DODD. During the entire period?

Mr. STEINBECK. I was stationed in Saigon for 6 months. In those 6 months I did not completely have my activities in Saigon. I would go out of Saigon throughout the Republic for a day or two. And then, I was stationed in the field for 6 months through the II Corps and III Corps areas, and I believe I have seen just about every square mile of the Republic.

Chairman DODD. Had you made a study of this subject before you went into the Army?

Mr. STEINBECK. No, sir; and I would actually prefer in the future not to make a study. The subject of marihuana to most people that use it, as well as to the people that find themselves controlling it, turns out to be mostly just a bloody bore. The problem is that in controlling the drug we have something to control, and I do not believe that the problem exists.

The only thing that would instigate me to make any investigation is to try and spread a little more information about the drug itself. The widespread use and effects of the drug seem to be very much like the intake of alcohol or cigarettes. I remember when I first started smoking cigarettes that it was very hard to get through one and I became very dizzy. Unfortunately, now I can go through many without any ill effects that are noticeable.

To the novice user, the original effect of marihuana seems to be a distortion of time perception, heightening of different visual, optical and audio things. But after it is used continually for a while, these effects diminish and the user can function as he did before.

Chairman DODD. Do not misunderstand my question. Do you consider yourself an expert on this subject?

Mr. STEINBECK. I do, sir.

Chairman DODD. I would like to ask you another question because I think we are going to have recess at 10:30.

On the first page of your statement you say it seems that the prohibition of a substance involves public opinion far mare than common sense or medical evidence. Well, do you not think that common sense and medical evidence could play some part?

Mr. STEINBECK. I believe, sir, it is the most valuable way to approach the problem. However, the common sense and medical evidence that we use to whitewash cigarettes and alcohol do not seem to have any effect whatsoever, and the common sense that I apply to a situation leaves me in complete paralysis of the fact that there is no common sense being used at all when, as Dr. Nowlis says, the penalties for marihuna in many States exceed those of second degree murder. This does not seem to me to reflect common sense at all and when any doctor would say the consumption of alcohol represents the intake of protoplastic poison and we still use it, this seems to me imbues no evidence of common sense or medical sense, either.

Chairman DODD. On what evidence did you base your statements that I think you said it is more likely that the soldiers returning from Vietnam will continue to smoke marihuana than unlikely?

Mr. STEINBECK. Because in the United States with what controls there are and much of public opinion, it might be quite a gesture in some cases, though statistics show not much at all, for somebody to start smoking marihuna. In Vietnam this is not the case. The soldier is out in the field or in a foxhole. He does not have Federal narcotics agents walking around his foxhole and he will smoke it. After spending a year smoking it he is probably in a pretty good position to judge whether he is suffering any ill effects from doing it.

Chairman DODD. This is a matter of your own judgment, really.

Mr. STEINBECK. I say, "probably." And, when he returns to the United States, he probably will continue to smoke it because he does not believe it is hurting him.

Chairman DODD. Do you advocate the use of marihuna?

Mr. STEINBECK. Sir, I do not believe that any responsible person would be able to say that smoking marihuna is good.

Chairman DODD. Not good? Is not good?

Mr. STEINBECK. I would not say it is not good but I certainly would not use my influence to convince anybody they should do it.

Chairman DODD. I got mixed up in your negatives.

Mr. STEINBECK. I believe that the smoking of marihuana is as silly an affectation of character as smoking cigarettes or drinking alcohol, and if it is as silly, I think it is to be a great crime that we should send these people to jail for doing something basically ridiculous.

Chairman DODD. To answer my question, you do not advocate its use.

Mr. STEINBECK. I am not against it, sir, but I would not use whatever respect I could muster to tell somebody they should use it. The only thing I would like to say on the subject is that if I am a spokesman at all concerning it, I am a spokesman for the people who suffer through the ignorance about it. This is to say the people who might even go to heroin because of the inadequacy of the laws.

I have come across a number of young people who went to heroin paradoxically, not because they smoked marihuana exactly, but because they smoked marihuana, discovered it was harmless as far as they were concerned. They read the statutes further and found that heroin and the other opiates are classed exactly the same way as marihuana was and with this as an example, they then concluded that these drugs as well must be harmless. However, I believe that the President's Commission on Law Enforcement and the Administration of Justice in the spring of 1967 says that the amount of heroin users without a marihuana experience and the amount of marihuana users who never graduated to heroin, can never possibly imply the link that the last witness said was there.

Chairman DODD. Very well, Mr. Steinbeck. We appreciate your appearance. We will have to recess because of the situation in the Senate and we will certainly review your testimony and think about it.

Mr. STEINBECK. Thank you very much.

(Mr. Steinbeck's prepared statement follows:)

STATEMENT OF JOHN STEINBECK IV

Mr. Chairman and Members of the Subcommittee, I have agreed to give testimony today concerning use of the drug marihuana by service personnel in the Republic of Vietnam because I believe it is the sincere goal of this Subcommittee to eventually arrive at a realistic view of the use of marihuana by Americans, a view unclouded by any particular moral opinion, to couple this view with modern scientific inquiry and then, with this information, to instigate whatever legislation best reflects public morality, civil rights and the national welfare.

None of this can be achieved without accurate information as to what marihuana is and especially what marihuana means to the people for whom the government would be passing any legislation. For it seems that the prohibition of a substance or the lack of such a prohibition involves the weight of public opinion far more than common sense or medical evidence.

The popular acceptance of cigarettes, while we know them to be a health hazard, is an example. It is a medical fact that marihuana is far less harmful than the cancer-feeding tars contained in the everyday cigarette, which carries with it the very powerful addictive drug that is nicotine. Cigarette smoking, however, remains in the public domain of overall acceptance despite scientific evidence that the practice of smoking them is deadly. I believe that if marihuana becomes legal, it will probably be the weight of public opinion that matters again, far more than any medical or scientific justifications, either way, pro or con. It is interesting that society is now embracing a chemically dangerous drug and worried about a relatively safe one. I say again that it is interesting to note how public opinion can change poison to water and water to poison and it really doesn't seem to make much difference what the chemical make-up is.

I do not completely believe that a government or official survey into the use of an illegal substance like marihuana could arrive at an accurate index or numerical figure indicating the extent of marihuana use in America or by Americans abroad. With all the extensive official literature on the subject, it is still almost impossible to get a vague picture of the widespread effects of the drug. This in itself demonstrates some of the haziness of most official publications concerning marihuana use. Because I represent no agency, have smoked marihuana, have been exposed to it in a variety of social climates, and because of my personal interest and investigation into the subject, I believe I have access to perhaps more realistic information about marihuana in general than any austere survey could deliver.

In notifying me of the scope of this testimony, the Subcommittee submitted a comprehensive list of questions which address themselves to the use of marihuana by American service personnel in Vietnam. I believe that these questions cover almost all that could be of interest on the subject, so I'll confine the rest of this testimony to reading those questions and answering them as directly and completely as I can.

Included in the first question, "How extensive is the use of marihuana by U.S. servicemen in Vietnam?" was the additional question of how I arrived at the

conclusions that will make up the bulk of this testimony, and how I substantiate my analysis of the situation.

My year in the Republic of Vietnam was in the Army as an enlisted man with Armed Forces Radio and Television, which is an information activity of the Department of Defense. I served as a newsman and a news director of the network throughout the Republic of Vietnam. I spent six months of my year in Saigon and six months in the field. I was stationed for over two months around Pleiku in the II Corps forward area, and Qui Nhon, the large Korean concentration and logistical port on the South China Sea. I drove in a truck with one other man along the breadth of Vietnam from the sea in Qui Nhon, to the Cambodian border near Plei Djeraing. In my field capacity for the Armed Forces network I visited many hospitals and waited long hours in rainy flight sheds with men from other units going in other directions. I believe that I had contact with personnel from practically every battalion-size unit in the Republic at one time or another. In working for an interservice organization my associations covered all branches of the military. I also believe that I saw nearly every part of South Vietnam with the exception of some parts of the Delta. I have a great many Vietnamese friends both in the United States and Vietnam, and when I was last stationed in Saigon, I was teaching English in my off-duty time at the Vietnamese-American Association. All this is to say that I was not an average soldier in Vietnam with an average job.

The result of what I believe to be my sophistication with many aspects of Vietnam tells me that about sixty percent of American soldiers between the ages of nineteen and twenty-seven smoke marihuana when they think it reasonable to do just that, taking into consideration their responsibilities at the moment. However, I think the figure daily approaches seventy-five percent of the previously mentioned group as they become more sophisticated about the plant. I believe for the most part that this is a relatively harmless practice, both to the military at large and to the individual soldier.

The second question refers to the obtainability of marihuana in Vietnam. Marihuana, or *cannabis sativa*, flourishes throughout almost every portion of the world. This is true for Omaha, not to mention the jungles and plains of Southeast Asia. The easy access of marihuana to American service personnel is mostly due to the exposure of the American soldiers to the Vietnamese national at all levels of his involvement in Vietnam.

It would be best to describe the use of marihuana by service personnel in this age group as both chronic and sporadic. By this I mean that their desire or affinity to marihuana is as chronic as a Scotch liker's affinity to Scotch, but the use of marihuana may be sporadic due to the amount of time available to use it. The use of marihuana to a user of the drug is in amounts as normal and intelligent as the use of anything by anyone. Most intelligent people would not get stinking drunk before approaching something important. Neither would it occur to someone who smokes marihuana to get particularly high when he knows that he should not. There is no loss of judgment and the individual is left with his facility to decide for himself when to smoke and when not to.

"What is the attitude of service personnel towards the use of marihuana? Do they plan to continue its use upon their return to the United States?" The attitude of the members of the Armed Forces to marihuana is certainly a casual one. A substance that might seem momentous to a suburban family in the United States, just isn't to a Sergeant First Class in the Delta. The younger soldier who has friends in the States who probably smoke it is certainly as off-hand about it as the rusty veteran. Soldiers who have started smoking marihuana in Vietnam may or may not continue its use when they return to the United States, although it is more likely that they will.

In answer to the question "What is the attitude of the military command with regard to the use of marihuana by service personnel?" I would say that marihuana causes an administrative problem rather than a moral dilemma or health hazard. Under the articles of the Uniform Code of Military Justice, to possess marihuana is illegal; however, this violation of the Code is noteworthy to the command as an infraction of discipline rather than through any connotations of possessing "drugs". There are too many military people for the command to deal with on a personal level, so it becomes a matter of whether control of the use of marihuana is a convenience or an inconvenience to the legal officer or company commander who has to make out the paper work if any action is taken against members of his command.

I have been among a great number of military police and legal officers who use the drug and so another enforcement problem arises there. Also, if my fig-

ures are even nearly correct, then enforcement of the law in any total measure would mean taking legal action against tens of thousands of military personnel in a logistical area where such a thing would be impossible.

"What indications are there that the continued use of marihuana by service personnel has had deleterious effects upon the men, physically or psychologically?" I believe in many cases the use of marihuana has a psychologically beneficial effect on servicemen in a combat situatior This is not to say in combat itself, but rather in the overall mental health of a soldier thousands of miles away from home at war with strangers. Because it is not a depressant like alcohol, which can lead the mind into some pretty emotionally abysmal corridors, marihuana is a euphoriant, which tends to lead to an attitude of serenity, a feeling of well-being and relaxation. It is certainly true that this is not the best psychological state of mind to be in when confronted with combat. Most soldiers who find themselves under the effects of marihuana in combat are either stupid and would be drunk in the same circumstances without marihuana or they are members of a resting element taken under surprise attack. It would not occur to a soldier to wear aftershave lotion on patrol in the jungle, must less to be smoking a cigarette of any kind.

"Has the use of marihuana by service personnel impaired their effective functioning as combat personnel?" I do not believe that marihuana has in any way significantly impaired the effectiveness of American combat personnel. The Viet Cong, who we know to be excellent fighters and skillful soldiers have used marihuana almost to the man since early childhood. I've already made it clear that marihuana is used for the most part for relaxation and a soldier with any respect for his own life would never be likely to endanger that life if he thought marihuana affected his functioning. I don't think that there is anyone who is in a better position to judge whether a drug is debilitating or not than the individual himself, if, as in the soldier's case, he is asked to continue to perform a series of tasks of a highly physical nature whether he uses the drug or not. It must be added here that from all evidence at my disposal there is no indication that the effects of marihuana carry over for any great length of time after smoking. Certainly far less so than the physical effects noticible in having too many beers the night before or as much as twelve hours after ceasing to use the drug.

"Would the use of marihuana in combat units be as prevalant as in noncombat units?" It has been the military philosophy of every army since the Chinese philosopher Sung Tze not to permit combat elements to have a great deal of spare time, either to think or worry. When American combat personnel come off patrol they generally fall asleep. When they wake up, they are generally given details or some other duty under the supervision of their superiors. For this reason support elements undoubtedly do have more spare time and thus more time to smoke the drug; however, because many support elements are in the cities and marihuana is most prevalant in Vietnam throughout the countryside, it could be said that combat elements have more exposure to marihuana than many support groups.

"What is the atttitude of the Vietnamese population and officials towards the use of marihuana? Is there extensive use of marihuana by the Vietnamese?" At present there is, as far as I know, no effective law in the Republic of Vietnam controlling the use or sale of marihuana. Though there may be some clauses in the new Vietnamese legislation involving the revenue received from marihuana, such laws are ignored to the same extent as most other civil controls in Vietnam. About 100% of the tribal people in the central highland region of Vietnam smoke marihuana. This includes men, women and children. Among the Vietnamese peasants throughout the countryside I believe about 50% of their number use marihuana daily. These are mostly the older men and women of the villages.

Though marihuana may be obtained anywhere in the cities of Vietnam, its use is not as prevalant as in the field. There seems to be very much of a reverse trend in Vietnam from that seen in the United States. In revolting against their peasant background, the young Vietnamese of the city and his intellectual counterpart in Vietnamese government and society prefer to drink alcohol than indulge in the pasttimes of the common people. Thus, as marihuana may be used in America as an assertion of individuality, the Vietnamese youth refrain from its use in order to establish their individuality. Geographically, more marihuana is smoked in the mountains than in the countryside, and more in the countryside than in the cities. However, even with this it can easily be said that marihuana is as available in Vietnam, no matter where you are, as cigarettes are in the United States. I also believe that a great number of officials in the Vietnamese govern-

ment probably have access to a majority of the proceeds from the sale of marihuana to American personnel in the cities.

"What other drugs are available to service personnel in Vietnam? What are their sources? Are such drugs abused? To what extent?" Besides marihuana, opium, and amphetamines or pep pills, fill the remainder of the drugs used by American servicemen in Vietnam. When I was serving in Vietnam I came across absolutely no use of the stronger hallucinogens such as LSD, peyote, or psilocybin. However, considering the growing popularity of these drugs in America this is no longer necessarily the case. Opium is not a favorite of American personnel. The intelligence level of young men in the United States military is a great deal higher than is generally thought, and it is common knowledge to these people that opium is a dangerous and tremendously debilitating addictive drug. Though it is readily available, opium is used in this part of the world mostly by the Vietnamese and Chinese equivalent of the American narcotics addict. It's interesting to note, however, that the vast majority of orientals who do use opium are over the age of 40. Amphetamines, however, paint quite a different picture. These pills related to methadrine are distributed by the American government to its personnel through medical officers, corpsmen, and survival kits. The drug is very popular, especially to the combat soldier because it gives him a super-human amount of energy and in this way it could be said that it is beneficial to him but purely as a fighting machine.

"What information do you have relative to the use of marihuana in the United States? College students? Professionals? The so-called 'Hippie Subculture'?" It should be obvious to anyone who so much as reads the New York Times that increasing numbers of youth and adults, from every conceivable class and subculture, including police officials and narcotics agents, are beginning to experiment with the drug. To believe anything else is to display perhaps malicious ignorance to the nature of our increasingly more drug-oriented society. This society includes the sale of tranquilizers, which in America has soared to over $200,000,000 annually.

"What recommendations would you leave with the Subcommittee with regard to the control of marihuana?" I concur with Dr. Goddard about penalties being far out of proportion to the nature of the crime when we sentence a user of marihuana to jail. It seems to me to be ultimately ridiculous and defeating to the philosophy behind any legal system to turn upwards of 10 million or more people into criminals because of the provincial and prejudicial nature of our laws governing the use of this substance.

Chairman DODD. We will recess this hearing now until 10 o'clock tomorrow morning.

(Whereupon, at 10:30 a.m., the hearing was recessed, to reconvene at 10 a.m., Wednesday, March 6, 1968.)

5. *Costs of the Pharmacological and Biochemical Investigations.*—Based upon the costs of studying the biochemistry, toxicology and behavioral effects of other drugs, we estimate that the investigation of marihuana proposed herein would run about $1.5 million. A full investigation of the clinical effectiveness of tetrahydrocannabinol should run an additional $750,000.

II. SOCIAL AND PSYCHOLOGICAL INVESTIGATION OF MARIHUANA USERS

1. *Surveys.*—A national survey of drug use is currently in progress. Preliminary data from a number of college surveys suggests that marihuana use (of one or more times) has reached 15–20 per cent of the college population. The number of student groups (including high school students) will provide some idea of the direction of the problem. Such surveys should be coordinated by a survey research investigator selecting from a random sample of schools that would participate collaboratively in the study.

2. *Epidemiologic Data.*—Known chronic marihuana inebriates should be studied psychiatrically and medically. Such studies will offer clues about the hazards of marihuana usage that can be documented in laboratory populations. Autopsies on known users, with particular reference to liver, brain and respiratory system are essential. Psychological test data and evoked potential EEG studies in known chronic users are also indicated.

Of particular importance would be an in-depth epidemiologic study of cannabis use in the Middle East and/or India. The cultural side effects of endemic drug usage and the hazards to the individual need to be documented in these settings; previous reports were poorly documented. A visiting epidemiologic team (modeled after Public Health Service teams at the Communicable Disease Center) could accomplish this mission effectively. Data obtained here would be compared with user data in the United States and with control population of nonmarihuana using natives in the countries studied.

3. *Social Psychological Studies.*—Social psychological studies of small groups of marihuana users in the United States should be pursued in order to determine the group and individual factors which initiate and maintain substance use patterns. Previous studies by Becker need to be expanded upon in order to understand more recent manifestations of the problem.

4. *Summary and Costs.*—The purpose of these social and psychological studies would be to determine factors leading to and factors associated with marihuana use. The interaction between such use and effective human functioning will be determined by investigating populations of known users. In total this is a more costly operation than the laboratory pharmacology and costs could run as high as $3 million. The costs of effective periodic surveys alone approximates $1.5 million. Priority here should be given to studies which define the public health implications of this problem currently in the United States and of estimating the additional hazards which might result from a change in the law.

Table of cost estimates for the elements of a research program studying marihuana

	Million
Biochemical studies	$0.5
Toxicologic and pharmacologic studies in animals	.5
Toxicologic and pharmacologic studies in man	.5
Studies of the drug as a therapeutic agent	.75
School surveys	1.5
Epidemiologic team studies	.75
Social-psychological studies	.75

Question 6: Does the presently available scientific evidence regarding the characteristics of LSD and marihuana have any implications for any further legislative action with respect to these drugs?

Research as well as educational and treatment efforts conducted by the NIMH are operating satisfactorily under existing legislation.

Chairman DODD. Dr. Yolles, I think I asked each witness who has appeared here in the last two sessions of this hearing about the criminal penalties attaching to the use and possession of marihuana or the sale

and possession both by the peddler and the user. What do you think about it?

Dr. YOLLES. Is the question in relationship to marihuana?

Chairman DODD. Marihuana.

Dr. YOLLES. Well, having worked with the problem of hard narcotics and having seen patients for quite a number of years when I was at Lexington Hospital, I am aware of some of the problems. However, I am here today as a medical scientist and profess no real knowledge, expert knowledge, in the area of law enforcement. I would comment that it has been a repeated observation not only by the medical profession but by law-enforcement officials as well and most recently reported by the President that, to use his words, it is a crazy quilt of inconsistent approaches and widely disparate criminal sanctions in the field of narcotics and drug abuse, and we are quite enthusiastic about the notion that the National Commission to Revise the Criminal Laws, Federal criminal laws, will be taking a look at this to try to bring a more consistent approach to it.

Chairman DODD. For example, you know there have been proposals before Congress to impose a criminal penalty of up to 1 year in jail for possession of LSD. I know you are not an expert and do not pretend to be in the area of law enforcement but based on your studies on LSD use or users, do you think such a penalty would be an effective deterrent?

Dr. YOLLES. Well, again I really do not have any knowledge of the deterrent effect of such penalties.

Chairman DODD. Well, I will not press you on it. I understand your position but we have to ask our witnesses these questions.

That leaves me with another question I do not think we have asked. You are not a scientist, apparently. You do not pretend to be knowledgeable on all subjects. Do you think that the question of deterrent should be left up to the law-enforcement people for effectiveness?

Dr. YOLLES. In large part I suspect this is so. It is a matter of law enforcement and deterrent from use. I can say this, that from a medical point of view, we are as committed to our previous position and it is a consistent position, and I stated this before this committee in 1966 when I appeared. It happens to be the position of the New York County Medical Society, and I think it is worthwhile restating at this point, in terms of the opinion of the National Institute of Mental Health, that:

> No hallucinogen, LSD, mescaline, psilocybin of dimethyltryptamine, et cetera, should be administered except by a physician trained in its use, and that this should apply even if the current studies show LSD to be of value in the treatment of psychoneuroses, sexual perversions, frigidity, alcoholism or other illnesses.
>
> Even use by trained physicians should be limited to carefully controlled experiments until incontrovertible data are available documenting LSD's efficacy and safety.

This is a dangerous drug and should not be administered except under very carefully controlled conditions.

Chairman DODD. I take it that the New York County Medical Society would feel, then, that some punishment should attach to the sale and use of these dangerous drugs other than by prescription or other use under careful medical supervision.

Dr. YOLLES. I think we are all dedicated to the proposition that we have to control the illicit distribution, sale, et cetera, of these dangerous drugs, and this is the intent of the administration at the present time to do so, and there has been in administration bills submitted an increase in the penalties for illicit distribution.

Chairman DODD. The point of my question is whether we should reduce penalties or not and what the reasons are for doing that if we make that decision. I do not think it will do much good to just say that these dangerous drugs should not be available except by prescription, as I would interpret what the New York County Medical Society was saying, and then not attach any penalty for selling or using them without prescription.

Dr. YOLLES. As you will recall, in 1966 it was the administration's position, and a number of us were here and testified to that point, that vigorous enforcement of the drug abuse control amendments together with an effective adequate preventional program would be sufficient to control the problem. It was also stated at that point in time that after some experience with the administration of the laws in this regard, if it was felt that further changes in the law were necessary, that we would come back and request them or at least the appropriate authorities would. But after about a year and a half of experience with these laws, the principal law enforcement authorities of the Federal Government have agreed that such changes are necessary, that there are further sanctions necessary, and so they have come back to the Congress and asked for such changes. This includes a penalty for personal possession.

Now, I have the highest regard and respect for the opinions of the law enforcement agents and in their opinion, if they think this is necessary for the enforcement of the laws to control illicit drug distribution, I am heartily in favor of such measures and I support the administration's position wholeheartedly.

As a physician, however, I am concerned about one factor, that in trying to protect the individual from the dangers of drug abuse, through the operation of the personal penalty for possession, we do not inadvertently do him harm by preventing him from seeking medical help when he feels that it is necessary because of a bad trip, because of the fear of incriminating himself. This is my principal concern as a physician.

Chairman DODD. I think it is a very proper concern myself. I do not know how we will work these things out. That is what we are trying to find out.

Is it too much to ask you this question? There seems to be a major conflict so far between the scientific and research community, in some substantial number anyway, and the law enforcement people on the other side with respect to the control of drug abuse. For example, if you read the testimony of Dr. Goddard, Dr. Nowlis, and Commissioner Giordano, you will see this contrast that I refer to. I think there will be more of it in later hearings. Do you have any opinion about this?

Dr. YOLLES. No. I do not think I could add very much more to what I have already said in this regard.

Chairman DODD. Well, of course, I would like to know who has the better argument.

Dr. YOLLES. Well, there are parallels, not specifically in the area of deterrents or law enforcement, and I think this is a problem that has been going on as you well know for quite a number of years.

Chairman DODD. That is right.

Dr. YOLLES. There is a chronic problem, if you will, or chronic disagreement, for example, in the area of hard narcotics and marihuana. Does marihuana use lead to the use of heroin? The law enforcement authorities generally have taken a position which states simply that a large majority of hard narcotics users have previously used marihuana. The medical authorities and scientific authorities on the other hand, say, yes; this is quite true, but it is an incomplete statement. If you take the obverse of this and look at the universe of marihuana users, relatively few go on to the use of hard narcotics. There is some element of truth in both sides of this.

Now, how you resolve that question is a very difficult one to answer at the present time.

Chairman DODD. I do not know the answer myself. That is why I asked you. I think we ought to get on to the record in the minutes remaining, your views on the known detrimental short-range effects of LSD. What do your studies show?

Dr. YOLLES. Well, LSD use, short range, may cause uncontrolled anxiety, may cause psychotic reactions, and will alter perception, especially time and space perceptions.

Chairman DODD. Would you put that in layman's terms? What does that mean to the average citizen? What does it mean on the street, on the campus?

Dr. YOLLES. It means that an individual who is on LSD will not perceive the reality around him, objects around him as they really are. There is a merging of the various senses so that the individual feels that he can smell what he sees and taste what he hears. It is a complete distortion of reality and it is associated with hallucinations and delusions.

Chairman DODD. We know that. Now, how much do you know about the long-range effects?

Dr. MILLER. There have been no evidence from the electroencephalogram——

Chairman DODD. Make it simple because when this record is printed everyone should be able to understand it and not just the medical society.

Dr. MILLER. OK. In terms of the long range in some few individuals—exact percentage is not known—there is a prolonged psychotic state, that is, the patients remain mentally ill. Some people remain chronically depressed over a long period. There is another phenomenon which is a very unusual one in which some time after having taken LSD, a person will undergo the identical type of experience he had under LSD even without taking the drug.

Chairman DODD. I read and I have heard that in the long run the use of LSD is more likely to lead to deformities or defects in future generations. You have a medical way of putting that.

Dr. MILLER. We have detailed in our responses the research results.

Chairman DODD. Tell me what you think. Is that so?

Dr. MILLER. I think at this point there is inferential evidence that LSD can affect chromosomes. The exact seriousness or significance of this, particularly regarding future generations, I still think is hard to know.

Chairman DODD. You do not exactly know but you are suspicious.

Dr. MILLER. Yes. There certainly is some inferential evidence in that regard.

Chairman DODD. So deterrents in the form of new information might be some explanation for the decrease.

Do you think LSD has any legitimate medical use?

Dr. MILLER. We are conducting research in controlled clinical settings where LSD is being used in the experimental treatment of alcoholics, of severe neurotics and other types of patients who have been unresponsive to other forms of psychiatric therapy. These researchers will continue. I think it is still too early to know really how effective LSD will be as a therapeutic agent.

Chairman DODD. Well, it was just called to my attention that when Dr. Goddard was here, he made another observation. This is what he said: "Research in this field"—that is, with reference to LSD—"is going on and"—and he went on to say at least 90 research projects are being carried out. But I thought these words were rather interesting: "I cannot share their appraisal"—that is, the researchers'—

> Appraisal that this drug is all that important because it has been under investigation now longer than any other investigative drug I have any knowledge of. It has been around since 1942.

Dr. YOLLES. I would like to answer that, Mr. Chairman. It is quite true, and Dr. Goddard is quite correct, that the drug has been around a long time but investigations into its therapeutic uses are very recent, and in terms of the mission of the National Institute of Mental Health, in terms of improving the mental health of the people of the United States, we feel it is our responsibility to investigate every new lead for a new therapeutic agent. At the present time, there is sufficient evidence for us to continue such studies.

Chairman DODD. I see. Well, I want to thank all of you, particularly Dr. Yolles, for being here this morning. I am greatly interested in your testimony—I speak for myself. The last paragraph I think is very good. I found it very impressive.

Dr. YOLLES. Thank you, sir. One last note, Mr. Chairman, if I may. I forgot to mention it. I have brought along this year again, as I did previously for the use of the committee, for whatever use it wishes, a complete set of abstracts of all of the literature on marihuana and LSD, which is available from the National Clearing House on Mental Health Information. This is the most complete file on material on LSD which exists in the world.

Chairman DODD. Well, that ought to keep the staff busy.

Dr. YOLLES. Thank you for the opportunity.

Chairman DODD. Mr. Fitt.

STATEMENT OF ALFRED B. FITT, ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER, ACCOMPANIED BY FRANK A. BARTIMO, ASSISTANT GENERAL COUNSEL

Chairman DODD. Mr. Alfred B. Fitt was appointed Assistant Secretary of Defense for Manpower in 1967. He attended Yale University and received his law degree from the University of Michigan Law School. He was on the staff of the Senate Judiciary Subcommittee

Drugs useful in medicine require different regulations for their control than those without therapeutic value. The latter, if harmful when taken by human beings, should be prohibited and their use, possession, or sale should incur penalty. LSD, marihuana, and similar drugs, commonly known as hallucinogenic drugs, have in my opinion, no recognized place in medicine other than for research purposes and should be strictly controlled. Unfortunately, current penalties for marihuana are more severe than for more harmful drugs, thus making strict and consistent enforcement of laws regulating it very difficult and at the same time encouraging disrespect for law.

Classes of drugs, based on their capacity for harm to the individual or to society, should be devised with heroin and LSD's being in the most serious class and the other drugs being placed in the classification suited to their degree of harmfulness. The classification of harmful drugs is best determined by consultation with competent pharmacologists, physicians including psychiatrists, and specialists in the enforcement of drug laws.

Although "pushing" drugs should always be dealt with severely, I believe that the mere possession for use of hallucinogenic drugs, including marihuana, should be considered a relatively lesser offense punishable by short periods of incarceration and a small fine, but with increasingly severe penalties being imposed for second and subsequent offenses. In other words, at present the laws are so severe they are not being enforced, as I see it.

Chairman DODD. I think you are right.

Dr. FARNSWORTH. Those persons who use these drugs for the first time without full realization of the possible consequences should not have their careers ruined for such offenses unless they persist.

Possession of amphetamines and sedatives (and other drugs useful in medicine) in quantities greater than a specified amount, let us take, for example, 10 times an ordinary therapeutic dose, for example, should also be discouraged by mild penalties at first and increasingly severe penalties for subsequent offenses.

We now need reasonable laws regarding the manufacture, sale and possession of harmful drugs (especially the hallucinogenic drugs), which can be consistently enforced. When the laws are not related to the degree of danger posed by drugs, the overly severe penalties discourage law enforcement and at the same time encourage disrespect for all authority.

A national program of education regarding the abuse and misuse of drugs is urgently needed. And I think it is taking form in many different parts of the country. Many groups in schools, colleges, and universities are urgently seeking help in developing sound programs. Some are carrying out experimental programs. With today's young people, fear tactics do not work. They resent exaggeration. Many distrust the reported experiences of physicians, including psychiatrists, and say that these doctors see only a small percentage of those who use drugs, and that the advantages of taking them outweigh the disadvantages.

Thank you, Mr. Chairman.

Chairman DODD. I want to thank you very much for a very helpful statement. Doctor, do you have some problem about the abuse of marihuana at Harvard University?

Dr. FARNSWORTH. We do, indeed. At our university, and all other universities, particularly those that are located near urban centers or where for one reason or another many students and former students and people who are posing as students collect because of the drug subcultures that are forming.

Chairman DODD. Would you say this is also true about the abuse of depressants and stimulants?

Dr. FARNSWORTH. In the experience that I have had in my own institution and others, there has not been a marked increase in problems connected with them or with the tranquilizers over the 30 years I have been working in college health work. We always had problems with them and we always will, but the drugs that are, as the youngsters say, "in" are the hallucinogenic drugs and substances which they believe might be hallucinogenic.

Chairman DODD. Well, we have had conflicting evidence about some aspects of this problem, as you probably know. Do you think the drug problem on our campuses is increasing, decreasing, or levelling off?

Dr. FARNSWORTH. The problem with respect to LSD is decreasing, I believe, all over the country. For some reason or other, students feel fearful of having their chromosomes disarranged even though they are not fully aware of what this means. It has a powerful propaganda effect.

Chairman DODD. It is a pretty frightening word.

Dr. FARNSWORTH. And the fact that because of LSD abuse many students have become psychotic and quite a number are spending their lives in hospitals and halfway houses and in and out of hospitals has finally become more known. Marihuana, however, is still, I believe, an increasing problem and I think the susceptibility to drugs of any kind is still an increasing problem, because when youngsters get started taking any kind of a drug, they tend to lose their discriminating capacities and, hence, go on to other drugs. In this they are supported quite definitely by many of the influences they encounter in their own peer group cultures and in publicity that occurs concerning the drug problem.

Chairman DODD. We have also had different opinions expressed here about how widespread the use of marihuana is on our college and university campuses. The figures vary according to witnesses. In some cases, not too much. But I wonder if you have any information that you could give us with respect to your university.

Dr. FARNSWORTH. Our university and others in what you customarily call the Ivy League universities, those that have somewhat selective admissions policies, are in general finding a greater willingness to use marihuana with each incoming class because the drug is so frequently used in high schools and secondary schools throughout the country. I should not say in the schools but in people of that age, that it is an increasing problem. However, there are many colleges in the country in which there is very little use of marihuana. Even in any one particular college or university, the colonies that use them are scattered throughout the university but there may be some sections, for example, some parts of dormitories where many students use them. In others, hardly any will use them. The drug phenomenon is a contagious phenomenon. You get a group of people in any particular area, they tend to be very strongly evangelical. They are great proselytizers and this is one of the elements in the loss of judgment. I

think the drug takers have judgment to start with and it becomes exascerbated as they become preoccupied with taking drugs and with maintaining their source of supply.

So, I would say that the range of usage of marihuana ranges from nearly zero in many of the smaller colleges in urban areas to somewhere between 30 and 35 percent in some of the larger universities and colleges near urban centers. But of that 30 to 35 percent, which includes those who have taken marihuana at any time for experimental reasons or otherwise, I would estimate that the number of persons who use it regularly is probably less than one-third the number who have used it at any one time. I would hasten to add, however, that my statistics are not reliable and I feel safe in saying that no one else's statistics are either. We are dealing with a tremendous mixture of a few small studies, many sources of gossip, but of the one thing I am sure, we have a serious problem on our hands.

Chairman DODD. Well, let me ask you another question, if I may, in the few minutes we have remaining. In your opinion, has the chronic use of a drug like marihuana impaired the functional ability or impeded the educational attainment of the student who uses the drug?

Dr. FARNSWORTH. Yes. I would say that I classify marihuana users in three different categories. First, those who use it experimentally and stop, and nothing happens as far as they are concerned. No permanent harm. Another group that gets started, becomes concerned about themselves after using it a few weeks or months. They get help, possibly from friends, possibly from professional sources, and they withdraw and no harm comes to them of a permanent sort that we can demonstrate. Those who remain dependent on the drug or become dependent on it, possibly 10 percent of the total, are the people whose motivation becomes impaired. Their life still changes, their responsibility decreases, their judgment and memory sometimes become impaired. They seem so preoccupied with the drug and maintaining the sources of supply that they can hardly think of anything else. I have had students come to me and say "I am trying to get off these drugs. If you can help get rid of the pushers, then I think I could do it, but when the supply is easily available, it is just too much for me and I cannot do it." So, I am thoroughly convinced from my own clinical experience and from exchange of experiences with my colleagues working in this field that the chronic user of marihuana is in a sense destroying those very things which he came to college to acquire; namely, sensitivity of judgment and perception, the capacity to make decisions in delicate situations, and these are what is first impaired. As I sometimes say to the students who are making it pretty hard for me, if you do not matter, it does not matter whether you take marihuana or not, because it will not be noticed, but if much is expected of you, you have much to lose.

Chairman DODD. Do you think an interest in marihuana would increase or decrease or maybe disappear if possession penalties were removed?

Dr. FARNSWORTH. I certainly do not. I think it would be more of a problem. I would be aghast at the very idea as I am shocked by those who advocate that.

Chairman DODD. If I understand your position, you suggest—very interesting—determination of whether this is one misuse, one abuse,

whether it involved selling or pushing or peddling, and so on. And the hard user and the hard seller is a different matter from the user.

Dr. FARNSWORTH. Yes.

Chairman DODD. The trouble, I suppose, for the legislators, is how we work that out in legislation, that is, by writing it out. It is a matter for a judge or someone in such capacity.

Dr. FARNSWORTH. I think that my comment would have and does have considerable support from quite knowledgeable persons in the legal profession. We feel that the only really effective enforcers of the laws about marihuana are the young people themselves once they become aware of what it does and that then we have to have some additional sanction against their use by society in the form of mild laws so that the laws are used as teaching devices for educational purposes, say in a sense, we disapprove of this but we do not want to ruin your career and so you are on notice now that you are indulging in a very dangerous type of activity. This, then, puts the youngster in a position where he has to go back and talk with his family. He, in a sense, has to do a lot more serious thinking than he has ever done before. And this will then make it possible for people to learn the seriousness of the offense without being so penalized that their careers are going to be ruined in the future. This we must avoid at all costs.

Chairman DODD. I do not speak for any other member, but I think you are right. Would you suggest, say, a short jail sentence for a first offender? Or would you rather put it in the category of traffic offense, a first traffic offense; mild, moderate, not of excessive nature?

Dr. FARNSWORTH. I would prefer, if I may speak as an absolutely uninformed law citizen with respect to the legal aspects of it, I would prefer that there be a small uncomfortable penalty which the judge in a given individual case could suspend or not, depending on what he thought was helpful in the individual situation. In other words, the penalty should be as light as it can possibly be to get the point across that you are starting on something that is very full of potential danger.

Chairman DODD. Very helpful. I want to thank you again for your appearance.

I want to say that we have now concluded the first phase of these hearings, in these three mornings, the purpose of which was to determine the extent and nature of the drug abuse problem, to get more knowledge about it than we had; and it was also our purpose on the past 3 days to look at the drug control policys and procedures of the Federal Government. It has been our purpose to examine the legislative needs with respect to penalties for drug violations and with respect to other aspects of drug control. We wanted to hear as much as we could; and we still want to and we will, I hope, have more hearings, to hear from those best qualified to tell us the latest scientific evidence pertaining to the dangers of drug abuse and the harmful effects of, say, LSD or marihuana or other dangerous drugs. We have heard from the heads of major Federal drug control agencies, those who are charged with enforcing our drug laws, and we have heard from scientists and educators.

So, I am confident the subcommittee feels that the fact that we ran into a conflict or at least a controversy, must be settled if we are to have an intelligent policy for legislation. You were not here, Doctor, but I do not think I exaggerate when I say it is a conflict. I would say it is a serious basic conflict between the law enforcement, the drug

law enforcement people, and some scientists and researchers and educators who are highly respected men in their field. I think, and I think the subcommittee thinks, that this controversy may have hampered drug control in the past and it must be resolved before we pass any new legislation. We ought to be able to learn or settle for ourselves on the basic facts and I think this conflict or controversy has influenced the recent proposals for new dangerous drug laws. But, we will hold further hearings and try to resolve this. I hope it comes to resolution. And then, we can hammer out the best possible kind of legislation which I hope will be satisfactory to both sides. I do not know of any other kind of law that would be made effective. So, I hope these hearings are the beginning of an effort to prevent and reduce the drug problem in this country.

Perhaaps we have been on the wrong track altogether for too long and it has been changing all the time. Knowledge is accumulating. More experience is being gathered. I cannot say I will announce today, without consultation with other members, when we will resume our hearings; but I think there are other people we ought to hear from.

Finally, let me say to you, Dr. Farnsworth, that your testimony is of great value to the subcommittee.

Dr. FARNSWORTH. Thank you very much.

Chairman DODD. I appreciate your presence.

We will recess this hearing until further notice.

(Whereupon, at 10:05 a.m., the hearing was recessed, until further notice.)

(Excerpts from)

NARCOTICS LEGISLATION

Hearings before the

Subcommittee To Investigate Juvenile Delinquency

of the

Committee on the Judiciary

UNITED STATES SENATE

September 15, 17, 18, 24, 25, 26, and 29; and October 20, 1969

Testimony of:
Ingersoll, John E., director, Bureau of Narcotics and Dangerous Drugs, U.S. Dept. of Justice;
Mitchell, John N., Attorney General of the United States;
Yolles, Dr. Stanley F., director, National Institute of Mental Health;
Moss, Hon. Frank E., a U.S. Senator from the State of Utah;
Rossides, Eugene T., Assistant Secretary for Enforcement and Operation, Dept. of the Treasury;
Sonnenreich, Michael, deputy chief counsel, Bureau of Narcotics and Dangerous Drugs, U.S. Dept. of Justice; and
Egeberg, Dr. Roger O., Assistant Secretary for Health and Scientific Affairs, U.S. Dept. of Health, Education, and Welfare.

Mr. INGERSOLL. This chart indicates the number of compliance actions conducted by the Bureau from July 1, 1968, through June 30, 1969. Of the 908 compliance investigations completed during this period, 329 corrective actions of some form had to be taken or in more than one-third of the cases. During this same period, 2,353 thefts of narcotics and 574 thefts of dangerous drugs were reported. The chart indicates that certain portions of the drug industry are maintaining lax security controls against drug diversion and are not complying with the recordkeeping requirements of existing law. We know that large quantities of these legitimately produced drugs are being diverted into the illicit traffic. A study conducted by the Bureau a year ago, for example, showed that 92 percent of the amphetamines and barbiturates on the illicit market were legitimately manufactured, and then diverted. Such diversion can only be attributed to lax security and recordkeeping by those persons responsible for the legitimate traffic in these drugs.

Moving on to the next page of the testimony, there is a rather lengthy discussion of registration and the criteria for revocation, and the Attorney General's authority to deny, revoke, or suspend registration, which I will skip over with your permission at this time.

On page 18, beginning with the second paragraph, is a discussion of production quotas and the procedures that are established under title IV of the act.

Page 19, discusses recordkeeping and the increasing requirements in recordkeeping on the dangerous drugs.

Page 20, then, discusses order form requirements, both present and proposed.

And then moving over to page 21, I would like to briefly comment on title IV which deals with the importation and exportation of controlled dangerous substances.

In order to better insure total information regarding the flow of drugs from this country to other countries and back into the United States, it is imperative that certain drug shipments be given advance clearance by the Attorney General and that there be a notification procedure for the other substances. Vast quantities of drugs are being shipped in and out of this country. Therefore, balancing law enforcement goals against industry's economic requirements, we divided the various substances into two parts—first, those which will require advance authorization, such as schedules I and II substances and the narcotic drugs which are found in schedule III; and, second, those drugs that will require simple notification, which are the drugs in schedules III and IV. Further, provision was made for prohibiting the transshipment of drugs through the United States from one country to another unless prior written approval of the Attorney General has been received which shall be granted or denied within 21 days of the request. I might point out that this provision does not apply to schedule IV drugs. And, as to the schedule II and III drugs, only advanced notice to the Attorney General is necessary.

Title IV now does away with the historic company market share approach presently in existence under the Manufacturing A[illegible] of 1960 and gives the Attorney General greater flexibility in determining those drugs subject to import, and by whom. As the Attorney General mentioned, and as you are all aware, the Attorney General also is respon[illegible]

tions. By giving him flexibility, it is hoped that we can avoid such anticompetitive effects and further protect the consumer who has a legitimate need for these drugs.

The penalty structure in title V closely parallels existing Federal law. With regard to trafficking offenses, minimum mandatory sentences are imposed for the first and subsequent offenses of unlawful distribution, importation, and manufacture of schedules I and II substances. For a first offense the range is 5 to 20 years, and for a subsequent offense the range is 10 to 40 years. Probation and suspended sentences are not permitted.

No minimum mandatory is imposed for first or subsequent offenses involving distribution, importation, or manufacture of schedules III and IV dangerous substances. First offenses involving schedule III substances are punishable by imprisonment up to 5 years and second offenses are punishable by up to 10 years. As to schedule IV substances, first offenses are punishable by up to 1 year imprisonment and second offenses by up to 2 years.

No minimum mandatory sentences are imposed in first offense possession cases, regardless of the drug involved. Possession of schedules I and II substances would draw from 2 to 10 years, but with provisions allowing for probation and suspension of sentences. Possession of schedules III and IV substances is a misdemeanor punishable by imprisonment for up to 1 year. However, second offense possession of schedules I and II substances would draw a minimum mandatory sentence of 5 to 20 years with no provision for probation and suspension of sentence. Second offense possession of schedule III substances is punishable by up to 3 years imprisonment, and second offense possession of schedule IV substances would be punishable by up to 2 years.

The offense of distributing dangerous substances to a minor has been substantially changed from the existing Federal law. A person at least 18 years of age who distributes a dangerous substance to another under the age of 18, who is also at least 3 years his junior, is subject to the harsher penalty provisions. The penalties vary in accordance with the schedule of the substance distributed, but generally they are twice the penalty prescribed for the substantive offenses of distribution of schedules I and II, III, or IV substances. The reason for the 3-year-age difference is to prevent operation of this section in such situations as where a college student, 18 years old, gives a marihuana cigarette to his roommate who happens to be almost 18. Without the 3-year-age difference requirement, such a person would draw a minimum mandatory sentence of 10 to 40 years. Obviously, this was never the intent of Congress when the distribution to minors provision was originally enacted and it is not our intent now.

The new bill also affords first offender treatment in the case of unlawful possession. And this is a significant departure from existing law. Under this provision, a person who pleads guilty or is found guilty of possession of a controlled dangerous substance, and who has no previous conviction for an offense relating to narcotics, marihuana, stimulants, depressants, or hallucinogenic drugs either under Federal or State law, is eligible for a conditional discharge and can be placed on probation. Upon fulfillment of the terms and conditions, the court shall then discharge the individual and dismiss the proceeding against him. No adjudication of guilt is ever entered on record and such a discharge is not deemed a conviction. Such a provision will in no way

hamper our enforcement activities since the type of person it is aimed at is not engaged in large scale narcotic or dangerous drug trafficking or distribution.

As to commercial offenses, we have found it necessary to recognize another dichotomy in the dangerous drug area—this is the difference between technical violations by members of the legitimate industry and violations carried out strictly for illicit purposes. As to purely illicit trafficking, imprisonment and/or fines appear to be a meaningful penalty scheme, but in many violations of a commercial nature, such as recordkeeping and alteration of symbols or just negligence in filling an order, civil and criminal fines appear more efficacious. Such fines can be buttressed by misdemeanor terms or imprisonment when such activities are committed wilfully and knowingly. By separating and establishing this approach apart from the penalty structure for illicit traffickers, I believe the penalty provisions become more credible and realistic.

There is much controversy over the existing penalty structure. This is noted by the Attorney General in his transmittal letter and in his testimony this morning. Recognizing that this is a problem area, I would like to give you my overview of it.

Any criminal penalty structure, to be effective, must be acceptable to the courts, the prosecutors, and the public. It must represent a rational, credible approach to the problem and must further be flexible enough to tailor the penalty to the crime and to the person committing it. In drafting any penalty structure, an effort must be made to identify the types of individuals who are engaged in the traffic and use of narcotic and dangerous drugs. To make a penalty structure more credible and directly applicable to individuals violating the laws, three distinct types of persons involved in the drug syndrome must be identified. These three types are: 1) The professional criminal who is engaged in the business of supplying these drugs to others for profit. This person can be a member of an organized criminal syndicate such as the Mafia or he can be a highly organized regional trafficker dealing in drugs such as LSD or methamphetamine, which are not usually handled by the larger organized criminal elements, or he can be an individual who actively and purposely derives his livelihood from the sale and distribution of these drugs. This type of individual whom we label as a professional criminal must be treated differently and more severely than all other persons caught in violation of the drug laws. He is not engaged in this illicit business because of an ideology or because of mental instability or insecurity. He is fully aware that he is violating the law for profit. For this individual, we must accept the hard and perhaps unappealing fact that we do not know how to rehabilitate him and must, for society's protection, "lock him up;" and get him off the streets.

For this person, there must be built into any general penalty scheme, a separate extended penalty term that will be commensurate with his culpability. This isolation of the professional criminal from the point of view of sentencing is supported to a large degree by the President's Commission on Law Enforcement and Administration of Justice which recognized and approved the separate classification and extension of maximum penalties for the dangerous criminal. Under any proposed penalty structure, such a defendant should be subject to severe terms

of imprisonment so that society is protected. I consider this to be a primary objective of any penalty structure in this area.

2) The casual user or intermittent experimenter of drugs, usually of the nonaddicting variety such as LSD, marihuana, and other hallucinogens, who, for a variety of reasons, starts exploring the drug scene, is the second type of person that must be identified in any penalty structure. This type of person is far different from the professional criminal mentioned before. This is the group that is possessing, or giving away these drugs, usually among its own peer group. For these persons the penalty structure should be more flexible and open-ended as these persons seem most likely to respond to rehabilitative efforts and the court should not have imposed upon it rigid penalty requirements.

The penalties should be flexible enough to deter, and, if deterrence fails, flexible enough to allow the judge, based on his observations of the defendant, to tailor the penalty to the nature of the crime and the person committing that crime. This type of person forms a major segment of the defendant population and for the penalties to be effective and rational, they must be geared to fit the punishment to this person with fairness.

3) The drug addict is the other category of persons that should be isolated and identified for penalty purposes. The addict is usually the consumer of the drugs and when he is arrested for sale, it may be only a sale to facilitate his ability to sustain himself on drugs or to help another addict craving the drug. His commission of other property crimes to sustain his drug habit is well known. There is no question that he is a danger to society and to himself and that he requires removal from the society and intensive rehabilitation so that he can become useful and law abiding. The court must have the opportunity to give this person adequate medical treatment. The Narcotic Addict Rehabilitation Act of 1966 is not changed by the penalty structure of this act and can be used as a treatment modality in the addict situation.

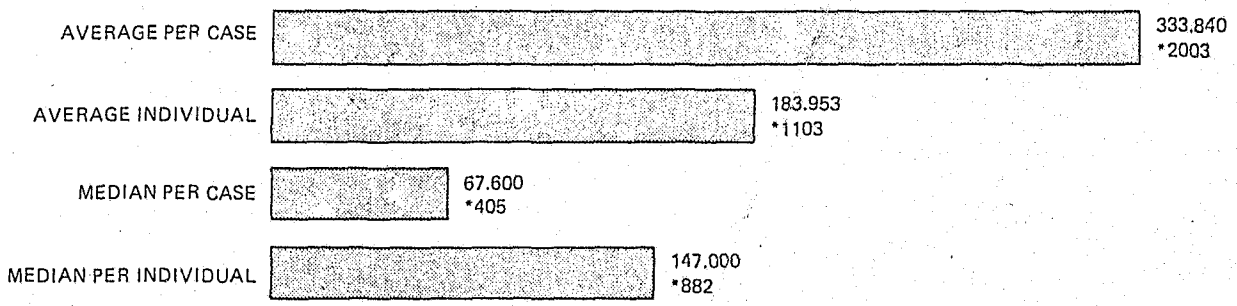
With regard to the crime of possession for one's own use, I feel, from a Federal point of view, that this should not be the major Federal law enforcement effort. The rationale for mere possession offenses within the framework of the Federal penalty structure is for the purpose of indicating a lack of acceptance for indiscriminate and nonmedical use of these drugs and to provide a handhold against the criminal who cannot be arrested for more serious crimes because of his insulation from the street traffic. For the Federal enforcement point of view, some sort of possession provision is considered necessary and must be included. However, the person arrested for simple possession will many times be the narcotic addict or the casual abuser of drugs. In both cases rehabilitation is possible, and, for the casual abuser, probable.

S. 2637 distinguishes mere possession from possession with intent to sell, realizing that the latter is akin to illicit distribution and should be treated more severely. That is why possession with intent to sell is treated the same as sale and simple possession treated as a lesser offense.

Calling your attention to the next three graphs which will be depicting the quantities of the various drugs seized in Federal possession arrests between January 1, 1969, and June 30, 1969, the first illustrates the quantities of narcotics seized.

(The chart was marked "Exhibit No. 13" and is as follows:)

QUANTITY OF NARCOTIC IN POSSESSION CASES (in Grams)



*DOSAGE UNITS
1 DOSAGE UNIT = 333. MGM @ 6% PURITY

Mr. INGERSOLL. The average seizure per case equaled 333 grams, which, when reduced to an amount approximating the average dose taken by a street addict, equals 2,003 dosage units. The average seizure per individual equaled 183 grams or about 1,103 dosage units.

Chiarman DODD. I didn't hear the last figure.

Mr. INGERSOLL. Sir?

Chairman DODD. Would you repeat the last figure?

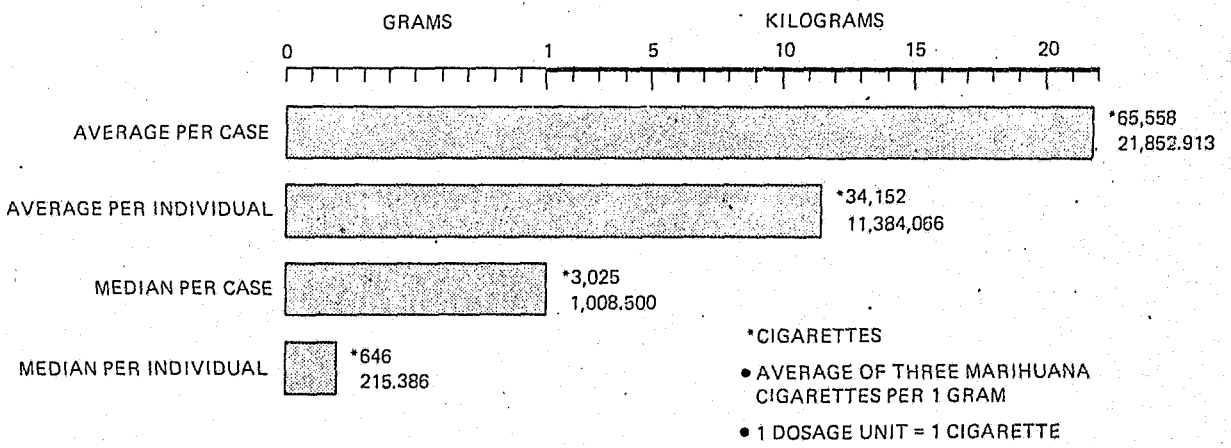
Mr. INGERSOLL. The average seizure per individual equaled 183 grams or about 1,103 dosage units.

The median case produced 67 grams or 405 dosage units, and the median individual was in possession of 147 grams or 882 dosage units. The lowest of these four figures, 405 dosage units, would approximate a 3 month's supply for an average addict requiring three dosage units a day. However, a 3-month supply of narcotics is something which is almost unheard of in the general addict community. In our experience, the average street addict has a difficult time maintaining a single day's supply, let alone a 3-month supply. The only realistic conclusion to be drawn is that the individuals involved in these possession cases were, in fact, engaged in illicit distribution and sale rather than only personal consumption.

The next graph represents the quantity of marihuana seized in reported possession cases.

(The chart was marked "Exhibit No. 14" and is as follows:)

QUANTITY OF MARIHUANA IN POSSESSION CASES (in Grams)



Mr. INGERSOLL. The average quantity of marihuana seized per case equals 21,852 grams, which, when reduced to the number of cigarettes such an amount will produce, equals 65,558 cigarettes. The average quantity seized per individual was 11,334 grams or the equivalent of 34,152 cigarettes. The median case produced 1,008 grams or the equivalent of 3,025 cigarettes; and the median per individual was 215 grams or the equivalent of 646 cigarettes. Logic would dictate that anyone in possession of the equivalent of 646 marihuana cigarettes does not intend to use them all himself. The inference of an intent to sell is inescapable.

Mr. MITCHELL. One additional facet that I would like to mention is that our consideration of this to date discloses that not only is the Mexican border a great source of import of marihuana; it is a troublesome area to police, and it also is a great source of hard narcotics and dangerous drugs that come from all over the world. Thus we find some dangerous drugs that are manufactured under proper circumstances in this country find their way out of the country and into Mexico and back into this country, so that we have all three facets of the problem on the border.

Chairman DODD. I remember that. That was one of the reasons for the writing of the 1965 Drug Control Amendments, to try to stop traffic from this country into Mexico and then out again back into this country. Anyhow, we are all glad to hear we are underway.

The second point I would like to talk about is this. It has become evident to all of us in recent years that the most popular drug of abuse among young people is marihuana. Everybody agrees on that. I wonder what you think, Mr. Attorney General, and Mr. Ingersoll, about the suggestion that I made in my draft bill to make a special effort to study the profits of this drug and to reevaluate the penalty structure. I wonder if either of you have had a chance to think about this idea of having a committee or commission of experts to advise the Attorney General on the properties and penalty structure of marihuana violations. I think you pointed out, Mr. Attorney General, the inconsistencies in the penalties for possession of marihuana and LSD, for example. What, if anything, do you think about this idea? Don't you think it might be helpful if we had such a study made, first, because I find that after the last set of hearings the testimony on marihuana was so conflicting before this subcommittee that it was impossible for me to really make up my own mind about it. I don't know how anyone could legislate in such an atmosphere. The law enforcement people pretty generally took the view that it is dangerous, addictive, very harmful and ought to be dealt with very severely; while the medical, scientific, and educational community pretty generally took the view that this was not quite so. That is the main part of it as I remember it from that record. And I wonder if it would not be a good idea—we have got the top brains in this country—to say to them, now get to work and tell us the facts, give us a definition within a year, say, so that we could better legislate and enforce law.

Mr. MITCHELL. Yes, Mr. Chairman. I was somewhat amazed and surprised upon becoming involved in this subject to find out that there was such little knowledge about the various aspects of marihuana. I would like to point out that the best thing that we have been able to pull together with the cooperation of the HEW and the other participating agencies on the subject is contained in here.

Chairman DODD. In this——

Mr. MITCHELL. And you will find that it is most inconclusive, and I agree with you that definitive information is certainly not available for ultimate disposition of the matter by permanent legislation.

With respect to the concept as contained in your bill regarding the appointment of a commission or another study group, I think that it should be done. I think that it should be adequately funded so that we do get at the bottom of the problem. There are many facets to it. As you

pointed out, the law enforcement people take one approach to it, the medical people another, and that it leaves somewhat of a never-never land in which we are operating.

I do feel, however, that for the purpose of the bill we have under consideration we must proceed with legislation pertaining to marihuana in the category which we are discussing because of the effects that have been established of the substances, but with a review based upon the results of the commission's determination within the period of a year or 2 years or whatever is viable.

Chairman DODD. I would not have any trouble with that. I think you are right. I don't think we should hold up legislation now.

Mr. MITCHELL. And I would be glad, Mr. Chairman—I understand that the people from the Bureau have discussed the concepts with your staff and have been working together.

Chairman DODD. That's right.

Mr. MITCHELL. I would hope that they would provide for such a commission. With respect to the penalties, I think we evidenced our position here this morning to the point where we certainly have to reconsider those as they pertain to this bill vis-a-vis the existing law.

Chairman DODD. Yes. I understand you and I think that is a sensible and a very constructive approach.

Senator KENNEDY. Would the Senator yield at that point?

Chairman DODD. Yes.

Senator KENNEDY. I am just wondering if this is as valuable as Senator Dodd has expressed in the sense of his own legislation. I understand Congressman Pepper has suggested that the Surgeon General do a study; and Congressman Koch of New York has also suggested, I understand, that there be an appointment of a presidential type commission such as the Warren Commission, or the Kerner Commission. Is there any reason why the administration could not go ahead rather than wait for this legislation to be considered and run through the process of the committee and the Senate and House; is there any reason why with the importance of this problem as it exists nationally and with the concern that the administration has expressed, as evidenced in the efforts out in California and Mexico, that there could not be expeditious action by the administration in establishing such a commission rather than waiting for the legislation itself?

Mr. MITCHELL. Senator, I think your point is well taken and I would point out that the President in his message to Congress, in effect, directed this.

We have two problems in my opinion with respect to that process. Number one is we haven't been able to obtain the money.

Senator KENNEDY. Well, are you suggesting from your response that one of the principal limitations in further action in the designation or the appointment of a commission is a lack of congressional responsiveness in providing adequate funding for such a commission?

Mr. MITCHELL. No, I say that the process that we must undertake now and are undertaking—and the initial start is contained in this—is partially inhibited by the lack of money. I would also hasten to add that I think the more important facet is that by the appointment of a commission from whatever source with a national reputation and

representation, I think that we will have better acceptance of the subject matter within all aspects of the community than if we do it as a branch of the Government.

Senator KENNEDY. Well, I couldn't agree with you more in those terms, although I think the Surgeon General obviously would have a very significant standing in all aspects of our Government and as far as public acceptance. I think my point would be is there any reason, realizing the expression of support and the expression of need which you have articulated so well in terms of your response to the chairman's question, that there could not be Presidential action in the naming of such a commission prior to the passage or the consideration of this legislation; given the fact that the administration and you, yourself, as I think so many law enforcement and young people have expressed that there really is a tremendous need for a greater understanding about the dangers of such drugs and their effect in terms of law enforcement, and many other implications of it? Is there any reason that the administration could not go ahead and appoint this commission rather than wait for the legislation?

Mr. MITCHELL. I think in the context of your question in that area, I think that is a good suggestion that should be followed, and we will examine the prospects of funding, the powers and intergovernmental relations as we go along.

Senator KENNEDY. I say this as I am sure you realize, Mr. Attorney General, because there has been so much misinformation, I think, as the distinguished Chairman has pointed out about the drug itself, and it seems to me that such a commission made up as you suggested of a very broad and wide spectrum of public participation within our own society I think would have a very significant impact in furthering the understanding of the public. And I think particularly with the appointment and the mantle of a Presidential commission, with all that that suggests and recommends, I think that we could at last come to grips with this problem which I think all of us feel has escaped us in too many of the studies where they go back to the time of the La Guardia study, many other studies have been done on the local and State level and even some that have been done in various departments of Government. And I think with that Presidential mandate, I think a very important step would be taken forward.

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. Thank you.

Thank you, Mr. Chairman.

Chairman DODD. I would just add, Mr. Attorney General, when I suggested this last March or April, when I introduced this bill, I had more in mind a committee or commission just concerned about marihuana, because I think it is urgent that we get the answers to this specific problem. There are many others. But in any event, I hope we can get something done about it and I know you do, too.

(Testimony of Dr. Yolles, continuing)

I would now like to spend the remainder of my time here in talking about marihuana, Mr. Chairman.

Because of the increase in the use of marihuana and because of the confusion and controversy resulting from that use, it is of the greatest importance to present factual information about the drug itself, the effects of its use and the history of efforts to control its use.

For, unless we separate fact from fable in the public uproar over the use of this drug, our efforts to achieve effective and acceptable controls over marihuana use will indeed be just "more of the same."

The marihuana story for 1969 in the United States goes back to the 1930's.

The "great experiment" was over. The prohibition of the use of alcoholic beverages, under the 18th Amendment, had ended.

For better or worse, American voters had made it clear that they considered alcohol a social beverage, and chose to limit prohibition of its use through state laws which vary to this day, in terms of "wet" and "dry" jurisdictions and the age at which individuals can legally drink beer, wine, and spirits.

The experiment, which we voted to terminate, had produced at least two major results: the social usage of alcohol by adult men and women had increased and the contempt for an unpopular law had spread, bringing other legal restrictions on manners and morals into question.

At approximately the same time, however, enough hue and cry over the reported evils of another intoxicant—marihuana—resulted in the adoption of the Marihuana Tax Act of 1937.

We know that marihuana is not, scientifically, specifically—and I repeat, is not, scientifically—a narcotic drug like heroin or morphine, but is a mild hallucinogen. It should not be associated with narcotics—either medically or legally.

However, "guilt by association" with narcotics occurred for marihuana for the first time in Federal law in 1929, with the passage of Public Law 672 of the 70th Congress authorizing the establishment of the Lexington and Fort Worth Hospitals.

In the statute, the term "habit-forming narcotic drug" or "narcotic" was specifically defined—drug by drug—and on the list was "Indian

hemp, or marihuana and its various derivatives, compounds and preparations."

Nowhere, Mr. Chairman, in the committee hearings or in the Congressional Record was there any discussion of the rationale for this drug classification.

As States adopted the Uniform Narcotic Drug Act which included marihuana, it was more widely classified as a narcotic.

And so the stepping stone concept got its start. Once labeled as a statutory narcotic, marihuana continued to be so labeled in succeeding years.

By 1937, the use of marihuana was reported to present so severe a health danger that Federal controls were represented as necessary. And so the Marihuana Tax Act of 1937 was enacted, even though many of the statements in testimony before the Congress were substantially untrue.

The report to the Senate on the bill quotes the following:

> Under the influence of this drug (marihuana) the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, many violent crimes have been and are being committed by persons under the influence of this drug. Not only is marihuana used by hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high-school children in the form of marihuana cigarettes by unscrupulous peddlers. Its continued use results many times in impotency and insanity.

And elsewhere in the testimony, the witness stated, "I believe in some cases that one marihuana cigarette may develop a homicidal maniac probably to kill his brother." [sic]

At the time of the hearings on this proposal, one of the witnesses was Dr. William C. Woodward, appearing for the American Medical Association.

In speaking about newspaper accounts of abuse of marihuana, Dr. Woodward said:

> It has surprised me that the facts on which these (newspaper) statements have been made have not been brought before this Committee by competent primary evidence. We are referred to newspaper publications concerning the prevalence of marihuana addiction. We are told that the use of marihuana causes crime.
>
> But as yet no one has been produced from the Bureau of Prisons to show the number of prisoners who have been found addicted to the marihuana habit. An informal inquiry shows that the Bureau of Prisons has no evidence on that point.

Dr. Woodward pointed to a series of agencies including the PHS who had not been consulted.

> You have been told that school children are great users of marihuana cigarettes. No one has been summoned from the Children's Bureau to show the nature and extent of the habit, among children.
>
> Inquiry of the Children's Bureau shows that they have had no occasion to investigate it and know nothing particularly of it.
>
> Inquiry of the Office of Education—and they certainly should know something of the prevalence of the habit among the school children of the country, if there is a prevalent habit—indicates that they have had no occasion to investigate it and know nothing particularly of it.
>
> Moreover, there is in the Treasury Department itself, the Public Health Service, with its Division of Mental Hygiene. The Division of Mental Hygiene was, in the first place, the Division of Narcotics. It was converted into the Division of Mental Hygiene, I think, about 1930. That particular Bureau has control at the present time of the narcotic farms that were created about 1929 and 1930 and came into operation a few years later. No one has been summoned from that Bureau to give evidence on that point.

Informal inquiry by me indicates that they have had no record of any marihuana or Cannabis addicts who have ever been committed to those farms.

The indictment by Dr. Woodward, who qualified both as a physician and an attorney, of the acceptance of "indirect hearsay evidence" by the committee brought forth neither questions nor comment at that time.

The legal history of marihuana control measures is a matter of record and I will not pursue it here. The major point I wish to make is that, in the case of marihuana, legal penalties were assigned to its use that are strict enough to ruin the life of the first-time offender, with total disregard for medical and scientific evidence of the properties of the drug or its effects. I know of no clearer instance in which the punishment for an infraction of the law is more harmful than the crime itself.

I would like to make my professional position very clear in this regard, Mr. Chairman.

I do not, at this time, advocate the removal of all restrictions on the use of marihuana. I believe that until we know more than we now do about the long-term effects of marihuana and other forms of cannabis, that use of the drug should continue to be controlled.

Medically speaking, I cannot give it a clean "bill of health." But, penalties for its use should be lowered, in proportion to the danger and risk to the individual and society of this drug.

Chairman Dodd. That is about what I happen to think is right, too. And if you are familiar with the bill I introduced, this is about what I tried to do.

Dr. Volles. Yes, sir.

Chairman Dodd. I think the only thing we can do pending this study is for your office to hold the present controls and iron out this ridiculous penalty situation, and both of these things could be done.

Dr. Volles. You are quite right.

For some marihuana can be a potentially dangerous drug. Generally it is a mild drug in comparison with other hallucinogens such as LSD, or with certain amphetamines and barbiturates. To equate its risk—either to the individual or to society—with the risks inherent in the use of hard narcotics is—on the face of it—merely an effort to defend an indefensible, established position that has no scientific basis.

It is quite understandable that law enforcement officials are concerned with the misuse of marihuana. So are physicians, educators, and scientists. But the degree of concern must now—at long last—be equated with the degree of mental and physical risk. For too long, the fantasies surrounding marihuana, whether fostered deliberately or through ignorance, have clouded the facts. I would like to mention some of them here because fallacy can only give way to fact if each is recognized for what it is.

And I have prepared a chart of fable and fact on marihuana which I would like to read into the record at this point.

Chairman Dodd. Yes; please do.

Dr. Volles. Fable: Marihuana is a narcotic. Fact: Marihuana is not a narcotic except by statute. Narcotics are opium or its derivatives—like heroin, and morphine—and some synthetic chemicals with opium-like activity.

Fable: Marihuana is addictive. Fact: Marihuana does not cause physical addiction, since tolerance to its effects and symptoms on sudden withdrawal does not occur. It can produce habituation, which is psychological dependence.

Fable: Marihuana causes violence and crime. Fact: Persons under the influence of marihuana tend to be passive. It is true that sometimes a crime may be committed by a person while under the influence of marihuana. However, any drug which loosens one's self-control is likely to do the same and relates primarily to the personality of the user.

Fable: Marihuana leads to increase in sexual activity. Fact: Marihuana has no aphrodisiac property.

Fable: Marihuana is harmless. Fact: Instances of acute panic, depression, and psychotic states are known, although they are infrequent. Certain kinds of individuals can also become overinvolved in marihuana use and can lose their drive. We do not know of the effects of long-term use.

Fable: Occasional use of marihuana is less harmful than occasional use of alcohol. Fact: We do not know. Research on the effects of various amounts of each drug for various periods is underway.

Fable: Marihuana use leads to heroin use. Fact: We know of nothing in the nature of marihuana that predisposes to heroin abuse. It is estimated that less than 5 percent of chronic users of marihuana go on to heroin use.

Chairman Dodd. May I interrupt you here, Doctor?

Do you remember the letter that I wrote to you and you wrote back to me?

Dr. Yolles. Yes.

Chairman Dodd. I believe—I don't know whether you have your copy or a copy of your answer with you. Do you have a copy of yours?

Dr. Yolles. No, I don't have it with me, Senator.

Chairman Dodd. Well, I think my facts are straight. You say that, "Habitual marihuana users will invariably try hashish, which is three to four times stronger. They are often attracted to LSD and other hallucinogenic drugs. Pep pills, like the amphetamines, are used by one-third of the 'potheads' and some of these go on to injecting amphetamines."

And then you say, "The escalation of heroin is infrequent, but it certainly occurs."

Now, these drugs are more dangerous than the ones you refer to here, certainly more dangerous than marihuana.

Dr. Yolles. Yes, sir.

Chairman Dodd. What I find difficult to understand—perhaps you could clarify this for me—is what the relationship is. Perhaps you are going to show it. I haven't had a chance to read your testimony over. What, then, is the relationship between marihuana and such other drugs like hashish and heroin? Or is there a relationship? I know what you said before about heroin so far, but I say perhaps you are going to say more than I have had a chance to read. But even so, I think it would be helpful if you could spell it out here.

Dr. Yolles. Well, I could summarize it very briefly. In terms of progression to heroin, there is a very small percentage of frequent

users, chronic users of marihuana, who do go on to heroin but they also go on to all other drugs. The very fact that these individuals, who use marihuana chronically, and are known as potheads, will test the nature of the habituation of these drugs, leads them to try all other types of stimulants, hallucinogens, et cetera. Only a small percentage, however, even of these smorgasbord users of various types of drugs go on to use heroin. So the statement has been made over the years that marihuana use inevitably leads to heroin use, but——

Chairman Dodd. It is said it is a threshold drug.

Dr. Yolles. The large percentage of marihuana users are infrequent users. It is estimated that about 65 percent of them use it once or twice. Another 25 percent of them will use it on occasion socially. These are not the people we are talking about. There is another 10 percent who are frequent users. but of that 10 percent somewhat less than 5 percent go on to using heroin, which is a rather small percentage.

Chairman Dodd. If a higher percentage of these marihuana users were more frequent users—suppose 80 percent were smoking it all the time—then would you have a higher percentage moving to heroin and other dangerous drugs?

Dr. Yolles. There would be a larger number of people moving if the percentage stayed the same. However, I must point out that given an unselected population exposed to marihuana smoking, some 50 percent of them will have no effect the first time at all. What we are talking about basically here, Senator, is the personality of the users.

Chairman Dodd. Some people are more addictive than others, is that it?

Dr. Yolles. They are more addiction prone. Let's put it that way.

This is the basic phenomenon. It is not the drug itself which leads to the use of another drug. It is the personality of the user which leads him to experiment with other drugs.

Chairman Dodd. Very well: That is helpful testimony. Go ahead.

Dr. Yolles. Fable: Marihuana enhances creativity. Fact: Marihuana might bring fantasies of enhanced creativity but they are illusory, as are instant insights reported by marihuana users.

Fable: More severe penalties will solve the marihuana problem. Fact: Marihuana use has increased enormously in spite of the most severely punitive laws.

Fable: It is safe to drive while under the influence of marihuana. Fact: Driving under the influence of any intoxicant is hazardous.

Of all those who have tried marihuana, as I mentioned a moment ago, about 65 percent are experimenting, trying the drug from one to 10 times, and then discontinuing its use. Some 25 percent are social users, smoking marihuana on occasion when it is available, usually in a group context. Ten percent or less can be considered chronic users who devote significant portions of their time to obtaining and using the drug. The effects of marihuana vary with the potency of the agent, the psychological set of the user, or what he expects from the situation, and the setting in which use takes place. Thus, it has been estimated that half of those who use marihuana the first time experience no effects at all.

It is obvious, therefore, that there are some things we already know about marihuana, in spite of the fact that many people are not willing to accept this knowledge.

A youngster who smoked one marihuana cigarette is not a dope fiend, even though misguided individuals in the past have made this association.

There is probably not a single youngster today who believes that smoking one marihuana cigarette will automatically lead him to perdition.

In this situation, it is extremely unfortunate that by the continued, exaggerated emphasis on the supposed dire evils of marihuana smoking, we make it extremely difficult to tell people what the real risks of use of specific kinds of drugs are. And there is no doubt that we have already built up in the new generation some of what people of our age absorbed in the days of the Volstead Act. The prohibition syndrome, as applied to marihuana, has already brought about defiance of these specific laws; additionally, it has created in the new generation a credibility gap concerning other laws and law enforcement.

This committee, Mr. Chairman, is considering various legislative proposals. Other proposals designed to improve control of drug abuse are also before the Congress and have been assigned to other committees.

I would like to discuss the elements of the proposals under consideration by this committee which I would hope to see enacted, and the elements that I think could be improved.

I would not favor adoption of these proposals in their present form, without further consideration of medical and scientific data, as well as further consideration of statements made by judges, probation officers, prison officials and others who oppose mandatory minimum penalties on drug offenders.

Chairman DODD. Now, you are talking about S. 2637, is that the one? So you are not talking about my bill, are you, when you say that you would favor the adoption of either proposal in its present form?

Dr. YOLLES. The two major proposals before the committee are your bill and the bill of the late Senator Dirksen. There are elements in both that I am strongly in favor of and certain elements which I would hope can be altered in both of these bills.

Chairman DODD. I see. All right.

Dr. YOLLES. The principle and the effects of mandatory penalties defeats the whole purpose of treatment and rehabilitation of drug users; it unnecessarily limits the courts and negates the traditional American expectancy that each individual will be heard by a court of law in terms of his intent, the circumstances of his alleged offense, and his potential ability to be rehabilitated.

As a result of my professional experience with drug users sentenced by the courts, I am convinced that the social and psychological damage caused by incarceration is in many cases far greater to the individual and to society than was the offense itself. Each case of drug abuse must be decided separately, from the legal as well as the medical point of view.

From this standpoint, I would favor provisions which would make possible a definite scientifically based determination of the dangers of marihuana use and of the properties of the drug themselves.

Changes in scheduling drugs in any piece of legislation can only have real meaning if they are based on research findings. My second point in this regard, therefore, is that social and psychological research on the use and abuse of drugs should remain a medical and health responsibility so that scientific credibility can be established.

As President Nixon has said:

> In addition to gathering existing data, it is essential that we acquire new knowledge in the field. We must know more about both the short- and long-range effects of the use of drugs being taken in such quantities by so many of our people. We need more study as well as to find the key to releasing men from the bonds of dependency forged by any continued drug use.
>
> The National Institute of Mental Health has primary responsibility in this area, and I am further directing the Secretary of Health, Education, and Welfare to expand existing efforts to acquire new knowledge and a broader understanding in this entire area.

Similarly, drug abuse education in schools and for health professions should continue to be the responsibility of the health professions. We have long been involved in such educational programs and public response to the expanded drug education pamphlets, TV, and radio spots and other visual materials indicates that when youngsters gets facts instead of hysteria they pay attention to this information.

The Department of Justice should, of course, have responsibility for the training and education of enforcement personnel, but today's youth are unlikely to accept information on drugs presented by enforcement officials.

I am hopeful that relevant, factual educational programs will begin to become significantly effective in curbing the indiscriminate abuse of all drugs as it has been in reducing LSD use.

No matter what legal reforms are undertaken, this task will be difficult, because the whole program has gotten out of hand, and the smoking of marihuana has become an accepted fashion among millions of our citizens.

In this situation, the first place in which legal reforms can be made is in the removal of mandatory minimum penalties.

I agree with you, Mr. Chairman, as you stated at the White House Conference on Narcotics and Drug Abuse in 1962, that the time has come to correct the mistake that was made with the passage of the Narcotics Control Act of 1956. That act radically departed from the existing trend in criminal legislation—a trend toward individual treatment of convicted offenders with a view to their eventual rehabilitation.

If mandatory sentences really were deterrents to criminal conduct, then there would be little justification for limiting them only to narcotic and marihuana offenders.

Mandatory sentences bear little or no relationship to the public good, to public health or to mental health.

I think it important that the record of this committee's current hearings include the results of the questionnaire that the chairman of this committee included in the proceedings of the White House Conference on Narcotics and Drug Abuse.

As a joint project of the Senate Subcommittees on Juvenile Delinquency and on National Penitentiaries, the questionnaire was sent to Federal district judges, Federal chief probation officers, Federal prison authorities and U.S. attorneys, inquiring into the effects of the

mandatory minimum sentence provisions, and the elimination of probation and parole in the handling of narcotics offenders.

The results of that survey showed that approximately 75 percent of all those who responded—people who lived with that law from day to day—opposed these two basic provisions of the act.

Chairman Dodd. I appreciate your recognition of the survey of drug abuse which this subcommittee and the Subcommittee on Penitentiaries submitted at the White House Conference. The appropriate parts of it will be included in the record of these hearings. (The documents referred to were marked "Exhibits Nos. 16 and 17," and are as follows:)

EXHIBIT No. 16

STATEMENT OF SENATOR THOMAS J. DODD, BEFORE THE WHITE HOUSE CONFERENCE ON NARCOTICS, SEPTEMBER 28, 1962

The White House Conference on Narcotics is at once an indication of the gravity of the narcotic problem in the United States and a symbol of the determination of the American people and its Government to do something about it. I feel deeply privileged to have been invited to speak before this panel, which is concerned with the legislative aspects of the problem.

In 1956, as a result of widespread national dissatisfaction with the growth of narcotic addiction, especially among juveniles, and because of deep frustration over the apparent failure of existing legislation to deal with the problem, a new Narcotic Control Act was passed into law. This law contained three major innovations that were expected to have a tremendous deterrent effect on narcotic racketeers.

First, it removed from the hands of judges all discretion in the sentencing of convicted narcotic offenders by providing a mandatory minimum sentence of 5 years for the first offense and 10 years for subsequent offenses, with maximum penalties of 20 years for the first offense and 40 years for subsequent offenses.

Second, it removed all possibility of parole for narcotic offenders, thus putting them in a special category in our Nation's Federal prisons.

Third, it emphasized the concern of Congress over juvenile drug use by providing up to life imprisonment or even death for adults convicted of selling narcotics to a juvenile under the age of eighteen.

To demonstrate the severity of this law, it should be pointed out than an illegal narcotic transaction normally involves several violations of the act, each of which could be punishable by a mandatory 5-year sentence. Thus, a first offender could be, and frequently has been, sentenced to 20 or 30 years for a first offense.

When Congress passed the Narcotic Control Act of 1956 it radically departed from the existing trend in State and Federal criminal legislation, a trend toward the individual treatment of convicted offenders with a view to their eventual rehabilitation. Congress made this departure because it felt that the peddling of narcotics was so vicious, dangerous, and contagious a crime that unusually severe and rigid methods were necessary and justified in dealing with it. If the passage of several years under this act had been accompanied by a marked decrease in narcotic crimes, we might say that the law could have justified itself. For after all, the primary purpose of law enforcement is the protection of the public; the care and rehabilitation of criminals, however important, must be subordinate. But has the law been effective?

We have now had several years of experience under it. Its degree of effectiveness is a matter of dispute. The 1956 law has proved helpful in the jailing of several large-scale narcotic racketeers. Yet the growth of drug traffic continues.

The dispute is heightened by the fact that available information on the spread of narcotic addiction is completely contradictory. The Federal Bureau of Narcotics tells us that there are 46,798 drug addicts in the entire country. But testimony before the Senate Subcommittee To Investigate Juvenile Delinquency by responsible city and State officials indicates that there may be as many as 50,000 addicts in the city of New York alone, and from 15,000 to 20,000 addicts in the State of California alone.

Only last week the executive director of the New York City Youth Board told our subcommittee that 25 percent of the children studied by the youth board are

involved in the use of drugs ranging all the way from heroin to marihuana, pep pills, goof balls, and other varieties. He told of entire neighborhoods where children were exposed to narcotic pushing "as part of their daily life." In his opinion and in the opinion of countless people with whom I have talked, who deal with this problem on a day-to-day basis, there are more narcotics illegally available today than ever before.

Therefore, I think it is clear that the severe mandatory sentencing provisions of existing law have not had the deterrent effect that was hoped for.

There is an overwhelming preponderance of opinion on the part of those who deal most closely with this act that these provisions have had a very damaging effect and should be altered.

The Senate Subcommittee on Juvenile Delinquency, in a joint project with the Subcommittee on National Penitentiaries, sent a questionnaire to Federal district judges, Federal chief probation officers, Federal prison authorities, and U.S. attorneys inquiring into the effects of the mandatory minimum sentence provisions, and the elimination of probation and parole in the handling of narcotic offenders. The answers to this questionnaire, digested and broken down, are as follows:

Of Federal prison wardens, 92 percent were opposed to the mandatory minimum sentence provisions; 97 percent were opposed to the prohibition of probation or parole:

Of the Federal district judges responding to the questionnaire, 73 percent opposed the mandatory minimum sentence provisions and 86 percent opposed the prohibition of probation or parole:

Of the probation officers who responded, 83 percent opposed the mandatory minimum sentence provisions and 86 percent opposed the prohibition of probation or parole:

Of the U.S. attorneys who responded, a group which understandably is predisposed toward more rigid punitive statutes, 50 percent opposed the mandatory minimum sentence provisions and 55 percent opposed the prohibition of probation or parole.

The overall figures for our survey showed that approximately 75 percent of all those who responded, people who live with this law from day to day, oppose the two basic provisions of the act and seek their modification.

Why? I will give you representative answers.

From James V. Bennett, Director of the Federal Bureau of Prisons:

"Prisons, both State and Federal, in the years immediately ahead will be faced inevitably with the problems of narcotic offenders, addict and nonaddict alike, who are weighted down by the hopelessness and the bitter futility of sentences which seemingly stretch into infinity. What can the institution offer the man serving 30, 50, or 80 years with no prospect for parole or hope of mitigation of his sentence? There is a real danger that, in the effort to contain the problems which stem from the hopelessness characterizing the attitudes of such men, much of what has been achieved in the development of constructive programs for all types of prisoners may be wiped out."

From U.S. District Judge James M. Carter:

"Several years ago at a Ninth Circuit conference there was a unanimous vote against mandatory sentences. The mandatory sentence can work extreme injustice. I was compelled to impose a 5-year sentence on a Marine veteran of the Korean campaign who was found with three or four marihuana cigarettes. He had been drinking in Tijuana and was arrested at the border. Obviously, three or four cigarettes did not make him a peddler and these were not commercial amounts. He had a spotless civilian record and an excellent military career. He had received a Purple Heart and had been wounded in action and had a wife and children. I held up sentencing 60 days with the defendant's consent, to attempt to get the U.S. Attorney to file a tax consent on a smuggling charge which would not have carried at least 5 years' sentence. I was unsuccessful. I sentenced the man to 5 years in the penitentiary without parole."

From Oliver Gasch, then U.S. attorney for the District of Columbia:

"I am opposed to the philosophy of mandatory minima. Even in narcotic cases some discretion should be allocated to the judge. The answer to the elimination of drug traffic is an ideal difficult of realization. I would recommend long *conditional* sentences with close supervision by parole authorities."

From Eugene P. Dupuy, Chief United States Probation Officer, New Orleans, Louisiana:

"Existing laws emphasize the punitive aspects in dealing with the illegal drug traffic. Presumably, the reason for this approach is that strict penalties are expected to serve as a deterrent and to eliminate or greatly reduce the problem. Were this premise valid, mandatory minimum sentences for all crimes would be the solution. I believe that all persons who have worked with offenders know that such an approach is doomed to failure, for it overlooks the causative factors of crime. Historically, we know that severe penalties for relatively minor offenses, such as theft of a loaf of bread, did not deter the hungry from stealing bread. Similarly, the person with mental or emotional problems who needs support, will seek that support, irrespective of social or legal consequences."

I believe that the experience of the Narcotic Control Act of 1956 demonstrates again the fact that mandatory, inflexible, general punishment statutes can never be a just or even an effective substitute for the individual discretion, within prescribed limits, of judges, prison officials, probation officers and district attorneys who, acting upon personal study of individual cases, can arrive at justice far more readily than can a blind and impersonal article of law.

The principal defect in the present law is that it makes no distinction between major narcotic pushers and narcotic addicts themselves who, in order to pay for their own drugs, become small-time drug peddlers. Under the present law, drug addicts are being imprisoned for terms of twenty, forty and sixty years, and some are being given life imprisonment. This mandatory sentencing, with no hope for parole, thwarts all efforts to deal sensibly and rationally with addicts and completely sweeps under the rug the tragic problem which they represent.

The problem of drug addiction is essentially a medical problem, a psychiatric problem. It cannot be solved by merciless prison sentences. I believe that the law should be amended to repeal mandatory minimum penalties and to restore the possibility of probation and parole for rehabilitated narcotic offenders.

I do not here suggest that the professional criminals at the vortex of narcotic racketeering be given lenient treatment. Their conscious dedication to profiting from the calculated destruction of human beings demonstrates that they are the least likely of all rehabilitative prospects, and must of their very nature be confronted with the full force of the law. But I do propose that we should reform the excessively punitive and inhumane treatment now meted out to those who are essentially the victims of the narcotic racket.

To be sure, the drug addict, while locked up in prison, only to be released at an old age or by death, does not pose a threat to society as a narcotic peddler. But this solution is so demonstrably ineffective as a deterrent to narcotic crimes, wreaks such havoc within the penal system, does such damage to the individual involved, works such violence to the principles of justice and equity which should characterize our legal code, constitutes such an affront to reason, upon which all successful law must be based, involves such an abandonment of the principle of compassion which must be at the heart of all successful social advance, presents such a stark contrast with the enlightened trend toward the rehabilitation of prisoners—that all reasonable observers will eventually agree that the tragic and manysided toll of blind and rigid imprisonment procedures is too great to pay for the fancied and illusory gain.

I believe that the Congress should rewrite the law and give the courts the right to distinguish between professional narcotic criminals and narcotic addicts who are drug peddlers only because of the overwhelming need to finance their own addiction.

This is today an unpopular cause and those who advance it will be subject to ridicule and abuse by unthinking people. Yet I am certain that the American people, in their honest wisdom, in their mercy, and in their plain good sense, will support this cause when once they understand it.

This Conference marks a great step toward that goal and I am very proud and honored to have an opportunity to take part in it and to bring these views to you.

EXHIBIT No. 17

EXCERPTS FROM S. REPORT 1519, 85TH CONGRESS, SECOND SESSION, pp. 4–7

THE EFFECTIVENESS OF THE NARCOTICS CONTROL ACT OF 1956

A study of the effectiveness of the Narcotics Control Act of 1956 is clearly called for. The act is one of the harshest penal laws ever placed on our statute books, utilizing principles of deterrence and punishment as opposed to parole or

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probation for defendants convicted of narcotic and marihuana violations. The act has now been in effect for more than 6 years. Statistics and other data suggest that it has failed in its deterrent purpose and has been most costly to the Government. It has also produced many injustices and has generally had a destructive effect on prison rehabilitation programs.

There has been no decline in the number of narcotic and marihuana offenders committed to prison each year. This would appear to indicate that the stiff penalties provided for narcotic violations have not succeeded in their objective of frightening potential offenders away from this illicit trade. In 1956, the last fiscal year before the Narcotics Control Act went into effect, 1,189 persons were sentenced to prison for narcotic offenses and 325 for marihuana offenses. In the succeeding years, the commitments of these offenders experienced slight fluctuations. In the 1962 fiscal year, 1,070 defendants went to prison for narcotic violations and 204 for marihuana violations.

The rate of commitments has remained high despite the fact that the average sentence imposed for Narcotics Act convictions has increased. In 1956, the sentences imposed for narcotics violations averaged 3.9 years and for marihuana violations, 3.2 years. By the 1958 fiscal year, the average sentence for narcotic violators increased to 6 years and for marihuana violators to 5 years, and the average have remained at about those levels. Due to the cumulative effect of the longer sentences, the average term being served in prison by this group of offenders also increased, from 5.1 years in 1956 to 7.5 years in 1962 for narcotic offenders and from 4.4 to 5.9 years for marihuana offenders.

Lacking parole eligibility and serving substantially longer terms than other types of violators, the prisoners under sentence for Narcotics Act offenses comprise an ever larger component of our Federal prison population. Under the Boggs Act, the number of drug law violators increased from 2,017 or 11.2 percent of the entire prison population in 1950, to 3,181, or 15.1 percent of the population in fiscal 1956. The trend continued under the 1956 act. By 1962, the number reached 4,368, or 17.7 percent of the prison population.

In 1962, it cost the Federal Government $2,022 to keep one offender in prison for 1 year. The expense for keeping 4,368 drug offenders in prison for a year therefore comes to $8,824,000. And the cost is getting greater every year.

The provisions of the Narcotics Act, which apply indiscriminately to addict, peddler, and racketeer, have vastly complicated the problem of rehabilitating the addict. Approximately one-half of the offenders committed to Federal institutions last year for drug law violations were reported to be addicts, many of them in their late teens and early twenties. Their long terms and nonparole status has militated against their rehabilitation.

Prior to the recent White House Conference on Narcotics Addiction and Drug Abuse, the President appointed an ad hoc panel to review the overall problem, and a report prepared by the committee was used as one of the working documents of the Conference. The Panel's conclusions contained the observation:

The compulsive drug abuser can be rehabilitated to a legal and, in some cases, productive place in society. A decision either to place this offender in prison for long periods, or to maintain his addiction by continued drug dosage, is a tacit denial of this possibility. * * * The most critical component of treatment and rehabilitation appears to be a long, strictly supervised, highly controlled parole period, with legal and practical measures to assure that the parolee remains drug free. Such a parole period is essential for either civil or criminal commitments, and should be just as strict for either one. The cost of such supervision where tried has been $350 per year as compared with $2,000 to maintain a Federal prisoner for an equal time.

Under current Federal legislation, needless to say, the prospects of rehabilitating drug addicts have been greatly diminished.

The severe penalties provided by the Narcotics Control Act have also vastly aggravated the problem of sentence disparities in the Federal courts. Many of the sentences imposed on these defendants have been of truly Draconian proportions and far in excess of the 6-year average term imposed in most Federal courts for narcotic offenses. An addicted epileptic youth was sentenced to life for selling narcotics; a 32-year-old male addict was sentenced to 80 years. A 40-year-old woman, a first offender, was given 40 years for sale of heroin, and a 36-year-old woman, also a first offender, a 20-year term for sale of marihuana. None of these defendants was eligible for parole under the provisions of the Narcotics Act.

President Kennedy reduced the sentences of all four of these prisoners. He cut the sentences of the two men to 20 years each and the sentences of the two

women to 10 years each. He has also taken similar action in a number of other narcotics cases in which the sentences were excessive considering the circumstances of the offenses and the backgrounds of the prisoners.

James V. Bennett, Director of the U.S. Bureau of Prisons, wrote in a recent article for the University of Illinois Law Forum:

"With interminable sentences and no possibility of parole, these offenders [drug law] are accumulating from year to year in the Federal prisons and now compose the second largest group of prisoners, next only to the car thieves. They have utterly no incentive to improve themselves in prison and their very presence, bulking ever larger, is creating a formidable handicap and a discouraging atmosphere for the prison staffs who are doing their best to rehabilitate both the narcotic offenders and the many other types of prisoners in our institutions. The sentences in the narcotics cases, instead of promoting the rehabilitation of the offender and the public safety, are proving to be socially destructive in their effects."

It seems apparent that the Narcotics Control Act of 1956 has not been as effective as originally expected to reduce the dimensions of the drug problem. Its provisions have also made programs of rehabilitation for drug addicts virtually impossible and have had unfortunate and damaging consequences for our system of justice. We have now had more than 6 years of experience with the act, and it is time that it be amended in the light of that experience.

Because of this situation and numerous questions raised by eminent authorities, the subcommittee felt a need for further investigation. In a joint effort with the Subcommittee on National Penitentiaries, a questionnaire was sent to Federal district judges, Federal chief probation officers, Federal prison authorities, and U.S. attorneys. These groups were selected because of their association with the Narcotics Control Act of 1956. The questionnaire explored the effects of the mandatory minimum sentence provision of this act, the prohibition of probation and parole as provided, the severity of the mandatory provisions, the effect, if any, of this law upon the specialized function of those questioned and the advisability of amendments with requests for recommendations.

Federal prison officials.—The wardens or superintendents of the 27 Federal reformatories, correctional institutions, penitentiaries, and prison camps were sent questionnaires. One hundred percent were returned either fully or partially answered. Ninety-two percent were opposed to the mandatory minimum sentence provisions of the Narcotics Control Act of 1956 and 97 percent were opposed to the prohibition of parole as provided in the act. Ninety-seven percent replied that mandatory minimum sentences per se presented special problems in penology.

Federal judges.—Fifty percent of the questionnaires sent to Federal district judges were returned either fully or partially answered. An additional 20 percent disqualified themselves from answering the questionnaire due to lack of experience under the act. Eighty-five percent of the judges answering the questionnaire recommended changes in this Federal law. Eighty-six percent were opposed to the prohibition of probation or parole as provided in the Narcotics Control Act and 73 percent were opposed to the mandatory minimum sentence provisions, many on the grounds that the mandatory provisions were too harsh for first offenders.

Probation officers.—The chief probation officer of every Federal district was sent a questionnaire for a total of 87. Five of these officials disqualified themselves for lack of experience with the Narcotics Control Act of 1956. Of the 82 remaining who answered the questionnaire, 84 percent recommended that changes be made in this Federal law. Eighty-three percent were opposed to the mandatory minimum sentence provisions and 86 percent were opposed to the provisions which provided for the prohibition of probation or parole.

U.S. attorneys.—Questionnaires were sent to all of the U.S. attorneys regarding their opinion of the Narcotics Control Act of 1956. Sixteen percent declined to answer the questionnaire because of insufficient experience. Fifty percent of the respondents recommend changes in the Federal statute. Fifty-five percent were opposed to the provisions which prohibited probation or parole.

Dr. YOLLES. I think it most important.

Mr. James Bennett, former Director of the Federal Bureau of Prisons, has stated:

> There is a real danger that, in the effort to contain the problems which stem from the hopelessness characterizing the attitudes of men with mandatory sentences, much of what has been achieved in the development of constructive programs for all types of prisoners may be wiped out.

I am strongly in favor, Mr. Chairman, of the specific recommendations of the Prettyman Commission, made in 1963, in its report to the President. Any legislation designed to control drug abuse should include in its provisions the concepts and recommendations of that Commission.

Its report stated:

> The Commission makes a flat distinction between the two drugs (narcotics and marihuana) and believes that the unlawful sale or possession of marihuana is a less serious offense than the unlawful sale or possession of an opiate.
>
> The Commission believes that the sentencing of the petty marihuana offender should be left entirely to the discretion of the courts. There should be no mandatory minimum sentences for marihuana offenders and no prohibition of probation or parole.
>
> The courts should have the discretion to impose a fixed sentence (with eligibility for parole), to suspend sentence, or to impose an indeterminate sentence. The Commission is opposed to mandatory minimum sentences even in the case of multiple offenders.

If one considers the actual application of mandatory penalties when, for example, a 21-year-old college junior who gives a freshman, 3 years younger, a marihuana cigarette and then is subject to a mandatory 10 years in jail, the scene becomes absurd in relation to the size of the problem as well as tragic for the individual person.

A conservative estimate, as I said before, of persons in the United States, both juvenile and adult, who have used marihuana at least once is about 8 million and may go as high as 12 million people.

Can you imagine what would happen to the law enforcement and corrections system of this country if each of these 12 million people had been caught by a policeman when smoking his first marihuana cigarette?

It is no wonder that law enforcement officials reportedly stay away from rock festivals and other gatherings where the marihuana smoke hangs heavy in the air and proof of possession is very easily come by.

It is time to change from prosecution to a public health approach in dealing with drug abuse and especially in cooling the marihuana problem, and I can only repeat what I said 18 months ago to this committee, Mr. Chairman. If we are to get to the root of this problem of drug abuse, we must be prepared to identify and investigate the underlying problems which lead people to distort or ward off reality with drugs.

Chairman Dodd. Doctor, not because you are in any conflict but rather because I think it will be helpful if the record is clarified to present your view, let me refer to this figure of 8 to 12 million people who have used marihuana at least once. I asked you about this a few minutes ago, but I would like to do so once more. You say the chronic users of marihuana go on to use other drugs either more harmful or more potent, such as hashish——

Dr. Yolles. Quite correct.

Chairman Dodd (continuing). Than these other drugs, pep pills and so on. These cause psychosis and extreme aggressiveness, and post-brain damage and hepatitis, as you said.

You say there are about 8 or 12 million users. Now, you say that 10 percent of the 8 to 12 million are chronic users?

Dr. Yolles. That is the top limit; yes, sir.

Chairman DODD. Between 800,000 and a million people approximately. Then you say 5 percent of the 800,000 or 1 million go on to use heroin. Well, this would give us somewhere between 40,000, 50,000, 60,000 people. I am sure you agree this is a grave problem.

Dr. YOLLES. Yes, sir.

Chairman DODD. And then it has to be treated very seriously as a grave national problem.

Dr. YOLLES. I agree. I agree wholeheartedly.

Chairman DODD. I am sure you do. I just wanted to be sure that our record made that clear that we were not saying that this was just a trivial amount.

Dr. YOLLES. No, sir.

Chairman DODD. That is helpful.

Dr. YOLLES. Until we are prepared to identify and investigate the underlying problems which lead people to distort or ward off reality with drugs, until this is done, nothing said here today will achieve much more than to begin to solve the problem on paper. And since the problem is far more than a "paper tiger" we are faced with the fact that Americans must make a conscious decision relating to their acceptance or rejection of the use of dangerous drugs.

Even if it is found that there are no dire physiological effects of marihuana smoking, the problem still remains and a decision still has to be made by our society.

To protect the few who are oversensitive to the drug, will society restrict the use of this substance by the many?

Or, in the light of scientific information, our society may choose to remove restrictions and allow the individual to decide.

In my professional judgment, Mr. Chairman, even though marihuana is certainly not the horror it was alleged to be in 1937, it is a drug having a capacity to alter mood, judgment, and functional ability. For these reasons, I believe that in the interests of public health, it is necessary—at least for the present—to maintain restrictions on the availability and use of this drug.

Chairman DODD. I think I should have waited a while until you finished the statement because you answered the question better than I could ask it.

Go ahead.

Dr. YOLLES. Although there are several pathways toward alternative conscious decisions, any valid decision, I am convinced, must involve the scientific fact of the degree of public danger which exists, and the specific range of risk involved in the use of each drug.

If one-half of 1 percent of the population is at risk, the decision could certainly be different from a situation in which from 10 to 20 percent of the population is at risk.

The most obvious pathways to decisions which must be made very soon, if the uproar over drug abuse is to achieve any significant and acceptable results, are through legal reform and through education.

In considering both of these, however, the time has certainly come to substitute a broad and realistic look at our American society for the tunnel vision on which our legal and moral attitudes to drug use have been founded until now.

We all know, for example, that marihuana smoking is more than a fad. It is linked with student contempt for the Establishment.

Marihuana smoking has become a symbol of rejection of things as they are, as well as a sometimes pleasurable experience in itself.

The chairman of the House Interstate and Foreign Commerce Committee, Mr. Staggers, in commenting on the need for new legislation, said:

> Unfortunately, ours seems to be, for many of our citizens, a drug-oriented, drug-taking society. Hourly, television and radio commercials assault our ears extolling the virtues of various drugs. . . . Perhaps this overall orientation contributes to drug abuse among the young.
>
> Perhaps the problem lies deeper. Our national rate of suicide, alcoholism, violent crime and divorce indicates that a substantial number, and perhaps the majority, of Americans find their social and human environment something less than satisfactory.
>
> Whether we call it anomie, alienation, or excessive concentration on material values, this dissatisfaction may lie closer to the surface in many than they would be willing (or perhaps psychologically able) to admit. If so, it seems unlikely that laws alone can accomplish what is needed, although increased research on a very fundamental level may point the way.

Dr. Dana Farnsworth, director of university health services at Harvard University and chairman of the American Medical Association Council on Mental Health, speaking at a meeting of the American Medical Association recently said:

> Until now, the official attitude has been "Stamp out drug use and you will get rid of the problem." But the use of drugs is not the central problem—it is only a symptom, an index of the confusions and uncertainties which affect increasing numbers of young people.
>
> Unenforceable laws and inappropriate penalties make a mockery of the whole principle of legal control and provide one more example of the adult world's misunderstanding of the problem.

And a 22-year-old former drug addict, it seems to me, expressed a rare depth of perception when he said that the problem—

> Is a problem neither of youth nor one of drugs, but a problem of a whole society and an entire life style shared by young and old alike.

Our life style, Mr. Chairman, in the 1970's is characterized by our inability or ability to use the products of our technical ingenuity to help bring about our happiness and well-being.

The current patterns of drug abuse are illustrative of our inability to make the results of our technological skills work for us as servants, rather than as masters.

As science continues to offer an ever widening choice of chemicals designed to modify emotions and behavior and to enable us to cope with our environment, ways are being found to use them detrimentally. Our ingenuity, to date, has outrun our wisdom; we have yet to find the restraint to limit ourselves to constructive uses of these products.

The first place in which legal reforms can be made is in the removal of mandatory minimum penalties in all cases of drug abuse.

If this were done, it is quite possible that this one, major step toward accommodating the law to the realities of drug use might also initiate a steppingstone toward a greater respect for the law generally, if those laws were just and relevant.

Such a legal reform would eliminate one of the major causes of defiance brought on by the violent rejection by youth of what they see as our society's hypocrisies. And certainly such a reform would cap-

ture the attention, and I am sure a large amount of cooperation, among the young people who smoke marihuana, as well as their parents, their teachers, and the courts.

If these millions of young people were convinced that efforts to reform the drug laws were sincere and based on scientific fact and evidence, I feel confident that they would be more receptive and less cynical about information about possible harmful effects of drugs.

There is no doubt that the scare techniques which have been used in the past have now been discredited. And the resultant disbelief in much of the information provided by any persons in authority on many subjects should teach us that the abuse of known information is worse than the lack of any information at all.

In our search for information about man's behavior, many of us at the National Institute of Mental Health are relating the problems of some types of drug abuse to a more general question. What is the best way of handling crimes without victims—those situations in which an individual at most, is harming himself?

Do these belong in the criminal code, or should they be handled in another way?

This is a philosophy, in considering man's conduct, that is worthy of serious research and discussion.

As an initial step toward fundamental changes which must be forthcoming in changing the rules of our way of life, the Members of Congress and others who share the authority to do so have an immediate opportunity to revise the procedures for punishment. Society can then begin to devise procedures for protection, acceptable not only to tradition but also to our restless, rebellious, but thoughtful young people who have had enough of rhetoric and empty promises.

Chairman Dodd. Well, thank you very much. I wish everyone could have heard your testimony. I certainly hope they will read it. You make much sense here, as you have on other occasions when you have appeared here. And you have certainly helped this committee tremendously by way of information and clear thinking about this very problem.

And once again, I will say to you what I have said to you before, that we are very grateful to you.

Dr. Yolles. Thank you, sir.

Chairman Dodd. One more question on this matter of the number of addicts and users and so on. I am most anxious to have the record clear on this subject. I think we agree there are some 65,000 reported addicts in the United States?

Dr. Yolles. Yes, sir.

Chairman Dodd. But you said a more plausible figure of narcotic abusers would range as high as 125,000. I think it would be helpful if you could tell us how you substantiate that figure.

Dr. Yolles. The more plausible figure is arrived at from some studies which we have done where the reporting comes in from not only law enforcement on figures, but also from health sources. For example, in New York City, we have had a study going on for some time which shows a much higher percentage or a much higher number of addicts there than are reported by the law enforcement. And using that same basis of estimation we applied that to the national figure.

This is obvious only an estimate, but we believe and we have for a long time, and I believe the Bureau of Narcotics and Dangerous Drugs believes with us on this point that the figure is much larger.

Chairman Dodd. I think there is no reason why they should not be made public and why everyone should not know what we are talking about when we use the terminology "more plausible figures."

Thank you very much, Doctor.

NARCOTICS LEGISLATION

WEDNESDAY, SEPTEMBER 24, 1969

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Dodd, Hart, Bayh, Burdick, Tydings, Kennedy, Hruska, Fong, Thurmond, and Cook) met, pursuant to recess, at 9:10 a.m., in room 457, Old Senate Office Building, Hon. Thomas J. Dodd (chairman of the subcommittee) presiding.

Present: Senator Dodd.

Also present: Carl L. Perian, staff director; Eugene W. Gleason, editorial director; William C. Mooney, chief investigator; Peter Freivalds, research director; Elizabeth V. DePaulo, staff member; and Richard C. Sheridan, minority counsel.

Chairman DODD. I will call this hearing to order.

The first witness this morning is Senator Frank E. Moss, of Utah.

Senator Moss is the sponsor and author of S. 2590, a bill to establish a Presidential Commission on Marihuana, that is being considered by this committee.

Mr. Moss has for some time been interested in the problem of the widespread use of marihuana among our young people.

We want to welcome you this morning to our committee, Senator Moss. And we would be happy to hear you.

STATEMENT OF HON. FRANK E. MOSS, A U.S. SENATOR FROM THE STATE OF UTAH

Senator MOSS. Thank you, Mr. Chairman. I am pleased to be here this morning before this subcommittee. I am sorry that my own tight schedule has prevented me from appearing at these hearings at an earlier time. But I have been watching them each day—and I commend the chairman and the subcommittee for devoting as much time as you are to the very urgent problem of drug control. There is no doubt that the alarming increase in drug use—and drug abuse—especially by the Nation's young people is one of the most distressing problems facing the Nation today.

Because of the widespread use of marihuana among our young, I have for a long time been especially interested in determining just what are its effects. I first began asking questions in the U.S. Senate in the fall of 1967 as to how dangerous the use of marihuana is, and as to whether the penalties for its use are realistic. From time to time I have brought my questions up again, and I am delighted to be able

to bring them to the attention of a subcommittee devoted to finding some of the answers.

The questions raised by the use of marihuana are legion, and the authoritative answers nearly nonexistent.

I personally believe that there is only one way to assemble all of the answers we need—firm, incontrovertible answers which will be accepted by the majority of our citizens. And that is to establish a Presidential Commission to study the legal, social, economic and medical aspects of marihuana as proposed in my bill (S. 2590). The Commission would be required to submit to the President and the Congress the results of its study, making at that time specific recommendations for legislative proposals or administrative actions which should be taken. My bill allows 2 years for such a study, but I am willing to amend it to require that the study be made and the proposals be sent to Congress within 1 year, since I now believe that this is possible.

My attention was arrested last week by the testimony before this subcommittee by Dr. Stanley F. Yolles, Director of the National Institute of Mental Health, that marihuana is simply a "mild hallucinogen" that "should not be associated with narcotics either medically or legally;" and his recommendations that milder penalties for its use and possession are called for.

Dr. Yolles furthermore came out in opposition to the formation of any commission to study marihuana and make recommendations on it, on the basis that enough facts are already known, and further study is not necessary.

I have the greatest respect for Dr. Yolles as a physician, psychiatrist and scientist, and I recognize that he has been involved for 20 years in the development of research on narcotics and on the treatment and rehabilitation of the users of narcotics and other drugs. I have sought his opinion on a number of occasions during the period I have been concerned about the galloping increase in the use of marihuana in this country. But his word alone is not enough.

We still have such a thing as public opinion in this country, and even such an expert's testimony as his will not be enough to sway the public's thinking on this subject.

While Dr. Yolles may be fully convinced that smoking marihuana is practically harmless, many other people have not accepted that conclusion. There is even some disagreement among the experts as to the degree to which marihuana is dangerous—or harmless—or somewhere in between. About all that authorities agree upon is the individuality of the marihuana experience—that it has different effects on different individuals.

I suggest the best way to decide what we want to do about marihuana is to have an exhaustive and authoritative report on it, issued by an agency of the Federal Government, which will provide the same sort of "Bible" on marihuana as the 1964 Report of the Surgeon General on Smoking and Health did on cigarettes.

The report must be of the scope which could be prepared by a Presidential Commission because the marihuana problem is not only a medical and health problem, but a legal one, and we will need some guidelines for remodification and unification of our laws.

The American people will not be satisfied with less than an authoritative report of this type. On the one hand, there are many parents who are too deeply worried about their pot-smoking teenagers. On the other hand, there are too many young people who are convinced that pot is both harmless and fun. Neither will be satisfied with anything less than a commanding report on it. The public uproar demands it.

Here are some questions on which I hope the scientific community could reach a high degree of agreement.

Is the use of marihuana dangerous? To most people? To a minority?

Does it, like alcohol, pose primarily a problem of abuse?

Is it addictive, and should it be totally prohibited?

Or can it be used with some degree of safety in moderation?

Does its use, under certain conditions and dosages, lead to hallucinations?

Does its use lead to a faulty sense of time, or a loss of judgment?

Does it damage the brain?

Does the use of marihuana affect the user's ability to operate mechanical contrivances, such as an automobile?

Does it have an impact on artistic creativity?

Is there any medical justification for the widespread opinion that the use of marihuana may lead to the use of other drugs, such as heroin, or morhpine or cocaine, whose serious effects have already been established?

What are the long-term effects of the smoking of marihuana?

Could it induce lung cancer, as does the smoking of cigarettes made of tobacco?

Would its continued use cause chromosonal changes, as is the case in the use of LSD?

Mr. Chairman, we have been speculating about marihuana long enough. Let's have all of the facts, and in one authoritative package.

Because of the drug research program being carried on by the National Institute of Mental Health—a program which I have consistently supported, incidentally—and because more and more facts are emerging every week about marihuana, I am hopeful that we are reaching the point where we can be authoritative about it.

I was glad to note on Monday of last week, the New York Times agreed. In an editorial written in support of the bill introduced by Representative Koch of New York, which is the House counterpart of the Moss Senate bill, the Times called for the establishment of a presidential commission—saying it was "time the American people had the hard facts on a possibly soft drug."

I ask that the Times editorial of September 15, 1969, entitled "The Facts on Pot" be carried in the record of the hearings.

Chairman Dodd. That may be done.

(The document was marked "Exhibit No. 18" and is as follows:)

EXHIBIT 18

THE FACTS ON "POT"

THE NEW YORK TIMES, SEPTEMBER 15, 1969

"The question of whether 'taking pot' is a step toward self-destruction or merely an innocent diversion is being debated as though it could be decided by majority vote. Few young people concede any danger whatever in the practice,

many of their elders are genuinely alarmed, and medical men, predictably, are divided. The argument might be a harmless pastime were it not for two glaring circumstances: If marijuana is indeed harmful, then a staggering percentage of the rising generation is headed for disaster and drastic curbs are in order. If it is not, then hundreds of innocent users, police, school officials and parents, are being put through an ordeal as useless as it is psychologically damaging.

Given these alternative possibilities—both deplorable and both based on ignorance of the facts—Representative Koch of New York makes the sensible suggestion that something be done to diminish that ignorance. He proposes a Presidential commission, comparable to the Kerner and Warren commissions, to establish authoritatively how many Americans, and what kind, smoke marijuana; how effective the laws against it are; its psychological and physiological effects, taking the most exhaustive and reliable testimony; its relationship, if any, to crime; and, not least, its possible encouragement to the use of other drugs.

Other studies have, of course, been made. A committee appointed by Mayor La Guardia, in response to lurid charges about the prevalence of "reefers" in the schools, came up in 1944 with some reassuringly unsensational findings. A British Advisory Committee on Drug Dependence only a year ago found no evidence that marijuana-smoking led to violence or serious dependence. Beyond these studies and others like them a body of literature on "grass," "pot," "Acapulco gold," "weed" and "tea" goes back through the centuries.

Yet the fact remains that none of these studies, putting aside entirely the ancient and the legendary, is entirely applicable to the American situation today. The number of smokers, their degree of indulgence, and the potency of the drug—all these vary greatly from country to country and from time to time. There has been nothing in the United States comparable to the investigation proposed by Mr. Koch, either in scope or in the stature of the investigators. It is time the American people had the hard facts on a possibly soft drug."

Senator Moss. Thank you for the time, Mr. Chairman. I sincerely hope that the subcommittee will give serious consideration to my bill.

Chairman Dodd. Thank you, Senator Moss. We will give careful consideration to your testimony. I thank you for being here this morning.

Do you think that this proposal for a presidential commission should be made part of a bill recodifying and bringing up to date existing narcotics information, or would you really prefer to have a separate bill.

Senator Moss. I would envision that the appointed commission have on it not only medico-sociological experts but legal experts too, so that the recommendations that came out of it would establish what we would be doing as far as legal controls are concerned on marihuana. It seems to me we have come to such a juncture now, with so many of our young people adopting the attitude consistent with Dr. Yolle's testimony, that marihuana is just sort of a harmless bit of fun, that we have to focus the fact with authoritative findings. And I don't think that is going to happen until we get something of the caliber of a presidential commission to do it.

Chairman Dodd. Perhaps I didn't make myself clear. What I was really trying to get at is whether you wanted this as a separate bill, or would it make any difference to you if it was included in the overall narcotics law recodified, brought up to date with the existing law, harmonizing the several existing laws, or whether it ought to be a separate measure.

Senator Moss. I don't have a strong conviction, except that it seems to me that if it does remain separate, and if it focuses right on this commission, and especially if the subcommittee saw fit to shorten the time for reporting—which I have suggested could be 1 year rather

than 2 years—then with all that focus on it except apart from any other modifications in the Drug Control Act, perhaps we would get a really authoritative pronouncement that would have an arresting effect, as I made the comparison, like the Surgeon General's Report on Tobacco.

Chairman Dodd. Would you want the National Institute of Health represented on this?

Senator Moss. Very much so.

Chairman Dodd. Would it be expecting too much to ask you to outline who you think should be on it? I think it would be sufficient to suggest that we would probably want to cover the full spectrum of knowledgeable individuals who are well informed about this problem.

Senator Moss. The sociologists, and especially people concerned with the sociological problems of young folks, because that is where the principal unrest is now.

Chairman Dodd. One other question that I want to get your view on. Is it your view that the penalty structure for marihuana violations should remain the same as it is now under existing law until the commission or until the study is completed, or would you think it should be changed, pending the findings of the commission?

Senator Moss. I think that we would be anticipating the results of the findings a bit if we made the change now. Of course, I know there is a very considerable revolt against the penalties even now. But I think a year's time is not really too lengthy, and perhaps we should leave it as it is until we get the study made.

Chairman Dodd. I think you are right about that.

How do you feel about the penalty provisions in the administration bill, if you have had a chance to study it? The bill changes the penalty structure and eliminates mandatory sentencing. I wish you would look at it.

Of course, I think you are right, the penalty structure is a great problem, and it is pretty hard to reconcile a mandatory sentence for simple possession with other criminal penalties.

Senator Moss. I agree with you on that, Mr. Chairman. We have a tendency, I think, in a time when there is a bit of crisis, to think that we are going to solve the problem, perhaps, by just increasing the penalty. And there ought to be other ways that we could look at this rather than simply jacking up the penalty, and especially a mandatory sentence.

Chairman Dodd. Senator Moss, this has been very helpful testimony, and you can be sure that it will be given careful consideration.

Senator Moss. I thank you very much, Mr. Chairman.

Chairman Dodd (continuing). To give us the benefit of your views.

Mr. Eugene T. Rossides, Assistant Secretary for Enforcement and Operations, Department of the Treasury.

STATEMENT OF EUGENE T. ROSSIDES, ASSISTANT SECRETARY FOR ENFORCEMENT AND OPERATION, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY LAWRENCE FLEISHMAN, G. GORDON LEDDY, AND LEE RITGER

Chairman Dodd. Mr. Rossides, glad to welcome you back again. We are anxious to hear your testimony.

I will say for the record that although it is already in the record, Mr. Rossides has had a distinguished public career. He served as assistant to the Under Secretary of the Treasury from 1958 to 1961. In his present capacity, his present responsibilities include supervision of the Bureau of Customs and Secret Service, Treasury Law Enforcement School, and Bureau of Engraving and Printing, Bureau of the Mint.

Mr. Rossides is now involved in Operation Intercept, the Government's massive campaign against narcotics and drug addiction. If for

no other reason, if you were only in Operation Intercept, we would be very anxious to hear from you.

Go right ahead.

Mr. ROSSIDES. Thank you very much, Mr. Chairman. It is a great pleasure to appear again before your committee.

Mr. Chairman and members of the committee, on behalf of the Treasry Department, I wish to thank you for the opportunity to appear here today to comment upon S. 2637, the administration bill concerning control of drug traffic, and further to discuss other matters of concern to this committee.

Much testimony has been presented describing the features and details of the various provisions of S. 2637, and therefore I shall confine my remarks to a general endorsement of this bill. Additionally, in response to inquiry made by the committee chairman, I shall present certain factual material which serves as an appropriate background supporting enactment of this legislation.

No genuine dispute exists concerning either the dangerous character of the magnitude of drug abuses in the United States. We all recognize the threat this problem poses to the health and welfare of millions of Americans. Enforcement and drug control problems have increased for this Government as illicit drug traffic has proliferated. This bill is designed to increase the effectiveness of control and enforcement generally. Representatives of the Department of Justice have testified concerning the effect of the various titles of this legislation, and I concur in general in the thrust of that testimony.

The principal interest of the Treasury Department in this legislation arises from the primary involvement of Treasury's Bureau of Customs in prevention and suppression of drug smuggling and its exclusive responsibility to enforce the smuggling laws. Section 701(b) of S. 2637 recognizes this.

The Bureau of Customs historically and currently plays a vital role in our overall drug control effort, because foreign-produced and smuggled drugs constitute over 90 percent of illicit U.S. drug traffic and consumption. Drugs are smuggled into the United States by aircraft, boat, car, and by pedestrians at points all along the thousands of miles of the U.S. borders. We estimate that between 15 to 20 percent of narcotics and over 85 percent of high-potency marihuana are smuggled across the United States-Mexican border, facts well known to this committee.

1. The committee has requested the most recent trends in the smuggling of narcotics, marihuana and dangerous drugs into the United States, as indicated by the Bureau of Customs arrest and seizure figures.

Drug seizures and arrests by the Bureau of Customs during the past 3 years reflect startling increases in drug smuggling. For example, Customs seized 78 pounds of heroin during fiscal year 1967, 246 pounds in 1968 and 311 pounds in 1969, and thus seizures quadrupled in a period of but 2 years.

The same trend is reflected regarding seizures of opium, marihuana, hashish, and the various other dangerous drugs. Exhibit A sets forth the details of the quantity of seizures of all drugs.

(The chart was marked "Exhibit No. 28" and is as follows:)

EXHIBIT NO. 28

COMPARATIVE SEIZURES STATISTICS

	Fiscal year 1967		Fiscal year 1968		Fiscal year 1969	
	Number of seizures	Amount	Number of seizures	Amount	Number of seizures	Amount
Heroin:						
Grams	225	$35,323.00	265	$111,741.00	240	$141,269.00
Pounds		77.87		246.00		311.43
Opium:						
Grams	16	4,436.00	21	6,539.00	42	15,347.00
Pounds		9.81		14.20		33.88
Other narcotics:						
Grams	291	18,304.00	259	[1] 44,325.00	253	90,213.00
Pounds		40.37		98.00		198.87
Marihuana:						
Grams	1,081	11,935,431.00	2,450	31,767,457.00	2,673	25,929,683.00
Pounds		26,312.00		70,034.00		57,164.00
Hashish:						
Grams		[2]		86,638.00	186	282,771.00
Pounds				191.00		623.39
Dangerous drugs (5 grain units)		[2]	525	3,936,800.00	630	4,763,361.00

[1] Mostly cocaine.
[2] No records maintained.

Mr. ROSSIDES. It must be noted that very little hashish was seized prior to 1966. In 1966 and 1967, however, approximately 70 pounds of hashish were seized, 191 pounds in 1968, and 623 pounds in fiscal year 1969.

The seriousness and significance of these figures can only be appreciated when it is realized that it takes 625 pounds of raw marihuana to make 1 pound of hashish. Thus, the fiscal 1969 seizure represented the active ingredients in 390,000 pounds of marihuana.

Stepped-up enforcement efforts and tremendous traffic increases both contribute to these impressively enlarged seizure statistics. The statistics show that a firm market for hashish has been established in the United States, and that there is a growing market for other drugs for illicit distribution and use. Arrests by the Bureau of Customs follow the same pattern. Drug smuggling arrests increased from 3,374 in fiscal year 1967 to 6,200 in fiscal year 1969.

2. The committee has further inquired as to the international sources of supply.

Heroin, the most noxious of all the drugs, is derived from the opium poppy plant. Nearly all of the legal cultivation of opium poppies is in Turkey. The raw materials for heroin, in the form of the gum opium and its product, morphine-base, are diverted directly from legitimate channels into illicit production and the smuggling supply line.

The raw material for heroin, morphine-base, is smuggled into the European countries where, in hidden laboratories, it is converted into the heroin and smuggled directly into the United States through various routes.

It should be noted that a significant amount of opium is illegally cultivated in Mexico, and heroin derived from it is smuggled into the United States.

Cocaine flows into the United States from mountainous regions along the West Coast of South America, where the coca plant grows wild and is also cultivated. The finished drug ordinarily is produced in

countries where the coca leaves grow, and then smuggled into the United States, principally through the port of Miami, Fla., and additionally through New Orleans and across the Mexican border.

Hashish traffic has increased markedly during the past 2 years. As I have mentioned, hashish is a marihuana or cannabis derivative.It is six to eight times more powerful than the most potent marihuana. Its popularity apparently results from its high potency and increased availabiilty. Our best informaton, Mr. Chairman, indicates that large quantities of hashish currently are smuggled by caravan through Israel by way of the Sinai Peninsula and Negev Desert. Several seizures of hashish traceable to the Middle East have been made along our Canadian border. Smaller quantities of hashish arrive from original sources in India, Pakistan, and Afghanistan.

Unlawful activities within Mexico figure heavily in the illicit traffic in narcotics, marihuana, and dangerous drugs. The greatest volume of illicit drugs smuggled into the United States crosses the United States-Mexican border. The predominant drug crossing that border is Mexican-grown marihuana that has been pressed into kilo-sized bricks and smuggled in by a variety of methods. As I have noted, some raw opium is produced in Mexico and smuggled in as either crude gum opium, smoking opium or heroin. Heroin of European origin is sometimes channeled through Mexico into the United States. A high percentage of the dangerous drugs for illicit use in United States markets is legally exported from the United States to Mexico, is diverted to unlawful channels and smuggled back.

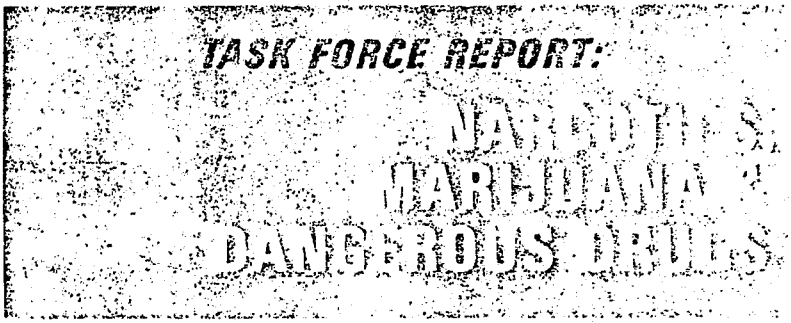
The bulk of Customs drug seizures and arrests is at the Mexican border, and the Mexican border is clearly the predominant supply route for such traffic. Any program designed successfully to combat the drug traffic problem must provide a method for effective suppression of traffic at the Mexican border.

The current, massive antidrug smuggling campaign at the U.S.-Mexican border is called Operation Intercept. Operation Intercept is a joint effort by various departments of Government, involving principally Treasury and Justice and including the Bureau of Customs, the Immigration and Naturalization Service, the Bureau of Narcotics and Dangerous Drugs, the Federal Aviation Administration, the Coast Guard and the Navy. It stems from President Nixon's direction to curb the flow of drugs across the Mexican border. Early in his administration, President Nixon appointed a special Presidential task force relating to narcotics, marihuana and dangerous drugs. It has been my pleasure to be cochairman of that task force with Deputy Attorney General Richard G. Kleindienst.

The findings and recommendations of the task force were submitted to President Nixon. The President reconstituted the study task force into an action task force and directed that it translate its recommendations into action. Operation Intercept was a direct result. I have submitted to you for inclusion in the hearing record a copy of that task force report.

Chairman DODD. Well, we are glad to have it and it will be included in the record.

(The report referred to was marked "Exhibit No. 29" and is as follows:)



FINDINGS AND RECOMMENDATIONS

SPECIAL PRESIDENTIAL TASK FORCE

Relating to
Narcotics, Marijuana and Dangerous Drugs

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June 6, 1969

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

We submit herewith a report dated June 6, 1969, entitled "Narcotics, Marihuana and Dangerous Drugs Task Force." As you can see, it is the result of the joint efforts over an extended period of time of many persons from not only the Treasury Department and the Justice Department, but also from the Departments of Defense, Health, Education and Welfare, Agriculture, Labor, Commerce and Transportation. The State Department was represented in an advisory capacity. A representative of the Interstate Commerce Commission also participated and a staff assistant to Mr. Ehrlichman was present as an observer at all meetings of the full Task Force.

This report is a direct result of your pledge to the American people on September 16, 1968, at Anaheim, California. At that time you stated that you intended to do several things. Among them was your intention to "move against the source of drugs" and to "accelerate the development of tools and weapons to detect narcotics in transit".

In the immediate future, the combined enforcement resources of the United States Government will be utilized in order to make a concerted frontal attack on the illegal importation into and the subsequent illegal sale and use of marihuana, narcotics and dangerous drugs in the United States.

We will keep you advised on a continuing basis of specific programs that will be initiated to implement the recommendations of the report. We will also advise you of the results of such programs.

In this regard, you should also be advised that representatives of our respective departments will be meeting in Mexico City on June 9th, 10th and 11th, with officials of the Government of Mexico to consider all aspects of the illegal traffic between our two countries in narcotics, marihuana, stimulants and hallucinogenic drugs.

The Department of State, which will assume the major burden of obtaining Mexican cooperation on a continuing basis, will participate in these meetings and will coordinate our follow-through efforts with the Mexican authorities. Under Secretary Richardson has assured us of that Department's whole-hearted support for the report.

Because the report concerns itself not only with recommendations as to enforcement matters but also with the dangers and effects which result from the use of marihuana in particular, representatives from the Department of Health, Education and Welfare made valuable contributions to the efforts of the Task Force. We have been authorized by Secretary Finch to inform you that he fully concurs in the report, its conclusions, and recommendations.

Respectfully,

/s/David M. Kennedy
Secretary of the Treasury

/s/John N. Mitchell
Attorney General

INTRODUCTION

One of the most serious problems facing the United States today is the marked increase in the use of narcotics, marihuana and other hallucenogenic or "mind-changing" drugs. This problem is especially prevalent among the youth of our nation, who have experimented with these drugs.

Most of the marihuana in the United States today comes from Mexico and is smuggled across the border by various means. Mexico has become by far our largest supplier of marihuana and it is also the source of a substantial amount of other drugs. As the primary sources of supply, free-lance smugglers and organized traffickers are largely responsible for the marihuana and drug abuse problem.

In an effort to find a solution to this problem, the Attorney General requested the formation of an inter-departmental Task Force to conduct a comprehensive study of marihuana with specific emphasis on the Mexican border problem. The objective of the Task Force has been to formulate a plan for positive and effective action to control the illicit trafficking of drugs across the Mexican border. The Task Force has also reviewed the best scientific information now available on the health dangers inherent in the use of marihuana and has endeavored to communicate unequivocally in this report the facts concerning the social implications of marihuana use.

It was considered advisable to involve in this study all Government agencies dealing with one or more phases of the problem.

The following individuals represented their departments and agencies on the Task Force and actively participated in its deliberations:

Co-Chairman	Mr. Richard G. Kleindienst Deputy Attorney General Department of Justice
Co-Chairman	Mr. Eugene T. Rossides Assistant Secretary Department of the Treasury

Executive Secretary:	Mr. R. Richards Rolapp Special Assistant to the Deputy Attorney General Department of Justice
Member:	Mr. John J. Caulfield Staff Assistant to Counsel The White House
Member:	Mr. Paul Eggers General Counsel Department of the Treasury
Member:	Mr. G. Gordon Liddy Special Assistant to the Secretary Department of the Treasury
Member:	Mr. Lester D. Johnson Commissioner - Bureau of Customs Department of the Treasury
Member:	Mr. John E. Ingersoll Director, Bureau of Narcotics & Dangerous Drugs Department of Justice
Member:	Mr. George H. Revercomb Associate Deputy Attorney General Department of Justice
Member:	Mr. Cartha D. DeLoach Assistant to the Director Federal Bureau of Investigation Department of Justice
Member:	Mr. Raymond F. Farrell Commissioner, Immigration & Naturalization Service Department of Justice
Member:	Mr. William E. Ryan Chief, Narcotics & Dangerous Drugs Section Criminal Division Department of Justice

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Member:	Mr. Henry E. Petersen Acting Deputy Assistant Attorney General Criminal Division Department of Justice
Member:	Mr. Robert E. Jordan, III Chief Counsel Department of the Army
Member:	Mr. Frank A. Bartimo Assistant General Counsel Manpower and Reserve Affairs Department of Defense
Member:	Dr. Theodore C. Byerly Assistant Director, Science & Education Department of Agriculture
Member:	Mr. Rocco C. Siciliano Under Secretary Department of Commerce
Member:	Mr. John Gentry Executive Assistant to the Under Secretary Department of Labor
Member:	Dr. Mark Novitch Special Assistant for Pharmaceutical Affairs Office of the Secretary Department of Health, Education and Welfare
Member:	Dr. Stanley F. Yolles Director, National Institute of Mental Health Department of Health, Education and Welfare
Member:	Mr. James M. Yohe Deputy Director of Compliance and Security Federal Aviation Agency Department of Transportation

Member: Commander Frederick J. Lessing
U. S. Coast Guard
Department of Transportation

Member: Mr. Fritz Kahn
Deputy General Counsel
Interstate Commerce Commission

The Task Force convened its initital meeting on March 26, 1969. In that first meeting the general scope of the proposed study was discussed, objectives formulated and Subcommittees formed for more specific and detailed research on the various aspects of the overall study. The Subcommittees were:

Health Subcommittee -- Dr. Stanley F. Yolles, Director of the National Institute of Mental Health, Chairman.

Resources Subcommittee -- Mr. Cartha D. DeLoach, Assistant to the Director of the Federal Bureau of Investigation, Chairman.

Enforcement Subcommittee -- Mr. John E. Ingersoll, Director of the Bureau of Narcotics and Dangerous Drugs, Chairman.

Each Subcommittee was given direction on the scope and nature of its study and assigned certain questions by the Task Force. The Task Force requested the Health Subcommittee to prepare a comprehensive report on the medical implications of marihuana use. The Task Force was particularly interested in learning by whom and to what extent marihuana is used and the health dangers involved, if any. This Subcommittee was also requested to report on present efforts to educate the public about drug abuse and to recommend particular areas where educational efforts can be increased and concentrated.

The Resources Subcommittee was asked to survey and report on the manpower and facilities available to aid in the control of trafficking in marihuana. This Subcommittee undertook an analysis and comparison of the resource needs of existing law enforcement agencies to enable such agencies to participate effectively in a long-range program for marihuana control.

The Enforcement Subcommittee developed a recommended plan of action, for immediate and long-term implementation, designed to have a significant impact on unlawful marihuana trafficking across the Mexican border. Its study included an examination of existing programs of law enforcement agencies with a view to the improvement of coordination and efficiency. The Enforcement Subcommittee defined the various aspects of the enforcement problem, reached certain conclusions and made appropriate recommendations for implementation.

These Subcommittees devoted considerable time to careful study of the assigned subject matter. As an example of the effort expended, the Enforcement Subcommittee devoted over 25 hours for discussion meetings within a three-week period of time.

The Task Force considered the Subcommittee reports during its second meeting on April 28, 1969. The reports were discussed in detail and Task Force members made suggestions for changes and additions. The final report in draft was submitted to each member of the Task Force for discussion and approval at a concluding meeting on May 19, 1969.

This final comprehensive report is a product of the extensive research and study by the Task Force of an extremely complex problem.

I. THE DANGERS OF MARIHUANA

WHAT IS MARIHUANA?

Marihuana (pot, grass, weed, etc.) is a product of the Indian hemp plant known to botanists as cannabis sativa (L.). It is derived from the leaves and flowering tops of the female plant which are the source of the psychoactive material. Under federal law, marihuana is defined to mean all parts of the cannabis plant except for the stalks and sterilized seeds.

Marihuana contains a number of potent compounds called tetrahydrocannabinols (THC) which affect the mind and body in various ways. Potency of the drug varies greatly depending on growing conditions such as temperature, humidity, soil conditions, and methods of cultivation. Generally, plants grown in sunny, dry climates are most likely to contain the highest proportion of THC. The pharmacologic potency of any preparation of marihuana depends upon the amount of THC which it contains.

The drug is most commonly smoked in hand-made cigarettes (reefers, sticks or joints.) The butt is called a "roach." Marihuana is also smoked in ordinary pipes or water pipes. The effects of the drug are decreased three or four times if it is swallowed rather than smoked.

Various forms of marihuana are prepared from extracts of the plant. Hashish (hash, charas) is the purest and most concentrated of the natural cannabis products. It consists of the concentrated resin of the plant and is usually eight times as concentrated as the typical marihuana available in North America. Once rare in the United States, hashish is reported to be increasingly obtainable in response to a rising demand. Relating foreign studies of cannabis use to the American scene is difficult because of the generally higher potency of the cannabis products used abroad. Marihuana grown in this country is typically of lower potency and is often weakened further by additives such as oregano. However, Mexican grown marihuana has a high potency and is regularly sold in the United States. It should be noted that all marihuana products lose strength over time.

While marihuana contains many ingredients, THC is believed to be the principle psychoactive substance. With the synthesis of THC in 1966, 1/ and the demonstration of its psychopharmacological effects in 1967, 2/ a basis was finally established for more precise, systematic pharmacological investigation of the drug. At present, THC is being synthesized in research quantities. Along with other natural marihuana constituents, THC is being made available under appropriate precautions to qualified researchers through the National Institute of Mental Health's Center for Studies of Narcotics and Drug Abuse.

Since marihuana products produce effects similar to other hallucinogens like LSD, and their reactions are often indistinguishable from those produced by other psychedelics, they are pharmacologically classified in that category.

PRESENT EVIDENCE OF EXTENT OF USE

Marihuana use has been rapidly increasing in the past five years. Although originally restricted to certain jazz musicians, artists and ghetto dwellers, it has now appeared amoung the middle and upper class. A conservative estimate of persons, both juvenile and adult, who have used marihuana at least once is about five million.

One of the most alarming aspects of the current drug crisis is the involvement of young people. In California alone juvenile arrests for drug offenses increased from 1,271 in 1961 to 14,112 in 1967. Of the 14,112 juvenile arrests in California during 1967, 10,987 were arrested for marihuana violations. To understand the full significance of this figure it must be compared with the year 1961 in which there were 401 arrests. In 1967 alone there were over 2,000 more arrests for marihuana violations than in the previous six years combined.

Two years ago, surveys in parts of the country where marihuana use is known to be high suggested that twenty percent of the college students in those areas had experience with marihuana. Present evidence, although spotty, suggests that as many as sixty percent of the students on some campuses have used it. Some students feel that official estimates are low, and that the true extent of drug abuse

1/ Mechoulam, R. et al. A total synthesis of a 1-Δ^1 tetrahydrocannabinol, the active constituent of hashish. Journal of the American Chemical Society 1965, pp. 3273-3275.

2/ Isbell, H. et al., Effects of Δ^9 Tetrahydrocannabinol in Man, Psychopharmacologia, 1967, pp. 184-188.

among college students is even higher. There are also many reports of increasing use of marihuana in high schools although there is not sufficient data to establish a countrywide pattern. Significantly, most recent college data indicated that many college users were first exposed to marihuana in high school. However, the bulk of users are more aptly characterized as "triers" rather than habitual "potheads." Two out of three who have tried the drug have used it not more than one to ten times. In the most recent (Fall, 1968) survey based on a geographic area of high use, about one person in ten reported using marihuana regularly for as much as a year's duration. Finally, there is growing evidence that the number of pre-teenagers who are using marihuana is increasing.3/

EFFECTS

The use of marihuana produces a variety of mental and physical effects. If active marihuana is smoked effectively (inhaled and kept in the lungs as long as possible) symptoms may appear after one or two puffs and the effect may last from several minutes to several hours.

Dr. Stanley F. Yolles, Director, National Institute of Mental Health, has stated:

> "Little can be added to previous reports on the toxicity of marihuana. It is considered to be a mild hallucinogen, taken by the usual route of smoking, occasionally by ingestion. It may induce a mild euphoria and lead to heightened suggestibility and faulty perception, really an exaggerated notion of thinking more clearly, profoundly and creatively. In addition, it is known to cause reddening of the membranes of the eyes, rapid heartbeat, muscular incoordination, unsteadiness, drowsiness, and distortion of time and space perception.
>
> "In acute intoxication, especially when ingested, it may also produce visual hallucinations, pronounced anxiety, paranoid reactions, and transient psychoses lasting four to six hours. It generally tends to lessen inhibitions and creates for the user a false reality based on his wants, his motivations, or the situation. In this respect it is similar to LSD, but its effects are not as potent.

3/ Blum, R. H. et al., Students and Drugs, Vol. II, 1969, pp. 31-47.

"The muscular incoordination and the distortion of space and time perception commonly associated with marihuana use are potentially hazardous, since the drug adversely affects one's ability to drive an automobile or perform other skilled tasks.

"We still do not know enough about the long-term effects of marihuana use. As in the case of tobacco, it is possible that there are serious consequences of chronic use which will only become apparent through careful, longtime studies." 4/

A 1965 report on drug dependence for the World Health Organization describes the nature of marihuana intoxication in the following terms:

"Among the more prominent subjective effects ... are: hilarity ... carelessness; loquacious euphoria ... distortion of sensation and perception ... impairment of judgment and memory; distortion of emotional responsiveness; irritability; and confusion. Other effects, which appear after repeated administration ... include: lowering of the sensory threshold, especially for optical and acoustical stimuli ... and aggressiveness as a possible result of various intellectual and sensory derangements; and sleep disturbances." 5/

In small, low potency quantities marihuana may act as a mild euphoriant and sedative somewhat similar to alcohol. In relatively high doses pyschotic-like phenomena, quite similar to those associated with LSD use, have been reported. Recurrences of the marihuana state (flashbacks) without actually taking the drug again have been reported. These recurrences can be anxiety provoking. Unlike the stronger hallucinogens, such as LSD, which produce wakefulness, marihuana tends to be more sedative in its properties. THC in sufficiently high doses can induce psychotic reactions in almost any individual.

Despite marihuana's long history -- spanning thousands of years and many cultures -- there has been comparatively little sound research on this drug. Only four laboratory studies investigating marihuana's immediate effects on humans have been reported in the American scientific

4/ Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, Mar. 4-6, p. 4658, 1968.

5/ Eddy, N. B. et al. Drug Dependence: Its Significance and Characteristics. Bull. World Health Organization. 32:721, 1965.

literature. The first of these was done with a group of 34 soldiers in the Canal Zone. A second study, reported in the 1944 LaGuardia Report, is based on 72 prisoners' responses to marihuana extract. In 1946, a small number of chronic using prisoners were studied. A more carefully controlled study recently produced a report on some laboratory work with marihuana in humans done partially with NIMH support.6/

All of these studies generally found loss of inhibitions, and feelings of relaxation and self-confidence together with some mild impairment of thinking and coordinated performance. It has also been demonstrated that THC, when administered in sufficiently high dosage, will cause a psychotic-like state, similar to that induced by LSD.

While no long-term physical effects of marihuana use have been adequately demonstrated in this country, the American experience has been extremely brief and additional studies are needed to resolve this and other issues. Although there is no firm evidence that marihuana use in humans has either teratogenic or genetic implications, this possibility should be explored -- particularly in view of some evidence on this point with respect to LSD. It is possible that there are serious consequences of chronic use which will only become apparent after careful, long-term studies. In foreign countries where heavy use of the stronger cannabis preparations is common, a variety of physical ailments supposedly related to marihuana use have been reported -- notable conjunctivitis, chronic bronchitis and certain digestive ailments.

There have also been reports of adverse psychological effects of marihuana both in this country and abroad. Recently a group of some 1500 psychiatrists, psychiatric residents, internists, general practitioners and psychologists in the Los Angeles area reported that they had seen almost nineteen hundred "adverse reactions" to marihuana. 7/ It is difficult to interpret this finding since "adverse reaction" was poorly defined, and there has been no follow-up to define just what the reactions to the drug were. However, there have been reports of increased number of hospitalizations following the usage of marihuana.

6/ Weil, A. T. et al., A Controlled Study of Cannabis in Humans, Science, pp. 1234-1242, 1968.

7/ Ungerleider, J. T. et al., A Statistical Survey of Adverse Reactions to LSD in Los Angeles County, American Journal of Psychiatry, Sept., 1968, p. 355.

Considerable concern has been expressed in the United States over the possibility of personality changes and a loss of motivation among youthful marihuana users. The potential effects of a reality distorting agent on the future psychological development and maturation of the adolescent user are of special concern. Normal adolescence is a time of considerable psychological turmoil. Patterns of coping with reality developed in the teen years help determine later adult behavior. Persistent use of an agent which serves to ward off reality during this critical period of development is likely to effect adversely the future ability of the individual to cope with the demands of a complex society. While systematic studies of large numbers of American chronic users are not yet available, a number of clinicians have observed that at least some users show evidence of a loss of convential motivation. They seem to prefer instead a non-goal oriented life style, which emphasizes immediate satisfactions to the exclusion of ambition and future planning. The "pothead", then, may well retard his own chances for emotional growth by not learning how to deal with life stress. Characteristic personality changes among impressionable young persons from the regular use of marihuana include apathy, loss of effectiveness, and diminished capacity or willingness to carry out complex long-term plans, endure frustration, concentrate for long periods, follow routines, or successfully master new material. It has also been observed that verbal facility is often impaired, both in speaking and writing.

The British cannabis report by the Advisory Committee on Drug Dependence (1968) concluded:

> There have been reports, particularly from experienced observers in the Middle and Far East, which suggest that very heavy long-term (italics, theirs) consumption may produce a syndrome of increasing mental and physical deterioration to the point where the subject is tremulous, ailing and socially incompetent. This syndrome may be punctuated on occasions with outbursts of violent behavior. It is fair to say, however, that no reliable observations of such a syndrome have been made in the Western World, and that from the Eastern reports available to us, it is not possible to form a judgment on whether such behavior is directly attributable to cannabis-taking. 8/

8/ Cannabis, Report by the Advisory Committee on Drug Dependence, 1968, pp. 14-34.

PROGRESSION TO OTHER DRUGS

A basic question that frequently arises is the extent to which marihuana use in some sense predisposes users to escalate to stronger and more dangerous drugs. There is little question that most heroin and LSD users have had experience with marihuana. Indeed, 85 to 90 percent of heroin addicts reported that they started their use of drugs with marihuana. There is also a question whether any but a small percentage of marihuana users progress to other drugs, the evidence tending to show that only five percent of the habitual marihuana users progress to heroin addiction.

In discussing the question of progression, it is vital to distinguish between the casual experimenter with marihuana, and the regular and continuous user, and between physical addiction and psychological dependency.

A casual experimenter by definition is not dependent upon the drug. A regular and continuous user, on the other hand, may very well be dependent upon it.

Once he has become psychologically dependent upon one drug as a "crutch" to cope with life stress, the user is substantially more susceptible to the acquisition of a larger crutch through the medium of a stronger drug.

An example of the importance of this distinction is the heroin addict. The most desperately "hooked" of junkies with a "habit" costing hundreds of dollars per day can be "detoxified" in under 8 days, and brought to a point where absence of the drug will produce no physical reaction or withdrawal symptoms. Yet, let that individual be imprisoned for 5 years without access to the drug, and without effective psychiatric treatment, upon release he will seek a pusher. He will do so because he is still psychologically dependent upon heroin. Recognition of the fact is basic to the New York State rehabilitation program which spends years, rather than weeks, treating addicts. Their physical craving is terminated in days -- their psychological dependency is the subject of years of treatment.

In view of the foregoing, it must be concluded that regular and continuous use of cannabis can and does produce psychological dependency and marked susceptibility to progression to stronger reality concealing drugs.

The progression is, however, probably not a consequence of the pharmacological properties of marihuana, but rather is due to sociological and psychological factors present in a vulnerable minority of users. For example, in ghetto situations where both drugs are freely available, sometimes from the same supplier, a progression based on availability may be likely. Similarly, heavy drug using subcultures may encourage widespread experimentation with a wide variety of drugs. It is generally true that a heavy marihuana user is more likely to be a multiple drug user. In one study, half of the heavy users of marihuana had tried LSD. One in seven had used LSD more than 25 times or had tried heroin. Two out of five heavy users in this same study had abused amphetamines. This trend to multiple drug experimentation may increase in the future. In this connection it is important to point out that use of a combination of dangerous drugs may have a synergistic effect and may result in the death of the user.

There is reason to believe that heavy marihuana users are likely to have considerable interest in the use of the stronger forms of cannabis such as hashish. If hashish is available, many would probably use it in preference to low-potency marihuana. The history of mind-altering drugs invariably reveals that excessive indulgence increases sharply as more potent preparations of a given drug become available. 9/

MARIHUANA VS. ALCOHOL

Some marihuana users have tried to justify their behavior by claiming that it is no worse than consuming alcohol. It is estimated that the consumption of alcohol is a major problem for some five to six million Americans who are unable to control their drinking. In most cases, excessive drinking of alcoholic beverages causes serious physical, psychological, social and vocational problems for these people and their families. It is well known that one-half of the fatal traffic accidents in the United States are related to excessive drinking. 10/

While alcoholism constitutes a major social problem, surely it is not valid to justify the adoption of a new abuse on the basis that it is no worse than a presently existing one. The result could only be added social damage

9/ McGlothlen, W. et al., American Journal of Psychiatry, Sept., 1968, p. 373.

10/ 1968 Alcohol and Highway Safety Report, U. S. Government Printing Office, 1968, pp. 11-21.

from a new source. It would not solve our alcohol problem and would only lead to additional numbers of marihuana intoxicated individuals. Moreover, marihuana, unlike alcohol, is nearly always consumed by its users for the express purpose of obtaining a "high", a disorientating intoxication.

Allegations have been made and attributed to government officials that marihuana is no more dangerous than alcohol. When these stories appear in the mass media they often do considerable harm, even when subsequently retracted. Dr. James Goddard, former Commissioner of the Food and Drug Administration, was extensively quoted as saying that marihuana is no more dangerous than alcohol. Dr. Goddard was, in fact, misquoted and never made such a statement. Although the wire service issued a written apology, the retraction has never caught up with the misquote.

THE POSITION OF THE AMA AND WHO

The American Medical Association has stated that marihuana is a dangerous drug and, as such, is a public health problem. 11/ They reiterate that while no physical dependence develops this does not mean that it is an innocuous drug. Further research is considered essential, and educational programs should be directed to all segments of the population.

The World Health Organization recently reaffirmed its previous opinions that cannabis is a drug of dependence, produces public health and social problems, and that its control must be continued. 12/ More basic data are needed on acute and chronic effects on the individual and society to permit accurate assessment of the degree of hazard to public health.

MARIHUANA USE AND CRIME

Aside from the fact that marihuana use and possession is in itself a crime, it has not been proven that its use is a direct cause of other types of criminal behavior. Generally, assertions that marihuana plays a casual role in the commission of crime are based on reports from other than scientific agencies. The validity of these impressions is, however, questionable because of the unscientific basis

11/ Marihuana and Society, Journal of the American Medical Association, June 24, 1968, pp. 1181-1182.

12/ World Health Expert Committee on Drug Dependence, WHO Technical Report Series 407, 1969, p. 19.

on which such data has been collected. The New York Mayor's Committee (1944) reported that many criminals might use marihuana, but the Committee did not feel marihuana played a causal role in crime. In the United Kingdom, the use of cannabis has not been generally regarded as a direct cause of crime.

The President's Commission on Law Enforcement and Administration of Justice has observed:

> One likely hypothesis is that, given the accepted tendency of marihuana to release inhibitions, the effect of the drug will depend on the individual and the circumstances. It might, but certainly will not necessarily or inevitably lead to aggressive behavior or crime. The response will depend more on the individual than the drugs. 13/

While perhaps it cannot be statistically proven that marihuana or other dangerous drugs may be the cause of originating crime, nevertheless the use of marihuana or dangerous drugs is related to increased criminal activity.

According to the President's Crime Commission Task Force Report on Narcotics and Dangerous Drugs, page 11, the FBI submitted criminal histories on 7,920 narcotics offenders. These criminal histories, when examined as to marihuana users and heroin users, indicated that the criminal careers of narcotics users, both marihuana and heroin, were longer, and resulted in more frequent arrest activities than the average non-narcotic criminal offender. For the marihuana offender this comparison demonstrated that during the course of his criminal career he was proportionately more frequently involved in violent crimes than the normal non-narcotic criminal offender.

CONCLUSION

There is no question that the widespread use of marihuana represents a significant mental health problem.

There is no known beneficial result from the use of marihuana; there are, on the other hand, definite detrimental effects.

13/ Task Force Report: Narcotics and Drug Abuse. President's Commission on Law Enforcement and Administration of Justice, 1967, p. 13.

More research is needed to further our understanding of the effects of marihuana use. However, it is clear that, depending on the dose, the active ingredient found in marihuana may have substantial detrimental effects on both the mental and physical well-being of the user. In this connection it is important to point out that use of a combination of dangerous drugs may have a synergistic effect and may result in the death of the user.

Medical evidence neither proves nor disproves that marihuana is a cause of crime. Criminal records do establish clearly an accelerating rate of association between crime and the use of marihuana.

The Task Force recommends:

Continued and expanded research to further our understanding of the causes and effects of marihuana use.

Prevention by wide distribution, among other means, of scientifically accurate information and materials about the dangers of drug abuse.

Provision of resources to treat and rehabilitate marihuana users in need of mental health care.

II. THE MEXICAN BORDER PROBLEM

Among the nations of the Western Hemisphere, Mexico occupies a unique position insofar as traffic in narcotics, marihuana and dangerous drugs is concerned. Large quantities of narcotics, marihuana and dangerous drugs are smuggled into the United States across the Mexican border. Based on our study of the problem, the Task Force enters these findings:

1. Mexico is the primary source of nearly all of the high potency marihuana seized in the United States. Seizures of marihuana at the Mexican border have increased tremendously in the past five years. For example, in 1966 there were 10,416 pounds of marihuana seized at the Mexican border: whereas, in 1968 almost seven times this much, or 70,210 pounds were seized.

Most of the marihuana sold and consumed in the United States is grown in Mexico. Mexican marihuana is highly preferred by users and is of more potent content than the U. S. variety. It enters this country at scores of border crossing points and is quickly delivered to the more populous cities where demand is greatest. In recent years, the California border has been a particularly active smuggling point for extremely large shipments of marihuana. San Diego and Los Angeles, California, are the major distribution points for the rest of the country.

Control of marihuana traffic is in the hands of small groups that generally operate independently. Some marihuana is smuggled by individuals for self-consumption or small-scale sales.

2. A significant percentage of the heroin consumed by addicts in the United States is produced surreptitiously in Mexico. Mexican heroin is produced from opium grown in small opium fields hidden in normally inaccessible valleys in remote areas of the Mexican interior. The distribution of the Mexican heroin is accomplished by scores of peddlers handling small shipments with great frequency.

Most of this heroin is distributed in states bordering Mexico. Once in the United States, most of the Mexican heroin is moved quickly from border cities to population centers such as San Diego, Los Angeles, Denver, Phoenix, Albuquerque, Houston, Fort Worth, and Dallas. Some of the heroin produced in Mexico has appeared in St. Louis, Chicago, Detroit, and other northern cities. The addict population in the border area is relatively low. However, many addicts living in border cities journey daily to nearby Mexican towns to obtain heroin and some risk smuggling small quantities into the United States for future use or for friends and associates.

3. Significant quantities of European heroin, produced principally in France, are smuggled from time to time into the United States via Mexico. Most of the heroin in the United States (approximately 80%) is produced in France from Turkish opium. Some of this European heroin is smuggled into the United States through Mexico. The largest individual heroin shipments seized at the Mexican border were of French origin and were under the control of individuals associated with "organized crime" in New York. The French heroin which passes through Mexico is usually destined for New York City and from this point is distributed to the large metropolitan areas on the Eastern Seaboard and the Middle West.

4. Mexico occasionally serves as an intransit point for cocaine destined for the United States from the source countries in South America, principally Bolivia and Peru. No fixed pattern has been detected with regard to cocaine smuggling from Mexico, although there is indication the California border is involved to a greater degree than other areas.

5. Considerable quantities of dangerous drugs in the amphetamine and barbiturate category are smuggled into the United States across the Mexican border. This traffic occurs in various ways. These drugs may have been produced legally or illegally in Mexico and smuggled into the United States, or may have been legally produced in the United States for export to Mexico and then smuggled back into the United States or diverted at border cities prior to actual exportation.

SMUGGLING METHODS

Smuggling methods are varied. In the case of French heroin, it is sometimes hidden in specially constructed traps

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in automobiles shipped to Mexico from Europe. In other cases, it may be sent from Europe to Mexico City concealed on aircraft, or by couriers carrying luggage with false compartments. It is then passed northward to the United States.

Mexican heroin is usually carried in relatively small quantities across the border on the persons of individual smugglers or in large quantities hidden in traps or panels of small trucks or automobiles. This same pattern is followed in shipments of Mexican marihuana and other dangerous drugs.

There is increasing use of general aviation aircraft and small boats in the smuggling of heroin and marihuana.

THE MEXICAN PROGRAM TO CONTROL ILLICIT TRAFFIC

The Mexican Government has participated in three bilateral meetings with the U. S. Government concerning the problems of illicit traffic in narcotics and other dangerous drugs. A fourth such meeting is scheduled for June 9, 10 and 11, 1969.

The atmosphere at these meetings has been friendly and cooperative. Mexican efforts to eliminate illicit opium and marihuana cultivation have been encouraged through these meetings. In the past, the United States has provided the Mexicans with aircraft for use in locating marihuana and opium fields and for transporting agents to destroy these fields.

Despite this country's encouragement, and the efforts of Mexican authorities to aid in the effective control of illegal trafficking in marihuana and dangerous drugs, Mexican resources and efforts continue to be inadequate in the face of the increasing magnitude of the problem. The control of illicit drugs in Mexico is based on federal statutes which are enforced by the Federal Judicial Police under the Attorney General. Their individual states, unlike our own, do not have narcotic and drug laws. At the present time the Federal Judicial Police, headquartered in Mexico City, is staffed by 264 agents, only a fraction of whom are assigned to drug enforcement activities.

The Task Force was formed to study the acute problem of marihuana drug traffic from Mexico and to develop a plan to bring this situation under control. It is clear that the

problem is becoming more serious and of greater magnitude. Smuggling activity at the Mexican border is increasing at an alarming rate.

The problem of illicit trafficking across the Mexican border is bilateral in nature. Neither country can solve it alone. There is need for a concerted, continual and coordinated effort on the part of both countries and at all levels of Government to become more deeply involved in controlling the flow of illicit drugs across the border.

It is reasonable to conclude that the ready availability of marihuana and other drugs from Mexico has significantly affected the increase in drug abuse in this country. It is also certain that more can be done toward solving the entire spectrum of drug abuse problems in the United States by attacking this problem at its source.

For the above reasons, the Task Force is prepared to recommend a plan for immediate action to substantially reduce on a short time basis the illicit trafficking in marihuana and dangerous drugs across the Mexican border.

In addition, the Task Force has considered in depth various methods to be used in the suppression of Mexican drug traffic on a more long-term basis. The problem has been divided, for study, into three main phases: (1) the prevention and control of drug smuggling at the Mexican border; (2) the location and destruction by the Mexican Government of drugs at their source in Mexico and the apprehension of the traffickers involved by the Mexican Government; and (3) the detection and swift prosecution of drug violators in the United States and Mexico. Accordingly, the findings and recommendations of this Committee will be based on analysis of each of these areas. It is anticipated that many of the recommendations of the Task Force may be put into effect, with Mexican Government cooperation, in the future in order to deter the flow of illicit drugs.

III. PREVENTION AND CONTROL OF DRUG SMUGGLING AT THE MEXICAN BORDER

BORDER CROSSING RESTRICTIONS

The suppression of drug smuggling along the border is directly related to the physical and regulatory control of individuals and conveyances. The huge volume of vehicle and pedestrian traffic crossing at border points creates serious enforcement problems for Customs officials. The limited manpower available and the enormous volume of traffic make it impossible to inspect adequately each vehicle to determine if it is transporting contraband. Inspectors detain and carefully search only those cars or individuals whose likelihood of possessing contraband merits secondary inspection. Since it is impossible under this method to detect all persons who may have contraband items, many smugglers successfully traverse the border. Any information that could lead to some common denominator as to the kind of person who smuggles contraband articles, should be analyzed. This would aid border inspectors in their discretionary authority to search persons and vehicles.

The Task Force recommends:

> Case histories of past and future smuggling operations should be analyzed to determine identifiable characteristic patterns of smugglers to facilitate primary inspection at the border.

One way to decrease the flow of vehicular traffic would be to encourage those traveling to Mexican border cities for brief visits to leave their cars and enter Mexico by foot. This procedure could be encouraged by providing additional parking facilities at border crossing points. Because of the advantages of parking a vehicle on the U. S. side, many temporary visitors would probably desire to use such parking facilities.

The Task Force recommends:

> The United States Government should acquire property at border crossings for the construction of parking facilities.

The Immigration and Naturalization Service has stressed the effectiveness of fences currently installed near authorized points and is convinced that their extension would enhance efforts to restrict unauthorized crossings.

The Task Force recommends:

> Existing fences along the United States-Mexican Border should be extended after careful determinations are made of those areas where such extensions are most needed and would have the most beneficial effect.

The lack of sufficient easements at the border, particularly at metropolitan points, compounds the problem of choking off traffic at unauthorized entry points. In such areas, an easement of at least thirty feet would be necessary to effectively control these areas.

The Task Force recommends:

> Easements up to thirty feet wide at metropolitan border points should be granted to the United States Government to enhance its efforts to restrict unauthorized crossings.

The large number of military personnel in San Diego produces an economic boost for Tijuana. It also creates many problems with respect to the safety and welfare of these men. Although a relatively small percentage of the military element is involved in the smuggling of narcotics, the social and commercial atmosphere produced by the drug trade in Tijuana greatly affects their activities. Should Tijuana be placed off limits to all military personnel, the effect on the local economy would be substantial. Such action could be considered as an inducement for better drug control along the border.

The Task Force recommends:

> A study should be made by the Department of Defense to consider the feasibility of imposing an off-limits restriction on military personnel at Tijuana.

Aliens are inadmissible to the United States under the Immigration and Nationality Act if they are narcotic drug addicts or if they have been convicted of a violation or conspiracy to violate any law or regulation relating to the

illicit possession of, or traffic in, narcotic drugs or marihuana. They are also inadmissible if the Immigration Officer knows or has reason to believe such aliens have been illicit traffickers in narcotic drugs. Furthermore, alien narcotic drug addicts convicted of offenses involving narcotic drugs or marihuana trafficking or possession, are subject to deportation. There is a program whereby the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs furnish the Immigration and Naturalization Service information concerning aliens who are arrested for criminal offenses involving narcotic drugs or marihuana.

DRUG DETECTION METHODS AND DEVICES

The Task Force discussed many technical devices presently available and in the experimental state that would aid in the detection of drugs at the border.

Because further study is necessary of the many scientific considerations that are necessary in determining the feasibility of a potential border detection device, a committee should be established to review the devices which may become available for future utilization. The White House Office of Science and Technology should be consulted for assistance in this endeavor.

Dogs, German shepherds particularly, have been trained to detect marihuana, and one such animal is being used by Customs at San Ysidro, California. It has been under test for approximately one year, not only at San Ysidro border points, but also at air cargo sections, mail sections and at other points along the border. Results have not been conclusive but tend to indicate that the dog requires considerable time, manpower and effort to sustain. The dog has assisted in the detection of some marihuana and definitely has a psychological effect on smugglers amounting to a limited deterrent. However, the limited work time of the dog is approximately four hours per day. It requires a trainer-handler who might otherwise be engaged in regular searching activities.

The Army has trained a number of dogs for these purposes. However, there is a problem of Army involvement on the Mexican border because of posse comitatus statutes.

There are numerous perimeter detection devices that could be utilized to cover the border area These would be used

primarily by the Border Patrol to cover border areas outside of designated crossing points. The Border Patrol is presently using a sensor device, which when activated, indicates to a centralized unit that an object has crossed the border at the point. Regardless of what devices are implemented, there must be sufficient manpower to back them up. The intrusion device presently used at the border enables the Border Patrol to detect more intruders than could possibly be done with the human eye at night, but its effectiveness in stopping intruders can only be measured in terms of available personnel to follow up each border-crossing detection.

The Task Force recommends:

> A committee should be established to study existing means of detection to evaluate their relative effectiveness. The Office of Science and Technology should participate in this study and render technical advice and assistance to the committee.
>
> The United States Government should obtain perimeter detection devices that are economically feasible and practical for use on the border.

BORDER SURVEILLANCE OF AIRCRAFT AND VESSELS

Based on reports submitted to the Task Force, it would appear the use of aircraft in the smuggling of drugs from Mexico is on the increase and it poses a problem requiring more attention. Air smuggling usually involves small rented or leased planes which proceed to obscure airports or makeshift landing fields in Mexico. Upon returning to the United States they either discard their contraband by air drops at secluded locations or they land at small private fields or on roads where their presence is unlikely to be observed. Present efforts to detect these illegal flights must be considered inadequate.

The Immigration and Naturalization Service currently employs 20 planes along the Mexican border. They are primarily used for observation purposes and are not considered to have pursuit capability. In addition, they maintain an Air Intelligence Center at Yuma, Arizona, where data on 73,000 private aircraft and pilots, including pilots suspected of alien smuggling, is catalogued.

The Bureau of Customs has only one aircraft at the present time. It has pursuit capability and is used primarily in the investigation of smuggling at the Mexican border.

The pilots of these government planes have gathered, in the normal course of their contact within the flying fraternity, considerable information of value relating to smuggling activity. Wider dissemination and exchange of such intelligence is clearly desirable.

In examining the role of the Federal Aviation Administration in relation to illicit flights and the licensing of pilots, it is apparent that existing regulations and sanctions should be reviewed at an early date. For example, at the present time, private pilots of non-commercial aircraft are not required to file a flight plan on a non-instrument flight prior to departure for Mexico. Precedence exists for the promulgation of such requirements. Conviction for smuggling or other felonies is not grounds for the revocation of an airman's license. Only the airman's skill and physical fitness is an issue in such action.

There is some recent evidence to indicate that small pleasure boats are sometimes used in drug smuggling. Smuggling by boat is potentially a very serious problem. It represents a means of smuggling that is very difficult to control. Effective surveillance of the thousands of pleasure crafts operating in the waters off southern California and in the Gulf of Mexico would represent a Herculean task and would not, at this time, justify the expenditure of manpower and equipment necessary to implement a meaningful program. Better coverage might be achieved at various Mexican ports of call and investigative procedures relating to small vessels should concentrate on gathering intelligence on their illegal use.

The Task Force recommends:

FAA regulations should be amended to require the filing of a flight plan prior to departure of all aircraft on international flights between Mexico and the United States.

FAA statutes and regulations should be revised to permit license revocation in the case of pilots convicted of smuggling, or possession of contraband drugs.

Existing radar facilities along the Mexican border should be expanded and improved to conduct greater surveillance of low altitude aircraft and canyon air corridors.

Pursuit-type aircraft should be utilized on an increased basis to combat smuggling by air.

UTILIZATION OF ENFORCEMENT PERSONNEL

The Bureau of Customs, the Bureau of Narcotics and Dangerous Drugs, and the Immigration and Naturalization Service need greatly increased manpower to carry out the duties and responsibilities of their respective agencies. Should a manpower increase be granted, the agencies would utilize these additional personnel as follows:

1. Customs would significantly increase its agent personnel, a substantial portion of whom would be assigned to augment the anti-smuggling drive by increasing information gathering facilities and emphasizing smuggling conspiracy investigations.

2. The Border Patrol would utilize new personnel at border areas other than designated crossing points. This would augment the Border Patrol's current effort to make it more difficult to avoid the ports of entry and to discourage potential smugglers from using unauthorized entry areas.

3. The Bureau of Narcotics and Dangerous Drugs would utilize its additional manpower to develop intelligence data, form specialized mobile units, and expand undercover operations and conspiracy-type investigations.

IV. THE CONTROL OF MARIHUANA AT ITS SOURCE

There is considerable opium poppy cultivation in Mexico, usually in remote and inaccessible areas in the interior. Generally, it is grown on relatively small plots by individual farmers as a supplemental money crop, primarily in the states of Sinaloa, Sonora, Jalisco and Morelos and to a lesser degree in Durango and Nuevo Leon.

Marihuana presents an even greater problem due to the fact that its prolific growth is both wild and cultivated. It can be found in practically every state in Mexico, although Guerrero, Jalisco, Sinaloa and Tamaulipas are the major sources.

REMOTE SENSING

In the absence of specific information from informants, the only practical method of locating these crops is through the use of remote sensing devices. For a number of years, the Mexican Government has employed light observation planes and helicopters on spotting missions, but it would appear that these operations to date have not been of sufficient scope to cover adequately the vast land area where these crops can be found. The use of broad remote sensing techniques in states involved, with subsequent crop identification by agricultural experts, would appear to be more efficient and effective. If the Mexican Government has such a capability at the present time, it is not being used for this purpose. On the other hand, there is no question that the United States is capable of undertaking such missions.

Airborne remote sensing of marihuana may be feasible with a minimum of investment and technical assistance with systems already developed. NASA and the Government of Mexico have already initiated an agreement to develop a Mexican remote sensing capability. As far as we know, remote sensing has not yet been tested specifically for marihuana and poppy detection. This should be done by interested United States agencies. If the results are positive, we should make them available to the Mexican Government and urge it to acquire whatever equipment is required. The question arises as to what extent NASA can commit its resources to this program.

The Task Force recommends:

With the participation of the State Department, there should be early discussion between appropriate officials of the Mexican and United States Governments concerning efforts to implement effective remote sensing surveys.

The Attorney General should be requested to direct an inquiry to the Director of NASA concerning the participation of NASA in helping to develop a remote sensing capability for marihuana control in Mexico.

The Attorney General should be requested to direct an inquiry to the Secretary of Agriculture concerning the participation of the latter's manpower and resources in development of a Mexican remote sensing capability. Remote sensing priority should be placed on known regions of opium poppy and marihuana cultivation.

CROP ERADICATION

For the most part, the Mexican authorities have relied on manual eradication of opium poppies. This simple but tedious process consists of breaking the stems with a wooden switch or cane, causing the plant to wither and die. As an added measure, the crude irrigation devices and protective fences are destroyed. Marihuana crops are usually burned, sometimes after being uprooted.

There are considerable difficulties associated with crop destruction. These crops are often grown in extremely difficult terrain in some of the most remote areas of Mexico, creating severe problems in transporting men and equipment to the scene. The local growers have, on occasion, resorted to armed resistance against the eradication teams resulting in death and injuries to the personnel involved. This particular problem is serious enough to require escorts of squads of heavily armed soldiers. In view of the foregoing, the Task Force is impressed with the potential effectiveness of chemical crop destruction utilizing aircraft.

The use of chemicals would undoubtedly involve considerable funding, but until the actual crop acreage is known,

a realistic cost estimate cannot be made. Before embarking on such a program, it would be necessary to obtain the agreement of the Mexican Government. It is not known whether the Mexican Government would be willing to authorize and finance such programs. Alternative sources of funding might be available, such as grants from U. S. agencies or international organizations, i.e., Pan American Union, the World Bank, or even private foundations in the United States.

The Task Force examined the possibility of crop substitution programs which would encourage the small farmer to abandon the cultivation of opium poppies and marihuana. It would appear for the present at least, that such a program would not be feasible or practical.

The Task Force recommends:

> The appropriate Departments should be requested to broaden their current research and experimentation to determine the most effective and practical methods for the destruction of opium poppy and marihuana crops.
>
> The Mexican Government should be consulted by the State Department concerning broad programs for marihuana and poppy crop destruction.
>
> A survey should be conducted of funding sources to support crop eradication programs, said survey to include other than U. S. or Mexican Government agencies.

FLOW OF TRAFFIC IN MEXICO

Interdiction of the flow of drugs in Mexico presents several unique problems. Elements of the traffic are located in remote areas, removed from adequate transportation and communication facilities. Heroin laboratories are operating in scattered locations, including some in desolate mountain regions and isolated villages. European heroin passing through Mexico enters by ship in the eastern part of Vera Cruz and by air at Mexico City. The capital city is also a transfer point for significant quantities of cocaine en route to the United States from South American sources. Marihuana is gathered at rural points and large consolidated shipments are prepared for movement north to the border.

With the recent increase in dangerous drug abuse in the United States, metropolitan areas in Mexico have emerged as souces of this material, both in clandestine production and diversion from legitimate industry. All of these drugs eventually move northward to the border in vehicles ranging from automobiles with sophisticated traps to tractor trailers.

An analysis of drug seizures clearly indicates that the bulk of this traffic moves to the California and Arizona border points via Mexican Highway #15 to Santa Ana in the state of Sonora. Here it either continues on Highway #15 to Nogales and other Arizona points of entry or moves westward on Highway #2 to western Arizona and California. Alternative routes simply do not exist in that region. Although there are checkpoints on these highways, they are only used for the control of southward traffic. If adequately staffed facilities were established south of Santa Ana on Highway #15 and on Highway #2 west of that city, it would impede the flow of these drugs to the border.

The violator in Mexico can be typed on the basis of his individual role in the traffic. He may be the grower, the laboratory operator, the courier who transports the drugs to the border, or the recipient who employs the actual smuggler. The Mexican authorities should give appropriate attention to each phase of the smuggling operation so that meaningful results can be achieved.

The Task Force recommends:

> The Mexican Government should be urged to establish adequate northbound inspection points along Highways #15 and #2.
>
> They should also be urged to tighten control over the legitimate production and distribution of dangerous drugs, and to monitor the sales and distribution of chemicals essential in the manufacture of heroin, particularly acetic anhydride.

STEPS TO ENCOURAGE MEXICAN COOPERATION

The United States Government can assist the Mexican Government in establishing better enforcement techniques, especially with regard to narcotics and dangerous drugs. Seminars on this problem should be held, attended by BNDD,

Customs, and Mexican Judicial Police to cover all aspects of drug trafficking. This could later be expanded into a school similar to what is available in the United States, with an equal number of students from both countries.

The Mexican Government should be urged to establish a bureau solely for the enforcement of narcotic laws. United States technical and financial assistance could be used to enhance this endeavor.

More specific intelligence information should be made available to the Mexican police. If substantive evidence concerning specific individuals would be presented to the Mexicans for their exploitation, the probability of arrest and prosecution of these violators would be greatly enhanced. Similar efforts with Italian officials concerning the Mafia families produced immensely successful results. The same technique may be effective in Mexico.

The Task Force recommends:

The Mexican Government should be encouraged to establish a Bureau of Narcotics with initial technological and financial assistance from the United States, where necessary and appropriate.

The United States authorities should provide more specific information to the Mexican Government describing the scope of the traffic along with names of drug traffickers known to be operating in Mexico.

Joint seminars should be established between The United States and Mexico for the interchange of information relating to enforcement techniques with regard to narcotics and dangerous drugs.

V. PROCEEDINGS AGAINST VIOLATIONS

PROSECUTION OF VIOLATORS IN THE UNITED STATES

The prosecution of drug traffickers in this country is based on a multitude of statutes. The laws regulating the smuggling of narcotic drugs and marihuana are generally inflexible in terms of minimum mandatory penalties. These penalties are applicable, not only to major violators but also to a broad range of offenders, some of whom are relatively minor offenders. As a result, it has been necessary to bring technical prosecutions under other statutes to avoid the imposition of mandatory sentences and in other cases, a program of deferred prosecution has been used to the same end. As a last resort, it has been necessary to decline prosecution, all in the interest of the fair administration of justice and in consideration of the nature of the offense.

In recent years, we have witnessed a dramatic increase in the number of drug prosecutions. The Administrative Office of the United States Courts reported that there was a 31.9% increase in narcotic prosecutions during the first half of fiscal year 1969 as compared to comparable period in the previous fiscal year. Approximately one-half were commenced in the judicial districts abutting the Mexican border. These courts are severely overburdened with a disproportionate number of criminal cases of all types. During fiscal year 1968, over twice as many criminal cases were filed and terminated in these districts than in the five judicial districts located between Connecticut and eastern Pennsylvania, one of the most densely populated regions in the United States. In fact, there were six times as many narcotic cases filed in the border districts compared with those in the eastern districts.

This inordinate situation is also reflected in the heavy case loads assigned to the Assistant U.S. Attorneys in the border districts. The problem is further compounded by the relatively few federal judges available in these districts.

Because of the congestion, there has been a parallel problem regarding bail for drug offenders, which has necessitated the release, pending trial, of violators who might otherwise be held on high bond for early prosecution. The result has been a high incidence of new offenses by persons awaiting trial and bail jumping. In the case of Mexican nationals, the defendants often seek sanctuary across the border.

The Task Force recommends:

> Federal statutes relating to the smuggling of narcotic drugs and marihuana should be revised to permit greater flexibility in the prosecution of such violators.
>
> Serious consideration should be given to increasing the number of federal judgeships in border districts.
>
> The staff of U.S. Attorneys in border districts should be enlarged to handle the heavy criminal caseload.
>
> As an interim measure, consideration should be given to the use of visiting and retired judges and Special Assistant U.S. Attorneys from other districts.
>
> There should be an appropriate increase in the staff of the Criminal Division of the Department of Justice to complement any increase in U.S. Attorney staffing and, specifically, to provide assistance in highly complex drug cases involving major violators.

PROSECUTIONS IN MEXICO

The federal laws of Mexico relating to narcotic drugs and marihuana, in a general sense, are similar to those of the United States. We are informed, however, that Mexico has not enacted laws similar to our laws regulating stimulant, depressant and hallucinogenic drugs.

With regard to narcotic drugs and marihuana, the Mexican Government has assured us that it is within their power to prosecute their nationals in Mexico for violations of the Mexican laws, even though such violations occur in the United States. A recent ruling by the Supreme Court of Justice for Mexico has upheld such a prosecution. The ruling was handed down on January 13, 1969, under Mexican appeal number 4032/968-2a, by the First Cabinet of the Court, in the case of Mario Aguilera-Smith, a fugitive from American justice.

Aguilera, a Mexican national, had been arrested on January 3, 1966, at Tijuana, B.C., Mexico, based upon evidence presented by the United States. On August 5, 1967, Aguilera was convicted of exporting, trafficking and furnishing heroin. He was sentenced to six years' imprisonment and a fine of 1000 pesos. An intermediate appeal to the 4th Circuit Tribunal at Guadalajara had resulted in the affirmance of Aguilera's conviction.

Existing extradition treaties with Mexico, although listing narcotic violations as extraditable offenses, grant discretion to the parties in respect of requests for their own nationals.[14/] The Government of Mexico will prosecute locally persons who are fugitives from justice in the United States. Its present policy is to deny requests for the Extradition of Mexican nationals. The United States Government generally grants extradition requests for its nationals.

The Task Force recommends:

> The United States should take immediate steps to present to the Republic of Mexico for prosecution selected cases involving narcotic and marihuana violations by fugitive Mexican nationals.

14/ Treaty of Extradition with Mexico, Feb. 22, 1899, 31 Stat. 1818, T.S. No.242 (effective April 22, 1899); Supplementary Extradition Convention with Mexico, December 23, 1925, 44 Stat. 2409, T.S. No. 741 (effective July 11, 1926); Supplementary Extradition Convention with Mexico, August 16, 1969, 55 Stat. 1133, T.S. No. 967 (effective April 14, 1941).

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VI. ROLE AND RESPONSIBILITY OF STATE DEPARTMENT IN SECURING MEXICAN COOPERATION

The Department of State is the primary representative for communicating to foreign governments the vital interests of the United States and for doing everything necessary to advance those interests through diplomacy. The consumption in the United States of drugs and narcotics produced abroad and illegally imported into this country has reached such proportion as to be in the highest rank of those matters affecting the vital interests of the nation.

Accordingly, the Department of State, in its dealings with the highest officials of Mexico and in the setting of agenda therefore, should give no subject higher priority or greater emphasis than the desire of the United States to realize an eradication of the production and refinement in Mexico of opium poppies and marihuana in violation of Mexican laws. The basic responsibility for effecting such control lies with the Government of Mexico and its law enforcement agencies. Nothing should be done which would weaken or shift that burden of responsibility. Only a massive, continuous effort, directed by the highest officials of Mexico, will significantly curtail the production and refinement of marihuana and other dangerous drugs.

The Task Force recommends:

> The Department of State must devote its efforts to persuading Mexico to place a program for eradication and control of marihuana and dangerous drugs among the highest of its national priorities.
>
> The United States Ambassador in Mexico should have this problem on his highest priority list on a continuing basis.

Mr. ROSSIDES. Your committee has also asked what problems the Bureau of Customs faces in its antismuggling efforts directed to illicit drug traffic.

The basic need of the Bureau of Customs today is for more manpower and facilities.

President Nixon consistently has asserted his personal concern and desire to increase the number of agents and the resources of the Bureau of Customs in order that it can better meet its responsibility for enforcement of the Nation's antismuggling laws.

On September 16, 1968, Richard M. Nixon, presidential nominee, recommended greatly increasing the number of Customs agents. In the President's message to the Congress dated July 14, 1969, concerning the drug menace, he pledged increased efforts to eliminate drugs illegally entering this country, and stated:

> The Department of the Treasury, through the Bureau of Customs, is charged with enforcing the Nation's smuggling laws. I have directed the Secretary of the Treasury to initiate a major new effort to guard the Nation's borders and ports against the growing volume of narcotics from abroad. There is a recognized need for more men and facilities in the Bureau of Customs to carry out this directive. At my request, the Secretary of the Treasury has submitted a substantial program for increased manpower and facilities in the Bureau of Customs for this purpose which is under intensive review.

In accordance with the President's message, there will be transmitted to the Congress shortly a supplemental request for appropriations recommending substantial supplemental appropriations to increase Customs manpower and facilities.

During 1968, 213 million persons entered the United States by foot and in 61 million motor vehicles, 96,000 vessels and 313,000 aircraft. This represents a tremendous increase in border traffic. In spite of vast increases in business and traffic, the number of personnel of the Bureau of Customs has not materially increased over the force in being many years ago, impairing the effectiveness of the antismuggling effort. Much of the drug traffic intercepted is found on the person of arriving passengers.

Traffic volumes are such that personal and vehicular searches must be made on a random basis. In order to intercept drug traffic, Customs inspectors must rely to a great extent on information developed by agents and informants and on shrewd observations of arriving traffic.

Smuggling by light aircraft across the Mexican border is becoming an increasingly difficult problem. A number of successful interceptions of such traffic recently have been made along the Texas-Mexican border and along the southwest Arizona to southern California-Mexican borders.

Customs has been operating with only one recently acquired aircraft, but during its first 6-month period of operation in Southern California it was used to further 26 separate smuggling investigations, 14 of which have not yet been concluded. As a consequence of the 12 finished cases in the period, 23 arrests were made, 10 motor vehicles and 3 aircraft were seized, and the Bureau of Customs confiscated 4,100 pounds of marihuana, 12 pounds of heroin and 2 pounds of cocaine. This demonstrates conclusively, I believe, that the effectiveness of Customs antismuggling efforts would be greatly enhanced by employing additional aircraft which are effective for surveillance and pursuit of both air and surface traffic.

4. At best, the Bureau of Customs can only guess. Mr. Chairman, as to the amount of narcotics, marihuana and dangerous drugs smuggled into the United States. One indication to unknown traffic is the amount seized. Our rough estimates are that seizures approximate only 10 to 15 percent of the total amount of drugs smuggled into the United States. It must be noted, however, as is apparent, that estimates are highly unreliable, and that total drug smuggling volumes could be greater than this estimate.

5. This committee has asked for an appraisal of the ability of the Customs Service to cope with the narcotic traffic across our borders in terms of its manpower, equipment and operating funds. As I have indicated in response to your inquiry concerning the problems of Customs, this is our greatest need.

With the same number of personnel, seizures and arrests constantly escalate. However, increases in seizures and arrests correspondingly increase time and work requirements of our manpower because of the need for time-consuming investigations, case reports, appearances, consultations, and other matters attendant to preparation for and appearance at trials and various other preliminary proceedings.

Additionally, the demand for related correspondence and statistical reporting is accordingly increased. Thus, it is clear that the effectiveness of Customs in dealing with vastly increased volumes of international traffic is directly related to those available resources of manpower, equipment and operating funds.

The forthcoming supplemental appropriations request is significant. Appropriation increases will help rectify a longstanding manpower shortage of the enforcement arm of the Customs Service. The President and the Secretary have manifested their support in this regard, and with the continuing support of the Congress, the Bureau of Customs can and will meet its responsibilities in suppression and control of illicit drug smuggling.

Thank you, Mr. Chairman. I would be pleased to answer any questions the committee might have.

Chairman Dodd. Thank you very much, Mr. Rossides. We have a few questions, mostly for clarification.

What would you say was the major goal of Operation Intercept?

Mr. Rossides. The major goal of Operation Intercept is to prevent heroin, marihuana and other dangerous drugs, from coming into the United States. The main purpose is not seizures because obviously once we started the intensive full-time inspection, the organized smuggler would try to wait us out. He is not coming across as he had been before. That is our key aim.

Now, secondly, and part of that aim, we are most hopeful that we will be having effective cases against the major organized bands who are involved in smuggling these drugs across the border. We hope for, and I confidently expect, that we will be having full cooperation from the Mexican Government in this regard.

Chairman Dodd. The operation is still on, is it?

Mr. Rossides. It is still on, Senator, and it will go on indefinitely.

Chairman Dodd. I am not going to ask you, unless you want to volunteer, how many of the smugglers were caught. I would rather put it another way. Are you satisfied that your program is making progress?

Mr. ROSSIDES. We are satisfied, very much so, Senator, and the fact that there have been very few seizures is indicative to us that the actual smuggling attempts have been very, very few. This is proof of the success of the program thus far.

There is additional proof in that we have had fine cooperation with most of the people involved, and frankly I had expected a great deal more comment and criticism regarding the economic dislocations that are occurring, but it is most gratifying to have the various persons at the border areas say, yes, it is inconvenient, we hope we can work out procedures to reduce the inconvenience, but your goals we are all for.

Chairman DODD. How many agents did the operation involve?

Mr. ROSSIDES. That, Senator, I would prefer not to get into.

Chairman DODD. All right. I will ask it another way. I am not trying to pry.

Mr. ROSSIDES. Let me suggest this——

Chairman DODD. Let me help you. Obviously the Operation Intercept differs very considerably from the normal border operation and a lot of people are wondering can this be continued for very long?

Mr. ROSSIDES. I think it can, Senator, because I think the hallmark, as Deputy Attorney General Kleindienst in our briefings that we have given, as he pointed out, and I think it is the hallmark of this program, this is the first time that we have brought together the various enforcement arms of the Federal Government in a coordinated effort. We have the Bureau of Customs and the Immigration Service along the border. We have the Coast Guard and the Navy in the water. We have the Federal Aviation Agency helping significantly with regard to regulations and its expertise. We have the Bureau of Narcotics and Dangerous Drugs working internally and supplying intelligence information.

This will continue after the period of the full intensive inspection ends and that period, as I say, at the moment is indefinite.

Additionally what has occurred, Senator, and this is the part that is difficult to keep up without the additional manpower, particularly the Bureau of Customs and Immigration and Naturalization Service have brought in manpower from other parts of the country to beef up the personnel on the border. As I say, we hope to keep that going indefinitely but I do want to stress that everybody must understand that Customs will continue permanently an increased level of inspection along the border.

Tied in with our supplemental appropriation, which will be forthcoming shortly, we will be able to have a much more effective inspection along the Mexican border.

Chairman DODD. I take it, then, as a result you expect that the smuggling operations such as they were, when this Operation Intercept started, now are greatly reduced or substantially reduced.

Mr. ROSSIDES. Yes, sir.

Chairman DODD. I am glad you said that you notified the Mexican Government officials. They knew all about this going into operation, I take it?

Mr. ROSSIDES. Yes, sir, and if I may add to that, Deputy Attorney General Kleindienst and I visited with our counterparts in Mexico

City in June of this year. It was the fourth such informal talk which had started back in—I believe the first conference was 1960. They were called informal consultations to see what could be done about the drug traffic.

In June of this year, following months of work that we had been undertaking in view of this task force, I would suggest that our delegation was as fully prepared as could possibly be. We had most fruitful discussions with the Mexican officials and the Mexican Government.

I might add that a joint communique was issued June 11, I believe, Mr. Chairman, and it is most significant because there is some criticism in the papers regarding our efforts, but we feel that we will have the cooperation of the Mexican Government.

In the joint communique, and I quote regarding border intensification, Mr. Chairman, the intensification of the inspection at the border:

> The question of smuggling narcotics along the long common border between the two countries was examined since despite intense enforcement efforts this presents a growing problem for the authorities charged with its control. It was agreed that the respective officials of each government recommend that enforcement activity along the border be increased.

Mr. Chairman, we are looking forward to further discussions with the Mexican Government, particularly in the area where we want to be as helpful as we can to them, namely, the eradication of the crops, the poppy and hemp fields and with regard to suppressing the entire smuggling pipeline.

Chairman Dodd. To be destructive of the poppy and marihuana fields?

Mr. Rossides. This a major goal of our joint efforts with the Mexican Government.

Chairman Dodd. That sounds very sensible and I hope you succeed. As I understand, you are telling us that this operation will continue and in fact gradually evolve into a stronger, more heavily managed operation, with border patrols on both sides of the border.

Mr. Rossides. We are hopeful on the other side. We can only control our side, Mr. Chairman.

Chairman Dodd. I know.

Mr. Rossides. And we have already had indications. I received word over the weekend, for instance, that the mayor of Tiajuana, and this was secondhand, so I have not had a chance this morning to confirm it, had asked the Mexican Government to have checkpoints on the traffic coming north on Routes 15 and 2, which are two of the main passage points from Mexico into the United States in the southern California area.

Chairman Dodd. Since you have brought up that question, that moves me to ask you what about that. I have heard that some Mexican officials have been greatly concerned about the impact of this program on the economy of these border communities. Can you tell us anything about that?

Mr. Rossides. Yes, sir. There is an impact. There has been great concern voiced on—maybe the word "great" is a little overstating it. There has been concern voiced on both sides of the border of the business community that tourism has been hurt, for instance. The traffic has

dropped enormously, the tourist traffic, maybe up to 75 percent. We are gratified that even with the businessmen I have spoken to and others that are in the border areas, they all recognize the problem. They want us to try and alleviate the question of movement through, if we can speed up the procedures, but this would be a very, very small price, indeed, to pay, Mr. Chairman, if we are successful in this program.

Chairman Dodd. It would seem to me the destruction or the doing away of these poppy fields and marihuana fields in Mexico—I think the Mexican Government could very easily do this if it wanted to.

Mr. Rossides. Well, I would only qualify one word, Mr. Chairman, the word "easy." A lot of these fields, as was pointed out to us, are in the dense mountainous areas of Mexico. Mexico is a poor country. Its resources are limited. We are hoping that they will make a much greater allocation of these resources to the eradication program. We stand ready to assist them with technical assistance.

Chairman Dodd. That is important.

Mr. Rossides. Of planes and materials and sensor devices. The Department of Defense has been developing these sensor devices from the air, from the aroma it picks up, the location of various poppy and hemp fields. The word "easy" would be a little bit strong, but a greater effort, there is no question, and we feel we can be successful.

And also, Senator, I think a much greater effort must be made by the Mexican Government in following the smuggling pipeline, because the smuggling pipeline starts when you put the seed in.

Then there is the growth and production of the plants. That is part of the smuggling pipeline. And then where there is the refinement and the traffic north, each stage gets easier to stop.

There is no doubt in my mind that a much greater effort by the Mexican authorities on the entire smuggling pipeline will cut down the volume drastically.

Chairman Dodd. Are you aware of the fact that this subcommittee had pictures taken of some of those fields back in 1962?

Mr. Rossides. I was not aware, Senator.

Chairman Dodd. We have those photographs, and at that time we did quite a bit of work trying to get the cooperation of the Government of Mexico. I personally talked with many people down there. Nothing ever happened. I am sure you are going to do much better. That is what we hope.

Mr. Rossides. Mr. Chairman, let me suggest at least one reason why we feel we will do better. Two reasons.

One, at first you have to put your own house in order and this is what we feel we are doing with our intensified program of inspection along the border where we control the border.

Additionally, and most significantly, at this conference in June with the Mexican Government, they stated that for the first time they now have the problem of marihuana use by their youth. In the last year or 2, call it spillover or whatever term, but the Mexican youth of the average family is now using marihuana, not to the degree that we are but to a degree which alarms their officials.

So I think that factor has had an important effect and it was in our communique, our joint communique.

Chairman Dodd. Yes. That is significant. I had always understood they had a very low rate of users.

Mr. ROSSIDES. Up until the last few years there were only a very few of them.

Chairman DODD. Well, now, a couple of more questions. Some of them I want to get on the record so it will be complete.

Can you tell us, or give us your opinion, as to why smuggling of narcotics from Mexico has quadrupled in the last 2 years?

Mr. ROSSIDES. I believe I referred to it in regard to hashish.

Chairman DODD. You said it had quadrupled. I wondered if you would care to tell us why you think this happened.

Mr. ROSSIDES. One, frankly, prior to this effort, the Mexican border was such a sieve that the feeling was that it is so easy to get it in; this helps stimulate it through that border.

Also, there became the growing popularity of hashish. I think it is the ease with which it has been able in the past to come in, which is a great factor. Other than that, I cannot tell.

That is one of the reasons why you have the hard narcotics from Turkey through the refinement process in France, Italy, and Spain. A fair proportion of that goes into Mexico and is shipped on up as being a safer route than directly along the eastern coast or through Canada. We have a fair amount coming into Canada and down from Montreal and we plan to make a greater effort on that.

Chairman DODD. I won't go into that situation in Turkey. We will be hearing more about that later. My own impression is you have got good people working on that. I have talked to them, as you probably know.

Mr. ROSSIDES. Yes, I do, Senator.

Chairman DODD. Principally Mexico and Turkey, as far as heroin is concerned.

Mr. ROSSIDES. Correct, sir.

Chairman DODD. Let me finally ask you this question. If most of the marihuana in this country comes from Mexico, and I take it from your testimony that it does, and your plans for more men and airplanes and surveillance people and surveillance devices all along the Mexican-United States border. I suppose we have got reason to look forward to a greatly improved situation in the not too distant future and outwardly pretty near total eradication of the traffic from Mexico. Ultimately I know there will always be some illegal traffic, but I am talking about this massive traffic we have now. Would you agree to that?

Mr. ROSSIDES. I would agree to this extent, Senator, and we are putting ourselves right on the spot and are pleased to do so because of the importance of the program. We feel, Mr. Kleindienst and I, and I am sure the task force members do, but I can talk for Mr. Kleindienst because we have had this question asked of us at various conferences, we feel there will be a significant, a substantial reduction in the marihuana and narcotics traffic from Mexico within a year.

Chairman DODD. Well, thank you very much, Mr. Rossides.

Mr. ROSSIDES. Mr. Chairman, may I make one other reference for the record? We received, and again this is regarding part of the total picture, a lot of the things we have read in the paper have been about criticism of persons, about our operation, from Mexico—I received a Mexican editorial digest and I will supply for the record the name

of the paper, but this was a cable that came through to us over the weekend, and this was on Thursday, September 25, and I would like to quote, Mr. Chairman. It just said "Mexican Editorial Digest."

We shouldn't be offended by the United States effort to stop drug traffic. Let us not complain that it hurts our tourist industry; nor should we defend ourselves with the questionable argument that all of us aren't marihuana smugglers or that there is a greater consumption of drugs north of the border than there is south of it.

We should let our neighbors solve their internal problems as they see fit and start putting our own house in order, not for them nor for tourism but for ourselves, our health and dignity. If there is an excessive proliferation of vice in our border cities, we should cure these sores instead of shouting protests and let us not forget that there is where the Latin American world begins. This remembrance should imbue us with a sense of responsibility.

The National Border Program, long languishing in the throes of bureaucracy, should now be vigorously implemented. This would change our border into a cultural, artistic, commercial and industrial showcase. This would be better than trying to defend racetracks, bullfight arenas, and centers that traffic in vice.

Thank you, Mr. Chairman.

Chairman DODD. Thank you. I am glad you read that editorial into the record. That sounds very sensible. It will help everyone better understand the attitude below the border. Thank you again.

Mr. ROSSIDES. Thank you, Mr. Chairman. It was a great pleasure. If I may just introduce—and I apologize for not having done this earlier—some of the gentlemen that have been most active in the campaign.

First, Assistant Commissioner Lawrence Fleishman, of the Bureau of Customs, who is in overall charge under the direct supervision of Commissioner Ambrose, of Operation Intercept.

Chairman DODD. Glad to have you.

Mr. ROSSIDES. Special Assistant to the Secretary for Organized Crime, Mr. G. Gordon Liddy, who has been most helpful in this program; and

Mr. Lee Ritger, Assistant General Counsel of the Treasury Department.

Chairman DODD. We are very pleased to have you here, and appreciate your help and cooperation.

Mr. ROSSIDES. Thank you, sir.

Chairman DODD. Senator Birch Bayh, a member of the subcommittee, is here. We welcome you here this morning.

Senator BAYH. Mr. Chairman, I regret that other committee responsibilities prohibited me from following your present investigation as closely as I would like. I am sure that no one knows better than you the difficulty of touching all bases as we must.

I listened with a great deal of interest to Secretary Rossides' discussion of this problem.

Mr. INGERSOLL. I should like to point out that the American Bar Association, the Model Penal Code, and the Model Sentencing Act all favor special treatment for professional criminals. The Department agrees that such a provision is worthwhile and rational as it allows, within the sentencing structure, the ability to identify and discriminate between offenders, treating the exceptional case exceptionally, and the routine case flexibly.

4. MARIHUANA AND HALLUCINOGENIC PENALTIES

The next requirement that runs throughout the suggested alternatives is the legal and medical recognition that marihuana is not a narcotic drug but it rather an hallucinogen and should be treated, in terms of regulation and sentencing, as an hallucinogenic drug.

It is our conclusion, after consulting with the scientific community and with members of the legal profession, that the hallucinogenic substances should not be subject to the same penalty scheme as the narcotic substances in schedules I and II. Therefore, while the proposed act properly reflects the regulatory and penal structures according to the schedule designation, the hallucinogenic substances in schedule I shall be treated the same as the amphetamine, barbiturates, and other dangerous drugs listed in schedule III.

Under present law the hallucinogens are treated in this manner and we see no reason to disturb the present structure.

One point, however, has become clear as a result of the testimony before the subcommittee and that is the need for more knowledge about the effects of marihuana. Although it is termed an hallucinogen, we need to know more about this particular drug, especially its long-term effects.

Therefore, the Department supports a provision that will allow for a study into the causes and effects of marihuana use. Such a study is

part of S. 1895, introduced by Senator Dodd. The Department is reparing some language on the organization and scope of such study ld will be happy to submit it to this subcommittee for its nsideration.

Chairman Dodd. I am glad to hear you say that. I am glad we are oing to get it. That is in the bill I have introduced, as you pointed it, and of course that is the right way to go about it. There have en a lot of suggestions about Presidential commissions since that ll was introduced, but the best thing to do would be to do just what ou say you are going to do here, find out and let us know.

Mr. Ingersoll. By recognizing the proper classification for marihuana and adjusting the penalties to that classification, the Department feels that this is a rational and credible approach to sentencing. oupled with the proposed study on marihuana we hope to have more formed answers and a better understanding of this drug in the near uture.

5. SPECIAL PAROLE TERM

Another requirement that has been included in the alternative enalty schemes is a special parole term that is a part of the illicit trafficking sentence structure. Just as incarceration is not always a meaningful answer to effective rehabilitation, certainly incarceration without an adequate supervisory followup after release is not in the best nterest of society.

Therefore, we have required a special parole term so that persons entenced for trafficking violations would be placed under supervision or a period of time regardless of whether they are incarcerated or heir sentence probated or suspended. The intent here is to give the udges another tool for sentencing and another means of protecting ociety when dealing with the drug violator.

6. SIMPLE POSSESSION OR POSSESSION FOR DISTRIBUTION

With regard to possession offenses, we have identified two types of possession and treated each type differently. On one hand, there is the violator who is merely possessing for his own personal use. He is on he lowest rung of the distribution ladder and represents the widest segment of the drug culture.

On the other hand, we have the possessor who intends to sell and has large quantities of the drug in his possession.

The only distinction between this person and the trafficker is that he is normally caught before he sells the drugs. Since the intent to sell is present in both instances, this person is logically no different from the actual trafficker and he should be treated the same.

With this dichotomy in mind, all alternatives make possession with intent to sell a felony and possession for one's own use, regardless of the drug involved, a misdemeanor.

We believe that, by having such a flexible range of penalties for the illicit possessor, prosecutors will be more willing to initiate cases and the courts less reluctant to handle possession cases because of the potential high penalties involved.

By allowing, the court to prosecute the possessor who intends to sell as a felon and the possessor for one's own use as a misdemeanant, I believe we will have better law enforcement and better respect for the law.

Senator HRUSKA. Mr. Ingersoll, you refer to the possessor who intends to sell and has large quantities of the drug in his possession. Now, an offender who has that particular material in his possession for his own personal use may possibly have this material with others.

This material would not be for his personal use. It is for the use of someone else, and yet it is not the possessor who intends to sell and has large quantities of the drug in his possession. Now is there any special consideration given to that half-way in between point?

Mr. INGERSOLL. Yes; the term "trafficking" includes distribution without the exchange of money, and also the choice between prosecuting for simple possession or possession with intent to sell would be a prosecutive decision based upon the information that is provided by the investigative agency.

Senator HRUSKA. A malevolently inclined prosecutor could make out of that kind of a simple process I have just described a trafficking thing and a very serious proposition. Is there any inhibition in the statute that you propose in the bill that you propose, guarding against that sort of thing?

Mr. INGERSOLL. Yes. Can Mr. Sonnenreich comment on that, Senator?

Mr. SONNENREICH. Senator, we have a similar existing law with the Drug Abuse Control Amendments as it was amended on October 24, 1968, which also has the possession with intent to sell and the simple possession. Normally the burden when we talk about possession with intent to sell, the burden is on the Government to show that there was in fact an intent to distribute, and the burden would be on he Government to do this.

Of course, the jury then makes its decision as to whether or the Government's burden was carried forward. If the jury determines that it was, of course, they will convict with a felony. This is a matter that has always been, when you are talking about the gray area a very difficult area to pinpoint. It is normally left to the discretion of the prosecution to prosecute. The normal case is that, as Mr. Ingersoll has pointed out, our cases where we have had possession would normally involve very large quantities. This would probably be true still under this coming law, and we do not anticipate having this kind of a problem. Most of those cases would be broken down to simple possession.

Senator HRUSKA. Does this bill still make a distinction between the offense of giving marihuana to someone under 18 and a person over that age?

Mr. SONNENREICH. Yes, sir.

Senator HRUSKA. In this same topic we are discussing?

Mr. INGERSOLL. Yes; that same provision is included in these alternatives.

Senator HRUSKA. Are you satisfied that by leaving this matter to the discretion of the prosecutor we are on safe and fair ground?

Mr. INGERSOLL. I think as a practical matter, Senator Hruska, a nmative transfer or a simple giving would be prosecuted as a simple ossession type of case.

Senator HRUSKA. It would?

Mr. INGERSOLL. As I indicated in my testimony in September, the ast majority of our cases involve very large amounts of substances hich makes it very apparent that the material was in the individual's ossession not for his own personal use.

Senator HRUSKA. Thank you very much.

Mr. INGERSOLL. Yes, sir.

Chairman DODD. Let me see if I understand this clearly. You have old us now about the possession situation; you are recommending that andatory minimum sentences for possession of marihuana and other rugs as well are out. I think that is a good thing: this is what really as got the country upset.

The meat of this thing is the problem of young people found in he possession of marihuana or some other drug. People, judges, and rosecutors felt that the law was not to the point where we were getting nywhere. You are taking a good intelligent step here and this will elp us.

My own judgment is that this is what the Congress will want to do.

Mr. INGERSOLL. That is certainly in line with our thinking.

Chairman DODD. I do not want to rub it in but this is about what I ecommended in my own bill.

Mr. INGERSOLL. Yes: it is.

Chairman DODD. Last March.

Mr. INGERSOLL. Very close to it.

Chairman DODD. I am glad this is what you are recommending. I hink it will help us.

Mr. INGERSOLL. I might point out, Mr. Chairman, that the Department of Justice has favored this approach for some time. Senator Iruska may recall that in January of this year I testified before the National Committee to Reform the Federal Penal Law in favor of a nodification on the marihuana penalty.

Chairman DODD. Yes.

Mr. INGERSOLL. And consistently throughout the intervening period we have attempted to work in that direction.

Chairman DODD. I recall your testimony when you were here and I hink you were thinking that way then?

Mr. INGERSOLL. Yes, sir.

FIRST OFFENDER TREATMENT

I might add that we have carried over from our present proposal the first offender treatment that will allow those persons possessing drugs for their own use, who are first offenders, to have their records expunged if the court thinks this a useful procedure. The Congress enacted just such a provision on October 24, 1968, in Public Law 90-639, which Mr. Sonnenreich referred to just a moment ago, and applied it to all hallucinogenic, depressant, and stimulant drugs. We feel that this is an extremely useful tool and will allow many young persons, who have learned their lesson and satisfied the court with their sincerity to stop illicit drug use, to avoid the stigma of a lifelong criminal record.

ALTERNATIVE PENALTY SCHEMES

At this time, I would like to briefly outline the alternative sentencing structures so that this subcommittee will have a better idea of our proposals. All alternatives contain a professional criminal penalty of not less than 5 years nor more than 20 years for first offenders, and not less than 10 years nor more than 40 years for second offenders. All alternatives provide for up to 5 years and/or $15,000 for traffickers in hallucinogenic, depressant, and stimulant drugs in schedules I, II, and III, with second offenses allowing for imprisonment of up to 10 years, a fine of $30,000, or both for alternatives A and B, and not less than 2 nor more than 10 years for alternative C.

All include a special parole term of 2 years for first offenders and 4 years for second offenders. All schedule IV violations carry a penalty of up to 1 year, a fine of $5,000, or both. Both imprisonment and fine double for second offenders.

Alternatives A, B, and C, all treat possession for one's own use the same, allowing for first offender treatment at the court's discretion and imprisonment of up to 1 year, a fine of $5,000, or both. Second offenses are a felony of up to 2 years, a fine of $10,000, or both. Possession with intent to sell is treated in all alternatives as a sale offense and sentenced accordingly as a felony.

As to first offense sales of narcotic drugs in schedules I and II, alternative A imposes a sentence of up to 12 years imprisonment, a fine of $25,000, or both, as well as a special parole term of 3 years. Second offenders are subject of up to 24 years, a fine of $50,000, or both, as well as a special parole term of 6 years.

Under alternative B, first offender sales of narcotic drugs carry a penalty of up to 12 years, and, in addition, a discretionary fine of $25,000. The special parole term is 3 years. Probation, suspension of sentence, and parole are permitted. Second offenses carry a penalty of not less than 5 or more than 20 years, and, in addition, a discretionary fine of $50,000. The special parole term is 6 years. No probation or suspension of sentence is permitted but parole is available.

Alternative C first offender sellers of narcotic drugs are subject to imprisonment for up to 20 years, a fine of $25,000, or both. The special parole term is 3 years. Second offenders are subject to not less than 5 nor more than 20 years, with a discretionary fine of $50,000. The special parole term is 6 years. No probation or suspension of sentence is permitted, but parole is available.

These, then, are the general requirements of our penalty structure alternatives. We have created a range of flexible sentencing alternatives for the courts to administer that we believe will more adequately fit the crime and the person who committed that crime. Where severity is needed, as in the case of the professional criminal, minimum mandatory sentences are retained.

As to other traffickers, more judicial flexibility is permitted. As to possessors, the penalties range from first offender treatment, to misdemeanor, to felony, depending on the Government's proof and whether or not the person is a first offender.

I trust you will find this approach useful and meaningful. There is a great need for swift passage of this law both in terms of effective law enforcement operations and in terms of public acceptance of governmental activity in the drug abuse area.

We need stronger laws to protect against diversion from legitimate industry sources and we must, at the same time, respond more effectively against the illicit drug traffic. We believe that S. 2637 with the penalty concepts outlined above, will effectively meet both challenges.

Thank you, Mr. Chairman.

Chairman DODD. Thank you, Mr. Ingersoll. I am glad you came back. Your testimony was helpful when you first appeared here, and it is very helpful today. You have a very good understanding of this problem, and I like the way you go about it. I wish you would tell us which one of these penalty structures you are in favor of.

Mr. INGERSOLL. I, Mr. Chairman, am personally in favor of alternative B.

Chairman DODD. B?

Mr. INGERSOLL. Yes, sir.

Chairman DODD. Why?

Mr. INGERSOLL. The main reason is that it makes a distinction in first and second sale offenses for narcotic substances, and I think provides again a floor for the second trafficking offense in narcotic substances, which I think will be useful in the sentencing procedure.

Chairman DODD. Am I right now that B is a mandatory sentence for a second offender?

Mr. INGERSOLL. It is only for hard narcotic traffickers.

Chairman DODD. Is this something about the professional criminal?

Mr. INGERSOLL. It has a relationship to the professional criminal. I think that when a man or a defendant comes around for the second time for a hard narcotic sales or distribution offense, that he is professionally engaged in this kind of activity.

Chairman DODD. That is another question, is it not? This is something in addition to the determination that he is a professional criminal?

Mr. INGERSOLL. The professional criminal on second offense would call for a higher sentencing structure than we have provided for here. There is a distinction.

Chairman DODD. Under plan B the maximum fine would be $50,000, and the sentence mandatory 5 to 20 years.

Mr. INGERSOLL. Excuse me, sir?

Chairman DODD. I want to be sure I understand it.

Chairman HRUSKA. For second offenders.

Chairman DODD. For second offenders, yes. I said a $50,000 maximum fine and a mandatory sentence of from 5 to 20 years for a second offense, and then the same under alternate plan B. The professional criminal which is another class of case or offense, maximum fine of $100,000 and a mandatory sentence of from 10 to 40 years.

Mr. INGERSOLL. That sentence provision for a professional criminal is true of all of the alternatives, Mr. Chairman.

Chairman DODD. I know.

Mr. INGERSOLL. Let me say that I have expressed by own personal preference.

Chairman DODD. I know.

Mr. INGERSOLL. I think we can live with all or any of the alternatives.

Chairman DODD. I understand that. I am not suggesting if you do not get everything you want that everything is going to drop dead. As a law enforcement officer my reason for asking you is why you think this is true. Very likely that is the way we should be thinking about it. I do not want to belabor this. I find it so hard to understand this 5- to 20-year mandatory sentence.

Mr. INGERSOLL. May I point out to the chairman that even this provision does provide for parole, which is different from existing penalty structure.

Chairman DODD. Yes.

Mr. INGERSOLL. And it is a minimum sentence which a person could qualify for parole under.

Chairman DODD. Do you think any second offender should be considered as being professionally involved as a criminal?

Mr. INGERSOLL. I think that the burden still should remain upon us to prove the status of professionalism as far as the defendant is concerned.

Chairman DODD. What is he, a semipro? This is what bothers me. I know the popular view of it is throw him in jail and lock the doors. There is not any logic to it in my judgment.

Mr. INGERSOLL. It seems to me that when an individual is convicted a second time for the sale of narcotics, after having had a first opportunity for rehabilitation, that we then have to consider the welfare of society.

Chairman DODD. And you can give him up to 20 years, but you do not say you have got to do it just because he has twice made a mistake and committed this offense. That is my case. Why do you say in all such cases, regardless of the circumstances, the judge has just got to lock him up? You do not allow any leeway for all the sociologists to learn anything, psychiatrists, psychologists, penologists. Every second offender is not a hardened criminal or a professional criminal, even a semiprofessional criminal. You must know that as a law enforcement officer.

Mr. INGERSOLL. I appreciate that, and I think that those other disciplines will have their opportunity to work with this individual.

Chairman DODD. Yes, but in this very section you have got plenty of machinery to get him if he is a professional. You can give him forty years, if he is a professional. This is, providing that he is determined to be a professional. If you are fooling around with words, you do not want to say he is a professional, or semiprofessional. It seems to me you have got all the power you need in the case of that hardened individual who needs most severe confinement for a long period of time. Anyway, we will be talking about it more. I am grateful for your testimony, to both of you.

You have been very helpful before this subcommittee. I agree with you that we ought to hurry along and I am sure Senator Hruska agrees as we all agree. We want to get this reported to the full committee as quickly as we can, and I commend you and your associates for the help they have given the subcommittee. It has been very substantial. Without it we could not have proceeded this far. Mr. Sonnenreich has been extremely helpful.

Mr. INGERSOLL. Thank you very much, Mr. Chairman. I am sure r. Sonnenreich shares my appreciation for your kind remarks.

Senator HRUSKA. Mr. Ingersoll, I want to agree with our Chairman re that your statement reflects a good deal of talk, study and research this particular aspect of this legislation. With all due respect to your d your colleagues' prowess in the field I have an idea that you arched for wisdom and for suggestions far beyond the four walls your respective offices. Let me ask this question in regard to any search that might have been made in that direction, particularly in gard to first offenders. What progress has been made in State legisla- on on this subject? Are you informed on that, Mr. Sonnenreich?

Mr. SONNENREICH. Yes, Senator. We have been as you know, work- g on a model State act, and as a result of that, we have been looking to the State legislative processes in the drug area. We have found that there is a tendency among at least 11 States to opt toward the rst offender treatment and to opt toward lesser penalties as to the pos- ssion, your State happens to be one in particular.

There have been I believe three States, maybe four, that have opted the other direction for stiffer penalties. The biggest problem we have the State area is we really do not have any way of determining hether or not stiffer penalties are more effective or less effective.

The only thing we do know about it is the fact of course that the use increasing and it has been taking up a tremendous amount of law nforcement efforts for possession offenses, but this seems to be the end at the present time toward making a very clear distinction be- ween the first offender possessor and others. I might point out as I elieve Mr. Ingersoll pointed out in his testimony that a great majority f these people that are caught for the first time in possession, I be- eve it was either 98 or 99 percent, were first offenders for possessing ese drugs, especially marihuana.

Senator HRUSKA. Is the reason for your inability to form a conclu- ion about the need for greater or lesser penalties the lack of statistics. r is it the lack of followup in the State penalties; or is it the model ct and the State laws on the subject are of recent origin?

Mr. SONNENREICH. Well, they are of fairly recent origin, Senator, ut I believe it is also a question of statistics. I just do not think that here are adequate statistics at this point to really evaluate what the mpact is.

Senator HRUSKA. It would be difficult in minor offenses of that kind o maintain any followup, would it not?

Mr. SONNENREICH. That is correct, sir. It would be very difficult, nd you are dealing, as I believe the statistic was of some 162,000 cases. great many of them, the great majority being possession cases in he United States since last year as reported by the Uniform Crime Reports.

Senator HRUSKA. I think this illustrates once again the services which the States perform for the entire Nation in this particular field.

Mr. SONNENREICH. Absolutely.

Senator HRUSKA. Where many approaches and many efforts are made we get a little experience. Based on that experience we can mod- fy either the Federal laws or the other State laws accordingly.

Mr. SONNENREICH. It is clearly a two-way street, Senator. We do get lot of suggestions and we get a lot of experience from what the

States are doing with their own laws. By the same token we can give input to the States. That is why we are trying to work closely with them.

Senator HRUSKA. Some 10 or 12 years ago, the matter of any offense was considered by the Senate. I remember Senator Hennings of Missouri was very active in those hearings which were held when the fever and the emotion of the public was at a high pitch. The demands did not stop at 40 years for a penalty. Some even demanded the death sentence for second and third offenders. Of course, better judgment prevailed.

Not that the final product is much better. Under the law, the original sentence as I remember it was 5 years; the second offense was 10, and the third 20, with no parole. We have found that approach to be a little barbaric and insufficient, did we not? It is not flexible enough to suit all facets of the crime.

Chairman DODD. You asked about State laws, Senator. I know in my own State we reduced possession of marihuana to a misdemeanor.

Senator HRUSKA. My State did, too. We are under this model plan. In fact this seems to be the trend, is it not?

MR. SONNENREICH. For the most part, yes, Senator.

Senator HRUSKA. Thank you very much, and I join the chairman in commending you for your contribution.

Chairman DODD. Thank you, gentlemen.

MR. INGERSOLL. Thank you.

Chairman DODD. Dr. Roger Egeberg is the Assistant Secretary for Health and Scientific Affairs of the U.S. Department of Health, Education, and Welfare. He served as Assistant Secretary since July 1969, and has had a very distinguished career in the field of medicine. He has been the medical director of Los Angeles County General Hospital, dean of the University of Southern California Medical School, and professor of medicine at the University of Southern California.

Dr. Egeberg has served as a member of the President's Study of Narcotics in 1962, and on the President's Advisory Committee on Narcotics and Drug Abuse in 1963. I am sure that there is much more to his distinguished background, but I wanted to properly identify Dr. Egeberg for the subcommittee.

I am glad you are here and look forward to hearing your testimony.

STATEMENT OF ROGER O. EGEBERG, M.D., ASSISTANT SECRETARY FOR HEALTH AND SCIENTIFIC AFFAIRS, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY DR. MORTON G. MILLER, ASSOCIATE DIRECTOR, NIMH; DR. MARK NOVITCH, SPECIAL ASSISTANT TO DR. EGEBERG; AND THEODORE ELLENBOGEN, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. EGEBERG. Thank you, Mr. Chairman and members of the subcommittee.

May I first introduce on my left Dr. Morton G. Miller who is the Associate Director of the National Institute of Mental Health, and on my right Mr. Theodore Ellenbogen, who is Assistant General Coun-

for Legislation in our department, and Dr. Mark Novitch who is a ecial Assistant on my staff.

Chairman Dodd. We are glad to have you here and we will be ased to hear from them.

Dr. Egeberg. Thank you.

I very much welcome this opportunity to appear before you in nection with the important drug abuse legislation under considera- n by this subcommittee.

The similar bills introduced by the late Senator Dirksen and by the airman, Senator Dodd, as well as the related bill introduced by nator Moss, deal with a subject of very deep concern to me person- y and of immense importance to this Nation. The increasingly seri- s problem of drug abuse, a problem that encompasses health issues, ial issues, and legal issues at one and the same time, clearly requires ective action predicated on the best informed judgments of those o make law, those who enforce law, and those others, such as myself, o must look at drug abuse in a context broader than the law.

In recent weeks I have felt it appropriate to make several public tements concerning drug abuse—I may say that none of them have en volunteered, they have all been sought, specifically on the subject the use of marihuana by our young people. Because this subject is imately related to the legislation now before this committee, I ould like, Mr. Chairman, to make my views as clear as possible so at there need be no misunderstanding of what I believe, either in the blic mind or on the part of the Congress.

I neither recommend nor condone the use of marihuana by anyone, ung or old. This drug has no recognized medical value and, as a llucinogen and intoxicant, it constitutes a clear and demonstrated k to the user and thus to those with whom he comes in contact. It is entifically invalid, however, to associate marihuana with more dan- rous substances, such as heroin and other addicting drugs.

Its use under ordinary circumstances does not lead to physiological pendence, as do narcotics, nor is there any scientifically sound evi- nce to demonstrate that the use of marihuana in itself predisposes individual to go on to more potent and more dangerous drugs. I nt to emphasize that I am talking here about the relatively short- m effects of marihuana, not its potential long-term effects.

We simply do not know the effects of this drug over relatively long riods of use. We do not know, for example, to what if any extent the equent use of marihuana by young people, let us say under the age 18, may impair emotional and intellectual maturation.

It is because of its known short-term effects and the gaps in our owledge about its long-term effects that I cannot condone the use marihuana. And it is for the same reasons that I am very concerned out the marked increase in experimentation with marihuana by the uth of this country. Millions of Americans, most of them under 25 ars of age, are tampering with a drug whose long-term effects neither ey nor anyone else fully understand, and this is a situation I regard extremely serious, medically and socially.

But I want also to make as clear as possible my views concerning e treatment of these people before the law. As a physician, as a rson who served on the President's Advisory Commission on Nar-

cotic and Drug Abuse in 1962 and 1963, and as a former dean of a medical school, I cannot in good conscience accept a system of punishment that fails to recognize the major and important differences between the use of marihuana and of the so-called "hard" narcotics.

It is my strong belief that laws that threaten the user of marihuana, even when convicted of a first offense, with lengthy prison terms are unjustified, unnecessary, and very probably unenforceable. Such laws have the effect of making a large part of our population criminals by definition. They deny to the courts the opportunity to fix sentences consistent with the dual requirement of protecting society and rehabilitating the offender. And they impose on the marihuana user a degree of punishment that, in my view, can be more damaging to him and to society than is his use of this drug.

Chairman Dodd. I want you to go on and finish your statement but do you mind if I ask you a question?

Do I understand you correctly that you would not be in favor of mandatory sentences in these cases?

Dr. Egeberg. For users? Yes, I am not in favor of mandatory minimum sentences for users.

I think it is imperative:

(1) That we make a clear legal distinction between marihuana and the hard narcotics with which it has erroneously been associated in law and in the public mind, and

(2) That we make a further distinction between the individual who chooses to use marihuana and the person who is involved in the distribution of the drug.

To equate these two kinds of people in terms of the punishment given them for their contact with marihuana is, I believe, an egregious legal and social error. Speaking not as an expert on legal matters but as the ranking health official of the Federal Government, I am deeply troubled by our present ill-founded and inappropriate system of classifying dangerous drugs and punishing those who abuse them.

I think I hold a view shared by the overwhelming majority of scientists and physicians when I say we need to replace the present patchwork of Federal drug laws with a new legal structure that is consistent with society's needs and with the scientific information at hand. The legislative proposals before this committee are an important step in that direction, and I should like to comment on them.

In the opinion of this Department, the bill sponsored by Senator Dodd (S. 1895) and the administration bill, S. 2637, introduced by the late Senator Dirksen, represent a sound approach toward recodification of existing Federal law for the control of narcotics and other dangerous drugs. By providing for logical classification of drugs based on scientific knowledge, both bills represent a needed forward step toward orderly and effective drug control.

By providing a system of regulatory control that is related to the proposed classification system, the bills aim toward controls that are based on a realistic appraisal of our various kinds of drug abuse problem, rather than on emotion or unsupported opinion.

By assuring continued efforts in the all important areas of drug research and education, the bills recognize the need for a balanced approach to the control of drug abuse.

We recommend enactment of S. 2637, which is the administration oposal, with the modifications that have been suggested to your mmittee by the Department of Justice. It rationalizes and categorizes e regulatory scheme for controlling dangerous substances.

S. 2637 would give the Attorney General responsibility for specifilly those research and education activities necessary to carry out s enforcement functions, thus avoiding needless duplication of the search and education activities of this Department.

The National Institute of Mental Health of this Department, as you ow is directing a comprehensive program of drug abuse research nd education, an area in which it has no peer in the Federal Governent. The duplication of these activities in the Department of Justice, proposed in S. 1895, seems unwarranted.

As the Attorney General said in testifying before this committee on eptember 15:

> The Department of Health, Education, and Welfare has the primary function providing for research education and treatment in the field of drug abuse.

We feel very strongly that these major responsibilities must remain ith this Department.

S. 2637 would retain with the Attorney General the authority he ow has to determine when a dangerous drug should be brought under ederal control. The bill would improve this procedure by establishing our categories, or schedules of controlled substances on the basis of ie liability for abuse and legitimate medical value of each substance. s I have indicated, we believe that this provision represents a major nd necessary step toward orderly and effective control of dangerous rugs.

The decision to place a potentially dangerous substance under ederal control involves both legal and scientific considerations. There re those in the Congress and elsewhere who advocate giving to the ecretary of Health, Education, and Welfare the ultimate responsiility for deciding which substances are to be brought under Federal rug abuse control.

I would be less than candid if I did not acknowledge that there is nerit in this suggestion. The hazard to society and to an individual osed by abuse of a drug must be assessed in the light of sound scienific information on the nature of a given drug, its physiological and sychological effects, trends in its use among various segments of he population, and other factors that are largely the province of the ealth sciences.

But we must recognize that determination as to which drugs are o be brought under Federal control and in what manner are an ssential element of the regulatory process and thus should logically e made by the agency responsible for such control.

We think it is highly appropriate, indeed essential, that the Atorney General, in the exercise of his control authority, be guided y the best available scientific information, and we fully support the provision of S. 2637 requiring him to seek in writing the advice of his Department and a committee of scientists.

I would remind the committee that Attorney General Mitchell, in his testimony before you on September 15 stated that he would exercise his authority to schedule controlled substance only "upon ad-

vice in writing of a Scientific Advisory Committee and of the Secretary of the Department of Health, Education, and Welfare."

You have my assurance, Mr. Chairman, that this Department will promptly and fully meet its responsibility in this critically important area of control, so that the Attorney General will be able to base his determinations on the best possible scientific information that can be provided him.

Mr. Chairman, I would like to turn briefly to the subject of penalties for drug abuse.

As you know, officials of the Department of Justice, at the committee's request, have developed and presented alternative penalty structures for that now included in S. 2637.

Let me just indicate at this time some of my thinking with regard to penalties for drug abuse.

First: because marihuana and similar hallucinogenic drugs are fundamentally different from addictive narcotics and in our present state of knowledge, cannot be considered as hazardous as the "hard" drugs, penalties for possession and distribution of these drugs should be of a substantially lesser order.

Secondly: the courts should have greater flexibility when imposing sentence on persons convicted of drug abuse. Except in the case of the professional criminal whose traffic in drugs poses a real threat to society, minimum mandatory sentences for drug abuse are inappropriate.

The penalty alternatives that have been outlined by Mr. Ingersoll incorporate these concepts and deserve the committee's very careful consideration.

Chairman DODD. Doctor, were you consulted about these alternatives that Mr. Ingersoll testified about this morning?

Dr. EGEBERG. The Department of Justice evolved these, and we had a very cooperative discussion with them, but I would like to be sure that they get the credit for evolving the structure of penalties.

Chairman DODD. (Laughing.) Or the blame?

Dr. EGEBERG. (Laughing.) Pardon me. All right, if it is blame I suppose I will share it with them.

Chairman DODD. I take it from what you have said already, or should I take it that you would be in favor of alternative A?

Dr. EGEBERG. Yes. Personally I think I would prefer A.

Chairman DODD. I thought you would.

Dr. EGEBERG. But I would go along with A, B, or C because I think they are a great step forward.

Chairman DODD. Don't say that. I think you did very well when you stopped at A. I am glad to know your view anyhow, go right ahead.

Dr. EGEBERG. Thank you.

Mr. Chairman, you asked that we comment on the bill introduced by Senator Moss, S. 2590, calling for the creation of a Presidential Commission to conduct a 2-year study of marihuana and to report its findings and recommendations to the President and the Congress.

We are in favor of the creation of a study group, either by legislative or executive action. Such a group could perform a useful service by assembling existing information on marihuana use for the benefit of

e scientific community, law-enforcement officials, legislators, and .e public.

Such a study, whose objective would be the marshaling of existing formation on marihuana as the basis for specific recommendations, ould in no way conflict with the work of this Department pertaining basic and applied research on marihuana and the dissemination of formation about the drug.

We believe that a review of the marihuana situation could be of nsiderable value to all concerned. We are exploring with the Justice epartment the possibility of recommending that provision for such study be included in S. 2637.

Mr. Chairman, in your letter of October 1 inviting us to testify day, you asked that we answer some specific questions concerning ie administration of several statutes relating to drug abuse. We shall rovide detailed answers in writing. At this time, however, I should 'e to make a few general comments on one of your questions.

You asked for an evaluation of the need for research, educational, nd rehabilitation efforts in the drug field. I simply want to tell you at the need in all three of these areas is great. These three elements e, in effect, the other side of the coin we have been discussing today.

Without the knowledge gained through research and the applica-on of that knowledge through educational and rehabilitation pro-rams, even the best designed enforcement programs will be severely eakened, and perhaps rendered ultimately ineffective.

Mr. Chairman, in our written reply to the questions in your letter e will provide detailed comments on our rehabilitation programs, nd I would like to confine my remarks today to the remaining two ements of your question, research and education.

(The reply subsequently received was marked "Exhibit No. 34" nd will be found on p. 1166.)

Chairman Dodd. Before you do that, I would like to indicate for ie record that this 2-year study you suggest be included n S. 2637 already included in my bill S. 1895. I had in mind at the time that our Department would unquestionably do this work for the Attorney ieneral.

It is the only place I know of in government where it could be prop-rly done. I am conscious of the fact that you may not be able to answer his question at all but it will be helpful if you can. Do you have any dea how long you would want in time for such a study, 1 year, 2 years, r could you do it in less time?

Dr. Egeberg. I have a pretty good idea, but I think Dr. Miller might nswer these.

Dr. Miller. In terms of the study referred to in your bill, Senator Dodd, that is the research that needs to be done. We have also testified previously before this committee that within 2 years, given appro-riate budgetary support, we would have some initial answer and con-lusion regarding the scientific determined effects of marihuana.

Chairman Dodd. I hope we do this, and that we get this in the bill efore it comes to the floor or before the full committee.

Go ahead, Doctor.

Dr. Egeberg. I have suggested in my remarks this morning that nowledge is the foundation upon which progress in the control of

drug abuse must be based, knowledge of the nature of drugs, of their immediate and long-term effects on physical and mental health and on human behavior, knowledge of the hazard that drug abuse poses for individuals and for society—in short, a sound understanding of the drug abuse problem in all its aspects.

I believe that the Department of Health, Education, and Welfare, through the National Institute of Mental Health, is conducting a well planned and well designated program that will give us this kind of knowledge, that is in fact beginning to provide it now.

NIMH studies cover such varied aspects of the drug problem as: the addiction potential of new drugs; basic biochemical and neurophysiological aspects of drugs of abuse; the nature and extent of drug abuse in the United States; and the biological, psychological, and sociological consequences of drug abuse.

These studies range from examination of the basic neurophysiology of drug action on the brain, the nervous system, and the genetic material; to studies of the psychosocial consequences of drug abuse. These studies range from examination of the basic neurophysiology of drug action on the brain, the nervous system, and the genetic material; the studies of the psychosocial characteristics of drug users and to the care and cure of the drug addict.

These kinds of research are providing not only valuable new scientific insights into the drug problems, they also serve as the source of materials and methods needed by others in their investigations of drug abuse. NIMH, for example, sponsored the developmental work leading to the identification and production of tetrahydrocannibinol (THC), the active constituent of marihuana.

This accomplishment has provided the scientific community a standardized substance for use in controlled studies of marihuana and has done away with the need to rely on the natural product which as you know has a highly variable potency.

It is, admittedly, difficult to assess precisely the value of a program of basic research. But experience in this and other health-related fields of endeavor leave no doubt in my mind that such studies are not only urgently needed but will be increasingly effective in this Nation's efforts to deal with the problem of drug abuse.

As a physician, I feel very strongly that the best approach to virtually any health problem, certainly including drug abuse, is prevention. The educational efforts of NIMH are, in our view, appropriately and effectively aimed in this direction.

There are several aspects of the NIMH information and education program, including a public service announcement series presented in cooperation with the mass media; programs for the educational community, including curriculum development and workshops; a program to disseminate the authoritative information to parents, youngsters, and the general public; and a professional communication program aimed at providing scientific information to physicians and researchers.

Strong emphasis is being placed on "educating the educators" to make them more effective agents of prevention, as well as on reaching the general public to alert them to the hazards posed by drug abuse.

I have no intention of claiming that NIMH, through its educational activities, has achieved dramatic results, nor do I think dramatic

sults can be expected overnight. Nevertheless, there is evidence in the decline of LSD use following wide dissemination of information about its adverse and often unpredictable effects, that public understanding of drug hazards can have a real impact on patterns of drug abuse. This Department feels a genuine necessity to continue its drug abuse education activities because of the important contribution they can and will make toward effective control.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions you and the members of the committee may care to ask.

Chairman Dodd. That statement of yours will be very helpful to us. The mere fact you have made it this morning will be helpful because it will lay at rest some misinformation that is abroad about this problem.

What evidence, if any, is there that the long-term use of marihuana predisposes a person to the use of other more dangerous drugs or more potent drugs? Or is there any evidence to this effect?

Dr. Egeberg. I know of no evidence that this is true. I would like to ask Dr. Miller if he would care to comment.

Dr. Miller. There is indeed no evidence, Senator Dodd.

Chairman Dodd. What?

Dr. Miller. There is no evidence that the drug itself has any properties which will lead someone to use other drugs. I think it is generally recognized that the use of drugs, particularly by very heavy users, tends to become a multiple use phenomenon, so that probably a certain percentage of marihuana users will also use other drugs, amphetamines, barbiturates, perhaps even heroin.

There is nothing within the characteristics of marihuana per se which leads people to use other drugs.

Chairman Dodd. That is what I wanted to know. We will have to know these things. Of course, Senator Hruska is aware we will have to know when we get into the full committee and certainly when we get before the Senate.

There will be a lot of debate on this question. There are a lot of people who do believe that the use of marihuana leads to the use of other more dangerous drugs. I know you are right about it in my own mind, but the task will be to make this so clear that there can be no doubt about it in the minds of others.

Senator Hruska. Would the chairman yield at this point?

Chairman Dodd. I will be glad to yield.

Senator Hruska. Dr. Miller, could there be evidence to the contrary or the converse? Could it be imagined and would there be any evidence obtainable on the proposition that use of marihuana would deter people, in view of their experience and the affection from going into any other fields of drugs or of the narcotics?

Dr. Miller. I do not think there is specific evidence in that regard. I am sure that people, for instance who had an unpleasant experience from the use of marihuana or other such drugs might be thereby convinced not to try something else but there is no scientific data, Senator Hruska.

Senator Hruska. In both fields we lack evidence, do we not?

Dr. Miller. Yes.

Dr. Egeberg. Could I suggest one thing here. It occurs to me that when I was on the Presidential Commission on Narcotic and Drug

Abuse, the number of marihuana users in this country was probably one-twentieth or less of what it is now, that the hard narcotics users have probably not gone up anywhere near in proportion. I admit that finding statistics that are valid on hard narcotics users is difficult, and one has to use estimates, but the estimates would indicate that in spite of the great rise, and even the creation of a marihuana culture, the use of the hard narcotics has not gone up at all in this proportion.

Senator HRUSKA. Might not the element of time enter in there? It would take a little while to record and to gather information on the progression for marihuana to harder drugs. You would have to allow a little more time than 6 or 7 years, item 1 for the event to happen, item 2, to gather the information thereon?

Dr. EGEBERG. Yes, I think that is a logical question, but so far——

Senator HRUSKA. No results?

Dr. EGEBERG. Yes.

Senator HRUSKA. That is no appreciable results?

Dr. EGEBERG. That is right.

Senator HRUSKA. In a commensurate fashion?

Dr. EGEBERG. That is correct.

Senator HRUSKA. I wish there were something to encourage us to believe that once the urge to try something new and daring and the thing that is being done by the use of marihuana, maybe the experience is so disagreeable on the morning after that maybe they would not want to venture into new fields of experimentation. But be on the lookout. It might be an optimistic hope, anyhow, maybe not very realistic, but try to find it.

Chairman DODD. I do not think a hangover has ever helped too much, or that a hangover has been a very good remedy for drinking.

Senator HRUSKA. But drinking cannot equate with marihuana, can it?

Chairman DODD. I do not know. I thought your treatment was somewhat similar.

Dr. EGEBERG. If personal experience is worth anything I think a hangover is a good deterrent.

Chairman DODD. I have been told that is true. I know what you are saying but I do not want any doubts about it on the record. You were just telling us that the incidence and use of marihuana has grown enormously while the increased rate of the use of hard narcotics is much less. Is that about what you are telling us? It has increased in other words, but not as much?

Dr. EGEBERG. That is our impression. These statistics are difficult to get.

Chairman DODD. That is what I wanted to make clear. Now, let me ask you this question. What, if any, definite information do you have relative to marihuana that can be made available to this subcommittee in the next couple of weeks?

Dr. EGEBERG. For that I think I would have to refer you to Dr. Miller.

Have you got anything?

Dr. MILLER. Again, to cite Dr. Yolles's testimony here previously, he has submitted a list of some 10 so-called facts and fables which details generally what we do and do not know about marihuana.

Marihuana, for instance, is not a narcotic drug scientifically. It does not cause physical addiction. In terms of relationship between marihuana and crime, we know that persons under the influence of marihuana tend to be passive. Marihuana does not lead to our knowledge to any increase in sexual activity. We do believe that contrary to many people's feelings, that marihuana is not a harmless drug. We know instances of acute panic, depression and psychotic states which have been associated with marihuana use.

We know that marihuana does not lead inexorably to the use of heroin, as Dr. Egeberg has pointed out. We believe we have information to indicate that marihuana does not enhance creativity.

We do not know specifically as to how one could compare scientifically the short- and long-term effects of alcohol and marihuana, but we are currently supporting and conducting research which hopefully will differentiate some of this.

I think we know that more severe penalties will not solve the marihuana problem, based on the increase, the enormous increase in marihuana, in the face of very severe penalties, and I think we also know that it is unsafe to drive while under the influence of marihuana as under the influence of any intoxicant.

Chairman DODD. As you know, Dr. Yolles was here and testified. He said he was not representing anybody. Are you familiar with his testimony?

Dr. MILLER. Yes, sir; I am.

Chairman DODD. I suppose you are. Maybe you could validate it for us this morning. Do you think he was right? Maybe he could name you his agent here today?

Dr. MILLER. Insofar as I am in Dr. Yolles' employ that is perfectly appropriate, sir. I am with the National Institute of Mental Health.

Dr. EGEBERG. I think you know Dr. Yolles was speaking specifically for himself.

Chairman DODD. He made that very clear. It was a unique appearance here for a Government official to come from his agency and say that he was speaking only for himself. I thought it might be helpful if we could clarify that point.

Would you now like to say he can speak for the agency as well?

Dr. EGEBERG. Well, I think that Dr. Miller is here, and if Dr. Yolles had been here today he or both of them would be speaking for the agency.

Chairman DODD. That is all right. That does it just about as well as we could expect you to do it. This may be off the subject a little bit, Dr. Egeberg, but would you care to tell us what is your view with regard to including in the current proposals such tranquilizers as Miltown, Librium, and Valium?

Dr. EGEBERG. My own feelings, and I would say I can speak for the Department, are that these should be included along with the barbiturates, and others as they develop.

Chairman DODD. Thank you very much for that. That is very valuable. I think it will be very persuasive I am sure. I thank you and commend you for your appearance here this morning.

MISCELLANY.

Limiting or Prohibiting the Possession of Intoxicating Liquors for Personal Use.—"Alas, poor Yorick, I knew him well." This feeling sentiment appeared recently under a cartoon depicting a thirsty faced individual holding in his arms an empty beer keg through the bung holes of which, pictured as the eye holes of a skull, the last drop of amber liquid had long since run. Many is the man, and hush! speak it low, and woman too, who will gaze with fond recollections and intense longing on the empty receptacles which in bygone days were filled with the spirit that cheers. And their inability to replace the dear lost ones will cause exceeding hurt. But they will get over it, for they say that time heals all things, and in days to come they will cease to mourn the lost one and their regrets will be softened by the pictures they can conjure up of the good times that flowed from the associations with the long departed. To them the adage that there are as good fish in the sea as ever came out, will no longer give comfort and they must be content to dwell in the pleasant memories of the past. A kind of spiritualistic seance, as it were. But how about him who has tenderly nursed and preserved his loved one to soothe and calm his declining years, housing her within impregnable walls (cellars rather) and surrounding and protecting her against inquisitive and covetous eyes? What will be his feelings when the ruthless hands of the law break down his stronghold and seize and bear away his mistress to destruction? It is one thing to say, No more shall you flirt with and wed the nymphs of Bacchus, but quite another to seize the nymph whom you have lawfully wedded and forcefully tear her from your loving embrace. And this brings us to the serious side of the question.

How far, in the exercise of its police power, may the state go in prohibiting the possession and personal use of intoxicating liquors which have been lawfully acquired? In many states laws have been passed limiting the amount that may be possessed at any one time, and in some the possession of any amount whatsoever, even one teeny weeny drop of the awful stuff, has been prohibited. And these laws have been declared to be a proper and lawful exercise of the police power by the highest court in the land. It is interesting to note the gradual change in judicial opinion on this question in keeping with the growth of the prohibition movement. At first the legislatures were content to prohibit its manufacture and sale and in most instances they were particularly careful to insert a provision that the law did not apply to the possession of liquor for personal use. But later they began to place a limit on the amount that might be possessed, and finally in some instances prohibited the possession of any quantity whatsoever. If the press reports of the bills introduced in Congress to enforce the prohibition laws are correct the

latter provision is embodied therein. That the acquisition of liquor for personal use may be prohibited seems to be conceded, but whether the state can by law deprive one of the possession of liquor lawfully acquired, is another question, though the trend of the more recent decisions is strongly in favor of the view that it can.

One of the earliest cases passing on the power of the state to forbid the possession of intoxicating liquors for personal use was Preston *v.* Drew, 33 Me. 558, 54 Am. Dec. 639, decided in 1851. Here a statute providing that no action could be maintained for the recovery of the possession of intoxicating liquor or the value thereof was held to be unconstitutional as a deprivation of property without due process of law. The court, recognizing that the state might legally forbid the future acquisition of intoxicating liquors, said: "The State, by its legislative enactments, operating prospectively, may determine that articles injurious to the public health or morals shall not constitute property, within its jurisdiction. It may come to the conclusion that spirituous liquors, when used as beverage, are productive of a great variety of ills and evils to the people, both in their individual and in their associate relations. * * * Such conclusions would be justified by the experience and history of man. If a legislature should declare that no person should acquire any property in them, for such a purpose, there would be no occasion for complaint that it had violated any provision of the constitution." And hearken to this from Kentucky (Com. *v.* Campbell, 133 Ky. 50), 117 S. W. 383, 19 Ann. Cas. 159, 24 L. R. A. (N. S.) 172. It sounds like a voice from the tomb: "The right to use liquor for one's own comfort, if the use is without direct injury to the public, is one of the citizen's natural and inalienable rights, guaranteed to him by the Constitution, and cannot be abridged as long as the absolute power of a majority is limited by our present Constitution. The theory of our government is to allow the largest liberty to the individual commensurate with the public safety, or as it has been otherwise expressed, that government is best which governs the least. Under our institutions there is no room for that inquisitorial and protective spirit which seeks to regulate the conduct of men in matters in themselves indifferent and to make them conform to a standard not of their own choosing, but the choosing of the lawgiver; that inquisitorial and protective spirit which seeks to prescribe what a man shall eat and wear, or drink or think, thus crushing out individuality and insuring Chinese inertia by the enforcement of the use of the Chinese shoe in the matter of private conduct of mankind. We hold that the police power—vague and wide and undefined as it is—has limits, and in matters such as that we have in hand its utmost frontier is marked by the maxim 'Sic utere tuo ut alienum non ledas.'" Among the many cases supporting the sound constitutional doctrines announced in the cases just quoted from, see Luera's Application,

28 Cal. App. 185, 152 Pac. 738; Cortland *v.* Larson, 273 Ill. 602, 113 N. E. 51, Ann. Cas. 1916E, 775, L. R. A. 1917A, 314; Shreveport *v.* Hill, 134 La. 352, 64 So. 137, Ann. Cas. 1916A, 283; Flowers *v.* State, 8 Okla. Crim. 502, 129 Pac. 81; State *v.* Rookard, 87 S. C. 442, 69 S. E. 1076. The theory of these cases is that there being a property right in intoxicating liquors, lawfully acquired, it is beyond the power of the state in the exercise of its police power to destroy it.

But as the cohorts of prohibition have advanced, the constitutional barriers have fallen one by one, until we come to the decision in Crane *v.* Campbell, 245 U. S. 304, 38 S. Ct. 98, 62 U. S. (L. ed.) 304. This case arose in Idaho and involved the construction of a statute making it unlawful for any person to have in his possession any intoxicating liquors of any kind for any use or purpose except for scientific, medical or sacramental purpose, as provided by the act. The Idaho Supreme Court held the statute to be constitutional and on appeal to the Supreme Court of the United States the Idaho case was affirmed. After stating that it is well settled that a state may prohibit the manufacture, sale, gift, purchase or transportation of intoxicating liquors, the Supreme Court goes on to say: "As the State has the power above indicated to prohibit, it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective. * * * And, considering the notorious difficulties always attendant upon efforts to suppress traffic in liquors, we are unable to say that the challenged inhibition of their possession was arbitrary and unreasonable or without proper relation to the legitimate legislative purpose. We further think it clearly follows from our numerous decisions upholding prohibition legislation that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no State may abridge. A contrary view would be incompatible with the undoubted power to prevent manufacture, gift, sale, purchase or transportation of such articles—the only feasible ways of getting them. An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the State." Apparently this decision gave the death blow to John Barleycorn, at least in so far as Idaho was concerned. But unfortunately the court in this case did not take notice of the time when the liquor was acquired and the language used is seemingly broad enough to cover the possession of liquor no matter when acquired or whether its acquisition was lawful or unlawful. At any rate it was so interpreted by the Utah court in State *v.* Certain Intoxicating Liquors, 172 Pac. 1050, L. R. A. 1918E, 943, wherein it was held on authority of the Crane case, supra, that a statute prohibiting the possession of intoxicating liquor for personal use was constitutional, and that it was immaterial when, how or where it had been acquired. It appeared from the facts in this case that the

liquor was lawfully acquired before the statute went into effect and the lower court held the statute to be unconstitutional basing its ruling on the ground that property rights in liquor lawfully acquired could not be destroyed by the state. In reversing the case on that point, the Supreme Court said: "If we correctly interpret the meaning of the opinion of the very able and learned trial judge, he holds that the acts does not undertake to prohibit the use or drinking of intoxicating liquors within the state except as in the act expressly mentioned, and that the state may not, in the lawful exercise of its police powers, confiscate and destroy intoxicating liquors within the state, when acquired for personal use and recognized as property before the act became effective. * * * We have heretofore pointed out that in our judgment it was the intent of the legislature, and that the plain provision of the act abolishes, aside from the exceptions expressly made, all property rights in alcoholic liquors on and after August 1, 1917, no matter where or how acquired, for what use intended, or how possessed. It necessarily follows that the very purpose and intent of the act was to preclude the right to use intoxicating liquor within the state except for the specific purposes in the act expressly mentioned and reserved." And now we come to the case of Barbour *v.* Georgia, 39 S. Ct. 316. Here the Georgia court like that of Utah held that it was within the police power of the state to prohibit the possession of intoxicating liquor for personal use, and the fact that it incidentally destroyed the property rights lawfully acquired therein before the law became effective did not render it void as contrary to the Fourteenth Amendment of the Federal Constitution, and the Supreme Court of the United States sustained the decision. Among the recent decisions adopting this construction, see the following: Frazier *v.* State (Ala.), 73 So. 764; Southern Express Co. *v.* Whittle, 194 Ala. 406, 69 So. 652; O'Rear *v.* State (Ala.), 72 So. 505; State *v.* Carpenter (S. C.), 92 S. E. 373. As may be seen from these cases the tendency of the more recent legislation with respect to alcoholic liquors is directly against the consumption on the theory that it is in consumption always that the evil lies.

But in the Barbour case we see the first glimmer of hope for the man with the well stocked cellar—a small, very small one it is true, but nevertheless it is there. The court sustains the decision of the Georgia court, but is very careful to point out that in that case, although the liquor was acquired before the law became effective, it was acquired after the passage of the act, and though lawfully acquired, the possessor was put on notice by the passage of the law of the inherent evil qualities of his property. It also points out that in the Crane case it only decided that liquor acquired after the passage of an act forbidding its possession, though lawfully acquired, could be outlawed by the statute; and particularly states that in

neither the Crane case nor the Barbour case did it decide that liquor acquired before the passage of an act making its possession unlawful could be divested of its property rights by the statute. So here we find the one possible oasis in the coming desert. The court also states that the particular question as to whether a state can legally prohibit the possession of liquor acquired before the passage of the act has never been passed on by it, although the two cases cited as touching on the question give a very clear indication of what would have been decided by the court as then constituted. In Boston Beer Co. *v.* Massachusetts, 97 U. S. 25, 24 U. S. (L. ed.) 989, the court while holding that a state might enact a law prohibiting the manufacture and sale of intoxicating liquor said: "We do not mean to say that property actually in existence, and in which the right of the owner has become vested, may be taken for the public good without due compensation. But we infer that the liquor in this case, as in the case of Bartemeyer *v.* Iowa (18 Wall. 129), 21 U. S. (L. ed.) 929, was not in existence when the liquor law of Massachusetts was passed." And in Bartemeyer *v.* Iowa, 18 Wall. 129, 21 U. S. (L. ed.) 929, it was said: "The weight of authority is overwhelming that no such immunity has heretofore existed as would prevent State legislatures from regulating and even prohibiting the traffic in intoxicating drinks, with a solitary exception. That exception is the case of a law operating so rigidly on property in existence at the time of its passage, absolutely prohibiting its sale, as to amount to depriving the owner of his property."

The reasoning on which the decision in the Barbour case is based is somewhat difficult for the ordinary mind to grasp. The court says: "Does the Fourteenth Amendment, by its guaranty to property, prevent a state from protecting its citizens from liquor so acquired? A state, having the power to forbid the manufacture, sale, and possession of liquor within its borders, may, if it concludes to exercise the power, obviously postpone the date when the prohibition shall become effective, in order that those engaged in the business and others may adjust themselves to the new conditions. Whoever acquires, after the enactment of the statute, property thus declared noxious, takes it with full notice of its infirmity and that after a day certain its possession will, by mere lapse of time, become a crime." Now if property rights existed in liquor acquired after the passage of the act but before it went into effect how could it be divested by the law becoming operative? In other words how did the law going into effect affect the inherent evil nature of the liquor? Was it innocent of evil during the period between the passage of the act and the time set for it to go into effect, and then suddenly by the magic touch of legislative legerdemain did it become invested with all the qualities of the evil one? And could it be said that liquor purchased before the passage of an act declar-

ing its possession to be unlawful retained its innocent and law abiding qualities, while liquor purchased after the passage but before the law became effective lost its innocent character and assumed the livery of the evil one on the happening of the latter event? It would seem that the wish to uphold the statute was stronger than the reasoning on which the decision was based.

What does this opinion presage as to the court's action, should it be called on to construe a law of Congress, enforcing the prohibition amendment, containing provisions prohibiting the possession of intoxicating liquors for personal use? Does not the amendment put all on notice of the evil qualities of liquor and in the language of the court "whoever acquires, after the enactment of the statute, property, thus declared noxious, takes it with full notice of its infirmity, and that after a day certain its possession will, by mere lapse of time, become a crime?" The cases are certainly parallel, and if a legislative enactment can warn the possessor of the evil qualities about to inhabit his property surely an amendment to the Constitution adopted by forty-five states is a trumpeting announcement that that which to-day is innocent of evil in the eyes of the law shall in the near future be looked upon by the same law as invested with noxious qualities. In one other recent case the Supreme Court has shown some signs of relenting in its strict construction of the liquor laws. In U. S. *v.* Gudger, 39 S. Ct. 323, the court held that the Reed Amendment prohibiting the transportation of intoxicating liquor into any state which had prohibited its manufacture, sale, etc., did not apply to liquor being transported through the state. In this case it appears that a passenger bound from Baltimore to Asheville, North Carolina, was arrested in Lynchburg, Virginia, where his train was temporarily stopped and his baggage searched.

But the state legislatures and courts are still revelling in extreme and rigorous laws. As an instance to what extremes a law-making body may go in its zeal to deal a death blow to intoxicating liquors, take the recent statute passed by the legislature of Georgia. By this statute it is made illegal to manufacture, sell, etc., all liquors and beverages or drinks made in imitation of or intended as a substitute for beer, wine, whisky or other alcoholic or spirituous, vinous or malt liquors (Acts 1915, p. 77). And the Supreme Court of Georgia, holding this act to be constitutional even when applied to beverages admitted to be non-intoxicating, said: "On the basis of protecting health, morals, and the public safety, the provisions of the act making it illegal to manufacture, sell, etc., intoxicating liquors have been held to be a valid exercise of the police power. Delaney *v.* Plunkett, 146 Ga. 547, 91 S. E. 561, Ann. Cas. 1917E, 685, L. R. A. 1917D, 926. The manufacture and sale of drinks made in imitation of or intended as a substitute for intoxicating drinks as specified in the act, although not intoxicating themselves, afford a cloak for

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clandestine manufacture, sale, etc., of intoxicants—the evil which the legislation was designed to prevent. Under such circumstances, the power to prohibit the manufacture, sale, etc., of the beverages will include the power also to prohibit the manufacture and sale of substitutes and imitations." Purity Extract, etc., Co. *v.* Lynch, 226 U. S. 192, 33 S. Ct. 44, 57 U. S. (L. ed.) 184. Under this view, it is within the police power of the state to enact a law prohibiting the manufacture and sale of liquors and beverages not intoxicating in character, but made in imitation of or intended as a substitute for beer, ale, wine, whisky, or other alcoholic or vinous or malt liquors." Kunsberg *v.* State, 147 Ga. 95 S. E. 12. Luckily for the Salvation Army the twenty-five or more saloons in New York city on which it has obtained options are not located in Georgia. It is the announced purpose to conduct these saloons in all particulars, i. e., with bars, mirrors, fixtures, brass rail and all, just as they are now conducted, except that in the place of alcoholic beverages there will be served over the bar as a substitute, soda water, buttermilk, ice cream, etc.

There is another phase of this question which deserves careful and unprejudiced consideration. For years the right of property in intoxicating liquors was recognized by the law-making bodies and the courts. Only in comparatively recent times has this been denied. If such a right of property exists it is setting a dangerous precedent to deprive the owner of it by legislative ukase. Where will such a precedent lead us? The right of property, always so jealousy guarded by civilized governments, was never before in the history of the world so jeopardized. One big country has repudiated it in a large measure and the leaders of that doctrine are endeavoring with all their might to fasten it upon others and with some degree of success in its neighboring states. Even here in our own great land of the free these destroyers of human liberty in the name of liberty are organizing and their insidious propaganda is being industriously spread. The professional reformer, whether he be prohibitionist, advocate of blue laws, or what not, is prone to say of such arguments as the above that they display "prejudice, blind prejudice, born of interest and not of reason." But is it not time for all of us to cease imputing prejudice and to realize that an honest difference of opinion can exist without prejudice and without ulterior motive? When one looks at the question from the standpoint of the lover of constitutional government and not that of a partisan or follower of any particular fad or ism, can it be said that the precedent set by such decisions does not lead logically and directly to the doctrine advocated by the Bolsheviki? To them all property possessed by the individual is against the health, morals, and general welfare of the public, so they take it away. In the present case it is prop-

erty in liquor lawfully acquired that is taken, but for the same reasons as announced for the action of the Bolsheviki. The tendency of such decisions is well expressed by Chief Justice Browne in his dissenting opinion in Morasso *v.* Van Pelt recently decided by the Florida Supreme Court. The majority, following the decision of the Crane case, upheld the Florida law limiting the amount of intoxicating liquor that might be possessed for personal use. But in an exceptionally well-reasoned dissenting opinion Justice Browne said: "The right to abolish private ownership of property for the public welfare is predicated on the doctrine that whatever a strong and preponderant public opinion regards as against the prevailing morality and inimical to the public welfare constitutional guarantees are impotent to secure. This is the apotheosis of the police power, at whose feet all constitutional guarantees must humbly kneel, petitioning but not demanding observance. Before it, the right of free speech, a free press, freedom of conscience and religious worship, must yield. The attention of the civilized globe is now centered in one of the great nations of the world whose government, conducted upon this doctrine, is ruthlessly destroying life, liberty and property. There the 'prevailing morality' and the 'strong and preponderant opinion' is that private ownership in lands and manufacturing capital, and private wealth, are inimical to the public welfare; that they produce idleness, pauperism, suffering and crime, and consequently must be abolished. These people feel as deeply on these subjects as our people feel on the liquor question. Their doctrine is not a new one. It was proclaimed by Karl Marx more than half a century ago, but it has recently become more insistent, and its spread threatens our own institutions. He taught that 'the proletariat will use its political supremacy to wrest by degrees all capital from the bourgeoise,' and his followers advocate that 'the institution of private property, that is, the right of private ownership in things tangible or intangible, is to be abolished—by indirect and peaceful means as far as convenient, but by violence so far as conducive to speed and thoroughness of the change.' It is a short step—one that will be essayed much sooner than many anticipate—from abolishing private property in intoxicating liquors, to abolishing without compensation private property in lands, manufacturing capital, railroads or other public utilities, whenever a 'strong and preponderant public opinion' shall consider the public welfare demands it. When that time comes, the decision of the majority of the court in this case, and those in line with it, will be authority for legislation along these lines, and they will plague those who too late seek to check further inroads upon the rights of property. Not the least of the evils that the traffic in liquor is responsible for, is this line of decisions sustaining laws destructive of property and

property rights, enacted in response to 'strong and preponderant opinion.'"

Do not let the possessors of well-stocked wine cellars delude themselves with the idea that Congress or the states will not go to such extreme lengths as to take away from them the liquor which they have lawfully acquired for their own personal use. Such laws already exist in not a few states and a similar provision is incorporated in one of the bills introduced in Congress, and one of our most prominent business men and capitalists, Mr. Schwab, according to the press, advocates such a law. In his opinion if we are to have nationwide prohibition we should be consistent about it and make it apply to all alike. If we are to deprive the poor man of his beer, then make the rich man empty his wine cellars. And there are many who agree with him. A law prohibiting the possession of any intoxicating liquors, no matter when, where or how acquired, would do this, and the Supreme Court has said that it is a lawful exercise of the police power, certainly to the extent of liquor acquired after the enactment of laws prohibiting their possession although acquired before the law becomes operative.—Minor Bronaugh in Law Notes.

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Illicit Drug Traffic

IN a recent address delivered before a luncheon gathering of the Association, Commissioner Anslinger of the Bureau of Narcotics enumerated some of the difficulties confronted by those in charge of the suppresion of the illicit traffic in narcotic drugs, and especially in the District of Columbia, where, owing to the inadequacy of the District Code effective enforcement is rendered extremely difficult. He emphasized the fact that the Bureau of Narcotics regards with grave concern the accumulating reports of the increased use in certain of the states and in the District of Columbia of marihuana, which is the Mexican name for the drug designated in the United States Pharmacopoeia as cannabis. It consists of the dried flowering tops of the pistillate plants of cannabis sativa Linne (Fam. Moraceae). One of the chief reasons for this apprehension is the wide-spread use of this drug in the form of cigarettes. This noxious plant is cultivated and also grows wild by the roadside, in ditches and in open meadows. Its accessibility makes it easy to obtain as it is indigenous to every State. It has been cultivated in the United States for its commercial use and it is also used to a limited extent in medicine as a mild counter irritant.

The active narcotic principles of cannabis sativa seem to affect the higher nerve centers, producing first an exaltation, then later an increased feeling of physical strength, followed by a stimulation of the imagination in a more or less delirious state, which lasts until it gradually merges into frenzy. Those who are habituated to the drug develop an uncontrollable rage after its use and during the stimulation are liable to, and often do, commit violent crimes.

The Federal Government has no control over the sale and distribution of marihuana under the Harrison Narcotic Act, but the uniform Narcotic Drug Act drafted and approved by the National Conference of Commissioners on Uniform State Laws and recommended for enactment in all of the States at its 42d annual conference in Washington, D. C., October 1932, includes can-

nabis or marihuana and expressly prohibits its production, preparation, etc., without a license from the proper official.

Twenty-nine States have adopted the Uniform Narcotic Drug Act; eleven States are operating under State legislation. In the District of Columbia and in the following eight states the sale and possession of cannabis is not a criminal offense: New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Kentucky, Tennessee and Minnesota. The uniform law presents many advantages over the state legislation as found in a number of the states. It prohibits street, or retail peddling and also prohibits improper possession, the enforcement of which prohibitions is of the utmost importance as a supplement to Federal activity, as the facilities of the Bureau of Narcotics are not designed for such work, but are intended rather for operations in the detection and elimination of the larger wholesale sources of illicit supply within the states. The uniform law also inclusively defines the dangerous habit forming drugs and makes provision for simple additional amendment to the act to include any other dangerous drug which may need to be brought under control. The duties and responsibilities of the dispensing professions with respect to the sale and administration of narcotics are quite clearly defined. An adequate set of records is required to be kept. The false or fraudulent execution of narcotic prescriptions is condemned as an offense. It has many other indispensable advantages essential to the proper control of the illicit traffic in narcotic drugs. In fact the Bureau of Narcotics reports that is seems to fill every need and to meet all emergencies for investigation, detection and judgment.

In those states where the uniform law is not in effect efforts are being made by the Bureau to have it adopted, since strong legislation presents the best means of control over all narcotic drugs. The citizens of those st tes in which the unlawful sale or possession of marihuana is not a criminal offense may well be apprehensive of the evil consequences of marihuana cigarettes. The facility of communication from one commonwealth to another requires that something in the way of reciprocal legislation should be enacted to safeguard such communities from encroachment by criminals who have been driven out of states where appropriate legislation operates. No state or community should fall below the level of the adequate law of other states.

The Police Department of the District of Columbia is obliged, owing to the inadequacy of the District Code, to prosecute marihuana violators under the Pharmacy Act, which provision is entirely inadequate to meet the present needs for infraction of the Narcotic Drug Law. With a view to securing for the District of Columbia adequate laws to cope with the illicit drug traffic the Association only recently sponsored a resolution pledging its cooperation with the office of the Corporation Counsel of the District of Columbia in drafting appropriate legislation, which should conform, as nearly as may be practicable, to the Uniform Narcotic Act, and in urging upon the Congress the speedy enactment of such legislation.

MORAL PASSAGE: THE SYMBOLIC PROCESS IN PUBLIC DESIGNATIONS OF DEVIANCE

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The fact of public affirmation of a norm through law and government action expresses the public worth of one sub-culture vis-à-vis others. Because different forms of deviance affect that normative status in different ways, they incur different responses from the designators. Three forms of deviance are disinguished: repentant, sick, and enemy. One form threatens the public affirmation of the norm more than another. The public definition of deviance undergoes changes from one form to another, as illustrated in issues of drinking control. Where consensus on the norm is lacking and deviants become enemies, movements for legal restrictions are most likely. It is not the frequency of deviant acts but the symbolic import of deviance for the status of the norm which is determinative of these reactions.

Recent perspectives on deviant behavior have focused attention away from the actor and his acts and placed it on the analysis of public reactions in labelling deviants as "outsiders."[1] This

[1] Howard S. Becker, *Outsiders: Studies*

perspective forms the background for the present paper. In it I will analyze the implications which defining behavior as deviant has for the public designators. Several forms of deviance will be distinguished, each of which has a different kind of significance for the designators. The symbolic import of each type, I argue, leads to different public responses toward the deviant and helps account for the historical changes often found in treatment of such delinquents as alcoholics, drug addicts, and other "criminals," changes which involve a passage from one moral status to another.

INSTRUMENTAL AND SYMBOLIC FUNCTIONS OF LAW[2]

Agents of government are the only persons in modern societies who can legitimately claim to represent the total society. In support of their acts, limited and specific group interests are denied while a public and societal interest is claimed.[3] Acts of government "commit the group to action or to perform coordinated acts for general welfare."[4] This representational character of governmental officials and their acts makes it possible for them not only to influence the allocation of resources but also to define the public norms of morality and to designate which acts violate them. In a pluralistic society these defining and designating acts can become matters of political issue because they support or reject one or another of the competing and conflicting cultural groups in the society.

Let us begin with a distinction between *instrumental* and *symbolic* functions of legal and governmental acts. We readily perceive that acts of officials, legislative enactments, and court decisions often affect behavior in an instrumental manner through a direct influence on the actions of people. The Wagner Labor Relations Act and the Taft-Hartley Act have had considerable impact on the conditions of collective bargaining in the United States. Tariff legislation directly affects the prices of import commodities. The instrumental function of such laws lies in their enforcement; unenforced they have little effect.

Symbolic aspects of law and government do not depend on enforcement for their effect. They are symbolic in a sense close to that used in literary analysis. The symbolic act "invites consideration rather than overt reaction."[5] There is a dimension of meaning in symbolic behavior which is not given in its immediate and manifest signifi-

in the Sociology of Deviance, Glencoe: The Free Press, 1963, Chap. 1. A similar view is presented in John Kitsuse, "Societal Reaction to Deviant Behavior," *Social Problems*, 9 (Winter, 1962), pp. 247-56; Kai Erikson, "Sociology of Deviance," in E. McDonagh and J. Simpson, editors, *Social Problems*, New York: Holt, Rinehart and Winston, Inc., 1965, pp. 457-464, p. 458.

[2] The material of this section is more fully discussed in my book *Symbolic Crusade: Status Politics and the American Temperance Movement*, Urbana: University of Illinois Press, 1963, esp. Chap. 7.

[3] See the analysis of power as infused with collective goals in Parsons' criticism of C. Wright Mills, *The Power Elite:* Talcott Parsons, "The Distribution of Power in American Society," *World Politics*, 10 (October, 1957), p. 123, 144. [See his book, *Structure and Process*, Glencoe, Illinois: Free Press, 1960.]

[4] Francis X. Sutton, "Representation and the Nature of Political Systems," *Comparative Studies in Society and History*, 2 (October, 1959), pp. 1-10. In this paper Sutton shows that in some primitive societies, political officials function chiefly as representatives to other tribes rather than as law enforcers or policy-makers.

[5] Phillip Wheelwright, *The Burning Fountain*, Bloomington: Indiana University Press, 1964, p. 23.

cance but in what the action connotes for the audience that views it. The symbol "has acquired a meaning which is added to its immediate intrinsic significance."[6] The use of the wine and wafer in the Mass or the importance of the national flag cannot be appreciated without knowing their symbolic meaning for the users. In analyzing law as symbolic we are oriented less to behavioral consequences as a means to a fixed end; more to meaning as an act, a decision, a gesture important in itself.

An action of a governmental agent takes on symbolic import as it affects the designation of public norms. A courtroom decision or a legislative act is a gesture which often glorifies the values of one group and demeans those of another. In their representational character, governmental actions can be seen as ceremonial and ritual performances, designating the content of public morality. They are the statement of what is acceptable in the public interest. Law can thus be seen as symbolizing the public affirmation of social ideals and norms as well as a means of direct social control. This symbolic dimension is given in the statement, promulgation, or announcement of law unrelated to its function in influencing behavior through enforcement.

It has long been evident to students of government and law that these two functions, instrumental and symbolic, may often be separated in more than an analytical sense. Many laws are honored as much in the breach as in performance.[7] Robin Williams has labelled such institutionalized yet illegal and deviant behavior the "patterned evasion of norms." Such evasion occurs when law proscribes behavior which nevertheless occurs in a recurrent socially organized manner and is seldom punished.[8] The kinds of crimes we are concerned with here quite clearly fall into this category. Gambling, prostitution, abortion, and public drunkenness are all common modes of behavior although laws exist designating them as prohibited. It is possible to see such systematic evasion as functioning to minimize conflicts between cultures by utilizing law to proclaim one set of norms as public morality and to use another set of norms in actually controlling that behavior.

While patterned evasion may perform such harmonizing functions, the passage of legislation, the acts of officials, and decisions of judges nevertheless have a significance as gestures of public affirmation. First, the act of public affirmation of a norm often persuades listeners that behavior and norm are consistent. The existence of law quiets and comforts those whose interests and sentiments are embodied in it.[9] Second, public affirmation of a

[6] Talcott Parsons, *The Social System*, Glencoe: The Free Press, 1954, p. 286.

[7] Murray Edelman has shown this in his analysis of the discrepancy between legislative action and administrative agency operation. Murray Edelman, *The Symbolic Uses of Politics*, Urbana: University of Illinois Press, 1964.

[8] Robin Williams, *American Society*, New York: A. A. Knopf, 1960, pp. 372-96. Hyman Rodman's analysis of "lower-class value stretch" suggests yet another ambiguity in the concept of norm. He found that in Trinidad among lower-class respondents that *both* marriage and non-legal marital union are normatively accepted, although marriage is preferred. Hyman Rodman, "Illegitimacy in the Caribbean Social Structure," *American Sociological Review*, 31 (October, 1966), pp. 673-683.

[9] Edelman, *op. cit.*, Chap. 2. The author refers to this as a process of political quiescence. While Edelman's symbolic analysis is close to mine, his emphasis is on the reassurance function of symbols in relation to presumed instrumental affects. My analysis stresses the conflict over symbols as a

moral norm directs the major institutions of the society to its support. Despite patterned practices of abortion in the United States, obtaining abortions does require access to a subterranean social structure and is much more difficult than obtaining an appendectomy. There are instrumental functions to law even where there is patterned evasion.

A third impact of public affirmation is the one that most interests us here. The fact of affirmation through acts of law and government expresses the public worth of one set of norms, of one sub-culture vis-à-vis those of others. It demonstrates which cultures have legitimacy and public domination, and which do not. Accordingly it enenhances the social status of groups carrying the affirmed culture and degrades groups carrying that which is condemned as deviant. We have argued elsewhere that the significance of Prohibition in the United States lay less in its enforcement than in the fact that it occurred.[10] Analysis of the enforcement of Prohibition law indicates that it was often limited by the unwillingness of Dry forces to utilize all their political strength for fear of stirring intensive opposition. Great satisfaction was gained from the passage and maintenance of the legislation itself.[11]

Irrespective of its instrumental effects, public designation of morality is itself an issue generative of deep conflict. The designating gestures are dramatjstic events, "since it invites one to consider the matter of motives in a perspective that, being developed in the analysis of drama, treats language and thought primarily as modes of action."[12] For this reason the designation of a way of behavior as violating public norms confers status and honor on those groups whose cultures are followed as the standard of conventionality, and derogates those whose cultures are considered deviant. My analysis of the American Temperance movement has shown how the issue of drinking and abstinence became a politically significant focus for the conflicts between Protestant and Catholic, rural and urban, native and immigrant, middle class and lower class in American society. The political conflict lay in the efforts of an abstinent Protestant middle class to control the public affirmation of morality in drinking. Victory or defeat were consequently symbolic of the status and power of the cultures opposing each other.[13] Legal affirmation or rejection is thus important in what it symbolizes as well or instead of what it controls. Even if the law was broken, it was clear whose law it was.

DEVIANT NONCONFORMITY AND DESIGNATOR REACTION

In Durkheim's analysis of the indignant and hostile response to norm-violation, all proscribed actions are

process of importance apart from instrumental effects.

[10] Gusfield, *op. cit.*, pp. 117-126.

[11] Joseph Gusfield, "Prohibition: The Impact of Political Utopianism," in John Braeman, editor, *The 1920's Revisited*, Columbus: Ohio State University Press, forthcoming; Andrew Sinclair, *The Era of Excess*, New York: Harper Colophon Books, 1964, Chap. 10, pp. 13-14.

[12] Kenneth Burke, *A Grammar of Motives*, New York: Prentice-Hall, 1945, p. 393. Burke's writings have been the strongest influence on the mode of analysis presented here. Two other writers, whose works have been influential, themselves influenced by Burke, are Erving Goffman and Hugh D. Duncan.

[13] Gusfield, *Symbolic Crusade*, *op. cit.*, Chap. 5.

threats to the existence of the norm.[14] Once we separate the instrumental from the symbolic functions of legal and governmental designation of deviants, however, we can question this assumption. We can look at norm-violation from the standpoint of its effects on the symbolic rather than the instrumental character of the norm. Our analysis of patterned evasion of norms has suggested that a law weak in its instrumental functions may nevertheless perform significant symbolic functions. Unlike human limbs, norms do not necessarily atrophy through disuse. Standards of charity, mercy, and justice may be dishonored every day yet remain important statements of what is publicly approved as virtue. The sexual behavior of the human male and the human female need not be a copy of the socially sanctioned rules. Those rules remain as important affirmations of an acceptable code, even though they are regularly breached. Their roles as ideals are not threatened by daily behavior. In analyzing the violation of norms we will look at the implications of different forms of deviance on the symbolic character of the norm itself. *The point here is that the designators of deviant behavior react differently to different norm-sustaining implications of an act.* We can classify deviant behavior from this standpoint.

The Repentant Deviant

The reckless motorist often admits the legitimacy of traffic laws, even though he has broken them. The chronic alcoholic may well agree that both he and his society would be better if he could stay sober. In both cases the norm they have violated is itself unquestioned. Their deviation is a moral lapse, a fall from a grace to which they aspire. The homosexual who seeks a psychiatrist to rid himself of his habit has defined his actions similarly to those who have designated him as a deviant. There is a consensus between the designator and the deviant; his repentance confirms the norm.

Repentance and redemption seem to go hand-in-hand in court and church. Sykes and Matza have described techniques of neutralization which juvenile delinquents often use with enforcement agencies.

> The juvenile delinquent would appear to be at least partially committed to the dominant social order in that he frequently exhibits guilt or shame when he violates its proscriptions, accords approval to certain conforming figures and distinguishes between appropriate and inappropriate targets for his deviance.[15]

A show of repentance is also used, say Sykes and Matza, to soften the indignation of law enforcement agents. A recent study of police behavior lends support to this. Juveniles apprehended by the police received more lenient treatment, including dismissal, if they appeared contrite and remorseful about their violations than if they did not. This difference in the posture of the deviant accounted for much of the differential treatment favoring middle-class "youngsters" as against lower-class "delinquents."[16]

[14] Emile Durkheim, *The Division of Labor in Society*, trans. George Simpson, Glencoe: The Free Press, 1947, especially at pp. 96-103. For a similar view see Lewis Coser, "Some Functions of Deviant Behavior and Normative Flexibility," *American Journal of Sociology*, 68 (September, 1962), pp. 172-182.

[15] Gresham Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review*, 22 (December, 1957), pp. 664-670; at p. 666.

[16] Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," *American Jour-*

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The Sick Deviant

Acts which represent an attack upon a norm are neutralized by repentance. The open admission of repentance confirms the sinner's belief in the sin. His threat to the norm is removed and his violation has left the norm intact. Acts which we can perceive as those of sick and diseased people are irrelevant to the norm; they neither attack nor defend it. The use of morphine by hospital patients in severe pain is not designated as deviant behavior. Sentiments of public hostility and the apparatus of enforcement agencies are not mobilized toward the morphine-user. His use is not perceived as a violation of the norm against drug use, but as an uncontrolled act, not likely to be recurrent.[17]

While designations of action resulting from sickness do not threaten the norm, significant consequences flow from such definitions. Talcott Parsons has pointed out that the designation of a person as ill changes the obligations which others have toward the person and his obligations toward them.[18] Parsons' description sensitizes us to the way in which the sick person is a different social object than the healthy one. He has now become an object of welfare, a person to be helped rather than punished. Hostile sentiments toward sick people are not legitimate. The sick person is not responsible for his acts. He is excused from the consequences which attend the healthy who act the same way.[19]

Deviance designations, as we shall show below, are not fixed. They may shift from one form to another over time. Defining a behavior pattern as one caused by illness makes a hostile response toward the actor illegitimate and inappropriate. "Illness" is a social designation, by no means given in the nature of medical fact. Even left-handedness is still seen as morally deviant in many countries. Hence the effort to define a practice as a consequence of illness is itself a matter of conflict and a political issue.

The Enemy Deviant

Writing about a Boston slum in the 1930's, William F. Whyte remarks:

> The policeman is subject to sharply conflicting pressures. On one side are the "good people" of Eastern City, who have written their moral judgments into law and demand through their newspapers that the law be enforced. On the other side are the people of Cornerville, who have different standards and have built up an organization whose perpetuation depends upon the freedom to violate the law.[20]

Whyte's is one of several studies that have pointed out the discrepancies between middle-class moralities embodied in law and lower-class moralities which differ sharply from them.[21] In Cornerville, gambling was

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nal of Sociology, 70 (September, 1964), pp. 206-214.

17 This of course does not mean that the patient using morphine may not become an addict.

18 Talcott Parsons and Renée Fox, "Illness, Therapy and the Modern Urban Family," *Journal of Social Issues*, 8 (1952), pp. 31-44.

19 A somewhat similar distinction as that presented here can be found in Vilhelm Aubert and Sheldon Messinger, "The Criminal and the Sick," in V. Aubert, *The Hidden Society*, New York: The Bedminister Press, 1965, pp. 25-54.

20 William F. Whyte, *Street-Corner Society*, Chicago: University of Chicago Press, 2nd edition, 1955, p. 138.

21 See William Westley's analysis of the differences between the morality shared by

seen as a "respectable" crime, just as antitrust behavior may be in other levels of the social structure. In American society, conflicts between social classes are often also cultural conflicts reflecting moral differences. Coincidence of ethnic and religious distinctions with class differences accentuates such conflicts between group values.

In these cases, the validity of the public designation is itself at issue. The publicly-defined deviant is neither repentant nor sick, but is instead an upholder of an opposite norm. He accepts his behavior as proper and derogates the public norm as illegitimate. He refuses to internalize the public norm into his self-definition. This is especially likely to occur in instances of "business crimes." The buyer sees his action as legitimate economic behavior and resists a definition of it as immoral and thus prohibitable. The issue of "off-track" betting illustrates one area in which clashes of culture have been salient.

The designation of culturally legitimate behavior as deviant depends upon the superior power and organization of the designators. The concept of convention in this area, as Thrasymachus defined Justice for Socrates, is the will of the stronger. If the deviant is the politically weaker group, then the designation is open to the changes and contingencies of political fortunes. It becomes an issue of political conflict, ranging group against group and culture against culture, in the effort to determine whose morals are to be designated as deserving of public affirmation.

It is when the deviant is also an enemy and his deviance is an aspect of group culture that the conventional norm is most explicitly and energetically attacked. When those once designated as deviant have achieved enough political power they may shift from disobedience to an effort to change the designation itself. This has certainly happened in the civil rights movement. Behavior viewed as deviant in the segregationist society has in many instances been moved into the realm of the problematic, now subject to political processes of conflict and compromise.

When the deviant and the designator perceive each other as enemies, and the designator's power is superior to that of the deviant, we have domination without a corresponding legitimacy. Anything which increases the power of the deviant to organize and attack the norm is thus a threat to the social dominance symbolized in the affirmation of the norm. Under such conditions the need of the designators to strengthen and enforce the norms is great. The struggle over the symbol of social power and status is focused on the question of the maintenance or change of the legal norm. The threat to the middle class in the increased political power of Cornerville is not that the Cornerville resident will gamble more; he already does gamble with great frequency. The threat is that the law will come to accept the morality of gambling and treat it as a legitimate business. If this happens, Boston is no longer a city dominated by middle-class Yankees but becomes one dominated

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the lower class and the police in contrast to that of the courts over such matters as gambling, prostitution, and sexual perversion. The courts take a stemer view of gamblers and prostitutes than do the police, who take a stemer view of the sexual offender. William Westley, "Violence and the Police," *American Journal of Sociology*, 59 (July, 1953), pp. 34-42.

by lower-class immigrants, as many think has actually happened in Boston. The maintenance of a norm which defines gambling as deviant behavior thus symbolizes the maintenance of Yankee social and political superiority. Its disappearance as a public commitment would symbolize the loss of that superiority.

The Cynical Deviant

The professional criminal commits acts whose designation as deviant is supported by wide social consensus. The burglar, the hired murderer, the arsonist, the kidnapper all prey on victims. While they may use repentance or illness as strategies to manage the impressions of enforcers, their basic orientation is self-seeking, to get around the rules. It is for this reason that their behavior is not a great threat to the norms although it calls for social management and repression. It does not threaten the legitimacy of the normative order.

DRINKING AS A CHANGING FORM OF DEVIANCE

Analysis of efforts to define drinking as deviant in the United States will illustrate the process by which designations shift. The legal embodiment of attitudes toward drinking shows how cultural conflicts find their expression in the symbolic functions of law. In the 160 years since 1800, we see all our suggested types of non-conforming behavior and all the forms of reaction among the conventional segments of the society.

The movement to limit and control personal consumption of alcohol began in the early nineteenth century, although some scattered attempts were made earlier.[22] Colonial legislation was aimed mainly at controlling the inn through licensing systems. While drunkenness occurred, and drinking was frequent, the rigid nature of the Colonial society, in both North and South, kept drinking from becoming an important social issue.[23]

The Repentant Drinker

The definition of the drinker as an object of social shame begins in the early nineteenth century and reaches full development in the late 1820's and early 1830's. A wave of growth in Temperance organizations in this period was sparked by the conversion of drinking men to abstinence under the stimulus of evangelical revivalism.[24] Through drinking men joining together to take the pledge, a norm of abstinence and sobriety emerged as a definition of conventional respectability. They sought to control themselves and their neighbors.

The norm of abstinence and sobriety replaced the accepted patterns of heavy drinking countenanced in the late eighteenth and early nineteenth century. By the 1870's rural and small-town America had defined middle-class morals to include the Dry attitude. This definition had little need for legal embodiment. It could be enunciated in attacks on the drunkard which assumed that he shared the normative pattern of those who exhorted him to be better

[22] The best single account of Temperance activities before the Civil War is that of John Krout, *The Origins of Prohibition*, New York: A. A. Knopf, 1925.

[23] *Ibid.*, Chapters 1 and 2; also see Alice Earle, *Home Life in Colonial Days*, New York: Macmillan and Co., 1937, pp. 148-149; 156-165.

[24] Gusfield, *Symbolic Crusade*, *op. cit.*, pp. 44-51.

and to do better. He was a repentant deviant, someone to be brought back into the fold by moral persuasion and the techniques of religious revivalism.[26] His error was the sin of lapse from a shared standard of virtue. "The Holy Spirit will not visit, much less will He dwell within he who is under the polluting, debasing effects of intoxicating drink. The state of heart and mind which this occasions to him is loathsome and an abomination."[26]

Moral persuasion thus rests on the conviction of a consensus between the deviant and the designators. As long as the object of attack and conversion is isolated in individual terms, rather than perceived as a group, there is no sense of his deviant act as part of a shared culture. What is shared is the norm of conventionality; the appeal to the drinker and the chronic alcoholic is to repent. When the Woman's Anti-Whiskey Crusade of 1873-1874 broke out in Ohio, church women placed their attention on the taverns. In many Ohio towns these respectable ladies set up vigils in front of the tavern and attempted to prevent men from entering just by the fear that they would be observed.[27] In keeping with the evangelical motif in the Temperance movement, the Washingtonians, founded in 1848, appealed to drinkers and chronic alcoholics with the emotional trappings and oratory of religious meetings, even though devoid of pastors.[28]

Moral persuasion, rather than legislation, has been one persistent theme in the designation of the drinker as deviant and the alcoholic as depraved. Even in the depictions of the miseries and poverty of the chronic alcoholic, there is a decided moral condemnation which has been the hallmark of the American Temperance movement. Moral persuasion was ineffective as a device to wipe out drinking and drunkenness. Heavy drinking persisted through the nineteenth century and the organized attempts to convert the drunkard experienced much backsliding.[29] Nevertheless, defections from the standard did not threaten the standard. The public definition of respectability matched the ideals of the sober and abstaining people who dominated those parts of the society where moral suasion was effective. In the late nineteenth century those areas in which temperance sentiment was strongest were also those in which legislation was most easily enforceable.[30]

The Enemy Drinker

The demand for laws to limit alcoholic consumption appears to arise from situations in which the drinkers

[25] *Ibid.*, pp. 69-86.

[26] *Temperance Manual* (no publisher listed, 1836), p. 46.

[27] See the typical account by Mother Stewart, one of the leaders in the 1873-74 Woman's War on Whiskey, in Eliza D. Steward, *Memories of the Crusade*, Columbus, Ohio: W. G. Hibbard, 2nd edition, 1889, pp. 139-143; also see *Standard Encyclopedia of the Alcohol Problem*, 6 (Westerville, Ohio: American Issue Publishing Co., 1930), pp. 2902-2905.

[28] Krout, *op. cit.*, Chap. 9.

[29] See the table of consumption of alcoholic beverages, 1850-1957, in Mark Keller and Vera Efron, "Selected Statistics on Alcoholic Beverage," reprinted in Raymond McCarthy, editor, *Drinking and Intoxication*, Glencoe: The Free Press, 1959, p. 180.

[30] Joseph Rowntree and Arthur Sherwell, *State Prohibition and Local Option*, London: Hodden and Stoughton, 1900, using both systematic observation and analysis of Federal tax payments, concluded (p. 253) that ". . . local veto in America has only been found operative outside the larger towns and cities."

possess power as a definitive social and political group and, in their customary habits and beliefs, deny the validity of abstinence norms. The persistence of areas in which Temperance norms were least controlling led to the emergence of attempts to embody control in legal measures. The drinker as enemy seems to be the greatest stimulus to efforts to designate his act as publicly defined deviance.

In its early phase the American Temperance movement was committed chiefly to moral persuasion. Efforts to achieve legislation governing the sale and use of alcohol do not appear until the 1840's. This legislative movement had a close relationship to the immigration of Irish Catholics and German Lutherans into the United States in this period. These non-evangelical and/or non-Protestant peoples made up a large proportion of the urban poor in the 1840's and 1850's. They brought with them a far more accepting evaluation of drinking than had yet existed in the United States. The tavern and the beer parlor had a distinct place in the leisure of the Germans and the Irish. The prominence of this place was intensified by the stark character of the developing American slum.[81] These immigrant cultures did not contain a strong tradition of Temperance norms which might have made an effective appeal to a sense of sin. To be sure, excessive drunkenness was scorned, but neither abstinence nor constant sobriety were supported by the cultural codes.

Between these two groups—the native American, middle-class evangelical Protestant and the immigrant European Catholic or Lutheran occupying the urban lower class—there was little room for repentance. By the 1850's the issue of drinking reflected a general clash over cultural values. The Temperance movement found allies in its political efforts among the nativist movements.[82] The force and power of the anti-alcohol movements, however, were limited greatly by the political composition of the urban electorate, with its high proportion of immigrants. Thus the movement to develop legislation emerged in reaction to the appearance of cultural groups least responsive to the norms of abstinence and sobriety. The very effort to turn such informal norms into legal standards polarized the opposing forces and accentuated the symbolic import of the movement. Now that the issue had been joined, defeat or victory was a clear-cut statement of public dominance.

It is a paradox that the most successful move to eradicate alcohol emerged in a period when America was shifting from a heavy-drinking society, in which whiskey was the leading form of alcohol, to a moderate one, in which beer was replacing whiskey. Prohibition came as the culmination of the movement to reform the immigrant cultures and at the height of the immigrant influx into the United States.

Following the Civil War, moral persuasion and legislative goals were both parts of the movement against alcohol. By the 1880's an appeal was made to the urban, immigrant lower classes to repent and to imitate the habits of the

[81] See the accounts of drinking habits among Irish and German immigrants in Oscar Handlin, *Boston's Immigrants*, Cambridge, Massachusetts: Harvard University Press, 1941, pp. 191-192, 201-209; Marcus Hansen, *The Immigrant in American History*, Cambridge, Massachusetts: Harvard University Press, 1940.

[82] Ray Billington, *The Protestant Crusade, 1800-1860*, New York: Macmillan, 1938, Chap. 15; Gusfield, *Symbolic Crusade*, *op. cit.*, pp. 55-57.

American middle class as a route to economic and social mobility. Norms of abstinence were presented to the non-abstainer both as virtue and as expedience.[83] This effort failed. The new, and larger, immigration of 1890-1915 increased still further the threat of the urban lower class to the native American.

The symbolic effect of Prohibition legislation must be kept analytically separate from its instrumental, enforcement side. While the urban middle class did provide much of the organizational leadership to the Temperance and Prohibition movements, the political strength of the movement in its legislative drives was in the rural areas of the United States. Here, where the problems of drinking were most under control, where the norm was relatively intact, the appeal to a struggle against foreign invasion was the most potent. In these areas, passage of legislation was likely to make small difference in behavior. The continuing polarization of political forces into those of cultural opposition and cultural acceptance during the Prohibition campaigns (1906-1919), and during the drive for Repeal (1926-1933), greatly intensified the symbolic significance of victory and defeat.[84] Even if the Prohibition measures were limited in their enforceability in the metropolis there was no doubt about whose law was public and what way of life was being labelled as opprobrious.

After Repeal, as Dry power in American politics subsided, the designation of the drinker as deviant also receded. Public affirmation of the temperance norm had changed and with it the definition of the deviant had changed. Abstinence was itself less acceptable. In the 1950's the Temperance movement, faced with this change in public norms, even introduced a series of placards with the slogan, "It's Smart *Not* to Drink."

Despite this normative change in the public designation of drinking deviance, there has not been much change in American drinking patterns. Following the Prohibition period the consumption of alcohol has not returned to its pre-1915 high. Beer has continued to occupy a more important place as a source of alcohol consumption. "Hard drinkers" are not as common in America today as they were in the nineteenth century. While there has been some increase in moderate drinking, the percentage of adults who are abstainers has remained approximately the same (one-third) for the past 30 years. Similarly, Dry sentiment has remained stable, as measured by local opinion results.[85] In short, the argument over deviance designation has been largely one of normative dominance, not of instrumental social control. The process of deviance designation in drinking needs to be understood in terms of symbols of cultural dominance rather than in the activities of social control.

[83] William F. Whyte, *op. cit.*, p. 99. Whyte has shown this as a major attitude of social work and the settlement house toward slum-dwellers he studied in the 1930's. "The community was expected to adapt itself to the standards of the settlement house." The rationale for adaptation lay in its effects in promoting social mobility.

[84] Although a well-organized Temperance movement existed among Catholics, it was weakened by the Protestant drive for Prohibition: See Joan Bland, *Hibernian Crusade*, Washington, D.C.: Catholic University Press, 1951.

[85] See my analysis of American drinking in the post-Repeal era. Gusfield, "Prohibition: The Impact of Political Utopianism," *op. cit.*

The Sick Drinker

For most of the nineteenth century, the chronic alcoholic as well as the less compulsive drinker was viewed as a sinner. It was not until after Repeal (1933) that chronic alcoholism became defined as illness in the United States. Earlier actions taken toward promotion of the welfare of drinkers and alcoholics through Temperance measures rested on the moral supremacy of abstinence and the demand for repentance. The user of alcohol could be an object of sympathy, but his social salvation depended on a willingness to embrace the norm of his exhorters. The designation of alcoholism as sickness has a different bearing on the question of normative superiority. It renders the behavior of the deviant indifferent to the status of norms enforcing abstinence.

This realization appears to have made supporters of Temperance and Prohibition hostile to efforts to redefine the deviant character of alcoholism. They deeply opposed the reports of the Committee of Fifty in the late nineteenth century.[86] These volumes of reports by scholars and prominent men took a less moralistic and a more sociological and functional view of the saloon and drinking than did the Temperance movement.

The soundness of these fears is shown by what did happen to the Temperance movement with the rise of the view that alcoholism is illness. It led to new agencies concerned with drinking problems. These excluded Temperance people from the circle of those who now define what is deviant in drinking habits. The National Commission on Alcoholism was formed in 1941 and the Yale School of Alcoholic Studies formed in 1940. They were manned by medical personnel, social workers, and social scientists, people now alien to the spirit of the abstainer. Problems of drinking were removed from the church and placed in the hands of the universities and the medical clinics. The tendency to handle drinkers through protective and welfare agencies rather than through police or clergy has become more frequent.

"The bare statement that 'alcoholism is a disease' is most misleading since . . . it conceals what is essential—that a step in public policy is being recommended, not a scientific discovery announced."[87] John Seeley's remark is an apt one. Replacement of the norm of sin and repentance by that of illness and therapy removes the onus of guilt and immorality from the act of drinking and the state of chronic alcoholism. It replaces the image of the sinner with that of a patient, a person to be helped

[86] The Committee of Fifty, a group of prominent educators, scientists, and clergymen sponsored and directed several studies of drinking and the saloon. Their position as men unaffiliated to temperance organizations was intended to introduce unbiased investigation, often critical of Temperance doctrine. For two of the leading volumes see John Shaw Billing's, *The Physiological Aspects of the Liquor Problem*, Boston and New York: Houghton, Mifflin and Co., 1903; Raymond Calkins, *Substitutes for the Saloon*, Boston and New York: Houghton, Mifflin and Co., 1903.

[87] John Seeley, "Alcoholism Is a Disease: Implications for Social Policy," in D. Pittman and C. Snyder, editors, *Society, Culture and Drinking Patterns*, New York: John Wiley and Sons, 1962, pp. 586-593, at p. 593. For a description of the variety of definitions of alcoholism and drunkenness, as deviant and non-deviant, see the papers by Edwin Lemert, "Alcohol, Values and Social Control" and by Archer Tongue, "What the State Does About Alcohol and Alcoholism," both in the same volume.

rather than to be exhorted. No wonder that the Temperance movement has found the work of the Yale School, and often even the work of Alcoholics Anonymous, a threat to its own movement. It has been most limited in its cooperation with these organizations and has attempted to set up other organizations which might provide the face of Science in league with the tone of the movement.[88]

The redefinition of the alcoholic as sick thus brought into power both ideas and organizations antithetical to the Temperance movement. The norm protected by law and government was no longer the one held by the people who had supported Temperance and Prohibition. The hostility of Temperance people is readily understandable; their relative political unimportance is crucial to their present inability to make that hostility effective.

Movements of Moral Passage

In this paper we have called attention to the fact that deviance designations have histories; the public definition of behavior as deviant is itself changeable. It is open to reversals of political power, twists of public opinion, and the development of social movements and moral crusades. What is attacked as criminal today may be seen as sick next year and fought over as possibly legitimate by the next generation.

Movements to redefine behavior may eventuate in a moral passage, a transition of the behavior from one moral status to another. In analyzing movements toward the redefinition of alcohol use, we have dealt with moral crusades which were restrictive and others which were permissive toward drinking and toward "drunkards." (We might have also used the word "alcoholics," suggesting a less disapproving and more medical perspective.) In both cases, however, the movements sought to change the public designation. While we are familiar with the restrictive or enforcing movements, the permissive or legitimizing movement must also be seen as a prevalent way in which deviants throw off the onus of their actions and avoid the sanctions associated with immoral activities.

Even where the deviants are a small and politically powerless group they may nevertheless attempt to protect themselves by influence over the process of designation. The effort to define themselves as ill is one plausible means to this end. Drug addiction as well as drunkenness is partially undergoing a change toward such redefinition.[89] This occurs in league with powerful groups in society, such as social workers, medical professionals, or university professors. The moral passage achieved here reduces the sanctions imposed by

[88] The WCTU during the 1930's persistently avoided support to Alcoholics Anonymous. The Yale School of Alcohol Studies was attacked and derogated in Temperance literature. A counter-organization, with several prominent pro-Dry scientists, developed, held seminars, and issued statements in opposition to Yale School publications.

[89] Many of the writings of sociologists interested in drug addiction have contained explicit demands for such redefinitions. See Becker, *op. cit.*; Alfred Lindesmith, *The Addict and the Law*, Bloomington: Indiana University Press, 1965, and David Ausubel, *Drug Addiction*, New York: Random House, 1958. The recent movement to redefine marijuana and LSD as legitimate is partially supported by such writings but is more saliently a movement of enemy deviants. The activities of Timothy Leary, Allen Ginsberg, and the "hipsters" is the most vocal expression of this movement.

criminal law and the public acceptance of the deviant designation.

The "lifting" of a deviant activity to the level of a political, public issue is thus a sign that its moral status is at stake, that legitimacy is a possibility. Today the moral acceptance of drinking, marijuana and LSD use, homosexuality, abortion, and other "vices" is being publicly discussed, and movements championing them have emerged. Such movements draw into them far more than the deviants themselves. Because they become symbols of general cultural attitudes they call out partisans for both repression and permission. The present debate over drug addiction laws in the United States, for example, is carried out between defenders and opposers of the norm rather than between users and nonusers of the drugs involved.

As the movement for redefinition of the addict as sick has grown, the movement to strengthen the definition of addiction as criminal has responded with increased legal severity. To classify drug users as sick and the victims or clients as suffering from "disease" would mean a change in the agencies responsible for reaction from police enforcement to medical authorities. Further, it might diminish the moral disapproval with which drug use, and the reputed euphoric effects connected with it, are viewed by supporters of present legislation. Commenting on the clinic plan to permit medical dispensing of narcotics to licensed addicts, U.S. Commissioner of Narcotics Anslinger wrote:

> This plan would elevate a most despicable trade to the avowed status of an honorable business, nay, to the status of practice of a time-honored profession; and drug addicts would multiply unrestrained, to the irrevocable impairment of the moral fiber and physical welfare of the American people.[40]

In this paper we have seen that redefining moral crusades tends to generate strong counter-movements. The deviant as a cultural opponent is a more potent threat to the norm than is the repentant, or even the sick deviant. The threat to the legitimacy of the norm is a spur to the need for symbolic restatement in legal terms. In these instances of "crimes without victims" the legal norm is *not* the enunciator of a consensus within the community. On the contrary, it is when consensus is least attainable that the pressure to establish legal norms appears to be greatest.

[40] Harry Anslinger and William Tompkins, *The Traffic in Narcotics*, New York: Funk and Wagnalls Co., Inc., 1953, p. 186.

CLARIFICATION OF DR. GODDARD'S VIEWS ON MARIHUANA

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

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CLARIFICATION OF DR. GODDARD'S VIEWS ON MARIHUANA

WEDNESDAY, NOVEMBER 8, 1967

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 11 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The purpose of the hearing today is to obtain clarification from Dr. James L. Goddard, Commissioner of the Food and Drug Administration, concerning statements he is reported to have made with respect to marihuana.

Dispatches carried by a major news service on October 16 and 17 stated "Food and Drug Administration Commissioner Dr. James Goddard says he would not object to his daughter smoking marihuana any more than if she drank a cocktail."

This dispatch received wide publicity throughout the United States and, although its accuracy has been denied, the denial has not caught up with the statement as originally reported, as is often the case.

Ever since the original statement was reported, I have been requested by Members of the House to hold a hearing to provide for clarification of this matter. I have refused up until now, because I wanted enough time to pass for the facts to be developed. I think we are now in a position to discuss the subject in perspective, and therefore have called this hearing to obtain from Dr. Goddard a clarification of his remarks concerning marihuana, both as reported, and as actually delivered.

Dr. Goddard, we are pleased to have you with us again, and you may proceed with your statement.

STATEMENT OF DR. JAMES L. GODDARD, COMMISSIONER OF FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL

Dr. GODDARD. Mr. Chairman, we appreciate the opportunity to appear before this committee today to clear the atmosphere about our position with respect to marihuana.

As evidenced by the attention given by representatives of Government, the press, and the professions, it is plain that the increasing use of marihuana is a matter of national concern.

I am aware, Mr. Chairman, that statements attributed to me, but which I did not make, have caused additional concern. Let me clarify the record in this regard at the very outset.

I did not say that I would not object to my daughter smoking marihuana.

I did not, and I do not, condone the use of marihuana.

I did not, and I do not, advocate the abolition of controls over marihuana.

I did not, and I do not propose "legalizing" the drug.

With your permission, Mr. Chairman, I would like to call your attention to one point which arose as the result of an erroneous news dispatch from Minneapolis on October 17. I was reported to have stated that I would not object any more to my daughter smoking marihuana than if she drank a cocktail.

The news dispatch was not correct, and Mr. Julius Frandsen, vice president and Washington manager of United Press International, has written me a letter on the subject. With your permission, I would like to insert a copy for the record and quote just this brief portion:

So it has become clear to me that UPI erred in attributing to you unqualified statements which in fact were considerably qualified.

I am sorry if UPI has compounded your problems. We are prepared to carry a dispatch acknowledging our error.

(The letter referred to above follows:)

UNITED PRESS INTERNATIONAL,
Washington, D.C., November 2, 1967.

DR. JAMES L. GODDARD,
Commissioner, Food and Drug Administration,
Washington, D.C.

DEAR DR. GODDARD: Following my return from a trip, I have been belatedly looking into the circumstances of our dispatches from Minneapolis on October 17 and 18. I find we owe you an apology.

I refer to the UPI dispatch which began, without qualification:

"Food and Drug Administration Commissioner Dr. James Goddard says he would not object to his daughter smoking marijuana any more than if she drank a cocktail."

Unfortunately, no complete tape exists of your exchanges with reporters. The questioning began in an informal session in the front of the auditorium after your speech and no recording equipment was there. Equipment was set up in another room and only the ensuing proceedings at that place were taped.

UPI was represented by Miss Judy Vick of the University of Minnesota News Service. She says her notes show that in the Q. & A. with reporters in the auditorium Victor Cohn of the Minneapolis Tribune asked whether marijuana is more dangerous than alcohol. And that you replied "Whether or not marijuana is more dangerous than alcohol is debatable. I don't happen to think it is."

Miss Vick says that Mr. Cohn then asked whether you would mind if your daughter smoked marijuana any more than if she drank a cocktail, and that you replied "No, except in the context of the present law." I take that to be a reference to the fact that marijuana is illegal and alcohol is legal.

Mr. Cohn's recollection is that his question was to the effect "Would you mind if your daughter took marijuana?" His notes have you responding: "We have talked about it at home. I would (that is, would object) in terms of the law today" and "we really don't know what the long-term effects (of marijuana) are." Followed by some comments about distortion of perception following use of marijuana.

So it has become clear to me that UPI erred in attributing to you unqualified statements which in fact were considerably qualified.

I am sorry if UPI has compounded your problems. We are prepared to carry a dispatch acknowledging our error.

In view of the public uncertainty that now exists as to what you do and do not believe, I hope you will sit down with our Louis Cassels so that he can prepare

a definitive dispatch. I believe you know Mr. Cassels and his outstanding record for accuracy and fairness. Please let me know.

Several members of Congress have inquired about our original story, and I am taking the liberty of sending them copies of this letter.

Sincerely,

JULIUS FRANDSEN,
Vice President and Washington Manager.

Dr. GODDARD. Mr. Chairman, I think Mr. Frandsen—and other members of the press—recognize the complexities of the issue of marihuana and wish to serve the public in the best possible manner. I think the press does sense the importance of the problem and makes every effort to provide the Nation with the best information available.

My remarks at Minneapolis and elsewhere concerning marihuana have always been in response to questions from the press. In every instance, I have made it abundantly clear that marihuana has been and still remains under the jurisdiction of the Bureau of Narcotics of the U.S. Department of the Treasury.

It is often erroneously assumed that the Food and Drug Administration, which administers the drug abuse control amendments, has jurisdiction over not only the controlled drugs—the amphetamines, barbiturates, and hallucinogens—but marihuana, as well. Our agency has made every effort to clarify the differences wherever possible.

Now let me make several points about marihuana. First, the shocking growth and use of marihuana has been so rapid that none of us in Government, in medicine, or the legal profession has been able to counter it effectively.

For example, the Department of Justice of the State of California has reported a total of 28,319 adult drug arrests for 1966, the highest figure to date, fully 32.1 percent above the 1965 figure. Some of this increase comes from the enforcement last year, for the first time, of the drug abuse control amendments, which became effective on February 1, 1966.

However, to quote from the California report, "Marihuana offenses accounted for approximately one-half of the 1966 arrests and showed a 71-percent increase over those reported during 1965." Arrests for "heroin and other narcotics" rose by about 11 percent. "Dangerous drug arrests showed a 4-percent gain," the report also adds.

California's adult marihuana arrests in 1966 were triple that for 1960. Among juveniles, the rise was even more dramatic: Drug arrests in general increased 87 percent between 1965 and 1966, but juvenile marihuana arrests increased 140 percent, from 1,623 to 3,869.

The marihuana arrests, plus the 898 dangerous drug arrests, accounted for 95 percent of the juvenile drug arrests in California during 1966.

We could pursue this further, Mr. Chairman, but I hope that this illustration will show that, as we have talked about the problem in professional circles and have done our studies and exchanged our memorandums, the agencies of law enforcement have encountered a grim situation that is developing with great momentum—with a momentum that seems to exceed our own ability, thus far, to explore the problem and come up with sound solutions that are in the public interest and that can be put into effect.

This is only part of the broad picture of drug abuse. As you know, Mr. Chairman, the drug abuse control amendments, which we carry

out, include a class of drugs called the hallucinogens. Among these drugs are lysergic acid diethylamide—or LSD—peyote, mescaline, psylocibin, and others, such as DMT and STP, which have recently come upon the scene.

Since the establishment of our Bureau of Drug Abuse Control, in February of 1966, we have conducted over 2,000 criminal investigations. A third of these have involved the hallucinogens. Marihuana has been offered for sale or seized in nine out of every 10 investigations by our BDAC men following the hallucinogen leads.

Our agents, Mr. Chairman, have moved in on these cases swiftly, but with a good sense of who has jurisdiction. BDAC agents in Dallas recently seized 1,000 doses of LSD. At the same time, they seized approximately 100 pounds of marihuana, which they turned over to Bureau of Narcotics agents.

At New York's Kennedy International Airport, BDAC agents, again working on an LSD case, seized not only a quantity of that drug, but about 230 pounds of marihuana as well, which was turned over to local police and agents of the U.S. Customs Service.

There are countless instances of marihuana appearing together with the hallucinogens under our jurisdiction. Our agents, working in close cooperation with other Federal agencies and with the excellent cooperation of State and local law enforcement agencies, can account for 931 arrests to date. Sixty per cent of these arrests involved the hallucinogens. And, as I have indicated—in both the investigational as well as the arrest stages—marihuana is usually present.

The Food and Drug Administration and the Treasury Department's Bureau of Narcotics have been cooperating in dealing with this problem. There is a formal working agreement between the Bureau of Narcotics and our Bureau of Drug Abuse Control which provides for a close working relationship between our agents in the field as well as our staffs in Washington.

The use of marihuana in this country and the rest of the world has a long history, of course. In the United States, "marihuana" refers to any part of the plant, or an extract such as the resin, which induces changes in physical perception and in psychological reactions. These physical and mental effects will vary in the individual marihuana smoker, depending on four major factors:

The circumstances in which the drug is used;
The amount consumed, usually by smoking;
The personality of the user; and
The user's previous experience with marihuana.

The most common reaction to marihuana is development of a state of mind in which ideas seem disconnected, uncontrolled, and freely flowing. Perception is disturbed, minutes seem to be hours, and seconds seem to be minutes. Space may be broadened, and near objects may appear far away.

When large doses are used—doses generally heavier than normally used in this country—extremely vivid hallucinations may occur. With such large doses, panic and a fear of death may make the experience highly unpleasant.

Gentlemen, what I have just told you about marihuana is a résumé from one of the most respected textbooks on drugs in this country. It is the third edition of the "Pharmacological Basis of Therapeutics"

by Louis S. Goodman and Alfred Gilman. I refer you to pages 299 and 300 of this volume.

It should be made clear, however, that no one in the scientific or medical communities is satisfied with the level of knowledge we have concerning marihuana and similar drugs. As I have stated on several occasions, there is still much research to be done.

For example, the chemical composition of marihuana has not been fully determined, although what seems to be the plant's most active ingredients have been isolated and synthesized.

Scientifically controlled marihuana studies of varying lengths have not been conducted on animals or humans to determine effects on body tissue and metabolism, or neuromuscular response, and on psychological, and cultural reasons for marihuana use, especially among our young people. The number and characteristics of marihuana users in the United States are virtually unknown, and paths to such use are unexplored.

Mr. Chairman, there are a number of studies that are being conducted under the auspices of the National Institute of Mental Health. I would like to deposit with the committee at this time a recent listing by the NIMH of their marihuana research and related grant activities.

(The document referred to follows:)

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, PUBLIC HEALTH SERVICE, NATIONAL INSTITUTE OF MENTAL HEALTH

(For release Thursday, October 26, 1967)

The National Institute of Mental Health today issued a summary of Institute-supported research related to marijuana and its components. The summary follows:

Eugene S. Boyd, University of Rochester, N.Y.—Investigation of the effects of marijuana components on the central nervous system of human subjects. Start September 1, 1960; $167,773.

Hine Laboratories, San Francisco—Development and investigation of tests to determine the presence of marijuana in blood and urine. Start March 1, 1967; $70,700.

Raphael Mechoulam, Hebrew University, Jerusalem—Synthesis of marijuana constituents and a study of their physiological and psychological effects. Start March 1, 1967; $26,500.

Constandinos J. Miras, University of Athens—Use of radio-active tagged marijuana to determine absorption, distribution, site of action and excretion of marijuana in the body of experimental animals. Start March 1, 1967; $14,000.

Lloyd J. Dolby, University of Oregon—A study of the chemical nature of selected marijuana components. Start September 1, 1965; $13,699.

Dean I. Manheimer, Longley-Porter Neuropsychiatric Institute; San Francisco—Research on patterns of drug acquisition, drug use and attitudes toward drugs by adults. (West Coast). Start June 1, 1966; $285,931.

Ira Cisin, George Washington University, Washington, D.C.—Research on patterns of drug acquisition, drug use and attitudes toward drugs by adults, (East Coast). Start June 1, 1966; $107,337.

Martin Hoffman, Mount Zion Hospital and Medical Center—San Francisco—Psychological and psychiatric studies of marijuana smokers. Start September 1, 1965; $64,751.

Richard Blum, Stanford University—An investigation of the incidence and patterns of use of marijuana and other mind-altering drugs by college students. Start March 1, 1966; $78,524.

Ross Speck, Hahnemann Medical College, Philadelphia—Investigation of adolescent drug users and of the spread of drug use among adolescents. Start June 1, 1966; $49,734.

National Student Association, Washington, D.C.—Exchange of information on the motives for, and extent and consequences of, drug use by college students

as a basis for developing means to discourage campus drug abuse. Start June 15, 1967; $50,600.

Samuel Pearlman, Brooklyn College of City College of New York—Investigation of patterns of drug use and abuse in five New York City universities. Start May 1, 1967; $4,200.

Christopher D. Stone, University of Southern California Law Center—A survey of laws concerning marijuana use, with special attention to problems of marijuana use in research. Start June 1, 1967; $3,248.

Harris Isbell, University of Kentucky, Lexington—Studies of psychological, emotional and behavioral effects of marijuana in humans, Addiction Research Center. (Intramural).

Dr. GODDARD. You will notice that underway are several projects on the sociology of marihuana usage, the metabolism of marihuana in man and animals, and patterns of acquisition of the drug.

Gradually, we will be able to construct a clearer picture—based upon hard, scientific facts—of this drug, its short- and long-term effects, its fully identity, and the ways it can and cannot be used by man.

Clearly, while the answers to these questions are being formulated by the scientific community, by the work of many hundreds of physicians and researchers, our enforcement efforts in the Food and Drug Administration as well as in the Bureau of Narcotics must continue.

I am reminded, Mr. Chairman, of the experience the FDA went through when it first became involved in the control of abused drugs. The agency discovered, for example, that as many as 25,000 barbiturate dosages could be purchased at a truck stop.

The enforcement strategy for an agency with limited manpower seemed to be clear enough: concentrate on those who engage in the illicit manufacture, distribution, and sale of large quantities of those drugs which are abused by some members of our society. This was the position advocated by the Department of Health, Education, and Welfare during the hearing before this committee on the Drug Abuse Control Amendments of 1965. This was the position adopted by the Congress.

After the amendments were passed by a unanimous vote of the Congress, this strategy of enforcement continued to be FDA's approach. In my opinion, it has worked well. In fact, last year, when we were questioned by three congressional committees as to the need for more stringent penalties—particularly penalties for personal possession and use of the amphetamines, barbiturates, and hallucinogens—I responded that we saw no need for a change in the law. We believed then and still believe today that no useful purpose would be served by making a felon of the individual who abuses these drugs.

I did state, however, that we would evaluate the effectiveness of the misdemeanor penalties for the illicit manufacture, sale, and distribution of the controlled drugs. If we find these penalties to be ineffective, I promised to come back to the Congress and seek a tougher set of penalties in that area. I repeat that promise now.

From this brief bit of history, you can see how the FDA, while administering the drug abuse control amendments and coming upon both LSD and marihuana in the course of our enforcement work, finds that there is a rather significant anomaly in the penalties with respect to these two hallucinogens.

During the past year and a half, I have become personally aware of the problem, as the agency's Commissioner. For example, our agents may find two individuals in the same room, one possessing LSD—an extremely dangerous drug, and one of the most dangerous drugs I have ever studied—and the other possessing marihuana. Our BDAC agents would seize the LSD under the executive seizure provisions of the drug abuse control amendments, but the person possessing the drug would not be subject to prosecution under the Federal statute. His companion, however, would be taken into custody and be liable to a felony conviction under the laws governing the possession of marihuana, a drug which is less potent that LSD.

This is why I consider the penalties to be inconsistent and why I believe that this inconsistency prevents full and effective protection of the public interest in the matter of abused drugs of any kind.

Let me emphasize again that I have never advocated the legalization of marihuana. Rather, I have raised the question of the severity of the penalties attached to possession of marihuana and I suggest that the Congress might also wish to review these penalties in the light of enforcement experience throughout local, State, and Federal Government and as the results of drug research may dictate.

In closing, I would like to summarize some of the tasks we are performing and the goals toward which we are striving in dealing with the problem of drug abuse in a comprehensive manner. Among these, I would include—

(1) a continuing concentration of enforcement activities against the illicit manufacturers and distributors of dangerous drugs;

(2) an increased exchange of information with State and local police and health agencies, as well as with similar international agencies, to strengthen enforcement programs and to broaden the total understanding of the scientific and social data upon which these programs must be based;

(3) the continuation and expansion of the research effort to fill the gaps in our knowledge that I noted a moment ago; and

(4) effective assistance to educators and journalists to support their effort to bring factual drug knowledge to the public, who ultimately must determine the nature and direction of our control programs.

The cooperation of many agencies, at all levels of government, is required in carrying out these broad assignments. The Food and Drug Administration will give its best efforts in this cause, I assure you.

Thank you.

I will be happy, Mr. Chairman, to answer any questions you or other members of the committee may have.

The CHAIRMAN. Thank you, Dr. Goddard.

I do have one or two questions, and I would like to say for the benefit of the committee that I hope that after questions have been asked, they will not be repeated by the members of the committee. I hope that we get the questions asked and answered by noon, in the hopes that we can finish this morning.

Dr. Goddard, to clarify some of your statements, do you favor eliminating any of the penalties presently prescribed by law for the

sale of marihuana or any other drugs whose sale is prohibited by law?

Dr. GODDARD. No, sir.

The CHAIRMAN. Well, based upon the studies that you have conducted, does it appear that a person can become addicted to any of the following drugs: the amphetamines, barbiturates, LSD and the like, marihuana, and the hard narcotics?

Dr. GODDARD. Yes. There is no question that persons can become addicted to the hard narcotics, the opiate derivatives of which heroin is one. Addiction implies that the individuals are taking increasing dosages and that they have physical withdrawal symptoms from the drug.

With respect to the amphetamines, the other drugs we have mentioned, LSD and the other hallucinogens, we do not see addiction, as such. We do see psychic dependence; we do see development of tolorence.

For example, people rapidly go to tolerance in the amphetamines. They may take heavy dosages at one time, for example, several hundred milligrams instead of the usual dosage of 5 milligrams, dosages so large that they could be fatal in any of us who have not taken the drug.

We now talk more in terms of drug dependence than getting caught in the argument of addicting, nonaddicting, and get into the semantic problems that existed in the past. Alcohol is still another drug that one can develop physical dependence upon and have withdrawal symptoms occur. Barbiturates also can cause physical dependence.

The CHAIRMAN. Now, that was my next question. Does alcohol cause addiction?

Dr. GODDARD. I would rather call it physical dependence, rather than addiction. This is measured by the increasing dosage that is required by the person to obtain the same effect; in other words, what we commonly call tolerance and the withdrawal symptoms that occur when the drug alcohol is withdrawn.

What we commonly refer to as the "DT's" are the physical manifestations of withdrawal sysmptoms in the individual who has developed a physical dependence to alcohol. As I have tried to point out, alcohol does represent a serious problem to our society. Many times I have also mentioned that marihuana and other drugs are abused.

These problems of drug abuse and the problem of alcohol are very much alike; they are manifestations of problems in society that we have to approach realistically; we have to recognize their presence and we have to begin to develop programs which will help solve these problems.

The CHAIRMAN. Excuse me. Is there a study now being made in your Department on alcohol?

Dr. GODDARD. Yes.

The CHAIRMAN. Who is making it?

Dr. GODDARD. Both through the support of research, and recently we have published what represents a comprehensive summary of our present knowledge about alcohol and alcoholism from the NIMH national clearinghouse for mental health information.

I could provide you, if you wish, Mr. Chairman, for the record, the scope of the studies that are being carried out, the activities that are underway.

(The information supplied is contained in Public Health Service publication No. 1640 (1967), "Alcohol and Alcoholism".)

Dr. GODDARD. We are talking about a very serious health problem, and I consider drug abuse to be a very serious health problem of our Nation as well, and marihuana is one drug that is being abused. The extent of the magnitude of that portion of the problem is known, and estimates range between 400,000 to 3 million people currently using marihuana.

The CHAIRMAN. One further question and then I will stop.

In 1963, the Prettyman commission recommended transfer of jurisdiction over the hard narcotics and over the amphetamines, barbiturates, and LSD to the Justice Department. Do you know if the administration ever took a position on that recommendation and, if so, what it was?

Dr. GODDARD. I do not believe they have ever taken a position on that recommendation. I am familiar with the Prettyman report, but they have not taken a position.

The CHAIRMAN. Mr. Friedel.

Mr. BROWN. Mr. Chairman——

Mr. FRIEDEL. I don't have any questions, but I am very glad we invited Dr. Goddard to this meeting to clear the air. I am glad that you were here to deny that. I think you have been done a lot of injustice.

Dr. GODDARD. Thank you.

Mr. FRIEDEL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

It is good to see you here to clarify this confusing situation, but I am not surprised that it is confused. It seems to me that you could have given a frank statement of one word to each of the questions contained in this UPI letter and saved yourself a lot of embarrassment, this committee a lot of concern, and reassure the public as to what the true facts were instead of hedging a bit. It seems to me as though you asked for what you got.

The letter you presented here does not give a simple, straightforward answer to a question that could have been answered simply and straightforward. Is that not so?

Dr. GODDARD. I don't believe it is so because I obviously answered the questions that were asked me by the press on this and other occasions, and these are complicated matters. Many of these things cannot be answered by a direct "Yes" or "No."

I would like to offer for the record, Mr. Chairman, a copy of the transcript of the press conference at Minneapolis as well as other press conferences where the question has arisen.

(The document referred to follows:)

TRANSCRIPTION OF WCCO TAPE OF GODDARD PRESS CONFERENCE, OCTOBER 17, 1967, UNIVERSITY OF MINNESOTA, MINNEAPOLIS, MINN.

Dr. GODDARD. First of all, marijuana is under the jurisdiction of the Bureau of Narcotics, U.S. Treasury Department. I've been asked to comment on the subject a number of times and I've tried to make my position clear, that first we need more long term research to detect any possible serious side effects from chronic usage. But, secondly, I feel that the present penalty for personal possession is

too severe, and I've simply said that the penalties for sale and distribution should remain but, I favor a penalty more comparable to that, that we have for the other hallucinogens. LSD, which is far more a serious and toxic drug than marijuana is, after all, a mild hallucinogen. It just isn't a rational kind of set of penalties for these two classes of drugs.

Question.—Would you describe it as being more dangerous than alcohol? Marijuana is more serious than alcohol?

GODDARD. Well, trying to compare two different drugs is a very risky business itself. They have quite different mechanisms of action; alcohol's a depressant, where marijuana is a mild hallucinogen, at best, or maybe a euphoric.

Now, they both share some properties in common, however, they both distort our sense of reality, and therefore it's dangerous to operate heavy equipment or drive a vehicle when we're under the influence of either one of these.

Alochol, probably, lends itself more readily to control on the part of the individual, with respect to the dosage he's receiving than marijuana does, at least to the inexperienced.

So, there are some similarities, but there are also some differences. And as I've mentioned many times, we don't know what the long term effects of smoking marijuana or using marijuana in other forms might be, and we have to carry out this kind of research before, I for one, would be satisfied to say that the drug is safe under any conditions.

Question.—Doctor Goddard, what major safeguards do we need in the commercial drug testing?

GODDARD. Well, we seem to have good laws at the present time. It's a matter of having the laws that exist in the form of the Kefauver-Harris Amendment of 1962, followed by those who produce and distribute drugs for the marketplace. I'm satisfied we're making progress in this field. We're trying to get truth in drug advertising. I think we're beginning to see some signs of progress.

Question.—Do doctors know about the adverse affect of drugs? Are they well informed on that?

GODDARD. Well, this is one of the areas that the Kefauver-Harris Amendments was designed to correct, the failure on the part of firms who sell these drugs to sort of obscure or tend not to tell the doctor about the bad effects. We are seeing improvements in this, but I'm still not satisfied, that all of the scientific data is properly being provided to the prescribing physician.

Question.—Can you specify some drugs that you think might have adverse effects?

GODDARD. Well, we have recently in the past year, in fact, caused a number of "dear doctor" letters to be sent out, and I think the doctors know what these are well enough without my going into details now.

Question.—How serious is the shortages of flu serum going to be?

GODDARD. Well, I haven't kept up with the flu vaccine problems this year. I used to, when I was chief of the Communicable Disease Center, because we were the group that predicted how serious the flu season would be. The Division of Biologic Standards, part of the National Institutes of Health in the Public Health Service, determines what the nuture of the flu vaccine will be, that the manufacturers turn out. So, it's not under my perview, and I'm not all caught up on the subject right now.

Question.—How about drug pricing? Are you investigating companies that maybe sell drugs at inflated prices?

GODDARD. No, we have no responsibility for pricing policies of the drug industry. I'd like to make that clear.

Question.—You were speaking of ante facto action by business, getting into the area of your talk this afternoon. Could you communicate to us some of the idea in—in a minute or so?

GODDARD. Well, I'm simply trying to say that the business community, be more perceptive as to the writing that's on the wall and begin to take actions long before the Government pushes them into certain activities, become involved in the community activities, in our national affairs in a different way than they have in the past. This is a risk type of thing, I admit, but it's essential in my thinking, if the business community is going to withstand increasing government regulation.

I'm simply trying to say that the automotive industry could have avoided the creation of a National Safety Agency had they built more safety into their vehicles, something they've always been capable of, they have the scientific—the engineering know how; the only thing they lacked was the desire and the social perceptiveness to realize that if they failed to do it, it would be done to them.

This is what I'm also trying to tell the drug industry, avoid the heavy hand of regulation by acting in a responsible way. Make the decisions yourselves. The food industry has done quite well.

That kills it fellows.

Mr. KEITH. I would like to ask you again——

Mr. BROWN. May I ask if that is the same transcript you sent me?

Mr. KEITH. I have not yielded as yet.

I would like to ask, if I may, the question that was asked of you. You were asked whether or not marihuana is more dangerous than alcohol. Will you answer that question now?

Dr. GODDARD. I do not believe it is more dangerous than alcohol but it is difficult and dangerous to compare these two drugs. One is a drug that is a depressant; the other an hallucinogen.

Mr. KEITH. We realize there are amplifications to that answer but at any rate I can see where the press looks for a quick answer to something so they could make a headline. You are in the business of representing the public and leading them; I believe that by attempting to elaborate and equivocate upon that answer you asked for the response that you got from the public.

Now, the next question that was asked of you by Mr. Cohn, as I understand it, was whether or not you would mind if your daughter smoked marihuana any more than if she drank a cocktail.

What would be your answer to that today?

Dr. GODDARD. My answer is that I would not want my daughter or anyone else's daughter to smoke marihuana. We don't know what the long-term effects of the drug are.

Mr. KEITH. I tell my daughter, leave it alone.

Dr. GODDARD. So have I.

Mr. KEITH. And the public would get your meaning.

Now, this is sort of a lengthy approach, it would appear to the public in casual reading of the press comments as contrasted to the position I believe you take in some other area of jurisdiction of the FDA like fish protein concentrate where the official position is that fish protein concentrate is not fit for human consumption.

Dr. GODDARD. No, sir. That is not the case. I am sorry. I have never said that fish protein concentrate is unfit for human consumption. Whole fish protein concentrate has been approved by me and is going to be produced for distribution both here and overseas. In fact, I also share with you some concern, Mr. Keith. I feel rather strongly that I am in an anomalous position here of being accused of taking a soft position.

Mr. KEITH. Mr. Chairman, I am perfectly willing to let your statement stand with reference to fish protein concentrate.

The CHAIRMAN. I might say that the gentleman's time has expired. I failed to make it clear that we are only here for one purpose and not to go into other things. We do have an answer to your question, though, Mr. Keith.

Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Doctor, I have not prepared myself for this day's hearings, having been devoting my thoughts to other matters a little while back.

I did send back to my office for some of my files for the impact of marihuana which I am impelled to look at some of the psychological

effects that take place as quoted in at least one major news magazine that not infrequently marihuana is at least a constituent of the so-called drug culture shadow world that we see. It certainly is dangerous and should be viewed with a great deal of concern by organized society.

Am I correct on this matter?

Dr. GODDARD. Yes, sir.

Mr. DINGELL. You have indicated to us that we do not know fully the physiological impact of the use of marihuana; am I correct?

Dr. GODDARD. That is correct.

Mr. DINGELL. But I read here in an article which I took out of the Washington Post, an article entitled "Doctor Finds Marihuana Far From Harmless," he goes on quoting Dr. Constandinos J. Miras of the University of Athens. He says:

I can recognize a chronic marihuana user from afar by the way he walks and talks and acts.

Do you have any knowledge that would indicate to you that this is not a factual statement?

Dr. GODDARD. I would have difficulty based on my reading of the literature on this subject and discussion of the subject with my colleagues that someone could tell one person who uses marihuana from afar by the way he walks, talks, and acts.

Mr. DINGELL. Mr. Miras' conclusions are based on 20 years' observation of chronic marihuana smokers in Greece. He defined a chronic marihuana user as one who smokes at least two marihuana cigarettes a day for 2 years or longer and he goes on to say he begins to see the personality changing typifying the long-term user—slow speech, the lethargy, the lowered individual activity.

He went on to say as follows:

They will accept as perfectly possible things which five years ago they did not even like to hear discussed. They will become suddenly silent without apparently provocation; they will even kill.

Then the article states that Dr. Miras is a pharmacologist. He goes on to cite this effect. He says:

Many of the human objectives he has been studying—

Referring to Dr. Miras—

were teachers, members of the arts, graduates of years past. Many of them left their professions and looked in other jobs but preferred most of all to sleep and talk of philosophy, he said.

Are these circumstances observable circumstances in connection with users of marihuana, Doctor?

Dr. GODDARD. Let me make two points, Mr. Dingell.

First is the pattern of usage. The use in other countries differs from our patterns. First of all, the drug, itself, may be different. It is often more powerful. In other words, the resin or marihuana is more commonly used in other countries of the world than it is in the United States where we tend to use the leaves which are pharmacologically less active, so you are dealing with a drug at a higher concentration. This is the point I want to make.

We have not had enough long-term experience or experience with long-term chronic users. We do know it is a dangerous drug. I cannot refute his statement but it is dangerous to make categorical state-

ments about this drug because we really do need a great deal more knowledge.

Mr. DINGELL. If I may, I would like to read just one more thing. Rat studies, for example, have showed that marihuana reduced reproduction activity 90 percent.

Dr. GODDARD. That is right.

The CHAIRMAN. Your time has expired.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I am not going to comment on the drug problem but I was very much surprised that the United Press said they don't owe you an apology. They certainly do.

I am very much disturbed with the irresponsible, sensational reporting that we get in our press today. This happened to me. Just last week, I was appearing before a Senate committee on a House-passed bill and I was talking about a section of that bill that I am very much concerned with and there was a UPI dispatch that said Congressman Cunningham said in effect if he does not get this provision in the Senate bill as it is in the House bill, he will kill the bill because I will be a conferee on that committee. I never made any such statement.

I didn't have a prepared text and I just spoke off the cuff for about an hour and a half. But they made the sensational opening statement and I immediately checked the transcript and found there was no reference to any such statement made by me; there was no foundation for it.

So, I just hope when I take this up with the UPI they will give me an apology as they did you which you should have and deserved to receive.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

Dr. Goddard, I am glad that you stated that you were not quoted correctly and an apology from UPI has been given.

Now, let me ask you this; You say alcohol is not addictive to the subject.

Dr. GODDARD. Well, physical dependence.

Mr. ROGERS. You say it is a dependence?

Dr. GODDARD. A physical dependence or addiction does occur and if you wish to equate those two, yes.

Mr. ROGERS. So, smoking cigarettes, for instance—some people have a dependency.

Dr. GODDARD. That is more of a psychological dependency.

Mr. ROGERS. I don't know what you call it; they get dependent on it.

Dr. GODDARD. Yes; they do.

Mr. ROGERS. What we need to get across to the public is what you basically have said but it has not been reported—that there is a dependency on these drugs and that it can be on marihuana, I presume, just as it could on cigarettes?

Dr. GODDARD. Yes.

Mr. ROGERS. So, a dependency—and I hope the press will get this point this morning, that it may not be an addiction in the scientific

sense of it but a dependency, which is just as bad as an addiction if the person is dependent upon a drug.

Now, let me ask you this: I think you have said that alcohol—you are not sure that one is any worse than the other—if one depends on anything it can become very serious. Actually, we have recognized in the law that marihuana is a drug and if there is a dependency on this drug it is a criminal act to sell it. Now, let me ask you this about LSD which is such a potential hazard: Should not this committee consider making possession of LSD a criminal offense?

Dr. GODDARD. Possession, Mr. Rogers?

Mr. ROGERS. Yes; possession.

Dr. GODDARD. I do not believe this committee should. I was asked this question by three committees of Congress last year. My opinion then, and still remains the same, is we should not make criminals of young people in our society who experiment with these drugs. Rather, we should focus our efforts in the drug abuse area, whether we are talking about marihuana, LSD, or whatever it may be, on diminishing the availability of it.

Then, an underlying problem that society has to examine is, why do these people experiment with drugs?

Mr. ROGERS. But we cannot get into that problem.

Dr. GODDARD. I don't think it helps.

Mr. ROGERS. Now we have said it is against the law to sell it.

Dr. GODDARD. Yes, and I believe that should be.

Mr. ROGERS. Don't we make it a penalty if they have opium or a hard drug, narcotic?

Dr. GODDARD. Yes.

Mr. ROGERS. And if there is a possession of it?

Dr. GODDARD. Yes.

Mr. ROGERS. Don't we make possession of marihuana a criminal offense?

Dr. GODDARD. Yes.

Mr. ROGERS. Isn't LSD worse than marihuana?

Dr. GODDARD. Yes.

Mr. ROGERS. Well, it seems to me we have not controlled it very well or stopped the sale of it.

Dr. GODDARD. I would say we have not stopped the sale of marihuana very well, either.

Mr. ROGERS. That is right. At least we can do something about it when we find it in possession. So, I just hope you will review your position here. I think this committee is going to have to study the situation and we have to stop this free flow of drugs.

Thank you.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. Dr. Goddard, does marihuana degrade driving skills more or less than alcohol?

Dr. GODDARD. Yes; it does degrade them differently and I have tried to point out this is one of the dangers of hallucinogens and marihuana, specifically because it distorts the time sense very markedly; seconds seem like minutes, so one's perception changes markedly.

Now, alcohol also influences driving skills, depending on the level of alcohol blood levels that are attained. Up to 0.05 produces relatively little changes in driving skills; after that, rather marked de-

terioration sets in in the ability to track and maneuver a vehicle, attention span, and these kinds of things, so they are a little different—both very dangerous.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. HARVEY. Yes.

Mr. KUYKENDALL. I think it is very important that we bring out here one thing that should be clarified about this letter of apology from the United Press. This is kind of a left-handed apology because in the same letter, and I would like to read from this letter, and this is quoting the reporter on the scene, it says:

> Mr. Cohn then asked whether you would mind if your daughter smoked marihuana any more than if she drank a cocktail and you replied no except in the context of the present law.

Now, this left a very clear implication that if it was not against the law it would be all right. This is in the letter of apology.

On the second page of this letter of apology, which is the strangest letter of apology I have seen, it says:

> Would you mind if your daughter took marihuana?
> Answer: We have talked about it at home. I would in terms of the law today. We really don't know what the long-term effects are. He never answered his daughter yes or no in either case.

There is something I want to question here as to whether or not it was made absolutely clear in this apology. I don't think it was.

Another point, here is a newspaper that didn't apologize, Mr. Chairman, the New York Times, and they questioned:

> He did not favor legalizing the drug but favored the removal of penalties for simple possession.

I have approved fully of the statement you have made here this morning. I wish you would have made it in Minneapolis and stuck with it, but I think it was a bad day in Minneapolis because I think you made yourself absolutely clear.

I don't think all these reporters—I don't think everybody that heard this was completely off their rocker in being misled so easily. I don't have any doubt about what your intent was but, sir, what I want to question you about is this: Don't you feel like you are responsible for your speculations in public as much as the actual scientific meaning?

Dr. GODDARD. Yes, sir.

The CHAIRMAN. Would you answer the question?

Dr. GODDARD. The answer to that last question is "Yes." However, I would like to add that, as opposed to the letter from the United Press International, the report contained in the pink sheet of October 23 where this particular publication called Victor Cohn, the reporter who was present, a veteran science reporter, and Mr. Cohn made this point in his story:

> Goddard stated two reservations. The first was that we don't know what its long-term effects are. For example, we don't know whether or not it may alter the chromosomes as LSD may do. I would not want young women who have not been married and children yet unborn to be affected.
> Goddard's second reservation continued that marihuana distorts perception of reality so that it is dangerous if you are driving a vehicle or operating heavy equipment.

Now, this was in response to the same question about my daughter and drinking and may I say I don't view my family as setting the

norm for the United States; rather, I feel my responsibility is to all parents of this country and to their children. We are concerned with a national problem of drug abuse and this is what we are trying to get at.

Mr. KUYKENDALL. If the gentleman would yield for one more quick question.

Do you feel no responsibility for this misunderstanding?

Dr. GODDARD. Well, I obviously have to feel responsibility, yes, because I was at the press conference. In communications, if I don't make myself clear, then I have been partly responsible.

Mr. KUYKENDALL. Thank you, Dr. Goddard.

The CHAIRMAN. Any further questions. Mr. Harvey?

Mr. HARVEY. No. I just would like to comment, Mr. Chairman, that I think Dr. Goddard, that what disappointed some of us on the committee is that we feel a part of your role as Commissioner is that of public education. Certainly it suggests more than just analyzing these drugs and being able to tell this committee the harmful effects. I think we would have all felt much easier if you had stressed in Minneapolis the "grim situation," which you have now told us that confronts law enforcement officers today.

This is what this committee is worried about and this is what I am particularly worried about, and we appreciate your explanation again.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Dr. Goddard, I, too, join my colleagues in saying we are glad you are here today.

I have a copy of the Washington Post article dated October 18, I believe, which described the conference in Minneapolis. The first statement of significance is the one you have already answered and that is related to your daughter, and I am not going back into that or about her smoking marihuana or drinking cocktails.

The next one is:

> Dr. Goddard said the long-term effect of smoking marihuana may be more serious than the effect presently known.

Did you say that, sir?

Dr. GODDARD. Yes.

Mr. KORNEGAY. Then you were quoted as saying that:

> Society should be able to accept both alcohol and marihuana.

Did you say that, sir?

Dr. GODDARD. Yes; but in the context of both of these are real problems that we have to accept them as problems and begin to work on them.

Mr. KORNEGAY. You didn't say accept the problem; you said accept the alcohol and accept the marihuana.

Dr. GODDARD. Sir, I must tell you that this press conference was a confusing one in every aspect. A fuse blew at the start.

Mr. KORNEGAY. It started informally and then they figured they were working into a pretty big deal so they moved inside; is that right?

Dr. GODDARD. What happened, Mr. Kornegay, was the university had a young woman on their staff from the press office and after the speech

in the front of the room where the meeting had been held she said, "We have some people who want to meet with you."

We were about to begin there and then someone else came along and said, "No; there are television cameramen who have set up in a nearby room," so we moved immediately there. We started the press conference and about 3 minutes after the beginning, as I recall, a fuse blew so the cameramen asked that it be stopped and we waited until the fuse was repaired.

Then they asked the same questions over again. They went back to the same question on alcohol and marihuana. Now, the transcript we have, therefore, is not complete in the sense that it does not contain the part that preceded the fuse blowing; whoever was doing the transcription wiped that when they picked up again.

So, I have no proof that I used it in the proper context nor is there any proof that I did not, and that is why I say this was an unfortunate series of events that day.

Mr. KORNEGAY. All right. Let me proceed with the understanding that it was a confusing situation. It goes on quoting you as saying:

I don't believe smoking marihuana leads to addiction of stronger drugs.

Did you say that?

Dr. GODDARD. Yes, sir.

May I explain why?

Mr. KORNEGAY. Yes, sir.

Dr. GODDARD. In the study carried out by the Federal facility of Lexington of some 2,200 admissions roughly in 1 year, they examined the use of marihuana as a precursor to the use of heroin and they found that there was a very strong correlation for individuals who came from 16 areas in the United States, 16 States including the District of Columbia and Puerto Rico. The correlation was about 80 percent. Almost everybody who used opium or heroin had started first with marihuana at age 17, roughly.

Then the next thing that happened was the mean age at the time of first arrest was about 18.7 years and the mean age at time of first use of herion was 20.9 years.

Now, quite in contrast to this, 12 Southern States showed an entirely different pattern. There was no correlation with marihuana use to those who were addicted to opiates. The opiates tended to be different. We didn't have the heroin addiction as commonly as in these other States so there are these extremes.

There are people who say that opium addicts always start on marihuana and that marihuana can lead to addiction to hard narcotics. Both are wrong.

With the number of estimated people in this country who use marihuana, between 400,000 and 3,000,000, and some people place the figure as high as 20,000,000 as representing those in our society who have tried marihuana, it is clear with only 60,000 heroin addicts in our country that not everyone who smokes marihuana has become addicted to heroin and that was the basis for my statement.

Mr. KORNEGAY. Of course, some start higher on the ladder than others.

I see my time is up but just one question, Mr. Chairman, and that is, it appears to me as I gathered from your testimony that you feel that

there ought to be a lessening of the severity of the laws on marihuana. I mean, you say it that way, making it too stringent.

Dr. GODDARD. Yes.

Mr. KORNEGAY. As I gather, one of the reasons you feel that way is that the laws on LSD are not stringent—not that you feel they are not stringent, but they are not as stringent on marihuana.

Dr. GODDARD. For possession.

Mr. KORNEGAY. I agree with my friend, Mr. Rogers, that you ought to be here asking to increase the laws on LSD rather than to lessen the stringency of the laws on marihuana.

Dr. GODDARD. Mr. Kornegay, I may well come back and ask that the penalties for the sale and distribution and manufacture of LSD be increased. I am simply saying that I think the penalties are inconsistent now and I do not feel as an agency head that making young people who are using LSD into felons is desirable for our society.

Mr. KORNEGAY. I agree with you. It appears to me that you have not rectified this and you ought to raise them on LSD rather than lower them on marihuana.

The CHAIRMAN. You clarify one thing, that it would be on possession instead of sale or anything like that.

Dr. GODDARD. Yes.

The CHAIRMAN. Before we get all intertwined, I understood you to say it was on possession.

Dr. GODDARD. That is right.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Chairman, I have no questions.

I only wish to comment that I am sure that we all agree that the circumstances perhaps were unfortunate and perhaps misinterpreted to some degree and I hope the hearing today has fully clarified the situation.

Having served in an executive position in the Government, I know how difficult the role is at times. I have been before a congressional committee and have been cross-examined. I also know that it is not easy to get people to serve the Government in any capacity because qualified people are hard to find.

I do agree that this has been unfortunate and I hope the hearing today has fully clarified the position that you, Dr. Goddard, have taken and I think you agree that some of the circumstances were unfortunate.

Mr. BROWN. Would you yield?

Mr. NELSEN. I would be glad to yield, Mr. Brown.

Mr. BROWN. Dr. Goddard, did you find fault also with the New York Times article on your press conference in Minneapolis?

Dr. GODDARD. I thought it generally covered the points that were made there; yes.

Mr. BROWN. The reason I ask the question, and I ask it as a newspaperman more than a Member of Congress, is that I understand that the source was different; in other words, a different person heard your comments and wrote the article which was in the New York Times than the one who heard your remarks and wrote the United Press dispatch.

Dr. GODDARD. Yes, sir.

Mr. BROWN. I would like to put the whole article in the record at this point so that we can see the way the New York Times reported this case.

(The article referred to follows:)

[From the New York Times, Oct. 18, 1967]

PERIL OF MARIJUANA AND THAT OF ALCOHOL EQUATED BY GODDARD

MINNEAPOLIS, October 18.—Dr. James L. Goddard, Commissioner of the Food and Drug Administration, said yesterday "whether or not marijuana is a more dangerous drug than alcohol is debatable—I don't happen to think it is."

Dr. Goddard said that he favored removing all penalties for the possession of marijuana, leaving penalties only for its sale or distribution.

"We don't know what its long-term effects are," he said. "For example, we don't know whether or not it may alter the chromosomes, as LSD may do. I wouldn't want young women who haven't been married and had children yet, to be affected.

"It distorts your perception of reality so it's dangerous if you are driving a vehicle or operating heavy equipment."

Dr. Goddard was asked if he would object to his son or daughter using marijuana. He has a son, Bruce, 19 years old, and two daughters, Margaret, 21, and Patricia Ann, 18, in college.

"We've discussed this at home," he said, adding:

"I would object in terms of the law today and any possible long-term effects."

He said that he did not favor "legalizing" the drug completely but favored the removal of all penalties for simple possession.

"We need more research on chronic use," he said, "and I think this research will start now."

Dr. Goddard's comment on marijuana came after a lecture on business responsibility to an assembly at the University of Minnesota. He told that group that he would answer questions on any subject except marijuana.

But the first question at a new conference that followed was on marijuana. It was then that he gave his views on the subject.

VIEWS ARE ASSAILED

Dr. Robert W. Baird, a campaigner against marijuana and other narcotics, assailed Dr. Goddard's comments last night and demanded his resignation as head of the Food and Drug Administration.

Dr. Baird said that Dr. Goddard's comments had done "irreparable damage across the college campuses as well as in the high schools."

"This man's knowledge of narcotics is notorioulsy poor," Dr. Baird said. "Before he makes comments off the cuff, he ought to realize that 97 other nations who signed the Narcotics Convention of 1965, of which we were a part, can't all be wrong in realizing that marijuana is detrimental.

"I am surprised at his as a doctor. I am really mortified."

Dr. Baird, who is the director of the Haven narcotics clinic in Harlem and the chairman of the Suffolk County Narcotics Control Commission, said that he was "unequivocally" demanding Dr. Goddard's resignation "for equating marijuana on the same plane as alcohol."

A symposium on narcotics will be conducted by Dr. Baird today at the New York Hilton. About 1,000 college and high school students are expected to attend.

Dr. Baird said in a telephone interview that he would produce a dozen youngsters who had become involved in accidents of one kind or another after smoking a marijuana cigarette.

Mr. BROWN. You are reported in many instances in the same words as used in the UPI dispatch but among the comments, and this is in the first paragraph, you were quoted as saying:

Whether or not marihuana is a more dangerous drug than alcohol is debatable; I don't happen to think that it is.

Dr. GODDARD. Yes.

Mr. BROWN. And you are further quoted later on in the story where it was jumped to an inside page with reference to this question about the family discussion of marihuana, as saying, and I quote:

> We discussed that at home, he said, adding, I would object in terms of the law today and any possible long-term effects.

Then the article goes on to say:

> He said that he did not favor legalizing the drug completely but favored the removal of all penalties for simple possession.

Is that a fair interpretation of your view?

Dr. GODDARD. Well, on alcohol and marihuana I said it was debatable but that I felt it was not because I feel that we have a major problem with 11,000 deaths and about four and a half to five million alcoholics in our society, a very large social problem. We also have one of drug addiction of which marihuana is a part of the problem of drug induced——

Mr. BROWN. That really is not what I asked. What I asked was if you felt that this was a fair interpretation of your view. In other words, are both UPI and the New York Times wrong or was just UPI wrong in this?

Dr. GODDARD. I think that is a fairer interpretation of what I said at the press conference.

Mr. BROWN. Thank you.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No one has asked you, Dr. Goddard (and it is really none of our business) but as a father, I am curious to know—does your daughter do everything you recommend, and refrain from those things you may warn her against?

I have three daughters coming along, the eldest 17. I should like to think that they might avail themselves of the wisdom that I have accumulated over a half century. I feel perhaps such is not the case. I think it is very important if we are going to reach the next generation that we don't tighten ourselves too much with the ideas or shibboleths of the past.

Even men in important national positions like yourself should feel free to think, and to discuss, without fear that you are going to be hauled in before a congressional court and held accountable for every last syllable that you uttered.

Dr. Goddard, this has no connection with what I have said thus far. Is marihuana an aphrodisiac?

Dr. GODDARD. It is generally not an aphrodisiac, but rather when persons who are interested in sexual activities use the drugs their interest will be heightened and the sensations will be heightened, as well. This has been frequently reported in the scientific literature in this country, from India and from other parts of the world.

No; it is not generally viewed by science as being an aphrodisiac.

Mr. VAN DEERLIN. Does marihuana have any medical benefits?

Dr. GODDARD. It is not accepted or used in medical practice in this country today; it has not been, of course, since 1937. This is not to say there is not great interest in some of the fractions of marihuana and the recent synthesis of THC is extremely interesting to pharmacologists because they feel that they can investigate some of the mechanisms

related to sleep and also that some of the fractions may be able to produce a mild form of euphoria which could be useful for those in mild depressive states. So, there is interest but there is no present use for this drug.

Mr. ADAMS. Will the gentleman yield?

Doctor, I shall share with Mr. Van Deerlin the position that it is important that officials be able to discuss subjects with some freedom and not feel that because a position may be unpopular that it can't be fully discussed. You can refer to Mr. Goodrich if you want, in answer to this question. Hasn't there been considerable discussion regarding a change in the type of prosecution for offenses for possession of hard narcotics as well as marihuana as to whether or not possession should be made an offense? For example, isn't it true, at the present time, that the way we make hard narcotics possession an offense is by a legal presumption that the possession is a part of a sale and that possession in and of itself is not criminal offense? Aren't you trying to open the discussion as to what generally should be done in the area of marihuana as well as LSD and all the rest I think it is important for this committee to not just shut you off on this discussion.

Dr. GODDARD. This is indeed what I was trying to do. I think one of my responsibilities is to report to the public, to help in the education of the public, tell them where we are on the national problem. I am simply saying I think this is important, that we engage in the dialog in our society and that Congress review the penalties of all the drugs being used.

Mr. ADAMS. I just want to make this point, that one of the problems we face in handling drugs as a social problem is if you make possession a felony offense, you cut off very often your sources of information and your ability to know (1) the size of the problem and (2) who is dealing in it because the person who is in possession, immediately, has the privilege against self-incrimination and will not, and often does not, talk as to his source of supply.

Dr. GODDARD. Mr. Staggers, can I make a comment on this statement that Mr. Adams brings to mind?

The CHAIRMAN. Yes.

Dr. GODDARD. Our department is very much interested in marihuana. We have no legal jurisdiction for the enforcement of the control activity, but let me point out that it is the National Institute of Mental Health's responsibility to conduct research. NIMH also is expected to provide services under NARA.

The Department of Health, Education, and Welfare has a responsibility for the dissemination of information and educational activities on narcotics and all drugs that are abused.

The Food and Drug Administration has to control the distribution of synthetic marihuana, if you will. We have the problems of juveniles in our society and we are very much concerned that the facts I mentioned earlier with respect to the age and time of the first use of marihuana being about 17½ years, the age and time of first arrest of heroin addicts being about 18 years; both these events occurring before they got locked in a drug subculture and used heroin and became addicts and burdens on our society.

The point I am trying to make is, our Department has a broad concern here, and we are hoping that we can look at the underlying prob-

lems of juveniles and youth in our society that lead them to have used drugs, including marihuana, and it is one that is being widely used today.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Dr. Goddard, I differ about 180 degrees from my friend from California and my friend from Washington. I think you have a responsibility to the public not to discuss your own personal philosophies about these things because the parents of all teenagers are, I think, directly influenced by any judgment that you make.

Frankly, I believe the main trouble that you had in this particular instance is that you qualified your answer in reference to the use of marihuana.

Now, let me ask you this: You cited the fact that we have had 140-percent increase in the use of marihuana among young people in California alone. Further, you stated on page 5 of your prepared testimony that marihuana has been involved in nine out of every 10 investigations by the Bureau of Drug Abuse Control.

Despite those figures, you tell the American public that you would still advocate a reduction in the penalties for the possession of marihuana?

Dr. GODDARD. Yes.

Mr. WATSON. Despite those figures, you still advocate it?

Dr. GODDARD. What I have been trying to ask is that we review this whole matter. We feel that the major emphasis, the major effort should be on the control of sale and distribution and that there is an anomaly here.

Mr. WATSON. I don't want to interrupt you, but I think our problem is that you have qualified so many of your answers. I would like to get some "Yes" or "No" answers as far as possible.

You would still say, despite the tremendous increase in marihuana, despite the fact that nine out of 10 of your cases had involved marihuana, you would still recommend that the penalties for possession be reduced despite those figures?

Dr. GODDARD. Yes.

Mr. WATSON. Secondly, you made much ado about the long-term effects, and not knowing what the long-term effects are I am sure you are aware of the short-term effects.

Dr. GODDARD. Yes.

Mr. WATSON. Of course, we can only speculate what period would be required for you to determine what the long-term effects are. On the basis of the short-term effects and the detrimental effects as you have outlined, you would still recommend again that there is no more danger in marihuana than there is in alcohol?

Dr. GODDARD. This is not a question that I can answer with "Yes" or "No."

Mr. WATSON. Well, you have recommended it, have you not?

Dr. GODDARD. No; I have said it is dangerous to compare drugs of different pharmacological classes. Because I was asked the question, I compared the actions of the two and I have said that alcohol is a great problem for our society. In terms of the health problems, it is a greater problem than marihuana.

Mr. WATSON. Doctor, we know it is a tremendous problem; we are trying to get at the basic facts now of education.

Educationally speaking, you have spoken to the young people and said there is no more danger in marihuana than there is in alcohol. You have spoken to the American people and said that the penalties for the possession of marihuana should either be eliminated or reduced. That is your position in the eyes of the American public and I think you have done a great disservice to people who are concerned about the drug problem, and I say that in all respect.

May I ask you one thing further?

You said we should not make felons of young people who experiment with drugs. Even if that experiment leads to dependency or addiction, you would still make that statement? Can the experiment lead to addiction or dependence?

Dr. GODDARD. It can.

Mr. WATSON. You still make the statement that we should not deter to the point of making criminal penalties apply to young persons?

Dr. GODDARD. That is correct. The person then is like an alcoholic; he needs medical treatment if he becomes dependent on the drugs, not criminal treatment.

Mr. WATSON. But parents are trying to say no, don't use it, don't possess it.

Dr. GODDARD. So am I.

Mr. WATSON. You are saying possess it.

Dr. GODDARD. No.

Mr. WATSON. Without criminal penalties.

Dr. GODDARD. No.

Mr. WATSON. Aren't you? Did you suggest reducing or eliminating the criminal penalty?

Dr. GODDARD. I said let's review these penalties; I think they are inconsistent. I specifically said it is too severe, in my opinion.

Mr. WATSON. Well, aren't severe criminal penalties a deterrent? Are they not, sir?

Dr. GODDARD. I would have to ask a criminologist that question. I believe there is some argument about this.

Mr. WATSON. There is some argument. I am sure there is always argument about everything.

Dr. GODDARD. Certainly.

Mr. WATSON. Explain one thing. You say drug dependent rather than addiction. I am afraid we are playing semantics here now.

Addiction is a stronger term than dependency. What is the difference between dependency and addiction?

Dr. GODDARD. The difference may be whether or not a person has physical withdrawal symptoms upon discontinuing the drug. Opiate derivatives cause addiction.

Mr. WATSON. Do you not have the problem with any person who is dependent upon the drug as well as the addict?

Dr. GODDARD. Not necessarily; no.

Mr. WATSON. You do not have problems with a person who is dependent upon a drug?

Dr. GODDARD. No, sir.

Mr. WATSON. Would not have problems in withdrawal?

Dr. GODDARD. No physical signs of withdrawal upon cessation of usage of drugs. Persons are psychologically dependent upon but not addicted to.

Mr. WATSON. Who have no problems in withdrawal, someone who is dependent upon the drug? That is your position?

Dr. GODDARD. Well, I admit this gets down to trying to medically define the difference between addiction and dependence. In the World Health Organization they prefer now and in other organizations to talk about drug dependence which is a spectrum of problems with drugs going from the person who is psychologically dependent or habituated to the use of a drug or a compound such as tobacco on up through the person who is physically dependent upon a drug such as the opiate derivative heroin. So there is a whole spectrum.

Mr. WATSON. Doctor, oftentimes the mental dependence of a drug is just as serious as a physical dependence, but you are now trying to tell us it is easy for a person to withdraw without any problems.

Dr. GODDARD. I didn't say it was easy, sir; I said there was no physical signs of withdrawal.

Mr. WATSON. May I say in all respects I am afraid a disservice has been done in this regard.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Continuing on that, Dr. Goddard, I preface this by saying that I have both prosecuted cases dealing with the hard narcotics and so-called soft narcotics and dealt with addicts as witnesses. Actually what you are referring to as addiction is an actual physical change in the nerve ends, are you not? the so-called hard narcotics when they cause withdrawal systems, it is produced by a physical deterioration in those nerve ends, isn't that true?

When they speak of withdrawal, when they say the skin crawls, it literally crawls, does it not?

Dr. GODDARD. Yes.

Mr. ADAMS. Whereas, with the others the problem may be extremely difficult but it is a mental problem as it is with stopping smoking, stopping alcohol, stopping all the rest?

Dr. GODDARD. Yes.

Mr. ADAMS. And it may be terribly severe and it may be something that the person cannot overcome?

Dr. GODDARD. That is correct. I stopped smoking cigarettes and it was an extremely difficult thing to do.

Mr. ADAMS. And you will have various degrees of this.

Now, I asked Mr. Van Deerlin to yield because I am concerned about, and I think your message covers, a broader spectrum than marihuana. What you are basically saying is that alcohol as well as marihuana as well as the hallucinogens over a broad spectrum are all extremely dangerous and bad for the general health of the individual, isn't that right?

Dr. GODDARD. Yes.

Mr. ADAMS. And that we should be examining all of these in terms of what we apply as specific penalties for the activity that is involved?

Dr. GODDARD. That is correct.

Mr. ADAMS. All right. Now, I know that there has been and I want to know if there is presently pending a study between the Bureau of Narcotics and FDA on jurisdiction over the band that lies between the

hallucinogens—and we will include marihuana in that—as to both jurisdiction and as to application. Is that presently under study?

Dr. GODDARD. There is no joint study presently underway. We have had meetings with the Treasury Department, Narcotics Bureau, to make clear we are not trying to grab the narcotics control problem away from them. We are not seeking it and we do have a working arrangement that works very well.

Mr. ADAMS. I understand that, what we have, and I think Mr. Dingell referred to it, that you are basically operating in this new type of drug-abuse area that has grown beyond the hard narcotics and are trying to determine what types and kinds of penalties will allow you to best deal with it in terms of stopping the overall spread of it; is that correct?

Dr. GODDARD. That is correct.

Mr. ADAMS. I have not heard you at any time in your testimony and I want to know if you ever have publicly stated that you thought that marihuana or the other hallucinogen drugs were good for anybody.

Dr. GODDARD. No; I never made that statement.

Mr. ADAMS. And that your problem has been one of trying to indicate to the younger public the dangers of this spectrum and suggest to us how you think the tools could better be developed to deal with this as a social problem?

Dr. GODDARD. Yes, sir.

Mr. ADAMS. I have no further questions.

Thank you.

The CHAIRMAN. Dr. Carter.

Mr. CARTER. What was the origin of marihuana as we know it? Where did marihuana come from?

Dr. GODDARD. This is an interesting question you have asked because there is some indication that it may have originated in this hemisphere. However, it has been used in the Middle East and in other parts of the world for over 5,000 years, and in a variety of forms, I might add.

Mr. CARTER. By whom was it commonly used? Do pharmacologists give an adequate statement of what group of people commonly used it?

Dr. GODDARD. It was used in older societies quite commonly by the priests, by the people involved in faith healing. It was also used by a fairly wide spectrum of people in the older societies and until the mid 1930's or early 1940's it was quite commonly used even in India in a variety of forms; they drank it in a tea, as well as smoked it.

Mr. CARTER. Do you recall the meaning of hashish?

Dr. GODDARD. Yes.

Mr. CARTER. What is that?

Dr. GODDARD. The word had its origin from a specific group that were known as assassins; they were given the drug prior to going out on missions, I am told.

Mr. CARTER. Yes, sir. They first took their hashish and then they went out to do assassinations. That is a very hurried history of the drug, rather dangerous drug.

It is my unfortunate experience to have a young man who went to medical school with me commit suicide after smoking a muggle cigarette, as it was called at that time.

Now, is alcohol addictive?

Dr. GODDARD. It can cause physical dependence and if you mean by that to equate it with addiction; yes.

Mr. CARTER. It does certainly have withdrawal symptoms, as you mentioned.

Dr. GODDARD. Yes; it does.

Mr. CARTER. I believe you stated that you opposed increasing penalties or penalizing those who possess this particular drug; is that true?

Dr. GODDARD. I have said I think that penalties for possession of this particular drug are too severe in contrast with LSD and I have compared them with the penalties in the field of the other hallucinogens and the other drugs that are abused where there is no penalty for personal possession but executive seizure can occur.

Mr. CARTER. You do differentiate between possession and possession for sale?

Dr. GODDARD. Oh, indeed.

Mr. CARTER. I wish you would make that plain. Certainly I regret that this unfortunate circumstance has arisen and most of us realize that our words can be distorted many, many times.

Thank you, Mr. Chairman.

Mr. WATSON. Doctor, will you yield?

Mr. CARTER. Yes.

Mr. WATSON. Of course, the matter of possession, I would be in favor of your position on LSD, but we are dealing with entirely two different things. We are unaware, certainly I am unaware, of any doctor prescribing marihuana. Are you aware of that?

Dr. GODDARD. No.

Mr. WATSON. They have prescribed LSD, peyote, mescaline, psylocibin?

Dr. GODDARD. No, sir.

Mr. WATSON. I yield to my doctor friend.

Dr. GODDARD. LSD is only an investigative new drug.

Mr. CARTER. As you know, lysergic acid has been used for different types of headaches.

Dr. GODDARD. Yes, but that is not LSD.

Mr. CARTER. Yes; it is.

Dr. GODDARD. Precursor.

Mr. CARTER. It has been used by the Mayo Clinic.

Dr. GODDARD. Yes, sir; it is a precursor but it is not LSD. It does not have any of the properties of LSD, Dr. Carter. It is not a hallucinogen.

Mr. WATSON. The amphetamines are a legal drug?

Dr. GODDARD. Yes.

Mr. WATSON. So there is a problem of possession of a legal drug as contrasted with the problem of possession of marihuana. The thing that disturbs me is that you suggest that he would use superlatives for the possession of the drug which is never prescribed for any medicinal purposes and can only be illegally possessed.

Dr. GODDARD. What I am trying to ask is have the possession penalties, not possession for sale, you made an important point there—have the possession penalties really contributed to our ability for society to handle the marihuana problem? Aren't we concerned about the whole spectrum of drug abuse? Isn't this our concern in the society, getting at that?

Mr. WATSON. If you make it a criminal penalty to possess it, I am sure that would be a deterrent.

Mr. CARTER. Mr. Chairman, there is just one thing. I know the users of narcotics are troubled, worried, and disturbed by the future. The youth of our country are at the present time troubled, worried, and disturbed, and it is not unusual that they seek release from their troubles in some cases. I regret that this is true. I think this is the wrong path but they are confronted with problems as the youth of no country have ever been confronted before.

Thank you.

The CHAIRMAN. Mr. Kyros.

Mr. KYROS. Dr. Goddard, I think that this hearing this morning has been very helpful, particularly in the colloquy you had with Dr. Carter and consequently Mr. Adams in showing how easy it is to get confused.

For example, you were talking about possession all morning long and it was helpful, I think, that you distinguished between some hoodlum or criminal having possession of marihuana for purposes of sale or some innocent youngster who had just got something in his pocket, might have got a whole cigarette for purposes of idle curiosity.

You are worried about the inconsistency of penalties presently applicable and I think everyone is. I think one of the problems that came out, Doctor, is that you are looking at this as a scientist; but one thing I think that came out clear is that you absolutely are against the use of marihuana by anyone in the United States.

Dr. GODDARD. Yes.

Mr. KYROS. And the use of any of these drugs?

Dr. GODDARD. Yes; I have never advocated its legalization.

Mr. KYROS. I think in that respect, sir, the hearing has been very helpful this morning, and I appreciate it very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Doctor, I regret that I didn't hear the formal part of your statement inasmuch as I was engaged in another meeting, but I wanted to be here very badly because I must be very candid with you and don't want to equivocate in any way.

I was terribly concerned about the remarks that were attributed to you by the press. It has been my responsibility in the past as a U.S. attorney to handle the law enforcement part of this situation. I have been led to believe that we were not really winning the battle in keeping our youth from being subjected to the addictive type of drugs.

I don't have any current statistics on this but at the time that I was in that job, it was a never-ending fight.

Now, from your experience in dealing with the individual that is addicted to the heavy drug, have you found that an undue proportion of them became addicted after they had started out smoking or using Cannabis sativa?

Dr. GODDARD. Yes, but that is not necessarily a causal relationship as you well appreciate.

Mr. BROTZMAN. I realize not a causal physiological relationship.

I don't say that it was a physical correlation but more terrible to me and more callous to me was the fact that those individuals who use marihuana had been picked out by the pushers that sold the heavy drugs; they were prospect No. 1 to try to get them to use something more.

Dr. GODDARD. Mr. Brotzman, this is an interesting point. Most addicts, I am told, are introduced to the drug by the people they associate with. Now, the people who handle heroin as pushers, I am told, never handle marihuana or almost never. So, you see the people who handle the hallucinogens, the amphetamines, the barbituartes, on the other hand nine out of 10 arrests we make we find them in possession of marihuana, too.

This whole question is very complex, as you well know. We have a drug subculture that exists. People get drawn into that subculture and the most frequent thing they start with is marihuana; you are quite correct on that. Now, if they stay in that drug subculture, they always tend to get arrested and they always tend then to go on and become involved with heron. But that does not mean that everyone who has used marihuana goes on to heroin, nor does it mean that, and it is a fact indeed that of those who use heroin 90 percent of them have had marihuana to start with.

Mr. BROTZMAN. Now, I don't say that every one of them do but I think that the record will show that a majority or maybe a large majority started out just this way.

I want to make this particular point. The prosecution usually is aimed at the person that is selling. However, in order to convict that person, many times you can't get the evidence of a clearly defined sale, so the reason for the "possession" in the law, according to my experience, is to get the pusher, and there you do have some means of checking what I think is a very dangerous crime against our whole society.

I have not heard the Narcotics Bureau state that they think that they should lessen the penalties on sale or possession of marihuana, or any other type of drug, have you?

Mr. GODDARD. No; to my knowledge, they have not. I cannot speak for them.

Mr. BROTZMAN. I must express this thought as I see the chairman about to bang the gavel. I think to take a step backward in this area right now would be bad for our country. I hope no younger person misunderstood the remarks attributed to you, as putting the stamp of approval on this because it is my sincere belief, and I would say this to my daughter, too, and I have, that this is at least an invitation to a life of degredation, hardship, and unhappiness.

I have seen young females turn to prostitution; I have seen young males turn to armed robbery because they had taken the first step. This is what I want to prohibit.

The CHAIRMAN. Mr. Brown.

Mr. BROWN. Dr. Goddard, when I asked you for the medical evidence on which you based your conclusions that the penalties for possession should be reduced, you sent me a bibliography of 137 different scientific studies, most of which have been done since 1960, and then went on to say that we need more research to come to some conclusion.

Now, can you tell me how much more research we ought to do?

Dr. GODDARD. To answer what question?

Mr. BROWN. To determine whether or not we should change the penalties.

Dr. GODDARD. I don't think we need the research to change the penalties. I think the penalties can be reviewed apart from the research. The research may contribute, but the penalties have been changed.

For example, prior to the Prettyman Commission report, as I recall the penalties for what I will call possession of marihuana, it is really the failure to have the transfer tax paid, you see, and have that paper in your possession. Those penalties were at that time, as I recall, mandatory sentencing for 5 years.

Now, the Prettyman report, as a result of that there was a reduction in the penalty, 2 to 10 for first offense and the judge in his discretion could place the individual on probation for marihuana possession. Now, that was a reduction in the penalty, itself, and those kinds of reductions can be achieved without further research.

Mr. BROWN. Dr. Goddard, I understand you want all penalties removed for possession.

Dr. GODDARD. Sir, may I say except the possession for sale.

Mr. BROWN. Possession for sale. The other possession is for use or just to have as a collection. Now, you want possession for use or ownerhip made legal?

Dr. GODDARD. What I tried to say——

Mr. BROWN. You want all penalties removed for possession for use or ownership?

Dr. GODDARD. I have not said that. I have said the penalties are too severe and that we should reevaluate them and reexamine them.

Mr. BROWN. I go back to the New York Times article where you were quoted. It says, "Dr. Goddard said he favored removing all penalties for the possession of marihuana, leaving penalties only for its sale or distribution."

I think this is the point, Dr. Goddard. If they remove the penalty itself for mere possession (not for sale, now, or distribution but the possession for use or ownership, collection, or whatever you want to call it) aren't we saying in effect that it is all right to have the demand, it is not illegal?

Dr. GODDARD. No.

Let me make this point, Mr. Brown. We have this problem with LSD and, believe me, it is a serious problem.

Mr. BROWN. I am not talking about LSD, we are talking about marihuana.

Dr. GODDARD. I understand, but there is no penalty for possession.

Now, let me make the point that young people were increasing their usage of it. Our enforcement efforts were directed at sale and distribution. Now, only when the young people began to perceive that there was a possible danger to their health in terms of the effect on chromosomal patterns and unborn children did we begin to notice any diminution in LSD usage.

So, you see, we are able to work in our area of drug abuse without having the penalty for personal possession, with just having executive seizure. I think the individual can be better influenced by educational efforts by getting at whatever it is that motivates him to use these things. What we have always tried to say is don't make the person a criminal, a felon.

Mr. BROWN. Dr. Goddard, I don't know whether you have seen the ad in the New York Times yesterday for "Pot, a Handbook for Marihuana," but it says this—and I hate to take my time reading this New York Times advertisement here, but I want to make the point that I don't agree with you and I do agree with some of my colleagues who are concerned about the fact that your remarks have been taken as license by many, many people. You shake your head and say no, they have not, but I think the ad would indicate they have if I may read it.

It says:

It is now an open secret that marihuana is considered harmless by some of the Federal Government's own health and mental health officials.

And in another paragraph it says:

"Drug chief equates peril of marihuana and that of alcohol." This headline in the New York Times reports that Dr. James L. Goddard, Commissioner of the Food and Drug Administration, favored removing all penalties for the possession of marihuana, leaving penalties only for its sale and distribution. This trend toward legalization of marihuana explains the growing demand for "Pot, a Handbook for Marihuana" now in its third printing. More we cannot tell you.

They are selling a handbook on the drug on the strength of your comments. I think they may be selling the drug itself on the strength of your comments.

Dr. GODDARD. I never said it was harmless. I have said it is dangerous.

Mr. BROWN. Mr. Chairman, may I ask a question of the Chair?

Will we hear any more competent testimony than that of Dr. Goddard on the medical and social aspects of marihuana and its use and will we hear from any enforcement officials or any parents whose children have "gone to pot"?

The CHAIRMAN. That was not the purpose of this meeting at the present time, which was to get clarification of the reported statement which aroused nationwide interest here.

Now, Dr. Goddard will be before this committee many times and we can pursue other matters then.

I would like to make this statement in closing, that I have gathered from the hearing today that you are against the use of marihuana and all other drugs.

You have not said whether you use alcohol or not, but there are a lot of people who don't advocate its use—I don't either—for children, tobacco or alcohol or anything else.

I think the whole controversy might be over the fact of possession here; I don't think that question comes within the province of your agency at all. I believe it is something that should never have been brought up. I think it is very unfortunate that it was.

It simply does not come within your province at all to say whether possession of marihuana should or should not be an offense. There has been a big hullabaloo here aroused that, perhaps if there had been a simple explanation given, might have cleared the air.

I think perhaps it has been very unfortunate that you have made the statements that you did when the question doesn't come before your agency about enforcement on possession.

Am I correct on this, that enforcement of penalties for marihuana possession does not come before your agency?

Dr. GODDARD. We do not have the responsibility for control of marihuana.

The CHAIRMAN. That is what I mean.

I am very happy to see that it is clear that you are against the use of any of these drugs at any time, not only for your family but for any other person or child. I think that is our responsibility here as Members of the Congress, to find out about that and try to verify it. I think this has been helpful. I want to thank you for coming.

Mr. BROWN. May I ask unanimous consent to put in the record the material to which I made reference, including the full text of the ad in the New York Times, and also an exchange of letters I have had with Dr. Goddard, because I do think that they help to clarify the record on this drug.

While I hesitate to include the 137 scientific references which he gave me, I would put those in at your discretion, Mr. Chairman.

(The material referred to follows:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 19, 1967.

DR. JAMES L. GODDARD,
Commissioner, Food and Drug Administration,
Washington, D.C.

DEAR DR. GODDARD: As elsewhere in the nation, some doctors and pharmacists in my District have been displeased from time to time by past decisions by you or your office.

Because of the nature of your statement on marijuana as reported in the press earlier this week, I am sure I shall be receiving from highly respected people in these professions and in law enforcement in my District letters questioning the competence of the experimental work on which your conclusions were based. For this reason, would you be kind enough to send me a summary of this study?

Because of the nature of your remarks, I am also sending the enclosed letter to the Chairman of the Interstate and Foreign Commerce Committee urging that you be called for a hearing to explore the studies FDA has made on drug use, abuse and dangers so that public information media or individuals will not interpret your remarks about marijuana improperly or as applicable to all narcotics or hallucinogens.

Sincerely yours,

CLARENCE J. BROWN, Jr.,
Member of Congress.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
FOOD AND DRUG ADMINISTRATION,
Washington, D.C., October 20, 1967.

HON. CLARENCE J. BROWN, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. BROWN: This is in reply to your letter of October 19, regarding remarks attributed to me concerning marihuana.

I am enclosing a copy of the transcript of the remarks made at the October 17 Minneapolis press conference and two statements I have issued on the subject. A review of the enclosed material will show that I have not advocated free use of marihuana; that I have not dismissed its possible dangers to health; and that I have not failed to recognized the fact that possession of marihuana is illegal.

You will also note that I did not advocate the use of marihuana as has been reported. The report that I stated that I would not object any more to my daughter smoking marihuana than to her drinking a cocktail is not true.

It is my feeling that the present penalties imposed for use and possession of marihuana are disproportionate to the hazards presented by the drug. This is a view held by many responsible persons in our society.

The Food and Drug Administration has not made any studies of the effects of marihuana. My statements as to the relative dangers of marihuana reflect not only my views as a physician but the views of colleagues whose works have been published in the scientific literature. It is my understanding that further studies

of the effects of marihuana are now in progress at the National Institute of Mental Health.

Your interest in this matter is appreciated and I hope these remarks can be used to set the record straight.

Sincerely yours,

JAMES L. GODDARD, M.D.,
Commissioner of Food and Drugs.

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 24, 1967.

DR. JAMES L. GODDARD,
Commissioner, U.S. Food and Drug Administration,
Washington, D.C.

DEAR DR. GODDARD: This is to acknowledge and thank you for your letter of October 20th with accompanying information regarding your recent remarks on marijuana.

As you may remember, my letter of October 19th included a specific request that you forward to me a summary of experimental work on which your conclusions were based. Since your letter made no reference to my request, am I to assume from your reply that your expression was not based on a comprehensive study, but, rather, on the views of colleagues whose works have been published in scientific literature and on your insight as a physician and father?

Your credentials as a physician and parent may be admirable. But I am concerned that they and the published studies of colleagues may not be adequate scientific evidence upon which to base so weighty a judgment for one who occupies such a responsible position in government.

In your letter to me you state your feeling that "present penalties imposed for use and possession of marijuana are disproportionate to the hazards presented by the drug". And yet you also say, ". . . we don't know what the long term effects of smoking marijuana or using marijuana in other forms might be . . .". If our knowledge is incomplete, is it sufficient upon which to base your feeling—whether that feeling is personal or official?

Any relaxation of penalties as established by present law must be founded on detailed and scienctific information and official conclusions. Your call for more long term research to detect any possible serious side effects from chronic usage of marijuana would seem to suggest that such studies and conclusions do not exist. Why, then, has the Food and Drug Administration not seen that such studies of the effects of the drug are made?

Does not the Bureau of Drug Abuse Control have the responsibility to initiate and conduct programs desgined to emphasize the social, physiological, and psychological aspects of drug abuse control? Are you satisfied with no more than an "understanding" that the National Institute of Mental Health is conducting further studies?

I would like to know whether or not you consider the Food and Drug Administration to have a prime interest in such research. I would like to know what research has been completed and what conclusions, if any, have been reached. What studies are now under way? If none have been completed or none are under way, then I would appreciate your opinion on what agency or agencies should be actively engaged in research on marijuana, what you have done to see that such studies are undertaken, and what, if any, reasons or circumstances have prevented such research from being conducted.

I appreciate your prompt response to my earlier letter, and I trust you will agree that the sooner the above questions are satisfactorily answered, the better for everyone concerned. In this I speak not only as a member of the House Interstate and Foreign Commerce Committee, but as one who is sorely worried by the possibility that any misinterpretation of the facts in this matter may lead to disaster for even one individual who might have read into your earlier remarks a license to indulge in the traffic or use of marijuana.

Sincerely yours,

CLARENCE J. BROWN, JR.,
Member of Congress.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
FOOD AND DRUG ADMINISTRATION,
Washington, D.C., October 31, 1967.

Hon. CLARENCE J. BROWN, Jr.,
House of Representatives, Washington, D.C.

DEAR MR. BROWN: This is in response to your letter of October 24 requesting more information about my views on marijuana. Your assumption is correct that my own opinions regarding marijuana are based upon "the published studies of colleagues." Enclosed is a bibliography citing many of the articles, books, and pamphlets which I have reviewed. The list includes articles about marijuana from the lay press as well as the scientific literature. I have relied upon the latter in forming my opinions.

Any physician or scientist must rely upon the knowledge available in scientific literature in reaching a decision. It is a rare case, indeed, when any single research study can provide a comprehensive answer to a problem of any complexity.

I have not expressed any conclusive judgments about marijuana; rather, I have emphasized that we know too little about the possible effects of long-term use of the drug. I do not think that this view is inconsistent with my opinion that the present penalties for possession and use of marijuana are disproportionate to the hazards presented by the drug.

I have never suggested, nor do I believe, that we should eliminate criminal penalties for the distribution of marijuana. The drug was dismissed by the medical profession long ago as having any unique therapeutic value; I can conceive of no benefit in giving it legal status in society.

You also asked about the status of the research long-term effects of marijuana. The FDA is dealing with the problem of drug abuse, but we have concentrated on those drugs over which the Congress has given us jurisdiction; that is, stimulants, depressants, and hallucinogens other than marijuana.

In terms of the FDA's statutory authority, however, this Agency does not have a primary responsibility in marijuana research, although our studies in the social, physiological, and psychological aspects of drug abuse are often relevant to marijuana.

Marijuana research is going forward in the National Institute of Mental Health (I am enclosing a listing of these studies). I am not in a position to report on the conclusions of this research, but I am sure NIMH would be as helpful as possible in this regard should you wish to pursue this matter.

If I can be of any further assistance, please do not hesitate to call.

Sincerely yours,

JAMES L. GODDARD, M.D.,
Commissioner of Food and Drugs.

N.Y. Times
11-7-67

POT

A HANDBOOK OF MARIHUANA

by JOHN ROSEVEAR

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The CHAIRMAN. Thank you again, Dr. Goddard.
The committee stands adjourned until the call of the Chair.
(Whereupon, at 12:45 p.m., the committee adjourned.)

MARIHUANA-HASHISH EPIDEMIC AND ITS IMPACT ON UNITED STATES SECURITY

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

MAY 9, 16, 17, 20, 21, AND JUNE 13, 1974

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RESOLUTION

Resolved, by the Internal Security Subcommittee of thhe Committee on the Judiciary, That the testimony of Dr. Hardin B. Jones taken in executive session on May 21, 1974, and the testimony of Dr. Forest S. Tennant and David O. Cooke taken in executive session on June 13, 1974, be released from the injunction of secrecy and printed in the same volume with the public hearings of May 9, 16, 17, and 20, 1974, all on "The Marihuana-Hashish Epidemic and Its Impact on U.S. Security."

JAMES O. EASTLAND,
Chairman.

Approved: September 4, 1974.

INTRODUCTION

BY

SENATOR JAMES O. EASTLAND

Chairman, Senate Subcommittee on Internal Security

I consider the hearings which are the subject of this record to be among the most significant ever held by the Senate Internal Security Subcommittee, or, for that matter, by any committee of Congress. The widespread interest already generated by the hearings suggest that they may play a role in reversing a trend towards national disaster.

Without public awareness, our country has become caught up in a marihuana-hashish [1] epidemic that probably eclipses, in gravity, the national epidemics that have had so debilitating an effect on the population of a number of Middle Eastern countries. Speaking about this matter, Mr. Andrew C. Tartaglino, Deputy Administrator of the DEA, made this statement at the opening hearing on May 9, over which I presided:

> The traffic in, and abuse of, marihuana products has taken a more serious turn in the last two or three years than either the courts, the news media, or the public is aware. The shift is clearly toward the abuse of stronger, more dangerous forms of the drug which renders much of what has been said in the 1960's about the harmlessness of its use obsolete.

The epidemic began at Berkeley University at the time of the famous 1965 "Berkeley Uprising." Not only was pot-smoking embraced as a symbolic rejection of the establishment, but, together with the "dirty speech movement," the right to pot became an integral part of the catalogue of demands of the uprising. From Berkeley, the marihuana epidemic spread rapidly throughout the American campus community. Then it spread down into the high schools and junior high schools—and within the last year or two it has begun to invade the grade schools. It has also spread into the ranks of professional society and of the bluecollar workers, so that all sectors of our society are today affected by the epidemic. Today it is estimated that there are some millions of regular marihuana users in the country, and the evidence indicates that they are graduating rapidly to the stronger hemp drugs, hashish and liquid hashish.

The spread of the epidemic has been facilitated by the fact that most of our media and most of the academicians who have been articulate on the subject have been disposed to look upon marihuana as a rela-

[1] Marihuana and hashish are both derived from the cannabis, or hemp, plant. Marihuana consists of the leaves and female flowers; hashish comes from the resin of the plant. Hashish is roughly 8 to 10 times as strong as marihuana.

tively innocuous drug. (How the myth of harmlessness came to be so widely accepted is also part of the subject of this testimony.) There were some who even held that marihuana was a good thing, while most held that there really wasn't too much to worry about.

Taking advantage of the confusion and widespread ignorance, a variety of movements seeking the legalization of marihuana came into existence. They gathered strength rapidly. In fact, by early this year concerned scientists and government officials were almost ready to throw in the sponge because the battle looked so hopeless.

This situation, by itself was reason enough for concern. The Internal Security Subcommittee decided to look into it because of internal security considerations affecting the armed forces of the United States, and because of the evidence that clearly subversive groups played a significant role in the spread of the epidemic—both as propagandists and as traffickers. It was established, for example, in previous hearings of the subcommittee, that Timothy Leary's Brotherhood of Eternal Love had for a number of years been the largest producers of LSD and the largest organized smugglers of hashish in the country.

The hearings focused heavily on scientific evidence of physical or psychological harmfulness, because this was basic to any assessment of the impact of cannabis on security.

Important new scientific evidence had emerged within the last few years. But this evidence remained fragmented, sometimes inconclusive, and almost invariably completely unknown to the public. The situation was further confused by contradictory evidence and by the emergence of several best-selling books suggesting a more tolerant approach to marihuana.

One of the principal reasons why hard scientific evidence has been so slow in emerging is that it is only within recent years—in fact, since 1970—that accepted procedures for the quantitative analysis of marihuana have been established and that carefully standardized strains of marihuana have become available for research purposes. In the absence of standardized research materials and standardized analytical procedures, research scientists in the past, working with the utmost conscientiousness, often came up with sharply conflicting findings. Within the last few years, thanks to a remarkable program that has been developed at the University of Mississippi,[2] marihuana research is today moving forward without these handicaps—and, as this volume of testimony dramatically demonstrates, this research is producing some highly dramatic results.

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[2] The program is known as the Marihuana Project of the Research Institute of Pharmaceutical Sciences, which is part of the School of Pharmacy at the University of Mississippi. The program was established in 1968, as part of a national program of research, by Dr. Coy Waller, formerly Vice President in Charge of Research at Meade-Johnson and consultant to the National Institute of Mental Health, who today serves as the Director of the Research Institute. The first Director of the Marihuana Project, from 1968 to 1971, was Dr. Norman Doorenbos. Since 1971, it has been under the direction of Dr. Carlton Turner, who also serves as Associate Director of the Research Institute.

In addition to standardizing the marihuana used for research purposes, Dr. Turner's scientists have developed analytical methods which enable them to give accurate readings on ten different cannabinoids contained in marihuana samples—a few years ago, they were able to analyze for only three cannabinoid components. The marihuana the Institute cultivates is now used routinely for all research projects sponsored through the National Institute of Mental Health, while the United Nations Narcotics Commission has recommended that the analytical procedures developed at the University of Mississippi be used worldwide.

If today we know far more about marihuana than we did two or three years ago, it is thanks in large measure to the pioneering work done at this internationally unique research center.

In the recent hearings, it was obvious that one of the first things that had to be done was to bring together the bits and pieces of recent research in an organized manner, because only in this way would the total significance of these findings become comprehensible. The subcommittee, therefore, issued invitations to some 20 prominent medical researchers and psychiatrists. Most of them were American, but six other countries were also represented in the panel of scientists. The pro-marihuana cabal could assail a single scientist whose research persuaded him that marihuana was a very dangerous drug: this they could get away with. But abuse and character assassination would no longer be persuasive at the point where it was demonstrated that a large number of top-ranking scientists who had done research on cannabis were convinced that it is a drug with deadly consequences.

With the assistance of several scientists who are internationally known for their research on cannabis and other drugs, the subcommittee staff put together a master list of scientific witnesses who, between them, could cover the newly available scientific evidence in a broad spectrum manner.

Among the eminent scientists who appeared before the Subcommittee were:

Dr. HARVEY POWELSON: Research Psychiatrist, Berkeley University; Chief of the Psychiatric Division of the Student Health Service at Berkeley from 1964 to 1972.

Dr. HENRY BRILL: Regional Director of the New York State Department of Mental Hygiene; member and/or chairman of drug dependence committees of American Medical Association, National Research Council, the World Health Organization, and the FDA; senior psychiatric member of the Shafer Commission.

Dr. DONALD LOURIA: Chairman, Department of Preventive Medicine and Community Health, New Jersey Medical School; Chairman and President, New York State Council on Drug Addiction, 1965 to 1972.

Professor W. D. M. PATON: Head of the department of pharmacology at Oxford University; Chairman of committee overseeing the British Government's drug research program; author of a standard textbook on pharmacology and widely recognized as one of world's leading pharmacologists.

Professor MORTON STENCHEVER: Chairman of the Department of Obstetrics and Gynecology at the University of Utah Medical School.

Dr. GABRIEL NAHAS: Research Professor at the Columbia University College of Physicians and Surgeons; simultaneously Visiting Professor at the University of Paris.

Dr. AKIRA MORISHIMA: Research geneticist; Associate Professor, Department of Pediatrics, Columbia University College of Physicians and Surgeons; Chief of the Division of pediatric endocrine service at Babies Hospital, New York.

Dr. CECILE LEUCHTENBERGER of Switzerland: Head of the Department of Cell Chemistry at the Institute for Experimental Cancer Research in Lausanne; founder and first Director of Cell Chemistry Department at Western Reserve University.

Dr. JOHN A. S. HALL: Senior Physician and Chairman, Department of Medicine, Kingston Hospital, Jamaica, since 1965: Associate Lecturer in Medicine, University of West Indies and visiting Assistant Professor of Neurology at Columbia University.

Dr. ROBERT KOLODNY: Director of the endocrine research section at the Reproductive Biology Research Foundation in St. Louis.

Professor M. I. SOUEIF: Chairman of the Department of Psychology and Philosophy at Cairo University; member of World Health Organization Panel on Drug Dependence; author of classic study on consequences of hashish addiction in Egypt.

Professor NILS BEJEROT: Karolinska Institute, Sweden; author of "Addiction and Society" and several other standard texts on the epidemiology of drug abuse. Widely recognized as one of foremost international experts in this field.

Dr. ANDREW MALCOLM: Toronto psychiatrist; member, Drug Advisory Committee, Ontario College of Pharmacy; formerly Senior Psychiatrist, Rockland State Hospital, New York (1955–1958).

Dr. HAROLD KOLANSKY: Currently Associate Professor of Psychiatry at the University of Pennsylvania School of Medicine; twice President of the Regional Council (Pennsylvania, New Jersey, Delaware) of Child Psychiatry; Director of Child Psychiatry, Albert Einstein Medical Center, Philadelphia, 1955–1969; Chairman, Department of Psychiatry, Albert Einstein Medical Center, 1968–1969.

Dr. WILLIAM T. MOORE: Currently Associate Professor in Clinical Psychiatry, University of Pennsylvania School of Medicine; Associate Professor of Child Psychiatry at Hahnemann Medical College for 13 years up until 1972; for the past five years Director of Training, Division of Child Analysis, Institute of Philadelphia Association for Psychoanalysis.

Professor ROBERT HEATH: Chairman of the Department of Psychiatry and Neurology at Tulane University Medical School.

Dr. PHILLIP ZEIDENBERG: Professor of Psychiatry at Columbia University; Chairman of the Drug Dependence Committee of the New York State Psychiatric Institute.

Dr. JULIUS AXELROD. Nobel Prize winning research scientist at the National Institute of Mental Health.

Professor HARDIN B. JONES: Professor of Physiology and Professor of Medical Physics at the University of California, Berkeley; Assistant Director of the Donner Laboratory of Medical Physics at Berkeley.

Dr. CONRAD SCHWARZ: Associate Professor, Department of Psychiatry, University of British Columbia and Consultant Psychiatrist to the Student Health Service; Chairman of the Drug Habituation Committee of the British Columbia Medical Association.

Dr. FOREST S. TENNANT, Jr.: Medical Director for several drug abuse programs in the Los Angeles area; officer in charge of the drug abuse program of the U.S. Army Europe, 1971–1972.

THE SCIENTIFIC FINDINGS

That our hearings succeeded in achieving their objective has been demonstrated by the dramatic increase of interest, on the part of the scientific community as well as the press, in the new scientific evidence on marihuana. For example, a recent issue of *Science* magazine (August 23, 1974) points out "the notion that marihuana is harmless has enjoyed a high degree of acceptability with only a minimum of scientific support. . . . Since 1969, when the federal government began making marihuana of controlled quality available to research scientists, evidence suggesting potential hazards has accumulated at a

rapid pace. Those five years of research have provided strong evidence that, if corroborated, would suggest that marihuana in its various forms may be far more hazardous than was originally suspected." I think it worthy of note that ten of the scientists whose findings were quoted by the article in *Science* were among the witnesses who testified in the subcommittee's recent hearings.

The collective testimony of the eminent scientists who came to Washington to testify may be summarized as follows:

(1) *THC, the principal psycho-active factor in cannabis, tends to accumulate in the brain and gonads and other fatty tissues in the manner of DDT.* This was established beyond challenge by the research of NIMH Nobel Laureate, Dr. Julius Axelrod, and his associates. As a corollary of this, they found that THC persists in the body long after the act of ingestion. In some parts of the body, residual amounts could be found as much as a week after ingestion.

(2) *Marihuana, even when used in moderate amounts, causes massive damage to the entire cellular process:*

(a) It reduces DNA and RNA synthesis within the cell, which in turn sharply reduces the mitotic index, or the rate at which the cells give birth to new cells. (Nahas, Morishima, Zimmerman, Leuchtenberger, Paton)

(b) In the case of the T-lymphocytes (the cells involved in the immune process), marihuana use at the three-times-a-week level results in a 41 percent reduction in cell birth. (Nahas and associates)

(c) It results in far more cells with defective chromosome complements—from 38 to 8 chromosomes instead of the normal complement of 46. (Morishima)

The findings of five of the scientists who testified converged on the central theme of cellular damage. Other research that had been done in this field was also referred to. Professor W. D. M. Paton of Oxford University, one of the world's leading pharmacologists, summarized this recent research in these terms:

> Numerous such effects have now been described, including actions on microsomes, on mitochondria, on neurones, fibroblasts, white blood cells, and on dividing cells, affecting metabolism, energy utilization, synthesis of cellular constituents, and immunological responses.

On the specific question of cellular damage, additional evidence is becoming available almost by the week. Since Dr. Nahas testified, for example, his findings on damage to the immune cells have been confirmed by two nationally prominent medical scientists, Dr. Louis Harris and Dr. Louis Lemberger. Other aspects of cellular damage will be covered in several research papers, prepared under official auspices, which are shortly to be published.

Needless to say, the confirmation that marihuana does such serious damage to the entire cellular process opens up an entire spectrum of frightening possibilities.

(3) *Tied in with its tendency to accumulate in the brain and its capacity for cellular damage, there is a growing body of evidence that marihuana inflicts irreversible damage on the brain, including actual brain atrophy, when used in a chronic manner for several*

years. Psychiatrists who testified said that they knew of many cases of brilliant young people who went on prolonged cannabis binges, and then tried to go straight—only to discover that they could no longer perform at the level of which they had been capable. (Heath, Powelson, Kolansky and Moore, Paton) Professor Paton referred to animal experiments which demonstrated that rats exposed to marihuana had smaller brains than rats which were not exposed, and to research by Dr. Campbell and associates in England which found brain atrophy in a group of young cannabis smokers comparable to the atrophy that is normally found in people aged 70 to 90. Professor Heath reported that, in experiments with rhesus monkeys exposed to marihuana, highly abnormal brain wave patterns persisted after the marihuana was withdrawn, suggesting long-term or permanent damage to the brain.

(4) *There is also a growing body of evidence that marihuana adversely affects the reproductive process in a number of ways, and that it poses a serious danger of genetic damage and even of genetic mutation.* Scientific testimony presented pointed to the following conclusions:

(a) Male hormone (testosterone) level was reduced by 44 percent in young males who had used marihuana at least four days a week for a minimum of six months. (Kolodny)

(b) Sperm count was dramatically reduced in the same group of marihuana smokers, falling almost to zero with heavy smokers, so that they had to be considered sterile. (Kolodny) A similar result was found with mice. (Leuchtenberger)

(c) Very heavy smoking in a number of cases resulted in impotence. Potency was recovered in some of these cases when marihuana was given up. (Kolodny, Hall)

(d) In animal experiments, the spermatids (the precursors of the sperm cells) were found to be abnormal in the sense that they carried reduced amounts of DNA. (Leuchtenberger)

(e) Regular marihuana use, even down to the once a week level, results in roughly three times as many broken chromosomes as are found in non-users. While further research is necessary, this suggests the possibility of genetic abnormalities. (Stenchever)

(f) In a number of animal experiments, marihuana was found to cause a very high rate of fetal deaths and fetal abnormalities, including runting and lack of limbs—the thalidomide effect. (Paton)

(5) *Chronic cannabis smoking can produce sinusitis, pharyngitis, bronchitis, emphysema and other respiratory difficulties in a year or less, as opposed to ten to twenty years of cigarette smoking to produce comparable complications.* (Tennant, Paton, Kolansky and Moore) Professor Paton pointed out that emphysema, which is normally a condition of later life, is now cropping up with increasing frequency in young people, opening up the prospect of "a new crop of respiratory cripples" early in life.

(6) *Cannabis smoke, or cannabis smoke mixed with cigarette smoke, is far more damaging to lung tissues than tobacco smoke alone. The damage done was described as "pre-cancerous."* (Tennant, Leuchtenberger) Although further research is indicated, preliminary observa-

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tions suggest that marihuana may be a far more potent carcinogen than tobacco.

(7) *Chronic cannabis use results in deterioration of mental functioning, pathological forms of thinking resembling paranoia, and "a massive and chronic passivity" and lack of motivation—the so-called "amotivational syndrome."* (Powelson, Bejerot, Zeidenberg, Malcolm, Schwarz, Jones, Kolansky and Moore, Hall, Soueif, Tennant)

Describing the zombie-like appearance of chronic cannabis users, Dr. Tennant said: "Major manifestations were apathy, dullness and lethargy, with mild to severe impairment of judgment, concentration and memory . . . physical appearance was stereotyped in that all patients appeared dull, exhibited poor hygiene, and had slightly slowed speech. . . ."

Several psychiatrists suggested that the total loss of their own will would make a large population of cannabis users a serious political danger because it makes them susceptible to manipulation by extremists. (Powelson, Kolansky and Moore, Malcolm)

THE SOCIAL CONSEQUENCES OF THE MARIHUANA EPIDEMIC

The scientific evidence presented to the subcommittee points to an array of frightening social consequences, or possible consequences.

(1) If the cannabis epidemic continues to spread at the rate of the post-Berkeley period, we may find ourselves saddled with a large population of semi-zombies—of young people acutely afflicted by the amotivational syndrome. There is evidence that many of our young people, including high school and junior high school students, are already afflicted by the "amotivational syndrome." The general lack of motivation of the current generation of high school students is a common complaint of teachers. Some of them point out that the growth of this phenomenon in recent years has roughly paralleled the spread of the cannabis epidemic.

(2) We may also find ourselves saddled with a partial generation of young people—people in their teens and early twenties—suffering from irreversible brain damage. Their ability to function may improve if they abandon cannabis, but they will remain partial cripples, unable to fully recover the abilities of their pre-cannabis years.

(3) The millions of junior high school and grade school children who are today using marihuana may produce another partial generation of teenagers who have never matured, either intellectually or physically, because of hormonal deficiency and a deficiency in cell-production during the critical period of puberty. This fear was expressed in particularly urgent terms by Dr. Paton and Dr. Kolodny. As Dr. Paton put it, we may witness the phenomenon of a generation of young people who have begun to grow old before they have even matured.

(4) There are other frightening possibilities, too. There is the possibility of which Dr. Paton spoke that we may develop a large population of youthful respiratory cripples. And there is the possibility—which can only be confirmed by epidemiological studies—that marihuana smokers are producing far more than their quota of malformed or genetically damaged children.

(5) There is the growing body of evidence that marihuana use leads to indulgence in other drugs.

(6) If the epidemic is not rolled back, our society may be largely taken over by a "marihuana culture"—a culture motivated by a desire to escape from reality and by a consuming lust for self-gratification, and lacking any higher moral guidance. Such a society could not long endure.

These are some of the reasons why we cannot legalize marihuana, and why society cannot remain indifferent to the epidemic.

THE EPIDEMIC POTENTIAL OF CANNABIS

What makes the prospect even more terrifying is the extraordinary epidemic potential of cannabis. It is doubtful that any other drug in common use today has a comparable potential.

I do not underestimate the damage done by the abusive use of alcohol. But the nature of alcohol places certain limitations on its epidemic spread. It is impossible, or at least very difficult, to take a quart of whiskey or a six-pack of beer to one's place of work, or, in the case of a teenager or grade schooler, to take it to school. If one did take it to school or to work, it would be difficult to find the time during the work day or during school hours to get oneself really intoxicated on alcohol. And if a worker or a student did manage to get himself stoned on alcohol, he would be given away by his drunken stagger or by the smell of alcohol on his breath.

But with marihuana, there are no such limitations. It is cheap enough so that even a fourth or fifth grader can afford to buy a joint or two with his weekly allowance. It is compact enough so that a few joints can easily be concealed on the body. All it requires is a 10 or 15 minute break to get thoroughly stoned. And, apart from a tired and passive look which may suggest that the user is short on sleep, there are no telltale symptoms; the user, though stoned, does not walk with a stagger, nor is there any odor on his breath. A student could sit through an entire day in a cannabis stupor, and learn nothing—and his teacher would be none the wiser.

On top of this, users of marihuana suffer from a much more compelling urge to proselytize and involve others than do users of alcohol. One can attend a cocktail party and drink ginger ale and not be harrassed and pushed by one's cocktail friends to get in on the act and drink. At pot parties, the pressures are infinitely greater.

Another factor contributing to the spread of the cannabis epidemic is the tremendous potency of the material available and the ease with which it can be concealed and transported. A pound of "liquid hashish"—a concentrated distillate derived from either marihuana or hashish—would theoretically be enough to intoxicate a city of 15,000 people.

Still another factor is that, with marihuana and hashish, chronic abuse begins at a use level which would be insignificant with alcohol. A person who took a drink of whiskey once a week or even three times a week, would be considered a light drinker; it has yet to be argued that alcohol consumption at this level can do any damage. But a person who smokes marihuana three times a week or more is generally considered a chronic smoker; and there are some scientists who insist that even once a week smoking constitutes chronic use. In support of this contention, they point to the facts that THC persists in the

brain for a week or more after smoking, and that some of the research covered in our recent hearings found dramatic changes even at the once a week level (cf. Stenchever on chromosome damage).

Finally, there is the almost unbelievable rate at which—if it is readily available—a cannabis user can escalate from occasionl social use to chronic and massive abuse. It generally takes years before a chronic drinker escalates to a quart a day. But, according to Dr. Tennant, GI's who arrived in Germany as casual marihuana users, would a month or two later be consuming 50 or 100 grams—and in some cases up to 600 grams—of hashish monthly. Three grams of hashish a day, it should be pointed out, is roughly 12 times the amount required to produce a hashish intoxication.

WHERE THE EPIDEMIC STANDS TODAY

There are conflicting estimates of the number of chronic cannabis users in our country. According to some estimates, there are roughly 20 to 25 million people who have used marihuana in one degree or another, but only one to two million who may be considered regular users. According to the estimate of NORML (National Organization for the Reform of Marihuana Laws), the total number of Americans who have been exposed to marihuana runs close to thirty-five million, while the number of regular users is past the ten million mark.

Figures on seizures of marihuana and hashish submitted to our hearings by the Drug Enforcement Administration strongly suggest the validity of the higher estimate. According to DEA, federal seizures of marihuana over the past five years have increased tenfold, to a total of 780,000 pounds in 1973, while federal seizures of hashish over the same period of time increased twenty-five fold, to a total of almost 54,000 pounds. These figures do not include seizures by state and local law enforcement authorities. Assuming that ten times as much got into the country as was actually seized—a fairly conservative estimate—this would mean that total consumption of marihuana in 1973 was probably close to ten million pounds, while total consumption of hashish probably exceeded 600,000 pounds. (These estimates make some allowance for non-federal seizures—for which no figures are available.)

These are truly staggering quantities when one understands just how potent marihuana and hashish are and how little is required to become intoxicated. No one could possibly get intoxicated on an ounce or two ounces of hard liquor. An ounce of hashish with a 10 percent THC content is sufficient for a hundred intoxications; an ounce of marihuana with a 1.5 percent THC content is enough for roughly twelve intoxications. And when it comes to "marihuana oil," or "liquid hashish," as it is sometimes called, the THC content of which can run as high as 60 to 90 percent, we have a substance with an almost lethal potential for mass intoxication. One drop of liquid hash is enough to send the user into the stratosphere, while a pound of the strongest variety would be enough to intoxicate a population of 15,000.

These figures provide some clue—but only a partial clue—to the damage done by the massive quantities of marihuana and hashish consumed in our country last year.

THE EMERGENCE OF AN ALCOHOL-CANNABIS EPIDEMIC

It must be emphasized that those who are caught up in the cannabis epidemic are not using marihuana or hashish as a substitute for alcohol. With increasing frequency they are being consumed together. The scientists who testified before the subcommittee were agreed that adding marihuana to alcohol, or alcohol to marihuana, does not produce an arithmetic effect but a synergistic, or compounding, effect. The combination of the two intoxicants produces a far more potent and dangerous form of intoxication, whose short and long term consequences we still know very little about. While there are reported to be some 10 million problem drinkers in our country, the overwhelming majority of those who use alcohol are what we call social drinkers, who take it occasionally and with moderation. But at the point where a person takes one drink of whiskey with a joint of pot, we are no longer dealing with a social drinker—we are dealing with someone who is suffering from a highly dangerous form of intoxication.

In its own right, the scale of the current cannabis epidemic would give us plenty to worry about and so is the scale of alcohol abuse. The emergence of an alcohol-cannabis epidemic is even more worrisome.

THE MYTH OF HARMLESSNESS

The spread of the epidemic has been facilitated by the widespread impression that marihuana is a relatively innocuous drug. This impression has been shared by liberals and conservatives, by laymen and judges, and even by people actively involved in the war on drugs. For example, in March of 1973 an advisory committee consisting of some 40 prominent D.C. citizens filed a report urging the complete legalization of marihuana on the ground that:

> No demonstrable medical evidence is available to support the assertion that marihuana use is hazardous or detrimental to the physical or mental health of the user.

The widespread acceptance of the myth of harmlessness has been due to several things. Certainly a role of some importance was played by the militant pro-marihuana propaganda campaign conducted by many New Left organizations, by academicians sympathizing with the New Left, and by the entire underground press, ever since the Berkeley uprising.

Some of this propaganda was positively euphoric on the virtues of marihuana. Dr. Joel Fort of San Francisco, a member of the Sociology Department of the University of California and a former consultant on drug abuse to the World Health Organization, had this to say on the subject: "Cannabis is a valuable pleasure giving drug, probably much safter than alcohol, but condemmed by the power structure of our society." An article in "The Sciences" by L. Greenwald in 1968 went even further. "Marihuana," said Greenwald, "restores to the student his ability to feel in an often hostile environment, and the liberating action of that drug is going to allow him to experience more intimate social contact."

But the myth of harmlessness has been stimulated in even greater degree by a number of highly publicized writings and by reports, some

official, some unofficial, which have taken a rather benign attitude toward marihuana. A major role was also played by the generous attention which the media bestowed on militant drug enthusiasts like Timothy Leary and Jerry Rubin. The damage was further compounded by the virtual blackout imposed by much of our media—at least until recently—on adverse scientific evidence about the effects of marihuana. The result has been that Congress and the American public have been exposed for years to an appallingly one-sided presentation of the marihuana controversy.

Another factor contributing to the myth of harmlessness was the selective manner in which the Shafer Commission Report was handled by the media. This report, as several witnesses pointed out, contained a number of apparently contradictory passages, which made it possible to write a story suggesting caution or to write one suggesting that its emphasis was on tolerance. But it did contain quite a number of fairly strong cautionary passages. It was for the purpose of setting the record straight on the Shafer Commission Report that one of the first witnesses heard by the Subcommittee was Dr. Henry Brill, who had served as senior psychiatric member of the Commission. This is what Dr. Brill had to say on the subject:

> I am concerned about the misinterpretations which have developed with respect to the marihuana report of that Commission. These misinterpretations result from reading the reassuring passages in the report and ignoring the final conclusions and recommendations, and the passages in the report on which they were based. As a result it has been claimed that the Commission's report was intended to give marihuana a clean bill of health, and as a covert, or indirect support for legalization of this drug in the near future, or as a step in that direction. Nothing could be further from the truth.
>
> From my knowledge of the proceedings of the Commission, I can reaffirm that the report and the subsequent statements by the Commission meant exactly what they said, namely that this drug should not be legalized, that control measures for trafficking in the drug were necessary and should be continued, and that use of this drug should be discouraged because of its potential hazards.

It was because of this pervasive imbalance in dealing with the question of marihuana that so many intelligent people have been under the impression that the scientific community regards marihuana as one of the most innocuous of all drugs. Part of the purpose of our recent hearings was to correct this imbalance—to present the "other side" of the story—to establish the essential fact that a large number of highly reputable scientists today regard marihuana as an exceedingly dangerous drug. We make no apology, therefore, for the one-sided nature of our hearings—they were deliberately planned this way.

MARIHUANA AND THE LAW

In previous statements, I have made it clear that I am opposed to the decriminalization of marihuana use and that I believe some penalties have to be retained. However, a man would have to be devoid

of compassion if he did not sympathize with the plight of a youthful offender who was caught smoking marihuana because he succumbed to peer pressures or to the bad advice he received from older students and from a small but vociferous group of academicians. (The academic propagandists for marihuana are protected by the First Amendment, but in my judgment they are far more culpable than the young people who have heeded their advice!) In most cases involving youthful offenders, especially first offenders, the purpose of justice is not served by sentencing them to prison and giving them criminal records. Our federal laws and many of our state laws have in recent years been modified in a manner that reflects a more compassionate approach, and the law is further tempered by the compassionate understanding which the great majority of judges have for the problems of young people.

Although there is still some unevenness in the state laws governing the use of marihuana and although there is always room for review and improvement, in practice very few young people are being sent to prison for simple possession of marihuana, especially when they are first offenders. On this point, there is such broad agreement that I feel it is no longer at issue.

But there is a militant lobby in our country which has been agitating and lobbying for the complete legalization of marihuana. As a stepping stone in that direction, they are working for the complete *decriminalization* of simple possession. This means that personal use of marihuana would no longer be covered by criminal law, that it would not even be considered a misdemeanor under the law. These matters still *are* at issue—and I truthfully believe that they cannot intelligently be decided without an assessment of the known and potential dangers posed by marihuana use.

Not all drugs are equal—no one, for example, has yet proposed that we deal with coffee and heroin, or tobacco and heroin, in exactly the same manner. And the evidence I have presented in the preceding pages should be sufficient to establish that the dangers of cannabis are much closer to the dangers of heroin, in scope and quality, than they are to the admitted but far more limited dangers of coffee or tobacco—or, for that matter, alcohol.

The scientists who testified before the subcommittee were unanimous on the point that it made no sense to send young people to prison for simple possession of a few joints of marihuana. On the other hand, they were strongly opposed to legalization, and not one of them spoke in favor of decriminalization. They expressed the belief that it would seriously undercut any national effort to discourage marihuana use if all penalties were removed for simple possession, as the Shafer Commission had recommended—and which remains the continuing objective of the pro-marihuana lobby. Dr. Brill, who, as a member of the Shafer Commission, had voted in favor of eliminating all penalties, indicated to the subcommittee that he was now rethinking this recommendation.

Commenting on the proposal that the decision on whether or not to use drugs, and especially marihuana, should be left to the individual, Dr. Andrew Malcolm, a distinguished Canadian psychiatrist, called for a combination of education and the law. Said Dr. Malcolm:

> It is necessary to have some external restraint when, indeed, some of the people are incapable of exercising internal re-

straint. But those people who propose [that the matter be left to] "wise personal choice" usually are unalterably opposed to any kind of external restraint. It is very foolish, because what we need, in fact, is both of these elements.

Dr. Phillip Zeidenberg, Chairman of the Drug Dependence Committee of the New York State Psychiatric Institute, while he held that the marihuana epidemic could not be eradicated by legal measures alone, nevertheless strongly opposed legalization and said that there have to be some penalties for use. These were Dr. Zeidenberg's words:

> I believe that legalization will turn on a "green light" which will enormously increase the number of chronic heavy users, just as it has in every other country where de facto legalization exists. Once this happens, marihuana will become an integral part of our social structure and take on complicated social and symbolic significance, as tobacco and alcohol already have. Once this happens, it will be virtually impossible to remove it.
>
> Ultrapunitive measures taken against individuals occasionally using the drug can only lead to the backlash of pressure for legalization. Offenders should be given light, but significant sentences, enough to be a sufficient deterrent to repeated use. Chronic heavy users should be offered psychiatric treatment, not jail.... The job of the law is to find the appropriate deterrent so that the marihuana problem is kept as a minor drug-abuse problem without crucifying errant adolescents.

Warning about the drive to legalize cannabis in the United States, Professor Nils Bejerot of Sweden said:

> The demand for legalizing cannabis has been strongest in those countries which have had the shortest experience and the weakest forms of the drug. Correspondingly, I consider that as a psychiatrist . ne's attitude to cannabis becomes more negative the more one sees of its effects.
>
> If cannabis were legalized in the United States, this would probably be an irreversible process not only for this country and this generation, but perhaps for the whole of Western civilization. As far as I can see, another result would be a breakdown of the international control system regarding narcotics and dangerous drugs.

The pro-marihuana lobby brandishes the statistic that there were some 400,000 arrests nationwide for marihuana offenses last year. They do so in a manner which creates the impression that some 400,000 young people went to jail because they were caught with a few joints in their possession. The actual situation is quite different.

The number of arrests involving marihuana was very high, among other reasons because virtually every petty criminal arrested for shoplifting or burglary or mugging or other similar offenses had marihuana in his possession at the time of his arrest. But according to many reports, our law enforcement authorities—federal, state, and local—in most cases do not even bother to make arrests when they find young people smoking marihuana or in possession of less than an ounce.

The cases that do come to court for the most part receive suspended sentences or fines, while most states now have a provision in their laws,

similar to the provision in the federal law, calling for the expunging of the record for first offenders after one year, if parole is satisfactorily completed.

However, the law is uneven from state to state. Some states, while they have the theoretical power to send first offenders to prison, in practice rarely use this power. But here and there, it must be conceded, simple possession is still punished by prison terms.

I believe it would be helpful in dealing with this situation if the federal law and state laws could be brought into basic harmony on the question of marihuana. I do not suggest that the states slavishly adapt their laws to the current federal model; in many respects, in fact, I think federal law has something to learn from existing state statutes.

There is one state statute that does not recommend itself as a model: that is the marihuana law recently adopted by the State of Oregon. Under this law, simple possession of small quantities of marihuana is not treated as a violation of the criminal law but as a civil violation—something akin to a parking ticket. While the maximum fine provided is one hundred dollars, in practice the fines imposed rarely exceed thirty dollars. And those thus fined, if they can afford it, can go on collecting marihuana violations just as freely as some chronic illegal parkers collect parking tickets.

This approach, I submit, is altogether too permissive and just doesn't take into account the serious social damage done by marihuana or the compelling need to protect society against the spread of the habit. It doesn't take into consideration the basic fact that all drug addiction—including marihuana addiction—is like a contagious disease. Society can't remain indifferent to the spread of this disease.

The law must be framed in a manner that makes it unmistakably clear to young people that smoking marihuana *is* a crime against society. This is something that decriminalization would completely destroy. I believe that the kind of escalated penalties provided by state law in New Mexico, to give one example, make much more sense. Under this law, the possession of one ounce or less for a first offender is punishable by a fine of $50 to $100 and/or 15 days in jail. The jail sentences are rarely imposed, but this much discretion is given to the judge. The penalty for repeat offenders is a fine of $100 to $1,000 and/or one year in jail. Suspended sentences are frequently given and there is provision for expunging the record after one year.

New legislation governing the use of drugs requires the most careful consideration by Congress because—as Dr. Bejerot pointed out concessions to tolerance, once made, are very difficult, if not impossible, to eradicate. However, as far as marihuana use is concerned, I believe that the philosophy guiding such legislation might well be based on the opinions expressed by Dr. Zeidenberg and the other scientists who testified before the subcommittee. I think there is much merit to Dr. Zeidenberg's proposal, for example, that instead of jail sentences, we might consider sending chronic abusers for a period of time to an institution where they will be given intensive education on drugs and psychiatric treatment if they need it.

When it comes to the pushers and the traffickers, I think our federal and state laws have got to be reinforced. I find it an outrage that, over and over again, criminals caught in the possession of hundreds and even thousands of pounds of marihuana get off with very light sentences or even with six months suspended sentence. For the pushers

and traffickers, there have got to be heavy minimum sentences, and they have got to be mandatory.

The suggestion has been made that it might help to break up the traffic in drugs if offenders at every level—users, pushers, and small and intermediate traffickers—could be assured of suspended sentences if they cooperated by identifying the source, or sources, from which they had obtained their drugs. This is a proposal which merits serious consideration.

There are some who argue that tough law enforcement is not the answer to the drug problem, that we won't be able to deal effectively with the drug problem until we eliminate our slums, eliminate poverty, eliminate unemployment, and create a social utopia. I am all in favor of doing everything we reasonably can do to improve the quality of our society. But the fact is that every year since the early sixties has witnessed a massive increase in the amount we spend for new social programs—and the same period of time has witnessed a staggering increase in our drug problem.

No drug problem has ever been controlled by decriminalization or by social reforms. In every country where the drug problems have been effectively controlled, it has been thanks to strong laws against both the use and sale of the drug. That is how it is controlled in Communist countries; and that is how it has been controlled in some non-Communist countries, both authoritarian and democratic. There is no serious drug problem, for the indigenous population or for the GI's, in either Taiwan or South Korea. Nor is there one in Japan. The contrast between Germany and Italy is most instructive in this connection. In Germany, where drug laws are lax and law enforcement ineffective because it is fragmented among the *Laender*, or states, there has been a runaway epidemic of hashish consumption among the American GI's. (According to Defense Department witnesses, this situation has now improved significantly—although it still remains serious.) In Italy, where the drug laws are much stronger, drug use among GI's has been kept to a minimal level. The GI's in both countries are basically the same. The difference is the law.

THE NEED FOR A NATIONAL EDUCATION PROGRAM

The scale of the marihuana-hashish epidemic makes it essential that we embark—with as little delay as possible—on a national educational program directed in the first place to our young people.

Can the facts that are assembled in this volume be communicated to young people who are disposed to be skeptical about information they receive from "the establishment?" I am convinced that this evidence *can* be communicated to young people and *can* influence them—because it is far more graphic, far more persuasive and far more authoritative than any information that has heretofore been available for marihuana education programs.

Dr. Forrest Tennant, who was in charge of the U.S. Army drug program in Europe from 1968 to 1970, told the subcommittee that at one point he had actually given up on anti-cannabis educational programs because the material at that time was not too persuasive, and while the programs discouraged some GI's, they stimulated the curiosity of others, so that there was no real net progress. He expressed

the conviction, however, that armed with the recent evidence that had been presented to the subcommittee by so many eminent scientists, it would be possible to mount an educational program that GI's would find credible. The fact is that no young person wants to run the risk of irreversible brain damage, and no young male wants his male hormone level reduced by more than 40 percent or his sperm count reduced to close to zero. Nor does any young person, boy or girl, want to run the risk of genetically damaged children. These are dangers that young people will respond to.

There is an even larger matter that should be considered by every young person who finds himself yielding to the temptation of drugs or to peer pressures. Whatever each of us does, affects, for better or for worse, all those around us. And the fact is that every young person who takes marihuana or hashish or other drugs, drags down not only himself, but drags down his friends, drags down his family, drags down his community, drags down his nation. I would commend to every young person who is prepared to stop and think the wise words of Dr. Gabriel Nahas, one of the eminent scientists who appeared as a witness before the Subcommittee:

> One may wonder... how long a political system can endure when drug taking becomes one of the prerequisites of happiness. If the American dream has lost its attraction, it will not be retrieved through the use of stupefying drugs. Their use only delays the young in their quest to understand the world they now live in and their desire to foster a better world for tomorrow.

A final word of an editorial nature. So many scientific papers and supporting documents were left with the subcommittee by the witnesses that the inclusion of all of them would have made this a document of almost prohibitive length. In the interests of economy, only a portion of these documents have been included in the Appendix. I particularly regret that it was not possible to include a bibliography of some 800 cannabis research papers which Professor W. D. M. Paton of Oxford prepared for the subcommittee, because this volume was already in page proof at the time of its arrival. I ask the indulgence of the scientists who gave supplementary material to the subcommittee which has not been included in the printed Appendix. Hopefully, this material can be included in a followup study or documentation.

On behalf of the subcommittee, I want to thank the many distinguished witnesses who gave so generously of their time to make these landmark hearings possible.

[Extract from the hearings on the Narcotic Sentencing and Seizure Act of 1976]

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

July 28, 1976

Senator BAYH. In the President's white paper and his address to Congress, the thrust on major traffickers that you are describing you want help with was mentioned. If you assess this policy, what is going to be the practice or policy pursued relative to marihuana?

Mr. BENSINGER. The policy that our agency, and I, personally, have directed with respect to marihuana is that it is not our principal or secondary or tertiary drug abuse priority or responsibility.

The marihuana arrests that DEA have made have decreased substantially for all classes, from 1 through 4. And the class 4 marihuana arrests have decreased 1,400 cases.

The principal efforts of our agency are directed against heroin, barbiturates, and amphetamines and cocaine. We will certainly investigate and refer for prosecution cases involving marihuana as a controlled substance. But it is not a priority, Senator, and has not been emphasized in our investigative and enforcement regional deployment of resources.

Senator BAYH. What about the possibility of decriminalizing it, the possession?

Mr. BENSINGER. I don't think we have enough knowledge, medically, on marihuana, Senator. This question has been asked repeatedly of me and of our agency. It has a THC content that varies, whether it is domestic marihuana of 1 percent, to the Mexican variety of 3 to 5 percent, to some grown in Jamaica of 5 to 8 percent. It has produced studies and individual instances which have caused a slowness in reaction, a danger to one's health, some responses that have not been in; (1) public safety of the individual, and (2) of the community.

I think personally until we get real definitive information from HEW, from the research organizations, certainly within our own agency, that this will not be a harmful commodtiy to use personally, or if used, it will not have an implication on the community, that we should say to the public we really don't have enough information, but let's legalize it anyway.

Senator BAYH. That isn't what I said. I said decriminalize it. It sounds to me like the physiological reactions you describe could be applied to alcohol as well as marihuana.

I don't want to put the Good Housekeeping seal of approval on it. We don't know as much as we should. But when you look at state and local cases, we are talking about three-quarters of the cases being marihuana related, which means we have had a lot of priority in the wrong way.

It seems to me as long as we have the statutory limitation, that there will be some people who will look for a headline and take time and effort to do a job in an area where we really don't have the kind of priority you are directing your attention to in this other legislation.

Mr. BENSINGER. Senator, the percentage of marihuana arrests is the smallest of any of the type of drugs that we have responsibility for enforcing the laws on.

The State and local jurisdictions have made, I would say in a year about 350,000. The Drug Enforcement Administration in terms of cannabis, through 1975, we decreased the cases significantly since then, and they are less than 2,000 interms of total arrests and are diminishing.

So the Federal effort is 90 percent on the other types of controlled substances.

Senator BAYH. You don't think perhaps we should address our attention to the Federal Criminal statutes, which would be a model for those jurisdictions that now do this?

Mr. BENSINGER. I think the Federal Government has a responsibility for standard-setting in all fields of criminal justice, sentencing, bail, the method by which hearings are held.

So I agree with that in principle. I think we do not have sufficient evidence and information from the medical authorities to say that these couldn't be damage to individuals and to the community if marihuana was continued to be made available. That is my personal view, Senator. I think it's a period of time

in this country where certain states have taken the option of removing felony sanctions, and that is certainly within their prerogative. I think we would like to have more information at the Federal level on that commodity.

Senator BAYH. Do you think we will ever get enough information that that won't be a political hot potato?

Mr. BENSINGER. I think we certainly will. I think the kind of attention you have addressed on this issue will be helpful.

Senator BAYH. I don't think we will ever get enough information. Maybe I am selling it short that it won't be a political hot potato. I think we better stand up and face realities, that we are talking about getting limited resources to get these kingpins that you and I want to put in jail forever.

You get a guy involved in peddling large amounts of heroin, and you have an experience factor, I have no compunction about putting that fellow away for life and just keeping him there.

If we are going to do that, it seems to me we are going to have to summon up all of the proscutorial and law enforcement resources we can, and direct them at those people, and as long as we have the statutory temptation in other areas, I fear we are not going to do as good a job there as we could.

Mr. Rauh, in the District of Columbia jurisdiction, could a summons approach on marihuana be used without a statutory change?

Mr. RAUH. We have a summons citation situation in the District of Columbia and that is used from time to time. The police can issue citations and have people come in without placing them under arrest.

Senator BAYH. Could it be used for marihuana?

Mr. RAUH. I believe it is used. I am not 100 percent sure of that.

Senator BAYH. If you don't know, that is understandable. But find out if it is used, and if so, how often it is used.

I have very mixed feelings. On one side I find my conservative "puritan" Hoosier upbringing that says let's not put the Good Housekeeping seal of approval on that, it can't be good for you. You can argue its value and its damage vis a vis alcohol and flip a coin in my judgment.

When you look at the problem of alcoholism, it is hard to sustain the present differentiation. When you get down to priorities and recognize the real world as it is, then I think to continue to follow the criminal approach is really not serving the public well.

Mr. RAUH. Maybe I didn't understand what you meant by citation. I interpret a citation or summons in lieu of arrest, which is advise the individual to appear in court, rather than arrest him and take him to court, but still he is going to court under either procedure.

Is that what you were referring to?

Senato BAYH. I guess what I was talking about is the kind of practice that is being followed in Oregon.

Mr. RAUH. That is quite different. We do not have that here.

Senator BAYH. I think you would probably have to have a statutory change for that.

Mr. RAUH. What they have done, as I understand it, is make it a civil fine.

Senator BAYH. It is a fine. It is not legal, but it is not a criminal offense. You just get fined for it.

Mr. RAUH. I apologize. You used the word summons and we do have a summons or citation procedure whereby a person stopped for a crime would be given a citation to appear in court. It is still a criminal matter in the District of Columbia.

Senator BAYH. I understand the conflict in terms there.

August 5, 1976

Senator BAYH. Let me direct your attention to another matter before this committee, and I know you have given consideration to it as well. Our subcommittee held hearings on legislation to decriminalize marihuana. I bring this to your attention because here again, if we are talking about limited resources, your assessment has been—mine is, and Mr. Alexander said he would concur—that the thrust ought to be directed at expanding limited resources where you

had the biggest problem and the maximum return on investment, and the biggest problem as far as society is concerned. And I think here when you look at marihuana, I am uneasy with the way criminal statutes deal with it from that perspective.

What is the latest information on the aftermath of decriminalization in Oregon and California and Alaska been?

Dr. DUPONT. The available evidence that we have suggests that there has been no increase in marihuana consumption specifically associated with decriminalization. And I base that on two studies: one in the State of Oregon and the other in San Mateo, Calif.

I would add extreme caution to the use of those studies, however, because these studies are relatively primitive. We now have under way a much more ambitious study of high school seniors in all of the country, and we are separating out those that live in States that have decriminalized marihuana possession and those that live in States where there has been no decriminalization. Since we have measures taken before the state decriminalized and after, we are going to be able to see whether there is any difference in use, either up or down, in those states that have decriminalized from those who have not. We don't have that study in yet, but the studies we do have suggest that there is no change either up or down associated with the substitution of a civil fine for a misdemeanor as punishment.

Senator BAYH. When could we see that study?

Dr. DUPONT. I think in 6 months perhaps, Senator. I will be happy to make it available just as soon as I have it.

On the marihuana issue let me say that I found the statements that you submitted for the Congressional Record last week very eloquent, and I concur with them. However, let me emphasize that I find the word "decriminalization" has itself become terribly politicized. I find it helpful not to use the word because it has become a kind of symbol that people rally around on one side or the other in such a way that they somehow miss what we are really talking about.

I would commend to the committee for consideration a specific solution, if you will, to the conflict that I think can command very broad support. And that is the approach that has been adopted in Sacramento, Calif., and in the state of Minnesota. It involves the use of a civil fine for a first offense for marihuana possession. But if there is another offense for marihuana possession within a 2-year period, then this becomes a misdemeanor criminal offense. It is my judgment from talking to people from many parts of the marihuana spectrum that this compromise commands very broad support. They found in Sacramento for example that 98 percent of the people did not come back again with a second offense within the 2 years of the first offense. This compromise satisfies most of the marihuana decriminalization supporters since it eliminates the use of criminal law for 98 percent of the people apprended for marihuana possession.

On the other hand, the marihuana decriminalization detractors have been concerned about the more serious drug abusers in that group arrested for marihuana possession and then want to continue to have the possibility of a criminal penalty for them. Of course the Sacramento and the Minnesota approachs do contain that.

So perhaps some compromise like that could form a basis of Federal legislative action. Such a compromise is not easily categorized as "decriminalization."

Senator BAYH. I don't recommend the use of marihuana, and I'm frankly not prepared to go the route of legalization, which is another political catch word.

Dr. DUPONT. The "legalization" issue is very much caught up with "decriminalization" in the public mind. There is no question that those things are equated by most people in the nation today.

This morning, while I was driving to the hearing, one of the local radio stations asked a question of the public on marihuana decriminalization. The answers they got from the public, although the question was clearly phrased, showed that the public just simply did not make the distinction between legalization and decriminalization. The answers were coming back either "for" or "against" marihuana, which is hardly the question we are trying to deal with.

As you quite rightly point out, we have a national policy of discouragement of marihuana use. It is the right policy. We can support it. That is not at issue. At issue is how does the law enforcement apparatus respond to the individual found to possess small quantities of marihuana for his personal use. That is the only issue that we're talking about, not whether we like marihuana or not. But you cannot get that idea across to the public. At least, I've tried for 2 years and I have failed miserably to get that idea across.

Senator BAYH. What percentage of all drug arrests are for marihuana?

Mr. DUPONT. If I were to cite a statistic, I would have to cite your report, I was just reading last night. I don't know the number, but it was something over half, as I recall reading last night.

Senator BAYH. The FBI was the source of the figure in our report of 70 percent.

Dr. DUPONT. That sounds right. That is an unfortunate drain on needed resources for more serious crimes, including serious trafficking in dangerous drugs.

Senator BAYH. It seems to be remarkable evidence of the lack of focus and priority in this particular area that 70 percent of the arrests are for marihuana. And IRS is despecializing its attention to the heroin problem.

Dr. DUPONT. Mr. Chairman, I would point out that Mr. Bensinger as Administrator of DEA has shown a particular understanding of this issue, and strong commitment to dealing with it. I am delighted he is focusing the Drug Enforcement Administration very clearly and precisely the way you are suggesting.

[From the New York Times magazine, Dec. 13, 1970]

WHAT WE HAVE FORGOTTEN ABOUT POT—A PHARMACOLOGIST'S HISTORY

(By Solomon H. Snyder*)

There was a time in the United States when extracts of cannabis were as commonly used for medicinal purposes as aspirin today. Not only was cannabis a medication that could be purchased without a prescription in any drug store (which is almost unbelievable when you consider that mere possession of marijuana is now a serious offense), but it was also prescribed by physicians as an important treatment for a large number of medical conditions, from migraines and excessive menstrual bleeding to ulcers, epilepsy and even tooth decay.

If cannabis was so widely and apparently successfully used, why is this hardly known today? Were there legitimate medical reasons for the fall-off in its employment by physicians or did legal restrictions largely account for the dramatic changes in its availability? The answer is probably a combination of the two.

Cannabis, the generic name for marijuana, hashish and related products, has been in use legally or illegally for about 3,000 years. The story of its varying role in different cultures—both as a medicine and as a mind-altering substance—and its spread from country to country is a fascinating one, and provides, moreover, important perspective on the controversy over whether marijuana is a threat to the well-being of the young, on why the drug seems to divide the generations and on what, if anything, ought to be done about it.

Before beginning this chronicle of cannabis as a medicine (I) and as an intoxicant (II), we should clarify the sometimes confusing jargon applied to the plant and its derivatives. The source of this medicine, or "dope," depending on one's point of view, is the plant Cannabis sativa. There are made and female forms, although, as may seem fitting for the mascot plant of the unisex generation, it has recently been cultivated in a hermaphroditic variety. The psychoactive ingredients have, for abount a thousand years, been assumed to derive almost exclusively from the female plant. But in the past year, chemical analyses of the pure psychotropic (intoxicating) substances of cannabis showed that they are present in equal concentration in male and female plants, an embarrassing revelation for hemp growers who have for years been discarding the male plants.

The cannabis palnt is also known as hemp, and its stalks have been a major source of fiber for cloth, beginning with the Chinese at least as long as 3,000 years ago. It grows freely as a weed in almost any climate, although the strains of plants grown in warmer climates produce more of the resin that contains the psychoactive material. The exact identity of this chemical was established in 1964 by Dr. Raphael Mechoulam in Israel, who showed it to be delta-1-tetrahydrocannabinol, and was even able to synthesize it from simple, basic chemicals.

Commonly referred to as "T.H.C.," the chemical in small doses produces a mild pot high, and in larger doses gives rise to hallucinogenic and psychotomimetic (resembling psychosis) effects similar to an L.S.D. trip. Despite this similarity, however, T.H.C. has no chemical resemblance to any psychedelic drugs such as L.S.D., mescaline or psilocybin.

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Unlike oplate narcotics, moreover, cannabis is not physically addictive. Thus its consumers do not develop the compulsive craving that turns oplate addicts into thieves, prostitutes and pawns of organized crime. Also, no deaths have ever been reported from marijuana, in contrast to heroin, which sometimes kills because a fatal dose is not much greater than the amount needed to get high.

Why are some preparations of cannabis terrifyingly powerful and others pleasantly mild? This seems to depend on which part of the plant is used. The flowering leaves of ripe male or female hemp plants secrete a sticky resin which is the source of all, or almost all, of the T.H.C. in cannabis. Marijuana, a Mexican term first applied to cheap tobacco and only in the late 19th century to cannabis, refers to preparations of leaves and stems of uncultivated plants chopped up into something resembling crude tobacco leaf—with some seeds included. The T.H.C. content of marijuana is fairly low, and its effects are thus comparatively moderate. In the United States it is usually smoked or baked into cookies. In India the same preparation is called *bhang* and is legal. It is blended conventionally into a pleasant-tasting liquid concoction drunk at social gatherings and is also prescribed by physicians for a variety of medical purposes. The tops of cultivated plants are harvested in India and processed into a somewhat more potent material called *ganja*, which is usually smoked.

The most potent cannabis preparation is obtained by carefully scraping the resin containing T.H.C. from the leaves of the cultivated plants. This gooey material is then pressed into hard blocks and, eventually, smoked. In India it is known as *charas*, and in other countries as hashish, which is about 10 times as powerful as marijuana and is the only cannabis derivative that can produce hallucinogenic and psychotomimetic effects with any regularity. Even experienced potheads are cautious in their use of hashish.

1. THE "MIRACLE DRUG"

The first reference to the medical use of cannabis is in a pharmacy book written about 2738 B.C. by the Chinese Emperor, Shen Nung, who recommended it for "female weakness, gout, rheumatism, malaria, beriberi, constipation and absent-mindedness." In China at that time, the hemp plant was also a major source of fiber for the production of rope, but there is little indication that its psychotropic properties were of much interest. Its pain-killing powers were well-known to the Chinese physician Hao-Gho, who mixed the resin with wine. This preparation, which was called *ma-yo*, was employed as an anesthetic in surgery.

Some years later cannabis extracts were introduced in India, where they have, for more than a thousand years, had medical applications. An Indian girl who worked for me as a laboratory technician tells a story of her experience with the drug: She came from a wealthy family in Bombay, which, when she was a little girl, sent her to the finest physician in the city because, apparently, the parents felt she was too skinny to attract a man. The doctor prescribed a glass of *bhang* before each meal, which greatly enhanced her appetite. By the time she was 17 she was voluptuous and eminently nubile, though not obese. Surprisingly, she cannot recall any psychotropic effects, nor was she told by her physician to expect any.

The ancients in other countries seemed to know cannabis as a balm or, perhaps, an antiseptic (though, of course, they knew nothing about bacteria then). In the papyrus of the pharaoh Ramses, for example, washing sore eyes with extracts of the plant was recommended. In a folk remedy of the Middle Ages in Europe, the dried leaves were kneaded and applied with butter to burns. Extracts were also used as drops for earaches and for preventing inflammation of ulcers, and there are even claims that women stooping due to a disease of the uterus were able to stand straight again after inhaling smoke from the plant.

Western physicians, however, remained largely ignorant of cannabis until 1839, when a 30-year-old British doctor serving in India, W. B. O'Shaughnessy, wrote a 49-page article in "The Transactions of the Medical Society of Bengal" describing his experiences with the drug. (The fact that we are able to pinpoint historically the introduction of cannabis into European medicine is itself notable, since most drugs seem to be gradually adopted by doctors after originating in folk medicine.) O'Shaughnessy reviewed the literature on the use of cannabis in Indian medicine during the preceding 900 years. A cautious man, he was not satisfied with the drug's well-documented record of safety and proceeded, in a series of animal experiments, to test its effects as well as the limits of the dosage. He found cannabis remarkably safe in animals, a conclusion which has been reaffirmed many times. In fact, despite many escalations of the dose he could not kill any mice, rats or rabbits. Then, Dr. O'Shaughnessy administered the

drug to patients suffering from seizures, rheumatism, tetanus and rabies. His findings were that it relieved pain, was an anticonvulsant and acted as a muscle relaxant.

O'Shaughnessy's work excited the interest of clinicians throughout Europe, and soon there were descriptions of its applications to a range of ailments, including menstrual cramps, asthma, childbirth psychosis, quinsy, cough, insomnia, migraine headaches, chorea and withdrawal from opiates. Some idea of this broad usage can be gleaned from 19th-century medical journals. One investigator wrote: "It acts as a soporific or hypnotic, causing sleep; as an anodyne in lulling irritation; as an antispasmodic in checking cough and cramp; as a nervine stimulant in removing languor and anxiety. Also, it raises the pulse and enlivens the sprits, without any drawback or deduction of direct or incidental convenience; and it conciliates tranquil repose without causing nausea, constipation or other signs of effect or indigestion, without headache or stupor."

Such testimonials from the medical profession were by no means rare. Hobart Hare's "Standard Textbook of Practical Therapeutics" stated: "Cannabis is very valuable for the relief of pain, particularly that depending on nerve disturbances; it produces sleep; it gives great relief in paralysis and tends to quiet tremors; it is used in spasm of the bladder due to cystitis or nervousness; it is used in cough mixtures and does not constipate or depress the system as does morphine."

Since extracts of hemp from colonial India were the most abundant source of cannabis in the 19th century, British physicians were responsible for the first explorations of the medicinal uses of the drug. Of course, in those days, before the current era of super-specialization in medicine, individual doctors researched and treated patients with a wide variety of illnesses. Thus, men like Dr. J. Russell Reynolds, a physician to Queen Victoria, devoted 30 years to careful evaluation of cannabis under many conditions. He was particularly impressed with its ability to relieve pain; his observation that the drug was an emotional or psychosomatic elements aggravated an illness is of special interest. Perhaps cannabis's tendency to release neurotic inhibitions and bring on euphoria, as well as its mild sedative action, was responsible for its unique ability to ease "nervous" pain. In much the same way today a mild barbiturate together with aspirin and caffeine—called Fiorinal—constitutes a most effective anti-tension-headache cocktail. Thus, Dr. Reynolds especially recommended cannabis for migraine headaches. "Very many victims of the malady," he reported, "have for years kept their sufferings in abeyance by taking hemp at the moment of threatening or onset of the attack."

There are also indications that cannabis can help prevent future attacks, or at least reduce the frequency and severity of the headaches. In modern medicine two different types of drugs are normally prescribed for these purposes; ergot derivatives such as ergotamine alleviate acute pain, and methysergide (Sansert)—which is, interestingly, a close relative of L.S.D. and is hallucinogenic itself in bigger doses—is used to ward off future headaches. Dr. Hare, a professor of medicine at the University of Pennsylvania, concluded that cannabis can fulfill both roles.

One medical complaint that can benefit from a drug that relieves "nervous" pain is menstrual cramps, since relatively severe attacks are often emotionally caused. Indeed, cannabis was prescribed extensively for the cramps in the 19th century, and physicians soon discovered that it also relieved excessive menstrual bleeding, or "menorrhagia." Its successes here seem to have beeen spectacular. For instance, Dr. Robert Batho reported: "It [cannabis] is par excellence the remedy for that condition . . . it is so certain in its power of controlling menorrhagia that it is a valuable aid to diagnosis in cases where it is uncertain whether an early abortion may or may not have occurred." How cannabis slows down menstrual hemorrhage is something of a mystery.

Like narcotic pain-relievers such as codeine, cannabis was also used frequently to control coughs. While today this may not seem to be so important, in the 19th century tuberculosis was the leading killer of the young—and debilitated people of all ages with incessant, intractable coughing; any medicine that could ease the cough was thus a blessing.

Cannabis was introduced in the West at a time when opiates were prescribed freely and addiction was far more widespread than it is today. As a consequence, it was natural that the drug should be tested as an aid in withdrawing patients from opium, as well as from other addictive substances, such as alcohol and chloral hydrate. For example, Dr. Edward Birch reported in The Lancet: "I am satisfied of its immense value [in withdrawing patients from chloral hydrate or

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opium] . . . the chief point that struck me was the immediate action of the drug in appeasing the appetite for the chloral or opium and restoring the ability to appreciate food."

The potential value of cannabis in helping to withdraw patients from alcohol or opium was rediscovered about 50 years later during an investigation of the marijuana problem in New York City sponsored by Mayor La Guardia in the early nineteen-forties. Doctors Samuel Allentuck and K. Bowman found that by substituting cannabis for heroin, "the withdrawal symptoms were ameliorated or eliminated sooner, the patient was in a better frame of mind, his spirits were elevated, his physical condition was more rapidly rehabilitated, and he expressed the wish to resume his occupation sooner." Other investigators, however, have said recently their experience is that cannabis is not effective as a means of easing off heroin.

One is struck by the suggestion of some researchers that, besides easing the craving for an addictive agent, cannabis had a tonic-like action, raising the spirits of the addict and increasing his energy and appetite. In O'Shaughnessy's first report on its uses in medicine, he cited its value in controlling convulsions. (Convulsions resulting from many different causes in those days were lumped together, while today we can distinguish epilepsy from other causes.) There followed reports of cannabis treatment of chorea, resulting from rheumatic fever, in which wild flailing of the arms—called St. Vitus's dance—resembled convulsions.

However, its possible value in epilepsy remained buried for many years until routine screening of many substances in animals for anticonvulsant activity revealed an analogue of T.H.C., that is, a chemical similar to it in composition, which seemed to have anticonvulsant properties. At this time, the late 1940's the attacks of most epileptics could be controlled by diphenylhydantoin (Dilantin) or phenobarbital, which are still the major antiepileptic drugs in medical practice today. To see whether T.H.C. could help epileptics, two researchers—Doctors J. Davis and H. Ramsey—chose five institutionalized children whose attacks could not be controlled with phenobarbital, Dilantin or even a combination of the two. Given T.H.C., two of the five became almost completely seizure-free, and the other three did at least as well as they had on their previous drug regimen. The unavailability of cannabis or T.H.C. derivatives in the succeeding decade prevented any further medical investigation of this problem.

The major use in the 19th century was as a pain-killer or mild sedative-tranquilizer and, since in those days opium had been the most widely used drug for these purposes, most medical reports on cannabis concentrated on comparing the virtues and drawbacks of these two drugs. One of the most obvious assets of cannabis, apparently quite clear to 19th-century physicians—but not yet clear to the United States Narcotics Bureau—was that prolonged use never led to addiction, nor did it result in tolerance to the drug's effects. This was commented on again and again in 19th-century medical journals, was confirmed in the investigations of Mayor La Guardia's committee and has been confirmed repeatedly in studies over the last three years using both crude cannabis as well as pure T.H.C.

In addition, cannabis products are far less toxic than the opiates. The latter drugs, including morphine and heroin, kill by depressing the respiratory centers in the brain, and do so in amounts only a few times greater than therapeutic doses. By contrast, cannabis may well be one of the least toxic drugs known.

What about effects on the vegetative functions of the body? Opiates slow down the churnings of the intestines and routinely produce constipation. Since opiate alkaloids retard the secretions of the liver and the pancreas, they slow down digestion. Opiates retard the flow of bile by constricting the bile ducts, so that the pressure inside them builds up—sometimes causing severe colic pain; another unpleasant side effect is their tendency to cause nausea and vomiting. Cannabis produces none of these effects.

In one important way opiates are better than cannabis: they are stronger pain-killers. For the excruciating colicky pain produced by a kidney stone or the crushing chest pain of an acute heart attack, morphine is a blessing. For these situations, cannabis is a weakling.

Still, we have seen that the drug could be valuable in treating a number of conditions. Why, has it been so neglected in recent years? Legal restrictions are at fault to a large extent, but they cannot be the sole reason. Well before the Marijuana Tax Act of 1937, in the late 19th and early 20th centuries, cannabis as a general medicine was already on the decline.

There had always been problems in prescribing the drug. For one thing, it is insoluble in water and so cannot be injected intravenously for rapid effect. When taken by mouth, moreover, it does not begin to go into action for one to two hours—longer than for many other drugs.

Even more troublesome was the difficulty during the 19th century of obtaining standard batches of cannabis. Different batches can vary tremendously in their potency, probably because the amount of resin in plants depends on ripeness, humidity, soil characteristics, temperature and time of year. In the early days of cannabis in European medicine, the drug became highly controversial on this account. On the one hand, highly reputed physicians were praising it as a "miracle drug." But at the same time others could not duplicate the therapeutic successes of their colleagues and concluded, like Dr. J. Oliver, that cannabis "is hardly worthy of a place on our list of remedial agents."

It is possible that the "therapeutic failures" simply reflected weak preparations. This variability was well-known even to O'Shaughnessy, who observed considerable deterioration of the drug's potency while transporting it from India to England.

Then, too, some of the therapeutic successes of cannabis could possibly have been "placebo" responses suggested by the physician. This is especially the case with headaches, menstrual cramps and emotional ailments, which are particularly responsive to suggestion.

Dr. Reynolds, an astute clinician, also pinpointed another difficulty: the variability of individual responses to the same dose of cannabis. "Individuals differ widely," he said, "in their relations to many medicines and articles of diet, especially those of vegetable origin—such as tea, coffee, ipecac, digitalis . . . and *cannabis*." Anyone who has attended a pot party can vouch for this piece of wisdom.

One more possible drawback might be that patients treated for medical conditions with cannabis might get high and become potheads. Yet, it is striking that so many of the early medical reports on cannabis fail to mention the plant's intoxicating properties. Rarely, if ever, is there an indication that patients—thousands must have consumed cannabis in Europe in the 19th century—were "stoned," changed their attitudes about work, love, their fellow men or patriotism. It is unlikely that the plants grown 50 to 80 years ago differed in chemical composition from those growing today. More likely, the difference is a matter of mental set or expectation on the part of the patient. When people see their doctor they want to be treated for a specific malady, and do not anticipate being "turned on" or "tuned in." And recent investigations have suggested that the mental effects of cannabis are quite dependent on the expectation of the subject.

In the mid-19th century none of the drug's difficulties seemed insuperable. Variations in individual response and in the potency of different batches of the drug could be readily taken into account by starting patients with a small dose which might then be increased gradually. The one or two-hour delay before the drug took effect could be tolerated, since most of the conditions to be treated were not life-or-death emergencies. For the same reason, it did not seem too much of a nuisance that cannabis could not be dissolved in water and injected.

It was probably the introduction of a variety of new synthetic drugs that started the decline of cannabis. A major factor was the introduction of the hypodermic syringe into American medicine from England. This facilitated the injection of fast-acting, water-soluble opiate drugs, a practice which soon became widespread. The great number of casualties in the Civil War spread the use of intravenous morphine rapidly. Although the danger of addiction had been well known since antiquity, somehow physicians managed to forget about it when they were presented with the convenient tool of injectable morphine. Opiate addiction became so prevalent among soldiers who had received it for their wounds that it came to be called the "soldiers' disease."

A few cautious physicians warned against what were soon to be the tragic results of this reckless prescribing of morphine. Mattison in 1891 reminded his colleagues of these difficulties and recommended cannabis instead: "With a wish for speedy effect, it is so easy to use that modern mischief-maker, hypodermic morphia, that they (young physicians) are prone to forget remote results of incautious opiate-giving. Would that the wisdom which has come to their professional fathers . . . might serve them to steer clear of narcotic shoals on which many a patient has gone awreck." By contrast, he felt that his experience confirmed that "cannabis indica is a safe and successful anodyne and hypnotic."

The new synthetic analgesics such as aspirin, as well as new sedatives such as barbiturates and chloral hydrate, also tended to replace cannabis. Just as with

morphine, the new drugs were more efficient to administer than cannabis, and made more money for the manufacturers, but they, too, had their drawbacks. Aspirin seems to be a less potent pain-killer than cannabis, and lacks its relaxing sedative action. Barbiturates, of course, can be addictive. What is worse, the lethal dose of barbiturates is so treacherously close to the therapeutic doses that these drugs are the most frequently employed chemical means for committing suicide. Those who use them fairly indiscriminately for nighttime sedation, even if they are not barbiturate addicts, often risk death from accidental overdoses or the effects of combining barbiturates and liquor.

Some of the objections to cannabis extracts as medicine may soon be resolved by new research. Since the isolation and synthesis of T.H.C. in 1964, doctors have been able to reproduce most of the effects of cannabis quite reliably. Thus it can be given in absolutely pure form and in regulated doses with predictable effects.

What is even more interesting is the possibility of developing variations of this molecule which may selectively retain certain of the actions of cannabis while discarding others. This is not mere speculation. Quite recently, Dr. Van Sim, a scientist at the Edgewood Arsenal near Baltimore, tried out several variants of the T.H.C. molecule on man. One of these markedly reduced blood pressure at doses which produced few if any mental changes. Dr. Sim suggested that this drug might be valuable for hypertensive patients.

Currently, several American drug companies are working feverishly to synthesize many new analogues of T.H.C., with the expressed aim of developing medicines for treating a variety of maladies. And all of this activity goes on despite the official status of cannabis as a "dangerous drug." It would be a good bet that the latter part of this century will witness the revival of cannabis in new forms as a valuable therapeutic agent.

II. THE "DELIGHT-GIVER"

Ancient Chinese writings refer to cannabis as "the liberator of sin." Probably there was a certain amount of controversy over the plant's merits then, just as there is today: other (presumably "pro-pot") Chinese writers refer to cannabis as the "delight-giver."

As a mind-altering substance, cannabis seems to have come of age in India, where it certainly was used as early as 1000 B.C. and soon thereafter became an in integral part of Hindu culture. Why the drug should catch on in India but not in China is unclear. Perhaps this has something to do with the difference in temperament of the Indians and Chinese—or their respective religions. One might be tempted to suggest that the placid, practical Chinese did not appreciate the euphoria produced by cannabis. Or maybe opium was too well ensconced as their national vice.

Hindus used cannabis as an aid in medication. Its religious role is suggested by passages in Indian folk literature, such as this one:

"To the Hindu the hemp-plant is holy. A guardian lives in *bhang* . . . *Bhang* is the joy giver, the sky flier, the heavenly guide, the poor man's heaven, the soother of grief . . . No god or man is as good as the religious drinker of *bhang*. The students of the scriptures of Benares are given *bhang* before they sit to study. At Benares, Ujjain and other holy places, yogis take deep draughts of *bhang* that they may enter their thoughts on the Eternal . . . By the help of *bhang* ascetics pass days without food or drink. The supporting power of *bhang* has brought many a Hindu family safe through the miseries of famine."

Even in India there seems to have been some angry discussion about the possible value or danger of cannabis. The writer of the paean above alludes to the controversy: "To forbid or even seriously to restrict the use of so holy and gracious a herb as the hemp would cause widespread suffering and annoyance and to large bands of worshiped ascetics deep-seated anger. It would rob the people of a solace in discomfort, of a cure in sickness. of a guardian whose gracious protection saves them from the attacks of evil influences . . . so grand a result, so tiny a sin!"

Disapproval of cannabis seems to have originated with the Christian missionaries and other Europeans. In a study of Hindu mystics, J. Campbell Oman noted that Christian missionaries often remarked, "Great numbers of Hindu saints live in a state of perpetual intoxication, which arises from smoking intoxicating herbs, fixing the mind on God."

Dr. George Morrison Carstairs, a professor at the University of Edinburgh and an authority on transcultural psychiatry, lived in a village in Northern India in 1951 and was struck by the attitudes of the ruling castes toward the

two most prevalent forms of intoxication there. The Rajputs, or warriors, drank *daru*, a potent, distilled alcohol from the flowers of the mahua tree, and seemed to regard cannabis as fit only for sissies. The Brahmins, on the other hand, employed cannabis both in religious services and for social refreshment.

Rajputs, of course, represent the temporal aristocracy, as Brahmins do the spiritual. Until the social reforms of 1948, the rajas of the Rajput class exercised autocratic rule over innumerable small principalities. In their upbringing, they were taught to put great stress on bravery and ferocity in the face of danger, and although the test of real danger was seldom met, every young Rajput lived with the anxiety that some day he might not prove adequate to the occasion. As a result, the Rajputs in the village tended to be boastful, touchy and inclined to assuage their anxieties with drinking bouts, Dr. Carstairs reported. Although ostensibly they prided themselves on drinking with discrimination—a fixed ration was allowed for each day—restraint tended to be forgotten in the course of an evening.

The Brahmins unequivocally denounced the use of *daru*, which they felt was inimical to their religious life—the first requirement of which was to "abhor meat and wine." Interestingly, Carstairs found that the gentle priests were far more vitrolic in their reviling of *daru* than were the Rajputs in their uninterested disdain for cannabis. The ruler of the village, a Rajput, thought himself a religious man and tried to reconcile his religious devotion with his drinking. This was vehemently rejected by the Brahmins, one of whom said: "He is all wrong; he is a bogus lecher always busy with wine and women. How can be find his way along this stony and throny path?"

Brahmins in the village would often visit a nearby pilgrimage center, where the chief object of worship was a large, black stone phallic symbol representing the god Shiva. The god was often cited as being a *bhang* drinker, and the Brahmins would attempt to model themselves after him. In his visits to the temple, Dr. Carstairs would generally encounter large numbers of holy men staggering about "stoned out of their minds."

Dr. Carstairs was struck by how similar Western Europeans and Americans are, in their commitment to a life of action, to the Rajputs. All share an upbringing which values individual achievement highly and considers sensual indulgence to be not wholly wrong if enjoyed within socially prescribed limits. The Brahmin theme of surrendering volition is unfamiliar, threatening and distasteful to Westerners, except for the new drug generation. Because of this, Dr. Carstairs concluded:

"The present writer would have to say that of the two types of intoxication which he witnessed and in a measure shared, he had no doubt that that which was indulged in by the Brahmins was the less socially disruptive, less unseemly, and more in harmony with the highest ideals of their race; and yet so alien to his own personal and cultural pattern of ego defenses that he much preferred the other."

After 500 A.D., cannabis began creeping westward from India, and references in the Persian and other Arabian literature began to appear. One of the most fascinating stories about the use of cannabis in Moslem cultures was told by Marco Polo about a secret cult organized in the 11th century by a Moslem religious leader, Hasan ibn-al-Sabbah. Since religion and philosophy in those days in the Moslem world were political tools to be imposed by force rather than persuasion, Hasan trained his followers as an army and was successful in capturing a number of fortresses. He is best known for refining the practice of assassination to an art—and herein lies the relevance of this tale to cannabis, as well as an interesting dilemma for philologists.

The assassins were specially recruited young men in their late teens and early 20's, who were well-treated, well-paid and sworn to total allegiance to Hasan. Marco Polo described a remarkable garden that Hasan constructed at his major fortress, the Alamut, where the young assassins were entertained under intriguing circumstances:

"He [Hasan] kept at his court a number of the youths of the country, from 12 to 20 years of age, such as had a taste for soldiering . . . Then he would introduce them to his Garden, some four, or six, or ten at a time, having first made them drink a certain potion [hashish] which cast them into a deep sleep, and then causing them to be lifted and carried in. So when they awoke they found themselves in the Garden . . .

"When, therefore, they awoke and found themselves in a place so charming, they deemed that it was Paradise in very truth. And the ladies and damsels dallied with them to their hearts' content . . .

"So when the Old Man [Hasan] would have any prince slain, he would say to such a youth: Go thou and slay So-and-So; and when thou returnest my Angels shall bear thee into Paradise. And shouldst thou die, natheless even so will I send my Angels to carry thee back into Paradise."

Most philologists seem to agree that the concept of assassination derives from Hasan ibn-al-Sabbah. There is however, dispute among them as to whether the word *assassin* comes from *Hasan* or from *hashish*. Some maintain that *hashish* itself derives from *Hasan*.

The decendants of Hasan survive today in colonies spread through Syria, Persia, Zanzibar and India. They are well-known to Westerners because of the fame of their leader, who claims direct descent from Hasan and is known as the Aga Khan. Cannabis must have been quite popular in the Arab world during the Middle Ages. For in the "Thousand and One Nights," which represent folk tales collected between about 1000 and 1700 A.D., there are many references to *bhang*, which the Arabians called *beng*, as well as to hashish.

Cannabis was probably brought to Europe by Napolean's soldiers returning from Egypt. At least it is well-documented that in Egypt, he discovered widespread use of hashish, particularly among the lower classes. Napoleon issued a proclamation prohibiting its sale or use.

Between 1840 and 1860 in Paris, a distinguished group of writers—including Theophile Gautier, Charles Baudelaire and Alexandre Dumas—became fascinated by the hashish experience. Their written descriptions probably still constitute the clearest, most thorough accounts of the effects of the drug on the psyche.

How did the "literary epoch" in the history of cannabis come about? Dr. Jacques Moreau de Tours, a prominent French psychiatrist at the Hospital of the Bicetre who became interested in treating his patients with the drug, introduced it to the popular author Gautier, who was 24 years old at the time.

Gautier founded the famous *Le Club des Hachichins* at the Hotel Pimodan on Paris's Isle Saint-Louis. There the patrons ate *Dawamesc*, a sweetmeat which had been advertised as an Algerian dessert delicacy to the romantic society of the day and which contained hefty quantities of hashish. The literary accounts of the club's members, accordingly, reflect high doses of cannabis. Gautier was the first to publish his experience, in a book called "*Le Club des Hachichins*":

"After several minutes a sense of numbness overwhelmed me. It seemed that my body had dissolved and become transparent. I saw very clearly inside me the hashish I had eaten, in the form of an emerald which radiated millions of tiny sparks. The lashes of my eyes elongated themselves to Infinity, rolling like threads of gold on little ivory wheels, which spun about with an amazing rapidity. . . . At certain moments, I still saw my comrades, but disfigured and grotesque, half men, half plants. The spectacle was so ridiculous that I writhed with laughter in my corner . . ."

Alexandre Dumas was imprssed with how hashish enhances erotic sensations. He wrote this in "The Count of Monte Cristo" and thus anticipated Timothy Leary by 100 years in wrongly declaring cannabis an aphrodisiac:

"And then followed a dream of passion like that promised by the Prophet to the Elect. Lips of stone turned to flame, breasts of ice became like heated lava, so that to Franz, yielding for the first time to the sway of the drug, love was as a sorrow and voluptuousness a torture, as burning mouths were pressed to his thirsty lips, and he was held in cool serpentlike embraces."

But cannabis is not really an aphrodisiac. Since the drug makes perceptions more vivid, sex can become spectacularly beautiful or, in some cases, hideously repugnant.

Although the experience of the nineteen-sixties in the United States suggests that the mind-altering consumption of cannabis tends to catch on and spread like plague, the chronicle of the plant's first 3,000 years in other cultures bespeaks a slower rate. Before the Christian era and until about 500 A.D., it was employed for this purpose almost solely in India, and to a lesser extent in China. In the next 1,000 years or so, it reached the Middle East and Near East. Only in the 19th century did it become well-known in Europe. And we must wait until the 20th century for it to reach the United States.

Marihuana came to the United States from Mexico and Cuba. The weed was smuggled by Mexican laborers across the border into Texas. American and Mexican sailors were also go-betweens, buying the drug in the ports of Havana, Tampico and Veracruz for $10 to $12 per kilogram (2.2 lbs.) and selling it wholesale in New Orleans at $35 to $45 a kilogram.

The consumers in New Orleans were largely the poor and the Negro population. When reporters of The New Orleans Morning Tribune wrote a series on "the marihuana menace," the stories that generated the most alarm were those claiming that large numbers of teen-agers smoked "mootas," New Orleans jar-

gon for marihuana cigarettes. The superintendent of the city's Children's Bureau told reporters that he felt many problem children living at the bureau had come under marijuana's influence (implicitly suggesting that it had *made* them problem children) and that two of them had run away because they couldn't get their "muggles" (another slang word for marihuana) there.

At this stage, only 16 states had laws against the sale or use of marihuana, and these were laxly enforced. This was, after all, the era of Prohibition, and the police had more pressing matters to attend to.

In the mid-thirties, however, a major crime wave struck New Orleans. Searching for some explanation for an outbreak of holdups, one which, it was hoped, would not expose police inadequacies, Frank Gomila, the Commissioner of Public Safety, concluded: "The crime wave unquestionably was greatly aggravated by the influence of this drug [marijuana] habit. . . . Youngsters known to be 'muggle-heads' fortified themselves with the narcotic [sic] and proceeded to shoot down police, bank clerks and casual bystanders. . . ." And state narcotic officers reported that in 1936, "60 per cent of the crimes committed in New Orleans were by marijuana users."

Soon newspapers throughout the country had taken up the story and sparked national concern. Nevertheless, neither the public nor law enforcement officers truly considered marijuana a serious problem. One index of how feebly the laws were enforced was the very low price of marijuana products, indicating that there was little risk of arrest from its sale. Even the Treasury Department in 1931 minimized its importance:

"A great deal of public interest has been aroused by newspaper articles appearing from time to time on the evils of the abuse of marijuana, or Indian hemp . . . inference that there is an alarming spread of the improper use of the drug, whereas the actual increase in such use may not have been inordinately large."

Still and all, the continued publicity gradually pressured the Treasury Department's Bureau of Narcotics into drafting a national law. At the same time, the bureau conducted a national campaign against the drug, working with state legislatures in developing state laws for the regulation of marijuana, and providing information for magazine articles about the threat.

Harry Anslinger, the United States Commissioner of Narcotics, himself wrote articles designed to "educate"—and terrorize—the readers. For instance, in one piece he reported:

"An entire family was murdered by a youthful marijuana addict in Florida. When officers arrived at the home they found the youth staggering about in a human slaughterhouse. With an ax he had killed his father, mother, two brothers and a sister. He seemed to be in a daze . . . He had no recollection of having committed the multiple crime. The officers knew him ordinarily as a sane, rather quiet young man; now he was pitifully crazed . . . The boy said he had been in the habit of smoking something which youthful friends called 'muggles' . . ."

It is remarkable how many times potheads are referred to as "addicts" in the popular literature of the twenties and thirties, despite medical evidence, available then, that marijuana is not addictive. As to the details of Anslinger's lurid account, it takes little psychiatric acumen to appreciate that such a crime would not be committed by someone who was "ordinarily sane."

The proposed Marijuana Tax Act never faced any grave danger in Congress, since marijuana smokers of the nineteen thirties—the underprivileged, black derelicts of society—were not represented in the hearings held in Congress prior to the final vote. The Congressmen were, moreover, assured by a Treasury spokesman that the bill would in no way "interfere materially with any industrial, medical or scientific uses which the plant may have." The reason that the Treasury felt that "medical uses" would not be interfered with was simply that the medical profession rarely used the drug at the time. Unlike the Harrison Narcotics Act, which made morphine and related narcotics available to physicians, the Marijuana Tax Act effectively banned cannabis as a medicine as well as an intoxicant.

Narcotics Commissioner Anslinger was the star witness at the hearings on the bill. He recited the well-worn tale of Hasan, hashish and the assassins. He introduced newspaper clippings that claimed cannabis caused crime, addiction and loss of reproductive powers. He said that it led to a "delirious rage after its administration and that prolonged use invariably produced "mental deterioration."

With such impressive testimony, the bill sailed smoothly through committee. Only two minor inconveniences arose during the hearings. One had to do with the bill's provision that the seeds of the plant as well as the flowering tops which smokers used should be outlawed, because the seeds contained a small amount of the intoxicant and might be used for smoking. Violent objection to this provision

came from, of all places, the birdfood industry. A representative of this industry appeared at the last minute in a rather excited state because, as it turns out, the bird-seed industry at that time was consuming about four million pounds of cannabis seed each year.

He observed that "it is a necessary ingredient in pigeon feed, and we have not been able to find any seed that will take its place. If you substitute anything for the hemp it has a tendency to change the character of the squabs produced." Congressman Doughton of North Carolina was curious about whether pigeons get stoned on pot. The manufacturers' representation answered, "I have never noticed it. But the seed does have a tendency to bring back feathers [which have fallen out] and improve the bird." The upshot was that the Government modified the bill. Since sterilized seed would do just as well for pigeon feed, but could not be used to grow the intoxicating plant, an amendment was passed exempting sterilized seed.

A less amusing series of objections to the bill remained. The final witness was Dr. William Woodward, the legislative counsel of the American Medical Association. This extremely conservative organization might be counted on to throw its weight behnd a law to stamp out a purported menace to the nation's health. Accordingly, the Congressmen and the Narcotics Bureau must have been surprised by Dr. Woodward's testimony. He not only proceeded to criticize the provisions of the bill which were to deter future investigations into cannabis's medical uses, but also was harshly critical of the committee's procedures for obtaining evidence.

"We are referred to newspaper publications concerning the prevalence of marijuana addiction. We are told that the use of marijuana causes crime. But yet no one has been produced from the Bureau of Prisons to show the number of prisoners who have been found addicted to the marijuana habit. An informal inquiry shows that the Bureau of Prisons has no evidence on that point.

"You have been told that schoolchildren are great users of marijuana cigarettes. No one has been summoned from the Children's Bureau to show the nature and extent of the habit among children. An inquiry of the Children's Bureau shows that they have had no occasion to investigate it and know nothing particularly of it."

Caught unawares after what had been a notably placid series of sessions, the Congressmen proceeded to badger and browbeat Dr. Woodward, questioning his qualifications (he was both a physician and a lawyer and spent five years working with the A.M.A., the Bureau of Narcotics and the American Pharmaceutical Association drafting a uniform narcotics act). "If you want to advise us on legislation," one committee member fumed, "you ought to come here with some constructive proposals rather than criticism, rather than trying to throw obstacles in the way of something that the Federal Government is trying to do."

Needless to say, the Marijuana Tax Act was passed by Congress—originally with a maximum penalty of a $2,000 fine and/or five years in prison. In 1956 penalties for sale or transfer were increased to a five-year mandatory sentence, and a third offense could bring prison sentences of up to 40 years and fines of up to $20,000. (In October 1970, however, Congress passed legislation that raised penalties for professional pushers, but allowed more lenient treatment of others caught selling drugs, including pot. The law also cut the maximum penalty for those simply possessing marijuana to one year—a sentence that may be suspended—and permitted the judge to expunge the offense from the records in cases of first offenders.)

One conclusion we can draw from this brief history is that marijuana means different things to different cultures. It may be an essential to the Hindu, who values, above all else, the experience of nirvana. Yet the same drug seems anathema to the hard-driving, traditionally prudish American. As culture change, so may their attitudes toward mind-altering substances such as marijuana and alcohol. A thousand years ago *bhang* was almost a sacrament in India. Today, India is becoming more Westernized and the Government, reacting to international pressures, has imposed some legal controls on hashish.

In contrast, the United States, so long the land of the Calvinistic work ethic—and of more or less covert violence—may be becoming a more introspective country. The younger generation is more concerned with here-and-now self-awareness than with accumulating money for some future gratification. Humanistic ethical considerations, such as concern for one's comrades, are replacing abstract morality and competitive individualism. All of this suggests a more contemplative, less aggressive national ethos, the kind that has existed in Eastern countries such as India for many years, fostered there, perhaps in part, by cannabis.

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U. S. MARIJUANA LEGISLATION AND THE CREATION OF A SOCIAL PROBLEM

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The possession, sale or use of marijuana in the United States today is considered serious deviant behavior, both legally and socially, and the penal sanctions which may be imposed on a convicted marijuana offender are among the most severe in both the Federal and State penal codes. It is the threat of arrest and conviction which is currently the most persuasive argument advanced to young people when attempting to dissuade them from the use of the drug. Simple logic would suggest to us that there must be more to our proscription of marijuana than meets the eye; in order to merit such severe legal penalties, marijuana surely poses a major threat to the fabric of our society, in the same way that society is threatened by acts of murder, arson or burglary, criminal acts which carry similar stiff penal sanctions.

Although the professional literature reveals conflicting data regarding the pharmacological, psychological, and social effects of marijuana use, there is nowhere presented fact or research data which would justify our current legal attitude toward the drug. It is for this reason that we seek, in this paper, to examine some of the less tangible aspects of attempts to control marijuana use in this country, as well as to review some of the highlights of such legislation historically. Because the history of marijuana legislation has been extensively reported in both the professional and lay literature, a certain familiarity with the content and implications of that specific legislation is assumed, although reference will be made to it when it is of some particular value or interest.

The Historical Background

In the years which preceded the passage of the Marijuana Tax Act, the specter of "demon rum" was still quite clear in the minds of the moral entrepreneurs of this nation, when a new menace, the "killer weed" raised its ugly head. Like alcohol, it was an intoxicant which was sought after primarily because of the pleasure it gave the user, but unlike alcohol, it did not provide for the spiritually-redeeming morning-after hangover. Its use, like alcohol, is a pleasurable, hedonistic, non-productive, and above all, a sinful practice. As a pharmacological entity, marijuana can be regarded as a relatively innocuous and insignificant weed, but as a social, legal and philosophical entity, it has assumed menacing proportions. Just why this has happened requires a close examination of the images which were drawn of the marijuana smoker and the methods employed to arouse a generally apathetic and unaware public to this new menace.

It is somewhat difficult to understand where the impetus for such an energetic anti-marijuana campaign on the national level arose. In the late 1920's, marijuana was used primarily in the South and Southwest part of the country, where the majority of the habituates were Mexican descent, although the practice had slowly spread to the urban centers in the North, where marijuana smoking was practiced by musicians and other "bohemian" groups.

One of the earliest and most forceful of the anti-marijuana crusaders was Earle Albert Towell, who was convinced that he had discovered the ultimate aim of the tobacco industry; namely turning everyone on to marijuana, which, in his opinion,

would lead ultimately to the destruction of the morals and health of the nation. In his popular book On the Trail of Marijuana, The Weed of Madness, Rowell clearly outlines the potential of this new drug:

1. Destroys will power, making a jellyfish of the user. He cannot say no.
2. Eliminates the line between right and wrong, and substitutes one's own warped desires or the base suggestions of others as the standard of right.
3. Above all, causes crime; fills the victims with an irrepressible urge to violence.
4. Incites to revolting immoralities, including rape and murder.
5. Causes many accidents, both industrial and automobile.
6. Ruins careers forever.
7. Causes insanity as its specialty.
8. Either in self-defense or as a means of revenue, users make smokers of others, thus perpetuating evil.[2]

The Federal Bureau of Narcotics, formed in 1930 and staffed largely by ex-Prohibition agents, was apparently not particularly concerned with the national control of marijuana until the middle 1930's. By 1930, some 16 states had passed legislation restricting the sale or use of marijuana in some way, although these laws were not vigorously enforced, for the most part. In 1932, the Federal Bureau of Narcotics (FBN) was an interested observer at the National Conference of Commissioners on Uniform State Laws which touched on the matter of marijuana legislation on the state level. It was about this time that a rash of lurid articles and stories began to appear in the popular press concerning marijuana, most of which were outrageous enough to prompt the FBN to publically minimize the importance of the "marijuana menace."[3] At this time they apparently saw marijuana control as properly the baliwick of the states.

Despite the fact that following the Uniform State Laws conference in 1932, several additionalstates enacted legislation prohibiting the manufacture, sale or possession of marijuana, the FBN became increasingly insistent that the states were not doing enough and that if they did not step up their efforts, the FBN would be forced to seek legal controls at the Federal level. By 1936, the FBN, and particularly Commissioner Harry J. Anslinger, was deeply involved in a campaign to alert the public to the menace of marijuana. There is an interesting parallel between their efforts to shape policy with regards to marijuana and their previous campaign to impose their will on the administration of various pieces of legislation intended to control the distribution and use of the "hard" narcotics, principally the opiates and cocaine.

The opiate addict at the turn of the century was regarded as an unfortunate victim of ignorance, who had become addicted to drugs which he had initially used for

alleviating suffering, and not simply for the pleasurable feelings which accompanied its use. The majority of addicts at this time were women, most were Protestants, white and from rural areas. With the passage of the 1906 Pure Food and Drug Act, the patent medicines loaded with opiates were taken off the market, while the Harrison Act of 1914 curbed the indiscriminate sale of opiates across the counter. The Harrison Act, like the Marijuana Tax Act, is a revenue act, and is enforced by agencies within the Treasury Department. The original law made no mention of addicts or addiction, and reflected a growing concern about the widespread use of narcotics for the self-treatment of a variety of complaints. The legislation came at a time when the medical-profession was becoming aware of the potential dangers of such drugs and sought to sharply curtail their use.

Those who were addicted to narcotics immediately subsequent to the passage of the Harrison Act had little difficulty in receiving proper medical care, until a series of court interpretations of the Act made it impossible for the addict to obtain drugs from any source other than the black market. Thus, many cities opened up ambulatory drug clinics, the first being in New York City, in 1919, with hopes for rehabilitating the addict and preventing his involvement with criminal drug distributors. Later, other cities began opening drug clinics, and there were soon a total of 44 throughout the United States.

The clinic experience was the critical period insofar as the development of our current punitive policy toward drugs is concerned. The addict was publicly characterized as an individual in need of medical help and assistance when the clinics opened in 1919. Narcotics addiction was regarded as an unfortunate occurence, but not really the fault of the individual. The public was receptive to treating him as such. By 1923, all of the clinics had closed their doors, the addict was left with only the criminal underworld as his source of supply, and he had come to be regarded by the lay public as a willfully indulgent criminal, unwilling to respond to humane medical treatment, and fully deserving of society's moral and penal sanction. It was only after this radical transformation of the addict's image that the increasingly punitive approach advocated by the Federal Bureau of Narcotics could become official policy. It is of significance that nowhere in the discussions of the ambulatory clinics does one find a critical analysis of the treatment methodology. The FBN was instrumental in exposing the weaknesses of the clinics, and the press had a field day with them.

As the public became more aroused and outraged by the activities of narcotics addicts as described for them in the press, they became less receptive to pleas for moderation or rationality, and insisted on the strongest possible punitive measures. The addict was no longer a victim, but a threat, a transformation which took but four years to accomplish.[4]

In order to set the stage for federal legislation controlling marijuana, the FBN set about to promote the notion that the marijuana smoker was a serious threat and responsible for an increasing number of crimes, particularly crimes of violence, including murder and rape. To this end, they widely publicized several "examples" of heinous crimes which they claimed were directly related to the use of marijuana. For example:

> "In 1935, a 30 year old male "assaulted 10 year old girl, admitted being under the influence of marijuana, so "crazy", convicted in court trial. Hanged."

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"1936, in San Antonio, Texas. Two women arrested for possession of marijuana violently attacked Officer C. Cullen. Arrested.

1921, male 30, beat to death with rock T. Bernhardt, boy, 14, while herding cattle in pasture; accused boy of polluting his water supply. Boy's head crushed, one eye gouged out, and missing. Arrested several hours later, he screamed and tore jail furnishings. Smoking marijuana at the time; claimed insane, found to be sane. Hanged.

1933 Tampa, Florida. A boy murdered his father, mother, sister and two brothers with an axe while under the influence of marijuana. Didn't know of all this until next morning. Arrested.[5]

While there were few people in this country who objected to statements linking marijuana use and crime, it is clear that in the numerous cases previously cited, the "casual relationship" between marijuana and crime was tenuous, at best, and in some cases, outright fabrication. Thus, we turned to other sources for confirmation of the dangerous qualities inherent in the drug. Longitudinal studies on users in this country were impossible because of the length of time that it had been a "social problem", as well as the fact that there had been no research done in this area. Thus, we looked to the experiences of other cultures. One of the more popular stories on the marijuana circuit was the story of the "Assassins", in which we discover that the use of hashish by members of a certain Persian religious sect led directly to the commission of political assasinations by individuals who were in no way predisposed to such violence. In another variation of the same story, FBN officials related the stories about how warriors would become fearless fanatics on the battlefield under the influence. They failed to explain how in the first instance hashish made one a stealthy, cunning assassin, and in the latter, a screaming fanatic.

Few have called into question this particular bit of folklore from another culture, and in fact, many law enforcement officials still use this story to underscore their contention that marijuana can lead to acts of violence. Mandel's analysis of this story would suggest that they were grossly distorted, and that indeed hashish was a reward for certain kinds of behavior, not the cause of it.[6]

As the campaign against marijuana was stepped up, an increasing number of sensational horror stories were related in magazines and newspapers, deploring the "juicy" sex and violence which was attributed to marijuana smoking. Some enterprising attorneys attempted unsuccessfully to introduce marijuana intoxication as a defense in capital cases.

By the time the Treasury Department went to Congress with the proposed Marijuana Tax Act, the fervor had reached a high pitch. The hearings before the House Committee on Ways and Means lasted five days. There was little doubt in anybody's mind that the legislation would be enacted. Rather, the primary function of the hearing was to titillate the legislators with horror stories. They were assured that the Act had the blessings of the newspapers. The Hashish-assassin story was related. The various crimes which the

Federal Bureau of Narcotics linked directly to marijuana were related, including the tale of the youngster who murdered his family while under the influence, and couldn't recall having done it the following day. A district attorney told the committee that marijuana was used as an aphrodisiac, but that prolonged use led to impotence. A pharmacologist who had done research on doped race horses testified that marijuana produced mental and physical deterioration when administered to dogs. Though he admitted that he had done no work with humans, he stated unequivocally that the drug was dangerous because it produced degeneracy of the brain. A district attorney from New Orleans related that several individuals who had been prosecuted through his office had claimed that they were not criminally responsible for their acts because they were under the influence of marijuana at the time the crime was committed.

The dissenting witnesses before the committee were limited. The birdseed industry feared that the new law would inhibit their use of hempseed. The Committee quickly amended their bill to allow them to continue their production unhindered.

The last remaining witness, Dr. William C. Woodward, the legislative counsel for the American Medical Association, and himself an attorney, opposed the bill on a number of counts. He felt that the state legislation was sufficient to meet the problem, and that previous testimony was based primarily on hearsay evidence. The passage of this act, he added prophetically, would inhibit further research into its pharmacology and would rule out further investigation into the medical possibilities of the drug. He cited its use in medicine as a sedative and muscle relaxant.

Dr. Woodward's testimony aroused the ire of the committee, who apparently had anticipated little opposition to their efforts. In response to his testimony, committee members challenged his credentials, which turned out to be impeccable, and criticized him for not cooperating. The members assured themselves that they were doing the right thing, by reminding the doctor of the tales of horror which had been previously related. In their parting shot, the doctor was rebuked: "If you want to advise us on legislation, you ought to come here with some constructive proposals, rather than criticism, rather than trying to throw obstacles in the way of something the Federal Government is trying to do."[7]

The Marijuana Tax Act quickly passed the House of Representatives, and shortly thereafter, the Senate. There was little debate during the Senate hearings. The star witness was again Commissioner Harry J. Anslinger, who reiterated the numerous crimes which he felt were comitted by individuals under the influence of marijuana.

The Marijuana Tax Act, now a part of the Internal Revenue Code, provides " a graduated occupational tax by all persons who import, manufacture, produce, compound, sell, deal in, dispense, prescribe, administer, or give away marijuana. A tax is also imposed upon all transfers of marijuana at the rate of $1 per ounce or fraction thereof, if the transfer is made to a taxpayer registered under the Act, or at the rate of $100 per ounce, if the transfer is made to a person who is not a taxpayer registered under the act." Obviously, the Act has not produced significant tax revenue, since few Marijuana Tax Stamps have been issued, although the Internal Revenue Service still attempts to collect $100 per ounce of illegally possessed marijuana from those convicted of violating the Act.

In many cases, this tax is collected from an individual upon his release from prison on parole, a time when the individual finds himself in a most difficult position financially.

The obvious intent of this legislation was to impose federal police powers into the area of marijuana enforcement. The original Act provided for a maximum penalty of $2000 fine and/or five years in prison, with probation or suspended sentence possible.

By the time that the Marijuana Tax Act had passed the Congress, most states had outlawed marijuana under the Uniform Narcotic Drug Act, an act which grouped marijuana with the opiates. This system of classification poses no problem for Donald Miller, Chief Counsel for the United States Bureau of Narcotics, who stated in a recent speech: "Legally, marijuana is not considered a narcotic drug under the Federal law, but it is considered a narcotic under the State laws. I do not consider these differences to be significant, since both laws are designed to control a substance which is socially unacceptable. It is less important that the controls fit like some finely balanced formula under either the taxing clause or the commerce clause of the Constitution, or in a category according to its similarity with other dangerous drugs. In fact, the Supreme Court of Colorado has ruled it is perfectly permissible to define marihuana as a narcotic drug."

With a reported upswing in the number of young people addicted to heroin a few years after World War II, increasing pressure was brought to bear by the Bureau for increased penalty provisions, both on the state and Federal level. By this time, however, there were grave doubts in even the most conservative minds about the relationship between marijuana smoking and insanity or violence. Hence, a new theme emerged, which persists to this date, despite data to the contrary. In testimony before the Senate subcommittee investigating drug abuse in 1955, Commissioner Anslinger, in response to a question regarding the relationship between marijuana and heroin addiction, stated: "...our great concern about the use of marijuana, that eventually if used over a long period, it does lead to heroin addiction." However, on the relationship between marijuana smoking and crimes of violence, he has taken a new tack: "It does not follow that all crime can be traced to marijuana. There have been many brutal crimes traced to marijuana, but I would not say that it is a controlling factor in the commission of crimes."10

Convinced that the answer to the problems of drug use and sale was heavier penalties, the Congress authorized minimum mandatory sentences, with no chance for probation, suspended sentence or parole, and an optional fine of up to $20,000 for individuals convicted of selling narcotics, including marijuana. For first offenders convicted of possession, the penalties were increased to 2 to 10 years, an optional fine up to $20,000 and the possibility of probation, suspended sentence, or parole.

Following the lead of the Federal Government, many states enacted new legislation which increased the penalty provisions in their narcotic laws, which, by definition, included marijuana. In several states, one convicted of selling marijuana to a minor could be subjected to death or life imprisonment.

The Federal Bureau of Narcotics is dedicated to the notion that increasing penalties is the only way to limit the traffic in narcotics. One of their initial fears upon passage of the Narcotic Control Act of 1956 was that judges would be hesitant about convicting an individual in a case which carried a minimum mandatory sentence.

In testimony before a House subcommittee in 1960, Commissioner Anslinger expressed great satisfaction with the sentences which had been handed down by Federal judges since the 1956 legislation, but expressed concern about the traffic in marijuana. The solution, as he saw it, lay in increasing the penalties. In response to the question as to whether marijuana led to heroin addiction, Anslinger replied: "Yes, Sir. That is the beginning, especially in the New York and Los Angeles areas. They start on marijuana and get sort of a jaded appetite and want to get to something real. Well, they switch to heroin, and that is when the trouble starts." 11

What we have seen then, in less than thirty years from the passage of the Marijuana Tax Act, is a dramatic transformation in the qualities of a drug, from a substance which produces moral degeneration, and is the cause of crimes of violence, to a drug which has only a tenuous causal relationship to crimes of violence, but is directly responsible for progression to harder narcotics. This transformation took place without benefit of even minimal research into the actual properties of the drug which was severely restricted because of the limitations imposed on legitimate researchers.

If the assumptions of the Commissioner, and law enforcement officials in general are correct, we might assume that with increased penalties for possession and sale of marijuana since 1956, the practice by 1968 would be almost totally eradicated. This apparently not being the case, we are forced to look at the implications of existing laws, and how they have shaped the contemporary scene.

The Current Scene

Marijuana smoking is no longer confined to the Southwest part of this country, nor are its users primarily from the lower socio-economic classes. Attorney General Thomas Lynch has characterized the current drug offender in California as being "young, white, urban, and without previous arrest record." It is perhaps this fact, more than any other, which accounts for the re-examination of our current laws which is being undertaken on all levels of government. During the White House Conference on Narcotic and Drug Abuse in September of 1962, doubts were voiced by many individuals who had pressed for severe penalties in 1956. Senator Thomas Dodd in a very forceful presentation to the conference, gave the following example of the implications of the minimum mandatory sentences, quoting from a United States District Judge:

> "The mandatory sentence can work extreme injustice. I was compelled to impose a five year sentence on a Marine veteran of the Korean campaign who was found with three or four marijuana cigarettes. He had been drinking in Tijuana and was arrested at the border. Obviously, three or four cigarettes did not make him a peddler and these were not commercial amounts.

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> "He had a spotless civilian record and an excellent military career. He had received a Purple Heart and had been wounded in action and had a wife and children. I held up sentencing 60 days with the defendant's consent, to attempt to get the U.S. attorney to file a tax consent on a smuggling charge which would not have carried at least 5 years sentence. I was unsuccessful. I sentenced the man to 5 years in the penitentiary without parole." [12]

That conference suggested that "...the hazards of marijuana per se have been exaggerated and that long criminal sentences imposed on an occasional user or possessor of the drug are in poor social perspective." [13] The recent report of the President's Commission on Law Enforcement and the Administration of Justice also recommends differentiating between narcotic and marijuana offenders, giving more discretion in the sentencing of marijuana offenders, to the courts or correctional institutions.[14]

We should have learned something as a result of our national experience with marijuana. We did not. At this moment, legislation is being considered in the Congress which would make possession or sale of LSD a criminal offense, carrying with it long prison terms. This despite the fact that there appears to be a tapering off in the extent of LSD use, prompted not so much by the fear of arrest, but because medical research has suggested the possibility of real harm resulting from use under certain conditions. The information which was made public was not in the nature of bizzare claims or unfounded rumors offered by ill-informed enforcement officials, but rather, medical research. We as a nation seem obsessed with the notion that the threat of punishment will deter people from doing things which they enjoy.

In demanding new legislation, the legislators, both on the state and federal level, are assured that the real intent of the legislation is to control traffic, to arrest and imprison the criminal entrepreneur and not the so-called victim. As a practical matter however, few of the major traffickers in drugs are arrested, and it is the street level user or dealer who is arrested and imprisoned.

Let us examine some of the practical effects of our current posture toward marijuana. The obvious fact is that police activity is at an all time high. We witness the spectacle of police invading the high schools and grilling students about their use of drugs and that of their friends. Convinced that early detection is the only answer to later addiction, parents are bringing their teen-aged sons and daughters to the police station for arrest. Local police departments author ludicrous pamphlets for distribution in the schools which are an affront to even the novice. Telling lies to a youngster who has read scientific data on the pharmacology of marijuana in one of the many paperback books readily available in every magazine rack in town is hardly the way to develop a respect for law enforcement.

Nor does it pave the way to a receptive mind when an informed individual urges individual restraint and caution with regard to other more harmful substances.

Marijuana smoking among the majority of teenagers is interwoven into their daily round of activities. It is but one facet of an adolescent style which emphasizes clothes, music, friendship, sexuality, freedom from restraint, and non-violence. It is a drug which makes a small gathering in some homes more convivial.

Heroin addicts are regarded by most as relics of the past; as weak minded individuals who are untrustworthy and incapable of relating to other people. It would seem that this assessment is generally correct. The heroin addict of today is little different from the addict of ten or twenty years ago. He is still a product of a slum environment, he is still a dependent, inadequate individual, unable to cope with the challenges of everyday life. The pressure in most adolescent groups is away from the use of addictive drugs, contrary to popular opinion. Street gang workers in New York and other cities have noticed a trend away from violence and toward "coolness". One group, formerly called the Assassins, is typical of this change. Several years ago they were one of the most violent gangs in Manhattan. Today, the overwhelming majority of the gang smokes marijuana, and the club has been renamed the "Socializers." [15] This is not to suggest that we have found the answer to gang violence, but merely to emphasize that the culture has built-in mechanisms of control which restrict the use of drugs by all but the most disturbed youngsters in a way which is infinitely more effective than the threat of arrest and detention.

What of the youngsters who are arrested? Have we indeed saved them from a life of degeneration and crime as an addict? It is difficult to understand how being excluded from school as a menace to other youngsters contributed to the alleged "rehabilitative" process. The felony conviction of youngsters over 18 certainly poses major problems in terms of their educational or vocational plans.

Incarceration, although a decreasing probability for most convicted of marijuana offenses, is perhaps one of the best ways to assure continued drug use on a larger scale upon release. It is within criminal subcultures, not groups of potheads, that the peer sanctions against the use of addictive drugs are lowered. It would thus seem that the notion that there is a single line of progression from a mild drug to the addictive drugs leaves out the most important variables, namely, the individual's public and personal image, the cultural controls against certain forms of deviant behavior, including narcotic drug use.

Perhaps the most ludicrous expressions of our popular conception relating marijuana use to hard narcotics is the use of the nalline clinic for marijuana offenders. The purpose of this testing, authorized in 1957 legislation, was to "discourage" the individual from progressing on to harder drugs. Although this program might do much to discourage some from returning to heroin, we might speculate upon the implications of such a program in a larger urban area, where the majority of individuals taking Nalline shots are heroin addicts. The weekly meetings are very convivial events, with each person being required to wait around a reception room from 20 minutes to half an hour following the injection of Nalline before being examined. The associations that might be made in such a setting are obvious.

In reviewing the merits of this legislation, we must ask ourselves a question which as a nation we were forced to ask during prohibition: does the legislation restricting behavior which we have decided is harmful to our society cause more harm in its enforcement than the original harm which we set out to control? In the case of our current marijuana legislation, we must answer in the affirmative.

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2. For a detailed description of Rowells activities, see Lindesmith, Alfred, Ibid, pp. 222-242.

3. Becher, Howard, The Outsider, Tree Press, Glencoe, 1963, pp.138.

4. For a discussion of the clinic experiment and the reversal of the imagery surrounding the addict, see Smith, Roger "Status Politics & the Image of the Addict", in Issues in Criminology, School of Criminology, U.C. Berkeley, Vol 2. Fall 1966.

5. Munch, James C. "Marijuana and Crime", reprinted from U.N. Bulletin on Narcotics, VOL. XVIII, No. 2 April-June, 1966. Munch is a member of the advisory committee, U.S. Bureau of Narcotics.

6. Mandel, Jerry, "Hashish, Assassins, and the Love of God", in Issues in Criminology, School of Criminology, U.C. Berkeley, Vol. 2, No. 2, Fall 1966, pp. 149-156.

7. Oteri, Joseph and Silverglate, Harvey, "In the Marketplace of Free Ideas: A Look at the Passage of the Marijuana Tax Act", in Simmons, J.L., Marijuana Myths and Realities; Brandon House, North Hollywood, California, 1967, page 152.

8. Narcotic Drug Addiction Problem, Proceedings of the Symposium on the History of Narcotic Drug Addition Problems, March 27-28, Bethesda, Maryland, page 50.

9. Narcotic Drugs and Marijuana Controls-a paper presented by Donald E. Miller at National Association of Student Personnel Administration Drug Education Conference, Washington, D.C. November 7-8, 1966.

10. For a detailed description of Anslingers testimony, see Lindesmith, Alfred, op. cit., pp. 230.

11. Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Jan. 26, 1960, page 182.

12. Proceedings: White House Conference on Narcotic and Drug Abuse, Wash. D.C. September 27 & 28, 1963, pp. 231

13. Ibid, pp. 286.

14. Challenge of Crime in a Free Society, Report by the Presidents Commission on Law Enforcement and Administration of Justice, Wash. D.C., Feb. 1967, pages 211-231.

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MARIHUANA: THE LAW AND ITS ENFORCEMENT †

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CONFLICTING SOCIAL PHILOSOPHY

In searching for the causes of the growing national problem of drug abuse,[1] one reason appears clear to me. We cannot help but make slow progress in deterring drug abuse so long as there is an allegiance of some intellectuals to the "drug cult." These persons control large sections of public opinion, and hold the ear of many influential people—the authors, the editors, the lecturers, the educators and the theologians.

The general strategy of these "Spockian ultra-permissivists", as we might rightfully call them, is to proclaim that an individual's morals and vices are his own private affair, and that society has no right to invade this domain. Personally, I believe social disruption will increase when intellectuals define the important interests of society in purely individualistic terms. Somehow, I hope we can convince our young hedonists that they cannot live success-

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[1] Figures compiled by Bureau of Narcotics and Dangerous Drugs indicate that arrests for narcotic drug and marihuana violations have increased 200% in the past seven years, with a 55% increase in 1967 over 1966; for persons under the age of 21, the increase is 450% in the past seven years, with a 75% increase in 1967 over 1966. In 1963, about 6,500 pounds of marihuana were seized, and in 1967, over 51,000 pounds were seized.

fully in our society and at the same time ignore the rules of the group in which they wish to function. It is time for permissivists to stop and take a long look at what is happening and assess the irreparable harm being done.

Let us move to the next logical question—what should we do about drug abuse? Why not let the youth follow their private road to perdition in their own way? If the road were private, one might have some sympathy with that proposition—but, it is not! We may or may not agree that mere drug abuse is bad *per se*. But, when the habitual use of certain drugs happens to be detrimental to the well-being of both the individual and society, it must be regarded as a pernicious vice and proscribed by law. Actually, anti-social behavior which encroaches on individual and social welfare has never enjoyed an inviolable status immune from governmental regulation. It never should. The drug abuser is the agent of the spreading of drug abuse to his friends. His drug dependence and his drugs go where he goes and the people with whom he associates are exposed. The social costs of drug dependence, in wasted lives alone, removes the matter from the realm of a private affair. While many persons may not conclude that there is anything immoral or criminal about abusing one's self with drugs, most of us will agree that it would be highly undesirable for society to adopt a permissive attitude toward a deleterious practice.

DANGERS OF MARIHUANA

Recently, there has been considerable debate about the dangers (or lack of dangers) of marihuana. Real damage is being done by some scholarly men who are eager to attack the marihuana controls rather than justify them. They are more concerned with deriding the public officials who are charged with enforcing the laws than in helping them prevent drug abuse; they are more interested in condoning and rationalizing marihuana's use rather than presenting reasons for controlling it.

The impression is being created that virtually nothing is known about marihuana. This is false. The impression is being created that there is nothing harmful about marihuana. This is equally false. Too many people seem to think we should not pay any attention to the old studies. Too many of these permissivists argue that the studies of Benabud in Morocco, of Bouquet in Tunisia, of Chopra in India, of Gardikas and Joachimoglu of Greece, and of Wolff in South America are not valid.[2] The basis for their attitude is that they were not done in America, under American standards, using American subjects, and using American-type marihuana. I do not dismiss the studies so lightly, nor should anyone else who professes to have an objective viewpoint.

It is true that we do not possess absolute knowledge of the effects of marihuana. However, keep in mind that marihuana contains very powerful ingredients, tetrahydrocannabinols,[3] which are capable of producing many ill effects. Various studies from the Middle East, the Near East, and in the United States indicate that the mental effects are seriously detrimental.[4] Emotional balance is disturbed with waves of euphoria interspersed with phases of anxiety; paranoid episodes are frequent—giving rise to disturbances of conduct; volition and initiative are impaired; sensation is changed and distorted; and even the

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[2]Benabud, *Psycho-pathological Aspects of the Cannabis Situation in Morocco: Statistical Data for 1956*, 9 BULLETIN ON NARCOTICS NO. 4, 1 (1956); Bouquet, *Cannabis, Parts I and II*, 2 BULLETIN ON NARCOTICS NO. 4, 14 (1950); Bouquet, *Cannabis, Parts III-V*, 3 BULLETIN ON NARCOTICS NO. 1, 22 (1951); Chopra, *The Use of the Cannabis Drug in India*, 9 BULLETIN ON NARCOTICS NO. 1, 4 (1957); Gardikas, *Hashish and Crime*, ENGEPHALE NO. 2-3 (Aug. 1950); G. JOACHIMOGLU, HASHISH, ITS CHEMISTRY AND PHARMACOLOGY 5 (1965); P. WOLFF, MARIHUANA IN LATIN AMERICA, THE THREAT IT CONSTITUTES (1949).

[3]33 Fed. Reg. 9833 (July 9, 1968); 33 Fed. Reg. 11814 (Aug. 21, 1968). Notices were published proposing to control three synthetic tetrahydrocannabinols under the Drug Abuse Control Amendments of 1965 (21 U.S.C. § 321 [V]). The control became effective Sept. 21, 1968.

[4]*Supra* note 2.

so-called "American-type" marihuana can produce full-fledged hallucinations and delusions. There is also evidence of recurring episodes.[5]

A problem in the United States in the field of research is the lack of a potent standard product. Significantly, many persons report they obtain no effects whatever when they use marihuana. They are not the victims of a drug, but merely have been deceived with a hoax. There is so much gyping going on that it helps support the notion that marihuana is innocuous. Chemically speaking, many persons who confess on questionnaires to having been "triers" of marihuana really have done nothing more than to become partially asphyxiated from polluted air. Also, we know that marihuana varies according to where it is grown, when and how it is harvested, and its age.[6] Nevertheless, when potent substances are consumed, or the dosage of a weaker substance is increased, mental and physical reactions are intensified. The results of using the natural occurring tetrahydrocannabinols of marihuana seem to be conclusive. Dr. Harris Isbell of the University of Kentucky concludes that in sufficient dosage, the properties of marihuana "can cause psychotic reaction in almost any individual."[7]

EFFECTS OF MARIHUANA USE

The formal list of reported physiological and psychological effects of the intake of marihuana is quite varied and lengthy. For example, the 1965 report on Drug Dependence for the World Health Organization lists the following:

> Among the more prominent subjective effects of cannabis . . . are: . . . carelessness; . . . distortion of sensation and perception . . . impairment of judgment and memory; distortion of emotional responsiveness; irritability, and confusion. Other effects, which appear after

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[5]Keeler, *Spontaneous Recurrence of Marihuana Effects*, 125 AM. J. PSYCHIATRY NO. 3, 384 (Sept. 1968).

[6]Lerner and Zeffert, *Determination of Tetrahydrocannabinol Isomers in Marihuana and Hashish*, 20 BULLETIN ON NARCOTICS NO. 2, 53; Bouquet, *supra* note 2, at 21; Wolff, *supra* note 2, at 8.

[7]Isbell, *Studies of Tetrahydrocannabinol*, B.N.D.D., (Feb. 1967).

> repeated administration . . . include: lowering of the sensory threshold, especially for optical and accoustical stimuli . . . illusions, and delusions that predispose to antisocial behavior; anxiety and agressiveness as a possible result of the various intellectual and sensory derangements; and sleep disturbances.[8]

The Committee on Problems of Drug Dependence of the National Research Council (of the National Academy of Sciences) and the Committee on Alcoholism and Drug Dependence (of the American Medical Association Council on Mental Health) have correctly concluded, after appraising all available information concerning marihuana, that it is indeed a harmful drug, and that its legalization would lead to even more serious medical and social consequences than now result from its use.[9]

The effects upon the central nervous system are profound, but have been explored extensively by research. Little is known about the psychopharmacological aspects of marihuana: However, there is still a lot of literature indicating that its effects are detrimental to the central nervous system. For example, Dr. Donald Louria in his book *Nightmare Drugs* states that marihuana may produce all of the hallucinogenic effects of which LSD is capable.[10]

A medical symposium sponsored by the Ciba Foundation in 1965 summarizes much of the current research and opinions of leading medical authorities. Included in the conclusions of these studies are the following comments:

> One can easily imagine the difficult situation to which society would be condemned if the selling of hashish were legal.
> It is well known that taking hashish causes both pathological and psychic disturbances, thus rendering the addict a burden to society.[11]

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[8] Eddy, Halbach, Isbell, Seevers, *Drug Dependence: Its Significance and Characteristics*, 32 BULL. WORLD HEALTH ORG. 721-33 (1965).

[9] *Marihuana and Society*, 204 J.A.M.A. NO. 13 (June 24, 1968).

[10] D. LOURIA, NIGHTMARE DRUGS 32 (1966).

[11] JOACHIMOGLU, *supra* note 2, at 5.

MARIHUANA AND CRIMINALITY

Because of these findings, marihuana has earned a reputation for inducing criminal behavior. One prominent team of researchers which has studied the problem in India, where there has been long and widespread abuse of marihuana in all of its potent forms, concludes that:

> Excessive indulgence in cannabis is apt to produce in healthy individuals and more so in susceptible individuals, mental confusion which may lead to delusions with restlessness and disordered movements. Intellectual impairment as well as disorientation may show itself in various ways, such as weakening of moral sense. . . . Sometimes indulgence may release subconscious impulses and lead to violent crime.[12]

Earlier studies in 1939 in New Orleans disclosed that the number of marihuana users among major criminals was very high.[13] Even the LaGuardia report of 1944, which is so often cited as support for the harmlessness of marihuana, found in a number of test subjects that: ". . . [T]here were alterations in behavior giving rise to antisocial expression. This was shown by unconventional acts, anxiety reactions, opposition and antagonism, and eroticism. Effects such as these would be considered conducive to acts of violence."[14] and further that: "The conclusion seems warranted that given the potential make-up and the right time and environment, marihuana may bring on a true psychotic state."[15]

Of special significance is the investigation of Professor C. G. Gardikas in which he analyzed a group of 379 hashish-smoking criminals. He found that 117 of these became criminally inclined only after their habituation to hashish. Also, they had between them more than 420 sentences for assaults, woundings, threats, robberies, manslaughter, and

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[12]Chopra, *supra* note 2, at 23.

[13]Bromberg, *Marihuana—A Psychiatric Study*, 113 J.A.M.A. NO. 1, 19 (1939).

[14]THE MAYOR'S COMMITTEE ON MARIHUANA, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK 215 (1944).

[15]*Id.* at 51.

sex offenses.[16] P. O. Wolff refers to various other reports from Greece, Turkey, Tunisia, and Egypt which bear out this finding.[17] Wolff has also listed a number of specific incidents taken from his own observations in Latin America. In India, the Chopras state that: "Fits of aggressive mania are not infrequently observed after indulgence in cannabis."[18]

The manner in which marihuana causes or induces criminal behavior is not clear and seems to vary with the individual, the dosage, and the circumstances. A general survey of the literature indicates that it may stimulate criminal conduct in any of the following ways: (1) use by criminals to fortify their courage prior to committing crimes; (2) chronic use resulting in general derangement and demoralization; (3) use resulting in the lowering of inhibitions and bringing out suppressed criminal tendencies, and (4) use resulting in panic, confusion or anger induced in otherwise normal persons who have not been previous users.

A psychoactive drug such as marihuana does different things to different people, and even to the same person, depending on external and internal circumstances. Environmental and psychological factors, mood, disposition, attitude, suggestion, expectancy, motivation, and any abnormal behavioral patterns will determine the drug's effects. "The subjective effects (of marihuana) are exquisitely dependent, not only on the personality of the user, but also on the dose, the routine of administration, and the specific circumstances in which the drug is used."[19]

We are now in a wave of ever-increasing juvenile delinquency. More youngsters are getting arrested every year—at lower ages and for more serious offenses. These young people are often predisposed to impulsive and aggressive

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[16]Gardikas, *supra* note 2, at 5.
[17]WOLFF, *supra* note 2, at 27.
[18]Chopra, *supra* note 2, at 24.
[19]Jaffe, *Drug Addiction and Drug Abuse*, in L. GOODMAN AND A. GILMAN, THE PHARMACOLOGICAL BASIS OF THERAPEUTICS 300 (3d ed. 1965).

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behavior. Coupled with an equally complex adult problem involving hundreds of thousands of neurotic and psychotic persons in our midst, would it be wise to make available to them a chemical agent which would most likely release their inhibitions? We should not exaggerate the hazards of smoking a marihuana cigarette by a college student, who may be otherwise normal, and is seeking social acceptance from a group of his peers. But, on the other hand, it is appalling when we so often read that "there is no reliable evidence that marihuana causes crime." Both the logic and the evidence clearly support the proposition that marihuana can be a potent triggering chemical in persons predisposed to criminal behavior.

Here are just a few examples of statements compiled by Dr. Victor Vogel of the California Rehabilitation Center from 100 consecutive heroin addicts concerning their experiences with marihuana:[20]

> I got in quite a bit of trouble while I was high on marihuana—steal to get money to party and to buy marihuana; got involved in gang fights and was arrested twice for rape.
> Under the influence of marihuana, I broke into a church and robbed the collection box.
> I feel stubborn and get into arguments when I am high.
> Marihuana makes me paranoid and I get into fights.
> I got arrested for quite a few fights and scrapes when I was high on marihuana which gives you a false courage and you talk big and then blow it by starting a fight.
> I did about 15 drugstore robberies with a partner for narcotics. We used to get high on marihuana beforehand.
> I was walking down the road one time with a fellow and we were both high on marihuana. All of a sudden, for no reason, he jumped about four feet in the air

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[20] Vogel, *Excerpts from Statements Regarding Marihuana Use Made by One Hundred Consecutive Heroin Addicts Interviewed by Dr. Victor H. Vogel at the California Rehabilitation Center During Hearings Beginning August 18, 1967*, unpublished paper sent to the Comm. of Narcotics (Sept. 1967).

and began beating a man. He was like a wild man and we had to call the State Police.
I have gotten into plenty of trouble while high on marihuana, gang fights, and I beat up my wife.

ESCALATION PHENOMENON

One particularly grave danger of habitual marihuana use is that there is often a clear pattern of graduation from marihuana to the stronger drugs. Those who seek personal well-being and exhilaration through the stimuli of drugs ultimately discover that LSD, methamphetamine, and the opium derivatives have more to offer. This point has been disputed, of course, particularly in the case of student experimentation. Certainly, it is true that not all persons who ever smoked a marihuana cigarette have gone on to the use of LSD or heroin, but actual experience leaves little room for doubt that a large majority of addicts began their drug taking with marihuana. This pattern of graduation has been observed in the United States, the Near East, and in Africa,[21] though admittedly, the exact causal connection is unknown. In a sample of 96 heroin users examined in the United States, 83 admitted to the use of marihuana prior to their addiction.[22]

A good review of the subject is that of P.A.L. Chapple who studied 80 English heroin addicts. He found that 70 of these had first used marihuana and apparently considered its effects to be second only to those of heroin.[23] In studying these patients, Dr. Chapple was led to the conclusion that the connection between marihuana and heroin could not be accounted for, simply on the basis of the "mutual influence of availability in illegal society. . . ."[24] In an intensive research project conducted by Dr. John C. Ball, Chief Sociologist of the United States Clinical Re-

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[21]D. MAURER AND V. VOGEL, NARCOTICS AND NARCOTIC ADDICTION 245 (2d ed. 1962).

[22]I. CHEIN, THE ROAD TO H 149 (1964).

[23]Chapple, *Cannabis: A Toxic and Dangerous Substance, a Study of 80 Takers*, 61 BRIT. J. OF ADDICTIONS 273 (1966).

[24]*Id.* at 276.

search Center in Lexington, Kentucky, it was found that of 2,213 narcotic addicts examined, from those states classified as areas in which marihuana is often available, 1,759 addicts or 80 percent had first used marihuana.[25]

A very significant survey has been made by Doctors Lee N. Robins and George E. Murphy, of 235 persons in St. Louis. The report indicates that about 50 percent of the persons in the survey who had used marihuana had also gone on to the use of narcotic drugs.[26]

It seems very reasonable that the more people we have who are experimenting with marihuana, the greater the danger that many of them will not be able to rid themselves of a new habit. They will then be contaminated as a consequence of association in sub-cultures involved with all types of drug abuse, barbiturates, amphetamines, LSD, and even heroin. If this assumption is true, and if the apparent increase in marihuana abuse continues unabated, it is certainly within reason that there will be a sharp rise in the incidence of narcotic addiction in the near future. There is already a showing that the increased use of marihuana is beginning to result in an increase of addiction in persons under the age of 21 years.[27]

The question of the permanency of the effects of marihuana remains open for investigation. More likely than not, the earlier failures in finding such effects in this country resulted from the unavailability of chronic users of

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[25]Ball, *The Association of Marihuana Smoking with Opiate Addiction in the United States*, presented at the Annual Meeting of the Am. Sociological Assoc., San Francisco, Aug. 1967.

[26]Robins and Murphy, *Drug Use In A Normal Population of Young Negro Men*, 57 AM. J. PUB. HEALTH NO. 9, 1580-96 (1967).

[27]Statement of Commissioner of Narcotics Henry L. Giordano before the House Subcommittee on Public Health and Welfare, February 27, 1968, where he stated:

> In 1963, only 13.9 percent of the new addicts reported were under the age of 21 years. In 1967, 21.2 percent of the new addicts reported were under the age of 21 years.... Also, preliminary reports show that the largest increases in youthful addiction are in areas other than the traditional addiction centers. Thus, as I predicted, we are beginning to register the ultimate experimentation with marihuana.

high quality marihuana. Further scientific study is needed, and the National Institute of Mental Health is presently carrying on a complete plan of research, covering all aspects of marihuana use. Pending the results of these new studies, no off-the-cuff decision should be made which is contrary to the existing belief—that marihuana is a harmful and dangerous substance which should be controlled in the best possible way. While these studies are going on, it is clear that a heavy burden of proof must rest upon the proponents of measures removing any controls.

Marihuana does differ significantly from the opium and "opiate" classes of drugs in that it does not produce addiction of the morphine type. Abstinence does not produce a physiological withdrawal syndrome in the user; however, its use does result in a psychological dependence. According to Dr. David Ausubel, in chronic users, deprivation may result in anxiety, restlessness, irritability, or even a state of depression with suicidal fantasies; all symptoms of a psychological withdrawal syndrome.[28] For these reasons, marihuana is more often said to be habituating rather than addicting, although one investigator claims that at least from a psychiatric point of view, there is little difference.[29] It is somewhat incredible that the lack of physical dependence liability has been cited by some observers as though it were a positive virtue of marihuana.

THE ALCOHOL ARGUMENT

One argument used by the permissivists that strikes me as naive is the comparison of marihuana and alcohol. Their reasoning is, "What is so bad about marihuana, it is no worse than alcohol?" The best reply to this is that a public health problem is not the less odious because it is sanctioned by a majority of the people. Before accepting the argument that marihuana is no worse than alcohol, one must consider the price paid by society for its inability to control abuse of alcohol. While no one can envisage return

[28]D. AUSUBEL, DRUG ADDICTION 273 (1958).
[29]Chapple, *supra* note 23, at 279.

to Prohibition as a politically achievable goal, and very few would desire it even if such were the case, the fact is, that according to the Public Health Service, there are today some 6 million chronic alcoholics.[30] These in turn adversely affect the lives of at least 20 million other persons, principally members of their families. One half of the annual toll of fatal accidents, or the death of more than 26,000 people, can be attributed in some measure to alcohol abuse.[31] Over one-half of all crime in the United States has been said to be connected with alcohol.[32] Despite all this, alcohol has been socially acceptable in our civilization for many years. This does not necessarily mean that now for the first time, marihuana, the recent fad of isolated groups of pseudo-intellectuals and hippies, should gain social acceptance. The result in any case can only be added damage from a new source. We now have more than 62,000 reported active narcotic drug addicts, untold thousands of amphetamine and barbiturate abusers, and millions of persons who drink too much alcohol.

Nevertheless, the comparison of the two is essentially unsound since the active principles of each are entirely different substances with different mental and somatic effects. Marihuana is a stimulant and hallucinogen, whereas alcohol is a depressant. The evidence indicates that marihuana, unlike alcohol, is nearly always consumed to the point of disorientating intoxication.

The American Medical Association and the National Academy of Sciences have this to say about comparing marihuana and alcohol:

> When advocates of legalizing marihuana claim that it is less harmful than alcohol, they are actually comparing

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[30]Blum, *Mind Altering Drugs and Dangerous Behavior: Alcohol*, Appendix B, Task Force on Drunkenness, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, 29-32.

[31]Pittman, *Public Intoxication and the Alcoholic Offender in American Society*, Appendix A, Task Force on Drunkenness, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, 14.

[32]*Supra* note 30, at 40.

> the relatively insignificant effects of marihuana at the lower end of the dose-response curve with the effects of alcohol at the toxicity end of the curve—i.e., the "spree" use of marihuana vs. acute or chronic "poisoning" with alcohol. If they compared both drugs at the upper end of the curve, they would see that the effects on the individual and society are highly deleterious in both cases.
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> Admittedly, if alcohol could be removed from the reach of alcoholics, one of the larger medical and social problems could be solved. But to make the active preparations of cannabis generally available would solve nothing. Instead, it would create a comparable problem of major proportions.
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> That some marihuana users are now psychologically dependent, that nearly all users become intoxicated, and that more potent forms of cannabis could lead to even more serious medical and social consequences—these facts argue for the retention of legal sanctions.[33]

We are told that people use marihuana to "escape" from problems and insecurities, much the same as alcohol is used. Dr. Benjamin Kissen takes exception to this rationalization.[34] He states that psychoactive drugs may be used in two ways: to diminish emotional tension and permit a person to function within reasonable limits, or the other, to allow the person to escape from reality. The first group (the sedatives), when used in moderation to allay excessive anxiety, often permits a person to function more effectively. On the other hand, the psychedelic drugs, such as marihuana, allow the individual to escape from reality so that he need not function at all. "The first group of drugs is often useful to society; the second group would only destroy it." I think Dr. Kissen is saying that literally millions of persons consume controlled portions of alcohol, a drug which has been engrained in our culture, and which is most often self-titrated for its beneficial effects. This is quite different from the marihuana users who have one motive when they use the substance—to achieve a physical

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[33] *Supra* note 9.

[34] Kissen, *Faculty Byline "On Marihuana,"* 2 BROOKLYN DOWNTOWN MEDICAL CENTER REPORTER NO. 7 (1967).

and mental "thrill", to smoke more and more until there is an altering of the mental process.

The effect of marihuana on the performance of complex tasks, such as the operation of a motor vehicle, although a less spectacular concern, is of considerable social significance. In a statement before the United Nations Commission on Narcotic Drugs in 1963, the French Delegation expressed alarm over the high rate of road accidents which appeared to be attributable to the abuse of drugs and "particularly cannabis".[35] This danger has also been noted by authorities elsewhere and it was specifically dealt with in the report of the United Nations Commission in 1965.

EXTENT OF CONTROLS

The Marihuana Tax Act of 1937, 26 U.S.C. §4771 et seq.,[36] requires registration and payment of a graduated occupational tax by all persons who import, manufacture, produce, compound, sell, deal in, dispense, prescribe, administer, or give away marihuana. A tax is imposed upon all transfers of marihuana at the rate of $1 per ounce or fraction thereof if the transfer is made to a taxpayer registered under the act, or at the rate of $100 per ounce if the transfer is made to a person who is not a taxpayer registered under the act. Transfers are also limited generally to those made pursuant to official order forms obtainable from the District Director of Internal Revenue. Exceptions from the order-form and transfer-tax requirements are made in dispensing to a patient by a qualified practitioner in the course of his professional practice only, and in the sale by a druggist to or for a patient, pursuant to a written prescription issued by a qualified practitioner.

The law is designed to permit marihuana to be produced and used for industrial, scientific and medical purposes only. In determining which persons may be registered, and thereby sell or acquire marihuana, the regulatory scheme

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[35]U.N. Doc. E/CN. 7/L. 268 (1963). Statement by French Delegation.

[36]*See* Sobeloff's article this edition p. 101.

requires as a condition precedent that the applicant be qualified to engage in the activity according to the applicable state provisions. A typical "street peddler" could not become registered, because such a person is not qualified by state law.[37] Consequently, the scheme of the Marihuana Tax Act of 1937 is critically different from that in the gambling and firearms tax statutes, and does not present the same risks of self-incrimination. Persons who intend to acquire marihuana illicitly cannot incriminate themselves because they are not allowed to register and pay the occupational and transfer taxes. Since no record is kept of those who unsuccessfully apply for a marihuana order form because they are not eligible, and since no notification is given to either a federal or state law enforcement agency, there is no " . . . real, and not merely trifling or imaginary, hazards of incrimination."[38]

The term "marihuana" includes many fancy and vernacular names: the so-called "American type", the so-called "Mexican type", "hashish", "kif", "bhang", "ganja", "charas", "cannabis", "cannabis resins", "cannabidol", "cannabinol", "tetrahydrocannabinol", "pot", "grass", "weed". It is true that there are varying degrees of potency ranging from almost no effects of poorly harvested marihuana to the severe effects of "hashish" or "charas". Most of the marihuana consumed in the United States is made up of the leaves and flowering tops of the marihuana plant. To a lesser extent, but which is definitely on the increase, "hashish" is also being consumed by users in the United States.

The various state legislatures have enacted programs for controlling possession and sale of marihuana by finding that marihuana and such drugs as those of the opium family have sufficiently similar social and physiological effects to warrant proscription in a single category labeled "narcotics".

In the course of developing their statutory schemes, the

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[37]26 C.F.R. 152.22 & 152.23.

[38]Marchetti v. United States, 390 U.S. 39, 53 (1968).

legislators were recipients of a substantial ammount of information bearing on the social and physiological effects of marihuana. The Uniform Narcotic Drug Act, including the proscription against marihuana as a "narcotic", is now in force in 48 of the states.[39] The other two states also control marihuana under statutes similar to the control of narcotic drugs.

What is the right of states to classify marihuana as a "narcotic"? Despite some psychological and physiological differences in the effects of the drugs in the opium family and marihuana, the inclusion of marihuana in the statutory definition of "narcotic" is not constitutionally improper. The word "narcotic" is commonly used to designate drugs having the consciousness-altering characteristics of marihuana, *i.e.*, stupor, mental lethargy, marked alterations of mood, and possible physiological harm.[40]

This issue has been considered by the Supreme Court of Colorado.[41] That court sustained the Colorado Narcotic Drug Act against the appellant's challenge that the inclusion of marihuana in a class with heroin and other physically addicting drugs was an unreasonable and arbitrary classification violative of due process and equal protection of the law. Noting that its statute was in the language of the Uniform Narcotic Drug Act,[42] the court observed that legislative classifications are constitutional when based on a grouping of different items, if these items all bear some

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[39]UNIFORM NARCOTIC DRUG ACT, § 1, 9B U.L.A. (1964). The exceptions are California and Pennsylvania. Legislation in some states is only in part based on the Act. Also, there have been varying amendments in a number of states. Consequently, the law in those states is not entirely "uniform".

[40]WEBSTER'S NEW COLLEGIATE DICTIONARY (1966); ROGET'S THESAURUS (1966); STEDMAN'S MEDICAL DICTIONARY (21st ed. 1965); J.E. SCHMIDT'S ATTORNEYS DICTIONARY OF MEDICINE (3d ed. 1965).

[41]People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965).

[42]ELDRIDGE, NARCOTICS AND THE LAW 135 (1962).

> "Narcotic drugs" means coca leaves, opium, cannabis [the international term describing marihuana], and every other substance neither chemically nor physically distinguishable from any of them. . . .

reasonable relation to the public purpose sought to be achieved by the legislation involved. Several cases have been in accord with the Colorado holding.[43]

It, therefore, seems conclusive that the term "narcotic" as currently used, is a legal term with no precise technical meaning, used to describe a varied assortment of harmful and dangerous drugs. There is a problem of semantics, but the classification should not be upset merely because it is not made with mathematical nicety or because in practice the equating of marihuana and the drugs of the opium family results in some inexact reasoning. The wide degree of judicial accord is an indication that the classification of marihuana with the drugs of the opium family is a rational use of the legislature's power.

In developing their programs, the legislators are not bound by any one school of thought, nor are they bound to rely on only uncontroverted factual propositions. So long as the legislation rests on some rational basis, it is not to be declared unconstitutional. It is beyond dispute that the legislature, and not the courts, has the duty to assess and weigh the various and often conflicting considerations in legislative programs.[44] The legislature is not bound by any orthodoxy, but rather can range over the whole spectrum of human knowledge and experience in developing its legislative programs. "It makes no difference that . . . facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate such contrarity."[45]

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[43]Spence v. Sacks, 173 Ohio St. 419, 183 N.E.2d (1962); Locke v. State, 168 Tex. Cr. R. 507, 329 S.W.2d 873 (1959); State v. Page, 395 S.W.2d 146 (Mo. 1965); Jenkins v. State, 215 Md. 70, 137 A.2d 115 (1957); People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (Dist. Ct. App. 1952); People v. Woody, 40 Cal. Reptr. 69, 394 P.2d 813 (1964) (*en banc*).

[44]Katzenbach v. Morgan, 384 U.S. 641, 653 (1966).

[45]Rast v. VanDeman & Lewis Co., 240 U.S. 342, 357 (1916); *See also*, United States v. Carolene Products Co., 304 U.S. 144, 152 (1937); Radice v. New York, 264 U.S. 292, 294 (1923); Bordens Co. v. Baldwin, 193 U.S. 194, 209, 210 (1934); The *Carolene* case held that legislation ". . . is not to be pronounced unconstitutional unless . . . it is of such character as to preclude the assumption that it

Thus, all defendant-appellants have an extremely heavy burden to carry. It will not suffice to show merely that a body of scientific opinion, however sizable and respected, regards the legislative assumptions about the social and physiological effects of marihuana to be incorrect. Rather, the appellants must show that the assumptions are completely without support; that is, that no reputable body of opinion whatsoever exists on which the legislature might have rested its decision to proscribe marihuana in a statute dealing with drugs "narcotic" in character.

The information available to the legislators at the time of the enactment of the inclusion of marihuana within the proscriptions against narcotics was abundant. The legislative history of the United States Congress in enacting the Marihuana Tax Act of 1937, reveals there was a great deal of agreement among medical and scientific groups concerning the harmful effects of marihuana. The Seventy-fourth and Seventy-fifth Congresses were the beneficiaries of a large volume of material describing a variety of different experiences with marihuana, both in controlled environments and in real life.[46]

In 1942, the National Conference of Commissioners on Uniform Laws recommended that marihuana be included in the controls of the Uniform Narcotic Drug Act.[47] The legislative histories in the various states will also support the proposition that a rational basis for controlling mari-

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rests upon some rational basis within the knowledge and experience of the legislators."

[46]*See*, H.R. 6906, 75th Cong., 1st Sess. (1937), H.R. 6385, 75th Cong., 1st Sess. (1937). Included in the record as secondary references were many papers relating to marihuana, *e.g.*, Bromberg, *Marihuana Intoxication, Clinical Study of Cannabis Sativa Intoxication*, 91 AM. J. OF PSYCHIATRY, 303-30 (1934); Bragam, *The Weed of Insanity*, MED. J. AND REC. 416 (1925), H. ARNY, PRINCIPLES OF PHARMACY 767-68 (3d ed. 1926); J. MUNCH, BIOASSAYS: A HANDBOOK OF QUANTITATIVE PHARMACOLOGY 190-97 (1931).

[47]HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS 173 (1942).

huana existed at the time of the enactment of their statutes.

Many of the defenses being raised today in opposition to the Uniform Narcotic Drug Act controls were handled in an extensive opinion by Chief Justice G. Joseph Tauro of the Suffolk Superior Court at Boston, Massachusetts, in the case of *Commonwealth v. Leis and Weiss*,[48] (unreported). After a thorough twelve-day pre-trial inquiry, in which many experts from the United States and foreign countries testified, Justice Tauro stated in part:

> . . . I do not find that the inclusion of marihuana in the statutory definition of a narcotic drug is constitutionally offensive. . . . [and] [i]t is my opinion, based on the evidence presented at the hearing, that marijuana is a harmful and dangerous drug.[49]

NEED FOR CONTINUED CONTROLS

Hence, we find very adequate reasons for proscriptions against marihuana. Even if we were to accept the doubtful proposition that the children of our colleges today possess a superior intelligence and are better able to deal sensibly with drugs, and even if we were to conclude that marihuana affects only the weak and the vulnerable, since when has our society stopped being concerned about a minority? The very purpose of many of our health laws is the protection of minorities. I am not impressed that a law student with a high IQ does not obtain a reaction from taking two or three puffs on a marihuana cigarette. I am concerned over the consequences of making the drug readily available in a society containing millions of persons predisposed to impulsive and aggressive behavior.

The question most people are inclined to ask at this point is why make possession of a controlled drug a violation of law? To me, it is reasonable to assume that the fear of suffering the consequences of the law does deter

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[48]Partially reprinted in this publication p. 23.
[49]*Id.* at 26-27 of this publication.

countless reasonable and responsible persons. Avoidance of punishment and disgrace is a very decisive reaction of normal people. The vast majority of the people who have lived with the social contrivance of punishment, in the home, in the schools, at work and at play, will avoid certain courses of action which are potentially injurious. The condoning of unauthorized possession of a controlled drug is to approve of a ready source of supply for proselytizing. Such a view also condones a "drug cult" where all types of drugs may be available for the use of anyone who decides to find an escape or experience a different "high". We need to retain all of the penalties, otherwise it will be taken as an expression of relaxation, and a less harsh attitude toward drug abuse.

One extremely important aspect in the use of any mind-altering drug by an adolescent is the potential effect on his future psychological development. We all know that teenagers go through a very trying period of learning to cope with reality. They are in a constantly shifting state of equilibrium. Psychologists tell us that patterns of coping with the social processes—with reality—at that stage will greatly affect their adult behavior. Persistent use of mind-changing drugs as escapes from reality will hardly prepare them for entry into the realities of adulthood and a very complex society. If we can't ward off this trend of widespread misuse of drugs by our youth, there is a serious danger that large portions of the current generation and future generations will reach adulthood unequipped to take on parental, vocational and other citizen roles.

MARIJUANA LAWS — A CRIME AGAINST HUMANITY†

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I. Introduction

American enforcement of laws prohibiting the use of marijuana is an unjustifiable and shocking practice which is ruining lives, interrupting careers and destroying relationships. Leaving an embittered citizenry in their wake, these laws are promoting social discord in the present as well as assuring similar strife for the future. They are an absurdity that must not be permitted to continue to ravage our nation and our sense of justice. It is therefore the contention of the authors that the use of the substance marijuana should be legalized immediately in order to stop the mindless alienation and criminalization of marijuana users, particularly the young, which our society is perpetrating by the continued enforcement of criminal sanctions against marijuana.

In the past several years, there have been many studies in the areas of science and legal scholarship about the effects of marijuana upon the individual user, the judicial system and society in general. These have proved illuminating with regard to arriving at an enlightened approach to the question of the legalization of marijuana. It is not one of the purposes of this paper to evaluate the scientific studies involved with an eye toward criticism of the methods used, nor is it one of our purposes to devote our entire effort to a detailed analysis of the efforts of others in the courts or in the area of legal scholarship. All this has been done by others in greater detail and with greater expertise than the authors of this article could hope to approximate. However, in order to make a persuasive argument, as this article is intended to be, it is helpful to utilize many of these studies, including case law, to understand fully the issue of the legalization of marijuana. It is from the basis of the knowledge imparted by these sources that it becomes proper to assert that legalization is desirable.

Two studies in particular are worth investigating, not only for the original thinking which they bring to bear on the marijuana problem but also because they serve as excellent reviews of the history of marijuana use, legislation and scientific knowledge. In short, they are essentially complete investigations of certain aspects of the marijuana issue. Dr. Lester Grinspoon's book, *Marihuana Reconsidered*,[1] and the very recent report of the National Commission on Marihuana and Drug Abuse, *Marihuana—A Signal of Misunderstanding*,[2] which was made under authority of the Comprehensive Drug Abuse Prevention and Control Act of 1970, primarily by various Nixon appointees, both provide excellent studies and summaries of scientific, legal and social issues involved in the marijuana

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1 L. GRINSPOON, MARIHUANA RECONSIDERED (1971) [hereinafter cited as GRINSPOON].

2 NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, FIRST REPORT. MARIHUANA—A SIGNAL OF MISUNDERSTANDING (1972) [hereinafter cited as COMMISSION].

problem. In this regard they can be considered as updating the earlier landmark report of Professor John Kaplan.[3] Recourse to either of these sources or to various others[4] will provide the reader with a good understanding of the history of marijuana in this country, both its use and related legislation.

Generally, marijuana was introduced into this country by Mexican laborers and New Orleans inhabitants in the 19th century and was confined to use by minority groups until the early 1960's.[5] However, in the 1920's, word of the use of this substance and of its alleged association with more dangerous drugs such as heroin reached government and law enforcement officials and a general feeling of prohibition against drug use of any kind (this was the Era of Prohibition against alcohol use) led to the enactment of laws against the use of marijuana. This did not occur, however, until after the "marijuana scare," a concerted effort on the part of many agencies, public and private, to "inform" the public about the dangers of marijuana as a killer drug capable of the worst horrors upon its user and a social disaster as well. This campaign, which was based upon misinformation and emotionalism, is attributed in large part to the then Commissioner of the newly created Federal Bureau of Narcotics, Henry J. Anslinger, who based his early opinions upon the "scientific studies" of Dr. Frank Gomila, Commissioner of Public Safety of New Orleans, and his chemist wife.

Thus, by 1931 several states had enacted laws against the use of marijuana (by "use" is variously meant possession, distribution, cultivation, etc.), and by 1937, the year of the enactment of the federal Marihuana Tax Act,[6] nearly every state had made possession of marijuana illegal.[7] The Marihuana Tax Act also acted as a general prohibition against the use of marijuana, and over the years the penalties for the use of marijuana were increased.[8]

By 1956, the year of the last amendment to the Tax Act, the penalty for possession included a two-year minimum (mandatory), and the penalty for sale was five years for the first offense and ten for the second. All this and yet no one responsible for this legislation had ever done a comprehensive study as to the effects of marijuana. Everyone, it seemed was willing to "take Commissioner Anslinger's word for it" despite the fact that there had been several early objective studies made regarding the effect of marijuana upon individuals and society[9] which had cast doubt on the claims of those opposed to marijuana use. These studies were simply ignored or belittled by those involved in campaigning and legislating against marijuana. For example, in 1958, a joint American Bar

3 J. KAPLAN, MARIJUANA—THE NEW PROHIBITION (1970) [hereinafter cited as KAPLAN].

4 *See, e.g.*, Bonnie & Whitehead, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971 (1970). (This is a rather lengthy article incorporating legal analysis and student survey work).

5 For a more detailed history of marijuana legislation, *see* GRINSPOON at 10-29; COMMISSION at 3-14.

6 Act of Aug. 2, 1937, ch. 553, § 8, 50 Stat. 554 (codified as amended at 26 U.S.C.A. 4744).

7 GRINSPOON at 16.

8 *See* Act of Nov. 2, 1951, ch. 666, §§ 1, 5(1), 65 Stat. 767; Act of July 18, 1956, ch. 629, Title I § 101, 70 Stat. 567. *See also* Narcotic Control Act, Act of July 18, 1956, ch. 629, § 106, 70 Stat. 5570 (codified at 21 U.S.C.A. § 176(a)) (repealed 1970).

9 *See, e.g.*, MAYOR'S COMMITTEE ON MARIHUANA, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK (1944). (The LAGUARDIA REPORT.) W. Bromberg, *Marihuana Intoxication*, AMER. J. PSYCHIAT. 91 (1934) quoted in GRINSPOON at 18.

Association/American Medical Association Committee restudied the drug problem in the United States and was asked to report to the Federal Bureau of Narcotics. Among other heretical innovations, the committee urged the creation of heroin addiction treatment centers and a reconsideration of marijuana and other drugs. For this it was roundly condemned by Commissioner Anslinger, who, in a letter to the committee chairman called the report prejudiced, ambiguous, inconsistent, inaccurate and false propaganda, and went on to inform the committee that he was not trying to censor the report but merely wanted a "factual document."[10]

Commissioner Anslinger, without waiting for the committee's "enlightenment," went on to gather together his own group of "experts," one of whom was the Honorable Twain Michelson, Superior Court judge for San Francisco, California. Judge Michelson was highly critical of the ABA-AMA study, but could offer no scientific or medical data regarding the dangers of the various drugs in question (he did, however, quote from *Reader's Digest* and *Women's Home Companion*). Noting that he had read in a newspaper of a petition signed by more than 2,200 Modesto High School students asking the California legislature to prescribe the death penalty for those convicted of selling narcotics to minors, the judge stated:

> Here is an example of youth being aroused to the death dealing properties of contraband narcotics, but the ABA-AMA Joint Committee will not go along with them. Contrast this youth movement with the sentence imposed upon George Yokoyama by a California judge who placed the defendant on probation for two years, fined him $150 . . . "to be paid in installments," following his conviction of having "Approximately *900 pounds of growing marijuana*"—enough of the killer weed to send hundreds of juveniles reeling into a world of moronic behaviour, crime and near-insanity.[11]

As late as 1963, a federal government committee was describing marijuana as a very dangerous drug.

> What are these drugs that can turn potentially useful citizens into hopeless, estranged, dependent individuals? That can turn normal young men and women to crime? They are many and include . . . morphine, heroin . . . marijuana.[12]

Thus, the federal and state governments went roaring into the 1960's with completely thoughtless and repressive legislation, entirely unprepared for the increased use of marijuana and all the related problems which that would bring when the youth culture came into being.

While no one apparently ever polled the public to find out their views about

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10 Advisory Committee to the Federal Bureau of Narcotics, Advisory Report, at viii (U.S. Gov't Printing Office 1958).

11 *Id.* at 98.

12 The President's Advisory Commission on Narcotic and Drug Abuse, Final Report at 1 (U.S. Gov't Printing Office 1963).

marijuana usage during the decades prior to the 1960's, it seems reasonable to assume that those among the citizenry who had an idea what marijuana was were probably in favor of harsh criminal penalties for its use because of the virulent antimarijuana campaign previously described. Yet today, public opinion, indeed all opinion, has altered its course. The National Survey, a poll conducted under the auspices of the National Commission, made a comprehensive statistical report of the attitudes of the public at large and various government officials and, *inter alia*, reported that at the present time, 51% of all adults polled believe that marijuana should be treated as a medical problem[13] and 87% object to putting users in jail.[14] Equally as important, 31% of all prosecutors polled admitted that they would not prosecute anyone arrested for smoking a marijuana cigarette at a private social gathering, and 53% admitted that the legislation against the possession and use of marijuana does not deter the under-30 group from such possession and use.[15] Perhaps most important was the conclusion of the National Commission itself, as will be discussed in greater detail later in this article, which, after its comprehensive, yearlong study, recommended partial legalization of marijuana use (private, personal possession of marijuana and casual transfers for little or no remuneration).[16]

This shift in opinion on the part of all concerned has been largely the result of an increased awareness of the effects of marijuana upon both the individual user and society. Generally, the awareness has been that of the relative harmlessness of marijuana in its effects upon the user when compared to many other drugs in use in America today.

II. What Is Marijuana? What Are Its Effects?

> It probably originated somewhere in Central Asia (as did mankind) and was first used perhaps five thousand years ago. Our marijuana is one-fifth to one-tenth as strong as other cannabis preparations which are preferred abroad, and it is looked down upon in other countries as fit only for the poor. It is the weakest of three grades used throughout the world; *ganja*, the intermediate grade, is the ground-up tops of specially cultivated plants; *hashish* or *charas* is the pure resin from the best cultivated plants and is usually the strongest. Marijuana is the entire foliage from ordinary plants. It is usually smoked, although it can also be ingested in foods or tea.[17]

This description of cannabis is the first step in an objective understanding of marijuana. But knowledge of what marijuana is does not tell us what marijuana does.

> Looking only at the effects on the individual, there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis . . .[18]

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13 COMMISSION at 122.
14 COMMISSION at 144.
15 COMMISSION at 120.
16 COMMISSION at 140, 152, 154.
17 MARIJUANA—MYTHS AND REALITIES 230 (J. L. Simmons ed. 1967).
18 COMMISSION at 65.

So concluded the National Commission, going on to note that the heavy use of cannabis in its most potent forms over a long period of time, a practice of only 2%[19] of all marijuana users, leads to psychological dependence proportionate to use, some minor behavioral changes and possible (results of studies are as yet inconclusive) pulmonary alteration.[20]

Or, as the equally prestigious authority Dr. Lester Grinspoon, put it:

> It is quite true that among the hundreds and hundreds of papers dealing with cannabis, there is relatively little methodologically sound research. Yet out of this vast collection of largely unsystematic recordings emerges a very strong impression that no amount of research is likely to prove that cannabis is as dangerous as alcohol and tobacco. The very serious dangers of tobacco, particularly to the pulmonary and cardiovascular systems, are becoming increasingly well known. . . . It is a curious fact that the only socially accepted and used drugs known to cause tissue damage (alcohol and tobacco) are the ones whose use Western society sanctions. It is reasonably well established that cannabis causes no tissue damage. There is no evidence that it leads to any cellular damage to any organ. It does not lead to psychoses *de novo*, and the evidence that it promotes personality deterioration is quite unconvincing, particularly in the forms and dosage used in the United States today.[21]

Both the National Commission and Dr. Grinspoon devote a large portion of their reports to a detailed discussion of the physical and mental effects of marijuana on the individual user. The quotations reproduced above are indicative of the conclusions reached by both authorities. Both the Commission and Dr. Grinspoon based their conclusions upon careful analyses of the results of past and currently existing research projects by independent researchers. Many of the same studies are quoted by both the National Commission and Dr. Grinspoon,[22] and both sources appear aware of the results of most if not all of the existing projects and studies that are available on the subject of marijuana's effects on the user.[23] Generally, both the National Commission and Dr. Grinspoon report the following similar findings, many of which explode the old myths about the dangers of marijuana use.[24] As just mentioned, short-term use of marijuana causes no organic damage to its user or any adverse mental effects. In addition, there are no known cases of human fatalities attributable to marijuana use,[25] marijuana is not physically addictive,[26] does not lead to a decrease in ambition or motivation (what has been variously termed the "drop out" or "amotivational syndrome"),[27] is not a stepping-stone to the "harder drugs" such as heroin and cocaine,[28] does not produce psychoses in its users,[29] and is a mild

19 COMMISSION at 87 *et seq.*
20 COMMISSION at 65 (*see generally* 55-66).
21 GRINSPOON at 370, 371.
22 Many of these studies are also mentioned in Kaplan's work, *supra* note 3.
23 GRINSPOON at 3; COMMISSION at 62.
24 For a similar report, slightly dated, and reduced to chart form, *see* S. YOLLES, MARIHUANA, FABLE—FACT, 3 U.S. CODE CONG. AND AD. NEWS 4577-78 (1970).
25 GRINSPOON at 227.
26 GRINSPOON at 223; COMMISSION at 65, 66; KAPLAN at 164-175.
27 GRINSPOON at 290; COMMISSION at 62; KAPLAN at 193.
28 GRINSPOON at 235 *et seq.*; COMMISSION at 87, 88; KAPLAN at 270.
29 GRINSPOON at 253 *et seq.*; COMMISSION at 58; KAPLAN at 148-160.

intoxicant (or psychoactive drug) which ought not necessarily be clasified as a hallucinogen.[30] It does not lead to crime, violent or non-violent,[31] does not cause that most dread of all American fears, an increased sex urge,[32] and it will not result, as its opponents used to assert in their heyday, in insanity.[33] In many users it will, unlike alcohol,[34] result in no substantial interference with driving. In fact, there are growing indications that cannabis preparations might have substantial medical value.[35]

Actually, marijuana use is, for the most part, a relaxing, pleasurable experience for the vast majority of its users,[36] one with no adverse side effects and one which is rapidly gaining in popularity in this country.[37] In fact, the worst that the National Commission could say about long-term use of marijuana was that it appeared to have become part of the change in life-style that the youth in this country is undergoing, but the National Commission expressed doubt that marijuana usage was the cause of this change and was uncertain whether marijuana use came before or after the change in attitude.

The National Commission, relying upon studies and data available largely from other countries, attempted to gather information as to the effect of marijuana on a person who not only used cannabis over a long period of time, but who used very strong potions of it on a frequent or daily basis. While the Commission was not able to reach any definite conclusions regarding such use, it reported that such use apparently led to no increase in psychoses, change in life-style, inability to perform job assignments or any other significant physical or mental abnormalities. (There was some evidence of pulmonary diminution and psychological dependence on the drug. There are conflicting studies as to whether behavioral changes occur.)[38] Although lack of a controlled study group makes reliability of these conclusions open to question, it would seem, nonetheless, that currently existing data tend to show that cannabis is a relatively harmless drug, especially in its weakest form—marijuana.[39]

Where does all this information, some of it inconclusive, lead us? Assuming, *arguendo*, that marijuana use is, compared to alcohol or tobacco use, relatively harmless, do we then legalize marijuana on that basis alone? Or do we go on the assumption that every drug, marijuana included, can be abused, and therefore the fewer drugs on the market the better? Even then, are criminal sanctions the proper tool for control of marijuana? Current governmental response to the increased use of marijuana by our youth and the increased awareness of marijuana's harmlessness in its effects on the user provides its own answers to these questions.

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30 GRINSPOON at 168.
31 GRINSPOON at 308, 309 & 311, 312; COMMISSION at 23, 71-75.
32 GRINSPOON at 312 *et seq.*; COMMISSION at 434-38 (app. vol. I); KAPLAN at 80.
33 GRINSPOON at 253 *et seq.*; COMMISSION at 23; KAPLAN at 171 *et seq.*
34 GRINSPOON at 159-161; COMMISSION at 471-80 (app. vol. I); KAPLAN at 288-291.
35 GRINSPOON at 218 *et seq.*
36 GRINSPOON at 129, 130; COMMISSION at 56, 59.
37 GRINSPOON at 177; COMMISSION at 7, 8 (24 million Americans have tried marijuana—8.5 million are current users), 121.
38 COMMISSION at 62-65.
39 COMMISSION at 55-66 (app. vol. I).

III. Recent Statutory Developments

Since 1969, every state and the federal government have made changes in their marijuana statutes, all of them lessening penalties in one way or another and generally they accord possession of small amounts of marijuana misdemeanor treatment.[40] As noted earlier, federal law has been, in past years, rather harsh in its treatment of the marijuana user. On October 27, 1970, Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970,[41] was enacted. It is intended to encompass legislatively all drugs currently in use in the United States and those which might come into being or use in the future. With respect to marijuana it lessens criminal penalties dramatically. The Act places marijuana in the same category as heroin and other opium-derived drugs (there are five categories, or "schedules") because of its alleged high potential for abuse and because of the claim that marijuana has no currently accepted medicinal use and that its use is not considered safe, even under medical supervision.[42]

The penalty specified for distribution of marijuana, or for possession with intent to distribute the drug, is five years' imprisonment or $15,000 fine or both, and two years of mandatory parole for those imprisoned, for the first offense. The penalties double for a second offense.[43] However, those who distribute small amounts of marijuana for no remuneration are treated under a separate provision and accorded the same required penalty as those convicted of mere possession of marijuana (simple possession of any drug, be it marijuana, LSD or heroin brings the same penalty under the Act).[44] A conviction for possession of marijuana for a first offender brings with it, at the court's discretion, the possibility of a conditional discharge. That is, the first offender may be placed on a maximum of a year's probation during which time his conviction is not recorded as a final judgment. If the defendant successfully completes his term of probation, the conviction is set aside, and his record will show no conviction for a marijuana violation. (A separate file is kept by the Department of Justice to insure that no defendant receives such treatment twice.) For first offenders who are not sentenced under this provision or who violate their probation and are convicted of the crime of possession, the penalty is one year in jail or a $5,000 fine, or both. The penalty doubles for subsequent offenses.[45] The penalty for distribution is doubled (10 years and/or $30,000) for adults who distribute to minors; said penalty is increased threefold if the distributor has already been convicted once of distribution to a minor.[46] Thus, while federal law has become more lenient in its response to marijuana use, all phases of such use are still unlawful.

As for state laws, lack of uniformity has been their most noticeable characteristic. But here too, a lessening of the penalties has occurred recently. Most

40 COMMISSION at 547, 548 (app. vol. I).
41 21 U.S.C. §§ 801-966 (Supp. 1971).
42 *Id.* § 812.
43 *Id.* § 841(b)(1)(B).
44 *Id.* § 841(b)(4).
45 *Id.* § 844.
46 *Id.* § 845.

states had extremely harsh penalties until the late 1960's. Some penalties are still rather heavy, compared to sister states' penalties and those of the federal government. But at least the specter of the death penalty has disappeared and that is, presumably, something every imprisoned marijuana offender can be grateful for. The reform movement among the states began its current drive with the passage of the Uniform Controlled Dangerous Substances Act by the National Conference on Uniform State Laws.[47] The Conference passed this Uniform Act on August 8, 1970, stating in its prefatory remarks that it sought uniformity among the states regarding the drug problem, and attributing the "drug abuse problem" to the increased mobility of the American citizens and their affluence.

The Uniform Act prohibits certain acts but leaves specific sentences to the individual states, thereby insuring the very lack of uniformity that the law was designed to remedy. Since its enactment, 30 states have adopted it and more are considering it for adoption.[48]

Under the Uniform Act marijuana is treated in much the same way as under the previously described federal Drug Act of 1970. All drugs are categorized into five schedules depending upon their potential for abuse, and penalties are assessed accordingly. Marijuana is again classified with the opiates, LSD, etc. There is also a provision against distribution to a minor, with a questionable comment,[49] and in many respects there is no difference between the federal law and the Uniform Act. Penalties under the Act are left to the individual states to determine. As mentioned previously,[50] every state has changed its law since 1969, and many of these states have adopted the Uniform Act. Those that have not are, in many cases, considering adoption, and many who decided not to adopt incorporated the philosophy of the Act or certain of its provisions into their statutory schemes. (The relevant chart provided by the National Commission is appended to this article. It is current up to March, 1972.)

Among the states, there are still glaring differences in penalties for marijuana use. By way of example, in Arkansas first and second violations of the provision against possession of marijuana are punishable by a *maximum* of one year in jail or a $250 fine or both.[51] The offender is labelled a misdemeanant. In Colorado, misdemeanor treatment is available to those who possess one-half ounce or less, but for those who possess more (keeping in mind that street use generally involves a "lid" which is one ounce) felony treatment occurs and the offender runs the risk of two to fifteen years for a first offense or a $10,000 fine or both. Penalties increase for subsequent offenses.[52] Sale of marijuana brings a penalty of five years to life in California, with a *mandatory minimum* of three years' im-

47 1970 HANDBOOK OF THE NATIONAL CONF. OF COMMS. ON UNIFORM STATE LAWS 223.

48 COMMISSION at 548 (app. vol. I).

49 1970 HANDBOOK, *supra* note 47, at § 406. (The reason for requiring a three-year difference between the seller and the buyer before this section becomes operative is because "In this situation, there is not the element of seduction so often found in the cases where the distributor and recipient are far apart in age.") *But see* COMMISSION at 41. (The process whereby one becomes a marihuana user is not a "seduction of the innocent.")

50 *See* text accompanying note 40 *supra*.

51 7A No. 590 [1971] Ark. Acts 1342.

52 12 COLO. REV. STAT. § 48-5-20(b) (1971 Supp.).

prisonment,[53] while in Maine, the penalty for sale is *not more than* five years' imprisonment and/or a $1,000 fine.[54] Sale to a minor is punishable by a *maximum* of five years' imprisonment and/or $5,000 fine in Georgia.[55] A similar violation in Missouri brings the incredible penalty of 10 years to life with no probation or parole possible![56]

Such is the unequal treatment that the states have accorded to marijuana use. Of course, the same objection (*i.e.*, unequal treatment) can be made about any penal provision. The reason this inequality has particular urgency in the area of drug laws is not only because individuality in state criminal codes is generally becoming less desirable in our modern, mobile times but also because, in the area of drug use and control, there seems little reason to discriminate among users. This is the reason for promulgation of the Uniform Act. Drug use is a nationwide problem, it cannot be insisted that its effect upon both users and upon society varies so much, in particular where marijuana is concerned, as to warrant different treatment by the several states.

IV. Recent Judicial Developments

Recently, there have been an increasing number of attacks upon the constitutionality of marijuana laws. These attacks began in the 1960's[57] and have kept pace with the increase in the number of marijuana arrests. In 1965 there were approximately 20,000 arrests by state authorities for violations of drug laws; the number burgeoned to 495,000 arrests in 1971—with 90% of those arrests for possession of marijuana.[58] This enormous increase has not gone unchallenged, but rare is the case in which a marijuana law has been declared unconstitutional. One of the most heralded early attacks was in the case of *Commonwealth v. Leis*,[59] a 1969 Massachusetts case in which the defendant argued the unconstitutionality of the state statute in question on a variety of grounds. In ruling the statute constitutional, the Massachusetts Supreme Judicial Court stated that it did not believe that smoking marijuana was a fundamental liberty. Further, the inclusion of marijuana in the category of narcotics was not arbitrary. (The court seems, in this case, to have defined "narcotic" as any mind-altering drug.) In response to the argument that marijuana should be treated in the same manner as alcohol, the court answered that more information is available about alcohol abuse than is known about marijuana and, further, alcohol abuse can be more easily controlled. Finally, the court did not feel that penal sanctions for the possession of marijuana imposed a cruel and unusual punishment upon the defendant primarily because at the time of the appeal no sentence had been

53 CAL. HEALTH & SAFTEY CODE § 11531 (West Supp. 1972).
54 22 MAINE REV. STAT. ANN. § 2384 (Supp. 1972).
55 22 GEO. CODE ANN. § 79A-9915 (Supp. 1971).
56 12 MISS. CODE ANN. § 195.200 (1971).
57 *See, e.g.*, People v. Leal, 64 Cal. 2d 504, 413 P.2d 665 (1966).
58 COMMISSION at 106; 1971 statistics submitted October 13, 1972, at ABA national institute seminar on drug cases, Los Angeles, by Michael R. Sonnenreich, Executive Director, National Commission on Marihuana and Drug Abuse, Washington, D.C.
59 355 Mass. 189, 243 N.E.2d 898 (1969).

handed down and because the court did not find persuasive the argument that *any* punishment for marijuana possession is cruel and unusual.

Reviewing the *Leis* decision after a period of four years gives one an advantageous position. However, perhaps the most faulty logic on the part of the court was equally apparent four years ago. Reference is made to the argument that more is known about alcohol's effects than is known about those of marijuana. That, of course, is not the same thing as saying that it is known that marijuana produces undesirable effects. More is known about the dangers of alcohol abuse than about many drugs which can be bought without prescription today,[60] and yet those drugs are not made illegal and their users put into penitentiaries. Also, the inclusion of marijuana in the category of narcotics, by defining "narcotics" as any mind-altering drug, is a masterpiece of judicial mental contortion which would conceivably open the category of "narcotics" to every tranquilizer and sedative available today. Finally, the statement that more is known about alcohol abuse and that such abuse can be better controlled than marijuana abuse is amusing. Much indeed is known about alcohol abuse in this country. Nine million of our fellow citizens are alcoholics, and billions of dollars each year are lost to the national economy because of the abuse of this drug.[61] If anything, one would have expected the court to take judicial notice of the fact that alcohol abuse is *out of control* in this country.

Another case remarkable for its justification of the inclusion of marijuana as a narcotic substance is *State v. White*,[62] a 1969 Montana case which reasoned that it does not matter that marijuana is known now not to be a narcotic. What is important is whether it was reasonable to classify it as such in 1937 (the date of Montana's law). (It does not matter that the burning of "witches" is now considered to be a stupid, illegal and immoral action. If it was considered reasonable in 17th-century Salem, will we uphold the practice now?)

A case from Florida the same year exhibited its own charm. *Borras v. State*[63] is interesting for the assertion upon the part of the Florida Supreme Court that marijuana is a "harmful, mind-altering drug," a remark for which the court offered no supportive citation. Further, the court met the argument that if one could constitutionally read obscene literature in one's home without fear of arrest, one could similarly smoke marijuana (this argument came quickly on the heels of the United States Supreme Court ruling in *Stanley v. Georgia*)[64] by maintaining that marijuana use is more dangerous to society than possession of obscene material. (Actually, the court's language reveals some uncertainty about this—it appears the court was not too keen on the idea of people reading obscene material either.) The state, it was reasoned, had an interest in preventing harm to the individual and to the public, and, therefore, the illegalization of marijuana was permissible. Then, in a flourish of pomposity and patriotic pride, the court announced that the State of Florida had an interest in having "robust citizens" capable of self-support who would bear arms and add to the country's resources.

60 COMMISSION at 481 *et seq.* (app. vol. I).
61 COMMISSION at 498 *et seq.* (app. vol. I); KAPLAN at 275-298.
62 153 Mont. 193, 456 P.2d 54 (1969).
63 229 So. 2d 244 (Fla. 1969).
64 394 U.S. 557 (1969).

Since marijuana is a threat to the individual and to society as a whole, its use can be totally prohibited.

The same court continued on in much the same vein in *Raines v. State*[65] by declaring that the classification of marijuana as a narcotic did not violate the Equal Protection Clause and that punishment under state penal provisions did not constitute cruel and unusual punishment.

Recent constitutional arguments have upon occasion been treated more kindly. *State v. Zornes*,[66] a 1970 Washington case, held that marijuana was not a narcotic, but merely a mild hallucinogen and that any prosecutions pending at the time of the enactment of Washington's amendments to its narcotic drug act (which removed marijuana from treatment as a narcotic) must be processed under the new law. (The latter was merely a question of statutory construction.)

In *People v. McCabe*,[67] a 1971 Illinois case, the Supreme Court held that classifying marijuana under the Narcotic Drug Act rather than under the Drug Abuse Control Act was so arbitrary as to deprive the defendant of the equal protection of the law. The court, with no more than a cursory analysis, noted that there were several cases *contra* but felt that those cases had not had the equal protection argument put before them in the same manner as had been the situation in *McCabe*.

In 1972 the continued questioning of the constitutionality of marijuana and other drug laws showed no signs of abating. In March, the Supreme Court of Appeals of West Virginia was asked, in *Scott v. Conaty*,[68] to declare unconstitutional that portion of the Uniform Controlled Substances Act which gave to the State Board of Pharmacy the power to reclassify drugs. (In the federal scheme, the Attorney General has this power.) The court declined to do so, and while the case at bar involved a charge of possession of LSD, the court mentioned, by way of *dictum*, that the law prohibiting the possession of marijuana is constitutional.

In April of this year, in *English v. Miller*,[69] the Federal District Court for the Eastern District of Virginia held that classification of marijuana as a narcotic drug violates the Equal Protection Clause because marijuana is thereby included with addictive drugs. However, the Fifth Circuit held that there is a rational basis for concluding that all drug traffic affects interstate commerce. Therefore, it held, in *United States v. Lopez*,[70] that the Comprehensive Drug Abuse Act of 1970 is constitutional through exercise of the Commerce Clause.

The recent case of *People v. Sinclair*[71] has also served to bring the marijuana issue into focus. In this case, the defendant leader of a politically radical group known as the White Panthers, was convicted of possession of marijuana and sentenced to 9½ to 10 years in prison. In reversing his conviction, the Michigan Supreme Court handed down four separate opinions in which four of the justices

65 225 So. 2d 330 (Fla. 1969).
66 78 Wash. 2d 9, 475 P.2d 109 (1970).
67 49 Ill. 2d 338, 275 N.E.2d 407 (1971).
68 — W. Va. —, 187 S.E.2d 119 (1972).
69 11 CRIM. L. REP. (BNA) 2140 (April 18, 1972).
70 11 CRIM. L. REP. (BNA) 2204 (May 11, 1972).
71 387 Mich. 91, 194 N.W.2d 878 (1972).

voted for reversal and two merely for modifying the sentence imposed. The arguments were many and varied, including the opinion written for the court by Justice Swainson holding that the evidence used to convict was inadmissible because Sinclair had been entrapped. The argument that the sentence constituted cruel and unusual punishment was appealing to two of the justices while two also felt that classification of marijuana as a narcotic violated the Equal Protection Clause. One justice argued that the illegalization of marijuana denied the right to liberty and the pursuit of happiness.

In what was virtually a companion case, the court also decided *People v. Lorentzen*,[72] in which it held that a 20-year *minimum* term of imprisonment for sale of marijuana was cruel and unusual punishment. The court compared this sentence with others imposed upon those convicted of different crimes in Michigan and, *inter alia*, noted that the *maximum* for manslaughter in the state was only 15 years and for felonious assault with a gun merely four years.

Finally, the Hawaii Supreme Court was recently presented with the question of the constitutionality of the Hawaiian statute making possession of marijuana illegal in *State v. Kantner*.[73] The court held, in an exquisitely unique decision, that the marijuana law was constitutional. Three justices voted to uphold the law, two to declare it unconstitutional (the latter two on privacy, due process and equal protection grounds). One of those voting to uphold the law (Justice Abe) did so despite his own stated belief that the law was unconstitutional because he felt that the issue of constitutionality had not been properly raised. The majority opinion held that the classification of marijuana as a narcotic did not violate the due process and equal protection clauses of the federal and state constitutions because, while it may be true that marijuana is not scientifically a narcotic, the legislature has broad power in defining terms for legislative purposes, and, in any event, no one was misled by the legislative classification. Further, the court noted that marijuana was treated differently than other narcotic drugs under Hawaii law.

The classification argument has aspects of an "Oh, you know what we mean" justification. It overlooks the fact that by allowing an inaccurate classification, improper treatment of violators occurs. The legislature is not forced thereby to reconsider and justify the illegalization of marijuana. As for the argument that marijuana is treated differently, the very fact that it is included in the category of narcotics places a second offender in danger of receiving a mandatory one-year minimum imprisonment, a fate not imposed upon those found guilty for a second time of possession of LSD, amphetamines, barbiturates or any other "harmful drugs."[74]

For these and other reasons, the Supreme Court of the United States has

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72 387 Mich. 167, 194 N.W.2d 827 (1972).

73 493 P.2d 306 (Hawaii 1972); *petition for cert. filed* 40 U.S.L.W. 3577 (U.S. May 30, 1972) (No. 71-1558).

74 HAWAII REV. LAWS § 329-5 (1968). It should be noted that Hawaii has recently passed a law removing marijuana from the category of narcotics as of January 1, 1973. *See* Act 9, [1972] Hawaii, Acts: "The New Hawaii Penal Code."

been petitioned for a *writ of certiorari* asking that the statute prohibiting the use of the "narcotic" marijuana be declared unconstitutional.[75]

In addition to the many legal cases in which the constitutionality of the marijuana statutes have been questioned, there have been many similar arguments proffered by legal scholars and other interested parties. One of the most thoughtful and careful analyses of the entire question is to be found in the article by law professors Richard J. Bonnie and Charles H. Whitehead entitled "The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marihuana Prohibition."[76] In that article, the authors supply a detailed history of the development of the laws against the use of marijuana as well as statistics and charts of laws, terms of imprisonment, numbers of arrests, etc. Far more important is their discussion of the nature and validity of some of the arguments most favored by those asserting the unconstitutionality of laws prohibiting the use of marijuana. The authors did not believe that equal protection or due process arguments would be successful primarily because doubt remained about the status of marijuana as a narcotic or a mild drug. Of course, in the two years since that article was written, both the report of the National Commission and the book by Dr. Grinspoon have appeared, hopefully laying that objection to rest.

The arguments that there is a right of privacy involving the use of marijuana and a right to put anything into one's own body are, the authors felt, without prior judicial support and rather shaky at best.

The professors felt that two other arguments had great appeal. The theory that any imprisonment for possession of marijuana constitutes cruel and unusual punishment seemed to them to be one which appellate courts might find convincing. Ironically, no court has since held accordingly, and some courts have specifically stated the opposite.[77]

Secondly, the authors argued that the state had no right, under its police power, to make the private use or the possession of marijuana illegal. This was so, they reasoned, because the private use of marijuana does not create a public harm, and police powers are available to the state only to promote the public welfare. Such an argument would cast upon the state the burden of producing a rational basis for the continued illegalization of marijuana. The authors felt confident no state could ever meet that burden.

The authors rejected the argument that marijuana use is protected religious activity,[78] noting the difference between protection of religious beliefs, as guaranteed by the Constitution of the United States, and mere religious activity. Finally, the authors opined that before any court would ever hold that smoking marijuana is a fundamental right, it would necessarily be required to find that there is such a concept as sensual individuality. This the authors expressed doubt would ever occur. (Note, however, Justice Levinson's dissent in *State v. Kantner,*

75 State v. Kanter, 493 P.2d 306 (Hawaii 1972); *petition for cert. filed* 40 U.S.L.W. 3577 (U.S. May 30, 1972) (No. 71-1558).

76 Bonnie & Whitehead, *supra* note 4.

77 *See, e.g.,* Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898 (1969).

78 *See, e.g.,* People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) (upholding religious use of peyote); Leary v. United States, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds,* 395 U.S. 6 (1969).

holding that the fundamental right involved is not the right to smoke marijuana but the right to do what one wishes in the privacy of one's home, presupposing that no harm to society is involved.)

Another equally analytical essay is to be found in the Appendix to the report of the National Commission.[79] In this chapter, entitled "The Constitutional Dimensions of Marihuana Control," the lawyer-authors focus attention upon the extent to which the United States Constitution may be seen to impose substantive limitations upon the prohibition of marijuana for personal use and the equally important question of whether the federal government can impose its policies in this area of the law upon the several states. Any attorney contemplating a constitutional attack upon a law prohibiting the personal use of marijuana would be remiss if he did not read this chapter which argues that there are several avenues available for constitutional attack upon such statutes. First, the essay argues for the private use of marijuana as a fundamental right, part of *Griswold's* "zone of privacy."[80] The second possible attack lies within the doctrine of inherent limitations upon the police power of a state, limitations arising out of the state's interest in protecting only the public as opposed to the private welfare. Acknowledging that attacks based upon the Freedom of Religion Clause or the Equal Protection Clause have generally failed, the chapter goes on to note new approaches that can be taken within the framework of these constitutional clauses that may prove more successful. The article argues that federal preemption of the field of marijuana regulation and control can be accomplished either through the Commerce Clause or the enabling provision (section 5) of the fourteenth amendment. Congress, it is argued, could legislate state enforcement of federal penal provisions in order to avoid imposing a heavy burden upon the federal judiciary, and the desired uniformity of treatment of all marijuana offenders would be achieved.

Finally, there is the argument put in the form of a recent petition to the Attorney General's Office that, assuming marijuana use can be criminalized, it should not be classified as one of the most harmful drugs. That is, it should be removed from Schedule I and placed in Schedule V.[81]

It is arguments such as these, as well as those being proffered by appellate courts as cases continue to arise, which indicate clearly that the question of marijuana prohibition is one of those unsettled areas of the law. Everyone has his own favorite theory; many attorneys are attempting to find the theory that will appeal to a majority of justices in their appellate jurisdictions. With the advent of such cases as *People v. Sinclair*, it seems only a matter of time before marijuana statutes will begin to fall.

V. The Social Costs of Repressive Laws and Some Proposed Solutions

Despite the many varied arguments made in favor of legislative repeal or

79 COMMISSION at 1123 (app. vol. II).
80 Griswold v. Connecticut, 381 U.S. 479 (1965).
81 Petition has been filed with the U.S. Dep't of Justice by the National Organization for Reform of Marijuana Laws (NORML), the Institute for Study of Health and Society and the American Public Health Assoc. (APHA) (May 18, 1972).

judicial nullification of marijuana laws, the fact is that such laws are presently in force in every state as well as in the federal legal system. The cost of enforcing them is immeasurable, but some statistics should serve as gross indicators of the social expense involved.

It has been estimated that enforcement of the laws against marijuana cost the State of California $75 million in 1968 alone.[82] The increased alienation of the young and the encouragement of unhealthy police practices are two other, and often ignored, social costs. In fact, the entire judicial system seems to have undergone some compromise because of these laws. One study reports that, in addition to the many other social costs involved, we also have the misfortune (from one point of view) of seeing judgments of acquittal returned in the face of overwhelming evidence of guilt solely because of the hesitancy on the part of judges to convict young defendants and place them in jeopardy of receiving serious punishment.[83]

Another social "cost" lies in the credibility gap developing between the judiciary and the public in general on the one hand and law enforcement officers on the other hand. The officers, it is feared, are becoming skilled perjurers in order to obtain drug convictions, a fact that has not gone unnoticed.[84]

The costs to this country in actual governmental monetary outlay and, more importantly, in the rending and ruin of the social fabric are immense. One fears that, in some ways, they are also irretrievable, at least insofar as the attitudes of American youth are concerned.

Many proposals have appeared suggesting solutions to the marijuana problem. The National Commission has declared itself in favor of a policy of discouragement.[85] That is, the use of marijuana is to be discouraged, through partial prohibition of the drug. Total prohibition is deemed too harsh a remedy and, for that reason, the Commission recommends eliminating penalties for the possession of marijuana for private use, including private distribution of small amounts for no profit. Any other use (possession with intent to sell, cultivation, etc.) would continue to be a crime and, generally, the Commission urges felony treatment. Complete legalization is rejected because it is the hope of the Commission that marijuana is merely a fad which will soon die out if not encouraged. Also, the Commission does not believe that a substance which has uncertain long-term effects should be legalized. Nonetheless, the Commission does believe that the widespread use of marijuana in this country is an essentially innocuous practice and that the threat of incarceration is an unreasonable burden in certain instances. Further, legalization of some aspects of the marijuana problem would

82 Note, *Possession of Marijuana in San Mateo County: Some Social Costs of Criminalization* 22 STAN. L. REV. 101 (1969); L. Calof, THE FINANCIAL COST OF ENFORCING MARIJUANA LAWS (1968) quoted in KAPLAN, *supra* note 3, at 29.

83 *Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County,* 15 U.C.L.A. L. REV. 1499 (1968). (This study followed a number of adult and juvenile cases through their processing through the criminal justice system in Los Angeles. It analyzes the costs to both the system and the individuals who are caught up in the system.) *See also* Andrus & Moore, *The Uniform Controlled Dangerous Substances Act: An Expositive Review,* 32 LA. L. REV. 56 (1971).

84 KAPLAN at 44, 45; Comment, *Police Perjury In Narcotics "Dropsy" Cases: A New Credibility Gap,* 60 GEO. L.J. 507 (1971).

85 COMMISSION at 134 *et seq.*

free both law enforcement officials and the courts to concentrate their efforts on the more serious violators of the drug laws, the importers and manufacturers of the "hard drugs," and those who deal in marijuana solely for profit.

However, the National Commission seems to have an uncertain commitment to its recommendations. Throughout its report one senses a feeling that the Commission realizes that complete legalization is forthcoming and that its report is an unsupportable middle way between the present repression and future legalization. "If responsible use of the drug (marijuana) does indeed take root in our society" the Commission intones, then it is foreseeable that future policy planners might reach a conclusion different from that of the Commission, which has decided to discourage marijuana use.

Another concern of the Commission, and one which possibly best explains its awkward "Yes, it's legal; No, it's not" stance is the emphasis that marijuana must be desymbolized. It is a drug used by the young to display anti-establishment attitudes, the Commission warns, and this is decidedly undesirable. However, should the day ever come that marijuana is desymbolized, so that the availability of the drug does not connote societal approval, then a policy change might be proper.

In these remarks are laid bare the "social concerns" of the Commission. We are told that responsible use of the drug is needed, the assumption being that inasmuch as only "drop-outs" use it, it is being put to irresponsible use. Or could the Commission be saying that since marijuana use is currently illegal, those who use it are necessarily irresponsible? This leads down the confusing path of requiring responsible use before legalization while insisting that responsible use will only come after legalization. Perhaps the Commission is actually stating that use is presently irresponsible because marijuana is as much a symbol as an intoxicant. Smoking marijuana to show anti-establishment values is not responsible—it is annoying to the American public. This too is one of the Commission's justifications for discouraging marijuana use.

But the Commission would have been better advised to recommend legalization of marijuana rather than discouragement on the basis of symbolization. Rather than concerning itself with the misguided antipathy of Middle America, the Commission ought to have realized that American youth desperately needs a symbolic victory of its own. At a time when the younger generation is being forced to fight an unpopular war (or is fighting against continuation of that war at home) and seems to have very little power to affect its own direction, let alone that of its country, a symbolic cause such as the legalization of marijuana takes on added significance. To the older generation, marijuana legalization is merely one of many matters to which its attention is drawn. To the younger generation, it is a matter of extreme interest and importance. Thus, the "symbol" approach the Commission takes can just as easily lead to the opposite conclusion from that reached by the Commission.

The Commission admits that private use of marijuana produces no social or individual harm and that laws prohibiting such use are constitutionally suspect. It agrees that even the practice of imposing civil fines would be of little value, since that would continue the current misuse of police manpower and the con-

current undesirable invasions of privacy necessary for law enforcement. And yet the Commission, hanging by a thread, argues for partial prohibition. Its justifications for this stance involve carefully constructed attempts to gather in every conceivable shred of evidence against marijuana use (it *might* have undesirable personal effects *if* used in *very heavy* amounts over a *long* period of time; it symbolizes anti-establishment values; its use is not responsible; it is of transient social interest, etc.).[86] While its carefully gathered statistical and scientific evidence goes in one direction, the Commission acrobatically, but not too convincingly, goes in the other.

Dr. Grinspoon opts for legalization of the personal use of marijuana of predetermined potency and consequently for governmental regulation of marijuana in much the same manner as alcohol.[87] He does not believe that long-term use degenerates the user,[88] and while he admits that marijuana is not completely harmless in its effects on the user, in the sense that no drug is ever completely harmless,[89] he does believe that its relative lack of harm merits kinder treatment for its use than the states and federal government have thus far afforded.

Approaching the subject from a different viewpoint, Professor John Kaplan wrote recently[90] that the problem with laws that seek to protect people from themselves is that they are so atypical that the "protected" person feels resentment toward the government because he knows of more dangerous activities that are not condemned. "The laws requiring one to protect himself are little islands of criminal liability in a vast sea of freedom to injure one's self."[91] These criminal laws, Kaplan goes on to say, are counterproductive in terms of educational programs because those to be educated—that is, the drug users—tend to feel that the educational process is just another means of enforcing the law. Thus, in implying that the prohibition against marijuana is doomed to failure, Kaplan points out that drug laws are successful only when people do not want a drug intensely. For example, the prohibition against alcohol did not work because the desire for alcohol on the part of large numbers of people was great. The ban against cyclamates does work because there is no black market demand for products with cyclamates.

Kaplan therefore proposes that marijuana be legalized and regulated in much the same manner as alcohol, with the potency of the drug controlled and maintained at a mild dosage. He further argues for licensing of sellers, sales to be conducted in liquor establishments only and other thoughtful limitations upon the distribution and use of marijuana.

Countless others have called for legalization of marijuana or at the very least a reconsideration of the current penalties imposed upon marijuana use. These voices include American Bar Association committees,[92] legislators[93] and the

86 COMMISSION at 150.
87 GRINSPOON at 367 *et seq.*
88 GRINSPOON at 276.
89 GRINSPOON at 9.
90 Kaplan, *The Role of the Law in Drug Control*, 1971 DUKE L. J. 1065.
91 *Id.* at 1072.
92 ABA Special Committee on Crime Prevention and Control, *New Perspectives on Urban Crime*, reported in 11 CRIM. L. REP. (BNA) 2018 (April 5, 1972) (urging consideration of the repeal of "victimless crime" laws); Committee on Alcoholism and Drug Reform (section

President's Commission on Law Enforcement and the Administration of Justice.[94] All of these authorities appear convinced that the greatest undesirable effect marijuana produces is the possibility of imprisonment.

VI. Conclusion

In the past several years, as new information has become public, the marijuana issue has been brought more clearly into focus. The task of supporting the stance that marijuana use should be legalized has become much easier as a brief review of the material presented in this article should reveal. It is now generally conceded that short-term use of cannabis preparations is, for all practical purposes, without any detriment to the user and that the primary effect of such use is that of mild, pleasurable relaxation. The consequences of long-term use also appear to be relatively minor, and the only area about which there is still doubt is that of long-term heavy use, especially of potent preparations of cannabis. However, even here it is possible to extrapolate to the conclusion that, in comparison with the results that similar use of other drugs would bring, the effects would not be too deleterious.

However, it does not end the controversy merely to assert that marijuana preparations appear to be among the milder intoxicants. Several other questions must be resolved, among which is the question of whether any intoxicant should be condoned by a society. The National Commission found the argument that society should not formally approve the use of any intoxicant to be persuasive.[95] But once the use of a drug reaches the proportions that marijuana use has, the question shifts. The question then becomes whether any society should criminalize those who use intoxicants, once it is determined that the use of those intoxicants for the majority of users poses little or no threat of lasting harm. Our society has answered that question in the negative in the area of two intoxicants which are clearly harmful—alcohol and tobacco.

The current approach to the use of marijuana on the part of government is completely unreasonable and arbitrary. Without any real justification legislative bodies have criminalized the use of marijuana and have, in recent years, reasserted this approach despite the increasingly wide dissemination of information explaining the origin of such legislation—a beginning based solely upon anxiety, fear and misinformation. These laws have continued despite clear evidence of the relatively harmless effects of cannabis preparations for the average user, a claim the proponents of alcohol and tobacco use would be hard put to assert.[96] Those who enacted the federal Comprehensive Drug Abuse Act of 1970 even had the audacity to announce, while justifying the legislation in an introductory

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on Individual Rights and Responsibilities) and Committee on Drug Abuse (section on Criminal Law) as reported in COMMISSION at 109 *et seq.*

93 11 CRIM. L. REP. (BNA) 2019 (April 5, 1972) (bill introduced in New York legislature seeking legalization of possession of four ounces or less).

94 PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967).

95 COMMISSION at 127 *et seq.*

96 COMMISSION at 15; KAPLAN at 317-20 (discussion of the dangers of alcohol as compared to those of marijuana use).

section as preventing the improper use of substances which have a detrimental effect on the health and welfare of the American people, that alcohol and tobacco were to be specifically excluded from control under the Act.[97] The mere mention of this is certain to do much for the credibility of the legislation with American youth.

The entire controversy surrounding marijuana occasionally seems in danger of becoming woefully misdirected. Rather than quibble over such unresolved questions as whether long-term, heavy use leads to an alteration of the pulmonary function, and whether the studies show this to be irreversible, perhaps we need to be reminded that the real issue is whether society should be invoking criminal sanctions against drug users at all. If one persists in the use of a drug, even assuming that such drug is deleterious to the user, society's reaction should not be criminalization of the user. In a Nation where heroin addiction is becoming more and more recognized for the sickness that it is, and methadone treatment centers are springing up throughout the Nation, how curious that users of another, much milder drug should still be treated entirely as criminals.

Leaving aside the question of the proper reaction of society to drug use in general, we must ask ourselves what society's response to the use of the specific drug marijuana should be. Should the use of marijuana—an essentially harmless drug in many respects—be criminalized solely on the basis that there is more to be learned about the use of the drug? Of course there is more to be learned about the use of the drug, but it would appear that sufficient knowledge has been gained to assure even the most critical observer that the use of cannabis will not destroy either its users or society. Further, once a large number of people have decided that they will persist in the use of an intoxicant, government should not continue to criminalize the users of that drug. This is a lesson we learned from the Prohibition Era.

The constant recourse to penal sanctions against the use of marijuana has become a greater evil than the use itself. Once preliminary indications reveal that a substance appears relatively harmless, the burden should shift to those who would ban its use to come forward with some evidence that the drug is harmful, rather than merely insisting that more can be learned about the effects of the drug, something which is true of every drug on the market. One senses that the refusal on the part of Government to end the criminalization of marijuana use has its roots not so much in a concern for the health and welfare of the marijuana user as much as in political and emotional considerations. The much-heralded generation gap is closing in the United States, not so much because the younger generation is growing appreciative toward the older for imprisoning it for use of an intoxicant milder that the one favored by the older generation, but because the "younger generation" is getting older. Marijuana users are reaching into business and professional circles, and it might not be too unreasonable to speculate that what is replacing the generation gap is an increasing alienation from their government on the part of a growing number of American adults.

The continued illegalization of marijuana has taken on the aspect of a government cover-up. Faced with growing evidence and support for the legal-

97 21 U.S.C. § 801, 802(6) (Supp. 1971).

ization of marijuana, the Government has continued to avoid the information presented and instead has sought new ways to justify illegalization. The arguments it offers are neither believed nor trusted.

Marijuana use is relatively harmless. That is an important consideration. The constitutionality of marijuana laws is questionable. That too is an important consideration. But the real issue of marijuana use now lies in considerations of justice, reason and fair play. Government must stop alienating American youth by pursuing the criminalization of marijuana. Instead of focusing on such false issues as whether long-term heavy use might prove slightly harmful—something that is true of the very food we eat—our national and local leaders should reaffirm the American principle that that government is best which governs least. The marijuana user should be allowed to seek his own ways to happiness, even if many would disagree with the emphasis he places on marijuana in this quest. Marijuana should be allowed to "float free" in our society, much like gold in the international market place, in order that it might find its market. If this were allowed, marijuana use might save some of our fellow citizens from the perils of alcohol and tobacco use.

Our Victorian attitude that "victimless crimes" may be punished because of their tenuous (often non-existent) connections with the general welfare must cease. Such "crimes" have been the focal point of more wasted energy and more grief than our judicial system can tolerate.

We must also stop this illogical discrimination between "user" and "seller," a categorization which we know does not exist. We should control these profit-mongers (the user-sellers) like any others we encounter in our society. If making a profit off drug use bothers government and the American public, why is the same not true in regard to alcohol and tobacco use? And if such profiteering is so unsettling, perhaps now is the time to re-evaluate our commitment to capitalism.

All those who piously assert their anxiety for the marijuana user should show some real concern for these users. Instead of worrying about the possibility that the users' hearts may skip a beat 40 years from now, these "protectors" should show some pity for those who are going to jail and having lives, marriages and careers ruined, all because of the enforcement of illogical, unsound laws.

By admitting that marijuana users should not be jailed, critics such as the National Commission have admitted that the prohibition against marijuana is unreasonable. That being so, there is no reason to discriminate among the various types of use. Big-city users, who must buy their marijuana, should not be preferred over rural users, who cultivate their own.

It must be recognized that marijuana is not entirely a legal or medical issue. It is also a social question. Social considerations such as those outlined in this article are the ones this nation should be addressing itself to. The unreasonableness of the present marijuana legislation is a matter that creates social implications for our legislators while also presenting legal questions for our courts. The evidence is clear—marijuana laws should be repealed.

Marijuana use should be treated as is the use of "the other intoxicant," alcohol. Legalization of marijuana use, with strict control by regulatory agencies, limitations on the age of the user, the manner and places in which it may be pur-

chased, its potency level predetermined, with no legally recognized justification for acts committed while under its influence, etc.—this is the more reasonable way of approaching the marijuana issue. Continued criminalization of marijuana users is an absurd way of dealing with essentially law-abiding citizens. This illogical stance on the part of government is serving only as more fodder for those who would convince our citizenry that government is an unresponsive tool in the hands of the few. In an ironic turnabout, it is the enforcement of a law that is endangering society, harming society's members. The laws against marijuana use have become a crime against humanity.

State	Year of Uniform Law[1]	Uniform Act	Classification of Marijuana[2]	Conditional Discharge for First Offense Possession Available[3]	Possession for Personal Use[4] Relevant Amount	Penalty	Possession[5]	Sale[6]	Cultivation	Sale to a Minor
Alabama	1971	yes	hallucinogen		amount discretionary for the court	NMT 1 yr. +/or NMT $1,000[7]	2-15 yrs. +/or $25,000	2-15 yrs. +/or $25,000	2-15 yrs. +/or $25,000	4-30 yrs. +/or NMT $50,000
Alaska	1969		hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000 or custody for rehabilitation	NMT 25 yrs. +/or NMT $20,000	no separate offense	up to life
Arizona	1969		narcotic		no separate penalty		1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000[8]	5 yrs.-life & NMT $50,000 (parole after 3 yrs.)	1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000	10 yrs.-life & NMT $50,000 (parole after 5 yrs.)
Arkansas	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $250	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
California	1970		narcotic		no separate penalty		NMT 1 yr. in county jail OR 1-10 yrs. + NMT $20,000	5 yrs.-life + NMT $20,000 (parole after 3 yrs.)	1-10 yrs. (no release until served at least 1 yr.)	10 yrs.-life + NMT $20,000 (parole after 5 yrs.; no probation)
Colorado	1971		narcotic	yes	NMT 1/2 oz.	NMT 1 yr. +/or NMT $500 or NMT 1 yr. probation with psychiatric treatment	2-15 yrs. + NMT $10,000	2-15 yrs. + NMT $10,000	2-15 yrs. + NMT $10,000	life
Connecticut	1971		controlled drug		no separate penalty		NMT 1 yr. +/or NMT $1,000	5-10 yrs. + NMT $3,000 over 1 kilo - 10-20 yrs. + NMT $3,000	5-10 yrs. + NMT $3,000	no separate offense
Delaware	1970		dangerous drug	yes	no separate penalty		NMT 2 yrs. + NMT $500	5-10 yrs. + $1,000 to $10,000	NMT 5 yrs. + NMT $3,000	7-15 yrs. + fined in discretion of court
Florida	1971		narcotic		NMT 5 g.	NMT 1 yr. or NMT $1,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. + NMT $10,000 (no probation)	NMT 10 yrs. + NMT $10,000	10 yrs.-life + NMT $10,000 (no suspension)
Georgia	1970		depressant or stimulant	yes	NMT 1 oz.	NMT 1 yr. +/or NMT $1,000	NMT 2 yrs. +/or NMT $2,000	NMT 2 yrs. +/or NMT $2,000	NMT 2 yrs. +/or NMT $2,000	NMT 5 yrs. +/or NMT $5,000
Hawaii	1969		narcotic		no separate penalty		NMT 1 yr. OR 1-5 yrs.	NMT 10 yrs. at hard labor + NMT $1,000	NMT 1 yr. OR 1-5 yrs.	NMT 20 yrs. at hard labor + NMT $1,000

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use: Relevant Amount	Possession for Personal Use: Penalty	Possession	Sale	Cultivation	Sale to A Minor
Idaho	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $300	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
Illinois	1971	yes	marihuana	yes	2.5 g. or less 2.5 g.-10 g. 10 g.-30g.	NMT 90 days NMT 180 days NMT 1 yr.	30 g.-500 g., 1-3 yrs.; more than 500 g., 1-5 yrs.	2.5 g. or less, NMT 180 days; 2.5 g.-10g, NMT 1 yr. OR 1-2 yrs.; 10 g.-30 g., NMT 1 yr. OR 1-3 yrs.; 30 g.-500 g., 1-4 yrs.; over 500 g., 1-7 yrs.	NMT 1 yr. +/or NMT $1,500	2.5 g. or less, NMT 360 days; 2.5 g.-10 g., NMT 2 yrs. OR 2-4 yrs.; 10 g.-30 g., NMT 2yrs. OR 2-6 yrs.; 30 g.-500 g., 2-8 yrs.; over 500 g., 2-14 yrs.
Indiana	1971		dangerous drug		NMT 25 g. of marihuana or 5 g. of hashish	30 days-1 yr. + NMT $500	1-10 yrs. + NMT $1,000	1-10 yrs. + NMT $1,000	1-10 yrs. + NMT $1,000	no separate offense
Iowa	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $1,000	NMT 5 yrs. + NMT $1,000	NMT 5 yrs. + NMT $1,000	NMT 7-1/2 yrs. +/or NMT $1,000
Kansas	1971		narcotic		no separate penalty		NMT 1 yr. +/or NMT $5,000	minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000	minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000	no separate offense
Kentucky	1970		dangerous drug	yes	no separate penalty		treatment and rehabilitation NMT 1 yr. or NMT 6 mos. +/or NMT $600	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $20,000
Louisiana	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $500	NMT 10 yrs. at hard labor +/or NMT $15,000	NMT 10 yrs. at hard labor +/or NMT $15,000	NMT 20 yrs. at hard labor +/or NMT $30,000
Maine	1971		marihuana		no separate penalty		NMT 11 mos. + NMT $1,000	NMT 5 yrs. +/or NMT $1,000	NMT 11 mos. + NMT $1,000	no separate offense
Maryland	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $1,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	no separate offense
Massachusetts	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. probation	NMT 2 yrs. +/or NMT $5,000	NMT 2 yrs. +/or NMT $5,000	no separate offense

State	Year of Law	Uniform Act	Classification of Marihuana	Penalties Distinguished for Purpose of Plea	Possession for Personal Use: Relevant Amount	Possession for Personal Use: Penalty	Possession	Sale	Cultivation	Sale to a Minor
Michigan	1971	yes	hallucinogen	yes	no separate penalty		NMT 90 days +/or NMT $500	NMT 4 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000
Minnesota	1971	yes	hallucinogen	yes	NMT 1-1/2 oz. of marihuana	NMT 1 yr. +/or NMT $1,000	NMT 3 yrs. +/or NMT $3,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $30,000
Mississippi	1971	yes	hallucinogen		no separate penalty		NMT 6 mos. +/or NMT $500 NMT 4 yrs. +/or NMT $2,000[7]	NMT 4 yrs. +/or NMT $2,000	NMT 4 yrs. +/or NMT $2,000	NMT 8 yrs. +/or NMT $2,000
Missouri	1971	yes	hallucinogen	yes	NMT 35 g. of marihuana or 5 g. of hashish	NMT 1 yr. +/or NMT $1,000	NMT 5 yrs. OR NMT 1 yr. in county jail +/or NMT $1,000	5 yr. to life	NMT 20 yrs. in penitentiary OR 6 mos.-1 yr. in county jail	5 yrs. to life or death
Montana	1971		hallucinogen or dangerous drug		NMT 60 g. of marihuana or 1 g. of hashish	NMT 1 yr. +/or NMT $1,000	NMT 5 yrs.; if shown to be habitual user then committed to rehabilitation institution	1 yr. to life	1 yr. to life	no separate offense
Nebraska	1971	yes	hallucinogen		NMT 1 lb.	NMT 7 days +/or NMT $500	1 yr. in prison OR NMT 6 mos. in jail +/or NMT $500	1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000	1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000	no separate offense
Nevada	1971	yes	hallucinogen	yes	NMT 1 oz.	1-6 yrs. + NMT $2,000 OR NMT 1 yr. in county jail + NMT $1,000	1-6 yrs. + NMT $2,000	1-20 yrs. + NMT $5,000	1-6 yrs. + NMT $2,000	life with possible parole after 7 yrs. + NMT $5,000
New Hampshire	1971		controlled drug		NMT 1 lb.	NMT 1 yr. +/or NMT $500	NMT 5 yrs. +/or NMT $2,000	NMT 10 yrs. +/or NMT $2,000	NMT 10 yrs. +/or NMT $2,000	no separate offense
New Jersey	1970	yes	hallucinogen	yes	NMT 25 g. of marihuana or 5 g. of hashish	NMT 6 mos. +/or NMT $500 (A quasi-criminal non-indictable offense)	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
New Mexico	1972	yes	hallucinogen	yes	NMT 1 oz. More than 1 oz., less than 8 oz.	$50-$100 + NMT 15 days $100-$1,000 +/or NMT 1 yr.	8 oz. or more: 1-5 yrs. +/or $5,000	1-5 yrs. +/or NMT $5,000	10-50 yrs. +/or NMT $10,000	2-10 yrs. +/or NMT $5,000

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use: Relevant Amount	Possession for Personal Use: Penalty	Possession	Sale	Cultivation	Sale to A Minor
New York	1971		narcotic	yes	NMT 1/4 oz.	NMT 1 yr.	25-99 cigarettes or more than 1/4 oz.: 2-1/3-7 yrs. 100 or more cigarettes or more than 1 oz.: 5-15 yrs.	5-15 yrs.	NMT 1 yr.	5-1/3-25 yrs.
North Carolina	1971	yes	marihuana	yes	no separate penalty		NMT 6 mos. +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	no separate offense
North Dakota	1971	yes	hallucinogen	yes	no separate penalty		NMT $500 +/or NMT 1 yr.	NMT 10 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000	NMT 20 yrs. +/or NMT $5,000
Ohio	1970		hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000	20-40 yrs.	2-15 yrs. + NMT $10,000	30 yrs.-life
Oklahoma	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr.	2-10 yrs. + NMT $5,000	2-10 Yrs. + NMT $5,000	4-20 yrs. + NMT $10,000
Oregon	1971		narcotic		NMT 1 oz.	NMT 1 yr. +/or NMT $1,000	NMT 10 yrs. +/or NMT $2,500	NMT 10 yrs. +/or NMT $2,500	NMT 10 yrs. +/or NMT $2,500	NMT 20 yrs. +/or NMT $2,500
Pennsylvania	1970		narcotic		no separate penalty		2-5 yrs. + NMT $2,000	minimum 5-20 yrs. + NMT $5,000	NMT 1 yr. +/or NMT $5,000	no separate offense
Rhode Island	1970		narcotic		no separate penalty		NMT 15 yrs. +/or NMT $10,000	NMT 40 yrs.	NMT 20 yrs.	up to life (no probation)
South Carolina	1971	yes	hallucinogen	yes	NMT 28 g. of marihuana or 10 g. of hashish	NMT 3 mos. +/or NMT $100	NMT 6 mos. +/or NMT $1,000	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $10,000
South Dakota	1971	yes	hallucinogen	yes	NMT 1 oz.	NMT 1 yr. +/or NMT $500	2-5 yrs. +/or NMT $5,000	5-10 yrs. +/or NMT $5,000	5-10 yrs. +/or NMT $5,000	10-20 yrs. +/or NMT $5,000
Tennessee	1971	yes	hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000 or treatment in state facility	1-5 yrs. + NMT $3,000	1-5 yrs. + NMT $3,000	2-10 yrs. + NMT $5,000
Texas	1971		narcotic		no separate penalty		2 yrs.-life	5 yrs.-life	2 yrs.-life	5 yrs.-life
Utah	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $299	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000

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State	Year of Law[1]	Distinguishes Marihuana and Hallucinogens	Hallucinogen Considered Dangerous Drug	Possession Considered Felony	Possession Considered Felony	Possession Considered Felony	Sale	Sale	Sale
					NMT 1/2 oz.	NMT 6 mos. +/or NMT $500	1/2 oz.-2 oz., NMT 1 yrs. +/or $2,000; 2 or more oz., NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $10,000	NMT 5 yrs. +/or NMT $10,000
Virginia	1971	yes	hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000	1-40 yrs. +/or NMT $25,000	1-40 yrs. +/or NMT $25,000
Washington	1971	yes	hallucinogen		NMT 40 g.	NMT 90 days +/or NMT $250	NMT 5 yrs. +/or NMT $10,000	NMT 5 yrs. +/or NMT $10,000	NMT 5 yrs. +/or NMT $10,000
West Virginia	1971	yes	hallucinogen	yes	NMT 15 g.	conditional discharge mandatory for first offense	90 days-6 mos. +/or NMT $1,000	1-5 yrs. +/or NMT $15,000	1-5 yrs. +/or NMT $15,000
Wisconsin	1969		dangerous drug	yes	no separate penalty		NMT 1 yr. +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	no separate offense
Wyoming	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. + NMT $1,000	NMT 10 yrs. +/or NMT $10,000	NMT 6 mos. +/or NMT $1,000
District of Columbia	1970		narcotic		no separate penalty		NMT 1 yr. +/or $100-$1,000	NMT 1 yr. +/or $100-$1,000	NMT 1 yr. +/or $100-$1,000
Guam	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $1,000	NMT 2 yrs. +/or NMT $1,000	NMT 2 yrs. +/or NMT $1,000
Puerto Rico	1971	yes	hallucinogen	yes	no separate penalty		1-3 yrs. +/or NMT $5,000	5-20 yrs. +/or NMT $20,000	5-20 yrs. +/or NMT $20,000
Virgin Islands	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or $5,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000

State	Sale	Sale
	NMT 9 yrs. & NMT $10,000	NMT 5 yrs. & NMT $10,000
Virginia	1-40 yrs. +/or NMT $25,000	5-40 yrs. +/or NMT $50,000
Washington	NMT 5 yrs. +/or NMT $10,000	NMT 10 yrs. +/or NMT $10,000
West Virginia	1-5 yrs. +/or NMT $15,000	2-10 yrs. +/or NMT $15,000
Wisconsin	no separate offense	NMT 15 yrs.
Wyoming	NMT 6 mos. +/or NMT $1,000	NMT 20 yrs. +/or NMT $20,000
District of Columbia	NMT 1 yr. +/or $100-$1,000	no separate offense
Guam	NMT 2 yrs. +/or NMT $1,000	NMT 4 yrs. +/or NMT $4,000
Puerto Rico	5-20 yrs. +/or NMT $20,000	10-40 yrs. +/or NMT $40,000
Virgin Islands	NMT 5 yrs. +/or NMT $15,000	NMT 15 yrs. +/or NMT $45,000

1 "Year of Law" means the last year in which the jurisdiction's marihuana laws were revised or amended in any way. This includes those jurisdictions that enacted entirely new laws, as well as those that may have only changed a penalty provision.

2 The Uniform Controlled Substances Act classifies marihuana as a hallucinogen. This is the modern trend, as most jurisdictions have come to realize that scientifically marihuana is not a narcotic.

3 Conditional discharge is designed to permit a judge to place a first offender on probation in lieu of sentencing him to prison. It is usually applicable only to cases of first offense possession, and is available only once with respect to any person. In addition, this provision calls for confidentiality of the defendant's record upon fulfillment of all the terms and conditions of his probation. This precludes any criminal record from following the individual in later life.

4 Some jurisdictions have created a separate penalty for possession of a limited amount of marihuana. While state laws usually do not specify their reasons, it may be inferred these states consider possession of less than the designated amount to be possession for personal use.

5. In states with no special provision for possession of small amounts, the "possession" offense covers possession of any amount. In states which do have such a special provision, "possession" offense covers possession of over the specified amount. Possession does not include possession with intent to sell. This offense is usually punishable as if it were the actual offense of sale. Thus, the penalty for possession with intent to sell is the same as that for sale in 36 jurisdictions. The following 12 jurisdictions do not have a penalty for possession with intent to sell: Colorado, Florida, Georgia, Indiana, Maine, Mississippi, Missouri, Montana, Nevada, Pennsylvania, Texas, and the District of Columbia. Six other states have made possession with intent to sell a separate offense from sale: Arizona, California, New York, Ohio, Rhode Island, and Vermont.

6 This heading may include delivery, distribution, dispensing, furnishing, transportation, trafficking or transfer according to the individual jurisdiction.

7 "NMT" designates not more than.

8 There are several jurisdictions that give prosecutorial and sentencing discretion as to whether a particular offender is to be treated as a felon or a misdemeanant. This is indicated on the chart by use of "OR" in the appropriate column.

9 In the Mississippi Uniform Act, two separate penalties for possession were mistakenly included. The Mississippi Legislature is currently attempting to correct this error.

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DRUG DEALERS— TAKING ACTION

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3

Marijuana Use, Distribution, and Control

William H. McGlothlin

In this chapter, we will examine the available information on marijuana use, distribution, economics, and control. We will also consider the use patterns, along with alternative control policies, that may become evident in the United States within the next few years.

Prevalence and Patterns of Use

In the past few years, numerous surveys have been conducted on the prevalence of marijuana use—especially in high schools and colleges. Berg (1970) has summarized the statistics from 69 sources. Table 3-1 shows the percentages of those who have ever used marijuana, as determined by national surveys conducted during

the period 1970 to 1972; results from a 1970 survey of New York State are also shown.

Table 3–1

SURVEY RESULTS ON PREVALENCE OF MARIJUANA USE; 1970 TO 1972

Sample	Year	*Percentage of marijuana users*		
		Total	Male	Female
General population				
Age 18–75 (national)[1]	1970–71	4	6	3
Age 18 and over (national)[2]	1971	15	21	10
Age 18 and over (national)[3]	1972	11	16	7
Age 14 and over (New York State)[4]	1970	10	—	—
College				
National[5]	1971	44	—	—
National[6]	1971	51	58	43
New York State[4]	1970	48	54	38
Secondary schools				
Age 12–17 (national)[7]	1971	15	17	14
Age 12–17 (national)[2]	1971	14	14	14
High school (New York State)[4]	1970	23	26	20

SOURCES: [1]Parry, 1971; [2]Commission on Marihuana, 1972; [3]Gallup Poll, *Los Angeles Times,* Feb. 10, 1972; [4]Chambers, 1971; [5]Groves and others, 1971; [6]*Gallup Opinion Index,* Report No. 80, February 1972; [7]Josephson and others, 1971.

These data indicate that, in the general population, males are about twice as likely to have tried marijuana as are females. The male-female ratio is about 3:2 for college students, and it is somewhat closer at the high school level. Two surveys have shown that the percentage of college students who have used marijuana is nearly twice that for the same age group (18 to 24) of nonstudents (Chambers, 1971; Parry, 1971), although this difference is probably decreasing as marijuana use becomes more widespread. Usage

is still low among the older age groups; the 1970 New York State survey found that those who had ever used the drug constituted 4 percent for the 35 to 49 age group and 2 percent for those 50 and over; the 1972 Gallup survey reported 7 percent for the 30 to 49 age group and 2 percent for those 50 and over. The survey of the Commission on Marihuana and Drug Abuse, however, reported 6 percent for those 50 and over.

The values presented in Table 3-2 represent a best estimate of the number of persons who had used marijuana one or more times by mid-1972. They are based on a composite of the various survey results projected to the 1972 time period. Since data on student usage are much more extensive than those for nonstudents, these estimates are treated separately from the remainder of the population. In summary, we estimate that as of mid-1972 about 22 million persons in the United States had used marijuana, that is, about 14 percent of the population age 11 and over.

Frequency. Until recently, most survey results were reported only as percentages "having-ever-used" or in vague terms such as *occasionally, frequently,* and *regularly.* Table 3-3 provides limited data on frequencies of use. In the early 1970s, apparently about one-third of all persons who had ever tried marijuana were using it one or more times per week. More males than females have tried marijuana, and males are also more likely to use the drug frequently. The proportion of females who have ever used the drug who fall in the range of three or more times per week, is about one-half that for males (Hochman and Brill, 1971; McGlothlin and others, 1970b). In schools where marijuana usage has existed for several years and prevalence is high, the proportion of frequent users tends to be relatively high; for example, San Mateo County high schools in California. Schools that exhibit low prevalence of use typically show that 50 percent or more of those who have ever used marijuana are experimenters (fewer than ten times) (McGlothlin, 1971). Limited data on usage among persons over 35 also show that a high proportion of those who have used the drug are in the experimenter class (Chambers, 1971).

Table 3-4 provides frequency-of-use estimates that are consistent with the data shown in Table 3-3. Estimates are made by sex, by student and nonstudent status, and by two age categories in

Table 3–2

ESTIMATE OF PERSONS IN UNITED STATES WHO HAD USED MARIJUANA ONE OR MORE TIMES BY MID-1972

	Percent			*Number*		
	Total	Male	Female	Total	Male	Female
Grades 6–8	7	8	6	770,000	450,000	320,000
Grades 9–12	28	32	25	4,130,000	2,330,000	1,800,000
College	54	62	41	4,110,000	2,920,000	1,190,000
Age 18–24 (nonstudent)	30	39	20	4,990,000	3,350,000	1,640,000
Age 25–34 (nonstudent)	15	19	10	3,340,000	2,250,000	1,090,000
Age 35 and over (nonstudent)	6	9	3	5,040,000	3,360,000	1,680,000
Total, age 11 and over	14.2	18.9	9.5	22,380,000	14,660,000	7,720,000

Table 3–3

FREQUENCY OF MARIJUANA USE AS REPORTED IN SURVEYS CONDUCTED IN 1970 AND 1971

Sample	Year	Users: one or more times, percent	*Users in upper ranges*	
			Frequency	Percent
General population				
Age 18 and over (national)[1]	1971	15	1–6 times/wk	9[a]
			daily	3[a]
Age 14 and over (New York State)[2]	1970	10	≧ 6 times/mo	34
College				
National[3]	1971	44	≧ 2 times/mo	22
National[4]	1971	51	≧ 25 times/mo	10
New York State[2]	1970	48	≧ 6 times/mo	34
			male	36
			female	29
Secondary schools				
Age 12–17 (national)[5]	1971	15	> 60 times	20
Age 12–17 (national)[1]	1971	14	1–6 times/wk	13[b]
			daily	5[b]
High school (New York State)[2]	1970	23	≧ 6 times/mo	38
			male	43
			female	31
San Mateo County high school seniors[6]	1971	54[c]	≧ 1 time/wk	47
			male	55
			female	38

SOURCES: [1]Commission on Marihuana, 1972; [2]Chambers, 1971; [3]Groves and others, 1972; [4]*Gallup Opinion Index*, Report No. 80, February 1972; [5]Josephson and others, 1971; [6]San Mateo County School Study.

[a]Of those indicating use, 30 percent did not reply as to frequency.

[b]Of those indicating use, 12 percent did not reply as to frequency.

[c]Used during preceding 12 months.

the nonstudent group. In the early 1970s, the frequency-of-use data were reasonably plentiful for the student population, but were scarce for other groups. In particular, the 18 to 34 nonstudent group was estimated to have a relatively high proportion in the daily-use category because of the subculture characterized by heavy drug use,

which is largely contained in this segment. However, since no data were available on the size of this subculture, this estimate could be substantially in error.

In summary, of the estimated 22 million persons in the United States who had used marijuana one or more times by mid-1972, we further estimated that 48 percent had stopped using the drug or had used it fewer than ten times; that 37 percent were currently using marijuana one to eight times per month; and that 15 percent were using on a basis of three or more times per week. Of those who used the drug three or more times per week, an estimated 80 percent were males.

Amount. Information on the amount of marijuana consumed per use is essential—both from the standpoint of assessing the impact on the user and for estimating the volume and economics of the marijuana market. In this country, marijuana is normally smoked in the form of cigarettes, so the natural unit of measure is the number of cigarettes per use or per day. Certain exceptions exist. Marijuana may be smoked in a pipe, but probably no more than 10 percent is used in this manner (Haines and Green, 1970); it is also occasionally taken orally, but the amount consumed in this manner is negligible (Haines and Green, 1970). Finally, use in the form of hashish is increasing and probably represents 15 to 20 percent of the total at present. Although survey data generally do not distinguish between marijuana and hashish use, seizure data provide the basis for an estimate. In 1971, federal agencies seized 100,627 kilograms of marijuana and 3,526 kilograms of hashish (Bureau of Narcotics, 1971). Assuming that hashish is approximately five times as potent as marijuana by weight (Lerner and Zeffert, 1968; Mechoulam, 1970), the hashish seizures would be equivalent to 17,630 kilograms of marijuana, or about 15 percent of the total seizures. Hashish use is increasing and has been projected to represent 20 percent of the total use by mid-1972. For the purposes of this subsection, total use will be estimated in terms of marijuana cigarettes and then 20 percent will be subtracted as representing use in the form of hashish.

Studies that report the amount of marijuana smoked per occasion indicate that the majority of users consume no more than one cigarette. One study found that 50 percent reported using one

Table 3–4

Estimates of Frequency of Use in the United States Among Persons Who Have Used Marijuana One or More Times, Mid-1972

	Frequency of marijuana use											
	> 1 time/mo[a]		1–4 times/mo		1–2 times/wk		3–6 times/wk		Daily		Total	
Group	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number
Students												
Male	40	2,280,000	20	1,140,000	21	1,197,000	13	741,000	6	342,000	100	5,700,000
Female	50	1,655,000	22	728,000	19	629,000	7	232,000	2	66,000	100	3,310,000
Nonstudents (18–34)												
Male	45	2,520,000	20	1,120,000	14	784,000	13	728,000	8	448,000	100	5,600,000
Female	55	1,502,000	22	600,000	13	355,000	7	191,000	3	82,000	100	2,730,000
Nonstudents (35 and over)												
Male	50	1,680,000	20	672,000	19	638,000	8	269,000	3	101,000	100	3,360,000
Female	60	1,008,000	20	336,000	15	252,000	4	67,000	1	17,000	100	1,680,000
Total	48	10,645,000	20	4,596,000	17	3,855,000	10	2,228,000	5	1,056,000	100	22,380,000
Male	44	6,480,000	20	2,932,000	18	2,619,000	12	1,738,000	6	891,000	100	14,660,000
Female	54	4,165,000	22	1,664,000	16	1,236,000	6	490,000	2	165,000	100	7,720,000

[a]Includes persons who have stopped using marijuana and/or have used a total of less than ten times.

cigarette or less and 10 percent more than three cigarettes (Nisbet and Vakil, 1971). Another interview study of fairly regular users (median two times per week) found that the large majority smoked one-half to one cigarette "to get high," but that 76 percent reported they normally smoked an additional amount subsequent to achieving this effect (Haines and Green, 1970). A third study of an older sample (mean age 44) of persons who had typically used marijuana for many years found that 63 percent used no more than one cigarette per occasion, while 26 percent stated that they normally smoked three to five (McGlothlin and others, 1970a). The potency of available marijuana varies widely and contributes to the variability in amount consumed. The delta-9 tetrahydrocannabinol (THC) content varies from 0.1 to 5.0 percent in the dried material exclusive of stems and seeds. Mexican-grown marijuana sold in the United States averages about 1 percent THC (R. T. Jones, 1971; Lerner and Zeffert, 1968); domestic marijuana contains only 0.1 to 0.5 percent THC (Phillips and others, 1970).

Experimental data provide further evidence on the effective marijuana dose level. When given as a single administration, smoked doses of 2 milligrams of THC, or its marijuana equivalent, are sufficient to produce a mild euphoria in experienced users; 7 milligrams produce some perceptual and time-sense changes; and 15 milligrams produce a relatively high level of intoxication (Isbell and others, 1967; Weil and others, 1968). Assuming that marijuana contains 1.0 percent THC and that a cigarette weighs 0.5 gram, these doses are equivalent to about one-half, one and one-half, and three cigarettes respectively. Marijuana users do not necessarily smoke it in a single dose, however, and larger amounts would be required to maintain these effects over a period of several hours.

Table 3-5 presents an estimate of the mean amount of marijuana smoked per user per occasion as a function of frequency of use. More precisely, it is the mean amount smoked during the days on which any marijuana is consumed. The estimated amount used increases with frequency of use. This is partially a reflection of the fact that frequent users are more likely to smoke at intervals during a longer period of intoxication, or at more than one time during the day. No estimate of amount used is made for the category of Table

Table 3–5

ESTIMATED NUMBER OF MARIJUANA CIGARETTES (OR EQUIVALENT) CONSUMED AS A FUNCTION OF FREQUENCY OF USE

Frequency of use	Number of persons	Mean number cigarettes smoked per person		Annual consumption	
		Per occasion	Per month	Number of cigarettes	Percent
Daily	1,056,000	3.0	90	1,140,000,000	43
3–6 times week	2,228,000	2.0	36	962,000,000	37
1–2 times week	3,855,000	1.5	9	416,000,000	16
2–4 times month	4,596,000	1.0	2	110,000,000	4
Total	11,735,000			2,628,000,000	100

3-4 showing those who use less than one time per month, since this group consists primarily of the experimenters or persons who have stopped using marijuana. Their contribution to the total amount of marijuana consumed is negligible.

Table 3-5 also shows the total estimated annual consumption of marijuana cigarettes, that is, number of users times number of cigarettes used per month times 12. Hashish use and smoking by pipe are included in terms of cigarette equivalents. Note that 1 million marijuana users account for 43 percent of the estimated 2.6 billion marijuana cigarettes consumed. A comparable relationship exists with respect to alcohol.

Market

Annual National Consumption. Assuming an average cigarette weight of 0.5 gram,[1] the gross weight of the 2628 million ciga-

[1] Data from 54 seizures in the Los Angeles area showed the average net weight per cigarette to be 0.61 gram, with a range of 0.25 to 1.12 grams

rettes smoked annually is 1,314,000 kilograms of dried, cleaned marijuana. As discussed previously, the amount of hashish consumed is assumed to be equivalent to about 20 percent of the total consumption, so we may substract this amount (262,800 kilograms), leaving 1,051,200 kilograms of clean marijuana plus 52,560 kilograms of hashish.[2]

Crude marijuana loses 25 to 30 percent by weight when prepared for smoking, due to the removal of seeds, stems, and excess moisture (Doorenbos; 1971). Assuming a weight ratio of 10:7 for crude to cleaned marijuana, an estimated 1,501,700 kilograms of crude marijuana are required to satisfy the annual consumption.

In larger quantities, marijuana is usually sold in the form of wrapped bricks of compressed material ostensibly weighing 1 kilogram. In actual practice, the bricks typically weigh substantially less than 1 kilogram. Statistics from 35 seizures involving some 5000 bricks revealed an average net weight of 780 grams, with a range of 539 to 995 grams.[3] The number of short kilograms necessary to supply 1,501,700 kilograms of crude marijuana is thus 1,925,250.[4]

Source. Some marijuana is cultivated or collected from low-potency wild growth in the United States, but most is grown outside the country, principally in Mexico.[5] As of 1972, substantial

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(data provided by William Arnold of the California State Bureau of Narcotics, Los Angeles office, and Paul Kayne of the Los Angeles Sheriff's Crime Laboratory). The mean weight for some 9000 marijuana cigarettes seized by the New York City Police Department in 1969 and 1970 was 0.32 and 0.36 gram respectively (New York City Police Department annual reports, 1969, 1970). Other sources indicate cigarettes used in Eastern states are smaller than those rolled in the West, possibly due to the higher cost of marijuana (see Haines and Green, 1970).

[2] Assumes the potency is five times that of marijuana.

[3] Data supplied by Norman Nordweir (U.S. Customs, Los Angeles Office), Lloyd Sinclair (BNDD, Los Angeles Office), and William Arnold (California State Bureau of Narcotics Enforcement, Los Angeles Office).

[4] An alternative approach to estimating the amount of marijuana consumed is to utilize data on the number of cigarette papers sold, which is available from tax records. After subtracting those used for tobacco cigarettes, this presumably provides an estimate of the number used for marijuana. This approach has been attempted (see McGlothlin, 1971), but the instability of the recent cigarette paper sales data made the results of dubious value.

[5] This subsection is largely based on information obtained in interviews with U.S. Customs, BNDD, California state and local narcotics agen-

quantities originated in Jamaica and to a lesser extent in Central America, Southeast Asia, and other areas; but the primary source was still Mexico. For the present purposes, we assume that 90 percent of the crude marijuana consumed in the United States originates outside the country.

Of the 1,501,700 kilograms of crude marijuana consumed annually in this country, 90 percent (1,351,500 kilograms) originates outside the United States. Adding 130,000 kilograms of marijuana seized,[6] we get the total amount of marijuana grown in foreign countries for the United States market: 1,481,500 kilograms or 1,899,400 short kilograms. The land required to produce this amount is about 7600 acres.[7]

In Mexico, marijuana sells for $6 to $10 per 1-kilogram brick in the fields, and purchases are often of the order of several tons. It is normally trucked to points on the Mexican side of the border, where it sells for $35 to $40 per short kilogram in quantities of 100 kilograms or more. At the $35 price, the estimated annual expenditure for marijuana before importation is $66 million.

Hashish is generally assumed to originate in Lebanon and other Middle Eastern countries. Prices paid at the point of origin are not well established, but it may be bought in several Middle Eastern countries for $35 to $45 per kilogram. Assuming an annual United States consumption of 52,560 kilograms and a price of $40 per kilogram, the current estimated expenditure at the point of origin is $2 million.

Importation. The enormous bulk of the marijuana traffic does not impose severe restrictions on the Mexican side of the

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cies, and various other persons familiar with the sources and distribution of marijuana and hashish. Some published and unpublished data on prices and seizures were obtained from BNDD and U.S. Customs, and several published descriptions of the retail marijuana market were also utilized.

[6] 1971 BNDD and Customs seizures plus an estimated 30,000 kilograms by California state and local narcotic agencies. The Mexican government also reported seizing 35,000 kilograms of marijuana and the destruction of 390,000 kilograms of dried marijuana in the fields during the period October 1969 to March 1971 (BNDD *Bulletin,* U.S. Department of Justice, May–June, 1971).

[7] Based on the average of 300 pounds of dried cleaned marijuana obtained per acre from experimental cultivation in Mississippi (Doorenbos, 1971).

border. At the point of importation and beyond, the bulk involved imposes a severe limitation and is the major factor shaping the distribution system on the United States side. When one considers that approximately 4 tons of marijuana per day must be smuggled into the United States, typically in lots of no more than 50 to 300 kilograms, and that the bulk of marijuana makes it infeasible to store in quantity on the United States side, the prohibitive complexity of organizing more than a relatively small operation becomes apparent. By comparison, the annual importation of heroin is equivalent to only one or two days of smuggling activity for marijuana by weight, and heroin can be imported and stored in the United States well in advance of its distribution.

Amounts of marijuana smuggled from Mexico vary from 1 or 2 kilograms brought across the border by an individual to as much as 5 tons brought up the coast by boat, as reported in the *Los Angeles Times* of May 5, 1971. The vast majority of smuggling attempts involve amounts on the low end of the scale. In 1971, the mean weight of the 6312 marijuana seizures made by Customs was less than 15 kilograms (Bureau of Narcotics, 1971). About 85 percent of marijuana seized at the United States–Mexican border is intercepted in vehicles. However, some authorities are of the opinion that aircraft and boats are carrying an increasing portion of the traffic—considerably more than is indicated by the percentage of seizures.

Hashish is most frequently smuggled into the United States aboard commercial aircraft. The mean weight for 1757 Customs seizures in 1971 was 1.8 kilograms (Bureau of Narcotics, 1971), although in the early 1970s seizures of 40 to 50 pounds were not infrequent.

Distribution. On entry into the United States, marijuana sells for $75 to $90 per short kilogram in lots of 100 or more bricks at points near the Mexican border. Virtually all warehousing of large quantities of marijuana is done outside the United States. Normally, the buyer for a given lot of 100 kilograms or more is known before importation, and dispersal or transshipment takes place immediately after delivery.

Typically, although an individual who buys in 100-kilogram lots would not sell in quantities of less than 5 or 10 kilograms, he

may frequently be willing to sell much larger quantities for lower profits, particularly to another known wholesaler, a transaction that involves little risk. In general, the price is dependent on the size of transaction, extent of risk, and distance from the border. The quality of the marijuana and the actual weight of the "kilogram" bricks are also factors, especially in smaller transactions. Finally, the price varies with availability, and there is some seasonal fluctuation corresponding to the time of harvest in Mexico. In the spring of 1972, marijuana was in short supply; and the price per single short kilogram in California was $300 to $400, or about double the price for 1971. For the present purposes, such prices are assumed to be atypical, and calculations are based on the 1971 prices, that is, $150 to $200 per single short kilogram in California and other border states and $225 to $275 in most other areas of the country.

Assuming an annual consumption of 1,925,250 short kilograms of marijuana (including Mexican, domestic, and other origin), the annual expenditures in the United States as a function of lot size are estimated as shown in Table 3-6.

Table 3–6

ESTIMATED ANNUAL UNITED STATES EXPENDITURES FOR MARIJUANA, 1972

Level, lot size	Price per short kilogram	Annual expenditure
100 kilograms and up	$ 85	$163,600,000
10–15 kilograms	150	288,800,000
1 kilogram	250	481,300,000

Hashish sells for $600 to $1000 per pound. Apparently, there is little regional variation in price, although it generally sells for less in areas where there is a relatively large market or where it is in competition with low-priced marijuana, for example, San Francisco and Los Angeles. No information was available on price for multipound lots. Assuming the annual consumption at 52,560 kilograms, or 115,900 pounds, and a price structure similar to that

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for marijuana, the annual expenditures for hashish are estimated as shown in Table 3-7.

Table 3–7

ESTIMATED ANNUAL UNITED STATES EXPENDITURES FOR HASHISH, 1972

Level	Price per pound	Annual expenditure
10 pounds and up	$500	$57,950,000
1 pound	800	92,700,000

The standard retail unit for marijuana is an ounce or "lid" of uncleaned material. Generally, the "ounce" is short by about the same proportion as the brick; that is, it averages around 22 grams instead of the full 28.3 grams. Marijuana is also sold in 1-pound, ½-pound and ¼-pound quantities. The 1972 price per short ounce in California and the Southwest was $10 to $15; in most other areas, a short ounce sold for $20 to $25, and prices in Chicago and Ohio were quoted as high as $35 to $40. Marijuana may also be retailed in "nickel bags," containing 3 to 5 grams and selling for $5. Occasionally, the smaller quantities are sold in loose cleaned (manicured) form or as cigarettes. The addition of adulterants such as oregano is not uncommon in this form.

Hashish retails for $5 to $10 per gram, but it is often sold to the ultimate consumer in 1-ounce quantities at prices ranging from $70 to $125.

Several authors have described the distribution of marijuana at the retail level (Anonymous, 1969; Carey, 1968; Goode, 1969, 1970; Mandel, 1967). The majority of persons who use the drug several times per week technically have also sold marijuana, although it may be no more than sharing a purchase with friends at no profit. One survey reported that 85 percent of persons who use it three or more times per week fall in this category (Goode, 1970). Others casually sell to a few close acquaintances to earn enough for their own supply and a small amount of money. Others retail mari-

juana as a full-time occupation. Still others move further up the ladder, buying in quantities of 5 to 10 kilograms, selling some as single bricks and retailing the remainder in ounces or fractions of a pound.

Retail expenditures. In order to estimate the retail expenditures for marijuana, it is necessary to assume the size of the purchase made by the ultimate consumer. As would be expected, heavier users are more likely to buy larger amounts in a single purchase. The buying of ¼ pound up to 1 pound, or even a kilogram, for sharing among a group of users is not uncommon. In one study of fairly heavy users, 17 percent stated they purchased a kilogram at a time about one-half of the time (Hochman and Brill, 1971). The size of purchase is also influenced by the economic status of the buyer and the price of marijuana; for example, purchases of less than an ounce are relatively uncommon in California where the ounce price is $10 to $15, but in the East a cost of $25 per ounce reportedly results in more frequent purchases of smaller quantities, especially among lower socioeconomic groups. The retail expenditures for marijuana and hashish are estimated in Table 3-8, account being taken of the variability in purchase sizes as a function of frequency of use. The number of users and percentage of total consumption by frequency of use are taken from Table 3-5. The national average price of marijuana is assumed to be $250 per short kilogram and $20 per short ounce, or $700 for a short kilogram bought in short-ounce units. The more frequent users are assumed to obtain their supplies at less than $20 per short ounce, by purchasing in larger quantities, by sharing in group purchases, or by obtaining lower prices through familiarity with dealers. The average price paid by those who use daily and those who use three to six times per week is estimated to be $450 and $575 per short kilogram respectively. Of those persons who use the drug two times per week or less, half are assumed to buy at $20 per short ounce and half in smaller units equivalent to $30 per short ounce, for an average of $875 per short kilogram.

Similar assumptions were made for hashish purchases. Retail prices for hashish were assumed to be $8 per gram and $90 per ounce. Three-fourths of the daily users and one-half of those who use three to six times per week were estimated to obtain hashish at

Table 3–8

ESTIMATE OF RETAIL EXPENDITURES FOR MARIJUANA AND HASHISH

	Frequency of use			
	Daily	3–6 times/wk	≤ 2 times/wk	Total
Number of users	1,056,000	2,228,000	8,451,000	11,735,000
Annual consumption:				
Proportion of total consumption	43%	37%	20%	100%
Marijuana	827,850 kg[a]	712,350 kg[a]	385,050 kg[a]	1,925,250 kg[a]
Hashish	49,840 lb	42,880 lb	23,180 lb	115,900 lb
Retail cost:				
Marijuana	$ 450/kg[a]	$ 575/kg[a]	$ 875/kg[a]	$ 581/kg[a]
Hashish	$2,000/lb	$2,500/lb	$3,600/lb	$2,500/lb
Total annual expenditures:				
Marijuana	$372,530,000	$409,600,000	$336,920,000	$1,119,050,000
Hashish	$ 99,680,000	$107,200,000	$ 83,450,000	$ 290,330,000
Total	$472,210,000	$516,800,000	$420,370,000	$1,409,380,000
Individual user expenditures:[b]				
Annual	$447	$232	$50	
Weekly	$ 9	$ 4	$ 1	

[a]Short kilograms.
[b]Average expenditures for all users: annual, $120; weekly, $2.

the ounce price and the remainder at the gram price. All who use the drug two times per week or less were assumed to buy at the gram price.

The estimated annual retail expenditure for marijuana and hashish combined is about $1.4 billion. Average cost per user is about $9 per week for daily users and about $4 per week for those who use three to six times per week.

Subtracting the previously estimated annual expenditure for marijuana at the short-kilogram level ($481 million) and that for hashish at the pound level ($93 million) from the retail expenditure in Table 3-8 leaves a gross retail profit of $835 million. Several authors have concluded that marijuana-hashish dealing at the retail level is a low-profit operation—a dealer serving only about 25 customers and making $200 to $300 per month (Carey, 1968; Goode, 1969; Mandel, 1967). At this rate, the gross retail profit estimated here would be sufficient to employ some 280,000 persons in retail selling. Data are not available for estimating the number of persons involved in the wholesale marijuana-hashish market. If we assume the average gross profit to be $20,000 per year per person, then the gross wholesale profit subsequent to purchase on the United States side of the border ($353 million) would result in some 17,500 persons being employed at the wholesale level.[8] Figure 3-1 provides a summary of the estimated use, distribution, and economics of the marijuana-hashish market for mid-1972.

Enforcement

Seizures. In 1971, the U.S. Bureau of Customs and the federal Bureau of Narcotics and Dangerous Drugs (BNDD) seized 91,400 kilograms and 9,200 kilograms of marijuana, respectively (Bureau of Narcotics, 1971). The corresponding hashish seizures were 3,100 kilograms and 400 kilograms. California state and local seizures in 1970 accounted for an additional 26,000 kilograms of marijuana (Bureau of Criminal Statistics, 1970b). Data on seizures by other state and local agencies are generally not available but are

[8] Since both wholesale and retail dealers often sell other drugs in addition to marijuana, the total number of persons involved is likely to be substantially larger than the numbers estimated here.

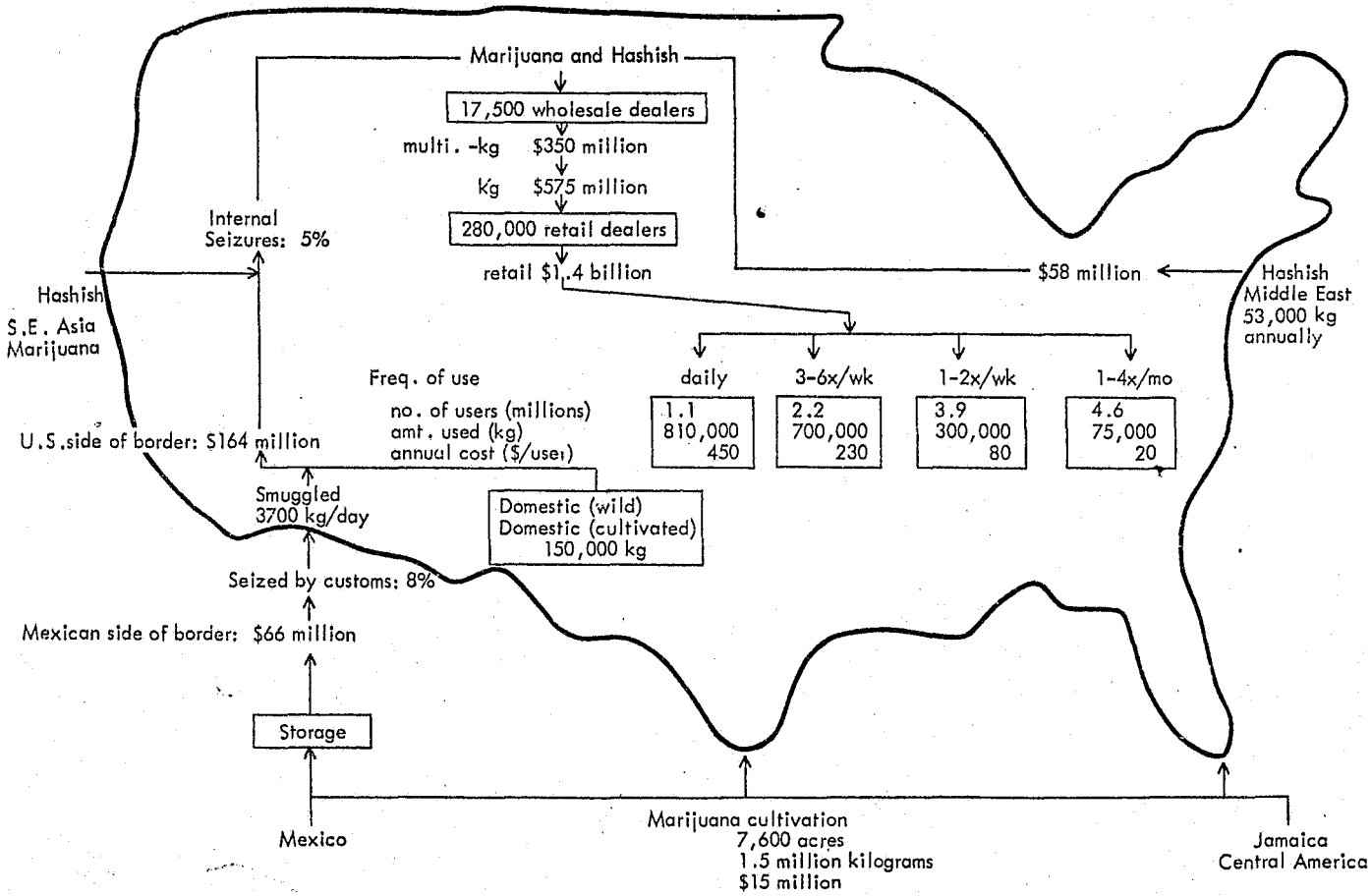

FIGURE 3-1. Summary of marijuana-hashish use, distribution, and economics for 1972.

known to be relatively small in comparison to those for California (McGlothlin, 1971). The marijuana seizures by Customs (1971), BNDD (1971), and California (1970) represent 8 percent of the estimated 1972 consumption. Assuming that the 1971 consumption was no more than 75 percent of that for 1972, and that state and local agencies other than those of California seized an additional 20,000 kilograms, the total 1971 marijuana seizures represented about 13 percent of the 1971 attempted importation.

Arrests. Statistics from the 1970 *Uniform Crime Reports* show 157,000 arrests for marijuana or 45 percent of the total 346,000 drug arrests (Federal Bureau of Investigation, 1971). The 1970 adult and juvenile marijuana arrests in California totaled 69,000 (Bureau of Criminal Statistics, 1970b). For 1969, 34 percent of the 55,000 California marijuana arrests were of persons age 18 to 20, which yields an arrest rate of 1.8 per 100 (Bureau of Criminal Statistics, 1969). Of marijuana arrests for persons 18 and over, 86 percent were males, for an arrest rate of 3.0 per 100 in the 18 to 20 age group. In San Mateo County, California, 50 percent of senior high school males reported marijuana use during 1969 (San Mateo County School Study, 1968 through 1972). Assuming the statewide average for marijuana use at about 80 percent of that for San Mateo County, the arrest rate for males age 18 to 20 who used marijuana one or more times in 1969 is estimated to be 7.4 per 100. If we further assume that virtually all the arrests are among the 60 percent who used marijuana on more than an experimental basis (ten or more times), the arrest rate for this group of males age 18 to 20 is 12 per 100.

The number of California arrests for sale or transportation of marijuana in 1969 was 7800 (Bureau of Criminal Statistics, 1969). If we assume that the number of persons involved in wholesale and retail selling in California during 1969 was 30,000, the arrest rate was 26 per 100.[9]

In summary, the risk of arrest for use or sale of marijuana is quite substantial, at least in California. The penalties imposed by the courts are also significant. Of the 37,700 adult (18 and over)

[9] Assumes the number of persons involved in wholesale and retail selling in 1969 was 50 percent of the 300,000 estimated for 1972 and that 20 percent of the total were in California.

nonfederal arrestees in 1969, 21 percent were convicted on felony charges. Incarceration rates were relatively low—0.6 percent of the total arrested received prison sentences, and 8 percent received jail sentences; however, the additional implications of felony convictions are severe. The cost of processing the California adult and juvenile marijuana arrests for 1969 has been estimated to be $43 million, or about $780 per arrest (McGlothlin, 1971).

Future Use

Current trends. Figure 3-2 presents some trend indicators of marijuana use and control between 1967 and 1971. Obviously the seizure and arrest data may reflect variations in enforcement emphasis as well as changes in usage.

As the percentage of students who have ever used marijuana approaches or exceeds the 50 percent mark, increasing interest focuses on trends in the proportion of such students who continue use. A comparison of the Gallup college surveys for 1970 and 1971 indicates continuing use may be nearing a plateau (Gallup Opinion Index, 1972). On the other hand, the San Mateo County secondary school data show a definite increase over the same period, in the proportion of students who use marijuana one or more times per week (San Mateo County School Study, 1968 through 1972). This survey showed a tendency toward leveling out of use from 1969 to 1970, but the sharp rise resumed in 1971. Interview studies have provided additional data on the question of duration of use. One 1970 college survey found that, of those persons who had been initiated to marijuana more than three years before and who had used it on more than an experimental basis (ten or more times), 37 percent had currently either stopped or were using infrequently, and 32 percent and 31 percent reported current usage at several times per month and several times per week, respectively (Hochman and Brill, 1971). Another 1970 college study found that 77 percent of those who had been initiated to marijuana four or five years previously were still using to some degree (Lipp, 1971).

In summary, the currently available (1972) trend data on marijuana usage leave unanswered the question of whether it is likely to be a transient or a permanent phenomenon. The number of persons who have ever used marijuana in continuing to increase,

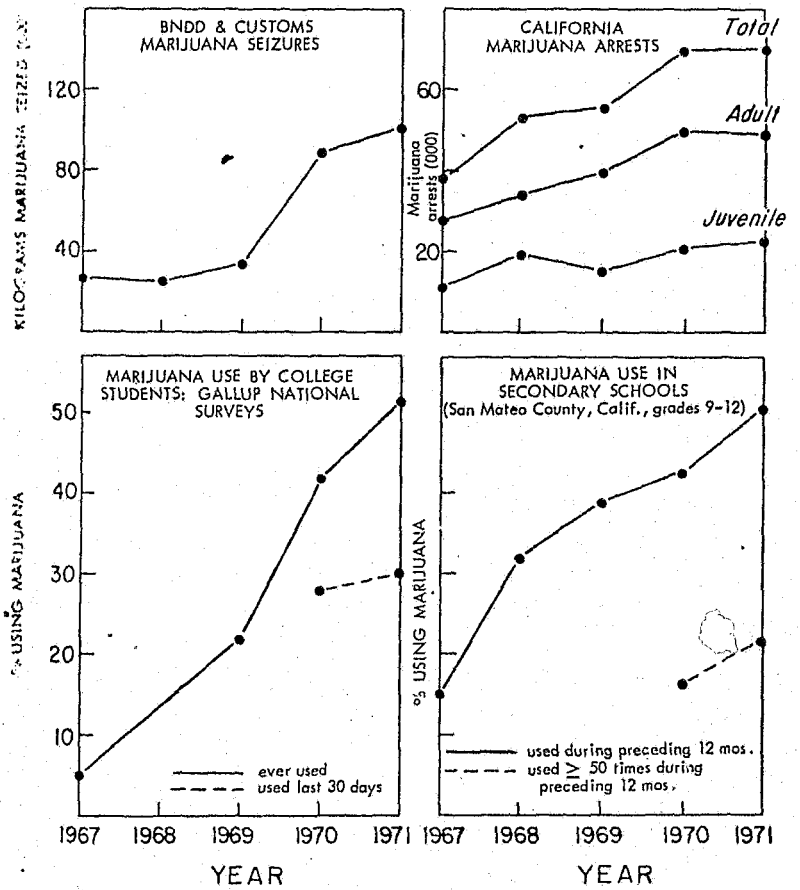

FIGURE 3-2. Marijuana trend indicators: use and control.

probably at a rate of 25 to 30 percent per year. In addition, there is no evidence as yet that the number of persons who discontinue after a significant period of usage are exceeding the number who are initiating such behavior. On the other hand, the behavior has many of the characteristics of a fad or temporary style: its very rapid acceptance by that segment of the population most susceptible to fads; the fact that it has been enthusiastically propagandized via music, a pseudophilosophy, and the popular media; the fact that its use is, in part, an antiestablishment reaction stemming from factors other than the properties of the drug itself. In addition, the

appearance of Western-style (Occidental) marijuana use among university students in most countries throughout the world has more the flavor of adoption of styles of music or hair length than a lasting behavior.

The contrary view holds that since cannabis (marijuana) is the second most widely used intoxicant in the world, it clearly is a drug that may prove attractive to large numbers of people on a continuing basis. Once a drug with these features is introduced into a culture on a widespread basis, it seems quite likely to be retained by some portion of the population. Blum has noted that in the history of drug use there are few instances in which a drug achieved widespread acceptance in a culture and was subsequently discarded (Blum and Associates, 1969a).

Insights from Other Cannabis-using Cultures. Cross-cultural generalizations are hazardous; however, a brief examination of the prevalence and patterns of cannabis use in cultures where it has existed for centuries may be helpful in forecasting the future use in the United States. For instance, what proportion of the population elects to use the drug under conditions of acceptance in countries with a long history of use? In Nepal, which is reportedly the only country in the world that imposes no restrictions on cannabis use, approximately 4000 acres are officially cultivated and taxed, and additional amounts of hashish are harvested from wild growth for commercial purposes (McGlothlin, 1971). In spite of the fact that cannabis is legal, readily available, and inexpensive, Nepalese use is very limited and virtually all the crop is illicitly exported to India and Pakistan.

In India and Pakistan, charas (hashish) was prohibited in 1945, but other preparations of cannabis (bhang and ganja) are still legal in selected states. Daily users probably number 2 million to 3 million, or about 4 per 1000 on a per capita basis (McGlothin, 1971). However, since use is restricted to lower-class males and is concentrated in certain states, daily users may constitute as high as 5 percent of the relevant population in some areas.

In Morocco, occasional and regular cannabis users were estimated to represent 10 percent of the population before prohibition of the drug in 1954 (Roland and Teste, 1958). Since use was primarily restricted to males, this was about 25 percent of the adult

male population. Other estimates of regular use have run as high as 50 percent of the native male population in some areas of South Africa (South Africa Drug Report, 1952) and 40 to 50 percent of the male population in Jamaica (*Marihuana and Health,* 1972).

In summary, in very few areas in the world does the prevalence of cannabis use approach that for alcohol in the Western culture. Usage is largely restricted to lower-class males, and daily use seldom exceeds 5 to 10 percent among this group. By comparison, it is estimated that 2.5 percent of United States males age 14 to 34 are currently (1972) using marijuana daily and that an additional 4.6 percent are using it three to six times per week (Table 3-4).

Probably the most significant comparison between the use of marijuana in the United States and that in other cultures concerns the amount consumed. In Table 3-5, the typical American dosage is estimated at one to three marijuana cigarettes, or 5 to 15 milligrams of THC, per day. The maximum amount consumed by heavy users is of the order of ten cigarettes, or 50 milligrams of THC, per day. By contrast, the *average* amount consumed by daily users in India, Egypt, and Morocco is estimated to contain 45 to 60 milligrams of THC, and the maximum is around 200 milligrams (McGlothlin, 1971). Some studies have indicated usage equivalent to more than 700 milligrams of THC (Chopra and Chopra, 1939). In Greece, chronic hashish users serving as experimental subjects are routinely given smoked-THC doses of 150 milligrams, whereas 15 milligrams is normally the maximum dose administered to experimental subjects in this country. The one- to three-cigarette dosage of the early 1970s is also low in comparison with the six to ten cigarettes per day estimated for regular users in the 1940s (Charen and Perelman, 1946; Mayor's Committee, 1964). It is also low in comparison with the amounts used in the early 1970s by American soldiers in Vietnam and Germany. One study of heavy hashish users among the United States military forces in Germany found an average use of more than 3 grams per day, that is, the equivalent of 30 marijuana cigarettes per day (Tennant and others, 1971).

In summary, most of the current marijuana smokers in the United States are best described as playing at cannabis use in com-

parison with users in other cultures. It seems likely that the average amount of THC consumed by continuing users in this country will increase in the next few years, although probably not to the level observed in other cultures. Additional experience, the availability of more potent preparations, and the development of tolerance among frequent users will tend to increase the average amount consumed. In addition, it would not be surprising if some individuals daily consume 200 milligrams of THC or more in the form of hashish or other concentrated preparations, an amount greatly in excess of that previously observed in this country. Experience in other countries indicates that the use of these very large amounts occurs in about the same proportion of users as does alcoholism in the United States, that is, about 5 to 10 percent of the total number of users.

Predicted Use in 1976. Table 3-9 compares higher and lower predictions of marijuana-hashish usage for 1976 with the estimate for 1972. The predicted use of larger quantities of THC in the form of marijuana or other preparations is reflected in the 1976 estimates. It is estimated that daily users and those who use the drugs three to six times per week will be using five and three marijuana cigarettes, or equivalent, respectively, in comparison with three and two cigarettes assumed in Table 3-5 for 1972. Although the lower estimate for 1976 assumes a somewhat smaller population of users than that for 1972, the predicted larger amounts per user result in an increase in total consumption. The estimated retail expenditures are calculated on the same basis as those in Table 3-8.

Alternative Control Policies

Marijuana control policies have been discussed at length in previous documents (Kaplan, 1970; Brill, 1971–1972). The present section will be primarily limited to an examination of the major alternative policies in the context of the quantitative estimates of use, distribution, and enforcement effectiveness developed in the previous sections.

Several features characterize the current (1972) marijuana-hashish market as summarized in Figure 3-1. First, in the case of marijuana, the fact that 99 units of inert substance must be handled for every one unit of the active drug means that large amounts of

Table 3–9

ESTIMATED MARIJUANA-HASHISH USAGE AND EXPENDITURES FOR 1972 AND 1976

	1972 estimate	1976 prediction	
		Minimum	Maximum
Number of users:			
Daily	1,100,000	800,000	2,500,000
3–6 times/week	2,200,000	2,000,000	3,500,000
1–2 times/week	3,900,000	3,000,000	6,000,000
1–4 times/month	4,600,000	3,000,000	10,000,000
Total	11,800,000	8,800,000	22,000,000
Annual national consumption of crude marijuana or equivalent	1,900,000 kg	2,300,000 kg	5,400,000 kg
Wholesale expenditures	$ 600,000,000[a]	$ 700,000,000[a]	$1,700,000,000[a]
Retail expenditures	$1,400,000,000[b]	$1,600,000,000[b]	$3,700,000,000[b]

[a]1972 prices at 1-kilogram level.
[b]1972 prices.

bulky material must be transported—an estimated 4 tons are smuggled into the United States daily. Second, distribution within the United States involves numerous independent operations with little evidence of central organization. This is probably closely related to the difficulty of smuggling and storing large quantities of the drug. Third, the market involves a large number of users who make a relatively small amount of money by retail selling. Fourth, the monetary cost of marijuana use to the individual is relatively low, that is, $0.50 to $9 per week, depending on the frequency of use.

The effectiveness of the present marijuana control system may be measured (1) in terms of enforcement statistics, for example, drug seizures and arrests for sale and use; (2) indirectly in terms of availability and price of the drug; and (3) directly in terms of extent and type of use. An overall evaluation should also consider the costs of control, monetarily, as well as in terms of unintended side effects such as alienation of youth or diversion to more dangerous drug use. With regard to the more quantitative measures, and based on California statistics, we estimate that the current marijuana control system results in seizure of 13 percent of the marijuana and hashish intended for sale, in the arrest of 26 percent of those who are regularly involved in selling and in the arrest of up to 3 percent of those who use marijuana one or more times during the year (Bureau of Criminal Statistics, 1970a).

The present control system has had only limited success in restricting the availability of marijuana and hashish. Availability is not sufficiently open that purchases can be easily made by persons who are not involved in the drug subculture, but regular users generally have little difficulty obtaining the drug (Haines and Green, 1970). Periodic shortages occur, but they appear to be mostly related to seasonal fluctuations in harvesting, rapid increases in demand, and variations in supply related to the situation of storage being largely outside the United States. The price of marijuana increased by about 50 percent from 1969 to 1972, but this increase was not a limiting factor for most users. With respect to controlling the extent of marijuana use, the present policies have obviously been unsuccessful in preventing the rapid increases over the past few years.

With respect to possible policy changes, there are three primary alternatives: (1) increase criminal sanctions for both use and sale; (2) decrease or eliminate penalties against use and continue or increase efforts to eliminate the supply; and (3) regulate the sale of marijuana in the manner of alcohol controls.

The adoption of the first alternative in terms of penalties as well as arrests would undoubtedly increase the level of deterrence. It seems equally clear that society would be unwilling to incur the costs of such an approach. The current trend toward decreasing or eliminating penalties at the user level is essentially being forced by the realities of the widespread usage. This leaves the second and third alternatives as feasible policy changes.

Suppress Supply. The immediate question with regard to alternative 2 concerns the ability to suppress the supply of marijuana and hashish. The increased pressure against smuggling by Customs in 1969, 1970, and 1971 clearly resulted in a sharp increase in seizures (see Figure 3-2). The current estimated seizure rate of 13 percent is substantial when interpreted in terms of risk of arrest. While no attempt was made in the present study to estimate the results of additional enforcement efforts, such a policy can reasonably be expected to further increase both seizures and arrests. On the other hand, there is no indication as yet that the present level of enforcement is capable of severely restricting the availability of marijuana.

Efforts are also being made to eliminate the sources of marijuana in Mexico (McGlothlin and others, 1970b). Information necessary for evaluation of the progress of this effort is not available, but clearly this approach to cannabis control on a worldwide basis would be more difficult to implement than the current attempt to suppress the sources of opium. Cannabis grows wild in many portions of the world and may be cultivated with relatively little effort in any temperate or tropical climate. It requires no processing in the crude form, and relatively little for the more concentrated preparations.

Increase Smuggling Controls. The major difficulty in smuggling marijuana is the excessive bulk. The estimated 3700-kilogram amount smuggled into the United States daily contains only about 37 kilograms of THC. Further significant increases above the already high marijuana seizure rate will likely result in efforts to de-

crease the risks of detection by means of reductions of bulk. The most obvious countermeasure would be the gradual replacement of the marijuana market with hashish from the Middle East, smuggled into the United States either directly or by way of Mexico or Canada. Hashish is estimated to contain 5 percent THC compared with 1 percent for marijuana, and is also a solid; for equivalent amounts of THC, hashish requires far less space than does the leafy marijuana. As mentioned earlier, the increased smuggling of hashish is already evident—the ratio of hashish to marijuana seizures in 1971 was double that for 1970. Very little technical skill is required for converting hashish to an extract containing up to 20 percent THC; this method has already been employed on a small scale and seems likely to be used increasingly. In general, any method that permits importation in a more concentrated and compact form will increase the ease of concealment for smuggling and will reduce information leaks by permitting more centralized operations.

Another result of increased enforcement effectiveness would be an increase in the price paid for marijuana and hashish. One of the announced objectives of Operation Intercept in 1969 was to place the price of marijuana beyond the reach of the adolescent. The price in the United States increased by about 50 percent from 1969 to 1972; however, the relative costs of comparable levels of intoxication achieved by use of marijuana and alcohol are probably still of the order of 1:2 or 2:3. This result of Operation Intercept would indicate that the price of marijuana might rise by 50 to 100 percent if the risks of importation and distribution are again substantially increased. It is interesting that the price of hashish is about $1 per gram in Holland and Denmark, which have relatively permissive policies; about $3 per gram in Norway, which stresses enforcement; and $8 per gram in the United States ($3 per gram in ounce quantities).

Limitations on marijuana supply should also be considered in the context of availability of other drugs. For instance, during the period when the price of marijuana increased by 50 percent, the widespread availability of LSD resulted in its wholesale price dropping to one-fifth its former level. Marijuana shortages apparently result in increases in the use of other drugs (McGlothlin and others, 1970b). Alcohol and hallucinogens are the most frequent substi-

tates, but there is also some increase in sedative, stimulant, and opiate use, especially among those who are heavily involved in the drug subculture. Finally, increased domestic cultivation of marijuana is another possible reaction to heightened controls against importation. Marijuana plants may be grown indoors as well as outside. Should sanctions be dropped at the user level, cultivation for personal use might pose a difficult legal problem.

Contribution to Criminal Behavior. A control policy that attempts to deal severely with the seller and deals leniently or not at all with the user will inevitably encounter difficulty in differentiating between the two categories. A major disadvantage of maintaining marijuana in the illicit drug category is the encouragement of large numbers of young persons to become involved in retail selling. It is especially easy to begin selling marijuana on a casual basis and quickly become seriously enmeshed in a highly criminogenic subculture. As previously discussed in the section on the marijuana market, the majority of regular users have technically sold the drug at some time—280,000 persons are currently estimated to earn all or a significant portion of their income by retail selling. Applying the same formula of $250 per month for the retail dealer to the 1976 upper estimate of $2 billion in gross retail profits would result in some 670,000 persons employed in the retail selling of marijuana.

In addition to encouraging young marijuana users to adopt the dangerous and unproductive life of retail selling, the large wholesale profits are attractive to organized crime—a development that is considered more likely if the more concentrated preparations replace marijuana. The present estimated wholesale market of $600 million per year (1-kilogram level) is predicted to increase to $700 million to $1.7 billion by 1976. With additional pressure against smuggling and distribution, price increases might raise these market values by 50 to 100 percent.

Regulate Sale. Legal distribution of marijuana would provide the usual advantages of licensing, including control of conditions of sale, especially those relating to the age of the purchaser. Other controls employed in some countries are the limiting of the amount purchased and the issuing of permits for use.

Another advantage of regulated sale is the imposition of quality and potency control. As discussed earlier, increased pressure

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against sales and smuggling seems likely to result in a shift to more potent forms. While the availability of the more potent preparations of cannabis does not necessarily result in the consumption of larger amounts of the active ingredient, there is general agreement that excessive use is more prevalent under such conditions. Some countries have initiated controls that allow consumption of low-potency materials but prohibit the more concentrated forms (Krisnamoorthy, 1969). Regulated sale would also prevent adulteration. This has not been an appreciable problem thus far because of the lack of an economic incentive, but if extracts come into use it is likely they would often be mixed with other active adulterants.

Another major advantage of legal sales is the removal of large numbers of youth from the criminogenic retail sales occupation. It would also reduce the cost of enforcement, disassociate marijuana from other drug sales, and encourage a credible approach to education.

Finally, if sales of marijuana were regularized in the same manner as sales of alcohol, the profits that now go into criminal channels could presumably be converted to tax revenues. If we assume the same tax percentage for marijuana as alcohol (approximately 30 percent), the current estimated $1.4 billion retail expenditure for marijuana and hashish would yield around $420 million in taxes per year, or about 8 percent of the current alcohol tax revenue. The 1976 lower and upper estimates of retail sales would result in tax revenues of $480 million and $1.1 billion or 9 to 22 percent of the current alcohol revenues. The current retail price of marijuana could probably be doubled and still be competitive with alcohol and, since marijuana is easy to grow and process, the tax percentage could be substantially higher than 30 percent of the total price. Thus, it is reasonable to predict that tax revenue could be nearly $1 billion at present, and possibly as much as $2 billion within five years, or some 40 percent of the alcohol revenue.

Future Policies. We have examined some of the implications of various marijuana control policies in the context of estimates of current and future use and distribution. In summary, the current prevalence of marijuana use is high and is likely to continue to increase, at least for two or three years. Among younger age groups,

the present policies do not effectively deter use, particularly in certain areas of the country. The reaction of policy makers to the failure of deterrents and to the cost of criminal sanctions has been to reduce penalties against the user, while continuing or increasing pressure against distribution. It is reasonably certain that this trend will continue in the immediate future, possibly including dropping other than token sanctions against the user. Additional pressure against smuggling and sale of marijuana should further increase seizures and prices, although as yet there is no evidence that this approach is capable of severely restricting availability. A likely countermeasure is the shifting to hashish or other concentrated preparations in order to reduce the risks associated with smuggling. A major cost of a policy aimed at suppressing supply is the criminalizing of large numbers of young persons involved in retail sales. A policy of legalization would eliminate this problem, encourage a credible educational approach, produce a substantial tax revenue, and provide control of potency and other controls related to legal sale. On the other hand, legalization would very likely produce greater prevalence of use, whereas strong efforts against the supply of marijuana, together with token sanctions against use, would indicate social disapproval and discourage its use, at least among some portions of the population.

The major uncertainty concerns the future trends in marijuana usage related to factors other than control policies. If the demand for marijuana continues at the present or higher level and efforts to suppress the supply are unsuccessful, then a policy of continued prohibition would have most of the disadvantages of legalization and none of the advantages. On the other hand, the current epidemic use of marijuana among the middle class is too new to allow confident predictions as to whether or not it will be a permanent phenomenon. Early legalization would provide official, and perhaps irreversible, sanction to a potentially harmful behavior that might otherwise have been primarily a transient phenomenon.

[From the National Observer, Nov. 30, 1974]

A CHANGE IN POLICY ON POT?

(By William J. Lanouette)

More than two million Americans will smoke some marijuana today. Maybe 2,000 of them will be arrested.

For some very different reasons, those statistics are beginning to disturb a growing number of people and their elected representatives here. And if this concern spreads, as now appears likely, it could produce a fundamental shift in the nation's policy toward pot.

Attitudes are quite dissimilar. Some people are annoyed because they think that all pot smokers should be arrested. Some think no pot smokers should be arrested. Some think that pot smoking is wrong—for medical or moral reasons—but also that laws applied so selectively are unfair. And some think that regardless of the arguments for or against pot smoking, the police should be battling more serious crimes.

SEPARATE CONCERNS

These varied concerns were focused here recently by a series of loosely related events that together renewed debate about the public and political response to pot. From this debate emerges one fundamental shift in attitudes: a tendency to separate concern about the possible medical harm of pot from the legal harm caused by enforcing the present laws.

Marijuana is still a long way from being "legalized," that is, sold commercially as a legitimate product. Yet the chances that the possession and use of small amounts will be "decriminalized"—publicly discouraged but not punished by jail terms—may be only months away. And oddly enough, the move to decriminalize pot could be boosted by a widespread concern for "law and order."

The shift in public attitudes began at the top. Although former President Nixon wouldn't even read the 1971 commission report recommending decriminalization, President Ford and the First Family have taken a different approach. "I'm sure the children have tried it," Betty Ford said in September. "I think children try everything, don't they?"

THE KEY QUESTION

Columnists, including William F. Buckley, Jr., Ann Landers, and James J. Kilpatrick have supported decriminalizing pot. Attorney General William Saxbe said he would not lobby for a change in marijuana laws on Capitol Hill, but "neither will I block any efforts to make the changes."

Last week the Ford Administration's chief drug-policy spokesman edged close to advocating decriminalization without explicitly saying so. Dr. Robert L. DuPont, director of both the White House Special Action Office for Drug Abuse Prevention and of the National Institute on Drug Abuse, said: "The key question today is whether the benefits of deterrence are available at a lower cost than the current criminal sanction. I think that they are."

THE COST OF JAIL

With this shift in attitudes, New York Democratic Rep. Edward Koch is trying to muster support for his pot-decriminalization bill. "While many thousands are being arrested for possessing marijuana, many millions are not," Koch said in an interview last week. "I think that both Constitutional liberals and Constitutional conservatives will want to rally around this issue—because of the unfairness of it. By an estimate I've seen it would cost $79 billion a year to put every pot smoker in jail. And even assuming pot's as vile as its worst critics say, so do you correct that by putting everybody in jail?"

Sen. Harold Hughes, Iowa Democrat, is now posing two questions to witnesses before his subcommittee on alcoholism and narcotics, which is examining current pot policies. "Is the health hazard so great as to endanger society or is it so minimal that government should refrain from interfering with the individual user? Do the criminal laws impose on the individual and on society a burden

which is so great and so unfair that they are far more damaging than the use of marijuana itself could be?

"Even if we find that marijuana does present serious health hazards," Hughes says, "are we justified in using the criminal law to solve a health problem when we do not use it in any similar way to solve the very well-known problems created by the use of such substances as alcohol and nicotine?"

THE OREGON APPROACH

Committee witnesses, including narcotics agents from New Jersey, urged a reassessment of national marijuana laws. Most favored an approach begun last October in Oregon, where possession of 10 ounces or less is a "violation," like a traffic ticket, punishable by a maximum fine of $100.

Also last week, Dr. DuPont presented to Congress his agency's fourth annual "Marijuana and Health" report. It was due in March but delayed, he said, "to include new findings from several important studies in order that the report would accurately reflect the present state of our full scientific knowledge." He conceded, however, that "there are more unanswered than answered questions. But these recent findings give reason for concern in several areas."

SEX AND DRIVING

Among those he highlighted were: depressed levels of the male sex hormone testosterone in heavy users of marijuana, possible interference with the body's immunity responses, and adverse effects on driving skills while high on marijuana. Yet, he warned, "we do not know today that *cannabis* [marijuana] use definitely is more dangerous in all respects than we previously thought. Much of the research reported is very preliminary, involving testing in animals, not man. Some of it is contradictory."

Indeed, the testosterone experiment, which DuPont gave the most attention, used out-patient subjects and showed that levels of the male sex hormone were depressed, but it was contradicted by a clinical attempt to replicate it. However, these results were confirmed by a third project, as yet unpublished. The leader of the first study, Dr. Robert Kolodny of the Reproductive Biology Research Foundation in St. Louis, explained at a Senate hearing this May that his "study has a number of problems."

Kolodny noted, for example, that the survey was small, involving 20 men. Researchers had no way to verify that marijuana users weren't using other drugs that might also lower sperm levels, such as LSD or alcohol. And they had no control on the purity or potency of the marijuana smoked. Kolodny also has stated publicly this year that he favors decriminalizing marijuana, despite the possible adverse effects suggested by his research.

VALUE AS TREATMENT

Other findings in the fourth "Marijuana and Health" report suggested that the drug might have some useful therapeutic value. From more than 35 studies it appeared to have analgesic, anticonvulsant, and sedative effects. It may also be useful in treating cancer and glaucoma. However, as in the possible harmful effects, research was said to be either inconclusive, tentative, or contradictory.

"Of the studies we've funded, more have been reassuring about the effects of marijuana than alarming, by far," says Dr. Robert Petersen, the report's author. "But you can say more about negative findings at a press conference than positive ones. After all, what more can you say after you've said, 'There's no significant difference between marijuana use and nonuse'? Furthermore, if you look long and hard enough at *any* substance you're certain to pick up some negative consequences."

Many of the marijuana studies that DuPont delayed his report to include were first publicized at a hearing on the "Marijuana-Hashish Epidemic and its Impact on United States Security," held in May by Sen. James Eastland, an avowed foe of pot. He held the hearings, Eastland said, "to present the 'other side' of the story, to establish the essential fact that a large number of highly reputable scientists today regard marijuana as an exceedingly dangerous drug."

The Mississippi senator favors "the kind of escalated penalties [for repeaters] provided by state law in New Mexico." Eastland is expected to be a powerful opponent of any Senate moves to decriminalize marijuana because of his influence as chairman of the Judiciary Committee, the body with jurisdiction over drug-control laws.

In the House, too, the subcommittee chairman who must consider any move to decriminalize marijuana is publicly against such a measure. Democratic Rep. Paul Rogers of Florida, a member of the Presidential commission, dissented from the commission's majority recommendation to decriminalize pot. Today he says that "for simple possession of a small amount of marijuana I think there should be a civil fine, but not jail as a penalty." He anticipates that "if the Administration makes a request to decriminalize marijuana, I would think the Congress would be willing to go into the matter. But I question strongly whether there's much support for complete decriminalization."

But despite the views of key chairmen, such as Eastland and Rogers, many observers here see important changes in the pot laws coming during the next Congress. An influx of younger, more liberal members, and rising support for decriminalization in many parts of the country, may make the recent experience in Oregon a model for pot policy in both Federal and State legislatures.

[From the U.S. News & World Report, Apr. 28, 1975]

The Private Use of "Pot"—A Growing Public Issue

Laws against marihuana are undergoing sweeping and controversial changes in this country.

At one time, because of widely held fears about marihuana's effects, every State made its use a serious crime, a felony. Then, in the 1960s, a movement sprang up to reduce the smoking of marihuana to a less serious classification of crime, a misdemeanor. By 1974, despite considerable opposition, every State had done this.

Now this trend toward softening the legal sanctions against marihuana has entered a new phase: "decriminalization." Legislatures of nearly half the States are considering bills that would make the private smoking of small amounts of marihuana no longer a crime. Oregon has already done this—in 1973.

The California Senate passed such a bill on March 20, and the State Assembly is expected to add its approval soon. Prospects are considered good for passage of similar measures this year in Alaska, Hawaii, Minnesota, Maine and the District of Columbia.

Now Congress, too, is being asked to join this spreading movement. A bill introduced on April 17 would make it no federal crime to possess up to a single ounce of marihuana.

A CIVIL OFFENSE

In effect, the "decriminalization" would reduce the private smoking of marihuana in small amounts from a crime to a civil "infraction," something like a traffic offense. An offender, if caught, could be fined, but would not incur a "criminal" record.

Some variations of this concept would go even further, making private use or nonprofit transfers of small amounts of marihuana completely legal. The only penalties would be for "trafficking" in marihuana, that is selling it for profit, or for smoking it in public.

"Decriminalization" does not mean "legalization," which would permit over-the-counter sales of marihuana, much like alcohol and tobacco.

It would, however, be a significant change in the way this country has dealt with marihuana for almost half a century. And it is encountering opposition.

Arguments against softening marihuana laws center mainly on the health hazards the drug is said to present.

At hearings held by the Senate Internal Security Subcommittee in June, 1974, many opponents of marihuana testified that its use is clearly dangerous. Some suggested that the "epidemic" increase in use may have been promoted by subversive groups bent on endangering the nation's security.

Arguments are made that many young people who start smoking marihuana graduate to harder, more harmful drugs, such as cocaine and heroin.

Even among opponents of marihuana, however, there are many who do not favor sending users to jail.

WIDESPREAD USE

The movement toward "decriminalization" grew out of the explosive growth of marihuana smoking that occurred in the mid-1960s. For large numbers of American youths, marihuana became a symbol, flaunted in their fight against "establishment values" and the Vietnam War. "Pot" parties became a vogue among students, in high school as well as college. "Reefers" were passed from hand to hand almost anyplace young persons gathered. At "rock" concerts, the air was redolent with the pungent odor of "grass."

By 1972, an estimated 26 million persons had tried marihuana. Thirteen million were regular users, most of them young persons.

Increased use, naturally, brought increased arrests. Some police, prosecutors and judges soon found their time preoccupied with "pot busts" at the expense of fighting serious crime.

In 1965, an estimated 18,815 persons were arrested for State and local violations of marihuana laws. By 1973, arrests had jumped to 420,700. The vast majority of such arrests—93 per cent—were for simple possession of marihuana, usually of small amounts.

The most notable impact of the arrests was that for the first time hundreds of thousands of white, affluent or middle-class parents saw their children being treated as criminals.

Many young offenders were tossed into prison for long terms, forced to mingle with hardened criminals, often subjected to sexual abuse by inmates.

Even those who escaped prison were saddled with arrest or conviction records that would stay with them for life, adversely affecting their job prospects and credit rating.

Many law-enforcement authorities soon reacted to parental complaints by easing up their drive against the weed. Some police began "looking the other way," although the increasingly open use of "grass" kept arrests rising. Some prosecutors—officially or unofficially—adopted policies of nonenforcement.

Many judges began suspending sentences or imposing fines or drug-education programs instead of jail terms. But the stigma of arrest remained even for those spared jail.

While this move toward softening penalties was occurring, new looks were also being taken at the health aspects of marihuana use.

DEBATE ON HARM

For many years, a common view had been that marihuana was a seriously harmful drug that led to addition, incited crime and sexual immorality, and could possibly even lead to insanity. Users were widely regarded as menaces to society.

A presidentially appointed Marihuana Commission, though, reported in 1972 that: "From what is now known about the effects of marihuana, its use at the present level does not constitute a major threat to public health. [And] neither the marihuana user nor the drug itself can be said to constitute a danger to public safety."

The Commission recommended the decriminalization of private use and nonprofit transfers of marihuana in small amounts. The prestige of this report, more than anything else, is credited with sparking the current decriminalization drive.

The report also prompted more research. Some experiments suggested that high levels of marihuana use might have detrimental effects on immunity to disease, on brain and body cells and on sexual potency.

Other researchers attacked such suggestions. Some claimed that marihuana actually has therapeutic applications that would help in treatment of glaucoma and asthma and in organ transplants. In 1974, though, the U.S. Department of Health, Education and Welfare concluded "there is as yet no direct clinical evidence confirming" such claims.

Although doubt still clouds the effects of heavy marihuana use, few researchers have found occasional or moderate use to be dangerous. Since many violators of marihuana laws were occasional or moderate users, they developed a growing

resentment toward Government interference in a matter they regarded as no danger to society.

CHANGING THE LAWS

Out of this resentment grew a campaign to change the marihuana laws. In the forefront of this fight was the National Organization for the Reform of Marihuana Laws (NORML), whose $150,000 annual budget is funded largely by the Playboy Foundation.

Keith Stroup, director of NORML, summarizes the argument for decriminalization of marihuana this way: Admittedly, marihuana use may result in some harm. But criminal laws have failed to deter its use, while attempts to enforce those laws have strained the limited resources of the criminal-justice system. And criminal prohibition engenders disrespect for the law when use of marihuana is treated as a crime while use of other potentially harmful drugs, such as alcohol and tobacco, is not.

Richard J. Bonnie, a University of Virginia law professor who was associate director of the Marihuana Commission, adds: "No criminal law can be fairly or effectively enforced unless it commands a popular consensus. Yet, the consensus that supported the marihuana laws from 1915 to 1965 evaporated as soon as the prohibition encountered the rigors of public dialogue."

One thing that is helping the move toward decriminalization is Oregon's year-and-a-half-old experiment with its new law. In October, 1973, the State made private possession of less than one ounce of marihuana a civil infraction punishable by a maximum fine of $100. Public use of marihuana remains a crime. So does trafficking in it.

Pat Horton, district attorney for Lane County (Eugene), Oreg., says the new law has resulted in many benefits: Police can now concentrate on violent crime, young persons have a better relationship with police, and it has reduced by one third the total number of court cases awaiting trial.

A 1974 survey by the Drug Abuse Council showed marihuana use did not go up after passage of the law as some had feared. And there was no influx of "pot-heads" into Oregon.

The move toward decriminalization has also been aided by the endorsements of numerous civic and professional groups including the American Bar Association, the American Medical Association and the National Council of Churches.

NORML's director Stroup says the fact that 1974 was an election year slowed the drive toward decriminalization because many candidates were fearful of voter reaction on such a controversial issue. But 1975 is an off year for elections, and Mr. Stroup says that and the growing youth vote make prospects good that many of the 23 States considering decriminalization will approve it soon.

The outlook for early passage of such legislation by Congress is described as highly uncertain.

PROBLEMS AHEAD

Public opinion appears almost evenly divided on the issue. A nationwide poll by the Drug Abuse Council in October, 1974, showed that 40 per cent of those questioned favored stronger penalties while 39 percent favored decriminalization. The rest were undecided or against change at this time.

Eventually, however, Mr. Stroup predicts, decriminalization will become widespread, perhaps within two years if Congress approves it soon.

"When Oregon said private use wasn't a crime, it in effect said marihuana wasn't immoral," Mr. Stroup says. "Ever since then, we've considered the war to be over."

For large numbers of Americans, however, the marihuana war is far from over. Many battles lie ahead before "pot smoking becomes a generally accepted recreation for Americans.

[From the Congressional Record, Oct. 11, 1974]

A NEW PROBLEM: LEGAL MARIHUANA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. Hogan) is recognized for 10 minutes.

Mr. HOGAN. Mr. Speaker, it may come as a surprise to most Members of this body that there is such a thing as legal marihuana. But this is a fact, and it is causing serious problems for law enforcement agencies.

The current laws prohibit possession, sale, or use of only one species of marihuana—cannabis sativa—and they do so in a most specific way.

Taking advantage of this legal technicality, the drug trade is switching to growing and selling cannabis indica, a species of marihuana that was identified and described in published works in Europe nearly 200 years ago.

Although drug peddlers are now referring to Cannabis indica as "legal grass," it is at least four times as strong, and costs approximately three times as much "on the street" as the single species that was outlawed when the U.S. laws on marihuana were written in the 1930's. Since there had been only one species of marihuana "naturalized" in the United States, the code makers adopted the so-called monotypic concept of this drug when the language of the statutes was drafted.

One of my constituents, Prof. James L. Reveal of the University of Maryland, has already been called as a witness in several court cases as a result of this anomaly in the drug laws.

He recommends a speedy change in the United States Code to include all species of cannabis in the prohibitions on the possession, sale, or use of this harmful drug.

The following letter to me from Professor Reveal will give Members much of the background related to this problem:

Hon. LAWRENCE J. HOGAN,
Representative from Maryland, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HOGAN: One of man's oldest domesticated plants is *Cannabis*, variously called hemp, marijuana or cannabis. Cannabis has long been regarded as a multi-purpose economic plant, being a source of fiber, a medicine, an oil and an edible fruit. It is also known for its hallucinogenic properties, and it is in this latter regard that *Cannabis* has become best known to the general public under a variety of local, common names—marijuana or marihuana, grass, pot, etc.

In the scientific community, cannabis is generally referred to by its generic name, *Cannabis*. For our purposes, *Cannabis* had its formal baptism in 1753 when the Swedish naturalist Carl Linnaeus published the scientific name *Cannabis sativa* in his Species Platarum. We know that Linnaeus actually saw living plants of *Cannabis sativa*, and probably collected the specimens that still exist in his collection in England himself. This species, the hemp plant, was grown throughout much of Europe for its fiber, having come to Europe at least 1,500 years before Christ from Asia. By 1753, hemp had been established even in the Americas, for the Pilgrims of New England had brought this crop to North America in 1632.

In 1783, the French biologist Jean Baptiste Lamarck published an account of a second species of *Cannabis* which he called *C. indica* in the first volume of his Encyclopedia. Lamarck contrasted *C. indica* from *C. sativa*, noting the several morphological differences between the two species as well as the use of the former as an intoxicant. Apparently, the hallucinogenic aspects of *Cannabis* were either largely unknown to Europeans, or the plants of *C. sativa* which were being grow only for fiber, oil and seeds—were not particularly rich in the chemical compounds responsible for the hallucinogenic effects. Lamarck called attention to these differences, and wrote that the stems of *C. indica* were unsuitable for fiber as it had "a thin cortex rendering it incapable of providing fiber" (as translated from the original French), but he did note that *C. indica* was used by man for its intoxicating properties instead.

Since 1783, other species of *Cannabis* have been added to the genus. In 1812, Stokes proposed *C. macrosperma*, but this has proved to be identical to *C. sativa*. The name *C. generalis* was proposed by Krause in a 1905 German flora, but this too is a synonym of Linnaeus' name. A possibly good species was described from Indochina in 1917 by Crévost, which he named *C. gigantea*. Due to a paucity of material and critical observations, I and others have not been able to determine

if this is a valid species or merely a synonym of *C. sativa*. From the U.S.S.R., *C. ruderalis* was described by Janischewsky in 1924, and this entity is regarded as a good species.

As there has only been (until recently) one species naturalized in the United States, *Cannabis sativa*, the opinion has been expressed that the genus *Cannabis* is monotypic, i.e., the genus consists of but a single species. In the 1930's, when the laws regarding marijuana prohibition were enacted, the monotypic concept was largely accepted in the United States, although the committee hearings used several different species names and several publications—unfortunately mostly in Russian—held that the genus was polytypic, i.e., that the genus consists of more than one species. In the late 1960's when the current Federal laws were established, the polytypic concept was well known for in 1964, "Flora Europaea," a book on the plants of Europe which had to deal with the monotypic versus polytypic question, recognized the two species that occur in Europe; *C. sativa* and *C. ruderalis*.

The significance of this monotypic versus polytypic concept of the genus has moved from the realms of academic debate and study to the courtroom. Our current laws prohibit the use of only one species, *Cannabis sativa*, and do so in a most specific manner. As a result of recent publicity from court trials, lawyers have used the argument that the government must prove that the marijuana in question is *C. sativa* as called for in the statute. Concomitant with the developments in court is the fact that the growers of marijuana have stopped growing *C. sativa* for the drug trade, and have stated to grow *C. indica* almost exclusively.

The man on the street is now aware of the differences. It is possible that some growers wrap their marijuana in specially coded packages distinguishing between crops of *Cannabis sativa* and *C. indica*. The street price for *C. indica* is nearly three times higher than that for *C. sativa* currently in the Washington, D.C., area because one species is legal and the other is not.

It should be noted that all species of *Cannabis* produce tetrahydrocannabinol (THC), the chemical compound that causes the euphoric effect of marijuana. However, well-documented studies have shown that the amount of THC is much greater in *C. indica* than that found in most populations of *C. sativa*. As a result, the introduction of *C. indica* onto the streets of the United States could be significant.

As our current laws are very restrictive in defining the term "marijuana" I feel it is necessary to alter the definition to include all species of the genus *Cannabis*. I feel that this is urgently needed legislation as street jargon has apparently christened *C. indica* with the name "legal grass." Long-term debate can only delay those persons charged with the duty of protecting the citizens from the illegal use of a controlled substance.

Finally, let me say that the debate amongst my colleagues as to whether or not *Cannabis* is monotypic or polytypic is a discussion we all relish. More work has been done on this genus in the past few years than anyone could have foreseen, due to the problem of species definition. However, this debate should be amongst the taxonomists of the world via their usual channels of publication and not in the courtrooms of America. Quick action on your part will solve the legal problems of *Cannabis*, for I can guarantee that the discussion of one or more species of this genus will continue for years to come.

Thus, let the laws of the United States fall into line with those of most nations of the world which prohibit the use of *Cannabis*—any element of the genus—and not merely one species. I hereby submit to you the suggestion that the definition of marijuana in the Controlled Substance Act be reworded as follows:

Title 21, Section 802 (15) "The term "marihuana" means all parts of any plant of the genus *Cannabis*, whether growing or not, . . ."

This rewording would make it impossible for anyone to claim that a particular kind of marijuana is implied, and more importantly, all the chemist will have to do is prove that the material in question is *Cannabis* (and therefore marijuana) which they can now do with existing tests. Currently, there is no chemical test that will distinguish the various species of the genus.

Sincerely yours,

JAMES L. REVEAL,
Associate Professor of Botany.

[From the Washington Evening Star, Apr. 13, 1972]

"Maybe they're right, but I can't give it up."

WHITE PAPER
ON
DRUG ABUSE

September 1975

A REPORT TO THE PRESIDENT
FROM
THE DOMESTIC COUNCIL DRUG ABUSE
TASK FORCE

THE VICE PRESIDENT
WASHINGTON

September 29, 1975

Dear Mr. President:

I am pleased to submit for your consideration the White Paper on Drug Abuse prepared at your request by the Domestic Council Drug Abuse Task Force. The White Paper documents the principal findings of the Task Force, assesses the current extent of drug abuse in America and presents a number of recommendations for improving the Federal government's overall program to reduce drug abuse.

Drug abuse is one of the most serious and most tragic problems this country faces. Its cost to the nation is staggering: counting narcotics-related crime, health care, drug program costs and addicts' lost productivity, estimates range upwards of $17 billion a year. In addition to these measurable costs, the nation bears an incalculable burden in terms of ruined lives, broken homes and divided communities.

The Task Force believes that the optimism about "winning the war on drugs" expressed so eloquently and confidently only a few years ago was premature. It urgently recommends that the federal government reaffirm its commitment to combatting drug abuse and that public officials and citizens alike accept the fact that a national commitment to this effort will be required if we are to ultimately succeed.

The Task Force submits this White Paper in the knowledge that it does not provide all of the answers to solving the drug abuse problem. The issues are complex and changing and the Federal effort represents only part of the nation's total response. However, I believe that the recommendations contained in the White Paper provide a solid base upon which a re-invigorated national effort can be built.

The Members of the Task Force, the contributors to the White Paper and I appreciate the opportunity to have participated in this vital undertaking.

Respectfully submitted,

Nelson A. Rockefeller

The President
The White House
Washington, D. C.

DOMESTIC COUNCIL DRUG ABUSE TASK FORCE

RICHARD D. PARSONS, Chairman, Associate Director and Counsel, Domestic Council.

Special Assistant for Coordination of Foreign Narcotics Information, Central Intelligence Agency.

WILLIAM A. CARLSON (to July 31), Director, Office of Planning and Evaluation, Department of Agriculture.

JOHN FEDKIW (Dr.) (from August 1), Assistant Director, Economic Analysis and Program Evaluation, Office of Management and Finance, Department of Agriculture.

JAMES R. COWAN (Dr.), Assistant Secretary, Health and Environment, Department of Defense.

THEODORE COOPER (Dr.), Assistant Secretary for Health, Department of Health, Education, and Welfare.

ROBERT L. DUPONT (Dr.), Director, National Institute on Drug Abuse, Department of Health, Education and Welfare.

JONATHAN C. ROSE, Deputy Assistant Attorney General, Anti-Trust Division, Department of Justice.

JOHN R. BARTELS, JR. (to May 30), Administrator, Drug Enforcement Administration.

HENRY S. DOGIN (from June 1), Acting Administrator, Drug Enforcement Administration.

ABRAHAM WEISS (to August 12), Assistant Secretary for Policy, Evaluation and Research Department of Labor.

WILLIAM KOLBERG (from August 13), Assistant Secretary for Manpower Department of Labor.

SHELDON B. VANCE (Ambassador), Senior Adviser to the Secretary and Coordinator for International Narcotics Matters, Department of State.

DAVID R. MACDONALD, Assistant Secretary, Enforcement Operations, and Tariff Affairs, Department of the Treasury.

VERNON D. ACREE, Commissioner of Customs Department of the Treasury.

JOHN D. CHASE (Dr.), Chief Medical Director Department of Medicine and Surgery Veterans Administration.

HAROLD HORAN, Senior Staff Member, National Security Council.

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Ex-Officio

RAYMOND P. SHAFER, Counsellor to the Vice President.

Additional studies indicate that as many as 16 percent of male high school graduates followed in a national sample had used cocaine at some time during the five years following graduation. There are other subpopulations in which use of cocaine is also high.

The data indicate that cocaine is used for the most part on an occasional basis (several times a month or less); usually in the company of others; and is likely to be taken in combination with alcohol, marihuana, or some other drug. Cocaine is not physically addictive.

About one percent of patients admitted to Federally funded treatment facilities reported cocaine as their primary drug of abuse; an additional 12 to 13 percent reported that they used cocaine in association with other drugs, mainly heroin. Thus, the data obtained from treatment programs and surveys generally reflect the fact that cocaine, as currently used, usually does not result in serious social consequences such as crime, hospital emergency room admissions, or death.[9] The implications of this conclusion are discussed later in this chapter.

In summary, although the rate of increase of first use of cocaine is alarming, significantly less is known about cocaine use in the United States than about the other drugs described in this assessment.

MARIHUANA[10]

Marihuana is the most widely used illicit drug, with an estimated 20 percent of Americans above the age of 11—25 to 30 million people—

[9] The phrase "as currently used" is important. The effects of cocaine if used intensively—particularly if injected—are not well known, but recent laboratory studies with primates, as well as reports of the effects of chronic cocaine injection during the early 1900's suggest that violent and erratic behavior may result. For this reason, the apparently low current social cost must be viewed with caution; the social cost could be considerably higher if chronic use began to develop.

[10] A great deal of controversy exists about marihuana policy. On the one hand, recent research indicates that marihuana is far from harmless, and that chronic use can produce adverse psychological and physiological effects. Therefore, its use should be strongly discouraged as a matter of national policy.

However, in light of the widespread recreational use—and the relatively low social cost associated with this type of use—the Federal Government has been deemphasizing simple possession and use of marihuana in its law enforcement efforts for several years. For example, very few persons are arrested by Federal agents for simple possession and use; those who are charged with this offense normally are also being charged with some other, more serious offense as well. However, vigorous law enforcement aimed at major *traffickers* has been and should continue to be undertaken at the Federal level.

The task force endorses this moderate view and expects the lower priority that has been established for marihuana will also be reflected in our demand reduction efforts by the elimination of many non-compulsive marihuana users now in our treatment system.

having used it at least once. In short, marihuana has joined alcohol and tobacco as one of the most widely used drugs in the United States.

Historical Trends

National attention first focused on marihuana following reports of widespread use during the mid-1930's. Discussion culminated in legislation which imposed Federal criminal sanctions against both the distribution and use of marihuana. Although proscribed by Federal law, the use of marihuana continued during the ensuing years, but at relatively low levels. Marihuana use was most common among urban minority groups and Mexican-American workers in the Southwest during this period.

A significant increase in the use of marihuana began to occur during the mid-1960's when its use became associated with artistic and anti-establishment life-styles; use then rapidly spread across geographic, demographic, and social boundaries.

The sources of supply have traditionally been Mexico, the Caribbean and South America. They remain so today.[11]

Current Situation

Rates of marihuana use have been rising steadily over recent years as shown in chart 10.

Chart 10

TRENDS IN THE USE OF MARIHUANA

EVER USED

	1968	1969	1970	1971	1972	1973	1974
National Sample of Adults	—	—	—	15%	16%	—	19%
National Sample of Youths	—	—	—	14%	14%	—	23%
Regional Sample of High School Graduates	32%	40%	43%	50%	51%	55%	—
National Sample of High School Graduates	—	20%	35%	—	—	—	62%

CURRENTLY USED

	1968	1969	1970	1971	1972	1973	1974
National Sample of Adults	—	—	—	5%	8%	—	7%
National Sample of Youths	—	—	—	6%	7%	—	12%
Regional Sample of High School Graduates	18%	25%	25%	33%	35%	36%	38%
National Sample High School Graduates	—	6%	9%	—	—	—	21%

[11] In addition, there is an unknown but presumed small amount of domestic growth.

Current estimates suggest that up to 20 percent of the general population over the age of 11 has used marihuana at least once, and that use is encountered in nearly all population groups. Over 40 percent of those who have ever used marihuana are current users, and at least half of the current users use it at least once a week.

Rates of use may be considerably higher or considerably lower, depending on the segment of the population under study. The highest rates of use have been reported among so-called "hippies" and high school dropouts. There appears to be a slight preponderance of males among marihuana users, although this distribution varies considerably from study to study. Other findings which occur consistently include the following:

- Urban residents use at higher rates than rural residents;
- Use is greater among those with higher levels of education and income;
- Use is more frequent in the northeastern and western United States than in other regions.

A recent development which is cause for great concern is the increasing availability of the much more potent marihuana derivations—hashish, and other preparations of high THC (tetrahydrocannabinol) content. Unlike common forms of marihuana, these potent drugs are known to have serious physical and social effects on the user.

DAWN provides some interesting data on various drug crises attributed to marihuana. During the nine months between July 1973 and March 1974, marihuana comprised only one percent of all emergency room drug mentions, but 51 percent of all crisis center drug mentions. This distribution of mentions by facility type reflects the kind of acute psychological problems likely to occur in association with the use of marihuana, with panic reactions or "bad trips" predominating over the more life-threatening reactions which would lead to appearance in an emergency room.

From a treatment point of view, data show that approximately 17 percent of patients admitted to Federally funded drug treatment programs from January to April 1975, reported marihuana as their primary drug of abuse.[12] There is considerable controversy regarding the interpretation of these data for a number of reasons. The frequency of use reported by these "primary marihuana abusers" is less than once a week for nearly 45 percent of the patients. It seems clear that these people do not have a serious drug problem and should not be in treatment. Most likely, they were referred to treatment by the criminal justice system, by schools, or by parents who were concerned about

[12] This includes NIDA, VA, and DOD. When NIDA is viewed alone, the marihuana figure is 21 percent.

the marihuana use. But when treatment facilities are full, this is a poor utilization of resources and these occasional marihuana users should not be occupying treatment slots. (Chapter 4 will develop this concept further.)

OTHER DRUGS

In addition to these four major categories of drugs, Americans abuse a variety of other substances.

Hallucinogens [13]

Except for the use of peyote in the religious ceremonies of some American Indian tribes, the use of hallucinogens is a recent development in the United States.

Limited, nonmedical use of LSD began in California in the 1950's, but was greatly accelerated in the early 1960's as publicity associated with its use grew. In the early 1960's this drug was diverted from legitimate research sources, but by 1964 illegal manufacture of LSD was established. Today, virtually all LSD in the United States is produced illicitly and, because only very small amounts are needed to produce an effect, it is easily concealed.

Hallucinogen use is very different from most other drugs. Addiction, or even extended regular use is very unusual. These drugs are rarely used more than twice a week. Since a major reason people use these drugs is to experience unusual mental effects, most users stop taking these drugs entirely after the "trips" lose their novelty.

Surveys of hallucinogen use show that most who use do so less than once a month, and that weekly use is very rare. None of the surveys support conclusively the widespread belief that these drugs are not as popular as they once were, but there has been a definite decline in the number of hallucinogen-related medical problems.

Hallucinogens can cause a number of side effects, including panic reactions and long psychotic or depressive episodes. Most reactions are unpredictable and the negative side effects can occur after several "safe trips." The possibility of medical side effects such as chromosomal or genetic change has neither been thoroughly documented nor entirely eliminated.

Solvents and Inhalants

These are chemicals that are used for a variety of medical, industrial, and household purposes, and can also be inhaled to produce intoxication. The ingredients of these products are often unknown to the purchaser, abuser or doctor treating an adverse reaction.

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[13] LSD, (Lysergic Acid Diethylamide Tartrate), mescaline, psilocybin, peyote, etc.

Very little is known about the pharmacology of solvents. Partial tolerance may develop, and the effects of these substances are intensified when used with other depressants, especially alcohol.

Data on solvent use are sparse. The few available surveys indicate that about 7 percent of junior and senior high school students may have inhaled solvents once or twice and that about one percent of these experimenters continue to inhale periodically.

Volatile substance abuse occurs almost exclusively among the young, perhaps because solvents are often the most readily available intoxicants to children. Accordingly, maturing out of the inhalant habit is the general rule. Even heavy users will persist for only a few years, and then abandon solvent sniffing by their teens. (Many of these individuals, however, then begin the excessive use of alcohol, barbiturates or other substances.)

The fact that solvent inhalation lasts for such a short time for most users leads to the conclusion that it is primarily a reflection of the immaturity of those young people who become involved with it. Nonetheless, abuse must be monitored and action taken as appropriate. One simple action might be to use unpleasant additives in the manufacturing process. Further, the task force believes that the intervention efforts using peer groups discussed in chapter 4 will help some young people resist the pressure to experiment with these substances if and when the inhaling of solvents becomes temporarily popular among their friends.

B — DRUG PRIORITIES

One of the major themes of the Federal strategy discussed in chapter 1 was the importance of differentiating in terms of the particular drug of abuse, and the frequency and quantity of use. Implicit in that decision to differentiate is the assumption that public policy should be most concerned with those drugs which have the highest costs to both society and the user, and with those individuals who have chronic, highly intensive patterns of drug use.

In order to determine the social cost of a particular drug, we should consider the following factors:

- *The likelihood that a user will become a compulsive user, either physically or psychologically dependent on the drug:* closely linked to this concept is the ability of the drug to produce tolerance, requiring successively higher intake to achieve the same result.
- *Severity of adverse consequences of use, both to the individual and to society:* in terms of criminal behavior, health consequences, economic dependence and the like. (This is discussed in greater detail below.)

- *Size of the core problem:* the number of compulsive users who are currently suffering (or causing others to suffer) adverse consequences.

ADVERSE CONSEQUENCES TO THE INDIVIDUAL

The adverse consequences of drug use are of two types: consequences which are the direct result of drug use, and indirect consequences which are associated with drug use. *Direct* consequences include:

- *Illness or death:* Illness or death can occur from overdose, a severe toxic or allergic reaction to a drug, or from rapid withdrawal. In New York City, drug-related deaths are a major cause of death for males aged 15 to 25. Death due to drug abuse is often the result of ignorance—ignorance of possible contaminants in drugs, ignorance of the danger of using combinations of drugs, ignorance of the strength of the drug purchased and of techniques to determine nonlethal doses. If drug use affects reproductive organs, or when certain drugs are taken during pregnancy, a second generation may suffer casualties.
- *Acute behavioral effects:* The paranoia produced by intravenous injection of amphetamines can cause violent behavior and consequent criminal acts such as rape and homicide. Acute paranoia and extreme anxiety from the effects of hallucinogenics, and depression (in the withdrawal state) from stimulants such as amphetamines, are other examples of behavior effects.
- *Chronic behavioral impairment:* Adverse behavioral effects may also be chronic as with the inertia, apathy and depression associated with long-term heroin use. Also, impairment can be measured in things such as loss of productivity, health costs, welfare assistance, and criminal costs.
- *Intellectual Impairment:* Some evidence of intellectual impairment has been reported by clinicians on the West Coast. Specifically, mental status evaluations of chronic users of hallucinogens who stopped after two or more years revealed a clinical impression not unlike that of mild chronic brain disease.

Indirect consequences include:

- *Injury or death associated with impaired judgment:* Potent, mind-altering drugs such as LSD can affect judgment, which may for example, result in accidental death by succumbing to bizarre hallucinations, such as believing one can fly. Even a "mild" drug such as marihuana may distort preception and thus increase the risk of death in automobile accidents of either a driver or pedestrian.
- *Injury or death associated with conditions of use:* Poor nutrition and neglected hygiene stemming from the total focus of energy

on obtaining drugs can cause damage to vital organs. Transmission of viral hepatitis from shared needles is another medical problem of drug abusers. Young people in the drug culture are particularly susceptible to pneumonia. Infections associated with injections using unsterile needles may be fatal.

- *Developmental difficulties:* The potential for personality impairment due to drug use is an important consequence, but one difficult to assess. There are crisis periods in the course of every individual's development, but adolescence is a particularly vulnerable period because the individual seems inundated with crises. These crises provide an opportunity for growth, formation of new ideas, and the emergence of a healthier and more mature personality. The use of drugs as a means to deal with these crises may diminish, delay, or prevent this maturation process.
- *Barriers to social acceptance:* The public image of the drug user is extremely negative; thus, the user is often stigmatized, making it extremely difficult for a current or former drug user to find acceptance in society. Moreover, arrest and conviction for violation of drug laws results in the creation of a criminal record which may follow a user for the rest of his life.

ADVERSE CONSEQUENCES TO SOCIETY

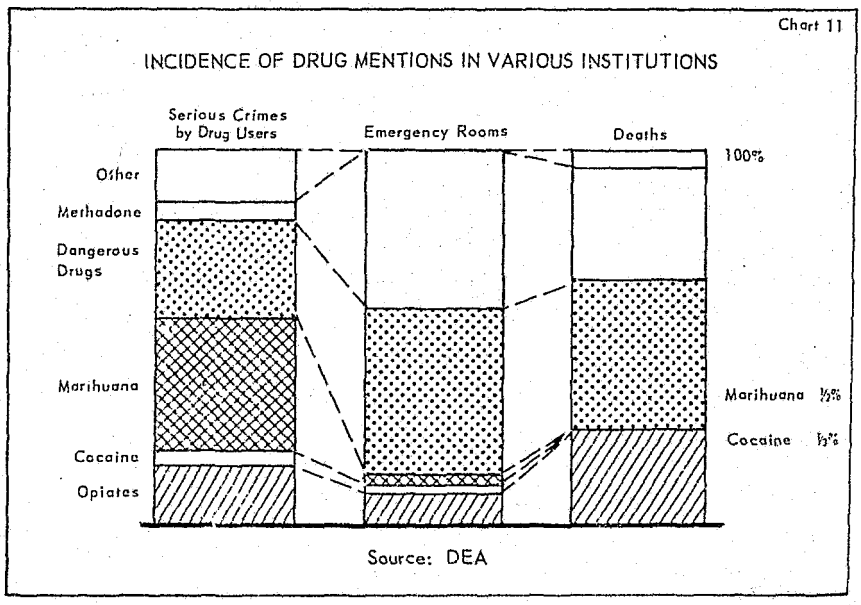
Obviously the above adverse effects to individual drug users are society's loss, too. But there are also more directly measurable costs to society. A recent study estimated that the total measurable cost of drug abuse—direct program costs, health care costs, property losses attributable to drug-related theft, and lost productivity—was $10 billion to $17 billion per year.[14]

Still another way to look at the social cost of drug abuse—one which is of particular interest in this discussion of drug priorities because it can be broken down by drug—is to look at drug users' appearances in the various institutions we have established to deal with people in trouble.

Among the largest and most important of these institutions are the welfare system, the criminal justice system, and the health care delivery system. Drug users often appear in these institutions, and may be identified as users. If we assume that at least part of the reason for their appearance is drug use, the frequency of appearance provides one rough indicator of the magnitude of the social cost of drug abuse.

[14] Social Cost of Drug Abuse, Special Action Office for Drug Abuse Prevention, 1974; This excellent survey is summarized in the *Federal Strategy, 1975.*

Our capability to monitor these appearances is irregular and limited in scope, but some data exist. Chart 11 illustrates the fraction of drug users who had used various drugs prior to their appearance in three different places where people in trouble show up: the criminal justice system (serious crimes only);[15] emergency rooms and medical examiners' offices.



SUMMARY: DRUG PRIORITIES

Chart 12 ranks the various drugs according to the following criteria: (1) likelihood that a user will become physically or psychologically dependent; severity of adverse consequences, both (2) to the individual and (3) to society; and (4) size of the core problem.

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[15] The large proportion of marihuana mentioned is probably a reflection of its widespread use in society.

Chart 12

SUMMARY OF DRUG PRIORITIES

		DEPENDANCE LIABILITY	SEVERITY of CONSEQUENCES		SIZE OF CORE PROBLEM
			PERSONAL	SOCIAL	
HEROIN		HI	HI	HI	HI 400,000
AMPHETAMINES	NEEDLE	HI	HI	HI	HI 500,000
	ORAL	LOW	MED	MED	
BARBITURATES	MIXED	HI	HI	HI	MED 300,000
	ALONE	MED	HI	MED	
COCAINE		LOW	LOW	MED	LOW
MARIHUANA		LOW	LOW	LOW	LOW
HALLUCINOGENS		MED	MED	MED	LOW
INHALENTS		MED	HI	MED	LOW

Though the data are flawed and the rankings therefore imprecise, a clear pattern emerges.

- Heroin ranks high in all four categories;
- Amphetamines, particularly those injected intravenously, also rank high in all four categories;
- Mixed barbiturates rank high three out of four categories;
- Cocaine,[16] hallucinogens, and inhalants rank somewhat lower; and
- Marihuana is the least serious.

On the basis of this analysis, the task force recommends that priority in Federal efforts in both supply and demand reduction be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines (particularly when used intravenously), and mixed barbiturates—and toward compulsive users of drugs of any kind.

This ranking does not mean that *all* efforts should be devoted to the high priority drugs, and none to the others. Drug use is much too complicated and our knowledge too imprecise for that. Some attention must continue to be given to all drugs both to keep them from exploding into major problems and because there are individuals suffering severe medical problems from even a low priority drug, such as marihuana.

[16] This ranking is on the basis of current use patterns. As mentioned earlier, if intensive use patterns develop, cocaine could become a considerably more serious problem.

However, when resource constraints force a choice, the choice should be made in favor of the higher priority drugs. For example:

- In choosing whom to treat, we should encourage judges and other community officials not to overburden existing health facilities with casual users of marihuana who do not exhibit serious health consequences. (But, a person who is suffering adverse consequences because of intensive marihuana use should have treatment available.)
- In assigning an additional law enforcement agent, preference might be given to Mexico, which is an important source of both heroin and "dangerous drugs", rather than to Miami, where an agent is more likely to "make" a cocaine or marihuana case.

This drug priority strategy is essential to better targeting of limited resources and it will be further addressed in relation to supply and demand reduction activities in chapters 3 and 4. Further, the process of assessing the current social costs of drug abuse should be a continuing one, to ensure that resources are allocated on the basis of priorities which reflect current conditions and current knowledge.

[From the Christian Science Monitor, Oct. 16, 1975]

MARIHUANA: UNDERMINING THE LAW

(An Editorial)

No one can fail to sympathize with the enormous difficulties of enforcing marihuana laws in the United States. But for a presidential task force to recommend that marihuana be given low priority in the government's fight against illicit drugs is no less than astonishing. It undermines the law and indeed the very spirit of law. For it says in effect: If you cannot carry out the law, turn your back on it.

That is far from a constructive approach for the White House to take as the nation seeks to uplift moral integrity in government and a respect for law and law enforcement. If the American people indeed believe that marihuana laws are no longer valid or useful, the right course is to rescind or revise them. The task force, working under the White House Domestic Council, attacks the problem from the wrong end.

It should be noted that the report is not unanimously supported. An addendum to it by the Treasury Department and Bureau of Customs warns against a policy of enforcing only selected drug laws. In its words, "Enforcement must be evenhanded and comprehensive to be effective and corruption-free. To diminish efforts against marihuana and cocaine can only erode further respect for law and law-enforcement officers."

To remove marihuana entirely from the purview of law would be foolhardy and dangerous. We are not unmindful of the growing sentiment for relaxation of marijuana laws because of the alleged harmless of the drug. But the fact is that there is yet no conclusive evidence that marihuana is *not* injurious to one's health and indeed mounting evidence that it does have negative effects. Until further studies are made and the scientific community can reach some consensus—and this may take another four or five years—it is surely prudent to keep sanctions against the spread of the drug's use.

Nor should the public forget the link which marihuana has with the sale of hard drugs and with criminal activity. Commissioner of Customs Vernon Acree, a member of the task force, reportedly filed a sharply dissenting letter describing illicit marihuana distribution as a growing multibillion-dollar business linked with organized crime.

True, the task force does not advocate less vigorous enforcement of the law against the major traffickers of marihuana but only a deemphasis on arrests for possession and use of it. Yet if leniency with users is declared to be national policy, this would certainly embolden the traffickers.

It is to be hoped that serious thought and discussion will now be given to this issue. The President has ordered all federal agencies dealing in the field to study and respond to the task force report within 60 days. They will confront some sobering statistics in the report, such as the fact that the use of heroin and deaths from usage have been gradually increasing since 1974. The "situation is deteriorating," the report warns.

The federal agencies might bear in mind the finding of many studies as they assess the task force recommendations: Users of heroin start on marihuana.

[From the Christian Science Monitor, Dec. 8, 1975]

MARIHUANA

Your recent editorial, "Marihuana: undermining the law," is receiving close and thoughtful assessment among Domestic Council members responsible for publication of the "White Paper on Drug Abuse." Our consensus is this: your editorial misinterprets the white paper's balanced and moderate statements on marihuana.

Simply put, the magnitude of the drug problem and the fact of budget and manpower constraints force us to attempt to utilize limited resources in a way which has the greatest impact on reducing the social cost of drug abuse. All drugs are not equally dangerous and all drug use is not equally destructive. Common sense would seem to dictate that we give priority in our law enforcement and treatment efforts to those drugs which pose the greater risk to society and to individual users. Based on current knowledge and use patterns, heroin, amphetamines and barbiturates appear to be the highest risk drugs.

This does not mean that all efforts should be devoted to high priority drugs and none to the others. You may rest assured that the federal government has no thought of abandoning marihuana control efforts. Federal law enforcement will continue to focus on major traffickers of all drugs, including marihuana. Such enforcement efforts are and will continue to be augmented by states and municipalities. Treatment and rehabilitation projects will remain open to compulsive marihuana abusers. Research teams will continue to seek confirmation of indications, preliminary as of now, that marihuana does indeed cause serious health consequences for abusers.

RICHARD D. PARSONS,
Associate Director and Counsel,
White House Domestic Council.

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The Rape of Mary Jane

By Lynn Darling

"If the cannabis epidemic continues to spread at the rate of the post Berkeley period, we may find ourselves saddled with a large population of semi-zombies. . . . If the epidemic is not rolled back, our society may be taken over by a 'marijuana culture'—a culture motivated by a desire to escape from reality and by a consuming lust for self-gratification, and lacking any higher moral guidance. Such a society could not long endure."—SENATOR JAMES EASTLAND

"It is now much too late to debate the issue: Marijuana versus no marijuana. Marijuana is here to stay. No conceivable law enforcement program can curb its availability."—Consumer Reports

"Dope will see you through times of no money better than money will see you through times of no dope."—ANCIENT PROVERB

There's been quite a lot of talk about marijuana lately. In Senate hearing rooms and at weekend conferences, through forests of medical reports, press releases, and prepared statements, reasonable men in well-cut suits and with impeccable credentials talk of marijuana and advocate the lifting of criminal sanctions against those who used it.

They talked in ways once wildly alien to their subject, using, as was natural to them and to those they sought to convince, the terms of the marketplace to buttress their arguments. They spoke of the time and money wasted in prosecuting offenders, of the useful lives destroyed by arrest records, of a generation of young people forever alienated from whatever passes for the system these days. Statistics swirled through their analyses like leaves in a November storm, but all they really said about marijuana was that they were resigned to its presence. Not in deference to the threat it once symbolized, but because that threat is gone now and because a symbol without the tides that forced it to the surface is harmless.

It was, of course, all very gratifying to the multitudes of grass smokers to hear Congressman Ed Koch and Senators Harold Hughes and Jacob Javits express their determination to get dope decriminalized in the next legislative session, to read Ann Landers huffily informing an outraged reader that there was no sense in arresting people for smoking the stuff, and to watch Dr. Robert Dupont, chief Administration spokesman on drug abuse, go through death-defying semantic somersaults in an effort to endorse the lifting of criminal penalties without officially saying so.

But it was also outrageous, this talk—not because what was said was new or different or startling, but precisely because it wasn't. Five years ago, marijuana was a phenomenon, frightening, mysterious, renegade, and what you had to say about it said a lot about a number of things; how you felt about the war, for instance, and the kind of life you led, your proximity, perhaps, to madness. Now grass is in a cultural no man's land, nothing, really, to get excited about, but lacking any kind of official societal imprimatur. Its prosaic nature is underscored by the interminable comparisons to alcohol and tobacco, as it becomes slowly relegated to the status of mere social lubricant, something to be categorized, studied, and, it seems, accepted. No longer the tattered banner of a generation of self-proclaimed outlaws, it has finally entered the arena of the mundane, its fate in the hands of the architects of the status quo—doctors and lawyers, Senators and city councils.

It was different once, and these latest reports and political endorsements call forth specters of just how it was different, in a time too recent to be clouded in nostalgia but already too far away to feel the sharpness of its pain. The '60s. Remember? A rag-tag army was about, capturing media headlines, asking questions, demanding answers, delighting in its differences and in the cultural shock waves it sent forth. The recruits were young for the most part, drafted from safe suburban cloisters that had given them everything, given them nothing, given them a war to hate. Smoking grass back then came down to the war in the way that everything then seemed to come down to the war.

Vietnam was not a mere political issue, anesthetized on an operating table, to be

ILLUSTRATED BY BOB BARKIN

How the Deadly Marijuana Reefer Was Transformed from the Scourge of Western Civilization and a Revolutionary Cultural Symbol into a Smokable Middle-Class Cocktail, a Legal-Legislative-Bureaucratic Mess, and Not Such a Big Deal After All

analyzed and dissected rationally and without emotion in the ways its promoters favored. No, to be against the war was nothing less than a way of life, in the most trenchant reading of that phrase. Its opponents did not see Vietnam as some strange anomaly, to be examined against the background of a hearty American optimism. To them, it *was* America, and it made every aspect of the society that supported it suspect, almost indecent, every facet of the national character absurd. It forced re-examination of the status quo, from its broadest proconceptions to the swarms of minutiae that buzzed around it. Every act, every decision, became a statement the forms one's pleasure took as important a declaration of principle as the moratoriums and the marches.

"The connection seemed so obvious at the time," a friend of mine, a veteran of those days, recalls. "If the Vietnam War was all that the alcohol generation had managed to produce, then screw it. My friends and I, we thought that the world would be a better place if everyone would just get stoned. I thought my life was the natural and desirable opposite of the war. Lighting up a joint was an act of rebellion. You took pride in it, you were breaking a law of a society you felt no allegiance to. But then, I also took pride in not putting dimes in parking meters at the time."

Above all, the war provoked passion, torrents of outrage that tried to sweep away all the brackish, abandoned rituals that came before it. Its opponents proclaimed their innocence, screamed it, brandished it, disavowed all complicity in what they saw to be a vast, all-encompassing guilt. The lines were clearly drawn by the media and by the opposing forces themselves, the demarcation always self-evident throughout a cultural upheaval with more twists and turns than a badly rolled joint. There were "them" and there was "us"—the one massive, monolithic, the keeper of the army's childhoods and, it was feared, the wardens of their futures; the other raucous, self-consciously outrageous, junkyard angels recklessly making their way through the tricky existential terrain. Straights and freaks. The divisions between the two seemed unalterable, absolute. There was, it was whispered, no going back.

Innocence, however, must be protected, and passion nurtured through customs and ceremonies of its own. The abandonment of one set of rituals demanded the creation of new ones to reinforce an identity, distinguish the faithful and make them recognizable to one another. Rituals, as they have always done, could defend the new world against the horrors that had created it. There were not only new political models but cultural and social ones as well. And to this end, symbols were essential.

The true nature of one's commitment to change and the degree of alienation could only be measured by the ways in which one chose to put principle into practice—the degree of militancy endorsed, which products of the corporate state one avoided, the ways one tried to relate to friends and lovers. On these things people might differ, but the banners and the rallying cries that developed around the ideology remained the same, provided some constants, and reinforced shared assumptions. The long hair, faded jeans, and gaudy beads and bangles seemed to many on the outside to be a uniform as constricting in its own way as three-piece suits and understated jewelry, but they were more than that. They signified a conscious effort, at least in the beginning, to fuse style with content, to translate the adoption of new attitudes into the esthetics of day-to-day living.

In the end, they helped to create a community, however tenuous, something around which to form an identity and to stop a war. Even outlaws need intimacy and, as one young lawyer now working in a Congressional office remembers, "You trusted people who wore their hair long, dressed in jeans, and smoked dope. You really thought of them as your brothers and sisters, although that sounds so strange to say now. You felt that with them you had the power to change everything and the commitment to try."

The importance attached to style back then often managed to create strange new heroes and bizarre standards of excellence. A friend points to his own experience one summer in Paris when he was

involved in the the counterculture: "I met this young guy there named Carlos and I was convinced he was the most amazing and worthwhile person I had ever met. I was awed by all the impressive things he'd done. These are the things that impressed me so much. First, Carlos lived in Los Angeles and Frank Zappa thought he was so weird looking that he asked him to be a go-go dancer at his concerts. Then he went to San Francisco and took speed for a year without dying. Then he went to Paris and he looked so weird that he was asked to join the Paris production of *Hair*. Then one day he walked down the Rue de Rivoli and he looked so weird that Salvador Dali asked him to tea. See what I mean? Very impressive. Every morning Carlos would stand on the balcony of his apartment and say 'Life is so beeuteeful. I am so beeuteeful.' And this was a guy whose only attribute was that he looked like a woman who had been run over by a steamroller. The narcissism of that time was incredible. Sometimes all that really mattered was a good performance."

Marijuana, of course, was the most potent symbol of the tumultuous decade, both for those on the outside looking for clues as to what was going on and for those on the inside who smoked it. It was both condiment and catalyst, highlighting at times the despair with which one looked at the world, banishing it at others in exchange for a gleeful euphoria. Dope, it seemed, could do anything. As Annie, who smoked and still does, recalls, "I got high to work and high to relax. I smoked to write letters to my friends so I wouldn't bullshit and to write to my father so I could. It was a revolving door really. The more I smoked dope, the more I realized the world was crazy, and the more I realized the world was crazy, the more I smoked dope. When you find yourself in an existential mire, you get high not to get out of the swamp, but to appreciate the fact that you're up to your waist in it and to be able to simply recognize it as a condition."

To smoke grass back then was not only a rejection of the mundane and the system that supported it, but an affirmation of one's status as a renegade. The decision to try it was exotic and dangerous, putting the initiate right up there with Patrick Henry and Jesse James. It was a rite of passage, signifying the coming of age in absurd America, an act no less awesome than the losing of one's virginity. It was a malleable tool, the means to many ends. There were those who thought it would help them find the key to the secrets of the universe, or, failing that, the one to the front door. For most, however, it was simply a lot of fun. Not, like alcohol, a prerequisite to fun, but the parameters of pleasure itself. Smoking dope seemed to create the world anew, transformed even the most boring of tasks into an exotic adventure. A trip to the supermarket while stoned made the conquest of Everest seem by comparison like, well, a trip to the supermarket. Marijuana enriched the new culture, gave it its own unique myths, legends, music, vocabulary, and sense of humor.

In many ways, the experiences associated with smoking grass seemed at the time to provide a good counterpoint to the prevailing notions of ambition and success. Hard work, self-sacrifice, and unblinking motivation had got us into Vietnam; it had robbed one's parents of their freedom. Suddenly there was no future worth sacrificing the present for. If you believed, as many did, that the world was about to destroy itself, it was all you could do to enjoy the trip, which, after all, was what getting high was all about. Smoking dope didn't alleviate the pain, answer the questions, or bring down the Establishment, but it was what you did when you weren't doing these things. It was the best way to spend the time waiting for whatever it was you thought was sure to arrive. Apocalypse. Revolution. Madness. Whichever came first.

Somehow, finally, it came to an end. Looking back, it's hard to say just how or when—some say it was Kent State, others the day they realized their theses were due in a month. No matter. In time the movement or counterculture or whatever it was called exhausted its options with a dizzying, terrifying speed, culminating in tawdry little parodies of itself. Yippies, zippies, and 50 factions of SDS collided with teenage gurus, primal screams, transvestite liberation, and a thousand other mad little mockeries, each of them screaming at one another like sideshow barkers at a county fair, screaming into the night after there was no one left to listen. Somehow, too, the war ended, after a fashion—no searing *mea culpas*, no reclamation of principle, simply a semantic victory called peace with honor.

The system, it seemed, would stagger on: its opponents grew older, became exhausted. The movement had answered, or at least endorsed the asking, of many questions, fearful questions. But it had nothing to say about need and the awkward, embarrassingly personal ways in which it betrayed itself. Marches and mass meeting provided no catharsis for rejection or jealousy or vulnerability. Ultimately a decision had to be reached—some went up to the mountain, others underground, most simply survived.

The meaning of the moment gradually disappeared, but style is made of sterner stuff. The college students may have decided to give electoral politics and the nine-to-five routine another chance, but jeans were still comfortable (after hours) long hair (within limits) still attractive, and grass still fun to smoke. And once the rage and threats and, yes, the godforsaken novelty of it all had passed, the style became marketable to those for whom it had no context, for those who didn't know RYM I from I or a Trotskyite from a macrobiotic dinner.

The accoutrements of the counterculture, it turned out, had two things going for them, sex and youth. Jeans became chic, long hair fashionable, and marijuana intriguing. Threatening no longer, but with just enough of the forbidden about it to make it exciting. One lawyer who handles a lot of possession cases says he knew that marijuana was becoming middle class when housewives started approaching him at parties asking him if he could get them a joint. "They told me they had heard it was very 'sensual,' " he says with a shrug. "I think maybe they'd been reading *The Joy of Sex*."

Some veterans of the generation gap find all of this most annoying. "You know," said a friend of mine, thoughtfully sipping his Scotch and soda, "it may have been the function of our generation to obliterate ourselves on drugs so that people a little older and a little younger than us could five years later pick up a joint instead of a can of beer."

Perhaps he's right. Now, lots of people smoke marijuana, 26 million in the country. The college students and the street freaks graduated from their respective

halls of learning and became lawyers and secretaries and shop clerks and bureaucrats, and they still smoke and now their younger brothers and sisters do too. Treasury Department officials smoke. So do construction workers. There is no more "us" and there is no more "them," and marijuana is beginning to have all the symbolic content of a vodka martini.

Not that people don't get excited about smoking it anymore, it's just that most of the ones who do are either under 20 or over 35. Well, maybe not even them. My friend Simon is 16, has smoked for three years, and he smiles tolerantly when asked about marijuana. "Look at it this way," he says. "The only reason you smoke dope is to get stoned. And the only reason you get stoned is because it's fun and because it makes everything a lot better. What more can you say?"

Not much, it seems. Asking people why they smoke marijuana these days or why they don't is like asking them why they drink a particular brand of bourbon or why they're unfaithful or why they're never on time. It's like asking them why they perform any of the other prosaic routines of their lives, rituals graceless and meaningless in themselves, important only when they happen to reflect a glimmer of poignancy or need. There was a time when marijuana seemed a symbol of something, a statement of conviction and community, a talisman of change that seemed inevitable and euphoric. That time, of course, is past, and the things that marijuana was made to mean seem as sadly ephemeral and insubstantial as the smoke that wafted up from the pipes and joints passed in the darkened rooms and demonstrations.

Now some people smoke grass because of the still lingering whiff of illegality it exudes, some because they think it's chic, and some because of what it used to say about the people who smoked it. But mostly they smoke it because it's there and because their friends do and because they enjoy it. It is becoming, finally, as mundane and boring as most of the other things people do to make themselves feel a little better and their world a little more comfortable.

If, as many signs indicate, the laws against marijuana use soon are liberalized, much of the credit will belong to the National Organization for the Reform of Marijuana Laws (NORML), housed in a townhouse on M Street.

Although the organization does not, God forbid, advocate the use of marijuana, it urges that it be decriminalized, and the means it uses to achieve that end are a far cry from the smoke-ins that the kids once used to try to convince their elders. NORML staff members lobby on the Hill and in state legislatures, refer people busted on marijuana charges to lawyers, provide witnesses and information to those challenging the law across the country, and put out volumes of literature aimed at proving that it is the law and not the weed itself that is harmful to users.

Started in 1971 by Keith Stroup and Larry Schott, who were then working for the President's Commission on Product Safety, the organization now has more than 10,000 dues-paying members and an annual budget of $200,000, derived in equal part from membership fees, the Playboy Foundation, and sales of a motley assortment of merchandise from belts to bumper stickers to gold pins and Christmas cards.

According to Schott, he and Stroup first became interested in doing something to change the laws when "a friend of ours got busted and we saw just how big a hassle it could be." Their experiences in government had taught them something about what worked on Capitol Hill and what didn't, and from the beginning they decided that movement tactics and counterculture rhetoric wouldn't work.

"We decided, why not try the traditional methods to change the law," says Schott. "Instead of protest marches, we'd try the common middle class approach."

It's an approach that works. NORML has helped to reduce the penalties for possession in several states, including Texas, which until last year had the most severe penalties in the country—two years to life for possession of any amount. Currently, the group is trying to convince the Drug Enforcement Administration (DEA) to remove marijuana from its Schedule I classification, which puts it in the same category as heroin and cocaine. They also have filed a landmark suit in District Court asking that possession laws be declared unconstitutional on grounds they violate the right to privacy, and they will be lobbying intensively this year for various decriminalization bills pending in Congress and in state legislatures.

Last fall, NORML held a three-day conference here to bring its members up to date on the latest developments in the marijuana crusade. If such an event conjures up images of a thousand stoned out freaks sitting around passing joints, getting laid, and trading brownie recipes, forget it. The whole affair was about as rowdy as a dentists' convention. Most of the conference's 150 or so participants were white and male and close to the untrustworthy side of 30; dressed in dapper suits with neatly trimmed hair, they each paid about $60 apiece to turn on their color TVs and to sleep in the Key Bridge Marriott Hotel's idea of tasteful comfort.

Which is not to say there weren't a few flamboyant throwbacks floating about. Several New York Yippies were there, doing what they do to make a living these days—selling good dope at correspondingly steep prices to the affluent bourgeoisie. And then, of course, there was the resident eccentric—a strange-looking fellow in blue suede cowboy

Acapulco Gold: Registered Trademark?

One of the legends dear to dope smokers maintains that large American tobacco companies have been preparing quietly for the day marijuana is legalized. Liggett & Myers, the American Tobacco Company, et al have drawn detailed marketing plans on the best ways to sell legal grass, the rumors have it, and they have registered official trade names—"Panama Red" and "Acapulco Gold," known to users as two of the more potent strains of marijuana—with the US Patent Office. When the blessed day of legalization finally comes, it will take a mere flick of the corporate wrist to package the grass and haul in the profits. It's a great rumor, except that it ain't so.

"Look," the man at the Patent Office explained, "The truth is, honey, you can't register a trademark unless you're already selling a product in interstate commerce. You can't do it ahead of time, so unless those companies could prove that they were already selling the stuff across state lines, they couldn't register a name for it. You know, we get calls like this all the time. Funny how rumors like that get started, isn't it?"

boots who stalked about with a huge plastic marijuana plant, burning sticks of incense, inspiring everyone concerned to increasingly creative suggestions as to what he could do with both items. But the main attraction of the conference—the speakers and panel members—were as respectable as a prayer breakfast.

Dr. Robert Dupont, whose close-cropped blond hair and horn-rimmed glasses make him look like an overly earnest 1950s fraternity brother, was there; so was Dr. Dorothy Whipple, a 73-year-old Washington pediatrician who can cut entire state legislatures down to size with a single grandmotherly admonition; Dr. Lester Grinspoon of the Harvard Medical School was there, as well as DC Superior Court Judge Charles Halleck and a plethora of district attorneys, scientists, and politicians. Such people lend dimension to the respectability which is one of NORML's most effective attributes—with it, the organization hopes to de-emotionalize the marijuana issue, insuring that its future will be decided in terms of logic and rationality.

This was NORML's third conference, and the marked difference between this gathering and the original says a lot about where the issue has gone in the last two years. Except for a few unregenerates, Stroup and most of the NORML membership remember that initial foray with something of a wince. Blithely entitled the People's Pot Convention, it was held in the middle of the week and everyone interested was invited free. The results were inevitable—several hundred freaks, clouds of dope, and a bust by the local vice squad.

This year, however, there were long panel discussions on all aspects of marijuana. There was a medical panel, in which experts in specialties from toxology to immunology blew holes in many of recent negative medical findings; a legislative panel in which Congressman Ed Koch and a number of state legislators talked of ways to pass pending decriminalization bills; a legal panel that discussed the status of various constitutional challenges, and a lawyers' meeting where trade secrets were exchanged on how best to get a client off a possession charge. There even was a panel on fund-raising, complete with charts and figures on cash disbursements and fixed assets acequired. Only in the media panel, where journalists from the *Washington Post*, *Time* magazine, and the wire services discussed the widespread publicity given to negative medical reports without corresponding attention to detrimental legal effects, did the delegates permit themselves a few expressions of righteous indignation. "If 420,000 arrests a year aren't news," said one delegate, "then we owe King George an apology."

Throughout it all, delegates discussed arguments designed to turn objections against decriminalization neatly on their heads. Nowhere was this more apparent than at the panel led by what Stroup described as "our token in-house conservatives," who took on the question of marijuana's hydra-headed public image.

"What you've got to understand," said Paul Kuhn, NORML's state coordinator for Illinois, "is the national mood. The country is tired of change, it's reluctant and fearful. That's why conservatives are badly needed on this issue."

But Kuhn warned of the necessity first to destroy the lingering image that surrounds marijuana for many social conservatives. When such people think of the drug, he said, they still think of a "bunch of goddam hippies, protesting the war every day and going home each night and shacking up."

"Ah," came the nostalgic sigh from one member of the audience, "those were the days."

On Saturday night, NORML threw a party. Your typical young middle class get-together really. Rock music of the unobtrusive sort drifted among the knots of people who stood about eating pâté and french bread and smoked the passing joints as nonchalantly as they sipped their champagne. It was all very pleasant in the ways traditional to such gatherings, where people who don't really know each other all that well search for common ground,

or at least some artificial turf, on which to rest comfortably for a few hours. All in all, a far cry from what the newspapers used to call "pot parties." No one goes to parties simply to smoke dope anymore, and no one really thinks about the fact that they don't. Still, there were those that night who seemed to sense the oddness of it all.

"I don't know," said the long-haired girl in the bluejean skirt as she took one last look at the party, "It's post-60s, post-war, post-brother and sister, post-women's lib. It's even post-dope. I just don't know what it is."

"It's late," said her companion. "Let's go."

Politicians and district attorneys and bleeding heart liberals may be running around telling folks that marijuana is no big deal, but Senator James O. Eastland knows better.

Last spring, as chairman of the Senate Subcommittee on Internal Security, he held hearings on the marijuana issue, blandly announcing that he would hear no one who did not have something negative to say on the subject, a move that some cynics suggest was not unaffected by the fact the subcommittee was then operating under the threat of stiff appropriations cuts. After the last witness had spoken his piece and the report was published, it came as no great surprise to anyone that the Mississippi Democrat had found marijuana to be just about as harmless as a cholera epidemic. In fact, the Eastland report contends, marijuana is nothing less than a tool for the New Left to be used in the conversion of our nation's youth to the radical overthrow of the government. Subcommittee staffers also will tell you that marijuana "addiction" leads to street crimes, turns people into "semi-zombies," and leads not only to irreversible brain damage, but to the possible destruction of Western civilization.

Such anachronistic outpourings would merit little more than a tolerant smile if Eastland were not chairman of the Senate Judiciary Committee, which has jurisdiction over all drug control laws and which will be considering this year a bill introduced by Senators Harold Hughes and Jacob Javits to decriminalize marijuana. Although Eastland himself doesn't think much of jail terms for possession offenders, he thinks even less of proposals that would eliminate all criminal sanctions for possession of minor amounts and for the non-profit sale of the drug, which is the basic thrust both of the Javits-Hughes proposal, as well as its House counterpart introduced by Democratic Congressman Ed Koch.

Despite Eastland's power over the committee, Javits has expressed a no-nonsense optimism over the bill's chances of success in Congress this session. "I'm really gung-ho on it this year," he said,

adding that the bill's primary selling point would be the fact that present marijuana penalties divert time and money away from the battle against violent crime.

But even committee staffers sympathetic to decriminalization take a less than hopeful view of the possibility of its passage. They cite difficulties with the way the bill is written—particularly its arbitrary selection of three ounces as the cut-off point for simple possession and its rather nebulous attitude toward possession with intent to sell—and with the way its sponsors believe a decriminalization bill can be sold to the Congress.

"Talking about the waste of law enforcement resources and quoting the arrest statistics is all very well and good if you're talking to state legislatures," noted one committee aide, "but all those arguments have little to do with the situation as far as the federal law is concerned. The fact of the matter is that little federal money is spent on prosecuting possession cases, and extremely few people arrested for possession are arrested under the federal law. When you get right down to it, a decriminalization of federal possession laws wouldn't really change the present situation much at all."

Such a law would, however, provide a model and incentive for change to the state legislatures, who might find it easier to reform their own statutes once it was simply a matter of bringing them into conformity with federal regulations. This role-model theory of decriminalization could result, however, in something of a political double bind—"You could have the situation where the states are looking to Congress to decide what to do about marijuana, and Congress is looking to the states to see what it should do," noted one Senate aide. "It could make for a stalemate."

The influx of new liberal Democratic votes into the Congress this session may help to break such a stand-off, but it is probably unrealistic to expect passage of a decriminalization bill this year. This could be the first year, however, that the real issues surrounding the decriminalization question receive serious consideration by Congress, Senator Eastland's bombast notwithstanding.

The DC Mayor's Advisory Committee on Narcotics Addiction, Prevention and Rehabilitation thinks marijuana should be decriminalized. So does the American Bar Association and the National Council of Churches. So, for that matter, does William F. Buckley. None of them seems to have affected the Metropolitan Police Department at all.

Marijuana arrests here for simple possession have escalated drastically, up from 255 in 1971 to 2,553 last year, but the police say they're not really trying to be harshly vigilant. In fact, the vast majority of those busted for grass in the District are arrested as they walk down the street joint in hand, or for having it in their cars when stopped for a traffic violation.

People still get busted in their homes for simple possession but it's becoming rare. As a rule, according to Captain Charles Light, head of the Metropolitan Police Department's narcotics division, the rising number of arrests has little to do with "any deliberate effort on our part. We're not making any concerted effort to get these people, but if a police officer sees someone walking down the street smoking marijuana, he's going to arrest that person. It's as simple as that."

Well, maybe not quite that simple. Police officials, after all, had a lot to do with US Attorney Earl J. Silbert's abrupt about-face on his decision not to prosecute those arrested with fewer than five joints in their possession. At the time, Light and the others said that their opposition to the decision was based on what Light termed "the impracticality of living with such a policy," and the belief that the announcement too blatantly overstepped the bounds of prosecutorial discretion. Silbert's ill-fated policy undoubtedly did present a number of problems, but there are those who feel procedural problems were not the only reasons the police were opposed to the change.

"I think to a certain extent it was a question of power, really," said one official in the US Attorney's office. "It was an infringement of their territory. I think you also have to consider the fact that marijuana arrests constitute an easy way for a police officer to build up a good record on the job, and I don't think that was something they wanted to give up."

Light, for his part, blames the burgeoning number of arrests on "our public leaders. Marijuana smoking has become very popular. When you have a number of people in a position of authority saying there's nothing wrong with it, people start having less respect for the law." Although he feels that laws still on the books ought to be enforced, he says that arresting people for possession has become little more than "a nuisance. The results just don't justify the time and effort and manpower expended on them." He would like to see the situation clarified one way or the other—"Either they start bringing these people to trial and fining them or they should legalize marijuana. But the way it is now, people no longer fear the law."

District police may be arresting people in record numbers for marijuana possession, but judges and prosecutors have made it clear such cases don't particularly interest them, and some of them have gone to great lengths to prove it.

Last spring, for instance, Superior Court Judge Charles Halleck ruled that District marijuana laws—up to a year and a $1,000 fine for possession—applied only to the specific species of the plant mentioned in the statute—cannabis sativa L. Since it is impossible to tell whether or not processed marijuana is from that particular species or from any of the two to five others, Halleck's ruling, while not binding on the other judges, indicates marijuana convictions are not among his priorities.

Judge David L. Norman tried a different approach. Last April, he declared the DC marijuana law unconstitutional on the grounds that present penalties for possession constitute cruel and unusual punishment—he threw out 52 cases and continued another 50.

"It was really amazing there for a while," noted one attorney. "While Norman was sitting as motions judge, there weren't any convictions for marijuana possession in DC. Every lawyer in town took his case to Norman and had it thrown out." The honeymoon ended, however, when the DC Court of Appeals overturned Norman's decision and reinstated all the cases he had disposed of.

Many of the other 23 judges sitting in Superior Court take a dim view of Norman's and Halleck's decisions. As Halleck himself noted, this kind of "de facto decriminalization" operates under the threat of what he calls "judicial roulette—you just have to hope you get a judge who won't put you in jail." Most first-time busters will not have to worry about such judicial brow furrowing, how-

ever, since the majority of them will never get to trial in the first place. If one has no prior arrest record and is arrested for possession of a third of an ounce or less, he will be "diverted" into a whimsical program run by the US Attorney's office known as First Offender Treatment (FOT).

The FOT program requires participants to take a tour of the FBI building, to attend a rap session on marijuana, to watch criminal trials for about eight hours, and to write an essay about either the drug itself or their arrest experiences. At best, FOT lets offenders avoid a conviction and serves as a warning. Bill Pease, one of two young assistant US Attorneys running the program, doesn't give the impression he expects the program to stamp out marijuana.

"So," Pease says with a smile that does him credit at 9 AM, "you want to talk about the devil weed?" He admits that the FOT program has a certain Mickey Mouse quality about it, but he asks, "What are you going to do? We want to avoid prosecuting first offenders, there's no point in convicting them. We're not going to give a lecture on the moral ramifications of smoking grass—what moral ramifications? But we have to do something. We try to say to them, 'Look. We're giving you a break this time, but don't hassle us again. If you do, you're going to have to go the whole route.' We're not naive enough to think that they're never going to smoke again, we just want them to stop smoking where they're going to get caught. If people simply kept their pot smoking confined to their own homes, arrests would plummet."

After all this cultural, social, and legal examination of marijuana, what do the scientists say about the devil weed? Depending on what you read, it seems marijuana can cause cancer, impotency, promiscuity, chromosomal damage, cerebral atrophy, breasts on men, and the destruction of Western civilization. It also can clear up asthma, stop cancer, and ameliorate glaucoma. The folks at the DEA are happy because some of the "studies" seem to prove they were right all along. And the folks at NORML are happy because some of the studies prove *they* were right all along. None of the studies so far, however, has proved anything definitive about the drug's alleged harmfulness one way or the other. Some of the findings are contradictory, others are suspect because of faulty research techniques, including inadequate controls, excessive dosage levels and less than acceptable laboratory conditions. In still others, there has been a tendency for some researchers to interpret their findings in the light of their social biases against the drug.

A much publicized case in point is the study conducted by Dr. Robert G. Heath at Tulane University. Called as a witness at the Eastland committee hearings last spring, Heath reported his research indicated marijuana use caused permanent brain damage. The subjects of his experiments were ten rhesus monkeys who were given the drug through smoking machines, and, in two cases, through injections. Some of the monkeys had electrodes planted in their brains, while others did not. Sure enough, at the end of the experiments, two of the monkeys died (from respiratory complications) and several suffered brain damage.

Dr. Heath apparently was convinced that the results had some pretty terrifying things to say about human users of the drug, since he maintained that the dosage levels given to the monkeys were equivalent to the average amounts consumed by American high school students. Evidently, Heath has made the acquaintance of some strange adolescents. Translating his dosage levels in terms of the average weight and potency consumed by users, a smoker would have to smoke at least 120 to 240 joints a *day* to even approach the amounts given the monkeys, in which case brain damage would probably be the least of the smoker's worries. Meanwhile an HEW study conducted in Jamaica under strict laboratory conditions, using human subjects, came to precisely the opposite conclusion—that no brain damage resulted from the amounts (an average of seven joints a day) given to the subjects. And seven joints a day is heavy use.

The ambiguous nature of the situation was underscored last fall by the release of HEW's fourth report to the Congress on *Marijuana and Health*. Although the report's publication was delayed eight months to insure that it would be up to date, Administration drug spokesman Dr. Robert Dupont noted, "There are more unanswered than answered questions."

Despite such official hedging, most attention centered on the report's findings that heavy use of the drug might result in abnormally low levels of the male sex hormone testosterone, possible adverse effects on the body's immunity responses, and interference with driving skills. The report noted, however, that none of the research in these areas can be considered conclusive and went on to mention the possible therapeutic effects of the drug when used as, among other things, an appetite stimulant, an anti-convulsant, or a painkiller. Research in these areas is also inconclusive.

In fact, about the only conclusion that does emerge from the ambiguities, contradictions, and general brouhaha is that it has yet to be established that there is any real difference between people who smoke dope and people who don't. □

Leaves of Grass

If your interest in marijuana runs more to the literary than the experiential, here are a few books that give some idea what the fuss is all about:

A Child's Garden of Grass (Pocket Books, $1.25). The all-time great book about everything you want to know about marijuana except the boring stuff. It's all there, how to smoke it, eat it, grow it, make love on it, and appreciate being high on it. It's also a swell introduction to stoned humor and the whole dope sensibility. It will make you laugh, and it's better than a night light.

The Book of Grass (Grove Press, $1.25). The intellectuals' response to the aforementioned. A sporadically interesting anthology of what everyone from George Washington to Allen Ginsberg has to say on the subject. A *Bartlett's Familiar Quotations* for the dope smoker.

The Cultivator's Handbook of Marijuana (Book People, $2). Discount Book's store clerks say this is their best selling work on the mysteries of producing a smokable plant.

Marijuana: A Signal of Misunderstanding, The First Report of the National Commission on Marijuana and Drug Abuse (Government Printing Office, $1). The Bible of the decriminalization effort. Appointed by then President Nixon to study the drug and to make recommendations concerning its status, the Commission got the ball rolling by coming out as the first quasi-official body to recommend decriminalization. Nixon wouldn't read the report when it first was published in 1971, but look what happened to him. An interesting example of liberals' attempts to come to terms with the ghost stories of the '60s.

High Times. A brand new glossy magazine, reportedly well financed, that just may be the '70s' answer to the underground press. Published quarterly, each and every issue is, as the promo ad quite rightly contends, devoted entirely to "getting high, really high" on every drug imaginable and then some. The last issue featured everything from an anonymous article entitled "I was JFK's Dealer" to an interview with John Finlator, former deputy director of the Bureau of Narcotics and Dangerous Drugs, to a lovingly photographed centerfold of a brick of Columbian grass, not to mention detailed market quotations on dope prices from New York to San Francisco and harvest reports from around the world. All in all, a rather laughable combination of the *National Enquirer* and the *Wall Street Journal*, just for druggies.

Marijuana-Hashish Epidemic and Its Impact on United States Security. Hearings Before the Subcommittee of the Internal Security Act and other Internal Security Laws. Shelve it under fiction.

COMMENTARY
on the
SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

(Prepared by the Secretary-General in accordance with paragraph 1 of Economic and Social Council resolution 914 D (XXXIV) of 3 August 1962)

UNITED NATIONS

FOREWORD

This Commentary has been issued in pursuance of paragraph 1 of Economic and Social Council resolution 914 D (XXXIV) of 3 August 1962. The Secretary-General wishes to express his thanks to Mr. Adolf Lande, former Secretary of the Permanent Central Narcotics Board and the Drug Supervisory Body, for his valuable assistance in preparing the Commentary.

ABBREVIATIONS

The following abbreviations are used in the commentary:

The "Single Convention", for the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961, reproduced in United Nations, *Treaty Series*, vol. 520, p. 151

The "Second Draft", for the second draft of the Single Convention, document E/CN.7/AC.3/7 and Corr.1 (English and Spanish only)

The "Third Draft", for the third draft of the Single Convention, which served as the working document of the Plenipotentiary Conference, documents E/CN.7/AC.3/9 and E/CN.7/AC.3/9/Add.1, both documents being reproduced in the "Records", vol. II, pp. 1-31

The "Records", for the Official Records of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, documents E/CONF.34/24 and E/CONF.34/24/Add.1, reproduced respectively in United Nations publications, Sales Nos. 63.XI.4 and 63.XI.5

The "Commentary on the 1931 Convention", for the publication entitled "Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13th, 1931, Historical and Technical Study by the Opium Traffic Section of the Secretariat of the League of Nations", League of Nations, document C.191.M.136.1937.XI. (Series of League of Nations publications 1937.XI.3)

The "Model Code", for the Model Administrative Codes to the International Opium Conventions of 1925 and 1931, League of Nations, document C.774.M.365.-1932.XI. (Series of League of Nations publications 1932.XI.8)

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The "Board", for the International Narcotics Control Board

The "Commission", for the Commission on Narcotic Drugs of the Economic and Social Council

The "Council", for the Economic and Social Council

The "Permanent Central Board", for the organ which became known as the Permanent Central Opium Board and later the Permanent Central Narcotics Board [Permanent Central Board being the treaty name of that former international organ, established under chapter VI of the 1925 Convention]

The "Plenipotentiary Conference", for the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which met in New York from 24 January to 25 March 1961

The "Supervisory Body", for the organ which became known as the Drug Supervisory Body [Supervisory Body being the treaty name of that former international organ, established under chapter II of the 1931 Convention]

"WHO", for the World Health Organization

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The "1912 Convention", for the International Opium Convention, signed at The Hague on 23 January 1912, referred to in article 44, para. 1, subpara. (*a*) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. VIII, p. 187

The "1925 Agreement", for the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, signed at Geneva on 11 February 1925, referred to in article 44, para. 1, subpara. (*b*), of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. LI, p. 337

The "1925 Convention", for the International Opium Convention, signed at Geneva on 19 February 1925, referred to in article 44, para. 1, subpara. (*c*) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. LXXXI, p. 317

The "1931 Convention", for the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931, referred to in article 44, para. 1, subpara. (*d*) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CXXXIX, p. 301

The "1931 Agreement", for the Agreement concerning the Suppression of Opium Smoking, signed at Bangkok on 27 November 1931, referred to in article 44, para. 1, subpara. (*e*), of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CLXXVII, p. 373.

The "1936 Convention", for the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, referred to in article 44, para. 2, of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CXCVIII, p. 299

The "1946 Protocol", for the Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, on 11 December 1946, referred to in article 44, para. 1, subpara. (*f*), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 12, p. 179

The "1948 Protocol", for the Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol Signed at Lake Success, New York, on 11 December 1946, signed at Paris on 19 November 1948, referred to in article 44, para. 1, subpara. (*h*), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 44, p. 277

The "1953 Protocol", for the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, referred to in article 44, para. 1, subpara. (*i*), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 456, p. 3

Article 4
GENERAL OBLIGATIONS

Paragraph 1

1. The Parties shall take such legislative and administrative measures as may be necessary:

(*a*) To give effect to and carry out the provisions of this Convention within their own territories;

(*b*) To co-operate with other States in the execution of the provisions of this Convention; and

(*c*) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

Commentary

1. In providing for a general obligation of Parties to "take such legislative and administrative measures as may be necessary to give effect to and carry out the provisions of the Convention", article 4 only states expressly what would in any event be the consequence of undertaking treaty obligations. The phrase "to give effect to and carry out" has the same meaning as the shorter phrases "*pour exécuter*" and "*para dar cumplimiento*" of the French and Spanish texts.

2. For the meaning of the word "territories", see above, comments on article 1, paragraph 1, subparagraph (*y*) and foot-note 22 relating to those comments.

3. Legislation authorizing a central organ of the executive branch of Government to give effect by decree to decisions of the Commission on Narcotic Drugs or of the Economic and Social Council under article 3 appears to be one of the legislative measures which Parties are required to take under article 4 if they have not yet done so. A delay in placing a drug under the national narcotics régime caused by the need for parliamentary legislation or for action by the component states, provinces or cantons of a federal country would hardly be compatible with the object and purpose of the provisions of article 3.

4. All measures which Parties must carry out under the various terms of the Single Convention require, of course, some domestic administrative action. By several specific provisions Governments are moreover required to maintain particular administrative institutions: a "special administration" for the purpose of applying the provisions of the Single Convention, [1] possibly national opium, coca leaf or cannabis agencies, [2] as appropriate, and, with "due

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[1] Article 17.

[2] Article 23, article 26, para. 1 and article 28, para. 1.

regard to their constitutional, legal and administrative systems", "arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic". [3]

5. A few specific administrative actions which are not expressly indicated in the text of the Single Convention, but which, it is suggested, Parties are required to take under the general rule of article 4, may be mentioned: maintenance of a staff sufficient in numbers and technical qualifications to carry out their treaty obligations, provision of training facilities for members of this staff where needed, and maintenance of a system of inspection [4] of businesses engaged in the various phases of the narcotics trade (agriculture, manufacture and wholesale and retail trade). [5] Governments which do not already have the required facilities would also fulfil their obligation regarding training by enabling members of their staff to participate in training arrangements offered by other countries or by international organizations such as the United Nations, the World Health Organization or the International Criminal Police Organization (INTERPOL). [6]

6. Co-operation of States is an indispensable requirement for effective narcotics control. This is recognized in the Preamble of the Single Convention, which states that "effective measures against abuse of narcotic drugs require co-ordinated and universal action", and that "such universal action calls for international co-operation". The general rule of article 4 requiring Parties "to take such legislative and administrative measures as may be necessary" "to co-operate with other States in the execution of the provisions of this Convention" is supplemented by some specific provisions. Article 35, paragraphs (*b*)-(*e*), contains rules regarding co-operation in the fight against the international illicit traffic. Article 36, paragraph 2, subparagraph (*b*), dealing with the extradition of illicit traffickers, is another provision aiming at international co-operation in this campaign. [7]

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[3] Article 35, para. (*a*).

[4] The obligation to make inspections appears also to arise from the provisions of article 29, para. 2, subpara. (*b*), article 30, para. 1, subpara. (*b*), clause (i) and article 31, para. 3, subpara. (*b*).

[5] The word "inspection" appears in the heading of article 34, but no express provision for inspection is made in the body of this article; the same applies to the corresponding and substantially similar article 43 of the Third Draft which served as working document of the Plenipotentiary Conference (E/CN.7/AC.3/9, *Records*, vol. II, p. 17). The corresponding article 46 of the Second Draft (E/CN.7/AC.3/7), in its second paragraph, requires Parties to maintain a system of inspection. This paragraph, but not the word "inspection" in the heading of article 46, was deleted by the Commission on Narcotic Drugs at its thirteenth session because it was superfluous, since all Governments provide in any case for inspection (E/CN.7/SR.398, pp. 6-7, and Annex V of the Report of the Commission on Narcotic Drugs on the thirteenth session, *Official Records of the Economic and Social Council, Twenty-sixth Session. Supplement No. 9.*

[6] An intergovernmental organization in special relationship with the Economic and Social Council.

[7] See also article 31, para. 1 requiring Parties not to permit exports of narcotic drugs except in accordance with the laws and regulations and within the import limits of the importing country or territory, and paras. 4-7 containing rules governing the co-operation of importing and exporting countries in the implementation of the import certificate and export authorization system.

7. It undoubtedly follows from the rule of article 4 on co-operation that a Party is bound not to permit its territory to be used as a base of operation of the illicit traffic in other countries or to become a refuge of international illicit traffickers, and that it must take appropriate legislative or administrative measures to this end. [8] Where that aim cannot be accomplished by the prosecution of crimes committed abroad [9] or by extradition, [10] such other appropriate measures must be taken as are feasible under the constitutional limitations and in accordance with the basic principles of the legal system of the Party concerned. Penalizing local participation of all kinds in the illicit traffic in other countries [11] and measures of expulsion may serve the purpose.

8. The question may be raised whether rendering technical aid to countries which need it in order to be able to implement the provisions of the Single Convention is a legal obligation of the Parties under article 4, paragraph (*b*). Experience has shown that foreign aid is indispensable to various Governments if they are to be enabled to make a full contribution to the fight against the abuse of narcotic drugs. There may not be general agreement on the existence of such a formal legal obligation; but giving technical assistance to countries which need and request it undoubtedly corresponds to the object and purpose of the Single Convention, and is within the spirit of the provision of article 4 requiring co-operation with other States.

9. The object of the international narcotics system is to limit exclusively to medical and scientific purposes the trade in and use of controlled drugs. From the beginning this has been a basic principle of the multilateral narcotics system, although all the treaties providing for it authorize some exceptions. The 1912 [12] and 1925 [13] Conventions and the 1953 Protocol [14] contained provisions incorporating this principle. The gradual extension of the scope of its application is a characteristic feature of progress in this branch of treaty law. It is one of the most important achievements [15] of the Single Convention that it ended the exceptions permitted in earlier treaties, subject only to transitional provisions of limited local application and duration pursuant to article 49, and apart from two cases presenting no problem of public health because they exclude the consumption of the dangerous substances involved.

10. The provisions to which paragraph (*c*) is "subject", i.e. which are excepted from its application, are article 49, article 2, paragraph 9 (whose practical importance seems highly hypothetical) [16] and article 27 (permitting

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[8] Such an obligation may also be implied in the provisions of article 35, paras. (*b*) and (*c*).

[9] See below comments on article 36, para. 2, subpara. (*a*), clause (iv).

[10] See below, comments on article 36, para. 2, subpara. (*b*).

[11] See also article 36, para. 2, subpara. (*a*), clauses (i) and (ii).

[12] Article 9, which, however, uses the phrase "medical and legitimate purposes".

[13] Article 5, which already employs the phrase "medical and scientific purposes"; see also article 13, para. 1 of the 1931 Convention.

[14] Article 2, article 5, introductory paragraph, and article 6, para. 1.

[15] The others being the extension of a comprehensive system of control to the cultivation of the coca bush (article 26) and to that of the cannabis plant grown for the production of cannabis and cannabis resin (article 28, para. 1).

[16] See above comments on this provision.

the use of coca leaves for the preparation of a flavouring agent which must not contain any alkaloids, and the production [17] of, trade in and possession of leaves intended for this purpose. [18]

11. The term "medical purposes" has not been uniformly interpreted by Governments when applying the provisions of the narcotics treaties containing it. [19] Some have prohibited the consumption of narcotic drugs by all addicts excepting only when necessary to alleviate suffering during withdrawal treatment; a number of other countries have permitted consumption by persons whose addiction proves to be incurable of the minimum quantities required to prevent painful withdrawal symptoms and to enable them to lead a normal life. There have also been a few cases in which all consumption of narcotic drugs by addicts was prohibited, even in the course of withdrawal treatment.

12. The term "medical purposes" does not necessarily have exactly the same meaning at all times and under all circumstances. Its interpretation must depend on the stage of medical science at the particular time in question; and not only modern medicine, sometimes also referred to as "western medicine", but also legitimate systems of indigenous medicine such as those which exist in China, India and Pakistan, may be taken into account in this connexion. [20]

13. The term "medical purposes" includes veterinary and dental purposes. [21]

14. Drugs in Schedule II and their preparations, as well as preparations in Schedule III, are not excluded from the scope of article 4 including its paragraph (*c*). [22]

15. The "use" of drugs is not specifically listed in article 36, paragraph 1, among the actions which, subject to its constitutional limitations, a Party must treat as punishable offences. It appears that it is left to the discretion of each Party to decide whether it wishes to penalize the non-medical consumption of narcotic drugs by addicts, or whether it prefers to prevent such abuse solely by administrative and penal measures by which the production, manufacture and distribution of drugs must be controlled under the terms of the Single Convention. [23]

16. In addition to article 4, paragraph (*c*), the provisions of article 33 and of article 36, paragraph 1, deal with the possession of drugs. Under these provisions, Parties must take the required legislative and administrative measures to limit exclusively to medical and scientific purposes the possession of

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[17] Article 1, para. 1, subpara. (*t*).

[18] Leaves from which "all ecgonine, cocaine or any other ecgonine alkaloids have been removed" are not "coca leaves" as defined in the Single Convention; article 1, para. 1, subpara. (*f*); see also below, comments on article 27, para. 1.

[19] See above foot-notes 12-14.

[20] *Records*, vol. I, pp. 25-26.

[21] *Records*, vol. I, p. 207; vol. II, pp. 123, 267, 280 (foot-note 8) and 285 (foot-note 27).

[22] Article 2, paras. 2 to 4; see also below, comments on article 33.

[23] See comments on article 36, para. 1.

drugs, [24] must not permit the possession of drugs except under legal authority, [25] and subject to their constitutional limitations must make possession of drugs contrary to the provisions of the Single Convention a punishable offence. [26]

17. The question arises how far and in what way these provisions govern the possession of controlled drugs; do they apply without regard to whether the drugs are held for illegal distribution or only for personal consumption, or do they apply solely to the possession of drugs intended for distribution?

18. Article 4, paragraph (*c*), undoubtedly refers to both kinds of possession; but whether that provision must be implemented by imposing penal sanctions on possession for personal consumption is a question which may be answered differently in different countries. [27] Some Governments seem to hold that they are not bound to punish addicts who illegally possess drugs for their personal use. This view appears to be based on the consideration that the provisions of article 36, which in its paragraph 1 requires Parties, subject to their constitutional limitations, to penalize the possession of drugs held contrary to the provisions of the Single Convention, are intended to fight the illicit traffic, and not to require the punishment of addicts not participating in that traffic. Article 45 of the Third Draft, which served as working document of the Plenipotentiary Conference, enumerated in its paragraph 1, subparagraph (*a*) "possession" among the actions for which punishment would be required. This paragraph is identical with the first part of paragraph 1 of article 36 of the Single Convention, dealing with "possession" as one of the punishable offences. Article 45 of the Third Draft is included in chapter IX, headed "Measures against illicit traffickers". This would appear to support the opinion of those who believe that only possession for distribution, and not that for personal consumption, is a punishable offence under article 36 of the Single Convention. The Draft's division into chapters was not taken over by the Single Convention, and this was the only reason why the chapter heading just mentioned was deleted, as were all the other chapter headings. Article 36 is still in that part of the Single Convention which deals with the illicit traffic. It is preceded by article 35, entitled "Action against the illicit traffic", and followed by article 37, entitled "Seizure and confiscation".

19. Parties which do not share this view, and which hold that possession of drugs for personal consumption must be punished under article 36, paragraph 1, may undoubtedly choose not to provide for imprisonment of persons found in such possession, but to impose only minor penalties such as fines or even censure. Possession of a small quantity of drugs for personal consumption may be held not to be a "serious" offence under article 36, paragraph 1, and only a "serious" offence is liable to "adequate punishment particularly by imprisonment or other penalties of deprivation of liberty".

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[24] Article 4, para. (*c*).

[25] Article 33.

[26] Article 36, para. 1.

[27] No doubt appears to exist as regards the obligation of Parties to apply penal sanctions in implementing the rule of article 4, para. (*c*), concerning manufacture, production, export, import, distribution, trade and possession for distribution; see below, comments on article 36, para. 1. As to use, see above.

20. Penalization of the possession of drugs for personal consumption amounts in fact also to a penalization of personal consumption. [28]

21. It has, on the other hand, been pointed out, particularly by enforcement officers, that the penalization of all unauthorized possession of drugs, including that for personal use, facilitates the prosecution and conviction of traffickers, since it is very difficult to prove the intention for which the drugs are held. If Governments choose not to punish possession for personal consumption or to impose only minor penalties on it, their legislation could very usefully provide for a legal presumption that any quantity exceeding a specified small amount is intended for distribution. It could also be stipulated that this presumption becomes irrebuttable if the amount in the possession of the offender is in excess of certain limits. It may also be remarked that constitutional limitations, which can free a Party from all obligation to punish an action mentioned in article 36, paragraph 1, will generally not prevent the penalization of the unauthorized possession of drugs.

22. It may finally be mentioned that Parties must prevent the possession of drugs for other than medical and scientific purposes by all the administrative measures which they are bound to adopt under the terms of the Single Convention, whatever may be their view on their obligation to resort to penal sanctions or on the kind of punishment which they should impose.

23. What has been said in regard to the need for penal sanctions for limiting the possession of controlled drugs exclusively to medical and scientific purposes pursuant to article 4, paragraph (*c*), also applies to the obligation of Parties under article 33 not to permit the possession of drugs except under legal authority. While there may be a difference of opinion as to the obligation of Parties to impose penal sanctions on persons found in the unauthorized possession of drugs held for personal consumption, it should be kept in mind that Governments must in any event take all the administrative measures which they are required to adopt under the Single Convention in order to prevent any unauthorized possession for any purpose whatever. There can be no doubt that Governments may refrain from imposing imprisonment in cases of possession of drugs held for personal consumption without legal authority. Possession of drugs for distribution without such authority must, on the other hand, be made punishable "by imprisonment or other penalties of deprivation of liberty". [29]

24. It is also apparent that the obligation of Parties not to permit the possession of drugs except under legal authority requires them to confiscate drugs if found in unauthorized possession, even if held solely for personal consumption. See also below, comments on articles 33 and 37. [30]

25. Parties cannot legally authorize the possession of drugs for other than medical and scientific purposes, except in the cases in which non-medical

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[28] See above for the omission of the "use" of drugs in the enumeration of punishable offences in article 36, para. 1.

[29] Article 36, para. 1.

[30] The obligation to confiscate drugs posessed without legal authority for non-medical consumption is held to derive from article 33 if article 37 is not applied, because such possession is not considered to be an offence under article 37.

consumption or industrial use is exceptionally permitted by the Single Convention.[31] See also below, comments on article 33.

26. As regards the meaning of "production" and the application of the term "manufacture" to the separation of substances which may in the future be placed under international narcotics control from plants, see above, comments on article 1, paragraph 1, subparagraphs (*n*) and (*t*).

27. It will be noted that the English text of article 4 is preceded by the figure 1, without any following numbered paragraph. This is an oversight due to the fact that article 4 of the Third Draft had two numbered paragraphs, of which the first was retained in its entirety by the Convention as finally adopted by the Plenipotentiary Conference, while the second paragraph was deleted.[32] The number 1 does not, however, appear in French and Spanish texts, in which the required change was made.

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[31] Article 4, para. (*c*) together with article 2, para. 9, article 27 and article 49.

[32] United Nations document E/CN.7/AC.3/9, *Records*, vol. II, p. 4.

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Article 33

POSSESSIONS OF DRUGS

The Parties shall not permit the possession of drugs except under legal authority.

Commentary

1. Article 33 must be read in connexion with article 4, paragraph (*c*) requiring Parties, subject to the exceptions expressly permitted by the Single Convention, [1] to limit exclusively to medical and scientific purposes the possession of drugs. It has therefore been stated in the comments on that paragraph that apart from these exceptions, Parties may not authorize the possession of drugs for other purposes.

2. It may be repeated here that some Governments consider that they are not required to punish the unauthorized possession of drugs by addicts for their personal use, because the word "possession" as used in article 36, paragraph 1, covers only possession for distribution, and is not meant to include possession for personal use; but even if this view is not accepted, there cannot be any doubt that Parties need not consider unauthorized possession of drugs for personal use to be a "serious" offence within the meaning of article 36, paragraph 1, liable to punishment by imprisonment or other penalties of deprivation of liberty. They may choose to impose minor penalties such as fines or even censure. [2]

3. Whatever the position the Parties may take on this question of penal sanctions, it does not affect their obligation under article 33 not to permit the unauthorized possession of drugs for personal consumption, like any other possession of drugs without legal authority. If they choose not to impose penalties on the unauthorized possession for personal use, they still must use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention, and whose basic objective is the prevention of the abuse of drugs and therefore also to prevent the *unauthorized* possession by addicts. It is also submitted that Parties which do not consider such possession to be an offence under article 36, and therefore are not required to apply article 37 regarding the seizure and confiscation of drugs, are nevertheless bound to confiscate the drugs found in the unauthorized possession of persons

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[1] Article 2, para. 9, article 27 and article 49.

[2] For a more extensive discussion of this legal question, see above comments on article 4, para. (*c*).

for personal consumption. This obligation appears to be implied in the provision of article 33. [3]

4. It will be noted that article 33 applies to all drugs and their preparations. Drugs in Schedule II and their preparations, as well as preparations in Schedule III, which it may be possible for individuals to acquire without medical prescriptions, [4] are not excepted. [5] Although free from the prescription requirement, they are not excluded from the scope of article 4, paragraph (*c*), requiring Parties to limit the possession and use of drugs to medical and scientific purposes, and they may be sold only by State enterprises or licensed traders or dispensed or administered by persons duly authorized to perform therapeutic functions. [6]

5. Parties may therefore not authorize the possession of drugs in Schedule II and their preparations as well as of preparations in Schedule III [7] by individuals for the purpose of abusing them. They should therefore require their licensed retail traders not to sell these drugs and preparations to an individual who obviously intends to abuse them, and in any event not to sell excessive amounts of them to a single person.

6. They would also be bound to confiscate these drugs and preparations if found in the possession of a person who needs them not for medical purposes, but exclusively for the purpose of abusing them.

7. The Parties are, however, not bound to adopt measures which are not expressly or impliedly required by the Single Convention in order to enforce the limitation of the possession and use of drugs in Schedule II and their preparations, or of preparations in Schedule III, to medical and scientific purposes. It is moreover suggested that, unless more strict controls are required by national law than those prescribed by the Single Convention, the application of article 33 to the unauthorized possession by individuals of these drugs and preparations for the purpose of abusing them will generally be very difficult indeed, and in many cases not only impractical but also impossible.

8. It may be mentioned in this context that the leaves of the cannabis plant, when not accompanied by the tops, are not "drugs", [8] and are therefore not subject to article 33. [9]

9. For a provision in an earlier treaty requiring Parties to take measures to prohibit the delivery to or possession by any unauthorized person of drugs,

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[3] See also above, comments on article 4, para. (*c*); the United Nations Secretariat is not aware of any constitutional provisions which would prevent such course of action. It is however suggested that where such an obstacle should exist, the same effect could be accomplished by making the unauthorized possession of drugs by addicts for personal consumption an offence, to be punished exclusively by the confiscation of the drugs.

[4] Article 30, para. 6.

[5] Article 2, paras. 2 to 4.

[6] Article 30, para. 1, subpara. (*a*) and (*c*) in connexion with the references in foot-note 5.

[7] Preparations in Schedule III will, however, generally hardly be liable to the kind of abuse which the Single Convention is intended to prevent; see article 3, para. 4.

[8] Article 1, para. 1, subparas. (*b*) and (*j*), and Schedules I and II.

[9] See article 28, para. 3 and comments thereon.

see article 7 of the 1925 Convention. This provision has, however, a more limited scope than article 33 of the Single Convention. [10]

[10] Article 7 of the 1925 Convention does not apply to raw opium, prepared opium, coca leaves, cannabis and cannabis resin; to the possession for retail trade or personal consumption of drugs in Group II of the 1931 Convention (and of the 1948 Protocol) and to those preparations which either by express treaty provisions or by operation of article 8 of the 1925 Convention are exempted from the application of this Convention, i.e. to the so-called "preparations for the export of which export authorizations are not required" which are a group of preparations whose position corresponds to some extent to that of preparations in Schedule III of the Single Convention; see articles 8 and 4, para. (*d*) of the 1925 Convention, article 13, para. 1 and para. 2, subparas. (*a*) and (*b*) of the 1931 Convention; see also *Commentary* on the 1931 Convention, para. 135; article 7 of the 1925 Convention moreover applies only "as regards the internal trade" to the drugs which it covers. It may however be noted that all the drugs and their preparations covered by article 7 or excluded therefrom are subject under the narcotics régime preceding the Single Convention, to the import certificate and export authorization system of chapter V of the 1925 Convention, the only exception being "the preparations for the export of which export authorizations are not required".

7. Article 36 is not one of the provisions which do not apply to preparations in Schedule III. Illicit traffic in such preparations is therefore governed by the terms of this article. [8] "Illicit traffic" in leaves of the cannabis plant when not accompanied by the tops is, however, not subject to article 36 because the leaves are not drugs. [9]

8. No provision of article 36 is self-executing in countries where constitutions provide for that effect of treaty provisions. [10]

[8] Article 2, para. 4.

[9] Article 1, para. 1, subpara. (*b*) and comments on article 28, para. 3.

[10] Article 36, para. 4.

Paragraph 1

1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

Commentary

1. The enumeration in paragraph 1 of the activities which should be penalized very closely follows that of article 2, paragraph (*a*) of the 1936 Convention. [1] In order to make sure that all activities coming under the general heading "illicit traffic" [2] would be covered by paragraph 1 and that any gap which may exist in the list in that provision, [3] not only the actions specifically mentioned but "any other action which in the opinion of 'a Party' may be contrary to the provisions" of the Single Convention must be treated by that Party as a punishable offence in accordance with the terms of article 36. While it is left to the judgement of each Party to determine what action not specifically mentioned in paragraph 1 is contrary to the provisions of the Single Conven-

[1] The list of 1936 does not include "cultivation" and "production", which at the time of the conclusion of the 1936 Convention were not yet subject to a comprehensive régime of international control. See, however, article 5 of that Convention relating to Parties which have such a national régime; this list includes "conversion", which in so far as it relates to the transformation of drugs into other drugs, is covered by the term "manufacture" as defined in article 1, para. 1, subpara. (*n*) of the Single Convention. See also above, comments on that provision.

[2] *Records*, vol. II, p. 236.

[3] *Records*, vol. II, p. 238.

tion, it may be noted that this paragraph, like the other provisions of the Single Convention, must be implemented in good faith. [4]

2. Only those of the activities mentioned in paragraph 1 which are "committed intentionally" fall within the scope of this paragraph, and consequently within that of the other provisions of article 36. This limitation applies to the activities specifically listed in paragraph 1 as well as to those which are included by the general definition. Actions which are not taken wilfully or knowingly, but only as a result of "negligence", are therefore not subject to the provisions of article 36. [5] Governments will, however, find it necessary to punish unintentional violations of their narcotics laws and regulations if due to culpable negligence.

3. Some of the activities mentioned in paragraph 1 may not be considered to be those of "principal actors" as this term is understood in some penal codes, but only as forms of "participation" as defined in paragraph 2, subparagraph (*a*), clause (ii), and would therefore also be punishable under the terms of that clause.

4. The activities mentioned in paragraph 1 must also be made punishable offences if they deal with preparations including preparations in Schedule III. [6]

5. The term "manufacture" as used in the paragraph under consideration also covers activities referred to as "extraction" [7] or "preparation". The inclusion of all three of these terms is obviously due to the fact that the authors of paragraph 1 followed closely the text of article 2, paragraph (*a*) of the 1936 Convention.

6. The transformation of drugs into substances not covered by the Single Convention does not appear to be "manufacture" as this term is used in this context. [8]

7. It will be noted that paragraph 1 does not refer to "use". As has been pointed out elsewhere, [9] article 36 is intended to fight the illicit traffic, and unauthorized consumption of drugs by addicts does not constitute "illicit traffic". [10]

8. As regards the view that the term "possession" in the context of paragraph 1 does not include possession for personal consumption, and that in any event Parties which do not share that view need not consider possession for personal consumption to be a "serious" offence punishable by imprisonment or other penalties of deprivation of liberty, see comments on article 4, paragraph (*c*). [11]

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[4] See also above, comments on article 2, para. 5, article 22 and article 24, para. 1, subpara. (*b*).

[5] *Records*, vol. II, p. 235.

[6] Article 2, paras. 3 and 4. The terms "cultivation" and "production" of course cannot refer to preparations; article 1, para. 1, subparas. (*i*), (*s*) and (*t*).

[7] The extraction of cannabis resin from the cannabis plant may, however, also be "production"; article 1, para. 1, subparas. (*d*) and (*t*).

[8] Article 1, para. 1, subpara. (*n*) and comments on that subparagraph.

[9] See above, comments on article 4, para. (*c*).

[10] Article 1, para. 1, subpara. (*l*).

[11] See also comments on article 33.

9. Paragraph 1 requires "adequate" punishment of the offences which it covers if they are serious. The Plenipotentiary Conference did not accept by the required two-thirds majority a proposal to require "severe" punishment. [12] The opponents of the word "severe" invoked the considerations that the degree of severity of a penal sanction required in different countries to achieve its social purpose might differ widely; that what could be an adequate penalty in one State might not be considered to be severe in another State; and that the word "severe" carried overtones of "retribution", which was one of the purposes of penal law which should not be emphasized. [13] It is, however, submitted that in order to be "adequate" for the fight against serious offences of the illicit traffic, the penalties must be sufficiently severe to have the desired deterring effect under the special conditions of the country in which they are imposed. This idea is also embodied in the requirement that the "adequate punishment" should be meted out "particularly by imprisonment or other penalties of deprivation of liberty". The imposition of fines alone would in no case constitute an "adequate" punishment for serious offences of the illicit traffic.

10. The term "imprisonment" in its broad sense covers all penalties of deprivation of liberty. By following the introductory paragraph of article 2 of the 1936 Convention in including the whole phrase "by imprisonment or other penalties of deprivation of liberty", the Conference appears to have made it clearer that not only confinement in an institution which is technically a prison, but also that in other places such as labour or "re-education" camps, constitutes an "adequate" penalty as required by paragraph 1 of article 36.

11. It will be noted that the obligations of Parties under paragraph 1 are subject only to their "constitutional limitations", while those under paragraph 2 are subject to their constitutional limitations, their legal system and domestic law. [14]

12. The question arises whether a federal State is relieved from obligations under paragraph 1 if it is unable to enact the required penal legislation on account of lack of authority under its federal constitution to do so. This question should be answered in the negative. A Party is in such a case bound to obtain the necessary action by the legislatures of its component states or provinces which have jurisdiction in matters of penal law.

13. The Secretariat of the United Nations is not aware of any constitutional limitations which would prevent a Party to the Single Convention from implementing article 36, paragraph 1, by national or local legislative actions.

14. For a corresponding provision in the narcotics régime preceding the Single Convention, see introductory paragraph and paragraph (*a*) of article 2 of the 1936 Convention.

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[12] *Records*, vol. I, p. 147; see also vol. II, p. 239. The introductory paragraph of article 2 of the 1936 Convention requires "severely punishing".

[13] *Records*, vol. II, pp. 234-239; see also above general comments on article 36.

[14] As regards this difference in the "escape clauses" of the two paragraphs, see *Records*, vol. II, pp. 236-237 (statement of the representative of Canada who was Chairman of the Drafting Committee of the Plenipotentiary Conference).

[Excerpt from an article entitled, "The International Drug Control System" by Adolph Lande, Appendix, "Drug Use in America: Problem in Perspective," volume III: The Legal System and Drug Control, March 1973, pp. 129–130.]

Question of Treaty Provisions Preventing Policy Options on Certain Controversial Questions

Punishment of the acquisition (including purchase) of narcotic drugs or psychotropic substances for personal consumption

The terms "possession" and "purchase" used in the penal provisions of the Single Convention mean only possession and purchase for the purpose of illicit traffic. Consequently unauthorized possession and acquisition (purchase) of narcotic drugs for personal consumption need not be treated under the Single Convention either as punishable offenses or as serious offenses. If a government does not accept this view, they may consider purchase and possession for personal use to be offenses punishable by fines, censure or the confiscation of the drugs, or to be serious offenses punishable by deprivation of liberty, including imprisonment.[865]

The provisions of the Protocol of 1972 permitting the substitution of treatment and rehabilitation for conviction or punishment of addicted offenders will remain ineffective for the United States at least for a very long time.[866]

However, nothing in the Single Convention would prevent the United States from imposing on illegal purchase and possession of narcotic drugs for personal consumption penalties it considers advisable.

The Vienna Convention does not require parties to prohibit the possession of psychotropic substances in Schedules II, III or IV without legal authority,[867] but only to provide that the possession of substances in Schedule I should be prohibited without a special license or prior authorization.[868] The penal provisions of the Vienna Convention [869] are patterned after those of the Single Convention although the former define the punishable offenses in general terms instead of using the largely enumerative method of the latter. The penal provisions of the Vienna Convention aim at the illicit traffic; illicit acquisition (purchase) and possession of *all* psychotropic substances for personal consumption are not punishable offenses under the Vienna Convention, even though the government concerned might not permit the possession of substances in Schedules II, III and IV without legal authority. Here again a government which does not share this view, could in any event treat such purchase and possession as offenses which are not serious and which are punishable by fines, censure or even only by confiscation of the substances involved. The liberty of governments to impose heavy penalties would not be restricted by the Vienna Convention.

These legal considerations are of less importance in the Vienna Convention than in the Single Convention because the provision of the former, permitting the substitution of measures of treatment and rehabilitation for offenders who abuse psychotropic substances for their conviction or punishment, could be applied by the United States.

Distribution and sale of narcotic drugs and psychotropic substances

Illicit distribution and sale of narcotic drugs and psychotropic substances would be treated as serious punishable offenses subject to appropriate punishment, particularly by deprivation of liberty, including imprisonment. However, governments would be permitted to treat them as non-serious offenses and to punish them by fines, by censure or by confiscation. Such a case would include possession or distribution of a small amount of a relatively less dangerous drug for distribution to a friend without consideration or without profit.

Under the Vienna Convention, treatment and rehabilitation of all distributors of psychotropic substances, who abuse such substances, could be substituted for their conviction or punishment.

The corresponding provision of the amended Single Convention would remain ineffective for the United States, at least for a very long time.

Legalization of the non-medical use of cannabis and cannabis resin

As long as cannabis and cannabis resin remain in the Schedules I and IV of the Single Convention, or are removed only from Schedule IV or are trans-

[865] Article 33 and (if considered to be punishable offenses) article 37.
[866] Article 36, paragraph 1, sub-paragraph (b) of the amended text.
[867] Article 5, paragraph 3.
[868] Article 7, paragraph (b).
[869] Article 22.

ferred to Schedule II, which involves deletion from Schedule IV, the United States is bound by the Single Convention to prohibit their non-medical use.

In accordance with a recommendation of the World Health Organization, the Commission, by a simple majority of its members present and voting, could remove cannabis and cannabis resin from the Schedules of the Single Convention. Cannabis and cannabis resin would thus cease to be drugs within the meaning of this Convention and would be freed from all drug control provisions.[870] No longer considered drugs, cannabis and cannabis resin could be produced, exported, imported, distributed, traded, used and possessed for non-medical purposes without any controls, except those which the United States would wish to maintain or establish. However, a somewhat anomalous situation would exist because article 28, paragraph 1 of the Single Convention would continue to be in force, except if deleted by an amendment of this treaty. It would continue to require that the cultivation of the cannabis plant for the production of cannabis and cannabis resin be controlled as is the cultivation of the poppy for the production of opium; but despite these controls the cannabis and cannabis resin could be produced for any purpose, including non-medical consumption.

The legalization of the non-medical use of cannabis and cannabis resin presupposes that these substances would not be included in a Schedule of the Vienna Convention.

THE NON-MEDICAL USE OF THE LEAVES OF THE CANNABIS PLANT

The Single Convention[871] does not prohibit the non-medical use of the leaves of the cannabis plant if they are not accompanied by the tops of the plant.[872] Parties are required to adopt such measures as might be necessary to prevent the misuse of and illicit traffic in the leaves. The measures required to prevent misuse might include the prohibition of the sale of very potent leaves, of the sale of excessive quantities to one individual and of the sale to persons below a certain age. These are only a few examples of what parties might have to do under the vague provision of the Convention. The obligation to prevent the illicit traffic in the leaves may be carried out by limiting the trade in the leaves to government shops or licensed traders. Generally speaking such measures as are adopted in many countries to prevent excessive consumption of alcohol and illegal trade in alcohol may be sufficient.

MAINTENANCE PROGRAMS

The treaty provision limiting the use of drugs "to medical and scientific purposes"[873] has always been interpreted by some governments to permit consumption by persons whose addiction has proved to be incurable of the minimum quantities of addictive drugs required to prevent painful withdrawal symptoms and to make it possible for these addicts to lead a "normal" life. No party to the drug treaties has objected to this interpretation. However, the use of drugs in maintenance programs must in all cases be determined by *medical considerations*, which include the desire to *help* the addicts or other abusers of controlled drugs.[874]

ARTICLE 36* PENAL PROVISIONS

Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when

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[870] Article 1, paragraph 1, subparagraph (j) and article 2, paragraph 1–5; see also article 4, paragraph (c).

[871] Nor the Vienna Convention as long as the leaves are not included in one of its Schedules.

[872] Article 1, paragraph 1, sub-paragraph (b) and article 28, paragraph 3.

[873] The first drug treaty which uses this term is the 1925 Convention; the 1912 Convention uses the phrase "medical and legitimate purposes".

[874] The same would apply to the Vienna Convention, when in force, which also limits the use of psychotropic substances to "medical and scientific purposes".

*Executive G, 90th Cong., 1st sess., Senate Mar. 8, 1967, the "Convention on Narcotic Drugs, 1961," pp. 20–21, Message from the President of the United States.

committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(*a*) (i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;

(ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and

(iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offense was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

(*b*) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (*a*) (ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. The provisions of this article shall be subject to the provisions of the criminal law of the Party concerned on questions of jurisdiction.

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

Article 22* Penal Provisions

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

(b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offenses, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a) (i) if a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offense;

(ii) intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) foreign convictions for such offenses shall be taken into account for the purpose of establishing recidivism; and

(iv) serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgment given.

*Executive G, 92d Cong., 1st Sess., Senate, June 29, 1971, the "Convention on Psychotropic Substances," p. 16, Message from the President of the United States.

(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2(a)(ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. Any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences referred to in paragraphs 1 and 2 shall be liable to seizure and confiscation.

4. The provisions of this article shall be subject to the provisions of the domestic law of the Party concerned on questions of jurisdiction.

5. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

[From the National Observer, Sept. 25, 1976]

LEGAL MARIHUANA: A COLOMBIAN PIPE DREAM?

(By Thomas D'Arcy Quinn)

"Marihuana legalizada" exploded headlines on the front pages of newspapers throughout the country. The announcement came suspiciously on the Ides of March this year—which immediately made me beware.

Could it be true, after years of antimarihuana "reefer madness" play in these same newspapers, that suddenly the personal consumption of the illicit plant was legal and accepted in the land that produces the best species of it in the Western Hemisphere?

Not really.

Later that week I witnessed a youth, his eyes popped and red, being hauled to jail for smoking in a movie house in Cali. And within a month after the spurious announcement, a gringo friend spent two weeks in jail for two joints found in his pocket.

Confusion resulted from the media's misinterpretation of a new decree about marihuana issued by the minister of justice, Dr. Samuel Hoyos Arango. Facing perplexed dissent from most sectors of Colombian society, including the attorney general, Dr. Jaime Serrano Rueda, the minister of justice hastily explained that his Decree 701 did not legalize or even decriminalize marihuana. It simply reduced the penalties for possession of small quantities (set at 28 grams of marihuana and 10 grams of hashish) from an automatic three years in jail to a sentence of a month to a year, along with a fine of 200 to 2,000 pesos ($7 to $70).

That still meant jail even for people caught with a little bit. On the other hand, anyone caught with amounts exceeding these so-called "personal dose" equivalents faces a sentence of 3 to 12 years. "With this measure," explained Hoyos Arango, "we're trying to make a distinction between the mere consumer and the real dope pushers."

A RICH EXPORT MARKET

There seem to be several reasons why Colombia has taken a lead among its Latin American neighbors in softening its dope laws, at least toward small consumers. One is that in Colombia's recent crusade against the drug culture, no one was getting imprisoned except the users. Ninety-five per cent of 2,500 drug convictions in 1974 were for possession of less than an ounce of marihuana.

To Hoyos Arango that figure seemed a bit incongruous and inhumane, and—more important, perhaps—costly: The government spent over $500,000 per year to process and maintain these marihuana convicts.

But another possible reason, which holds an irresistible attraction for the minister, who is an economist as well as a law expert, is the commerce of marihuana. In the hands of the international Mafia, Dr. Hoyos Arango declared, the marihuana business sabotages the Colombian economy and corrupts the society. "The day that consumption of marihuana should become legalized," he said in a carefully hypothetical tone, "this would affect the Mafia in the sense they would no longer have this magnificent business they have today." Then he added, almost wistfully, "And the business of exportation [of marihuana or cocaine] is a very rich market."

Rich indeed. According to a study contracted in 1971 by the old U.S. Bureau of Narcotics and Dangerous Drugs, the U.S. marijuana traffic today amounts to more than $2 billion. Of that, at least $500 million would be tax revenue if the U.S. Government took it over the way it did alcohol at the end of Prohibition.

So far no one in the present Colombian government besides the economics-oriented minister of justice dares allude to the incredible prospects of legalized marijuana exports. Privately, some Colombians feel it logical that this struggling Andean country should exploit the pot market in the North, just as it exploits that other nonnutritious drug, coffee.

FROM ROPE TO DOPE

Occasionally, though, strange references to Colombia's interest in the marijuana commerce bob to the surface. For instance, columnist Guillermo Nieto Cano of the highly respected, nationally circulated newspaper El Espectador recently published a piece entitled, "Marihuana: A Product High in National Interest?" In the article, Nieto Cano told of a conversation with a "distinguished agriculturist" who, he said, asserts that the Colombian government has been experimenting for more than two years with three special kinds of *cannabis sativa: cannabis Sincnsis, cannabis Indica,* and *cannabis vulgaris.*

"We plan to have the best marijuana products in the world ready for the eventual international market," Nieto Cano quoted the man as saying.

Marijuana is not native to Colombia, and there are several exotic theories about how it got here. According to a 1951 United Nations "Bulletin on Narcotics," the substance was first introduced into Latin America by the Spanish in 1554 by way of Chile. Today, however, Chile produces no smokeable strains.

One aprocryphal yarn says black musicians spread the seeds while jamming their way up the Magdalena River, Colombia's main artery for centuries.

More likely, slave and pirate ships brought the distinctive blond or gold types of marijuana to the northern Caribbean coast of Colombia ages ago. In the interior of Colombia, however, the darker, red strains have predominated since World War II.

In the early 1940s the Allies needed rope fibers for the war effort, so they provided hemp seed from Asia and Africa to farmers in the Colombian interior. But the tough, stringy male hemp did not flourish here. On the other hand, the bushy, resinous female not only survived, but some botanists say it actually evolved into more potent forms in the lush, high Colombian soil.

GRASS FOR CONNOISSEURS

Cannabis connoisseurs rank Colombian marijuana alongside such Asian types as so-called Thai-sticks from Thailand or Cambodian temple balls, distinguishing it from the stringier and milder Mexican variety.

Though no formal studies have been made on the subject, an interesting indication of the wide variety of Colombian pot emerged recently when a nervous young Latin model caught the eye of Capt. Leopoldo Azuero, chief of customs at the Barranquilla International Airport. As Azuero routinely asked to examine the large carry-on bag the girl was clutching, she suddenly tried to abandon the bag and run off. And for good reason: It contained a neat double compartment with 16 polyethylene bags, each filled with about a half ounce of a different type of marijuana.

One bag contained what the dope culture calls *llanos* brown, a common sort of marijuana from Colombia's llanos, or grassy plains. Another contained an oily kind referred to as lowland purple. Others were the maroon or black pot from the jungle coast near Turbo; Santa Marta golds; red strains from the mountainous Manizales area; orangeish *mango biche* (unripe mango) from the department of Cauca; the potent, pale "moon grass" from the Guajira Desert; famous "red point" from around Cali; and resin-sticky, finger-length flowers (used to produce hash) from dwarf plants in the tropical prairies.

Stuck into this amazing sample case was a note in English to a man in Fort Lauderdale, Fla., advising that there was 5,000 pounds of each class of marijuana ready for immediate shipment.

It's precisely because Colombia provides such a rich selection of marijuana that people such as the minister of justice or the U.S. Drug Enforcement Administration agree that its exportation is big business, whether legal or illegal. In fact, the profit margin for dealing the weed internationally is even higher than it is for the more expensive cocaine (much of which is processed in Colombia too).

For instance, the farmer gets about $7 per pound. For him, that's a premium price. The same quantity fetches $50 to $70 for the Colombian middleman. The big gain comes when this pound gets to New York or San Francisco, where it's worth $700 at retail. The smuggler, of course, probably sells the pound for $300 to $350 wholesale . . . but he usually deals in nothing less than a ton at a time.

It's not surprising, then, that marijuana syndicates operating in Colombia seem so organized and well-equipped. They go into isolated farming areas—mountainous Andean nooks or far-off jungles—and set up co-operatives among the farmers. They make long-term loans and supply seeds and fertilizers, like a regular farmer's bank. If peasants resist such blandishments, the syndicates might run them off their land. Syndicate members recently killed 24 Malaya Indians in a secluded region of the Sierra Nevada de Santa Marta.

Some of the syndicates are so rich that they apparently shrug off large losses. Colombian officials were aghast not long ago when they discovered an abandoned airfield in the Guajira Desert (which has been described as "a landing strip the size of Massachusetts") with no fewer than five discarded airplanes, including one DC–3. This was just one of an estimated 10,000 clandestine airports in Colombia.

The United States has been attempting to combat these syndicates through a special program begun in 1973 of State Department narcotics agents and Drug Enforcement Agency (DEA) men who act as technical advisers to Colombian police and otherwise try to keep a low profile.

But not always. One DEA agent infiltrated a smuggling band as an airplane toms officials chartered a plane to check on a recent bust. But upon landing at Cartagena last year. Another time, about a year ago, DEA and Colombian customs officials chartered a plane to check on a recent bust. But upon landing at the site of 50 confiscated bushels of marijuana in the distant llanos, they became embroiled in a confusing shoot-out with DAS (Colombian FBI) agents who had been waiting for the owners of the dope to show up and thought the plane was full of Mafiosi.

In 1973 I convinced a Bogotá marijuana wholesaler to take me to a hashish farm in the Colombian llanos. To get there, we took two different buses and a taxi Jeep—an 18-hour odyssey that brought us, finally, to a 1,000-acre ranch protected day and night by riflemen on horseback.

There the farmer directed us on horses to a field where sugar cane swayed lazily in plains breezes in a far corner of his spread. As we approached the sugar cane, I could smell the marijuana patch even before I could see it. In the hot midday sun the heavy, sweet aroma made me dizzy before long, like too much jasmine.

A SMILE—AND A WARNING

The dwarf marijuana plants—knee high, bushy, and glistening with honey-like resins—were scattered over an acre hidden in the center of the undulating cane. "For three months' labor on this field," he told me, "I pay 10,000 pesos [then $400—expensive for Colombian pay standards]." Most of that went for constant pruning and manicuring. The farmer explained that most hashish is collected in dark, pliable balls by scraping the resin-sticky hands of laborers after they've worked the plants. He said he learned the process from a Dutch youth who had spent time rubbing hashish in Kashmir, India.

The farmer impressed me as being a simple, hard-working man with calloused hands and a friendly, open demeanor. When I was leaving, however, he cautioned me. "The people I sell to are everywhere," he said, "We depend on your discretion." He added pointedly, with a smile, "And so should your wife and baby . . ."

In contrast, I once accidentally ran across a smaller marijuana operation while exploring the isolated homesteading areas on the Pacific coast of Colombia. I arrived at a small rancho at nightfall and asked for lodging. There the man and his family offered me a bamboo bed and a meal of beans, corncakes, and watery hot chocolate . . . and proudly showed me a small plot of marijuana among cassava at the back of the house.

"I have about 30 marijuana plants," he explained. "Twice a year I dry the flowers and take them to Cali to buy us new clothes and medicines. It's not much, but it's a little better than growing coffee."

Both farmers said that while they did not smoke the stuff themselves, they liked the profits as much as they disliked the risks.

It never occurred to either cultivator that someday they might help Colombia's balance of payments by selling their marijuana to their own government rather than to the black market. But it has occurred to others.

(Excerpt from hearings)

Subcommittee on Internal Security

of the

Committee on the Judiciary

UNITED STATES SENATE

May 8, 1975

on

Marihuana-Hashish Epidemic And Its Impact on United States Security

Mr. MARTIN. Mr. Jenson, you attended the International Commission on Narcotic Drugs conference in Geneva last month. Was the question of marihuana discussed at that meeting?

Mr. JENSON. Yes, it was. It was one of the most discussed items at the Geneva convention because there was a great concern on the part of many countries that are members of this convention that there was a trend toward liberalizing, or legalizing, or decriminalization of the marihuana laws in the United States; and this gave great concern to those countries that consider marihuana just as significant, if not more significant a problem within their countries, within their boundaries, than some of the other drugs that the United States considers to be the most harmful drugs, such as heroin.

They feel that if the United States does not pursue with the same vigor the laws relating to marihuana, that this will help to enhance the trafficking of marihuana in those other countries; and this they are very much opposed to. And, if we did take that course of action, it's very possible that we would have great difficulty—possibly it would be impossible—to encourage or to enlist the support of foreign governments such as France and Mexico in the fight to eliminate the trafficking of heroin and those other drugs if we do not continue to enforce the marihuana laws.

Mr. MARTIN. Did they pass a resolution on the subject?

Mr. JENSON. Yes; there was a resolution that was passed to that effect, that the efforts would continue by all of the parties to the Single Convention; that there would not be any reduction in the momentum of the effort that is being applied to limit the problem of drug trafficking and the usage of marihuana.

Mr. MARTIN. Was there any division on this resolution?

Mr. JENSON. No. It was a unanimous vote, passed unanimously.

Mr. MARTIN. It had the support of the Communist countries as well as the non-Communist countries?

Mr. JENSON. That's correct. Russia and Yugoslavia were both represented and were strongly in support of the passage of this resolution.

Mr. MARTIN. Would you be able to provide a copy of this resolution for the record?

Mr. JENSON. Yes, sir.

[The information referred to follows:]

Text of resolution adopted February 24, 1975, by the U.N. Commission on Narcotic Drugs meeting in Geneva

The following resolution, which was recommended for adoption by the Economic and Social Council of the UN, was sponsored by the Federal Republic of Germany, Australia, Egypt, France, India, Sweden, Switzerland, Togo, USSR, Yugoslavia. It was approved by a vote of 26–0, with one abstention (Iran).

"The Economic and Social Council,

"(A) referring to the provisions of the Single Convention on Narcotic Drugs, 1961, in particular to Article 2, Paras. 1 and 5, Article 4(B) and (C) and Article 35 (B) and (C),

"(B) recalling that cannabis and cannabis resin, in addition to being listed in Schedule I of that Convention, are also included in its Schedule IV,

"(C) reaffirming that, in view of the numerous findings of scientific research on cannabis, there can be no doubt as to the harmful nature of cannabis,

"(D) noting with concern the recent increased availability in many parts of the world of new concentrated forms of cannabis, such as the so-called 'liquid cannabis,' 'liquid hashish,' or 'oil of cannabis,'

"(E) considering that cannabis and drugs derived from cannabis have lost their original medical role and are the most frequently abused drugs and that this fact requires joint action by all countries parties to the International Convention on Narcotic Drugs,

"(F) realizing that a reduced control regarding cannabis and drugs derived from cannabis in one area might create an important source of supply of, and illicit traffic in the same substance in other areas,

"1. recommends to all countries and competent international organs and organizations not to lose momentum in taking appropriate measures against cannabis abuse, supply of cannabis and cannabis resin, and, in particular, illegal trade and traffic in cannabis and drugs derived from cannabis, in order not to endanger the success of global and regional efforts in this field;

"2. draws to the attention of governments the desirability of taking all practicable measures for the treatment, rehabilitation and education of abusers of cannabis;

"3. urges that scientific research in relation to cannabis should be continued and accelerated;

"4. requests the Secretary-General to inform all governments of this resolution, inviting them to take action for its effective implementation, in accordance with the pertinent provisions of the Single Convention on Narcotic Drugs, 1961."

Mr. MARTIN. By the way, what is meant when people talk about decriminalization? I think it might be helpful to clarify this.

Mr. JENSON. I would like to defer to Mr. Rosthal, if I may, on that point, he being the lawyer, and let him describe the difference between decriminalization and legalization and all the other terms used in this area.

Mr. ROSTHAL. There is some confusion about it; but I think basically what we mean by legalization is a State or the Federal Government permitting the sale of marihuana much as they permit the sale of alcohol and tobacco. That would be legalization.

Decriminalization goes to the penalty structure; that is, you say it is not a felony, it is not a misdemeanor; it is a matter that can be treated as in S. 1450 which I believe is before the committee now. S. 1450 would treat some types of marihuana possession as a fine and not as a conviction for a crime.

Mr. MARTIN. Would you feel competent to express an opinion on whether or not decriminalization or legalization would put us in conflict with the terms of the U.N. Single Convention?

Mr. ROSTHAL. You've got to separate the type of offenses when you're talking about the Single Convention. For example, there is no doubt in my mind that we could never penalize trafficking by fine. I think the Single Convention is very clear; that the more dangerous, the more criminal, and the more coordinated offenses which are possible with the drug must be punished by criminal sanctions. On the other hand, if you were to ask me if simple possession, which is a misdemeanor under our Federal law today, could be treated in a fine situation, where there was no criminal result, but there was a penalty, there must be a penalty, I would say—and there are lawyers who might disagree with me—but I would say that the fine would meet the strictures of the Single Convention for simple possession.

Mr. MARTIN. You pointed out in your testimony, Mr. Jenson, that under the Controlled Substances Act of 1970, youthful first offenders are placed on probation rather than being sent to prison. This legislation, I believe, has been copied by a majority of our States, has it not?

Mr. JENSON. Yes, it has. I don't have the exact count now, but I know it represents something like 38 of the 50 States.

Mr MARTIN. Are many youthful offenders in fact being sent to prison for simple possession of a few joints of marihuana? Do you have any impression of the situation nationwide?

Mr. JENSON. No; there are a relatively small number of those persons charged with simple possession that actually ever serve any time, that actually ever go to jail.

Mr. MARTIN. The majority of them are let off on probation or their cases are dismissed?

Mr. JENSON. That's correct.

Mr. MARTIN. The fact that there were more than 400,000 arrests nationwide last year, 420,000, for the simple possession of marihuana, has been interpreted as signifying that our law enforcement authorities are engaged in some kind of national manhunt for pot smokers. Do you think there has been such a manhunt?

Mr. JENSON. No; I disagree completely.

I think that sometimes that is misleading. When the people that are referred to, the 400,000—when the cases are actually examined, quite often the charge is simple possession, but in fact those persons were engaged in more than simply possessing marihuana. But it just happened that the only chargeable offense at the time they were arrested was the possession charge. It's extremely difficult to actually penetrate these organizations, or to actually get a direct hand-to-hand purchase of evidence from many of these individuals, because they only deal with people that they know. And so, the cases that are built on these people are built on a basis of surveillance. Agents conduct lengthy surveillances. They see individuals in the business of

transferring drugs. But the actual arrest, quite often, is for the possession part of the offense, as opposed to the actual transfer or sale of the drug.

Mr. MARTIN. Your own agency is concerned primarily with discouraging use by disrupting and discouraging traffic. Is that correct?

Mr. JENSON. That is correct.

Mr. MARTIN. Do you feel that the laws governing cannabis traffic are adequate as they stand today? For example, are cannabis traffickers treated as stringently as traffickers in other drugs?

Mr. JENSON. No; the penalties as they relate to cannabis under the Controlled Substances Act are one-half that of those applicable to the so-called hard drugs, such as heroin and cocaine. The sentence for the violation involving marihuana would be 5 years and a $15,000 fine, whereas with heroin it would be double that.

Mr. MARTIN. Why do they make this distinction?

Mr. JENSON. The reason why is that the penalty structure relating to marihuana at the time that this law was enacted was designed with the idea that the penalties applicable to marihuana should be less than those that would be applicable to the hard drugs inasmuch as marihuana was not considered as serious a problem as, say, heroin.

Mr. MARTIN. Is it considered a narcotic drug?

Mr. JENSON. Not under the Controlled Substances Act. It is considered a hallucinogenic drug. However, under the Single Convention of the United Nations Single Convention, it is classified as a narcotic.

Mr. MARTIN. Doesn't this put the Controlled Substances Act in conflict with the Single Convention on the definition of marihuana?

Mr. JENSON. Yes, it does.

Mr. MARTIN. I would like to jump here at this point to one of our next witnesses, Dr. Coy Waller. I will not ask you for your statement at this point, Dr. Waller. You are the director of the Institute for Pharmaceutical Sciences of the University of Mississippi and have had a lot of experience in cannabis research. Would you consider cannabis to be a narcotic drug?

Dr. WALLER. If we are looking really at the pharmacological effects on the central nervous system, it does somewhat fit the pattern of a narcotic drug. It has analgesic and soporific type of action.

Mr. MARTIN. And is this view shared by other pharmacologists with whom you have been associated in your research?

Dr. WALLER. I am mainly a chemist working closely with them, and by osmosis and so forth I do have feeling for the data. The data does say that it has a central nervous system action, very much like a narcotic.

Mr. MARTIN. Thank you. We will come to your presentation a bit later, Dr. Waller.

What about the sentences being imposed by our courts, Mr. Jenson? From what I know of your operations, you had some really massive cases involving 10,000 pounds, 20,000 pounds, 30,000 pounds of marihuana, and one case involving 11,000 pounds of hashish. Now, are the courts throwing the book at these major traffickers when they are convicted?

Mr. JENSON. By no means. To the contrary, for the most part they are very light sentences that are being handed out by the courts. We have seen sentences of 2 and 3 years, and quite often probation, for

cases involving significant quantities of drugs being not only distributed, but smuggled into the country.

Mr. MARTIN. Why do you think the judges are so disposed to be so lenient in the case of marihuana traffickers? Would you be prepared to venture an answer to that?

Mr. JENSON. It is difficult to say what is in the minds of the judges, but I think to a great extent they are, like the general public, not fully informed as to what the true facts are with respect to marihuana, how serious a threat it is, what problems it really does present to society. As a result, some of them are taking the position that, when in doubt, it is better to hand out a rather soft sentence or a light sentence as opposed to handing out the more severe or longer sentences.

Mr. MARTIN. Do you think many of the judges believe the scuttlebutt which is pretty widespread that it is a relatively harmless drug?

Mr. JENSON. I could not say what they actually believe. Again it would be difficult to determine what they are thinking about it, but it is my opinion that they have been influenced by this proliferation of information from various organizations and movements over the past years that try to say that marihuana is a harmless substance.

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The Leaflet

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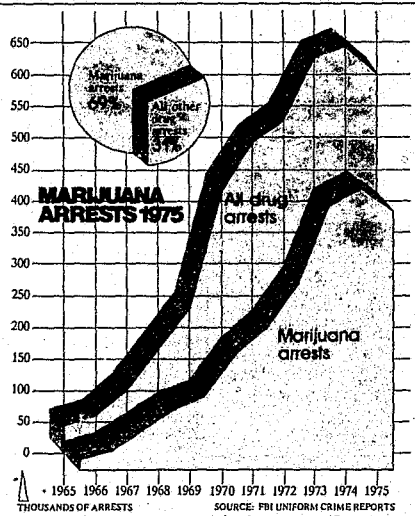


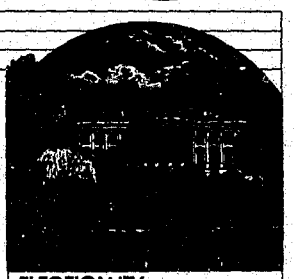
FEWER MARIJUANA ARRESTS IN 1975

Marijuana arrests, which peaked at nearly one-half million in 1974, declined last year for the first time in more than a decade. The FBI's Uniform Crime Reports, released in August, show 416,100 arrests for marijuana related offenses in 1975, compared with 445,600 in 1974.

It is too early to measure the effects of the new marijuana decriminalization laws. But changing public attitudes and enforcement priorities have already helped reverse the trend in arrests. Many local jurisdictions now routinely treat minor marijuana infractions with small fines or use diversion programs to get offenders out of the criminal justice system. (See story page 3).

California's new marijuana law didn't become effective until January, 1976. Still, 1975 figures dropped almost 14,000 with a reported 85,757 arrests across the state.

Yet, there is little reason to start cheering about the decline. The annual arrest figures are hefty, averaging 1,140 each day in 1975. That works out to nearly 35,000 arrests a month. The nationwide total for 1965 only reached 18,815. An even more sobering fact is that 7 out of every 10 drug arrests in this country are for marijuana. While society is clearly concerned about hard drug problems, police resources remain concentrated on pot smokers. What is the American tax payer's tab for all of this? Over one-half billion dollars a year.■



ELECTION '76: CARTER AND FORD ON MARIJUANA

by Larry A. Schott

Where do the Presidential candidates stand on marijuana decriminalization? On the record, Jimmy Carter supports it and Gerald Ford doesn't. But their private feelings may not be so far apart.

After all, they share something in common with millions of parents across the country: their children have smoked grass. Jack Ford, 24, readily admits he has smoked it and his brother Michael, 26, a theology student, says he's tried it too. Carter's sons Jack, 29, Chip, 26, and Jeff, 24, have also smoked pot. All say they no longer use the stuff.

Not surprisingly, Jimmy Carter and Gerald Ford each are quick to point out that they have never tried marijuana and don't intend to. Moreover, both nominees say they will work hard to stop the flow of all illegal substances into the U.S. ☞ 5

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DEA Administrator, Peter B. Bensinger

U.S. Senator Birch Bayh

BAYH SAYS NO DRUG BILL WITHOUT DECRIMINALIZATION

Senator Birch Bayh. (D-Ind.) has announced that marijuana decriminalization will be part of a major drug enforcement package to be introduced in Congress early next year. Bayh is Chairman of the Senate Subcommittee to Investigate Juvenile Delinquency, which is writing the legislation. The bill's main thrust is aimed at top-level narcotics traffickers and will substantially increase the risk of being in the heroin business.

Bayh said the Subcommittee will include a provision similar to the Oregon law, and will call for the possession of small amounts of marijuana under federal law to be changed from a criminal to a civil offense. The maximum fine would be $100 with traffic-like citations replacing arrest. Criminal penalties for selling marijuana, however, would remain intact. Bayh wants the bill to serve as a model for states that will decriminalize marijuana in the future.

Hearings were held last summer by Bayh on the bill that President Ford requested in his drug abuse message to Congress. Ford's bill (S. 3411) would require minimum mandatory sentences for persons convicted of selling heroin and narcotic drugs. But Bayh is not satisfied with the administration's proposal and thinks that it uses the wrong approach for limited federal resources. What is needed, he said, are tough mandatory penalties for the kingpins of hard drug trafficking, not street level addicts. Moreover, Bayh wants to send the tax collector after big time heroin dealers.

> "I'm uneasy with the way criminal statutes deal with marijuana."
> Sen. Birch Bayh

Legislation to fight drug abuse, Bayh pointed out, should also take into account the reality that drugs such as marijuana are not as dangerous as others. "I am uneasy with the way criminal statutes deal with marijuana," he said.

Peter Bensinger, head of the U.S. Drug Enforcement Administration, told the Subcommittee that marijuana is not a federal priority. When asked about his views on decriminalization, Bensinger ignored five years of government reports failing to link marijuana and serious health threats. "I don't think we have enough knowledge medically," he said.

"Do you think we will ever get enough information so it won't be a political hot potato?" Bayh shot back. "I think we better stand up and face realities," he said. "If we're going to go after the heroin kingpins, we are going to have to summon up all the prosecutorial and law enforcement resources we can. As long as we have the statutory temptation in other areas, I fear we are not going to do as good a job as we could."

Later in the hearings, Dr. Robert DuPont, Director of the National Institute on Drug Abuse, said that he concurred completely with Bayh on marijuana. DuPont also added that the available evidence suggests there has been no increase in marijuana consumption associated with decriminalization.

US DRUG AGENCY UNDER FIRE . . . AGAIN

A Senate Subcommittee report has called federal efforts to combat illicit drug traffic a failure. The report was released in July by the Permanent Subcommittee on Investigations, a unit of the Government Operations Committee. It has strong words for the U.S. Drug Enforcement Administration, scoring the beleaguered agency for concentrating on street level undercover "buy-bust" techniques instead of going after top level narcotics dealers.

"DEA's track record has not been good," the report said.

It is the second government report in less than a year to criticize DEA. In September, 1975, a special task force of the White House Domestic Council charged that U.S.

drug enforcement efforts suffered from DEA's misplaced priorities and internal problems. One of its recommendations: de-emphasize anti-marijuana efforts.

The DEA was created three years ago not by an act of Congress but as a reorganization plan of the Nixon administration, to consolidate federal drug enforcement functions. Since then, it has been plagued by bad judgment, corruption, mismanagement, and bickering with other agencies. All the while, the nation's drug abuse dilemma steadily worsened.

John R. Bartels, the agency's first administrator, was fired by Attorney General Edward H. Levi last year amid an embarassing Justice Department investigation. At least a dozen other senior DEA officials have been reassigned or transferred. The latest to get the axe is Vince Promuto, an ex-pro football player who was once paid $32,000 a year as Director of Public Affairs. He was fired in July, after being charged by internal DEA auditors with "dishonest conduct" involving government credit cards and travel. Promuto was a central figure in the Bartels affair and had been under investigation for ties to organized crime figures. Shortly before Bartels was canned, Promuto was demoted and exiled to DEA's New York regional office.

The Permanent Investigations Subcommittee is continuing its examination and the hearings may well decide what future, if any, is in store for the DEA.

THE PRESIDENT'S MEN AND MARIJUANA

Two familiar names recently returned to Capitol Hill and had a few words to say about marijuana. Watergate alumni John Ehrlichman and Egil Krogh came back to Washington to testify before the Permanent Investigations Subcommittee's hearings on the problem-prone Drug Enforcement Administration.

They talked about the Nixon blueprint for drug enforcement. Drug suppression is a "very sexy political issue," Ehrlichman said, and it usually has high media visibility. The White House wanted to be involved, he recalled.

Ehrlichman has mellowed since he faced the Watergate Committee three years ago. At the White House he was one of Nixon's closest advisors. Now, living in New Mexico, his lifestyle is different and, so it seems, are his views. Responding to a question by Senator Charles Percy, (R-Ill.), Ehrlichman said, "Marijuana policy should be left up to the states, a local option. It probably doesn't even belong as a federal matter."

Krogh agreed. Once the youngest member of Nixon's cabinet (an Undersecretary of Transportation at 33), he was given responsibility for drug matters after joining the White House. He told Percy that he too supported marijuana decriminalization. "It is wrong to jail young people for possessing pot," he insisted. Percy concurred.

Back in 1969, Krogh was the architect of "Operation Intercept," the ill-fated marijuana blockade on the U.S.-Mexican border. He was also head of the White House plumbers, and later served 4 months and 17 days in prison for his role in Watergate. Now he works for an ice cream company in San Francisco.

For Ehrlichman, prison will have to wait. He recently won a reprieve on his 20 month to 5 year prison sentence while he appeals his Watergate conviction to the Supreme Court.

After the hearing, Ehrlichman was asked by a reporter if he had smoked marijuana. He smiled broadly and said, "No comment."

LOCAL GOVERNMENTS AND DECRIMINALIZATION

While eight states have dropped criminal penalties for minor marijuana offenses, several local governments have also acted. In 1971, Ann Arbor, Michigan, led the nation with the first traffic-ticket marijuana ordinance. Over the past few years, other villages, cities, and counties have also adopted ordinances decriminalizing the possession of marijuana.

There are now at least fifteen such ordinances that call for only a fine, and no jail sentence. In four cities, the maximum possible fine is $5.

This local action reflects a separate yet parallel movement within communities to adopt common sense laws dealing with marijuana. The ordinances were passed by City or County Councils and in some cases, by voter referendum. About one-half of the states have some provision in their constitutions giving municipalities the option to adopt lower penalties for offenses of local concern.

NO ARRESTS. The Ann Arbor ordinance was originally passed by the City Council, repealed, and later permanently restored by voter referendum. It provides for a maximum $5 fine for the use, possession or sale of any quantity of marijuana. Instead of arresting an offender, the ordinance requires police to give a parking-ticket citation. It also requires that the city's parking violation procedures be used for collecting the fine. Moreover, the ordinance expressly forbids city police officers and prosecutors from referring a marijuana case to the state police for prosecution under the tougher state law.

Much of the push for the Ann Arbor ordinance came from students at the city's University of Michigan campus. Three other university towns have also adopted marijuana ordinances—East Lansing, home of Michigan State; Ypsilanti, home of Eastern Michigan University; and Oxford, Ohio, home of Miami University.

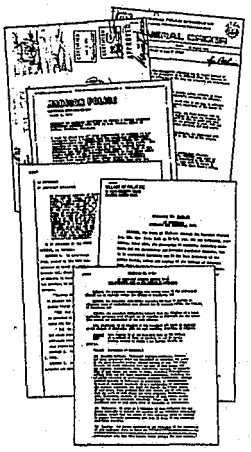
The Ypsilanti ordinance, adopted in 1974, and the Oxford ordinance, adopted in 1975, call for a maximum $5 fine for first and subsequent offenses. The East Lansing ordinance, passed in 1971 and later amended, provides for a $5 fine for the first time, $10 for the second offense and $100 for a third offense.

Though jail penalties are gone, the fines of some local laws can be stiff. Earlier this year, two villages in Illinois adopted marijuana ordinances and in each case the maximum fine can range up to $500. In Deerfield, possession of up to 30 grams of marijuana (slightly more than 1 ounce), is subject to this fine as is possession, sale or cultivation of up to 10 grams of marijuana in Palantine. Seattle, Washington, also has a $500 maximum fine for possession of marijuana which it adopted in 1974.

The fines actually assessed, however, generally are lower than the maximum allowed. In Seattle, Roger Roffman, a professor at the University of Washington and NORML State Coordinator, compared the dispositions of a random sample of 30% of adults given marijuana citations by the city police in 1975. He found 39% of the group had the case dismissed or dropped without any fine being imposed, and 42% were given a small fine, usually about $50-$75.

In other areas, Atlanta, Georgia, adopted an ordinance earlier this year containing a maximum $250 fine for possessing up to one ounce of grass. Six municipalities in Wisconsin also have marijuana ordinances, including Brookfield, Cudahy, Shorewood, South Milwaukee, St. Francis, and West Allis. Their maximum fines range from $200 to $250. In Milwaukee County, the Board of Supervisors adopted an ordinance last year making possession of up to an ounce of pot on county property subject to a fine of $50-$200, or informal probation.

INFORMAL POLICIES. In many states, local prosecutors and police departments have instituted policies which can operate informally without an ordinance. Aimed at conserving law enforcement time, the policies generally call for citations instead of arrest, and diversion programs instead of prosecution, for minor marijuana cases. For example, the police chief of Austin, Texas, has established a "field release citation program" for persons possessing up to four ounces of marijuana. Dozens of other cities and counties, including Washington, D.C., Sacramento, California, and Cook County, Illinois, have procedures for diverting persons arrested on marijuana charges out of the criminal justice system and into an education program.



There is one local law which has a greater marijuana penalty than the state law. In 1974, the Denver City Council passed an ordinance making possession of ½ ounce of pot punishable by up to 90 days in jail and a possible fine of $300. This was significantly lower than the state penalties at the time, but the new Colorado law, which took effect July 1, 1975, has a maximum fine of only $100 for possession of up to one ounce. Unfortunately, the Denver Police Department opposes the new state law and continues to use what is now a harsher city ordinance.

The Ann Arbor approach is still the best of the local ordinances. And it even provides for its own "self-destruction" if the Michigan state legislature adopts anything less than a $5 grass law.■

CALIFORNIA REDUCES MORE PENALTIES; EXPANDS RECORD DESTRUCTION

by Gordon S. Brownell, West Coast NORML Coordinator

Two bills recently passed in California reduce penalties for felony marijuana offenses, and expand the record destruction procedures of California's new marijuana law.

Indeterminate sentences, which could range to life imprisonment, were abolished and several felony marijuana penalties changed by S.B. 42, a bill authored by state senator John Nejedly (R-Contra Costa). The law will become effective July 1, 1977.

Under the current penalty system, cultivation and possession of marijuana with intent to sell can land an offender up to 10 years in prison for a first offense and up to life for a third conviction. Under the new law, the judge will set a fixed term of imprisonment, either 16 months, 2 years, or 3 years. Sale of marijuana, which now carries 5 years-life, will be either 2, 3, or 4 years under the new law. And the most severe marijuana offense in California, furnishing to a minor, will be a maximum sentence of 5 years instead of 10 years-life for a first offense. The maximum sentence for possession of "concentrated cannabis" was reduced from 5 years to 3 years though it can be treated optionally as a misdemeanor.

The legislation is intended to be retroactive and will have a definite impact on the release dates of individuals now serving felony sentences in California state prisons.

Another important bill (A.B. 3050) by state assemblyman Alan Sieroty (D-L.A.), revises record destruction procedures for persons convicted of marijuana possession prior to January 1, 1976, and enables persons convicted of a number of other minor marijuana offenses to have records of their prior offenses destroyed. It becomes effective January 1, 1977.

A key provision of the bill forbids an employer from asking about specified marijuana convictions more than two years old. Persons effected by the change can state that they have not been arrested or convicted of those offenses when responding to questions concerning a prior criminal record.

The California Department of Justice estimates that it has 806,000 entries of marijuana arrests which would be eligible for destruction under A.B.3050, involving approximately 460,000 persons.

NORML supported the enactment of both S.B. 42 and A.B. 3050.■

US EASES PAROLE GUIDELINES FOR POT

The U.S. Parole Commission, in response to a petition filed by NORML, has revised its guidelines for paroling prisoners in federal correctional institutions. The guidelines indicate the "customary" time an inmate must serve before release on parole, and are based in part on a six-level "severity" rating system of the offense committed.

The change, effective October 4, 1976, lowers simple possession of marijuana, hashish, and other non-narcotic drugs into the least serious category of offenses. This means that persons convicted of these offenses will generally be released on parole earlier.

Also changed by the Commission were their guidelines involving immigration law violations and offenses involving explosives, increasing the severity rating of each.

While the new guidelines treat marijuana and hashish the same for offenses involving simple possession of small amounts, the Commission rejected NORML's proposal to also treat marijuana and hashish the

same for offenses involving possession with intent to distribute and sale. The guidelines continue to define hashish as a "soft drug," a classification which has higher severity levels than marijuana for offenses other than simple possession. "Soft drugs" include the amphetamines, barbiturates, LSD, and hashish. The "hard drugs" category, which has higher severity levels, is defined to include heroin, morphine, opiate derivatives or substitutes. The Commission also chose to include cocaine in this category.

SOME AMBIGUITY. There is some ambiguity in the guidelines as to whether the decreased levels for possession offenses apply to prisoners who have already received their initial parole hearing. NORML has petitioned the Parole Commission for a clarification, requesting that the decreased levels for possession offenses be made fully retroactive.

The Parole Commission was created by Congress earlier this year as an independent agency within the Department of Justice. It repiaces the U.S. Parole Board. The nine Commissioners are appointed by the President and approved by the Senate.

The Commission proposed new parole guidelines in May, and called for public comments before taking final action. NORML's comments were filed by Peter H. Meyers, Chief Counsel, and Judith L. Klein, a legal intern in the National office. The Association for the Advancement of Psychology, 14 prisoners, and a number of probation officers, prosecuting attorneys and other individuals also filed comments.

Of the 22,191 prisoners now in federal institutions, 1,184 were convicted for marijuana offenses and 508 were convicted for other nonnarcotic drug offenses. Since neither the Parole Commission nor the U.S. Bureau of Prisons keeps statistics breaking down offenses into simple possession and sales categories, it is impossible to determine the exact number of inmates who would be effected by the lowered severity levels if they were made fully retroactive.

More men and women are in prison today than at any time in this nation's history. There were 249,716 persons in federal and state prisons on January 1, 1976, more than one-half of whom were under 30 years old. The number of prisoners this year was 10% more than last year.■

ELECTION '76 continued

CARTER MONDALE

STRONG ADVOCATE. Jimmy Carter was an early supporter of marijuana decriminalization in the campaign. Responding to NORML's presidential candidate survey in January, Carter said he "favors a modified form of marijuana decriminalization, along the lines of the Oregon law." He feels "this legislation should be left up to the individual states themselves." In a direct mail funding appeal before the Florida primary in March, Carter told potential contributors, "you and I will agree on some issues, disagree on others . . . I favor decriminalization of marijuana." Vice-Presidential candidate Walter Mondale shares Carter's views.

Rosalynn Carter, like Betty Ford, was the one to reveal to the press that her sons had tried marijuana. In an interview with Lynn Olson of Associated Press in September, Mrs. Carter added that she didn't worry about the behavior of her children as long as they confide in her. "The only time I worry about my children doing something like smoking marijuana," she said, "is if I thought they were slipping around and doing it and not letting me know about it." At a press conference the next day, Carter remarked that he wished his sons hadn't tried grass, but said he thinks "it's something most teenagers go through." The Carter's three sons are all married.

Ford Dole

PROBABLY MODERATE. Betty Ford first talked about her family and marijuana in 1974. "I'm sure the children have tried it," she told a reporter. At the same time, Mrs. Ford was asked if she thought the law for smoking grass should be softened. "I think that is a possibility," she said. A year later, she speculated on CBS's "60 Minutes" that if marijuana had been prevalent when she was young, she probably would have tried it herself.

Ford's position on marijuana is probably moderate, but he did shift to a harder line with the emergence of Ronald Reagan's candidacy. The Ford-Dole campaign office declined to issue an updated statement on marijuana. Still, the President has expressed support for lower possession penalties, and has been characterized as having an "open mind." Asked about decriminalization during the New Hampshire primary, Ford said:

"Personally, I do not approve of the use of marijuana and believe that it's use should be strongly discouraged as a matter of national policy. I do not support decriminalization because I believe that this would be interpreted by potential users and by other nations as a signal that the U.S. government no longer opposes marijuana use. I do, however, support reduced federal penalties for simple possession, such as those contained in the proposed Criminal Justice Reform Act of 1975 (which would reduce penalties to a maximum of 30 days)."

President Ford has said that he's been influenced by his children's beliefs. In his words, they have given him a "new perspective, a broader view." Jack Ford, who calls for decriminalization when campaigning, believes his father is all right on the marijuana issue. "Don't worry, Dad's a pretty cool guy," he told Illinois NORML's Dave Samber. "Give him some time."

WILD CARDS. Don't count out the impact of the alternative presidential candidates. Independent Eugene McCarthy, who at last count was favored by 6% of the voters, may be on the ballot in 40 states. He has long been a supporter of marijuana decriminalization. So has Roger MacBride of the Libertarian Party, as has the People's Party candidate, Margaret Wright.

Over all, the marijuana question hasn't come up much this election year. For example, only once in a swing through 17 communities was Jimmy Carter asked his position, and this came from a college audience. His answer was a stock reply that he's for decriminalization, but against legalization. Most recently, Rosalynn Carter told the same thing to a national TV audience on NBC's "Meet the Press." Ford is infrequently asked about marijuana. But the issue that haunted George McGovern four years ago no longer sparks campaign controversy. "People aren't as afraid of marijuana any more," one professional political observer recently noted. "They all suspect their own kids have been using it and nothing much has happened to them. They're more worried about booze these days."■

In the Courts

Peter H. Meyers
Chief Counsel

US SUPREME COURT WEAKENS SEARCH AND SEIZURE PROTECTIONS

The U.S. Supreme Court ended its 1975-76 Term in July with five separate decisions significantly weakening the Fourth Amendment's protection against unreasonable search and seizure. The Court:

Ruled 5-4 that police officers can constitutionally search the unlocked glove compartment of a car impounded for traffic violations, as part of a routine "inventory" of the car's contents. In this case, police had found a bag of marijuana in the glove compartment, and the defendant had been convicted of possession. The Court's opinion appears to leave open the question of whether a search of a *locked* glove compartment or trunk as part of a routine "inventory" would also be constitutional. *South Dakota* v. *Opperman*, 44 U.S.L.W. 5294 (July 6, 1976).

Ruled 7-2 that a heroin suspect observed by police as she stood in the open doorway of her home could be arrested without a warrant because the doorway of a house which is open to public view from the street is equivalent to any other "public place." *U.S.* v. *Santana*, 44 U.S.L.W. 4970 (June 24, 1976). The Court held earlier this Term that a warrantless arrest in a public place upon probable cause would not violate the Fourth Amendment.

Ruled 5-3 that the Fourth Amendment's exclusionary rule does not forbid the use in a federal civil proceeding of evidence seized unconstitutionally, but in good faith, by state police officers. *U.S.* v. *Janis*, 44 U.S.L.W. 5303 (July 6, 1976). The Court specifically left open the questions of whether evidence seized unconstitutionally by state police could be used in a state civil proceeding, and whether evidence seized unconstitutionally by federal police could be used in a federal civil proceeding.

Ruled 6-3 that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone* v. *Powell*, 44 U.S.L.W. 5313 (July 6, 1976). This decision means that, except in very rare instances, only the Supreme Court, and not the lower federal courts, can consider whether evidence obtained in an unconstitutional search was introduced in a state trial. With the Supreme Court's heavy caseload, it will hear only a small number of these cases.

Ruled 7-2 that Border Patrol officials at fixed checkpoints on U.S. highways near international borders may stop a vehicle and question its occupants about their right to be in this country, even without a reasonable suspicion that the vehicle contains illegal aliens. *U.S.* v. *Martinez-Fuerte*, 44 U.S.L.W. 5336 (July 6, 1976). Last Term, the Court held that *roving* border patrols could not stop a vehicle without a reasonable suspicion that it contained illegal aliens.

Herblock in The Washington Post

"We Were Told They Were 'Strict Constructionists'"

CALIFORNIA NORML ESTABLISHES AMICUS BRIEF PROGRAM

With the adoption of a new marijuana law last year, California NORML has been focusing more of its attention on the courts. A new program was established earlier this year for submitting *amicus curiae*, or "friend-of-the-court," briefs in cases involving the interpretation of the new law and on other important marijuana-related issues.

A committee was formed in April to select appropriate cases for the program. It consists of Gordon Brownell, West Coast NORML Coordinator, along with Bay Area attorneys Leo Paoli, Arthur Sohcot and Mark Soler. Working with six other attorneys, the *amicus* committee has begun selecting cases and filing briefs on behalf on NORML. The participating attorneys donate their services, with NORML paying the necessary expenses.

A top priority has been given to cases involving the record destruction provisions of the new marijuana law. This section, effecting about 500,000 persons convicted for marijuana possession who could now have their arrest records destroyed, has come under strong constitutional attack by the State Attorney General. The lower courts have split on the constitutionality of this section, and the issue has now reached the California Supreme Court. NORML has filed briefs supporting the section's constitutionality in a number of lower courts, and is representing several petitioners before the Supreme Court.

Amicus briefs have also been filed on behalf of persons who remain in state prison because of possession convictions under California's old marijuana laws. In one case involving an old possession arrest, NORML's brief helped get the prosecution dropped. An *amicus* brief has also been filed in the California Supreme Court in a case involving a school teacher who was dismissed for "moral turpitude" after a marijuana possession conviction. Another *amicus* brief was filed supporting the Right of Privacy in a case involving an old arrest for possession of 1.8 grams of marijuana in the home. Several other briefs are currently being prepared.

This important new legal program demonstrates how a state affiliate can effectively use the courts to

protect and expand upon legislative victories, and to provide support in other significant marijuana cases. For additional information, contact West Coast NORML, 2964 Fillmore Street, San Francisco, CA 94123.

PENNSYLVANIA MARIJUANA LAWS CHALLENGED

A constitutional challenge to Pennsylvania's marijuana laws was filed in September in Blair County, Pa., with the assistance of NORML and the American Civil Liberties Union.

The Blair County Courthouse is located in Holidaysburg, the home of the late Harry Anslinger. As Commissioner of the Federal Bureau of Narcotics between 1930 and 1962, Anslinger is credited for much of the misinformation and hysteria which swept the country and led to the adoption of the early marijuana laws. A plaque honoring Anslinger's contributions is displayed prominently inside the Courthouse.

Brought on behalf of a man charged with sale of $55 worth of marijuana to a police informant, this test case seeks to have the marijuana laws declared unconstitutional on a number of grounds, including a denial of equal protection because marijuana is classified with far more dangerous substances, including the amphetamines and barbiturates. The penalties contained in the law for marijuana offenses are also challenged as cruel and unusual punishment. Similar motions will shortly be filed for more than 20 other defendants who have been arrested on minor sales charges as part of a Blair County drug crackdown.

Alan Ellis, of State College, Pennsylvania NORML Legal Counsel, is the main attorney in the suit. *Commonwealth* v. *Dillon*, Cr. Act. No. 689-76, Court of Common Pleas for Blair County.

IN BRIEF

AUTOMOBILE FORFEITURE

● The South Dakota Supreme Court has interpreted that state's forfeiture law, which is similar to the laws in many other states, as authorizing the forfeiture of automobiles only when they contain felony amounts of marijuana or other controlled substances. Cars which contain misdemeanor amounts of controlled substances, such as the .4 oz. of marijuana involved in this case, are not subject to forfeiture to the state. Under present South Dakota law, possession of up to 1 oz. of marijuana is a misdemeanor, but the new marijuana law which will become effective April 1, 1977, makes possession of up to 1 lb. of marijuana a misdemeanor.

The South Dakota Supreme Court's decision also indicated that to justify forfeiture, the state would have to show that the vehicle was being used to "facilitate" the drug offense, and not merely that the drug was "contained in the vehicle at the time it was stopped." *State* v. *One 1972 Pontiac Grand Prix*, 19 Cr. L. Rep. 2236 (1976).

"PRESENCE" LAWS

● The Nebraska Supreme Court has held that the state's law which makes it a crime for any person "to visit or be in any room, dwelling house, vehicle, or place where any controlled substance is being used . . . [with] knowledge that such activity is occurring," is unconstitutionally vague and overbroad. The Court stated that:

"It is evident that the statute as written is broad enough to encompass entirely innocent behavior. Individuals may find themselves in situations such as at parties, theaters, dance halls, hotel lobbies, buses, apartments, taxis, or even private automobiles, where their conduct has no relation to the acts of others who may be disposed to use controlled drugs." *State* v. *Adkins*, 19 Cr. L. Rep. 2197 (1976).

Similar "presence" laws are in effect in about a dozen states, and courts in three states—California, Massachusetts, and Florida—have upheld the constitutionality of their law only after interpreting additional requirements into the law, such as control of the premises, or aiding and abetting the illegal activity.

PRETRIAL DIVERSION PROGRAMS

● The New Jersey Supreme Court has ordered major changes in the state's pretrial intervention programs (PTIs), which are used by local prosecutors to divert certain offenders out of the criminal justice system into rehabilitation programs, in lieu of prosecution. The Court announced that it would shortly adopt uniform statewide guidelines for these programs, but in the interim, the Court ordered all PTIs to change a number of their procedures, including: decisions on entrance into the PTIs must take into account the individual's potential responsiveness to rehabilitation, not just the nature of the offense charged; and, prosecutors must state their reasons for refusing an individual's request for diversion. Marijuana offenders are eligible for a number of these diversion programs. *State* v. *Leonardis*, 19 Cr. L. Rep. 2427 (1976).

● The D.C. Court of Appeals has upheld the constitutionality of the D.C. prosecutor's policy which requires that all persons who enter the "first offender" diversion program waive their rights to challenge their arrest or challenge any other aspect of the case. *United States* v. *Smith*, 19 Cr. L. Rep. 2015 (1976). The District of Columbia's "first offender" program covers possession of small amounts of marijuana and other non-violent misdemeanors.

RECORD EXPUNGEMENT

● The Florida Supreme Court has declared unconstitutional a portion of the state's law which requires the expungement (physical destruction) of arrest records when there is no conviction in the case. The Court called this provision "an unconstitutional encroachment by the legislative branch on the procedural responsibilities granted exclusively to this Court." The dissent responded that "minor interferences with a court's business . . . are clearly an insufficient basis upon which to invalidate a statute."

The Supreme Court did, however, uphold another section of the law which it saw as conferring the "substantive" right upon non-convicted defendants of having their records protected from public inspection. The Court ordered the records in this case, involving a marijuana defendant whose charges were dropped, to be sealed and retained by the lower court. These records can be reopened, the Court stated, "for good cause shown" when the "ends of justice might require it." *Johnson* v. *State*, 19 Cr. L. Rep. 2406 (1976).

MILITARY

● The U.S. Court of Military Appeals has held that it is a violation of equal protection for an Army private to be prosecuted for possession of marijuana under Article 134 of the Uniform Code of Military

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Justice, rather than Article 92, which has lesser penalties and which has been used for most marijuana cases prosecuted in the private's division. *U.S. v. Courtney*, 19 Cr. L. Rep. 2316 (1976).

The U.S. Court of Military Appeals has also held that a "health and welfare" team sent to inspect the living conditions in the barracks exceeded their authority in searching a soldier's clothing for drugs, and ordered the drugs found in the search to be suppressed. *U.S. v. King*, 19 Cr. L. Rep. 2231 (1976).

DEA

The U.S. District Court for Colorado has held that the Drug Enforcement Administration's (DEA's) surreptitious monitoring of a heroin defendant's conversations with her attorney was a "reprehensible" act which "irretrievably prejudiced" the defendant's Sixth Amendment right to assistance of counsel, and required dismissal of the indictment. *U.S. v. Orman*, 19 Cr. L. Rep. 2423 (1976).

The U.S. District Court for Massachusetts has dismissed a cocaine defendant's indictment because of the "bad faith" actions of DEA agents who were part of a federal-state Task Force. The agents destroyed notes of an interview with the defendant after he had subpoenaed them, and then prepared a back-dated report on the notes. *U.S. v. Pollack*, 19 Cr. L. Rep. 2421 (1976).

The U.S. Court of Appeals for the Ninth Circuit has held that the DEA's policy of shredding diaries and other records of paid informers is unreasonable, and the failure to produce the diary prepared by an informer who testified against a heroin defendant required reversal of the conviction. *U.S. v. Carrasco*, 19 Cr. L. Rep. 2302 (1976).

The U.S. Court of Appeals for the D.C. Circuit has held that the DEA's loss of a tape recording of a phone conversation between a cocaine defendant and an undercover agent does not require dismissal of the case. The Court stated that: "Although we cannot condone negligence of this sort, we do not believe it requires dismissal of the indictment." *U.S. v. Quiovers*, 19 Cr. L. Rep. 2285 (1976).

SEARCH AND SEIZURE

The Massachusetts Supreme Judicial Court has held that a search warrant for a drug suspect's apartment which authorized the search of "any person present" in the apartment was not overly broad. *Commonwealth v. Smith*, 19 Cr. L. Rep. 2282 (1976).

The U.S. Court of Appeals for the Ninth Circuit has held that Customs agents can make a border search of a boat if they have a "reasonable certainty" that the boat came from foreign waters, even without probable cause to believe the boat contains contraband. In this case, 880 pounds of marijuana were found aboard a boat in San Diego Bay. *U.S. v. Tilton*, 19 Cr. L. Rep. 2146 (1976).

The U.S. District Court for Massachusetts has held that police officers acted unconstitutionally in attaching a "beeper" to a drug suspect's car, without first getting a warrant. *U.S. v. Bobisink*, 19 Cr. L. Rep. 2355 (1976). Another recent case has upheld the warrantless attachment of a "beeper" to a car on the basis of probable cause and exigent circumstances. *U.S. v. Frazier*, 19 Cr. L. Rep. 2372 (8th Cir. 1976).

The Florida Supreme Court has upheld the constitutionality of a state statute which authorizes police officers to take blood samples from unconscious persons involved in automobile accidents to test for alcohol intoxication. *Filmon v. State*, 19 Cr. L. Rep. 2343 (1976).

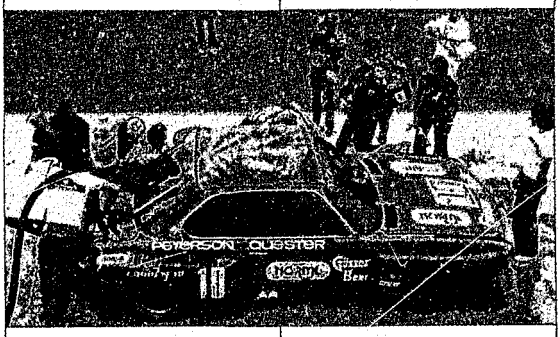
The U.S. District Court for Southern Texas has held that the University of Houston's policy for searching students entering the school's stadium and auditorium for bottles containing alcoholic beverages violates the Fourth Amendment. *Collier v. Miller*, 19 Cr. L. Rep. 2292 (1976).

OTHER CASES

The U. S. Court of Appeals for the D.C. Circuit has held that a convicted narcotics defendant was entitled to the return of $2,550 which was seized in his apartment but not linked to the drug offense or any other crime. *U.S. v. Wilson*, 19 Cr. L. Rep. 2349 (1976).

The Michigan Court of Appeals has held that a trial judge acted unconstitutionally in revoking the probation of an indigent person for failure to meet the $20-per-month payments on his $400 fine. *People v. Terminelli*, 19 Cr. L. Rep. 2396 (1976).

The U.S. Court of Appeals for the Seventh Circuit has held that a heroin defendant's convictions for engaging in a continuing criminal enterprise and for conspiracy to distribute narcotics, a lesser included offense of the criminal enterprise charge, were not barred on double jeopardy grounds. *U.S. v. Jeffers*, 19 Cr. L. Rep. 2128 (1976).



RACING TO A DIFFERENT DRUMMER. NORML logo's and marijuana leafs turned this Schnitzer BMW into a show-stopper. The car, driven by Ronnie Peterson and Dieter Quester, proved it was more than a pretty face. It finished 5th out of 34 qualifying entries in a 6-hour "Championship of Makes" running on July 10, at the Watkins Glen (N.Y.) Grand Prix Race Course.

Bob Randall

A NEW SERIES

CASUALTIES OF THE MARIJUANA LAWS

The outdated marijuana laws which are still on the books in most states are causing very real and unnecessary suffering for many people. Whenever possible, NORML is helping the victims of these laws. With this issue, THE LEAFLET begins a new series of reports on cases where the heavy hand of the law has been excessive and severe. In this edition, three cases are examined: Bob Randall, who stands to lose his eyesight and could go to jail; Roger Davis, a black man from a southern town who is serving forty years in prison; and, Jerry Mitchell, a 19-year old college student who was recently sentenced to twelve years by an Ozark circuit judge.

BOB RANDALL faces this dilemma: be a criminal or go blind. Randall, who is 28, has glaucoma. He is functionally blind in one eye and has seriously impaired vision in the other. He is being prosecuted in the District of Columbia for possession of a few marijuana plants that his doctors have certified he needs to keep from going totally blind.

The doctors say flatly that Randall's condition can no longer be adequately controlled by conventional medications. Randall has tried them all. In fact, he faces rapid blindness unless he is allowed to use marijuana, or chances a risky surgical procedure, which is not always successful and may even aggravate the condition.

> "All I'm asking is for the maintenance of my sight for as long as possible."

An estimated 1 million Americans suffer from glaucoma, an incurable eye disease that ranks as one of the leading causes of blindness in the U.S. Glaucoma increases the fluid pressure within the eye and eventually shuts off all sight. In many cases, the progress of the disease can generally be controlled by miotics, but, as in Randall's case, they often diminish in effectiveness over time. Some preparations can themselves cause eye damage through retinal detachment. In the past few years, however, marijuana has been found to be a significant new treatment. The tragic irony is that while the government hails the new treatment as "promising" it will not allow its legitimate medical use.

Before any research findings were published on marijuana and glaucoma, Randall began smoking marijuana in college. After smoking, he noticed something curious: the hazy rings seen around lights by glaucoma sufferers disappeared. He then participated in a marijuana research project on glaucoma at UCLA and got the same welcome results. Unfortunately, there were no similar research projects for him to enter in the Washington, D.C. area, where he moved to teach speech and rhetoric part-time at near-by Prince Georges Community College.

Randall has asked the federal government to exempt him from the drug laws so that he can use marijuana for his glaucoma. Three separate federal agencies are involved: the Food and Drug Administration, the Drug Enforcement Administration, and the National Institute on Drug Abuse. Officials of the agencies have indicated that an exemption might be granted if he would agree to smoke marijuana only in his doctor's office. But since Randall would need about five joints each day, it would require a burdensome rescheduling of his life for him to smoke only in his doctor's office, rather than at home.

"All I'm asking," Randall says, "is for the maintenance of my sight for as long as possible."

Earlier this year, Randall was arrested and charged with possessing a few marijuana plants found growing on his back porch. At his trial in the D.C. Superior Court in July, he admitted possession of the plants, but Randall's attorney, John Karr, argued that it was justified by his medical necessity. The trial judge has not yet issued his decision. NORML and the Playboy Foundation are assisting in Randall's case.

Until 1941, marijuana was listed in the U.S. Pharmacopeia, a standard physicians' drug reference, and was prescribed for a variety of illnesses. Under present federal law, marijuana is listed with drugs which are deemed to have no "currently accepted medical use." NORML has been petitioning the federal government since 1972 to recognize legitimate medical uses for marijuana. The petition is currently before the U.S. Court of Appeals for the second time.

The most recent report by the Department of Health, Education and Welfare, *Marihuana and Health* (1975), stated that the "most promising therapeutic applications" of marijuana are in the treatment of glaucoma and as an anti-emetic for cancer patients receiving chemotherapy and possibly in the treatment of asthmatics. Other therapeutic uses which are currently being investigated include its use as a sedative-hypnotic, as an anticonvulsant, and an alternative in treating alcoholics.

ROGER DAVIS is 30 years old and black. He was sentenced in 1974 to 40 years in the Virginia penitentiary

Roger and Carol Davis

and fined $20,000 for sale of 4 ounces, and possession with intent to distribute of about 6 ounces of marijuana. His story reads like a Southern Gothic novel, with elements of community hysteria, racial prejudice, and judicial insensitivity.

Davis grew up in Wytheville, a small town nestled in rural southwestern Virginia. Being black in the South has long been a reality for him. When he was 8, his father, a railroad worker, died after being savagely beaten. The white man charged with the killing received 3 years probation.

After graduating from high school, he held a variety of jobs and took some courses at the Wytheville Community College. But he also threatened the town's strict southern manners and morals, as he openly dated white girls and eventually married one. In one local view, he was "a black hippie leader, with the charm of a Pied Piper." The town's hostility to Davis included insults, deliberately picked fights, and finally, the burning of a cross one

"... Nobody gets 40 years for reefer!"

night on the lawn of his mother's small frame house.

Then, in 1973, the "drug menace" came to Wytheville. The only local newspaper, *The Enterprise*, began an anti-drug crusade, reminiscent of the "reefer madness" of the 1930's. Virtually every issue carried sensationalized stories and editorials. One front page editorial referred to the "sickening picture of terror and suffering" caused by marijuana and warned that "the use of marijuana by young Americans is a tremendous help to the Communists." Another issue emblazoned a page one picture of the local sheriff about to publicly burn a few ounces of marijuana which had been seized. The caption read: "Thousands of dollars worth of marijuana goes up in smoke."

The campaign whipped up the sleepy town's emotions. Citizens packed town meetings, the mayor issued statements of concern, and the town council passed an anti-drug resolution. And, in the midst of this frenzy, Roger Davis was arrested for allegedly selling about $10 worth of LSD. He was promptly convicted. But soon after, he was arrested again. This time the charge was marijuana.

At the trial, Danny Eads said he had bought the grass from Davis. A convict sentenced to 5 years for breaking into a gas station, Eads had been released from prison temporarily to make the "buy." He is 21 and white, and while in prison had been gang-raped by a group of black inmates. He had tried suicide and testified that he would have done "anything" to get out of prison.

Davis denied he sold marijuana to Eads, but was nevertheless found guilty by an all-white jury after a two-day trial. The Virginia Supreme Court denied him an appeal and Governor Mills Godwin rejected requests for a pardon or sentence reduction.

With the assistance of NORML and the ACLU, Davis filed a petition for habeas corpus in the federal courts earlier this year. Dr. Dorothy Whipple, a NORML Advisory Board member, was called as an expert witness for Davis at a hearing on the petition. Davis' appeal is being handled by Edward Hogshire, of Charlottesville. The judge has taken the case under advisement and is expected to reach a decision shortly.

Roger Davis still waits in prison. He recently told a Washington Star reporter:

"I look around me and see men serving 10, 15, 20 years, at the most for murder and rape and other crimes. They ask me how long I'm in for and when I tell them 40 years, they say 'Hey man, what did you do?' And when I tell them, they don't believe me. They say 'Hell, we've been smoking reefer for years

Jerry Mitchell (l.) and Mike Stepanian

and nobody gets 40 years for reefer.' And I tell them I did, but they don't believe me."

JERRY MITCHELL is a 19-year old college student from West Plains, Missouri, a small farming town whose main street is named for country singer Porter Waggonner. Like Wytheville, the townspeople worry that a drug problem may creep into the community.

Mitchell graduated from the local high school with a good record and reputation. Last fall, he entered college. Then everything changed. Earlier this year, he pleaded guilty to the sale of 11 grams of marijuana (about 1/3 ounce) for $5 to an undercover Highway Patrol officer. There was no profit involved and the exchange was made only as a favor and at the insistence of a neighborhood friend. He turned out to be an informer.

For this offense, Mitchell was sentenced to 12 years in the state penitentiary. He could have gotten life. The Missouri law is one of the harshest in the nation, providing for 5 years to life for the sale of any

He could have gotten life.

amount of marijuana, no matter how small.

When NORML was alerted to what happened, National Director Keith Stroup asked noted San Francisco criminal lawyer Michael Stepanian to meet him in West Plains. The first order of business: urge the court to reduce Mitchell's

sentence and allow him to be free pending his appeal. At a hearing in July, Stroup and Stepanian argued that the 12-year sentence was way out of proportion to the offense committed. The judge agreed to some extent, saying that he now saw a "ray of hope" for Mitchell. He then reduced Mitchell's sentence to 7 years and released him on bond.

Howard Eisberg, of Kansas City, NORML's Assistant State Coordinator, is the principal attorney working on the appeal to the Missouri Supreme Court. The appeal argues that the penalties contained in the Missouri law and the sentence given Mitchell violate the cruel and unusual punishment clauses of the federal and state constitutions. Moreover, the appeal asserts that the law denies equal protection because marijuana offenses are subject to the same penalties as offenses involving truly dangerous drugs, including the narcotics, amphetamines, and barbiturates. The state Supreme Courts in Illinois and Michigan, and a lower court in Connecticut, have declared their laws unconstitutional on this equal protection ground. NORML and the Playboy Foundation are funding Mitchell's appeal.

Mitchell, meanwhile, is back at his studies in political science and philosophy at Missouri State College.■

TEXAS JURY ACQUITS ON MOST MEXICAN JAILBREAK CHARGES

Three persons prosecuted for their participation in the raid last March on Piedras Negras jail, in Mexico, have been acquitted by a Federal Court of most of the charges against them after a three-day trial in Del Rio, Texas.

In the jailbreak, Mexican guards were held at gunpoint while cell doors were opened. Fourteen American men and women, most being held on drug charges, fled across the Rio Grande River into Texas.

Mike Hill, 32, was acquitted on the two most serious charges against him and convicted on two minor ones involving an unregistered sawed-off shotgun, even though Hill admitted all four charges from the witness stand. One of the other defendants, Billy Blackwell, was acquitted on two charges against him and the third defendant, Sterling Davis, was convicted on one of two charges.

Testimony at the trial described the horrible conditions at Piedras Negras jail, where 13 people were squeezed into an 8' x 7' cell, not even large enough for everybody to lie down and sleep in at the same time. Some persons freed in the jailbreak had been held in prison for more than 2 years. One woman had been arrested by the Mexican police for "conspiring" after visiting a friend in the jail.

Hill was represented without charge by Gerald Goldstein, of San Antonio, and Ed Mallett, of Houston, both members of the Texas NORML Policy Committee. The National office paid the expenses of three former prisoners, called by Hill as witnesses on the conditions at Piedras Negras. Hill is free on bail pending the appeal which will be filed shortly after sentencing in mid-October.■

POTPOURRI

NOTES

● One of the nation's toughest drug laws has flopped, says a U.S. government sponsored study. Three years ago, New York State's "get tough" law took effect with much fanfare. Now, after costing $55 million to administer, it hasn't worked. Not only has the law had no effect on drug traffic, the report by the New York drug law evaluation project suggests that it may have even made things worse.

The study found that "None of the key indicators of successful implementation have been evidenced: the risk of punishment facing offenders did not increase noticably; the number of drug offenders sentenced to prison declined; and the speed with which cases were processed did not improve".

● Alcohol and the tranquilizer Valium are responsible for the greatest amount of drug-related illness in the U.S., according to a federal report released last summer. The figures come from the government's $7 million Drug Abuse Warning Network (DAWN) and compare for the first time the ill-effects of both legal and illegal drugs. Marijuana showed up in about 4% of the incidents reported by emergency rooms, drug crisis centers, and other treatment facilities across the country. While the study broadens the nation's drug abuse focus, it has two deficiencies. First, incidents are reported without an indication of seriousness; and, alcohol is reported only when it shows up in combination with other drugs. So, while even phone inquiries about marijuana would be tabulated, cases of common drunkenness would not.

● Two privately sponsored studies have concluded that the U.S. government's Law Enforcement Assistance Administration (LEAA) has accomplished very little and should be abolished. A Twentieth Century Fund task force and the Center for National Security studies have both charged that LEAA has had no significant effect on crime despite having spent more than $4 billion. Even a $2.4 million evaluation conducted by the Mitre Corporation and paid for by LEAA itself, reported earlier this year that program results in 8 key cities have fallen considerably short of expectations. Established in 1968, LEAA provides high level federal funding for state and local crime fighting projects, including controversial drug enforcement strike forces. Dismantling of LEAA in the near future seems unlikely, however, since the many regional bureaucracies it has created can be expected to wage an intensive battle for survival.

● More changes in foreign drug laws have been reported. The Netherlands Senate gave final approval earlier this year to legislation that reduces penalties for possessing small quantities of marijuana, hashish and hard drugs for personal use. The penalties for trafficking in hard drugs, however, double when the new law takes effect. And Italy is reported to have dropped penalties for the possession of small amounts of marijuana or hashish for personal use.■

ROSE FIRST, POT SECOND

Don't expect to be able to order marijuana delivered with a card any time soon, but a poll taken by the Florists Telegraph Delivery (FTD), to help determine the national flower, shows grass as the leading write-in candidate. The rose was the unsurprising winner.■

POTPOURRI

FIFTH ANNUAL NORML CONFERENCE

Hunter S. Thompson and Dr. Peter Bourne will be among the program participants at NORML's Fifth Annual Conference. The Conference will be held at Washington's new Hyatt Regency Hotel, Dec. 10-12, 1976.

Thompson, who will give the Conference's opening remarks, has been called "irreverent" and "inspired". Author Kurt Vonnegut, Jr., thinks he's the "most creatively crazy" of the New Journalists. Be there and find out for yourself. Dr. Bourne is one of Jimmy Carter's closest advisors, and Deputy Campaign Director. He established Carter's Georgia Mental Health and Drug Abuse Programs, and later served with the White House Special Action Office for Drug Abuse Prevention.

Featured at the Conference will be a review of the marijuana issue and a look ahead, plus a check of the new laws and how they are working. In addition, the latest medical research, legislative programs, and legal strategies will be examined. The discussion panelists will include NORML Advisory Board members, State Coordinators, and nationally-known experts.

Registration for members is $55. Included are Friday night's Keynote Dinner, two additional meals, and all Conference sessions. Non-members will be charged an additional $15.

Register before December 1, 1976, and avoid a $5 late fee.

Write now for further information and registration materials to: NORML Conference, 2317 M Street, NW, Washington, DC, 20037.

Come to Washington for a weekend and help kick off NORML's Campaign '77!■

SHORT SUBJECTS

●Call back the "plumbers". According to *Newsworks*, a Washington, D.C., alternative publication, White House staffers can get choice pot from the diplomatic corps who pass through customs unchecked. The source of the leak? Someone called "Dope Throat".

SURPRISE PACKAGE. Keith Stroup, National Director of NORML, smiles approvingly at a $10,000 contribution left at the Washington office last August by an unknown benefactor. The mystery began when Stroup, who often can be found at his desk on weekends, answered a Sunday morning knock at the office's front door. The caller's request, commonly enough, was for some information about the marijuana issue. As he left, the visitor handed Stroup a note, remarking that a sizable donation had been placed in a close-by briefcase while Stroup had momentarily stepped away to select pamphlets. Brushing aside the comment, Stroup nevertheless checked his case and discovered ten neatly bound packs of $10's and $20's. The cryptic note suggested it might have come from a group of grass dealers. Stroup, however, believes the note may be the playful intrigue of a well-healed contributor who prefers anonymity. In any event, the unexpected help is most welcome. Maybe it will start a trend.■

●And there's a rumor that hospitals and other medical facilities around the country are finding a lot of hemostats have been disappearing at a rapid rate. It seems that the stainless steel plyers device is the latest chic way to hold a short joint. If this is true, and supply runs out, will doctors have to resort to "roach clips" in the operating room?

●High school football coaches in Ft. Lauderdale, Florida, recently found out through a local newspaper survey that 50% of their players smoked marijuana. Some coaches have resorted to lectures and others say they will probably not dwell on the matter. But a coach at Cooper City High has taken a stern view and now has required his players to sign a contract which reads in part: "I will not smoke, drink alcoholic beverages, or take any illegal drugs while a member of the Cowboy football team. Note: first offense you are finished with playing football at Cooper City *forever*."

●Multimillionaire W. Clement Stone has had his caretaker and another man arrested for allegedly growing marijuana in an area of his 400 acre Barrington estate near Chicago. Stone is known for his generosity to Republican party causes.■

TheLeaflet

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MARIJUANA DECRIMINALIZATION

HEARING

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

Pursuant to S. Res. 72, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

S. 1450

WHICH AMENDS CERTAIN PROVISIONS OF THE CONTROLLED SUBSTANCES ACT RELATING TO MARIJUANA

Supplement I

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Printed for the use of the Committee on the Judiciary

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APPENDIX

SUPPLEMENT I

Part 3—Decriminalization of Marijuana

[From the Crime Control Digest, June 23, 1975]

FORMER DEA/BNDD TRAINING CHIEF URGES REDUCED PENALTIES FOR POSSESSION OF MARIJUANA

CITIES DRAIN ON CRIMINAL JUSTICE SYSTEM AND HARM TO INDIVIDUALS

Perry A. Rivkind, former director of the Drug Enforcement Administration's National Training Institute, said last week he favors lessening penalties for possession and use of marijuana in the United States.

In an exclusive interview with Narcotics Control Digest, Rivkind said he would be opposed to legalization of marijuana.

Rivkind established the DEA training institute while he was a top official with the now defunct Bureau of Narcotics and Dangerous Drugs. He is currently Assistant Director of the Law Enforcement Assistance Administration for Operations Support and Training.

Rivkind said he "subscribed to" the 1972 recommendations of the National Commission on Marijuana and Drug Abuse, which found that the personal, private use of marijuana should not be a crime. He said a number of his law enforcement friends share his view.

Rivkind's reasons for advocating lesser penalties for marijuana possession, he said, include concern over the "enormous amount of manpower and other resources that are required to deal with (the vast number of marijuana arrestees) input into the criminal justice system."

He also cited the serious harm being done to the hundreds of thousands of people arrested each year for marijuana possession. He said the practice is "alienating, perhaps even destroying, people by the hundreds of thousands in order to enforce laws that obviously are unenforceable."

"It seems to me that in a nation where the rising crime rate is of grave concern—and I'm talking about the alarming increase in predatory crimes—we cannot afford to continue to try to enforce marijuana possession laws."

Rivkind said that next to alcohol, marijuana is the second most abused drug in the U.S. But he said present scientific knowledge about the possible harmful effects of cannabis do not justify the "vast resources this nation expends on arresting or prosecuting people for personal, private marijuana use."

The former DEA official said that even with the knowledge that alcohol and tobacco are harmful to the health, these products have not been outlawed. This makes it very difficult, he said, to convince the thousands arrested for marijuana use every year that their arrests are justified.

When asked if he thought the states should consider changing their laws to reduce marijuana use and possession to a misdemeanor instead of a felony, Rivkind said some states are already discussing this possibility.

He said that the federal government, in the 1970 Dangerous Substances Act, reduced marijuana possession from a felony to a misdemeanor and gave courts discretion to expunge individual records after certain probationary requirements were met.

The federal enforcement effort, Rivkind said, has never been directed at the user or the possessor of marijuana, but rather at the suppliers and dealers.

Rivkind said he thinks it is possible that, if the penalties for possession were reduced, marijuana smoking would lose its appeal to many.

The Justice Department official said he is opposed to legalization of marijuana, or its use in public.

He said it would create too many problems and make it too easy for young people to obtain marijuana cigarettes. And he said he didn't think it would help reduce smuggling of marijuana into the U.S.

"I feel that legalization is the wrong approach," Rivkind told Narcotics Control Digest. "I think we should continue to research the scientific effects of marijuana, and openly and honestly disseminate information about that scientific and social research to the American public, much in the same way we now do with alcohol, tobacco and other drugs."

He said one of the problems in discussing decriminalization of marijuana is that it is a very emotional and controversial subject. This is due largely to the myths about cannabis which were circulated for years, he said.

But he said that alcohol, as injurious as it is known to be, and tobacco, "have not destroyed America" and he doesn't feel that reducing penalties for marijuana possession would cause the collapse of the nation.

Rivkind, who in 1972 received the Attorney General's Exceptional Service Award, said he feels that the nation should continue enforcement efforts aimed at smuggling and distribution of marijuana and all other illegal narcotics and drugs.

But he said it is "time we considered the harm that is being done to many of our citizens in our efforts to enforce what are obviously unenforceable laws regarding the personal and private use of marijuana."

"The criminal justice systems throughout the U.S. must commit their resources to the priority areas of crime," he said, adding that he considers it a "matter of urgency."

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Research Department

Tod H. Mikuriya, M.D.
Director

February 13, 1974

Selected California Statistics Concerning the Enforcement of Marijuana Laws from the California State Bureau of Crime Statistics

Crime and Delinquency in California 1972

Introduction

Obtaining accurate quantitative estimates about marijuana law enforcement, court and prison activities is just about impossible. Records keeping systems are inadequate, interpretation difficult, and conclusions dangerous.

The following representations illustrate the substantial diversion of enforcement, judiciary and correctional services caused by the present public policy approach (i.e., criminal justice system) to marijuana use.

"...the fact that nearly one-fifth of all California felony arrests pertain to marijuana charges indicates that marijuana enforcement costs constitute a significant portion of all California law enforcement and correctional expenditures." (from a letter from A. Alan Post, Legislative Analyst to Dr. Tod H. Mikuriya, April 26, 1972)

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Barbara Schneider
Michael R. Aldrich, Ph.D.
Gordon Brownell, J.D.

Thanks to: Charles Bridges
Bureau of Criminal Statistics

for his helpful corrections and suggestions.

A. 1972 Total Adult Felony Arrests: 240,321
1972 Total Adult Felony Marijuana Arrests: 52,027

21.6% of all Adult Felony Arrests are for Marijuana Crimes

PRETRIAL

Complaint Filed	41,927
Felony Complaint	20,176
Convicted	8,310
Sec. 17, Penal Code	6,531
Misdemeanor Reduction	12,185
Not Convicted	3,875

TRIAL

Total: 7,991

Convicted	6,540	Not Convicted	1,451
Felony Conviction	3,590	Misdemeanor Conviction	2,950

PENALTY

Prison	150
CYA	52
Jail	314
Jail & Probation	2,073
Probation	3,741
Fine	164
Civil Committment	46

Total Incarcerated: 2,589
Total Not Incarcerated: 3,591

Cost Statistics

On page 62 of Crime and Delinquency in California 1972 it is stated that total California Criminal Justice Agency expenditures rose by 67% from the 1967-1968 fiscal year to the 1971-1972 fiscal year. Therefore, in using the Calof method to arrive at costs, that total will have to be increased by at least 67%. Cost figures for the Public Defender were arrived at by multiplying the total Public Defender budget for 1971-1972 by Calof's 8.94% of Public Defender time spent on marijuana cases. The disposition statistics were arrived at by multiplying the 1971-1972 budgets by the percent of marijuana dispositions as compared with the total dispositions for each agency.

1. 52,027 arrests x $29.89	$1,555,087.00
2. 41,921 complaints filed x $63.92	2,679,590.00
3. Pretrial jail costs @$1,388.67/person for average of 123 days before disposition 52,027 x 22.7% = 11,810 11,810 x $1,388.67	16,400,192.00
4. Prosecution	
A. Arraignment: 20,176 x $2.30	46,404.00
B. Preliminary Hearing: 20,176 X $61.40	1,238,806.00
C. Trials: 1510 X $933.95	1,410,264.00
D. Motions to Suppress: Estimate of 1/3 of those without an original plea of guilty: 6,147 X $48	295,056.00
Total:	23,625,399.00
67% of Total:	15,829,018.00
Total + 67%:	$39,454,416.00
E. Public Defender $21,784,607.00 X 8.94%	1,829,906.00
Prison----------$123,229,741 X 2.6%	3,203,980.00
CYA ---------- 53,009,396 X 3.4%	1,802,319.00
Probation ---------- 141,050,644 X 21.3%	30,043,863.00
Probation and Jail----- 141,050,644 X 6%	
76,218,927 X 6%	13,036,195.00
Jail---------- 76,218,927 X 7.7%	5,868,857.00
Total:	$95,239,536.00

COSTS OF CALIFORNIA MARIJUANA LAW ENFORCEMENT

A PRELIMINARY STUDY

by

Michael R. Aldrich, PhD
Barbara Schneider
Tod H. Mikuriya, MD
Gordon S. Brownell, JD

Presented to the California Senate Select Committee on Control of Marijuana, 14 February 1974

HIGHLIGHTS:

1. The cost of California marijuana law enforcement in 1972 is estimated at around $100 million. The lowest estimate we calculated was $52 million, but that did not include adult Lower-Court sentencing costs or any juvenile court disposition costs. The highest estimate was $119 million, but even that remains conservative because it does not include peripheral costs such as government funds expended on welfare for families of those incarcerated, etc.

2. Previous enforcement cost estimates beginning in 1966 are presented to acquaint legislators with the methods used. Of particular interest is Legislative Analyst A. Alan Post's method of determining costs of the first stage of marijuana law enforcement only: investigation and arrests. Applying this method to the 1972 data gives an estimated cost per arrest of $171.36, or $13.1 million spent arresting 76,561 marijuana offenders in 1972.

3. Legislative and reporting-system changes relevant to enforcement cost statistics are presented and discussed critically. A recent legislative change which resulted in a "minor" change in the reporting forms used by the Bureau of Criminal Statistics starting in 1974, will have disastrous effects on all future study of drug use trends unless it is returned to its original form immediately. We strongly recommend that this Select Committee investigate this matter and cooperate with the Bureau of Criminal Statistics to correct the situation at once.

4. Adult Misdemeanor Marijuana Arrests were not broken out for 1972, though they had been for the years 1968—1971. Based on past percentages of total marijuana arrests, we estimate about 3500 Adult Misdemeanor marijuana arrests in 1972. This figure, combined with the reported Adult Felony Marijuana Ar[illegible] (52,027) and the reported 21,034 Juvenile marijuana arrests, give a total of approximately 76,561 marijuana arrests in Califo.nia in 1972. A similar breakdown for all California marijuana arrests from 1960 to 1972 is given in Table 1.

5. Contrary to public impressions, most marijuana arrests are of adults rather than juveniles. In addition, Adult Felony marijuana arrests constitute over one-fifth (21.7%) of all adult felony arrests in the state. Finally, a surprisingly large number of persons convicted on marijuana charges in Superior Court serve time in prison, jail, or CYA: 40% of those convicted in 1972 were incarcerated.

TABLE 1 — CALIFORNIA MARIJUANA ARRESTS, 1960 – 1972

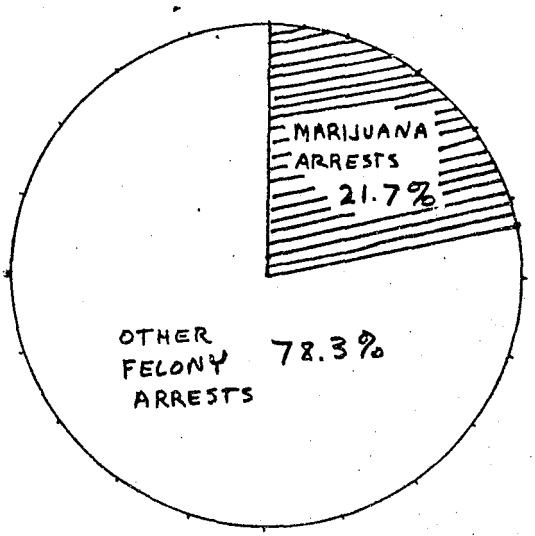
Table 1A — Marijuana Arrests 1960 – 1967 (Individual Reporting System)
Source: *Drug Arrests and Dispositions, 1972,* page 4.

MARIJUANA OFFENSES	1960	1961	1962	1963	1964	1965	1966	1967
Total ADULT	4,245	3,386	3,433	4,883	6,323	8,383	14,209	26,527
Total JUVENILE	910	408	310	635	1,237	1,619	4,034	10,987
TOTAL, Adult & Juvenile	5,155	3,794	3,743	5,518	7,560	10,002	18,243	37,514

Table 1B — Marijuana Arrests 1968 – 1972 (Summary Reporting System)
Sources: A = *Drug Arrests and Dispositions, 1972, p. 4* B = *Drug Arrests and Dispositions, 1971, p. 3*

MARIJUANA OFFENSES	1968	1969	1970	1971	1972
Adult FELONY (A)	31,185	34,408	44,718	42,745	52,027
Adult MISDEMEANOR	2,388	3,762	4,141	3,398	*Approx. 3,500*
ADULT TOTAL (B)	33,573	38,170	48,859	46,143	*Approx. 55,527*
JUVENILE TOTAL (A)	16,754	17,006	20,162	18,454	21,034
TOTAL, ADULT & JUVENILE	50,327	55,176	69,021	64,597	*Approx. 76,561*
TOTAL, ADULT FELONY & JUV.	47,939	51,414	64,880	61,199	73,061

ADULT FELONY MARIJUANA ARRESTS
ARE 21.7% OF ALL ADULT FELONY ARRESTS

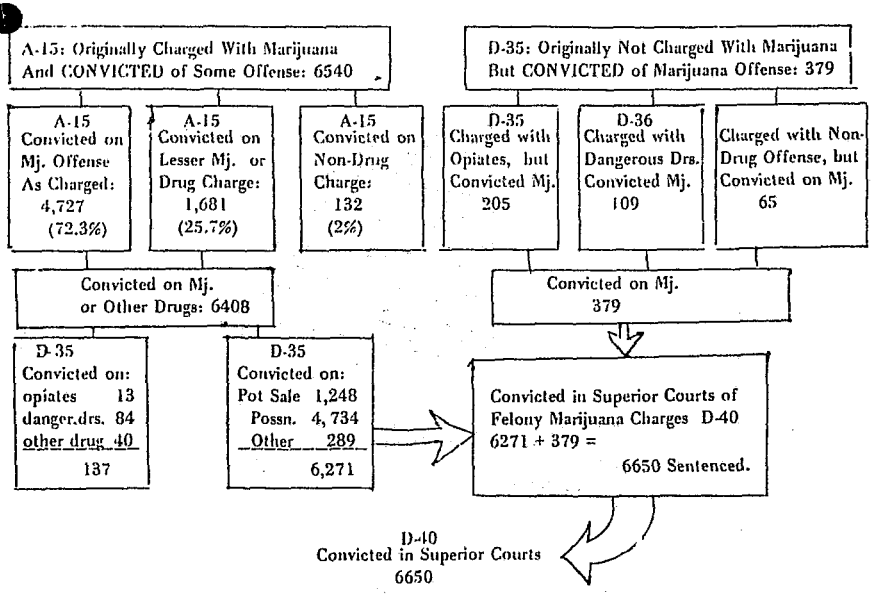


TOTAL ADULT FELONY ARRESTS: 240,231
ADULT FELONY MARIJUANA ARRESTS: 52,027

SOURCE: CRIMES + ARRESTS 1972, pages 5, 7.

TABLE 2

1972 SUPERIOR COURT MARIJUANA CONVICTIONS AND DISPOSITIONS



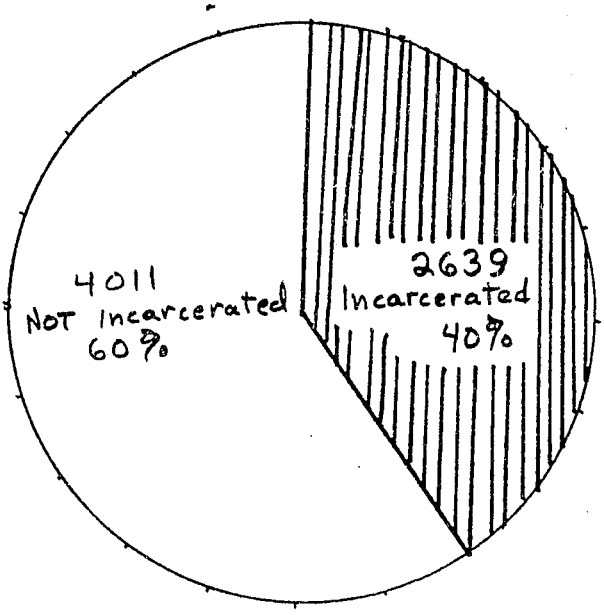
Offense	TOTAL	Prison	CYA	Jail	Jail & Probation	Straight Probation	Fine	Civil Commitment	
								CRC	Ment.Hyg.
All Marijuana Offenses	6650	154	54	309	2122	3816	148	45	2
11361 Furnish/Minor	8	-	-	-	6	1	-	1	-
11360 SALE/Transp.	717	68	15	8	452	170	-	4	-
11359 Possession for Sale	559	33	3	5	354	158	1	5	-
11357 POSSESSION 76.2% of 6650	5067	53	36	273	1289	3261	118	35	2
11365 Visiting Premises	299	-	-	23	21	226	29	-	-

SOURCES
A = Drug Arrests & Dispositions '72
D = Adult Prosecution Ref. Tab. '72

Incarcerated = 2639 = 39.7%

Not Incarcerated = 4011 = 60.3%

INCARCERATED - 1972



CONVICTED IN SUPERIOR COURTS ON MARIJUANA OFFENSES - 6650

PRISON	154	2639
CYA	54	
JAIL	309	
PROB + JAIL	2122	
STRAIGHT PROB.	3816	4011
FINE	148	
CRC	45	
Ment. 1149.	2	

SOURCE: ADULT PROSECUTION REF. T. '72 p. 40

PRELIMINARY NOTES ON ENFORCEMENT COSTS

by Michael R. Aldrich, Ph.D.
Research Director, AMORPHIA
14 February 1974

1. Calof figures applied to 1972 Adult Felony and Juvenile Marijuana Arrests: $119,133,674.24
   1972 Adult Felony Marijuana Arrests, 52,027
   1972 Juvenile Marijuana Arrests, 21,034
   Total, 73,061
   73,061 is four times the 18,243 arrests in 1966. Calof's $29,783,418.56 X 4 = $119,133,674.24

2. Calof method applied to 1972 Adult Felony Dispositions by Barbara Schneider: $95, 239,536
   See enclosed "Cost Statistics" sheet.

3. Post method to determine Marijuana Arrest Costs (not Dispositions Cost), 1972: $13,119,508.
   See enclosed "Previous Marijuana Enforcement Cost Estimates," page 3.
   76,561 total arrests X $171.36 cost per marijuana arrest = $13,119, 508.21

4. Use the Post method ARREST Costs in Barbara Schneider's Calof-method, 1972: $105,762,049
   a) ARRESTS 76,561 total X $171.36 cost/unit = $13,119,508
   b) Complaints, $2,679,590
   Pretrial Jail, 16,400,192
   Arraignment, 46,404
   Prelim. Hearings 1,238,806
   Trials 1,410,264
   Motions to suppress 295,056
   Total 22,070,312
   67% of Tot. 14,787,109
   Total + 67% 36,857,421
   Public Defender 1,829,906 (b) Subtotal $38,687,327
   c) Sentences:
   Prison 3,203,980
   CYA 1,802,319
   Probation 30,043,863
   Prob. + Jail 13,036,195
   Jail 5,868,857 (c) Subtotal $53,955,214

   Total a, b, c = $105,762,049

NOTE: In the 1973-1974 Governor's Budget, page 20, are the following Dept. of Justice budgets:

	1971-72 Actual Budget	1972-73 Estimated Budget	1973-74 Proposed Budget
Total	$31,067,218	$42,580,563	$44,880,408
Law Enf.	19,293,335	28,024,697	28,761,459

If marijuana law enforcement costs about $100 million a year, apparently if we stopped punishing marijuana possession we could fund the entire Department of Justice for at least 2 years, or fund all state law enforcement agencies including criminal justice information, organized crime program, state bureau of narcotics, and the bureau of criminal statistics for 4 years.

5. Using the McGlothlin Method to Determine 1972 Enforcement Costs, $52,225,390.60
Not Counting Lower Court Sentence Costs!

	Number	Cost/Unit	Total Cost
1. ARRESTS (All Adult & Juvenile)	76,561	(Post) $171.36	$13,119,508.21
2. COMPLAINT FILED (Adult)	41,927	(Calof) 63.92	2,679,973.80
3. PRETRIAL JAIL COSTS			
22.7% of 51,131 =	11,607	(Calof) 1388.67	16,118,292.00
4. LOWER COURT COSTS			
Preliminary Hearings	20,176	(Calof) 61.40	1,238,806.40
Plea & Setting	20,176	(Calof) 2.30	46,404.80
TRIALS			
Fel. Complaints Terminated	12,346	(McG) 250.00	3,086,500.00
CONVICTED	8,310	Information Not Yet Available	
5. SUPERIOR COURT COSTS			
TRIALS	7,991	(Calof) 934.00	7,463,534.00
Public Defender			
38.7% of 7991 =	3093	(Calof) 266.94	825,645.42
6. SENTENCES			
CONVICTED, 6650			
Prison	154	(Gov)* 4,396	676,984.00
CYA	54	(Gov)* 8,201	442,854.00
Jail	309	(McG) 1,500	463,500.00
Jail and Probation	2122	(McG) 1,500	3,183,000.00
Probation	3816	(McG) 708	2,701,728.00
Fine (148)			
CRC	45	(McG) 3,800	171,000.00
Mental Hygiene	2	(McG) 3,800	7,600.00
			$52,225,390.60

*Actual 1971-72 Per Capita Prison and CYA costs given in 1973-74 "Governor's Budget" pages 180, 187. Estimated 1972-73 costs are higher: Prison, $5025, and CYA, $9072.

Does Not Include Costs of Sentencing Those 8,310 Convicted in Lower Courts.

Superior Court Felony Sentences Costs are Determined above for 1 Year only.

NOTE: *Decriminalization of Marijuana "would not result in increased state or local costs. It should result in a reduction in cost of state and local law enforcement and judicial activities relating to the personal use and possession of marijuana."* A. Alan Post, Analysis of Prop. 19

PRELIMINARY NOTES ON ENFORCEMENT COSTS

by Michael R. Aldrich, Ph.D.
Research Director, AMORPHIA
14 February 1974

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Total + 67%	*36,857,421*	
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c) Sentences:		
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PREVIOUS MARIJUANA ENFORCEMENT COST ESTIMATES

by Michael R. Aldrich, Ph.D.*

CALOF ESTIMATE, 1966 TOTAL ARRESTS AND ADULT DISPOSITIONS: $29.7 MILLION.
In 1968, Stanford law student Lawrence Calof took the available 1966 marijuana arrests and dispositions data and applied the fiscal year 1967-1968 cost figures to arrive at a "hybrid" enforcement cost estimate of $29,783,418.56 for the 18,243 total adult and juvenile marijuana arrests. Based on extensive interviews and a careful sampling of Los Angeles County dispositions, Calof followed each of the 14,209 Adult Felony Marijuana Offenders as much as possible through the criminal justice process to determine per capita costs at each stage, and then added in relevant fixed costs in the disposition system. Reference: "The Cost of Enforcing the Marijuana Laws in California," July 8, 1968.

KAPLAN ESTIMATE, 1968 ADULT FELONY ARRESTS & DISPOSITIONS: $72 MILLION.
Stanford Law Professor John Kaplan used his student Calof's method to determine the 1968 enforcement costs for Kaplan's book Marijuana: The New Prohibition. *Adult Felony Marijuana Arrests for 1968 were 34,323, which is 2.42 times the Adult Marijuana Arrest figure (14,209) used by Calof. Kaplan multiplied Calof's 29.7 million dollar figure by 2.42 for an estimated 1968 cost of $72,074,860. This is a conservative estimate because it does not include arrest or disposition costs for adult misdemeanor or any juvenile marijuana arrests. Had Kaplan used the total adult and juvenile arrest figure, 53,314 is 2.92 times the 1966 total adult and juvenile arrest figure of 18,243, for a resulting cost of $86,966,360 in 1968.*

MCGLOTHLIN ESTIMATE, 1969 ADULT FELONY ARRESTS & DISPOSITIONS: $43.1 MILLION.
In 1971, UCLA researcher William McGlothlin prepared an analysis of marijuana use and distribution for BNDD and included his own variation on Calof's method, using 1969 marijuana arrest and disposition data and either his own or Calof's cost/unit estimates. McGlothlin's $43.1 million estimate is extremely conservative: where Calof had found the cost per arrest to be near $1500, McGlothlin's is only $780 per arrest. The difference is partly accounted for by differences in estimating CYA costs (Calof, $8 million; McGlothlin, $1.8 million) and partly by McGlothlin's having excluded certain costs that Calof included, such as appeals costs, State Bureau of Narcotics costs, and the costs of processing motions to suppress evidence. Although McGlothlin's estimate is probably too conservative, it is nevertheless true that enforcement costs probably decreased due to the "Wobbler" bill and the increasing use of adult probation for marijuana offenses.

MIKURIYA ESTIMATE, 1970 ADULT FELONY & JUVENILE ARRESTS: $106 MILLION.
Adult Felony and Juvenile marijuana arrests in 1970 totalled 64,878 (excluding the 4141 Adult Misdemeanor marijuana arrests reported that year), which is 3.56 times the 1966 Adult Felony and Juvenile marijuana arrest figure (18,243) used by Calof. Thus National Marijuana Commission consultant Tod H. Mikuriya, M.D., multiplied Calof's $29.7 million estimate by 3.56, for a 1970 total of $106,028,968.08 estimated costs of Adult Felony and Juvenile Arrests and (like Calof) Adult Felony Dispositions in 1970.

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*Research Director, AMORPHIA, Inc., 2073 Greenwich Street, San Francisco, California 94123.

A. ALAN POST ESTIMATE, 1971 MARIJUANA ARRESTS (Not Dispositions): $8.9 MILLION

The Bureau of Criminal Statistics and the office of Legislative Analyst A. Alan Post in 1973 invented a new method for determining the cost of marijuana arrests only— not dispositions through the system— in 1971. This estimate was developed by taking the percentage of all felony and misdemeanor arrests which were for marijuana offenses and applying that percentage to local law enforcement expenditures which related to "detection and suppression of criminal activity"— an estimated 25% of all expenditures by local police and sheriffs' offices (not CHP, and not State Bureau of Narcotics expenditures).

The 64,597 adult felony, adult misdemeanor, and juvenile marijuana arrests were found to be 6% of all California felony and misdemeanor arrests (1,139,121).

Expenditures for criminal activity (¼ of police and sheriffs' expenditures) were estimated at $148,416,401, and 6% of that is $8,904,984, *or $138 per pot arrest.*

The A. Alan Post method was concerned only with LOCAL marijuana law enforcement expenditures, and left out a portion of the California Highway Patrol expenditures. Because 63% of CHP felony arrests involve drugs, however, I have modified Post's calculations to include CHP expenditures for arrests. This is shown in Section 2 of Table A on the next page and brings the estimate of 1971 marijuana arrest costs up to $10,731,929, or $166 per pot bust.

In addition, I have plugged the 1972 arrest data into the Post Method, to show comparable estimates for 1972 marijuana arrests— approximately $171 per pot arrest. This is shown in Sections 3 and 4 of Table A on the next page.

An important criticism of the Post Method is that using total marijuana arrests (including 3,398 adult misdemeanor marijuana arrests) and comparing them to total felony and misdemeanor arrests in the state is misrepresentative. Misdemeanor marijuana arrests annually account for less than one-half of one percent of total misdemeanor arrests, while misdemeanor arrests in general account for over half of all arrests. If misdemeanor arrests are not considered, then adult felony and juvenile (major) marijuana arrests account for about 18%, not 6%, of all 1971 adult felony and juvenile (major) arrests.

Interestingly, extrapolation of the Post Method (based on the above criticism) to apply to Adult Felony and Juvenile (Major) marijuana arrests as they are disposed of throughout the system, provides an estimate of total marijuana enforcement costs astonishingly similar to estimates obtained by updating the Calof method. The Post Method Extrapolated gives a $106 MILLION cost estimate for total 1971 Adult Felony and Juvenile Arrests and Dispositions.

Step One: Adult Felony and Juvenile marijuana arrests are 18%, not 6%, of total state Adult Felony and Juvenile Major arrests. 18% is three times 6%, therefore multiply Post's $8.9 million marijuana arrest cost by three = $26,714,952.

Step Two: Marijuana arrests and dispositions affect the entire criminal process, not merely investigation and arrest, so multiply the marijuana arrest cost from Step One, by 4 to reproduce the whole system (remembering Post obtained arrest costs by dividing law enforcement costs by 4). 4 x 26.7M = $106,859,808.

This is remarkably similar to Mikuriya's 1970 cost of enforcement estimate.

TABLE A

A. Alan Post Method of Determining Cost of Marijuana Arrests

1. 1971 Arrest Data, with California Highway Patrol not included in Criminal Activity budget. Expenditures for Criminal Activity were determined by taking One-Fourth of the Amount spent by local police agencies and sheriffs' offices in FY 1970-1971. This is precisely the information reported by A. Alan Post to Senator Nicholas C. Petris, February 7, 1973.

	Total California Felony and Misdemeanor Arrests	Total Marijuana Felony and Misdemeanor Arrests	% Mj. of Total	Expenditures for Arrests Crim. Activity (for Arrests)	Marijuana Arrests	Cost/ Mj. Arr.
1971	1,139,121	64,597	6	$148,416,401	$8,904,984	$138

2. 1971 Arrest Data, Post's calculations modified to include California Highway Patrol in the Expenditures for Criminal Activity, because according to the S. F. Examiner, Feb. 23, 1973, two-thirds (63.4%) of all CHP felony arrests involved drugs.

	Total Arrests	Marijuana Arrests	%	Crim. Activity	Mj. Arrests	Cost/Mj
1971	1,139,121	64 597	6	$178,865,483.50	$10,731,929	$166

3. 1972 Arrest Data, plugged into Post Method (including CHP in Criminal Activity budget).

	Total Arrests	Marijuana Arrests	%	Crim. Activity	Mj. Arrests	Cost/Mj
1972	1,154,325	76,561 (3500 misd.)	6.6	$198,780,428.50	$13,119,508.21	$171.36

4. 1972 Arrest Data, using only Adult Felony and Juvenile Marijuana Arrests in Post Method.

	Total California Felony and Misdemeanor Arrests	Adult Felony and Juvenile (Major) Marijuana Arrests	% Mj. of Total	Crim. Activity Expenditures	Mj. Arrest Expenditures	Cost/ Mj. Arr.
1972	1,154,325	73,061	6.3	$198,780,428.50	$12,523,167	$171.41

Budget Figures for Expenditures are taken from p. 66,
CRIME AND DELINQUENCY IN CALIFORNIA 1972.

This Table Compiled 12 February 1974 by Michael R. Aldrich, Ph.D., Research Director, AMORPHIA, Inc.

Previous Enforcement Cost Estimates, page 4

SF CHRONICLE 2/23/73

CHP Leads In Felony Arrests

In between stopping speeders and helping all those stranded motorists, the California Highway Patrol made more felony arrests last year than any law enforcement agency in the state outside of Los Angeles county.

In a report issued yesterday by the agency, the Highway Patrolmen were said to have made 13,890 felony arrests in 1972.

Of those arrests, 8803 involved narcotics and other illegal drugs, 3932 were for auto theft, 604 for receiving stolen property, 555 for possessing dangerous weapons, 276 for robbery and 238 for burglary.

The felony arrests also included an additional 237 for vehicular manslaughter, 29 for counterfeiting motor vehicle registration papers — and 33 for kidnaping, 31 for murder, 24 for rape and 15 for prison escapes.

In San Francisco, the Highway Patrol made 311 felony arrests.

Arrests in individual categories added up to more than the total felony arrests reported because some individuals were charged with more than one crime

While comparable figures for previous years were not reported, California Highway Patrol Commissioner Walter Pudinski said the 1972 total represented "an all-time high."

Historically, only the Los Angeles city police and the Los Angeles sheriff's office have made more felony arrests than the Highway Patrol in California, Pudinski said

Page 18—S.F. Examiner
Fri., Feb. 23, 1973 ☆

CHP Drug Arrests Rocketing

The California Highway Patrol made a record number of felony arrests last year and two-thirds of them involved narcotics and dangerous drugs, the CHP announced today.

CHP Commissioner Walter Pudinski said highway patrolmen made 13,890 felony arrests and that drugs were a factor in 8803 of them. = 63.4%

The patrol also arrested 95,667 drinking drivers in 1972 and issued 1,962,816 misdemeanor citations.

Only the Los Angeles police department and the Los Angeles County sheriff's office make more arrests than the patrol, Pudinski said.

Also arrested were 3932 auto thieves, 604 receivers of stolen property, 555 persons with dangerous weapons, 276 robbers, 238 burglars, 33 kidnapers, 31 murderers and 24 rapists. Vehicular manslaughter was the charge in 237 arrests. The patrol also arrested 15 escaped prisoners and 29 people with counterfeited motor vehicle registration papers.

In the San Francisco area, according to area commander Capt. J. S. Hughes, CHP officers made 311 felony arrests. Marijuana possession accounted for 139 of them, stolen vehicles, 86, and possession of dangerous drugs, 56.

LEGISLATIVE AND REPORTING SYSTEM CHANGES

Relevant to Statistics on Cost of Enforcing California Marijuana Arrests 1960-1973

by Michael R. Aldrich, Ph.D. *

1960–1967 Individual Reporting System

In response to public demand for factual data on drug offenders, the Bureau of Criminal Statistics began an intensive scrutiny of drug arrests and dispositions statewide in 1959. This data was also needed in order to evaluate current drug legislation, to suggest appropriate new legislation, and to test the efficacy of new programs.

The Individual Reporting System used between 1959 and 1967 showed in detail the drug careers of all persons arrested for drug offenses. This individual accounting was performed by registering each person on a 5 x 8 record card the first time the individual was arrested for any drug offense, and subsequently posting each further drug arrest on the card along with the disposition of each case. Data collected included: the specific offense charged, drug usage, prior criminal and drug history, probation or parole status, disposition of each case, and sentencing commitments– for all persons reported by any agency for any drug offense in California.

A substantial part of this information came from "rap sheets" maintained by the Bureau of Criminal Identification and Investigation (CII) which gave an identification number to each newly arrested individual and showed a chronological record of all arrests for which the person was fingerprinted. The rap sheets were not necessarily a complete arrest record because they did not reflect any conflict with the law for which the person was not fingerprinted; and, for instance, might not show prior juvenile arrests if the person was first fingerprinted during an adult arrest. To supplement this information, the Bureau of Criminal Statistics methodically compiled arrest reports from each of the 500 or so criminal justice agencies, and other auxiliary information. All this data was published annually in *Drug Arrests and Dispositions* by the Bureau.

1960–1967 Legislative Changes

In 1961, penalties for all narcotic law violations, including marijuana, were toughened by making all such violations felonies with minimum mandatory sentences. Possession of marijuana drew a minimum of 1 year, and up to 10 years, in state prison, with no parole available until at least a year had been served. A new offense, Possession of Marijuana for Sale, drew 2 to 10 years. Sale of marijuana drew a mandatory 5 years to life imprisonment and persons convicted of sale had to serve 3 years before the possibility of parole.

In 1962, the *Robinson* decision held that addiction per se was not a crime. This greatly reduced the number of addict-user arrests. In the same year, California marijuana arrests reached an all-time low: a total of 3,743 adult and juvenile marijuana arrests. From 1962 on, the number of all-drug arrests and particularly the number of marijuana arrests began increasing drastically. In late 1965 many dangerous drug offenses were raised from the misdemeanor to the felony level, and several major enforcement agencies changed their previous policy of booking all drug offenders on "suspicion of narcotic felony" to booking on exact misdemeanor or felony charges. In 1966, new legislation making LSD and hallucinogens illegal went into effect.

All of these legislative and social changes greatly increased the workload of the Bureau of Criminal Statistics and made the Individual Reporting System progressively more difficult and more expensive. In 1966 certain auxiliary sources of information used in screening drug offenders had to be discontinued, with less careful screening of drug usage, particularly marijuana usage, as a prominent result. At one point almost one-fourth of the entire BCS staff was involved in the

*Research Director, AMORPHIA, Inc., 2073 Greenwich Street, San Francisco, California 94123

collection of drug statistics, at a cost of upwards of $150,000 a year. As arrests continued to double or triple each year, it became obvious that the Individual Reporting System could not continue. But while it lasted, it was one of the finest drug information systems in the world. The 1966 *Drug Arrests and Dispositions* manual is the most complete drug offender analysis available in any state: in it, BCS even compiled the exact quantities of drugs seized by police agencies in the state, and broke out the dispositions of arrestees with more clarity than in any other document. In addition, in 1966 a pilot project was undertaken in three counties which produced Offender-Based Transactional data following all arrestees through each stage of the criminal process from point of arrest to final disposition. These models of drug statistic data collection deserve to be mentioned because it was on these books of statistics that the first, and in many ways still most comprehensive, analysis of enforcement costs, was based.

1968– Present: Summary Reporting Systems

Thus in 1968 a new reporting system based on a 30% sample of all drug arrests reported to BCS was begun. This involved extrapolating the percentages (for example, the percent of arrestees on whom complaints were filed in Superior Court) used in determining the final data from the percentages obtained in a 30% sample of all data reported. This had the immediate effect of downgrading the value of the statistics and making it more difficult to follow each arrestee through the entire criminal process. Moreover, "Because a large increase in arrest volume was expected in 1969, the sampling fraction was reduced to 20 percent. This reduction necessitated scaling the prior year data down to 20 percent. This operation did not change the percentages shown in any of the tables." (*Drug Arrests and Dispositions, 1969*, page 5.)

The Summary Reporting System which has been used since 1968 calls for each of the 500 or so enforcement agencies in the state to send in arrest information on report forms each month; disposition data is collected from the appropriate court or agency on similar forms. In some cases, particularly at the dispositions end of the criminal justice process, information is submitted which breaks out sentences by specific convicted offense (marijuana possession, sale, furnishing to minor, etc.) but at the beginning of the process, the point of arrest where the largest amount of data must be submitted, the forms simply have spaces for general offense charged: how many were arrested for all marijuana offenses, how many for burglary, etc. This significantly reduces the information available for study and makes detailed analysis by specific code violation charged almost impossible.

The Summary Reporting System also makes it difficult to break out meaningful statistics on Misdemeanor arrests, particularly on drug offenses. Adult Misdemeanor marijuana arrests, for example, were reported between 1968 and 1971 but the system could not distinguish with any clarity whether marijuana was the specific drug involved in the misdemeanor arrest. Officials at BCS felt that the Summary System was not successful in getting meaningful statistics on misdemeanors: "possession of narcotic paraphernalia" could refer to marijuana pipes or to opium pipes; "being under the influence of drugs" might refer to any drug; and even "Visiting premises" where drugs were found, a misdemeanor which agencies were asked to report from 1967 on up, did not provide specific information as to whether marijuana was involved, because the summary reporting forms did not specify the distinction. Thus starting in 1972, Adult Misdemeanor Marijuana Arrests are not broken out at all: which skews the Total Marijuana Arrest statistics by about 3500 a year and makes meaningful comparison with previous year totals very difficult.

Another difficulty posed for the serious researcher by the Summary Reporting System is the fact that only one offense is shown on the reporting sheet sent in by the agency. If a person

is arrested on multiple charges, only the most serious charged offense is shown. Thus someone arrested for Furnishing Marijuana to a minor, and Loitering around the schoolyard, would be shown as a marijuana arrest only (though the charges might be reduced to loitering later through plea bargaining); but if someone is arrested for Armed Robbery and Possession of Marijuana, it would be shown as an armed robbery arrest only. This creates an undetermined amount of "slippage" in the arrest information: all marijuana arrests are not reported each year by the Summary Reporting System. Thus, unlike the Individual Reporting System, California has no real count of the number of marijuana arrests in the state. Secondly, it appears that a significant number of people originally arrested on a marijuana charge as the most serious offense, have the charges reduced to a lesser charge which may or may not be a marijuana charge: this creates a serious lacuna in the dispositio· information available. For example, in 1972 approximately 41,927 adults originally arrested on marijuana charges had Complaints Filed on them either on marijuana charges or some other charge. Of these, 2248 Complaints were dismissed before filing in Superior Court, and 21,230 were processed through either the Lower or the Superior Courts: but that leaves 18,449 people (44% of the original 41,927) unaccounted for in any of the BCS tables of dispositions. Unless we can determine what happened specifically in the disposition of those 18,449 people who had Complaints of some sort filed against them, it is very difficult to calculate the enforcement costs. BCS is not at fault: the Summary Reporting System is at fault.

1968– Present: Legislative Changes

In 1968, the "Wobbler" bill came into effect and began to have significant impact on marijuana dispositions. This law specifies that at the Court's discretion, the penalty upon conviction of a 1st offense marijuana possession felony charge can be reduced by the Judge to a misdemeanor sentence of up to one year in county jail, with a possibility of parole; or, if the Judge decides that the offense is quite serious, he can hand out the felony sentence of 1 to 10 years in state prison. This vastly increased the number of misdemeanor sentences given for marijuana possession and BCS began showing the proportions of misdemeanor and felony sentences in their final disposition tables in 1969. Probably because of the Wobbler law, BCS also for the first time in 1969 began to show lower court drug case dispositions separately from Superior Court adjudications. These are quite valuable in following lower-court dispositions but the lacuna mentioned above still exists. It would be of extreme value to have information on Preliminary Hearings in lower courts.

In late 1969, Section 17 of the Penal Code was modified in regard to criminal complaint filing policy. Section 17b4 PC now allows prosecutors to file misdemeanor complaints involving offenses which, like possession of marijuana, carry alternate prison-jail sentences; and Section 17b5 PC now allows lower court judges to adjudicate certain felony offenses, including marijuana offenses, as misdemeanors instead of transferring the case to Superior Court for trial. This resulted in a further drop in Superior Court prosecutions from 1970 onward, and probably involves a substantial saving in the cost of processing marijuana cases through the courts. Unfortunately it is very difficult to determine how much money is saved thereby, because there is a paucity of information on pre-trial hearings and dispositions at the lower court level. The BCS Summary Reporting System works adequately for Felony Complaints and Superior Court dispositions, but does not provide sufficient information on Misdemeanors, preliminary hearings, and the lower court process.

Because of the above legislative changes, and the state Probation Subsidy program enacted in 1965 (which gives a subsidy per defendant to those counties which reduce the proportion of criminal defendants sentenced to state institutions), straight probation and probation with jail have been used increasingly with those convicted of marijuana charges. Section 17 adjudication of felony offenses in

lower rather than Superior Courts has increased the statewide adult probation caseload to an all time high of 143,183 in 1972, as lower courts significantly increased the number of adults placed on probation and Superior Courts actually decreased the number placed on probation. (*Adult and Juvenile Probation, 1972,* page 1). Vastly increased use of Section 17 PC in Los Angeles in 1972 created a relatively large drop in statewide Superior Court prosecutions, 1972.

Increased use of probation in lower courts, and decreasing prosecution in Superior Court, have also had the probably unintended effect of downgrading the quality of information on drug dispositions, because the present Summary Reporting System is really geared to record Felony prosecutions in Superior Courts.

DEBASEMENT OF DATA COLLECTION
Caused by Legislative Change in Statistic Reporting Forms

Finally, a legislative change made in 1973 threatens to debase the Summary Reporting System even more than it has already been downgraded. Until this year (1974), the reporting forms which local agencies returned each month to BCS contained spaces in which to report each different drug arrest or law enforcement disposition according to four categories of substances: Heroin and other narcotics, Marijuana, Dangerous Drugs, and Other Drug Offenses. Beginning this year, BCS will be receiving information on only two categories of drug offenses: Marijuana, and Other Drug Offenses all lumped together. (See Forms enclosed.)

This means that from now on, it will be progressively more difficult to get good information on trends in drug use, comparative relationships between different drug offenders, and identification of individuals arrested on various drug charges as they proceed through the criminal justice system. It will no longer be possible to evaluate the effectiveness of treatment programs or law enforcement programs. Budgeting considerations cannot be made because not enough data will be provided from which to determine the cost of various programs. The soundness or ineffectiveness of recent legislation in this field cannot be evaluated unless concrete information is available about the specific workings of the programs which the laws set in action. As long as this debasement of the Summary Reporting System continues, the only information available, in effect, will be marijuana information; and future researchers will find their efforts to determine simple arrests and dispositions— not to mention costs of enforcement— frustrated in regard to opiates, dangerous drugs, and other substances which certainly are of concern to society.

RECOMMENDATION: It is imperative that reporting forms be returned immediately to their 1973 design, if not an even more detailed design, by legislative action as soon as possible. Without an immediate return to a more complete Summary Reporting System, all future drug information on offenders and drug law enforcement will be irreparably garbled and it will soon be impossible to determine specific trends in drug use, enforcement, or the costs of enforcement. The members of this Committee should consult with the Bureau of Criminal Statistics and cooperatively draft a more detailed reporting form to specify offenses charged by exact Health and Safety Code violation; such a form should be incorporated into a legislative bill and supported for passage as soon as possible.

Additionally, it is recommended that more attention be paid to lower court disposition data in the Summary Reporting System, including information on preliminary hearings; and it is further recommended that the OBT (Offender Based Transactions) reporting project be continued and expanded, as it has perhaps the greatest potential for providing information on offenders at each stage of the criminal process, which is necessary to determine enforcement costs.

1973 and 1974 FELONY OFFENSE REPORTING FORMS

Dabasement of Statistics Collecting from 1973 to 1974

'73

JURIS. CODE

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF CRIMINAL STATISTICS
P. O. Box 13427
SACRAMENTO, CALIFORNIA 95813

QTR	Trans. Code	BATCH
	00	

MONTHLY REPORT—ADULT FELONY ARRESTS
18 YEARS OR OVER

County ( )
City ( ) of _____ Month of _____

FELONY OFFENSE		Male 1	Female 2	Total 3	LAW ENFORCEMENT DISPOSITIONS: Released 4	Turned Over To Other Jurisdiction 5	Complaint Filed 6
Heroin and Other Narcotics	800						
Marijuana	810						
Dangerous Drugs	870						
er Drug ORenses	830						

JURIS CODE

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF CRIMINAL STATISTICS
P. O. Box 13427
SACRAMENTO, CALIFORNIA 95813

'74

QTR	Trans. Code	BATCH

MONTHLY REPORT—ADULT FELONY ARRESTS
18 YEARS OR OVER

( )
( ) of _____ Month of _____

FELONY OFFENSE		Male 1	Female 2	Total 3	LAW ENFORCEMENT DISPOSITIONS: Released 4	Turned Over To Other Jurisdiction 5	Misdemeanor Complaint Filed 6	Felony Complaint Filed 7
[illegible]	810							
[illegible] Offenses	870							

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY RONALD REAGAN, Governor

DEPARTMENT OF CORRECTIONS
SACRAMENTO

February 13, 1974

Mrs. Eva Nelson, Secretary
Senate Select Committee on
Control of Marijuana
State Capitol
Sacramento, California 95814

Dear Mrs. Nelson:

On December 31, 1973, there were 606 men and 15 women in prison whose most serious commitment offense was violation of some law pertaining to marijuana. On this same date there were 817 men and 41 women on parole on similar charges.

That compares with a total of 19,794 felons in prison on that same date and 12,996 felons on parole. (In addition, the Department had in its custody in institutions and on parole several thousands of other persons on civil commitments, etc.)

Actual cases, both in the institutions and on parole are handled individually according to their needs, so some individuals may have taken a great amount of staff time to resolve various problems while others took relatively little. On a mass basis, however, the marijuana offenders represent 4½% of the felony workload.

In agreement with the Legislative Analyst, various per capita cost figures are used in accord with circumstances. For example, a reduction of one inmate in the population would make virtually no difference in departmental costs, but if you reduced the institution population by 1,500 you might be able to close an entire institution. In any event in terms of the numbers involved in marijuana we would estimate their cost to the Department at approximately $900,000 a year.

Sincerely,

WALTER L. BARKDULL
Assistant Director
Legislative Liaison

WLB:mc

STATE OF CALIFORNIA — RONALD REAGAN, Governor

HEALTH AND WELFARE AGENCY

Capitol Mall, Room 200 – Sacramento 95814 (916) 445-6951

DEPARTMENTS OF THE AGENCY

Corrections
Health
Human Resources Development
Rehabilitation
Social Welfare
Youth Authority

James E. Jenkins
Secretary

March 7, 1974

Honorable George R. Moscone, Chairman
Senate Select Committee on Control of Marijuana
Ninth and L Building, Room 153
Sacramento, California 95814

Attention: Mr. Jesus Genera, Consultant

Dear Senator Moscone:

Thank you for your letter of February 7, 1974, in which you requested information on what portion of the Health and Welfare Agency's budget, and what level of manpower is expended in the processing of marijuana law offenders.

The Departments of Health, Corrections, and Youth Authority do not budget their respective narcotic and drug abuse programs by drug or substance but rather by treatment and rehabilitation modalities. While statistics are available for wards and inmates convicted of marijuana law violations, they cannot reflect the true overall extent to which these offenders absorb our resources. The data base for marijuana law-involved clients in Department of Health supervised local programs does not directly capture the sort of information you requested. Thus, the breakdown shown below represents our best interpolation of available data.

Department	Dollars (%)	Man years (%)
Corrections	$1,085,000 (0.7%)	44.0 (0.5%)
Youth Authority	1,656,000 (2.6%)	51.9 (1.4%)
Rehabilitation	N.A.	N.A.
Employment Development	-0-	-0-
TOTALS	$2,741,000	95.9

I hope this information will be useful to you and the Select Committee. Please feel free to contact Mr. William Wilder, Director of the State Office of Narcotics and Drug Abuse, if you have any questions.

Sincerely,

TOM J. ELKIN
Assistant to the Secretary,
Legislation

As I explained on the telephone, we list commitments for statistical purposes on the basis of the most serious (as determined by the statisticians, generally on the basis of the penalty) and, therefore, it is possible there may be persons not shown in the above tables who are in on multiple commitments, one of which is more serious than the marijuana offense.

I had occasion some time ago to make manually a case-by-case study of 19 of the 27 men committed in the first half of 1972 on simple possession. The cases, a substantial sample, were selected randomly.

In 11 of the cases the offender had been placed on probation for the marijuana offense and then got into further trouble with the result the probation was revoked and he was committed to prison. The further troubles included such conduct as being convicted for burglary, escape and a bomb plot and arrests for robbery, assault on a peace officer, possession of marijuana and dangerous drugs, etc.

In three additional cases, the offender was on probation for possession of dangerous drugs when he was convicted of possession of marijuana and sentenced to prison on that charge.

Three others were on federal parole or state out-patient status when convicted of a marijuana offense and wound up in state prison.

Of the other two, one was a fringe member of a big narcotics ring broken by the State Bureau of Narcotic Enforcement involving a sale of some 2,000 blocks and the other was a burglar who escaped and when reapprehended had marijuana in his possession.

Turning from commitments to prison to release from prison we find that 317 persons were paroled for the first time in 1972 from a commitment for a marijuana offense. Two tables are enclosed showing the release by offense, and the time served broken down between those who were narcotic addicts and those who were not addicted.

I hope this information is helpful to the Committee.

Sincerely,

WALTER L. BARKDULL
Assistant Director-
Legislative Liaison

WLB:mc

Attachments

CONTINUED

13 OF 33

STATE OF CALIFORNIA - HEALTH AND WELFARE AGENCY RONALD REAGAN, Governor

DEPARTMENT OF CORRECTIONS
SACRAMENTO

January 3, 1974

The Honorable George R. Moscone
Chairman, Senate Select Committee on
Control of Marijuana
State Capitol, Room 408
Sacramento, California 95814

Attention: Ms. Lorraine Reynon

Dear Ms. Reynon:

The two tables below show the commitments to the Department of Corrections by various classes of marijuana offenses for the first and second halves of 1972 and the first half of 1973:

MEN	1972		1973
Offense	1st	2nd	1st
Sale to minor by adult	1	-	-
Possession of marijuana	27	29	24
Possession with one prior	1	1	-
Possession for sale	19	20	18
Possession for sale with one prior	-	1	-
Possession for sale with two priors	-	-	1
Sale	36	25	26
Sale with one prior	1	-	1
Sale with two priors	-	-	1

WOMEN	1972		1973
Offense	1st	2nd	1st
Possession	3	2	-
Possession for sale	1	1	2
Sale	1	1	-

State of California — Department of Justice

Memorandum

To : Eva Nelson
Senate Committee on Control of Marijuana
1116 Ninth Street, Room 153
Sacramento, CA 95814

Date : February 7, 1974

File No.:

From : **Bureau of Criminal Statistics**
Wayne Knutila, Assistant Chief

Subject: Marijuana Data

Here are the data you requested based on a study made by the Bureau last year. Also enclosed is a copy of our 1972 "Crimes and Arrests Reference Tables."

The 1971 total of felony and misdemeanor arrests for adults and juveniles was gleaned from the Bureau's 1971 "Crime and Delinquency in California, Crimes and Arrests Reference Tables." The 1971 total felony and misdemeanor marijuana arrests for adults and juveniles was subtracted from the total 1971 arrests. Marijuana arrests were posted from the 1971 "Crime and Delinquency in California, Drug Arrests and Dispositions Reference Tables."

Based upon scanty available data, it was determined that approximately 25 percent of a police officer's time is devoted to the detection and apprehension of criminals. Therefore, it was concluded that 25 percent of the county's law enforcement budget is expended on criminal activity.

The percentage of total marijuana arrests of the total arrests was computed for each county. This percentage was applied to that activity. Thus, a rough approximation was constructed of what it costs California county law enforcement agencies to effect marijuana arrests. Estimates were also provided on the average costs per arrest for total felony and misdemeanor arrests and marijuana arrests by county. Expenditure data were obtained from the State Controller's publication entitled "Annual Report of Financial Transactions Concerning Cities and Counties in California, 1970-1971."

Wayne Knutila

WK:jah/74
Enclosures
cc: O. J. Hawkins
W. H. Hutchins
Jan Stevens

TABLE I

TOTAL ARRESTS AND MARIJUANA ARRESTS, 1971

By County and Fiscal Year Expenditures

County	Felony and misdemeanor arrests			Marijuana arrests			Percent marijuana arrests of total arrests	1970-1971 expenditures	
	Total	Adult	Juvenile	Total	Adult	Juvenile		Criminal activity[a]	Marijuana arrests
Total.	1,139,121	968,025	171,096	64,597	46,143	18,454	6	$148,416,401	$8,904,984
Alameda.	76,592	64,008	12,584	3,028	2,057	971	4	8,207,504	328,300
Alpine	52	46	6	6	6	-	12	18,060	2,167
Amador	451	388	63	35	20	15	8	70,626	5,650
Butte.	3,041	2,551	490	140	108	32	5	507,054	25,353
Calaveras.	812	671	141	79	52	27	10	73,125	7,313
Colusa	531	495	36	42	31	11	8	87,419	6,994
Contra Costa . . .	22,609	16,201	6,408	1,583	929	654	7	3,693,020	258,511
Del Norte.	705	629	76	18	12	6	3	63,721	1,912
El Dorado	3,088	2,733	355	206	171	37	7	427,861	29,950
Fresno	33,293	28,932	4,361	764	506	258	2	2,180,392	43,602
Glenn.	560	463	97	44	31	13	8	92,688	7,415
Humboldt	4,227	3,688	539	152	116	36	4	503,576	20,143
Imperial	6,881	6,156	725	330	260	70	5	566,364	28,318
Inyo	823	767	56	68	47	21	8	92,531	7,402
Kern	16,175	13,010	3,165	478	308	170	3	1,768,869	53,064
Kings.	2,855	2,446	409	46	27	19	2	235,530	4,711
Lake	885	740	145	90	57	33	10	118,945	11,895
Lassen	564	457	107	36	29	7	6	66,454	3,987
Los Angeles. . . .	468,798	412,234	56,564	26,074	19,072	7,002	6	66,509,904	3,990,594
Madera	2,955	2,784	171	44	31	13	1	165,450	1,855
Marin.	8,559	7,186	1,373	478	313	165	6	1,265,525	75,932
Mariposa	365	338	27	37	33	4	10	22,480	2,248
Mendocino.	3,008	2,492	516	195	148	47	6	301,987	18,119
Merced	6,612	5,464	1,148	282	174	108	4	439,705	17,588
Modoc.	216	204	12	12	9	3	6	34,895	2,094
Mono	200	183	17	18	18	-	9	47,463	4,272
Monterey	15,800	14,009	1,791	570	390	180	4	1,261,692	50,468
Napa	2,037	1,536	501	238	139	99	12	407,402	48,888
Nevada	1,018	803	215	28	9	19	3	167,342	5,020
Orange	69,103	56,442	12,661	7,564	5,435	2,129	11	8,730,066	960,307

TABLE I - Continued

TOTAL ARRESTS AND MARIJUANA ARRESTS, 1971

By County and Fiscal Year Expenditures

County	Felony and misdemeanor arrests			Marijuana arrests			Percent marijuana arrests of total arrests	1970-1971 expenditures	
	Total	Adult	Juvenile	Total	Adult	Juvenile		Criminal activity[a]	Marijuana arrests
Placer	2,434	2,069	365	185	149	36	8	$ 439,596	$ 35,168
Plumas	922	813	109	58	45	13	6	100,270	6,016
Riverside	27,765	24,142	3,623	1,228	932	296	4	2,964,903	119,396
Sacramento	29,935	25,285	4,650	1,409	932	477	5	3,734,615	186,731
San Benito	661	581	80	20	16	4	3	82,265	2,468
San Bernardino	32,095	26,085	6,010	2,077	1,504	573	6	3,772,921	226,375
San Diego	66,129	52,675	13,253	5,720	3,936	1,784	9	7,418,615	667,675
San Francisco	55,684	49,497	6,187	2,444	2,153	291	4	8,302,496	332,100
San Joaquin	17,545	14,966	2,579	461	328	133	3	1,899,600	56,988
San Luis Obispo	4,134	3,599	535	411	308	103	10	555,621	55,562
San Mateo	17,587	14,076	3,511	851	470	381	5	3,445,221	172,261
Santa Barbara	11,468	9,935	1,533	799	608	191	7	1,589,473	111,263
Santa Clara[b]	45,807	34,582	11,225	2,265	1,494	771	5	7,007,516	350,376
Santa Cruz	6,679	5,865	814	495	334	161	7	713,313	49,932
Shasta	3,017	2,634	383	196	161	35	6	358,566	21,514
Sierra	102	87	15	12	7	5	12	20,078	2,409
Siskiyou	1,307	1,161	146	110	94	16	8	195,194	15,616
Solano	6,150	4,583	1,567	425	302	123	7	1,094,049	76,583
Sonoma	9,212	7,254	1,958	506	310	196	5	813,062	40,653
Stanislaus	9,477	8,030	1,447	403	285	118	4	1,085,431	43,417
Sutter	1,318	1,037	281	69	41	28	5	250,478	12,524
Tehama	939	748	191	49	40	9	5	165,304	8,265
Trinity[b]	267	243	24	29	18	11	11	46,982	5,168
Tulare[b]	9,522	7,972	1,550	318	197	121	3	887,456	26,624
Tuolumne	972	912	60	60	41	19	6	112,830	6,770
Ventura	15,954	12,781	3,173	927	618	309	6	2,500,755	150,045
Yolo	5,315	4,578	737	313	234	79	6	499,559	29,974
Yuba	3,909	3,578	331	70	48	22	2	192,942	3,859

[a]Represents 25 percent of total expenditures which is devoted to criminal activity. Does not include jail or rehabilitation.

[b]Expenditures include jail.

TABLE II

TOTAL ARRESTS AND MARIJUANA ARRESTS, 1971

By County, Fiscal Year Expenditures and Cost Per Arrest

County	Felony and misdemeanor arrests			Marijuana arrests		
	Total	1970-1971 expenditures[a]	Cost per arrest	Total	1970-1971 expenditures	Cost per arrest
Total	1,139,121	$148,416,401	$130	64,597	$8,904,984	$138
Alameda	76,592	8,207,504	107	3,028	328,300	108
Alpine	52	18,060	347	6	2,167	361
Amador	451	70,626	157	35	5,650	161
Butte	3,041	507,054	167	140	25,353	181
Calaveras	812	73,125	90	79	7,313	93
Colusa	531	87,419	165	42	6,994	167
Contra Costa	22,609	3,693,020	163	1,583	258,511	163
Del Norte	705	63,721	90	18	1,912	106
El Dorado[b]	3,088	427,861	139	208	29,950	144
Fresno	33,293	2,180,092	65	764	43,602	57
Glenn	560	92,688	166	44	7,415	169
Humboldt	4,227	503,576	119	152	20,143	133
Imperial	6,881	566,364	82	330	28,318	86
Inyo	823	92,531	112	68	7,402	109
Kern	16,175	1,768,809	109	478	53,064	111
Kings	2,855	235,530	83	46	4,711	102
Lake	885	118,945	134	90	11,895	132
Lassen	564	66,454	118	36	3,987	111
Los Angeles	468,798	66,509,904	142	26,074	3,990,594	153
Madera	2,955	185,450	63	44	1,855	42
Marin	8,559	1,265,525	148	478	75,932	159
Mariposa	365	22,480	62	37	2,248	61
Mendocino	3,008	301,987	100	195	18,119	93
Merced	6,612	439,705	67	282	17,588	62
Modoc	216	34,895	162	12	2,094	175
Mono	200	47,463	237	18	4,272	237
Monterey	15,800	1,261,692	80	570	50,468	89
Napa	2,037	407,402	200	238	48,888	205
Nevada	1,018	167,342	164	28	5,020	179
Orange	69,103	8,730,066	126	7,564	960,307	127
Placer	2,434	439,596	181	185	35,168	190
Plumas	922	100,270	109	58	6,016	104
Riverside	27,765	2,984,903	108	1,228	119,396	97
Sacramento	29,935	3,734,615	125	1,409	186,731	133
San Benito	661	82,265	124	20	2,468	123
San Bernardino	32,095	3,772,921	118	2,077	226,375	109
San Diego	66,129	7,418,615	112	5,720	667,675	117
San Francisco	55,684	8,302,496	149	2,444	332,100	136
San Joaquin	17,545	1,899,600	108	461	56,988	124
San Luis Obispo	4,134	555,621	134	411	55,562	135
San Mateo	17,587	3,445,221	196	851	172,261	202
Santa Barbara	11,468	1,589,473	139	799	111,263	139
Santa Clara[b]	45,807	7,007,516	153	2,265	350,376	155
Santa Cruz	6,679	713,313	107	495	49,932	101
Shasta	3,017	358,566	119	196	21,514	110

TABLE II - Continued

TOTAL ARRESTS AND MARIJUANA ARRESTS, 1971

By County, Fiscal Year Expenditures and Cost Per Arrest

County	Felony and misdemeanor arrests			Marijuana arrests		
	Total	1970-1971 expenditures[a]	Cost per arrest	Total	1970-1971 expenditures	Cost per arrest
Sierra	102	$ 20,078	$197	12	$ 2,409	$201
Siskiyou	1,307	195,194	149	110	15,616	142
Solano	6,150	1,094,049	178	425	76,583	180
Sonoma	9,212	813,062	88	506	40,653	80
Stanislaus	9,477	1,085,431	115	403	43,417	108
Sutter	1,418	250,478	190	69	12,524	182
Tehama	939	165,304	176	49	8,265	169
Trinity	267	46,982	176	29	5,168	178
Tulare[b]	9,522	887,456	93	318	26,624	84
Tuolumne	972	112,830	116	60	6,770	113
Ventura	15,954	2,500,755	157	927	150,045	162
Yolo	5,315	499,559	94	313	29,974	96
Yuba	3,909	192,942	49	70	3,859	55

[a]Represents 25 percent of total expenditures which is devoted to criminal activity. Does not include jail or rehabilitation.

[b]Expenditures include jail.

MARIJUANA LAWS: AN EMPIRICAL STUDY OF ENFORCEMENT AND ADMINISTRATION IN LOS ANGELES COUNTY

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FOREWORD

John Kaplan*

Professor Herbert Packer in his very recent but already classic work on the criminal process has written of the enforcement of the drug laws.

> To the difficulties of apprehending a criminal when it is known that he has committed a crime are added the difficulties of knowing that a crime has been committed. In this sense, the victimless crime always presents a greater problem to the criminal process than does the crime with an ascertainable victim. But this problem may be minimized if the criminal process has at its disposal measures designed to increase the probability that the commission of such offenses will become known. If suspects may be entrapped into committing offenses, if the police may arrest and search a suspect without evidence that he has committed an offense, if wiretaps and other forms of electronic surveillance are permitted, it becomes easier to detect the commission of offenses of this sort. But if these measures are prohibited and if the prohibitions are observed in practice, it becomes more difficult, and eventually there may come a point at which the capacity of the criminal process to deal with victimless offenses becomes so attentuated that a failure of enforcement occurs.[1]

It has remained for the editors of the *UCLA Law Review* to bring these words to life with a careful empirical study of the enforcement of California's marijuana laws.

As the editors point out, whether or not the marijuana laws are justified depends at least in some part on how effective the laws are in reducing marijuana use, and upon whether marijuana use leads to violent crime, to heroin addiction, or to physical or psychological damage to the user, as well as upon the costs we incur by attempting to enforce these laws. The editors, however, have wisely taken the view that they cannot treat all these complex questions carefully in the relatively short space available to them. As a result they have contented themselves merely with pointing out both that the marijuana laws, at best, are not very effective in making marijuana unavailable and that many of the purported serious dangers of marijuana rest upon an empirical foundation which is, to say the least, questionable. Moreover, in concentrating on the enforcement of the marijuana laws, the editors have undertaken to examine only one of the complexes of costs entailed in our present criminalization

* Professor of Law, Stanford University.

[1] H. PACKER, LIMITS OF THE CRIMINAL SANCTION 151-52 (1968).

of marijuana. Although, after reading their work, no one can fail to appreciate either the enormous amount of law enforcement effort or the essential arbitrariness of enforcement of the marijuana laws, we should not forget that there are serious costs not directly associated with the enforcement of these laws.

Thus, who can compute the social cost of a law which turns approximately 30 percent of the population of the state between the ages of 16 and 25 into serious criminals? Nor can we find any calculus of the alienation from societal values that occurs when young people who, rightly or wrongly, feel that marijuana is no more dangerous than alcohol are told that their vice is a felony while that of their elders is at most an indiscretion. And, though we cannot estimate the amount of criminality attributable to this alienation, it is hardly unreasonable to believe that the second crime comes easier —that those who are made criminals by laws which they firmly believe to be wrong will thereby find it easier to commit other crimes, less restrained perhaps by the feeling that it is wrong in itself to commit a criminal act.

Even where the alienation caused by our marijuana laws does not result in the commission of further crimes it may have a profound effect upon law enforcement. Police departments throughout the country are coming more and more to appreciate that their task can only be performed with the cooperation of a citizenry which sees the police as their friends and protectors rather than as their oppressors. Indeed, great efforts have been made toward educating the young to picture the policeman as someone to whom they can turn for help rather than as a danger. At least to the 30 percent of youths who have used marijuana, however, the policeman is most clearly not a friend. Each one of these knows that had the police found out about his use of marijuana he would have been arrested and charged with a felony.

Since their focus is on the actual enforcement of the marijuana laws, the Law Review editors make no effort to consider the profound educational problems with which our marijuana laws have saddled us. Whether or not marijuana is dangerous, it is quite clear that there are several far more dangerous drugs in relatively common use in California. Indeed, it is often argued that a major reason for the marijuana laws is to curb use of these more dangerous drugs. The result, however, according to many drug educators, is exactly the opposite. Drug educators, by and large, do their very best to avoid the subject of marijuana in talking with students. They emphasize the dangers of the amphetamines, LSD, the opiates and various more exotic drugs and mention only in passing that marijuana possession is a felony. Sooner or later, however, a student brings up the

issue and the drug instructor then finds himself talking to a group in which many of the members, at least in some sense, know more about the drug than he. His dilemma is this: If he tells them that, pharmacologically speaking, marijuana is not the least bit more dangerous than alcohol, they may believe what he has to say, but he runs a strong risk of being accused of encouraging the commission of a felony and of losing his job. On the other hand, if he tells them stories of the terrible dangers of marijuana, whether he is right or wrong, they will not believe him, and, with the sometimes regrettable capacity for generalization common to the young, not believe him about anything else either. It is not uncommon for psychiatrists to report that a youth after suffering serious consequences from abuse of amphetamines, LSD or opiates has said that he didn't really believe those drugs were dangerous because "they lied to me about marijuana and I figured they were lying about this, too."

The editors of the Law Review, in restricting their effort to learning more about those costs of the marijuana laws associated with our actual enforcement of these laws, have made a great contribution toward providing information on one of the least studied costs of our marijuana laws. Even if we were completely convinced about the value of criminalizing marijuana, we might well hesitate before diverting such massive amounts of law enforcement energy from the area of crime against the person and against property. According to the latest statistics from the California Department of Justice Bureau of Criminal Statistics, arrests of juveniles and adults for marijuana violations in the first half of 1968 were running at a yearly rate of 50,000. When one considers that the good majority of these arrests were for simple possession of small amounts of marijuana untainted by any commercial dealing, the issue becomes even more stark. Whether or not the importance of shutting off the supply of marijuana justifies a continuing use of scarce law enforcement resources to prevent the trafficking in the drug, it is hard indeed to justify the expenditure of these resources on the huge number of mere possessors.

Moreover, entirely apart from whether the law enforcement energies could better be used elsewhere, there is reason to believe that the application of these resources to marijuana does a good deal of harm. Not only does the very existence of the law tend to bring otherwise non-criminal users into contact with considerably more anti-social drug peddlers, but for the unfortunate few (at least as compared to the total number of marijuana users in our population) who are caught, it is likely that both their criminality and drug use will be increased rather than decreased by the experience. First, even if the case against them is dropped—as we find that it often is—they

are left with an arrest record which makes it harder for them to get employment. Also, they will often have spent a short time in jail awaiting release or bail. As a result, in the majority of cases they will have had to pay a bondsman and they may have been exposed to police practices which tend to increase their feeling that their constitutional rights are, in practice, a very chancy thing.

Finally, where the criminal process is not aborted and the marijuana user is sent to jail, he will be incarcerated in a place where he will come in contact with others far more anti-social and deeply imbedded in the drug culture than he. In some sense, we do not send people to jail to reform them; we send them there as a lesson to others. When others do not seem to be getting the lesson, we are not only forced to send too many of them to jail but, at least where the "criminal" is not otherwise anti-social, we may find that we have increased crime more than we have decreased it.

Moreover, those processed by the marijuana laws may be exposed to another phenomena which certainly cannot help their development into law abiding citizens. While it is not pleasant to talk about, we should recognize that one of the costs of our marijuana laws—like those against most consensual crime—is that they tend to produce an entirely different crime which in the long run can cause more harm to the nation. The policeman, caught between society's demands that, on the one hand, he enforce the laws against crimes for which no witnesses exist and, on the other hand, that he respect the constitutional imperative of probable cause before search may take the easy way out and simply make the arrest and lie about the probable cause. This type of perjury is regrettably not uncommon. Many criminal lawyers know that police officers who would not dream of fabricating evidence to make the defendant look more guilty, take a very different attitude toward "fudging a little" on a search and seizure point. The effect of this upon both the defendant, who will know even if no one else does, and, probably more importantly, upon the policeman himself are most unhealthy both for the individuals concerned and for society.

However, by far the most impressive social cost documented by the Law Review is the erratic nature of each step in the enforcement of the marijuana laws. To some extent, of course, this is a problem with all law enforcement. Violators may not be detected; those who are detected may not be prosecuted; those who are prosecuted may not be convicted; and those who are convicted may not receive appropriate sentences. Yet with respect to marijuana it seems that at each step of the way the uncertainty is magnified. Marijuana possession is almost certainly the most common felony in the state of California. Still, we have approximately 50,000 arrests as against.

by a fairly conservative estimate, some 10 million separate uses of the drug. At the very least, then, one's chances of being caught using marijuana on any given occasion are one in 200. Of course, for most segments of the population, this is a gross overstatement of the risk. And indeed the Law Review study shows this. The typical marijuana arrest occurs by chance. A policeman stopping a car for a defective taillight is able by one means or another to discover small amounts of marijuana on an occupant. Typically, however, this happens to lower-class, or alienated, youth. For the more cautious member of the middle class, marijuana possession arrests occur usually because of some freak occurrence. He may be injured in an automobile accident, and when taken to the hospital have the green leafy substance discovered in his pocket. In one case, policemen received a mistaken report of a kidnapping from a home. Entering the building they found neither clues to the kidnapping nor any of the occupants. They did, however, find a can of marijuana on the kitchen table.[2] In another very recent case, a bank president and former supervisor of a suburban Bay Area county was arrested when, because of the failure of a babysitter to arrive, his children were left alone at home and a worried seven-year-old called the police.[3] When rates of arrest get as low as they are in the marijuana area, those arrested tend neither to respect the majesty of the law which has caught them, nor to realize that, after all, they did take their chances. Rather, they tend to chalk it up as a very bad break.

The arbitrariness in the enforcement of the marijuana laws by no means ends with the arrest. At each further stage of the prosecution there is a decision which may be arbitrary. And although this is also true to some extent of most other crimes, for marijuana offenses the arbitrariness of the process appears to be greater for several reasons. Since there are many more cases involving marijuana than most other serious crimes, more prosecutors have to handle the cases and tend to apply varying standards in judging whether they are fit for prosecution. Moreover, the usual crime, possession of marijuana, leads to such tenuous concepts as "joint possession," "constructive possession," and "usable amount," which seem to give an especially wide play to prosecutorial standards. Furthermore, since such a large percentage of marijuana offenders have been in no previous trouble with the law, the varying weights this factor is given by different prosecutors introduce an extra element of uncertainty into the entire process. Finally, determinations as to all of the previous issues necessarily reflect what the individual prosecutor happens to think about the propriety of the marijuana laws. Since, as the Law

[2] People v. Kampmann, 258 Adv. Cal. App. 629, 65 Cal. Rptr. 798 (1968).
[3] S.F. Chronicle, Nov. 14, 1968, § 1, at 3, col. 1.

Review indicates, there is a considerable disparity in the views of prosecutors, especially concerning the marijuana possessor, it is hardly surprising that the prosecution of a marijuana offender will depend to a large extent on which prosecutor has received the case.

Nor does the arbitrariness inherent in the enforcement of the marijuana laws stop with the exercise of prosecutorial discretion. The preliminary hearing and the trial will often reflect what the judge feels about the marijuana laws and about the constitutional guarantees of freedom from unreasonable search and seizure. And finally, at the sentencing level, there appear to be disparities wider even than those to which we are accustomed in the case of other serious crimes and based in great part on the feeling of the sentencing judge.

Of course, the enforcement of the marijuana laws illustrates the problem common to many other areas of our criminal law, the adjusting of discretion with the operation of the law. In the marijuana area the differences at each step of the criminal process—except perhaps for the step from commission of the crime to arrest, which is so enormous as to be a qualitative difference—are differences merely in degree, rather than in kind. On the other hand, the differences of degree are there and they are striking. Moreover, the chances are that they will become more so in future years as a higher percentage of government officials lose confidence in the criminal law as the major method of regulating marijuana use. And when the present generation of young users reaches the age at which they may sit on juries it is not unreasonable to expect the enforcement of the marijuana laws to collapse as completely as did alcohol prohibition. In short, the problems revealed by the Law Review study will remain with us. They are not problems of poor administration or of weak leadership in law enforcement. Rather they are the result of relying on the criminal law to coerce a morality that more and more of the informed citizenry are coming to feel is not worth its cost.

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MARIJUANA LAWS: AN EMPIRICAL STUDY OF ENFORCEMENT AND ADMINISTRATION IN LOS ANGELES COUNTY*

PART I: INTRODUCTION

Man has historically had an affinity for substances that alter his state of consciousness. For centuries substances like opium[1] and alcohol[2] have been used to escape from reality, for relief from physical or mental distress, for the simulation of mystical experiences or merely to induce a pleasurable feeling. Marijuana[3] is one of the oldest of these mind-altering substances.[4] It was first used in China over 3,000 years ago, where it was called "the Delight Giver."[5] Ganja,[6] a concentrated variety of marijuana, has been associated with Hindu religious practices since before the birth of Christ.[7] Recently the use of marijuana has spread throughout the Western world.[8]

The use of marijuana has been attacked in the United States with a vehemence unequaled in any other society. To a great extent

* Funded by the National Institute of Mental Health.

1 *See* W. ELDRIDGE, NARCOTICS AND THE LAW 3 (1962). For a concise review of the history of opium see Macht, *The History of Opium and Some of Its Preparations and Alkaloids*, 64 J.A.M.A. 477 (1915).

2 It is estimated that approximately 70 million Americans consume alcohol. J. COLEMAN, ABNORMAL PSYCHOLOGY AND MODERN LIFE 421 (3d ed. 1964). It is also estimated that roughly five million people may be classified as alcoholics—about six percent of the adult population. *Id.*

3 This spelling of marijuana will be used throughout the project. An alternative spelling, "marihuana," will be retained in those citations using it.

4 For a short but highly readable history of marijuana see Taylor, *The Pleasant Assassin: The Story of Marijuana*, in THE MARIHUANA PAPERS 3-17 (D. Solomon ed. 1966).

5 *Id.* at 7.

6 Ganja is a "specially cultivated and harvested grade of the female plants of Indian hemp." *Id.* at 10. It is of a much higher quality than the marijuana most commonly used. *Id.* at 9. In our society all extracts of the hemp plant are known as marijuana. However, there are several different grades. Hashish, for example, is composed exclusively of the resin from the tops of the female hemp plant, and is a far more potent substance than other types of marijuana. Because it is expensive to produce, its use is relatively rare in the U.S. *Id.* at 9. For a clear discussion of the different varieties of products of the hemp plant, see *id.* at 9-10.

7 *See id.* at 9-10.

8 *Cf.* A. LINDESMITH, THE ADDICT AND THE LAW 225-26 (1965). It has been estimated that over 200 million people currently use marijuana throughout the world. McGlothlin, *Cannabis: A Reference*, in THE MARIHUANA PAPERS 402 (D. Solomon ed. 1966).

this reaction is based on a morality rooted in our Puritan heritage—a scheme which glorifies the industrious and frowns on the idle.[9] Marijuana, a drug causing a torporific pleasure among its users, is an evil when judged by this scheme. The overwhelming response to this evil has been the attempt to legislate marijuana out of existence through laws prohibiting its sale or possession.[10] These laws have been adopted under pressure generated by various federal and state law enforcement officials[11] who have consistently argued that "pot" leads to crime, violence, and heroin addiction.[12]

The current laws in California are noteworthy in two respects. First, they typify the attitude that marijuana constitutes a grave social evil.[13] For example, a judge has the option of punishing a first offense of marijuana possession as a felony and sentencing the offender to one to 10 years in prison.[14] A second offense is punishable solely as a felony by a two to 20 year sentence.[15] Possession of marijuana for the purpose of sale carries a two to 10 year penalty, with a requirement that the convicted felon serve a minimum of two years before becoming eligible for probation. A second offense is punishable by five to 15 years and carries a three year minimum term.[16] Selling, furnishing or transporting marijuana brings a sentence of five years to life, with a minimum term of three years.[17] By contrast, the punishment provided for voluntary manslaughter[18] or grand theft[19] in California is a prison term not exceeding 10

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[9] For a general analysis of Puritan society and culture see P. MILLER & T. JOHNSON, THE PURITANS (1938) and H. SCHNEIDER, THE PURITAN MIND (1930). The legacy of our Puritan heritage can also be seen in other areas of legislation. For example, laws proscribing "unnatural" sexual activities between consenting adults are prevalent in every state. For a summary of these provisions see Project, *The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County*, 13 U.C.L.A. L. REV. 643, 657-85 (1966).

[10] For a detailed examination of past and current legislation, both federal and state, *see* Appendix *infra*.

[11] *See, e.g.*, H. ANSLINGER & W. TOMPKINS, THE TRAFFIC IN NARCOTICS 20-26 (1953); Testimony of Mr. Harry Anslinger, in *Hearings on the Taxation of Marijuana Before the House Ways and Means Comm.*, 75th Cong., 1st Sess. 23-26 (1937); Sterba, *The Politics of Pot*, ESQUIRE 58 (Aug. 1968).

[12] *See generally* sources cited in note 11 *supra*; E. STANLEY, MARIHUANA AS A DEVELOPER OF CRIMINALS (1937). Many of these arguments were echoed by other writers of the period. *See* E. ROWELL, ON THE TRIAL OF MARIHUANA: THE WEEDS OF MADNESS (1939); R. WALTON, MARIHUANA: AMERICA'S NEW DRUG PROBLEM (1938). These arguments are still made today, particularly by the Federal Bureau of Narcotics. *See* Giordano, *The Prevention of Drug Abuse*, HUMANIST 20 (Mar.-Apr. 1968).

[13] *See* Appendix *infra*.

[14] Ch. 1465, Calif. Legis. Serv. (West No. 7, 1968).

[15] CAL. HEALTH & SAFETY CODE § 11530 (West 1966).

[16] *Id.* § 11530.5.

[17] *Id.* § 11531.

[18] CAL. PENAL CODE § 193 (West 1957).

[19] *Id.* § 489.

years. Thus it is apparent that the California Legislature considers marijuana crimes as serious and dangerous as these other crimes.[20] This approach is reflected in the statutes of every state and in the federal marijuana tax laws.[21]

The second noteworthy aspect of the California laws is the recent legislative action in granting a judge the discretion to punish first offenses of simple possession as either a misdemeanor or felony depending on the circumstances of the case. This new law may indicate a trend towards regarding marijuana use as a less serious danger than it has been thought to be in the past.

Several different theories have been offered to justify the imposition of criminal sanctions for marijuana violations.[22] These theories can be summarized into four basic categories:

(1) Marijuana produces physical and psychological harm to the user.

(2) It is a stepping stone to harder narcotics such as heroin.

(3) Marijuana use leads to criminal and violent acts.

(4) Its use is immoral and will lead to a diminishing of the individual's potential productivity and energy.

Any discussion of the physical or psychological harm produced by marijuana must proceed from a description of its immediate effects upon users.[23] One fairly impartial account can be found in the report of the President's Crime Commission:

> Its effects are rather complicated, combining both stimulation and depression. Much of its effect depends on the personality of the user. The drug may induce exaltation, joyousness and hilarity, and disconnected ideas; or it may induce quietude or reveries. In the inexperienced taker it may induce panic. Or, one state may follow the other. Confused perceptions of space and time and hallucinations in sharp color may occur; the person's complex inteilectual and motor functions may be impaired. These effects may follow within minutes of the time the drug is taken. The influence usually wears off within a few hours but may last much longer in the case of toxic dose. The immediate

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[20] It should be noted that whereas manslaughter and theft are crimes directed against third persons, most of the harm contemplated by the marijuana statutes is cast primarily upon the user himself.

[21] Cantor, *The Criminal Law and the Narcotics Problem*, 51 J. CRIM. L.C. & P.S. 512, 516-19 (1961).

[22] A summary of these theories can be found in PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 224-25 (1967) [hereinafter cited as PRESIDENT'S CRIME REPORT].

[23] It should be noted that because of the prohibitory legislation, little research has been conducted on the effects of marijuana. For the need for intensive research see *id.* at 225.

> *physiological* effects may include nausea and vomiting, but there are no lasting physical effects, and fatalities have not been noted. Tolerance is very slight if it develops at all. Physical dependence does not develop.[24]

Although it has been shown that marijuana does not produce physical dependence[25] or tolerance,[26] it is argued that it generates psychological dependence. The proponents of this theory claim that by using marijuana the user comes to depend on it as a crutch in his efforts to resolve his inner conflicts and face up to reality.[27] In opposition to this theory, several proponents of marijuana use have claimed that it helps them to understand and resolve their problems.[28] No conclusive evidence is available corroborating either view.[29] Although this issue is open to empirical investigation, it is

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[24] *Id.* at 213 (emphasis added).

[25] Physical dependence is defined as "a state of latent hyperexcitability, [which] develops in the cells of the central nervous system of higher mammals following frequent and prolonged administration of morphine-like analgesics, alcohol, barbiturates, and other depressants. It becomes apparent in specific subjective and objective symptoms and signs—the *abstinence syndrome* or the *withdrawal illness*—upon abrupt termination of drug administration." WHITE HOUSE CONFERENCE ON NARCOTICS AND DRUG ABUSE 278 (1963) [hereinafter cited as WHITE HOUSE CONFERENCE].

[26] "*Tolerance* is a fundamental survival mechanism which permits body cells to be exposed continuously to toxic substances without evoking possibly dangerous responses. This is manifested by the phenomenom that successive doses of the same amount of drug produce lesser effects and that, conversely, larger and larger doses are necessary to achieve the effects of the first dose." *Id.* at 277.

Even Harry Anslinger, a vociferous opponent of marijuana use, has accepted the notion that marijuana is not physically addictive. *See* H. ANSLINGER & W. TOMPKINS, *supra* note 11, at 20-26.

[27] "The real harm that results from the chronic use of marijuana is the development of the *habit* of escaping all discomfort and all unpleasantness by the use of some substance . . . . When discomforts are not met realistically, when the solution of troublesome problems is sidestepped or consciousness of them destroyed, by the use of some substance, we have the foundation of a *habit-formation* that may lead to regression and to the destruction of the personality." Reichard, *Some Myths About Marihuana*, 10 FED. PROBATION 21 (Oct.-Dec. 1946). *See also* Becker, *Becoming a Marihuana User*, 59 AM. J. SOCIOLOGY 235 (1953); Cal. Bureau of Narcotic Enforcement, The Law Enforcement Position Concerning the Cannabis Sativa Problem 2 (Mimeograph of Address by John Warner, Conference on LSD and Marijuana, UCLA, Oct. 9, 1967); Charen & Perelman, *Personality Studies of Marihuana Addicts*, 102 AM. J. PSYCHIATRY 674 (1946); Gaskill, *Marihuana, An Intoxicant*, 102 AM. J. PSYCHIATRY 202 (1945); Marcovitz & Meyers, *The Marihuana Addict in the Army*, 6 WAR MEDICINE 382 (1944).

[28] Interview with Dr. Lewis Yablonsky, Chairman of the Sociology Department of San Fernando Valley State College, in Los Angeles, Feb. 14, 1968. Dr. Yablonsky has done extensive fieldwork among the hippies and is the author of a forthcoming book on them. The effects of marijuana use on personal creative activity are discussed in Burroughs, *Points of Distinction Between Sedative and Consciousness-Expanding Drugs*, in THE MARIHUANA PAPERS 388 (D. Solomon ed. 1966).

[29] For further discussions of the psychological effects of marijuana use see Allentuck & Bowman, *Psychiatric Aspects of Marihuana Intoxication*, in THE MARIHUANA PAPERS 361 (D. Solomon ed. 1966); Bromberg, *Marihuana: A Psychiatric Study*, 113 J.A.M.A. 4 (1939); Mayor's Committee on Marihuana, *The Marihuana*

a task for trained medical and psychological researchers and has not been undertaken by this project.

Currently, it is widely accepted that marijuana leads to heroin addiction[30] or experimentation with hallucinogenic drugs.[31] Supporters of this theory cite to the few available studies which tend to show that a large number of heroin addicts have, at some time, smoked marijuana.[32] On the other hand, many scientists have pointed out that a direct cause and effect relationship has not been demonstrated.[33] While this theory is also badly in need of empirical study, it lies within the realm of sociological and medical expertise and has therefore been excluded from study in this project.

It is frequently claimed that marijuana use leads to the commission of crimes and violent, anti-social behavior.[34] This view was

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Problem in the City of New York, in THE MARIHUANA PAPERS 285-335 (D. Solomon ed. 1966); Murphy, *The Cannabis Habit: A Review of Recent Psychiatric Literature*, 15 BULL. ON NARCOTICS 15 (Jan.-Mar. 1963).

It has been suggested by several psychologists that marijuana may have an adverse psychological effect upon young people. The processes of maturation and emotional development occurring during youth are often beset with tension and conflict. Using marijuana as a refuge from facing up to these conflicts may hinder the development of emotional maturity. As yet, little evidence is available supporting this view. In any event, this argument would go only toward keeping marijuana out of young hands, as is presently done with alcohol. *See generally*, Chein & Rosenfeld, *Juvenile Narcotics Use*, 22 LAW & CONTEMP. PROB. 52 (1957); Winick, *Marijuana Use by Young People*, in DRUG ADDICTION IN YOUTH 19 (1965). For a general discussion of the use of marijuana and other drugs by young people see ILLINOIS INSTITUTE FOR JUVENILE RESEARCH AND THE CHICAGO AREA PROJECT, DRUG ADDICTION AMONG YOUNG PERSONS IN CHICAGO (1953); LAPD, YOUTH AND NARCOTICS: A STUDY OF JUVENILE ADDICTION IN LOS ANGELES (1953).

30 "That is the great problem and our great concern about the use of marijuana, that eventually, if used over a long period it does lead to heroin addiction." Testimony of Mr. Harry Anslinger, in *Hearings on S. 3760 Before the Subcomm. on Improvements in the Federal Criminal Code of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess., pt. 5, at 16 (1955). *See* CAL. BUREAU OF NARCOTICS ENFORCEMENT, THE NARCOTIC PROBLEM 12 (4th ed. 1965); *cf.* Chein & Rosenfeld, *supra* note 29; Winick, *supra* note 29, at 28-30. For a general discussion of this argument see PRESIDENT'S CRIME REPORT, *supra* note 22, at 225.

31 Yablonsky Interview, *supra* note 28. In his investigation of the hippie communities, Dr. Yablonsky found an integrated use of LSD and marijuana. He circulated a questionnaire to over 600 hippies. 70% of them reported that the first drug they ever used was marijuana. Over 95% reported that they had taken LSD.

32 A summary of these studies can be found in the PRESIDENT'S CRIME REPORT, *supra* note 22, at 225. *See also* note 31 *supra*.

33 There is no pharmacological basis for the charge that marijuana leads to heroin addiction. L. GOODMAN & A. GILMAN, THE PHARMACOLOGICAL BASIS OF THERAPEUTICS 300-01 (3d ed. 1965). *See also* PRESIDENT'S CRIME REPORT, *supra* note 22, at 225.

34 *See generally* H. ANSLINGER & W. OURSLER, THE MURDERERS: THE STORY OF THE NARCOTICS GANGS (1961); H. ANSLINGER & W. TOMPKINS, *supra* note 11, at 20-26; Andrade, *The Criminogenic Action of Cannabis and Narcotics*, 16 BULL. ON NARCOTICS 23 (Oct.-Dec. 1964); Munch, *Marihuana and Crime*, 18 BULL. ON NARCOTICS 15 (April-June 1966). For a contrary position see Blum, *Mind-Altering Drugs*

originally promoted in the 1930's by Harry Anslinger, director of the then newly formed Federal Bureau of Narcotics.[35] Statistics and files from various law enforcement agencies throughout the country have been used to support the connection between marijuana and crime.[36] The validity of this evidence, however, is questionable because of the untested assumptions upon which it rests[37] and the highly unscientific manner in which it was gathered.[38] The President's Ad Hoc Panel on Drug Abuse concluded that the evidence is inadequate to substantiate the correlation between marijuana and anti-social acts.[39] Upon this theory, the President's Crime Commission reported:

> One likely hypothesis is that, given the accepted tendency of marijuana to release inhibitions, the effect of the drug will depend on the individual and the circumstances. It might, but certainly will not necessarily or inevitably, lead to aggressive behavior or crime. The response will depend more on the individual than the drug.[40]

Marijuana has also been condemned by those who claim that its use is immoral.[41] Such a view reflects the Puritan ethic of sobriety and self-restraint. Whether marijuana is moral or not and whether the criminal law is the proper vehicle for controlling morality[42] are essentially philosophical questions which are outside the province of an empirical project.

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and Dangerous Behavior: Dangerous Drugs, in PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTIC AND DRUG ABUSE 21, 24-25 (1967); Bromberg & Rogers, *Marijuana and Aggressive Crime*, 102 AM. J. PSYCHIATRY 825 (1946); Mayor's Committee on Marihuana, *supra* note 29, at 227; Murphy, *supra* note 29, at 16; Reichard, *supra* note 27, at 17-18.

[35] *See* notes 11-12 *supra*, and accompanying text.

[36] One report, originating from the District Attorney of New Orleans, claimed that 125 of 450 men convicted of major crimes in 1930 were regular marijuana users. Stanley, *Marihuana As a Developer of Criminals*, 2 AM. J. POLICE SCI. 252 (1931). This report is critically commented on in Winick, *supra* note 29.

[37] These assumptions are: (1) that the defendant was a marijuana user, (2) that he was under the influence of marijuana at the time he committed the crime, and (3) that the crime would not have been committed but for the use of marijuana. *See* PRESIDENT'S CRIME REPORT, *supra* note 22, at 224.

[38] For a critique of the techniques employed by law enforcement officials in the gathering of evidence linking marijuana with crime see Mayor's Committee on Marihuana, *supra* note 29.

[39] WHITE HOUSE CONFERENCE, *supra* note 25, at 286.

[40] PRESIDENT'S CRIME REPORT, *supra* note 22, at 225.

[41] *See, e.g.*, H. ANSLINGER & W. TOMPKINS, *supra* note 11, at 20-25; Reichard, *supra* note 27, at 21.

[42] Proponents of marijuana use generally agree with John Stuart Mill's formulation: "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." Mill, *On Liberty*, in THE UTILITARIANS 484 (1961). The opposing viewpoint would permit society to wield its power over the individual in order to preserve and protect the practice of moral virtue. *See* H. DAGGE, CONSIDERATIONS ON CRIMINAL LAW 245-46 (1772);

Thus, in dealing with the enforcement of marijuana laws, this project is not designed to investigate the justifications cited for marijuana legislation. Nonetheless, enforcement practices must be considered in any assessment of the effectiveness and desirability of substantive law. One important factor, for example, is whether the laws actually deter people from using marijuana. Despite the current stringency of the laws, statistics show that the number of people using marijuana is substantially increasing.[43] It has been estimated that 20 percent or more of certain college populations have smoked marijuana at least once.[44] Arrests of juveniles in California for marijuana offenses have increased over 400 percent in the past five years.[45] Moreover, the type of individual using marijuana has changed over the last 25 years. Originally, marijuana smoking was limited to the lower socioeconomic classes;[46] today, it has also become frequent among the middle and upper-class youth.[47] This increase in marijuana use indicates that the laws are not deterring large numbers of people and raises serious questions about the efficacy of those laws.

The institutional, social and financial costs of enforcing the law must also be taken into consideration in evaluating the marijuana laws. Institutional costs include the diversion of police time and energy from the investigation of other crimes and the mounting frustrations of the police caused by uncontrollable marijuana use and judicial leniency towards marijuana offenders. Possible social costs of the present laws include exposing a rapidly increasing number of young offenders to the criminal process and to the stigma of arrest and felony conviction.[48] In addition, police techniques necessary to uncover violators often involve serious intrusions on individual privacy. Financially, the enforcement of the marijuana

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P. DEVLIN, THE ENFORCEMENT OF MORALS (1959). For a detailed critique of Devlin see H. HART, LAW, LIBERTY, MORALITY (1963).

[43] Although exact figures are not available, all observers, including law enforcement officials, agree that marijuana use is increasing. *See* PRESIDENT'S CRIME REPORT, *supra* note 22, at 213. *See generally*, LIFE, July 7, 1967.

[44] *See* PRESIDENT'S CRIME REPORT, *supra* note 22, at 213; Blum, *supra* note 34, at 24.

[45] CAL. DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS, DRUG ARRESTS AND DISPOSITIONS IN CALIFORNIA (1966).

[46] A. LINDESMITH, *supra* note 8, at 226-27.

[47] PRESIDENT'S CRIME REPORT, *supra* note 22, at 213; Yablonsky Interview, *supra* note 28.

[48] In 1967 a total of 8,371 juveniles under the age of 19 with no prior criminal record were arrested by California law enforcement agencies. An additional 5,557 with no prior record were between the ages of 20 and 24. There were a total of 16,161 individuals with no prior record arrested for marijuana violations in 1967. Unpublished statistics obtained from the Cal. Dep't of Justice; Bureau of Criminal Statistics.

laws is very expensive. Thousands of hours of police time are consumed in apprehending marijuana offenders;[49] many more hours are spent by the police in court;[50] and our criminal courts, already plagued by oppressive caseloads, are ill equipped to handle the staggering increase in marijuana trials.

An empirical project can be of significant value in exploring such conditions. This project has gathered data relating to the enforcement of the marijuana laws in Los Angeles County. At the pre-arrest level, it will describe the special techniques used in uncovering marijuana users and pushers. At the post-arrest level, the project will concentrate on the use of prosecutorial and judicial discretion in the application of the laws. Such an empirical study will hopefully add a needed perspective to the body of information which will be used by legislators and other concerned citizens in evaluating the desirability of the present laws.

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[49] By the time a two man patrol team has arrested an individual, taken him to the station to be booked and returned to their patrol, two to three hours have usually passed. Interview with Joe Reichmann, Deputy District Attorney of Los Angeles County, in Los Angeles, June 11, 1968.

[50] *See* note 14, Part II *infra*.

PART II: ENFORCEMENT TECHNIQUES

I. INTRODUCTION

Enforcement of the marijuana laws suffers from the same difficulties encountered in the enforcement of laws concerning other consensual crimes.[1] There is no victim to complain and there is little social pressure to conform to the law within the various subcultures involved.[2] The police compensate for these difficulties by developing aggressive techniques designed to ferret out the illicit activity, including the use of informants, undercover operators, and field surveillance.[3]

The effectiveness of enforcement can be measured only by determining the ratio of arrests to violations. But the effectiveness of enforcement of the marijuana laws is particularly difficult to determine because marijuana use is increasing so rapidly.[4] The police readily admit that total enforcement of the marijuana laws is impossible.[5] However, the heavy penalties placed on marijuana use by the legislature plus community concern place considerable pressure on the police to close the ever widening gap between violations of the law and actual arrests. At some point increased police efficiency in uncovering violations is going to clash with

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[1] For a general discussion of the problems involved in enforcing consensual crimes *see* E. SCHUR, CRIMES WITHOUT VICTIMS (1965); L. TIFFANY, D. MCINTYRE, & D. ROTTENBERG, DETECTION OF CRIME 208-13 (1967) [hereinafter cited as TIFFANY]; Project, *The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County*, 13 U.C.L.A. L. REV. 644, 686 (1965) [hereinafter cited as *Homosexual Project*].

[2] A subculture may be loosely defined as a "culture-within-a-culture, with its [own] distinctive values and behavior norms . . . ." E. SCHUR, *supra* note 1, at 85. Schur indicates that legal repression of some activities, such as homosexuality or the use of addictive narcotics, may in fact directly stimulate the creation of subcultures centered on those activities. *Id.* at 141-45. Marijuana, however, has been incorporated into the life style of existing subcultures such as those of the ghetto Negro and the Sunset Strip "hippie," rather than being the cause behind the creation of those subcultures.

[3] Jerome Skolnick notes that the police enjoy narcotics work because it requires skillful and efficient detective work initiated by the policeman himself. J. SKOLNICK, JUSTICE WITHOUT TRIAL 117 (1966).

[4] To the extent that arrests are an indication of increased illegal activity the record is striking. During the period 1960 through 1966 adult arrests for marijuana violations in Los Angeles County increased 217% from 2,704 in 1960 to 8,564 in 1966. Juvenile arrests in the county increased from 694 in 1960 to 2,636 in 1966, a gain of 280%. CAL. DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS, DRUG ARRESTS AND DISPOSITIONS IN CALIFORNIA 6-7 (1966) [hereinafter cited as DISPOSITIONS 1966].

[5] Chief Thomas Reddin of the Los Angeles Police Department admits that all the police can do is try to keep marijuana under control. L.A. Times, Dec. 4, 1967, § 2, at 6, col. 1.

court-imposed barriers on investigation.[6] The police response is pressure for relaxation of these barriers[7] and the development of means to work around them.[8] These efforts, however, have been largely ineffective. At present, the police still depend largely on fortuity in apprehending marijuana violators.

Another factor which complicates the enforcement of marijuana laws is the increased geographical range of the problem. In the past, the police could isolate particular problem areas because the traditional users were Mexican-Americans, Negroes, and "artists" who lived within particular areas.[9] Now, the rapid increase in use among 15 to 24-year olds[10] has spread the problem far beyond its traditional neighborhoods,[11] and there are no longer any local police agencies which deny having a marijuana problem.[12]

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[6] This results from two alien views on what should be the primary emphasis of the criminal process. The police believe the process should be geared to efficiency in the discovery of those violating the law. The courts, interpreting the law, emphasize the rights of an individual to be free from certain police tactics even if this means a reduction in police efficiency. *See* Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1 (1964).

[7] Police pressure resulted in the passage of a new evidence code section allowing the judge discretion in deciding whether to require the police to reveal their informant where probable cause to arrest or search is the sole issue. CAL. EVID. CODE § 1042 (West 1965). *See* STATE OF CALIFORNIA, FINAL REPORT OF THE SPECIAL STUDY COMMISSION ON NARCOTICS 43-47 (1961) [hereinafter cited as SPECIAL STUDY].

[8] This does not necessarily mean illegal actions by the police, but includes techniques not prohibited by law designed to circumvent informant disclosure or probable cause requirements. *See* Section IV *infra*.

[9] *See* testimony of Luke McKissick, in *Hearings on Marijuana Laws Before the Cal. Senate Pub. Health & Safety Comm.*, Oct. 18, 1967, at 87 [hereinafter cited as *Hearings*]. The percentage of adults arrested for marijuana offenses in Los Angeles County of Negro descent has remained fairly constant during the period from 1960 to 1966. In 1960, 33.6% of adult arrestees were Negro; in 1966, the figure was 31.0%. However, the corresponding figures for Whites and Mexican-Americans have changed significantly. In 1960, the percentage of arrestees who were White was 44.3%; in 1966, 53.6%. During the same period the equivalent percentages among Mexican-Americans declined from 21.0% to 14.6%. *Compare* DISPOSITIONS 1966, *supra* note 4, at 56, *with* CAL. DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS, NARCOTIC ARRESTS AND THEIR DISPOSITIONS IN CALIFORNIA 17 (1960).

[10] This age grouping represents a consensus drawn from responses of local enforcement agencies when asked what age group was primarily responsible for the increase in marijuana arrests.

[11] The traditional marijuana problem areas were the Watts area with its high Negro population, the East Los Angeles area with its high Mexican-American population, and the Hollywood and Venice areas with a high percentage of "artists" and fellow-travelers as residents. While these areas still provide the most arrests, there has been a spectacular increase in arrests, particularly among juveniles, in the traditionally respectable White middle-class areas. For example, the Covina Police Department reports a 700% increase in arrests within a one year period (1966-67). This is a fairly typical suburban community.

Juvenile arrests also increased dramatically in two Los Angeles Police Division located in the predominately white San Fernando Valley. Arrests by the West Valley Division went from 32 in 1965 to 430 in 1967 while arrests by the Van Nuys Division increased from 28 in 1965 to 278 in 1967.

Arrest reports probably do not give an entirely accurate picture of the relative use of marijuana in particular areas. For example, although there are considerably more arrests in the Hollywood area than in West Los Angeles,[13] the difference may not be due entirely to greater incidence of marijuana use in Hollywood. Part of the difference may be due to heavier police patrols in the Hollywood area, and part to the overt use of marijuana by the "hippie-type" youth in Hollywood (as opposed to more covert use by the student and young adult population of West Los Angeles).

Given the current spread of marijuana use, both numerically and geographically, and the limitations placed upon investigatory techniques, the primary means of increasing the percentage of apprehensions is to devote more manpower to the task. However, the investigation required to uncover consensual activities such as marijuana possession and sale requires great amounts of time[14]—time which must be taken away from the investigation of other more violent crimes. This time commitment, along with the other social costs involved, should reflect a rational measure of the comparative importance of present marijuana laws.

II. The Distributional System

Los Angeles is a distribution center from which marijuana flows to the rest of the country.[15] Over 90 percent of the marijuana in Los Angeles County is grown in Mexico[16] and about 72 to 80

Lieutenant William Pettit of the Manhattan Beach Police Department estimates that 30% of the students of Manhattan Beach High School have tried marijuana. Interview in Manhattan Beach, Jan. 16, 1968 [hereinafter cited as Pettit Interview]. Attorney Marvin Cahn makes a similar estimate of 90% of the students at Hollywood High School. Interview in Los Angeles, Jan. 3, 1967 [hereinafter cited as Cahn Interview]. In a recent poll of students at UCLA, 3377 of the 9589 responding claimed to have tried marijuana at least once. UCLA Daily Bruin, Jan. 4, 1968, at 3, col. 3.

[12] Of the enforcement agencies responding, the percentage of marijuana arrests to total arrests ranged from 1% in Culver City to 16% in Pasadena. Pasadena has a separate narcotics unit which may account, in part for the higher percentage.

[13] Of the 738 adult arrests studied, 90 were made by the Hollywood Division of the Los Angeles Police Department and 13 by the West Los Angeles Division. In 1967 (through November) 368 juveniles had been arrested by the Hollywood Division as compared with 228 by the West Los Angeles Division.

[14] *See* J. Skolnick, *supra* note 3, at 139. Not only is this time spent on patrol and investigation, but it includes time spent by the police in court pursuant to a marijuana prosecution. Police responses indicated that the successful prosecution of the average marijuana case requires from four to eight hours of court attendance by the arresting officer.

[15] The Van Nuys News and Valley Greensheet, Sept. 12, 1967, at 16-a, col. 5 (central ed.).

[16] Special Study, *supra* note 7, at 19.

percent of this amount is shipped to Los Angeles by a group of separate, loosely knit syndicates that are organized particularly for this purpose.[17] It is purchased by Mexican-based members of the syndicate for five to eight dollars a kilogram, processed locally, and shipped over the border by plane, boat, or special vehicles known as "mules."[18] After arriving in Los Angeles, the transporter calls a designated telephone number for instructions. He is told to deposit the cargo in a particular spot, such as a service station restroom, or he may be told to park the vehicle on a side street where the dealer will pick it up later. At no point is there any contact between the transporter and the stateside dealer.[19] Once the dealer receives his shipment he "stashes" it in a concealed place. The stash is later divided into smaller quantities for distribution to local pushers or for transportation out of Los Angeles.

Marijuana not shipped by these syndicates comes across the border in the possession of small-scale pushers, usually individuals who have purchased the marijuana primarily for their own use and who bring back some extra to make a small profit by selling to their friends.

The last link in the distributional chain is the pusher. In the past, most marijuana use was in heavily patrolled low income areas where the pusher had a firsthand knowledge of police procedures. With the currently expanding market, however, the dealers have recruited "amateurs" from middle or upper income areas[20] whose previous contact with the police has been minimal and who are thus less circumspect in their dealings.

There is some dispute whether marijuana pushers also sell heroin and other hard narcotics. Some enforcement agencies, not-

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[17] The bulk of the information presented in this section was obtained from an interview with Mr. John Warner, Field Supervisor of the California Bureau of Narcotic Enforcement, in Los Angeles, Jan. 9, 1967. His assertion that continuing operations account for most of the imported marijuana is disputed by others, including attorney Marvin Cahn and sociologist Jerry Mandel. They claim that marijuana is too bulky and the eventual profit too low to make a continuing organization possible. Cahn Interview, *supra* note 11. Mandel, *Myths and Realities of Marihuana Pushing*, in MARIHUANA MYTHS AND REALITIES 58, 76 (J. Simmons ed. 1967).

[18] The "mule" is an ordinary truck or automobile which has been specially outfitted to transport up to 1100 kilograms of marijuana.

[19] The precautions are so elaborate that the transporter may park an empty car, observe who gets in it and follow him to be sure he isn't a police plant. Warner Interview, *supra* note 17.

[20] This is necessary because a successful pusher must be integrated into the community in which he sells. Narcotics users will seldom buy from a total stranger and few experienced pushers desire to sell to total strangers. The new breed of pusher is typically a student, who started as an occasional user and began picking up extra money by selling to acquaintances.

ably the Federal Bureau of Narcotics, claim that the marijuana pusher often switches to selling heroin.[21] However, this claim is disputed by defense attorneys and other enforcement agencies who state that marijuana is usually sold exclusively.[22] The claim of exclusivity is supported by the negative connotation heroin has to the marijuana user and pusher. Heroin users form a separate subculture and rarely come into contact with casual marijuana users.[23] There appears, however, to be an increasing connection between the use of marijuana and the use of pills, such as the amphetamines, particularly among juveniles.[24] Since both pills and marijuana are used by the same groups for similar purposes, it is reasonable to infer that the same pushers may be supplying them both.

III. Organization Against the Problem

Each law enforcement agency concerned with marijuana is organized to combat a particular aspect of the overall narcotics flow from importation down to use: the Federal Bureau of Narcotics and the California Bureau of Narcotics Enforcement combat the flow at the importation and major traffic levels; the various special narcotics units of local enforcement agencies are organized to uncover the local dealers and pushers; and the individual patrolman has the responsibility of apprehending the individual user.

The Federal Bureau of Narcotics (FBN) is vested with the broad authority to enforce all of the laws of the United States pertaining to marijuana and narcotic drugs.[25] In point of fact it is

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[21] Interview with an agent of the Federal Bureau of Narcotics, in Los Angeles, Mar. 19, 1967 [hereinafter cited as FBN Interview].

[22] Cahn Interview, *supra* note 11; Interview with Luke McKissick, Attorney, in Hollywood, Mar. 13, 1968; Warner Interview, *supra* note 17.

[23] Interviews with enforcement agencies indicate that, even in areas where there is a high incidence of both marijuana and heroin use, undercover agents are advised to deal in one drug or the other, since an agent buying both heroin and marijuana would be suspect.

[24] Statistics compiled on juvenile arrests in 1967 by the Los Angeles Police Department, Juvenile Narcotics Division, indicate a rapid increase over 1966 in both dangerous drug arrests and marijuana arrests. As of December, arrests through the first 11 months of each year were:

	1966	1967
Dangerous Drugs	397	1062
Marijuana	1522	2910

Interviews with high school teachers indicate that the use of amphetamines and other dangerous drugs is becoming as severe a problem as marijuana use among high school students.

In our sample of 204 juvenile cases, 58 of those arrested had pills as well as marijuana.

[25] 26 U.S.C. § 7607(2) (1964). As this project was being prepared, President Johnson submitted a government reorganization plan which abolished the Federal

concerned only with major traffic, its policy being to stop the flow of marijuana at its source.[26] To accomplish this end the FBN has agents spread throughout the world and has been the influential force behind the present international control agreements.[27] The FBN claims to work closely with local and state agencies, but this claim is disputed by some of those agencies. They claim that the Bureau prefers to develop its own information and that it is generally uncooperative.

The California Bureau of Narcotics Enforcement is a part of the California Attorney General's Office.[28] Ostensibly given the duty of enforcing all of California's narcotics laws, its function has been narrowed by directives from the Attorney General's Office assigning it the "detection and apprehension of major traffic."[29] This Bureau depends primarily on arrestees of local agencies to supply it with information.[30]

Both the Federal and California Bureaus work with the United States Bureau of Customs and the Border Patrol in attempting to apprehend marijuana importers at the Mexican border. Border searches are a particularly useful enforcement device in view of the fact that they need not be accompanied by probable cause.[31] The border patrolmen receive instructions from state and federal

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Bureau of Narcotics and the Bureau of Drug Abuse Control as separate agencies, and combined them into a new organization, The Bureau of Narcotics and Dangerous Drugs, under the Department of Justice. This reorganization became effective April 8, 1968. Sterba, *The Politics of Pot*, ESQUIRE 119 (Aug. 1968).

[26] FBN Interview, *supra* note 21.

[27] The present United Nations Treaty is known as the Single Convention on Narcotic Drugs. It urges member nations to take measures to control marijuana, but not necessarily to prohibit it. The former commissioner of the Federal Narcotics Bureau, Harry Anslinger, continually sought to keep the United Nations committed to the position that marijuana is an addictive drug. *See* McGlothlin, *Toward a Rational View of Marihuana*, in MARIHUANA MYTHS AND REALITIES 191-93 (J. Simmons ed. 1967).

[28] CAL. HEALTH & SAFETY CODE §§ 11100-07 (West 1964). The Code denominates the organization "Division of Narcotic Enforcement" but most people, including those within the organization, refer to it as the "Bureau of Narcotic Enforcement."

[29] The other assigned functions are to prevent the unauthorized use of licensed narcotics (which has nothing to do with marijuana since there is no authorized use for which it can be licensed) and to aid local agencies in narcotics enforcement (which the Bureau does not have the manpower to do anyway). Warner Interview, *supra* note 17.

[30] *See* text accompanying note 79 *infra*.

[31] The fourth amendment's prohibition against unreasonable searches has been held not to forbid border searches made without probable cause. The standard applied is one of mere suspicion that the vehicle might be carrying contraband goods. 19 U.S.C. § 482 (1964). *See* Carrol v. United States, 267 U.S. 132, 138 (1925); King v. United States, 348 F.2d 814 (9th Cir. 1965); Witt v. United States, 287 F.2d 85 (9th Cir. 1961), *cert. denied*, 366 U.S. 950 (1961). For a detailed discussion of border searches see Comment, *Intrusive Border Searches—Is Judicial Control Desirable?*, 115 U. PA. L. REV. 276 (1966); 18 W. RES. L. REV. 1007 (1967).

agents to search particular vehicles coming over the border. This information is usually obtained from informants inside the United States.[32] The FBN also claims to get considerable cooperation from Mexican authorities.[33] The California Bureau, however, admits that it gets little assistance from Mexican officials and the FBN's claim is disputed by other commentators.[34]

The larger police departments and the Sheriff's Department in Los Angeles County have special narcotics units which concentrate on uncovering local dealers and pushers.[35] In addition, these same agencies have separate juvenile narcotics divisions concerned with all juvenile offenders and with adults who supply them.[36] In the smaller agencies, responsibility for all narcotics enforcement usually lies with a couple of officers who devote only part of their time to the task.[37]

There appears to be a lack of any coordinated attack on marijuana traffic. Each of the law enforcement agencies involved operates at its designated level with only occasional contact with agencies at higher or lower levels. The California Bureau of Narcotics Enforcement does depend on local agencies for much of its information but can offer little help in return. The smaller police forces occasionally use undercover agents from the Sheriff's department and get the Sheriff's help in training their individual patrolmen. There is also some inter-agency cooperation in the chemical testing of seized marijuana for its presentation as evidence. Both the State Bureau and the smaller police forces depend on the Los Angeles Police Department or the Sheriff to do their testing.[38]

The training and selection procedures of the various narcotics units tend to perpetuate the existing bias against marijuana already present in the unit. The training is done by the present agents and

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[32] Warner Interview, *supra* note 17.

[33] FBN Interview, *supra* note 21.

[34] Mandel, *supra* note 17, at 75. Mandel describes the various payoffs and concessions which must be made to the Mexican *Federales* to get them to show much interest in stopping the flow north.

[35] Of those agencies contacted three had special narcotics units. These were the Los Angeles Police Department, the Los Angeles County Sheriff, and the Pasadena Police Department.

[36] Interview with Sergeant Gene Zappey, Los Angeles Police Department Juvenile Narcotics Division, in Los Angeles, Jan. 11, 1967.

[37] The smaller agencies indicated that they often try to keep one man continually on narcotics matters but because of manpower shortage, this is difficult. If a large "bust" is planned practically the whole department may be used.

[38] The two tests used are the *Duquenois* and the *Bouquet* tests which indicate the presence of tetro-hydro cannabinal, the active ingredient present in marijuana, hashish, and other derivatives of the hemp plant (*cannabis sativa*). A positive result from the test is presumptive evidence that the material being tested is marijuana.

the medical evidence presented is generally on the side of the anti-marijuana lobby.[39] Those individuals selected for the special units of the police must have considerable experience in law enforcement and a desire to become members.[40] Thus they have generally formed their attitudes prior to becoming narcotics officers.

The individual patrolman is the last link in the enforcement chain. He is responsible for the detection of the individual user. This job comes to him by default through the inability of any of the other organizations to afford the time and the manpower to actively seek out the individual user. He is given training on how to identify marijuana by sight and smell[41] and learns to recognize the characteristics of someone under the influence of the drug. As marijuana use has increased, this training has been given greater emphasis with the result that the individual patrolman has developed a heightened awareness of marijuana use. This awareness has been a partial factor in the increase in marijuana arrests.[42]

The attitudes of patrolmen toward marijuana users are harder to assess than those of narcotics agents. They are not interested primarily in narcotics and thus probably have a less definite view on marijuana. Of those patrolmen interviewed only one expressed any doubts as to the validity of the stiff marijuana laws and he stated this had no effect on his enforcement of them.

IV. Methods of Enforcement

A. *Informants and Other Informational Sources*

Before a narcotics unit can justify committing its limited manpower it must first have reliable information on which to proceed.

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[39] Mr. John Warner of the State Bureau of Narcotic Enforcement said that he gave the lectures on the physical and psychological effects of marijuana to his trainees. The literature used in the talks is all anti-marijuana in nature. It all consists of reputable authorities, including the positions of the American Medical Association, the California Medical Association and the United Nations Committee on Drugs. In a recent speech at U.C.L.A. entitled "The Fuzz Looks at the Grass Problem" Warner concluded that marijuana is psychologically addicting, that it has many deleterious physical effects on the user, and that the use of marijuana leads to heroin addiction.

[40] For example, the Los Angeles Police Department's Juvenile Narcotics Division accepts applicants only if they have five years of service, an outstanding record, plus a strong desire to become a narcotics agent. Zappey Interview, *supra* note 36.

[41] The patrolman learns to identify marijuana by the wrapping used. "Bricks" (kilogram quantities) often come wrapped in tinfoil. "Lids" (ounce quantities) usually come in wax paper bags. "Joints" (marijuana cigarettes) look like handrolled cigarettes, twisted at both ends.

[42] This is a view expressed by both narcotics agents and defense attorneys. It is reasonable to assume that patrolmen more extensively trained to spot marijuana violators will be more perceptive to possible violations while on patrol.

Thus the initial and most important requirement of marijuana enforcement is the development of dependable sources of reliable information. These sources of information may be broken down into the following categories: (1) professional informants; (2) local contacts cultivated by the police who voluntarily provide frequent information concerning marijuana activity within a particular area; (3) individuals arrested for marijuana violations who cooperate in exchange for possible reduced charges or a recommendation of a lenient sentence; and (4) the occasional or one-time source of information.

1. Professional Informants

The professional informant is the most valuable of these four sources to the local narcotics unit.[43] A good informant can make up to $50 a day in Los Angeles.[44] The pay scale is arbitrary depending on the individual agent's view of the quality and quantity of his informant's information. The only agency paying at a fixed rate is the United States Bureau of Customs which scales its compensation to the amount of marijuana uncovered by the information.[45] The narcotics officers interviewed, however, did not feel that money was the sole factor motivating the professional informant. The informant often works for the psychological feeling of importance he gets through cooperating with the police. The police try to find out the motivation of each informant, particularly with unproved sources, in order to avoid the possibility that the informant has planted the marijuana on the suspect for purposes of revenge.

The professional informant is the narcotic unit's eyes and ears within the community. A good professional will be able to provide continually reliable information used by the police for field investigation, and will often introduce police undercover agents to suspected dealers and pushers. Because of his continuing value, the police are careful to protect the professional informer's identity, a task which is hampered by the disclosure rules currently prevailing in California.

The California Supreme Court, in a series of decisions, has laid

[43] Apparently the only agencies who pay informants are those with a separate narcotics unit. Of the nine agencies from whom information was collected, four did not pay their informants. These four were the smaller police departments without a separate narcotics unit.

[44] Interview with Sergeant George Barber, Los Angeles Police Department Narcotics Division, in Los Angeles, Jan. 10, 1967. The Los Angeles Police Department pays its informers out of a special fund budgeted for this purpose. Both the Federal Bureau of Narcotics and the State Bureau are allotted funds to pay their informers.

[45] FBN Interview, *supra* note 21.

down rules requiring the police to disclose the identity of their informant whenever he is a material witness to an issue of the defendant's guilt.[46] This rule has been applied to require disclosure if the informant introduced an undercover agent to the defendant, even though the informant was not present when the illegal transaction occurred. The theory is that the informant is aware of the defendant's identity which is a "material issue."[47]

Until 1967, the police in California were required to reveal their informant's identity whenever his information was the sole basis of probable cause to arrest or search.[48] Section 1042 of the California Evidence Code now gives the judge discretion to require disclosure under these circumstances.[49] The police officers interviewed claimed that judges usually require disclosure, while defense attorneys claimed the opposite. The police feel that the disclosure requirements have scared off many valuable professional informants, especially since police policy is to warn all prospective informants that their identity may be subject to disclosure at trial. If the police feel that the informant is particularly valuable or that his life might be in danger because of disclosure, they will refuse to identify him even though it might cost them the case.[50]

One method of protecting the informant's identity is the so-called "double duke-in" sale. The informant introduces undercover agent *A* to the suspect and then drops out of the picture. *A* makes several buys and then introduces agent *B* to the suspect. *B* makes several buys with *A* dropping out of the picture. The only sales charged to the suspect are those made to agent *B*. Although an alert defense attorney may trace back through the entire transaction, thus requiring the police to reveal their original informant, many defenders fail to probe beyond agent *A* thereby leaving the informant protected.[51]

The informant's identity may also be protected by arresting him (or the police undercover operator) along with the pusher. This decreases the possibility that the seller will be able to identify the informant as a police operative.[52]

The police claim that no immunity is granted to informants working for them. This claim is roundly disputed by defense

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[46] People v. McShann, 50 Cal. 2d 802, 330 P.2d 33 (1958); People v. Castiel, 153 Cal. App. 2d 653, 315 P.2d 79 (1957).

[47] People v. Durazo, 52 Cal. 2d 354, 340 P.2d 594 (1959).

[48] Priestly v. Superior Court, 50 Cal. 2d 812, 330 P.2d 39 (1958).

[49] CAL. EVID. CODE § 1042 (West 1965).

[50] Barber Interview, *supra* note 44.

[51] Warner Interview, *supra* note 17.

[52] *See* TIFFANY, *supra* note 1, at 258.

attorneys who assert that the police allow their better informants to use marijuana without fear of arrest as long as they supply information.[53]

2. Local Contacts

A second source of information comes from local sources the police have cultivated who frequently come into contact with marijuana users and pushers. Through experience the police have learned that certain groups of individuals can provide reliable information about marijuana activity in a particular area and the police respond immediately to any proferred information from a member of these groups. They include prostitutes,[54] hotel and motel owners, bartenders, theatre operators, and generally any individual who deals with a transient clientele. Since these sources are not paid, their motives vary considerably: some want to curry favor with the police;[55] some are attempting to keep their establishments free of undesirables; some are genuinely concerned citizens; and others merely get a psychological kick out of participating in a police arrest.[56]

One of the most profitable of these regular sources is the school official. The juvenile narcotic units attempt to nurture a close working relationship with school principals, encouraging them to report any students under the influence of drugs and to report any suspicious individuals lurking near the school grounds.[57] The

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[53] There is little doubt that this is so with regard to heroin informants. *See* Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 565-67 (1960). However, it seems less likely with marijuana informants since an individual does not become dependent on marijuana to the extent he does on heroin. What probably happens is that the narcotics unit will ignore use of marijuana by one of its informants as long as he is working for it. But if he is arrested separately by an individual patrolman, he is not given immunity.

[54] The information from prostitutes comes by way of the vice squad. Some attorneys claim that the police let prostitutes operate unmolested in return for narcotics information. The police, of course, deny this. Jerome Skolnick indicates that the police are willing to trade the arrest of a common prostitute for the arrest of a marijuana pusher, since the pusher has a higher moral culpability in the policeman's eye. J. SKOLNICK, *supra* note 3, at 118.

[55] Most owners of public establishments feel that it is smart to stay on the good side of the police by scrupulously avoiding any reputation of catering to a questionable clientele, which might result in the loss of their licenses.

[56] The police find that after turning in someone, the informant will often insist on being on the scene to witness the arrest. Participating in a live arrest gives an informant a feeling of importance which is psychologically gratifying. Barber Interview, *supra* note 44.

[57] The school officials usually call in directly to the juvenile narcotics office and the juvenile officers will give official advice on how to handle an unruly student, until the police arrive. Zappey Interview, *supra* note 36. Out of 110 juvenile arrest reports studied, eight of the arrests were initiated by school authorities.

success of this police encouragement varies from school to school depending on the attitude of the individual principal. The principals of schools in smaller communities and in low income areas seem to report use of marijuana by students to the police more often than principals of higher income, urban schools, although use in some of the latter is the highest in the county.[58] It is claimed that the high school principal is also authorized to search student lockers[59] and the police encourage this as a means of uncovering marijuana. However, while school authorities are likely to report the student who comes to class obviously under the influence of narcotics, they apparently do not fully exercise their authority to search lockers.[60]

3. Arrestee Informants

A third type of informant is the arrestee who cooperates with the police in an attempt to obtain a recommendation for leniency from them. There is no lack of such potential cooperators since the first reaction of most marijuana arrestees is to ask what they can do to get off.[61] The police claim not to make any specific promises, but they do tell the arrestee that any assistance he gives will be reported to the district attorney or the probation officer and thus to the court. The police generally will not release an individual merely because he has promised to cooperate with them; he must first make bail.[62] Once out of jail the would be informant is on his own. He is told only to let the police know when he can give them some positive assistance. Such assistance requires that the arrestee inform against somebody who is actually selling marijuana and usually someone who is more than a minor pusher.[63] The arrestee

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[58] Estimates of marijuana use among high school students at Palos Verdes High (an upper-class Los Angeles suburb) range from 50% to 75% of the student body. TIME, Aug. 30, 1968, at 44.

[59] This was the claim of the juvenile narcotics authorities. In actuality, there is no specific authorization for such a search under rules set down for the administration of the Los Angeles City Schools; but since there is no prohibition against it, the authority is assumed.

[60] A check with principals in the West Los Angeles area indicated that none of them ever search their students' lockers.

[61] The police claim that they do not bring up the subject of "finking"; they only respond when an arrestee asks if he can do anything to help his case. However, defense attorneys claim that arrestees who are believed to have valuable information are encouraged by the police to cooperate. This is more likely to happen in small towns where the police have no special narcotics unit and where any one arrestee may be able to tie the police in with most of the marijuana activity in town.

[62] This is the announced policy of the Los Angeles Police Narcotics Unit.

[63] This would follow from the claims of the narcotic units that they are interested only in the professional pusher or dealer. Defense attorneys, however, claim that the police will try to get the arrestee to "turn" anyone he knows. It is possible that this happens in some of the smaller cities where the local police may view any use of

is told that the more information he gives the better it will go for him. This practice has aroused much criticism since it places pressure on young arrestees to inform on their friends.[64] The police tend to obtain as much information as possible from such an informant before giving any favorable recommendation. The Federal Bureau of Narcotics, for example, requires that the arrestee set up a transaction between the police and the individual on whom he is informing before it will give any recommendation. Such an initial "turn" by the arrestee may start a chain of successive arrests followed by more "turns" leading eventually to the ultimate desired end, the apprehension of a major dealer.

The arrestee informant is employed by the police in a variety of ways to initiate the transaction necessary for an arrest for the sale of marijuana. The informant will introduce an undercover agent to a pusher or will make the buy himself. The latter method, called a "witness sale," requires the informant to be stripped and searched, sent to make the purchase, and stripped and searched again when he returns. This procedure prevents any possible frame-up by the informant or any successful challenge in court when the marijuana is sought to be admitted as evidence.[65] The police maintain as close a surveillance as possible at all times during the sale, often through the use of field glasses in an adjoining building, or through the use of an electronic eavesdropping device attached to the informant.[66]

The police will often use a witness sale to provide probable cause for a subsequent search of the seller's apartment, rather than charging him with that particular sale. There are two possible reasons for this. The first is that using the information solely for probable cause permits the judge to exercise his statutory discretion to protect the informant's identity, which he could not do if the informant was a material witness to the sale.[67] The second reason

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marijuana as a serious offense. One of the defense attorneys interviewed had an affidavit taken from a 19-year old arrested by a small southern Los Angeles County community. The youth claimed he had been required to "turn" several of his friends, none of whom were regular pushers, in return for police recommendation of a reduced sentence. Cahn Interview, *supra* note 11.

[64] The pressures placed on arrestees to cooperate can be extremely severe in the hands of some police. For example, the police can threaten the arrestee with exorbitant bail if he does not cooperate. *See* testimony of Luke McKissick, in *Hearings*, *supra* note 9, at 78.

[65] The use of women informants is inconvenient for this purpose since the vagina can be used as a hiding place. Thus the skin search must be done with female personnel. TIFFANY, *supra* note 1, at 255.

[66] Barber Interview, *supra* note 44.

[67] There is still a possibility, however, that the informant may be held to be a material witness to the defendant's guilt. *See* text accompanying note 46 *supra*.

is that the judge may be less sympathetic to a possible claim of entrapment against the informant where the only issue is probable cause.[68]

The police allow the arrestee informant to set up buys[69] without supervision.[70] The possibility of entrapment here is greater than where a purchase is set up by another type of informant or by a police undercover agent. This is so for two reasons: (1) the arrestee is under great pressure to set up a transaction in order to obtain a reduced charge or a more lenient sentence; and (2) the arrestee is likely to make the purchase from a personal friend and use the friendship as a lever to extract a sale which the friend might not ordinarily make.

Entrapment is an affirmative defense to a criminal charge based on the rationale that the police have induced an individual into committing a crime which he would not have otherwise committed.[71] Although arrestees and any other type of informants working for the police are subject to entrapment rules,[72] the defense is an extremely hard one to prove. The defendant is required to show that the intent to commit the crime originated in the mind of the police, *i.e.*, the informant.[73] The prosecution can rebut this defense by showing a willingness on the part of the defendant to make the sale.[74] Because of the difficulties of proof involved, the doctrine of entrapment is rarely used by defense attorneys.[75]

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[68] It is doubtful whether the defendant can raise the issue of entrapment to defeat probable cause, since theoretically entrapment is an implied defense to the substantive crime and is therefore inapplicable when sought to be invoked to defeat probable cause. *See* text accompanying note 78 *infra*.

[69] Five of the nine agencies responding stated that they do not use cooperating informants to actually make purchases. However, these informants are used to set up transactions where an undercover agent makes the purchase.

[70] None of the agencies interviewed indicated that they gave a potential informant instruction on how to set up a transaction.

[71] Sorrels v. United States, 287 U.S. 435 (1932); People v. Benford, 53 Cal. 2d 1, 345 P.2d 928 (1959); People v. Adams, 213 Cal. App. 2d 536, 29 Cal. Rptr. 57 (1963).

[72] People v. Perez, 62 Cal. 2d 769, 775, 401 P.2d 934, 937 (1965) ("someone acting in cooperation with the authorities"). *See* Comment, *The Defense of Entrapment in California*, 19 HASTINGS L.J. 825 & n.2 (1968). The issue of just who is a police agent for purposes of applying entrapment rules has never been adequately discussed. Courts have treated, without discussion of their status, paid informers and those acting under promises of immunity, as government agents. *See* Donelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091, 1109 (1951).

[73] People v. Jackson, 42 Cal. 2d 540, 547, 268 P.2d 6, 11 (1954); People v. Cordero, 240 Cal. App. 2d 826, 829, 49 Cal. Rptr. 924, 926 (1966). *See* Comment, *The Defense of Entrapment in California*, *supra* note 72, at 842.

[74] People v. Sweeney, 55 Cal. 2d 27, 49, 357 P.2d 1049, 1062, 9 Cal. Rptr. 793, 806 (1960); People v. Harris, 210 Cal. App. 2d 613, 26 Cal. Rptr. 850 (1962).

[75] None of the enforcement agencies responding felt the entrapment laws were

When the purchase of marijuana is made by an undercover agent from an on-the-street pusher, there is a sound argument for placing the burden of proof on the defendant to show lack of intent. A rigid entrapment rule applied in this case would make the apprehension of pushers aware of the work of undercover agents extremely difficult.[76] However, where an arrestee is involved, because of the intense personal pressure on him to make a purchase, the inference of preexisting intent to sell is less. In order to acknowledge this difference, the entrapment rules might be altered by placing the burden of proof on the prosecution to show preexisting intent where the purchase was made by an arrestee. Such a burden could be discharged by showing possession of a large amount of marijuana by the defendant, by having the arrestee make more than one purchase, or by other circumstantial evidence. The issue of prexisting intent is usually met by having the agent or informant make two to three purchases.[77]

It is not clear whether the defendant can use entrapment for sale to negate a separate charge of possession.[78] If not, the police have a powerful weapon since they can entrap a suspect into a sale, and even if the sale is thrown out, still successfully prosecute him for possession.

Unlike local agencies, the California Bureau of Narcotics Enforcement depends primarily on information from arrestees.[79] Although it has a limited number of regular informants, it does not have the manpower nor the proximity to the problem to develop a more extensive network. It gets cooperation from individuals it has arrested, but relies primarily upon arrestees of local agencies. The local agencies contact the State Bureau whenever they have an

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a barrier to enforcement. Out of 738 arrest reports studied, only three defendants were acquitted because of entrapment.

[76] There is probably more justification for a liberal entrapment rule in narcotics transactions than in homosexual solicitations. The narcotics laws are aimed at the availability of the narcotic and police solicitation may be the only way to eliminate that availability. However, homosexual laws are aimed largely at *unprovoked* solicitations and the entrapment doctrine should be applied more strictly to prevent solicitations provoked by the police. *See Homosexual Project*, *supra* note 1, at 701-02.

[77] Barber Interview, *supra* note 44; FBN Interview, *supra* note 21; Warner Interview, *supra* note 17.

[78] Probably not, since entrapment in theory is treated as an implied defense to the particular crime for which the defendant is charged. United States v. Kaiser, 138 F.2d 219 (7th Cir. 1943), *cert. denied*, 320 U.S. 801 (1944); Donelly, *supra* note 72, at 1110. However, if it can be shown that but for the illegal police conduct (entrapment), the marijuana would not have been discovered, then it is arguable that the marijuana is "tainted" evidence and therefore inadmissible against the defendant, to show possession. *See* Wong Sun v. United States, 371 U.S. 471 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

[79] Warner Interview, *supra* note 17.

arrestee who has information on major traffic. Like the local agencies, the state claims that it gives no guarantees to cooperating informants.

4. One-Time Informants

The final source of information comes from random calls from people within the community. The police tend to ignore these calls unless there is some indication that the caller can provide a solid lead.[80] The police must be especially careful in this situation to look for the possibility of marijuana planted by someone with a grudge to settle. One informant who is not ignored, however, is the parent who reports finding marijuana in his child's possession. This is a large source of juvenile contacts.[81]

B. *Field Operations*

1. Field Investigation Units

Most police forces do not have a field investigation unit because of limited manpower.[82] The Los Angeles Police Department's Special Field Investigation Unit is composed of five two-man teams, all sergeants with extensive experience in narcotics enforcement. They operate out of the Central Division and, unlike the average investigator, they do not respond to information coming into the office, but instead are engaged in continuous independent field investigation. The key to such an operation is the investigator's ability to evaluate and connect pieces of information, insignificant alone, into a picture of a major dealer and how he operates. The investigators work continuously at developing a network of reliable informants. One informant, for example, may have information that an individual is receiving and dispersing large shipments of marijuana. If this information is corroborated by other informants, the individual may be put under surveillance. If he is a major dealer, he will usually establish a systematic pattern, such as visiting places like a supermarket or a gas station with greater regularity than the average individual. While the suspect is under surveillance the investigators are continuously rechecking with their informants. After what may be an extensive period of time, the investigation

[80] The police get a surprising number of calls from people who have "heard that someone down the street is smoking marijuana," from people who won't give their names, and from obvious cranks. The State Bureau gets numerous calls from sheriffs and concerned citizens of small communities who have found one of the local youths with a marijuana cigarette and demand that the Bureau do something to eradicate the problem.

[81] Out of 204 juvenile arrests studied, 22 were initiated by the juvenile's parents.

[82] Of the nine enforcement agencies responding, only the Los Angeles Police Department and the Los Angeles County Sheriff had a special field investigation unit.

will have uncovered enough information to give the investigator probable cause to make a "bust." However, the investigator will usually wait until he believes the dealer has just received a shipment in order to arrest him before he unloads it. Because of the precise timing involved, the investigators ordinarily do not obtain a search warrant.[83]

2. Undercover Agents

Most agencies at some time employ undercover agents, although many of the smaller forces borrow them for a limited period from the Los Angeles Police Department or the Los Angeles Sheriff.[84] Prior to 1950, undercover work usually involved a disguised agent making two or more purchases with marked money from a suspect, who was then arrested. This limited the use of the good undercover worker, since once the arrest was made his name became known throughout the neighborhood and his effectiveness was destroyed. In 1950, the Los Angeles Police Department organized their present "buy program" which has been widely copied by large agencies all over the country. In this program the police send an agent into the field for a period of approximately three months, during which time he makes buys from numerous individuals. None of these people are arrested until "roundup day" at the end of this particular agent's period of work. This extended period enables the agent to become integrated into the community and facilitates the apprehension of a great number of pushers.

Undercover agents are recruited directly from the police academy without any prior patrol experience. Their appearance is made to conform to that of the average narcotics user in the community they will infiltrate. Agents placed in Watts will be goatee-wearing Negroes; agents on the Sunset Strip will be young looking and dressed in hippie garb; while agents in Hollywood will often wear homosexual attire. Although some agents are instructed to uncover both marijuana and heroin pushers, this is unusual since heroin users seldom buy marijuana and such a combination of purchases would immediately arouse suspicion.[85]

The good undercover agent will attempt to become an integral part of the marijuana subculture he is infiltrating. He will hang out at the local gathering spots, go to the homes of his new found

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[83] In only 25 of the 738 adult cases studied was a search warrant used.

[84] Of the nine enforcement agencies responding, seven used undercover operators at some time. Three of these agencies—the Los Angeles Police Department, the Los Angeles County Sheriff, and the Pasadena Police Department—used their own personnel. The other four agencies occasionally used agents supplied by the Sheriff.

[85] *See* text accompanying note 22 *supra*.

friends, and participate in "pot parties." Technically an agent who goes to a party and participates in the ritual passing around of a marijuana cigarette is as guilty as those he arrests. Of course the police never file charges against him, even though he may sometimes be arrested along with the rest of the participants to protect his identity.[86]

The key element in the "buy program" is the agent's ability to identify the pusher from whom he made his purchases. This identification is crucial to the success of the program because it provides the exclusive basis for probable cause to make the arrest, and the judicial determination that such an identification constituted probable cause hinges largely on the reputation of undercover agents for accuracy. One case of mistaken identity proved at trial might have a deleterious effect on the whole program. Thus, if there is any doubt in the agent's mind about the identity of his supplier, the police prefer to drop the case. To aid in identification each agent is given a thorough briefing on identifying features to look for, such as scars and tattoos. He also is required to come to police headquarters after each transaction and record the details of the sale. This document is dated and later used to corroborate the agent's testimony for purposes of probable cause or proof of the charge.

The undercover agent makes three or four buys from each pusher. He then goes through police mug books and other sources attempting to identify the pusher by name. The police obtain arrest warrants on those the agent identifies and on "roundup day" they are arrested. In order to apprehend those pushers that the agent could not identify by name, the police take the agent through the area he worked in an unmarked car. The agent points out any pusher he recognizes and usually verifies his identification by approaching the pusher and calling him by the name he used when making the sale. On the strength of this identification, the suspect is immediately arrested without a warrant. A "roundup" results in the arrest of approximately 80 percent of the individuals from whom the agent purchased marijuana.[87]

C. *Enforcement Through Patrol*

A third means of enforcement involves arrests of marijuana users by the patrolman or traffic officer. This category of enforcement provides the overwhelming majority of marijuana arrests, particularly those for possession. These arrests do not result from systematic attempts to uncover marijuana violators, but are a

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[86] TIFFANY, *supra* note 1, at 258.
[87] Barber Interview, *supra* note 44.

by-product of routine police investigation. In areas of high marijuana use, however, patrolmen are specifically on the lookout for marijuana users.

The patrol arrest usually occurs as a consequence of one of the following police actions: (1) the stopping of a vehicle for a traffic violation; (2) confrontation of allegedly underage juveniles for curfew violations; (3) the investigation of a loud party; and (4) the "frisk" of an individual stopped under the "stop and frisk" doctrine. The nagging question in all these situations is whether the police are truly interested in the conduct justifying the investigation or whether they are using that conduct merely as an excuse for investigating some other activity for which they have no legal basis. To the extent that the police use these procedures as a subterfuge to uncover marijuana use, they have effectively created a new "method" of marijuana enforcement.

1. Stopping of Vehicles

A large percentage of the arrests for marijuana possession results from the stopping of automobiles for minor traffic violations, with the subsequent discovery of marijuana either in the car or on the person of one of the passengers.[88] The most common of these stops are for a missing taillight or for an unilluminated rear license plate. The police do not have probable cause for any search of the car based on the traffic violation alone. To justify the search they must have independent evidence indicating that contraband may be found in the vehicle.[89] This requirement, however, may be waived if the driver voluntarily consents to the search.[90] It is common for many drivers to grant such consent with full knowledge that the car contains marijuana, undoubtedly because of the natural impulse to avoid arousing police suspicions.[91]

The police may avoid the necessity of searching the automobile if one of the passengers tosses marijuana out of the window of the

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[88] Out of the 658 arrests studied in which this information was available, 230 were initiated through automobile traffic violations.

[89] *See* People v. Burke, 61 Cal. 2d 575, 579, 394 P.2d 67, 69, 39 Cal. Rptr. 531, 533 (1964); People v. Terry, 61 Cal. 2d 137, 152, 390 P.2d 381, 391, 37 Cal. Rptr. 605, 615 (1964). A citation for a traffic violation of itself does not justify a search of the car. People v. Anders, 167 Cal. App. 2d 65, 67, 333 P.2d 854, 856 (1959).

[90] People v. Michael, 45 Cal. 2d 751, 753, 290 P.2d 852, 854 (1955); People v. Weire, 198 Cal. App. 2d 138, 142, 17 Cal. Rptr. 659, 661 (1961). A suspect's consent may be implied from his opening of a car door which jammed when the officer tried to open it from the outside. People v. Williams, 148 Cal. App. 2d 525, 307 P.2d 48 (1957).

[91] There were 24 consensual automobile searches among the 658 arrest reports studied in which this information was available.

car as it is being stopped.[92] This happens quite often as the instinctive reaction of most people is to get rid of any incriminating evidence the instant they see the red light of a police vehicle. Once they find the tossed marijuana, however, the police must connect it with one of the passengers in order to show possession.

In the absence of either consent or tossed marijuana, the police must establish probable cause to search the automobile. This may be obtained by one of the passengers making a "furtive motion," the odor of burnt marijuana coming from the car, marijuana being in plain sight inside the car, or one of the occupants of the car displaying the characteristics of intoxication associated either with alcohol or narcotic use.

The furtive motion authorizing a search usually results as the officer is pulling a car over for a minor traffic violation. The arrest reports typically state that as he shined his lights on the back of the car, the patrolman saw one of the occupants make a "furtive motion" as if to hide or throw away something. A few appellate decisions indicate that something additional, such as evasive action by the driver, must be present before the police have probable cause to search.[93] Usually, however, the judge accepts the furtive gesture alone as being sufficient.[94] This provides the police officer with an almost irrefutable method to "write-in" probable cause,[95] although some attorneys have successfully gone to great lengths to prove that the officer could not have seen inside the car from his vantage point.[96] Even accepting that the policeman did see the furtive motion, however, a sudden movement inside a car is open to a variety of interpretations and references. It is thus questionable

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[92] Out of 658 adult arrests, 38 were initiated because of marijuana being thrown out of an automobile window. *See* text accompanying notes 25-28, Part III *infra*.

[93] People v. One 1958 Chevrolet Impala, 219 Cal. App. 2d 18, 20, 33 Cal. Rptr. 64, 66 (1963); People v. Tyler, 193 Cal. App. 2d 728, 732, 14 Cal. Rptr. 610, 612 (1961).

[94] The leading case on the matter, People v. Blodgett, 46 Cal. 2d 114, 293 P.2d 57 (1956), appears to sanction the use of a "furtive motion" as sole grounds for probable cause to search. This is the usual interpretation. *See* People v. Shapiro, 213 Cal. App. 2d 618, 28 Cal. Rptr. 907 (1963) (defendant lowered her head as if to hide something); People v. Sanson, 156 Cal. App. 2d 250, 319 P.2d 422 (1957) (police noticed defendant withdraw his left hand from seat).

[95] The suspicion that this does occur is heightened by the almost total uniformity of the arrest reports. The traffic officer appears to be aware that if he tailors his report to a certain style with certain facts, he will almost certainly have it accepted by the court.

[96] One of the attorneys interviewed took the jury outside the courtroom to view the defendant's car from the same vantage point as the arresting officer. The car was an early model coupe with a small rear window, and the attorney was able to demonstrate that no one could see a "furtive motion" through the rear window.

whether such a movement satisfies the high degree of probability which has been required for probable cause in other areas.

Another basis for establishing probable cause to search a stopped automobile is that the officer detected an odor of burnt marijuana coming from the car.[97] While it is true that the traffic patrolman is given brief instruction on what marijuana smells like, there is considerable dispute as to his actual ability to detect marijuana by this method. However, as in the case of a furtive motion, the policeman's testimony is usually accepted by the court as a valid basis for the search.[98]

The police also search a stopped automobile if they see marijuana in plain view inside the car. This usually occurs when the officer shines his flashlight into the automobile, ostensibly to check the car registration, and sees marijuana on the seat or on the floorboard.[99] Defense attorneys claim that many police "look for registration" throughout the car and that the marijuana does not become "clearly visible" until after the police relocate it from some location which was not initially in view. Occasionally, the visible marijuana used as a basis for the search consists solely of seeds. It is questionable whether a full scale search is justified merely on this evidence alone, since marijuana seeds do not differ radically in appearance from common garden variety seeds.

Another basis for the search of an automobile is the intoxication of the driver or passengers. The arrest reports usually state that the subject was intoxicated with no odor of alcohol on his breath and that his eyes became pinpointed under light—both characteristics of one under the influence of narcotics.[100] Under such circumstances the inference of recent drug use is regarded as sufficient probable cause for a search.[101] Also, since any intoxication justifies a search, if the driver or passenger is obviously drunk the police can search the car for alcohol and if they find marijuana it can be admitted as evidence on the theory of lawful discovery.

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[97] Out of 658 arrest reports studied, there were 30 instances of the police smelling burnt marijuana.

[98] People v. One 1961 Ford Falcon, 215 Cal. App. 2d 149, 30 Cal. Rptr. 110 (1963).

[99] *See* People v. Galceran, 178 Cal. App. 2d 312, 316, 2 Cal. Rptr. 901, 903 (1960). Out of 658 adult arrest reports studied, there were 42 instances where the police discovered marijuana in this manner.

[100] There were 68 instances of adults being under the influence of marijuana in the 658 adult arrest reports studied. However, there were only two instances in the entire adult sample where the defendant was charged with driving under the influence of narcotics. CAL. VEHICLE CODE § 23105 (West 1960).

[101] People v. Di Blasi, 198 Cal. App. 2d 215, 18 Cal. Rptr. 223 (1961).

2. Curfew Violations

A great many juvenile arrests, and some adult arrests, result from the police stopping youthful looking pedestrians for possible curfew violations.[102] The procedure is to stop the suspect, sometimes shining a search light on him. This confrontation will often cause the person to throw away a marijuana cigarette or make a furtive motion in an attempt to hide one. In the first situation, the police merely retrieve the discarded cigarette and arrest the individual. In the situation where the individual attempts to hide the cigarette, the police have probable cause to search him. The furtive motion theory in this situation is harder to attack than when the person is in a moving automobile since the individual is totally visible and his actions are not as capable of various interpretations.

There may be a high degree of discriminatory enforcement of curfew ordinances insofar as they are used for the apprehension of marijuana users. The police know that the teenager with long hair dressed in "mod" attire is more likely to be using marijuana than the "straight" appearing youth who looks about the same age. Thus, it is tempting for the officer in an area of high marijuana use to confront the youthful "hippie" with the hope that he will find more than a curfew violator.[103] There is also a thinly veiled hostility on the part of the average patrolman to the so-called "hippies" with their natural antipathy towards authority of any type, including police authority.[104] It is difficult to prove any conscious discrimination in enforcement by the police, since they do not, of course, admit to such discrimination.

3. Complaints of Marijuana Use and Loud Parties

A third source of arrests results from an investigation, sometimes by the narcotics division, of a complaint by a tenant or neighbor that marijuana is being used or that there is a loud party on the

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[102] Five out of 658 adult arrests and 54 out of 204 juvenile arrests were initiated by stops for suspicion of curfew violation.

[103] It is difficult for the patrolman to see anything wrong in stopping a "hippie" type youth where he would not stop a "straight" youth under the same circumstances. An experienced patrolman realizes that the possibility of a "hippie" type youngster possessing marijuana is much greater than a "straight" looking young person. Therefore, he feels that the efficient way to discover marijuana violations is to stop those likely to be committing them. The fact that the law does not always openly sanction the officer's experience as a basis for probable cause is another example wherein police feel that due process undercuts efficiency. *See* Packer, *supra* note 6.

[104] The police officers interviewed made no attempt to hide their dislike of the long haired "hippie" type. There was a particular contempt for the older hippies (generally in their 20's) who the police believe introduce many high school age juveniles to drug use.

premises.[105] The police usually station one man outside a window of the residence. The others go to the door and announce themselves as required by statute.[106] To escape arrest the residents will often toss the marijuana out of the window where the officer is waiting. He shouts this information to the other officers which establishes probable cause to enter the residence.[107] They also have probable cause to enter if they hear a toilet flushing or any other indication that the occupants are attempting to dispose of contraband,[108] or if they observe marijuana through an open window.

If the occupants open the door without giving the police cause to enter, the police may attempt to get consent to search the apartment. If this is refused they still have probable cause to enter if they smell burning marijuana.

4. Stop and Frisk

A final major source of arrests for possession is the "frisk" performed by the patrolman under the "stop and frisk" doctrine. In California, an individual can be stopped for questioning as long as the prudent officer would consider such a step necessary to discharge his duties.[109]

The usual justification for the stop is the presence of the suspect late at night under "suspicious circumstances."[110] These circumstances may include individuals parked in a car in a residential area or pedestrians on foot who appear to be engaged in some sort of suspicious activity. What constitutes "suspicious circumstances" seems to depend largely on the experience of the individual officer involved. For example, one officer may consider a parked car on a dark residential street with youths inside as being suspicious. Another officer, under the same circumstances, may require an addi-

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105 There were 28 instances of neighbors' complaints leading to apartment busts in the 658 adult arrest reports studied.

106 Police, with probable cause to arrest or with a search warrant, can break into the premises, after they have announced who they are and their reason for being there, if they are refused admission or if there is no answer. CAL. PENAL CODE §§ 844, 1531 (West 1956).

107 People v. Padilla, 240 Cal. App. 2d 114, 49 Cal. Rptr. 340 (1966).

108 People v. Fisher, 184 Cal. App. 2d 308, 7 Cal. Rptr. 461 (1960).

109 People v. Mickelson, 59 Cal. 2d 448, 450, 380 P.2d 658, 660, 30 Cal. Rptr. 18, 20 (1963); People v. Currier, 232 Cal. App. 2d 103, 106, 42 Cal. Rptr. 562, 564 (1965); People v. Hilliard, 221 Cal. App. 2d 719, 723, 34 Cal. Rptr. 809, 811 (1963); People v. Ellsworth, 190 Cal. App. 2d 844, 846, 12 Cal. Rptr. 433, 435 (1961). *See* Note, *Stop and Frisk in California*, 18 HASTINGS L.J. 623, 625 (1967); Comment, *Constitutional Limitations on Pre-Arrest Investigations*, 15 U.C.L.A. L. REV. 1031, 1031-46 (1968).

110 There were 72 adult arrests out of 658 studied where the individuals were stopped because of "suspicious circumstances."

tional element before his suspicion is aroused. These highly individual judgments of the police are traditionally encompassed in general phrases such as "present under suspicious circumstances in a high crime rate area." This phrase appears time and time again in the arrest reports studied, with the judge usually accepting it as being sufficient to justify the stop.[111] There has, as yet, been no real definition of either the phrase "under suspicious circumstances" or "high crime rate area."[112]

Incidental to a valid police stop, the officer often submits the suspect to a brief "pat-down" search, known as a "frisk," for the purpose of uncovering concealed weapons. The frisk is designed solely to protect the officer. Defense attorneys, however, claim that if the officer believes he might find marijuana, the frisk strains the limits of its definition. For example, in confronting a "hippie" type youth after curfew, if the police fail to establish grounds for a full scale search, they allegedly will submit him to a frisk in which every thread of his clothing is carefully gone over. If during this frisk the police feel what appears to be a cigarette, then, depending on the circumstances surrounding the stop, they may have probable cause to reach inside the individual's pocket and extract the suspected marijuana cigarette.[113]

It is difficult to distinguish between a valid frisk for weapons and an illegal search for marijuana under the guise of a frisk. If the recent Supreme Court "stop and frisk" decisions[114] are applied carefully by the lower courts much of this problem will be avoided. Those cases require the policeman to be able to point to particular facts that led him to believe the person was armed and dangerous.[115] In addition, the scope of the search must extend only to the extent necessary to uncover dangerous weapons.[116] But if these safeguards

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111 *See* Comment, *Constitutional Limitations on Pre-Arrest Investigations*, *supra* note 109, at 1039 n.33, 1040 n.34.

112 *But see id.* at 1040 n.35.

113 People v. Machel, 234 Cal. App. 2d 37, 44 Cal. Rptr. 126, *cert. denied*, 382 U.S. 839 (1965). The court ruled that the circumstances surrounding the questioning and frisk of the defendant gave the police probable cause to believe he was in possession of marijuana. Those circumstances included the officer's knowledge that the defendant was a known narcotics user, the fact that the defendant came to the apartment where the officer had just arrested two other individuals for marijuana possession, the defendant's failure to answer when asked what was in his pocket, and the fact that he sweated profusely. It is unclear whether the mere feeling of a cigarette during a frisk, without the suspicious circumstances present in *Machel*, would give the police probable cause to reach inside the suspect's clothing.

114 Terry v. Ohio, 392 U.S. 1 (1968); Sibron v. New York, 392 U.S. 40 (1968); Peters v. New York, 392 U.S. 40 (1968).

115 Sibron v. New York, 390 U.S. 40, 63-64 (1968).

116 *Id.* at 65.

fail to deter the police from making searches for marijuana under the guise of a frisk for weapons, only two solutions remain. One, which is clearly undesirable, would be to do away with the frisk altogether. The other would be to refuse to admit as evidence any contraband found as a result of the frisk.[117]

V. Selective Enforcement

Selective enforcement results from conscious police decisions not to invoke the criminal process against certain classes of violators. These decisions, in marijuana enforcement, are premised on the realization that it is not possible to enforce the laws against all violators.[118] Selective enforcement of the marijuana laws, unlike that of homosexual offenses, does not appear to be conditioned on the undesirability of enforcing the laws under certain circumstances.[119]

All enforcement agencies interviewed indicated that marijuana enforcement was, by necessity, selective. This selectivity stems from police determinations regarding the necessity of uncovering one type of narcotics offense rather than another; police discretion in the geographical distribution of patrolmen resulting in de facto discrimination against some groups; police discretion in the arrest of juvenile offenders; and attempts by the police to persuade the courts to deal more severely with some individuals.

Because of manpower limitations the police must decide which type of narcotics offender they are going to place the highest priority on uncovering. This decision may vary from agency to agency. For example, one agency may place the highest value on the apprehension of a major marijuana dealer, while another agency would favor the apprehension of a heroin pusher. This type of decision is in-

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[117] For an exposition of both sides of this argument *see* Comment, *Constitutional Limitations on Pre-Arrest Investigations*, *supra* note 109, at 1047-48.

The Supreme Court has yet to decide the issue of the admissibility of evidence other than weapons found through a frisk. *Peters* raised the issue, but the Court dodged it by finding probable cause for arrest. 392 U.S. at 65.

[118] Professor Joseph Goldstein of Yale divides police enforcement of any law into three levels: total enforcement, which occurs when the police successfully apprehend all violators; full enforcement, where the police actively follow every lead up to the full level of their authorization; and actual enforcement. Goldstein, *supra* note 53. Obviously total enforcement of the marijuana laws is impossible because of the extent of the problem and the legal boundaries placed on investigative techniques, such as search and seizure and interrogation. Interviews with police officials indicate a general consensus that actual marijuana enforcement operates at a level considerably below what Professor Goldstein would class as full enforcement. This is the result of numerous factors such as manpower limitations and financial considerations, but apparently not from any reluctance to enforce the law.

[119] *See Homosexual Project*, *supra* note 1, at 734.

fluenced by four factors: (1) the type of activity involved (*e.g.*, sale or possession); (2) the volume of the drug or narcotic involved; (3) the individuals involved; and (4) the drug or narcotic involved.

The Federal Bureau of Narcotics, the California Bureau of Narcotics Enforcement, and the police narcotics investigation units claim to be solely interested in professional marijuana importers, dealers and pushers rather than the individual user.[120] It is clear that this is true for the federal and state agencies. But some defense attorneys claim that the police special units use informants to entice ordinary users to commit sales.[121] The smaller police departments, without special narcotics squads, generally have the same priority of sale over possession, although the smaller the community, the more likely it is to respond to any reported activity.[122] The state and federal narcotics bureaus are solely interested in major traffic and do not respond to other types of leads.[123] The local units attempt to apprehend all pushers, although they are primarily interested in the regular pusher who is a consistent link in the overall traffic.[124]

It is apparent that small pushers are pursued more vigorously if juveniles are involved. While both the Los Angeles Police Department's Narcotics Division and Juvenile Narcotics Division do field investigations, the latter is more likely to engage in a full scale investigation to apprehend a small scale pusher than is the former.[125]

Finally, the decision of an agency to follow up a lead may depend on whether the narcotic is heroin or marijuana and this, in turn, depends on the individual agency. The California Bureau admits that all other things being equal, it would prefer to get two ounces of heroin rather than 10 kilos of marijuana.[126] But this feeling is not shared by the majority of local police forces who generally consider marijuana an equal or greater threat than heroin.[127] In fact, since heroin comes in smaller amounts than marijuana and is easier to destroy, the police may prefer to concentrate on making marijuana arrests.[128] The attitude of the smaller police forces depends on the attitude of the individual primarily responsible for

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120 FBN Interview, *supra* note 21; Warner Interview, *supra* note 17.

121 Cahn Interview, *supra* note 11.

122 Pettit Interview, *supra* note 11.

123 FBN Interview, *supra* note 21.

124 Barber Interview, *supra* note 44. Sergeant Barber indicated that less than one-third of those arrested through the efforts of a single undercover agent on the "buy" program are consistent pushers. The rest are only occasional sellers.

125 Zappey Interview, *supra* note 36.

126 Barber Interview, *supra* note 44.

127 This feeling was particularly prevalent among police forces in smaller communities where a heroin problem is virtually nonexistent.

128 McKissick Interview, *supra* note 22.

narcotics enforcement. Generally, although there are some notable exceptions, these smaller communities have little problem with heroin.

The juvenile narcotics officer likes to view himself as part policeman, part juvenile counselor. His implementation of this latter role is especially important since it affects his decision whether to exercise his statutory discretion to counsel and release an arrested juvenile, or to file a formal arrest report, requiring the juvenile to attend a hearing with a probation officer.[129] His decision will be based on how effective he believes a simple lecture to the juvenile on the evils of marijuana will be toward deterring future use.[130] The factors going into this decision are generally the same as those considered by a juvenile court judge in deciding whether to release a juvenile to his parents.[131] They include past record, family stability, school record, and general willingness to cooperate.[132] The type of case most amenable to counsel and release occurs when the parent reports the juvenile's activity and comes with him to the police station for consultation.[133] In other cases the narcotics officers will go to the juvenile's home to inform his parents of the problems and observe firsthand the potential for rehabilitation. The juvenile officer's role as a counselor might be attacked as an undesirable encroachment upon the probation officer's field of concern. But it seems desirable to avoid exposing the juvenile to the entire criminal process if it doesn't appear necessary. This may be particularly true in small communities where the police often know the juvenile personally and have a more thorough familiarity with the family situation than any probation officer could obtain.[134] It is difficult to judge the effectiveness of the counsel and release since there are no accumulated statistics showing the number of juveniles released who are later arrested for drug use.

The police decision on where to concentrate their routine patrol activities, although not necessarily motivated by marijuana usage,[135] nevertheless may cause greater enforcement in one area than another. Since the majority of arrests come from routine patrolling,

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129 CAL. WELF. & INST'NS CODE § 626 (West 1966).

130 Zappey Interview, *supra* note 36.

131 *See* text accompanying note 114, Part III *infra*.

132 Zappey Interview, *supra* note 36.

133 Despite the alleged antipathy of minority groups toward the police, the Los Angeles Police Department claims to get as many calls from Negro and Mexican-American parents as it does from White parents. Zappey Interview, *supra* note 36.

134 Pettit Interview, *supra* note 11.

135 The only area where heavy police patrolling is partially attributable to marijuana usage is in the Hollywood area. The usual cause for heavy police patrolling of a particular area is a high incidence of violent crime. Barber Interview, *supra* note 44.

the heavier patrolling of areas with higher incidences of violent crime will undoubtedly result in a higher percentage of marijuana arrests in proportion to actual use than in more lightly patrolled areas. This may be part of the reason for the high percentage of Negroes and Mexican-Americans arrested.[136]

There is no evidence of any conscious discrimination against one group based solely on marijuana use, with the possible exception of the aforementioned "hippie" type youth.[137]

There is no evidence that the extent of the arrestee's marijuana involvement affects a decision whether to arrest. The police, however, often try to influence the court's disposition of convicted offenders. This is usually done by police contribution to the probation report to encourage the judge to give a stiffer sentence to the professional pusher.[138] The police may also attempt to influence the court's disposition by refusing an offer of cooperation by an individual they desire to see given a stiff sentence.[139]

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136 Out of 738 arrests studied, Negroes and Mexican-Americans accounted for 402 (304 Negroes, 98 Mexican-Americans), a percentage far higher than their respective percentages of the Los Angeles County population.

137 *See* text accompanying notes 103-04 *supra*.

138 Barber Interview, *supra* note 44.

139 *Id.*

PART III: POST-ARREST DISPOSITION

I. INTRODUCTION

Post-arrest disposition consists of a number of procedural steps leading from the arrest of the marijuana pusher or user to his imprisonment. At any one of these stages, the arrestee may be freed from having to proceed to the next step.[1] The district attorney may refuse to file a complaint against him; the judge at the preliminary hearing may refuse to "hold the defendant to answer" a complaint that has been filed; the trial judge (or jury) may find the defendant innocent; and finally, even if found guilty, the defendant may be released on probation.

There are two types of factors which influence the district attorney and the judge in deciding whether to release the arrestee at any of the above stages. The first type of factors are those which the law requires the trier of fact to consider in determining guilt and which the district attorney must, by necessity, consider in filing a complaint. In marijuana offenses these include the legality of a search, sufficiency of the evidence, and knowledge on the part of the arrestee that he possessed marijuana. If all such factors are resolved against the defendant, theoretically he should be found guilty.

There are, however, other factors which either the judge or district attorney may consider in making his decision to release. These include the defendant's age, his attitude, his previous contact with the law, his family situation, and what the judge or district attorney believes to be his moral culpability. The consideration of such discretionary factors is officially sanctioned only for the judge in sentencing. But it is an undeniable fact that in all crimes prosecutors and judges will release some individuals at earlier stages in the process because of the above mentioned factors. The amount of weight given to each of these factors varies with the individual judge or district attorney involved.

In marijuana cases there has been great pressure on both the judge and district attorney to invoke this discretion at the lower stages of the conviction process. This has been due largely to the legislative classification of marijuana possession as a felony. For example, many district attorneys and judges are reluctant to impose a felony conviction on an 18-year old first offender found with one marijuana cigarette. The recent legislation in California granting a

[1] Of those cases sent to the district attorney for possible filing by the police, approximately 12% are rejected outright; an additional 14% are dismissed at the preliminary hearing.

judge discretion to punish first offenses of simple possession as either a misdemeanor or felony[2] will undoubtedly have an impact on the exercise of discretionary devices at earlier stages in the conviction process. Where district attorneys and judges have in the past employed various other devices to avoid felony conviction, it may well be that they will now rely on the ability of the judge to treat the offense as a misdemeanor in sentencing.

This section is designed to show empirically how district attorneys and judges handle both legal and discretionary factors in deciding whether to release an arrestee.

II. Filing the Complaint

When a defendant has been arrested and booked, the police will seek to have the district attorney issue a felony complaint.[3] The deputy in charge of complaints has three alternatives open to him: he can file a felony complaint; he can refer the case to the city attorney for misdemeanor filing; or he can reject the case completely.

The deputy's decision is based upon information gained from a written arrest report and from conversations with the investigating officers.[4] Normally, the deputy does not have a defendant's prior record before him and thus does not consider it in making his decision.[5] However, in some instances the police will inform the deputy of a suspect's bad record or reputation in urging the issuance of a complaint.[6] A very weak case may be filed to satisfy the desires of the police. One district attorney stated that when he first joined the office the police were concerned with securing convictions, but now they only insist that complaints be filed. They apparently feel that their duty ends when a complaint is filed.[7]

The district attorney must decide whether the legally required elements of the offense were present and whether there is sufficient

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[2] Ch. 1465, Calif. Legis. Serv. (West No. 7, 1968).

[3] Cal. Penal Code § 806 (West Supp. 1966): "A proceeding for the examination before a magistrate of a person on charge of an offense originally triable in a superior court must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate . . . ."

[4] Interview with Joe Reichmann, Deputy District Attorney for Los Angeles County, in Los Angeles, Jan. 10, 1968.

[5] Interview with Harvey Hassen, Deputy District Attorney for Los Angeles County, in Los Angeles, Jan. 11, 1968. In some borderline cases a deputy may examine the suspect's record in deciding whether to file. However, a person's record is more influential in the determination of bail and in sentencing.

[6] Interview with Keith Glazer, Deputy District Attorney for Los Angeles County, in Los Angeles, Jan. 17, 1968.

[7] Reichmann Interview, *supra* note 4.

evidence to prove the defendant guilty. The decision whether to file or reject a case is usually based upon the deputy's estimation of the probability of success in securing a conviction.

A. *Filing on Possession Cases*

The great majority of felony complaints allege possession of marijuana.[8] To prove possession the prosecution must show that the defendant exercised dominion and control over the marijuana and had knowledge of its presence and narcotic nature.[9] Knowledge of its presence may be presumed from the fact of possession. The district attorney will usually file unless he is unable to connect the marijuana with the defendant, the defendant possessed an insufficient quantity of marijuana, the search for the marijuana was made without probable cause, or the police refuse to identify their informant.[10]

1. Lack of Connecting Evidence for Constructive Possession

Possession of marijuana does not require that the defendant have marijuana on his person at the time of his arrest;[11] it is sufficient that the marijuana can be connected with him. Lack of such connecting evidence is the leading cause for the rejection of complaints by the district attorney.[12] Constructive possession is shown by demonstrating that the marijuana was deposited in a place[13] or on a person[14] under the control of the defendant. The doctrine can be used to make two or more individuals liable for the joint possession of a single amount of marijuana,[15] providing one is sufficiently connected with the unlawful possession of the other.[16]

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[8] CAL. HEALTH & SAFETY CODE § 11530 (West 1964). *See* Appendix C *infra*. Of the 441 felony complaints studied, 350 contained a possession charge. In some instances a possession charge may be attached to a charge of sale (§ 11531) or possession for sale (§ 11530.5).

[9] People v. Layne, 235 Cal. App. 2d 188, 45 Cal. Rptr. 110 (1965).

[10] Reichmann Interview, *supra* note 4.

[11] People v. Blinks, 158 Cal. App. 2d 264, 322 P.2d 466 (1958).

[12] Of 297 rejections, 180 were for lack of sufficient evidence.

[13] *See* People v. Luke, 233 Cal. App. 2d 793, 43 Cal. Rptr. 878 (1965), where a defendant was observed taking packages out from under an abandoned car on four occasions during one evening. The police officers who searched under the car found similar packages that contained marijuana. The court concluded that the car and the area around it were under the control of the accused and that he constructively possessed the marijuana.

[14] *See* People v. White, 50 Cal. 2d 428, 325 P.2d 985 (1958), where a defendant was found guilty of constructively possessing a narcotic when his agent was arrested for possession.

[15] If there is an admission that the marijuana belonged to one of the defendants the district attorney will file on that individual even though the marijuana was found on the other person. Reichmann Interview, *supra* note 4.

[16] *See* People v. Basco, 121 Cal. App. 2d 794, 264 P.2d 88 (1953). In this case

Constructive possession may also be shown by: (1) a statement or admission,[17] (2) an attempt to hide the marijuana,[18] (3) an attempted escape coupled with actual possession of marijuana debris,[19] or (4) proprietorship of an automobile or dwelling in which marijuana was found. The district attorney looks at a number of factors in deciding whether he can connect marijuana found in a dwelling with the proprietor or owner of that dwelling. The proprietor is often charged with constructive possession if he was present at the time of the discovery. However, ownership of a house does not constitute possession of everything in the house; some additional incriminating evidence is required to secure a conviction.[20] Finding the marijuana intermingled with personal effects or hidden in the house is usually considered sufficient proof of constructive possession by the owner.[21]

Another instance where the district attorney must find the connection necessary to prove constructive possession is where marijuana is found during the "bust" of a private pot party. Normal procedure at a pot party is for a group of people to smoke a pipe or small number of cigarettes. In this situation the district attorney will file only against someone who was in close proximity to the marijuana. If there are an equal number of people and cigarettes, with each person within reaching distance of a cigarette, a felony complaint will usually be issued against all those present. However, if there is only one cigarette which no one person was observed to possess, and several people are within reaching distance of it, the deputy will not file against each person.[22] This is primarily because there is little likelihood of successful prosecution. First, it is very difficult to prove possession when there are no incriminating factors other than presence.[23] Second, many judges do not like to find a defendant guilty of joint possession of a small amount of

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joint possession of heroin was evidenced by the fact that the defendant was a user of narcotics, that he had possessed some of the narcotic that was found on the co-defendant, and that the amount found on the co-defendant was large and the defendant had knowledge of that amount. Ordinarily the district attorney will require more connecting evidence than existed in the *Basco* case unless a large amount of marijuana was confiscated.

17 People v. Reese, 164 Cal. App. 2d 737, 331 P.2d 210 (1958).

18 People v. Sedacca, 238 Cal. App. 2d 190, 47 Cal. Rptr. 657 (1965).

19 People v. Huerta, 238 Cal. App. 2d 162, 47 Cal. Rptr. 580 (1965).

20 People v. Antista, 129 Cal. App. 2d 47, 276 P.2d 177 (1954).

21 *See* People v. Hamilton, 223 Cal. App. 2d 542, 35 Cal. Rptr. 812 (1963), where possession was established when marijuana was discovered in the defendant's drawer.

22 Hassen Interview, *supra* note 5.

23 *See* People v. Perez, 213 Cal. App. 2d 436, 439-40, 28 Cal. Rptr. 751, 753 (1963); People v. Foster, 115 Cal. App. 2d 866, 253 P.2d 50 (1953).

marijuana which was equally accessible to several people.[24] The district attorney will usually refer these rejections to the city attorney for possible prosecution as a misdemeanor.

Dismissals for lack of connecting evidence also often occur in cases involving vehicles—the major source of marijuana arrests.[25] The mere fact that a person was in a car in which marijuana was found or from which marijuana was thrown is not sufficient to support a conviction where there were several persons in the vehicle.[26] The district attorney will consider how many people were in the car, where they were sitting, where the marijuana was found and the accessibility of each person to it. For example, if the marijuana was found in the back seat, the deputy will probably file on the persons in the back seat and the driver, but will reject complaints on passengers in the front seat. If the marijuana is locked in the glove compartment or in the trunk of the automobile, the district attorney will file on the owner or driver of the vehicle. If the glove compartment is open, he may also file on the person sitting in the front seat.[27] In many instances the marijuana is thrown out of the car when the police officer approaches.[28] In those cases, the district attorney will file against the person who was observed to discard the marijuana or against the persons who were sitting on the side from which it was thrown.[29] When it cannot be determined who threw the marijuana or from which side it was thrown, the case will be rejected.[30]

2. Possession of an Insufficient Quantity of Marijuana

The basis for rejection on the ground that an insufficient quantity of marijuana was involved stems from the case of *People v. Leal*[31] in which the California Supreme Court ruled that a person cannot be convicted for the possession of a narcotic where the amount possessed is not enough to sell or consume.[32] The court,

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[24] These cases are not dismissed on the rationale that only a minimal amount of marijuana was present. *See* text accompanying notes 31-35 *infra*. Instead, the grounds for dismissal are usually based on a lack of connecting evidence.

[25] *See* Enforcement Section, Part II *supra*.

[26] People v. Foster, 115 Cal. App. 2d 866, 253 P.2d 50 (1953). *See* text accompanying note 92, Part II *supra*.

[27] Hassen Interview, *supra* note 5.

[28] *See* note 92, Part II *supra*.

[29] Reichmann Interview, *supra* note 4.

[30] *Id.*

[31] 64 Cal. 2d 504, 413 P.2d 665, 50 Cal. Rptr. 777 (1966).

[32] Since the arrest reports studied covered the entire year of 1966, the *Leal* decision (handed down in May of 1966) only affected those arrests in the latter part of the year. Of the 297 adult arrest reports studied which were rejected by the district attorney, only 14 were rejected on the basis of the *Leal* decision. However, 58

however, did not designate the numerical quantity which would be the minimum amount necessary for prosecution.[33] There is no formal policy of the district attorney's office as to the minimum amount of marijuana necessary for prosecution. Some deputies will set a minimum quantity below which they will not file.[34] Others will file in a case in which knowledge of the presence and narcotic nature of the substance is shown regardless of the quantity involved.[35]

It is common for some deputy district attorneys to reject cases where the defendant possessed one roach,[36] although a roach is consumable and thus apparently outside the *Leal* exemption. These deputies base their decision on the awareness that the particular judge handling the case will employ *Leal* to dismiss a case where for some reason he does not want to convict the defendant.[37] This may happen where the defendant has no previous record or where the judge thinks the penalty does not fit the crime. Such a use of the *Leal* doctrine is highly individualized depending on the attitude of the particular judge in question.

There is a need for a uniform application of *Leal* to avoid the present unpredictability at both the prosecutorial and judicial levels. One solution may be to reduce the judges' discretion by statutorily defining a de minimis quantity. A clear standard would require all defendants to be treated the same with respect to similar quantities of marijuana.

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were rejected on the basis of the pre-*Leal* de minimis rule, which was based on the inability of the defendant to be consciously possessing such a small amount of marijuana. *See* Appendix C *infra*.

33 Of the 14 cases rejected, the amount of marijuana present varied from a few seeds to one roach (one burnt marijuana cigarette).

34 Deputy District Attorney Hassen does not usually file a case when less than 150 milligrams is involved. Often he will not file a case for possession of one roach However, special circumstances may induce a deputy to file a case that he might normally reject. Thus Mr. Hassen reported filing a one-roach case in which the defendant admitted smoking four marijuana cigarettes a day. Hassen Interview, *supra* note 5.

35 Deputy District Attorney Reichmann believes that *Leal* requires rejection only if it can be demonstrated that the suspect had no knowledge of the marijuana or if the amount involved is so minute that knowledge cannot be inferred by its presence He once filed on a person who, after attempting to swallow marijuana, had the debris scraped from his tongue. He stated that he did not believe a de minimis rule was beneficial because it encouraged destruction of evidence and resistance to the police. Reichmann Interview, *supra* note 4.

36 Hassen Interview, *supra* note 5.

37 Of the 441 arrest reports studied where the district attorney did file a complaint, 11 were dismissed by the judge, either at the preliminary hearing or at trial, on the basis of the *Leal* decision or the pre-*Leal* de minimis rule.

3. Illegal Search

Another possible grounds for rejection is that the search for the marijuana was made without probable cause. Even though this is a major reason for dismissal at the preliminary hearing and trial levels, rejection by the filing deputy on search and seizure grounds is rare.[38] The district attorney will normally leave this decision to the court and will fail to file only in the case of a blatantly illegal search.

4. Refusal of Police to Identify Informant

In very rare instances, a case will be rejected for refusal of the police to give an informant's identity.[39] Normally, since the police are aware of the occasions which necessitate the disclosure of an informant, they will not request that a complaint be filed unless they have sufficient independent evidence or unless they intend to reveal the identity of the informer. However, sometimes the police believe they have sufficient corroborating evidence (*e.g.*, the defendant was seen in the company of a known narcotics user), but the deputy will disagree and will reject the case upon a refusal to disclose the informer's identity.

B. *Filing on Possession for Sale*

The offense of possession for sale[40] involves stiffer penalties than those for simple possession, and is designed to allow the courts to differentiate between those individuals caught with small amounts of marijuana they are using themselves and those individuals apprehended with large amounts which they had intended to sell. The possession for sale charge allows the police to apprehend large dealers whom they cannot entice into a sales transaction. Arrests for possession for sale, like those for sale, are often the result of police undercover work. Because of this, the police are able to present the district attorney with a stronger case, resulting in fewer rejections,[41] than in possession cases.

Normally the charge of possession for sale is only made if the suspect has been found with a large quantity of marijuana. Cases

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[38] Out of 297 rejections studied, only 35 were rejected because of lack of probable cause to search.

[39] None of the 297 rejections studied occurred for this reason.

[40] CAL. HEALTH & SAFETY CODE § 11530.5 (West 1964). *See* Appendix C *infra*.

[41] Of the 441 complaints studied, 42 were issued for § 11530.5 violations. Of the 297 rejections studied only five were cases in which the police had charged the arrestees with possession for sale.

involving small amounts of marijuana will not be filed unless circumstances indicate that the defendant actually possessed the marijuana for sale.[42] One factor which a deputy takes into consideration is how the marijuana was packaged.[43] Division of the marijuana into individually wrapped "lids"[44] is an indication that the suspect contemplated selling it, even though the total amount of marijuana, if found in bulk, would ordinarily only support a possession charge. A large amount of cash on the suspect or an incriminating statement by him can also indicate that the marijuana was held for sale.[45]

C. *Filing on Sale of Marijuana*

Cases that involve sales[46] of marijuana are rarely rejected[47] due to two major factors. First, the police usually have a strong case resulting from undercover activity. The arrests typically are made by narcotics experts who are careful to secure sufficient evidence before requesting a complaint.[48] Their reports are very complete and frequently contain information from both the arresting officer and the undercover agent. Second, the sale of marijuana is regarded by the police and district attorney's office as a much more serious offense than mere possession;[49] they see the seller as the root of the drug problem and are determined to secure his conviction. Thus, the district attorney may file even when he has a weak case, realizing that the likelihood of conviction is not great, but believing that all efforts must be made to ensure the protection of society from marijuana pushers. Judges are less sympathetic towards a defendant charged with sale of marijuana than towards one charged with possession. This increases the probability of conviction and is another factor which encourages the district attorney to file in sale cases.[50]

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[42] Of the 42 § 11530.5 complaints filed, the largest amount of marijuana involved was 125 pounds; the smallest amount was two ounces.

[43] The presence of packaging equipment and packaged marijuana can be sufficient to convict for possession of marijuana for sale. *See* People v. Foster, 248 Cal. App. 2d 715, 56 Cal. Rptr. 872 (1967).

[44] A "lid" or "can" is 1-1½ ounces of marijuana which is often wrapped in small plastic sandwich "baggies." A lid will sell for from $10 to $15. The average pusher buys a "key" (kilogram) of marijuana for about $100 and breaks it down into about thirty lids. Thus, he makes about $200 profit on the average kilogram.

[45] Hassen Interview, *supra* note 5.

[46] CAL. HEALTH & SAFETY CODE § 11531 (West 1964). *See* Appendix C *infra*.

[47] Of the 297 rejections studied, only four were instances where the police had charged the arrestee with sale. However, 62 of the 441 cases actually filed were § 11531 charges.

[48] *See* text accompanying note 120, Part II *supra*.

[49] The opinion that sale of marijuana is a much more serious offense was shared by everyone interviewed including police, district attorneys and judges.

[50] Of the 37 filings under § 11531 where final disposition was available, 22 de-

Health and Safety Code § 11531 includes the crime of transporting marijuana as well as selling it. Although no minimum amount is required by the statute, a major factor in deciding whether to file transportation charges is the quantity involved. If a large quantity is found the deputy will charge the defendant with sale and transportation. If a small quantity is involved the deputy will usually not file a complaint charging transportation because most judges are not sympathetic to the charge.[51] They believe that section 11531 and its stiffer penalties are intended to apply only to individuals who are distributing marijuana for sale. Since the district attorney bases his decision to file upon the likelihood of conviction, he will refrain from filing for transportation and instead charge the defendant with possession. However, one deputy indicated that sometimes it was a good technique to file for transportation even if there was a small amount involved, since it would encourage the defendant to plead guilty to a possession charge which has less severe penalties.[52]

D. *Sale of Marijuana to Minors*

Very few complaints are filed charging a violation of Section 11532 of the California Health and Safety Code.[53] Section 11532 declares it to be a crime for an adult to sell, furnish, or offer to furnish marijuana to a juvenile.[54] A sale to an undercover agent does not usually result in a violation of section 11532 because most agents are over 21.[55] Those that are filed are the result of information gathered from a person arrested for possession who is under 21 and who informs the police of the origin of the marijuana. Often, rather than file a complaint alleging a violation of section 11532, the district attorney will submit a section 11531 complaint because it is considered too much trouble to prove the ages of the seller and buyer.[56]

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fendants were convicted of sale, 12 defendants were found not guilty of the § 11531 charge, and three defendants had the charge reduced to possession.

51 However, one judge reported an instance of a transportation charge being filed when two suspects were arrested for possession of two marijuana cigarettes while riding on a motorcycle. The judges interviewed expressed the opinion that the statute should be applied only to those who transport large quantities of marijuana, but not to defendants such as those who were arrested while on the motorcycle.

52 Reichmann Interview, *supra* note 4.

53 Only one of the 297 complaints filed contained a § 11532 charge. The defendant was convicted.

54 *See* Appendix C *infra*.

55 All of the police agencies interviewed required their recruits to be over 21. Thus unless the police use an informant who is a minor to make the purchase, there is no way to set up a sale which would violate § 11532.

56 Reichmann Interview, *supra* note 4.

E. *Maintaining a Place Where Narcotics Are Used or Sold*

The deputy may also file a complaint under Section 11557 of the Health and Safety Code.[57] This is rarely done because of the quantum of proof necessary for conviction.[58] The crime involves maintaining a place where narcotics are used or sold, but to establish guilt it must be proven that there has been a continuity of such maintenance on the premises. A single instance of the proscribed conduct is not sufficient for conviction, since maintenance has been interpreted to mean the establishment of a place over a period of time.[59] Thus, there must be evidence that narcotics were sold or used on another occasion besides the time of arrest. A "place" would be usually a house or an apartment, although an automobile could qualify. Generally, if marijuana is present the district attorney will file for possession or for possession for sale.

F. *Driving Under Influence of a Narcotic*

It is also a felony for a person to drive while under the influence of narcotics.[60] Again, however, evidentiary requirements preclude filings in most marijuana cases[61] since it is difficult if not impossible to prove that one is under the influence of marijuana.[62] Normally, the complaint will merely allege possession of marijuana. However, if the seemingly intoxicated suspect passes the blood and breath tests which measure the alcohol in his body, and the officer smells marijuana smoke and observes a cigarette in the automobile, the district attorney may file a complaint charging violation of section 23105 in addition to section 11530 or 11531.[63]

G. *Misdemeanor Complaints*

Misdemeanor complaints are filed by the city attorney. In some cases the complaints are based upon felony rejects referred by the district attorney; in other cases they are based upon police

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57 There were seven instances out of 297 complaints where the district attorney filed a § 11557 charge. Since in only one of these instances did the police initially charge the defendant with a § 11557 violation upon arrest, it appears likely that most of the § 11557 filings are the result of a negotiated plea. *See* text accompanying note 88 *infra*.

58 *See* Appendix C *infra*.

59 People v. Horn, 187 Cal. App. 2d 68, 9 Cal. Rptr. 578 (1960), *cert. denied*, 368 U.S. 846 (1961).

60 CAL. VEHICLE CODE § 23105 (West 1960).

61 Among the 441 complaints studied four were filed charging a § 23105 violation.

62 There is no conclusive medical test that can be administered at the time of the arrest as there is for detection of alcohol in the human system.

63 Reichmann Interview, *supra* note 4.

reports made directly to the city attorney. The vast majority of misdemeanor filings are the result of felony complaint rejects. The city attorney, like the district attorney, will examine the arrest report and reject some of the cases for illegal search and seizure or insufficient connecting evidence. However, the city attorney will normally file a larger percentage of cases than the district attorney. This is due to several factors. First, the police policy of filing virtually all cases with the district attorney[64] results in many cases that are properly misdemeanor cases being filed with the district attorney and subsequently being rejected.[65] Secondly, it is usually easier to secure a plea to a misdemeanor than to a felony and it is easier to secure a conviction. Finally, the city attorney cannot refer the case to someone else. Since the decision to reject completely dismisses the case, there is a certain pressure to file which is not felt in the district attorney's office.

Cases filed in the city attorney's office are usually for violation of Section 11556 of the Health and Safety Code.[66] This section provides that it is illegal for a person to be present in a place where marijuana is smoked or used with the knowledge that such activity is taking place. In deciding whether to file on a suspect arrested in an apartment or a house, the deputy must determine his location at the time of arrest. If he was in the room where the marijuana was being smoked, the city attorney will file.[67] However, since section 11556 requires that there be knowledge that marijuana was being smoked or used, the city attorney may reject the case if the suspect was in another room or if other circumstances indicate that the suspect was not aware that the marijuana was being smoked.[68]

The city attorney will also examine the report to determine whether the officer smelled marijuana smoke. He will do this for two reasons. First, he will want to know if it can be proven that marijuana was being smoked. It is not a crime to be in a room where marijuana is merely present. Second, the smelling of the smoke may have been used for probable cause to enter the house.[69]

Although it is a misdemeanor to be under the influence of a narcotic, complaints alleging a violation of Health and Safety Code

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[64] It was estimated that only a dozen misdemeanor complaints are filed directly with the city attorney each year.

[65] Out of 242 rejections in which referral or non-referral was indicated, 27 were referred to the city attorney.

[66] Information for this section was obtained from interviews with John L. Denny and Robert O. Young, Los Angeles Deputy City Attorneys, in Los Angeles, Feb. 9, 1968.

[67] *Id.*

[68] *Id.*

[69] Young Interview, *supra* note 66.

§ 11721 are rarely filed in marijuana cases. It is too difficult to prove that a suspect is under the influence of marijuana and, therefore, section 11721 filings are confined to heroin and other "hard narcotics."[70]

III. Preliminary Arraignment

If a felony complaint is issued, the defendant is brought before a magistrate[71] to be charged with the crime, to have bail set[72] and to have the date for the preliminary hearing determined. Normally the defendant will not plead guilty at the preliminary arraignment.

Bail is set by the magistrate upon the recommendation of the district attorney. Although a bail schedule exists to guide the deputy, he is not bound by it and he may consider several factors in determining his recommendation. The major considerations are the defendant's prior record and his ties to the community.[73] Since the primary purpose of bail is to guarantee the presence of the suspect at trial, the district attorney is lenient in possession cases where it seems probable that the defendant will appear. Bail for possession is usually set between $500 and $1000.[74]

Some deputies will recommend release of a defendant on his own recognizance if he has no prior record, if he is employed or in school and, in the case of a young offender, if he resides in his parents' home.[75]

The defendant can request that the judge reduce bail to an amount lower than the deputy's recommendation. Even though the district attorney knows that the defendant will usually request a lower bail, there is no policy of recommending very high bail with the expectation that the judge will reduce it. In fact, most deputies will attempt to gauge the amount the judge feels is fair, so that when they do set a high bail the judge will respect their recommendation.[76] In deciding whether or not to reduce bail the judge will take into account the same factors that were considered by the deputy. One judge stated that he would frequently grant release on one's own recognizance if only one cigarette was involved.[77]

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70 *Id.*

71 Cal. Penal Code § 807 (West 1957).

72 Cal. Penal Code §§ 1274-76 (West Supp. 1966).

73 Reichmann Interview, *supra* note 4.

74 In the arrest reports studied bail ran from $250 to $2,000 in possession cases.

75 Out of 306 arrest reports studied, there were 39 releases on the defendant's own recognizance, all in possession cases.

76 Hassen Interview, *supra* note 5.

77 Interview with the Honorable Mark Brandler, Judge of the Los Angeles County Superior Court (Criminal Division), in Los Angeles, Feb. 9, 1968.

Bail is set higher for felonies other than possession. The scale for possession for sale is five thousand, seven thousand five hundred, and 10 thousand dollars for the first, second and subsequent offenses respectively. These amounts are also subject to the discretion of the district attorney and the judge. The scheduled amounts are recommended for the "classic case of a person running kilos into the state."[78] If the possession involved a small amount of marijuana and the defendant is a good risk, the bail will be much less than the scheduled amount.[79] Similar discretion applies to other offenses such as sale where the bail can be set as high as $100,000.[80]

IV. Preliminary Hearing

A preliminary hearing is held before a municipal court judge to determine whether the prosecution has established a prima facie case against the defendant.[81] The attorney for the defense will utilize the hearing as a discovery device. If he discovers that the district attorney lacks significant evidence or if he can exclude essential evidence on the basis of an illegal search, he will attempt to have the case dismissed.[82] Unlike the rejections, the most common cause for dismissal in a preliminary hearing is lack of probable cause for the search. Cases are also dismissed for insufficient evidence (usually lack of connection between the defendant and the marijuana), the *Leal* de minimis rule, in rare instances entrapment, and upon the motion of the district attorney, when he receives some information which he believes would make it pointless to continue the action.[83]

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[78] This information was obtained from a Superior Court judge who desires to remain anonymous.

[79] Reichmann Interview, *supra* note 4.

[80] The highest bail discovered in the arrest reports studied was $11,500 in the case of a woman dealer.

[81] "The purpose of the preliminary hearing is to weed out groundless or unsupported charges of grave offenses, and to relieve the accused of the degradation and expense of a criminal trial." Jaffe v. Stone, 18 Cal. 2d 146, 150, 114 P.2d 335, 338 (1941).

[82] Interview with Marvin Cahn, Attorney, in Los Angeles, Jan. 3, 1968.

[83] There were 70 cases studied where the complaint was dismissed at the preliminary hearing. In 35 of these cases the dismissal was due to lack of probable cause to search; in 22 cases the basis for dismissal was lack of sufficient evidence; 9 cases were dismissed under the *Leal* de minimis rule or its predecessor; 3 cases were dismissed because of entrapment; 8 cases were dismissed on the motion of the district attorney; and 2 cases were dismissed for other reasons. The total adds up to more than 70 because in some cases more than one reason was given for dismissal by the judge.

Motions to dismiss by the district attorney are usually made because the defendant is already in jail or is about to be tried for a more serious offense. However, a number of cases are dismissed "in the interest of justice" for a variety of reasons. For example, one case was dismissed where the defendant had volunteered for the

V. Dismissal on 995 Motions

If a prima facie case is established at the preliminary hearing, the defendant is held to answer and an information is filed. The information is the prosecution's accusatory pleading in felony cases; it includes the crimes with which the defendant is charged. At this stage of the proceeding the defendant can request that the information be set aside and the case dismissed on the grounds that he was not indicted for probable cause. This is done through the vehicle of a "995 motion" to the superior court.[84] Dismissals on 995 motions occur for the same reasons as dismissals at the preliminary hearing.[85]

On January 1, 1968, Section 1538.5 of the California Penal Code went into effect. This section authorizes a special hearing to be held if the defendant moves to suppress evidence alleged to have been secured through an illegal search. This procedure is designed to expedite cases by having search and seizure issues determined prior to trial. It is advantageous to the prosecution because it grants them the right to an immediate appeal from a determination that the search was illegal, rather than delaying the appeal until completion of the trial. Motions to suppress evidence are often made in conjunction with 995 motions. If the evidence is excluded (*i.e.*, the motion to suppress is sustained), there may no longer be probable cause to hold the defendant and the case will be dismissed on the 995 motion.

VI. Negotiated Pleas

Very few people plead guilty to felony charges in marijuana cases.[86] This is due primarily to the extreme sanctions that can be imposed as the result of a felony conviction. However, these penalties do create a very real pressure to plead guilty to a misdemeanor charge if the opportunity presents itself.[87]

A negotiated plea, obtained by bargaining between the defense and prosecuting attorneys, allows the defendant to plead guilty to a

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Marine Corps and the Marines had indicated to the district attorney that they would still take him if the case was dismissed.

[84] Cal. Penal Code § 995 (West 1957).

[85] In the arrest reports studied there were 43 § 995 motions granted and 58 denied. The motion was granted 14 times because of an illegal search, twice because of the *Leal* rule, eight times because of insufficient evidence, once because of entrapment and twice for other reasons. In 16 instances no reason was given.

[86] The defendant pleaded guilty in only 55 of the 425 cases where a felony complaint was filed.

[87] In 1967 there were 12,708 marijuana arrestees in California with no prior criminal record. This was an increase from 5,084 in 1966. These statistics were obtained from the California Bureau of Narcotics Enforcement.

lesser crime than that for which he was charged. The prosecution will allow such a plea for several reasons: it may have a weak case; it may wish to expedite the case; or it may deem it to be in the interests of justice.[88] Prosecutorial discretion based on factors such as age, prior record, and the deputy's own attitude toward the stiff penalties involved is more commonly exercised in the decision to negotiate a plea than on the decision to reject the filing of a complaint.[89] One explanation for this might be that police pressure on the deputy is greater at the filing level since the police base their own performance evaluation on the number of cases filed rather than those successfully prosecuted.

Until recently, negotiated pleas in marijuana cases did not appear to be any more common than such pleas in other criminal offenses. However, the increasing number of defendants with no prior record,[90] particularly youthful defendants, appears to be causing prosecutors to exercise more readily their discretion to negotiate.

Many attorneys will arrange a negotiated plea and advise their clients to plead guilty to the lesser charge, even though there may be a chance of acquittal at trial.[91] These attorneys feel that a felony conviction and its attendant penalties are too severe to risk the chance of being found guilty. One public defender said that although he would advise his clients to plead guilty to a misdemeanor in many cases, this procedure generates disrespect for our criminal process, especially among those people who believed themselves to be innocent but who accepted his advice rather than risk a felony record. Not all attorneys advise their clients to plead guilty to a misdemeanor; however, and some will not attempt to negotiate a case if they believe their client to have a better than even chance of being acquitted.[92]

A plea to a misdemeanor must be approved by the district attorney. The district attorney has no definite policy, but such pleas are usually accepted only in possession cases. The particular circumstances of each case are examined; if a young defendant with a good record and a small amount of marijuana is involved, the deputy will be more inclined to allow a negotiated plea. However, since there is

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88 Interview with Mr. Dino Fulgoni, Deputy District Attorney of Los Angeles County, in Los Angeles, Feb. 11, 1968.

89 This information was obtained from a member of the Los Angeles Public Defender's Office, who desires to remain anonymous.

90 Reichmann Interview, *supra* note 4.

91 Out of the 286 cases in which information as to negotiated pleas was available, the defendant pleaded guilty to a lesser charge 29 times.

92 Cahn Interview, *supra* note 82.

no set policy, the decision depends upon the particular deputy handling the case. One said he would not negotiate a plea if he had a strong case regardless of the defendant's age or record or the quantity involved.[93] Another confidentially stated that he would allow a plea to the lowest possible misdemeanor if the defendant's age, record or the quantity involved made a felony charge undesirable. One deputy district attorney stated that he would rather move for dismissal in the interest of justice than negotiate a plea, if he believed that the defendant's background warranted the use of prosecutorial discretion.

Whether either side will attempt to negotiate a plea is sometimes affected by the holding of a hearing to suppress evidence. For example, counsel for the defense may refrain from negotiating until after the hearing in the hope that the case will be dismissed. He realizes that even if the evidence is allowed, he will have an opportunity before trial to negotiate a plea. Of course, if the evidence is not suppressed he will be in a weaker bargaining position. The district attorney may also wait, hoping that the search will be sustained and the case prosecuted as a felony. On the other hand, the deputy may feel because of the new law that the case will be dismissed and will offer to negotiate before a section 1538.5 hearing is held.[94]

There are two instances where a defendant may be willing to plead guilty to a felony charge. First, a defendant may agree to plead guilty to one count of possession when he has been charged with several counts or when he has been charged with sale or with possession for sale.[95] Second, he may plead guilty with the "guarantee" that probation will be granted.

Most negotiated cases are submitted on the transcript of the preliminary hearing to a "short cause court." Cases that are decided by such a court are restricted to those that can be decided within one hour. Both parties must get the agreement of the presiding judge to accept the negotiated plea. Ordinarily this presents no complications, since the judge usually will go along with the district attorney's recommendation. However, one judge indicated that he would accept a negotiated section 11556 plea (being present in a place where marijuana is being smoked) only if the facts of the case fit precisely within the statutory language.[96]

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[93] Fulgoni Interview, *supra* note 88.

[94] Interview with a representative of the Los Angeles Public Defender's Office who desires to remain anonymous.

[95] Five of the 24 negotiated pleas involved a defendant pleading guilty to a possession charge. In each instance this occurred where he had been charged with one or more counts of sale.

[96] Interview with the Honorable Vernon P. Spencer, Judge of the Los Angeles County Superior Court (Criminal Division), in Los Angeles, Feb. 11, 1968.

The defendant who negotiates a plea usually pleads guilty to either California Health and Safety Code § 11556 or 11557 (maintaining a place where narcotics are used). Section 11557 is preferred by both the district attorney's office and judges because it provides for alternate misdemeanor or felony sentencing. Such sentencing allows the judge to find the defendant guilty of the crime, but gives him the opportunity to wait until he has read the probation report before deciding whether to grant a misdemeanor or felony sentence. This procedure protects the judge from agreeing to a straight misdemeanor plea (*i.e.*, section 11556) and then later discovering that because of the defendant's record or some other circumstance he would have found him guilty of a felony. The defendant is usually willing to agree to a section 11557 conviction because only in rare cases will the judge give a felony sentence.[97]

The recent legislation in California allowing alternate felony-misdemeanor sentencing for first offenses in possession cases will undoubtedly decrease the incidence of negotiated pleas. Insofar as prosecutors have been persuaded to negotiate pleas on the basis of discretionary factors such as age and background, such factors would seem to favor a defendant most often in first offenses for possession. Under the new law, since discretion in such cases is expressly reserved for the court, prosecutors will undoubtedly be reluctant to usurp this function by negotiating. If the prosecutor has a weak case, however, he may still attempt to negotiate the plea rather than risk losing the case at trial. If the case involves a first offense for possession, it will be easier under the new law for a defendant to refuse the offer to plead guilty to a misdemeanor because, even if convicted, there is the possibility of the judge treating the offense as a misdemeanor in sentencing. In other cases, however, the defendant must still face the difficult decision whether to accept a lesser offense or gamble that he will be acquitted at trial.

VII. Cases Submitted on the Transcript

Negotiated pleas are not the only type of cases that are submitted on the transcript of the preliminary hearing. Submission on the transcript may also occur when the defendant has either a very weak case or a rather strong case.[98]

Submission of the case may signify a "slow plea" of guilty. A slow plea may be desirable where the defendant expects to be found guilty but would rather not plead guilty. The value of this

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[97] Reichmann Interview, *supra* note 4.
[98] *Id.*

tactic is that it does not preclude the possibility that the case may later be reversed because of a subsequent change in the law; or the defendant may simply desire to avoid the stigma of a guilty plea. In marijuana cases, some attorneys do not invoke this procedure because they feel that their client has a much better chance for acquittal or leniency if the case is taken to trial and tried before a jury.

Sometimes defense attorneys will submit a case on the transcript when they have a particularly strong case. This prevents any further evidence which may be prejudicial to the defense from being brought into court. For example, if a case involves a questionable search and seizure, an attorney would want the trial court to rule on the issue of probable cause with the least amount of testimony available.

Before a case may be submitted on the transcript, both parties must approve. Where the prosecution has an "open and shut case" it is clearly understandable that the district attorney would want to save the time and expense of having to introduce further evidence. Submission on the transcript may also occur when the prosecution has a weak case if there is not much hope that new information will be adduced at a trial. Sometimes, in very weak cases, the district attorney will submit a case on the transcript rather than move for dismissal because he does not want to risk upsetting relations with the police or because he does not wish to justify the validity of a motion to dismiss.

VIII. Trial

Most defendants prefer to have their case tried before a judge rather than a jury.[99] Many jury members are appalled by narcotics users, fail to differentiate between marijuana and hard narcotics cases, and have a tendency to find a defendant guilty. Judges, on the other hand, try several marijuana cases per week and are not shocked by a suspect who is apprehended with marijuana.

Some judges are generally more lenient in marijuana cases than in other types of felonies. Some, of course, do not believe that possession of marijuana warrants classification as a felony with its subsequent harsh penalties. Others believe that while some cases should be prosecuted as felonies, there are many situations

[99] Out of 252 cases in which the information was available, 245 were tried by the judge and only seven by a jury. Of the seven jury trials only two resulted in acquittal. One of the trials resulted in a hung jury and the district attorney declined to refile the case.

where a misdemeanor conviction would be proper. In these situations, such judges will strain to find a legitimate reason for dismissing a case if the defendant possessed only a small quantity of marijuana and had a good record.[100] One judge stated his belief that a young defendant who had no prior record and had been picked up with one cigarette had already been punished sufficiently by being arrested, placed in jail and subjected to criminal prosecution. This exercise of discretion has been termed the "one cigarette rule." The judge in such cases will justify dismissal on grounds of search and seizure or insufficient evidence.[101] Such dismissal is, of course, not automatic in one cigarette cases; some judges will never dismiss such cases, while others will do so only on rare occasions. However, this unpredictability along with the stiff statutory penalties, encourages court tried cases rather than jury trials or guilty pleas.

The differing attitudes of judges also encourage defense attorneys to try whatever means available to get into a lenient judge's court. Some will attempt to secure continuances indefinitely if they are sent to a judge who is harsh on marijuana offenders. Such "shopping" is probably greater in marijuana cases than with other crimes, since the judges differ on the desirability of the present laws rather than merely on the sentence to be meted out. Thus, while a burglary suspect may wish to go before a certain judge because he may get a lighter sentence, a marijuana suspect may do so in hopes of being acquitted entirely.

If a defendant is convicted with a prior narcotics felony on his record, the judge cannot grant probation[102] and the penalties are much stiffer. However, if the prior is "struck" from the pleading (upon a motion of the district attorney and with approval of the judge) or if there is no "finding on the priors," the defendant will not be subjected to the added penalties. When a small amount of marijuana is involved, most judges do not like to convict a defendant with a prior felony conviction for possession because they consider the five year minimum penalty excessive. Thus, if the

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100 In 56 cases where the defendant possessed one cigarette or less, *e.g.*, a roach or seeds, the judge found the defendant not guilty 19 times, dismissed the case at the preliminary hearing 10 times, and granted a § 995 motion twice. The defendant in 12 of these 31 exonerations had either no previous record or had only committed one or more misdemeanors. In the 25 cases where the defendant was eventually found guilty, there were only two instances where he either had no previous record or had previously only committed a misdemeanor.

101 This information was obtained in an interview with a judge of the Los Angeles County Superior Court (Criminal Division), who prefers to remain anonymous.

102 CAL. HEALTH & SAFETY CODE § 11715.6 (West 1964).

district attorney does not offer evidence to prove the prior, the judge may make no finding and the defendant will be treated as a first offender. Also, some judges will encourage the deputy not to offer evidence of priors in possession cases. Other judges, however, feel duty bound to make a finding on the priors and subject the defendant to the more stringent penalties, even if the deputy does not present any evidence on the matter. Still others may make a finding but will then find the defendant not guilty if only a small amount of marijuana was in his possession.[103]

Most judges are lenient with regard to priors only in possession cases. If a sale is involved, the judges will usually make a finding on the prior. One judge reported that he would never strike a prior conviction in a sale case.[104]

IX. Sentencing

If a defendant is found guilty, the judge is required to sentence him according to the statute. Much of the judge's decision on what sentence to give is based upon a probation report which includes a summary of the defendant's family history, criminal record, and school and employment levels.

The most important factors considered by the court when determining the sentence are the nature of the offense, the defendant's prior dealings with the law, and his present scholastic or employment status. In possession cases, if the defendant has a good record and is in school or has a steady job, the judge will invariably grant probation.[105] Probation may be conditioned upon the payment of a fine or upon spending a small amount of time in county jail. Most judges will not sentence such a defendant to prison for two reasons. First, some do not believe that the offense of possession warrants spending a year in prison. Second, and most important, many judges do not believe that there is any rehabilitative value in sending a person with no criminal record to prison where he will come into contact with "hard" criminals. If the defendant has had extensive contact with the police or the case involves possession for sale or actual sale, however, the judge is more likely to sentence the defendant to prison.[106]

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103 This information was obtained in an interview with a Judge of the Los Angeles County Superior Court (Criminal Division), who prefers to remain anonymous.

104 *Id.*

105 These are generally the same factors used by a juvenile court judge in deciding whether to grant probation or release the juvenile. Reichmann Interview, *supra* note 4.

106 Of 49 adult cases involving sale or possession for sale wherein the final dis-

The length of the sentence is influenced by the same factors which the judge takes into account in deciding whether to grant probation. Also, if the defendant seems to be involved in selling marijuana on a large scale, the judge will undoubtedly be more harsh than if merely a single sale or a small quantity was involved.

For the most part, middle-class offenders receive probation or are allowed to plead guilty to a misdemeanor.[107] The factors—a clean record, steady employment, and a successful school record—that are taken into consideration by the judges and district attorney when deciding whether to grant probation or allow a defendant to plead to a misdemeanor, all favor those with a middle-class background. Since the penalties are considered extreme by many judges and deputy district attorneys, they will be lenient with those whom they think are a good risk.

This is not a conscious discrimination based on economic class. It merely reflects the unfortunate reality that a resident of the ghetto or other low income area is likely to have a background which discourages judicial leniency. He is more likely to be unemployed, to have a poor scholastic record and to have had previous contact with the police than similarly situated middle-class offenders.

X. Juveniles

The procedures for dealing with juveniles arrested for marijuana possession are more flexible than those for dealing with adults. The police have an initial option to either counsel and release the juvenile or turn him over to a probation officer for further action.[108] If the latter course is followed, the juvenile can be detained up to 48 hours in an Intake Detention and Control Center, while it is determined whether a petition, similar to the information used in an adult proceeding, will be filed.[109] Even if the suspect is counseled and released by the police, they may later ask that a petition be filed. If so, the local probation office will decide whether or not to file.

Juveniles arrested for marijuana violations are brought within the jurisdiction of the Juvenile Court through the filing of a peti-

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position was given, 14 defendants were sentenced to state prison, 11 were given probation with a period of time in the county jail (varying from one year to 90 days), 14 were given probation with a fine (ranging from $50 to $1,000), five received straight probation (usually from three to five years), four were committed to the California Youth Authority, and one was sent to Department 95 for a mental test.

107 *See* note 114 *infra*.

108 Cal. Welf. & Inst'ns Code § 626 (West 1966).

109 *Id.* § 631.

tion to make the juvenile a "ward of the court," usually under Sections 601 or 602 of the Welfare and Institutions Code.[110] It is important to the juvenile whether the probation officer decides to file either a section 601 petition or a section 602 petition. If a section 602 petition is filed and approved, the juvenile can be committed to the California Youth Authority for a first offense, a disposition not possible under a section 601 petition.[111] Also, if a section 602 petition is filed, the juvenile court can bind the juvenile over for the institution of general criminal proceedings if he is 16 or above.[112] Finally, the judge can deny the section 601 petition even if the juvenile has obviously violated the law, since approval is required only if the juvenile is in danger of leading an "idle, dissolute, lewd, or immoral life."[113] Under section 602, if the probation officer proves that the juvenile has committed the crime charged, the judge is required to approve the petition.

If a petition is filed a detention hearing is held to determine whether the suspect will be detained or released pending the adjudication hearing. The guilt or innocence of the defendant is determined at the adjudication hearing. If the defendant is found guilty, a disposition hearing is held in two weeks.

The police decision whether to release the juvenile, the probation officer's decision on whether to file a section 601 or 602 petition, the probation officer's recommendation, and the final disposition of the offender are all conditioned on certain factors in the juvenile's background relative to his rehabilitative potential. These factors include the juvenile's past record, attitude, and family situation. For example, the ideal subject for probation would be a juvenile with no prior record, a repentant attitude, two concerned parents, and "A" grades in school.

This personal background information is collected by the probation officer and put into a report which forms the basis for the judge's disposition. The report contains a recommended disposition which the judge will ordinarily follow. If the juvenile is found to be a "ward of the court" under section 601, the judge can grant him probation or send him to county juvenile camp. Under section 602 the judge can also commit the juvenile to the California Youth Authority. Disposition of juvenile cases depends not on the

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110 *Id.* §§ 601-02. Section 601 permits the juvenile court to adjudge a juvenile a "ward of the court" if that juvenile is in danger of leading an immoral or dissolute life. Section 602 permits the same finding if the juvenile has broken any California or United States law.

111 CAL. WELF. & INST'NS CODE §§ 727-31 (West Supp. 1967).

112 *Id.* § 707.

113 CAL WELF. & INST'NS CODE § 601 (West 1966).

offense charged, but on what the court believes will be the future conduct of the juvenile and his parents, based on the aforementioned factors.[114] Thus, a juvenile found guilty of selling marijuana may receive more favorable treatment than one convicted of possession.

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[114] A study of the files of 204 juveniles on whom a petition had been filed revealed that the following had been either given probation or had their petition denied and been subsequently released:

25 Negroes out of 69 arrested
59 Whites out of 101 arrested
16 Mexican-Americans out of 30 arrested
46 juveniles with no prior police contact out of 61 arrested
52 juveniles with one or more non-narcotic prior arrests out of 129 arrested
4 juveniles with one or more arrests for a non-marijuana narcotic offense out of 14 arrested
7 juveniles with one or more prior arrests for marijuana violations out of 24 arrested
73 students out of 127 arrested
13 employed non-students out of 30 arrested
14 non-employed non-students out of 37 arrested
5 juveniles living with neither parent out of 15 arrested
48 juveniles living with both parents out of 93 arrested
48 juveniles living with one parent out of 89 arrested
5 juveniles with both parents unemployed out of 18 arrested.

PART IV: CONCLUSION

The ultimate question underlying any discussion of the marijuana laws is whether the harm caused by marijuana justifies the prohibitions against it. This project has made no attempt to answer that question. Rather, it has dealt solely with the effects of the enforcement of these laws upon our criminal system.

One effect of the substantial rise in marijuana use has been a significant increase in the time and resources allocated by the police to marijuana enforcement. An officer may spend up to eight hours in arresting and booking a suspect and in later having to appear in court to testify. This time must be subtracted from time available for the discovery and prevention of violent crimes.

The resources allocated to the enforcement of the marijuana laws may be used in a number of ways. At present, the investigative machinery is directed primarily at the sale of marijuana. The theory underlying this practice is that without a source of marijuana there can be no use, and since a single seller serves many users, the apprehension of a seller will be much more valuable than the apprehension of a user. This theory can also be extended to the importation of marijuana from Mexico. The amount of marijuana being handled is greater at the border than at any other point in the distribution process. Increasing the present number of border guards and providing a continuing organization which would coordinate the activities of the various federal, state, and local enforcement agencies could stem the present traffic considerably.

The enforcement of marijuana laws necessitates the use of informants, undercover agents, and other surreptitious enforcement techniques. While these are the most effective of the presently available methods for discovering violators, they have made little headway in halting the spreading use of marijuana. Moreover, these enforcement methods risk intrusions into the privacy of individuals who are not involved with marijuana. The more widely these methods are used, the greater this risk becomes.

There are three types of factors which may be responsible for the use of discretion by police officer, prosecutors and judges in the treatment of offenders. First, there are factors which the law requires the trier of fact to consider in determining guilt, such as the legality of a search and sufficiency of the evidence. Second, there are personal characteristics, such as age, attitude, and previous criminal record, which may indicate the risk of future violations. Finally there is the element of disagreement with either the terms of punish-

ment for the offense or with making the acts in question an offense at all.

With regard to the first of these factors, police officers, prosecutors, and judges all legitimately exercise discretion where they feel that the chances for legally establishing guilt are insufficient to warrant further proceedings. Discretion related to the other two factors is seldom exercised by either policemen or prosecutors. Judges, by contrast, are authorized to consider individual circumstances in sentencing. This Project also found, however, that the disagreement of judges with the legislative range of penalties influenced, in numerous instances, their disposition of a case. Informal rules, such as the "one-cigarette rule" and the stretching of evidentiary and search and seizure requirements to acquit a defendant, evidence this practice. Undoubtedly, much of this judicial "discretion" is related to the tremendous increase in the arrests of educated, middle-class youth without prior records who, except for their marijuana activity, appear to be law-abiding citizens. Faced with the alternatives of a felony conviction or acquittal, a significant number of judges have chosen to acquit such defendants. Recent legislation in California has attempted to alleviate this problem by allowing the judge to treat first time possession cases alternatively as misdemeanor or felony cases.

Despite reforms of both enforcement procedures and the laws themselves, it is possible that the use of marijuana may become so widespread that prohibitory laws would be useless. If that happens, then, as in other cases where society's morals have outstripped its laws, either the present laws will be repealed and a rational scheme of regulatory laws substituted or the present laws will become like many of the old Sunday blue laws still on the books today: an anomaly for future generations to ponder.

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Possession of Marijuana in San Mateo County: Some Social Costs of Criminalization*

This Note is built around an empirical study of the present California marijuana laws as applied to the 129 defendants charged with felony violations in a single jurisdiction during a recent 12-month period. The first section places the study in context and outlines its assumptions. The next presents the findings, following the defendants from arrest to final disposition and commenting on the observable roles and practices of those persons involved. Costs that society incurs during this process and ways in which these costs might be reduced by shifting the resources utilized by the criminal process from the "problem" of marijuana possession to the "problem" of marijuana sale are then discussed.

I. Background

The marijuana, or "hemp," plant[1] was introduced to the United States under the most respectable auspices. The settlers of Jamestown planted the first crop in 1611 at the behest of King James I, who wanted hemp to be made into rope for the British navy.[2] Marijuana was also prized as a medicinal agent, and there is evidence that George Washington cultivated it at Mount Vernon for that purpose.[3] For many years, until 1937, it was a prescription drug, listed in the official *Pharmacopoeia of the United States of America* as *Extractum Cannabis*,[4] and was available from both large drug companies and vendors of patent medicines. Although its psychoactive properties have been known and enjoyed elsewhere for almost 5000 years,[5] it was not used as a recreational drug in this country until the beginning of the 20th century. About 1910,

> Mexican immigrants brought marijuana into Texas and California and from there it seems to have made its way very quickly to New Orleans, where its use was established among Negroes, especially jazz musicians, by the early 1920s. From there it spread as Negroes immigrated to the urban centers of the North . . . where it

* The author wishes to thank Professor John Kaplan of the Stanford Law School, who suggested this study and guided it during its early stages, and Wilbur R. Johnson, Chief Criminal Deputy District Attorney for San Mateo County, without whose counsel and assistance this study could not have been completed.

1. *Cannabis sativa.*
2. J. Hopkins, A History of the Hemp Industry in Kentucky 6 (1951).
3. The Book of Grass 34 (G. Andrews & S. Vinkenoog eds. 1967).
4. Comm. of Revision, U.S. Pharmacopoeial Convention, The Pharmacopoeia of the United States of America 155 (11th ed. 1936).
5. Taylor, *The Pleasant Assassin*, in The Marijuana Papers 7 (D. Solomon ed. 1966).

> was introduced to whites on a large scale as a result of contact with Negroes in lower-class, racially mixed neighborhoods and in clubs frequented by bohemian jazz enthusiasts.
>
> Marijuana was soon adopted by many deviant groups, those considered somewhat beyond the pale of respectability . . . .[6]

As use became more widespread, the Federal Bureau of Narcotics and the popular press mounted a propaganda attack depicting marijuana as a sinister and dangerous drug responsible for a host of violent crimes and leading to a life of idleness and insanity.[7] In 1937, following hearings[8] at which only one witness opposed the measure, Congress passed the Marijuana Tax Act of 1937, requiring disclosure and taxation of all transfers of marijuana.[9] By 1938 almost every state legislature had made possession of marijuana a crime.[10] Although a 1944 medical study of the dangers of marijuana discredited many of the assertions made by proponents of the various marijuana laws,[11] the Federal Bureau of Narcotics continued to press its viewpoint on legislators, and the laws remained in force. So long as the use of marijuana and the effects of its proscription were confined to a relatively small and powerless minority and the enforcement of these laws placed no untoward burden on the criminal process, there was little pressure on legislators to reconsider the wisdom of the marijuana legislation.

The 1960's, however, witnessed a radical increase in the number of people using marijuana and, consequently, in the burden of enforcing laws against its use.[12] Numerous recent studies confirm that a large percentage of the white middle-class student population has experimented with marijuana, and that a significant number use it on a regular basis.[13] In California from 1960 to 1968 the annual number of adult arrests for marijuana violations

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6. Goode, *Introduction*, in MARIJUANA 7 (E. Goode ed. 1969) (footnote omitted).

7. *See, e.g.*, U.S. BUREAU OF NARCOTICS, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 65 (1937); Anslinger, *Assassin of Youth*, THE AMERICAN MAGAZINE, July 1937, at 18.

8. *Hearings on H.R. 6385 Before the House Comm. on Ways and Means*, 75th Cong., 1st Sess. (1937).

9. Act of Aug. 2, 1937, ch. 553, 50 Stat. 551 (codified at 26 U.S.C. § 4741 *et seq.* (1964)). Those provisions of the Act requiring disclosure of transfers illegal under state laws have been declared unconstitutional as violative of the transferor's fifth amendment rights. Leary v. United States, 395 U.S. 6 (1969).

10. Solomon, *Foreword*, in THE MARIJUANA PAPERS, *supra* note 5, at xv.

11. MAYOR'S COMM. ON MARIHUANA, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK (1944).

12. The results of a recent Gallup Poll indicate that 10 million Americans, age 21 or older, have used marijuana, and that another 5 million would do so if it were offered to them. N.Y. Times, Oct. 26, 1969, § 1, at 75, col. 1.

13. In a 1969 study of high-school students in San Mateo County, 50.1% of the senior boys and 37.6% of the senior girls reported having used marijuana within the last 12 months. Of that group, 67.7% of the boys and 59.3% of the girls reported that they had used it 10 or more times within the past 12 months. RESEARCH & STATISTICS SECTION, SAN MATEO DEP'T OF PUBLIC HEALTH & WELFARE, FIVE MIND-ALTERING DRUGS 20 (1969) (report prepared at the request of the Narcotics Advisory Committee of the Juvenile Justice Commission). *See also* 2 R. BLUM, STUDENTS AND DRUGS 7–28 (1969).

increased seven times to 33,573 and the number of juvenile arrests some 21 times to 16,754.[14]

These dramatic changes have reopened the whole question of the wisdom of criminalizing the use and possession of marijuana. Some students of the problem have concluded, with Professor Herbert Packer, that "[a] clearer case of misapplication of the criminal sanction would be difficult to imagine."[15] Others argue that a "policy of vigorous law enforcement" continues to be "necessary not simply because of the harmful effects of the drug on consuming individuals but also because of the antisocial conduct which it engenders."[16] In the same week that the President of the United States declared an all-out war on marijuana smuggling, complete with elaborate electronic detection equipment,[17] the Wall Street Journal reported discussion in the business world on the profit potential in legalized marijuana.[18]

Whether or not the original decisions to criminalize the use and possession of marijuana were rational is not now important. A rational society will attempt to control an activity by making it a criminal offense only if the anticipated benefits of criminalization exceed the anticipated costs. It will also periodically review the instituted system, checking expectations against results. If the costs in practice outweigh the benefits, there are two alternatives: modify the law and the enforcement pattern in ways better calculated to yield net benefits, or repeal the law. The evolution of the law of homicide in England illustrates the first approach, the history of prohibition in the United States the second.

Calculation of the total costs and benefits of criminalizing marijuana use and possession will involve a host of determinations outside the lawyer's competence.[19] This Note does not purport to perform that calculation. It simply seeks to define some of the costs.

II. The Study

A. *Scope and Method*

Of the 605 felony complaints filed in the Southern Judicial District of San Mateo County in the period from October 1, 1967, to September 30,

14. Bureau of Criminal Statistics, California Dep't of Justice, Drug Arrests & Dispositions in California 1968, at 22 (1968).

15. H. Packer, The Limits of the Criminal Sanction 333 (1968). *Accord*, J. Rosevear, Pot: A Handbook of Marijuana 137–39 (1967).

16. Miller, *Marijuana and Legal Controls*, in Marijuana, *supra* note 6, at 161, 169. *Accord*, testimony of H. Giordano, United States Commissioner of Narcotics, in *Hearings Before the Subcomm. on Dep'ts of Treasury and Post Office and Executive Office of the President of the House Comm. on Appropriations*, 90th Cong., 1st Sess. 477 (1967).

17. Belair, *Mexico Is Asked to Help Combat Drug Smuggling*, N.Y. Times, Sept. 9, 1969, at 1, col. 3.

18. Kessler, *Tales Making Rounds Tobacco Firms Plan New Line: Marijuana*, Wall Street Journal, Sept. 8, 1969, at 28, col. 2.

19. For example, there is as yet no complete agreement among pharmacologists as to the physiological effects of marijuana use. *Compare* Weil, Zinberg & Nelsen, *Clinical and Psychological Effects of*

1968, 137 alleged violations of the California marijuana laws.[20] These 137 complaints form the basis of the study. The data were obtained from the records of the San Mateo County Municipal and Superior Courts, the reports of the County Probation Department, and the Office of the District Attorney. The sample comprises 129 individuals charged with a total of 133 offenses.[21] For most of these defendants, data were available concerning age, race, sex, current occupation, educational background, and previous criminal record.[22]

The sample includes a total of 92 different arrest situations,[23] the circumstances of which were recorded with particular attention paid to the types and amounts of drugs seized. The counts of each complaint were traced through the judicial process to the point where the case was dismissed, passed from the jurisdiction of the adult courts, or terminated in sentencing in the superior or municipal court.

B. *Findings*[24]

1. *Enforcement pattern.*[25]

In the study jurisdiction, responsibility for enforcing the marijuana laws is shared between patrolmen and drug-law-enforcement specialists. The

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Marijuana in Man, 162 SCIENCE 1234 (1968), *with* Hollister, Richards & Gillespie, *Comparison of Tetrahydrocannabinol and Synhexyl in Man*, 9 CLINICAL PHARMACOLOGY & THERAPEUTICS 783 (1968).

20. Complaints alleging violations of § 11,556 of the California Health and Safety Code (being present in a place where a narcotic is being unlawfully used with knowledge of such use—a misdemeanor) are on file with the clerk of the municipal court in chronological order together with all other misdemeanor complaints, including traffic offenses. Because it would have been very difficult to locate all of them, no § 11,556 violations are included in the sample except those filed after a felony charge had been dismissed.

Defendants under the age of 18 are within the jurisdiction of the juvenile court and are not included in this study.

21. Four of the complaints were refilings of complaints appearing earlier in the sample which had erroneously been dismissed. In almost every case in which a complaint alleged violation of the marijuana laws on several counts, all counts were based on the same supply of marijuana or the same sales transaction. Thus, for purposes of this study, each complaint stated a single "offense." Four of the defendants were arrested and charged for two distinct offenses during the study period.

22. *See* Tables 1–3 *infra*. The defendant's age, sex, and race were available in almost every case. Information on prior arrest record, current occupation, and educational background was unavailable only for some of those defendants not held to answer in the superior court. Where available, the data as to prior criminal record were taken from the official "rap sheet" (a record of all of a person's arrests maintained by the State of California Bureau of Criminal Investigation and Identification). Because this often listed arrests without showing any subsequent disposition, it was impossible to tell in every case if the defendant had been convicted as charged. Since the extent of the defendant's previous contact with the criminal system was particularly relevant to this study, each prior arrest was recorded and each of the defendants for whom data were available was assigned to one of five classes. *See* Table 2 *infra*. Where the rap sheet listed a conviction for a drug offense, this was also recorded; statements in the text referring to a defendant's "drug record" are based on these data.

23. The arrest of several defendants at the same time, under the same circumstances, and by the same police officers was treated as a single "arrest situation." In 24 cases two defendants were arrested together, and six arrest situations involved more than two defendants.

24. This section of this Note parallels to some degree parts of Project, *Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A.L. REV. 1499, 1515–63 (1968) [hereinafter cited as U.C.L.A. STUDY]. In many respects the enforcement patterns and the significant steps from arrest to trial are similar in the two jurisdictions studied. In other respects,

specialists consist of a 3-man unit in the county sheriff's office and special officers in some municipal police departments. Their efforts are directed primarily toward the apprehension of persons involved in selling drugs.[26] In a typical case as described in police reports, an informer introduces an undercover agent to a suspected seller, a sale takes place, and arrest ensues. Often these arrests are cooperative ventures involving both municipal and county authorities.[27]

Most narcotics-unit arrests for mere possession fall into one of two categories.[28] Often the marijuana is found during a search made incident to an arrest related to some other drug-sales investigation. In other cases suspects are brought to the attention of a narcotics officer by a parent or neighbor who has discovered what he believes to be marijuana in or near the suspect's home. Specialized narcotics agents accounted for only 20 of the 92 arrest situations in the sample. The remainder were made by ordinary patrolmen—members of the county sheriff's department and the police departments of four municipalities.

In almost every case, the ordinary patrolman's discovery of marijuana results from police work unrelated to drugs: peace-keeping and investigations or arrests for nondrug crimes. Typically officers will stop an automobile, either for a vehicle-code violation or because they find its presence or occupants "suspicious," and will discover marijuana during a search of the vehicle or its occupants. Searches of suspects incident to nondrug-related arrests also yield marijuana; this category includes searches made in the field as well as more thorough searches made when suspects are booked at the county jail.[29] Finally, some marijuana turns up in the course of investi-

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however, they are not; and for purposes of coherence this Note traces the process through its consecutive stages in the context of the Southern District of San Mateo County. The composition of the defendant samples in the two studies differed considerably. *Compare* U.C.L.A. STUDY, *supra* at 1578 (Appendix D), *with* Tables 1–3 and text accompanying notes 36–44 *infra*. Certain other significant differences are noted *infra*. This section of this Note also presents findings in a number of areas that the *U.C.L.A. Study* does not discuss—notably the correlations between the characteristics of defendants and the methods used to apprehend them, and the kinds and amounts of drugs seized incident to the arrests which led to marijuana prosecutions.

25. The information for this section was drawn from the actual police and crime-laboratory reports for the 92 arrest situations in the sample.

26. *See* CAL. HEALTH & SAFETY CODE § 11,531 (West 1964) (transport, sale, or giving away of marijuana—a felony).

27. For a detailed description of enforcement techniques used by narcotics agents in connection with marijuana see U.C.L.A. STUDY, *supra* note 24, at 1530–32.

28. CAL. HEALTH & SAFETY CODE § 11,530 (West 1964) (unauthorized possession). During the study's sample period, § 11,530 provided for imprisonment in the state prison for a year or more—a felony. After the close of the sample period the section was amended, providing alternatively for "imprisonment in the county jail for not more than one year . . . ." CAL. HEALTH & SAFETY CODE § 11,530 (West Supp. 1968). Where such alternative sentencing is provided, "in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment other than imprisonment in the state prison . . . ." CAL. PENAL CODE § 17 (West 1955).

Possession for the purpose of sale is a separate and more serious offense. CAL. HEALTH & SAFETY CODE § 11,530.5 (West 1964).

29. In several cases in the sample, the marijuana was found some time after the suspect was incarcerated, during a search of his home or car.

gations conducted for other purposes. For example, officers sometimes have occasion to enter a private home to search for a suspect or a missing person or to investigate a reported disturbance. Upon their unexpected arrival they may find marijuana in plain view, or may discover it while searching the premises at least ostensibly in the expectation of finding something else.

Marijuana was seized in 88 of the 92 arrest situations in the sample, and 77 of these 88 cases led to charges of possession only.[30] In 46 of these 77 cases, marijuana was the only drug seized. In all but one of the remaining 31 arrests the amounts of other drugs seized suggest that they were the defendant's personal supply and were not intended for sale. In only nine of the 77 cases did the amount of marijuana seized exceed 100 grams.

Of the 88 arrest situations in which marijuana was seized, 11 led to complaints charging sale of marijuana. Other drugs were also found in connection with six of these 11 cases; in only one were the other drugs also being sold. Three cases involved the sale of a single "lid."[31] In the other eight, the amount of marijuana seized ranged from about 350 grams (three instances) to 20 kilograms (44 pounds; one instance).

The only drugs other than marijuana that turned up with any frequency were amphetamines.[32] Amphetamines were found in 16 of the 92 arrest situations; hypodermic needles, used to inject some types of amphetamines, were found in an additional 13 cases.[33] Other drugs were found in 18 cases: hallucinogens, barbiturates, codeine, hashish,[34] sedatives, tranquilizers, and diet pills each appeared in the sample three or four times.[35]

2. *The defendants.*

Analysis of the defendants' biographical information clearly indicates that the impact of the marijuana laws in San Mateo County falls overwhelmingly on young persons.[36] The median age of the sample was just over 20, and 95 percent of the defendants were under 30. Seventeen percent were

30. Where several defendants were arrested together, it was usually impossible to determine which drugs were taken from which defendant. Therefore all of the following findings are cast in terms of "arrest situations."

31. A "lid," the common unit of sale to consumers, is one ounce (28 grams) of marijuana.

32. The most common amphetamine found was methadrine, commonly known as "speed."

33. Hypodermics are also used to inject heroin. However, in only one case in the sample was any heroin seized, and there is no indication anywhere in the records that any of the defendants were addicted to narcotics.

34. Hashish consists of the resins collected from the flowering top of the marijuana plant. Although California law does not distinguish it from regular marijuana (the ground-up leaves of the same plant) hashish is more potent.

35. Only two cases involved opiates. One defendant had three capsules of Demerol, a synthetic narcotic, and one had one-tenth of a gram of heroin and a trace of raw opium. (The latter defendant was a walking pharmacopoeia. The arresting agents found in his possession—besides the heroin and the opium—one-half gram of marijuana, a hypodermic needle, 59 amphetamine pills, 13 barbiturate pills, two codeine pills, 47 grams of hashish, and a quantity of the hallucinogen known as DMT.) Taken as a whole, these data provide remarkably little support for the theory that marijuana use leads to heroin addiction.

36. *See* Table 1 *infra.*

black, a percentage slightly greater than the percentage of blacks in the 18-to-30 age group of the jurisdiction's general population.[37] Although available studies for the jurisdiction's younger student population indicate that marijuana use is only slightly more common among males than females,[38] males outnumbered females in the San Mateo defendant sample four to one.

As a group, the 100 defendants for which we have information were less well educated[39] and less stably employed[40] than the average for their age group in the jurisdiction. Forty-four were unemployed. Of the 45 who had jobs, seven were self-employed on a part-time basis as babysitters, musicians, or makers of handcraft goods. Five held white-collar or professional positions, while the remaining 33 were blue-collar workers. Only 11 of the defendants for whom information was available were currently in school. Of the nonstudents, 56 percent had dropped out of high school after completing an average of 2 years, and another 17 percent had dropped out of college.[41]

Forty-four percent of the defendants for whom information was available had had no significant prior contact with the criminal process. Another 31 percent had been involved with the police before but had never been incarcerated. Sixteen percent had been sentenced to the county jail on one or two occasions; 9 percent had had repeated contact with the criminal system and had spent over 6 months in either the county jail or state prison. Three-quarters of the defendants in the sample had no prior drug records whatsoever.[42]

A representative defendant from the sample would be a 19-year-old white male who had dropped out of high school in the 10th grade, who had no regular employment, and whose previous contact, if any, with the police was minor and did not involve drugs. Certain methods of marijuana-law enforcement[43] resulted in the apprehension of groups of defendants differing significantly from this norm. Defendants who first came to the attention of the police because of their involvement in drug traffic were older

37. It has been estimated, based on a recent special census of the study jurisdiction, that 12% to 14% of the 18-to-30 age group are black. Interview with Marion D. Boat, Urban Planning Economist, San Mateo County Planning Commission, in Redwood City, Calif., Oct. 6, 1969.

38. *See* note 13 *supra*.

39. In 1960 the median level of education in San Mateo County for persons 25 years old and over was 12.4 years of school completed. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK 1967, at 33 (1967). Current dropout rates in the county's high schools reveal that the majority of students continue to graduate from high school. *See* note 41 *infra*.

40. The percentage of the work force unemployed in San Mateo County is generally below the 4% average for the San Francisco Bay Area. Interview with Mrs. Rita Thomen, Occupational Analyst, California Dep't of Employment, in San Mateo, Calif., Nov. 3, 1969.

41. One estimate places the dropout rate in the San Mateo County high schools at 10% to 15%. Interview with Arnim Weems, Assistant Superintendent of Schools, San Mateo County, in Redwood City, Calif., Nov. 3, 1969.

42. *See* note 22 *supra*.

43. *See* text accompanying notes 26–29 *supra*.

and had more experience with the criminal system. Those whose marijuana arrests were connected with serious nondrug criminal activity were likewise older and had more extensive criminal records; nearly one-half of this group was black. At the other extreme, those defendants who had been apprehended through "freak" circumstances[44] were older, had almost no previous contact with the police, and were all white. By far the largest group—approximately 40 percent of the sample—were arrested as a result of (1) a search of an automobile stopped on the pretext of a vehicle-code violation or of "suspicious circumstances" or (2) a search of a "hippie" or communal-style living arrangement. This group was somewhat younger than the sample average—75 percent were between the ages of 18 and 21. Over one-half of them had no significant previous police contact.

3. *From arrest to trial.*

After a suspect is arrested and booked, the police submit his case to the District Attorney's office, which determines whether or not to file a felony complaint. In the study jurisdiction, if the Deputy District Attorney concludes that on the facts as stated by the arresting officer the search was clearly illegal under current search-and-seizure doctrine,[45] he will not file a complaint.[46] In virtually all cases, however, complaints are filed.[47] The defendant against whom a complaint has been issued is arraigned before a magistrate (usually a municipal-court judge) who sets bail. Shortly thereafter the defendant makes a second appearance before the magistrate, at which he enters a plea and at which a date is set for his preliminary hearing.

In a sizable number of cases that get this far, no preliminary hearing is ever held. Defendants between the ages of 18 and 20 may petition the court to suspend the adult proceeding and have the case referred to the juvenile court.[48] Cases are also dismissed on the motion of the District Attorney. At this point, some aspects of prosecutorial discretion are first exercised. The prosecution of a marijuana case may be dropped altogether at this point if, after reviewing the record, the Deputy District Attorney decides that there is insufficient evidence to link the defendant to the marijuana seized. The

44. In one case, a couple went out for the evening, and their babysitter, looking for a cookie, found their supply of marijuana instead and called the police.

45. *See* text accompanying note 81 *infra*.

46. This occurs in "approximately 20 cases per year." Interview with Wilbur R. Johnson, Chief Criminal Deputy District Attorney for San Mateo County, in Redwood City, Calif., Oct. 6, 1969.

47. *Id.* The U.C.L.A. investigators report that prosecutors in Los Angeles County exercise a substantial amount of discretion prior to filing a complaint in a marijuana case, and that generally a complaint will not be issued unless a Deputy District Attorney first ascertains that the available evidence will support a conviction and that the amount of marijuana seized and the defendant's background merit a felony prosecution. *See* U.C.L.A. STUDY, *supra* note 24, at 1544–54. In San Mateo County these aspects of prosecutorial discretion are deferred to a later stage. *See* text accompanying notes 48–49 *infra*.

48. CAL. WELF. & INST'NS CODE § 604(b) (West 1966).

case may also be dropped if the defendant agrees to plead guilty to an equally serious charge in another jurisdiction, or if it appears certain that he will be convicted of another felony and dual prosecution will serve no useful purpose. In most cases, however, when the District Attorney moves to dismiss a complaint it is because the defendant has agreed to plead guilty to some other, less serious offense in the jurisdiction.[49]

A variety of situations prompts such "plea bargaining."[50] The prosecution may choose to obtain a certain conviction on a lesser charge in some cases, rather than risk dismissal of the original charge on grounds that the legally admissible evidence fails to establish all of the elements of the offense. In exceptional cases the charges are reduced because the defendants agree to cooperate in apprehending other violators.

If the defendant is not certified to juvenile court and does not plead guilty and if the District Attorney decides to prosecute the case as a felony, the next step is a preliminary hearing in municipal court. At the preliminary hearing the judge decides whether the prosecution's legally admissible evidence warrants holding the defendant to answer in superior court. This provides the defense attorney with his first opportunity to challenge the legality of the police officer's conduct and exclude any evidence seized in a constitutionally invalid search.[51] Alternatively, the defense attorney may argue that the marijuana seized was not a "usable amount" as required by *People v. Leal*.[52] In cases where several persons have been arrested for possession of the same supply of marijuana, the defense may also argue that the evidence fails to establish possession by a particular defendant.

Slightly less than half the cases in the sample were disposed of in mu-

49. This lesser offense, if it had not already been charged as an additional count on the original felony complaint, was charged on a misdemeanor complaint after an agreement had been reached. Typically the plea accepted was one to the misdemeanor marijuana offense of being in a place where marijuana was being smoked. CAL. HEALTH & SAFETY CODE § 11,556 (West 1964). Where other drugs or paraphernalia had been seized in addition to marijuana, the typical result of bargaining was a plea of guilty to either § 4143 of the California Business and Professions Code, which makes unauthorized possession of a hypodermic needle a misdemeanor, or § 11,910 of the California Health and Safety Code, which, during the study period, made possession of dangerous drugs a misdemeanor. This pattern will undoubtedly be affected by recent California legislation making possession of dangerous drugs either a felony or a misdemeanor. *See* Stats. 1968, c.1465, p.2392, § 3.

50. The following generalizations, derived originally from the study data, were confirmed in the interview with Wilbur R. Johnson, *supra* note 46. Compare these findings with those of the U.C.L.A. investigators, U.C.L.A. STUDY, *supra* note 24, at 1556–59.

51. *See* text accompanying notes 81–91 *infra*.

52. In *Leal* the California supreme court held that "in penalizing a person who possesses a narcotic the Legislature proscribed possession of a substance that has a narcotic potential; it condemned the commodity that could be used as such. It did not refer to *useless* traces or residue of such substance. Hence the possession of . . . residue of [a] narcotic useless for either sale or consumption . . . does not constitute sufficient evidence in itself to sustain a conviction." 64 Cal. 2d 504, 512, 413 P.2d 665, 670, 50 Cal. Rptr. 777, 782 (1966). There is no judicial rule as to what constitutes a "usable amount." The sheriff's office in the study jurisdiction will not now make an arrest for possession of less marijuana than the minimum amount needed to make a single cigarette (0.2 gram). Interview with Sergeant Coslett, Narcotics Enforcement Bureau, San Mateo County Sheriff's Office, in Redwood City, Calif., Oct. 6, 1969.

nicipal court;[53] in the remainder the defendants were held to answer in the superior court.[54] If the District Attorney elects to file an information in the superior court against a defendant who has been held to answer,[55] the defense has a second chance both to challenge the sufficiency of the prosecution's prima facie case[56] and to contest the legality of the search and seizure.[57] For a variety of reasons, including a plea bargain, the prosecution may move to dismiss some or all of the counts alleged in the information.[58]

Once the defense attorney is convinced that the prosecution's evidence will be admitted, that it fairly clearly establishes the defendant's guilt, and that the District Attorney will not accept a plea to a lesser offense, his client has very little incentive to go to trial.[59] At this point the vast majority of those defendants against whom the most serious charge is possession plead guilty. In return, the District Attorney will move to dismiss any lesser counts charged in the information and will not oppose granting probation.[60]

Of the 133 offenses in the sample, only four went to trial in the superior court.[61] The three offenses tried before a judge resulted in convictions; a jury returned the only acquittal.[62]

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53. Of the 133 felony complaints filed, 14 were certified to juvenile court and 37 were dismissed (18 in consideration of other guilty pleas, eight for lack of sufficient evidence, one under the *Leal* rule, and 10 for unspecified reasons). Ten defendants pleaded guilty—five as charged, four to the lesser of two marijuana offenses charged, and one to a nondrug felony charged on the same complaint.

54. Seventy-one were held to answer for marijuana offenses and one for a nonmarijuana drug offense.

55. Informations were filed pursuant to all but three of the complaints for which defendants in the sample had been held to answer. Of these three complaints, two were dropped for lack of sufficient evidence and one because the defendant faced certain conviction of a more serious marijuana offense in another jurisdiction.

When he files an information the district attorney must also decide whether to allege any prior felony convictions for narcotics or marijuana offenses. If such convictions are alleged and proved, the judge may not grant probation or suspend the defendant's sentence. CAL. HEALTH & SAFETY CODE § 11,715.6 (West 1964). Although four of the defendants in the sample had previously been convicted of felony marijuana violations, in no case was this alleged on the informations filed against them.

56. California Penal Code § 995 provides that the superior court must set aside an information when "the defendant has been held to answer without reasonable or probable cause."

57. California Penal Code § 1538.5(i) provides for a special hearing in the superior court to determine the legality of the search and seizure. The hearing takes place after the defendant has been held to answer, but before trial.

58. Of the 69 informations filed, 16 were dismissed on all counts: Six for insufficient evidence; two in consideration of the defendant's plea in another case; three on motion of the District Attorney "in the interest of justice"; four because the defendants were certified to the juvenile court; and one because the defendant died in an automobile accident.

In eight cases where the information alleged offenses involving sales of marijuana, the District Attorney accepted a plea to a lesser felony marijuana offense and dismissed any remaining counts. In 12 cases where the most serious offense alleged was possession of marijuana, the District Attorney accepted a guilty plea to a misdemeanor and dismissed any remaining counts.

59. The elements necessary for a marijuana conviction are relatively simple. "Unlawful possession of narcotics is established by proof (1) that the accused exercised dominion and control over the contraband, (2) that he had knowledge of its presence, and (3) that the accused had knowledge that the material was a narcotic." People v. Groom, 60 Cal. 2d 694, 696, 388 P.2d 359, 361, 36 Cal. Rptr. 327, 329 (1964) (citations omitted).

60. In 27 of the 33 remaining cases where possession was the most serious offense alleged, the defendants pleaded guilty to that count, and the District Attorney moved to dismiss any remaining counts and did not oppose the recommendations of the probation officer.

61. Each of these four offenses involved a different defendant.

62. At the close of the data-gathering stage of this study, two cases were still pending.

4. *Sentencing.*

When a defendant is convicted, the judge refers his case to the Adult Division of the County Probation Department.[63] Based on interviews with the defendant and confirmation from outside sources, the Probation Department prepares an extensive report that includes information on the defendant's family, education, military service, employment experience, health, previous criminal record, and an account of the circumstances of the present offense.[64] The report usually includes the probation officer's subjective evaluation of the defendant's personality and attitudes, and a recommendation as to whether and on what conditions probation should be granted. Conditions may include incarceration in the county jail, a fine, payment of court costs and the costs of appointed counsel (if any), psychiatric treatment, or any combination of these.

The probation officer's objective in imposing conditions seems to be not only to punish the defendant but also to direct his life toward goals the officer considers constructive.[65] Where the defendant's attitude is considered poor, particularly where he continues to assert that there is nothing wrong with using marijuana, the probation officer will often recommend a short term in the county jail so that the defendant will be suitably impressed with the seriousness of his offense. If, however, the defendant is working or going to school or has definite plans to do either, the probation officer may conclude that a jail sentence would only impede progress, and he will recommend a fine instead. A frequently asserted rationale for a substantial fine ($250 to $500) is that it will pressure a previously unemployed defendant to find a paying job.

Of the 57 defendants in the sample who were sentenced for violations of the marijuana laws, 46 were recommended for probation.[66] Time in the county jail was recommended as a condition of probation in 17 cases, a fine in 12 cases, and both in three cases. Psychiatric treatment was proposed as an additional condition in six cases. In five cases no conditions were recommended.

Clearly, these recommendations carry great weight with the judges. In a third of the cases for which information was available, the actual sentence was the same as that recommended by the Probation Department; in a third

63. Defendants who plead guilty to a felony in municipal court are certified, under California Penal Code § 859(a), to superior court for sentencing. The superior-court judge then refers the case to the Probation Department.

64. These reports were available to the study in almost every case where the defendant was sentenced in either superior or municipal court.

65. The generalizations in the text are based upon the author's reading in their entirety of all of the available probation reports. In many cases the probation officer explained in the report his reasons for recommending each condition.

66. In two cases the Probation Department recommended that probation be denied. No information was available as to the recommendation in the remaining nine cases.

the actual sentence was only slightly harsher, and in a third slightly more lenient. In no case did a judge deny probation where it was recommended or grant it where it was not. In several cases the judge suspended fines on the condition that the defendants enroll in school.

Of the 40 defendants finally sentenced for possession of marijuana, two went to prison, 20 were placed on 3 years' probation and sentenced to between 60 and 90 days in the county jail, and the remaining 18 received less severe sentences, usually a period of probation plus a fine or a suspended jail sentence.

III. Costs

The most obvious costs of enforcing the law prohibiting possession of marijuana are the resources expended in apprehending offenders,[67] processing them through the judicial system,[68] and supervising their probation.[69] While no attempt was made in this study to calculate these costs in dollar terms, one recent study has estimated the statewide cost of enforcing all the California marijuana laws in 1968 at 75 million dollars.[70]

Subtler but equally significant costs of the decision to criminalize possession of marijuana derive from the effects of that decision on those who are asked to enforce it, on those against whom it is enforced, and eventually on the community at large. The extent of any police misconduct and any alienation of defendants attributable to the criminalization of possession would be difficult to measure under the best of circumstances. Any conclusions as to such costs drawn on the basis of the records left in the wake of actual prosecutions must necessarily be highly tentative. Such conclusions are advanced here for two reasons: They are consistent with the findings of other investigators, and they contribute to what is presently a very small stock of data of the kind on the basis of which rational decisions respecting the marijuana laws may be made.

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67. Little police time is devoted specifically to the apprehension of marijuana possessors. *See* text accompanying notes 26–28 *supra*. Once violations are discovered, however, police time is consumed in arresting and booking the defendants, filing arrest reports, and (in many cases) testifying in court proceedings, especially preliminary hearings.

68. Although marijuana cases constituted 22.6% of the felony complaints filed in the study jurisdiction, it is unclear whether they consumed an equivalent portion of the resources devoted to judicial administration. There were very few actual marijuana trials in the study jurisdiction; however, in Los Angeles a higher proportion of marijuana complaints goes to trial. U.C.L.A. STUDY, *supra* note 24, at 1560. Nor is the infrequency of trials likely to be a permanent phenomenon. As an increasing percentage of the adult population uses marijuana, and as juvenile users mature, users will appear with greater frequency on jury panels. If this leads more frequently to hung juries in marijuana cases, more defendants may be expected to carry their cases to jury trial.

69. According to the Adult Probation Division of San Mateo County, in 1968 "it cost $150.80 to investigate each case and $110.13 to supervise same." ADULT DIVISION, SAN MATEO COUNTY PROBATION DEP'T, RESUME OF STATISTICAL REPORT FOR 1968, at 21 (1969).

70. L. Calof, unpublished study (1969) on file with the *Stanford Law Review*.

A. *Police Misconduct*

Jerome Skolnick, author of an empirical study that sought to establish relationships between the kinds of tasks policemen are called upon to perform and their attitudes toward the criminal process,[71] concludes that most policemen view the criminal process in terms of what has been described elsewhere as the "Crime Control Model."[72] Under this model, the basic task of the criminal process is repression of criminal conduct. The complementary Due Process Model[73] postulates a high value on individual liberty and heavy protection against error in the criminal process. Policemen resent the assumptions in the Due Process Model that their own professional standards and skills and their estimates of priorities are inadequate, and that their conduct must be subject to judicial checks and sanctions.[74]

The problems posed by police hostility toward judicial intervention are most acute with respect to those laws whose large-scale enforcement is most difficult within the framework of present search-and-seizure law. "Victimless" crimes,[75] such as the possession of marijuana for personal use, exert a special strain on the criminal process. As Professor Packer has noted, these offenses

> do not result in anyone's feeling that he has been injured so as to impel him to bring the offense to the attention of the authorities. . . . To the difficulties of apprehending a criminal when it is known that he has committed a crime are added the difficulties of knowing that a crime has been committed.[76]

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71. J. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY (1966).

72. The Crime Control–Due Process dichotomy is Professor Packer's. *See generally* H. PACKER, *supra* note 15, at 149–73. Professor Packer notes: "The [Crime Control Model], in order to operate successfully, must produce a high rate of apprehension and conviction, and must do so in a context where the magnitudes being dealt with are very large and the resources for dealing with them are very limited. There must then be a premium on speed and finality. . . . By the application of administrative expertness, primarily that of the police and prosecutors, an early determination of probable innocence or guilt emerges. Those who are probably innocent are screened out. Those who are probably guilty are passed quickly through the remaining stages of the process." *Id.* at 159–60. Implicit in the assumption that actual guilt can be reliably determined at the early, administrative, factfinding stages is the view that "the subsequent stages are relatively unimportant and should be as truncated as possible. . . . The pure Crime Control Model has very little use for many conspicuous features of the adjudicative process. . . ." *Id.* at 162. After there has been a determination of probable guilt, the favored way of concluding a case "is the plea of guilty; through its use, adjudicative fact-finding is reduced to a minimum." *Id.*

73. Professor Packer's Due Process Model derives in part from an appreciation of the possibilities for error in an informal factfinding process. Its adherents insist on "formal, adjudicative, adversary fact-finding processes in which the factual case against the accused is publicly heard by an impartial tribunal and is evaluated only after the accused has had a full opportunity to discredit the case against him." *Id.* at 163–64. On this model, society's interest in efficient crime control must be weighed against the value of individual liberty, and particularly against the individual's desire to be free from arbitrary arrest and unreasonable searches and seizures of his person, home, and effects, as guaranteed by the Bill of Rights and specifically the fourth amendment. Further, adherence to this concept is to be secured within the criminal process itself by excluding any evidence obtained in violation of due process norms, even if this prevents the successful prosecution of a person who has clearly committed an offense.

74. J. SKOLNICK, *supra* note 71, at 212–29.

75. For a general discussion see E. SCHUR, CRIMES WITHOUT VICTIMS (1965).

76. H. PACKER, *supra* note 15, at 151.

The law prohibiting possession of marijuana presents the enforcement agent with serious tactical problems. To verify to his own satisfaction that a violation has been committed and to facilitate proof of that fact in court, the agent must catch the suspect "holding."[77] Normally this entails a search of the suspect's person, home, or automobile, and a seizure of the goods. But the search-and-seizure prerogatives of the police are limited—in principle at least—by the provisions of the fourth amendment. Two means of satisfying the constitutional requirements—obtaining a search warrant from a magistrate and obtaining informed consent from the person to be searched—are rarely available in a marijuana-possession case.[78] Thus, in practice, the authorities can count on sustaining a prosecution against a constitutional challenge only where they can persuade a judge that the officers were able to discover the marijuana without a "search," that they had "probable cause" to believe that the automobile they searched contained marijuana,[79] or that their search was made incident to a lawful arrest.[80]

In California an arrest is lawful if it is made pursuant to an arrest warrant, if the arresting officer has reasonable cause to believe that the person to be arrested has committed a public offense in his presence, or if the officer has reasonable cause to believe that the person has committed a felony.[81] Because probable cause and reasonable cause can be very exacting standards, the policeman may find himself uncomfortably constrained in the performance of his job. Thus, as Professor John Kaplan has noted,

> [t]he policeman, caught between society's demand that, on the one hand, he enforce the laws against crimes for which no witnesses exist and, on the other hand, that he respect the constitutional imperative of probable cause before search, may take the easy way out and simply make the arrest and lie about the probable cause. This type of perjury is regrettably not uncommon.[82]

Skolnick reports on the approach taken by narcotics officers in a large northern-California city:

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77. A person who has drugs in his possession is often referred to as "holding."

78. Search warrants were used in only three of the 92 arrest situations in the sample. In one case the defendant's parents had advised the police that there was marijuana hidden in their home. In the other two cases drugs had been observed in plain view, once by a building inspector and once by a hitchhiking deputy sheriff. Only two searches were made with the defendant's consent, although in several cases parents, having discovered some drugs, invited policemen to make further searches.

79. *See* Carroll v. United States, 267 U.S. 132 (1925). In *Carroll* the court noted that "the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." 267 U.S. at 153.

80. Ker v. California, 374 U.S. 23 (1963). *But see* Chimel v. California, 395 U.S. 752 (1969). In *Chimel* the court held that a search without a warrant, incident to a lawful arrest, was "unreasonable" under the fourth and fourteenth amendments where the search "went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him." *Id.* at 768.

81. CAL. PENAL CODE § 836 (West Supp. 1968).

82. Kaplan, *Foreword*, U.C.L.A. STUDY, *supra* note 24, at 1504.

> The practice of making an unlawful exploratory search of the room of a suspected criminal is, so far as I could tell on several occasions, accepted by both the Westville police and the state police. As one policeman commented: "Of course, it's not exactly legal to take a peek beforehand. It's not one of the things you usually talk about as a police technique. But if you find something, you back off and figure out how you can do it legal. And if you don't find anything, you don't have to waste a lot of time."[83]

A policeman who is unwilling to lie about probable cause or to conceal a prior illegal search may still be inclined to make an arrest for possession of marijuana, even if he is aware that it will not stand up under judicial scrutiny. At a minimum he will have confiscated a supply of an illegal drug. The defendant will be jailed and have to post bail, and in many cases will have to hire a lawyer; these alone serve as forms of punishment. Finally, there is always the possibility that the defendant will plead guilty to a lesser offense rather than risk a felony conviction.[84]

Of the 92 arrest situations in the study, 80 were examined to assess the possibility of police misconduct.[85] The analysis was made on the basis of the arresting officer's sworn testimony at the preliminary hearing, or, where no testimony was available, on the basis of the officer's own reports. In at least one-fifth of the 80 cases, the data raise serious questions for the critical observer as to whether the officer had probable cause either to search or to arrest. The most common situation involved officers investigating an automobile at night for a vehicle-code violation or because they found its presence or occupants "suspicious." Neither alone gives the officer probable cause to search a car; but a search has been held to be justified by "probable cause to believe that an automobile contains articles which by law are subject to seizure."[86] Probable cause based on the existence of contraband provides an extremely convenient bootstrap justification for an officer's search: If a search uncovers marijuana, the court is likely to believe that the officer rightly suspected its presence before he undertook the search. The data suggest that the convenience of this bootstrap may have led to its widespread invocation by arresting officers.

In one case officers stopped to question four young men parked at night in an exclusive residential area. One officer stated that when he requested identification from one occupant, "as he was leaning to one side to abstract his wallet from his pocket, I was able to notice vegetable-botanical material underneath his foot on the floor-boards." Twenty grams of marijuana were discovered when the car was searched. This was one of five cases in which

83. J. SKOLNICK, *supra* note 71, at 144.

84. *See* text accompanying note 50 *supra*.

85. No investigation for police perjury was made in the cases involving sales to undercover agents; the fact situations were so complex as to preclude reliable inferences.

86. People v. Burke, 61 Cal. 2d 575, 579, 394 P.2d 67, 69, 39 Cal. Rptr. 531, 533 (1964). *Accord*, Carroll v. United States, 267 U.S. 132 (1925).

officers claimed that from outside a car at night they were able to observe marijuana seeds, marijuana debris, or a single "roach"[87] inside the car on the floor. In assessing the officers' explanations, it should be noted that the interior of an automobile is lit dimly (if at all), that the floor is generally covered with dark carpeting or rubber mats, that dirt and other debris are usually present, and that seeds and particles of marijuana rarely exceed one-sixteenth of an inch in any dimension.

In another case an officer stopped a vehicle for having an unlit license plate. He observed a regular tobacco pipe with a hinged metal cover. He asked to see it, and his examination revealed burnt residue which he later stated he could tell was from marijuana. At the preliminary hearing he testified that this type of pipe was used to "keep seeds from popping out" and that the only persons he had ever seen with this kind of pipe used it to smoke marijuana. The legality of the search was upheld.

In another case officers investigating an unlocked parked car stated that they observed an open purse on the back seat containing a rolled envelope with a message written on it. Upon handling the envelope and feeling a "crunchy material," they looked inside and found marijuana. It is hard to see how the officers could have believed they had probable cause to make such a search. The court agreed, and the case was dismissed.

In four instances in the sample, the case for probable cause was based in part on the officers' testimony that they detected the odor of burning marijuana. That odor *is* distinctive. In one of these cases, however, the officer claimed to have detected it in an open park; and in another it was claimed that the smoke came billowing out of an automobile in "great amounts" when a window on the passenger's side was lowered, even though this occurred some time after the door on the driver's side had been opened.

Another group of cases involved probable cause based on "furtive gestures." The Supreme Court of California has held that where an officer "saw defendant's furtive action in getting out [of a cab] he had reasonable grounds to believe that [defendant] was hiding contraband and the search of the cab was therefore reasonable."[88] As other investigators have noted:

> The furtive motion authorizing a search usually results as the officer is pulling a car over for a minor traffic violation. The arrest reports typically state that as he shined his lights on the back of the car, the patrolman saw one of the occupants make a "furtive motion" as if to hide or throw away something. . . . This provides the police officer with an almost irrefutable method to "write-in" probable cause . . . .[89]

Where an officer searches a car without pausing to puzzle about constitutional probable cause and finds what he thought he might find, he may not

87. The unburned end, or "butt," of a marijuana cigarette.
88. People v. Blodgett, 46 Cal. 2d 114, 117, 293 P.2d 57, 58 (1956) (citations omitted).
89. U.C.L.A. STUDY, *supra* note 24, at 1534 (footnote omitted).

have much trouble "recalling" a furtive gesture. In four cases in the San Mateo sample, officers stated that at night from outside the vehicle, they observed suspects inside the vehicle make "furtive gestures" as if to hide contraband.

Since a search may be made incident to a lawful misdemeanor arrest, officers who desire to search for drugs may be tempted to make arrests for offenses that they would ignore under other circumstances.[90] In one case in the sample, a search was made after the adult occupants of an automobile were arrested for contributing to the delinquency of a minor present in the car by permitting him to remain out past the juvenile curfew time. In a second case a young man found asleep in his Volkswagen bus was placed under arrest for disorderly conduct because he was unable to produce any personal identification. Marijuana was found during a search incident to each of these arrests.[91]

Three things are clear: (1) In most cases marijuana is found only after the police make a search; (2) some policemen, at least, feel there is nothing wrong in "getting around" the fourth amendment; (3) the physical characteristics of marijuana provide ample opportunities for policemen so inclined to fudge on the issue of probable cause.[92] The information available for the arrest situations in the sample suggests that in some cases these three elements coalesced in police misconduct.

Police misconduct of this kind has several undesirable results. The invasions of privacy themselves will disturb those citizens who value the right to be free from unreasonable police intrusions. The resentment of those actually searched, especially those who are innocent, can only further the general deterioration of police-community relations. As a practical matter, the courts cannot effectively supervise the police.[93] If due process is ever achieved at the initial-enforcement level, it will be because the police have

90. Although *Chimel v. California*, 395 U.S. 752 (1969), prohibits general searches of the suspect's home, its impact on marijuana enforcement is likely to be limited, since in many cases the marijuana is found on the suspect's person. Further, since marijuana is often found during the search of an automobile incident to the arrest of one or more of its occupants even where there is no probable cause to believe that the automobile contains contraband, a search of the automobile may be held to be within the scope permitted under *Chimel*.

91. The sample contains several other cases of the same kind. In one instance an officer observed a Negro male talking with two white females in the vicinity of a freeway on-ramp. The officer investigated because he thought the girls were under 18. When asked for identification the man gave his name and said he was over 18 but had no identification. The officer ran a radio check and was advised that the suspect was a known marijuana user. He then asked the suspect for identification a second time and asked him to empty his pockets. This produced a pipe and a package of cigarette papers. The officer testified later: "I could observe the material of a plastic—a waxed paper bag sticking out [of the defendant's pocket]—approximately, oh, a quarter-inch to a half-inch. The pocket was bulging." The officer removed a bag which did indeed contain marijuana. Although the evidence was admitted at the preliminary hearing, it was suppressed in superior court prior to trial.

92. Not only is the marijuana itself relatively more bulky per dose than other drugs, but its use usually involves distinctive paraphernalia: cigarette papers, water pipes, and "roach clips" (used to hold a roach while it is smoked to the very end). Burning marijuana produces a distinctive odor. If the user is not tidy while rolling "joints" or filling his pipe, he may leave traces of marijuana which judges are apparently prepared to believe can be identified as such with the naked eye.

93. *See* text accompanying note 83 *supra*.

come to consider respect for due process rights to be as important a part of their job as efficient crime control. Society cannot reasonably expect policemen to develop this attitude so long as it calls on them to enforce laws the thorough enforcement of which is incompatible with the fourth amendment and with due process.

Arguably, even in the absence of the marijuana laws the abuses outlined would continue to occur at the current level, but in connection with enforcement of the dangerous-drug laws. There is good reason to believe that this is not the case. Since dangerous drugs are generally easier to conceal, do not produce any residue such as seeds or "roaches," and have no distinctive odor, they present fewer opportunities for policemen to persuade courts that evidence of contraband was in open view. Moreover, absent the laws against marijuana, so long as the level of dangerous-drug use remained significantly lower than that of marijuana use,[94] the chances that searches on mere suspicion would yield contraband might well drop to the point where policemen would conclude that to search was not worth the effort.

B. *Effects on Defendants*

There is good reason to suspect that the processing of many marijuana users as criminals affects their attitudes and their behavior in ways that are healthy neither for the defendants nor for the larger community. This section explores the possible implications of the sample data for this proposition.

It has been argued from a number of different standpoints that enforcement of the marijuana laws contributes significantly to the alienation of those against whom they are enforced.[95] An "alienated" person, for purposes of the discussion in this Note, is "one who has been estranged from, made unfriendly toward, his society and the culture it carries."[96] Alienation is a process by which attitudes change. Of particular concern are attitudes toward the legal system. The suggestion that criminalization of marijuana possession results in the alienation of defendants generally or of certain groups of them means that as a result of the treatment they receive they become: (1) less inclined to value adherence to the law for its own sake, (2) less inclined to favor the political process underlying the existing legal system as a means of ordering society, (3) more inclined to view the society whose interests the law serves as corrupt, and (4) more skeptical about the

94. *See* RESEARCH & STATISTICS SECTION, SAN MATEO DEP'T OF PUBLIC HEALTH & WELFARE, FIVE MIND-ALTERING DRUGS 49 (1969).

95. Dr. Roger O. Egberg, Assistant Secretary of Health, Education, and Welfare for Medical and Scientific Affairs, has said the marijuana laws could "alienate a whole generation of Americans." San Jose Mercury, Sept. 26, 1969, at 21, col. 2. *Accord*, H. PACKER, *supra* note 15, at 340–41.

96. Nettler, *A Measure of Alienation*, 22 AM. SOCIOL. REV. 670, 672 (1957).

value of applying their energies to tasks which are "constructive" in the general view.

If indeed these attitudinal changes occur, society almost certainly will bear some costs as a result. At a minimum, to the extent that alienated marijuana defendants dissociate themselves from society, society loses the contributions they might otherwise have made as workers and citizens. And additional expenditures of resources may be required to combat tendencies within the alienated group toward criminal activity, including illegal forms of political participation.

Ascertaining the extent to which costs of this kind are attributable to the marijuana laws is an important factor in a rational reassessment of these laws. Judging from the current state of the literature, no one has yet undertaken to measure them directly. The most helpful study would compare the attitudes and behavior of marijuana defendants before and after their experience with the criminal system. But a serious practical obstacle to such a study is the near impossibility identifying and testing marijuana arrestees before they are arrested.

This Note presents the case—based on the sample data—that, pending more formal studies, evaluation of the marijuana laws should proceed on the assumption that their enforcement gives rise to significant social costs deriving from the alienation of defendants. That case rests on data about the characteristics of the defendants and the treatment they receive. To summarize the case in advance, defendants whose past experiences and current attitudes render them susceptible to alienation are brought to see the criminal system as one which: (1) punishes certain kinds of conduct without justification, (2) apprehends and convicts people by means that are unjust even by its professed standards, (3) sacrifices, out of simple expediency, the logic by which it apportions punishment to crime, and (4) selects for punishment, among those who commit the same crime, a particular few who pursue "deviant" life styles which are in no sense criminal in themselves. For some defendants, the deleterious effects of criminal treatment end there. Others experience, in addition, (5) intensive exposure at a relatively young age to the prison environment, and (6) a police record destined to interfere with subsequent attempts to reintegrate themselves into society.

1. *Characteristics.*

Not every marijuana prosecution can be expected to lead to socially costly alienation. Some defendants have already adopted a delinquent life style, as evidenced by an extensive record of past criminal activity. Others presumably have long-standing hostility toward society and will not be appreciably affected by a single interaction with the criminal system. Elimi-

nation of the defendants in the San Mateo County sample who apparently fall into one or the other of these categories leaves a large contingent,[97] 67 percent of the sample, for whom the available data suggest neither particularly deep integration into the mainstream of society nor such antisocial feelings that society should have been concerned about exacerbating any tendencies in that direction.

The median age of this group was 20 years. No defendant in the group had ever been sentenced to jail, and only 40 percent had had any prior significant contact with the police. Some 40 percent were out of school and unemployed; 42 percent of the group as a whole had never finished high school, and another 20 percent were college dropouts. And there is additional evidence that the commitments of the group generally to adult middle-class social and moral conventions were partial and conditional at best. All, or nearly all, smoked marijuana; many did other "deviant" things;[98] many looked like, and some presumably were, "hippies."[99] These facts are not conclusive on the issue of whether these defendants were susceptible to alienation through criminal treatment based on their marijuana use. They do suggest that the implications of the decision to smoke marijuana are worth further exploration.

To some extent the very existence of the antimarijuana laws fosters alienation among those who smoke. Respect for the legal and political system is not fostered "when young people who, rightly or wrongly, feel that marijuana is no more dangerous than alcohol are told that their vice is a felony while that of their elders is at most an indiscretion."[100] The law prohibiting possession turns generally law-abiding citizens into serious criminals. Marijuana use becomes of necessity a somewhat clandestine activity, and the user's need to conceal his activity from those who might inform the police prompts him to view the world in terms of "them" and "us." Those whom he considers straight—parents, teachers, employers—will often be spokesmen for social norms which the user rejects in part because of antipathy generated over the marijuana issue. For instance, a drug educator who describes marijuana as a very dangerous drug to students whose personal experience indicates otherwise may not be believed when

97. It is difficult to identify from the available data those "nondelinquent" defendants whose relevant views and values were most likely to be sufficiently stable to withstand the stresses of criminal processing. For purposes of the analysis in text, we have assumed that this kind of stability correlates significantly with age, and have eliminated from the total sample those defendants who were over the age of 26.

98. For example, at least 10% of the defendants were participating in communal living arrangements.

99. Remarks in police and probation reports indicate that a large number, perhaps up to 50%, of marijuana defendants look like "hippies." This was corroborated in conversations with Deputy District Attorneys and by observations during the several months spent gathering data at the municipal and superior courts.

100. Kaplan, *Foreword* to U.C.L.A. STUDY, *supra* note 24, at 1502.

CONTINUED

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he describes the dangers of amphetamine abuse, which unfortunately are all too real.[101]

2. *Treatment.*

Undoubtedly any previous feeling as to the hypocrisy of the marijuana laws will be felt more strongly when the laws have an immediate and personal impact. For those arrested this impact includes not only the immediate burden of defending a criminal charge but long-term effects as well. The stigma of an arrest record and a criminal conviction may make it more difficult for the defendant to get a job and may label him as an "undesirable" in some circles. Although most convicted offenders in the sample were granted probation, more than half were sentenced to several months in the county jail, with the attendant enforced companionship of some of society's least savory members.

Prosecution for a marijuana crime gives many users their first opportunity to form strong firsthand convictions about the police and the courts. Defendants are probably aware of any police misconduct in their own cases, and some at least will infer that illegal searches and arrests are widespread and well tolerated in the system of criminal justice. A conviction that rests on what the defendant perceives as the abuse and disregard of constitutional freedoms can hardly be expected to engender respect for the criminal system. Similarly, although plea bargaining may in some cases permit a defendant to escape a felony conviction, he may find the practice, based largely on expediency, hard to reconcile with the idealistic notion that it is just to punish a man for what it can be shown he has done, and not simply for what he will admit to out of self-interest. This reconciliation will be especially difficult for those defendants who believe that the district attorney has accepted their lesser plea to avoid a constitutional challenge to the search on which the arrest was based.

Finally, present enforcement patterns may also encourage defendants to believe in the essential unfairness of a legal system that seems to have selected them arbitrarily for punishment from among vast unpunished numbers of users. Even at present high arrest levels it is clear that only a small percentage of marijuana users are ever caught.[102] Since most users are discovered in connection with routine police work, those who have the means and good sense to confine their marijuana possession to places where

101. *Id.* at 1503.

102. A recent Gallup Poll estimates that 10 million adult Americans have used marijuana. *See* note 12 *supra*. In testimony before the Juvenile Delinquency Subcommittee of the United States Senate, John E. Ingersoll, Director of the Federal Narcotics Bureau, placed the number of arrests in 1968 by state and local authorities for narcotics and marijuana violations at 162,177. Of these, 43,000 arrestees were under 18 years old. N.Y. Times, Sept. 16, 1969, § 1, at 34, col. 3.

the police are unlikely to appear are very nearly immune from arrest.[103] Those who carry marijuana on their person in public or in automobiles run a much greater risk, especially if their outward appearance draws attention. Where an officer has discretion, he tends to direct his attention toward those whom his experience tells him are most likely to be doing something illegal.[104] Indeed, this ability to isolate potential lawbreakers from all those he encounters may be in general a very desirable characteristic in patrolmen. But the high visibility of "hippie" types and the widely publicized correlation between the "hippie" life style and drug use mean that they will receive a good deal of police attention.[105] As the sample reveals, they account for a high percentage of those arrested. Defendants in this category may feel, rightly or wrongly, that, because of their life style, the police have singled them out for prosecution from all those who use marijuana. These suspicions may not be unwarranted. According to one investigator who interviewed policemen to discover their attitudes toward marijuana use,

> [t]he main evil and danger which these officers felt was presented by wide-spread use of marijuana was the creation and perpetuation of a life style and set of attitudes and actions which was contrary to the values of the society as a whole. . . . They pictured marijuana as a central tenet and foundation, and in some cases as the cause, of a way of life which they completely disapproved of. For them, marijuana leads to a life characterized by irresponsibility, escapism, long hair, dirty clothes and immoral activity.[106]

Any defendant who harbors the suspicion that police antipathy toward his life style motivated his arrest may find it reinforced by the Probation Department's efforts to channel him along more conventional paths.[107]

If, as the data seem to indicate, a fair percentage of marijuana defendants come away from their experience with the criminal law with increased feelings of alienation, it seems likely that the existence of a drug subculture will amplify that effect.[108] Defendants can be expected to recount their travails to their friends, some of whom will be drug users and perhaps past defendants themselves, and who will empathize with and reinforce the defendant's new attitudes. Thus the defendant's bonds with the drug subculture may be strengthened, and even marijuana users who are never apprehended may experience vicariously the deleterious effects of criminal treatment.

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103. Widespread marijuana use has been documented among students at Stanford University, adjacent to the study jurisdiction. *See* 2 R. BLUM, *supra* note 13, at 41. Arrests on campus, patrolled primarily by the University's private police force, are very rare.

104. J. SKOLNICK, *supra* note 72, at 45.

105. *See* note 99 *supra*.

106. G. Schofield, Marijuana: Its Relationship to Aggressive Behavior 19, July 10, 1968 (unpublished study on file with the *Stanford Law Review*).

107. *See* text accompanying note 65 *supra*.

108. *See generally* J. SIMMONS & B. WINOGRAD, IT'S HAPPENING 85–104 (1967).

IV. Possibilities for Cost Reduction

This Note has focused on the "costs" resulting from the decision to criminalize the use and possession of marijuana. It has called attention to the obvious cost of processing tens of thousands of defendants through the system of criminal adjudication. It has suggested that there may well be other costs not so apparent: increased alienation of the defendants and the adoption of unhealthy police practices. We turn now to a brief discussion of possible ways to reduce these costs.

Given the apparent desire of the majority of the public to retain restrictions on marijuana use,[109] lawmakers are faced with the dilemma of lowering the demonstrably high cost of the law against possession while at the same time reducing or at least containing present use. Assuming, as the drafters of the major recent proposals in California have done, that selling marijuana should continue to constitute a crime, the important question is how, if at all, the state should punish the person who uses but does not sell. The basic choice is between reducing the penalties for possession and eliminating them altogether.

The California Legislature has recently taken steps to reduce the penalties for possession. Under a recent amendment to section 11,530 of the California Health and Safety Code,[110] a judge now has discretion to sentence a possession violation as a misdemeanor even in cases that were tried as felonies. A Penal Code amendment[111] soon to come into effect will allow the prosecutor, at his discretion, to allege a possession violation as either a felony or a misdemeanor at the beginning of a case, with misdemeanors being tried in the municipal courts. A proposal recently endorsed by the delegates to the convention of the California State Bar Association would go even further and reduce the first offense for possession of up to 5 grams of marijuana[112] to a misdemeanor in every case.[113]

Assuming either that the State Bar proposal is enacted or that district attorneys will routinely prosecute cases of possession of small amounts as misdemeanors, some cost reduction seems certain. Convicted defendants

109. Twenty-six percent of the respondents in a recent copyrighted poll of California adults favored strict enforcement of present marijuana laws, and 49% wanted new laws with more severe penalties. The California Poll, Field Research Corp., Release No. 634, May 21, 1969.

110. *See* note 28 *supra*.

111. Senate Bill No. 1032, ch. 1144, enacted Aug. 30, 1969, *reported in* 1969 West's Calif. Legislative Serv. 2194, *amending* Calif. Penal Code § 17 (West Supp. 1968).

112. Although only about one-half of the defendants in the sample possessed less than 5 grams of marijuana at the time of arrest, if the amount possessed became legally significant presumably most users could adapt their holding pattern to escape felony charges. Thus if a person's entire supply of marijuana exceeded 5 grams, he could conceal that so that the police would not discover it without a search warrant and could withdraw something less than 5 grams for those times when he wanted the drug readily accessible. This assumes that users will take precautions where possible to avoid discovery. However, the arrest situations in the sample reveal that many defendants are quite careless in this respect.

113. San Francisco Chronicle, Sept. 9, 1969, at 1, col. 1.

will not bear the stigma of felony convictions. The less formal nature of proceedings in misdemeanor cases will probably reduce the consumption of judges' and lawyers' time, especially if defendants tend to plead guilty to misdemeanor charges where before they would have contested felony charges. Under the State Bar proposal, there would be very little room for plea bargaining; and under the amendment of Penal Code § 17, while plea bargaining would probably take place in connection with the district attorney's decision whether or not to allege a felony, at least it would be sanctioned by law and will not appear to the defendants as a sub rosa affair. Nothing in the State Bar proposal suggests that it would ameliorate the problem of selective enforcement, whether real or perceived, nor can those who feel that there is nothing wrong with marijuana use be expected to be appreciably less alienated because it is only being punished as a misdemeanor. However, if the actual sentences received become generally less severe, the impact of any alienating treatment and any costs associated directly with incarceration may be significantly diminished.

It is not at all clear that merely reducing the penalties for marijuana possession will cut down either the number of arrests for marijuana possession or the extent of police misconduct related to those arrests.[114] By contrast, legislative action to legalize possession for personal use, retaining the criminal sanction only for commercial dealers, would eliminate the costs of the current law against possession. It is clear, however, that at present such a proposal is not politically viable in California. The law professors commissioned by a joint committee of the state legislature to draft a comprehensive revision of the Penal Code recently incorporated such a proposal into its *Proposed Tentative Draft.*[115] The joint committee reacted to this proposal (among others) as "political suicide," and fired most of the revision staff.[116]

If the scientific demonstration of social costs and benefits from the criminalization of marijuana has any substantial role to play in the politics

114. It is difficult to predict the effect of penalty reduction on police behavior. Officers would still be free to search cars where they had probable cause to believe that marijuana was present, because it would remain a contraband. In other cases probable cause to believe that marijuana was present would probably justify an arrest on the theory either that any possession is a potential felony (under the present law) or that where an officer detects some marijuana he is reasonable in believing that there is more than 5 grams present. Arguably, the abolition of a routine examination of search-and-seizure questions at the preliminary hearing would allow for greater police misconduct; however, defense attorneys could still have those issues adjudicated before trial under Penal Code § 1535.8. And it might well develop that if possession were reduced to misdemeanor status, police would feel less impelled to make unreasonable searches, either because they would conclude that a misdemeanor conviction was not worth the effort or because they would conclude from the fact that the legislature had reduced the penalty that perhaps marijuana use was not as harmful as they had previously thought.

115. STATE OF CALIFORNIA JOINT LEGISLATIVE COMMITTEE FOR REVISION OF THE PENAL CODE, PROPOSED TENTATIVE DRAFT—DRUGS—PART I: MARIJUANA (1968).

116. Moore, *Penal Code Expert Tells Pressure on Revision*, San Francisco Chronicle, Sept. 24, 1969, at 8, col. 1. *See* letter from Professors Herbert L. Packer and Sanford H. Kadish to California State Senator Donald Grunsky, 1969, in 22 STAN. L. REV. 160 (1969).

of marijuana legislation, then clearly there is still important work to be done. Costs deriving from police misconduct and the alienation of young people will not be eliminated, and may not be significantly reduced, merely by lowering the penalties for marijuana use. If further scientific study is a political prerequisite to legalization, these subtle costs should be thoroughly explored.

The data and the interpretation offered in this Note have direct and current relevance, despite the incompleteness of cost studies to date. Unless and until the case is rebutted, those who are responsible for the shaping and the enforcement of the marijuana laws would do well to proceed on the assumption that society is now paying significant costs well beyond the current dollar costs of enforcement—that it is disinvesting in the integrity of its police and the future of its youth.

Geoffrey Richard Wagner Smith

APPENDIX

TABLE 1

CENSUS CHARACTERISTICS OF DEFENDANTS

Race	
White	107
Black	22
Sex	
Male	106
Female	23
Age	
18–20	61
21–23	28
24–26	21
27–29	10
Over 29	6
Not available	3
Occupation	
Student	11
High school	2
College	9
Unemployed	44
Employed	45
White-collar	5
Blue-collar	33
Part-time	7
Not available	29
Last level of education of nonstudents	
Some high school	40
Finished high school	17
Some college	12
Finished college	1
Graduate study	2
Not available	17

TABLE 2

PRIOR CONTACTS WITH CRIMINAL SYSTEM

None or single minor contact	47
Single major or several minor contacts	17
Several major and/or several to many minor contacts never sentenced to jail	16
Several major and/or several to many minor contacts sentenced one or more times to county jail	17
Sentenced to State Prison and/or many times to county jail	9
Not available	23

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TABLE 3

PRIOR DRUG-RELATED CONTACTS WITH CRIMINAL SYSTEM

None		80
Marijuana		18
Marijuana only	12	
Marijuana and dangerous drugs	6	
Dangerous drugs only		8
Not available		23

TABLE 4

HOW DEFENDANTS FIRST CAME TO THE ATTENTION OF THE POLICE

	Automobile Involved		No Automobile Involved		Total	
Method	Situations[a]	Number Arrested	Situations	Number Arrested	Situations	Number Arrested
Drug investigation	2	2	5	6	7	8
Other drug arrest	1	1	3	5	4	6
Sales to agent	—	—	11	15	11	15
Vehicle code violation	13	21	—	—	13	21
Suspicious circumstances	9	14	1	1	10	15
Nondrug arrest	6	6	7	9	13	15
Nondrug investigation	5	8	9	14	14	22
Referred by family	—	—	7	7	7	7
Other	3	4	8	17	11	21
Not available	—	—	—	—	2	3
Total	39	56	51	74	92	133

[a] *See* note 23 *supra*.

TABLE 5

FINAL DISPOSITION OF THE 129 DEFENDANTS

Disposition	Number	Approximate Percentage
Dismissed or discharged	32	25.0
Certified to juvenile court	19	14.5
Found not guilty	2	1.5
Found guilty	72	56.0
Other	4	3.0
Total	129	100.0

TABLE 6

DEFENDANTS FOUND GUILTY: CODE SECTION UNDER WHICH SENTENCED

Code Section	Number	Approximate Percentage	Number Incarcerated[a]
§ 11,556 H&S[b]: Being in a place where marijuana is being smoked	10	14	3
§ 11,557 H&S: Maintaining a place where marijuana is being smoked	1	1	—
§ 11,530 H&S: Possession of marijuana	40	56	23
§ 11,530.5 H&S: Possession of marijuana for sale	2	3	2
§ 11,531 H&S: Sale of marijuana	4	6	4
Total marijuana	57	80	32[d]
§ 11,910 H&S: Possession of dangerous drugs	3	4	1
§ 11,912 H&S: Sale of dangerous drugs	1	1	n/a[e]
§ 4143 B&P[c]: Unlawful possession of a hypodermic needle	2	3	2
Other (nondrug)	9	12	n/a
Grand total	72	100	35

[a] Sentenced to serve time in prison or jail.
[b] Health & Safety Code.
[c] Business & Professions Code.
[d] 56% of total sentenced for marijuana violations.
[e] Not available.

Report on
Midwest American Assembly
February 9-11, 1975
Illinois Beach State Lodge
Zion, Illinois

PRISONERS IN AMERICA

Sponsored by:
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PREFACE

On February 9, 1975, a group of 60 Americans from 8 midwestern states representing government (federal, state and local), medicine, communications, the legal profession (bench and bar), business, education (faculty, administration and students), the clergy, civic organizations and many other walks of life met at the Illinois Beach State Lodge in Zion, Illinois, for a Midwest American Assembly on corrections. For two days the participants discussed in depth the problems of the American correctional system, and on the third day in plenary session they reviewed the report of recommendations which appears on these pages.

As background reading for this American Assembly, participants were provided in advance with copies of *Prisoners in America,* edited by Dr. Lloyd E. Ohlin, professor of criminology at the Harvard Law School.

The American Assembly, a national, non-partisan educational institution, takes no stand on the subjects it presents for public discussion. The findings in the reports are those of the participants in their private capacities and the opinions in the background volume belong to the authors themselves. Nor is the Ford Foundation, which generously supported this American Assembly program, to be associated with the views in the book or the report.

Clifford C. Nelson
President
The American Assembly

FINAL REPORT
of the
MIDWEST AMERICAN ASSEMBLY
ON CORRECTIONS

At the close of their discussions the participants in the Midwest American Assembly on *Prisoners in America,* at Illinois Beach State Lodge, Zion, Illinois, February 9-11, 1975, reviewed as a group the following statement. The statement represents general agreement; however, no one was asked to sign it. Furthermore, it should not be assumed that every participant subscribes to every recommendation; some participants, in fact, sharply disagree.

I. Public drunkenness should be decriminalized. Alternative support services in the community, such as hospitals, mental health units, detoxification centers and alcoholic rehabilitation centers should be established and made available in place of arrest and confinement. Decriminalization should be coupled with acceptance of personal and public responsibility for referring such persons to programs and/or agencies capable of dealing realistically with the problem. No one should be put in jail solely for drunkenness.

II. The possession for personal use of a small amount of marijuana (less than 1½ oz.) should be decriminalized. Decriminalization of possession of drugs (controlled substances) for personal use should be coupled with legislation controlling distribution of such drugs. Incarceration in a penal institution does not solve the problem.

III. Vagrancy should be decriminalized.

IV. Children who are truant, stubborn, "incorrigible", or in other ways ungovernable, should not be processed by the criminal justice system. Such conduct should not be classified as delinquent. No minor should either be taken into custody or confined for acts that are not defined as criminal for adults. Children who are neglected should have services available to them outside the criminal justice system. Greater emphasis should be placed on holding parents responsible for the acts of their children.

V. The criminal justice system should seek more alternatives to pretrial detention of those accused of crimes, such as the greater use of bail, reduced bail, or release on recognizance. The present system should be modified so as to remove its present discriminations against the poor, and the burden of proof for the necessity for detention should be placed upon the criminal justice system. In minor violations, summons should be used in place of arrest. Courts should speed up the judicial process by holding defense and prosecuting attorneys responsible for delays caused by repeated continuances. This will require a significant increase in the numbers of personnel

involved in the judicial process. Standards should be developed regarding time between arrest and arraignment and between arraignment and trial. Both prosecution and defense should prepare cases for trial on time or the courts should use their powers to cite them for contempt.

There should be court-appointed counsel for indigent individuals at bail or bond hearings. Courts should experiment with methods of reducing pre-conviction detention time, such as greater use of night courts and the use of special closed-circuit television lines between courts and police lock-ups.

VI. There should be state control and regulation of jails and houses of correction to uphold uniform standards and goals, provide for regular inspection and ensure proper care of prisoners. Legislation should provide for the enforcement of state regulations and there should be penalties affixed for failure to abide by the regulations. Local jails should provide correctional services and programs for the accused and convicted. States should develop subsidy programs to encourage and assist cities and counties to upgrade jails and local detention facilities for inmates and staff.

VII. States should be encouraged to develop regional multi-purpose community-based correctional facilities and programs. In order for community-based corrections to be effective, society must reexamine its values, seeking to increase its sense of responsibility for the rehabilitation of the offender.

VIII. Criminal justice agencies should be encouraged to divert non-violent offenders prior to trial on a voluntary basis to specially designed and operated pre-trial diversion centers or other alternative programs. Institutionalization should be a measure of last resort. The burden of proof for the necessity of institutionalization should always rest upon the criminal justice system and the minimum punishment indicated should always be meted out.

The danger of pre-trial diversion as an alternative to conviction and incarceration is that some persons may be coerced into participating in such programs even though they have not been convicted of any crime. Diversional decisions should not be made without defense counsel being present.

IX. Correctional facilities are used to confine offenders as punishment and to protect the public. These institutions should also be designed and used so that they meet the needs of inmates and of society and not solely the needs of the institutions. Imprisonment should be used as little as possible as should incarceration in maximum security facilities. While society clearly requires protections from certain offenders, the dehumanizing effects of imprisonment and its negative effects on the possibilities of rehabilitation make it of questionable value except as a measure of protection in the last resort.

X. Major emphasis should be placed on the use of adequate alternatives to incarceration. The construction of new corrections facilities should

call for total systems-planning with the goal of reducing the number of persons incarcerated. We believe humane conditions are a constitutional right, and existing correctional structures which deny these rights should be renovated or replaced by new structures.

XI. Participation in correctional programs should be voluntary and not a condition for probation and/or parole.

XII. States should try to develop collaborative correctional programs with sentenced offenders, paraprofessionals and community volunteers.

XIII. Grievance procedures to safeguard the rights of prisoners in confinement or under supervision in the community should be developed. Prison systems should have independent ombudsmen with unlimited access to institutions, prisoners and staff to investigate on their own initiative or upon request all matters relating to conditions in prisons and alleged violations of prisoner rights. There should be established by law at every level — city, county and state — citizen's committees reporting directly to the chief executive officer of the jurisdiction to resolve disputes between inmates and correctional agencies which cannot be resolved by other means. Correctional agencies should provide inmates of institutions with public defenders physically situated in prison to review inmate legal needs. Inmates, upon entering an institution, must be informed in writing about the rules and regulations of the institution and they must have their rights clearly explained to them.

XIV. The convicted offenders in the institution should have the right to legal counsel, especially in the case of parole hearings. In addition, persons on parole or probation should be represented by an attorney at all parole and probation revocation hearings.

XV. The management and operation of correctional facilities and services should be made more open and accessible to the public and the media and be subject to inspection and periodic review by accredited agencies, boards and commissions including individuals and groups involved in projects of research.

XVI. Because we believe in abandoning the concept of large institutions, we urge the development of small residential and non-residential community-based facilities for experimental purposes so that the effectiveness of such agencies can be properly tested.

XVII. Local, state and federal governments should establish subsidy programs as a means of reducing prison populations and encouraging the development of community-based services. Parole, probation, community-based services and other alternatives to incarceration should be encouraged.

XVIII. To the greatest extent possible, correctional agencies should purchase educational, vocational, psychological, therapeutic and general correctional services from private organizations and agencies capable of delivering these services.

XIX. (a) There should be much greater attention given to the plight of the victims of criminal acts with concentration on better means of victim compensation and restitution.

(b) The use of the indeterminate sentence should be eliminated.

(c) Serious consideration should be given to shorter sentences.

(d) There should be higher standards for employment of corrections personnel with proper screening procedures to eliminate those who act out their own pathology on prisoners. The training of such personnel also needs to be strengthened and improved.

(e) Correctional facilities should have available to inmates adequate vocational, educational, medical and religious and therapeutic programs.

(f) Uniformity of sentencing should be studied on a nationwide basis.

(g) Federal legislation should require special affirmative action programs for business, industry and the public sector, stating that no employers can refuse to hire persons because of previous conditions of penal servitude.

The above nineteen statements and recommendations represent the best collective thinking and wisdom of the participants in the Assembly, though as earlier noted, it should not be assumed that each individual subscribes wholly to every statement in the report. The participants are mindful of the value of hard data in making judgments in this entire area and to that end strongly encourage the continuation and the enlargement of all responsible research activity by competent individuals in the entire corrections field.

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February 14, 1975

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ABOUT THE AMERICAN ASSEMBLY

The American Assembly was established by Dwight D. Eisenhower at Columbia University in 1950. It holds nonpartisan meetings and publishes authoritative books to illuminate issues of United States policy.

An affiliate of Columbia, with offices in the Graduate School of Business, the Assembly is a national, educational institution incorporated in the State of New York.

The Assembly seeks to provide information, stimulate discussion and evoke independent conclusions in matters of vital public interest.

marihuana: a signal of misunderstanding

First Report
of the National
Commission on
Marihuana and
Drug Abuse

March 1972

National Commission on Marihuana and Drug Abuse
801 19th Street N.W.
Washington, D.C. 20006

March 22, 1972

To The President and Congress of the United States:

As Chairman of the National Commission on Marihuana and Drug Abuse, I am pleased to submit to you our first year Report in conformance with the mandate contained in Section 601 of Public Law 91-513, The Comprehensive Drug Abuse Prevention and Control Act of 1970.

This Report "Marihuana, A Signal of Misunderstanding" is an all-inclusive effort to present the facts as they are known today, to demythologize the controversy surrounding marihuana, and to place in proper perspective one of the most emotional and explosive issues of our time. We on the Commission sincerely hope it will play a significant role in bringing uniformity and rationality to our marihuana laws, both Federal and State, and that it will create a healthy climate for further discussion, for further research and for a continuing advance in the development of a public social policy beneficial to all our citizens.

Whatever the facts are we have reported them. Wherever the facts have logically led us, we have followed and used them in reaching our recommendations. We hope this Report will be a foundation upon which credibility in this area can be restored and upon which a rational policy can be predicated.

By Direction of the Commission

Raymond P. Shafer

Raymond P. Shafer
Chairman

The President
The President of the Senate
The Speaker of the House

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V
marihuana and social policy

"The difficulty in life is the choice."
George Moore (1900)

A constant tension exists in our society between individual liberties and the need for reasonable societal restraints. It is easy to go too far in either direction, and this tendency is particularly evident where drugs are concerned.

We have guided our decision-making by the belief that the state is obliged to justfy restraints on individual behavior. Too often individual freedoms are submerged in the passions of the moment, and when that happens, the public policy may be determined more by rhetoric than by reason. Our effort has been to minimize the emotional and emphasize the rational in this Report.

Drugs In a Free Society

A free society seeks to provide conditions in which each of its members may develop his or her potentialities to the fullest extent. A premium is placed on individual choice in seeking self-fulfillment. This priority depends upon the capacity of free citizens not to abuse their freedom, and upon their willingness to act responsibly toward others

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and toward the society as a whole. Responsible behavior, through individual choice, is both the guarantor and the objective of a free society.

DRUGS AND SOCIAL RESPONSIBILITY

The use of drugs is not in itself an irresponsible act. Medical and scientific uses serve important individual and social needs and are often essential to our physical and mental well-being. Further, the use of drugs for pleasure or other non-medical purposes is not inherently irresponsible; alcohol is widely used as an acceptable part of social activities.

We do think the use of drugs is clearly irresponsible when it impedes the individual's integration into the economic and social system. A preference for individual productivity and contribution to social progress in a general sense still undergirds the American value structure, and we emphasize the policy-maker's duty to support this preference in a public policy judgment.

At the same time, in light of the emerging leisure ethic and the search for individual meaning and fulfillment noted in Chapter I, we cannot divorce social policy from the questions raised by the recreational use of drugs. Productivity and recreation both have a place in the American ethical system. They are not inconsistent unless the individual's use of leisure time inhibits his productive role in society.

Drugs should be servants, not masters. They become masters when they dominate an individual's existence or impair his faculties. To the extent that any drug, including alcohol, carries with it risks to the well-being of the user and seriously undermines his effectiveness in the society, that drug becomes a matter of concern for public policy.

An essential step in the process of policy-formation is a determination of the circumstances under which use of any given drug poses such risks. For some drugs, the risks may be so great that all permissible measures should be taken to eliminate use. For other drugs, such risks may be present only under certain specific circumstances, in which case society may defer to responsible individual choice on the matter of recreational use but take appropriate steps to minimize the incidence and consequences of dysfunctional use. In our Report next year, for which studies are already underway, we will consider from this perspective the whole range of drugs now used for non-medical purposes.

A Social Control Policy for Marihuana

In formulating a marihuana policy, our strongest concern is with irresponsible use, whether it be too often, too much, indiscriminate, or under improper circumstances. The excessive or indiscriminate use of

any drug is a serious social concern; and this is particularly true of marihuana since we still know very little about the effects of long-term, heavy use. We have little doubt that the substantial majority of users, under any social control policy, including the existing system, do not and would not engage in irresponsible behavior.

In identifying the appropriate social control policy for marihuana, we have found it helpful to consider the following policy options:

I Approval of Use.
II Elimination of Use.
III Discouragement of Use.
IV Neutrality Toward Use.

APPROVAL OF USE

Society should not approve or encourage the recreational use of *any* drug, in public or private. Any semblance of encouragement enhances the possibility of abuse and removes, from a psychological standpoint, an effective support of individual restraint.

For example, so long as this society (not only the government, but other institutions and mass advertising as well) in effect approved of the use of tobacco, the growing medical consensus about the dangers of excessive use did not make a significant impression on individual judgment. With the Surgeon General's Report on Tobacco in 1964, *Smoking and Health*, a very real change has occurred in the way society now thinks about cigarettes.

The institutions of society definitely add their influences to the variety of social pressures which persuade individuals to use any kind of drugs. Rational social policy should seek to minimize such social pressures, whether they come from peers, from the media, from social custom, or from the user's sense of inadequacy. Official approval would inevitably encourage some people to use the drug who would not otherwise do so, and would also increase the incidence of heavy or otherwise irresponsible use and its complications. On this basis we reject policy option number one, approval of use.

ELIMINATION OF USE

For a half-century, official social policy has been not only to discourage use but to eliminate it (option number two). With the principal responsibility for this policy assigned to law enforcement, its implementation reached its zenith in the late 1950's and early 1960's when marihuana-related offenses were punishable by long periods of incarceration. This policy grew out of a distorted and greatly exaggerated concept of the drug's ordinary effects upon the individual and the society. On the basis of information then available, marihuana

was not adequately distinguished from other problem drugs and was assumed to be as harmful as the others.

The increased incidence of use, intensive scientific reevaluation, and the spread of use to the middle and upper socioeconomic groups have brought about the informal adoption of a modified social policy. On the basis of our opinion surveys and our empirical studies of law enforcement behavior, we are convinced that officialdom and the public are no longer as punitive toward marihuana use as they once were.

Now there exists a more realistic estimate of the actual social impact of marihuana use. School and university administrators are seldom able to prevent the use of marihuana by their students and personnel and are increasingly reluctant to take disciplinary action against users. Within the criminal justice system, there has been a marked decline in the severity of the response to offenders charged with possession of marihuana.

In our survey of state enforcement activities, only 11% of all marihuana arrests resulted from active investigative activity, and most of those were in sale situations. For the most part, marihuana enforcement is a haphazard process; arrests occur on the street, in a park, in a car, or as a result of a phone call. Among those arrested, approximately 50% of the adults and 70% of the juveniles are not processed through the system; their cases are dismissed by the police, by the prosecutors or by the courts. Ultimately less than 6% of all those apprehended are incarcerated, and very few of these sentences are for possession of small amounts for personal use.

In the law enforcement community, the major concern is no longer marihuana but the tendency of some users to engage in other irresponsible activity, particularly the use of more dangerous drugs. Official sentiment now seems to be a desire to contain use of the drug as well as the drug subculture, and to minimize its spread to the rest of the youth population. Law enforcement policy, both at the Federal and State levels, implicitly recognizes that elimination is impossible at this time.

The active attempt to suppress all marihuana use has been replaced by an effort to keep it within reasonable bounds. Yet because this policy still reflects a view that marihuana smoking is itself destructive enough to justify punitive action against the user, we believe it is an inappropriate social response.

Marihuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it. This judgment is based on prevalent use patterns, on behavior exhibited by the vast majority of users and on our interpretations of existing medical and scientific data. This position also is consistent with the estimate by law enforcement personnel that the elimination of use is unattainable.

In the case of experimental or intermittent use of marihuana, there is room for individual judgment. Some members of our society believe the decision to use marihuana is an immoral decision. However, even during Prohibition, when many people were concerned about the evils associated with excessive use of alcohol, possession for personal use was never outlawed federally and was made illegal in only five States.

Indeed, we suspect that the moral contempt in which some of our citizens hold the marihuana user is related to other behavior or other attitudes assumed to be associated with use of the drug. All of our data suggest that the moral views of the overwhelming majority of marihuana users are in general accord with those of the larger society.

Having previously rejected the approval policy (option number one), we now reject the eliminationist policy (option number two). This policy, if taken seriously, would require a great increase in manpower and resources in order to eliminate the use of a drug which simply does not warrant that kind of attention.

DISCOURAGEMENT OR NEUTRALITY

The unresolved question is whether society should try to dissuade its members from using marihuana or should defer entirely to individual judgment in the matter, remaining benignly neutral. We must choose between policies of discouragement (number three) and neutrality (number four). This choice is a difficult one and forces us to consider the limitations of our knowledge and the dynamics of social change. A number of considerations, none of which is conclusive by itself, point at the present time toward a discouragement policy. We will discuss each one of them separately.

1. User Preference Is Still Ambiguous

Alcohol and tobacco have long been desired by large numbers within our society and their use is deeply ingrained in the American culture. Marihuana, on the other hand, has only recently achieved a significant foothold in the American experience, and it is still essentially used more by young people. Again, the unknown factor here is whether the sudden attraction to marihuana derives from its psychoactive virtues or from its symbolic status.

Throughout this Commission's deliberations there was a recurring awareness of the posibility that marihuana use may be a fad which, if not institutionalized, will recede substantially in time. Present data suggest that this is the case, and we do not hesitate to say that we would prefer that outcome. To the extent that conditions permit, society is well advised to minimize the number of drugs which may cause significant problems. By focusing our attention on fewer rather than more drugs, we may be better able to foster responsible use and diminish the consequences of irresponsible use.

The more prudent course seems to be to retain a social policy opposed to use, attempting to discourage use while at the same time seeking to deemphasize the issue. Such a policy leaves us with more options available when more definitive knowledge of the consequences of heavy and prolonged marihuana use becomes available.

2. Continuing Scientific Uncertainty Precludes Finality

In 1933 when Prohibition was repealed, society was cognizant of the effects of alcohol as a drug and the adverse consequences of abuse. But, because so many people wished to use the drug, policy-makers chose to run the risk of individual indiscretion and decided to abandon the abstentionist policy. There are many today who feel that if the social impact of alcohol use had then been more fully understood, a policy of discouragement rather than neutrality would have been adopted to minimize the negative aspects of alcohol use.

Misunderstanding also played an important part when the national government adopted an eliminationist marihuana policy in 1937. The policy-makers knew very little about the effects or social impact of the drug; many of their hypotheses were speculative and, in large measure, incorrect.

Nevertheless, the argument that misinformation in 1937 automatically compels complete reversal of the action taken at that time is neither reasonable nor logical. While continuing concern about the effects of heavy, chronic use is not sufficient reason to maintain an overly harsh public policy, it is still a significant argument for choosing official discouragement in preference to official neutrality.

3. Society's Value System Is In a State of Transition

As discussed in Chapter I, two central influences in contemporary American life are the individual search for meaning within the context of an increasingly depersonalized society, and the collective search for enduring American values. In Chapter IV, we noted that society's present ambivalent response to marihuana use reflects these uncertainties.

For the reasons discussed in the previous Chapters, a sudden abandonment of an official policy of elimination in favor of one of neutrality toward marihuana would have a profound reverberating impact on social attitudes far beyond the one issue of marihuana use. We believe that society must have time to consider its image of the future. We believe that adoption of a discouragement policy toward marihuana at this time would facilitate such a reappraisal while official neutrality, under present circumstances, would impede it.

4. Public Opinion Presently Opposes Marihuana Use

For whatever reasons, a substantial majority of the American public opposes the use of marihuana, and would prefer that their fellow

citizens abstain from using it. In the National Survey, 64% of the adult public agreed with the statement that "using marihuana is morally offensive" (40% felt the same way about alcohol).

Although this majority opinion is not by any means conclusive, it cannot be ignored. We are well aware of the skepticism with which marihuana user, and those sympathetic to their wishes, view the policy-making process; and we are particularly concerned about the indifference to or disrespect for law manifested by many citizens and particularly the youth.

However, we are also apprehensive about the impact of a major change in social policy on that larger segment of our population which supports the implications of the existing social policy. They, too, might lose respect for a policy-making establishment which appeared to bend so easily to the wishes of a "lawless" and highly vocal minority.

This concern for minimizing cultural dislocation must, of course, be weighed against the relative importance of contrary arguments. For example, in the case of desegregation in the South, and now in the North, culture shock had to be accepted in the light of the fundamental precept at issue. In the case of marihuana, there is no fundamental principle supporting the use of the drug, and society is not compelled to approve or be neutral toward it. The opinion of the majority is entitled to greater weight.

Looking again to the experience with Prohibition, when an abstentionist policy for alcohol was adopted on the national level in 1918, its proponents were not blind to the vociferous opposition of a substantial minority of the people. By the late 1920's and early 1930's, the ambivalence of public opinion toward alcohol use and the unwillingness of large numbers of people to comply with the new social policy compelled reversal of that policy. Even many of its former supporters acknowledged its futility.

With marihuana, however, the prevailing policy of eliminating use had never been opposed to any significant degree until the mid-1960's. Unlike the prohibition of alcohol, which had been the subject of public debate off and on for 60 years before it was adopted, present marihuana policy has not until now engaged the public opinion process, some 50 years after it first began to be used. Majority sentiment does not appear to be as flexible as it was with alcohol.

5. Neutrality Is Not Philosophically Compelled

Much of what was stated above bespeaks an acute awareness by the Commission of the subtleties of the collective consciousness of the American people, as shown in the National Survey. There is a legitimate concern about what the majority of the non-using population thinks about marihuana use and what the drug represents in the public mind. The question is appropriately asked if we are suggesting that

the majority in a free society may impose its will on an unwilling minority even though, as it is claimed, uncertainty, speculation, and a large degree of misinformation form the basis of the predominant opinion. If we have nothing more substantial than this, the argument goes, society should remain neutral.

To deal with this contention, one must distinguish between ends and means. Policy-makers must choose their objectives with a sensitivity toward the entire social fabric and a vision of the good society. In such a decision, the general public attitude is a significant consideration. The preferred outcome in a democratic society cannot be that of the policy-makers alone; it must be that of an informed public. Accordingly, the policy-maker must consider the dynamic relationship between perception and reality in the public mind. Is the public consensus based on a real awareness of the facts? Does the public really understand what is at stake? Given the best evidence available, would the public consensus remain the same?

Assuming that dominant opinion opposes marihuana use, the philosophical issue is raised not by the goal but by how it is implemented. At this point, the interests of the unwilling become important. For example, the family unit and the institution of marriage are preferred means of group-living and child-rearing in our society. As a society, we are not neutral. We officially encourage matrimony by giving married couples favorable tax treatment; but we do not compel people to get married. If it should become public policy to try to reduce the birth rate, it is unlikely that there will be laws to punish those who exceed the preferred family size, although we may again utilize disincentives through the tax system. Similarly, this Commission believes society should continue actively to discourage people from using marihuana, and any philosophical limitation is relevant to the means employed, not to the goal itself.

FOR THESE REASONS, WE RECOMMEND TO THE PUBLIC AND ITS POLICY-MAKERS A SOCIAL CONTROL POLICY SEEKING TO DISCOURAGE MARIHUANA USE, WHILE CONCENTRATING PRIMARILY ON THE PREVENTION OF HEAVY AND VERY HEAVY USE.

We emphasize that this is a policy for today and the immediate future; we do not presume to suggest that this policy embodies eternal truth. Accordingly, we strongly recommend that our successor policy planners, at an appropriate time in the future, review the following factors to determine whether an altered social policy is in order: the state of public opinion, the extent to which members of the society continue to use the drug, the developing scientific knowledge about

the effects and social impact of use of the drug, and the evolving social attitude toward the place of recreation and leisure in a work-oriented society. In our second Report next year, we will carefully review our findings to see if our perceptions have changed or if society has changed at that time.

Implementing The Discouragement Policy

Choice of this social control policy does not automatically dictate any particular legal implementation. As we noted in Chapter I, there is a disturbing tendency among participants in the marihuana debate to assume that a given statement of the drug's effects, its number of users or its social impact compels a particular statutory scheme.

Law does not operate in a social vacuum, and it is only *one* of the institutional mechanisms which society can utilize to implement its policies. Consequently, the evaluation of alternative legal approaches demands not only logic but also a delicate assessment of the mutual relationship between the law and other institutions of social control, such as the church, the family and the school.

THE ROLE OF LAW IN EFFECTIVE SOCIAL CONTROL

Social control is most effectively guaranteed by the exercise of individual self-discipline. Elementary social psychology teaches us that restraint generated within is infinitely more effective and tenacious than restraint imposed from without.

One of the participants at our "Central Influences" Seminar observed:

> When people grow up into a society, the principal aim is to internalize drives—that is, I assume they come up with certain drives which can be satisfied in many ways and you're trying to internalize ways of satisfying those drives which will be compatible with life in a community and also satisfying to the individual. The external restraints can only complement this, they cannot possibly substitute for it.

The supplemental effect of external restraints, particularly legal restraints, must also be weighed against the nature of the control sought. It was put this way at our Seminar:

> Think of the social welfare function as a mountain—the hill of the Lords really. Large parts of it are something of a plateau; that is you can be all sorts of places on it and be safe. You don't have to maximize. This is an economist's fallacy. You can have all sorts of

variations, you can be Socialists, Capitalists, Mormons, Adventists and get away with it—even Liberals. But there are cliffs, and you can fall off of them. This is what we are worrying about today. We are nervous about these cliffs.

The "no-no's"—as the kids call them—are the fences on these cliffs. That is, we have set up taboos and say there's a cliff there. Now one of the problems socially is that we set up "no-no's" where there are no cliffs. There are no cliffs and people jump over these [fences] and they say, "No cliffs! See no cliffs!" [Then, over other fences—and] chop-chop-chop-crash! See, it's just as dangerous to set up fences without any cliffs as not have fences where there are cliffs.

To this functional consideration of external restraint, we must also add the philosophical faith in the responsible exercise of individual judgment which is the essence of a free society. To illustrate, a preference for individual productivity underlies this society's opposition to indiscriminate drug use; the fact that so few of the 24 million Americans who have tried marihuana use it, or have used it, irresponsibly, testifies to the extent to which they have internalized that value.

The hypothesis that widespread irresponsibility would attend freer availability of marihuana suggests not that a restrictive policy is in order but rather that a basic premise of our free society is in doubt. We note that the escalation thesis, used as an argument *against* marihuana rather than as a tool for understanding individual behavior, is really a manifestation of skepticism about individual vulnerabilities. For example, one-half of the public agreed with the statement that "if marihuana were made legal, it would make drug addicts out of ordinary people."

At the same time, we do feel that the threat of excessive use is most potent with the young. In fact, we think *all* drug use should continue to be discouraged among the young, because of possible adverse effects on psychological development and because of the lesser ability of this part of the population to discriminate between limited and excessive use.

Social policy implementation in this regard is extraordinarily difficult. For example, although existing social policies toward tobacco, alcohol and marihuana alike oppose their use by the young, those policies are far from being fully effective. For example:

Tobacco

The National Survey (1971) indicates that of young people age 12-to-17,

- 50% have smoked at one time or another;
- 15%smoke now; and
- At least 8% smoke at least a half a pack a day.

In a 1970 sample of smoking habits in the 12-to-18 population conducted for the National Clearinghouse for Smoking and Health, it was found that:

- 18.5% of the boys and 11.9% of the girls were regular smokers; and
- About 8% of the boys and 5% of the girls smoked more than a half a pack a day.

Alcohol

The National Survey also ascertained the drinking pattern during the previous month of young people aged 12-to-17, finding that:

- At least 23% had used beer during that month, at least 14% had used wine and at least 12% had used hard liquor; and
- 6% had used beer five or more days during the month, 3% had used wine five or more days, and 3% had used hard liquor five or more days.

Marihuana

Of the 12-to-17 population, the Survey found that:

- 15% of this population had tried marihuana;
- At least 6% still use it; and
- Less than 1% use it once a day or more

The inclination of so many young people to experiment with drugs is a reflection of a so-called successful socialization process on one hand, and of society's ambivalence to the use of drugs on the other. This entire matter will occupy much of our attention in the coming year, but it is essential that we make a few anticipatory comments now.

This nation tries very had to instill in its children independence, curosity and a healthy self-assurance. These qualities guarantee a dynamic, progressive society. Where drugs are concerned, however, we have relied generally on authoritarianism and on obedience. Drug education has generally been characterized by overemphasis of scare tactics. Some segments of the population have been reluctant to inform for fear of arousing curiosity in young minds. Where drugs are concerned, young people are simply supposed to nod and obey.

This society has always been and continues to be ambivalent about the non-medical (in the strict sense) use of drugs. And this ambivalence does not escape our children. If we can come to grips with this issue, we might convince our youth that the curiosity that is encouraged in other aspects of our culture is undesirable where drugs are concerned.

The law is at best a highly imperfect reflection of drug policy. The laws proscribing sale of tobacco to minors are largely ignored. Prohibitions of sale of alcohol to minors are enforced sporadically. As to marihuana, there are areas throughout this nation where possession laws are not enforced at all. In other sections, such proscriptions are strictly enforced, with no apparent decrease in marihuana use.

As a guiding doctrine for parents and children, the law is certainly confusing when it imposes widely varying punishments in different states, and even in different courts of the same state, all for use of the same substance, marihuana. That marihuana use can be treated as a petty offense in one state and a felony in another is illogical and confusing to even the most sincere of parents.

The law is simply too blunt an instrument to manifest the subtle distinctions we draw between the motivations and the circumstances of use. At the same time, legal status carries a certain weight of its own, and other institutions must take account of the law in performing their functions.

In legally implementing our recommended social policy, we seek to maximize the ability of our schools, churches and families to be open and honest in discussing all drugs, including marihuana. The law must assist, not impede. In this respect, we note with concern the counterproductive tendency in our society to seek simple solutions to complex problems. Since the statutory law is a simple tool, the tendency in our society to look to the law for social control is particularly strong.

We have discussed the four basic social policy objectives of elimination, discouragement, neutrality and approval of marihuana use and have selected discouragement of use, with emphasis on prevention of heavy and very heavy use, as our generalized aim. We have considered three legal responses, each with a wide range of alternatives:

1. Total Prohibition.
2. Partial Prohibition.
3. Regulation.

TOTAL PROHIBITION

The distinctive feature of a total prohibition scheme is that all marihuana-related behavior is prohibited by law. Under the total prohibition response now in force in every state and at the federal level, cultivation, importation, sale, gift or other transfer, and possession are all prohibited acts. In 11 states and the District of Columbia, simply being present knowingly in a place where marihuana is present is also prohibited; and many states prohibit the possession of pipes or other smoking paraphernalia. For our purposes, the key feature of the total prohibition approach is that even possession of a small amount in the home for personal use is prohibited by criminal law.

From the very inception of marihuana control legislation, this nation has utilized a policy of a total prohibition, far more comprehensive than the restrictions established during the prohibition of alcohol.

Until recent years, society was operating under an eliminationist policy. The exaggerated beliefs about the drug's effects, social impact, and user population virtually dictated this legal approach. During this entire period, total prohibition was sought through the use of

heavier and heavier penalties until even first-time possession was a felony in every jurisdiction, and second possession offenses generally received a mandatory minimum sentence without parole or probation. Yet the last few years have seen society little by little abandoning the eliminationist policy in favor of a containment policy.

Under the total prohibition umbrella, this containment policy has been implemented by a unique patchwork of legislation, informal prosecutorial policy and judicial practice. Possession is now almost everywhere a misdemeanor. Although some term of incarceration remains as a penalty for possessors, it is generally not meted out to young first offenders or to possessors of small amounts. Instead, most such offenders are dismissed or informally diverted to agencies outside the criminal system by those within the system who are trying to help them avoid the stigma of a criminal record.

Offenders who are processed within the criminal justice system generally receive fines and/or probation. In many jurisdictions, enforcement officials make little or no effort to enforce possession proscriptions, concentrating instead on major trafficking. Possessors are generally arrested only when they are indiscreet or when marihuana is found incident to questioning or apprehension resulting from some other violation. From our surveys, state and federal, we have found that only minimal effort is made to investigate marihuana possession cases.

Such a tendency is a reflection of the adoption of a containment policy. By acting only when marihuana appears above ground, enforcement officials are helping to keep its use underground. The shift away from the elimination policy has been matched by a similar shift in legal implementation, but the distinctive feature of the total prohibition scheme still remains: all marihuana-related behavior, including possession for personal use within the home, is prohibited by criminal law.

Is such a response an appropriate technique for achieving the social control policy we outlined above? The key question for our purposes is whether total criminal prohibition is the most suitable or effective way to discourage use and whether it facilitates or inhibits a concentration on the reduction and treatment of irresponsible use. We are convinced that total prohibition frustrates both of these objectives for the following reasons.

1. Application of the Criminal Law to Private Possession Is Philosophically Inappropriate

With possession and use of marihuana, we are dealing with a form of behavior which occurs generally in private where a person possesses the drug for his own use. The social impact of this conduct is indirect, arising primarily in cases of heavy or otherwise irresponsible use and

from the drug's symbolic aspects. We do not take the absolutist position that society is philosophically forbidden from criminalizing any kind of "private" behavior. The phrase "victimless crimes," like "public health hazard," has become a rhetorical excuse for avoiding basic social policy issues. We have chosen a discouragement policy on the basis of our evaluation of the actual and potential individual and social impact of marihuana use. Only now that we have done so can we accord appropriate weight to the nation's philosophical preference for individual privacy.

On the basis of this evaluation we believe that the criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance.

2. Application of the Criminal Law Is Constitutionally Suspect

The preference for individual privacy reflected in the debate over the philosophical limitations on the criminal law is also manifested in our constitutional jurisprudence. Although no court, to our knowledge, has held that government may not prohibit private possession of marihuana, two overlapping constitutional traditions do have important public policy implications in this area.

The first revolves around the concept that in a free society, the legislature may act only for public purposes. The "police powers" of the states extend only to the "public health, safety and morals." In the period of our history when the people most feared interference with their rights by the government, it was generally accepted that this broad power had an inherent limitation. For example, early prohibitions of alcohol possession were declared unconstitutional on the basis of reasoning such as that employed by the Supreme Court of Kentucky in 1915 in the case of *Commonwealth v. Campbell:*

> It is not within the competency of government to invade the privacy of the citizen's life and to regulate his conduct in matters in which he alone is concerned, or to prohibit him any liberty the exercise of which will not directly injure society.

Noting that the defendant was "not charged with having the liquor in his possession for the purpose of selling it, or even giving it to another," and that "ownership and possession cannot be denied when that ownership and possession is not in itself injurious to the public," the Kentucky court concluded that:

> The right to use liquor for one's own comfort, if they use it without direct injury to the public, is one of the citizen's natural and in-

alienable rights. . . . We hold that the police power—vague and wide and undefined as it is—has limits. . . .

Even the perceived dangers of opium were not enough to convince some members of the judiciary that the government could prohibit possession. It is historically instructive to consider these words, penned in 1890, by Judge Scott in *Ah Lim v Territory:*

I make no question but that the habit of smoking opium may be repulsive and degrading. That its effect would be to shatter the nerves and destroy the intellect; and that it may tend to the increase of the pauperism and crime. But there is a vast difference between the commission of a single act, and a confirmed habit. There is a distinction to be recognized between the use and abuse of any article or substance. . . . If this act must be held valid it is hard to conceive of any legislative action affecting the personal conduct, or privileges of the individual citizen, that must not be upheld. . . . The prohibited act cannot affect the public in any way except through the primary personal injury to the individual, if it occasions him any injury. It looks like a new and extreme step under our government in the field of legislation, if it really was passed for any of the purposes upon which that character of legislation can be sustained, if at all.

As a matter of constitutional history, a second tradition, the application of specific provisions in the Bill of Rights, has generally replaced the notion of "inherent" limitations. The ultimate effect is virtually the same, however. The Fourth Amendment's proscription of "unreasonable searches and seizures" reflects a constitutional commitment to the value of individual privacy. The importance of the Fourth Amendment to the entire constitutional scheme was eloquently described by Justice Brandeis in 1928 in the case of *Olmstead v U.S.:*

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

Although the Fourth Amendment is itself a procedural protection, the value of privacy which it crystallizes is often read in conjunction with other important values to set substantive limits on legislative power. The Supreme Court, in the case of *Griswold v. Connecticut*, held in 1965 that Connecticut could not constitutionally prohibit the

use of birth control devices by married persons. Although the Justices did not agree completely on the reasons for their decision, Justice Douglas stated in the opinion of the Court:

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means of having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedom." (citation omitted) Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

Four years later, the Supreme Court, in *Stanley v. Georgia*, held that even though obscenity is not "speech" protected by the First Amendment, a state cannot constitutionally make private possession of obscene material a crime. The Court's reasoning is revealed in the following language:

> [The] right to receive information and ideas, regardless of their social worth, (citation omitted), is fundamental to our free society. Moreover, in the context of this case—a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy . . .

While the judiciary is the governmental institution most directly concerned with the protection of individual liberties, all policy-makers have a responsbility to consider our constitutional heritage when framing public policy. Regardless of whether or not the courts would overturn a prohibition of possession of marihuana for personal use in the home, we are necessarily influenced by the high place traditionally occupied by the value of privacy in our constitutional scheme.

Accordingly, we believe that government must show a compelling reason to justify invasion of the home in order to prevent personal use of marihuana. We find little in marihuana's effects or in its social impact to support such a determination. Legislators enacting Prohibition did not find such a compelling reason 40 years ago; and we do not find the situation any more compelling for marihuana today.

3. Total Prohibition Is Functionally Inappropriate

Apart from the philosophical and constitutional constraints outlined above, a total prohibition scheme carries with it significant institutional costs. Yet it contributes very little to the achievement of our social policy. In some ways it actually inhibits the success of that policy.

The primary goals of a prudent marihuana social control policy include preventing irresponsible use of the drug, attending to the consequences of such use, and deemphasizing use in general. Yet an absolute prohibition of possession and use inhibits the ability of other institutions to contribute actively to these objectives. For example, the possibility of criminal prosecution deters users who are experiencing medical problems from seeking assistance for fear of bring attention to themselves. In addition, the illegality of possession and use creates difficulties in achieving an open, honest educational program, both in the schools and in the home.

In terms of the social policy objective of discouraging use of the drug, the legal system can assist that objective in three ways: first, by deterring people from use; second, by symbolizing social opposition to use; and finally, by cutting off supply of the drug.

The present illegal status of possession has not discouraged an estimated 24 million people from trying marihuana or an estimated eight million from continuing to use it. Our survey of the country's state prosecuting attorneys shows that 53% of them do not believe that the law has more than a minimal deterrent effect in this regard. Moreover, if the present trend toward passive enforcement of the marihuana law continues, the law ultimately will deter only indiscreet use, a result achieved as well by a partial prohibition scheme and with a great deal more honesty and fairness.

A major attraction of the law has been its symbolic value. Yet, society can symbolize its desire to discourage marihuana use in many other, less restrictive ways. The warning labels on cigarette packages serve this purpose, illustrating that even a regulatory scheme could serve a discouragement policy. During Prohibition, the chosen statutory implementation symbolized society's opposition to the use of intoxicating beverages; yet, most jurisdictions did not think it necessary to superimpose a proscription of possession for personal use in the home.

Finally, prohibiting possession for personal use has no substantive relation to interdicting supply. A possession penalty may make enforcement of proscriptions against sale a little easier, but we believe this benefit is of minimal importance in light of its costs.

The law enforcement goal repeatedly stated at both the federal and state levels has been the elimination of supply and the interdiction of trafficking. These avowed aims of law enforcement make sense,

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since they are the most profitable means of employing its manpower and resources in this area.

Indeed, the time consumed in arresting possessors is inefficiently used when contrasted with an equal amount of time invested in apprehending major dealers. Although a credible effort to eliminate supply requires prohibitions of importation, sale and possession-with-intent-to-sell, the enforcement of a proscription of possession for personal use is minimally productive.

As noted, most law enforcement officials, district attorneys and judges recognize the ineffectiveness of the possession penalty as a deterrent. Its perpetuation results in the making of what is commonly referred to as "cheap" cases that have little or no impact on deterring sale.

The marihuana supply system can be viewed as a pyramid with the major bulk of marihuana entering the system at the top of the pyramid and then descending to the base which represents the user population. Common sense dictates where law enforcement should devote its efforts. To remove the profit from the traffic requires arresting sellers, not users. The oft-heard argument that the police need possession penalties to compel users to reveal their sources is not convincing. "Turning informants" at the base of the pyramid is of marginal value and limited utility in reaching upwards toward the apex. Further, the National Survey showed that 60% of the users don't "buy" marihuana but get it from a friend. The volume of traffic in the drug at these levels is at best minimal.

In short, personal possession arrests and even casual sales, which now account for more than 95% of the marihuana arrests at the state and local level, occur too low in the chain of distribution to diminish the supply very effectively.

In addition to the misallocation of enforcement resources, another consequence of prohibition against possession for personal use is the social cost of criminalizing large numbers of users. Our empirical study of enforcement of state and federal marihuana laws indicates that almost all of those arrested are between the ages of 18 and 25, most have jobs or are in school, and most have had no prior contact with the criminal justice system. The high social cost of stigmatizing such persons as criminals is now generally acknowledged by the public at large as well as by those in the criminal justice system.

According to the National Survey, 53% of the public was unwilling to give young users a criminal record and 87% objected to putting them in jail. The nation's judges expressed an overwhelming disinclination to sentence and convict users for marihuana possession. Of these judges only 13% thought it was appropriate to incarcerate an adult for possession and only 4% would jail a juvenile for marihuana possession. This disinclination is reflected in the low percentage of

arrested users who are convicted, and the even lower percentage who are jailed.

Even among the nation's prosecutors, a substantial majority favor the present trend toward avoiding incarceration for first offenders. Most jurisdictions have devised informal procedures for disposing of cases in lieu of prosecution. Our empirical study shows that 48% of the adult cases, and 70% of the juvenile cases, were dropped from the system at some point between arrest and conviction. The picture displayed is one of a large expenditure of police manpower to enforce a law most participants further along the line are not anxious to apply.

Other disturbing consequences of laws proscribing possession for personal use are the techniques required to enforce them. Possession of marihuana is generally a private behavior; in order to find it, the police many times must operate on the edge of constitutional limitations. Arrests without probable cause, illegal searches and selective enforcement occur often enough to arouse concern about the integrity of the criminal process.

Yet another consequence of marihuana possession laws is the clogging of judicial calendars. President Nixon has noted that one of the major impediments to our nation's efforts to combat serious crimes is the fact that the judicial machinery moves so slowly. Swift arrests, prosecution, trial and sentence would significantly improve the deterrent effect of law. Yet the judicial system is overloaded with petty cases, with public drunkenness accounting for about 50% of all non-traffic offenses.

In his March 1971 address to the National Conference on the Judiciary, President Nixon said:

> What can be done to break the logjam of justice today, to ensure the right to a speedy trial—and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkenness.

To this list we would add marihuana possession, which accounts for a rising percentage of judicial caseloads. In Chicago alone, during the last half of 1970, there were more than 4,000 possession arrests.

A final cost of the possession laws is the disrespect which the laws and their enforcement engender in the young. Our youth cannot understand why society chooses to criminalize a behavior with so little visible ill-effect or adverse social impact, particularly when so many members of the law enforcement community also question the same laws. These young people have jumped the fence and found no cliff. And the disrespect for the possession laws fosters a disrespect for all law and the system in general.

On top of all this is the distinct impression among the youth that some police may use the marihuana laws to arrest people they don't like for other reasons, whether it be their politics, their hair style or their ethnic background. Whether or not such selectivity actually exists, it is perceived to exist.

For all these reasons, we believe that the possession offense is of little functional benefit to the discouragement policy and carries heavy social costs, not the least of which is disrespect and cynicism among some of the young. Accordingly, even under our policy of discouraging marihuana use, the better method is persuasion rather than prosecution. Additionally, with the sale and use of more hazardous drugs on the increase, and crimes of violence escalating, we do not believe that the criminal justice system can afford the time and the costs of implementing the marihuana possession laws. Since these laws are not mandatory in terms of achieving the discouragement policy, law enforcement should be allowed to do the job it is best able to do: handling supply and distribution.

A criminal fine or similar penalty for possession has been suggested as a means of alleviating some of the more glaring costs of a total prohibitory approach yet still retaining the symbolic disapproval of the criminal law. However, most of the objections raised above would still pertain: the possibilities of invasion of personal privacy and selective enforcement of the law would continue; possessors would still be stigmatized as criminals, incurring the economic and social consequences of involvement with the criminal law; the symbolic status of marihuana smoking as an anti-establishment act would be perpetuated.

On the other hand, a fine most likely would deter use no more than does the present possibility of incarceration. It would continue to impede treatment for heavy and very heavy use and would persist in directing law enforcement away from the policy's essential aim which is to halt illegal traffic in the drug.

For all these reasons, we reject the total prohibition approach and its variations.

REGULATION

Another general technique for implementing the recommended social policy is regulation. The distinguishing feature of this technique is that it institutionalizes the availability of the drug. By establishing a legitimate channel of supply and distribution, society can theoretically control the quality and potency of the product. The major alternatives within this approach lie in the variety of restraints which can be imposed on consumption of the drug and on the informational requirements to which its distribution can be subject.

We have given serious consideration to this set of alternatives; however, we are unanimously of the opinion that such a scheme, no

matter how tightly it might restrict consumption, is presently unacceptable.

1. Adoption of a Regulatory Scheme at this Time Would Inevitably Signify Approval of Use

In rejecting the total prohibition approach, we emphasized the symbolic aspects. In essence, we do not believe prohibition of possession for personal use is necessary to symbolize a social policy disapproving the use. Theoretically, a tightly controlled regulatory scheme, with limited distribution outlets, significant restraints on consumption, prohibition of advertising and compulsory labeling, could possibly symbolize such disapproval. Our regulatory policy toward tobacco is beginning slowly to reflect a disapproval policy toward cigarette smoking. Nonetheless, given the social and historical context of such a major shift in legal policy toward marihuana, we are certain that such a change would instead symbolize approval of use, or at least a position of neutrality.

The Commission is concerned that even neutrality toward use as a matter of policy could invest an otherwise transient phenomenon with the status of an accepted behavior. If marihuana smoking were an already ingrained part of our culture, this objection would be dispelled. However, we do not believe that this is the case. We are inclined to believe, instead, that the present interest in marihuana is transient and will diminish in time of its own accord once the major symbolic aspects of use are deemphasized, leaving among our population only a relatively small coterie of users. With this possibility in mind, we are hesitant to adopt either a policy of neutrality or a regulatory implementation of our discouragement policy. The law would inevitably lose its discouragement character and would become even more ambiguous in its rationale and its enforcement.

The effect of changing a social policy direction may be seen with tobacco policy. In recent years, society has ostensibly adopted a policy of discouraging cigarette smoking. This new policy has been implemented primarily in the information area through prohibition of some forms of advertising and through compulsory labeling. Yet, the volume of cigarettes used increased last year. We believe that the failure of the new policy results from the fact that it supplants one that formerly approved use. This set of circumstances argues against any policy which would be regarded as approval of use, including a regulatory scheme. It is always extremely difficult to transform a previously acceptable behavior into a disapproved behavior.

2. Adoption of a Regulatory Scheme Might Generate a Significant Public Health Problem

We noted above that institutionalizing availability of the drug would inevitably increase the incidence of use, even though that in-

cidence might otherwise decrease. Of greater concern is the prospect that a larger incidence of use would result in a larger incidence of long-term heavy and very heavy use of potent preparations.

There are now approximately 500,000 heavy users of less potent preparations in this country, representing about 2% of those who ever tried the drug. Even if the prevalence of heavy use remained the same in relation to those who ever used, this at-risk population would inevitably increase under a regulatory scheme. If the emotional disturbances found in very heavy hashish users in other countries were to occur in this country, the adverse social impact of marihuana use, now slight, would increase substantially.

We have acknowledged that society, nonetheless, chose to run such a risk in 1933, when Prohibition was repealed. But alcohol use was already well-established in this society, and no alternative remained other than a regulatory approach. In light of our suspicion that interest in marihuana is largely transient, it would be imprudent to run that risk for marihuana today.

3. Adoption of a Regulatory Scheme Would Exacerbate Social Conflict and Frustrate a Deemphasis Policy

A significant segment of the public on both sides of the issue views marihuana and its "legalization" in a highly symbolic way. Any attempt to adopt a regulatory approach now would be counterproductive in this respect. The collision of values resulting from such a dramatic shift of policy would maintain the debate at a highly emotional level and would perpetuate the tendency to perceive marihuana use as a symbol of the struggle between two conflicting philosophies.

4. Not Enough Is Known About Regulatory Models In This Area

Advocates of legalization of marihuana are often inclined to propose a licensing scheme or an "alcohol model" without offering a specific program of regulation taking all the variables into account. Responsible policy planning cannot be so cursory. Consequently, we have given serious study to the many issues presented by such a scheme and to the nation's experience with other drug licensing schemes. On the basis of our inquiry, we are convinced that such a step should not be taken unless a realistic assessment of the efficacy of existing schemes and their potential application to marihuana indicates it would be successful. Such an assessment raises a number of disturbing questions.

The regulatory approaches which this nation has used in the cases of alcohol and tobacco have failed to accomplish two of their most important objectives: the minimization of excessive use and the limitation of accessibility to the young. Despite the warning and restraints on distribution and consumption, more than 50 million

Americans smoke cigarettes regularly, and more than nine million Americans are "problem" drinkers. We have previously cited data indicating how many of our children begin habits which have been legally forbidden to them. Since the young user and the chronic user of marihuana are of primary concern to our public health officials, the lack of success with alcohol and tobacco discourages an assumption that the regulation of supply would minimize use by the younger generation.

Another important purpose of a regulatory scheme is to channel the product through a controlled system of supply and distribution. In that way the quality and quantity of the substance can be regulated. The efficacy of such a scheme as applied to marihuana is questionable.

Cannabis can be grown easily almost anywhere in the United States with little or no human assistance. Even if a legitimate source of supply were established, it is likely that many persons would choose to ignore the legitimate source and grow their own, the purity of which would not be in question. If such a practice were illegal, the necessity for a concerted governmental eradication program is raised, which would involve a monumental law enforcement effort. According to the U.S. Department of Agriculture, there are presently an estimated five million acres of wild marihuana growing in this country and an undetermined number of acres under cultivation.

Yet, if such a practice were not forbidden, the revenue-raising, product-control and consumption-restriction features of a regulatory scheme would be threatened. Instructive to note is the fact that intensive regulation of alcoholic beverage production has not eliminated illicit production. During 1970, in fact, 5,228 illegal stills were destroyed by the Alcohol, Tobacco and Firearms Division of the U.S. Treasury and 5,279 persons were arrested. In 1971, 3,327 illegal stills were destroyed and 5,512 persons were arrested.

Another disturbing question is raised by the issue of potency regulation. Most advocates of legalization stipulate potency limitations as one feature of their scheme. Presumably they would limit the THC content of the regulated product. This is not an easy undertaking. Especially when cannabis is so easily grown and a black market is so easily created, we are dubious about the success of a regulatory scheme distributing only a product with low THC content. Again, attention must be paid the prospect of increased hashish use under a regulatory scheme; merely stipulating potency control is not sufficient. As we noted in Chapter II, the heavy, long-term use of hashish is a source of major concern to the Commission from both private and public health standpoints.

These are a few of the problems confronting the policy-maker if he seeks to devise an effective regulatory system of distribution for what is, in fact, a universally common plant. Our doubts about the efficacy

of existing regulatory schemes, together with an uncertainty about the permanence of social interest in marihuana and the approval inevitably implied by adoption of such a scheme, all impel us to reject the regulatory approach as an appropriate implementation of a discouragement policy at the present time.

Future policy planners might well come to a different conclusion if further study of existing schemes suggests a feasible model; if responsible use of the drug does indeed take root in our society; if continuing scientific and medical research uncovers no long-term ill-effects; if potency control appears feasible; and if the passage of time and the adoption of a rational social policy sufficiently desymbolizes marihuana so that availability is not equated in the public mind with approval.

PARTIAL PROHIBITION

The total prohibition scheme was rejected primarily because no sufficiently compelling social reason, predicated on existing knowledge, justifies intrusion by the criminal justice system into the private lives of individuals who use marihuana. The Commission is of the unanimous opinion that marihuana use is not such a grave problem that individuals who smoke marihuana, and possess it for that purpose, should be subject to criminal procedures. On the other hand, we have also rejected the regulatory or legalization scheme because it would institutionalize availability of a drug which has uncertain long-term effects and which may be of transient social interest.

Instead we recommend a partial prohibition scheme which we feel has the following benefits:

- Symbolizing a continuing societal discouragement of use;
- Facilitating the deemphasis of marihuana essential to answering dispassionately so many of the unanswered questions;
- Permitting a simultaneous medical, educational, religious, and parental effort to concentrate on reducing irresponsible use and remedying its consequences;
- Removing the criminal stigma and the threat of incarceration from a widespread behavior (possession for personal use) which does not warrant such treatment;
- Relieving the law enforcement community of the responsibility for enforcing a law of questionable utility, and one which they cannot fully enforce, thereby allowing concentration on drug trafficking and crimes against persons and property;
- Relieving the judicial calendar of a large volume of marihuana possession cases which delay the processing of more serious cases; and
- Maximizing the flexibility of future public responses as new information comes to light.

No major change is required in existing law to achieve all of these benefits. In general, we recommend only a decriminalization of possession of marihuana for personal use on both the state and federal levels. The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially; marihuana would be contraband subject to confiscation in public places; and criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the state level, fines would be imposed for use in public.*

Specifically, we recommend the following statutory schemes.

RECOMMENDATIONS FOR FEDERAL LAW

Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress provided the following scheme with respect to marihuana, by which was meant only the natural plant and its various parts, not the synthetic tetrahydrocannabinol (THC):

- Cultivation, importation and exportation, and sale or distribution for profit of marihuana are all felonies punishable by imprisonment for up to five years for a first offense and by up to 10 years for a second offense (the available penalty is doubled for sale to a minor).
- Possession of marihuana with intent to distribute is a felony punishable by imprisonment for up to five years for the first offense and by up to 10 years for a second offense.
- Possession of marihuana for personal use is a misdemeanor punishable by up to one year in jail and a $1,000 fine for first offense and by up to two years in jail and a $2,000 fine for second offense (expungement of criminal record is available for first offenders).

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*Commissioners Rogers, Congressman from Florida, and Carter, Congressman from Kentucky, agree with the Commission's selection of a discouragement policy and also agree that criminalization and incarceration of individuals for possessing marihuana for their own use is neither necessary nor desirable as a means of implementing that policy.

At the same time, both Commissioners feel that the contraband concept is not a sufficiently strong expression of social disapprobation and would recommend in addition a civil fine for possession of any amount of marihuana in private or in public.

Both Commissioners feel that the civil fine clearly symbolizes societal disapproval and is a simple mechanism for law enforcement authorities to carry out. If a person is found by a law enforcement officer to be in possession of marihuana, the officer would issue such person a summons to appear in court on a fixed day. Although a warrant would not issue for search of a private residence unless there were probable cause to believe a *criminal* offense was being committed, a police officer legitimately present for other reasons could issue a civil summons for violation of the "possession" proscription.

- Transfer of a small amount of marihuana for no remuneration is a misdemeanor punishable by up to one year in jail and a $1,000 fine for first offense and by up to two years in jail and a $2,000 fine for second offense (Congress singled out marihuana in this way to allow misdemeanor treatment of casual transfers and permitted first offender treatment, as allowed for possession for personal use).

The Commission recommends *only* the following changes in federal law:

- POSSESSION OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE, BUT MARIHUANA POSSESSED IN PUBLIC WOULD REMAIN CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.
- CASUAL DISTRIBUTION OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION, OR INSIGNIFICANT REMUNERATION NOT INVOLVING PROFIT WOULD NO LONGER BE AN OFFENSE.

The Commission further recommends that federal law be supplemented to provide:

- A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE, NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.

Commissioners Rogers and Carter believe that the legal system must be utilized directly to discourage *the person* from using marihuana rather than being utilized only indirectly as in the case of contraband.

This civil fine would not be reflected in a police record, nor would it be considered a criminal act for purposes of future job consideration, either in the private sector or for government service.

Agreeing with the other Commissioners that the casual transfers of marihuana for no profit should be treated in the same manner as possession for one's own use, Congressmen Rogers and Carter do not agree that it should extend to transfers involving remuneration. They prefer the limiting language of the Comprehensive Drug Abuse Prevention and Control Act of 1970 which does not include the term "or insignificant remuneration not involving a profit."

Apart from the addition of the civil fine to the contraband recommendation in the respects set out above, Congressmen Carter and Rogers are in complete agreement with the statutory recommendations set out in the Report.

Commissioner Ware concurs completely with the statements made by Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. The policy set forth in this Report, subject to the already noted comments of the two Congressional Commissioners, makes sense for marihuana on the basis of what is known about the drug and in the absence of any conclusive showing which would verify

RECOMMENDATIONS FOR STATE LAW

Under existing state marihuana laws, cultivation, distribution and possession with intent to distribute are generally felonies and in most states possession for personal use is a misdemeanor. The Commission strongly recommends uniformity of state laws and, in this regard, endorses the basic premise of the Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws. The following are our recommendations for a uniform statutory scheme for marihuana, by which we mean, as under existing federal law, only the natural cannabis plant and its various parts, not the synthetic tetrahydrocannabinol (THC):

Existing Law

- CULTIVATION, SALE OR DISTRIBUTION FOR PROFIT AND POSSESSION WITH INTENT TO SELL WOULD REMAIN FELONIES (ALTHOUGH WE DO RECOMMEND UNIFORM PENALTIES).

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some of the anecdotal law enforcement testimony heard by the Commission regarding criminal behavior exhibited while under the influence of marihuana.

Commissioner Ware feels that some penalty short of criminalizing the user, such as a civil fine or some type of intensive drug education, will act as a positive deterrent toward minimizing the incidence of marihuana use especially among the young. Further, he is opposed to the use of *any* drug for the express purpose of getting intoxicated, and includes alcohol within this category. The Commissioner feels that what is needed is an internalizing of discipline among our citizenry, with the legal system assisting this process through the use of disincentives.

Commissioners Hughes, Senator from Iowa, and Javits, Senator from New York, feel that the Commission has taken a major, highly laudable step in recommending that the private use of marihuana be taken out of the criminal justice system. They concur in its threshold judgment that overall social policy regarding this drug should seek to discourage use, while concentrating primarily on the prevention of irresponsible use. They disagree, however, with three specific recommendations relating to the implementation of this discouragement policy.

First, they would eliminate entirely the contraband provision from the partial prohibitory model adopted by the Commission. They want it eliminated first because its legal implications are confusing and the subject of disagreement even among lawyers. Whether or not possession of a given substance is criminal, possession of material designated as contraband makes that possession *unlawful.* Also, marihuana designated as contraband would be subject to government search and seizure, even though the underlying possession is no longer criminal. The provision—which does not apply to marihuana held for personal use within the home—is considered by both Commissioners to be an unnecessary "symbol" of the discouragement policy. It will not foster elimination of the misunderstanding and mistrust which is a hallmark of our current marihuana policy.

Commissioner Hughes and Javits seek to eliminate it also because as a practical matter it serves no useful law enforcement purpose within the overall partial prohibitory model. If marihuana held for personal use within the home is not contraband, why should marihauna held for personal use within one's

Private Activities

- POSSESSION IN PRIVATE OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE.
- DISTRIBUTION IN PRIVATE OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD NO LONGER BE AN OFFENSE.

Public Activities

- POSSESSION IN PUBLIC OF ONE OUNCE OR UNDER OF MARIHUANA WOULD NOT BE AN OFFENSE, BUT THE MARIHUANA WOULD BE CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.
- POSSESSION IN PUBLIC OF MORE THAN ONE OUNCE OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.
- DISTRIBUTION IN PUBLIC OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.
- PUBLIC USE OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.
- DISORDERLY CONDUCT ASSOCIATED WITH PUBLIC USE OF OR INTOXICATION BY MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO 60 DAYS IN JAIL, A FINE OF $100, OR BOTH.

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automobile be contraband? The area of operation of the contraband provision is extremely narrow. If one possesses *more* than one ounce of marihuana in public, it may be seized without regard to the contraband doctrine since such possession is a criminal violation.

Since the contraband provision does not apply to marihuana possession and use in private, the only effective area covered by the contraband provision is the area of possession in public of *less* than one ounce. The Commission has chosen to remove the stigma of the criminal sanction in this kind of case. To impose instead a contraband provision, which it is argued is in the nature of a civil "in rem" seizure which does not operate against the person, is to cloud the issue and to weaken the force of the basic decriminalization. A persuasive justification simply has not been made.

Both Commissioners seek to eliminate it also because they believe that the voice of the Commission should be loud and clear that the preservation of the right of privacy is of paramount importance and cannot be casually jeopardized in the pursuit of some vague public or law enforcement interest which has not been defined and justified with clarity and precision.

The second area of disagreement with the Commission's recommendations concerns the casual distribution of marihuana and the not-for-profit sale. As understood:

- OPERATING A VEHICLE OR DANGEROUS INSTRUMENT WHILE UNDER THE INFLUENCE OF MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN JAIL, A FINE OF UP TO $1,000, OR BOTH, AND SUSPENSION OF A PERMIT TO OPERATE SUCH A VEHICLE OR INSTRUMENT FOR UP TO 180 DAYS.
- A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.
- A PERSON WOULD BE ABSOLUTELY LIABLE IN CIVIL COURT FOR ANY DAMAGE TO PERSON OR PROPERTY WHICH HE CAUSED WHILE UNDER THE INFLUENCE OF THE DRUG.

DISCUSSION OF FEDERAL RECOMMENDATIONS

The recommended federal approach is really a restatement of existing federal policy. From official testimony and record evaluation, we know that the federal law enforcement authorities, principally the Federal Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, do not concentrate their efforts on personal possession cases. The avowed purpose of both Bureaus is to eliminate major traffickers and sources of supply. For the most part, the federal

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(1) The totally donative transfer is not subject to criminal penalty, regardless of where it takes place.

(2) The transfer of *small* amounts for *insignificant* remuneration *not involving a profit* is not subject to criminal penalty (except if it is accomplished in public, in which case it is subject to criminal sanction), but

(3) The transfer of *"large* amounts" for *"significant"* remuneration not involving a profit is subject to criminal penalty.

Footnote 4 on page 158 of the Report, the Commission refers to a Report of The Senate Judiciary Committee on the Comprehensive Drug Abuse Prevention and Control Act of 1970. In substance, it implies that within the meaning of the Act, transfers of more than one or two marihuana cigarettes in return for 50 cents or one dollar to cover cost are not intended to be covered as casual transfers, but rather are to be treated as unlawful sales.

Commissioners Hughes and Javits feel that the Commission has failed to set forth a clear standard which will adequately inform the public of their obligations under the law. The recommendation and its discussion in the Report are confusing and fail to provide the individual with sufficient guidance to allow him to act without having to dodge in and out of illegality. It also undermines a basic, stated objective of the Commission i.e., to concentrate the weight of the criminal sanction upon significant supply and distribution activities, rather than upon casual consumption.

Moreover, proscribing even the most casual not-for-profit transfers when they occur in public is, in their opinion, wrong. Such transfers are necessarily inci-

agencies have left possession enforcement to the states. Underlying this approach is a need to maximize the use of enforcement resources for major priorities and allow the states, in exercising their "police powers," to assume the responsibility for local activities, including possession for personal use.

By withdrawing the criminal sanction from possession for personal use we are, in effect, codifying official policy. In addition, such a scheme follows the model chosen for alcohol in the Volstead Act, and also revives the approach taken by Congress in the Drug Abuse Control Amendments (DACA) of 1965. We are in agreement with the original thrust of DACA, when Congress brought previously uncontrolled drugs, LSD, barbiturates and amphetamines, under control but did not assess criminal penalties for possession for personal use.

Instead, Congress placed on the prosecution the burden of proof that the possession was for purposes of sale. Regardless of whether or not Congress was wise in imposing a penalty in 1968 for possession for personal use, a subject we will consider in our next Report, we think the original DACA concept is enlightened where marihuana is concerned.

At the same time, present federal law classifies marihuana as contraband, and this feature should be maintained. The contraband

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dent to private possession and use. To hold that they should be subject to criminal sanction is logically inconsistent with the Commission's rationale and recommendation on decriminalization of such private activities.

Instead, both Commissioners recommend that all not-for-profit sales be excluded from the criminal sanction. It is fundamental that there be a clear separation between the serious, commercial, profit-making-seller, or "pusher" as he is known, and the individual who merely splits the cost of a reasonable supply of the drug with his friends or acquaintances.

Thirdly, exception is taken to the retention of the criminal sanction on public possession of more than one ounce. The individual who buys an ounce and a half would be a criminal when he buys on the corner, when he puts it in his pocket, when he gets in his car and drives home, when he is on his doorstep, but not when he crosses the threshold of his home. Commission policy should direct the attention of the law enforcement community to the person who sells the drug for profit, and not to the person who uses the drug privately.

If an individual has more than a few ounces in his possession, and there is probable cause to believe that he intends to sell it for profit, that activity is already covered under the Commission's recommendation that possession with intent to sell is illegal. Therefore, there is no need to further proscribe simple public possession.

All the component parts of the recommended policy of the Commission should be consistent with its objective of non-interference with casual transfers and possession and use which is essentially and fundamentally private and personal.

The contraband device, the not-for-profit sale, and public possession of some reasonable amount which should be presumed to be necessarily incident to private use should all be removed from the ambit of legal sanction. To do so would be to strike down "symbols" of a public policy which had never been adequately justified in the first instance. Such steps would in no way jeopardize the firm determination of the Commission that the use of marihuana ought to be discouraged.

concept serves the discouragement policy in two ways: it assists the removal of supply from the market and it symbolizes a continuing societal opposition to use. Accordingly, if a person is found in possession of marihuana in public and the government is unable to prove any intent to sell, it may nevertheless seize the marihuana and confiscate it is contraband.

The contraband provision would apply only to possession in public and would not extend to possession for personal use in the home. During Prohibition, the Federal Government and most of the states employed a similar statutory limitation. For example, the Volstead Act provided that a private dwelling could not be searched "unless it is being used for the unlawful sale of intoxicating liquor. . . ." [1]

The impact of this contraband concept is that marihuana possessed or found in public can be summarily seized by law enforcement officials and forfeited to the state for subsequent destruction.[2] The criminal justice system is not involved in the process. The individual receives no record of any kind; he simply loses the economic value of the marihuana.[3]

With regard to the casual distribution of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit we are following the approach taken in the Comprehensive Drug Abuse Prevention and Control Act of 1970 which in essence treats such casual transfers as the functional equivalent of possession. In doing so, Congress recognized that marihuana is generally

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[1] § 39. *Unlawful possession of liquor or property designed for manufacture thereof; search warrants.* It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this chapter or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in [sections 611 to 631 and 633 of Title 18] and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. (Oct. 28, 1919, c. 85, Title II, § 25. 41 Stat. 315)

[2] The federal and state provisions presently in force regarding the seizure and forfeiture of an automobile transporting marihuana would no longer be applicable. They would still remain in force for other controlled drugs classified as contraband.

[3] See the views of Commissioners Rogers, Carter, Ware, Hughes and Javits expressed in the footnote on pages 151–156.

shared among friends and that not all people who distribute marihuana are "pushers."*

The accuracy of Congress' appraisal is underscored by the National Survey. When people who had used marihuana were asked how they first obtained the drug, 61% of the adults and 76% of the youth responded that it had been given to them. Only 4% of the adults and 8% of the youth said that they had bought it. When asked who their source had been, 67% of the adults and 85% of the youth responded that it had been a friend, acquaintance or family member.

The close association between the concepts of casual transfer and personal possession is also underscored by the fact that 56% of the prosecutors in our survey thought that the present law did not deter casual transfer at all or deterred it only minimally.

With regard to importation and exportation, we recommend no change in existing law and make the following observations. First, the United States must maintain its international standing and, as a member of the community of nations, this country should do everything in its power to restrict the exportation of marihuana to other countries and to penalize such international traffic.

As to importation of marihuana, the most effective way to discourage use is to cut off supply at the top of the pyramid. Recognizing that most of the marihuana consumed in the United States comes from abroad, we feel that the Bureau of Customs at the borders should have all necessary authority to halt and interdict supplies intended for consumption in this country. There has been a long-standing practice of excepting ports and borders from procedural rules applying within the United States. One example is that Customs officials are allowed to search without the showing of probable cause, even though such a

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*In considering this relationship, the Senate, in the Report of the Committee on the Judiciary of the United States Senate regarding S. 3246 (a precursor bill to the new Federal law) stated:

> The language "distributes a small amount of marihuana for no remuneration or insignificant remuneration not involving a profit" as contained in section 501(c)(4) is intended to cover the type of situation where a college student makes a quasi-donative transfer of one or two marihuana cigarettes and receives 50 cents or a dollar in exchange to cover the cost of the marihuana. Transfers of larger quantities in exchange for larger amounts of money, or transfers for profit, are not intended to be covered by this section, but rather are to be covered by section 501(c)(2) which deals with unlawful distribution.

This language sketches a prototype situation which the Committee had in mind; however, the wording of the Federal Act and of our recommendations is not intended to establish inflexible rules. The objective in both provisions is to distinguish between commercial sellers and casual distributors. Ultimately the courts will have the responsibility of drawing this distinction according to the evidence in individual cases. The recommended provision intentionally establishes a loose standard not tied to specific amounts of marihuana or money.

See also the views of Commissioners Rogers, Carter, Ware, Hughes and Javits expressed in the footnote on pages 151–156.

showing is mandatory for searches conducted within the United States. We can see a legitimate reason for continuing this policy.

DISCUSSION OF STATE RECOMMENDATIONS

The states have primary responsibility for enforcing the existing proscriptions against possession for personal use. Their present efforts are designed mainly to keep marihuana use contained and in private. Such an enforcement policy is consistent with our social policy approach, and is an appropriate exercise of the states' obligations to maintain public order. So while we see no need for criminal sanctions against possession for personal use or against casual transfers, we recommend a number of provisions for confining marihuana use to the home.

The first point is that even marihuana possessed for personal use is subject to summary seizure and forfeiture if it is found in public. This concept is now applicable under federal law which we commend also to the states. In our view, the contraband feature symbolizes the discouragement policy and will exert a major force in keeping use private.

Another means of symbolizing the discouragement policy which has been suggested is the imposition of a civil fine on those possessing marihuana outside the home for personal use.* Under such an approach, a fine would be levied and processed outside the criminal justice system. Essentially, possession of marihuana would be the equivalent of a traffic offense in those jurisdictions where such an offense is not criminal.

Such a scheme would accomplish little more than that achieved under a partial prohibition scheme. Warrants would presumably not be issued for searches of private residences, and possession offenses would be detected only by accident or if the offender uses the drug in public. The more direct way to confront such behavior is a penalty against public use.

A further problem with the civil fine approach lies in the area of non-payment of the fine. With traffic tickets, or with civil fines levied against industrial polluters, society can compel compliance by withdrawing its permission to engage in regulated activity. For example, it can revoke the motorists' license to drive or the polluters' license to do business within the state. In short, the state has remedies beyond the criminal law to achieve its policy goal. The same would not be true for the marihuana user and enforceability of the statute would ultimately require court action.

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*See the views of Commissioners Rogers, Carter and Ware expressed in the footnote on pages 151–153.

As we have suggested, a central feature of our statutory approach at the state level would be a vigorously enforced prohibition of public use. No intoxicant should be used in public, both because it may offend others and because the user is risking irresponsible behavior if he should be under its influence in public. Moreover, where marihuana is concerned, continuing societal disapproval requires that the behavior occur only in private if at all. Public use, under the proposed scheme, would therefore be punishable by a fine of $100.

We also recognize the need for some prophylactic measure for anticipating distribution, even though there may be no intent to sell for profit. To this end, and in order to deter public use, possession and transfer, we have drawn a line at one ounce of marihuana. Possession in public of more than this amount would be punishable by a fine of $100.

For these same reasons, we believe the states should prohibit all transfers outside the home, whether or not for remuneration. A transfer for profit would be a felony, as under present law. A casual transfer of a small amount would be punishable by a fine of $100.

Taken together, the contraband feature, the proscriptions of public use and public possession of more than an ounce (even if for personal use) and the prohibition of public transfers will reflect the discouragement policy underlying the entire scheme.

The remaining set of recommendations aims at irresponsible behavior under the influence of marihuana. Whatever the precise legal scheme employed, these provisions should be included.

First, the "drunk and disorderly" statutes presently in force in the states are useful tools for maintaining public order. We would suggest similar statutes in the case of marihuana, punishing offenders by up to 60 days in jail, a fine of $100, or both. Law enforcement authorities must have a means to halt antisocial behavior exhibited incidental to marihuana use.

The second aspect of irresponsible behavior is the operation of automobiles, other vehicles, or any potentially dangerous instrument while under the influence of marihuana. Such behavior is gross negligence in itself, risking harm to others unnecessarily. In addition to penalizing a person who "drives under the influence" as a serious misdemeanant, we would impose absolute civil liability on anyone who harms the person or property of another while under the influence of marihuana.

Finally, no one should be able to limit his criminal accountability by alleging that he was under the influence of marihuana at the time of the crime. Under both federal and state law, the defendant should not be able to negate the mental element of "specific intent," which some offenses carry, by pleading that he was under the influence of marihuana and was therefore unable to have formed such an intent. Unlike many users of heroin, the user of marihuana is not physically de-

pendent on the drug. The use of the drug is usually a matter of choice. Although we believe on the basis of available evidence that there is no causal connection between marihauna use and crime, we would under no circumstances allow a person to escape the consequences of his actions by hiding behind the cloak of marihuana use.

DISCUSSION OF POTENTIAL OBJECTIONS

Having discussed our recommended scheme at the federal and state levels, we think it useful to answer some objections we anticipate will be raised. Possible objections are:

1. Partial prohibition is not a sufficient reflection of the discouragement policy.
2. Partial prohibition is logically inconsistent.
3. A possession penalty is necessary for effective enforcement of sale proscriptions.
4. Partial prohibition won't "work" for marihuana any more than it did for alcohol.
5. A possession offense is essential as a device for detecting problem users.
6. Retention of a possession offense is required by our international obligations.
7. A firm distinction should be drawn between less potent and more potent preparations.

1. The Partial Prohibition Approach Is a Sufficient Reflection of the Discouragement Policy

To those who would argue that a criminal sanction against use is a necessary implementation of an abstentionist policy, we need only respond that this country has not generally operated on that assumption. We would be astounded if any person who lived during the 1920's was not aware of a definite governmental policy opposed to the use of alcohol. Yet, *only five states prohibited possession for personal use during Prohibition.* The failure of the 18th Amendment, the Volstead Act and 43 state prohibition acts to criminalize private possession certainly did not signify official approval of or neutrality toward alcohol use.

As we pointed out in Chapter I, our nation has not generally seen fit to criminalize private drug-related behavior; only in the narcotics area was possession made a crime and marihuana was brought within the narcotics framework because of unfounded assumptions about its ill effects. We think it is time to correct that mistaken departure from tradition with respect to marihuana. As during Prohibition, the drug will remain contraband, and its distribution will be prohibited.

Even as late as 1965, an abstentionist drug policy was not thought to require prohibition for personal use. At that time, Congress enacted the Drug Abuse Control Amendments, bringing LSD, amphetamines and barbiturates under federal control. National policy was clearly opposed to use of the hallucinogens and the non-prescription use of amphetamines and barbiturates, yet Congress did not impose a penalty for possession. Whether or not Congress' subsequent decision in 1968, to impose such a penalty was appropriate is an issue we will cover in our next Report after analyzing the individual drugs controlled. The important point now is that such a penalty is not a necessary feature of a discouragement policy for marihuana, regardless of its propriety for other drugs.

2. The Partial Prohibition Approach Is Not Logically Inconsistent

It will be argued that a law which permits a person to acquire and use marihuana but does not permit anyone to sell it to him for profit is logically unsound. We do not agree. If we had recommended a social policy of approval or neutrality toward use, partial prohibition would indeed have been illogical. However, under a discouragement policy, such a scheme is perfectly consistent.

Under partial prohibition, use is discouraged in three main ways. First, law enforcement authorities will make a concerted effort to reduce the supply of the drug. If a person wishes to use marihuana, he will have to seek out a person to sell it to him; and if his seller is in the business of distributing marihuana for profit, the seller is violating the law.

Second, the user will have to confine his disapproved behavior to the home. If he uses the drug in public, he has committed an offense; if he possesses it in public, it may be summarily seized as contraband.

Third, continuing efforts will be made by educators, public health officials, and official government spokesmen to discourage use. Realizing that educational efforts are not always successful, we would hope for a sound program. In any event, the law should be an ancillary rather than a focal consideration.

There is nothing theoretically inconsistent about a scheme which merely withdraws the criminal sanction from a behavior which is not immoral but which is disapproved. The individual is being allowed to make his own choice. Hopefully, he will choose not to use marihuana. If he chooses to do so, however, he will have to do so discreetly and in private. Apart from its ultimate possession by the user, however, all marihuana-related activity is prohibited. The drug is contraband from its initial growth, through its harvest and distribution. It ceases to be contraband only when possessed and used in the home.

3. Prohibition of All Possession Is Not Essential to Prohibition of Sale

The other side of the "inconsistency" objection is the argument by law enforcement officials that they cannot adequately enforce proscriptions against sale without a possession penalty. We disagree. We have already explained that enforcement of a possession offense to some extent *impedes* the effort to reduce supply. Possession cases are generally regarded in the law enforcement community and by judges and prosecutors as "cheap" cases. Few seriously contend that prosecution of possessors reduces supply.

Some persons argue in response that the law should remain on the books as a tool not against the possessor but against the seller. They say that a possession offense is helpful in three ways. First, a prosecution can be used as a bargaining tool to encourage the possessor to reveal his source; this is called "turning an informant." Second, the police may know that a person is a seller, but may not be able to prove either sale or intent to sell, so they can at least charge such suspected sellers with simple possession.

Third, a corollary of the second argument is that the possession offense provides a useful tool in the "plea bargaining" process. That is, a seller may plead guilty to the lesser offense of possession, now generally a misdemeanor, instead of running the risk of trial and conviction of the more serious offense of sale, generally a felony. The prosecution may accept such a "bargain' if it is uncertain of the strength of the case, to avoid delay in sentencing, to reduce judicial backlog or in return for information from the defendant.

From an institutional standpoint, we do not find these arguments persuasive. First, if a possession offense is on the books, possession is a criminal activity. We oppose criminalizing conduct when its purpose and intent is directed not toward that conduct but toward another behavior.

In answer to the informant argument, the marihuana user (and this may not be true of other drugs) is simply too low in the distributional chain to help very much. As indicated earlier, the National Survey shows most users receive their marihuana from their friends or acquaintances either as a gift or at cost. Rarely is the time spent on him or on his "source" a fruitful allocation of the law enforcement official's time. Also, it is institutionally improper to hold the criminal sanction over a person to force him to talk, when we otherwise would be unwilling to use that sanction.

As to the "lack of proof" and "plea bargaining" arguments, we believe they challenge a fundamental tenet of our criminal justice system. That is, under our law, a person is not guilty just because the police think he is guilty; his offense must be proven beyond a reasonable doubt to a judge or jury. If a possession offense were not

on the books, the police would have to gather enough evidence to convict the seller of sale or of possession with intent to sell, and the prosecution would have to convince the judge beyond a reasonable doubt. The defendant, suspected seller or not, is entitled to due process of law.

The "lack of proof" argument is nothing more than a plea for an "easy out" when the police do not have enough evidence. This simply represents an admission that law enforcement officials want a possession offense which they can apply selectively, to people whom they think, but cannot prove, are sellers. Such a notion is inconsistent with the basic premise of our system of equal treatment under the law. If "simple" possession is not an offense for some, it is not an offense for all. A "known seller" is entitled to the same rights as anyone else: criminal conduct must be proved beyond a reasonable doubt. We do not favor coddling criminals. We do insist, as did the framers of the Constitution, that suspected criminal behavior be proved.

4. That Partial Prohibition Did Not "Work" For Alcohol Doesn't Mean It Won't For Marihuana

Prohibition failed to achieve its avowed purpose of eliminating the use of intoxicating liquors from American life. Risking an oversimplification, we think two reasons were essentially responsible for this failure: the unwillingness of a substantial minority, and probably a majority, of the American public to discard a habit deeply ingrained in their lives; and the inability of the law enforcement community to eliminate the bootlegging traffic which catered to this continuing demand.

As we have repeatedly noted, one of the reasons for adoption of a partial prohibition approach is uncertainty about the extent to which marihuana use is ingrained in American culture. Indeed, adoption of partial prohibition is the best way to find out for sure. If the social interest turns out to be only transient, this policy will prove particularly appropriate.

Similarly, an increase in marihuana use may be prevented by a concerted effort to eliminate major trafficking, the scope of which is presently only a small fraction of Prohibition bootlegging. We do not pretend that supply of a plant so easily grown can be eliminated. However, an intensive effort to eliminate commercial criminal enterprise should have some impact on the extent of use.

5. The Possession Offense Is Not Required as a Detection Device

In addition to their deterrent and symbolic functions, the drug possession laws serve a third function not shared by most other criminal laws. Like laws against public drunkenness, they facilitate societal detection of drug-dependent persons. Ideally, such persons, although

apprehended by law enforcement authorities, may be detained for purposes of treatment and rehabilitation.

Whatever the merits of such an argument for the opiates and alcohol, such an argument does not apply to marihuana. Only a very small percentage of marihuana users are drug-dependent or are in need of treatment. Their dependence is generally upon multiple drug use, not on marihuana. In any event, the existence of such a small population does not justify retention of the possession offense as a detection device.

6. International Obligations Do Not Require Maintenance of a Possession Penalty

Some have raised the possibility that removal of simple possession criminal penalties would contravene this country's obligations under the Single Convention on Narcotic Drugs (1961), to which it became a signatory in March, 1967. We do not believe the provisions of that Convention compel the criminalization of possession for personal use.

Nowhere in the Convention are its Parties expressly required to impose criminal sanctions on possession for personal use. Article 4 requires Parties to "take such legislative and administrative measures as may be necessary . . . . to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs." Penal sanctions are not necessarily included in this formulation.

Article 36, which deals specifically with penal provisions, requires each party to adopt "such measures as will ensure" that the listed activities, including possession, "shall be punishable offenses." Some have argued that this provision requires prohibition of personal use.

However, from a comprehensive study of the history of the Convention, the Commission has concluded that the word "possession" in Article 36 refers not to possession for personal use, but to possession as a link in illicit trafficking. This interpretation is bolstered also by the failure to include "use" in Article 36 even though it has been included in Article 4.

Finally, we must consider Article 33, which provides that "the Parties shall not permit the possession of drugs except under legal authority." This Article also does not require the imposition of any sanctions on possession for personal use. Experts consulted by the Commission have indicated that this Article may, nevertheless, require that the Parties to limit possession and use to medical and scientific purposes. To affirmatively allow drugs to remain in the possession of persons for non-medical use would in this view contravene Articles 4 and 33 to read together. From this perspective our international obligations may require the classification of marihuana as contraband. For this reason, together with a desire to symbolize our dis-

couragement policy in a clear way, we have included the contraband feature in our legal implementation scheme.

In conclusion, our reading of the Convention is that a Party may legitimately decide to deal with non-medical use and possession of marihuana through an educational program and similar approaches designed to discourage use.

7. No Potency Distinction is Necessary at the Present Time

Following the approach taken in the Comprehensive Drug Abuse Prevention and Control Act of 1970, we have drawn a line between the natural cannabis plant and the synthetic tetrahydrocannabinols. "Marihuana" is defined as any and all parts of the natural plant. That we choose this approach for purposes of statutory implementation does not mean that we are unaware of the difference between the less potent and more potent preparations of the natural plant.

As noted in Chapters II and III, the highest risk of cannabis use to the individual and society arises from the very long-term, very heavy use of potent preparations commonly called hashish. No such pattern of use is known to exist in the United States today.

The predominant pattern of use in the United States is experimental or intermittent use of less potent preparations of the drug. Even when hashish is used, the predominant pattern remains the same. In addition, whatever the potency of the drug used, individuals tend to smoke only the amount necessary to achieve the desired drug effect.

Given the prevailing patterns of use, the Commission does not believe it is essential to distinguish by statute between less potent and more potent forms of the natural plant. Reinforcing this judgment are the procedural and practical problems attending an effort to do so.

If the criminal liability of an individual user is dependent on the THC content of the substance, neither he nor the arresting officer will know whether he has committed a crime until an accurate scientific determination is made. Even if such accurate determinations were feasible on a large scale, which is not now the case, such after-the-fact liability is foreign to our criminal laws.

Under present circumstances, then, a statutory line based on potency is neither necessary nor feasible. We emphasize also that any legal distinction is an artificial reflection of the Commission's major concern: the heavy use of the drug over a long term. The most emphatic element of official policy should be to discourage such use, especially of the more potent preparations. Unfortunately precise legislative formulations regarding the amount of the drug presumed to be for personal use do not assist this effort at all. Whether it is lawful to possess one ounce of hashish or a proportionate amount based on potency (for example, one-fourth ounce), an individual prone to use the drug heavily will do so. Society's resources should be committed to the

task of reducing supply of the drug and persuading our citizens not to use it. Expenditure of police time and financial resources in an attempt to ascertain the THC content of every seized substance would make little, if any, contribution to this effort.

A Final Comment

In this Chapter, we have carefully considered the spectrum of social and legal policy alternatives. On the basis of our findings, discussed in previous Chapters, we have concluded that society should seek to discourage use, while concentrating its attention on the prevention and treatment of heavy and very heavy use. The Commission feels that the criminalization of possession of marihuana for personal use is socially self-defeating as a means of achieving this objective. We have attempted to balance individual freedom on one hand and the obligation of the state to consider the wider social good on the other. We believe our recommended scheme will permit society to exercise its control and influence in ways most useful and efficient, meanwhile reserving to the individual American his sense of privacy, his sense of individuality, and, within the context of an interacting and interdependent society, his options to select his own life style, values, goals and opportunities.

The Commission sincerely hopes that the tone of cautious restraint sounded in this Report will be perpetuated in the debate which will follow it. For those who feel we have not proceeded far enough, we are reminded of Thomas Jefferson's advice to George Washington that "Delay is preferable to error." For those who argue we have gone too far, we note Roscoe Pound's statement, "The law must be stable, but it must not stand still."

We have carefully analyzed the interrelationship between marihuana the drug, marihuana use as a behavior, and marihuana as a social problem. Recognizing the extensive degree of misinformation about marihuana as a drug, we have tried to *demythologize* it. Viewing the use of marihuana in its wider social context, we have tried to *desymbolize* it.

Considering the range of social concerns in contemporary America, marihuana does not, in our considered judgment, rank very high. We would *deemphasize* marihuana as a problem.

The existing social and legal policy is out of proportion to the individual and social harm engendered by the use of the drug. To replace it, we have attempted to design a suitable social policy, which we believe is fair, cautious and attuned to the social realities of our time.

addendum

The previous Chapter recommended a social policy oriented toward the discouragement of marihuana use and presented a set of proposals for the legal implementation of that policy. In addition to these legal recommendations for federal and state action, the Commission believes certain other recommendations should be presented for action.

Ancillary Recommendations

These recommendations are presented in three categories: (1) legal and law enforcement, (2) medical, and (3) other. Some of these recommendations apply to other drugs as well and will be discussed further in our second Report. However, we consider it useful to make recommendations now so that policy planners can be informed of the implications of what has been studied to date.

Foremost among the Commission's conclusions is a need for consistency between federal and state laws affecting marihuana distribution and use, and uniformity of marihuana laws among the states. The administration of all marihuana laws must be mutally reenforcing so that *total* governmental response to marihuana is both equitable and understandable.

Legal and Law Enforcement Recommendations

I. Federal

RECOMMENDATION: FEDERAL LAW ENFORCEMENT AGENCIES, ESPECIALLY THE BUREAU OF NARCOTICS AND DANGEROUS DRUGS AND THE BUREAU OF CUSTOMS, SHOULD IMPROVE THEIR STATISTICAL REPORTING SYSTEMS SO THAT POLICIES MAY BE PLANNED AND RESOURCES ALLOCATED ON THE BASIS OF ACCURATE AND COMPREHENSIVE INFORMATION.

In an effort to obtain information relating to enforcement of the marihuana laws including arrest, prosecution, sentencing and conviction data, the Commission found that sufficient information was available about prosecution and court action, but not about the activities of the law enforcement agencies. We were confronted by and large with inadequate statistical information and little or no in-depth evaluation.

The statistical reporting procedures of the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs are not uniform, making it extremely difficult to assess the effectiveness of the two principal drug enforcement agencies of the Federal Government. The Bureau of Narcotics and Dangerous Drugs keeps centralized files but the Bureau of Customs maintains its files on a regional basis. In both Bureaus, statistical information is kept only in its raw form; that is, number of arrests, number of seizures and so on. Very little analysis exists of the procedures leading to arrest, of the characteristics of persons arrested, and of the law enforcement strategies involved in the arrest. For law enforcement personnel to understand more fully *how* they are carrying out their functions so that internal assessments of particular policies can be made, sophisticated statistics must be maintained.

Both the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs are aware of these problems. Both were extremely helpful to the Commission and its research staff in seeking useful information from the mass of raw statistics. However, the information from the available statistics is incomplete and of limited utility for policy planning purposes.

In support of this priority recommendation, Congress is urged to provide additional and adequate funding for this area, at the same time requiring both agencies to utilize a common reporting system so that information can be more easily shared between them.

In addition, it is recommended that the Federal Bureau of Investigation, in its Uniform Crime Reports, requests the state agencies to

identify marihuana cases separately from narcotic cases and report them as a separate component.

RECOMMENDATION: THE FEDERAL BUREAU OF NARCOTICS AND DANGEROUS DRUGS SHOULD INCREASE ITS TRAINING PROGRAMS OF STATE AND LOCAL POLICE WITH SPECIAL EMPHASIS ON THE TRAINING IN THE DETECTION OF TRAFFICKING CASES.

The Commission's interviews with state and local police officials revealed a consistent desire to upgrade the quality of their investigations. Since the Federal Bureau of Narcotics and Dangerous Drugs, through its National Training Institute, has been performing this task well, it is recommended that the funds be granted by the Congress to extend the range of the educational program offered and increase the number of persons trained.

RECOMMENDATION: INCREASED BORDER SURVEILLANCE, A TIGHTENING OF BORDER PROCEDURES, AND A REALISTIC ERADICATION PROGRAM TO DIMINISH THE SUPPLY OF DRUGS COMING INTO THE COUNTRY, COUPLED WITH A MORE EFFECTIVE PROGRAM FOR DIMINISHING THE DOMESTIC PRODUCTION AND DISTRIBUTION OF MARIHUANA, ARE REQUIRED.

The Commission, as part of its mandate, studied drug trafficking patterns along the borders of the United States. An analysis of border marihuana seizures was also made. The results of both studies indicated that proportionately larger seizures were made along the borders at locations where there were no manned checkpoints. The Commission therefore recommends that more vigorous effort be made by federal agencies to interdict smugglers along the entire border while continuing their efforts at the formal checkpoints.

In discussions with representatives of other countries, a common observation made by foreign officials has been this country's somewhat indifferent attitude about the eradication of our home-grown marihuana, an attitude that is not appreciated by other countries under pressure from the United States to destroy their crops. Since this Administration has wisely made illicit trafficking in all drugs a foreign policy priority, we recommend that priority be supported by an equally assiduous effort to eradicate marihuana within our borders.

We recommend further that preclearance procedures be eliminated so that Customs personnel may more effectively control smuggling of marihuana and other drugs. Preclearance is a procedure whereby passengers and their baggage destined for the United States are inspected by U.S. Customs, Immigration and Agriculture officials *prior* to departure from a foreign location. This practice is in effect in Ber-

muda, Montreal, Nassau, Toronto, Vancouver, Winnipeg and the Virgin Islands. Other locations are petitioning for the same privilege.

An inherent weakness in the preclearance procedure is that Customs personnel stationed outside the United States have no authority for search, seizure and arrest. This fact is well-known to the professional smuggler who uses it to his advantage. Since we have been informed that preclearance creates a gap in Customs' interdiction process, reason dictates that the procedure be eliminated in the interest of tighter control.

II. State

RECOMMENDATION: ALL STATES SHOULD ADOPT THE UNIFORM CONTROLLED SUBSTANCES ACT TO ACHIEVE UNIFORMITY WITH REGARD TO MARIHUANA AND OTHER DRUG LAWS, WITH THE EXCEPTION THAT THE LEGAL RESPONSE TO POSSESSION FOR ONE'S OWN USE BE UNIFORMLY ADOPTED IN ACCORDANCE WITH OUR RECOMMENDATION IN CHAPTER V OF THIS REPORT.

As noted earlier, one of the greatest needs in the entire drug area is uniformity of state laws with regard to structure and penalties. While this recommendation applies to all drugs and not just marihuana, we feel it essential to make this recommendation now to help deemphasize the marihuana problem. Significant differences in penalties among the states constitute a valid source of irritation and conflict among various segments of our population. In an age of high mobility, it is unconscionable that penalties should vary so greatly in response to the same behavior.

RECOMMENDATION: EACH STATE SHOULD ESTABLISH A CENTRALIZED COMPULSORY REPORTING AND RECORD-KEEPING AUTHORITY SO THAT ADEQUATE AND ACCURATE STATISTICS OF ARRESTS, SENTENCES AND CONVICTIONS ON A STATEWIDE BASIS ARE AVAILABLE.

Several states have systems for maintaining records of drug arrests on a statewide basis. Accurate reporting and compilation of these cases permit the state to assess accurately the impact of law enforcement on drug offenders. The Law Enforcement Assistance Administration of the Department of Justice should assist the states to establish compulsory statistical reporting centers so that individual state needs are met and a clearer picture of the national trends can be ascertained. Efficient state record-keeping will have an additional benefit of increasing the reliability of the Uniform Crime Reports compiled by the Federal Bureau of Investigation.

RECOMMENDATION: THOSE STATES REQUIRING PHYICIANS TO REPORT DRUG USERS SEEKING MEDICAL ASSISTANCE SHOULD CHANGE SUCH REQUIREMENTS TO INSURE THE CONFIDENTIALITY OF THE DRUG USER'S IDENTITY, SO THAT PERSONS NEEDING MEDICAL HELP WILL FEEL FREE TO SEEK IT.

Seventeen states* currently require physicians to report to a government agency information on those persons treated by them who are dependent on, or are habitual users of drugs. No common pattern emerges among these states.

After reviewing these statutes, the Commission believes that the disadvantages of maintaining such reporting systems outweigh the benefits to society or the individual. Fear of disclosure to the police discourages many persons from seeking needed medical help. Furthermore, the requirement makes the physician an informant and an agent of law enforcement.

While a need exists for reliable statistics regarding the number and nature of those persons being treated, the Commission does not feel that identification of the individual user is necessary. We again emphasize that society should encourage persons in need of medical attention to seek out authorized practitioners without having to fear legal repercussions for such action.

III. International

RECOMMENDATION: IF THE UNITED STATES SHOULD BECOME A SIGNATORY OF THE PROPOSED PSYCHOTROPIC CONVENTION, WE RECOMMEND THAT CANNABIS BE REMOVED FROM THE EXISTING SINGLE CONVENTION AND CONSIDERATION BE GIVEN TO LISTING IT IN THE PSYCHOTROPIC CONVENTION AMONG DRUGS WHICH HAVE SIMILAR EFFECTS.

Under the Single Convention on Narcotic Drugs, 1961, of which the United States became a signatory in 1967, cannabis, with the exception of its leaves and stems, is included with narcotic drugs and cocaine. While that categorization had some justification in 1961 when knowledge about marihuana was more limited, this justification no longer exists. More importantly, tetrahydrocannabinol (THC), the psychoactive ingredient in cannabis, is not included in the Single Convention and is proposed for inclusion in the Psychotropic Convention.

The Commission sees little sense in having the potent psychoactive ingredient in cannabis covered in one Convention and the natural

*California, Connecticut, Hawaii, Idaho, Iowa, Massachusetts, Michigan, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Vermont, Virginia, Washington.

product in another. Logic dictates combining the active ingredient with the plant form under one international control scheme. The Commission concludes that cannabis is more appropriately included in an international agreement which would control the hallucinogens, stimulants, depressants, and other drugs rather than in the Single Convention, which includes the narcotics and cocaine.

Medical Recommendations

I. Research Coordination and Emphasis

RECOMMENDATION: FULLER COORDINATION OF THE MARIHUANA RESARCH CONDUCTED BY GOVERNMENTAL AND PRIVATE AGENCIES IS NEEDED TO REDUCE THE DUPLICATION OF EFFORT, ASSURE A DIVERSITY OF NEW APPROACHES AND NEW OBJECTIVES, AND TO PROVIDE EFFICIENT INTEGRATION OF FINDINGS INTO THE AVAILABLE BODY OF KNOWLEDGE.

The Commission recognizes the need for studies of chronic, heavy users of marihuana in this country. Among the required areas of information are the user's sociologic background (family dynamics, social stresses, impact of socioeconomic status), and medical status (documentation of physiological and psychological parameters, including pulse rate, blood pressure, electro-cardiogram, electroencephalogram, mental status examination, psychological tests). Epidemiological studies are also needed. Such studies should be directed toward understanding the life histories of chronic, heavy users, and identifying the effects of marihuana on the life patterns of these individuals.

The Commission recommends that intensive research be conducted on the carcinogenic properties of the components of marihuana smoke, in both animals and man. Further work should be conducted to analyze the effect of marihuana smoking on pulmonary function. The Commission-sponsored study in Boston and the study of heavy long-term users in Jamaica both indicated there was some decrement in measurable lung function capacity.

In addition to these physiological studies, investigations on the effects of marihuana-smoking on the bronchial epithelium and mucous membranes of the mouth, throat and lips should be undertaken. The relationship of marihuana smoking to cardiac diseases, particularly coronary artery disease, should be studied. Although such studies have been conducted in connection with tobacco use, they have not been performed on a significant scale with regard to marihuana use.

Some clinical investigators have voiced concern regarding the effect of marihuana-smoking on the peripheral vascular system. In order to accomplish the initial phase of this investigation, the Com-

mission recommends that thermographic studies be carried out on extremities of chronic, heavy marihuana users.

There are many unanswered questions about the effects of marihuana upon the brain. These include reported alterations upon the neuronal systems which produce effects resembling those of both psychedelic drugs and alcohol. Studies of the biogenic amines which appear to be neurotransmitters in the emotional areas of the brain are needed.

The Commission in the course of its work has encouraged cooperation among various federal agencies concerned with marihuana. Continuing and formalized informational exchange among federal agencies and the state, local and private agencies which have a professional concern with marihuana can be helpful to all of them. We recommend that an appropriate federal agency, such as the Special Action Office for Drug Abuse Prevention in the White House, serve as the catalyst in developing a permanent program for assembling and exchanging marihuana-related information.

II. Detection of Marihuana in the Human Body

RECOMMENDATION: RESEARCH EFFORTS TO DEVELOP AN INEXPENSIVE, EASY METHOD FOR DETECTING AND QUANTIFYING THE PRESENCE OF MARIHUANA IN THE BLOOD, BREATH OR URINE OF A PERSON SUSPECTED OF BEING INTOXICATED SHOULD BE ACCELERATED.

In keeping with the necessity to detect and punish persons who are operating vehicles and other dangerous equipment under the influence of marihuana, it is important for law enforcement officials to have a swift, easy-to-use mechanism that will determine with a high degree of certainty whether the person is acting under the influence of marihuana. The Commission understands that the Department of Transportation and other federal agencies are working toward this goal and we strongly recommend that this research be continued as a priority item.

III. International Cooperation

RECOMMENDATION: AN ACCELERATED PROGRAM FOR FUNDING FOREIGN RESEARCH SHOULD BE UNDERTAKEN IMMEDIATELY.

For the purposes of definitive research on the effects of heavy and very heavy marihuana use, the Commission has found that the United States fortunately does not have significant numbers of people who have been exposed over a long period of time to such use. The National Institute of Mental Health has cooperated with the Commission in

supplying data from its major foreign studies of chronic cannabis users in Jamaica and Greece. For medical research purposes, an analysis of data derived from populations in other countries with 10, 20 or 30 years of experience with heavy marihuana use will provide useful information about probable consequences if the incidence of marihuana use in the United States were to continue and increase, and if more people engaged in heavy, long-term use.

IV. Therapeutic Uses

RECOMMENDATION: INCREASED SUPPORT OF STUDIES WHICH EVALUATE THE EFFICACY OF MARIHUANA IN THE TREATMENT OF PHYSICAL IMPAIRMENTS AND DISEASE IS RECOMMENDED.

Historical references have been noted throughout the literature referring to the use of cannabis products as therapeutically useful agents. Of particular significance for current research with controlled quality, quantity and therapeutic settings, would be investigations into the treatment of glaucoma, migraine, alcoholism and terminal cancer. The NIMH–FDA Psychotomimetic Advisory Committee's authorization of studies designed to explore the therapeutic uses of marihuana is commended.

V. Community-Based Treatment

RECOMMENDATION: COMMUNITY-BASED TREATMENT FACILITIES SHOULD BE PROMOTED IN CARING FOR PROBLEM DRUG USERS UTILIZING EXISTING HEALTH CENTERS WHEN POSSIBLE AND APPROPRIATE.

In studying marihuana, the Commission has obtained information about a number of treatment centers and services. The wide range of agencies and the variety of goals and techniques present a confusing array of services available to drug users, varying widely in their effectiveness. Uniform criteria for evaluating the "success" of these programs is urgently needed.

The medical members of the Commission believe that some of the techniques being used may pose as much potential harm as good. Many young people who are experiencing profound difficulties resulting from the use of drugs may suppose they are being treated and helped, when in reality they are not. In some cases, the short-term benefit may be disruptive to the long-term welfare of the individual. In the rush to provide treatment facilities, many programs have been given impressive credientials without meeting minimal medical standards. It is essential that treatment facilities have, as their primary orientation, the well-being of the individual under treatment.

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VI. Training Programs

RECOMMENDATION: PUBLIC HEALTH COURSES ON THE SOCIAL ASPECTS OF DRUG USE SHOULD BE INCLUDED IN THE CURRICULA OF THE SCHOOLS OF THE HEALTH PROFESSIONS.

The Commission recommends that schools of the health professions include in their curricula courses on the social, public health and therapeutic aspects of drug use as appropriate to the educational purpose of the individual school. The National Survey indicated that the public views the family physician as an important source of information about drugs. Next to school personnel, physicians were mentioned most often in this connection. Persons involved in the health professions must be provided with information about non-medical as well as the medical aspects of drug use.

Other Recommendations

I. Reclassification of Cannabis

RECOMMENDATION: THE COMMISSION RECOGNIZES THAT SEVERAL STATE LEGISLATURES HAVE IMPROPERLY CLASSIFIED MARIHUANA AS A NARCOTIC, AND RECOMMENDS THAT THEY NOW REDEFINE MARIHUANA ACCORDING TO THE STANDARDS OF THE RECENTLY ADOPTED UNIFORM CONTROLLED SUBSTANCES LAW.

Scientific evidence has clearly demonstrated that marihuana is not a narcotic drug, and the law should properly reflect this fact. Congress so recognized in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as did The Conference of Commissioners on Uniform State Laws in the Uniform Controlled Substances Law.

In those states where the Uniform Controlled Substances Law has not yet been adopted, twelve of which continue to classify marihuana as a "narcotic", the Commission recommends that the legislatures distinguish marihuana from the opiates and list it in a separate category. The consequence of inappropriate definition is that the public continues to associate marihuana with the narcotics, such as heroin. The confusion resulting from this improper classification helps to perpetuate prejudices and misinformation about marihuana.

II. Information

RECOMMENDATION: A SINGLE FEDERAL AGENCY SOURCE SHOULD DISSEMINATE INFORMATION AND

MATERIALS RELATING TO MARIHUANA AND OTHER DRUGS. THE NATIONAL CLEARINGHOUSE FOR DRUG ABUSE INFORMATION SHOULD BE CHARGED WITH THIS RESPONSIBILITY.

A great proliferation of drug information materials has occurred in recent years. These materials are currently distributed by a number of federal agencies. Some of these materials conflict with each other. The result is a confusion and uncertainty on the part of the public about the accuracy of all these statements. The public should have one federal source from which to obtain drug information. The National Clearinghouse for Drug Abuse Information appears best suited to perform this task.

III. Education

RECOMMENDATION: THE SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION IN THE WHITE HOUSE SHOULD BE RESPONSIBLE FOR THE COORDINATION, DEVELOPMENT AND CONTENT REVIEW OF ALL FEDERALLY-SUPPORTED DRUG EDUCATIONAL MATERIALS AND SHOULD ISSUE A REPORT AS SOON AS POSSIBLE, EVALUATING EXISTING DRUG EDUCATION MATERIALS.

The Commission has studied many programs of drug education throughout the country. Some are irrelevant, others are poorly designed, still others are misleading, and a good many of them are of questionable value. A few are excellent. The Federal Government must provide assistance to the states and school districts in this matter, and should provide the leadership in developing sample programs in cooperation with educational systems. An evaluation of existing programs by The Special Action Office for Drug Abuse Prevention of the White House could be very helpful in improving the standards of drug education.

IV. Voluntary Sector Participation

RECOMMENDATION: THE COMMISSION NOTES THE SIGNIFICANT ROLE PLAYED BY THE VOLUNTARY SECTOR OF THE AMERICAN COMMUNITY IN INFLUENCING THE SOCIAL, RELIGIOUS AND MORAL ATTITUDES OF OUR NATION'S CITIZENS AND RECOMMENDS THAT THE VOLUNTARY SECTOR BE ENCOURAGED TO TAKE AN ACTIVE ROLE IN SUPPORT OF OUR RECOMMENDED POLICY OF DISCOURAGING THE USE OF MARIHUANA.

Already very active in drug education and prevention activities, the social agencies, service clubs, church groups, and other non-govern-

mental bodies have been extremely helpful in attending to the difficult problems of drug abuse. The local and personal nature of such organizations gives them an advantage over state and federal governments in the development of attitudes by our citizens.

The policy which we here recommend, indeed *any* policy which might be recommended, will inevitably encounter widespread and earnest objections. The fullest efforts of all citizens of good will will be required to attend to the massive problem of drug abuse in a calm, just, responsible and effective manner. The help of the voluntary agencies in working toward this end is earnestly invited and urgently needed.

BUREAU OF NARCOTICS AND DANGEROUS DRUGS' COMMENTS ON THE FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE

The Commission on Marihuana and Drug Abuse is to be commended for the thoroughness with which it carried out its assignment. The members, under Chairman Raymond P. Shafer, have produced an extremely valuable report. It is both readable and worth reading. The report should be of great assistance to the Government agencies immediately concerned with the marihuana problem.

The Bureau is in accord with several of the recommendations made by the Commission. After careful study, however, it has come to different conclusions on a few of them.

The basic flaw in the report is one that might have been predicted: the Commission lost sight of the larger goal of the general public interest as it ranged across the nation and the globe in what was essentially an adversary proceeding, pitting advocates of already established views on cannabis use against each other.

It is clear that the Commission made a valiant effort to walk the thin line between legalization and decriminalization. This effort resulted in recommendations which, if put into effect and coupled with limitations it will place on such matters of search and seizure and probable cause, would make effective enforcement for marihuana possession and even sale of small amounts nearly impossible for any normally operated police agency. The evidence is clear that what the majority of the Commission intended is that law enforcement agencies be discouraged from enforcing laws against any personal possession. Three of the Commissioners, agree that criminalization and incarceration for possession for personal use is neither necessary nor desirable; however, they do feel that a civil fine for possession of any amount of marihuana in private or in public is in order. Thus, in effect, the Commission has recommended legalization of cannabis for personal use and for distribution of small quantities.

This goes against all reasons for ever having drug control laws. This is a pronouncement that the Government no longer takes a harsh view regarding proselytizers--those who convert naive persons to drug abusers. If this activity is "legalized" then there is little left of the Commission's expressed policy seeking to discourage marihuana use. The policy of discouragement, as expressed by the Commission, is simply at odds with its recommendation to condone the activities of proselytizers. Indeed, such a recommendation is contrary to the Commission's statement: "Any semblance of encouragement enhances the possibility of abuse and removes from a psychological standpoint, an effective support of individual restraint."

Avoiding the problem of "potency distinction" is a glaring deficiency of the report. The argument used to justify this omission is that making the distinction is too difficult and use of stronger forms of marihuana is not known to exist in the U.S. today. Thus, possession of less than an ounce of low-grade marihuana, and of high-grade hashish, 20 or more times as potent, would be allowable in the home, and subject only to confiscation elsewhere. It is not difficult to predict the choice of those who would transport cannabis. The processing of hashish and liquid hashish would increase, thus making more potent forms of cannabis available in greater quantity, the exact opposite of the result desired by the Commission. This is already happening.

To de-emphasize marihuana as a problem as the report suggests requires more than the wish. And making the drug more easily available is not likely to do this. It is significant that many of the most specific steps the Commission urges are in the area of law enforcement. Its recommendations are, in the last analysis, an accommodation of a minority of the population, and a tacit admission that the Commission considers it more desirable to be permissive rather than firm on the basis of "insufficient evidence." This is not consistent with the drug laws which require a drug to be proven safe and effective before marketing.

This raises the issue which appears to be central to the whole problem: the use and approval of "pleasure drugs" as a basic right. Researchers have indicated that at certain dosages, both

cannabis and LSD have similar psychopharmacological effects. If this is true, then based upon the argument used by the Commission (marihuana in low dosages is relatively of little harm) then any drug chosen by a particular group ought logically to be similarly treated. Heroin comes quickly to mind and so the issue will be debated again, over another drug, by another advocate group, using another set of research findings--supporting the preconception that using low doses of a new drug is not harmful to most users.

The Commission has accepted the reversed argument of the advocate of legalization: that society must prove to a minority of its members that what they want is harmful. Yet for almost every other activity it is the individual who must bear the burden of proof.

We agree that the marihuana problem must be demythologized and desymbolized, but we do not believe that most of our population has accepted any particular myth. By the Commission's own survey a majority of American adults queried indicated disapproval of the lessening of penalties. In interpreting the statistics the Commission presumed that when 41% find the existing laws unacceptable they mean that the laws are too harsh. Perhaps the public feels the present laws are too lenient. While there may be some confusion as the questionnaire indicates, perhaps due to poor design, most adults do not seem to want a more permissive policy nor do they wish to gamble the country's future when all of the facts are still not in. Rather, it is waiting to see what its leadership recommends for marihuana. The majority of the public cannot or is reluctant to make a decision based on inadequate exploration of the alternatives. Unfortunately, the Commission has, through its recommendations, compounded the difficulty of dealing with the short-range problem.

The long-range effect of the report may be more salutory. It has provided a range of possibilities, and given them a clearer form than has existed heretofore. Thus, the report provides the opportunity to point out the inconsistencies in the legal position taken by the Commission. Previously, one would have had to set up the issues before being able to point out inconsistencies, illogic, and inadequacies.

In defense of the Commission, it attempted to do the impossible given (a) the present knowledge in the field, and (b) the present state of social values and attitudes toward drug use. It has succeeded in focusing the issues; it has succeeded in taking some of the mythology out of marihuana; it has provided a broader context within which to view the problem; it has, on a world-wide basis, gathered the available data. Unfortunately, it began with a negative bias: that is, it began looking (perhaps sub-consciously) for the best way to avoid a confrontation, rather than to let the evidence lead it to the truth. Perhaps the Commission was asked to judge too soon before all the witnesses were heard. In our opinion, that is the case. We prefer to view the evidence in terms of the long-term public interest, rather than as a judgment between a vocal minority and the status quo. The evidence, it seems to us, makes a case for greater caution than the Commission appears to have exercised.

The following section comments on the recommendations of the Commission.

RECOMMENDATION

FOR THESE REASONS, WE RECOMMEND TO THE PUBLIC AND ITS POLICY MAKERS A SOCIAL CONTROL POLICY SEEKING TO DISCOURAGE MARIHUANA USE, WHILE CONCENTRATING PRIMARILY ON THE PREVENTION OF HEAVY AND VERY HEAVY USE.

COMMENT

This recommendation goes counter to the escalation process. A person is a light user - or experimenter - before he becomes a heavy user. Prevention of heavy use assumes extensive light use by many others.

The recommendation raises a contention that the Commission is not as concerned for the future, but rather primarily for the present user. Ignoring tomorrow's problem by pretending that there is no escalation of use, from experimentation to heavy, is not a realistic view.

The recommendation implicitly assumes that (a) light users will not become heavy users in large numbers, which is not true in the case of tobacco or alcohol, and (b) education efforts alone will be effective in discouraging light use, which is not supported by solid data.

RECOMMENDATION

POSSESSION OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE, BUT MARIHUANA POSSESSED IN PUBLIC WOULD REMAIN CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.

COMMENT

The line of demarcation between what is possessed in private for one's own use or for distribution in small quantities with little or no remuneration, and what is possessed with intent to sell for profit is exceedingly difficult to make. If a person is known to have one, two or three kilograms of hashish in his home, is this sufficient to assume he possesses it for sale? In gathering probable cause for an arrest or search warrant, or in ruling on the sufficiency of probable cause for issuance of a warrant, how is a police officer or judiciary official to know whether a crime is being committed? In order to make the determination contemplated by the Commission, a judiciary official would be required to have more than probable cause; he would be required to have prima facie evidence of intent to distribute the hashish for profit. Moreover, the law enforcement agent would be required to show in his affidavit that none of the hashish was for the personal use of the accused or for distribution in small quantities for little or no remuneration.

The issue of probable cause cannot be overlooked. In most cases law enforcement agencies simply will not have the proof to negate the defense of possession for one's own use or to distribute in small quantities with little or no remuneration. The information necessary to show possession with intent to sell for profit is difficult enough to prove. Accordingly, we believe this recommendation will place such a loophole in the law as to allow traffickers to possess with impunity supplies of marihuana virtually out of reach of law enforcement agencies.

RECOMMENDATION (FOR FEDERAL LAW)

CASUAL DISTRIBUTION OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION, OR INSIGNIFICANT REMUNERATION NOT INVOLVING PROFIT WOULD NO LONGER BE AN OFFENSE.

COMMENT

This distinction is inappropriate because it is not measurable in terms that can be applied practically to various activities.

This recommendation impinges on the "pleasure drugs" question, and by extension a case could be made for applying the same criteria to other drugs such as mescaline, LSD, and heroin. The broader public interest has been subordinated in this recommendation to the requirements of satisfying the minority adversaries.

We also have legal difficulties with the recommendation. What is a "casual distribution," what is a "small amount of marihuana," and what is "insignificant remuneration not involving profit?" This means that if a person desires to introduce marihuana use to juveniles, he is free to do so as long as the transfers are "small" and are totally donative or only to reimburse himself for out-of-pocket expenses.

In dealing with such terms, police agencies, prosecutors and courts will have an impossible task. Every investigation of a trafficker's activities will require the law enforcement agency to negate all of the defenses by showing that the distributions were more than "casual," that the sales were more than "small amounts," and that the accused received more than "insignificant remuneration." Warrants of arrest will be made more difficult to obtain, and prosecutions will be threatened. Correct instructions to juries will be extremely difficult, and juries will be called upon to make almost impossible borderline decisions. The possibility of reversible error and numerous appellate problems are obvious.

RECOMMENDATION (FOR FEDERAL LAW)

A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE, NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.

COMMENT

We agree with this recommendation.

RECOMMENDATION (FOR STATE LAW)

CULTIVATION, SALE OR DISTRIBUTION FOR PROFIT AND POSSESSION WITH INTENT TO SELL WOULD REMAIN FELONIES (ALTHOUGH WE DO RECOMMEND UNIFORM PENALTIES).

COMMENT

We generally agree with this recommendation, in the classification of the offense and the desirability for a range of appropriate penalties to fit the particular offense. Also, we see advantages in having the penalties within similar boundaries between the States. On the other hand, if the citizens of a State believe the drug abuse situation would become worse by enacting less severe penalties, we believe it would be inappropriate to make such a change purely for purposes of uniformity.

RECOMMENDATION

POSSESSION IN PRIVATE OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE.

COMMENT

We disagree with this recommendation for the reasons cited above regarding Federal law.

RECOMMENDATION (FOR STATE LAW)

DISTRIBUTION IN PRIVATE OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD NO LONGER BE AN OFFENSE.

COMMENT

We disagree with this recommendation for the reasons cited above regarding the Federal law.

RECOMMENDATION (FOR STATE LAW)

POSSESSION IN PUBLIC OF ONE OUNCE OR UNDER OF MARIHUANA WOULD NOT BE AN OFFENSE, BUT THE MARIHUANA WOULD BE CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.

COMMENT

This recommendation disregards all considerations of the quality of the substance possessed, and places leaves, stems and seeds of the cannabis plant in the same category as the "liquid hashish" now being found in the traffic. Any effort to distinguish between small-time peddlers and major traffickers based on a rigid statutory formula, in our opinion, cannot adequately reflect the variety of illegal substances or the variety of means which will be used to escape being in violation of the law. Even major traffickers of hashish can adapt their operations to any statutory line of demarcation.

The feature also would place a heavy burden on law enforcement officers. Officers will not be able to estimate the quantity of marihuana; the precise weight is necessary to determine whether or not a crime has been committed. The law enforcement officer would be charged to make an on-the-spot determination of whether or not an ounce was involved, whether to charge the person with possession involving only a $100 fine and issue a summons, or to charge the person with possession with intent to sell and place the accused under arrest.

In the normal street situation, the police officer may not have the facts necessary to make a decision, he will not be able to take into account the type of substance involved, i.e., marihuana leaves as distinguished from hashish, he will not be able to readily determine in many cases whether the person is transient, and the possibility of misjudgment and mishandling is greatly increased. Based upon quantity alone, a police officer would be required to distinguish between (1) no crime at all, (2) a minor offense, or (3) a serious offense. Although training police officers to make such sophisticated decisions is not insurmountable, it is a feature that must be considered before adoption of this recommendation.

RECOMMENDATION (FOR STATE LAW)

POSSESSION IN PUBLIC OF ONE OUNCE OR UNDER OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.

COMMENT

The degree of culpability between mere "possession" of this type and possession with intent to sell is not discernible. Again, this recommendation fails to take into account the variety of substances available and the methods of operation that may be employed by violators.

RECOMMENDATION (FOR STATE LAW)

DISTRIBUTION IN PUBLIC OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.

COMMENT

We agree that this recommendation would be a viable alternative in the handling of persons who are not responsible for introducing drug abuse to naive persons. On the other hand, we do not believe such a minor offense is consistent with the Commission's view that society should not approve or encourage even the recreational use of marihuana. Merely subjecting a person to a $100 fine for introducing other persons to the use of marihuana may not be considered discouragement in the minds of many citizens.

RECOMMENDATION (FOR STATE LAW)

PUBLIC USE OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF $100.

COMMENT

Providing the offense involves nothing more than simple use of marihuana, we would not object to this recommendation as an alternative to having no penalty at all.

RECOMMENDATION (FOR STATE LAW)

DISORDERLY CONDUCT ASSOCIATED WITH PUBLIC USE OF OR INTOXICATION BY MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO 60 DAYS IN JAIL, A FINE OF $100, OR BOTH.

COMMENT

No objection.

RECOMMENDATION (FOR STATE LAW)

OPERATING A VEHICLE OR DANGEROUS INSTRUMENT WHILE UNDER THE INFLUENCE OF MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN JAIL, A FINE OF UP TO $1,000, OR BOTH, AND SUSPENSION OF A PERMIT TO OPERATE SUCH A VEHICLE OR INSTRUMENT FOR UP TO 180 DAYS.

COMMENT

No objection.

RECOMMENDATION (FOR STATE LAW)

A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.

COMMENT

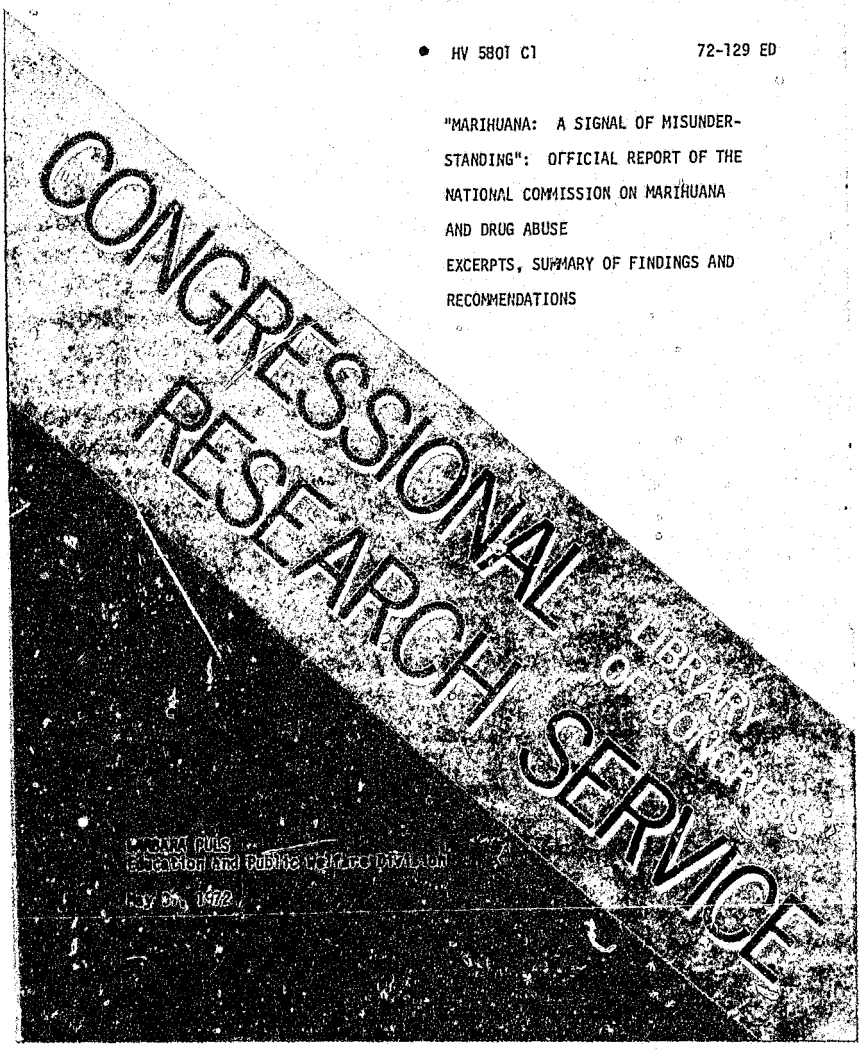
No objection.

RECOMMENDATION (FOR STATE LAW)

A PERSON WOULD BE ABSOLUTELY LIABLE IN CIVIL COURT FOR ANY DAMAGE TO PERSON OR PROPERTY WHICH HE CAUSED WHILE UNDER THE INFLUENCE OF THE DRUG.

COMMENT

No objection.



● HV 5801 C1 72-129 ED

"MARIHUANA: A SIGNAL OF MISUNDERSTANDING": OFFICIAL REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE
EXCERPTS, SUMMARY OF FINDINGS AND RECOMMENDATIONS

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BACKGROUND

The National Commission on Marihuana and Drug Abuse was established pursuant to a provision of Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970. The provision was an amendment by the House Interstate and Foreign Commerce Committee to the original Administration proposal. The law provided that the Commission should be composed of two Members of the Senate appointed by the President of the Senate, two Members of the House appointed by the Speaker of the House, and nine members appointed by the President of the United States. Appointed in early 1971, the Commission was charged to report to the President, Congress and the public within one year on the problems involved in marihuana use, and within two years on the causes of drug abuse in general and their relative significance. The 13-member commission, chaired by the Honorable Raymond P. Shafer, held formal and informal hearings, soliciting many different points of view -- including those of public officials, community leaders, professional experts and students. They commissioned more than fifty projects, ranging from a study of the effects of marihuana on man to a field survey of enforcement of the marihuana laws in various metropolitan areas. After a year's study, on March 22, 1972, the Commission submitted its first report, "Marihuana: A Signal of Misunderstanding." This report, according to the Commission, "is an all-inclusive effort to present the facts as they are known today, to demythologize the controversy surrounding marihuana, and to place in proper perspective one of the most emotional and explosive issues of our time."

EXCERPTS FROM THE REPORT

Origins of the Marihuana Problem

"Marihuana has been used as an intoxicant in various parts of the world for centuries and in this country for 75 years. Yet use of the drug has been regarded as a problem of major proportions for less than a decade.

"The Commission believes that three interrelated factors have fostered the definition of marihuana as a major national problem. First, the illegal behavior is highly visible to all segments of our society. Second, use of the drug is perceived to threaten the health and morality not only of the individual, but of society itself. Third, and most important, the drug has evolved in the late sixties and early seventies as a symbol of wider social conflicts and public issues."

Historical Perspective

"When viewed in the context of American society's ambivalent response to the non-medical use of drugs, the marihuana problem is not unique. Both the existing social policy toward the drug and its contemporary challenge have historical antecedents and explanations. American opinion has always included some opposition to the non-medical use of any drug, including alcohol and tobacco.

"In 1932, the National Conference of Commissioners on Uniform State Laws included an optional marihuana provision in the Uniform Narcotic Drug Act, and by 1937, every state, either by adoption of the Uniform Act or by separate legislation, had prohibited marihuana use. In late 1937, the Congress adopted the Marihuana Tax Act, superimposing a federal prohibitory scheme on the state scheme.

"Not once during this entire period [from the early 1900's until recently] was any comprehensive scientific study undertaken in this country of marihuana and its effects. The drug was assumed to be a "narcotic," to render the user psychologically dependent, to provoke violent crime, and to cause insanity.

"When penalties for narcotics violations escalated in the 1950's, marihuana penalties went right along with them, until a first-offense possessor was a felon subject to lengthy incarceration.

"With this historical overview in mind, it is not surprising that the contemporary marihuana experience has been characterized by fear and confusion on one side and outrage and protest on the other."

The Effects of Marihuana on the User

"Any psychoactive drug is potentially harmful to the individual, depending on the intensity, frequency, and duration of use. Marihuana is no exception.

"Looking only at the effects on the individual, there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis. The risk of harm lies instead in the heavy, long-term use of the drug, particularly of the most potent preparations."

Social Impact of Marihuana Use

"From what is now known about the effects of marihuana, its use at the present level does not constitute a major threat to public health. However, this statement should not lead to complacency. Marihuana is not an innocuous drug. The clinical findings of impaired psychological function, carefully documented by medical specialists, legitimately arouse concern. These studies identify marihuana-related problems which must be taken into account in the development of public policy. Unfortunately, these marihuana-related problems, which occur only in heavy, long-term users, have been overgeneralized and over dramatized.

"We believe that experimental or intermittent use of this drug carries minimal risk to the public health, and should not be given overzealous attention in terms of a public health response. We are concerned that social influences might cause those who would not otherwise use the drug to be exposed to this minimal risk and the potential escalation of drug-using patterns. For this group, we must deglorify, demythologize, and deemphasize the use of marihuana and other drugs."

SUMMARY OF FINDINGS

An estimated 24 million Americans over the age of 11 years (15% of the adults 18 and over, and 14% of the 12-17 year olds) have used marihuana at least once. About 8,300,000 still use the drug, and 500,000 are heavy users.

Age is presently one of the most significant correlates of marihuana use, the incidence of use being the greatest among young people: 27% of the 16-17 year olds, 40% of the 18-21 year olds, and 38% of the 22-25 year olds have tried marihuana; at the low extremes, 6% of the 12-13 year olds and 6% of the over-50 generation have used the drug.

No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana.

Experimenters and intermittent users develop little or no psychological dependence on the drug. No organ injury is demonstrable.

Long-term heavy users show strong psychological dependence on marihuana and hashish. Organ injury, especially diminution of pulmonary function, is possible. Specific psychological and behavioral changes are detectable.

Marihuana, like other psychoactive substances, predominantly affects mental processes and responses and thus the motor responses. Generally the degree of impairment of performance is dose-related, with minimal effect at low doses.

Rare cases of full-blown psychotic episodes have been precipitated by marihuana. Generally, the individuals had previous mental disorders or had poorly developed personalities.

No reliable evidence was found indicating that marihuana causes genetic defects in man. However, fetal damage cannot be ruled out, therefore, the use of marihuana during pregnancy is not advisable.

No objective evidence of brain damage from marihuana use has been found.

Marihuana use does not lead to physical dependence. No torturous withdrawal syndrome follows the sudden cessation of chronic, heavy use.

The overwhelming majority of marihuana users do not progress to other drugs. Only moderate and heavy use of marijuana is significantly associated with persistent use of other drugs.

The weight of the evidence is that marihuana does not cause violent or aggressive behavior; if anything, it generally serves to inhibit the expression of such behavior.

No valid evidence was found to support the thesis that marihuana, by itself, either inevitably, generally or even frequently causes or precipitates crime.

RECOMMENDATIONS

"The Commission is of the unanimous opinion that marihuana use is not such a grave problem that individuals who smoke marihuana, and possess it for that purpose, should be subject to criminal procedures. On the other hand, we have also rejected the regulatory or legalization scheme because it would institutionalize availability of a drug which has uncertain long-term effects and which may be of transient social interest.

"In general, we recommend only a decriminalization of possession of marihuana for personal use on both the State and Federal levels. The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially; marihuana would be contraband subject to confiscation in public places; and criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the State level, fines would be imposed for use in public."

Recommendations for Federal Law

Possession of marihuana for personal use would no longer be an offense, but marihuana possessed in public would remain contraband subject to seizure and forfeiture.

Casual distribution of marihuana for no remuneration or insignificant remuneration not involving profit would no longer be an offense.

A plea of marihuana intoxication shall not be defense to any criminal act committed under its influence, nor shall proof of such intoxication constitute a negation of specific intent.

Recommendations for State Law

Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies. [The Commission additionally recommends that such laws and penalties should be uniform throughout the States.]

Possession in private for personal use, and distribution in private of small amounts for no remuneration or insignificant remuneration not involving a profit would no longer be an offense.

Possession in public of one ounce or under of marihuana would not be an offense, but the marihuana would be subject to seizure and forfeiture. Possession in public of more than one ounce would be a criminal offense punishable by a fine of $100.

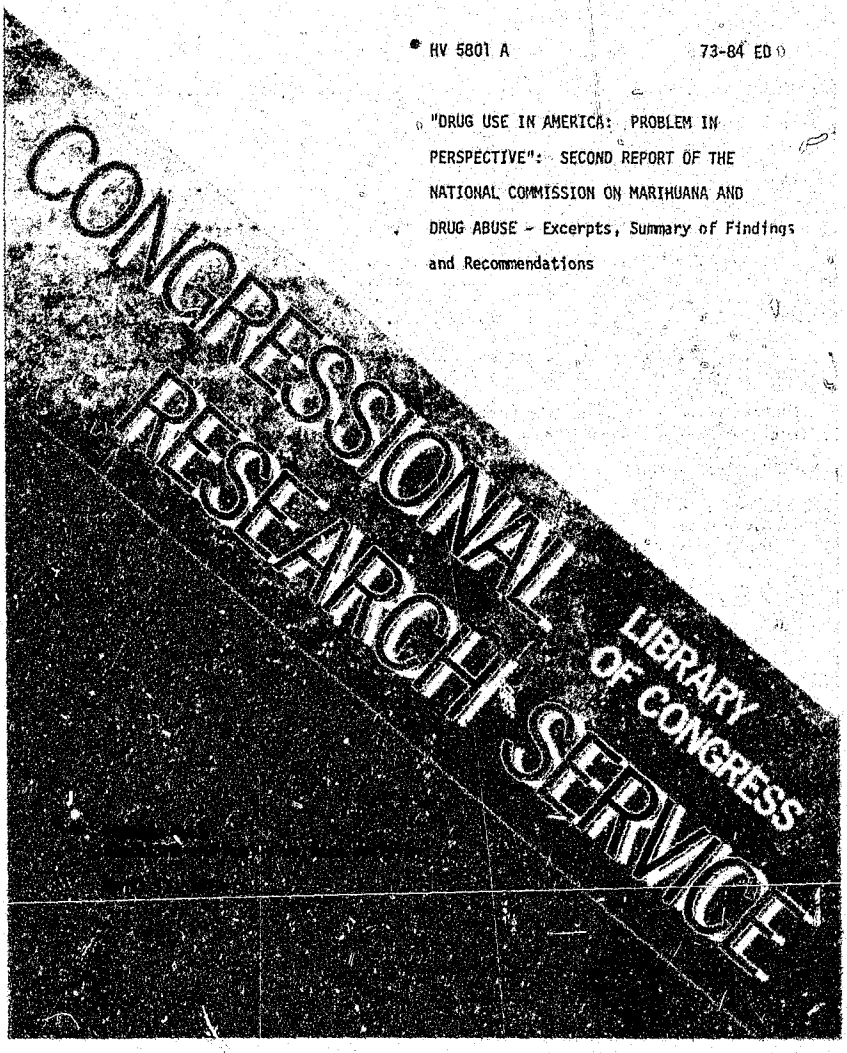
Public use or distribution in public of small amounts for no remuneration or insignificant remuneration involving no profit would be a criminal offense punishable by a fine of $100.

Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail, a fine of $100, or both.

Operating a vehicle or dangerous instrument while under the influence of marihuana would be a misdemeanor punishable by up to one year in jail, a fine of up to $1,000, or both, and suspension of a permit to operate such a vehicle or instrument for up to 180 days.

A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence nor shall proof of such intoxication constitute a negation of specific intent.

A person would be absolutely liable in civil court for any damage to person or property while he is under the influence of the drug.



HV 5801 A 73-84 ED

"DRUG USE IN AMERICA: PROBLEM IN PERSPECTIVE": SECOND REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE - Excerpts, Summary of Findings and Recommendations

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BACKGROUND

The National Commission on Marihuana and Drug Abuse was established pursuant to a provision of Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970. The law provided that the Commission should be composed of two Members of the Senate appointed by the President of the Senate, two Members of the House of Representatives appointed by the Speaker of the House, and nine Members appointed by the President of the United States. Appointed in early 1971 with the Honorable Raymond P. Shafer as chairman, the Commission was charged to report to the President, Congress and the public within one year on the problems involved in marihuana use, and within two years on the phenomena of drug use in general and its social impact.

After a year's study, on March 22, 1972, the Commission submitted its first report, "Marihuana: A Signal of Misunderstanding". This report attempted to present the facts concerning marihuana as they were currently known, and, among other things, recommended the elimination of criminal penalties for the private use and possession of the drug. For further details see Congressional Research Service multilithed report No. 72-129 ED.

The Commission's final report, "Drug Use in America: Problem in Perspective," was released on March 22, 1973, following two years of hearings and research. This report, in the words of the chairman, "is an effort to examine the roots of the drug problem in the United States, to analyze the assumptions upon which present policy is based, and to recommend policy directions for both the public and private sectors".

CONTINUED

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EXCERPTS FROM THE REPORT

Drug Abuse: Synonym for Social Disapproval

"Drug abuse is another way of saying drug problem. Now immortalized in the titles of federal and State governmental agencies (and we might add, in our own), this term has the virtue of rallying all parties to a common cause: no one could possibly be for abuse of drugs any more than they could be for abuse of minorities, power or children. By the same token, the term also obscures the fact that 'abuse' is undefined when drugs are concerned. Neither the public, its policy makers nor the expert community share a common understanding of its meaning or of the nature of the phenomenon to which it refers.

"Drug abuse, or any similar term, creates an impression that all drug-using behavior falls in one of two clear-cut spheres: drug use which is good, safe, beneficial and without social consequence; and drug 'abuse' which is bad, harmful, without benefit and carrying high social cost. From either a descriptive or an evaluative standpoint, the matter is much too complex to be handled in such a polarized fashion. The Commission urges that the public and its policy makers avoid such labels and focus instead on the relative risks and social consequences of various patterns of drug-taking behavior."

Defining America's Drug Problem

"Theoretically, social concern about use of a particular substance relative to another should correlate with the verified social costs attending the use of each drug in that society. As the incidence of intensified and compulsive use increases, so too should the public's concern with the problem. However, the current problem definition in the United States bears little relationship to actual social cost. The intense public concern regarding use of most drugs in large measure reflects anxiety for the future rather than empirical considerations rooted in the present. The result has been an over-estimation of the nature of

the problem attending use of some drugs, such as marihuana, and an underestimation of the problem attending use of other drugs, such as barbiturates and alcohol.

"In the Commission's view, problem definition should take into account the relationship between the maximum social cost of use of a particular drug under given conditions of availability, compared with the verified social costs at a particular point in time. In this context, the most serious concern in contemporary America should attach to use of alcohol and heroin. Moderate social concern should attach to the use of amphetamines, barbiturates, hallucinogens, methaqualone and cocaine, the use of which is relatively well-controlled within the present social policy framework. The use of marihuana and the so-called minor tranquilizers appears to require relatively minimum social concern at the present time. Present trends do suggest, however, that the incidence of use of and dependence on barbiturates and cocaine may be increasing and may demand increased social attention."

A Typology of Drug-Using Behavior

"In an effort to provide policy makers with a more accurate data base upon which to form their decisions, the Commission has attempted to relate the various patterns of drug use observed in the youth and adult populations to their motivating factors, and has tendered its best judgment of both the personal and social risks posed by the five usage patterns identified:

"1. Experimental drug use -- Experimental drug use is defined by the Commission as the short-term, non-patterned trial of one or more drugs, either concurrently or consecutively, with a variable intensity but maximum frequency of ten times per drug, used either singly or in combination.

"2. Social or recreational drug use -- Social or recreational use, like experimental drug use, occurs in social settings among friends or acquaintances who desire to share an experience perceived by them as both acceptable and

pleasurable. The most distinguishing characteristic of such use is that it is a voluntary act and, regardless of the duration of use, tends not to escalate in either frequency or intensity to patterns of uncontrolled and uncontrollable use which is personally rather than socially motivated. Nor is it sustained by virtue of the dependence of the user in any meaningful sense of that term.

"3. Circumstantial or situational drug use -- Circumstantial use is generally task-specific, self-limited use which may be variably patterned, differing in frequency, intensity and duration. The distinguishing feature of this pattern is that use is motivated by the perceived need or desire to achieve a known and anticipated effect deemed desirable to cope with a specific, sometimes recurrent, situation or condition of a personal or vocational nature.

"4. Intensified drug use -- Intensified use is generally a long-term, patterned use of drugs at a minimum level of at least once daily and is motivated by an individual's perceived need to achieve relief from a persistent problem or stressful situation or his desire to maintain a certain self-prescribed level of performance. A distinguishing characteristic of this class of behavior is the regular use of one or a combination of drugs escalating to patterns of consumption which might properly be defined as dependence.

"5. Compulsive drug use -- Compulsive use is patterned at both high frequency and high intensity levels of relatively long duration, producing physiological or psycholcgical dependence such that the individual cannot at will discontinue such use without experiencing physiological discomfort or psychological disruption. Compulsive use may be characterized by preoccupation with obtaining adequate and sufficient amounts of the drug in order to forestall the abstinence syndrome."

Evaluating the Social Impact of Drug Dependence

"No rational social policy would aim to eliminate drug dependence per se. When the risk associated with a type of drug dependence does not involve drug-influenced behavior, but is rather limited to possible danger to individual health, it is the Commission's view that private normative choice should prevail, and that the social policy decision is of an entirely different order than that required behavior-influencing drugs. The primary policy consideration here is the behavioral impact on the public safety, health and welfare."

A Realistic Appraisal

"Most opiate-dependent persons have long histories of psychopathology and social pathology which are manifest in delinquent, criminal, suicidal and other deviant behavior prior to the onset of drug use. Psychiatric and other studies have also confirmed the hypothesis that the pre-existence of these problems significantly increased the individual's initial susceptibility to opiate dependence as well as high vulnerability to relapse into drug use and crime.

"Additional research findings have indicated that most opiate-dependent persons come from unstable home and family situations where social deviance was evident in other family members, and drop out of school at a fairly early time (generally about 10th grade). They generally possess no marketable skills; have non-existent or at best unstable employment histories; have unstable personal and social relations; reside in the inner-city ghettos and suffer the psychological, social and economic stresses so often concommitant with that type of existence.

"Taken together, these finds suggest that chances for rehabilitative success, however defined, are not high for such individuals... Notwithstanding the fact that social, psychiatric, psychological, counseling and other ancillary services are provided to those in treatment, this society must face the fact that even the

best of the services have inherent limitations in the degree to which such programs can alter the behavior of individuals who for so long have been subject to non-supportive social and emotional circumstances. While evidence does exist to show that some qualitative and quantitative changes in behavior with respect to crime and employment are associated with treatment, the precise nature or amount of change which can be directly attributable to programmatic inputs is difficult to measure and has not yet been documented substantially."

Irresponsible Use

"The primary goal of drug policy must be to minimize irresponsible drug-using behavior. The Commission finds that the use of drugs is clearly irresponsible:

when the manner or circumstances of use pose a threat to the safety or welfare of others;

when the pattern of use substantially impedes or risks the impairment of the individual's social and economic functioning; and

when the pattern of use reduces the individual's options for self-fulfillment by impairing his faculties or retarding his development."

Looking Ahead

"Gathering the best data available on incidence and consequences of drug use, the Commission has looked carefully for the grounds of legitimate social concern. The problem does not lie in drug use itself, for much use, even when illegal, does not have immediately harmful consequences either for the user or for the community. Nor does the difficulty relate to any use of particular drugs though, plainly, certain drugs are associated with more serious individual and social consequences than others. The Commission found that the problem is in the behavior induced by the drug experience or by drug dependence which impacts adversely on the public safety or, by inhibiting social functioning, on the public health and welfare.

"Having defined the drug problem in terms of objective standards of public concern, the Commission was then able to set the criteria for selecting and formulating appropriate drug policy. The Commission concluded that the following policy is appropriate: our society should continue to discourage any drug use outside medical channels or established social patterns. The primary concern of drug policy should be with disruptive or dysfunctional drug use. Finally, drug policy should not limit its concern to illegal drug taking, but should also include dysfunctional or disruptive use of "lawful" substances such as alcohol and barbiturates."

SUMMARY OF FINDINGS

Drug Use in the General Population

The Commission's Survey findings regarding the reported drug experiences of American youth and adults were as follows:

	Youth	Adults
Alcoholic beverages[1]	24%	53%
Tobacco, cigarettes[1]	17%	38%
Proprietary sedatives, tranquilizers, stimulants[2]	6%	7%
Ethical sedatives[2]	3%	4%
Ethical tranquilizers[2]	3%	6%
Ethical stimulants[2]	4%	5%
Marihuana	14%	16%
LSD, other hallucinogens	4.8%	4.6%
Glue, other inhalants	6.4%	2.1%
Cocaine	1.5%	3.2%
Heroin	.6%	1.3%

[1] (Within past 7 days; [2] Nonmedical use only)

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Comparative National Survey Student Data

Information about secondary school and college student drug-using behavior gathered in the Commission's National Survey revealed the following:

Seventy-three percent of the junior high students, 87% of the senior high students, and 98% of the college students have consumed some type of alcoholic beverage at one time or another.

Some experience with marihuana was reported by 8% of the junior high students, 24% of the senior high students, and 67% of the college students.

Five percent of the junior high students, 8% of the senior high students, and 2% of the college students reported experiences with glue or similar inhalants.

Three percent of the junior high students, 9% of the senior high students, and 27% of the college students have tried LSD or similar hallucinogens at least once.

Only 0.2% of the junior high students, 1.1% of the senior high students, and 4.3% of the college students reported having tried heroin at least once.

Experience with cocaine was reported by 1.2% of the junior high students, 2.6% of the senior high students, and 10.4% of the college students.

Roughly 4% of the junior high students, 10% of the senior high students, and 33% of the college students reported use of ethical stimulants or depressants at some time in their lives. These figures include use for both medical and non-medical reasons.

Drugs and Crime

The following tentative conclusions were reached from the data available regarding drug use and crime:

Alcohol is strongly associated with violent crime and with reckless and negligent operation of motor vehicles.

Research findings linking barbiturate and amphetamine users with criminal behavior, especially assaultive offenses, are increasing, but no definitive association has yet been established in this country; however, a strong association has been demonstrated between amphetamine use and violence in Sweden and Japan.

Research data are generally lacking regarding the actual relationship between cocaine use and criminal behavior; however, the pharmacologic effects of the drug would seem to suggest a potential for drug-induced violent behavior similar to that shown for amphetamine and barbiturate users.

Marihuana use, in and of itself, is neither causative of, nor directly associated with crime, either violent or non-violent.

Use of opiates, especially heroin, is associated with acquisitive crimes such as burglary and shoplifting. Assaultive offenses are significantly less likely to be committed by these opiate users, especially in comparison with users of alcohol, amphetamines and barbiturates.

Except in relatively rare instances generally related to drug-induced panic and toxic reaction, users of hallucinogens, non-barbiturate sedative-hypnotics, glue and similar volatile inhalants are not inclined toward assaultive criminal behavior. It should be noted, however, that some of the non-barbiturate sedatives, notably methaqualone, and the hydrocarbon solvents have a potential for inducing violent behavior although the incidence of such behavior is currently low.

Analyzing the Government Response

In fiscal year 1969, the federal government spent $66.4 million for all phases of its drug abuse program, including law enforcement, treatment and rehabilitation, education, training, research, and evaluation. By fiscal year 1973, total funding had reached $791.3 million, an increase of 1092%.

Failures of the Present System

The Commission's review of the present system suggests that the governmental response has failed in nine major ways:

The nature and extent of drug use have not been adequately identified.

Definitive goals and objectives of drug-related functions have not been sufficiently developed at any governmental level.

Effective planning is not being, and cannot be carried out under present conditions.

Lack of meaningful plans, in turn, has made effective control of resource allocation impossible.

Limited coordination among federal agencies has resulted in duplication, overlap of efforts and a disregard of problem areas requiring action.

Formulating and administering drug policy is not the primary mission of many federal agencies performing important drug-related functions.

Because goals and objectives have not been defined, programs cannot be evaluated in terms of their effectiveness.

Programs are not being evaluated in terms of their efficiency.

Drug and alcohol activities are treated as two entirely distinct functions and their policy directions are not coordinated.

SELECTED RECOMMENDATIONS

Recommendations for Public Institutions

I. Government Organization

A. Federal

1. Congress should create a Single Federal Agency similar in legal and political status to the Atomic Energy Commission. The agency, which might be called the Controlled Substances Administration, would establish, administer

and coordinate all drug policy at the Federal level and would be the principal, if not sole, point of contact with the State drug programs. The Single Agency would remain separate from all other Federal departments and agencies and would be responsible for its own organization and fiscal management. 1/

2. The Single Agency should have the authority and capability to do the following: (a) Distribute and monitor block or formula grants to States for drug dependence treatment, rehabilitation, prevention, education, and law enforcement programs; (b) Coordinate all substance-related programs which remain external to the agency itself, such as those of the Department of Defense and the Bureau of Prisons; (c) Provide evaluative capabilities for federally funded drug programs operated at the Federal, State and local levels; (d) Maintain and monitor an ongoing collection of data necessary for present and prospective policy planning, including data on incidence, nature and consequences of drug use; (e) Develop and implement a general directed research plan; (f) Provide discretionary funds for those areas in which innovative and experimental programs are necessary at the local level and for other essential programs which cannot be performed adequately by the States; and (g) Direct the Federal law enforcement response in the drug field and provide assistance to State law enforcement.

3. To avoid institutionalizing the drug "problem", the concept and accomplishements of the Single Agency should be reexamined four years after its creation; and the agency itself, by law, should disband within five years, its surviving components being reassigned to the agencies or departments from which they came.

1/ Commissioners Hughes, Senator from Iowa, and Javits, Senator from New York, do not concur in the recommendation.

4. Congress should establish a commission four years hence, with the specific responsibility to: (a) Evaluate the social response to drug use during the preceding four years; (b) Consider the results of both directed and undirected research programs; (c) Recommend to Congress whether the unified Federal agency should be continued, dissolved or modified; (d) Determine which measures have justified their costs and which have not; (e) Propose needed new policies, programs and techniques; and (f) Reexamine fully the basic issues and consider whether departures from the present response are required.

B. State

1. Each State should establish a unified drug agency on the same model as that proposed for the Federal government.

2. Each State agency should have sufficient powers to coordinate all drug programs at the State level and provide guidance and funding to community programs.

C. Community

Each community with a significant drug use problem should create a coordinating council to insure communication and concert of action between the various drug-related functions in the community.

II. Legal Controls

A. International

1. The State Department, in conjunction with the Department of Justice, should immediately undertake a comprehensive review of existing extradition treaties dealing with drug offenses with a view toward expanding the scope of extraditable offenses and facilitating the extradition process.

2. The United States should encourage law enforcement agencies in all concerned countries to increase both formal and informal exchanges of information concerning drug traffic and traffickers.

3. Both the Single Convention and the proposed Psychotropic Convention should be redrafted to make clear that each nation is free to determine for itself which domestic uses for controlled substances it will allow, provided only that each nation prevent diversion and prohibit exportation and production for exportation for illegal use in other countries.

B. Federal

1. At this time, none of the barbiturate drugs should be placed in Schedule II of the Federal Controlled Substances Act. Instead, the American Medical Association should immediately design and furnish to physicians guidelines on the prescribing of barbiturates.

2. Since, unlike the barbiturates, methaqualone does not have large-scale medical uses, and does present a significant problem of misuse, it should be placed in Schedule II, along with the amphetamines.

3. With respect to the drug trafficking laws, the trafficking offenses and penalty structure presently in force under the 1970 Comprehensive Drug Abuse Prevention and Control Act should be retained.

C. Federal and State

1. The Commission reaffirms its recommendations concerning marihuana as set out in its First Report. (See CRS report number 72-129 ED.)

2. The unauthorized possession of any controlled substance except marihuana should remain a prohibited act. The primary purpose of enforcement of the possession laws should be detection and selection of those persons who would benefit by treatment or prevention services.

3. For those drug-dependent persons who are apprehended for consumption-related offenses, including possession, one of the following dispositions should be mandatory: (a) Diversion to a treatment program in lieu of prosecution, or (b) Diversion to a treatment program after conviction but before entry of judgment by the court. Failure by an individual to comply with the conditions of treatment would result in his return to the court for prosecution or sentencing. In that event, he should be subject to punishment by up to one year imprisonment, a fine of up to $500, or both.

4. For those non-drug-dependent persons who are apprehended for consumption-related offenses, including possession, one of the following dispositions should be mandatory: (a) Diversion to a prevention services program in lieu of prosecution; (b) Diversion to a prevention services program after conviction but before entry of judgment of court; (c) A fine of up to $500; or (d) Probation with appropriate conditions. Failure by an individual to comply with the conditions of prevention services under alternatives (a) or (b) would result in his return to the court for prosecution or sentencing. In that event, he should be subject to punishment by up to one year's imprisonment, a fine of up to $500, or both.

D. State

1. States which have not already done so should adopt the Uniform Controlled Substances Act.

2. Each State should review its penalty structure for trafficking offenses and determine whether the penalties are commensurate with the relative severity of the offenses.

III. Law Enforcement

A. Federal

1. Federal criminal investigative agencies should concentrate primarily on the top level of the illegal drug distribution network: importation, exportation, and large scale foreign and domestic trafficking.

2. The Federal regulatory effort should concentrate on preventing diversion of drugs at the manufacturing and wholesale levels, leaving to the States primary responsibility for supervising retail pharmacies, hospitals, and physicians.

3. To minimize corruption and the appearance of corruption, a separate unit should be established to maintain internal security among Federal drug law enforcement agencies. This unit should be distinct from all other drug law enforcement activities and report directly to the Attorney General.

B. State

1. In order to complement the Federal effort, State enforcement should concentrate on the lower levels of both licit and illicit distribution networks.

2. Every State should systematically review and evaluate the operations of its boards of pharmacy and medicine, to ensure that they are adequately enforcing the provisions of State and Federal law.

3. Each State with a substantial trafficking problem should have a separate unit, responsible to the State attorney general, charged with the responsibility of investigating any evidence of corruption in drug law enforcement agencies.

C. Community

1. Local police departments should participate with other community institutions in the development of a preventive services program.

2. Police departments should formulate precise guidelines for non-arrest dispositions of persons apprehended for consumption-related offenses and for their referral to appropriate prevention or treatment services. Each police department should consider using citations, or other formal means of directing persons into appropriate programs.

IV. Treatment and Rehabilitation

A. Federal

1. Through block and formula grants to the States, the Federal government should have major responsibility for funding treatment and rehabilitation services administered by the States. The Federal government should retain discretionary funds for direct funding of demonstration and special projects in the field of treatment and rehabilitation.

2. Except for offenders within Federally-operated correctional institutions, the Federal government should not have direct operating responsibility for providing treatment and rehabilitation services.

3. The Federal government should sponsor a program to evaluate existing drug treatment and rehabilitation programs to see whether they (a) are cost effective; (b) are designed to deal effectively with their client populations; and (c) have established suitable criteria and objectives.

B. Federal and State

1. To avoid destroying program effectiveness, Federal and State regulations concerning maintenance programs should emphasize treatment flexibility, coupled with reasonable controls to curtail diversion.

2. The government should continue to prohibit heroin maintenance as a treatment modality.

C. State

1. Each State should establish a comprehensive Statewide drug dependence treatment and rehabilitation program including integrated health, education, welfare and treatment services, which should be administered as part of the State's broader health care delivery and human resources development systems.

2. Each State should review its current statutory mechanisms regarding the process by which drug-dependent persons are permitted or compelled to enter treatment. Those States which have not already done so should modify existing legislation to encourage drug-dependent persons to seek treatment voluntarily. In order to maximize the attractiveness of voluntary programs, formal legal processes should be avoided entirely.

3. Every State should have confidentiality-of-treatment laws.

V. Prevention

A. General

1. Drug use prevention strategy, rather than concentrating resources and efforts in persuading or "educating" people not to use drugs, should emphasize other means of obtaining what users seek from drugs, means that are better for the user and better for society. Information about drugs and the disadvantages of their use should be incorporated into more general programs, stressing benefits with which drug consumption is largely inconsistent.

2. The government role in prevention should be limited to assuring the availability of accurate information regarding the likely consequences of the different patterns of drug-using behavior. The Commission recommends the following actions to assure the production and dissemination of accurate information: (a) The Federal Government should establish a procedure for screening all Federally-sponsored or funded information materials for accuracy; (b) A moratorium should be declared on the production and dissemination

of new drug information materials to allow sufficient time for the development of necessary standards for accuracy and concept; (c) Policy makers should, in recognition of ignorance about the impact of drug education, seriously consider declaring a moratorium on all drug education programs in the schools, at least until programs now in operation have been evaluated and realistic objectives have been developed. At the very least, State legislatures should repeal all statutes which now require drug education courses to be included in the public school curriculum.

B. Federal

The Federal government should fund prevention services through block and formula grants to the States, and sponsor basic research in the prevention area. The Federal government should also retain discretionary funds for direct assistance to innovative and experimental programs, as well as to programs in communities receiving insufficient aid from the State.

C. State

The primary responsibility for designing a prevention strategy and operating appropriate programs should reside at the State and local levels. Each State should establish a comprehensive, statewide drug dependence prevention program including a full range of prevention services.

D. Community

1. Prevention requires community-wide strategy in which all members of a community acquire information about drug use.

2. Each community should give high priority to the development of crisis-intervention services as part of its overall prevention services.

VI. Research

Congress should provide The Special Action Office for Drug Abuse Prevention with sufficient funds to design and direct an extensive program of research covering all studies touching on drug use. The Department of Health, Education, and Welfare should participate in the design of the research plan to avoid overlap and maximize the cost-effectiveness of Federal research efforts. The research design itself should deal not only with the immediate information needed but also with requirements of future and long-term policy making. It should fund not only projects which produce quick results, but also those requiring several years to generate useful data.

Recommendations for Private Institutions

I. Health Professions

1. Schools of medicine, pharmacy, nursing, and public health should include in their curricula a block of instruction dealing with the social and medical aspects of drug use.

2. The medical profession should prepare criteria for use of all psychoactive drugs in medical practice. These guidelines should stress restraint in use of such drugs, emphasizing that they are not a treatment of first resort and that when prescribed, they should be given in the smallest dosage units and doses possible.

II. Pharmaceutical Industry

A. Manufacturers

1. Manufacturers of psychoactive substances should undertake a major campaign to educate both health professionals and the public about the appropriate role of these drugs in treatment of conditions of anxiety, tension, and depression.

2. Advertising of proprietary, mood-altering drugs should omit suggestions that the substances can result in pleasurable mood alteration or deal with malaise caused by stress or anxiety.

B. Retail Pharmacies

At the retail level, all pharmacists should verify the identity of persons seeking prescription psychoactive drugs.

III. Alcohol Industry

1. The alcohol beverage industry should take the lead in funding research into the nature of compulsive alcohol-using behavior and the relation between alcohol use and traffic accidents, violent crimes, and domestic difficulties.

2. Manufacturers and distributors of alcoholic beverages should inform the public that compulsive use of alcohol is the most destructive drug-use pattern in this nation. Advertising should emphasize moderate, responsible use and point out the dangers of excessive consumption.

IV. Industry

1. The business community should not reject an applicant solely on the basis of prior drug use or dependence, unless the nature of the business compels doing so.

2. Industry should consider alternatives to termination of employment for employees involved with drugs. Where the nature of the business allows, employees should be referred to company-run or other public and private rehabilitation or counseling programs.

3. The fact of treatment and rehabilitation should be confidential to encourage employees to accept counseling and other assistance.

V. Colleges and Universities

1. Colleges and universities should make their policies and practices regarding drug use, including alcohol, explicit, unambiguous, and readily available to all students.

2. Counseling, treatment and rehabilitation programs on campus should ensure confidentiality to their student clients.

VI. Mass Media

Since government intervention is inappropriate here, the media, on their own initiative, must reexamine the impact of information messages on interest in psychoactive drugs. They should look not only at advertising, but also at anti-drug public service announcements, at program content, and at news coverage of "drug stories".

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A PLEA FOR AMELIORATION OF THE MARIHUANA LAWS*

MICHAEL P. ROSENTHAL**

Professor Rosenthal argues that existing doubts about the seriousness of the risks of using the drug and the heavy social costs of the present marihuana laws dictate an amelioration of those laws.

The marihuana laws must be ameliorated. Taking into account the known and likely risks of the drug and the social costs the marihuana laws are exacting, they are far too stringent.

By marihuana I mean only the plant *Cannabis sativa* and its parts—the stems, seeds, leaves, and flowering tops. The resin of the plant, derivatives of the plant or of the resin, and synthetic cannabis-like substances, such as synthetic tetrahydrocannabinols, are not included. It is appropriate to make this distinction because generally speaking, although the plant varies in strength, it is weaker than derivatives[1] and synthetics and has less potential for harm. The greater strength of cannabis derivatives, with their greater potential for harm, may perhaps call for more stringent laws than does the plant itself.

Just a year or two ago the position I espouse was somewhat less "respectable" than it is now. But recently more than one "responsible" body in the United States has urged amelioration of these laws, and two state legislatures have reduced penalties for some marihuana transactions.

The Council on Mental Health and the Committee on Drug Dependence of the American Medical Association and the Committee on Problems of Drug Dependence of the National Research Council, National Academy of Sciences, in a joint statement have advocated greater discrimination among different types of marihuana offenders. These groups pointed out that penalties for violations of the mari-

* This paper is based in part upon a speech delivered by the author at the symposium on drug dependence of the Texas Research Institute of Mental Sciences, November 20-22, 1968, and published in 2 ADVANCES IN MENTAL SCIENCE: DRUG DEPENDENCE (W. McIsaac, *et al.*, eds.) (University of Texas Press, in press).

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1 Cannabis resin is stronger than the plant itself. N.Y. County Medical Society, *The Dangerous Drug Problem—II*, 24 N.Y. MEDICINE 18 (1968); N.Y. County Medical Society, *The Dangerous Drug Problem*, 22 N.Y. MEDICINE 241, 246 (1966).

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huana laws are often harsh and unrealistic and suggested that "equitable penalties, insofar as they enhance respect for law, can contribute to effective prevention."[2]

A Harris County grand jury criticized "out-of-balance penalties" in Texas for possession and sale of marihuana. Stressing that penalties imposed for marihuana violations sometimes exceed the penalties imposed in murder cases, the grand jury said, "Surely this is not justice according to our national ideals, ideals which proclaim human life as of the greatest value."[3] And most important, both California[4] and Alaska[5] reduced penalties for possession of marihuana in 1968.[6]

Recently enacted changes to the Federal Drug Abuse Control Amendments are relevant also. Although they make simple possession of such drugs as LSD, barbiturates, and amphetamines a federal crime for the first time[7] (this law does not apply to marihuana), they provide that if a first offender is placed on probation and discharged before the expiration of the term of probation or if he satisfactorily complies with the conditions of probation, his conviction is automatically set aside, and he is to be given a certificate to that effect.[8] According to the Senate report on the bill, the purpose of this provision is to "minimize the long-term adverse consequences upon a youth of a conviction of a violation of the prohibition against possession of dangerous drugs."[9] The provision, however, contains no

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2 Council on Mental Health, *et al.*, *Marihuana and Society*, 204 J.A.M.A. 1181, 1182 (1968).

3 HARRIS CO. GRAND JURY REP., Aug. Term, App. No. 1, 177th Dist. Ct. of Harris Co., Tex. (1966). (The city of Houston is located in Harris County.)

4 CAL. HEALTH & SAFETY CODE § 11530 (West 1964), *as amended*, (Supp. 1968).

5 ALAS. STAT. § 17.12.110(a) (Supp. 1969) (possession for personal use). The reduction in penalties for possession in Alaska was accompanied by an increase in penalties for distribution. ALAS. STAT. § 17.12.110(b) (Supp. 1969).

6 In addition, penalties for possession under the Canadian Federal Narcotic Control Act were reduced by providing for lesser penalties upon summary conviction. 17 & 18 Eliz. 2, c. 41, § 12 (1969), *amending* 9 & 10 Eliz. 2, c. 35, § 3(2) (1961). Prior to the amendment possession was treated only as an indictable offense carrying a higher penalty.

Also, the British Advisory Committee on Drug Dependence (the "Wootton Committee") recently recommended reduction in penalties for marihuana offenses. The committee stated that its recommendation for reducing penalties for simple possession was intended "to remove for practical purposes, the prospect of imprisonment for possession of a small amount and to demonstrate that taking the drug in moderation is a relatively minor offense." ADVISORY COMMITTEE ON DRUG DEPENDENCE, CANNABIS 28 (1968). The British Government, however, rejected the committee's recommendations. N.Y. Times, Jan. 24, 1969, § 1, at 2, col. 3.

On December 14, 1968, the Board of Directors of the American Civil Liberties Union announced its opposition to criminal penalties for use and possession of marihuana. Memorandum to A.C.L.U. Academic Freedom Committee (Jan. 2, 1969).

7 21 U.S.C. § 360a(c) (1964), *as amended*, (Supp. IV, 1969).

8 21 U.S.C. § 355 (1964), *as amended*, (Supp. IV, 1969).

9 SENATE COMM. ON LABOR AND PUBLIC WELFARE, S. REP. No. 1609 ON H.R. 14096, 90th Cong., 2d Sess. 6 (1968).

restriction on the age of offenders eligible for treatment under it. The report also stated that

> testimony before Congress reflects concern among educators and social scientists that the indiscriminate enforcement of excessively severe drug laws increases disrespect for the law on the part of young people and tends to alienate them from society . . . . In one way or another every witness from the fields of science or medicine has expressed caution with respect to increased penalties for drug law violations.[10]

These developments suggest the possibility that some widespread amelioration of the marihuana laws may become reality in the foreseeable future. This would be extremely desirable.

In considering whether the marihuana laws are appropriate, we must first consider the risks of use. At the present any attempt to judge the dangers of marihuana is itself fraught with danger. The statement that it is quite harmful will be criticized by some. The statement that it does not seem very harmful or not harmful at all will be criticized by others. But there are two things that can be said:

First, there is much we do not know about the drug. Present studies are not nearly definitive. Hopefully, studies now being sponsored and that will be sponsored by the National Institute of Mental Health and other agencies will in a few years help illuminate the facts, but even these studies will not yield a complete picture of the effects of long-term use.

Second, to paraphrase Dr. Jonathan Cole,[11] drug risks, like beauty, are often in the eye of the beholder. What is a very serious risk to some observers may be at most a minor risk or at least not serious enough to warrant criminal punishment to others. Some may even see it as a desirable effect. What has been termed amotivation—"dropping out"—illustrates this difference of viewpoint. A student may stop attending classes, he may lose interest, and his grades may drop. When these things occur we do not know what their relation to his use of marihuana is. Has it caused this state of affairs in a normal person who otherwise would not have dropped out? Has it merely precipitated it in a predisposed person? Is his drug use itself only a symptom of dropping out? And even if use of marihuana does in some way contribute to "dropping out," one's views on how serious this condition

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10 *Id.* at 7.

11 Superintendent, Boston State Hospital, Boston, Mass. Formerly Chief Psychopharmacology Research Branch, National Institute of Mental Health.

is will influence his views on how serious the risks of marihuana are. Some may believe that this condition is unfortunate but certainly no reason to punish people. Others may find it a refreshing change from the usual pattern of our achievement-oriented society. Still others, however, may see a threat to the entire fabric of our society and its morality. Furthermore, while some may say that the phenomenon of amotivation (assuming that use in some way "causes" it) demonstrates that marihuana has adverse psychic effects on the individual and consequently that prohibition and punishment for those who violate it are in order, others may say that the judgment that amotivation is bad is essentially a moral judgment and that the criminal law should not and cannot regulate morality.

Actually, the dividing line between dangers to health (and dangers to psychic health in particular) and the regulation of morality is probably nonexistent. What is a danger to psychic health to one person is only a question of morality to another. Conceptions of mental health often involve moral judgments,[12] and perhaps for some purposes, such as a person's voluntary decision to begin psychotherapy or psychoanalysis because he decides he is not "mentally healthy," this is the way it should be. Whether deviations from a particular picture of health should be visited by the punishment of the state on the theory that a person is harming his psyche is yet another question.

On the basis of what we now know, marihuana, as defined, is probably the least or among the least harmful of the hallucinogens controlled under federal law,[13] and this is a fact relevant to the appropriate criminal controls on its use and distribution.

Of course, the drug may turn out to be more harmful than some of us think it is, and this complicates the question for the policy-maker. Another complicating factor is that attempts at change in the marihuana laws start out from the position that distribution and use of the drug is now unlawful, rather than from the position that they are lawful. The question is whether highly punitive laws should be made less punitive and not whether a free commodity should be regulated for the first time. The starting point may be relevant to the lawmaker. If marihuana were a free commodity and efforts were being made to restrict its distribution and use, a greater showing of the drug's risks vis à vis the user's subjective feelings of benefit from its use would be

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12 *See, e.g.*, K. HORNEY, NEUROSIS AND HUMAN GROWTH 14 (1950) (certain neurotic trends involve "a fundamental problem of morality").

13 *See* authorities cited note 1 *supra*.

required. It is now restricted, however, and it may turn out to be more harmful than some of us believe and as or even more harmful than others believe. If the law does act as a deterrent to use,[14] and if society wants neither to approve or endorse use, the loss of this deterrent through "legalization" (much as distribution and use of alcohol is legalized) might well be regretted at a later date.[14a] Legalization, conceivably, might lead in time to a substantial public health problem, and the decision to legalize could turn out to be irreversible. Even if such a decision were not irreversible, it is doubtful whether switching from one course to another and then back again would be likely to enhance respect for social policy or those who make it. Moreover, given that marihuana is restricted, a decision to legalize distribution and use, even if not intended to express social approval of use, may be more likely to be taken as that and may be more likely to influence conduct[15] than a decision *not* to restrict a free commodity. Although any attempt to ameliorate the marihuana laws—whether by reducing permissible penalties even by one day, by repealing laws prohibiting simple possession and use itself, or by at least minimizing these offenses while retaining restrictions on distribution—might be "misinterpreted" by some, it is unlikely that most alternatives short of legalization would be misinterpreted to the same extent as legalization would. And there is reason for taking measures such as these despite the risk that some persons may mistake them for a limited license to use the drug.

Regardless of whether legalization of marihuana would be warranted at the present time, the widely held doubts about how extensive the risks of the drug are and the costs of marihuana laws, require alternatives to current penalties and current offenses. The uncertainty concerning how harmful marihuana is—with the possibility that its use may involve risks (such as psychosis) whose extent or relationship to marihuana (as the term is used here) are now unclear or debatable,[16]

[14] I believe it does deter some people, but how many is another question.

[14a] If marihuana, however, should turn out to be less harmful than alcohol and tobacco, to the extent an increase in the use of marihuana involved switching from either of these drugs to it, the results would be beneficial.

[15] It should be noted, however, that regardless to what extent changes in law influence conduct, the only empirical study coming to my attention that has dealt with the effect of changes in the law on morality concluded that in the short-run people's moral judgments are only minimally affected by their knowledge or belief about the state of the law. *See* Walker & Argyle, *Does the Law Affect Moral Judgments?*, 4 BRIT. J. CRIM. 570 (1964). On the other hand, there is some evidence that the repeal of prohibitory laws may result in an increase in the conduct involved. *See* Andenaes, *The General Preventive Effects of Punishment*, 114 U. PA. L. REV. 949, 964 (1966) (abortion).

[16] Marihuana may distort perception while, unlike alcohol, not making the user aware that perception is distorted and not incapacitating him. Consequently there may be danger in the performance of certain skilled tasks such as driving. *See Hearings on H.R. 14096 Before the Subcomm. on Public Health and Welfare of the House Comm. on Interstate and Foreign Commerce*, 90th Cong., 2d Sess. 169 (1968) (statement by Dr. Stanley

lack of reliable information on the effects of long-term use, and the fact that extensive study of the drug is really just beginning, may suggest that legalizing the drug at *the present time* in the absence of a general public demand for it would be premature. However, the same uncertainty about how harmful the drug is—with the possibility that dangers that may be feared as possibilities but have not been verified, may turn out to be nonexistent—make current grading of penalties and perhaps definition of offenses inappropriate. With such uncertainty about the effects of the drug, it is inappropriate to permit punishments as harsh as those we currently permit.[17]

F. Yolles, Director of the National Institute of Mental Health) [hereinafter cited as *1968 House Hearings*]. *But cf.* Weil, Zinberg & Nelsen, *Clinical and Psychological Effects of Marihuana in Man*, 162 SCIENCE 1234, 1241 & n.26 (1968). This would not in itself, however, necessarily preclude legalization because the problem could be met by lesser measures than total prohibition. *See* Rosenthal, *Dangerous Drug Legislation in the United States: Recommendations and Comments*, 45 TEXAS L. REV. 1037, 1119-20 (1967). Also, even if use of marihuana is a consequence of dropping out rather than a cause of it, the preoccupation with the drug and the drug world that characterizes some persons habituated to marihuana (or other mind-altering drugs) may make it more difficult for those persons to solve their underlying problems or to make "an adequate adjustment to a complex society" than had they not become dependent on the drug. *See 1968 House Hearings, supra.* On the other hand, it is conceivable that being a chronic user may be the "best" adjustment that some people are capable of.

The relationship between use of marihuana and psychosis, use of other drugs, crime, birth defects, and amotivation is unclear. *See generally* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REP.: NARCOTICS AND DRUG ABUSE 13 (1967) (crime and violence, psychosis and other drug effects) [hereinafter cited as TASK FORCE]; CALIFORNIA JOINT LEGISLATIVE COMM. FOR REVISION OF THE PENAL CODE, DRUGS, Part I: Marihuana, ch. 2 (aggression), ch. 3 (heroin use), ch. 4 (psychosis and other drug effects) (Proposed Tentative Draft 1968) [hereinafter cited as CALIFORNIA JOINT LEGISLATIVE COMM.]; McGlothlin, *Cannabis: A Reference*, THE MARIHUANA PAPERS 401 (Solomon ed. 1966) (crime and violence, psychosis and other drug effects); Murphy, *The Cannabis Habit: A Review of Recent Psychiatric Literature*, 15 BULL. NARCOTICS No. 1, at 15 (1963) (same). For example, while some marihuana users become psychotic or have psychotic episodes, evidently a rare occurrence in the United States, it is unclear what part, if any, the drug plays in these occurrences. Does it induce psychosis in individuals who would have suffered a psychosis anyway? Are psychoses seen in users not attributable to or connected with use of the drug at all?

[17] For example, the federal marihuana laws make distribution (including gifts), importation, and handling the drug in various ways with knowledge that it has unlawfully been imported punishable by mandatory minimum terms of five to twenty years imprisonment and a maximum fine of $20,000 for a first offense and ten to forty years imprisonment and a maximum fine of $20,000 for subsequent offenses. 26 U.S.C. §§ 4742(a), 7237(b) (1964); 21 U.S.C. § 176(a) (1964). Probation and suspended sentence are unavailable. 26 U.S.C. § 7237(d) (1964); 21 U.S.C. § 176(a) (1964). Distributors to minors are punished even more severely. 26 U.S.C. § 7237(b) (1964). With only minor exceptions, penalties for federal marihuana violations are the same as penalties for violations relating to opiates and cocaine.

While 26 U.S.C. § 4744(a) (1964) prohibits, *inter alia*, acquisition, transportation, or concealment by a person required to pay the transfer tax on marihuana who has not paid the tax, the Supreme Court has held that if a defendant who would otherwise stand in violation of this provision properly claims the privilege against self incrimination he has a complete defense to a prosecution based on it. Leary v. United States, 395 U.S. 6 (1969); United States v. Covington, 395 U.S. 57 (1969).

In response to the *Leary* and *Covington* cases the Nixon administration has sponsored legislation that would directly prohibit simple possession of marihuana. S. 2657, 91st Cong., 1st Sess. § 8 (1969). This offense would be punishable like violations of 26 U.S.C. § 4744(a) (1964): first offenses by a minimum prison term of two years, a maximum of ten

In most states the distribution of marihuana, including noncommercial distribution (for example, as a gift), is punished as a felony.[18] Not only is it treated as a felony, but it is often punished as a very high degree felony with long terms of imprisonment permitted.[19] In fact, marihuana is defined as a narcotic drug under the laws of all but a few states, and the permissible punishments for distribution (including gifts) are much more often than not the same as those that apply to offenses involving opiates and cocaine.[20] The level of permissible penalties for a single small distribution of marihuana in some states may approximate those prescribed for such traditional crimes against person or property as larceny, burglary, aggravated assault, unaggravated robbery, kidnapping, arson, unaggravated forcible rape, or even second degree murder.[21] It is difficult to see how this treatment is consistent with ideals that proclaim human life as "the greatest value."[22]

Simple possession of marihuana is more often than not treated like

years, and a maximum fine of $20,000; second offenses by a mandatory minimum term of five years, a maximum of twenty years, and a maximum fine of $20,000; third and subsequent offenses by a mandatory minimum term of ten years, by a maximum of twenty years, and by a maximum fine of $20,000. 26 U.S.C. § 7237(a) (1964). Suspension of sentence and probation are unavailable for second and subsequent offenses. 26 U.S.C. § 7237(d) (1964).

The Nixon administration has also sponsored an omnibus drug bill which would, in effect, replace most existing federal narcotics, marihuana, and dangerous drug legislation. S. 2637, 91st Cong., 1st Sess. (1969). This bill would also directly prohibit simple possession of marihuana. § 501(d). Penalties would also parallel the penalties for violation of 26 U.S.C. § 4744(a) (1964), §§ 501(d), 508(b), except that in the case of a first offender the court would have discretion, with the consent of the defendant, to place the defendant on probation without entering a judgment of conviction, and if the defendant satisfactorily complied with the conditions of probation, the proceedings would be dismissed and no conviction would be entered. § 507.

In addition the omnibus bill would raise the maximum fine for, *inter alia*, unlawful distribution and importation of marihuana to $25,000 for a first offense and $50,000 for a subsequent offense. §§ 501(a), 501(c)(1), 508(a). It would also raise penalties for transactions involving LSD and other hallucinogens. §§ 202(a), 501(c)-(d), 506, 508(a)-(b).

In Texas, distributions (again including gifts) are punishable by five years to life imprisonment for a first offense and by ten years to life imprisonment for subsequent offenses. Possession is punishable by two years to life imprisonment for a first offense and by ten years to life imprisonment for subsequent offenses. Neither suspension of sentence nor probation are available for second or subsequent offenses. TEX. PENAL CODE ANN. art. 725b, § 23 (Supp. 1968), *as amended*, Tex. Laws 1969, ch. 242, § 1, at 703. A second offense of distribution to a minor may result in imposition of the death sentence. TEX. PENAL CODE ANN. art. 725b, § 23, *as amended*, Tex. Laws 1969, ch. 242, § 1, at 703.

18 *See* W. ELDRIDGE, NARCOTICS AND THE LAW 177-231 (App. B) (2d ed. 1967).

19 *Id.*

20 *Id.*

21 In New York, for example, a distribution of marihuana is punishable less severely than murder, forcible rape, or kidnapping; as severely as some burglaries; more severely than others, and less severely than still others; as severely as unaggravated arson; as severely as some grand larcenies and more severely than others; as severely as some robberies, more severely than others, and less severely than still others.

In California a distribution of marihuana is punishable as severely as second degree murder.

22 *See* note 3 *supra*.

simple possession of opiates and cocaine, often as a felony.[23] In those states that prohibit use or being under the influence of the drug, the penalties are often less severe than for possession.[24] But this is no consolation for the user because he is typically found in possession of the drug and charged accordingly. At the least a statute could distinguish marihuana from more dangerous forms of cannabis such as hashish (cannabis resin), other cannabis derivatives, and synthetic tetrahydrocannabinols. If it were thought desirable, transactions in these substances could be punished more severely than transactions in the plant and in parts of the plant itself.[25]

Relevant also to the wisdom of the marihuana laws are their costs. Scholars and others are increasingly beginning to pay attention to them,[26] and I do not propose to duplicate those discussions. Some of the leading costs should be discussed, however, for even if they may not yet be great enough to warrant legalization of marihuana, they do point to amelioration of the laws.

The extent to which marihuana is used is germane to the question of how substantial the costs of these laws are. Assuming that an undesirable effect of the law, anticipated or not, is a cost, the burden of the cost often varies directly, if not perfectly, with the extent of the effect. There is unanimous agreement that use of marihuana is increasing.[27] Many believe it is increasing rapidly. While there are many regular users, some of whom are probably psychologically dependent on the drug or "multi-habituated,"[28] there is also much experimental[29] and occasional use; many users try the drug once or a few times and then stop. Unfortunately, we do not really know either how widespread use is or how fast use is increasing. Beliefs of users, of those

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23 *See* note 18 *supra*.

24 *Id.*

25 Neither marihuana nor these other substances should be classified as narcotics. While marihuana may on occasion produce sleep, this effect is clearly overshadowed by its other effects. If these drugs are to be classified, they should be classified as hallucinogens.

26 CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, ch. 1; H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 337-41 (1968); Kadish, *The Crisis of Overcriminalization*, 374 THE ANNALS 157 (1967); Kaplan, *Foreword* to *Project—Marihuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A.L. REV. 1501 (1968). *See also* Skolnick, *Coercion to Virtue: The Enforcement of Morals*, 41 S. CAL. L. REV. 588 (1968).

27 *E.g.*, TASK FORCE, *supra* note 16, at 21, 24 (Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*); *1968 House Hearings*, *supra* note 16, at 106-07 (statement of Hon. Henry L. Giordano, former Commissioner of the Bureau of Narcotics), 177 (statement of Dr. Yolles); R. BLUM & ASSOCIATES, SOCIETY AND DRUGS: DRUGS I, at 242 (1969) [hereinafter cited as BLUM, DRUGS I].

28 "[W]here a person takes many different drugs and appears dependent, but not on any one of them." TASK FORCE, *supra* note 16, at 24.

29 *Id.*

promoting use, of nonusers, of those who want to see the laws ameliorated, of those who want to see no changes in the laws, or of those who want penalties increased, may often be suspect because of the interest of the person or group making the claim or because living as so many of us do in our own little worlds, we sometimes find it hard to believe that there are other worlds in which people believe and act differently.[30]

Unfortunately also, the marihuana laws are probably in good part themselves responsible for our lack of any solid figures on the extent of use because when conduct is unlawful, it is difficult to obtain reliable information concerning its incidence. Moreover, when the conduct prohibited involves a willing transaction between two parties, neither of whom have reason to complain, it is even more difficult to obtain such information.

In any event, estimates of persons in the United States who have used marihuana at least once range from hundreds of thousands to twenty million. In March, 1966, the New York County Medical Society referred to "hundreds of thousands of persons who have had one or a few marihuana experiences."[31] In testimony before the Subcommittee on Public Health and Welfare of the House Committee on Interstate and Foreign Commerce, Dr. Stanley F. Yolles, Director of the National Institute of Mental Health stated

> In the United States, we are not quite sure of the exact extent of the problem. Estimates as high as 20 million have been made, but it is much more likely in the neighborhood of 4 to 5 million persons have used it at least once.[32]

Use among persons in the eighteen to thirty age group (many of whom are from middle class backgrounds) and among persons of high school age (many of whom are also from middle class backgrounds)[33] is generally considered higher than use in other age groups. While campus and high school use is usually stressed, use among young professionals

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[30] A recent study of drug use at five California colleges and universities found that sometimes user estimates of the frequency of use were more nearly correct than nonuser estimates and concluded that they should not be discounted. R. BLUM & ASSOCIATES, STUDENTS AND DRUGS: DRUGS II, at 147, 163 (1969). Apparently, nonusers may underestimate use as easily as users may overestimate use.

[31] Medical Society of County of N.Y., *The Dangerous Drug Problem*, 22 N.Y. MEDICINE 241, 242 (1966).

[32] *1968 House Hearings, supra* note 16, at 177. Another estimate is that there may be one million or more marihuana users in the United States. Fort, *Social Problems of Drug Use and Drug Policies*, 56 CALIF. L. REV. 17, 22 n.29 (1968).

[33] TASK FORCE, *supra* note 16, at 24; BLUM, DRUGS I, *supra* note 27, at 242.

also seems to be increasing,[34] and there are a growing number of accounts of junior high school and grammar school use.

Between the estimates of hundreds of thousands and twenty million, the number of persons in the United States who have tried marihuana is unclear. Moreover, the estimates are usually cumulative use or cumulative incidence figures only. They usually speak of persons who have used the drug at least once and do not usually deal with frequency of use or how recent the last use was. Such information would, of course, be helpful in assessing the extent and seriousness of the problem.

Arrest statistics have built-in limitations. While they may furnish some indication of trends in the incidence of the conduct for which arrests are made, they primarily measure law enforcement activity and priorities.[35] Consequently, increases in arrests cannot necessarily be taken as a good measure of the incidence of the conduct for which arrests are made. Nevertheless, for what it is worth, marihuana arrests have been increasing rapidly. Federal Bureau of Narcotics figures show that state marihuana arrests reported to the Bureau rose from 4,113 in 1960 to 54,468 in 1967.[36] The figure for 1966 was 27,822,[37] meaning that arrests reported to the Bureau virtually doubled during 1967. California reported 26,527 adult drug arrests for marihuana offenses in 1967 compared with 14,209 in 1966 and 4,245, 3,386, and 3,433 in 1960, 1961, and 1962, respectively.[38] During the same period California also reported 10,987 juvenile marihuana arrests in 1967 compared to 4,034 in 1966 and 910, 408, and 310 in 1960, 1961, and 1962, respectively.[39] Preliminary data from California for 1968 show the trend continuing with 33,753 adult arrests and 16,754 juvenile arrests.[40] In addition, the California figures for 1967 show that over thirty-five percent of the adults arrested during that year for marihuana offenses had no prior criminal record whatsoever and that over forty percent had only a minor criminal record.[41]

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34 TASK FORCE, *supra* note 16, at 3.

35 In addition, reporting to the compiling agency is often incomplete or inaccurate. *See generally* Mandel, *Problems with Official Drug Statistics*, 21 STAN. L. REV. 991 (1969). On problems relating to arrest statistics see BUREAU OF CRIMINAL STATISTICS, CALIFORNIA DEP'T OF JUSTICE, DRUG ARRESTS AND DISPOSITIONS IN CALIFORNIA 1967, at 2-3 [hereinafter cited as DRUG ARRESTS 1967].

36 Letter from Henry L. Giordano, former Associate Director of the new Federal Bureau of Narcotics and Dangerous Drugs and former Commissioner of the Federal Bureau of Narcotics, to the author, June 20, 1968.

37 *Id.*

38 DRUG ARRESTS 1967, *supra* note 35, at 4 (Table a).

39 *Id.* at 5 (Table b).

40 BUREAU OF CRIMINAL STATISTICS, CALIFORNIA DEP'T OF JUSTICE, 1968 DRUG ARRESTS IN CALIFORNIA 4-7 (Tables 3 & 4) (Advance Report 1969).

41 DRUG ARRESTS 1967, *supra* note 35, at 64 (Table I-10). Seizures and purchases of

Chief among the costs of the marihuana laws is that they criminalize[42] large numbers of people, many of whom are young and developing and many of whom appear to have no prior criminal record or at most only a minor record. They criminalize in two general ways. First, those who are convicted are the ones obviously criminalized. Some of these may go to jail or prison;[43] others may not. Even if a person is not incarcerated but is fined, given a suspended sentence, or placed on probation, the fact remains that he has a criminal record, whether that record is for a felony or a misdemeanor. Probably never before in our history has the mere possession of a criminal record been as serious and detrimental as it is today. A conviction may adversely affect opportunities in employment and education. For example, the Board of Regents of the University of Texas System has promulgated a regulation providing for mandatory expulsion from the university of any student "finally convicted of" or "placed on probation for" selling, possession, or using "a drug or narcotic."[44] At another time, it may have been that the consequences of a conviction could be forgotten, but in the complex society that we live in, a man's history, be it one of conviction or not, follows him.

Moreover, the consequences of conviction have become particularly meaningful as marihuana has spread to the middle class. The middle class person convicted of crime really has something to lose. Employment and educational opportunities are meaningful opportunities to him. Being an adjudged criminal, with all the stigma that

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marihuana in the United States and at ports and borders by federal authorities reported by the Federal Bureau of Narcotics increased from 1,890.3 kilograms in 1960 to 27,914.98 in 1967. BUREAU OF NARCOTICS, U.S. TREASURY DEP'T, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS [*compare* Table 8, at 72 (1960) *with* Table 6, at 43 (1967)]. (A kilogram is the equivalent of 2.2 pounds.) The corresponding figure for 1966 was 10,780.12 kilograms, less than one-half the 1967 total. *Id.* at 45 (Table 6) (1966). Seizure figures also primarily measure law enforcement activity.

42 *See generally* CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, ch. 1 (by J. Kaplan); Kaplan, *Foreword*, *supra* note 26.

43 Some marihuana offenders, of course, are sent to jail or prison. While the effects of incarceration depend so much on both the individual and the kind of institutional experience he is subjected to, institutionalization carries with it the possibility that the offender will, because of association with hardened criminals or for other reasons, become worse rather than better for his experience. Also, large numbers of marihuana offenders are middle class persons to whom our correctional systems may generally have less to offer than they do to an underprivileged person. While at their best, given the realities of our institutions, they may offer vocational training and some educational opportunities that an underprivileged offender might not otherwise have access to, these opportunities would seem to be geared to the needs of the ill-trained and ill-educated rather than to the needs of *most* middle-class offenders. *Cf.* Letter from Hon. Richard A. McGee to Judge John W. Oliver, in Oliver, *A Judge Looks at LSD*, 32 FED. PROB., Mar., 1968, at 5, 10 (1968).

44 Rules and Regulations of the Board of Regents of the University of Texas System for the Government of the University of Texas System, Part 1, ch. 6, § 3.3 (Apr. 20, 1968, *as amended*, Mar. 14, 1969).

attends it, may be as or more meaningful to a middle class person than incarceration may be to a person who has few options in life.

Perhaps most important, to the extent that the use of marihuana may be a symptom of alienation from society,[45] a judgment of conviction may deepen the alienation of the user.[46] Criminal conviction is a particularly strong form of social condemnation. Conviction of a user may make both the user and others think of him as a criminal or "outsider."[47] It may deepen the user's loss of respect for a society at least one of whose values he does not share. Conviction may thus alienate the user further from society.[48] It may also alienate those who were not alienated before, and to the extent that a conviction may interfere with opportunities in a person's life, it may compound alienation even more.

The danger of further alienating the alienated extends beyond those who are convicted to those who are arrested, and beyond them to those who never come in contact with the law. An arrest is recorded, while acquittal or dismissal of a charge often is not. Merely labeling users (and sellers also) as members of a criminal class may make both themselves and others think of them as criminals or "outsiders" and thus further alienate them from society.[49] This danger may be compounded when so many people, whether rightly or wrongly, believe that marihuana is not or is negligibly harmful and view our harsh laws (particularly against possession and use) as unjust or irrational. There is disrespect for the marihuana laws, and the indications are that it is becoming more acute as the number of users and others who think these laws are unjust or irrational increases. In addition, the marihuana laws—regulating, as they do, consensual conduct—are difficult to enforce, and enforcement must be irregular.[50] This too may increase

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45 By alienation I mean a sense of nonbelonging or apartness; a feeling that the values and doings of the mainstream of the society are irrelevant to one's life. This may be translated into either noninvolvement or hostility. *See generally* 1968 *House Hearings*, *supra* note 16, at 179-80 (statement of Dr. Yolles).

46 Of course, conviction also may sometimes alienate offenders who are not alienated already.

47 The word is Howard Becker's. *See* H. BECKER, OUTSIDERS (1966).

48 *See generally* H. BECKER, OUTSIDERS *passim* (1966); E. SCHUR, CRIMES WITHOUT VICTIMS 5-7 (1965); Fort, *Social and Legal Response to Pleasure-giving Drugs*, in UTOPIATES 205, 221 (R. Blum ed. 1964) ("An added consequence of present procedures with all the drugs but alcohol is to create in the illicit user a negative self-image and added difficulty in finding employment, which perpetuates and intensifies any social alienation."). I am not necessarily claiming that criminal sanctions for marihuana users increase use, although it is certainly possible that some persons may be affirmatively attracted to use by its illegality or because they view penalties as inappropriate. *See* TASK FORCE, *supra* note 16, at 25. I make the point that criminal sanctions may reduce use and influence users to stop use and still compound alienation.

49 *See* E. SCHUR, *supra* note 48, at 5-7.

50 *See Project—Marihuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A.L. REV. 1499, 1539-42 (1968). Enforcement may

disrespect for the marihuana laws,[51] and disrespect for them may lead to a more generalized disrespect for law and for our institutions.[52]

If use of marihuana should be as widespread as some of the estimates claim, and if it continues to spread, the consequences of the marihuana laws will be to label as criminal an increasingly substantial segment of our population and further to alienate the alienated on a larger scale. Even under conservative estimates of use, the risk that by criminalizing we may be compounding alienation is a substantial one because the largest group of users seems to be persons of high school and college age and persons in their twenties. There is nothing novel in pointing out that this is a critical generation because it is the generation of tomorrow and at the same time probably a generation more alienated from its elders than any other of recent memory. To the extent that the marihuana laws criminalize and contribute to the alienation of this generation, they adversely affect not only a quantitatively but a qualitatively significant element of our society.[53]

Of course, as long as dominant public attitudes generally disapprove of use of marihuana, users (and sellers too) would be considered deviant even if marihuana were to be legalized. It often is difficult to distinguish deviancy as defined by social attitudes from those attitudes given effect in law generally or in the criminal law in particular.[54] To the extent social attitudes view use of marihuana as deviant, merely taking use or possession for personal use out of the ambit of the criminal law will not wipe out the deviancy of the user. The criminal law, however, is in many ways the most powerful form of official social condemnation in our society, and when a social judgment of deviancy is accompanied by criminalization, the judgment is heavy indeed. Just as the criminal law reinforces the social judgment, removal of criminal sanctions may lessen the harshness of the social judgment.

The harshness of this social judgment should be relieved as much as possible. The verified dangers of marihuana do not warrant such severe judgments as our legislatures have commonly made. Of course, criminal sanctions are commonly visited upon the alienated, the disaffected, the disturbed, and those who present psychiatric problems

also bear more heavily on lower economic and social classes, minorities, and hippie communities. *See* CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, ch. 1; *Project*, *supra*, at 1541-42.

51 *See* Record at 122-24, United States v. Mutrux, Crim. No. 5527 (W.D. Mo., Aug. 21, 1967) (testimony of Dr. Richard H. Blum).

52 *See* CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, ch. 1; H. PACKER, *supra* note 26, at 340-41.

53 *See* Fort, *Social Problems of Drug Use and Drug Policies*, *supra* note 32, at 23.

54 *See* E. SCHUR, *supra* note 48, at 6.

unless they fail to meet standards of criminal responsibility that apply to the generality of crimes. Since, however, criminalization is generally the strongest official mark of condemnation and deviance our society possesses, the criminal law should not be used against these persons unnecessarily. While not all who try marihuana are alienated, much less disturbed or in need of psychiatric care, alienation seems to be so much a major problem that criminalization should be treated quite circumspectly.

Moreover, many, if not most, American users apparently are experimental users. Certainly, the consequences of criminalization would seem to be least warranted in the case of the experimenter. A small transgression or even a small number of transgressions, especially—but not exclusively—when committed by the young and developing, should not be the basis for permanently scarring a person's life. This is part of the rehabilitative ideal. While that ideal is usually spoken of in connection with sentencing after conviction of crime, it should be given weight in formulating definitions of criminality also.

Much of my discussion up to this point could support legalization of marihuana.[55] Users of marihuana often give it away, share it with friends, exchange it, act as agents of friends in securing it, and sell it.[56] Some users sell it for profit in order to support themselves through school. Nonusing sellers may also be alienated; they too may have something to lose by a conviction. Social policy, however, rarely—and, more often than not, properly—exalts one policy to the complete exclusion of all others. If legalization of the drug would at present be premature, sellers could still be amenable to punishment even though conviction may have adverse collateral consequences in foreclosing

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[55] Because the marihuana laws prohibit consensual transactions, enforcement is difficult. Consequently, there is need for use of informers, undercover agents, and searches to enforce them, and practices approaching entrapment sometimes occur. These methods of enforcement, often regarded critically, are also costs of the law. *See generally* CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, ch. 1; H. PACKER, *supra* note 26, at 337-41; J. SKOLNICK, JUSTICE WITHOUT TRIAL ch. 6-7 (1966); Kadish, *The Crisis of Overcriminalization*, *supra* note 26; Skolnick, *Coercion to Virtue: The Enforcement of Morals*, *supra* note 26; *Project*, *supra* note 50, at 1515-37; Note, *Hallucinogens*, 68 COLUM. L. REV. 521, 552-54 (1968). While elimination of the simple possession offense or reduction of penalties for simple possession would reduce these costs, they could be eliminated only by "legalization" of sale and possession. As long as sales are unlawful, use of informants and undercover agents is necessary, and practices approaching the borderline of entrapment are likely to occur. Moreover, as long as possession with intent to sell is unlawful—even if possession for personal use is not—searches will occur. The further cost of requiring users to associate with criminals will not be eliminated completely as long as sale is unlawful.

[56] *See* CALIFORNIA JOINT LEGISLATIVE COMM., *supra* note 16, at 153 ("Our data indicate that over 20% of the users of marihuana have sold the drug on occasion in small quantity, to friends who tacitly agree they will return the favor if the drug becomes available to them in the future.").

opportunities and even though criminalization may further reinforce alienation and negative self-images.

These negative results may be outweighed by the attempt to keep some semblance of control over use of the drug. Restrictions on commercial trafficking would seem to have a greater potential for controlling use[57]—to the extent that use can ever be kept under control—than restrictions on use itself, possession for personal use, or even noncommercial distribution. Consequently, a balance can be struck by minimizing sanctions for the latter while prescribing significant (though not inordinate) sanctions for the former. Either sanctions on use and possession for personal use could be abandoned, or, for deterrent purposes, present criminal penalties could be replaced by a *civil* violation —with the only sanction being a fine or, in addition, a period of probation, satisfactory completion of which would result in reduction or remission of the fine.[58] Incarceration would not be permitted, the civil violation would not constitute a criminal conviction, and the offender would not have a criminal record.[59] Possibly, a first-time transgression should result solely in the issuance of a written warning by the law enforcement officer, with only subsequent transgressions being treated as

[57] In addition, the distributor by definition makes the drug available to others, while the user-possessor may or may not. When marihuana is unavailable, however, some users switch to more powerful drugs such as hashish (cannabis resin), amphetamines, and LSD. N.Y. Times, Sept. 17, 1969, at 1, col. 1. This suggests that to the extent the availability of marihuana prevents people from using more powerful drugs, measures tending to increase the availability of marihuana may be desirable.

[58] Possession for personal use could be distinguished from possession for the purpose of distribution in one of several ways: (1) the prosecution could be required to prove beyond a reasonable doubt that the accused possessed for the purpose of distribution; (2) the accused could be required to prove by a preponderance of the evidence that he possessed for personal use, or, alternatively, this determination could be made as a sentencing decision; or (3) the legislature could make a rough distinction between possessors who are likely to use and possessors who are likely to distribute on the basis of the quantity possessed; possession of more than a specific small quantity would result in treatment as a distributor.

It can be argued that federal abandonment of a sanction on possession for personal use or simple possession would conflict with the obligations of the United States under the Single Convention on Narcotic Drugs, May 15, 1967, [1967] 18 U.S.T. 1407, T.I.A.S. No. 6298, 520 U.N.T.S. 204. Article 33 of the Convention states that "[t]he parties shall not permit the possession of drugs except under legal authority," and Article 36-1 provides that

> [s]ubject to its constitutional limitations, each Party shall adopt such measures as will insure that . . . possession . . . of drugs contrary to the provisions of this Convention . . . shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

Despite this language, I believe that a strong case can be made for the view that Article 36 requires only domestic legislation generally oriented to the restriction of the use of drugs subject to the treaty to medical and scientific purposes, the principal purpose of the treaty. *See* Article 4-1.(c). Under this reading possession with intent to distribute might be prohibited. The last clause of Article 36-1 suggests that a civil violation for possession for personal use or simple possession would comply with the treaty. Moreover, it is doubtful if the treaty speaks to state law at all.

[59] *See* ALI MODEL PENAL CODE § 1.04(5) (Proposed Official Draft, 1962).

civil violations.[60] The civil violation could even be used to reach noncommercial distributions.[61] The aim is to balance the need for controlling use of marihuana while at the same time keeping criminalization to a minimum.

Admittedly, any amelioration of the marihuana laws may be taken by some as social approval of use even though it would not be so intended. I do not believe, however, that this possibility precludes amelioration. Much depends on to what extent the marihuana laws are changed. Reduction of penalties and redefinition of offenses in order to minimize criminalization are not the same thing as legalizing the drug, and it is not to be expected that the extent of misinterpretation of these measures would approximate the extent of misinterpretation that would probably follow legalization. Of course, if it were appropriate to visit marihuana transactions with the consequences currently permitted, there would be no reason to chance misinterpretation by reducing penalties and redefining offenses. But this I submit is not the case. Reduction in the deterrent effect of the marihuana laws, while relevant, is not controlling. Deterrence is not the sole goal of the criminal law. If it were, we might not only impose the death sentence for all crimes but might draw and quarter offenders also.[62]

At this time I would like to discuss in more detail the question of "legalization" of marihuana. Whether or not marihuana should be legalized (much as distribution and use of alcohol has been legalized) is a matter of both concern and dispute.

Some would require that before the state interferes with the individual's interest in pursuing his own inclinations it must have a compelling reason to do so. I think, however, that the interest required of the state before it may properly restrict individual freedom varies directly with the social value of the activity it would restrict. The use of marihuana is not generally regarded as having any substantial social value, although it can certainly be argued that insofar as the drug brings pleasurable or positive feelings to the user, it does possess some social value. The question then is whether that

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[60] This is the administrative practice in Great Britain with respect to violations of the Street Offences Act, 7 & 8 Eliz. 2, c. 57 (1959), by women observed loitering or soliciting for the purpose of prostitution. *See* C. DONNELLY, J. GOLDSTEIN & R. SCHWARTZ, CRIMINAL LAW 546 (1962).

[61] Commercial distribution could be treated as a higher offense than simple distribution, or the accused could be required to prove by a preponderance of the evidence that he did not act commercially, or, alternatively, the latter determination could be made as a sentencing decision.

[62] *Cf.* Hart, *Murder and the Principles of Punishment: England and the United States*, 52 NW. U.L. REV. 433, 450 (1957).

value and the existing costs of the marihuana laws are sufficient to warrant its "legalization" when it is unclear just how harmful it is, when existing studies of its effects are inadequate, when more extensive studies are only just beginning, and when the drug is now restricted. On balance, I doubt whether they now are,[63] and I think that to "legalize" marihuana *at the present time* would probably be premature even if it were a politically viable alternative.[64] Since, however, the drug brings pleasure to a considerable and increasing number of Americans, I believe that if in a few years time research shows that the short-term effects of the drug are not particularly harmful and fails to furnish substantial indications that its long-term effects are significantly harmful, legalization would be in order. True, we will probably not be as clear as we would like to be about marihuana's long-term effects for some twenty-five years. We cannot, however, wait until all the data are in until we make a decision: to do so would be to deprive a considerable number of people of their liberty to use the drug (with the pleasure it brings), and perhaps also of their liberty *for* using the drug, for more than a generation without a showing of demonstrated potential for harm. In addition, current social costs that may be tolerated for the few years before more is known about the short-term effects of the drug may become intolerable if they should be borne for a generation.

Furthermore, it should be recognized that the extent of use, pub-

[63] I am referring to nonmedically or scientifically oriented use in general. Religious use may have greater social value and consequently require a greater interest on the part of the state before its restriction would be warranted. *See* People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964); *In re* Grady, 61 Cal. 2d 887, 394 P.2d 728, 39 Cal. Rptr. 912 (1964) (peyote); Finer, *Psychedelics and Religious Freedom*, 19 HASTINGS L.J. 667 (1968).

[64] In addition, federal legislation legalizing distribution and use of the flowering tops of the cannabis plant would be inconsistent with the obligations of the United States under the Single Convention on Narcotic Drugs, May 15, 1967, [1967] 18 U.S.T. 1407, T.I.A.S. No. 6298, 520 U.N.T.S. 204. Article 4-1.(c) of the Convention obligates the parties "[s]ubject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs." Cannabis is a drug subject to the Convention and is defined as "the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted . . . ." Art. 1-1.(b). While federal legislation legalizing cannabis as so defined would for domestic purposes supersede the treaty, it would leave the United States in default of its international obligations.

The Convention also provides that "[t]he parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant." Art. 28-3. According to an official of the Federal Bureau of Narcotics and Dangerous Drugs, cannabis leaves were excluded from the full controls of the Convention because low potency beverages made from the lower leaves of the cannabis plant had widespread use without significant abuse in parts of India; and it was intended that such use would continue, but that abuse would be met by action of the affected party under Article 28-3. Personal communication to the author. It is unclear what "abuse," "misuse," or "illicit traffic" mean in this context.

lic attitudes toward use, and the social costs of existing laws are highly relevant to restriction and proscription. If use of marihuana were to become so accepted and so common that the marihuana laws would label as criminals a sizable minority of the population, so common that the police would not enforce them or juries not convict, or so common that enforcement would pose an intolerable burden on pocket books and on police manpower that could be used to deal with more serious crimes, legalization then might be in order despite the risks of the drug (and even if those risks may be greater than some of us believe). It might also be in order if increased enforcement efforts lead to significant organized crime involvement in the marihuana traffic. In these events, the increased costs of the marihuana laws might then outweigh their benefits.

In addition, public attitudes may be manifested more directly. Countless activities, including sky diving, are permitted even though they entail risk because it is believed they possess some sort of social value. Use of alcohol is permitted even though it is recognized that alcohol can have harmful effects. Of course, we have had national prohibition of alcohol; it failed as Professor Louis B. Schwartz of the University of Pennsylvania Law School has said, "not merely because violation was frequent, but because of increasing doubts that the forbidden conduct was undesirable and much evidence that the cost and consequences of enforcement were intolerable."[65] If the public *generally* begins to regard marihuana use as "not so bad" or as desirable, and if this attitude is translated into demands for legalization by groups that possess or come to possess the ability to have their views enacted into law, legalization of marihuana would be in order and would probably follow. Public acceptance and demand for change would in itself be a judgment on the social utility of use of marihuana.

While the attitude of the law toward any conduct, including use of any substance, must be based on a balancing—conscious or unconscious—of its harm or dangers against its social utility, and while some individuals and groups currently feel that the social utility of marihuana outweighs the risks of use, views on social utility differ. Again, beauty is in the eye of the beholder. Some or even all users of marihuana may believe that the effects of the drug are beneficial, creating feelings that they deem pleasurable or more generally "positive."[66]

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[65] Schwartz, Book Review, 96 U. PA. L. REV. 914, 916 (1948).

[66] Some people may deem "therapeutic" reactions that most of us would deem "adverse." For example, one psychiatrist has suggested to me that sometimes the precipita-

Others—nonusers particularly but some users also—may deem the feelings described as "negative," not in the sense that they deny that the feelings are pleasurable or positive in the opinion of those who ascribe these characteristics to them, but in the sense that they feel it inappropriate to induce or precipitate these feelings by the use of a drug in a situation that is not at least officially sanctioned as "medical." Even if they do not feel that the feelings described by users are negative in the sense just mentioned, they may react to them neutrally in the sense that they feel it neither appropriate nor inappropriate to induce such feelings in such settings. In this case they may, in effect, balance the subjective value to users of the feelings precipitated and the individual's interest in pursuing his own inclinations against the likely risks of harm. Perhaps at some time in the future there will be a change in public attitudes toward use of marihuana so that there is some *general* belief that the feelings ascribed to the drug are not inappropriate in the described setting and that the value of these feelings outweighs the perceived risks of harm. There are, of course, people in the country who hold one or the other of these views; how many is unclear, and there is reason to believe that their number is increasing. It is unknown, however, how widely held these views are. Certainly, these views have not been translated into large-scale demands for legalization by those groups that presently have the ability to enact their views into law. If and when public attitudes so change, this will be a judgment that the social utility of use outweighs the risks of use. Obviously, influencers of public attitudes, whether they be the medical and allied professions, lawmakers, law enforcement groups, academics, mass media, or others, will influence what public attitudes will be just as they have influenced what public attitudes are.

Epilogue

Especially in rapidly changing areas, the time elapsing between preparation and publication of an article may see substantial changes in events. Since preparation of this article, use of marihuana has continued to increase,[67] the costs of the marihuana laws have continued to

tion of a psychotic reaction may not be undesirable, because it brings the individual's problems out in the open.

[67] Thus Dr. Stanley F. Yolles, Director of the National Institute of Mental Health, has revised his estimate of use in the United States upward. Testifying before the Subcommittee on Juvenile Delinquency of the Senate Judiciary Committee, he recently stated, "A conservative estimate of persons in the United States, both juvenile and adult, who have used marihuana at least once is about eight million and may be as high as 12 million people." N.Y. Times, Sept. 18, 1969, at 47, col. 4.

rise, and pleas for amelioration have multiplied. Many state legislatures have listened to these pleas. As a result, to date in 1969 at least eight states have reduced penalties for possession of marihuana.[68] Although none of these reductions has been as substantial as I have argued for and although some of the new statutes raise penalties for distribution at the same time they reduce penalties for possession,[69] the movement is on the whole a welcome one. I hope it will continue.

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[68] Conn. Pub. Act No. 753, §§ 1, 19 (1969); Ill. Pub. Act 76-464, § 38(5) [4 Ill. Legislative Service 629 (West 1969)] (2.5 grams or less); Iowa Laws 1969, House File 516 [3 Iowa Legislative Service 359 (West 1969)] (possession for personal use); MONT. REV. CODES ANN. § 54-133 (Supp. 1969) (minimum penalty eliminated); N.D. CENT. CODE 19-03-28.1 (Supp. 1969); Utah Laws 1969, ch. 170, at 671; Wash. Laws 1969, ch. 256 [2 Wash. Legislative Service 1084 (West 1969)]; WYO. STAT. ANN. § 35-369 (Supp. 1969). *The New York Times* reports reductions in penalties for possession in still other states in 1969. N.Y. Times, Aug. 17, 1969, § 1, at 1, col. 3, but I have been unable to obtain slip laws or session laws to confirm this.

[69] MONT. REV. CODES ANN. § 54-132 (Supp. 1969); Utah Laws 1969, ch. 170, at 671; WYO. STAT. ANN. § 35-369 (Supp. 1969). On the other hand, North Dakota and Washington State reduced penalties for distribution at the same time as they reduced penalties for possession. N.D. CENT. CODE § 19-03-28.1 (Supp. 1969); Wash. Laws 1969, ch. 256 [2 Wash. Legislative Service 1084 (Wash. 1969)].

QUESTIONS AND ANSWERS

ABOUT

MARIJUANA DECRIMINALIZATION

Prepared by NORML

The National Organization for
the Reform of Marijuana Laws
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March 26, 1975

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QUESTIONS AND ANSWERS ABOUT MARIJUANA DECRIMINALIZATION

1. What's the difference between decriminalization and legalization?

A. Legalization, as the term is used in the drug field, means that marijuana could be legally sold, under appropriate governmental controls. This could, though not necessarily would, be similar to alcohol licensing. The important concept here is that both use and sale would be legal.

Decriminalization only pertains to the user. The user is taken out of the criminal justice system, although selling remains illegal. This concept is intended to continue a discouragement policy against marijuana; thus no legal market is permitted. By focusing the law enforcement attention against the commercial traffickers, rather than the user, we can eliminate over 90% of the marijuana arrests.

2. Why not go ahead and legalize marijuana?

A. First, legalization may be inconsistent with our current treaty obligations under the Single Convention of 1961.

Second, many believe legalization would institutionalize marijuana and give it the status of official approval, thus making its use more inviting and widespread.

But more importantly, there is currently no political consensus to support legalization. There are still unanswered questions about the effects of long term chronic use, and there is still considerable moral opposition to making marijuana available legally. In a few years, society may decide that the harm from marijuana could be minimized if we controlled the market and imposed age, quality and strength controls. But for now, this position has insufficient political support and would likely be construed as encouraging use.

Decriminalization can be expected to eliminate 90% of the marijuana arrests which occur annually. That is a significant step, well worth taking now. And there is a broad-based national coalition which has surfaced to support this change.

3. Since most states and the federal government have already lowered marijuana penalties to a misdemeanor, and very few people go to jail any more, why bother to go any further?

A. A misdemeanor is still a crime. The person is left with a debilitating criminal record, and is faced with a possible jail sentence.

Most of these people are young (88% of those arrested are under 26), otherwise law abiding citizens. There is simply no justification to continue to treat them as criminals.

In addition, hundreds of millions of dollars of law enforcement resources are wasted annually prosecuting marijuana smokers. We need these resources directed against serious crimes. For example, 66.9% of all drug arrests in the country in 1973 were marijuana arrests. Marijuana prosecutions are a significant cause of the court backlogs many jurisdictions face today. By decriminalizing marijuana we will free our law enforcement apparatus of an impossible and costly burden and thereby permit law enforcement officals to concentrate on such serious crimes as robbery, burglary, rape and murder.

4. Won't this be interpreted as an official sign of approval of marijuana smoking?

A. Certainly not. As the Marijuana Commission did when they issued their report, this change should be accompanied with clear indications that an official policy of discouragement is being continued.

By focusing law enforcement efforts at the commercial trafficker, society can maintain pressure on the illegal market.

If an "Oregon" type decriminalization plan is adopted, the purpose of maintaining the civil fine against the user is to dramatize society's disapproval and underscore the discouragement policy.

5. Isn't decriminalization illogical since it only applies to the user, leaving penalties against the seller?

A. No. Criminal penalties are retained against the seller as a means of discouragement. This is consistent with the way we treat such other "victimless crimes" as pornography, gambling and prostitution.

It balances the right of the individual in a free society to remain free from governmental interference in his private life, with society's right to protect itself against those who would purvey something society deems potentially detrimental.

6. What about the recent medical claims that marijuana may be more dangerous than we originally thought?

A. No drug is totally harmless, including marijuana. But the evidence strongly suggests no significant harm is caused by the occasional use of marijuana and whatever risk is involved with marijuana is far less than the demonstrated harm from a number of other drugs permitted in our society.

We should continue to look for potential ill effects from the use of marijuana -- especially the chronic, heavy use. But any findings of potential harm should be used to discourage use, not to justify treating the user as a criminal. As Dr. Tom Bryant, president of the Drug Abuse Council recently stated:

> "... we should not permit a medical debate to frustrate the decriminalization policy recommended by the Marijuana Commission. Even if marijuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."

This past year we have heard several new claims of potential harm from marijuana use. These claims have received widespread media exposure, often far greater than the substance of the study warranted. Because of inadequate controls, excessive dosage levels, the claims often fall flat under close objective examination. Unfortunately the public is left only with the original, unfounded impression.

A glaring recent example is the Report of the U.S. Senate Subcommittee on Internal Security entitled "Marijuana-Hashish Epidemic and its Impact on United States Security." Subcommittee Chairman James O. Eastland talked of a "marijuana-hashish epidemic," a pending "national disaster," and "a large population of semi-zombies."

The Senator's answer to this perceived threat: wage an all-out propaganda campaign, beginning with the distribution of his admittedly unbalanced one-sided

Report. Senator Eastland refused to permit anyone to testify unless their testimony would support his premise -- that marijuana was highly dangerous, medically and morally. The result is a biased, frightening document offering little scientific value and no solutions.

Yet, because the Eastland hearings were reported by a generally uncritical press, there now appears to be a rather widespread belief that recent studies have shown marijuana to be terribly dangerous.

Each year the Department of H.E.W. attempts to summarize the research on marijuana and to reach some conclusions about the potential dangers. In their recently released Report for 1974, National Institute for Drug Abuse (NIDA) Director Dr. Robert L. DuPont discusses the recent claims:

> "These more recent studies deal with three areas of concern. They are: effects on male sex hormone levels, interference with the body's immune response and effects on fundamental cell metabolism. The implications of these preliminary studies are, at this point, speculative. There is concern that alteration in hormone levels as a result of chronic use may interfere with normal adolescent development or with sexual differentiation of male fetuses if cannabis is used by pregnant women at criminal periods of fetal development. Effects on the immune response and on cell metabolism might seriously affect resistance to disease or result in a variety of degenerative or genetic changes. Thus far there is no clinical evidence indicative of such consequences although continuing research is obviously required." (emphasis added)

Dr. DuPont also cautioned,

> "We must also recognize that no drug with major pharmacological action -- including marihuana -- can ever be truly safe. In is inevitable that further reserach will disclose additional hazards. In developing rational social policy, scientific evidence of a health hazard must be balanced against social and economic costs incurred by possible alternative strategies for discouragin drug abuse."

Dr. DuPont, who also serves as chief Presidential drug advisor in his capacity as director of the White House Special Action Office for Drug Abuse Prevention, recently endorsed publicly the Oregon approach. He believes

marijuana presents health risks to the user, and should be actively discouraged, but opposes the use of the criminal law for possession of small amounts.

It should be stressed that the National Commission on Marijuana and Drug Abuse, when they recommended decriminalizing the user, did not presuppose marijuana would be harmless. And several members of the Commission have reiterated their conclusions since the Eastland Hearings.

> "No drug is totally safe or harmless. In a sense, there is no human activity which is totally harmless. However, it is my opinion that marijuana involves only a minimal risk of harm to the user. Clearly the potential harmfulness of marijuana to the user is on a much lower order of magnitude than the potential harmfulness of such other drugs as alcohol, tobacco, amphetamines, barbiturates, and hallucinogens." J. Thomas Ungerleider, M.D., Presidential Appointee to the National Commission.

> "Since publication of the Commission's Report in March 1972, numerous studies have been reported, some suggesting that the dangers from marijuana are far greater than the Report indicated, others demonstrating that its use produces relatively little harm. In short, work in the last two years has not fundamentally changed the data base on which the recommendations were made." Dr. Dana Farnsworth, Presidential Appointee to the National Commission.

In response to the flurry of contradictory medical claims, the Drug Abuse Council, a Washington, D.C. based private foundation funded primarily by the Ford Foundation, recently sponsored a seminar to discuss the recent research. The major researchers wre invited, including some of the most vocal opponents of marijuana. At the conclusion of the conference, following closed-door meetings involving critiques of the major work by peers, Dr. Daniel X. Freedman, the respected Chairman of the Department of Psychiatry, University of Chicago, had this to say:

> "I don't think that scientists can tell the public there is going to be any major damage to their health on the basis of the current knowledge."

This is also the conclusion of a detailed critique of the recent medical reports by award winning science writer Ed Brecher and the editors of Consumer Reports,

in an update of their excellent work Licit and Illicit Drugs. The March and April issues of Consumer Reports conclude that "recent reports, like past reports, fail to prove that marijuana is either harmful or harmless." C.U. reiterated their belief that "no drug is harmless to all persons at all dosage levels or under all conditions of use."

As part of the 1974 NORML Conference, a medical panel headed by Dr. Norman Zinberg, including Drs. Lester Grinspoon, J. Thomas Ungerleider, Andrew T. Weil and David Smith, discussed these recent claims and reached similar conclusions; the risk to the user demonstrated by these studies has been grossly exaggerated by the authors and/or the media.

The potential harm from marijuana has been greatly exaggerated by those who wish to maintain criminal penalties against the user. The thrust of this campaign has been to allege that new research, unavailable when the Marijuana Commission Report was released in 1972, renders their recommendations invalid. This is an attempt to use the medical/health questions as a "red herring."

Marijuana should be decriminalized, even if it were eventually shown to be dangerous. Giving an arrest record to the user only exacerbates the potential for harm.

And while marijuana may not be harmless, neither is it a terribly dangerous drug. Certainly it presents far less of a health hazard than alcohol, tobacco, birth control pills, and a host of other drugs available in our society. Any risk to the user falls within the ambit of choice the informed individual should be allowed in a free society. So long as the research results warrant it, we should warn against the use of marijuana, but we should not criminalize those who ignore our advice.

7. Why not leave the law as it is, at least so long as there are still unsettled medical questions?

A. The decriminalization of marijuana is not based upon an assumption of medical harmlessness. Rather it is a recognition that the costs of wrecked lives and careers and wasted law enforcement resources involved with continued criminal prohibition far outweigh any harm caused by the use of the drug. Or put another way, giving a criminal arrest record to the user only exacerbates whatever potential harm the drug itself causes.

The annual HEW report on marijuana, entitled Marijuana and Health, has yet to find any substantial evidence that occasional marijuana use presents a significant risk to the smoker. The research is now concentrating on chronic, long term use. And the only controlled study of long term use to date, funded by HEW, failed to demonstrate any harm among users in Jamaica, even after using very strong marijuana for an average of 17.5 years.

We should continue our research into the potential harm from marijuana use, but we should use this information to warn the user, not to justify continuing to maintain criminal penalties. Each year we wait, another 400,000 Americans are arrested for marijuana. It's time to change the law.

8. Will the decriminalization of marijuana be the first step towards more permissive drug laws generally?

A. We are talking about removing criminal penalties only from possession and not-for-profit transfers of small amounts of marijuana. Stiff penalties remain for sale. This concept is not permissive.

Also, other drugs must be considered individually as to their acceptance by the society, their potential for harm, their effects on the user, and a number of other factors. What is an appropriate policy for marijuana, for example, may not apply to other drugs.

9. Can you estimate the total cost of law enforcement resources used enforcing the marijuana laws?

A. Since most of the arrests are made on the state and local level, most of the costs of law enforcement are absorbed by state and local law enforcement.

While exact costs are impossible to determine, it has been estimated that the state of California, for example, spends an average of $1400 per marijuana arrest. At this rate, California spends more than $100 million dollars annually enforcing the marijuana laws, and the cost nationally would exceed $600 million.

These police and prosecutorial resources are badly needed to combat serious crime. Decriminalization will eliminate more than 90% of the marijuana arrests, thereby freeing-up hundreds of millions of dollars of law enforcement resources for more important use.

10. How many people are arrested on marijuana charges each year in this country? Are most arrests against sellers or users?

A. According to the F.B.I., more than one million persons have been arrested for marijuana offenses in this country in the last four years. (Ten years ago there were less than 8,000 marijuana arrests nationwide.)

TOTAL MARIJUANA ARRESTS NATIONALLY

Year	Total Marijuana Arrests	% of Total Drug Arrests	Increase Over Prior Year	Total Drug Arrests
1970	188,682	45.4%	--	415,600
1971	225,828	45.9%	19%	492,000
1972	292,179	55.4%	29%	527,400
1973	420,700	66.9%	43%	628,900
TOTAL	1,127,389			2,063,900

Source: Uniform Crime Reports
Federal Bureau of Investigation

And note that 62% of those arrested were under the age of 21 and 88% of those arrested were under the age of 26.

A statistical analysis of state marijuana arrests by the Shafer Commission uncovered the unsettling fact that 93% were for possession -- not sale -- and two-thirds of these involved the quantity of one ounce or less. Only 7% of the arrests were against the commercial trafficker.

In sum, what we're doing in this country is arresting more than 400,000 young people each year, the vast-majority possessing small quantities of marijuana for their personal use.

11. Is there any indication that marijuana smoking leads to violent behavior or behavior which might endanger others?

A. Quite the contrary. Research has indicated that marijuana tends to cause passivity, rather than aggression. Marijuana smokers, for example, are under-represented in crimes of aggression and violence; alcohol drinkers, on the other hand, are over-represented in these same categories.

The Marijuana Commission Report had this to say:

> "In sum, the weight of the evidence is that marijuana does not cause violent or aggressive behavior.." (p. 73)

"Neither the marijuana user nor the drug itself can be said to constitute a danger to public safety." (p. 78)

12. Is it safe to drive an automobile after smoking marijuana?

A. As the tests have become more sophisticated in this area, it has become more and more obvious that it is not safe to smoke marijuana and drive a car. Though clearly not as debilitating as alcohol, nonetheless, the marijuana smoker makes more errors on driving tests than the non-smoker.

In their 1974 report to Congress, entitled Marijuana and Health, HEW had this to say about the effects of marijauna on driving:

"It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities, and to detract from performance on a divided attention task."

"Based on the accumulated evidence it seems clear that driving while under the influence of marijuana is ill advised."

No new laws are needed to protect against the driver who may be intoxicated with marijuana. It is already illegal to drive while intoxicated, regardless of the drug. It is against the law to drive and smoke marijuana now, and it will continue to be after marijuana smoking is decriminalized.

13. Does marijuana smoking lead to the use of more dangerous drugs such as cocaine or heroin?

A. No. There are an estimated 30 million Americans who have tried marijuana, with perhaps 13 million remaining regular users. Very few of those millions of marijuana smokers have ever tried either cocaine or heroin. This "marijuana leads to heroin" myth is widespread (held by 70% of the public in 1972, including 56% of the youth), despite the finding that less than 6% of the current marijuana smokers had ever experimented with heroin, less than 16% with cocaine.

The Marijuana Commission made the following conclusion:

"marijuana use per se does not dictate whether other drugs will be used; nor does it determine

the rate of pregression, if and when it occurs, or which drug might be used." (pp. 88-89)

"the fact should be emphasized that the overwhelming majority of users do not progress to other drugs." (p. 87)

No drug chemically predisposes a person to try yet another drug.

Many heroin addicts will say they "started" on marijuana. But ask that same group of heroin addicts how many of them used alcohol before they used marijuana or heroin, and you'll find that alcohol is the drug first used by most heroin addicts, not marijuana.

Does alcohol lead to heroin? Of course not.

But so long as we treat the marijuana user as a criminal, we are grouping marijuana in the same illicit category as the more dangerous drugs and the result will inevitably be some experimentation with more dangerous drugs by marijuana smokers. Laws which honestly reflected a distinction might serve to discourage this regrettable and potentially dangerous association.

14. Would the decriminalization position still be valid if it turns out that marijuana is far more dangerous than we now believe?

A. Yes, decriminalization would still be appropriate. As Dr. Tom Bryant, President of the Drug Abuse Council, recently concluded:

"We have two problems: a health problem and a criminal problem. They are no more automatically synonymous in the case of marijuana than they are in the case of alcohol."

. . .

"Even if marijuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."

15. How many people smoke marijuana in this country?

A. According to surveys taken in October 1972 by the National Commission on Marijuana and Drug Abuse (Shafer Commission), 26 million Americans had tried marijuana and 13 million were regular users. This breaks down

to 16% of the adult population over 18, and 14% of youth between 12 and 17. Two-thirds of all college students have tried marijuana, as have 55% of persons 18-21 years old and 40% of the age group 22-25. Recently released survey results taken in October 1974 by the independent, Washington, D.C. based Drug Abuse Council indicate that 18% of the adults have now tried marijuana, (approximately 30 million Americans) with 8% continuing to use it (13 million). It is note worthy that despite recent alarmist claims by Sen. Eastland and others, in fact there is no "epidemic" of marijuana use in this country. The number of current users have remained constant since 1972.

The individual who smokes marijuana today hardly fits the sterotyped image concocted in the 1930's--the depraved criminal who got "high" on his reefer and commited vicious crime. In fact, the Shafer Commission found--"the most notable statement that can be made about the vast majority of marijuana users - experimenters and intermittent users - is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criterion other than their marijuana use."

The use of marijuana today is socially the equivalent of the use of alcohol by most of our citizens. It is the recreational drug of choice of a growing minority.

16. How do the voters feel about decriminalization?

A. For the first time, as a result of a recent national survey commissioned by the Drug Abuse Council, we have current data available. Prior to this, most surveys failed to differentiate between decriminalizing the marijuana user, and legalizing its sale, rendering their results useless as far as determining potential political support for decriminalization.

According to the D.A.C. Survey, as of October, 1974, the public is finally changing their attitudes towards marijuana smoking, and the trend towards decriminalization is unquestionable:

16% of the public favor legalization;
an additional 13% favor decriminalization;
an additional 10% favor the civil-fine approach:
39% - (current political support for some form of decriminalization)
13% would make no change at this time;
8% are undecided
40% would prefer stronger penalties.

This means that 39% favor some form of decriminalization, with an almost equal 40% still clinging to stiff criminal penalties. Thus the 13% who would currently want no change, plus the 8% undecided, will decide this issue as they select their sides.

As the favorable results of the Oregon experience become better known nationally, decriminalization will, for the first time, become the favored position politically.

17. What organizations and individuals have endorsed decriminalizing the marijuana smoker?

Since the Marijuana Commission made its recommendation in March of 1972, the concept of decriminalization has been endorsed by a growing list of organizations, including:

American Bar Association
Consumers Union, publishers of Consumer Reports
National Conference of Commissioners on Uniform State Laws
American Public Health Association
National Advisory Commission on Criminal Justice Standards and Goals
National Council of Churches
The Governing Board of the American Medical Association
National Education Association
B'nai B'rith
Canadian Commission of Inquiry into the Non-Medical Use of Drugs (Le Dain Commission)
San Francisco Committee on Crime
Mayor's Advisory Committee on Narcotics Addiction (Washington, D.C.)
American Academy of Pediatrics
Illionis Bar Association
Minnesota Bar Association
Vermont Bar Association
New York Bar Association
Washington Bar Association
Massachusetts Bar Association

In addition, four state legislatures have made their own studies (California, Maine, New Jersey and Massachusetts) and have all recommended decriminalization.

The concept has recently been endorsed editorially by William F. Buckley, Jr., James J. Kilpatrick, Ann Landers, The Washington Post, The New York Times, The Los Angeles Times, The Boston Globe, The Chicago Sun-Times, and many others.

NORML

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May 16, 1975

Mr. Harold R. Tyler
Deputy Attorney General
U.S. Department of Justice
Constitution Ave. and 10th Street
Washington, D.C. 20530

Dear Mr. Tyler:

We were pleased to learn, from Mr. Don Miller, Chief Counsel of the Drug Enforcement Administration, that the Department of Justice is currently reviewing its policy towards minor marijuana violations, and is particularly examining the feasibility of switching to a civil fine system under federal law.

As you may know, the suggestion that rather than eliminating all penalties for the private use of marijuana, a civil fine should be retained, was originally the suggestion of Congressman Paul Rogers and Tim Lee Carter, and Mr. Mitchell Ware, as a minority footnote to the Marijuana Commission Report in March of 1972. This concept has been gaining significant support nationwide, with more than 20 states intruducing legislation to accomplish that recommendation in the current legislative session. It appears that as many as a half a dozen states will enact these measures this year.

Our organization favors total decriminalization, as espoused by the majority report of the Marijuana Commission, as we recently testified. But we also recognize the need to minimize the numbers of casualties from the current criminal prohibition at the earlies possible time. Thus our organization is supporting these civil citation measures as a possible middle ground until our long-term marijuana policy in this country can be more deliberately developed. Simply stated, we cannot justify the alarming and increasing numbers of arrests for minor marijuana violations for the next couple of years while we attempt to gain sufficient support to enact a bill we prefer.

I am hopeful that the Department of Justice will also be mindful of the tremendous number of otherwise law-abiding persons whose lives are currently being disrupted and often their careers ruined while the marijuana issue is debated in the halls of Congress. About the only opposition to this concept any longer comes from the traditional law enforcement agencies. Apparently many law-enforcement policy makers are simply unwilling to break from a traditional position. Cer-

tainly a statement of support for a civil citation system for minor marijuana offenses from the Department of Justice would be sufficient to assure enactment of this concept federally and in many states within a very short time.

I have enclosed for your information a brief memorandum which states in some detail the position of our organization. I would appreciate your comments concerning the view of the Department of Justice.

Regards,

R. Keith Stroup

R. Keith Stroup
Director

NORML

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May 16, 1975

Congressman Paul G. Rogers
Chairman, Subcommittee on
Health and the Environment
Committee on Interstate and
Foreign Commerce
Room 2415
Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Rogers:

As you are undoubtedly aware, the position first espoused by yourself along with Congressman Carter and Mr. Mitchell Ware, in the final report of the National Commission on Marijuana and Drug Abuse, that of retaining a small civil fine against the user of marijuana, appears to be the position around which a consensus is forming nationwide. More than 20 states have had civil fine bills introduced legislatively this session, and as many as a half a dozen appear likely to win approval. As was expressed by yourself and the other dissenters in the Commission's final report, the retention of the civil fine against the marijuana smoker is seen by many as a more dramatic and sincere effort at discouraging use, while at the same time avoiding the harsh consequences of the current criminal prohibition.

Senator Birch Bayh recently announced his support for the civil citation concept and held public hearings in the Juvenile Delinquency Subcommittee on S.1450, the Marijuana Control Act of 1975, recently introduced by Senators Javits, Cranston, Nelson and Brooke. In the course of those hearings, Mr. Don Miller, Chief Counsel of the Drug Enforcement Administration, testified that the department had not yet taken a position on the concept of a civil citation for minor marijuana infractions, and further reported that he was personally in charge of an ongoing study to determine the feasibility of just such a system. I'm sure you will agree that this represents a significant change in the traditional position of the Department of Justice on this metter. It appears to signify a willingness to look seriously at the feasibility of adopting federally the recommendation you made in March of 1972.

With this growing momentum in favor of a non-criminal response to the private use of marijuana, I would like to suggest that this might be an appropriate time to schedule legislative hearings in the Subcommittee on

Health and the Environment, to consider H.R.6108, the proposal by Congressman Edward Koch and numerous co-sponsors to enact the civil citation system for minor marijuana offenses federally.

Should you decide to schedule hearings on this measure, our organization would be anxious to testify and to assist the committee staff in any way possible in arranging for other effective spokespersons who support the concept embodied in H.R.6108.

Regards,

R. Keith Stroup

R. Keith Stroup
Director

NORML
A SPECIAL
REPORT

Washington, D.C.
July 21, 1975

Maine, Colorado & California End Jail Penalties

This month the governors of Colorado and California signed similar bills reducing marijuana possession penalties. Possessing an ounce or less of marijuana now calls for fines up to $100. Amounts in excess of one ounce are punished as misdemeanors and selling marijuana still remains a criminal offense.

Two weeks before in Maine, James B. Longley, the country's only governor elected as an independent, signed a bill establishing a maximum $200 civil fine for possessing not more than an ounce and a half of marijuana.

With Alaska's action in May, four states have passed new laws this year discarding jail penalties for minor marijuana violations. Oregon was first to adopt a marijuana fine law in 1973.

The laws vary somewhat in their provisions and definitions, but in each possession of a small quantity of marijuana has been made the legal equivalent of a traffic offense that is enforceable by a citation instead of an arrest.

The California bill, sponsored by Senator George Moscone (D-San Francisco) and Assemblyman Alan Sieroty (D-Los Angeles), appeared lost earlier this year when it fell four votes short of the 41 required for passage in the State Assembly. After agreeing to reconsider the proposal, the Assembly engaged in a heated and partisan battle before adopting the bill 42-34, without a single Republican vote. The measure won bi-partisan support in the State Senate, and was signed by Governor Edmund G. Brown, Jr. on July 9. It becomes effective next New Year's Day. Gordon Brownell, NORML West Coast Coordinator, said the law "finally signals the end of 60 years of treating marijuana possession as a felony in California."

Around the state, the San Francisco Chronicle called the new law "... a wise reform" and the Los Angeles Times said "the law is sensible and humane" and "a big and responsible step forward". Meanwhile, grumbling L.A. Police Chief Edward M. Davis compared the Sacramento lawmakers to Donald Duck and predicted a devastating crime wave.

Colorado's new law became effective on July 1, the same day it was signed by Democratic Governor Richard A. Lamm. "Non-public" possession now is punishable by a maximum $100 fine, while "public display and consumption" carries the same fine but the violator also runs the risk of a possible 15 day jail term.

The Colorado law represents a compromise, but as Jim Moore, Aspen District Attorney and NORML's State Coordinator, points out: "The marijuana smoker will no longer be subject to arrest or jail when smoking is limited to private situations."

State Senate Majority Leader Richard Plock (R-Denver) and Representative Chuck Howe (D-Boulder) sponsored the Colorado measure.

Maine's new marijuana law won easy approval and is part of a sweeping legislative package that completely revamps the state criminal code. The new code is the culmination of nearly three years work by the state's Criminal Law Revision Commission headed by former Maine Attorney General Jon A. Lund.

Richard Clark, NORML Maine Coordinator, said the legislation recognized that the criminal law is "too costly and too severe for attempting to regulate private conduct." The new law does not become effective until March 1, 1976.

Summaries of the new laws are available from NORML.

STATE, FEDERAL UPDATE

Marijuana reform proposals remain alive in Michigan, New Jersey, New York, Washington state and Wisconsin. Hearings were held July 16 on bills in Ohio and the District of Columbia.

Reform bills in Georgia, Hawaii and Tennessee must wait for action until 1976. In Minnesota, a proposal for a $100 citation system was shelved until after the first of next year when the legislature's official session ended before final approval could be given.

Bills in Arizona, Connecticut, Florida, Illinois, Iowa, Maryland, Massachusetts, Nevada, New Hampshire and Texas were either voted down or killed for the year. A proposal to include private cultivation in Oregon's marijuana decriminalization law was tabled without consideration.

In a backward step earlier this year, Indiana outlawed items like roach clips and hash pipes, but exempted papers, apparently believing many Hoosiers still roll their own cigarettes.

No additional Congressional activity has taken place since the hearings before Sen. Birch Bayh's (D-Ind.) Juvenile Delinquency Subcommittee in May.

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Keith Stroup, Esq., Director

July 28, 1975

TO: ADVISORY BOARD
BOARD OF DIRECTORS
EXECUTIVE COMMITTEE
STATE COORDINATORS

RE: NBC-TV SPECIAL ON MARIJUANA

FROM: KEITH STROUP

Memo

Advisory Board:
Howard S. Becker, PhD
Northwestern University
Thomas Bryant, MD, JD
Washington, DC
Neil L. Chayet, Esq.
Boston, Massachusetts
Ramsey Clark, Esq.
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The Reverend Canon Walter D. Dennis, MA, STB
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Erich Goode, PhD
State University of New York
Lester Grinspoon, MD
Harvard University
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American Civil Liberties Union, New York City
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David E. Smith, MD
Haight-Ashbury Free Medical Clinic, San Francisco
Roger C. Smith, D.Crim.
Marin Open House San Raphael, California
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Dorothy V. Whipple, MD
Washington, DC
Leon Wurmser, MD
University of Maryland
Norman E. Zinberg, MD
Harvard University

On Sunday, August 3rd, at 10:00 P.M., NBC-TV News has scheduled a one hour documentary on marijuana entitled "Mary Jane Grows Up: Marijuana in the 70's". In light of the past coverage of this issue by NBC News, we are naturally cautious in our expectations. Nonetheless, it is an apparent attempt to examine both the medical and legal issues objectively.

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Keith Stroup, Esq., Director

Memo

July 28, 1975

TO: ADVISORY BOARD
BOARD OF DIRECTORS
EXECUTIVE COMMITTEE
STATE COORDINATORS

RE: 1975 NORML CONFERENCE

FROM: KEITH STROUP

Advisory Board:
Howard S. Becker, PhD
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We have tentatively chosen the weekend of December 5-7 as the date for the 1975 NORML Conference in Washington, D.C. Although no final commitments will be made for a few weeks, we now plan to utilize the same hotel and meeting facilities which were used last year.

Please advise if the suggested dates are inconvenient for your schedule and would preclude you from attending. For the Conference to be worthwhile, we need the participation and attendance of most of our key people. We urge you to set this weekend aside now and to make plans to come to Washington and be part of our annual meeting.

In addition, we are now at the stage of planning the agenda for the Conference and inviting speakers. We would like your suggestions for ways to improve the Conference. For example, we may attempt to sub-divide certain sections of the Conference into smaller workshops where those in attendance could participate more directly. Do you support this variation, and do you have any particular suggestions for topics which would be useful and appropriate for the workshops? Likewise, could we have your suggestions for persons we might invite to address the Conference? Please offer your comments and suggestions for the Conference within a short time so that we can have the benefit of your ideas.

THE 1975 NORML CONFERENCE - DECEMBER 5-7, 1975
WASHINGTON, D.C.

NORML
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National Organization for the Reform of Marijuana Laws
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Keith Stroup, Esq., Director

July 29, 1975

TO: ADVISORY BOARD
BOARD OF DIRECTORS
EXECUTIVE COMMITTEE
STATE COORDINATORS
ATTORNEYS

FROM: PETER H. MEYERS, LEGAL COUNSEL

RE: DOWNEY V. PERINI: FEDERAL APPEALS COURT RULES OHIO'S MARIJUANA PENALTIES UNCONSTITUTIONAL

Memo

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Two sections of Ohio's marijuana law were recently declared unconstitutional by the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. The Court held that the minimum penalties contained in the Ohio law for sale of marijuana (20 years) and for possession for sale of marijuana (10 years) were so excessive and disproportionate to the offense that they constituted Cruel and Unusual Punishment in violation of the Eighth Amendment.

This decision is the first time that a federal court has found a criminal penalty imposed by a statute to be cruel and unusual solely on the basis of the length of imprisonment imposed.

The Court pointed out that Ohio's marijuana penalties, which are among the most severe in the country, were much stiffer than the state's penalties for assault with a deadly weapon (2-5 years), or for kidnapping, armed robbery, burglary, rape, and voluntary manslaughter (4-7 years).

Unless the ruling is appealed to the U.S. Supreme Court, it could result in all persons presently incarcerated in Ohio for sale and possession for sale being released. The ruling could also affect the three other states which are covered by the Sixth Circuit, Tennessee, Michigan, and Kentucky, but the penalties in these states are generally much less severe than the Ohio penalties.

The decision may be cited: Downey v. Perini, _____ F.2d _____, No. 74-1929 (6th Cir. July 3, 1975). It is excerpted at 44 L.W. 2034 and 17 Cr.L.Rep. 2324. Copies of the full Slip Opinion are available from the D.C. office of NORML for $1.00. For further information contact NORML's Ohio Coordinator, David Weiner, Esq., 800 National City East 6th Bldg., Cleveland, Oh., 44114, tel. (216) 621-0150.

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Legislative Action Memo

RE: The Congressional Committee Structure and Membership Relevant to Current Federal Legislation to Decriminalize Marijuana

FROM: Keith Stroup
Director, NORML

DATE: August 15, 1975

Memo

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There are currently two marijuana decriminalization proposals before Congress.

H.R. 561 (Reintroduced as H.R.4520)

Rep. Ed Koch (D.-N.Y.) has reintroduced the Javits-Koch bill (S. ___/H.R. 561) to completely decriminalize the marijuana smoker. This bill, first introduced in 1972, reflects the recommendation of the National Commission on Marijuana and Drug Abuse. Recently reintroduced as H.R. 4520, this measure is co-sponsored by Bella Abzug (D.-N.Y.), Herman Badillo (D.-N.Y.), George E. Brown (D.-Calif.), John Burton (D.-Calif.), John Conyers (D.-Mich.), Robert Drinan (D.-Mass.), Don Edwards (D.-Calif.), Donald M. Fraser (D.-Minn.), Michael Harrington (D.-Mass.), Elizabeth Holtzman (D.-N.Y.), Paul McCloskey (R.-Calif.), Robert N.C. Nix (D.-Pa.), Charles Rangel (D.-N.Y.), Benjamin Rosenthal (D.-N.Y.), Edward R. Roybal (D.-Calif.), Pete Stark (D.-Calif.), Steven J. Solarz (R.-N.Y.), and Henry Waxman (D.-Calif.)

Senator Javits has not reintroduced the Senate version this session.

H.R. 6108/S.1450

On April 17, the Marijuana Control Act of 1975 (S.1450/H.R.6108), a proposal to adopt a maximum $100 civil fine for minor marijuana violations, was introduced for the first time federally, based on the successful Oregon experience. This measure is co-sponsored in the Senate by Jacob Javits (R.-N.Y.), Alan Cranston (D.-Cal.), Edward Brooke (R.-Mass.) and Gaylord Nelson

(D.-Wis.), and in the House of Representatives by Edward Koch (D.-N.Y.), Bella Abzug (D.-N.Y.), Herman Badillo (D.-N.Y.), John Burton (D.-Cal.), Phil Burton (D.-Cal.), John Conyers (D.-Mich.), Ron Dellums (D.-Cal.), Robert Drinan (D.-Mass.), Robert Duncan (D.-Ore.), Don Edwards (D.-Cal.), Robert Edgar (D.-Pa.), Michael Harrington (D.-Mass.), Paul McCloskey (R.-Ca.), Charles Rangel (D.-N.Y.), Benjamin Rosenthal (D.-N.Y.), James Scheuer (D.-N.Y.), Pete Stark (D.-Cal.), and Henry Waxman (D.-Cal.).

I. THE HOUSE OF REPRESENTATIVES

A. When federal drug legislation is introduced in the House, it is referred to the Subcommittee on Health and the Environment, Committee on Interstate and Foreign Commerce.

H.R.561 (H.R.4520) and H.R.6108 have both been referred to this Subcommittee for consideration.

To date, no hearings have been scheduled on the proposals, nor has any other action been taken. Subcommittee Chairman Paul Rogers (D.-Florida), a Presidential appointee to the National Commission on Marijuana and Drug Abuse (Shafer Commission), which originally recommended decriminalization in its 1972 Report, has not yet been willing to take the initiative on this issue. So the measures lie dormant.

Please contact members of the Subcommittee, as well as the Chairman, uring their early action in support of these bills. Legislative hearings should be scheduled promptly, followed by a vote to favorably report a decriminalization bill to the full Committee.

Please write as many members of the Subcommittee as time permits.

In addition, you should write the Chairman of the full Committee, Rep. Harley O. Staggers (D.-W.V.), and the ranking minority member, Rep. Samuel L. Devine (R.-Ohio), both ex-officio members of the Subcommittee.

HOUSE SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

Democratic Members (in order of seniority)	Republican Members (in order of seniority)
Rep. Paul Rogers (Chairman) 2407 Rayburn H.O.B. (Florida) Washington, D.C. 20515	Rep. Tim Lee Carter (Ky.) 2441 Rayburn H.O.B. Washington, D.C. 20515

Democratic Members (in order of seniority)	Republican Members (in order of seniority)
Rep. Daniel E. Satterfield (Va.) 2348 Rayburn H.O.B. Washington, D.C. 20515	Rep. James T. Broyhill (N.Car.) 2227 Rayburn H.O.B. Washington, D.C. 20515
Rep. Richardson Preyer (N.C.) 403 Cannon H.O.B. Washington, D.C. 20515	Rep. James F. Hastings (N.Y.) 113 Cannon H.O.B. Washington, D.C. 20515
Rep. James W. Symington (Mo.) 307 Cannon H.O.B. Washington, D.C. 20515	Rep. H. John Heinz, III (Pa.) 324 Cannon H.O.B. Washington, D.C. 20515
Rep. James H. Scheuer (N.Y.) 2438 Rayburn H.O.B. Washington, D.C. 20515	
Rep. Henry A. Waxman (Ca.) 1039 Longworth H.O.B. Washington, D.C. 20515	
Rep. W. G. Hefner (N.C.) 1004 Longworth H.O.B. Washington, D.C. 20515	
Rep. James J. Florio (N.J.) 1725 Longworth H.O.B. Washington, D.C. 20515	
Rep. Charles J. Carney (Ohio) 1714 Longworth H.O.B. Washington, D.C. 20515	
Rep. Timonthy E. Wirth (Co.) 516 Cannon H.O.B. Washington, D.C. 20515	
Rep. Andrew Maguire (N.J.) 1314 Longworth H.O.B. Washington, D.C. 20515	

EX OFFICIO MEMBERS

Rep. Harley O. Staggers (W.V.) 2366 Rayburn H.O.B. Washington, D.C. 20515	Rep. Samuel L. Devine (Ohio) 2206 Rayburn H.O.B. Washington, D.C. 20515

B. As a result of the recommendations of the National Commission on Reform of Federal Criminal Laws (Brown Commission), a comprehensive new federal criminal code is being considered by the House Subcommittee on Criminal Justice, Committee on the Judiciary.

The Brown Commission, in their 1971 Report, recommended that possession of marijuana be treated as a non-criminal "infraction," punishable by a maximum $500 fine only.

H.R. 333, sponsored by Reps. Robert Kastenmeir (D.-Wis.), Don Edwards (D.-Calif.), Joshua Eilberg (D.-Pa.) and Abner Mikva (D.-Ill.) reflects the Brown Commission "infraction" recommendation.

H.R.3907, sponsored by Rep. Charles E. Wiggins (R.-Calif.), is the Nixon-Ford administration's response to the Brown Commission. Under this proposal, marijuana possession would carry a possible 30 days in jail and/or $10,000 fine.

Current federal law permits a maximum one year in prison and/or $5,000 fine.

No Subcommittee action has occurred on either measure, and none is expected until late this year.

Nonetheless, letters to the Subcommittee in support of marijuana decriminalization as part of any new federal criminal code would be appropriate.

HOUSE SUBCOMMITTEE ON CRIMINAL JUSTICE

Democratic Members (in order of seniority)

William L. Hungate (Chairman)
2437 Rayburn H.O.B. (Mo.)
Washington, D.C. 20515

James R. Mann (S.C.)
1214 Longworth H.O.B.
Washington, D.C. 20515

Ray Thornton (Ark.)
1109 Longworth H.O.B.
Washington, D.C. 20515

Rep. Elizabeth Holtzman (N.Y.)
1027 Longworth H.O.B.
Washington, D.C. 20515

Rep. Martin A. Russo (Ill.)
128 Cannon H.O.B.
Washington, D.C. 20515

Republican Members (in order of seniority)

Rep. Robert McClory (Ill.)
2452 Rayburn H.O.B.
Washington, D.C. 20515

John M. Ashbrook (Ohio)
1436 Longworth H.O.B.
Washington, D.C. 20515

II. THE SENATE

A. Federal drug bills introduced in the Senate are usually referred to the Subcommittee to Investigate Juvenile Delinquency, Committee on the Judiciary.

S.1450 has been referred to this Subcommittee where legislative hearings were held on May 15, 1975. During this hearing Subcommittee Chairman Sen. Birch Bayh (D.-Ind.) and Sen. Phillip Hart (D.-Mich.) announced their support for the concept of marijuana decriminalization.

Subsequently, Sen. Floyd F. Haskell (D.-Colorado) and Sen. John V. Tunney (D.-Calif.) have requested to be added as co-sponsors of S.1450.

No further action has occurred with respect to the bill. Sen. Bayh is expected to schedule additional hearings before the Subcommittee is asked to vote on the measure.

You should contact all Subcommittee members now urging favorable action on S.1450.

Senate Subcommittee to
Investigate Juvenile Delinquency

Democratic Members

Sen. Birch Bayh (Chairman)
363 Russell S.O.B. (Ind.)
Washington, D.C. 20510

Sen. Philip A. Hart (Mich.)
253 Russell S.O.B.
Washington, D.C. 20510

Sen. Quentin N. Burdick (N.D.)
451 Russell S.O.B.
Washington, D.C. 20510

Sen. Edward M. Kennedy (Mass.)
431 Russell S.O.B.
Washington, D.C. 20510

Sen. John V. Tunney, (Ca.)
6221 Dirksen S.O.B.
Washington, D.C. 20510

Republican Members

Sen. Roman L. Hruska (Neb.)
209 Russell S.O.B.
Washington, D.C. 20510

Sen. Hiram L. Fong (Hawaii)
2121 Dirksen S.O.B.
Washington, D.C. 20510

Sen. Charles McC Mathias (Md.)
460 Russell S.O.B.
Washington, D.C. 2051-

B. The Report of the National Commission on the Reform of Federal Criminal Laws (Brown Commission), has also resulted in a Senate version of a comprehensive new federal criminal code.

The Subcommittee on Criminal Laws and Procedures, chaired by Sen. John L. McClellan (D.-Ark.), currently has before it S.1, the Nixon-Ford administration's response to the Brown Commission Report. The provisions of S.1 are identical to H.R.3907, sponsored by Rep. Charles Wiggins (R.-Ca.) in the House.

Although the Brown Commission recommended that marijuana be treated as a non-criminal "infraction," punishable by a maximum $500 fine, the sponsors of S.1, Sens. McClellan and Hruska, chose to ignore this aspect of the Commission Report. Instead, they propose a possible 30 days jail and/or $10,000 fine.

Sen. Jacob Javits (R.-N.Y.) has now introduced Amendment #584 to S.1, which would incorporate the basic provisions of S.1450 ($100 civil fine) for marijuana possession. No action has occurred on this amendment.

Sen. Philip Hart (D.-Mich.) also intends to offer amendments to S.1 soon which will incorporate marijuana decriminalization into the comprehensive proposal.

Due to the composition of the Subcommittee membership, the decriminalization fight may not occur until the proposal reaches the full Judiciary Committee.

Please write all members of this Subcommittee uring an amendment to S.1 to decriminalize marijuana. It is very likely that some version of S.1 will be voted on in the Senate later this session. Our efforts now can significantly increase the likelihood that decriminalization amendments will eventually be accepted in full Committee. This may lead to the first Senate floor vote on decriminalization later this session.

SENATE SUBCOMMITTEE ON
CRIMINAL LAWS AND PROCEDURES

Democratic Members	Republican Members
Sen. John L. McClellan (Chairman) 3241 Dirksen S.O.B. Washington, D.C. 20510	Sen. Roman L. Hruska (Neb.) 209 Russell S.O.B. Washington, D.C. 20510

Democratic Members	Republican Members
Sen. Philip Hart (Mich.) 253 Russell S.O.B. Washington, D.C. 20510	Sen. Hugh Scott (Pa.) 260 Russell S.O.B. Washington, D.C. 20510
Sen. James Eastland (Miss.) 2241 Dirksen S.O.B. Washington, D.C. 20510	Sen. Strom Thurmand (S.C.) 4241 Dirksen S.O.B. Washington, D.C. 20510
Sen. Edward Kennedy (Mass.) 431 Russell S.O.B. Washington, D.C. 20510	Sen. William L. Scott (Va.) 3109 Dirksen S.O. Washington, D.C. 20510
Sen. Robert Byrd (W.V.) 105 Russell S.O.B. Washington, D.C. 20510	

C. The following is a listing of all members of the full Senate Judiciary Committee.

It is urgent that you contact members of this Committee, as they must eventually approve any decriminalization provision before it can be voted on by the entire Senate. Both S.1450 and S.1 must receive favorable action by the full Judiciary Committee before they can be brought up on the floor. The Committee will be considering S.1 during September and October, so don't delay with the letter writing.

Senate Committee on the Judiciary

Democratic Members (in order of seniority)	Republican Members (in order of seniority)
Sen. James O. Eastland (Chairman) 2241 Dirksen S.O.B. (Miss.) Washington, D.C. 20510	Sen. Roman L. Hruska (Neb.) 209 Russell S.O.B. Washington, D.C. 20510
Sen. John L. McClellan (Ark.) 3241 Dirken S.O.B. Washington, D.C. 20510	Sen. Hiram Fong (Hawaii) 2121 Dirksen S.O.B. Washington, D.C. 20510
Sen. Philip A. Hart (Mich.) 253 Russell S.O.B. Washington, D.C. 20510	Sen. Hugh Scott (Pa.) 260 Russell S.O.B. Washington, D.C. 20510
Sen. Edward M. Kennedy (Mass.) 431 Russell S.O.B. Washington, D.C. 20510	Sen. Strom Thurmond (S.C.) 4241 Dirksen S.O.B. Washington, D.C. 20510

Democratic Members

Sen. Birch Bayh (Ind.)
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Washington, D.C. 20510

Sen. Quentin N. Burdick (N.D.)
451 Russell S.O.B.
Washington, D.C. 20510

Sen. Robert C. Byrd (W.V.)
150 Russell S.O.B.
Washington, D.C. 20510

Sen. John V. Tunney (Ca.)
6221 Dirksen S.O.B.
Washington, D.C. 20510

Sen. James Abourezk (S.D.)
1105 Dirksen S.O.B.
Washington, D.C. 20510

Republican Members

Sen. Charles McC Mathias (Md.)
460 Russell S.O.B.
Washington, D.C. 20510

Sen. William L. Scott (Va.)
3109 Dirksen S.O.B.
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NORML A SPECIAL REPORT

August 15, 1975

A Compilation of State Citation Laws for Minor Marijuana Offenses

In October 1973, Oregon became the first state to eliminate criminal arrest and jail penalties for possession of small amounts of marijuana, substituting a citation-enforced civil fine. The results of this innovative approach have been overwhelmingly favorable: there has been no demonstrable increase in marijuana smoking; thousands of young people have been spared the debilitating aspects of a life-long criminal record; and the police have been freed of a costly and time-consuming burden to concentrate on serious crime.

As a result, five other states have recently enacted similar laws: Alaska, Maine, Colorado, California and Ohio. The provisions of these laws are set out below, and copies are available from NORML. In each of them, regardless of whether marijuana may now technically be said to be "decriminalized" or not, the person who smokes marijuana or possesses a small amount, is no longer subject to arrest or jail, nor left with any permanent criminal record.

NORML NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS
2317 M STREET, N.W., WASHINGTON, D.C. 20037

SUMMARY CHART - MARIJUANA CITATION LAWS

State	Max. Fine Imposed	Max. Amount Possessed	Criminal or Civil Violation	Effective Date
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$100.00	Any amount in private for personal use or 1 oz. in public	Civil	Sept. 1, 1975
Maine	$200.00	Any amount[a] for personal use	Civil	March 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense - no criminal record	July 1, 1975
California[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (approx. 3 1/2 oz.)	Minor misdemeanor - no criminal record	Nov. 1975

a There is a rebuttable presumption that possession of less than 1 1/2 oz. is for personal use, and possession of more than 1 1/2 oz is with an intent to distribute.

b Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in California (for up to 1 oz.), Colorado (for up to 1 oz.), and Ohio (for up to 20 grs.).

PROVISIONS OF STATE LAWS

	First Offense	Subsequent Offense
1. OREGON		
House Bill No. 2936, amending O.R.S. 167.207, effective October, 5, 1973.		
Possession (up to 1 oz.)	$100 fine only	Same

Note: Possession of up to 1 oz. of marijuana is considered a non-criminal "violation" with a maximum fine of $100, enforced by a citation system. Possession of more than 1 oz., cultivation, and sale of any amount, remain criminal offenses, subject to 0-10 yrs. and/or $2,500.

2. ALASKA		
Senate Bill No. 350, amending A.S. 17.10.010 et seq., approved May 16, 1975, effective September 1, 1975.		
Possession (any amount in private for personal use, or up to 1 oz. in public)	$100 fine only	Same
Possession (while driving a motor vehicle)	$1000 fine only	Same
Public use	$1000 fine only	Same

Note: The new Alaska law is similar to the Oregon law in that it provides for civil fines enforced by citations. The Alaskan Supreme Court has generally held that possession of amounts up to 8 oz. - 1 lb. are presumed to be for personal use. The Supreme Court of Alaska's recent decision holding that possesion of marijuana by adults in the home is constitutionally protected by the Right of Privacy, appears to invalidate certain of the civil fines involved in the new law. Ravin v. State, No. 1156, May 27, 1975. Possession of more than 1 oz. in public remains a criminal offense, subject to 0-1 yr. and/or $1,000. Sale is punishable by 0-25 yrs. and/or $20,000.

	First Offense	Subsequent Offense
3. MAINE		
Maine Criminal Code revision, Title 17-A of Maine Revised Statutes Annotated, Chapter 45 et seq., approved June 18, 1975, effective March 1, 1976.		
Possession (any amount for personal use -- see note)	$200 fine only	Same
Possession (with intent to distribute	0-1 yr. and/or $500	Same
Sale or distribution	0-1 yrs. and/or $500	Same
Sale or distribution (to persons under 16)	0-5 yrs. and/or $1000	Same

Note: Possession of any amount of marijuana for personal use is a civil violation, subject to a maximum $200 fine, enforced by citation. There is a rebuttable presumption that possession of more than 1 1/2 oz. is with an intent to distribute. A "usable" amount is required, and residue found in a pipe, or a few seeds, would not be sufficient. The new law also provides that as an alternative to the fines indicated above for sale, a fine of up to twice the "pecuniary gain" involved in the sale may be imposed.

4. COLORADO		
House Bill No. 1027, amending Sec. 12-22-401 et seq. of the Colorado Dangerous Drug Act, effective July 1, 1975.		
Possession (up to 1 oz.)	$100 fine only	Same
Public display or consumption (up to 1 oz.)	$100 fine mandatory and up to 15 days	Same
Possession (more than 1 oz.)	0-12 months and/or $500	0-2 years and $500-$1,000

	First Offense	Subsequent Offense
Colorado, cont.		
Transfer "for no consideration" (up to 1 oz.)	$100 fine only	Same
Transfer of more than 1 oz. or any amount to a minor	3-14 years and up to $10,000	Same (except prison term mandatory)

Note: Possession of up to 1 oz. of marijuana is a non-criminal "violation" punishable by a maximum $100 fine. Transferring not more than 1 oz. "for no consideration" is defined as simple possession, and is subject to the same $100 maximum fine. Transferring more than one ounce, or any amount to a minor, is subject to imprisonment for 3-14 years and up to $10,000. Cultivation is subject to imprisonment for 1-14 years and a fine of up to $1,000.

5. CALIFORNIA

Senate Bill No. 95, amending Sec. 11357 et seq. of the Health and Safety Code and Sec. 853.6 of the Penal Code, effective January 1, 1976.

Possession (up to 1 oz.)	$100 fine only	Same (see note)
Possession (more than 1 oz.)	0-6 months and/or $500	Same
Possession (hashish)	0-5 yrs. and/or $500	Same
Furnishing "without consideration (up to 1 oz)	$100 fine only	Same (see note)
Furnishing "w/c" (more than 1 oz.) or sale of any amount	5 years - life (must serve 3 years)	Same (must serve 5 years)

Note: Possession, furnishing "without consideration," and transporting up to 1 oz. is technically still a misdemeanor, subject to a maximum $100 fine and enforced by citation, although there is no permanent criminal record. If the person charged was previously convicted three or more

	First Offense	Subsequent Offense

California, cont.

times for these offenses within a two-year period, he shall be diverted to an educational or treatment program in lieu of the fine, and if no program can be found, the fine is imposed.

Cultivation of any amount remains a felony punishable by a jail term from one to 10 years.

The new law abolishes the previous offenses consisting of (1) use of marijuana, (2) possession of marijuana paraphernalia, and (3) being in a place where marijuana is being used. The new law also requires that all records pertaining to the arrest or conviction for possession of marijuana be destroyed within two years, and that no public agency within the State shall deny or limit any license or privilege on account of a conviction for marijuana-related offenses.

6. OHIO

House Bill No. 300, amending Ohio Rev. Code Ann. Sec. 3719.01 et seq., approved August _____, effective 90 days thereafter.

Possession (up to 100 grams) (up to 5 gr. hashish) or 1 gr. hash oil)	$100 fine only	Same
(100 - 200 gr.) (5 - 10 gr. hashish or 1-2 gr. hash oil)	0-30 days and/or $250	Same
(200-600 gr.) (10-30 gr. hashish or 2-6 gr. hash oil)	6 mos. - 5 yrs. and/or $2,500	1-10 yrs. and/or $5,000
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	1-10 yrs. and/or $5,000	2-15 yrs. and/or $7,500
Gift (20 gr. or less)	$100 fine only (criminal record maintained)	0-60 days and/or $500
Sale (up to 200 gr.) (up to 10 gr. hashish or 2 gr. hash oil)	6 mos. - 5 yrs. and/or $2,500	1-10 yrs. and/or $5,000

	First Offense	Subsequent Offense
Ohio, cont.		
(200-600 gr.) (10-30 gr. hashish or 2-6 gr. hash oil)	1-10 yrs. and/or $5,000	2-15 yrs. and/or $7,500
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	2-15 yrs. (6 mos. mandatory) and/or $7,500	2-15 yrs. (1 yr. mandatory) and/ or $7,500
Furnishing to a Minor (who is at least 4 yrs. younger than transferor)	6 mos. - 5 yrs. (3 mos. mandatory) and/or $2,500	1-10 yrs. (3 mos. mandatory) and/or $5,000
Cultivation (any amount)	6 mos. - 5 yrs. and/or $2,500	1-10 yrs. and/or $5,000

Note: Possession of up to 100 grams of marijuana (approx. 3 1/2 oz.) is classified as a "minor misdemeanor," as are possession of up to 5 grams of hashish or 1 gram of hash oil. There is no criminal record for these offenses.

Criminal penalties are maintained, though drastically reduced, for all sale offenses and for cultivation, as well as possession of over 100 grams.

# # #

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August 22, 1975

IMMEDIATE RELEASE

For details, contact:
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OHIO DECRIMINALIZES MARIJUANA

On Friday, August 22, Republican Gov. James A. Rhodes signed into law a measure making Ohio the latest State to abandon jail penalties for minor marijuana offenses. Ohio joins Oregon, Alaska, Maine, Colorado and California in changing their public policy toward marijuana. The provisions of House Bill 300, a comprehensive drug bill which maintains strong criminal sanctions toward all other drugs, call for a maximum $100.00 fine for possessing up to 100 grams of marijuana. Enforcement is by a citation, similar to a traffic ticket.

H.B. 300 was first introduced two years ago as Ohio Attorney-General William J. Brown's "law-and-order" drug bill. Later, over the objections of the Attorney General, several legislators, including Reps. Ed. Orlett (D.-Daton) Harry Lehman (D.-Cleveland) Charles R. Saxbe (R.-Machanicsburg) and Mike Stinziano (D.-Columbus) and Sen. Stanley Aronoff (R.-Cincinatti), were successful in amending the proposal to include the more moderate marijuana penalties.

When the reduced penalties become effective in three months, possessing up to 100 grams (about 3 1/2 ounces) of marijuana will be classified as a "minor misdemeanor" and specifically exempted from any criminal record. Lesser amounts of hashish (5 grams) and hashish oil (1 gram), both concentrates of marijuana, will also carry the maximum $100.00 fine.

Richard Wolfe, Columbus businessman and Chairman of the Franklin County Mental Health and Mental Retardation Board, called the new measure "a balanced bill that properly addresses both the so-called 'hard' and 'soft' drug problems." Wolfe recently testified before the state legislature in support of the bill along with Art Linkletter; University of Virginia Law Professor Richard Bonnie, former Associate Director of the National Commission on Marijuana and Drug Abuse (Shafer Commission); J. Pat Horton, District Attorney for Lane County, Oregon; and award winning science writer, Edward Brecher, author of Consumer Union's highly respected book, Licit and Illicit Drugs.

NORML's Ohio state coordinator, Cleveland attorney David Weiner, called this latest legislation "a tribute to the people of Ohio." He praised the lawmakers for their willingness to incorporate sensible marijuana

penalties into the bill at a time when the subject still raises emotions among many Ohioans. "They remained firm with the dangerous drugs, while adopting a realistic position for marijuana," said Weiner.

Under this new bill, criminal penalties are maintained, though reduced, for possesion of larger amounts, and for cultivation or sale of any amount. A gift of less than 20 grams of marijuana, however, would subject the donor to a maximum $100 fine.

Ohio's old marijuana law, one of the toughest in the nation, treated possession of marijuana for sale with a minimum 10 year sentence, and sale of any amount with a minimum 20 year sentence. In a recent landmark federal court decision, Downey V. Perini, (July 3, 1975), the 6th Circuit Federal Court of Appeals ruled that the harshness of these penalties, in contrast with lesser penalties available for many crimes of violence, were "cruel and unusual punishment", in violation of the 8th Amendment to the U.S. Constitution.

	First Offense	Subsequent Offense
Possession (up to 100 grams) (up to 5 gr. hashish or 1 gr. hash oil)	$100 fine only	Same
(100 - 200 gr.) (5 - 10 gr. hashish) or 1-2 gr. hash oil)	0-30 days and/or $250	Same
(200-600 gr.) (10-30 gr. Hashish) or 2-6 gr. hash oil)	6 mos. - 5 yrs. and/or $2,500	1-10 yrs. and/or $5,000
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	1-10 yrs. and/ or $5,000	2-15 yrs. and/or $7,500
Gift (20 gr. or less)	$100 fine only (criminal record maintained)	0-60 days and/or $500
Sale (up to 200 gr.) (up to 10 gr. Hashish or 2. gr. hash oil)	6 mos. - 5yrs. and/or $2,500	1-10 yrs. and/or $5,000
(200-600 gr.) (10-30 gr. hashish or 2-6 gr. hash oil)	1-10 yrs. and/or $5,000	2-15 yrs. and/or $7,500
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	2-15 yrs. (6 mos. mandatory) and/ or $7,500	2-15 yrs. (1 yr. mandatory) and/ or $7,500
Cultivation (any amount)	6 mos. - 5 yrs. and/or $2,500	1-10 yrs. and/or $5,000

# # #

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September 5, 1975

Hon. Birch Bayh
363 Russell Senate Office Building
Washington, D.C. 20510

RE: S.1 and S.1450

Dear Senator Bayh:

I am writing to urge your strong and active support for both S.1450 and an amendment to S.1 which would remove criminal penalties for the private use and possession of marijuana.

The case for S.1450 and a decriminalization amendment to S.1 is not based on the premise that marijuana is harmless, or that its use should be encouraged, but rather on the immense (and growing) human, fiscal, and social costs of marijuana prohibition and on our traditional American values of individual freedom, personal choice, and the right to privacy.

Six states (Alaska, California, Colorado, Maine, Ohio, and Oregon) have enacted legislation ending the arrest and jailing of marijuana users. Similar action on the part of Congress will have a major impact on other states, and end the unconscionable arrests of half a million Americans annually on marijuana charges.

I urge you to support S.1450 and any amendments to S.1 which will incorporate a non-criminal approach to marijuana use and possession in the new federal criminal code. Thank you very much.

Sincerely,

Gordon S. Brownell

Gordon S. Brownell
West Coast Coordinator

GSB:ld

NORML
National Headquarters:
National Organization for the Reform of Marijuana Laws
2317 M Street Northwest
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(202) 223-3170
Keith Stroup, Esq., Director

September 16, 1975

TO: NORML SPECIAL MAILING LIST

RE: FISCAL COSTS OF ENFORCING THE MARIJUANA LAWS

FROM: KEITH STROUP

Memo

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With the current economic crisis which confronts many city and state governments, an increasingly important consideration in the debate over marijuana policy is the cost involved in attempting to enforce the current marijuana prohibition. The question arises, "Are the marijuana laws worth what they are costing us?"

Enforcement costs include the police, prosecutorial, judicial, penal and probationary personnel involved in marijuana law enforcement. Obviously it is difficult to accurately separate these marijuana related costs from the overall costs of administering our criminal justice system.

Two state studies have attempted an analysis of their costs of enforcing these laws. While conditions differ in each state, these costs analyses should be useful, in absence of more specific data, in estimating marijuana enforcement costs in your state.

A. California

The May, 1974 report of Sen. George Moscone's Senate Select Committee on Control of Marijuana, entitled Marijuana: Beyond Understanding concluded that when all marijuana arrests were felonies, each ended up costing the state $1,630. After the law was modified in 1968 to permit first offenders to be handled as misdemeanors, at the discretion of the judge, the cost per arrest dropped slightly to $1,340.

The Committee found that California was arresting nearly 100,000 persons annually on marijuana charges, resulting in a cost in excess of $100 million dollars in law enforcement resources.

B. Illinois:

In July, 1975, the Illinois Economic and Fiscal Commission, established by the state legislature, published an evaluation of state drug abuse programs. This report concluded that the average cost per arrest (not limited to drug arrests) was $1,139. Examining the drug law enforcement in particular, the report concluded that marijuana arrests involving possession of an ounce or less accounted for 44% of all drug arrests in 1974 resulting in law enforcement costs to the state of $15,490,000.

Copies of both of these state cost analyses are available upon request from NORML.

1827 1977

HANOVER COLLEGE
HANOVER, INDIANA 47243
Office of the President

May 12, 1975

Senator Birch Bayh
United States Senate
Washington, D.C. 20510

Dear Birch:

I have just learned that you are conducting hearings in the Senate on the possession and use of marijuana. I should like to forward to you a few of my thoughts on this matter.

If the legal dimensions and restrictions on the possession and use of marijuana are removed, this country will be subjecting itself to moral and social problems of such proportions that the ills of the Roman Empire will be a picnic by comparison. No greater contribution to the degradation of society could be made than to reduce and decrease the legal penalties for possession and use of this controlled substance.

Some of us who work with young people day in and day out are totally convinced that the law should deal with "possession and use" together. Although these two areas can be separated theoretically; they cannot be separated from a practical point-of-view. In moments of objectivity, young people from 18-21 years of age will generally verify and confirm this position. I do hope that we do not enact "soft-headed" laws on the possession and use of marijuana. In fact, we should be strengthening and upgrading the laws for possession and use and not weakening and downgrading them.

I submit these observations with great sincerity in the hope that we do not contribute negatively to society by weakening laws in this connection.

Sincerely,

John E. Horner
President

JEH:WC

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United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY
(PURSUANT TO SEC. 12, S. RES. 72, 94TH CONGRESS)
WASHINGTON, D.C. 20510

July 3, 1975

John E. Horner
President
Hanover College
Hanover, Indiana 47243

Dear Jack:

I appreciate your thoughtful letter regarding the use and control of marihuana and hope that you will comment further on the enclosed materials that were presented at a recent hearing of my Subcommittee.

With warm regards,

Sincerely,

BIRCH BAYH
Chairman

Enclosure

HANOVER COLLEGE
HANOVER, INDIANA 47243
Office of the President

July 10, 1975

Senator Birch Bayh
United States Senate
Washington, D.C. 20510

Dear Birch:

Thank you for your letter of July 3, 1975 in which you enclosed materials related to the control of marijuana through federal legislation. I appreciate your sending this information to me. Since you invited me to react to the materials, I shall do so through this letter.

The general thrust of the information which you forwarded to me appears to have as its major points the separation of possession and use and the reduction of legal penalties for private possession of small amounts of marijuana. The documents also stress the high cost of processing the breaches of current marijuana laws.

It would be my judgment that if we move in the direction of separating the legal sanctions for possession and use and a pattern of fines for the private possession of small amounts of marijuana, we will have even greater problems in our nation, and the cost of prosecution for breaches of the legal code will rise markedly. If psychology tells us anything, it certainly tells us that by reducing penalties for human error, we will not necessarily reduce the number of errors made. In fact, most psychological research shows the opposite to be true. I believe that the same rationale can be applied to matters related to the possession and use of marijuana and other addictive drugs.

I must indicate that the statement presented to your Committee by R. Keith Stroup of NORML is like asking the Mafia if it endorses crime. I must state that I was concerned that there is an almost total absence of medical evidence and testimony in the documents. I am wondering why the studies made at Tulane University and Columbia University have not been stressed in the considerations by your

Committee. I believe that there is growing evidence concerning the harmful medical effects of marijuana, although this aspect of the matter is often deprecated by proponents of reduction of penalties for marijuana usage. I am fully aware that your emphasis must be on the legal dimensions, but the concern for health, life and limb are also important considerations, so they cannot be set aside as you and your colleagues review the matter. Certainly, the environmental protection legislation, the automobile regulations as to seat belts and control of gasoline fumes, etc., relate to governmental concern for health problems. In brief, I personally believe that the health and medical factor should weigh heavily in the creation of legislation in this area.

I commend you and your Committee for probing deeply into this problem. I must admit that my point of view is colored greatly through the events and developments which I see day-by-day in working with youth at the college level. As I said in an earlier letter, I do not feel that possession and use can be separated effectively, as legal entities, and that the reduction of penalties exacted on possessors and users will aid in the solution of the problems. I feel that the problems will be magnified if changes are made.

Thank you again for your invitation to respond to the documents which you forwarded to me.

With kindest personal regards, I am

Yours cordially,

Jack

John E. Horner
President

JEH:WC

An Argument Against the Decriminalization of Marijuana Now!

(By George Gubar)

There are apparently a multitude of problems inherent in any discussion concerning the question of the decriminalization of marijuana. I could probably list these problems without discussion or clarification, but to do so would only add to the confusion which already exists.

The topic of marijuana is an emotional one engendering discussion, argumentation, and rhetoric from users, non-users, and should-I-be-using individuals. In most of the discussions and debates concerning the decriminalization of the use and possession of marijuana which I have had with members of The National Organization for the Reform of the Marijuana Laws, it becomes apparent that decriminalization is not an end, but only the first step toward the legalization of the use, possession, and sale of cannabis in all forms. If this is the case, why cloud the issue; discuss legalization.

However, if we assume that this is not the case, and decriminalization is the end and not the means, other serious considerations are implicit.

There is no need for me to reiterate the reported physical hazards concerning chronic and longitudinal use of marijuana, such as has been suggested by prominent scientists around the world. I can only say that this evidence may have been disputed, but in fact has never been refuted, and the body of evidence grows daily.

To argue (as do the advocates) in favor of the recreational use of marijuana on an unlimited basis because there has been some questionable research concerning the possible limited medical use of cannabis has no merit whatsoever.

Perhaps the first question that should be asked is not "should marijuana be decriminalized or legalized," but "should the marijuana laws be modified?" To this question, I would have to answer "Yes—BUT . . . !"

As a general axiom, marijuana laws should not be considered on an individual basis, nor on a State by State basis, but should be unified on a National basis. I would personally resent, as an American citizen, being fined for the possession of twenty-eight (28) grams[1] of marijuana in New Jersey and be arrested and possibly jailed for the same offense in New York or Pennsylvania. Further, the bases for change of laws which attempt to protect the mental and physical health of the American people should be considered on the recommendation of the F.D.A. after careful consideration of all of the evidence as in the case of any product offered for sale under the rubric of food or drugs.[2]

If we accept the fact (which most of us do) that there is no proven relationship between the use of marijuana and the progression to "harder" drugs, then we must also accept the fact that study after study has shown that individuals who smoke marijuana are more likely to use "harder" drugs than a person who does not smoke marijuana.

As a college professor, who instituted (and still conducts) one of the first college level courses in the United States[3] concerning drug abuse, I am becoming more and more distressed that students freely admit driving automobiles more frequently while under the influence of marijuana with the misbelief that marijuana intoxication does not cause any behavioral or response decrements in driving ability. This, in spite of the momentary lapses in attention, possible interference with peripheral and central vision, decreases in response time, distortion in time perception, and increased sensitivity which might cause a driver to focus and fix his senses on interfering stimuli such as lights, sounds, etc. These factors are reluctantly admitted by the students and have been shown under experimental conditions.

Driving while "stoned" does present other problems which must be considered before we attempt to change our mairjuana laws. Namely, how do we determine the potency (quality) empirically of the marijuana which is being used and secondly how do we determine levels of cannabis intoxication? How do we determine unimpaired vs impaired vs drunk? There is presently no accepted test to determine level of marijuana intoxication as there are tests to determine levels of alcohol intoxication.

As a result of the Harrison Act of 1914, our government created an illegal market for morphine. If we decriminalize marijuana, will we do the same thing,

[1] Twenty eight (28) grams of marijuana will produce between fifty-five (55) and eighty-five (85) cigarettes, depending on the proficiency of the "roller."

[2] The urgency and immediacy to decriminalize and/or legalize marijuana NOW is incomprehensible because of the Thalidamide experience.

[3] This course began five years ago at Seton Hall University, South Orange, N.J.

because who will supply the smoker with grass? Will decriminalization create a market for cannabis in New Jersey which is greater than the one which presently exists?

The Oregon experiment reducing the penalties for marijuana offenses is being touted as a reason for decriminalization and/or legalization because there is a small increase in heavy users versus a larger decrease in occasional users. This is a smoke screen! There has been a general reduction nationally in the number of marijuana smokers in the last year by all people (with a consequent switch to alcohol) as was predicted by the Shaffer Commission. This is especially true of college students. Oddly—the decrease in Oregon may be in line with the national patterns, but the increase of heavy use may be as a result of decriminalization.

Two other totally incorrect statements made by the advocates of decriminalization and therefore subsequent legalization have to do with the total number of marijuana smokers in the United States and the fact that marijuana is harmless. I should like to dispel both of these myths.

Firstly, an estimate of twenty (20) million smokers in the United States is ludicrous—we don't grow nor have smuggled that amount of marijuana and secondly, any person who has admitted smoking marijuana one time only (even one puff or "hit" as it is called) is considered to be a user.

So far as marijuana being harmless, there is no completely safe drug known to man. To underestimate the potential dangers of the use and abuse of marijuana is to invite disaster. This is the posture that decriminalization and legalization would foster. I doubt that any clear thinking husband (or physician) would advocate the use of marijuana by his pregnant spouse!

Nowhere in the New Jersey proposal by Senator Alexander Menza that marijuana be decriminalized is there a reference as to the action which is to be taken when a twelve (12) to fifteen (15) year old child is found in possession of "less than twenty-eight grams of marijuana" or approximately 55–85 joints. Does this child pay a fine or . . . . what? A breakdown of marijuana smokers by age would show that the thirteen (13) to seventeen (17) year old children are the second largest group of marijuana smokers in the country (junior and high school students).

As a licensed clinical psychologist who specializes in the treatment of addicted individuals, I can mention some psychological conditions affecting marijuana smokers which are seen more frequently than by chance alone.

Firstly, there is an impairment of memory for immediate events. Secondly, there is a decrement in performance on complex motor and complex cognitive tasks. Thirdly, is the incidence of paranoia which is not attributable to the illegality of marijuana. Fouth is the amotivational syndrome which does afflict some cannabis users, and lastly, is the incidence of a transient form of psychosis which may affect heavy or even moderate smokers. It is true that in some instances marijuana may be the effect rather than the cause, but it is just as true that in many cases, marijuana may be the cause. Unfortunately, as knowledgeable as psychologists are, they have not yet devised a test which can determine which individuals among us are "walking a psychological tightrope" and who will suffer ill or negative effects from the use of this mild hallucinogenic.

Two publications which are most frequently quoted as legitimate sources of information for changes in the cannabis laws include Licit and Illicit Drugs by Edward M. Breeller who states "The Commission (Le Dain Commission in Canada) concludes that . . . the scientific evidence concerning marijuana is not yet all in . . . " And later asks the question: "Would a decision by the government to assume responsibility for the quality control and distribution of cannabis imply, or be taken to imply approval of its use and an assurance as to the absence of significant potential harm?"

In the Second Report of the National Commission on Marijuana and Drug Abuse titled Drug Use in America: Problem in Perspective, the Commission corrects its original report by stating that "there are adverse effects on driving while under the influence of marijuana intoxication and then summarizes its position by stating the following:

"The Commission notes the significant role played by the voluntary sector of the American Community in influencing the social, religious, and moral attitudes of our nations citizens and *recommends that the voluntary sector be encouraged to take an active role in support of our recommended policy of discouraging the use of marijuana.*" [1]

[1] The italics are the authors.

There is no question in my mind, nor should there be in the minds of any clear-thinking individuals that before the marjuana laws are changed, if they are to be changed, there must be much more definitive research to answer all of the unanswered questions combined with an extensive program of awareness concerning the potential danger and possible hazards that can occur as the result of marijuana use.

John H. Stamler who is a member of the New Jersey Drug Abuse Advisory Council and Counsel to the New Jersey Narcotic Enforcement Officers Association on December 2, 1974 issued a statement asking for the decriminalization of marijuana in the amount of ten (10) grams or less than one (1) gram of hashish in opposition to Menza's request for 28 grams of marijuana and 6 grams of hashish). Nowhere does Mr. Stamler mention the ages of the offenders and states what he labels "incontrovertible facts" about marijuana as follows:

"Competent, credible, medical studies confirm that the use of marijuana is a destructive influence upon the human psychology and physiology."

"Ten grams of marijuana will make twenty-eight to thirty cigarettes, an amount which the President's Commission on Marijuana found to be months supply for the casual user;"

"Possession of more than twenty-five (25) grams of marijuana should continue to be a high misdemeanor;"

"The use and abuse of alcohol by millions while socially acceptable, are no reason to permit, support, or encourage the disablement of another twenty million Americans through the use and abuse of marijuana."

And finally, Mr. Stamler states quite emphatically:

"I oppose the use of marijuana."

Referring to Mr. Stamler's mention of alcohol, it has been suggested that if alcohol were to be discovered today, It would not be licensed by the F.D.A., even as a prescription drug, because of its potential for harm. Before we add another drug to this category, much more thought and investigation should be given to this substance.

We are constantly being asked, "should college students suffer the trauma of arrest and jail records?" To which I must answer, why are college students being singled out, because arrest and jail records have been shown to be traumatic to all kinds of people.

If, as the advocates suggest, marijuana is not addictive, why not declare a moratorium on its use (by college students and others) until such time as the evidence has become fact, rather than risk many unnecessary and possible unpleasant consequences because of its use.

Mr. Harry Anslinger may have distorted or emphasized the negative facts in his desire to have Congress pass the Marijuana Tax Act of 1937, but it seems just as dishonest for the advocates of decriminalization by omission or commission to do the same thing!

Dr. DuPont originally said that marijuana should be legalized, but reversed himself three days later—but the "pros" don't mention the reversal! United States Attorney Earl Silbert said his office would not prosecute cases involving possession of five or fewer cigarettes, but then reversed himself—but the "pros" don't mention the reversal! In 1967 Dr. D. Henry Powelson said "marijuana is harmless" but then reversed himself in December of 1974—but the "pros" don't mention this either.

There is a suggestion that there is no middle ground in this argument. Either the answer is decriminalization and legalize marijuana, or keep marijuana illegal and criminal.

This is far from the truth! I am advocating a middle ground. Consider changing the marijuana laws when we have the facts—and then we can take a reasonable, scientific and sane view of the problem and come to realistic solutions. But let us avoid the dangers of immediacy and urgency by "burying our heads in the sand" concerning either side of the question.

As a scientist it would be criminal on my part to deliberately ignore the possibility of the debilitating psychological and physiological effects of cannabis simply because of the impatience of a sector of the population desiring what they have come to regard as indulgence in a new form of recreation. In this era of maturity in which we are attempting to instill in our children a sense of responsibility it appears incongruent to change laws to accommodate law breakers. If this is the attitude, we should liberalize our gambling, prostitution, pornography, statutory rape, etc. and all of our victimless crime laws. It is true that we cannot legislate morality, nor is it true that we should legislate immorality!

Therefore, I am urging the membership of the New Jersey Psychological Association not to endorse the position of decriminalizing and/or legalizing marijuana on the basis of immediacy or urgency.

As a professional and scientific society, we should state that there is validity to the consideration of the possibility of a change in our marijuana laws but only after empirical evidence indicates changes should be made.

The New Jersey Psychological Association should remain as unemotional and rational as our patients, students, and constituents believe we should, in a matter concerning their psychological and physiological health.

[From the Washington Star, Mar. 22, 1972]

NIXON PANEL URGES END TO PENALTIES FOR SMOKING 'POT'

(By Judith Randal)

Saying that marijuana is not a major "threat to the social order," a presidentially appointed commission recommended today that the nation substitute a policy of "discouragement" for the current prohibition and abandon criminal penalties for simple possession and use.

But a year of study also has convinced the panel that current sanctions against sale and distribution of marijuana should be continued.

In a 180-page report, the 13 members of the National Commission on Marijuana and Drug Abuse agreed unanimously that adoption of these recommendations would focus law enforcement efforts where they are most needed and end the uneven administration of justice for those engaged in private and, for the most part, harmless recreational behavior.

"The fundamental principles and values upon which the society rests are far too enduring to go up in the smoke of a marijuana cigarette," the report says.

President Nixon, who appointed 9 of the commissioner's 13 members, received the report without comment. Assistant White House press secretary Gerald L. Warren turned aside questions about whether the President would back the recommendations. Nixon has said he opposes legislation but thinks some penalties for possession are too high.

The panel recommended that possession of an ounce or less of marijuana in public remain subject to summary seizure and forfeiture but no longer be against the law, but not all members concurred.

At one end of the dissenting spectrum was Mitchell Ware, a Chicago lawyer who formerly headed the Illinois Bureau of Investigation. He favored "some sort of penalty short of criminalizing the user."

Two other dissenters, Reps. Paul Rogers, D-Fla., and Tim Lee Carter, R-Ky., suggested civil fines, which—like the fines paid for traffic violations—would not become part of police records.

Sens. Harold Hughes, D-Iowa, and Jacob K. Javits, R-N.Y., took issue with both these stands, finding them unreasonable. "If marijuana held for personal use within a home is not contraband," they asked, "why should marijuana within one's automobile be contraband?"

They also found fault with the majority's recommendation that public possession of more than an ounce of "pot" be a criminal offense punishable by a $100 fine.

For one thing, they said, there are already penalties for intent to sell so that there is "no need to further proscribe simple public possession."

For another, they said, it is illogical that "the individual who buys an ounce and a half would be a criminal when he buys on the corner, when he puts it in his pocket, when he gets in his car and drives home, when he is on his doorstep, but not when he crosses the threshold of his home."

Although praising the commission for advocating decriminalization of private marijuana possession, the National Organization for the Reform of Marijuana Laws—the principal "pot" lobby—criticized the report for not going far enough.

A critique prepared for NORML by Dr. Lester Grinspoon, a professor of psychiatry at the Harvard Medical School, said that heroin became a widespread problem among servicemen in Vietnam only when authorities cracked down on marijuana.

He expressed fear that failure to legalize and regulate the use of marijuana similarly would escalate the use of harder drugs in the United States. He said the danger is the greater because the commission recommended stepping up measures to prevent the entry of "pot" into the country.

A key element of the commission's report and its 33 recommendations is the hope that the marijuana problem will go away.

The hope is based on a survey released earlier this year by the chairman of the commission. Raymond P. Shafer, a former governor of Pennsylvania. It found that an estimated 24 million Americans have tried marijuana, but 41 percent of the adults and 45 percent of the youth (those under 25) abandoned its use for lack of interest.

At a briefing for newsmen, Shafer said the commission had decided against recommending legalization, even though present evidence shows little harm from marijuana, because it opposes encouraging use of any mind-changing drug and because future evidence might show more bad effects of the drug.

Legalization, he said, would be "almost certain to promote further use."

Shafer said he had never tried marijuana himself, but that some of the commissioners had, though he didn't know how many.

MAY BE A FADING FAD

"There was a recurring awareness of the possibility that marijuana use may be a fad which, if not institutionalized, will recede substantially in time," says the report. "Present data suggest that this is the case and we do not hestitate to say that we would prefer that outcome. . . . We believe that society must have time to consider its image of the future. . . ."

In contrast to legalization, it added, "a discouragement policy toward marijuana at this time would facilitate such a reappraisal while official neutrality, under present circumstances, would impede it. . ."

"There is no fundamental principle supporting use of the drug, and society is not compelled to approve or be neutral toward it."

The report hints broadly in several places that many erroneous beliefs about marijuana can be traced to misinformation spread by the government "within the context of 30 years of instilled fear."

The reports points out, for example, that marijuana is not addictive, and draws a distinction between its use in societies where there is little upward mobility and its use in the United States

The lethargy often characteristic of "pot" users in those countries, it says apparently has more to do with lack of social opportunity than with the drug per se, and thus there is little likelihood that marijuana will stifle the initiative of Americans.

"Young people who choose to experiment with marijuana (in the United States) are fundamentally the same people, socially and psychologically, as those who use alcohol and tobacco," the report says.

Nevertheless, it insists that the 500,000 Americans it defines as heavy users because they smoke several times a day are a "high-risk" population—despite references in the report to studies of heavy long-term users in Greece and Jamaica which found little evidence of physical or mental harm.

In addition to potentially risking their own health, says the commission, heavy American users are a danger because they may initiate others into the drug subculture and its unconventional life-styles.

There is "no valid evidence . . . to support the thesis that marijuana, by itself, either inevitably, generally, or even frequently causes or precipitates the commission of crime," the report says.

Indeed, "perhaps, the major impediment to rational decision-making (about marijuana) is the tendency to think only in terms of the legal system in general and the criminal justice system in particular," it says.

NO LINK TO HARD DRUGS

Nor did the commission decide that marihuana leads to the use of other drugs. Pressure from others of the same age group, the report says, is the chief factor in all drug use.

"Indeed, if any drug is associated with the use of other drugs, including marihuana, it is tobacco, followed closely by alcohol. . . . The fact should be emphasized that the overwhelming majority of users do not progress to other drugs."

The report says there is "no reliable evidence that marihuana causes genetic (birth) defects in man . . . and no conclusive evidence . . . of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana."

This, it says, "contrasts sharply with the well-established brain damage of chronic alcoholism" and is the reason why the "vast majority" of "pot" users require neither treatment nor rehabilitation.

Rather, it says: "Marihuana has become both a focus and a symbol of the generation gap . . . and an expedient means of protest against adult values."

CONTINUED RESEARCH URGED

The commission advocates a continuation of research that would detect harmful effects, if any, on heavy users and demonstrate the drug's potential in the treatment of such disorders as glaucoma, high blood pressure and terminal cancer.

In 42 states and the District of Columbia, simple possession of marihuana in small quantities is a misdemeanor. In half of the remaining states, judges are free to sentence marihuana users as misdemeanants instead of felons if they choose.

The commission will spend the next year preparing a companion report on heroin and other drugs. It also may amend its recommendatons on marihuana in 1973 if that seems appropriate.

[From the Los Angeles Times, Mar. 26, 1972]

MARIHUANA

(An editorial)

Though it tried hard to avoid it, the National Commission on Marihuana and Drug Abuse couldn't get around a major contradiction in its chief recommendation, and that contradiction has now been given to the public to wrestle with.

The private possession or use of marihuana, says the commission, should not be illegal. This is because the "proven danger" of physical or psychological harm for the occasional marihuana smoker is so slight that the drug cannot now be considered a major threat to public health. So, there is no need or justification for the government to concern itself with what a marihuana smoker does in the privacy of the home.

But—and comes now the inconsistency—the commission strongly favors a policy of discouraging any use of marihuana. While it would wipe away existing penalties on private use of the drug, it would retain the legal prohibition on growing or selling marihuana for profit, and on its use in public. These deterrents are necessary because, among other reasons, marihuana has "uncertain long-term effects" and because its moderate or heavy use does have undesirable behavioral or physical consequences.

There are, obviously, a number of bothersome points here. First, the commission wants to discourage any use of marihuana, on the sound ground that it could be hazardous, that it could, as happens so often with alcohol, be abused. But is "decriminalizing" the private use of marihuana really an effective way to discourage its use?

It's often said that one of the attractions of marihuana is precisely that it is illegal—the old idea that forbidden fruits are always the most tempting. There may be a lot to that. But it doesn't follow that legitimizing the private use of marihuana would reduce its appeal, any more than it followed that the repeal of Prohibition led to a diminution in drinking. If anything, it seems to us, sanctioning marihuana would tend to increase the number of its users, though not necessarily the number of heavy or habitual users.

Then there is that curious distinction between possessing and using the drug, which would be legally permitted, and growing or selling it for profit, which would not be. Unless each marihuana user were to cultivate his own garden, the drug would have to be purchased, and in the nature of the marketplace it would be sold for a profit, as it is now. The trick, as now, would be for the peddler to avoid getting caught. But, to get fanciful for a moment, why should sellers under the proposed legal changes continue to be in jeopardy of the law? They would, after all, only be providing a commodity whose use, in private, would be entirely legal. Perhaps in justice, if there is legal sanction for one end of the transaction, there ought to be for the other as well.

The commission's response to this is, we think, rather labored and not truly persuasive. It makes the point that only about 2 percent of Americans who have

ever used marihuana are now heavy users, and that many of these persons have suffered psychological or physical harm. In public health terms 2 percent is not considered much. But—again that but—the commission is worried that "a sudden shift in social policy—i.e., fully legalizing the drug—could result in a great increase in the number of heavy users of marihuana, and convert "what is now a minor public health concern in this country to one of major proportion."

Well, if the free sale of the drug were to pose that threat, then so too could free private use of the drug. Which brings us right back to the commission's wish to discourage any use of marihuana, and the inescapable question of whether removing legal penalties on its private use would in fact serve that purpose.

Perhaps it would be better to look at the question from a different angle. Government interference with the cultivation, importation, sale or use of marihuana is justifiable for one reason alone: the drug's danger to health. Like any drug, marihuana is potentially harmful. The issue has become how harmful. The commission says that, on the basis of existing evidence—and we would emphasize existing—light or intermittent use of marihuana apparently is not really dangerous. If that is true, then the justification for government interference is at the least considerably diminished. Private marihuana smoking might then be regarded like private drunkenness, of minimal concern to the law.

Should legal restrictions on private use of the drug then be eliminated entirely? We think not, first because scientific evidence about marihuana's dangers remains inconclusive, second because such a move might well encourage a spread in use. The real legal issue, it seems to us, is how vigorously should existing prohibitions on private use of marihuana be enforced. Is the effort and the drain on police and court time and resources worth it, given the doubts about marihuana's actual dangers? Along with a lot of law enforcement officials, we think it is not.

The best approach would seem to be a pragmatic one, to regard private marihuana smoking essentialy as one of those "victimless crimes" where social harm is slight or nonexistent, where interference by authority is not really necessitated by any demonstrable threat to the community. What an individual chooses to do in privacy is his business alone, provided no harm is done to others. That choice may not be wise, or likely to win moral approval, nor is there need to sanction it by law. But neither is there need for interference by authority, and in the case of private marihuana smoking that ought to be the practice.

[From the National Observer, Mar. 31, 1973]

Is "Drug Abuse" A "Useless Code World"?

(By William J. Lanouette)

Washington, D.C.—The National Commission on Marihuana and Drug Abuse has spent two years and nearly $4 million. In its first report, last year, it recommended that Federal and state penalties for the possession and use of marihuana be eliminated, on the grounds that the drug is not nearly as dangerous or harmful as many people once believed.

In its second and final report, a 481-page document issued here last week, the nine-member commission had little new to say about marihuana, but it did offer more than 100 recommendations about everything from alcohol to zealots. Among its findings:

> The No. 1 drug problem in the United States today is neither marihuana nor heroin but alcohol.
>
> Federal drug-information programs are too often used "to propound and defend the official doctrines and values rather than to communicate accurate information" and should be discontinued until their facts and purposes can be resolved.
>
> A "drug-abuse industrial complex," which spends almost $1 billion a year in Federal funds, is actually confusing and perpetuating many social and medical drug problems.
>
> The dependence on barbiturates (sedatives) by frustrated housewives parallels increased alcohol use during the 1950s by this same group, and it may be a modern equivalent of the hidden opiate habits of the late Nineteenth Century.

Overzealous public officials rely too heavily on law enforcement as a solution to drug abuse, when medical and social therapy could be more appropriate.

Indeed, the commission dismissed the term "drug abuse" as being a useless code word "for that drug which is presently considered wrong," The conclusions even go one step further, stating that "popular conceptions and definitions of drugs and drug use are, in an important sense, *the* drug problem."

MOOD ALTERATION

The commission said thaat "no semantic fiction will alter the fundamental composition of alcohol and tobacco." The commission's chairman, former Republican Gov. Raymond Shafer of Pennsylvania, elaborated on the need for clearer public conceptions of all drugs. He said: "Instead of assuming that mood alteration through some drugs is inherently objectionable, while similar use of others is not, the pubic and its leaders must focus directly on the appropriate role of drug-induced mood alteration. It is no longer satisfactory to defend social disapproval of use of a particular drug on the ground that it is a 'mind-altering drug' or a 'means of escape.' For so are they all."

Beyond such general pronouncements, however, and a call to involve "private institutions" in drug-control activities, the commission's efforts did little to discover specific factual information about either marihuana or drug abuse. For example, it produced an ambivalent conclusion about the effects of marihuana on driving ability, weighing one report that concluded the drug had no adverse effects with another that concluded it did.

The commission said that "no semantic fiction will alter the fundamental and staff, yet it devoted very little attention to the increasing role of international drug trafficking. Furthermore, its most important single recommendation—that all drug-related Federal programs be combined under one authority—is simply an expanded version of a reorganization plan that President Lyndon Johnson proposed in 1968 after he received a set of recommendations from another Presidential commission. In fact, even last year's proposal that penalties for marihuana possession be eliminated had been made in the Department of Health, Education, and Welfare as long ago as 1967.

CONFLICT WITH PRESIDENT

But if the final report offered little more than a compilation of familiar ideas from the 1960s, it nonetheless did conflict with proposals made recently by President Nixon. His call for mandatory minimum sentences for some drug-related offenses returns public thinking to the era of "get tough" drug laws that were in vogue, and were enacted, in the 1950s. The President dismissed last year's commission recommendations to "decriminalize" marihuana use and is not expected to view last week's final report with much favor.

The commission, established in 1970 by Congress and made up of persons selected by President Nixon, was to answer questions about marihuana and drug abuse that then puzzled lawmakers and the public. But with the findings and recommendations now in hand, there still seems to be a paucity of reliable information on which future laws might be based.

[From the Christian Science Monitor, Jan. 16, 1974]

"POT" PENALTIES SMALLER, ARRESTS UP

(By Robert M. Press)

BOSTON—Marihuana-related arrests in the U.S. are increasing, even as more and more states are reducing criminal penalties against its use.

Most arrests are for personal use and many are a result of discovery of marihuana when state and local police stop persons for other reasons.

Federal arrests are growing, too, as significant smuggling of marihuana into this country continues.

State and local marihuana arrests nationwide jumped about 30 percent from 1971 to 1972, according to statistics given to this newspaper by the Federal Bureau of Investigation. There were approximately 184,000 marihuana arrests in 1971 and 239,100 in 1972 by state and local police, the FBI says.

USE STILL ILLEGAL

A recently compiled sampling of drug arrests in Massachusetts in April, May, July, and September, showed that marihuana arrests made up nearly one-half the total. Heroin arrests, the second largest group, comprised about 12 percent of the total.

An estimated 35 states since 1970 have followed the federal government's example of lowering the penalty for use of small amounts of marihuana from a felony to a misdemeanor. Its use is still illegal in every state, however.

The upswing in marihuana arrests over the past several years appears to be continuing. Federal agents this year had made about 34 percent more marihuana arrests by Oct. 1 than they had all last year, the FBI says. Such arrests as of Oct. 1 totaled 1,141 compared to 850 in all of 1972, the FBI says.

Federal marihuana arrests are closely related to attempts to smuggle the drug into the United States. As of Oct. 1 federal agents had seized approximately 29,000 pounds of marihuana. The total seized in 1971 was 52,000, a jump from 9,000 pounds taken in 1970.

The "vast majority" of arrests by state and local police appear to be "haphazard," not the result of planned anti-marihuana drives, says Robert Bogomolny. Mr. Bogomolny researched the question for the National Commission on Marihuana and Drug Abuse.

Arrests of this type may continue to increase in the wake of two recent Supreme Court decisions allowing police to conduct complete body searches of individuals they arrest. The high court said any evidence obtained during this type of search could be used against the individual at trial.

Usually police stop someone in a car or on the street for some reason that has "nothing at all to do with drugs," then happen to find marihuana, said Mr. Bogomolny.

"My personal belief is that young, long-haired people, who are not street people but ook like street people, wear jeans, may be bearded or mustachioed, are seen by police as high risks," he said.

He found in a sampling of about 3,000 arrests that only about one out of three persons arrested on a marihuana charge ever was sentenced. Most of those sentenced were convicted of possession, not sale, he said. And only about one out of three of those sentenced was locked up, he added.

OCCASIONAL USERS

"The typical person arrested for marihuana was a young, white male, a permanent resident in the area arrested, a blue-collar worker, or attending school," he said. About one-third were 18 or younger and about one-half were between the ages of 19 and 22, he said.

"Approximately 9 million to 10 million Americans use marihuana occasionally, and about half a million use it regularly," says Dr. Dana L. Farnsworth, one of the principal organizers of reports prepared by the national commission.

The commission estimated that approximately 26 million Americans have tried marihuana at least once.

"But the rate of increase in use has been slowing down the past several years," said Dr. Farnsworth, a consultant to the Harvard University School of Public Health.

[From the Washington Post, Nov. 18, 1974]

THE LIMITS OF CRIMINAL SANCTION

Over the last several years, most states have reduced the felony statutes for possession of small quantities of marijuana to misdemeanors. One state, Oregon, has made simple possession of the drug the legal equivalent of a traffic offense. It was only a matter of time before the federal government would begin to move in the same direction. A presidentially appointed commission argued in 1972 for "decriminalization" and although President Nixon simply rejected the recommendation, a number of federal officials have since taken the position that making marijuana possession a federal felony offense serves no useful purpose.

The latest federal official to take that position is Dr. Robert L. DuPont, President Ford's chief adviser on drug abuse control. Significantly, Dr. DuPont chose a meeting here of the National Organization for the Reform of Marijuana Laws to endorse the Oregon solution. In doing so, Dr. DuPont took the same stance that many responsible officials in federal and state government have

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taken: Marijuana is potentially dangerous to the individual smoker, but smoking by individuals poses no threat to the society that justifies locking up those unlucky enough to be caught.

The marijuana laws, because they proscribe a "crime" that has no victim, are ordinarily enforced against those whose "criminality" comes to the attention of the authorities by accident. Thus, the other day, a federal official whose home here had been burglarized was arrested the same day for possession of an ounce of marijuana found by the police officers investigating the burglary. But for that accident, we can assume his private use of marijuana would have remained his private affair.

That is how it is with most of the 20 million Americans estimated to have smoked marijuana. There is hardly a legal restraint that compares with the law on marijuana for inconsistency of enforcement. Most people who smoke never are caught. About a half million people will probably be arrested this year. Many of those will be released as first offenders without any action having been taken against them, particularly if they are juveniles. The application of the law is selective in many parts of the country. Young people the police may wish to detain for other reasons often go to jail because they happen to have a small quantity of marijuana on their persons during encounters with police.

Under those circumstances, the logic of Dr. DuPont and those other federal officials who have called for "decriminalization" makes sense. It is unwise for a society to permit the creation of so large a class of presumptive criminals when their crime can be of no demonstrable harm to anyone other than themselves. This is especially so when other recreational drugs are readily available and legal. The danger to the individual who drinks alcohol is at least as great as the danger of smoking marijuana, and may be far more so. Yet, it is perfectly legal for persons who are not minors to buy all the alcohol they wish. If the theory behind proscribing marijuana was that its use would diminish, the policy has been a failure. When the substance was made illegal in 1934, it was estimated that 50,000 Americans used it. The figure could be as high as 25 million today. "Marijuana," said a study by Consumers Union several years ago, "is here to stay."

Since there is little evidence to contradict that conclusion, and since many prosecutors—most recently the U.S. Attorney for the District of Columbia—have argued that they would like to get marijuana out of the way so they and the police can concentrate on real crime, it makes sense to support Dr. DuPont and those who argue for "decriminalization." But "decriminalization" should be recognized for what it is. It is a politically delicate way of saying that you are taking a first step toward the day marijuana will be legal. That is apparent on its face. Dr. DuPont says that "decriminalization" should be accompanied by programs that educate the public to the dangers of marijuana use. Despite such programs, it is doubtful that the use of marijuana is going to decline. If there is merit in relaxing the rules on possession, simple logic dictates that it makes sense eventually to legalize its sale and use and control its quality. That is the way to keep some of the more harmful and dangerously potent forms of the drug off the market. It is also a way of separating marijuana from some of the much more dangerous substances, such as cocaine, LSD and heroin, that now circulate through the same channels as marijuana.

For many young people, the illegality of marijuana makes a mockery of the law. Despite what those who seek to justify the criminal sanction might argue, the logic of the matter causes many youngsters to see duplicity in the current state of affairs. It is perfectly legal for their parents to drink alcohol but an indictable offense for them to possess marijuana. That kind of double standard is corrosive of the principle of the rule of law. The value of the criminal sanction in a society rests on the foundation of fairness. For that reason, the criminal sanction is most effective when it is limited to proscribing those offenses of genuine danger to the society. Possession of marijuana does not meet that test.

[From the Washington Star-News, Nov. 10, 1974]

END THE POT PENALTIES

(By William F. Buckley, Jr.)

A couple of years ago Johnny Carson turned suddenly to me, in a general discussion of the drug laws, and asked me point-blank: "Have you ever tried pot?" I said, yes, I had. And added primly that I was on my boat, outside the 3-mile limit, so that I wasn't breaking any law. (He went on to ask: "Did it do anything for you?" And I replied, "No.")

Now as a matter of fact, Carson should not have asked that question. It is in the category of questions you do not ask, like: "Have you ever cheated on your wife?" The rule is that you should never ask somebody a question if there is a high probability that the answer will reveal the questionee to be either a law-breaker or a liar. And of course for some such questions there is no escape clause. There is no such thing as cheating on your income tax outside the 3-mile limit.

But Carson did ask me, and my reply was truthful, and I have been plagued by it ever since. I seldom address a college audience without somebody bringing it up in some way or other during the question period. Example: "Mr. Buckley, how did pot get into your boat in the first place?" (My answer: Parthenogenesis.) Or: "Do you think it's fair that only people who have yachts can smoke pot legally?" (My answer: "Anybody can rent a boat. They come as low as ten, 15 bucks a day.") The audience is good-humored, mostly because if you are addressing a college audience, you are talking to a group 95 percent of which has experimented with pot. College students recognize that to experiment with pot is extremely safe, and you don't have to go out into the ocean to do it with impunity.

I say extremely safe with sharp reservations, having read the figures for the arrests during 1973, and the projected arrests for this year. These come to 400,000 and a half-million respectively. The figures are appalling, and I pass them along only because there is no reason to distrust the author of them. But what they seem to suggest is that although the typical campus is nowadays never, ever raided, still there are busts, hundreds of thousands of them, and a continuation of those preposterous penalties which are indefensible.

It is widely noticed that the Senate Internal Security Subcommittee has been transcribing a lot of anti-pot material offered by various doctors and scientists. It has not been widely noticed that the head of that committee, the draconian Senator James Eastland, has himself come out against any penalties for the users of marijuana (as distinguished from purveyors of it).

But somewhere along the line, the American public decided not to legalize pot. This conclusion it reached, in my opinion, on the grounds that any different conclusion would appear to be a capitulation to the counter-culture.

But at the same time, American parents reached the conclusion, or such is my reading of it, that they did not desire their 18-year-old boys and girls to be sent to jail for smoking pot which said parents had every reason to suppose they were experimenting with at school.

If the awful figures are correct—a half-million arrests—there has been a breakdown in communication between the public and the police.

The old adage is that the best way to get a bad law repealed is to enforce it. Perhaps this is what the police are trying to effect: the repeal of the law by the enforcement of it. In which event it is paradoxical that the police do not interfere with the colleges. Or is the problem that there aren't enough police to arrest the guilty students?

Little by little, the distinctions emerge. Richard Cowan, a young journalist from Texas, makes them most neatly, in my judgment. They are: Pot is harmful; but people shouldn't go to jail for smoking it. The difficulty is in trying to take the two positions simultaneously. The art of communication seems to break down. It is instantly supposed that if you desire decriminalization, you are saying there is nothing wrong in smoking pot. Or that if you disapprove of pot, you must be in favor of illegalizing it.

But there is a book in prospect on the subject, being written by the aforesaid Mr. Cowan, and it will be a blessing. In his case, frustration has been the mother of invention: he cannot communicate these simple disjunctions, so he is writing a book.

Meanwhile, the apparent indifference of parents to other parents' children being sent to jail for smoking pot, speaks poorly of our sense of community.

[From the Washington Post, Nov. 14, 1974]

REEFER

(By Ann Landers)

Dear Ann Landers:

I figured that all those loony letters would get to you sooner or later, but I didn't expect it to happen so soon. I honestly believe you've gone off your rocker.

I just read where you and some other oddballs have signed some sort of endorsement for marijuana. Now you say it is "normal" for kids to use it and all the scare stories about marijuana are nonsense and actually turning kids to harder stuff because they don't believe any of the propaganda about drugs.

I always thought you had good common sense, and I was pleased you were against pot because it helped me make a case with my own children. They have faith in what you say and will take it from you, but not from me.

Now, what am I to tell them when they catch up with your latest? Please explain. I am—Dumbfounded

Dear Founded—or perhaps I should say Dear Dumb:

Talk about getting facts twisted! You win the cutglass fly swatter. My position on marijuana is unchanged. I haven't budged an inch. I still believe that marijuana is not harmless. I continue to be opposed to any mind-altering drug—including alcohol, especially for teen-agers.

I did sign a statement declaring that I am in favor of the decriminalization of marijuana. This does not mean that I want to see it legalized. I do not. But I do want to see the laws in regard to possession changed.

The name of the organization whose statement I endorsed is "NORML." It is The National Organization for the Reform of Marijuana Laws. The state volunteer coordinator is Paul H. Kuuhn Jr., a highly respected gentleman.

The other "oddballs" (your term, not mine) who have endorsed the decriminalization statement are John Finlator, William F. Buckley Jr., James J. Kilpatrick, Sens. Barry Goldwater, Jacob Javits, Harold Hughes, Charles Percy and Adlai Stevenson II, and Joel Ford, M.D.

You write better than you read—and your apologies are accepted.

LEGAL HOSTILITY TO "POT" FADES

(By Allan Parachini)

Despite recent medical studies purporting to show evidence of physiological risks to smokers of marijuana, there is a clear and growing trend toward decriminalizing the drug. Opposition to "pot," once centered in the law-enforcement community, seems to be crumbling.

Either by statute or de facto means, police and prosecutors seem prepared to accept the fact that marijuana use now is widely accepted and that continued stringent enforcement of antimarijuana laws is unrealistic.

Decriminalization would mean the easing or elimination of penalties for private use or possession of marijuana. Penalties vary widely at present, ranging from a $100 fine in Oregon to a possible 15-year prison term in New York.

Captain Jerry Kennedy, commander of the Denver, Colo., vice squad, recalls that his officers at first opposed a Denver marijuana ordinance easing penalties, but have changed their minds. "Before," he says, "we were bogged down in marijuana arrests. We could never get on the quality cases."

The New Jersey Narcotics Officers Association has backed decriminalization in that state. In many cities, police arrest users only, as one New York City policeman has said, "if they blow smoke in your face." When Los Angeles Police Chief Edward M. Davis issued a statement opposing, on moral grounds, any statute change, the local police commission forced him to distribute a cover letter saying he had spoken as an individual and not on behalf of the department.

"The simple fact is that there is a tremendous number of people using marijuana these days," says Wesley Pomeroy, police chief in Berkeley, Calif., and a former Justice Department official, "and from a pragmatic point of view, the police ought not to be put in the uncomfortable position of having to enforce an unenforceable law."

In Washington, D.C., United States Attorney Earl J. Silbert announced last month that his office would no longer prosecute, and capital police should not arrest, users in possession of five or fewer marijuana cigarettes. Mr. Silbert canceled the order before it was to go into effect last Monday, however, because of the controversy that developed over the issue.

Prospects for widespread easing of marijuana laws appear greater now than ever before. Federal decriminalization legislation is expected to be introduced in

the next session of Congress in the Senate by Jacob K. Javits, Republican of New York; and in the House by Representative Edward I. Koch, Democrat of New York. Mr. Javits has said that "it's time to do something" about marijuana laws to make them conform to what has become accepted social behavior.

CHANGING STANCES

At the Federal level, the change in administration seems to have had a pronounced effect. Former President Richard Nixon repeatedly told aides there was "no way" he would ever support less stringent marijuana penalities, even after the National Commission on Marijuana and Drug Abuse called for such a change in 1972.

Betty Ford, the new President's wife, has publicly said she is certain her three children have tried "pot." One of the Fords' two sons has reportedly met several times with officials of the National Organization for the Reform of Marijuana Laws (NORML). Offspring of public officials, including Oregon's Gov. Tom McCall and former Presidential counsel J. Fred Buzhardt, have been arrested on marijuana charges.

Mr. Ford's chief drug policy adviser, Dr. Robert L. DuPont, said publicly in recent Senate subcommittee hearings and at a NORML-sponsored conference what he has long told intimates privately—that there is little point in continuing to jail marijuana users.

Keith Stroup, who as NORML's director keeps close watch on the legals aspects of marijuana, belives that several states are almost certain to decriminalize it next year. They are Colorado, California, Hawaii, Minnesota, New Jersey, Vermont and Massachusetts.

Various cities and states have already chosen to remove marijuana from criminal law enforcement.

In October, 1973, Oregon abolished criminal penalties for marijuana use, substituting civil fines of up to $100. Marijuana offenders are given citations that are processed like traffic tickets.

After the law's first year, a statewide evaluation was conducted by the Drug Abuse Council, a privately funded Washington, D.C., research organization. Forty per cent of the respondents who said they had used "pot" said they had decreased their consumption; 52 per cent reported no change and only 5 per cent had increased use. And 58 per cent of all respondents favored the present law or a more liberal statute; only 39 per cent thought the law was too lenient.

In Denver, the City Council last spring passed its ordinance overriding the state marijuana law, which had held possession to be a misdemeanor. The new ordinance treats possession of up to a half-ounce as a noncriminal violation. In October, the State District Attorneys Association approved, by a 3–1 margin, a resolution to support a change in the state law to conform with the Denver experiment. The measure will be introduced next year.

The so-called "parking ticket model" was first introduced in Ann Arbor and Ypsilanti in Michigan. A year ago, voters in the two neighboring cities approved a referendum providing for a maximum $5 fine in marijuana cases. The referendum reimplemented a system initially approved in Ann Arbor three years ago but briefly eliminated by the City Council.

In New York City, District Attorney Richard Kuh last summer instituted a circumvention of the potential 15-year prison term for possession of more than a quarter-ounce of marijuana. Under the Kuh plan, which also has the backing of three of the other four district attorneys in the city (Staten Island declined to participate), persons accused of "simple possession" of up to two pounds of marijuana are permitted to plead guilty to a single misdemeanor count.

Decriminalization ferment might seem to be contradicted by arrest statistics, which continue to show an upward trend. In 1973, for instance, 420,700 persons were arrested nationally on marijuana charges, up from 188,682 in 1970 and as few as 18,815 in 1965. Many observers believe the increase is the result of more uninhibited and widespread use. Though few of the offenders ever go to jail and many cases are dismissed, suspects retain their arrest records for life in most states.

Significantly, none of the proposed state and federal statute changes goes beyond the elimination of penalities for private use and possession of marijuana. The sale and distribution of marijuana would still be illegal.

[From the New York Times, Dec. 28, 1974]

HARSH PENALTIES FOR POT

Two years ago the National Commission on Marijuana and Drug Abuse reported that marijuana was a "low priority" risk compared with other drugs, including alcohol, and recommended the elimination of legal penalties for private possession and use while retaining stiff criminal penalties for marijuana traffickers.

This carefully considered proposal got short shrift from then President Nixon, who promptly denounced it. Efforts to liberalize drug laws along lines recommended by the commission so far have been stymied in Congress and in the Legislature of New York which retains some of the toughest anti-marijuana legislation in the country.

Private possession of small amounts of marijuana, which would be subject to no criminal charges under the commission's proposals, still can invoke penalties of up to fifteen years in jail in this state. Only last March, a man in Buffalo was sentenced to five years in prison for possessing 1.9 ounces of "pot." Last year in New York City alone there were nearly 6,800 arrests on marijuana charges, mostly of young people who were stigmatized for life because they were caught with less than one-quarter of an ounce of this drug.

Fears that liberalizing the law would encourage the use of "pot" and compound police problems do not appear to be borne out by the experience of at least one state that has pioneered in this area. In October, 1973, Oregon abolished criminal penalties for marijuana use, substituting civil fines of up to $100. After the law's first year, a statewide evaluation found that 40 per cent of respondents who acknowledged they had used "pot" said they had decreased their consumption; 52 per cent reported no change and only 5 per cent had increased use.

No one should underestimate the potential risks in marijuana use which are still incompletely understood.

The question is whether the harsh legal sanctions against marijuana prevailing in this and most other states really serve as a deterrent. The evidence is that they do not. Public attempts to control private vices through excessive and heavily punitive laws only undermine respect for law and divert law enforcement agencies from more urgent tasks.

[News release, Health and Welfare Canada, Nov. 26, 1974]

CANNABIS LEGISLATION INTRODUCED

OTTAWA.—A bill which would transfer cannabis (marijuana and hashish) from the Narcotic Control Act to the Food and Drugs Act was introduced in the Senate today.

The bill would not legalize the possession or distribution of cannabis. Possession would still be an offence, and there would still be severe penalties for the distribution of cannabis.

A variety of other illicit substances, such as LSD and MDA, are already controlled by the Food and Drugs Act which provides penalities for their possession and distribution. The presence of cannabis in this Act would therefore be both logical and consistent.

The bill would lessen the impact of the law for the offence of possession, and provide the courts greater flexibility in the application of the law regarding cannabis in general.

Specific changes to the law, if the bill is approved by Parliament, would see:

1. *The introduction of a choice of ways to proceed in trying most cannabis offences.*

At the present time, all offences except for possession result in criminal proceedings by indictment. In the case of simple possession, a choice between summary conviction and indictment exists. Under the new law, prosecutors would have the choice of proceeding by summary conviction or indictment for all offences except in the case of simple possession, where the only method open to the prosecutor would be summary conviction.

Summary conviction proceedings generally carry with them less severe sentences and shorter periods before pardon can be applied for, than do criminal indictment proceedings.

2. *No jail sentences for simple possession of cannabis except in default of payment of a fine.*

At the present time, persons convicted by indictment can receive up to seven years imprisonment. Persons convicted by summary conviction can be sentenced to a fine of up to $1,000 or imprisonment for six months, or both for a first offence. Summary conviction for a second or subsequent offence results in a fine of up to $2,000 or imprisonment for one year, or both.

Under the new bill, prosecutors would proceed by way of summary conviction only. The penalty upon summary conviction of simple possession would be a fine of up to $500 for a first offence, or a fine of up to $1,000 for a subsequent offence. In default of paying the fine, a person convicted for the first time of simple possession would receive a jail sentence of up to three months, and six months if it were a subsequent offence.

3. *Reducation of the maximum penalty of life imprisonment for trafficking and possession for the purpose of trafficking.*

Under the Narcotic Control Act, there are no summary proceedings for the offence of trafficking and possession for the purpose of trafficking, and conviction upon indictment results in imprisonment, the maximum sentence being life.

Under the proposed new section of the Food and Drugs Act (Part V) summary conviction of trafficking or possession for the purpose of trafficking would result in a fine of up to $1,000 or imprisonment for up to 18 months, or both. Conviction upon indictment would carry the penalty of imprisonment for up to 10 years.

4. *Removal of the mandatory minimum prison sentence for importing or exporting of cannabis where the convicted person can prove that he imported or exported for his own consumption only.*

Under current legislation, no summary proceedings are allowed for importing. Conviction of importing or exporting under indictment carries a prison sentence—a mandatory minimum of seven years and a maximum of life.

Under the new bill, all convictions would still carry prison sentences. However, under summary conviction the penalty would be imprisonment for up to two years. Conviction upon indictment would result in imprisonment of not less than three years and not more than 14 years.

The three-year minimum sentence would not apply however, where the convicted person could prove that he imported or exported the cannabis for his own consumption only.

5. *Choice of fine, imprisonment, or both in the sentencing of persons convicted of cultivation of cannabis.*

At the present time, conviction of cultivation results in a prison sentence of up to seven years. Under this bill, summary conviction of cultivation would carry a penalty of a fine of up to $1,000 or imprisonment for up to 18 months, or both. Conviction upon indictment would result in imprisonment for up to 10 years.

The proposed legislation is designed to continue to prohibit the availability and use of cannabis while at the same time giving the penal court system more flexibility in relating the sentences to the seriousness of the offence committed. Severe maximum penalties would remain in the law in order to respond to organized crime activities of importing, trafficking and cultivation for financial gain—activities which increase availability and lead to increased use.

[From the Washington Post, Feb. 27, 1975]

Pot Debate Stokes Up

(By Hal Willard)

I had dinner a few evenings ago at a table with nine women: six lawyers, two doctors and an ordinary American housewife, and there wasn't a pothead among them. But there was one on the podium: Keith Stroup, dandily dressed, meticulously groomed, fast-talking Apostle of Pot.

We were at the Cosmos Club, one of Washington's last (and weakening) bastions of male exclusivity of membership and a dispenser of alcohol, but no other drug.

The Women's Bar Association and the Women's Medical Society were holding their annual joint (no pun intended) meeting and had paid their collective way into the auditorium of the great, gray edifice on Massachusetts Avenue for

dinner and a panel discussion involving three persons from the National Organization for the Reform of Marijuana Laws, who titillated them with claims for the ordinariness, the conventionality, the overwhelming acceptance in our society of marijuana.

Stroup, aged 31, father of a 6-year-old daughter, and who is a lawyer and director of NORML, did not keep the women waiting: He quickly described himself as a confirmed and regular user of marijuana of six or seven years' standing and with his darting intelligence, grasp of statistics and command of a battalion of evidence against alcohol, the establishment's drug, was demonstrating that the drug marijuana did not transform a true-blooded American man into a raging savage.

Stroup, highly charged, fervent and passionately dedicated to his cause seems to me to be cast in the same mold as the evangelical temperance crusaders of the past, except that while they were against alcohol, he is for marijuana.

But he is for marijuana primarily to get it categorized in what he regards as the proper way: it should be decriminalized; it should not be considered a moral problem; if it is any kind of problem, and Stroup doesn't believe it is, it is a health problem and should be so treated.

Stroup doesn't drink alcohol, "except an occasional glass of wine," because he thinks it is bad for people and causes hangovers. Stroup, further, quit smoking tobacco cigarettes because of the fear that they cause cancer.

But he is a regular smoker of marijuana, using it, he says, "in a social way, the same way you (his audience of female doctors and lawyers) use alcohol. When I have people over on a Friday or Saturday night, we smoke marijuana instead of drinking alcohol."

The only possible undesirable effect Stroup lays at the door of marijuana he first described as a "lapse of memory" after smoking it. He subsequently said that what he meant was during the 30 minutes to an hour period of the marijuana "high, that people smoke it for," there is a "distortion of time and space and some memory loss." He went on to explain that he was referring, for example, to a situation in which the marijuana smoker, while high, could "lose his train of thought for a few seconds while in conversation, but then come right back to it."

Others on the panel were Dr. Norman E. Zinberg, a psychiatrist and professor at Harvard University, and Dr. Dorothy V. Whipple, a pediatrician and professor at Georgetown University. Both are on the advisory board of NORML.

Neither was as excitable on the subject as Stroup, but both supported his views on decriminalization. Dr. Zinberg went a step further in the question period: he said he opposed having any drug made illegal, but stressed that he favored controls on them.

During his talk, he expressed the view that social control of marijuana is desirable, but is "hindered by the illegality."

Tossing the subject of controls back and forth, Stroup and Zinberg agreed there should be protection of the public against drivers of automobiles being stoned on marijuana, just as it is against the law to drive while drunk on alcohol. Zinberg also said there should be an "age ceiling," too, such as no marijuana under age 18.

Stroup said "the goal of law is to control, not punish" and therefore marijuana smokers shouldn't be jailed. Stroup also said that controls are needed because there is "no quality control" of marijuana. "Some marijuana is adulterated with more dangerous drugs," he said.

Stroup got his start as a lawyer in what he calls "public interest law" and working for "product safety." He called that a "much more creative field" than regular law. He got into the business of trying to change the marijuana laws when a friend was "busted," and, in trying to help him, Stroup discovered "the field was wide open."

He smokes marijuana because he "enjoys" it. Although Stroup repeatedly drew parallels between marijuana smoking by mostly young people and the social consumption of alcoholic beverages, Zinberg said he felt there was a clear distinction.

He said he felt marijuana smokers go for the "high," whereas alcohol drinkers, for the most part, have learned how much it takes to get them high and stop drinking before that point. He said most drinkers have a drink or two to "relax" and not to get high. He said some young people are using alcohol as a "high" drug now, just like pot.

In discussing the widespread use of marijuana, Dr. Whipple said 26 million Americans had experimented with it. Stroup said 30 million had. Both said 13

million were regular users. To Stroup, regular usage means two or three "joints" a week.

He said he gets his marijuana from a lawyer friend who has a connection with a man who gets it from another man who drives it into the United States from Mexico. It costs, on the average, from $15 to $25 an ounce, or $180 to $200 per pound, with the price going up to $35 and more for "premium quality marijuana."

The average user, Stroup says, makes an ounce last two or three months. But it didn't appear to be the smoker of two or three joints a week who worried some members of the lawyer-doctor audience.

One doctor spoke of problems in the operating room with nurses being high on marijuana. She didn't say what hospital or what town the hospital was in.

This use of marijuana was deplored by the panel, but they were against criminal penalities in any form.

None of the panel members dwelt on the subject of the possible health dangers of marijuana. I gathered that they don't really think there are any. Others people do.

What are the facts. It appears to me that there aren't any in the sense that a real fact should stand unassailable. In the case of marijuana, medical facts must come from scientists, but, so far, scientists disagree—and some vigorously assail the opinions of others.

Despite reports issued by the National Commission on Marijuana and Drug Abuse and the President's Drug Abuse Council and the Senate Judiciary Committee's subcommittee hearings on "marijuana-hashish epidemic and its impact on United States security," despite books by eminent scientists and meticulous research by other eminent scientists; despite the clamor of marijuana smokers to be allowed to fly high in peace, and the equally raucous clamor of those opposed to marijuana that it will send the country to perdition—despite everything, serious questions about the drug remain unanswered.

After reading some of the pro and con, and after listening to leading scientists on both sides of the question. I am unable to form an opinion that can be supported by incontrovertible evidence.

I thought the remarks made to me by some leading scientists about other leading scientists were slanderous, so obviously I won't transform the slander into libel by identifying the scientists here. But some of their remarks bear repeating.

One called another's serious study "stupid." One called another a "right-wing fanatic."

Why all the fuss?

I asked that question of Dr. Lester Grinspoon, associate professor of psychiatry at Harvard, a member of NORML's advisory board and author of the book "Marijuana Reclassified."

He said he used to think marijuana was harmful, but under pressure from young people's need to know, decided to study the question and discovered, to his satisfaction, that it "is a dangerous drug, in the sense that any drug that can affect man's mental function is dangerous—but it is less harmful than, say, tobacco and alcohol. I decided that if we continued to tell our young people that marijuana was harmful while tobacco and alcohol were in such widespread use by their elders, they would not believe us on anything."

He said he favored decriminalization of marijuana and all drugs, for that matter) because a "stupid law leads to disrespect for all laws. I think making possession of marijuana a criminal act punishable by imprisonment damages respect for the law among young people."

On the other hand, Dr. Hardin B. Jones, a biophysicist-physiologist at the University of California at Berkeley, describes marijuana as "the most potent drug as far as damaging cells is concerned." He said the cells of the "gonads, brain and the immunity mechanism" are the most affected.

"Marijuana causes irreversible brain damage," he said "but we don't know how much of it used over what period of time causes the damage."

Dr. Jones has become known among the pro-marijuana people as a crusader against the weed and is vigorously attacked by them. Dr. Morton A. Stenchever, professor of obstetrics and gynecology at the University of Utah in Salt Lake City, whose research is cited by Dr. Jones, is not known as a crusader. He says marijuana causes injury to chromosomes.

Dr. Stenchever told me he began his research with a bias in favor of marijuana; that is, he felt his results would show that it had no effect on chromosomes.

"But I was wrong," he said. "It does damage the chromosomes."

Dr. Stenchever's work was cited in the February issue of Good Housekeeping magazine. It was contradicted in the March issue of Consumer Reports, referring to the work of Dr. Warren W. Nichols at the Institute for Medical Research in Camden.

Dr. Nichols, Consumer Reports said, gave "24 subjects measured doses of marijuana daily for five or 12 days" and detected no damage to chromosomes.

Dr. Stenchever did not regard that as significant in relation to his own experiments, which used 40 subjects who had smoked marijuana for an average of three years—none for less than six months.

On the question of the effect of marijuana on male testosterone levels—or fears that the drug may cause sterility and/or impotence—there are at least two major and contradictory studies:

A research team headed by Dr. Robert C. Kolodny and including sex researcher Dr. William H. Masters, worked at the Reproductive Biology Research Foundation in St. Louis and found that there was a drop in hormone level among chronic marijuana users "and we speculate that this would lead to adverse effects," Dr. Kolodny said.

Consumer Reports referred to work by Dr. Jack H. Mendelson and associates at the Alcohol and Drug Abuse Research Center, Harvard Medical School-McLean Hospital, that concluded that "high-dosage marijuana intake was not associated with suppression of testosterone levels. . ."

Good Housekeeping and Consumer Reports more or less summed up the situation with the titles of their articles: Good Housekeeping's was "Special: the alarming new evidence about marijuana's effects;" and Consumer Reports' was "Marijuana: The Health Questions—Is marijuana as damaging as recent reports make it appear?" The article answered the question in the negative.

There seems to be a tendency in the country toward decriminalization, on the theory that even though marijuana may be harmful to the user, possession of it or the smoking of it are not offenses serious enough to society to require imprisonment.

Columnists William F. Buckley Jr., James J. Kilpatrick, Ann Landers and Raymond Price, for example, favor decriminalization.

The Washington Post and the New York Times have editorialized for legalization.

The State of Oregon has made possession of marijuana the legal equivalent of a traffic offense. California is moving toward decriminalization.

District of Columbia City Councilman David Clarke is preparing similar legislation which, he says, is primarily designed to reduce the burden of enforcing marijuana laws on the Metropolitan police department and the courts.

NORML's Stroup says a dozen or more other States are moving toward some sort of decriminalization.

My own feeling after all this is continued rebellion against anything that is "psychoactive," to use the psychiatric term for substances that alter the mental function. But I must join those who feel the use of marijuana should not be an offense that requires imprisonment.

I think people who smoke marijuana are being foolish, as long as there are reputable scientists who believe the drug is harmful—and I think marijuana users reveal deep inadequacies in themselves if they continue to smoke it regularly to achieve "highs."

I feel the same way about any artificial addition to the body's chemistry done to alter one's mental function without a doctor's orders.

However, being foolish and inadequate shouldn't be a criminal offense, unless it leads to harmful effect on other people.

And it may be that scientists eventually will prove to everyone's satisfaction that marijuana causes no more harm than real grass. If they prove the opposite maybe marijuana will be the solution to the population problem.

[From the Chicago Sun-Times, Dec. 1, 1974]

POT—LONG-SMOLDERING ISSUE MAY END IN DECRIMINALIZATION

(By William Hines)

For the first time since ex-Commissioner of Narcotics Harry J. Anslinger trumped up a marijuana crisis in 1935, a real possibility exists that jail terms for pot users will be eliminated from Federal law. It could happen before another year has passed.

In turn, it is widely believed that if Congress acts to decriminalize marijuana, the 49 states that still hold the threat of jail over users (as opposed to peddlers) of the drug will soon fall in line.

Oregon has pointed the way in a law that went into effect last fall. Under its statute, possession of less than an ounce of pot—a misdemeanor in the Federal code and in all other states—is redefined as a "violation" to be dealt with through tickets and fines.

Already preliminary skirmishes are taking place on Capitol Hill, foreshadowing a serious legislative battle in the next Congress, whose coloration will be substantially more liberal.

Last week, a Senate alcoholism and narcotics subcommittee headed by Sen. Harold E. Hughes (D-Iowa) held two days of hearings aimed at showing that present punitive policies directed at minor pot offenders were doing the Nation more harm than good and developing a generation not of "semi-zombies" but of cynics and scofflaws.

Hughes, who has heard and heeded a religious evangelical call, will not be in the Senate next year, but Jacob K. Javits (R-N.Y.), re-elected this month, will. And Javits has sworn an all-out effort to decriminalize pot.

As Javits and others of like mind see it, decriminalization is the way off the horns of a dilemma that bothers those in this country (probably a majority) who do not want to sanction the smoking of grass, but who, at the same time, dislike the idea of young lives being ruled by a criminal record imposed for an impulsive, and ultimately trivial offense.

Decriminalization in the Oregon manner recognizes that public acceptance of marijuana as a major recreational drug has passed the point of no return.

When Anslinger created his pot scare in 1935, he estimated (probably overestimated) that 50,000 persons in the United States were smoking the devil weed. The best estimate now is that 13 million Americans—260 times as many—smoke it occasionally, and that about 2,500,000 smoke "regularly" (say twice a week or more). And 26 million are estimated to have "tried" marijuana at least once.

These numbers probably represent a greater proportion of the population than was guzzling illicit hootch while the writ of Andrew J. Volstead was running (1919–1933) during the "noble experiment" of Prohibition. Sociologists and law enforcement officers are virtually unanimous in agreeing that when an illegal activity achieves this wide an acceptance, there is no stamping it out.

So what to do?

The alternative, in the case of the Volstead Act and the 18th Amendment, was repeal with subsequent legalization of beverage alcohol under state and local controls.

As long as the two sides had to fight about the hazards of marijuana, they never could reach a definitive conclusion.

That has changed recently, but such results as have been reported are either inconclusive, controversial or both. The latest Health, Education, and Welfare Dept. report on "marijuana and health" (the government persists in spelling marijuana with an "h") was delayed for several months to obtain and include some new experimental data, but much of these results left a lot to be desired scientifically.

As far as the relative hazards of the three most widely used recreational drugs—alcohol (95 million users), tobacco (55 million) and marijuana—are concerned, Federal mortality statistics on the first two are revealing.

The National Clearinghouse on Smoking and Health identifies 92,000 deaths a year attributable to cigarettes. The Clearinghouse on Alcoholism has statistics that suggest something in the order of 20,000 deaths a year from alcohol abuse (not including vehicular and other forms of homicide perpetrated by drunks).

By contrast, Sen. Hughes in sharp questioning of Dr. Robert L. DuPont, head of the Special Action Office for Drug Abuse Prevention, drew from the psychiatrist-bureaucrat the admission that he knows of not one death directly attributable to marijuana abuse. It is on these statistics that the pro-reform element will rest its case about relative health hazards.

But this is not the real ace-in-the-hole of Javits, Rep. Edward Koch (D-N.Y.) and others who will be sponsoring decriminalization legislation in the next Congress. They offer two intriguing arguments—one philosophic, the other pragmatic. The philosophic argument is directed at conservatives, the pragmatic at every person preoccupied with crime, taxes and inflation.

To the true conservative (and such conservatives as William F. Buckley and James J. Kilpatrick are on written record to this effect), there is no justification

for the law stepping in to save the fool from his own folly. It is bad public policy to punish crimes without victims.

This goes hand-in-hand with the pragmatic argument that a great deal of law-enforcement effort is being frittered away in combating the ubiquitous, victimless crime of marijuana use.

[From the Washington Star-News, Dec. 4, 1974]

THOUGHTS ON MARIJUANA

(By James J. Kilpatrick)

Proposals for the "decriminalization" of marijuana once again are being heard. The proposals make sense—much sense that they ought to be seen as a first step toward reconsideration of public policy on the whole field of victimless crime.

Granted, "criminalize" and "decriminalize" are verbs that make a man wince, and "decriminalization" is a noun that would have driven H. L. Mencken up the wall. Yet the words are useful, all the same, in defining an area of the law in which an act is illegal but not criminal. Overparking is a familiar example. If I recall my dog Latin correctly, such an offense once was known as "malum prohibitum" as distinguished from "malum in se."

Over the past 40 years, most states have treated even the mere possession and use of marijuana as crimes—as felonies or grave misdemeanors, punishable by both fine and imprisonment. Here and there, as reason has replaced emotion, attitudes have moderated. Oregon now treats simple possession as a "violation," usually punished by a $25 fine.

Dr. Robert L. DuPont, chief White House spokesman on drug abuse, last month recommended that possession of marijuana (as distinguished from sale) be decriminalized at the federal level. His predecessor, Dr. Jerome H. Jaffe, concurred. Here in Washington, U.S. Atty. Earl J. Silbert announced that his office no longer would prosecute cases in which the evidence indicated possession of five or fewer cigarettes. Chief Judge Harold H. Greene backed him up. (Silbert later backed down.) On Capitol Hill, Rep. Edward Koch, D.-N.Y., said he would reintroduce a decriminalization bill next month. In Miami, Atty. Gen. William Saxbe said he would welcome a change in the law.

For the most part, the recommendations draw support from liberals. Such conservatives as James Eastland, chairman of Senate Judiciary, remain stoutly opposed. Yet carefully examined, the idea of decriminalizing marijuana precisely accords with conservative thinking.

Conservative doctrine holds that to the greatest degree possible, consistent with a demonstrably overriding public interest, the individual citizen should be both free and responsible—free to do what he pleases, responsible for the harm he himself may suffer. Unless it can be demonstrated convincingly that marijuana constitutes a health hazard to society, conservatives cannot consistently support the criminal sanctions that now apply.

No such evidence has been brought forward. Even as to individual harm, medical testimony is in conflict. The notion that most or all pot smokers proceed from marijuana to heroin has been exploded. As a hazard to public health, marijuana plainly does not qualify.

There is a second, pragmatic reason for abolishing criminal prosecution of marijuana users. It is a foolish and wasteful use of the time of both policemen and judges to continue the spasmodic and capricious enforcement of the marijuana law.

Half a million such arrests will be made this year. The cases divert police from such truly serious crimes as burglary and robbery, and they clog the courts with defendants—mostly young defendants—not guilty of any true offense against society.

To be sure, only 2 or 3 percent actually wind up in jail, but all of them suffer the stain of a criminal arrest on their records.

The same considerations ought to be applied to many other "crimes." Distasteful as the process may be, conservatives should re-examine their hostility to repeal of laws that make it criminal for adults to engage in homosexual relationships.

Why is simple drunkenness a "crime"? Why are those who gamble still lawfully subject to arrest and imprisonment?

We need to think on these things. The decriminalization of marijuana offers a fine place to start.

[Nov. 6, 1974]

ANOTHER COLUMN NOT ABOUT MARIHUANA

(By Richard C. Cowan)

FORT WORTH.—When a writer fails to get his point across he would naturally like to blame the obtuseness of his readers, but that doesn't do anyone any good. From time to time, perhaps too often, I attempt to convey my views on the subject of marijuana, and I can't say that I feel exactly triumphant.

Actually, I do not write so much about the weed itself as about the controversy surrounding it. There are several reasons for this approach. First, it is difficult and really pointless to try to critique a research report in a seven hundred word column for general readers. Secondly, I hope that younger readers who know what a mess the government has made of the "drug problem" will be consequently less anxious for the government to "solve" other problems, if this question is handled in a general way. (Of course. I run the risk of turning off conservatives who will simply put me down as a pot-head.) Finally, I don't go into specifics, because the arguments for decriminalization of possession (or legalization of sale) do not rest at all on the "alleged harmlessness" of pot. Not at all, but simply on the harm done by the laws.

Recently, however, we have been inundated by a new wave of anti-pot propaganda which is the grand finale of two years of hearings by the Senate Internal Security Subcommittee, headed by Sen. James O. Eastland, D-Miss.

There are several points about these hearings that are interesting. First, Senator Eastland seems to have endorsed the decriminalization of possession of small quantities. Thus, supposedly his objective is not to support the jailing of your kids, but to warn America about the dangers of marijuana. There is an interesting twist here. While many conservatives and even one tired old liberal (on whom I will pounce in a moment) have seen fit to report the "findings" of the hearings, few have mentioned the seemingly newsworthy endorsement of discriminalization by the senator.

What makes this even stranger is that invariably the columns assert that the "harmlessness of pot" has been argued by those favoring decriminalization, and even that the burden of the argument for decriminalization somehow rests on the "alleged harmlessness." Well, the National Organization for the Reform of Marijuana Laws (the only pot lobby in Washington), the Shafer Commission, William Buckley, and James Jackson Kilpatrick, and yours truly, have never said that pot is harmless. Maybe someone's favorite hippy says so, but that would hardly be representative of the "national debate," if there is such a debate. It is just the old "strawman" technique, of misrepresenting the opposition, subversive of the truth, i.e. a lie.

Secondly, following the press releases of the Sub-Committee, writers frequently start with some statement to the effect that "pot isn't harmless, after all, like everyone thought." Not just pot-heads like Kilpatrick, but the general population of America has thought for forty years that pot is harmless. Sure. This is a "news" lead in for a column. "Contrary to popular misconception" keeps propaganda from looking like propaganda.

Well, if you can find me a person who, one, thinks that pot is harmless and, two, thinks that Senator Eastland is an authority on the subject, I'll roll him in your newspaper and smoke him. The point is that the only people who will be influenced by this propaganda will be those seeking to justify the laws.

Senator Eastland has been attacked for his efforts, but he has in fact been more honest than those who bought his story. The old senator never made any bones about it. He candidly admits that these hearings have been open only to known anti-marijuana crusaders most of whom had testified before the Shafer Commission. Generally, however, the results of the hearing have been presented as "new research" when in fact much was old and no actual research was done by the Sub-Committee.

I have been disappointed, of course, that a number of conservative columnists have fallen for the "new evidence" bit, but the really incredible all-time sucker has to be John P. Roche, former head of the super-liberal Americans for Democratic Action. Professor Roche was turned off by the New Left, which turned on, so in the Oct. 5 issue of TV Guide he salutes NBC news for overcoming liberal inhibitions about believing Eastland, just this once, of course. For some reason Roche finds all this "authoritative" (such interesting epistemology), but that's okay. What really got me, though, was that he says that, "Except in rare cases, the police simply ignored pot parties." After one million arrests, the former head of the ADA can say that?

Another half million Americans will be arrested this year, and if you think that this column is pro-pot, or even about pot, I have struck out again.

AMERICAN BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

Be It Resolved, That, because of the tendency to punish those who [illegible] experiment with use of small quantities of marijuana and to apply too serious penalties to them, rather than to concentrate on detecting and punishing sellers of the drug, there should be no criminal laws punishing the simple possession of marijuana by users; and

Be It Further Resolved, That casual distribution of small amounts not for profit be treated as simple possession; and

Be It Further Resolved, That the American Bar Association deplores the use of marijuana; and

Be It Further Resolved, That educational programs should be established as widely as possible to discourage the use of marijuana and other drugs which may be harmful.

REPORT

The report and the recommendations contained therein were duly adopted and approved by the Council of the Section of Individual Rights and Responsibilities at its May 12, 1973 meeting in Washington, D.C.

Previous Activity on the Part of the American Bar Association and the Section's Committee on Alcoholism and Drug Reform With Respect to Reforming the Present Marijuana Laws

On April 21, 1971, Hon. Raymond P. Shafer, Chairman of the Commission on Marijuana and Drug Abuse, wrote to Edward L. Wright, President of the American Bar Association, requesting an expression of the Association's views on existing marijuana laws. On May 7, 1971, Mr. Wright advised Governor

Shafer that the Association "has not adopted any formal policy statement through its Board of Governors or House of Delegates." He added that several sections and committees were considering the problem and might be interested in communicating with the Commission. Chairmen of relevant sections and committees were advised of the President's response to Governor Shafer's inquiry.

On July 9, 1971, the Committee on Alcoholism and Drug Reform of the American Bar Association's Section of Individual Rights and Responsibilities sent its statement to the Commission on Marijuana and Drug Abuse. The Committee, without any dissent from its fourteen members, recommended the adoption of a regulated system of distributing marijuana similar to that now in use for alcohol, or at the very least, that criminal penalties be retained only for selling marijuana for profit, not for mere possession.

While acknowledging that marijuana use -- like the use of any drug, even aspirin -- can be dangerous, the Committee noted that alcohol is by far a greater threat to health, crime control and traffic safety. The Committee pointed to several societal costs resulting from the use of the criminal law in an attempt to suppress marijuana, costs which far outweigh the potential for harm associated with marijuana use. The marijuana laws:

-- are incredibly harsh and disparate among differing jurisdictions;

-- are selectively enforced;

-- engender disrespect for all laws;

-- criminalize the 26 million Americans who have used, or are using, marijuana;

-- stigmatize tens of thousands of otherwise lawabiding citizens who are arrested and convicted for marijuana-related offenses;

-- stifle the already overburdened criminal justice system with the processing of thousands of minor arrests;

-- divert law enforcement resources away from the control of serious crime;

-- impugn the credibility of the criminal law when it warns against the dangers of hard drug use;

-- enable a black market distribution system to flourish, one which involves sellers who may traffic in hard narcotics and which permits the sale of adulterated substances, marijuana of uncertain potency and transfers to minors.

Following submission of its statement to the National Commission the Committee recognized that the Association's failure to adopt a position with respect to an issue of such widespread interest and importance was wholly inappropriate. Committee deliberations in the months that followed produced last year's report and the resolution, subsequently submitted by the Section of Individual Rights and Responsibilities to the House of Delegates at the 1972 Annual Meeting in San Francisco. The resolution provided:

> RESOLVED, that because the individual and social costs resulting from existing laws punishing simple possession of marijuana substantially outweigh any benefits derived, federal, state, and local laws punishing simple possession of marijuana should be repealed; and
>
> BE IT FURTHER RESOLVED, that consideration be given to the feasibility of licensing the distribution of marijuana as a means of regulating its use.

After a debate in which, according to the ABA Journal for October, 1972, "it was obvious that many of those /sic/present simply do not believe the various scientific studies that indicate that marijuana is not harmful and does not lead to addiction to 'hard drugs,'" the House of Delegates approved a modified resolution providing:

> RESOLVED, that, because the individual and social costs resulting from some existing laws punishing personal use or simple possession of marijuana substantially outweigh any benefits derived, federal, state and local laws punishing personal use or simple possession of marijuana should be overhauled and present excessive criminal penalities should be eliminated;
>
> BE IT FURTHER RESOLVED, that the American Bar Association deplores the use of marijuana.

Additional reports, new data and changing conditions indicate that the Association's policy towards marijuana deserves further consideration and revision. The Committee wishes to make clear that at no time, either with its initial statement nor with the current report, has it sponsored or promoted the use of marijuana. Nor in view of the ready availability of marijuana does the Committee believe that the repeal of existing laws would encourage the use of this commodity. Indeed, the Committee recognizes that while long term, chronic use of the drug has not been proven harmful neither has it been proven safe. The crucial question which the Association must face is not a medical one. Rather, it is whether society's severest sanction, the penal law, should be used to punish a person who at most may be placing his own health in danger, particularly when by so doing society incurs significant costs far exceeding any real or potential benefits from the laws in question.

Extent and Scope of Domestic Marijuana Use

If one single fact stands out above all others in the debate over marijuana it is that harsh criminal laws have been a total and utter failure as a deterrent to marijuana use. When marijuana was first prohibited at the Federal level with the passage -- despite opposition at the time from the American Medical Association -- of the Marijuana Tax Act of 1937, there were an estimated 50,000 cannabis users, mostly members of minority groups, especially blacks and Mexican-Americans. Within several years every state had made possession of marijuana illegal, and most states instituted lengthy prison terms for violators.

Nevertheless, the second report of the National Commission on Marijuana and Drug Abuse, released March 22, 1973, estimates that 26 million Americans have now smoked marijuana at least once in their lives (16% of all adults over the age 18, 14% of all youths between the ages of 12 and 17). Moreover, 13 million people indicated they considered themselves regular users of marijuana, a substantial increase from the 8.34 million regular users reported by the Commission in 1972. Two-thirds of all college students have tried marijuana, while a survey conducted by two Stanford University medical researchers revealed that 25% of all doctors have experimented with marijuana and 7% remain regular users.

These statistics are remarkable only because each and every one of these 26 million people knowingly committed a criminal act by merely trying marijuana. One need possess but minimal insight to realize the damage done to our system of law and government by such widespread disregard for any law, much less one which has achieved such symbolic prominence among so many concerned parties.

One can expect little decrease in marijuana usage in the future. A report prepared for the Bureau of Narcotics and Dangerous Drugs and published in 1 Contemporary Drug Problems 467, by Dr. William H. McGlothlin of the UCLA Department of Psychology places the annual domestic consumption of marijuana in 1972 at 3.3 million pounds. For 1976 he projects between 9 and 22 million regular users consuming as much as 9.4 million pounds at maximum levels. Current estimates that 4 tons of marijuana are successfully smuggled into the country daily tend to be confirmed by the size of recent seizures.

For example, according to Newsweek, March 26, 1973, a joint U.S.-Mexican police raid netted 24.5 tons of marijuana about to be shipped across the border. The same article quoted a U. S. Customs agent as saying, "It would take one person every 15 feet /along the 2,013 mile U. S.-Mexican border/ to control ground smuggling. In the air, its impossible."

Moreover, marijuana grows wild in virtually every state in the Union. Pilot programs initiated by the Department of Agriculture in a futile attempt to eradicate marijuana from a number of midwestern states were abandoned several years ago.

Data such as this undoubtedly had a profound impact on the Consumers Union, for its recent book Licit and Illicit Drugs contains the following observation:

"It is now much too late to debate the issue: marijuana versus no marijuana. Marijuana is here to stay. No conceivable law enforcement program can curb its availability."

In brief, information presently available indicates convincingly that smoking marijuana has become a permanent part of our culture. This is true regardless of whether marijuana is believed good or bad, whether it is medically harmful or not, whether smoking it is seen as socially desirable or undesirable. Given the demand for and availability of marijuana the issue then becomes one of whether we as a people can continue a hopelessly futile prohibitory policy toward marijuana in the face of increasingly severe social costs by so doing.

NEW PARA.

Current Legal Approaches

One of the more odious aspects of the marijuana laws is the appalling disparity in the range of punishment prescribed from one jurisdiction to another, and the differences in sentences actually imposed within a given jurisdiction. Thus, a youth in Texas is subject to a sentence of life imprisonment, as a first offender, for possession of the same small quantity of marijuana possessed by a young Nebraskan whose sentence cannot exceed seven days in jail, in New York City -- though not necessarily in other parts of the state -- a first offender found in possession of a moderate quantity of marijuana is likely to have his case adjourned in contemplation of dismissal. On the adjourned date, the case is dismissed if the defendant has stayed out of further trouble, and his record expunged. Similar procedures may be followed at the judge's discretion in Tennessee, Oklahoma and West Virginia, among other states. Massachusetts imposes mandatory probation for first offenders in marijuana possession cases, and in New Jersey that state's Supreme Court has judicially barred jail terms for persons first convicted of possession. In Texas and Rhode Island, on the other hand, conviction for even a first offense is classified as a felony.

In at least one state -- Texas -- the imposition of long-term or life sentences for first offenders convicted of possessing small quantities of marijuana is not merely a possibility but a reality. At least one offender is currently serving a life sentence for conviction in 1962 of possessing one penny matchbox full of marijuana, and another first offender received a sentence in excess of fifty years in 1967 for possession of ten marijuana cigarettes.

According to a report prepared for the state Senate Interim Drug Study Committee entitled Marijuana in Texas, as of March 1972, 691 people were serving sentences averaging 9-1/2 years in Texas prisons for possession of marijuana. Included among this number were thirty people serving 30 years or more and thirteen people sentenced to life terms, three of them first offenders.

Some states, of course, have recently adopted less severe penalties for marijuana possession. Hawaii and Pennsylvania both now provide for maximum sentences of 30 days and/or a $500 fine; New Mexico, 15 days and/or a $100 fine. On the other hand, New York, despite the adjournment provisions mentioned supra retains a maximum penalty of 1 - 7 years for possession of 1/4 oz. to 1 oz. of marijuana, 7 - 15 years for over 1 oz. Additionally, even though many states have one year maximums for first offenders, those convicted a second time for marijuana possession might receive 10 or 20 year sentences in half a dozen states.

Moreover, the fact that stiff sentences are imposed in but a few cases raises another troublesome issue. If most marijuana defendants received probation, suspended sentences or short jail terms, what about the few unfortunates who receive maximum terms? In some instances, political dissidents, the poor, the young, and racial and ethnic minorities bear the heaviest burden of the law. (The Texas study found that blacks, Mexican-Americans and the poorly educated were disproportionately represented among those in prison.) A good example is the recent sentence of 10 years and 1 day given the editor of an underground newspaper in Dallas, Texas for possession of 1/18 of an ounce of marijuana. (Sentences of 10 years or less may be probated but any sentence over 10 years carries a mandatory term.)

Selective enforcement of marijuana laws and discriminatory and grossly uneven treatment for those convicted substantially undermines public confidence in the legal system.

In this context an additional question comes to mind: Is respect for law enhanced by retention of criminal sanctions which are flagrantly and persistently disregarded by millions of people and for which enforcement procedures are directed predominantly against young people in a totally arbitrary and capricious fashion? The Section answers this query in the negative. We believe that society and its legal institutions suffer far greater damage from the hypocrisy and unpredictability of current marijuana laws than from use of the drug itself.

At another level the National Commission on Marijuana and Drug Abuse found solid agreement among the large group of district attorneys it surveyed as to the ineffectiveness of current policy. More than half of the prosecutors agreed that present laws do not deter people under 30 from initiating marijuana use, do not deter those wishing to smoke regularly from so doing, and do not deter transfers of small amounts for little or no profit, envne though most states treat such transfers as sales with accordingly harsh penalties. Judges, the Commission discovered, are equally disenchanted with the law -- only 13% said they would imprison an adult charged with possession of marijuana, and only 4% would incarcerate a minor.

Despite this attitude on the part of some elements of the criminal justice system, arrests of marijuana smokers have grown to staggering proportions. Between 1965 and 1970, state marijuana arrests increased dramatically from about 19,000 in 1965 to over 188,000 by 1970, and increased of nearly 1000 per cent. Estimates published in the ABA News indicate that the number of state arrests grew again in 1970 to 226,000, plus an additional 3300

Federal marijuana arrests. According to the National Commission approximately 93% of these arrests are for simple possession and about 88% of those arrested are under the age of 26 (58% under age 21). In other words, more than 600 young people are arrested every day in this country for nothing more than having in their possession some quantity, usually under one ounce, of marijuana. Included in this number are the sons and daughters of corporate presidents, elected officials, and law enforcement personnel; in other words, every strata of society feels the adverse impact of marijuana laws. The Section can imagine no other such purely private activity which carries with it such potentially severe consequences.

A young defendant charged with possession of marijuana need not be imprisoned or even convicted to suffer long term ill effects from his experience. Often arrest alone is enough to stigmatize an otherwise law-abiding citizen. While young people may be most often arrested, the grief, shame and emotional trauma involved is shared by their parents and family. Promising careers have been and continue to be ruined because of marijuana arrests, and convictions inevitably foreclose entry into many professions and occupations. The average person who first endures the horrors of the criminal justice system because of a marijuana arrest will leave his experience somewhat bitter and alienated. He may, in fact, become so disillusioned as to "dropout" -- the ultimate irony since marijuana laws are sometimes cited as essential to discourage pot smoking and the apathy and amotivation which allegedly follow. Clearly, for most individuals the present marijuana laws themselves carry a greater potential for harm than do any other aspect of marijuana use, including possible medical effects.

The Basic Issues

In his excellent book analyzing the legal and social realities of present day marijuana use, Marijuana, The New Prohibition, Stanford Law School Professor John Kaplan observes that "(T)he wisdom of a law should be determined in pragmatic terms by weighing the costs it imposes upon society against the benefits it brings." This simple balancing of interests, although self-evident, is sometimes overlooked in our eagerness to promote the general welfare.

Unquestionably, the motives of those who argue in favor of marijuana laws are unimpeachable. The intention is to curb the growing drug culture and prevent adverse health effects, though in actuality few unhealthy side effects have been substantiated despite some 3000 years of use and nearly 80 years of study. There are, of course, few virtues in smoking marijuana, though the same comment holds true for smoking cigarettes or drinking alcohol. If, in fact, the marijuana laws successfully deterred use, then the balancing test suggested by Professor Kaplan might well extol the value of the laws.

But available evidence points to the failure of the laws as a deterrent, as noted supra. The drug is readily available for those who want it, and the prospects of arrest, prosecution and conviction -- while an unpleasant reality to some -- are too remote to deter most users. The Consumers Union Report, Licit and Illicit Drugs, estimates that in the United

States, where five million marijuana cigarettes were smoked daily in 1971, the likelihood of being arrested on any particular occasion of use was far less than one chance in 5000; for many users the risk approached zero. The simple fact is that for the most part the law is probably an irrelevancy in the decision to use, or not to use the drug--except in those cases where marijuana is used -- for reasons of protest and to defy authority -- simply because it is illegal. One young man appeared before the New York State Commission on Campus Unrest and related how a severely worded law actually helped entice him to experiment with the drug which he knew to be harmless. He observed: "It isn't often that a person can create a felony in the privacy of his own room in his own house."

When reviewing society's approach toward other potentially deleterious substances one is immediately struck by the unique and adverse status accorded marijuana, this nation's third most popular and widely used (after alcohol and tobacco) recreational drug, according to the National Commission. For example, cigarette smoking is legal despite clear and unequivocal evidence of its danger to life and health. Persons with emphysema are warned that smoking is apt to result in their death. But it is not illegal, punishable by a jail term, for them to smoke cigarettes. Similarly, persons having relatively large amounts of fat in their blood are warned to refrain from certain high-cholesterol foods. But they are not subject to arrest and imprisonment when they ignore their doctor's advice.

Smoking marijuana, on the other hand, remains illegal despite the lack of reputable medical evidence as to direct harm from moderate use. Certainly marijuana smoking does not carry with it even the slightest threat of a lethal experience. On this point the National Commission stated:

> "A careful search of the literature and testimony of the nation's health officials has not revealed a single human fatality in the United States proven to have resulted solely from ingestion of marijuana. Experiments with the drug in monkeys demonstrated that the dose required for overdose death was enormous and for all practical purposes unachievable by humans smoking marijuana. This is in marked contrast to other substances in common use, most notably alcohol and barbiturate sleeping pills."

A number of other findings of the thirteen member National Commission on Marijuana and Drug Abuse -- including nine appointees of President Nixon -- are worth considering in relation to potential dangers, both medical and social, arising from marijuana use.

-- "the most notable statement that can be made about the vast majority of marijuana users -- experimenters and intermittent users -- is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criterion other than their marijuana use."

-- "from what is now known about the effects of marijuana, its use at the present level does not constitute a major threat to public health."

-- "a large amount of research has been performed in man and animals regarding the immediate effects of marijuana on bodily processes. No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marijuana."

-- although a number of studies have been performed, at present no reliable evidence exists indicating that marijuana causes genetic defects in man."

-- "in sum, the weight of the evidence is that marijuana does not cause violent or aggressive behavior; if anything, marijuana generally serves to inhibit the expression of such behavior."

-- "no objective evidence of specific pathology of brain tissue has been documented. This fact contrasts sharply with the well-established brain damage of chronic alcoholism."

-- "no outstanding abnormalities in psychological tests, psychiatric interviews or coping patterns have been conclusively documented."

-- "in a word, cannabis does not lead to physical dependence."

-- "although evidence indicates that heavy, long-term cannabis users may develop psychological dependence, even then the level of psychological dependence is no different from the syndrome of anxiety and restlessness seen when an American stops smoking tobacco cigarettes."

-- "research has not yet proven that marijuana use significantly impairs driving ability or performance."

-- "no valid evidence was found to support the thesis that marijuana, by itself, either inevitably, generally or even frequently causes or precipitates the commission of crime, including acts of violence, or juvenile delinquency. Within this framework, neither the marijuana user nor the drug itself can be said to constitute a danger to public safety.

The report of the National Commission is unique only for the comprehensive, thorough nature of its research. Most of the facts it reports and the conclusions it reaches have been noted by a number of other government commissions, including the Indian Hemp Drugs Commission (1893-94), the Panama Canal Zone Military Investigations (U.S. Army, 1925), the New York

Mayor's Committee on Marijuana (La Guardia Report, 1944), the Advisory Committee on Drug Dependence of the United Kingdom Home Office (Wootton Report, 1968), the Canadian Commission of Inquiry into the Non-Medical Use of Drugs (LeDain Commission, 1972), and the National Institute of Mental Health (Marijuana and Health, 1972). Not only were these reports in agreement as to the relative harmlessness of marijuana, many of them recommended that criminal penalties for private possession of marijuana be eliminated. The Section recognizes that differences may exist as to the validity of any given study or report on the subject. However, the Section also believes that the weight of the evidence clearly disproves allegations sometimes heard that "more study is required" or that "not enough is known about marijuana." Simply stated, such comments reflect either a basic ignorance of available information or a conscious attempt to obfuscate the issue.

The hypocrisy of justifying present marijuana laws on the grounds of danger to the users' health or to society generally is further emphasized when alcohol is considered. According to the National Commission, about 80 million Americans currently use alcohol, and dependence on alcohol is "without question the most serious drug problem in this country today."

Alcohol has been shown to be far more dangerous than marijuana in several respects. From the point of view of the health of heavy drinkers the evidence is conclusive. Heavy drinking is associated with nutritional deficiencies, cirrhosis, cardiovascualr disease, tuberculosis, and brain damage. Alcoholics die earlier than non-alcoholics of natural and unnatural causes. Adverse social effects caused by heavy drinking among alcoholics and non-alcoholics, while too numerous to detail, include thousands of deaths due to traffic and other accidents. The link between alcohol and crime, particularly crimes of violence, is well known.

Any comparison of alcohol and marijuana should not overlook the issue of physical addiction. It is a uniformly accepted principle that of the two drugs, only alcohol is physically addictive. Alcoholics suffer from distressing withdrawal symptoms (known as delirium tremens) which, if untreated, may lead to death.

Alcohol presents a far greater danger than marijuana to society. This is not subject to honest debate. What has been questioned is the relevancy of the alcohol analogy. It has been urged on both sides of the "legalization" argument that the alcohol analogy is a "red herring." The Section feels that the alcohol analogy is not "red herring." It should be an important element in any consideration of laws making the possession and sale of marijuana illegal. We cannot overlook the question of hypocrisy being raised so adeptly by the younger generation. The label of "red herring" is hardly a rational response to this obvious difference in the handling of drug problems. There is simply no justification for present laws regulating alcohol yet prohibiting marijuana. We are concerned with inconsistencies in law and charges of hypocrisy both in law and in the enforcement of law, and as lawyers we are especially cognizant of the need for the legal system to be just and to appear to be just. Inconsistencies such as these must be corrected if we are to have any credibility when we preach respect for law and the institutions of government.

Prohibition did not work for precisely the same reasons that existing marijuana laws do not work. People want the product and, accordingly, there is widespread flaunting of the law. Still, from nearly every medical and social perspective alcohol is far more destructive and has a far greater adverse impact than does marijuana. Consequently, the two positions (endorsing marijuana laws and opposing any change in alcohol possession and distribution laws) appear to us to defy logic.

But it is not only the alcohol analogy which persuades this Section to urge repeal of criminal penalties for simple possession of marijuana. On balance, the total "costs" of retaining these laws outweigh any benefits derived from them. For, as the National Commission concluded, "The actual and potential harm of use of the drug [marijuana] is not great enough to justify instrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance."

The Link Between Marijuana and Use of Other Drugs

One of the arguments most often raised in defense of existing marijuana laws is that use of marijuana leads to use of heroin or other drugs. On this question the National Commission is unequivocal -- such arguments are absolutely false. To quote the Commission's findings:

> If any one statement can characterize why persons in the United States escalate their drug use patterns and become polydrug users, it is peer pressure. Indeed, if any drug is associated with the use of other drugs, including marijuana, it is tobacco, followed closely by alcohol.
>
> Marijuana use per se does not dicate whether other drugs will be used; nor does it determine the rate of progression, if and when it occurs or which drug might be used.
>
> The fact should be emphasized that the overwhelming majority of users do not progress to other drugs.

While it is true that some 85 to 90 percent of heroin users have smoked marijuana, the more important consideration is that only about 3 percent of those trying marijuana have subsequently used heroin. Indeed, the Committee feels that laws prohibiting marijuana may have a more direct correlation with the use of heroin and other dangerous drugs than does any chemical or pharmocological property of the substance itself. This is true for two reasons.

First, the illegality of marijuana coupled with its popularity and consequent high demand gives rise to a flourishing black market. Most marijuana smokers obtain their supply from friends or other amateur sources. Indeed, Professor Eric Goode of the State University of New York at Stony Brook estimates that roughly 45 percent of all users have sold or otherwise

transferred marijuana at one time or another. At the same time, some marijuana smokers are forced to deal with professional black marketeers whose stock may include not only marijuana but also heroin, barbiturates amphetamines or hallucinogens as well. These drug pushers have no qualms about offering other of their wares should marijuana be unavailable. Such was the case in late 1969 and 1970 when the U. S. Government's "Operation Intercept" program caused temporary shortages of and higher prices for marijuana. During this period large numbers of young people first began experimenting with "reds" (barbiturates). Ironically, then, present marijuana laws may tend to increase, for at least some young people their exposure to dangerous and addicting drugs.

A second, related factor concerns the user's attitute toward both marijuana and its legal status. A marijuana smoker knows that his use of the drug is illegal. He sees his friends arrested for similar behavior. (The National Commission found that 53 percent of all 16 and 17 year olds know someone who has been arrested for marijuana use.) He realizes he is a criminal because of an act he believes to be essentially harmless. Once his self-image is that of an "outlaw" he feels less inhibited about indugling in other behavior which society condemns. In many states the penalties for possession of dangerous drugs are equal to or only slightly more severe than penalties for marijuana possession. Once the marijuana smoker has risked arrest and imprisonment for his use of that drug he may well harbor no second thoughts about acquiring and using other illegal drugs.

Our marijuana laws have, indeed, created an entire generation of criminals, and respect for all law cannot but suffer as a result. This general attitude of disrespect for and disgust with the legal system poses a far greater societal threat than the simplistic and discredited notion that marijuana is an inevitable "stepping-stone" to heroin.

Marijuana and the Agencies of Criminal Justice

Clearly, an individual who is arrested and prosecuted on a marijuana charge endures great personal anguish for an act with de minimus social consequences. But the real loser because of the current marijuana laws is society itself. We find ourselves today in the midst of rising crime rates and growing concern over the adequacy of our law enforcement and criminal justice systems. Yet we persist in diverting an ample portion of our limited resources to the apprehension of young people whose only crime is smoking a marijuana cigarette. Accordingly, we must acknowledge that one of the most significant costs of present marijuana laws is their adverse effect on a criminal court system already groaning under the weight of huge backlogs of undisposed of cases and an overcrowded prison system which admittedly has virtually failed as an instrument of social rehabilitation.

The direct monetary costs involved are staggering. California alone spends an estimated $100 million annually to enforce its marijuana laws. In terms of resource allocation, each and every police, narcotics and customs officer who spends his time pursuing marijuana users could more effectively serve the cause of crime control by switching his attention and efforts to those who traffic in heroin and other hard drugs.

Occasionally, someone argues that the failure of the marijuana laws as a deterrent to the proscribed behavior is no reason to repeal these laws, since other criminal laws, e.g., the homicide statutes, also fail in their deterrent capacity. That view might be persuasive if marijuana use were realistically perceived as dangerous or even unhealthy. Such is not the case, however. As the National Commission has declared:

> "When the issue of marijuana use is placed in this context of society's larger concerns, marijuana does not emerge as a major issue or threat to the social order."

As already noted, there can be no doubt as to the utter failure of present laws in deterring the use of marijuana. Although the number of people arrested reached the astonishing total of 230,000, this figure represents less than 2% of the total number of regular marijuana smokers. Thus, for most users the possibility of arrest is so remote that few, if any, refrain from smoking marijuana because of the laws. Yet the cumulative effect on the criminal justice system of these thousands of arrests is staggering.

What is worse, enforcement of the marijuana laws has given rise to police practices of dubious wisdom and doubtful constitutionality. Long-haired young people have become prime targets of police harassment, which most often takes the form of wanton searches of persons and property without probable cause. Such tactics have, for example, become so prevalent along the New Jersey Turnpike that pending litigation seeks a permanent injunction to bar state police from engaging in future illegal searches. Even more insidious is the growing practice of deploying undercover narcotics agents in high schools and on college campuses. While the alleged goal is stopping hard drug traffic, the use of these agents most often comes to light amid highly publicized reports of campus "crackdowns" where dozens of students are arrested for possession of "narcotics." Close scrutiny of these reports reveals that almost all charges and drug confiscations involve not heroin or amphetamines but marijuana. On those campuses where agents are not deployed student informers are relied upon. Millions of students and young people no longer feel secure, even in the privacy of their rooms, a situation which must dismay those of us concerned with the diminishing rights of privacy we all enjoy.

In short, the marijuana laws are responsible for the wasteful and unwise deployment of law enforcement resources, for adding thousands of cases of trivial import to overloaded court calendars, and for inviting abuse of

the civil rights and civil liberties of millions of this nation's youth through unconstitutional searches and unhealthy police practices. In practical terms, these costs of existing marijuana laws are perhaps the most significant and certainly the most inexpedient.

Appropriate Governmental Response to the Use of Marijuana

We understand the concerns of those who support existing marijuana laws, though frankly we believe that many people have based their position on untenable arguments supported by discredited information and myth. We believe that if recreational drugs such as tobacco, alcohol and marijuana, remain popular -- and no reasonably objective observer could conclude otherwise for any of the aforementioned substances -- then the government has an obligation to regulate their availability and use. Reliance upon criminal sanctions in an attempt to regulate marijuana is, in our view, both inappropriate and counterproductive. In fact, a key point which must be stressed is that it is impossible to regulate a substance which is prohibited, a lesson which this country should have learned during the days of alcohol prohibition. (A curious footnote to Prohibition is the fact that while the sale of alcohol was universally forbidden, in only a few states was possession of alcohol illegal; this is in marked contrast to the present day situation with respect to marijuana which finds both sale and possession banned in all jurisdictions.)

Having said that, the question becomes one of what response to the issue by government is appropriate. There are several steps which government may properly take in this area. One is education. To date we have not done an adequate job of educating our citizens, both young and old, on the dangers of abusing any drug, including prescription and over-the-counter drugs. By grouping marijuana with heroin, by imposing strict penalties for its use and by overstating the possible dangers of the drug we have, in fact, lost credibility among both users and non-users of marijuana. As a result young people no longer believe us when we counsel against the dangers of narcotics. Thus the Section believes that an essential step in developing sound drug education programs is the reexamination of our response to the widespread use of marijuana and the revision of our criminal laws on the subject to reflect the wealth of information now available.

A second possibility involves governmental regulation of the channels of marijuana distribution. Contrary to what many believe, such a step would actually mean more controls over marijuana, not less. Age controls would be possible, as would purity and potency standards. At present none of these controls -- which are properly imposed on the other popular recreational drugs, tobacco and alcohol -- can be established for marijuana for the simple reason that a black market seller cares not whether his customer is 13 or 30, whether his product is pure or laced with more potent (and dangerous) adulterants, or whether the marijuana he sells is twice or even four times stronger than his previous supply thereby creating a potentially harmful situation for the novice smoker. Government regulation over the distribution of marijuana--with particular emphasis on purity and potency of the drug and age limitations on the buyer--will greatly reduce and perhaps eliminate the major known dangers associated with marijuana use today.

The wisdom of a government controlled regulatory system for distributing marijuana has recently been enunciated by the San Francisco Committee on Crime, by the District of Columbia Mayor's Advisory Committee on Narcotics Addiction, Prevention and Rehabilitation, and by Consumers Union. As the editors of the last named organization concluded in Licit and Illicit Drugs:

> We do not recommend legalization because we believe that marijuana is 'safe' or 'harmless'. No drug is safe or harmless to all people at all dosage levels or under all conditions of use. Our recommendation arises out of the conviction that an orderly system of legal distribution and licit use will have notable advantages for both users and non-users over the present marijuana black market. In particular it will separate the channels of marijuana distribution from heroin channels and from the channels of distribution of other illicit drugs -- and will thereby limit the exposure of marijuana smokers to other illicit drugs. Even more important, it will end the criminalization and allienation of young people and the damage done to them by arrest, conviction and imprisonment for marijuana offenses.

The Section's Recommendation

The users of any drug want to know about its dangers. For that reason the government has a responsibility to continue research into possible effects of marijuana on the user, and to publicize its findings. But once adequate warnings are given, the government has fulfilled its obligations. Millions of cigarette smokers daily ignore the government's advice, stated clearly on each pack. Their behavior may be foolish, but it cannot be classified as criminal. The same approach should be followed for marijuana, which medically is a far less harmful substance.

In summary, the Section believes that the time has come for government to acknowledge its obligation to minimize the abuse potential of marijuana by instituting strict legal controls over its distribution and use while recognizing the exorbitant cost of continuing the impractical and ineffective approach toward marijuana presently being followed.

Accordingly the Section of Individual Rights and Responsibilities respectfully urges the House of Delegates of the American Bar Association to endorse our recommendation -- as a meaningful initial step toward a rational policy on marijuana -- that: (1) there should be no criminal laws punishing the simple possession of marijuana; (2) casual distribution of small amounts not for profit be treated as simple possession: and (3) regulatory schemes governing distribution of marijuana be established by the States.

Respectfully submitted,

McNeill Smith, Chairman

August, 1973

REMARKS OF DONALD E. SANTARELLI
FORMER ADMINISTRATOR OF LEAA
TO THE SUB-COMMITTEE ON ALCOHOLISM AND NARCOTICS

I offer these few remarks to make clear the perspective from which I view this most timely subject of law enforcement and marijuana use.

From the beginning of my experience as a law clerk and then as Assistant U.S. Attorney for the District of Columbia, through my experience as legislative counsel to both the House and Senate Judiciary Committee, and as Associate Deputy Attorney General from 1969 to 1972 up to my term as Administration of LEAA, I have maintained a consistent point of view - that we need to strengthen our law enforcement institutions in dealing with the problem of controlling crime in America. But in the evolution of my short career I have come, some time ago, to recognize that simply strengthening law enforcement is not a sufficient objective in the desire to control crime in America. I have come to the rather strongly held and often expressed view that a particularly necessary and missing element in the present war against crime is a role for individual citizens, both at the crime prevention and law enforcement ends of the spectrum. Citizens simply must do more. They must report crime, they must testify about crime, they must refuse to be victimized at the hands of the criminal elements as well as at the hands of the criminal justice system accountable as well as holding their other community institutions accountable.

I have tried diligently and with some controversy to turn the direction of LEAA towards the development of citizen initiatives. These programs would, hopefully, revitalize and restore the missing element of community participation in crime prevention and law enforcement. I pressed for the commitment of LEAA funds to citizens activities such as witness and victims programs; juvenile delinquency prevention programs; community support for corrections and rehabilitation programs. I believe strongly that a community must have the greater role in the crime prevention and law enforcement. It is from that perspective that I make the observations on the enforcement of so called "victimless crimes" and particularly on the enforcement of laws against possession for personal use of marijuana.

MARIHUANA RESEARCH AND LEGAL CONTROLS, 1974

WEDNESDAY, NOVEMBER 20, 1974

U.S. SENATE,
SUBCOMMITTEE ON ALCOHOLISM AND NARCOTICS
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee reconvened, pursuant to recess, at 10 a.m., in room 4232, Dirksen Senate Office Building, Senator Harold E. Hughes (chairman of the subcommittee), presiding.

Present: Senators Hughes and Javits.

Senator HUGHES. The Subcommittee on Alcoholism and Narcotics will come to order.

The first witness is Mr. Michael Sonnenreich, speaking on behalf of Dr. Dana L. Farnsworth.

Mike, we want to welcome you before the subcommittee.

You may proceed with your testimony as you would like.

STATEMENT OF MICHAEL R. SONNENREICH, ESQ., SPEAKING ON BEHALF OF DR. DANA L. FARNSWORTH, FORMER VICE CHAIRMAN OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, HENRY K. OLIVER, PROFESSOR OF HYGIENE EMERITUS, HARVARD UNIVERSITY, AND CONSULTANT IN PSYCHIATRY, HARVARD SCHOOL OF PUBLIC HEALTH

Mr. SONNENREICH. Thank you very much, Senator. It is a pleasure to be here.

I am speaking on behalf of Dr. Dana L. Farnsworth, who was vice chairman of the National Commission on Marihuana and Drug Abuse, and I am speaking at his request.

I would like to read his statement.

The report of the National Commission on Marihuana and Drug Abuse has now been available to the American people for more than a year and a half. Its general conclusions, developed after 2½ years of study by hundreds of authorities in the field, are still as valid as when they were first made.

The Commission recommended, in 1972, that possession of small amounts of marihuana, 1 ounce or less, no longer be a criminal offense but that penalties be retained for possession of larger amounts presumably for sale. In addition, it asserted that the use of marihuana should be discouraged by all reasonable means, mainly through social controls, with particular emphasis on heavy and very heavy use.

Marihuana is a dangerous drug, as all drugs are when used excessively. However, its capacity for harm appears to be considerably

less than the harm done by the barbiturates, amphetamines, opium derivatives, and particularly alcohol.

Since the publication of the Commission's report in March 1972, numerous studies have been reported, some suggesting that the dangers of marihuana are far greater than the report indicates, others demonstrating that its use produces relatively little harm. In short, despite all these new studies, work in the past 2 years has not fundamentally changed the data base on which the recommendations were made.

The greatest harm stemming from marihuana use comes from the excessively harsh penalties applied to young persons caught with the drug in their possession. The harm done to a young person sentenced to several years in prison, or to any term in prison, is not limited to the cost of their incarceration but rather to the lives of otherwise effective persons being virtually ruined by the degrading experiences of prison life.

The stigma of a criminal record for relatively slight offenses effectively handicaps many persons in an unreasonable manner. In addition, the widespread disrespect for law and authority in general instilled by such harsh and basically unworkable laws is incalculable.

Several States have liberalized their marihuana laws, among them Oregon, Michigan, Rhode Island, and Texas. Others have lagged behind, stimulated, in part, by excessive and misplaced emphasis on the dangers of marihuana.

Recent attempts from several sources to persuade the American people that the use of marihuana is more destructive than it really is, and more dangerous than alcohol, the barbiturates, the amphetamines, and the opiates, are doing a disservice to the ideal of helping our people to learn how to use drugs for their benefit rather than to allow them to become their masters.

A finding made in 1973 that alcohol was the drug whose misuse was far and away the most serious problem facing this Nation was no surprise to the experts but disconcerting to many people, especially in that more than half our people do not consider it a drug.

The use of LSD and the amphetamines has apparently begun to decline, particularly among college students. Heroin use, on the decline for a short time, now once again seems to be increasing.

By no means is all concern with marihuana of a negative nature. There is considerable indirect evidence to suggest that therapeutic compounds could be derived from synthetic chemical structures modeled after those occurring in cannabis sativa, the marihuana plant. Such therapeutic possibilities include nonaddicting sedatives and analgesics, as well as compounds that may be useful in the treatment of high blood pressure and narcotic addiction. Work of this nature is now being actively pursued.

It can hardly be overemphasized that efforts to improve the quality of life of all our people through the removal of social and economic deprivation and raising the level of opportunity for self development will be the most effective means of reducing drug dependence.

Too much emphasis on any one particular index of personal frustration tends to divert attention from other sources of discontent. Ideally, solution of the drug problem should be one of the dividends of major

art[illegible] and effort toward the solution of all our social problems which, by their nature, impair human dignity in any of our citizens.

That is the statement that Dr. Farnsworth asked me to direct to the Committee, Mr. Chairman.

Senator HUGHES. Mr. Sonnenreich, would you care to add anything on your own?

First, I should ask you a couple of questions.

Were you the executive director of the National Marihuana Commission throughout its existence?

Mr. SONNENREICH. Yes, I was.

Senator HUGHES. Did you attend all of the hearings or practically all of them that were held here and around the world?

Mr. SONNENREICH. All of them.

Senator HUGHES. Did you do the work related to all the investigations of marihuana all over the globe?

Mr. SONNENREICH. That is correct, Senator.

Senator HUGHES. And before that time, were you not employed by the Justice Department?

Mr. SONNENREICH. I was.

Senator HUGHES. In what capacity?

Mr. SONNENREICH. I was Deputy General Counsel of the Federal Bureau of Narcotics and Dangerous Drugs, which has now become the Drug Enforcement Administration in the Department of Justice.

Senator HUGHES. On the basis of your own personal experience, would you like to say anything to the Committee this morning?

Mr. SONNENREICH. Yes, I would.

I firmly believe that the recommendations of the Commission, both its first and second reports, remain valid today. I think that the furor, or the recent publicity with respect to new scientific studies that are being conducted with respect to marihuana, are interesting and merit some careful attention. But I do not think they address the social issue which you, as a member of the National Commission, were actively involved in.

That social issue was what do we do with this drug, which is not just a drug but a social issue, and the question we resolved in the Commission, which was unanimous, and I still firmly personally believe it, is that the cost of the continual use of the criminal justice system to try and compel a social policy just does not work.

Now, with respect to marihuana, the decriminalization recommendation of the Commission is not only inevitable, but sound. I do not see any value whatsoever for putting people in jail for the use of marihuana.

Senator HUGHES. Well, as a matter of fact, the report of the Commission was condemned by the President before it was ever issued, was it not?

Mr. SONNENREICH. That is correct.

Senator HUGHES. His rejection seemed to add to the already existing public hysteria about marihuana, regardless of 2 years of effort in this country and all over the world by experts in every country which had had experience, including some countries where cannabis had been used for several hundred years. Is that not correct?

Mr. SONNENREICH. That is correct, Senator.

The fundamental issue, which is that we could disapprove or not condone the use of the drug, does not necessarily mean that there is a concomitant criminal penalty that has to be applied to it.

We could very strongly want to discourage the use of the drug or any psychoactive substance, but in terms of trying to enforce it through using an institutional approach, that is the criminal justice system, and incarceration, not only makes no sense, based on what we know about the substance, but does not seem to make sense knowing what we do about our own society. The statistics cannot be ignored in terms of the fact that a lot of people have used marihuana. They cannot be ignored that a lot of people will continue to use it. And they cannot be ignored that, from a curiosity point of view, the more we talk about this and the more we polarize the issue, the greater the curiosity factor becomes for many of our young people to just see what it is that we are creating such a fervor about.

The one thing that was pointed out in the Commission repeatedly is that we have to be absolutely certain that when the Government decides to impose any kind of restriction via the criminal justice system on any act that it seeks to condemn, then it must be competent to deal with that kind of situation. And if the law cannot deal with it, it loses credibility.

I think, to a large extent, we have lost a great deal of credibility in our criminal justice system through the use of these possession penalties on marihuana.

Senator HUGHES. Well, just to establish some of the basic facts which you say you still believe and which Dr. Farnsworth also reiterated in this statement which you read in his behalf as vice chairman of the National Marihuana Commission, No. 1, the Commission finding was that marihuana is a dangerous drug; is that correct?

Mr. SONNENREICH. That is correct.

Senator HUGHES. And you still believe it should be categorized as that today?

Mr. SONNENREICH. Well, dangerous is a relative term, as you know. It is a dangerous drug. Any drug used in excess is going to produce hazardous effects.

Senator HUGHES. Number 2, the recommendation was to use every method possible within reason to discourage the use of marihuana, was it not?

Mr. SONNENREICH. That is correct.

And I think that what Dr. Farnsworth is talking about and what I am talking about is that we have a great many sources of control that are not institutionalized. We have peer pressure, we have the church, and we have the local community. We exert pressures through these groups all the time on social behavior.

If the community feels something is not to be accepted, we use those social institutions, the private sector, to try and change attitude and change behavior. We do not always have to use the criminal justice system to do that.

Senator HUGHES. Was it not also the finding of the Commission that of the drugs and narcotics that we particularly looked at, including at least one drug, alcohol, marihuana was the least offensive of the group?

Mr. SONNENREICH. That is correct. Both if we were to talk about it from the scientific point of view, in terms of relative danger, it would be correct and if we talk about it from the social point of view, just limiting it to the United States, it is correct.

We know what the problems with a drug like alcohol are. We know what the social costs of alcohol are in terms of assaultive crime, in terms of loss of time on the job, and in terms of breakup within the family unit. These costs are very well documented.

I believe the figures are that approximately 10 million Americans might be classified as alcoholics in the United States.

Senator HUGHES. And was it not the unanimous conclusion of the Commission and yourself, as director, that the personal consumption of marihuana or private use in small amounts should be entirely decriminalized?

Mr. SONNENREICH. That is correct.

Senator HUGHES. Could you describe to the committee what the Commission and you meant by decriminalization?

Mr. SONNENREICH. We meant something very similar to what has been going on, and transpiring within the whole range of private activity.

It simply means we would control the manufacture and sale. We would continue to criminalize the commercial distribution, but not individual possession and use.

Senator HUGHES. That would continue to be criminalized?

Mr. SONNENREICH. That is correct. This is similar to the kind of situations you have with obscenity laws, that you had with alcohol prohibition. We would not make it a crime for the simple possession or the use of the drug. The fact that you have it in your possession does not mean you are criminally liable.

We also extend it beyond that, and I believe you were very intimately involved in this, both in terms of legislation, in the original 1970 act, and in the Commission, Senator, when we also included transfers of marihuana for small or little remuneration within the decriminalization framework. In this way, we recognized the way in which the drug was used, such as the so-called pot party.

There is the situation where somebody will give a marihuana cigarette to his friends. That kind of transfer, where he is not a commercial dealer, would be treated the same as simple possession, and we did not make that a crime.

What we were doing was, in effect, borrowing from what you had done in the 1970 Drug Abuse Prevention and Control Act. And I think that is valid, because I think we have to take into account the way in which a substance is used in the United States, not just simply draw very careful theoretical lines.

Senator HUGHES. In other words, one of the problems we were dealing with and trying to get at was that if five or six youngsters decided to have a pot party, and each chipped in a buck apiece to buy a small amount of marihuana, and one of these individuals made a contact and bought some for no profit to take back for sharing with five others, he was not a pusher. That is what we were dealing with.

Mr. SONNENREICH. In essence, that is correct.

We would not categorize that as criminal.

Senator HUGHES. In other words, let's carry this one step further, if we could. Dr. Farnsworth covered this very well in his statement, I think, but I would like for you to cover it also. Putting an individual into prison for a minor offense, and we found it to be a minor offense, was far worse than the offense itself, was it not?

Mr. SONNENREICH. In terms of social cost, absolutely.

Senator HUGHES. Could you describe that social cost for us to any extent, Mike?

Mr. SONNENREICH. We ran two studies back to back in the first year and the second year of the Commission. What we wanted to do was to find out just what was happening, who were the people that were getting arrested. We had our suspicions that they were young people, and we had our suspicions that they were heavily represented among the college students. And, of course, this was borne out in a six metropolitan area study.

The thing that was very disturbing was the fact that most of the people that were arrested for marihuana offenses, this was their first offense for any kind of criminal activity, including a moving traffic violation. I think the figure was about 93 percent of the people that were arrested for simple possession.

The question is, having been a prosecutor and recognizing how the system works—and it is imperfect and we admit it—it really is not designed to deal with that number of people and that type of individual. And the cost to society is having hundreds of thousands of young people being processed through a criminal justice system that really is not designed to deal with these people. It is designed to deal with our common law crimes and a variety of other crimes. I would be less than candid if I did not say that the system, during this processing, probably loses a great deal of credibility.

In 1972, we had almost 200,000 people arrested by State officials for marihuana offenses. Then it went up to 225,000, I believe, the next year. And from what I gather in statistics this year, it has gone over 300,000. That is an awful lot of people. This is the third largest category of crime that is reported by the FBI in their Uniform Crime Reports. The first is alcohol--drunk and disorderly. The second is petty larceny crimes under $100. And the third is drug offenses.

One has to ask the question, aside from the tying up of the criminal justice system, as to just what the impact of that system is on the people going through it, in terms of criminal records, in terms of disruption of, perhaps, their college life, and in terms of disruption of their families. The social cost that is spread is enormous. We would have to quantify it pretty much the same way as we would in terms of alcohol cost, even where the person is not necessarily arrested, in terms of the impact on the family, and in terms of the impact on future work. These costs are hard to assign but they are very real.

I think what has happened is that we have turned a lot of rebels, who I might call mini-rebels, because much of this was symbolic, into some very, very discouraged and disappointed people within our system.

There are many faults in our criminal justice system, but I believe that we have to preserve that system and try to make it workable. Pouring all these people through that system just does not make it workable. The statistics prove it for the simple reason that most of [illegible] never go to trial. They never get convicted.

What happens to the untrained or unknowing eye is that it looks like the system is being subverted when, in reality, the system is trying to keep itself together by diverting the people, dropping the cases, moving them into other alternatives, other than going through the court system.

And I think we have lost an incredible amount of credibility.

Senator HUGHES. Mike, one final question.

Your background in this field has been extensive and far more than any person normally gets. You have been a prosecuting attorney, an official of the old Bureau of Narcotics and Dangerous Drugs, and Executive Director of the National Marihuana Commission. In that job you were part of the team that conducted hearings, did the research, wrote the report and prepared the analyses and recommendations. You are now a private practicing attorney. What recommendation would you make to the Congress at this point in history on the basis of current research, some of which has raised, once again, the old questions regarding marihuana?

What should we do?

You have already stated that clearly, but just as a final statement, I would like for you to put it in perspective.

Mr. SONNENREICH. Scientific research that is going on, Senator, I think has to go on and continue. But I do not think it has anything to do with the issue.

The issue is whether or not people should be put in jail for using marihuana. I think that while everybody can voice concern and can carefully study all research findings that come out, I do not think it really has anything to do with this social policy issue.

I believe that the Congress should take the initiative. We know that with drug legislation and drug laws it is the States, in the past, that usually took the initiative. Now, what would be not only nice, but appropriate, is for the Congress of the United States to pass a bill, face the issue head on, and decriminalize the drug.

There is great concern and there is still a tremendous amount of misinformation in the public mind about the substance, and we are going to get a lot of emotional commentary by those who favor absolutely taking a giant step and dealing with marihuana like alcohol on one hand, and those who are concerned that it is a very, very dangerous substance and would like to keep the status quo.

But we are in an inevitable situation. The Congress has to pass a law. It has to decriminalize the use of the drug. It has to separate clearly the issue of utilization of our institutional processes, the criminal justice system, from the scientific and medical processes, which will go on and on, regardless of what the Congress does.

There is going to be a lot of research on this drug, as there is with a whole range of other drugs. There is going to be a lot of contradictory findings. I do not think that whether or not we find that it is 3 percent more dangerous, or 5 percent less dangerous is really going to have, other than as an informational kind of thing, an impact on changing the social policy, which I believe should be decriminalization.

Senator HUGHES. Thank you very much. I appreciate your opinions and also those of Dr. Farnsworth.

I hope you will extend to him my personal appreciation for his statement and continuing concern in this field.

Mr. SONNENREICH. Thank you.

Senator HUGHES. I want to say to you personally that over the last 6 years I enjoyed working with you in one capacity or another, sometimes occasionally as antagonist, but most of all as a friend.

Thank you very much.

Mr. SONNENREICH. Thank you, sir.

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John Rector, Esq.,
Sub-Committee on Juvenile Delinquency
of the Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Sir:

I am writing as chairman of the Sub-Committee on Drug Use of the Committee on Revision of the Criminal Law to let you know that we fully endorse the decriminalization of marijuana. I enclose a copy of our Position on the subject.

We would be glad to assist in any way in supporting this legislation, and particularly, to assist in arranging for the testimony of appropriate witnesses for your further hearings. If you deem it suitable, I will attempt to contact Mr. Whitney North Seymour, our former United States Attorney, and the Chairman of our State Bar Association. I have recently spoken with Mr. Seymour about this issue and I believe that he would join in supporting it.

We would be glad to hear from you to learn how we may help the decriminalization effort in the Senate.

Very truly yours,

DAVID S. MICHAELS
362 Madison Avenue
New York, New York 10017

NEW YORK STATE BAR
ASSOCIATION

ONE ELK STREET
ALBANY, NEW YORK 12207

NEW YORK STATE BAR

CRIMINAL JUSTICE SECTION

Criminal Justice Section
--Betty D. Friedlander, Chairman

Committee on Revision of the Criminal Law
--Hortense Mound, Chairman

Subcommittee on Narcotics and Drug Use
--David S. Michaels, Chairman

Position on Marijuana

As Secretary of the Criminal Justice Section of the New York State Bar Association, I hereby certify that the positions stated herein are the duly-adopted positions of the Section.

Herman H. Tarnow

Herman H. Tarnow

Resolution Concerning Decriminalization of Possession

WHEREAS: the present criminal prohibition of marijuana, which defines mere possession as a crime, is unreasonable and unwise in that it undermines respect for all law, encourages the violation of civil liberties, and threatens the criminal prosecution of a significant portion of our population for engaging in a personal act which poses no demonstrable danger to the public;

RESOLVED: that the Criminal Justice Section of the New York State Bar Association recommends that the Legislature decriminalize marijuana in accordance with the recommendations of the National Commission on Marijuana and Drug Abuse, by removing all criminal penalties for private use and possession of reasonable amounts of marijuana and treating the gift or profitless transfer of small quantities in a noncriminal manner.

--Adopted January 27, 1973

Resolution Concerning Inquiry into Lawful Sale

WHEREAS: the removal of criminal penalties for mere possession of marijuana would result in serious questions as to the wisdom and propriety of continuing the legal prohibition now applied to the sale and distribution of marijuana; and

WHEREAS: many proposals have been suggested as to legalizing such sale and distribution under varying methods of control, the comparative merits of which have not been adequately investigated and appraised; it is

RESOLVED: that the Criminal Justice Section recommends that an official temporary commission, established by legislative or executive authority, make a detailed study of various proposals governing the sale and distribution of marijuana under legal conditions of control, and make recommendations concerning the revision of our present criminal prohibition laws pertaining thereto so as to provide some lawful mechanism for the sale and distribution of the substance in question.

FURTHER RESOLVED: that we re-affirm our resolution of January 27, 1973, in favor of the decriminalization of the use and possession of marijuana, which resolution also urged that the profitless transfer of reasonable quantities of this substance be treated in a non-criminal manner.

FURTHER RESOLVED: that the Association present a copy of this resolution to the Governor and to every legislator.

--Adopted January 24, 1974

[From Presidential Documents, Vol. 12, No. 14, Apr. 5, 1976]

MARIHUANA REFORM

Q. I would like to know your views on marihuana reform.

THE PRESIDENT. I don't believe on the basis of the scientific evidence that we have available today that we should decriminalize the use of marihuana.

[From High Times, May 1976]

CARTER ENDORSES DECRIMINALIZATION

Surrounded by a phalanx of Secret Service agents, *High Times* news editor A. Craig Copetas recently questioned Democratic presidential hopeful Jimmy Carter on marijuana and the Drug Enforcement Administration (DEA).

"I favor the decriminalization of marijuana," said Carter, "but I'm not sure about the legitimacy of the federal government making this rule. Now in the field of alcohol, for instance, it's been a right reserved for the states and I don't think there are any uniform federal laws on the sale of alcohol except for the taxation of it. I think decriminalization is a matter best left up to the states for the time being."

[From High Times, May 1976]

THE SMOKE-FILLED ROOMS WHERE THE CANDIDATES STAND ON DOPE REFORM

(By Chip Berlet)

Marihuana has made it into the smoke-filled rooms of campaign '76. Reform of the grass laws is an acceptable issue in this year's presidential campaign. In fact, eight Democratic candidates favor marihuana decriminalization. Just the fact that all the candidates feel free to discuss grass is an indication of how far we've come. After all, four short years ago Senator George McGovern's support of decriminalization almost proved fatal to his bid to capture the Democratic presidential nomination. McGovern's primary opponents sneeringly labeled him the man in favor of the "Three A's—Acid, Amnesty and Abortion."

All of which is not to say that decriminalization or legalization is just around the corner. Republicans Gerald Ford, Ronald Reagan and Nelson Rockefeller, as well as Democrat George Wallace, still take strong stands against marihuana decriminalization. But it seems doubtful that this year any candidate will use grass as the blade with which to cut another up.

High Times has contacted every candidate's campaign headquarters to solicit the presidential hopefuls' stands on decriminalization. Decriminalization differs from legalization in that, while penalties for possession are reduced or abolished, grass remains technically illegal, with sale and distribution subject to criminal prosecution. Many of the candidates had already outlined their positions in response to a survey conducted by the National Organization for the Reform of Marihuana Laws (NORML).

High Times, however, has succeeded in getting some elaboration and in coaxing the first formal campaign statements from Ford, Reagan and Senator Hubert Humphrey.

NORML, incidentally, is trying to get a decriminalization stand written into the Democratic Party's platform. But according to Joe Duffy, former national chairperson of the liberal Americans for Democratic Action and an advisor to the Democratic Party platform committee, there is little chance of such a plank's being adopted. "We're not at the stage where it's going to be embraced by a national political party as a banner to run with," said Duffy. "I think it's a great mistake to press the Democratic Party to put some explicit language on decriminalization in the platform because at so many state and local levels it's already quietly happening, and it's happening quite often with the complicity of lots of people who formerly were bitterly opposed to decriminalization."

Keith Stroup, director of NORML, thinks "it's going to be one hell of an uphill battle to get decriminalization as a plank and we would be foolish to put a big stake in the issue. But we would be remiss if we did not make the effort to familiarize the Democratic leaders and the country as a whole with the issues in-

volved in decriminalization. . . . We're going in expecting to lose, but it's not a kamikaze mission. There is a chance that the Democratic nominee might go along with the decriminalization plank."

Whether decriminalization makes it into the platform or not, it is evident that grass is here to stay. "It's not going to be the kind of issue it was in 1972," says Joe Duffey. "The climate has changed."

Birch Bayh

Birch Bayh believes in decriminalization but not legalization, explained an aide. Bayh has spent 14 years as the junior senator from Indiana and during committee hearings came to the conclusion that federal policy toward marihuana was "unsound." "It is clear that the public interest is not served by arresting nearly 500,000. primarily young people, annually for simple possession of small amounts of marihuana." Bayh went on to say taxpayers, also, were not well served by "the current annual investment of $600 million for prosecuting [marihuana] cases," and noted that "last year, more than two thirds of all drug arrests were marihuana related."

Civil fines should replace criminal sanctions for possession, says Bayh, and when one ounce or less is involved, possession should be defined as including other incidental acts such as "cultivation and transportation for personal use, and the casual, nonprofit transfers of such amounts of marihuana."

Morris Udall

Morris Udall's views on marihuana reform parallel the recommendation of the President's Commission on Marihuana and Drug Abuse. The representative from Arizona subscribes to three basic conclusions: "Public use of marihuana and casual distribution of the drug in small amounts should be subject to citation and modest civil penalty. Possession and private use of small quantities of marihuana should no longer be a punishable offense. Sale of marihuana for profit, or serious misconduct under its influence, should remain a criminal offense."

Fred Harris

Populist Fred Harris supports decriminalization from a philosophical perspective. The former senator from Oklahoma feels that "making criminals out of people who use marihuana—a drug that's been found no more harmful than alcohol—grows out of an elitist attempt to use the government to enforce a general system of morals on its citizens." Harris favors a small fine for possession with specific laws left to local communities.

Milton Shapp

Milton Shapp thinks legalization might be justifiable and deserves further study. The two-term governor of Pennsylvania has proposed legislation in his state similar to the Oregon law. He supports decriminalization but does not want to encourage marihuana use. Shapp is not currently in favor of legalization, but says, "the prospect of legalizing and regulating marihuana similar to the way we control alcohol is attractive in several ways. It could means a new source of revenue for the federal government. It could give assurance that marihuana smokers will not be sold marihuana that has been laced with other drugs, and a curtailment of the interests of organized crime in the sale of marihuana."

Jimmy Carter

Jimmy Carter has surprised many observers with respectable showings in early state primaries and caucuses. The former governor of Georgia favors a modified form of marihuana decriminalization along the lines of the Oregon law and feels that this legislation should be left up to the individual state. Carter's issues coordinator said the candidate is definitely against legalization.

Henry Jackson

Senator Henry "Scoop" Jackson of Washington would support federal legislation "greatly reducing or eliminating the penalty for simple possession" of marihuana. In a slightly vague statement, the conservative Democrat seemed to lean toward decriminalization of possession, while retaining strict laws against the sale or distribution of marihuana for profit.

Frank Church

Frank Church, of Idaho, has spent 19 years in the Senate, and although he is not a formal candidate, he is considered in the running. Church leans toward decriminalization, having "voted to reduce the federal penalty for simple marihuana possession, but to toughen the penalties for drug traffickers." He does not feel legalization can be justified.

Gerald Ford

President Ford is obviously having trouble coming to grips with grass. The White House has sent up so many different smoke signals in recent months that it's hard to know exactly what the President's pot policy is—or what it will be in the future.

After the President's son Jack admitted last fall to an occasional toke, Ford said, "As far as I am personally concerned, I disapprove of young people using marihuana. I believe the preponderance of evidence so fare is that it is not a healthy habit to have."

The White House told *High Times* that the President continues to oppose any change in current federal marihuana legislation.

Nevertheless, there have been rumors in Washington that the man in the White House has been reviewing his pot position. Those rumors gained some credence when the President granted an interview in New Hampshire and addressed himself to the issue of decriminalization. "Personally," said Ford, "I do not approve of the use of marihuana and believe that its use should be strongly discouraged as a matter of national policy. I do not support decriminalization because I believe that this would be interpreted by potential users and by other nations as a signal that the United States government no longer opposes marihuana use. I do, however, support reduced federal penalties for simple possession such as those contained in the proposed Criminal Justice Act of 1975." (That legislation would reduce penalties to a maximum of 30 days.)

Whether Ford will stick to his position remains to be seen.

Ronald Reagan

It is probably Ford's opponent for the Republican nomination who will dictate the President's final position on grass. Ford and Ronald Reagan have been battling for conservative support, with Reagan succeeding in forcing Ford into ever more hard-line stands on various issues. Reagan has a long history of opposing marihuana reform. "Although there has been no written policy developed," his top policy spokesperson said, "the Governor is basically opposed to decriminalization. He thinks marihuana is harmful, and if we get around to talking about it in some detail later we will put out some sort of statement."

Nelson Rockefeller

There is no sign that the years have taken their toll on Nelson Rockefeller's presidential ambitions. There *are* signs that, should the Ford campaign falter, the Vice President will jump in the race. Rocky concocted some of the harshest drug laws in the nation while serving as governor of New York, Curious, then, that the Vice President should have supervised the work of the President's Domestic Council on Drug Abuse and that according to an aide, the Council's recommendations were "consistent with the views of the Vice President." Some of the mystery clears when one takes a careful look at those recommendations. For while calling for a "selective law enforcement approach"—with marihuana and cocaine listed as low-priority drugs—the Council said that this did "not mean that all efforts should be devoted to high-priority drugs [heroin, amphetamines and barbiturates], and none to others." A far cry from decriminalization.

George Wallace

On the Democratic side, only Governor George Wallace of Alabama remains unreconstructed in his attitude toward grass. In response to NORML's query on the Governor's position, Wallace snappishly wrote: "In answer to your question, I do not support any steps to decriminalize any narcotic offenses." An aide to the candidate confirmed that "the statement you got there is the only statement on it," and seemed hostile to the suggestion that marihuana was not a narcotic

and had been proven relatively harmless in a series of medical studies. "It's a narcotic," the aide huffed; "that's what it is classified as across the country—the governor has not changed his impression of marihuana."

Hubert Humphrey

Senator Hubert Humphrey from Minnesota is reluctant to give a position on marihuana since he is not officially in the presidential race. However, Humphrey leads Democratic presidential popularity polls and—assuming Teddy Kennedy remains serious about refusing a convention draft—it is he who, most political insiders feel, will step in to become the Democratic candidate if that party's convention is deadlocked.

Though Humphrey's pot position was formulated some time ago, an aide to the Senator says it still stands. "I believe," said the latter, "that a realistic response to the use of marihuana should definitely include the further reduction of penalties under existing law relating to the personal possession and use of marihuana, in light of continuing medical research and to strengthen the equity of justice. What is demanded today are extended programs of drug abuse prevention and rehabilitation, with law enforcement being concentrated on the apprehension and conviction of the professional and criminal traffickers in dangerous drugs." The Humphrey aide explicated that this meant the Senator did not favor decriminalization, but thought it deserved further sutdy.

Sargent Shriver

Sargent Shriver, who was George McGovern's running mate in 1972, favors a decriminalization system such as exists in Oregon, "where they use a system of civil fines, like traffic citations, to clearly express society's *disapproval* of the indiscriminate use of the drug, but where more severe penalties—totally out of accord with the severity of the risk to society—are not used." Shriver adds, "We know alcohol and tobacco can be harmful, but we don't jail people for using them. Instead we try to dissuade them in other ways. I think that's the approach we ought to take with marihuana."

Eugene McCarthy

Running as an independent candidate, Eugene McCarthy hasn't changed his position much since his 1972 presidential bid—but then, in 1972 he already supported controlled legalization and government regulation of grass. Now, he recommends the removal of all criminal penalties for marihuana and a licensing system like that used for alcohol, with sale prohibited to minors. In a recent speech the former senator from Minnesota told his audience that present laws on marihuana were "barbaric," and that marihuana sold over the counter should have "a warning on the package that says it doesn't cause cancer."

[From the Christian Science Monitor]

DEMOCRATS LABOR TO KEEP PLATFORM PLANKS FLEXIBLE

(By David T. Cook)

WASHINGTON, D.C.—After swiftly completing the first three planks in their party platform, Democrats are laboring to outline—in the most politically palatable prose—more highly controversial issues addressed in unfinished planks.

In a conspicuous effort to write a platform which avoids excessive specificity and controversy, the Democrate are trying to make campaigning as painless and profitable as possible for their presumed candidate Jimmy Carter.

In a sweltering, crowded, canary yellow, hotel ballroom here, platform committee delegates opened their Tuesday (June 15) meeting by considering ideological alterations to the "human needs" plank which deals with busing, abortion, and welfare reform among other issues.

Later in the day the delegates, squeezed behind long cloth-covered tables, were to face the even more controversial foreign-affairs plan. Language putting the party on record as opposed to development of the B–1 bomber is one of the expected amendments to that segment of the platform.

CONCERTED EFFORT

Efforts to turn aside proposals which would sharpen the platform language have been seen in both task forces which propose revisions in the platform draft and in meetings of the full platform committee. The full committee votes on both task force amendments and those proposed from the floor.

Former Ohio Gov. John J. Gilligan, who helped frame the initial platform draft, noted that he and his fellow authors had "walked away" from the issue of offering amnesty to military deserters in an effort to avoid rekindling what he termed the "refrain of the McGovern campaign—amnesty, abortion, and acid."

The delegates, however, didn't "walk away" from the amnesty issue. In sharp reversal of Carter recommendations, the delegates, 55–44, voted in favor of "full and complete pardon for those in legal and financial jeopardy because of peaceful opposition to the Vietnam war."

The delegates did follow Carter urgings in defeating a proposal to legalize marihuana.

One example of the toned down, conservative thrust of the full platform committee's deliberations was the rejection of a proposal that the platform-supported national health insurance system be fully financed by public revenues.

COMPROMISE LANGUAGE

All the urging of Carter supporters, the platform delegates voted down the full federal funding language in favor of a compromise plan operating with employer-employee shared payroll taxes as well as general tax revenues. Under the Carter supporters' amendment, a national health insurance system would be phased in gradually rather than implemented at once.

And while the platform calls for a "simplified, federally financed system of income maintenance," the delegates approved a proposal for immediate federal take-over of local welfare costs and a gradual take-over of the state's share of welfare costs.

Before turning to more controversial topics, the platform committee dispensed Monday night with its economic, government reform, and state and local government platform planks.

LOWERING UNEMPLOYMENT

A key element in the economic plank is a stated commitment to lower adult unemployment to 3 percent within a four-year period. But the specific mechanisms to be used in achieving this goal—and their cost—are not detailed.

Instead, the document refers to the use of institutional reforms: conventional tax, credit, and spending policies; and "a broad range of carefully targeted employment programs."

THE POT VOTE

by ROBERT R. CARR

No doubt there are a few old-timers who still sit around and argue about Prohibition. In the not-too-distant future they may be sitting around talking about today's marijuana laws.

Robert R. Carr is senior program officer of the Drug Abuse Council in Washington, D.C.

For a nation that does so much important business in smoke-filled rooms, we have failed to appreciate the importance of what is really going on in the Great Marijuana Debate. The various special commissions labor on. Legislatures pick their way through possible bills. The police still arrest smokers by the paddy wagon. Lab rats by the thousands smoke grass by the hundred weight. But the end of the controversy is in sight. The marijuana users are bound to win.

Within a generation, the United States will probably accept legally what it has learned to accept illegally. Decriminalization of marijuana will come about through the same process that solved the problems of Civil War veterans and what to do with all the horses that used to pull milk wagons. The old generation that doesn't use grass very much will be replaced by the younger generation that does. The demographics are irresistible.

The truth is that policymakers at all levels will continue to be replaced by younger men and women who most likely have either tried marijuana themselves or are at least much more tolerant of those who have. When leaders from the younger generations take control with the support of the majority of their peers, the marijuana debate will be over.

If younger adults maintain the attitudes they now have as they grow older, and if marijuana use continues to remain at its present level or increases in subsequent "younger adult" groups, we can expect an ever-increasing acceptance of marijuana in the years ahead and an increasing pressure to remove criminal sanctions for its use and possession.

The reasons are clear. In spite of massive law-enforcement efforts in the last decade to suppress its sale and use, marijuana is gradually taking its place with alcohol as the recreational drug of choice for millions of Americans. Marijuana is readily available to all who seek it, and the indications are that its use will continue to rise with each succeeding generation.

"It is now much too late to debate the issue: marijuana versus no marijuana," a Consumers Union report correctly observed as early as 1972. "Marijuana is here to stay. No conceivable law-enforcement program can curb its availability."

The most recent national surveys confirm that 1972 forecast. The National Commission on Marihuana and Drug Abuse reported to the public that, as of October 1971, 24 million Americans had tried marijuana, with eight million of them using it regularly—all illegally. A national survey commissioned by the Drug Abuse Council in October 1974 indicated that 29 million Americans had tried marijuana, with over 12 million of them using it regularly.

Indeed, if you look at marijuana as a consumer product, the demographics are enough to light up the heart of any marketing expert. Those who have tried the product are, most of all, young. While marijuana use cuts across all demographic lines, age is the single sharpest dividing line. Almost one-half of those between the ages of 18 and 25 report having tried marijuana at least once, while only 3 percent of those over 50 say that they have ever tried it.

Smokers also tend to live in big cities, easing the problems of distribution and advertising. Marijuana use varies significantly according to city size and region of the country. If you live in a city of one million or more, the chances are that one of every four adults you meet has at least tried marijuana. If you live in a city of less than 500,000, the chances of your meeting an adult who has tried marijuana are reduced to one in 10.

The highly lucrative western-states market has the highest percentage of users: 27 percent of adults say that they have ever used marijuana, with the northeastern states running a close second at 22 percent. A little more than one-half as many adults in the north central and southern states say they have tried marijuana.

The marijuana users of today are thus concentrated in urban centers and are particularly strong in the country's two largest markets. And because of their age, the marijuana smokers of today are likely to be tomorrow's majority. At the high school level, almost one-half of all students surveyed said they had tried marijuana. At the college level, that figure jumps to over two-thirds.

"Marijuana is here to stay.
No conceivable law-enforcement program
can curb its availability."

A recent follow-up study of a nationwide sample of high school boys first studied in 1966 reflects usage trends in a young adult male population, as reported to the U.S. Congress by the secretary of health, education and welfare. In 1969, when this group turned high school seniors, 20 percent had tried marijuana. By 1974, five years later, over three times as many (62 percent) had done so.

Professionals rank among the highest of all adult occupational groups in at least experimenting with marijuana. In the years to come, the legal and medical professions will be dominated by those who have sampled marijuana, if not by those who use it regularly—at least insofar as surveys of students at law and medical schools can be taken as barometers.

By any standard, marijuana is plainly a growth market right up there with quadraphonic stereos and digital watches. It is also a nonpartisan favorite. Of those adults declaring a political affiliation, a significantly greater percentage of independents have used and continue to use marijuana than either Democrats or Republicans. Democrats, however, use pot more often than Republicans—a fact that will probably not come as a surprise to either group.

We are witnessing the gradual acceptance of a new recreational drug into our society despite efforts at repression and medical warnings. Law-enforcement efforts are apparently having the same effect as they did during alcohol prohibition—large numbers of individuals are ignoring the law and rendering it ineffective.

But the law has hardly been ludicrous to those ensnared by it. Since 1965, almost two million arrests have been made by state and local authorities alone for marijuana violations. During that same period, law-enforcement officials have contined to assure us that marijuana law enforcement is a low priority, especially for personal possession and use. Yet in 1974 alone, marijuana arrests numbered 450,000, compared with only 19,000 in 1965. The overwhelming number of those arrests were for possession, not for sale.

Obviously, punitive criminal sanctions have failed to deter millions of people from using marijuana, and it remains readily available in every part of the nation. High school and college students report that "marijuana is easy to get." They are offered marijuana by friends, and it is often at parties they attend. Among adults who choose not to use marijuana, the reason usually has very little to do with their ability to obtain it.

California's experience with severe criminal penalties for marijuana possession illustrates the law's minimal impact on either use or availability. California had until recently one of the harshest antipot laws in the nation, with a maximum penalty of up to 10 years in jail for possession of any amount. Yet a Drug Abuse Council-sponsored survey in February 1975, when this tough law was still on the books, revealed that almost three out of 10 California adults had tried marijuana at least once, perhaps the highest experimentation rate among adults in any state.

The survey also revealed that of those Californians who were not currently using marijuana, the possibility of legal prosecution or the unavailability of marijuana ranked at the bottom of those reasons chosen for abstaining. Instead, over 90 percent of nonusers cited a lack of interest or perceived health dangers as their reasons for not trying grass.

In his appearances before local lawmakers, John Finlator, retired deputy director of the former Bureau of Narcotics and Dangerous Drugs, underscores the ineffectiveness of the criminal law as a deterrence to marijuana use. "Our criminal laws are a failure," he told a Vermont legislative committee. "We are simply fighting a ghost."

Policymakers are beginning to respond to the reality that the marijuana laws have not only failed in their purpose, but that draconian punishments do not fit the offense. As early as 1972, the National Commission on Marihuana and Drug Abuse, authorized by the Congress and created by ex-President Nixon, issued its first report, aptly titled *Marihuana: A Signal of Misunderstanding*. The commission recommended that possession of marijuana for personal use no longer be treated as a criminal offense and that distribution of small amounts of marijuana not involving profit be treated the same. The president ignored the report, but others were listening.

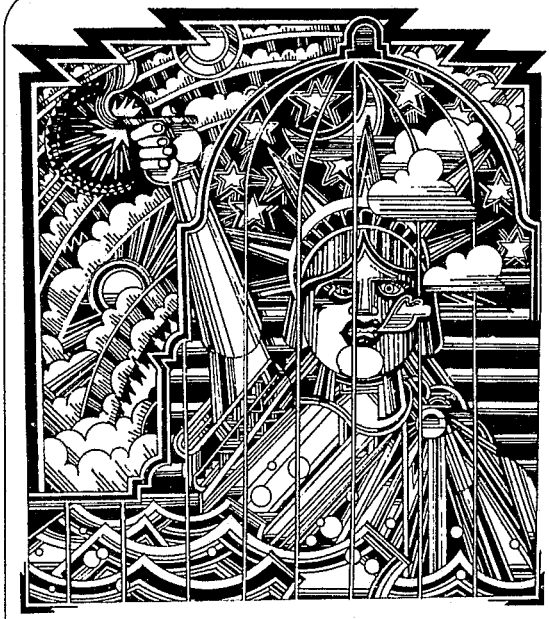
Within 18 months after the report was made public, the state of Oregon abolished criminal sanctions for possession of one ounce or less of marijuana and replaced them with a civil fine of $100 or less, similar to a traffic citation. The Oregon model is similar to that recommended by the commission—an official policy of discouragement of use by the imposition of a civil sanction and the elimination of criminal penalties. Criminal sanctions are retained, however, for possession of over one ounce, for selling and for cultivation.

What would be the results of the abolition of criminal penalties for possession of marijuana, and would the public accept that change? Evidence on this question comes from Oregon, where the Drug Abuse Council sponsored two identical surveys to assess the impact of their decriminalization law—the first survey was conducted one year after the new law went into effect, and the second was conducted one year after the first.

The fears of many that marijuana use would dramatically increase if criminal penalties were removed are not borne out by the Oregon experience. The first survey found that the number of individuals using marijuana had not significantly increased among Oregon adults during the year following removal of criminal penalties for simple possession of one ounce or less. Indeed, through a series of interviews with 802 respondents—a cross section of Oregon residents aged 18 or over—we found that only 72 adults (9 percent) reported being current marijuana users. Only four of the 802 respondents (0.5 percent) reported that they had started using it in the year following decriminalization.

Surprisingly, of those adults using marijuana at the time of the survey, four of every 10 reported an actual de-

"Professionals rank among the highest of all adult occupational groups in at least experimenting with marijuana."



crease in the amount they smoked during that year, while only one of 20 reported an increase. More than one-half (52 percent) of current users reported no change in consumption.

MARIJUANA USE IN OREGON

	Adults who have ever used	Adults who currently use
Oct. '74	19%	9%
Oct. '75	20%	8%

The follow-up survey found no significant difference among adults who said either that they had ever used or currently use marijuana. And, among those currently using, a similar decrease in consumption was reported. It would appear that marijuana use has stabilized among Oregon adults during the two years following the removal of criminal penalties.

The Oregon surveys also indicate that once the law has been changed to remove criminal sanctions, the public will accept that change. In both surveys, almost six of 10 adults favored the elimination of criminal penalties for the possession of small amounts of marijuana—the majority favored either the new law as is or even more lenient legal alternatives.

Within the last year, California, Maine, Alaska, Colorado and Ohio have substituted fines for jail sentences for possession of small amounts of marijuana. Several other states are presently considering such an approach. The Alaskan Supreme Court has gone even farther by declaring criminal penalties for marijuana possession to be unconstitutional invasions of privacy.

Yet criminal penalties remain in effect in 44 states, and the arrests continue. According to the latest federal statistics, state and local enforcement agencies spend some $600 million per year enforcing their marijuana laws.

Public attitudes are divided on what should be the proper legal response to marijuana use, but they seem to be moving toward more lenient approaches. Survey results compiled by the National Institute on Drug Abuse (*NIDA*), the federal drug-abuse treatment and research arm, indicate that 86 percent of adults are against sending marijuana smokers to jail for first conviction of possession, but they prefer other alternatives ranging from no penalty to probation and mandatory treatment.

The Drug Abuse Council's own national survey points to a sharp division of opinion toward legal alternatives to possession of small amounts of marijuana between those who have used it and those who have never tried it. Eight of every 10 adults who have ever used favor reducing or eliminating criminal penalties, compared with three of 10 of those who have never used.

The public's attitude toward the various legal alternatives varies from region to region, paralleling those in patterns of use. Of adults in the western states where use is the highest, 51 percent favor outright elimination of all criminal penalties for the possession of even small amounts of marijuana; that percentage drops precipitously to 31 percent in the southern states, where use is among the lowest.

Similar sharp variations in attitude are evident among age groupings, with younger adults by far the most lenient in outlook and older adults opting for the law as it now is or for stiffer penalties. Again, however, it should be noted that attitudes among these age groups generally follow patterns of use. Even more lenient attitudes toward mari-

"Marijuana is plainly a growth market right up there with quadraphonic stereos and digital watches."

juana laws are seen among the youth who will be reaching voting age in the next few years.

Decriminalization of marijuana is thus a matter of time. But meanwhile we are bombarded with a vociferous, if not acrimonious, rearguard action. Some of the summary language used, for example, to preface the marijuana hearings before the U.S. Senate Subcommittee on Internal Security in 1974 was reminiscent of the national hysteria of the 1950s. The subcommittee saw the marijuana euphoria as a danger to democracy with "subversive groups" playing a "significant role in the spread of the epidemic." It saw the nation being "saddled with a large population of semizombies." If the "epidemic is not rolled back," the subcommittee summary warns, "our society may be largely taken over by a marijuana culture."

The more serious debate about the possible health consequences of marijuana use has been flawed by a series of research reports, some of which resemble propaganda more nearly than scientific research. Science itself has become a weapon in a battle between conflicting values and lifestyles, and many of the scientists have taken off their hats to become protagonists or antagonists.

Without considering the detailed research findings, it is useful nonetheless to put them in the general context of the questions scientists themselves are asking about their purposes and methodologies. In early 1975, the Drug Abuse Council sponsored a conference in Washington, D.C., designed to comprehensively review the major marijuana studies reported since the commission issued its final report in March 1973. The participants were 19 distinguished scientists from the fields of immunology, genetics, endocrinology, pharmacology, psychiatry, psychology, internal medicine and neurology—those areas where the more serious allegations of potential health harm have been raised.

There was general agreement among the participants that "there are no new reasons to be especially disturbed by the use of marijuana." The scientists cautioned against acceptance of most of the recent findings prior to the completion of corroborating research. They called for large-scale epidemiological investigations to identify potential health consequences of chronic marijuana use, rather than the isolated animal research and retrospective studies that have dominated the area.

The National Institute on Drug Abuse, charged with the yearly responsibility of reporting to the U.S. Congress on research related to marijuana and health, says that "none of the results of marijuana research are conclusive." The institute itself spends over $5 million a year on marijuana-related studies. Yet, in five consecutive annual reports, it has never concluded that marijuana use poses a significant health danger, although it does point to possible negative consequences such as genetic changes and interference with driving skills. Everyone seems to agree that it is wise to abstain from marijuana if pregnant or when driving a motor vehicle or flying an airplane.

Few responsible scientists, however, would question that marijuana can be harmful, especially when taken in high dosages over an extended period of time. This is true of almost any drug, licit and illicit, with alcohol and tobacco ranking at the top of almost anyone's list of potential health hazards. But in pursuing a policy of discouraging use of alcohol and tobacco, especially at harmful levels, we have not framed our laws to make criminals of users.

The discouragement approach for marijuana is attracting increasing support among high-level policymakers. At a February 1976 news conference called to discuss the government's fifth annual report to Congress on marijuana and health, NIDA director Robert L. DuPont, M.D., endorsed the view that civil penalties should be substituted for criminal prosecution of possession of small amounts of marijuana. DuPont, who had previously avoided drawing comparisons among the three most widely used recreational drugs, declared alcohol and cigarettes to be far more dangerous to the health of the user than grass.

Legislation to remove criminal penalties for simple possession of marijuana has been introduced in Congress by Sen. Jacob Javits (R.-N.Y.) and Rep. Edward Koch (D.-N.Y.).

President Ford's Domestic Council Task Force on Drug Abuse released yet another major review of the nation's drug problems in its white paper to the president in December 1975. While not going so far as endorsing decriminalization of the Oregon variety, it did recommend that the marijuana laws go virtually unenforced.

The task force ranked drug-abuse priorities among the major classes of drugs according to dependence liability, severity of personal and social consequences and size of core problem. Marijuana was not only declared to be the least serious of the various problems associated with a variety of drugs, but it ranked "low" on each of the measurement scales.

There are signs that President Ford, unlike his predecessor, is listening to the advice of his domestic council that "public policy should be most concerned with those drugs which have the highest social cost." Ford has offered a general endorsement of the report and promises to put its recommendations into effect. It is too early to know whether the president will recognize the desirability of going beyond unenforced laws to repeal of those laws. He would attract considerable public suport if he did, and the experience with marijuana decriminalization, at least in Oregon where it has had a good chance to be tested, tells us that he ought to forge ahead.

The evidence to date should convince all but the most obstinate that the criminal law is not the answer and has failed to deter or decrease marijuana use. The attitudes those laws embody have gone up in smoke. A substantial number of Americans have voted with their lungs for their repeal.

The relative youth of today's marijuana users, their wide geographic spread and their heavy representation in the ranks from which the power structure of the future will be drawn makes the decriminalization of their drug of recreation inevitable. The major remaining question is the final cost of maintaining an archaic legal code that is bound to collapse sooner or later. IB

"The evidence should convince all but the most obstinate that criminal law has failed to deter or decrease use."

[From the Washington Star, Nov. 2, 1976]

MARIHUANA SMOKING ON INCREASE AND SO ARE ARRESTS

(By Abbott Combes)

People smoke it more. People enjoy it more. And people get arrested more for smoking and enjoying it more.

Marihuana. Killer weed of yesteryear, lightsome lift of today.

With public tolerance of once-dreaded pot apparently at a historic high, with the kindred impression among consumers that its use has been de facto decriminalized, the statistics are particularly astounding.

In Maryland and Virginia, marihuana-related arrests in 1975 were nearly double those of the previous year. Arrests likewise in creased in the District, through not so dramatically.

The local proliferation parallels a national trend. Marihuana arrests rose from 18,815 in 1965 to 445,600 in 1974, with each year between demonstrating progressively dramatic gains for a nine-year catch of 1.9 million Americans. (State-by-state statistics for 1975 have not yet been compiled by the FBI's uniform crime reports division.) And although eight states have decriminalized possession, the spiraling is expected to continue.

Present estimates place the number of American marihuana users at 13 million (8 percent of the adult population and 12 percent of those between the ages of 12 and 17) and the number who have sampled it at least once at 34 million (19 percent of the adults and 23 percent of the young).

In their annual crime in Maryland compilation for 1975, state police officials report that 75.4 percent of a total of 13,799 drug violations involved marihuana. Translated in numbers, this means 10,404 persons were arrested for having something to do with marihuana. The figure for 1974 was 5,997.

A similar Virginia report found that 77 percent of 11,288 drug arrests, or 8,691, involved marihuana. The figure for 1974 was 4,876.

(In the case of both Maryland and Virginia, 1975 was the first year statewide crime statistics were compiled by a single agency, the state police. Previously, figures were fed the FBI's computer by a disparate number of state and local law enforcement bodies. In 1974, for example, 16 agencies recorded Maryland's 5,997 arrests, and 23 agencies were employed for Virginia's 4,876.)

In the District, a total of 3,002 marihuana charges were brought in 1975, compared to 2,678 a year earlier. The large majority of these were for possession—2,967 in 1975, and 2,536 in 1974. (Maryland and Virginia do not provide breakdowns.)

The District's largest inflation in marihuana arrests came in the early 1970s. In 1970 there were 266 marihuana-related arrests, a figure that more than doubled to 694 a year later. But by 1972 the number had climbed to 1,667 and by 1973 to 2,553.

Burgeoning busts, however, do not translate into packed penitentiaries.

Most often, at least in the possession cases that account for the bulk of the load, discouraging words replace rides to the station, fines supercede sentences and "drug schools" double for prisons.

Take Northern Virginia. The results of an examination of arrests and court dispositions in Alexandria, Arlington and Fairfax County show that the punishment mostly fitting this crime is a fine or a dismissal.

Under the auspices of the local chapter of the National Organization for the Reform of Marihuana Laws (NORML), a researcher found the following:

Of Alexandria's 70 marihuana arrests in 1975, there was only one jail sentence (for 30 days). The remaining cases were resolved this way: 34 were dismissed, 21 were fined $50, two were fined $25, one $500, one $100, one $75, one was given a year's probation and eight went to the grand jury on sale or possession-with-intent-to-distribute charges.

Of Fairfax County's 488 marihuana arrests (421 males, 67 females and 167 under age 18) in 1975, there were eight jail sentences—four for 30 days, one for 20 days, one for 180 days, one for 12 months and one for 12 months with 10 months suspended. A partial accounting of the other cases included 62 dismissals, 35 sent to a grand jury, 21 $50 fines, 4 $100 fines, 2 $250 fines and 1 $75 fine.

Of Arlington's 163 possession, 10 sale and 12 possession-with-intent-to-distribute cases, exact disposition statistics were not available. However, the researcher concluded: "Officers I talked to felt most were nolle prossed (dropped) or received a delayed sentencing which in the event they kept out of trouble was a dismissal.

They also said . . . most policemen weren't bothering much with marihuana arrests."

Away from urban areas, policeman definitely are bothering with marihuana arrests. And rural judges are not adverse to strict sentencing. The difference, apparently, is lack of familiarity.

In the country, the stereotype of the Haight-Asbury hippie-dope addict persists, along with the steppingstone theory that marihuana smoking leads to habit-supporting crime, along with the dirty-old-man theory that has pushers skulking around grade-school playgrounds.

Throughout the metropolitan region, there are alternatives to imprisonment, and even fines, for first offenders.

In Prince Georges County, for example, 453 persons were admitted to "drug school" last year as an alternative to trials. According to the state's attorney's office, 355 persons graduated and 98 failed. Those that fail—chiefly for skipping school—get sent back to court. The school consists of four sessions, meets once a week and requires a five-page paper for graduation.

And in the District there are two first-offender programs, one operated by the U.S. attorney's office and one (Operation Crossroads) by Superior Court. In such instances, charges are filed in court, a continuance is granted and then the charges are dropped upon the successful completion of the program.

Given an increase in public acceptance—a recent NORML survey in Alexandria indicated 70 percent of the town's voters favored either minimal fines or no punishment at all for consumers, and a Harris Survey disclosed that Americans see more dangers in alcohol than in marihuana—why the escalation of arrests?

Because marihuana smokers have come out of the closet, have raised the shades they once puffed behind, have gone public. Marihuana is used openly at Capital Centre rock concerts, not to mention in Georgetown's street-corner society.

The flouting confounds the police. Simple marihuana possession may be merely a misdemeanor in local jurisdictions (as it has been federally since 1970), but it is still against the law. Good law, bad law, the policeman's job is to enforce it.

This has put police in a bind, with the result that some will make arrests, some will give lectures, some will destroy the discovered marihuana, some will inform parents of the offspring's offense, some will say smoke at home, some will simply sniff in the other direction and some might even confiscate for personal use later on. They also do not admit for attribution that such are the cases.

Witness the method of a local vice squad detective called upon to investigate a report that someone was growing a marihuana plant. He arrived at the door, without warrant, and asked if he could come in to look around. The answer, as he fully anticipated, was no. The good-natured detective announced that he would return in three hours with a warrant.

Most possession arrests occur in one of three ways: a routine check, say of a hitchhiker, turns up marihuana; a plant grows in a backyard and it is identified as marihuana; a person smokes it in public.

John Zwerling is a 33-year-old Alexandria lawyer whose practice consists primarily of drug cases. He is also Northern Virginia coordinator for NORML and as such is lobbying for decriminalization. (Alaska, California, Colorado, Maine, Minnesota, Ohio, Oregon and South Dakota already have decriminalized possession.)

For Zwerling, reduced sentences and fines are not enough. "The more lenient sentences are because of the bodies that have gone before them. It's costing the taxpayers a bloody fortune and breeding disrespect for the law at the same time," he says. "It's a situation where many police officers don't want to enforce it because it's a pain in the ass.

"The only rationale for making something a crime is to discourage—this hurts me more than it hurts you—but the police record is going to hurt them more than the drug.

"No one has ever been able to show any long-term or short-term harm," notes Zwerling, comparing the Virginia penalty for sale of a single joint with other crimes. Various types of murder and mayhem carry more lenient punishments than the sale of a single marihuana cigarette.

Making the cliche comparison between marihuana and martinis, hitting the hypocrisy of the people in authority who "tolerate their own recreational drugs" and ban marihuana, insisting that "no one is saying people should use recreational drugs," Zwerling says, "NORML is the vehicle through which the system is being tested. Parents tell their kids. 'The law is the law—you have to work

through the system to change it.' If we can't change the laws by working through the system, the entire argument is going to fall flat on its face."

There seems to be a consensus that laws making marihuana possession a crime will fall. But when is another matter. Anything so intimately tied to community standards, standards that swivel almost imperceptively, takes time.

The Justice Department, for example, was not prepared for acting U.S. Atty. Earl Silbert's 1974 announcement that he would no longer prosecute persons nabbed with small amounts of marihuana. Silbert, ordered Justice, was to enforce all laws on the books. No longer acting but the real U.S. attorney, Silbert says that about 20 percent of all misdemeanor cases prosecuted by his office involve marihuana, noting the current absence of undercover sales cases.

And the D.C. City Council was not prepared for the onslaught from local churches when it considered a decriminalization bill a year ago. After initially approving the measure 8–4, the council eventually voted 7–6 to table the measure.

"The timing is absolutely wrong," commented Chairman Sterling Tucker, a supporter who nevertheless voted for tabling.

So it goes. Maryland and Virginia legislators will again have opportunities to consider such reforms next year.

No matter the legal outcome, there is bad news for smokers. Herb famine and federal seizures have created dry times. Laments High Times, a magazine that concentrates on same, ". . . the dope shortage has reached crisis proportions with no end in sight. Repeat: no end in sight."

The solution? "The only hope for a high America," the magazine editorializes in its November issue, "is a return to the Victory Gardens that helped win World War II."

LEGISLATION

LAWS OF ALASKA

1975

Source: FCCS HCS SSSB 350 Chapter No. 110

AN ACT Relating to penalties for unauthorized possession and control of certain drugs

Be it Enacted by the Legislature of the State of Alaska:

Section 1. AS 17.12.110 is amended to read: [1]

SEC. 17.12.110. Penalties. (*a*) A person who violates a provision of this chapter relating to the possession or control of depressant, hallucinogenic and stimulant drugs, other than marijuana, when his possession or control is for his own use, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $1,000, or by both.

(*b*) A person who violates a provision of this chapter other than one mentioned in (*a*) of this section, or a person who violates a provision of this chapter relating to the possession or control of depressant, hallucinogenic and stimulant drugs, when his possession or control is for the purpose of sale or other disposal to another person, is guilty of a felony and upon conviction is punishable as follows:

(1) for the first offense, by imprisonment for not more than 25 years, or by a fine of not more than $20,000, or by both;

(2) for the second and subsequent offenses, by imprisonment for any term of years or life, or by a fine of not more than $25,000, or by both.

(*c*) A person who violates a provision of this chapter by selling or otherwise disposing of a depressant, hallucinogenic or stimulant drug to a person less than 19 years of age is guilty of a felony and upon conviction is punishable by imprisonment for any term of years or life, or by a fine of not more than $25,000, or by both.

(*d*) A person who: (1) uses marijuana on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place, or (2) possesses or controls more than an ounce of marijuana on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place, or (3) possesses any amount of marijuana while operating a motor vehicle or airplane, or (4) while under the age of 18, possesses, controls or uses any amount of marijuana is, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1,000.

(*e*) A person 18 years of age or older who violates this chapter by possession or control of any amount of marijuana in other than a public place, when his possession or control is for his own use, or by possession of one ounce or less of marijuana in a public place, is punishable by a civil fine of not more than $100. Punishment under this subsection shall be initiated only by civil complaint or citation. The court may establish procedures for payment of fines by mail.

(*f*) In this section, "public place" means a place which is either in public ownership or a place available to public access.

STATE OF CALIFORNIA

Senate Bill No. 95

An act to amend Sections 11357, 11360, 11363, 11364, 11365, 11550, and 11590 of, and to add Sections 11006.5 and 11361.5 to, the Health and Safety Code, and to amend Section 853.6 of the Penal Code, relating to controlled substances.

[1] Permitted to become law without signature. Actual effective date: September 2, 1975.

83-313 O - 77 - 25

LEGISLATIVE COUNSEL'S DIGEST

SB 95, Moscone. Marijuana: penalties and offenses.

(1) The present statute specifying the penalty for unlawful simple possession of marijuana does not differentiate between large and small amounts of marijuana and makes no distinction based on potency. Under current law, unlawful simple possession of marijuana is punishable optionally as a misdemeanor or as a felony, but, if a person convicted thereof has been previously convicted of any of specified drug-related offenses, it is a felony and punishable by longer maximum and minimum terms in state prison.

This bill would revise the penalty for unlawful simple possession of marijuana to make possession of not more than 1 avoirdupois ounce of marijuana, other than "concentrated cannabis," a misdemeanor punishable by a fine of not more than $100.

However, the penalty for such offense with 3 or more previous convictions for possession of not more than 1 avoirdupois ounce of marijuana during the 2 years immediately preceding the offense would be diversion and referral to an appropriate community program for education, treatment, or rehabilitation, as specified.

Possession of more than one ounce of marijuana, other than "concentrated cannabis," would be a misdemeanor punishable by imprisonment in the county jail for not more than 6 months, by a fine of not more than $500, or by both such fine or imprisonment. Possession of "concentrated cannabis" would be punishable by imprisonment in the county jail for not more than one year or by a fine of not more than $500, or by both such fine and imprisonment, or would be punishable by imprisonment in the state prison for not more than 5 years. "Concentrated cannabis," for purposes of the bill, would be defined to mean the separated resin, whether crude or purified, obtained from marijuana.

(2) The present statute specifying the penalty for unlawfully furnishing or offering to furnish marijuana makes no distinctions based upon the amount furnished or offered, the potency of the marijuana furnished or offered, or whether any consideration is given or to be given in exchange for the marijuana. Under current law, unlawfully selling, giving away, or furnishing marijuana or offering to do the same is punishable as a felony, with increased maximum and minimum terms prescribed for persons previously convicted of any of specified drug-related offenses.

This bill would revise the penalty for giving away or offering to give away marijuana to make giving away or offering to give away not more than 1 avoirdupois ounce of marijuana, other than "concentrated cannabis," a misdemeanor punishable by a fine of not more than $100.

Existing penalties would be retained with respect to giving away or offering to give away more than one ounce of marijuana or any quantity of "concentrated cannabis."

(3) The present statute specifying the penalty for unlawfully transporting, offering to transport, or attempting to transport marijuana does not differentiate beween large and small amounts of marijuana and makes no distinction based on potency. Under current law unlawfully transporting, offering to transport, or attempting to transport marijuana is punishable as a felony, with increased maximum and minimum terms prescribed for persons previously convicted of any specified drug-related offenses.

This bill would revise the penalty for such offenses to make unlawfully transporting, offering to transport, or attempting to transport, not more than 1 avoirdupois ounce of marijuana, other than "concentrated cannabis," a misdemeanor punishable by a fine of not more than $100. Existing penalties would be retained with respect to unlawfully transporting, offering to transport, or attempting to transport more than one ounce of marijuana or any quantity of "concentrated cannabis."

(4) Current statutes specify that it is unlawful to (a) possess any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking marijuana, or (b) visit or be in any room or place where any marijuana is being unlawfully smoked or used with knowledge that such activity is occurring.

This bill would delete such offenses.

(5) Existing law makes it a misdemeanor, with a mandatory 90-day minimum jail term, for any person to use or be under the influence of marijuana, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.

This bill would delete such offense.

(6) Nothing in present law requires the destruction of records pertaining to arrests and convictions for violation of penal statutes relating to marijuana.

This bill would require the destruction of records of any court or state or local public agency pertaining to an arrest or conviction for possessing marijuana, other than "concentrated cannabis," or for giving away or otherwise furnishing without consideration, transporting, offering to transport, or attemping to transport not more than one ounce of marijuana, other than "concentrated cannabis," where the conviction or the arrest, if there is no conviction, occurs after January 1, 1976. The bill would also require superior courts, as specified, to order the destruction of records of courts and public agencies of convictions for possession of marijuana, and arrests for possession of marijuana not followed by conviction, occurring prior to January 1, 1976, upon presentation of a petition by the person subject to such arrest or conviction and payment by such person of the costs of destruction, not exceeding $50, and would require destruction of such court order. The bill would prohibit public agencies from attaching any disability, as specified, on account of an arrest or conviction for which records are required to be destroyed under the bill, or on account of facts or circumstances leading to such an arrest or conviction.

(7) Present law authorizes the issuance of citations for misdemeanors in specified cases.

This bill would require the issuance of citations to persons possessing, giving away or otherwise furnishing without consideration, offering to give away or otherwise furnish without consideration, transporting, offering to transport, or attempting to transport not more than one ounce of marijuana, other than "concentrated cannabis."

(8) The bill would make changes in provisions relating to the registration of persons convicted of controlled-substance offenses in order to conform to certain penalty changes which would be made by the bill.

(9) Under present law penalties prescribed for certain violations of the California Uniform Controlled Substances Act are increased if the person convicted thereof has been previously convicted of prescribed offenses involving marijuana.

This bill would delete previous convictions of misdemeanors involving marijuana from those previous convictions which result in increased penalties in such cases.

(10) The bill would make no appropriation for the reimbursement of any local agency for costs incurred by it pursuant to the bill for a specified reason.

The people of the State of California do enact as follows:

Section 1. Section 11006.5 is added to the Health and Safety Code, to read:

11006.5. "Concentrated cannabis" means the separated resin, whether crude or purified, obtained from marijuana.

SEC. 2. Section 11357 of the Health and Safety Code is amended to read:

11356. (a) Except as authorized by law every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison for a period of not less than one year or more than five years.

(b) Except as authorized by law, every person who possesses not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as

provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than one avoirdupois ounce of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

SEC. 3. Section 11360 of the Health and Safety Code is amended to read:

11360. (a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in the state prison for a period of five years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than three years in the state prison.

If such person has been previously convicted once of any offense described in subdivision (b), the previous conviction shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of five years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than five years in the state prison.

If such person has been previously convicted two or more times of any offense described in subdivision (b), the previous convictions shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 10 years in the state prison.

(b) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall be charged pursuant to subdivision (a) of this section:

(1) Any felony offense described in Section 11378, 11379, or 11380.

(2) Any felony offense described in this division involving a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(3) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(c) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

SEC. 4. Section 11361.5 is added to the Health and Safety Code, to read:

11361.5. (a) Records of any court of this state, state agency, or local public agency pertaining to the arrest or conviction of any person for a violation of subdivision (b) or (c) of Section 11357 or subdivision (c) of Section 11360, shall not be kept beyond two years from the date of such a conviction, or from the date of the arrest if there was no conviction. It shall be the duty of each court and public agency having custody of such records to provide for the timely destruction thereof in accordance with the provisions of this subdivision. The requirements of this subdivision shall not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to such date.

(b) Any person convicted of a violation of Section 11357 or a statutory predecessor thereof, or arrested but not convicted for a violation of Section 11357 or a statutory predecessor thereof, may petition the superior court for the county in which the conviction or arrest occurred for an order directing the destruction of records pertaining to such arrest or conviction. If the court, after a hearing to determine the facts, finds that such an arrest or conviction occurred,

it shall, subject to payment of the costs of destruction by the petitioner, order each court of this state, state agency, and local public agency having records pertaining to the arrest or conviction to destroy all records thereof in the possession of the court or agency within such reasonable time as the court in its order shall determine. However, in no event shall the petitioner be required to pay more than fifty dollars ($50) for the aggregate costs of destruction. Moneys submitted by the petitioner for the costs of destruction of such records shall be remitted by the court to the agencies and courts destroying such records to reimburse the cost thereof. Upon the expiration of such reasonable time as the court in its order shall determine, the order of the court shall be destroyed.

This subdivision shall be applicable only to arrests and convictions occurring prior to January 1, 1976.

(c) Destruction of records required by this section shall be accomplished by actual physical destruction of the document constituting such a record and any copies or photographic records thereof. However, if actual physical destruction of a record would necessarily effect the destruction of other records, the agency charged with the destruction thereof may comply with the requirements of this section by permanently obliterating such record.

(d) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for a violation of Section 11357 or 11360, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) or pursuant to an order of the court authorized by subdivision (b). As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

SEC. 5. Section 11363 of the Health and Safety Code is amended to read:

11363. (a) Every person who plants, cultivates, harvests, dries, or processes any plant of the genus Lophophora, also known as peyote, or any part thereof shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison for a period of not more than 10 years.

(b) If such person has been previously convicted of any offense described in subdivision (c), the previous conviction shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of not less than two years or more than 20 years.

(c) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall be charged pursuant to subdivision (b) of this section:

(1) Any offense described in Section 11378, 11379, or 11380.

(2) Any offense described in this division involving a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(3) Any offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(4) Any offense described in this division involving marijuana, except a misdemeanor.

SEC. 6. Section 11364 of the Health and Safety Code is amended to read:

11365. It is unlawful to visit or to be in any room or place where any controlled strument or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

SEC. 7. Section 11365 of the Health and Safety Code is amended to read:

11365. It is unlawful to visit or be in any room or place where any controlled substances which are specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or which are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring.

SEC. 8. Section 11550 of the Health and Safety Code is amended to read:

11550. No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, excepting when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. The court may place a person convicted hereunder on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail.

SEC. 9. Section 11590 of the Health and Safety Code is amended to read:

11590. (a) Any person who, on or after the effective date of this section, is convicted in the State of California of any offense defined in Section 11350, 11351, 11352, 11353, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11368, or 11550, or any person who is on or after such date, discharged or paroled from a penal institution where he was confined because of the commission of any such offense, or any person who is, on or after such date, convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(b) Any person who, on or after the effective date of this section is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357 or 11360.

SEC. 10. Section 853.6 of the Penal Code is amended to read:

853.6 (a) In any case in which a person is arrested for an offense declared to be a misdemeanor and does not demand to be taken before a magistrate, such person may, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the arresting officer or his superior determines that the person should be released, such officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court. If the person is not released prior to being booked and the officer in charge of the booking or his superior determines that the person should be released, such officer or superior shall prepare such written notice to appear in court.

(b) Unless waived by the person, the time specified in the notice to appear must be at least five (5) days after arrest.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate may fix the amount

of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case, unless the defendant has been charged with violation of Section 374b or 374e of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he has previously been convicted of a violation of such section or punishable under such section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer shall indicate on the notice to appear whether he desires the arrested person to be booked as defined in subdivision 21 of Section 7 of this code. In such event, the magistrate shall, before the proceedings are finally concluded, order the defendent to be booked by the arresting agency.

(h) A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he has taken custody of a person pursuant to Section 847.

(i) If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking, the arresting officer, the officer in charge of such booking or his superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he should be released pursuant ot the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his release pursuant to the provisions of this chapter.

(j) Whenever any person is arrested by a peace officer for a misdemeanor, other than an offense described in subdivision (b) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code, and is not released with a written notice to appear in court pursuant to this chapter, the arresting officer shall indicate, on a form to be established by his employing law enforcement agency, whether or not each of the following was a reason for such nonrelease:

(1) The person arrested was so intoxicated that he could have been a danger to himself or to others.

(2) The person arrested required medical examination or medical care or otherwise unable to care for his own safety.

(3) The person was arrested for one or more of the offenses listed in Section 40302 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) Any other reason. If the person arrested was not released for one or more of the reasons specified in paragraphs (1) to (8), inclusive, the arresting officer shall specifically state on the form the reason for the nonrelease.

Such form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him from custody before trial.

SEC. 11. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 12. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act, because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

STATE OF COLORADO

1975

AN ACT

House Bill No. 1027. By Representatives Howe, Arnold, Barragan, Brown, Burrows, Castro, Dick, Frank, Knox, Lloyd, McCroskey, Marks, Orten, Smith, Taylor, and Valdez; also Senators Cisneros, Comer, Darby, DeBerard, Groff, Holmc, Kadlecek, Plock, Sandoval, and Smedley

Concerning the Drug Cannabis

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 12-22-301 (16), Colorado Revised Statutes 1973, is amended to read:

[NOTE.—Capital letters indicate new material added to existing statutes; all small capital letters indicate deletions from existing statutes and such material not part of act.]

12-22-301. *Definitions.* (16) "Narcotic drugs" means coca leaves, opium, CANNABIS, and any compound, manufacture, salt derivative, mixture, or preparation of coca leaves CANNABIS, and opium, including morphine, codeine, and heroin but not including apomorphine, noscapine, papaverine, narceine, cotarnine, isonipecaine, amidone, isoamidone, or keto-benidone, or any of their salts, and any other drug EXCEPT CANNABIS to which the federal "Controlled Substances Act of 1970" may apply, and any drug found by the state board of health, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the date of publication of such finding by said state board of health.

Section 2. 12-22-303 (1), Colorado Revised Statutes 1973, is amended to read:

12-22-303. *License required—fee.* (1) No person knowingly shall cultivate, grow, produce, process, or manufacture, or knowingly allow to be cultivated, grown, produced, processed, or manufactured, on land owned, occupied, or controlled by him any opium, coca leaves, CANNABIS, MARIJUANA, or other narcotic drug without first obtaining a license as a manufacturer of narcotic drugs from the department of health.

Section 3. 12-22-311 (1) (b) and (4), Colorado Revised Statutes 1973, are amended to read:

12-22-311. *Records to be kept.* (1) (b) No record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours: Two grains of opium; one-quarter of a grain of morphine or of any of its salts; or one grain of codeine or of any of its salts; OR ONE-HALF GRAIN OF EXTRACT OF CANNABIS OR ONE GRAIN OF ANY MORE POTENT DERIVATIVE OR PREPARATION OF CANNABIS; or a quantity of any other narcotic drug or any combination of narcotic drugs that

does not exceed pharmacologic potency of any one of the drugs named above in the quantity stated.

(4) The form of records shall be prescribed by the department of health. The record of narcotic drugs received in every case shall show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture and the date of such production or removal from process of manufacture; AND the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. AND THE PROPORTION OF RESIN CONTAINED IN OR PRODUCIBLE FROM THE DRIED FLOWERING OR FRUITING TOPS OF THE PISTILLATE PLANT, CANNABIS SATIVA L., FROM WHICH THE RESIN HAS NOT BEEN EXTRACTED, RECEIVED, OR PRODUCED. The record of all narcotic drugs sold, administered, or dispensed shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, or otherwise disposed of, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section; except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

Section 4. 12-22-403, Colorado Revised Statutes 1973 (numbered as 48-8-1, C.R.S. 1963), and the amendment thereto enacted by section 1 of chapter 55, Session Laws of Colorado 1974, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

12-22-403. DEFINITIONS. (1.5) "Cannabis" includes all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of its mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(1.6) "Cannabis concentrate" means hashish, tetrahydrocannabinois, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinois.

(13.5) (a) "Tetrahydrocannabinois" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp., or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(I) ^{1}cis or trans tetrahydrocannabinol, and their optical isomers;

(II) ^{6}cis or trans tetrahydrocannabinol, and their optical isomers;

(III) ^{3,4}cis or trans tetrahydrocannabinol, and its optical isomers;

(b) Since nomenclature of substances listed in paragraph (a) of this subsection (13.5) is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered.

Section 5. 12-22-403 (4), Colorado Revised Statutes 1973, is amended to read:

12-22-403. DEFINITIONS. (4) "Dangerous drug" means CANNABIS, CANNABIS CONCENTRATE, or any depressant drug, hallucinogenic drug, stimulant drug, or tranquilizer, or any of such drugs in a mixture or compound or with any other substance.

Section 6. 12-22-404 (1) (d), Colorado Revised Statutes 1973, is amended, and the said 12-22-404 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-22-404. UNAWFUL ACTS. (1) (d) The possession or use of any dangerous drug, EXCEPT CANNABIS OR CANNABIS CONCENTRATE, or the attempt to obtain a dangerous drug, EXCEPT CANNABIS OR CANNABIS CONCENTRATE, or to procure the administration of a dangerous drug, EXCEPT CANNABIS OR CANNABIS CONCENTRATE, by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription or of any written order or chart order, or by the use of a false name or the giving of a false address; for said attempt, a person, upon conviction thereof, shall be punished the same as for the use or possession as provided in section 12-22-412(6):

(1) The possession or use or attempt to obtain or procure the administration of cannabis, which shall be punished as provided in section 12-22-412 (12).

Section 7. 12-22-412. Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION TO READ:

12-22-412. VIOLATIONS-PENALTIES. (12) (a) Any person who possesses not more than one ounce of cannabis is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(b) Whenever a person is arrested or detained for a violation of paragraph (a) of this subsection (12), the arresting or detaining officer shall prepare a written notice or summons to appear in court, which written notice or summons shall contain the name and address of such arrested or detained person, the time and place where such person shall appear, and a place for such person to execute his or her written promise to appear at the time and place indicated on the notice or summons. One copy of said notice or summons shall be given to the person arrested or detained, one copy shall be sent to the court where the arrested or detained person is to appear, and such other copies as may be required by the law enforcement department or agency employing the arresting or detaining officer shall be sent to the places designated by such law enforcement or agency. The time specified in said notice to appear must be at least five days after such arrest or detention unless the person arrested or detained shall demand an earlier hearing. The place specified in said notice to appear must be before a judge within the county in which the class 2 petty offense charged is alleged to have been committed and who has jurisdiction of such class 2 petty offense. The arrested or detained person in order to secure release from arrest or detention must give his or her written promise to appear in court by signing the notice or summons prepared by the arresting or detaining officer. It shall be a class 3 misdemeanor, as defined by section 18-1-106, C.R.S. 1973, for any person to violate a written promise to appear given to an officer upon arrest or detention or issuance of summons under this subsection (12).

(c) Any person who openly and publicly displays or consumes not more than one ounce of cannabis is guilty of a petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of one hundred dollars or, at a maximum by a fine of not more than one hundred dollars and fifteen days in the county jail.

(d) Any person who possesses more than one ounce of cannabis or any amount of cannabis concentrate, upon conviction thereof, shall be punished as provided in subsections (6), (10), or (11) of this section.

(e) Transferring or dispensing not more than one ounce of cannabis from one person to another for no consideration shall be deemed possession and not dispensing or sale thereof.

(f) The court may utilize the treatment, probation, and deferred prosecution or deferred sentencing provisions of subsections (6) (b), (7), (8), and (9) of this section for any person who violates paragraph (d) of this subsection (12).

(g) Any provision of this part 4 to the contrary notwithstanding, any person eighteen years of age or older who transfers or dispenses more than one ounce of cannabis for consideration or any amount of cannabis concentrate, with or without consideration, to another person under the age of eighteen years is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than three years nor more than fourteen years and, in the discretion of the court, by a fine of not more than ten thousand dollars. Upon a second or subsequent conviction of any person under this paragraph (g), the imprisonment prescribed in this paragraph (g) shall be mandatory, and the court shall have no jurisdiction to suspend the sentence of imprisonment or to grant probation to such person.

(h) No person knowingly shall cultivate, grow, produce, process, or manufacture, or knowingly allow to be cultivated, grown, produced, processed, or manufactured, on land owned, occupied, or controlled by him any cannabis or cannabis concentrate without first obtaining a license as a manufacturer pursuant to section 12-22-408.

Section 8. *Nonseverability.* If the provisions of section 12-22-412 (12) (g), C.R.S. 1973, as enacted by section 7 of this act are found to be invalid, such invalidity shall apply to the entire provisions of this act. It is hereby declared by the general assembly that, but for the provision of said section 12-22-412 (12) (g), the general assembly would not have enacted this act.

Section 9. *Repeal.* 12-22-301 (3) and 12-22-322 (7), Colorado Revised Statutes 1973, are repealed.

Section 10. *Effective* date. This act shall take effect July 1, 1975.

Section 11. *Safety clause.* The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

FRED E. ANDERSON,
President of the Senate.
COMFORT W. SHAW,
Secretary of the Senate.
RUBEN A. VALDEZ,
Speaker of the House of Representatives.
EVELYN T. DAVIDSON,
Chief Clerk of the House of Representatives.

Approved:_____.
RICHARD D. LAMM,
Governor of the State of Colorado.

STATE OF MAINE

1975

S.P. 113—L.D. 314

AN ACT Creating the Maine Criminal Code

Be it enacted by the People of the State of Maine, as follows:

SEC. I. 17-A MRSA is enacted to read:

TITLE 17-A

MAINE CRIMINAL CODE

PART I

GENERAL PRINCIPLES

CHAPTER I

PRELIMINARY

§ 1. Title; effective date; severability

1. Title 17-A of the Revised Statutes Annotated shall be known and may be cited as the Maine Criminal Code. When it is alleged that an element occurred "on or about" a certain date, and the period so alleged may reasonably be interpreted to include the date on which this code becomes effective the prosecution shall be governed by the prior law.

2. This code shall become effective March 1, 1976, and it shall apply only to crimes committed subsequent to its effective date. Prosecution for crimes committed prior to the effective date shall be governed by the prior law which is continued in effect for that purpose as if this code were not in force; provided, however, that in any such prosecution the court may, with the consent of the defendant, impose sentence under the provisions of the code. For purposes of this section, a crime was commited subsequent to the effective date if all of the elements of the crime occurred on or after that date; a crime was not committed subsequent to the effective date if any element thereof occurred prior to that date.

* * * * * * *

4. Schedule Z:

A. All prescription drugs other than those included in schedules W, X or Y;

B. Marijuana;

C. All nonprescription drugs other than those included in schedules W, X or Y as the Board of Pharmacy shall duly designate;

5. Notwithstanding anything in this section, no drug or substance which is legally sold in the State of Maine without any federal or state requirement as to prescription and which is unaltered as to its form shall be included in schedule W, X, Y or Z.

§ 1103. Unlawful trafficking in scheduled drugs

1. A person is guilty of unlawful trafficking in a scheduled drug if he intentionally or knowingly trafficks in what he knows or believes to be any scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such trafficking is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

A. A Class B crime if the drug is a schedule W drug;

B. A class C crime if the drug is a schedule X drug; or

C. A Class D crime if the drug is a schedule Y or schedule Z drug.

§ 1104. Trafficking in or furnishing counterfeit drugs

1. A person is guilty of trafficking in or furnishing counterfeit drugs if he intentionally or knowingly trafficks in or furnishes a substance which he represents to be a scheduled drug but which, in fact, is not a scheduled drug, but is capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

2. Trafficking in or furnishing counterfeit drugs is a Class C crime.

§ 1105. Aggravated trafficking or furnishing scheduled drugs

1. A person is guilty of aggravated trafficking or furnishing scheduled drugs if he trafficks with or furnishes to a child under 16 a scheduled drug in violation of section 1103 or 1104.

2. Aggravated trafficking or furnishing is a crime one class more serious than such trafficking or furnishing would otherwise be.

§ 1106. Unlawfully furnishing scheduled drugs.

1. A person is guilty of unlawfully furnishing scheduled drugs if he intentionally or knowingly furnishes what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such furnishing is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

A. A Class C crime if the drug is a schedule W drug; or

B. A Class D crime if the drug is a schedule X, Y or Z drug.

3. A person shall be presumed to be unlawfully furnishing a scheduled drug if he intentionally or knowingly possesses more than 1½ ounces of marijuana.

* * * * * * *

§ 1114. Schedule Z drugs; contraband subject to seizure.

All scheduled Z drugs, the unauthorized possession of which constitutes a civil violation under Title 22, are hereby declared contraband, and may be seized and confiscated by the State.

* * * * * * *

Part III

CHAPTER 53

FINES

§ 1301. Amounts authorized.

1. A natural person who has been convicted of a Class C, Class D or Class E crime may be sentenced to pay a fine, subject to section 1302, which shall not exceed:

A. $1,000 for a Class C crime;

B. $500 for a Class D crime;

C. $250 for a Class E crime; and

D. Regardless of the classification of the crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

* * * * * * *

§ 2383. Possession

Possession of a usable amount of marijuana is a civil violation for which a forfeiture of not more than $200 may be adjudged.

* * * * * * *

NORML A SPECIAL REPORT

A COMPILATION OF STATE CITATION LAWS

FOR MINOR MARIJUANA OFFENSES

In October 1973, Oregon became the first state to eliminate criminal arrest and jail penalties for possession of small amounts of marijuana, substituting a citation-enforced civil fine. The results of this innovative approach have been overwhelmingly favorable: there has been no demonstrable increase in marijuana smoking; thousands of young people have been spared the debilitating aspects of a life-long criminal record; and the police have been freed of a costly and time-consuming burden to concentrate on serious crime.

As a result, seven other states have recently enacted similar laws: Alaska, Maine, Colorado, California, Ohio, South Dakota and Minnesota. The provisions of these laws are summarized below, and copies are available from NORML. In each state, regardless of whether marijuana may now technically be said to be "decriminalized" or not, the person who smokes marijuana or possesses a small amount is no longer subject to arrest or jail, nor left with any permanent criminal record.

(more)

SUMMARY CHART - MARIJUANA CITATION LAWS

State	Max. Fine Imposed	Max. Amount Possessed	Criminal or Civil Violation	Effective Date
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$100.00	Any amount in private for personal use or 1 oz. in public	Civil	Mar. 1, 1976
Maine	$200.00	Any amount[a] for personal use	Civil	Mar. 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense - no criminal record	July 1, 1975
California[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (approx. 3½ oz.)	Minor misdemeanor - no crim. record	Nov. 22, 1975
South Dakota	$ 20.00	1 oz.	Civil	April 1, 1977
Minnesota	$100.00[c]	1½ oz.	Civil	April 10, 1976

a There is a rebuttable presumption that possession of less than 1½ oz. is for personal use, and possession of more than 1½ oz. is with an intent to distribute.

b Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in California (for up to 1 oz.), Colorado (for up to 1 oz.), and Ohio (for up to 20 grams).

c Second offense within a two year period carries a possible 90 days in jail and a $300 fine.

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS
2317 M STREET, NW, WASHINGTON DC 20037

ARTICLES RELATED TO SUBCOMMITTEE HEARINGS

[From the Indianapolis Star, May 9, 1975]

BAYH ASKS CRIME-FIGHT CHANGES

WASHINGTON—Senator Birch E. Bayh (D-Ind.) said yesterday it is time to divert some of the crime-fighting energy used against small-time marihuana users to combating violence

He scheduled hearings in his Juvenile Delinquency subcommittee next Wednesday on a bill which would abolish criminal penalities for simple possession of marihuana and substitute a civil fine for possession and nonprofit sales up to an ounce.

The Hoosier said marihuana arrests increased from 188,682 in 1970 to 420,700 in 1973 and may have gone as high as 500,000 in 1974.

"The majority of those arrested are otherwise law-abiding young people in possession of small amounts of marihuana," Bayh said.

He said the rising tide of serious crime "inevitably raises the question of whether we are properly allocating our limited crime fighting resources in aggressively pursuing the arrests and criminal prosecutions of the 13 million American users of marihuana" Bayh estimated prosecuting such cases costs $600 million a year.

A presidential commission, Bayh said, found the vast majority of marihuana users indistinguishable essentially from their nonuser peers.

He said he has asked Attorney General Edward H. Levi and other experts to testify before the subcommittee on the question.

[From the Christian Science Monitor, May 28, 1975]

UNITED STATES WARNED ON MARIHUANA

(By Reuters)

The United States could lose the cooperation of other nations in combating illegal narcotics if it eases the penalities for simple possession of marihuana, Congress was told recently.

The warning came from Donald Miller, chief counsel of the Justice Department's drug enforcement administration, in testimony before a Senate subcommittee on juvenile delinquency.

Sen. Birch Bayh, the Indiana Democrat who chairs the subcommittee, told a hearing the United States spends too much money, an estimated $600 million a year, in pursuit of marihuana offenders.

The subcommittee is considering legislation that would make possession of up to one ounce of marihuana a civil, not criminal, offense carrying a $100 fine.

Mr. Miller said the Justice Department opposes "decriminalization" of simple marihuana offenses.

"If we do not continue to have and enforce laws against marihuana use," Mr. Miller said, "the cooperation we can expect from foreign governments in helping us control our herion and cocaine problem will be significantly reduced."

He said a permissive U.S. attitude toward marihuana might lead other countries to think that America was "unmindful of its obligations and unconcerned with the domestic drug problems of others."

[From the Indianapolis News, May 14, 1975]

BAYH URGES CUTTING POSSESSION PENALTIES

WASHINGTON (UPI)—Sen. Birch Bayh, D-Ind., suggested today criminal penalties for possession of small amounts of marihuana be eliminated so more law enforcement resources can be used to fight violent crime.

In remarks prepared for the opening of a hearing on decriminalization of marihuana proposals, Bayh suggested the nation is not helped by spending $600 million a year to prosecute young persons arrested for marihuana offenses.

"The rising tide of serious crime inevitably raises the question of whether we are properly allocating our crime-fighting resources by aggressively pursuing the arrest and criminal prosecution of the 13 million American users of marihuana," Bayh said.

He said arrests for simple possession have jumped from 188,682 in 1970 to 420,700 in 1973 and may hit 500,000 for 1974. "Available studies and research to date have found the majority of those arrested are otherwise law-abiding young people in possession of small amounts of marihuana," Bayh said.

[From the Louisville Times, May 14, 1975]

WILL LOBBY'S EFFORT FLOWER, OR JUST GO TO POT?

(By Jerry Hicks)

WASHINGTON—Keith Stroup grows a lot of plants in his office, for atmosphere. But none, he quickly points out, is marihuana.

Stroup is a marihuana smoker—has been for eight years. But he won't grow his own at his suite of offices near Georgetown, Md., nor allow any staff member to smoke it on the premises.

That would be an easy set-up for the police, he says, a waste of all the hard work his people have done fighting marihuana laws.

Stroup, a 31-year-old attorney is director of the only registered lobby working to eliminate laws used to put people in jail for smoking marihuana. But on one finger he can count the actual victories for his National Organization for the Reform of Marihuana Laws (NORML), formed five years ago.

Only Oregon, where the organization campaigned heavily two years ago, has made the possession of a small quantity of marihuana an offense punishable by a fine (maximum $100), not a jail term.

But Stroup points to lots of signs he says are encouraging, and rattles them off with unparalleled speed;

A bill in Congress to reduce penalties for users and new hearings this week. Thirty-five state volunteer organizations working to decriminalize marihuana laws. Conservatives like William F. Buckley, Jr. joining the cause. First Lady Betty Ford saying her children have experimented with it. Bills being considered this year in California, Colorado, Maine, Illinois, New York and Minnesota.

Stroup talks as if trying to stay ahead of a lightning bolt, but without a word slurred or a line of thought misconveyed.

"It's a job getting across that not everyone who opposes stiff marihuana laws is young, has long hair and smokes grass," he said in an interview at his office. "Of course, we at NORML are young, have long hair, and God knows we love our grass, but we aren't all the 13 million people in this country who regularly smoke pot, or the millions more who become opposed to outdated laws when a son, or friend, lands in jail for smoking a joint."

Stroup's agency operates out of a former storefront. While the outside would give the appearance that the building has been abandoned—the display window is kept bare because plants wouldn't keep and Stroup's people just aren't sure what to do with it—the inside is a lively combination of hanging ferns, rich red carpet, ample poster advertising, barefoot secretaries, pictures of Washington and Lincoln and a fireplace that dominates the main floor.

The lobby group's products team occupies the basement. You can buy NORML T-shirts ($4.50 regular, $8.50 for ribbed cotton, long sleeves, cream colored with marihuana design front and back), "Reefer Madness" movie posters, a "Liberate Marihuana" handbag or a poster that says, after all, marijuana is just a weed that turns into a flower once it hits your head.

Up a winding staircase from the main floor is the lobby group's legal team and its Center for the Study of Non-medical Drug Use. The center is approved as tax-exempt by the Internal Revenue Service, but is prohibited from carrying out any functions that would be considered as lobbying.

Peter Myers, a 28-year-old attorney, usually can be found in a back office on the top floor poring through law books for legal precedents to convince the courts that the use of marihuana is a matter of one's privacy and as such is protected by the Bill of Rights.

"That's the same attack the pro-abortion people used when they went to the U.S. Supreme Court," Myers said. "And they won."

So far the group has two important court cases pending, one in the District of Columbia, the other in New Orleans.

Stroup says the organization spends very little time gathering information about marihuana and laws.

"Quite frankly, we know all there is to know," he said. "We're the only people around working on this full-time. What we have to do now is educate people who have been listening to 35 years of marihuana prohibition."

Stroup would love to see no penalties at all for smoking marihuana. It's less dangerous than alcohol, he says. ("What a scene, these congressmen bellying up to the bar decrying the evils of pot.") But for now he is willing to settle for Oregon-style plans nationwide.

Why spend most of his time in Washington when those laws usually enforced are state laws?

"If we can get Congress to decriminalize marihuana, a lot of states would fall immediately," he said. "There is a lot of support for discrimination, but nobody wants to be first, or feel they are in conflict with the national law."

Stroup is scheduled to testify this week before the Senate subcommittee on juvenile delinquency, which is considering a bill by Sen. Jacob K. Javits, R-N.Y. The bill would amend the Federal Controlled Substances Act, abolishing criminal penalties for possession of marihuana and substituting a civil fine.

The subcommittee is chaired by Indiana's Democratic Sen. Birch Bayh, who announced last week he was leaning toward decriminalization.

When a list of witnesses was being put together, Stroup's name was the first to come to mind, according to John Rector, director of the subcommittee staff.

"Stroup knows more about marihuana than any other person in Washington," Rector said.

Stroup is a nonstop talker whose monologue somehow doesn't offend. The son of Southern Illinois Baptists, he says he began smoking marihuana as a law student at Georgetown University.

After law school he joined the staff of a congressional commission to study product safety. His decision to set up a marihuana lobby came about after a close friend was arrested for smoking marihuana.

The organization is not a shoestring operation. Its 25,000 members have paid either $15 or $10 (students and military). It has private donors, such as Playboy publisher Hugh M. Hefner, who gives at least $50,000 annually plus free advertising in his two magazines, and the group's products brought in close to $100,000 profit last year.

Kentucky has no group among the 35 volunteer organizations that get expense money from the organization.

"We haven't found much interest there yet," he said, "But it will come."

Stroups calls the organization's activities public-interest law and credits consumer advocate Ralph Nader with building interest in such activities.

All of the group's staff smoke marihuana—blacks push civil rights, farmers push for farm rights, so it's only natural, Stroup says—but Stroup insists the organization does not support marihuana smoking.

"Only the individual's private right to decide for himself," he said.

[From the New York Post, May 14, 1975]

BAYH: MORE CRIMEBUSTING, LESS POT-BUSTING

(By John S. Lang)

WASHINGTON—Marihuana prosecutions this year will cost the nation $100 million and will cloud the reputations of half a million young people, a Senate panel reported today.

Opening a hearing on a bill to remove criminal penalties for simple possession of marihuana, the Subcommittee on Juvenile Deliquency noted that marihuana arrests have increased twelve-fold in the past decade and now account for 67 per cent of all drug arrests.

Chairman Birch Bayh (D-Ind.) observed that while law enforcement agencies concentrated on "pot busts," serious crime rose 17 per cent last year, the highest annual increase since the FBI began collecting data 45 years ago.

"The rising tide of serious crimes inevitably raises the question of whether we are properly allocating our crime fighting resources in aggressively pursuing the arrest and criminal prosecution of the 13 million American users of marihuana," Bayh said.

"Is the public interest served by arresting annually 500,000 mostly young people for simple possession of small amounts of marihuana and thereby assuring that they are inhibited for life—in their education and careers—by the unrelenting stigma of criminal record?"

The bill under study, cosponsored by Sen. Javits (R-N.Y.), would retain criminal penalties for the sale of marihuana for profit but would allow only a civil fine of up to $100 for possession and non-profit transfers of less than one ounce.

Such an approach is supported by the American Bar Assn., the National Council of Churches, the governing board of the American Medical Assn., the National Education Assn. and B'nai B'rith.

But the proposed legislation is opposed by the Justice Dept. and Federal Drug Enforcement Administration.

"I want to state that the marihuana traffic is big business," protested Donald E. Miller, chief counsel of the DEA, in a prepared statement.

"Today, tons of marihuana are being smuggled into the U.S. by large, well-financed and well-organized criminal organizations."

Miller said the government seized over two million pounds of it last year but "the amount getting through is astronomical."

Speaking for both the DEA and the Justice Dept., Miller said the administration believes most Americans still want tough enforcement of tough marihuana laws.

Miller also objected that the measure "is a pronouncement that the government no longer takes a harsh view regarding those persons who convert naive persons to drug abusers."

"This means," he said, "that if a person desires to introduce marihuana use to juveniles, he may do so and face only a fine of up to $100 so long as the transfer is totally donative . . ."

Miller said the bill would harm the U.S. fight against drug trafficking worldwide because many cooperating nations do not have severe problems with cocaine and heroin but do consider cannabis a threat.

The bill before the subcommittee is similar to the law now in force in Oregon, which reports after one year of experience there was no increase in the number of users and thta a majority of its citizens approve of the law.

Similar measures are being considered by more than 20 state legislatures.

[From the Washington Star-News, May 14, 1975]

Drug Law Easing Is Urged

(By Michael Satchell)

The Nation's estimated 13 million marihuana users may be raising the blinds and unlocking their doors in the near future if the sentiments expressed at a Senate hearing today are translated into congressional approval and an easing of the laws against pot smoking.

The Senate Juvenile delinquency subcommittee, meeting to consider a bill that would decriminalize simple possession of the weed, heard Chairman Birch Bayh, D-Ind., cite the enormous social and economic costs of prosecuting marihuana smokers and recommended passage of the bill.

He noted FBI crime statistics that showed a 17 percent rise in serious offenses last year, and argued: "The rising tide of serious crime inevitably raises the question of whether we are properly allocating our crime-fighting resources and aggressively pursuing the arrest and criminal prosecution of 13 million American users of marihuana. It is estimated that the prosecution of these cases costs $600 million each year.

"In view of the failure nationally to curb violent and serious crime, I believe it is time to seriously reassess our priorities relative to the limited resources available to the nation's severely overburdened criminal justice agencies."

The Senate bill is identical to a House measure currently in committee, and both bills have bipartisan support. They are identical to the Oregon law passed about 18 months ago in which pot smokers caught with an ounce or less receive a civil citation much like a traffic ticket. There would be a maximum fine of $100 regardless of how many times the individual is arrested on a possession charge. Criminal penalties for sale of marihuana or possession of larger amounts would remain intact.

Federal law now carries a one year and $5,000 fine maximum penalty for simple possession of marihuana.

Today's only major dissent from witnesses on the proposal for a further lessening of marihuana penalties came from Donald Miller, general counsel of the Drug Enforecment Administration, who raised several questions about how a new federal law would be written and applied. Miller said the Jsutice Department has not taken a position on the concept of decriminalization.

Other witnesses at the hearing, all of whom backed the proposal, were Keith Stroup, director of the National Organization for the Reform of Marihuana Laws; Richard Bonnie, assistant law professor at the University of Virginia; J. Pat Horton, district attorney of Eugene, Ore., and Richard Wood, an assistant prosecutor from Denver.

Bayh said he was concerned with the growing numbers of young people arrested for marihuana smoking, noting an increase from about 190,000 in 1970 to around half a million last year. The smokers, he said, were "otherwise law-abiding young people, the vast majority indistinguishable from their nonuser peers by any criteria other than its use."

The Indiana Democrat quoted from a recent interview in The Washington Star in which Oregon Atty. Gen. Lee Johnson said that state's new pot law increased rather than decreased respect for laws among young people, giving them a feeling that government is more receptive to social changes which have taken place.

Sen. Philip Hart D-Mich., offered an amendment to the Senate proposal. Hart's amendment would remove all penalties for possession or non-criminal distribution of up to 100 grams (about 3½ ounces) of marihuana.

[From the Bloomington (Ind.) Herald-Times, May 15, 1975]

BAYH COMMITTEE HEARS TESTIMONY ON "POT" LAWS

WASHINGTON (UPI).—J. Pat Horton, a district attorney from the state that removed criminal penalties for personal possession of marihuana 18 months ago, says not much is gained by harsh enforcement of marihuana laws.

Horton, DA for Lane County in Oregon, told a Senate Juvenile Delinquency subcommittee Wednesday, chaired by Sen. Birch Bayh, D-Ind., that "by any reasonable standard," Oregon's experience with liberalized pot laws has been a success.

"As a law enforcement tool, there's not much good that can be accomplished by harsh enforcement of marihuana laws," Horton said.

He said the Oregon law, which removes criminal penalties and substitutes a $100 civil fine for possession of up to one ounce of marihuana, has not resulted in significantly more pot smokers.

But, he said, "There is a greater rapport between the law enforcement agents and the young people of our state than ever before."

Marihuana arrests are easy to make, Horton said, and result in impressive statistics for police departments. But, he said, it would be better to use the resources to fight violent crime.

Richard Wood, assistant district attorney in Denver, said city police decided they only had limited crime fighting funds and that marihuana offenses did not warrant the money being spent on enforcement. The law was changed, Wood said, and the DA's criminal case load decreased at least 10 percent.

Bayh agreed marihuana must be decriminalized to free resources to fight more serious crime, which increased 17 percent last year. He said the current laws are unfairly enforced and demonstrate an attitude of "hypocrisy."

The bill under consideration by Bayh's subcommittee would make possession and nonprofit transfer of up to one ounce of pot a civil offense subject to a $100 fine. At present, the offenses are misdemeanors punishable by up to 1 year in prison and a $5,000 fine.

[From the Washington Post, May 17, 1975]

JUSTICE DEPARTMENT SHIFTS STANCE ON MARIHUANA

(By Douglas Watson)

The Justice Department, which consistently had opposed efforts to remove the criminal penalty for posession of marihuana, shifted this week to taking no position on a bill that would "decriminalize" personal use of the controversial plant.

Attorney General Edward H. Levi "doesn't have a formal position on marihuana—he just hasn't addressed himself to it yet," said a spokesman for the nation's chief law enforcement officer who took office in February. The aide added that Levi "doesn't want to be locked into a position."

Levi's expected reconsideration of the federal government's position on marihuana contrasts with the position of his predecessor, William B. Saxbe, who in December said, "I have no intention to advicate or support legislation that would legalize or decriminalize possession and use of marihuana . . . Marihuana is no harmless lollipop."

The shift in the Justice Department from opposition to no position on removing criminal penalties for personal use of marihuana became apparent at a Senate Judiciary subcommittee hearing Wednesday on a bill that would substitute a maximum $100 civil fine for such possession.

Shortly before appearing before a Senate Judiciary subcommittee to voice objections to the bill, Donald E. Miller, chief counsel of the Drug Enforcement Administration, which is part of the Justice Department, was advised to delete the last sentence of his prepared testimony, which was to have said, "The Department of Justice recommends agains enactment of this legislation."

Instead, Miller said in answer to a question by Sen. Birch Bayh (D-Ind.), the subcommittee chairman, that he is considering drafting a model law for states that want to decriminalize the use of marihuana.

Last year more than 400,000 Americans were arrested for marihuana possession, Bayh said. There are criminal penalties for marihuana possession in all states except Oregon, whose law is the model for the proposed federal legislation.

The proposed fine under the new bill would apply to those found to have not more than one ounce of marihuana for their personal use, whether in a private or public place, or for those found transferring such an amount of marihuana if no sale is involved.

Previous proposed legislation would have legalized marihuana possession. The pending bill would impose the civil fine up to $100 like a traffic ticket but would not inflict an arrest record on the individual.

The bill is sponsored by Sens. Jacob K. Javits (R-N.Y.), Edward W. Brooke (R-Mass.), Alan Cranston (D-Calif.) and Gaylord Nelson (D-Wis.). A similar bill has been introduced in the House by Rep. Edward I. Koch (D-N.Y.).

R. Keith Stroup, director of the National Organization for the Reform of Marihuana Laws (NORML), in testifying in favor of the legislation, said:

"Skydiving, drinking alcohol, smoking cigarettes and overeating are but some of the high-risk activities people engage in every day. Yet they remain free from arrest. . . But the 13 million persons who regularly smoke marihuana are still classified as criminals" by the federal government and 49 states.

Miller testified that the proposed federal legislation would make it much more difficult for the Drug Enforcement Administration to obtain cooperation from many foreign nations which view marihuana as a greater problem than heroin and other "hard" drugs. He also maintained that the proposed legislation is unworkable.

Changing the federal law, under which comparatively few people are arrested, would not bar states from continuing criminal penalties for marihuana possession, but would probably have a heavy impact on state laws.

[From the Cleveland Plain Dealer, May 18, 1975]

THE ARGUMENT FOR "DECRIMINALIZING" MARIHUANA

(By Richard G. Zimmerman)

WASHINGTON—"We want to keep the laws against adultery because we want to preserve our morality. But we don't want to enforce them because we want to preserve our behavior."

So observed a witness last week before a Senate subcommitte. But he wasn't testifying on adultery laws. He was adroitly summing up why the "decriminalization" of simple possession of small amounts of marihuana appears to be an idea whose time has—or is about to—come.

As opposed to outright legalization of the private possession and use of pot, decriminalization involves abolishing criminal penalties for simple possession and replacing them with civil sanctions, in most cases a maximum $100 fine imposed much as a fine for a minor traffic offense is imposed.

In fact, Oregon and Denver have adopted such civil sanctions, and police officers actually issue tickets to offenders instead of making criminal arrests.

By retaining a fine, society certainly cannot be accused of condoning the use of marihuana and so our morality is preserved. But our behavior also is preserved, to a degree, in that users are not carted off to jail or saddled with a criminal record the rest of their lives.

The decriminalization of private pot use is a logical progression of the softening of marihuana laws that began when pot moved out of the ghettos into the homes of children of middle and upperclass whites. It was one thing to allow the courts to toss ghetto blacks into jail for five or 10 years, but quite another to mete out such draconian sentences to suburban, blue-eyed Dicks and Janes.

Until 1972, Ohio, like most states, retained heavy felony penalties for the simple, first-time offense of private use of marihuana. I remember watching in horror as a judge in a rural county sentenced a frail college freshman to five to 10 years in Mansfield Reformatory for smoking a joint in his dorm room. (Horror turned to cynicism a few hours later as I watched the same sentencing judge get bombed on martinis at the local country club.)

Such sentences became too much even for the often slow-acting Ohio Legislature to stomach and, along with every other state in the Union, a first offense for possession was made a misdemeanor. Judges were permitted wide discretion in sentencing, and no more than a year in jail could be handed down.

Yet there was uneasiness with even the reformed law. More and more otherwise respectable young people were using the stuff and even a misdemeanor conviction carries the lifelong brand of criminality. Some illiberal judges also were quick to impose maximum sentences and ship kids off to dehumanizing, filthy, local jails where sexual assaults were as common as cockroaches.

So Oregon, one of the most progressive states, and Denver came up with something less than criminal prosecution and more than legalization—decriminalization. If the Oregon experience is any indicator, it is a good compromise.

A survey by the independent Drug Abuse Council shows that "the number of individuals using marihuana has not significantly increased in Oregon during the year since it has removed criminal penalties for simple possession of one ounce or less."

One reason why Oregon did not suddenly become a smokers' haven is that police appear to be more comfortable issuing ticket-citations to private users than making arrests that could result in criminal prosecution. Instances of police action in pot cases rose 30 percent after decriminalization.

That decriminalization likely will be adopted by Congress and a number of states in the near future is evident in the number of prestigious groups supporting the concept. The American Bar Association, the National Council of Churches, the American Medical Association, B'nai B'rith and even conservative columnists such as William F. Buckley Jr. (who has experimented with pot) and James J. Kilpatrick have endorsed the decriminalization concept.

Even a commission of middle-aged establishment squares appointed by President Nixon endorsed the idea—which Nixon rejected out-of-hand, apparently favoring only the decriminalization of obstruction of justice by the White House.

One thing standing in the way of congressional approval this year is the Justice Department's ambivalence.

Last week, a representative of the department's Drug Enforcement Administration criticized certain parts of a pending decriminalization bill, but struck from his prepared remarks a sentence that might have left the impression that the department opposed the broad concept of decriminalization. Yet nothing was added to denote approval, either.

Atty. Gen. Edward Levi isn't exactly out of step. He just seems to be standing still watching the parade go by.

[From the Louisville Courier-Journal, May 18, 1975]

UNITED STATES TAKING NO POSITION ON BILL TO EASE MARIHUANA PENALTIES

(By Douglas Watson)

WASHINGTON—The Justice Department, which consistently had opposed efforts to remove the criminal penalty for possession of marihuana, shifted last week to taking no position on a bill that would "decriminalize" personal use of the controversial substance.

Atty. Gen. Edward H. Levi "doesn't have a former position on marihuana—he just hasn't addressed himself to it yet," said a spokesman for the nation's chief law enforcement officer. The aide added that Levi, who took office in February, "doesn't want to be locked into a position."

Levi's expected reconsideration of the federal government's position on marihuana contrasts with the position of his predecessor, William B. Saxbe, who in December said, "I have no intention to advocate or support legislation that would legalize or decriminalize possession and use of marihuana. Marihuana is no harmless lollypop."

The shift in the Justice Department became apparent at a Senate Judiciary subcommittee hearing Wednesday on a bill that would substitute a maximum $100 fine for such possession.

Shortly before appearing to voice objections to the bill, Donald E. Miller, chief counsel of the Drug Enforcement Administration, which is part of the Justice Department, was advised to delete the last sentence of his prepared testimony, which was to have said, "The Department of Justice recommends against enactment of this legislation."

Instead, Miller said in answer to a question by Sen. Birch Bayh, D-Ind., the subcommittee chairman, that he is considering drafting a model law for states that want to decriminalize the use of marihuana.

Last year more than 400,000 Americans were arrested for marihuana possession, Bayh said. There are criminal penalties for marihuana possession in all states except Oregon, whose law is the model for the proposed federal legislation.

The proposed fine under the new bill would apply to those in possession of not more than one ounce of marihuana for their own use, whether in a private or public place, or for those found transferring such an amount of marihuana if no sale is involved.

Previous proposed legislation would have legalized marihuana possession. The pending bill would impose a civil fine of up to $100, like a traffic ticket, but would not inflict an arrest record on the individual.

The bill is sponsored by Sens. Jacob K. Javits, R-N.Y., Edward W. Brooke, R-Mass., Alan Cranston, D-Calif., and Gaylord Nelson, D-Wis. A similar bill has been introduced in the House by Rep. Edward I. Koch, D-N.Y.

R. Keith Stroup, director of the National Organization for the Reform of Marihuana Laws in testifying in favor of the legislation, said, "Skydiving, drinking alcohol, smoking cigarettes and overeating are but some of the high-risk activities people engage in every day. Yet they remain free from arrest. But the 13 million persons who regularly smoke marihuana are still classified as criminals" by the federal government and 49 states.

Miller testified that the proposed legislation would make it more difficult for the Drug Enforcement Administration to obtain cooperation from many foreign nations that view marihuana as a greater problem than heroin and other "hard" drugs. He also maintained that the proposed legislation is unworkable.

Changing the federal law, under which relatively few persons are arrested, would not bar states from continuing criminal penalties for marihuana possession. But the existence of a federal law with weak sanctions probably would lead in time to weakening of state laws.

[From the Memphis (Tenn.) Commercial Appeal, May 18, 1975]

JUSTICE DEPARTMENT INCHING TOWARD MORE TOLERANT VIEW OF MARIHUANA USE

(By William Hines)

WASHINGTON, May 17.—The Justice Department gave evidence last week of starting to ease up on the hard-line stance against marihuana law reform that

has been fixed administration policy since the first term of former President Richard Nixon.

The hint that this was in the offing came by surprise as a top Justice official read the final paragraph of prepared testimony at a hearing on "pot" law revisions chaired by Sen. Birch Bayh (D-Ind.).

Donald E. Miller, chief counsel for the Drug Enforcement Administration, criticized at some length a bill sponsored by Sen. Jacob Javits (R-N.Y.), which would reduce simple possession and use of marihuana to the status of a civil violation punishable by a fine.

Then he came to the last paragraph of his statement, which read:

"Therefore, the Department of Justice recommends against the enactment of this legislation."

Pausing just before this passage, Miller said, "I want to strike the next sentence and say instead that the Department of Justice is not taking a position on the concept of the legislation."

Miller, one of the five witnesses at the hearing, argued that the Javits proposal would be unenforceable and said that in any event, federal drug police are not now enforcing existing legislation that makes first-offense marihuana violations punishable as misdemeanors.

Miller's testimony, which in the normal course would have been cleared through the Justice Department's congressional liaison office, apparently got official approval late last week. He is understood to have been told Wednesday morning shortly before going to Capitol Hill to soften his final, summary remark.

Some of Miller's comments drew sarcastic reaction from another witness, Richard Bonnie, a University of Virginia law professor who served as associate staff director of a Nixon-appointed presidential commission that recommended in 1972 a total decriminalization of pot.

Bonnie was particularly scornful of Miller's admission that existing pot law is not now enforced as a matter of government policy. Terming this approach to law enforcement "symbolism," Bonnie said, "We want to keep (laws) on the books because we want to keep up our morality, and we want to keep them unenforced because we want to keep up our behavior."

Two county-level prosecutors, Dist. Atty. Pat Horton of Lane County (Eugene), Ore., and Asst. Dist. Atty. Richard Wood of Denver, argued strongly for passage of the Javits bill or something like it. Both officials represent communities where simple pot violations have been reduced to traffic-ticket status.

In neither jurisdiction, they said, has there been an upsurge of marihuana abuse, and the elimination of criminal penalties for pot violations has freed police to crack down on perpetrators of violent crimes.

R. Keith Stroup, director of the National Organization for the Reform of Marihuana Laws (NORML), characterizing himself as a pot user, said he resents "the fact that someone can fine me" for this form of recreational drug-taking. But, he added, NORML is prepared to support the Javits bill as a "conditional cease-fire" pending eventual full decriminalization.

[From the Pasco (Wash.) Tri-City Herald, May 18, 1975]

GOVERNMENT GIVES UP ANTI-POT STANCE

WASHINGTON.—The Justice Department, which consistently had opposed efforts to remove the criminal penalty for possession of marihuana, shifted this week to take no position on a bill that would "decriminalize" personal use of the controversial substance.

Attorney General Edward H. Levi expected reconsideration of the federal government's position on marijuana contrasts with the position of his predecessor, William B. Saxbe, who in December said, "I have no intention to advocate or support legislation that would legalize or decriminalize possession and use of marihuana . . . marihuana is no harmless lollypop."

The shift in the Justice Department from opposition to no position on removing criminal penalties for personal use of marihuana became apparent at a Senate Judiciary subcommittee hearing Wednesday on a bill that would substitute a maximum $100 civil fine for such possession.

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Last year more than 400,000 Americans were arrested for marihuana possession, Bayh said. There are criminal penalties for marihuana possession in all states except Oregon, whose law is the model for the proposed federal legislation.

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[From the New Orleans Times-Picayune, May 20, 1975]

ON DECLARING POT A LOT LIKE BOOZE

(By Susan Fogg)

WASHINGTON.—Decriminalization of marihuana would be a "cautious, conservative" reform, given the high price society pays for existing laws, according to the former associate director of the Schafer Commission on Marihuana.

Richard Bonnie, a law professor at the University of Virginia since leaving the presidential commission, told a Senate hearing that in his personal view marihuana should be treated under law the same way alcohol is.

"My personal opinion is that if marihuana is used in moderate amounts for recreational purposes, the state ought not to intervene," Bonnie told the Senate Judiciary subcommittee on juvenile delinquency.

"Our policy ought to be the same as for alcohol, with intervention not to prohibit people from getting the drug, but to make sure that people are getting the healthiest product available," Bonnie said.

"But I realize that reform can be incremental and that the regulatory approach is not feasible," he said. "It might violate some of our international treaty obligations and it is politically unfeasible."

In contrast to the regulatory approach that would for the most part allow adults free access to the drug, decriminalizations is—and was for the commission headed by former Pennsylvania Gov. Raymond Schafer—a "cautious, conservative" approach, Bonnie said.

Bonnie made his statement in response to questions from subcommittee Chairman Birch Bayh, D-Ind., about the possible inconsistency in the Schafer Commission's recommendation to remove criminal penalties for possession, while retaining them for distribution or cultivation.

"Were you concerned with the consistency of saying it's okay to use it but not okay to sell a substance we say is okay," Bayh asked. "If the commission decided the substance doesn't harm individuals, why punish them for selling it?"

Bonnie responded that the commission, appointed by President Nixon, "did not say marihuana is okay, but that we are paying too high a price for criminal laws against personal use."

That price includes both the $600 million a year law enforcement agencies spend in making marihuana arrests—resources diverted from the prosecution of violent crimes and thefts—as well as the stigma attached to hundreds of thousands of young people arrested each year for simple possession, Bonnie said.

Bayh's subcommittee is considering a bill introduced by Sen. Jacob K. Javits, R-N.Y., that would amend federal drug law to make possession of one ounce or less of marihuana punishably only by a civil fine of not more than $100.

The bill is modelel on Oregon state law and contains some significant revisions of the bill Javits introduced last year, changes Bayh's staff said will make the bill more passable.

Javits originally favored a bill to make possession of up to three ounces of marihuana lawful, with no reference to civil fines or confiscation of the drug.

Bayh plans further hearings this year on the bill to clarify some of its technical provisions. As now written, the measure provides no mechanism for issuing citations for civil fines, and it lacks guidelines for the handling of arrest records—whether they can be withheld in employment or educational applications.

The authority of police to confiscate marihuana in making an arrest is not clear in the bill, and it does not indicate whether the burden of proof in an arrest is on the police or the defendant.

The bill would change only federal law, leaving unaffected the state and local ordinances under which most marihuana arrests are made. However, Keith Stroup of the National Organization for the Reform of Marihuana laws has predicted that at least 30 states would follow the federal example if the Javits bill were passed.

[From the National Drug Reporter, Vol. VI, August–September 1976]

BAYH PROPOSES STRICTER PENALTIES FOR HEROIN PUSHERS AND DECRIMINALIZATION OF MARIHUANA

In an August 3 message to the Senate, Sen. Birch Bayh (D–IN) announced his intention to introduce a drug bill later this year which will include a marihuana use decriminalization proposal modeled after the Oregon state law, and mandatory minimum sentences of 10 to 30 years for a first-offense conviction for selling 1/10 of an ounce or more of pure opiate narcotic, and mandatory life imprisonment for subsequent offenses. Eligibility for parole would be permitted after serving 30 years of a life sentence.

Bayh said his mandatory penalty proposal will target high-level traffikers who are pushing drugs for profit, and called it superior to the President's proposal, S. 3411 (see above story), which does not distinguish as to the amount or purity of drug involved in a sale. In accordance with S. 3411, Bayh would also require forfeiture of money used in illegal transactions, allow Customs agents to search suspects for currency, and enact new reporting requirements for seagoing vessels entering the country.

In support of marihuana decriminalization, Bayh said, "we must recognize that the $600 million invested annually to prosecute marihuana cases can be used in a manner more consistent with the protection of property and safety of the taxpayers . . . 7 in 10 drug arrests are for predominantly simply marihuana possession. We must reject such counterproductive law enforcement policy."

ARTICLES RELATED TO MARIHUANA LEGISLATION

ALASKA

[From the Washington Star-News, May 21, 1975]

ALASKA CUTS PENALTIES FOR POT SMOKERS

The Alaska legislature has approved a bill that removes criminal penalties for possession of small smounts of marijuana. If the bill is not vetoed by Gov. Jay Hammon, Alaska will join Oregon as the second state in the United States to decriminalize pot possession.

Approved Friday, the bill is more refined than the 18-month-old Oregon law which levies a maximum $100 fine on persons caught with an ounce or less in their possession.

The Alaska measure allows pot smokers to have unspecified amounts in their private home with a maximum fine of $100. However, those caught smoking marijuana in public, or found with marijuana on their person while driving, are subject to fines up to $1,000.

Keith Stroup, director of the National Organization for the Reform of Marijuana Laws, described the law as "sensible."

"The clause covering unspecified amounts kept in the home for personal use doesn't mean that a dealer can keep half a ton of grass in his room and not expect to be charged with possession with intent to distribute.

"The Alaska Supreme Court has generally held that amounts up to 8 ounces are probably for personal use and anything over that means that the individual is probably intending to sell it."

[From the New York Times, May 28, 1975]

COURT IN ALASKA BACKS MARIJUANA

SAYS CITIZENS HAVE RIGHT TO USE THE DRUG IN HOMES

JUNEAU, Alaska, May 27 (AP)—The Alaska Supreme Court ruled today that citizens have a constitutional right to possess marijuana for personal use in their own homes.

However, the court said the state has a "legitimate concern" with outlawing the use om marijuana in public.

With four concurring opinions and no dissent, the five-member court said the right of individuals to privacy in their homes "would encompass the possession and ingestion of substances such as marijuana in a purely personal, noncommercial context in the home."

The Legislature this month adopted a bill to reduce penalties for possession of the drug. At the same time, it imposed only civil penalties for personal possession of marijuana in the home.

Those provisions for fines would apparently be called into question by the high court ruling.

TRAFFIC CITATION ARREST

The decision came in a case against an Anchorage lawyer, Irwin Ravin, who was arrested in late 1972 after policemen discovered a small amount of marijuana on him while issuing him a traffic citation. His conviction was returned to District Court for further proceedings.

The court noted that there was a substantial body of scientific evidence that marijuana is a relatively harmless drug and said that the state could not demonstrate a sufficient threat to public safety to justify invading the privacy of the home.

But the state has "a legitimate concern with the problem of driving under the influence of marijuana," the court said.

The court noted that the state retains the right to outlaw the buying and selling of marijuana or possession of amounts "indicative of intent to sell rather than possession for personal use."

A law that was to take effect this September removed the threat of a $1,000 fine a year in jail for possession of any amount of marijuana for personal use in the home or possession of an ounce or less in public. While jail sentences were dropped, the Legislature retained a $1,000 fine for any public use of the drug, possession of more than one ounce in public, possession of any amount in a car or airplane and for possession of any amount by a minor.

CALIFORNIA

[From the Los Angeles Times West Magazine, Aug. 16, 1970]

THE HIGH COST OF CANNABIS

(By Walt Anderson)

They have a new courthouse in Orange County, an elegant 11-story building with 33 comfortable air-conditioned courtrooms in it. And a new courthouse building is going up in Los Angeles, too, across the street from City Hall. This will be the Criminal Courts Building: 22 stories high, 50 courtrooms.

These are prosperous times for courthouse builders. The population of Southern California counties is increasing, the amount of crime generally is increasing right along with it, and arrests and convictions in one group of crimes—those involving marihuana—are increasing even faster than the population.

In less than a decade, marihuana crimes have emerged from relative obscurity to a clear number one position. From 1960 to 1968, according to the Bureau of Criminal Statistics, marihuana violations in California increased more than 700 percent among adults, more than 2,000 percent among juveniles. At the present time, more than 70,000 people a year are arrested for marihuana violations in Los Angeles County alone. This means that the whole machinery of law enforcement has become in large part an apparatus for the processing of pot smokers. And it means that the taxpayers of California, most of whom presumably have never purchased a joint, are spending a great deal of money on marihuana.

This change has done more than just crowd the courts and boost business for lawyers and bail bondsmen. It has changed the whole tone and style of the law-enforcement business, and it has brought a whole new class of people into contact with the inside of jail cells and courtrooms. Go down, any day of the week, to the municipal courthouse annex on the corner of Sunset and Broadway, drop into Division 40, and you will see what I mean.

Twice a day, in Division 40, prisoners are arraigned on felony charges. They are transported from the jails by bus, unloaded, held in the cells in the back of the annex building, and then, at around 11 in the morning and 3 in the afternoon, brought into the courtroom. The prisoners' boxes, one for men and one for women, are big enough to seat about 30 people, but there are usually 40 or more prisoners at a time, and those who cannot find seats crowd into the closed-off area and stand wherever they can find room.

It is a crowded and busy place anyway. A young lawyer from the Public Defender's office, using a microphone so his voice will come over the sound system, calls off each prisoner's name and reads the charges against him. Then the judge takes over to set the amount of bail and preliminary hearing date for each prisoner. This operation, or something about like it, has gone on for years, and the main change has been the number and kind of people in the box. The prisoners used to be mostly blacks and Mexican-Americans. They still are, but now a third ethnic out-group—young, middle class whites—has joined them.

In 1960, the average person who came before the courts on a narcotics charge in California was 30 years old, from a racial minority group, with a fairly extensive criminal record. Today the median age of a drug offender is 19; three-quarters of them are white, and the great majority has no previous criminal record.

When I was in the early stages of researching this article, I happened to get into a conversation with a group of people from the city Human Relations Commission who were having coffee in the cafeteria in the new Hall of Records. I said something about the increase in the use of marihuana.

Leon Smith, who is black, corrected me on that. "You talk about marihuana like it was something new," he said. "You ought to be sure you know who it's new to. It's new to the white middle-class, that's all. Kids have been smoking it in the ghettos for years, and nobody worried about it."

Today, anyway, a lot of people are worried about it, and the public worry has been reflected in the increase in the number of public servants who are in one way or another trying to do something about it. Public problems have a way of carving out a place for themselves in the bureaucracy, and marihuana has done this with amazing speed. I spent several weeks in and out of offices and courtrooms in Southern California, talking to people who are employed in the legal side of the marihuana business. There are a lot of them.

One agency which becomes involved with a high percentage of the people arrested on marihuana charges is the Public Defender's Office, which provides legal counsel for those who can't afford to hire a private attorney.

The men who work for the Public Defender's Office tend to be young lawyers, with hair as long as you can safely wear into a courtroom when you want to stay on the right side of the judge. There are now 300 attorneys in the L.A. County Office of the Public Defender, working at salaries of a thousand a month upward, and they spend a lot of their time defending marihuana cases. Usually with a good deal of enthusiasm. One man from the P.D. Office told me: "We consider these to be serious cases, and we work hard at them." Then he added, with some pride, "It costs the taxpayers a fortune."

The average marihuana case requires about nine court appearances as it goes through the routine of arraignment in municipal court, preliminary hearing in municipal court, arraignment in superior court, continuances, and so forth, until sentencing.

For the defendant, it means four to six weeks will pass before the case is completed. During this time the arresting officer will have to make at least one court appearance, and usually more; at least two deputy district attorneys will be involved with the prosecution; and three or four different judges will have handled some part of the case in their respective courts. L.A. County has 134 Superior Court judges, and the Board of Supervisors is trying to get the state to authorize 27 more.

Although a good portion of the work of defending marihuana cases falls to the Public Defender's Office, private attorneys get their share. Many attorneys who would never have touched a narcotics case 10 years ago now make it an important part of their practice. As one lawyer put it, "It's really a gold mine since marihuana moved into the middle and upper classes. A lot of these kids that get busted may look like hippies, but they've got a daddy with money."

Getting defended by a private attorney in a marihuana case may cost a few thousand dollars, or it may only cost a few hundred. The prices on the lower end of the scale are those charged by some lawyers who have made a specialty of defending marihuana cases, and who sometimes come into court with a list of clients almost as long as the Public Defender's.

Because the courts are crowded, because marihuana cases are so numerous, because they do tend to fall into patterns of similarity, the whole judicial operation inevitably begins to take on the quality of processing Army recruits. Judges and lawyers will tell you that they want to treat each case on its individual merits, and mean it, but when a hundred or two hundred defendants move through a single courtroom in a single day—which is not at all unusual—they become an anonymous blur.

Around courthouses I sometimes heard this or that judge praised as a "great administrator." That sounded odd, to my outsider's ear. I thought they should call him a "great jurist," something of that sort. More majestic. But then I saw

a judge handle over 40 felony arraignments in about 20 minutes, and I knew what they meant.

In the day-in-day-out run of marihuana cases, there are certain ritual acts that the defense attorney can be expected to perform. He will usually make a motion for suppression of evidence, arguing that it was obtained illegally.

If the judge feels that the arresting officer violated the rules of search and seizure and grants the motion, that ends it then and there, because a possession case generally has one witness—the arresting officer—and one item of evidence—the marihuana. The amount, in about 90 percent of possession cases, is an ounce or less.

Another strategem is to have the defendant plead guilty to a lesser charge. This calls for some negotiating between defense and prosecution, but it has advantages all around. It makes it possible, for example, that somebody who is arrested for having been found with marihuana plead guilty to the lesser charge of being present when marihuana was being used.

The moral contradiction of pleading guilty to a crime one didn't commit doesn't seem to bother too many people, and it makes the legal gears grind. The prosecution gets a conviction, the defense attorney has done something for his client, and everybody is spared the time and expense of going on to a full-scale jury trial.

Once the defendant has been found guilty, there is still a further possibility. Although possession of marihuana is a felony, carrying a sentence of one to 10 years in state prison, the judge may, on a first offense, prescribe a misdemeanor sentence with a maximum of one year in county jail.

The chances of getting such a reduction vary from judge to judge, and from county to county. In Orange County 90 percent of first offense possession violators receive felony sentences; in Los Angeles County only 21 percent receive felony sentences. Alan Sieroty, a liberal young assemblyman from Beverly Hills, wants to pass a law which will do away with this inconsistency by making possession of marihuana simply a misdemeanor. Other lawmakers want to do away with the inconsistency by making all possession convictions felonies.

Meanwhile, it is possible for the judge to find the defendant guilty of a felony, suspend his sentence and put him on probation for a couple of years, and then reduce the conviction to a misdemeanor later on at the recommendation of the probation officer. And most of the misdemeanor sentences, for that matter, lead to a period of probation.

The Los Angeles County Probation Department has been growing, too, about three times as fast as the population. In 1969 its budget was about $41 million, and the department now has neary 2,000 probation officers.

They made a statistical survey of people on probation last year, and it showed that there were 3,298 adults on probation for the single offense of possession of marihuana. This figure which did not include other marihuana violations such as possession for sale, accounted for the largest single block of probationers.

It easily beat out such old probation standbys as nonsupport, petty theft and forgery.

Among juveniles, too, possession of marihuana is the leading offense—but the situation there is more complicated because narcotics in general and marihuana in particular so saturate all relationships between youth and the law that it is hardly possible to make any real distinction between the juvenile who is in trouble for a marihuana offense and the juvenile who is in trouble for something else.

One of the probation officers I talked to was Mike Allen, who works in the field office in Hawthorne. It is one of those bland government buildings, on a side street off El Segundo Boulevard; inside is a big waiting room with rows of metal chairs where probationers sit until they are called for their appointment, and beyond the waiting room are the offices, long rows of cubicles separated by barriers of metal and frosted glass, where tweed jackets hang on coat hangers and young men with psychology degrees sit interviewing clients and filling out forms.

I asked Mike, a big open-faced man with an impressive set of sideburns, how many of his clients were marihuana cases. Mike works exclusively with juveniles. He looked through the metal file on his desk, started to itemize cases, and then shoved the drawer back into the cabinet.

"Hell," he said, "they all use grass. There's not one kid I've talked to who does not use it or hasn't used it." So they all use grass, and so there sits a probation officer whose duty, you would think, is to persuade them to do otherwise. What does he do? Put it another way, what can he do? It seemed to me that this was very important, because the period of probation, for most people, is what the whole courtroom process finally leads to.

"I never argue about the advantages and disadvantages of grass," Mike said. "I never try to talk them out of it. I just say, look, it's against the law. You smoke, you're going to get busted again. That much, sometimes, I can get them to listen. And some kids I know, I knew they smoked grass but then I heard they were using pills also. And I warned them against the pills. I think they listened to me, because I hadn't preached to them before."

Most of the probation officers I talked to brought up the work they do in trying to help their clients cope more effectively with their problems; they view the use of narcotics as a symptom of more serious troubles, and try to deal with those. The contemporary probation officer, in short, tends to view himself as a kind of psychotherapist.

EDUCATION IS SEEN AS A NEW PANACEA

The trouble with this, aside from whatever displeasure it might cause in the psychiatric profession, is that probation officers don't have much time to work with their clients. The average probation officer is usually responsible for somewhere around a hundred people. Some have smaller caseloads, some have 200. He may see some of his clients twice a week, for a period of a half hour or so, and he may see some of them once every three months. Many probationers are on "mailer" status. That means they are only required to mail in a form periodically to their probation officer, and do not see him in person at all.

A couple of Mike's superiors in the Probation Department, whom I talked to in a big office in the Hall of Records, stressed the fact that the probation officer is only one person in the client's life, vastly outnumbered by all the peers and contemporaries who have other values. The solution to the marihuana problem, they feel, will have to come from education. They told me about various programs going on in the schools' educational films about the dangers of narcotics, lectures by experts and former addicts, demonstrations by yoga teachers to encourage turning-on with exercise and meditation instead of with grass.

Many people I talked to said they thought an educational effort will succeed in reducing the popularity of marihuana. But they also said that, so far, marihuana use is still on the rise. The use of various kinds of pills—uppers and downers—is on the rise also.

So far we have been talking only about the various agencies which deal with the marihuana violator from arrest onward. We have left out the law-enforcement agencies and completely ignored that new American folk figure, the narcotics agent, referred to by the probationer as a nark.

Nobody seems to know exactly how many narcotics agents—federal, state, county sheriff's departments, city police departments—are operating in Southern California, and occasional attempts to shed some light on this question have encountered a certain hostility from the authorities. Last year the Los Angeles *Free Press* published a list of the names and addresses of state narcotics agents—including 26 from the Los Angeles area office—and as a result of it a former reporter, Jerry Applebaum, and the Freep editor Art Kunkin were convicted of felony charges of receiving stolen property.

When I first talked to Lt. Ladhoff, the Los Angeles Police Department's press representative, about the article I was working on, he was unenthusiastic. "We don't want a lot of stories about undercover agents out on buy programs," he said.

"But there are undercover agents out on buy programs, aren't there?" I asked.

"Oh sure," he said. "But we don't want a lot of stories about them."

We were sitting in Lt. Ladhoff's office in Parker Center, and as we talked I saw a couple of shaggy-looking young men in the next room. They were laughing and talking to a secretary, and one of them was carrying a large potted marihuana plant, so perfect in shape and color that I think it was probably artificial.

"Who are those guys?" I asked the Lieutenant.

He said he didn't know who they were. As far as I can dope out the possibilities they were either (a) two undercover narcotics agents or (b) two hippies walking through Parker Center with a marihuana plant.

A couple of days later I went to see Captain Roger Guindon, who is commander of the narcotics division of the LAPD. To get in to see him you pass through a crowded outer office, full of kids being questioned by officers.

I had expected Captain Guindon to be reluctant to talk about how his division operates, but he turned out to be a courteous, soft-spoken type, and not reluctant at all. He told me, first off, that about 80 percent of narcotics arrests, including almost all the routine marihuana possession cases, are made not by men in his division, but by uniformed officers.

The narcotics agents in his division, plainclothesmen, are mainly involved with special investigations and with preparing the complaints which have to go to the District Attorney's Office before anyone is officially charged with a crime—that was what was going on in the outer office. There are now 128 officers in the narcotics division—an increase of a little over 100 percent in the past 10 years.

In addition to the regular officers, the division has an extra 15 men or so attached to it as undercover agents. These are young officers, fresh out of police academy, who let their hair or their beards grow and go out into the streets.

COST OF LAW ENFORCEMENT IS SKYROCKETING

They are not out there to get bigtime pushers. "This program," the Captain explained, "is basically designed for the small street peddler. He is the most contaminating source in society today, because he contacts the most people."

The undercover agent becomes assimilated into a group, or into several groups, makes acquaintances with people who are selling, makes two or three buys from each. After about four months, when his undercover tour of duty is finished, warrants are issued and all the sellers are arrested. According to Captain Guindon, the department gets 30 to 40 peddlers arrested for each undercover officer it puts in the field.

I thought about this later, and I estimate, based on the number of buys per officer, that the LAPD must be purchasing around $50,000 worth of marihuana a year.

I talked to Captain Guindon about the whole narcotics scene, and especially about marihuana. He is very upset at people such as Margaret Mead who are advocating more liberal laws about marihuana. Doctor Mead has said that marihuana should be legalized, and she is very unpopular with the police these days. Captain Guindon does not agree with people who think society should become more permissive. He, too, thinks education is the way to solve the problem. He had a folder on his desk from Lockheed Educational Systems, who have designed a narcotics program they are trying to market to local school districts.

Meanwhile, the narcotics division is growing. The City Council has been talking about increasing its strength to 226 officers, as part of a "war on narcotics."

One reason divisions such as Captain Guindon's keep getting larger is that the problem never seems to go away. Arrest 30 street peddlers, and in no time 30 new peddlers have come along to take their place.

Marihuana is also the easiest of all contraband goods for the user to produce himself. A few seeds and you are your own connection; nothing in the era of bathtub gin and home brew was ever as easy as home-grown grass.

This being true, it was inevitable that there would be an increase in the number of persons choosing to grow their own and avoid the uncertainties and expense of buying it from somebody else. In one year, from 1967 to 1968 (well before the beginning of the federal government's campaign to cut off smuggling from Mexico), the number of marihuana plants seized in California jumped from 72,772 to 1,327,260—an increase of over 1,500 percent.

Another evidence of the grass-growing boom—which I found even more dramatic than the statistics—is the kind of laboratory facilities which are now being built. The Sheriff's Facility in Orange County, a new building which went up at about the same time as the courthouse—has a beautifully equipped crime laboratory where chemists are kept busy—very busy—running the analyses which are necessary before any narcotics can be introduced in court as evidence. The crime lab has a place for keeping bulk quantities of seized drugs—this is a fragrant room full of lockers—and a herbarium on the roof, for living plants. The herbarium is a locked cubicle: from the outside, it looks as if it might be a structure for power equipment; from the inside, it looks like a greenhouse. It is full of potted marihuana plants, some peyote and a few bonzai trees being grown by one of the lab men.

A herbarium struck me as a kind of bizarre thing to find on the roof of the Orange County Sheriff's building, but it makes sense: if you are going to seize marihuana plants and introduce them as evidence in trials that may not take place for several months, you have to have someplace to keep them alive. If present trends continue, a herbarium will become a standard item for the modern police station.

But the increase in home-grown marihuana does not seem to be causing any decrease in the number of people who are bringing the stuff in from Mexico. That is a federal offense, and the responsibility for prosecuting the people who get caught bringing narcotics across the border from Mexico falls to Harry Steward, U.S. Attorney for the district encompassing San Diego and Imperial counties. When I talked to Harry Steward on the phone, he said, "This is a real bad news deal we've got going down here. The court congestion you wouldn't believe."

I asked him if he knew how many marihuana cases his office was handling per year, and he gave me almost exactly the same answer I had gotten when I asked the crime lab man at Santa Ana how many samples they were being asked to analyze. He said he was so far behind he hadn't time to figure out how far behind he was.

Later, when I visited him in his office in the old federal courthouse building in San Diego, he did come up with some figures. Steward is an informal type, with reddish hair and a reddish face and big horn-rimmed glasses, and he put his feet up on his desk as he talked, sitting there under his framed photograph of Richard Nixon.

He told me that his district—which takes in San Diego and Imperial counties—has the highest rate of violations of federal law of any district in the United States. "We're inundated," he said. "The demand for marihuana is up north, and the supply is down south, and we're sitting in the middle." The statistic he gave me was a figure on the number of cases each judge in his district was required to handle; it was 1,250 cases per year, compared to the national average of 250 cases per year.

The crime, illegal importation of marihuana, carries a federal prison sentence of five to 20 years on the first offense, 10 to 40 years on the second offense. No probation. There is a lesser offense, failure to pay import duties, to which some offenders, with a little luck and a good lawyer, sometimes get their charges reduced; that has a two-to-10 year sentence with the possibility of probation.

Steward did not have any data on what kind of people are being arrested and charged with smuggling marihuana across the border—except to say that they are, on the average, getting younger. "They run the gamut," he said. "You've got the experimenter, the addict or user, the mule—that's some guy, usually some poor dumb peasant, who gets talked into bringing some stuff across the border for somebody else, and then there's the big-time commercial peddler, whom you seldom catch. Right now we're getting more mules."

Steward told me about the programs which the Mexican government has undertaken since the beginning of Operation Co-Operation: searching vehicles on the highways, discovering and burning entire fields of marihuana plants. Operation Co-Operation, Steward thinks, is the best hope of cutting off the supply. The solution to the demand problem, he thinks, is education: he showed me a newspaper clipping about a national campaign being launched under the direction of a New York advertising agency, a campaign to change young people's attitudes about narcotics through advertisments.

IT'S BEEN A BAD YEAR FOR THE GRASS GROWERS

Those things, Steward conceded, will take some time to produce results. Meanwhile, he was glad to hear that Congress was passing a bill authorizing three new federal judges for his district. This will lessen some of the court congestion in San Diego, although the caseload will still be far above the national average. With the three new judges, Steward will also be authorized six more prosecutors.

From the Federal Courthouse I went to the Customs Bureau, the agency which is responsible for policing the border. I was looking for some information on how many people they were actually arresting every year for bringing marihuana in from Mexico. They didn't have that data, but they did give me a total of the amount of marihuana seized by border agents: it had gone up from 2,165 pounds in fiscal 1965 to 48,896 pounds in 1968.

The men at the Customs Bureau—one of whom wore the uniform of a border customs inspector—were a couple of friendly bureaucrats, interested in their work and glad to be able to tell somebody what they were doing. I did not get the impression that they felt caught up in some great social crisis, sitting there in that pleasant building by the freeway on a sunny San Diego day; they weren't even mad at Margaret Mead. They were busy, and, like bureaucrats everywhere, felt they need more help.

They are going to get it: more customs inspectors have been authorized, and the government is going to do some construction work at the San Ysidro border station. Right now there are 16 usable lanes; this is going to be increased to 26, so that many more inspectors can be working and that many more vehicles can be spot-checked.

I drove down to the border, then, and stood for a while watching cars stream across it from Tijuana; the usual herds of fishermen, campers, Mexican workers, sightseers, horseplayers, hippies on the road and sailors on shore leave. I watched them come across and tried to see them as experimenters and users and mules; somehow it didn't work, but by all the odds, several pounds of marihuana must have moved past me on its way north as I stood there.

Up in an office above the San Ysidro border station they have a wall chart with a month-by-month breakdown on narcotics seizures and arrests. It showed that they are currently arresting more than a thousand people a year for crossing the border with marihuana. I noticed that the amount of marihuana seized in 1969 was considerably less than for 1968. This was the first time in all my researchers that I had seen anything decline. I assumed that it had something to do with Operation Co-Operation, but one of the narcotics agents (not an inspector; there are 31 plainclothes narcotics agents working out of San Ysidro also) told me it was the result of bad weather and crop failures in Mexico. Apparently the fields are fluorishing again; according to the charts, the influx is rising, and right now marihuana seizures are better than a ton a month.

A ton a month is a lot of grass, and of course the amount seized is only a small fraction of the amount that gets across; I can only conclude that Mexico must still have a lot of unburned marihuana fields.

During the weeks that I spent traveling around Southern California, looking at different public agencies dealing with marihuana, and talking to people about what they thought was going on, I got a great deal of agreement on some points, and a great deal of disagreeemnt on others.

Everybody agrees that the situation is critical. Some use the word crisis, some call it an epidemic, some call it a war. The choice of adjectives shows more variety; some people say the situation is tragic, and others say it is ridiculous. Everybody agrees that it is expensive.

Now, about solutions: I ran across quite a number of people on the public payroll who think marihuana ought to be legalized; they spoke out with surprising vehemence, and then asked me not to use their names.

SENTENCING VARIES GREATLY BY COUNTY

For most people legalization is not quite thinkable, and the favorite word is education: Lockhead, or Madison Avenue, or some alliance of documentary film-makers, yogas, ex-users and health experts, will shatter the network of shared values which now makes pot desirable to so many young people.

Others are for escalation: more and tougher laws, more and tougher law enforcement.

Meanwhile, the number of people using marihuana and getting arrested for it continues to increase, and so does the number of people whose occupation it is to catch, prosecute, defend, punish or counsel the users. I am not prepared to estimate how much it all costs: you would have to compute some portion of the salaries of all the uniformed police officers peering into Volkswagen campers, all the undercover men out making friends and looking for connections, all the narcotics agents writing complaints, all the men from the district attorneys' offices prosecuting the cases in court, all the laboratory men studying samples of Acapulco Gold through microscopes so the prosecution will have scientific evidence that somebody has not been arrested for possession of a bag of oregano, all the public defenders cross-examining policemen to try to establish that they got their evidence illegally, all the judges hearing the cases, all the probation officers warning their clients not to get arrested again, and whoever it is that waters the plants on the roof of the Orange County Sheriff's Department.

There are a lot of people in the marihuana business, and there will be more people in it tomorrow than there are today, and I do not know of anybody—anybody at all—who can clearly foresee an end to it.

[From the Los Angeles Times, July 20, 1971]

THREE MAYOR SAN FRANCISCO LAW OFFICERS OPPOSE RECOMMENDATION

SAN FRANCISCO (UPI)—There top San Francisco law enforcement officers Monday unanimously opposed a recommendation of the San Francisco Committee on Crime to legalize marihuana.

"Because something is wrong, you just can't legalize it out of existence," said Police Chief Alfred J. Nelder. "You can't take a defeatist atitude.

"Marihuana is detrimental to the user," Nelder said. "Recently, prior to testifying before a congressional subcommittee, I canvassed numerous heroin addicts. All said they started on marihuana. Each was asked if they advocated usage of marihuana. All said no."

Matthew O'Connor, regional chief of the State Narcotics Bureau, said marihuana is "a dangerous, unpredictable substance. According to our studies, marihuana used consistently and in substantial amounts disorients the personality."

O'Connor said studies of more than 1,000 individuals made by the State Bureau of Criminal Statistics in Sacramento showed that 12% of those arrested for marihuana offenses were arrested subsequently for heroin offenses within five years.

"Several Haight-Ashbury studies here reflected that of persons involved in the initial use of marihuana, a large percentage will go on to other drugs—including heroin—within less than a three-year period," he said.

Dist. Atty. John Jay Ferdon said he also was against legalization "because marihuana has been proven to have deleterious effects."

A minority on the crime committee also disagreed with the 17-member majority reports.

CRIME COMMITTEE URGES END TO LAWS AGAINST MARIHUANA

SAN FRANCISCO (UPI)—While deploring the use of any mind-altering drugs, the San Francisco Committee on Crime recommended Monday the repeal of laws prohibiting use of marihuana by adults, but retention of laws making the sale of heroin illegal.

In its 11th and final report, the 27-member committee split in its recommendations. About one-third of the members were against the marihuana recommendations and filed minority reports. Only one member dissented from the recommendations on heroin.

The committee's recommendations for repealing laws prohibiting marihuana use were based, the report emphasized, on the belief that the criminal process is not the best way to control use of the drug.

"We do not propose that society discontinue efforts to deter people from using marihuana," the report said.

COMMENTS ON EFFECTS

"It's use is probably not as deleterious as its most earnest detractors say, but certainly people would be better off without it. In an age when human wits are most needed, they should not be subjected to manipulation or alteration by drugs.

"We simply conclude that the criminal process is not the way to go about achieving the goal given the present state of evidence.

"Indeed, removing the stigma of criminality may remove the attraction of the illicit and eliminate the impetus to use that comes from bravado.

"Criminalization has failed; we suggest that society now try non-criminalization."

The committee members, in an introduction to the report, emphasized that they were not condoning or endorsing marihuana use.

"We realize that previous portions such as those dealing with prostitution and pornography, have been carelessly read by portions of the public, including those who should know better.

"The committee thoroughly deplores prostitution and has the utmost detestation for pornography. Yet our reports have been carelessly interpreted as an endorsement of these vices.

"We resign ourselves to a like misinterpretation that the committee approves the use of marihuana, despite our reiteration that we disapprove the use of marihuana and encourage all non-criminal processes to prevent it."

Regarding marihuana, the committee recommended:

Repeal of laws prohibiting the use and possession of marihuana by adults.

Repeal of laws prohibiting sale of marihuana to adults and regulate sale to them by laws on the order of those regulating alcoholic beverages.

Continue to prohibit sale to minors and possession by minors.

Prohibit any advertising of marihuana.

Devise and expend a vigorous education program about marihuana.

The committee said in the case of heroin "a wholly different set of considerations is apparent.

"The use of heroin is unmitigatably bad. It is destructive to the user, and it is destructive to society. No one is more contemptible than the vendor or pusher who 'hooks' another into use for the sake of profit.

"If society is ever justified in punishing anyone for the sake of revenge and detestation rather than for determent or rehabilitation, it would be justified in doing so to the vendor of heroin."

But the committee also said that "efforts to date by criminal law to check heroin traffic have been singularly unsuccessful. Major arrests are few and do not visibly decrease the traffic."

Therefore, the report said, "Long-range solutions to the heroin problem must be found in efforts by the federal government to stop opium cultivation, heroin refining and importation and in massive educational programs aimed at the drug."

UNDERWORLD SOURCES

The report said heroin addicts can obtain their drug only from underworld contacts because of current laws and commit crimes in order to obtain money.

"At this time, there appear to be only two ways of having a substantial effect on the heroin crime cycle," the report said.

"The first alternative is to place addicts permanently in institutions. This is punishment for illness.

"The second alternative is to establish government-controlled medical clinics where, if nothing else succeeds, heroin could be administered, not handed out, to confirmed heroin addicts on the educated, experienced judgment of physicians.

"This would substantially reduce crime, the role of the commercial peddler, and the likelihood of peddlers attempting to hook our youth."

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CALIFORNIA LEGISLATURE
SENATE SELECT COMMITTEE
ON
CONTROL OF MARIJUANA

FINAL REPORT

MARIJUANA: BEYOND MISUNDERSTANDING

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May, 1974

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INTRODUCTION

The Senate Select Committee on the Control of Marijuana was established by the adoption of Senate Rules Committee Resolution Number 401. The Select Committee was authorized and directed to ascertain, study and analyze all facts relating to the administration and effect of laws relating to control of the use and availability of marijuana, and report thereon to the Legislature including in its report its recommendations for appropriate legislation.

The Select Committee, in accomplishing its assigned tasks, has completed the following activities:

1. Held a series of three public hearings in various regions of the State.
2. Held meetings with concerned citizens.
3. Reviewed extensive study and report material available relative to the subject of marijuana use throughout the United States.
4. Completed this report on the Select Committee's activities.

The Select Committee report draws liberally upon other studies, reports, letters and the considerable experience of other states in the field of marijuana use. The Committee sought out and evaluated "the best thought" and experience on marijuana use before formulating its report. A great number of outstanding citizens were consulted. These are truly dedicated individuals who have given unselfishly of their time and talent

in assisting the legislative committee. They have assisted entirely at their own expense.

The conclusions and recommendations in this report offer a reasonable and realistic approach to a program of action by individuals and their governments.

Chapter 1

GENERAL CONCLUSIONS

In submitting its final report to the Senate Rules Committee, the Senate Select Committee on the Control of Marijuana states the following general conclusions reached after thoughtful consideration of the marijuana criminalization issue:

1. The Committee finds, even assuming marijuana has some undesirable or harmful properties, attempts at prohibition through utilization of the criminal law is not a proper approach in controlling these properties and effects.

2. The Committee further finds private use of marijuana is a private act.

3. Marijuana use is to be regarded as involving primarily a risk to the individual user.

4. The State does not have sufficient compelling interest to prevent the individual from taking such risks.

5. Marijuana use is not a threat to public health, safety or morals so as to warrant state intrusion.

6. The use of marijuana is not such a threat to society to warrant the jailing of people as a way to deal with the attendant issues.

7. The State does not have the responsibility to protect an individual against the potentially harmful effects of a drug when these are still unknown and when all the evidence suggests they are no greater in severity, and possibly not so much different in kind, than those from other socially acceptable drugs.

8. If the individual needs to have some deterrant to over-use of a drug, bringing the individual into the criminal justice system does not constitute a desirable way of accomplishing this end.

9. The benefits, compared to the dollars spent by the State and the social costs suffered by the individual, are not worth the use of the criminal process.

10. One cannot justify a law which in actual practice can only

be selectively enforced.

Therefore, the Select Committee concludes possession and use of marijuana is a private act and recommends decriminalization of marijuana possession for private use.

Further conclusions:

1. In the thirteen-year period 1960-1972, over 400,000 Californians were arrested on marijuana charges.

2. There were approximately 75,561 marijuana arrests in California in 1972.

3. There were 52,027 adult felony marijuana arrests in the State comprising 22% of all adult felony arrests in the State.

4. Similarly, there were 21,034 juvenile marijuana arrests comprising approximately 20% of the 103,347 juvenile major law violation arrests.

5. Marijuana use is not a youth phenomenon. It pervades all groups and classes of people.

6. There is great selectivity of marijuana law enforcement. Due to its limited resources, it is clear law enforcement cannot and does not arrest all users. About 1 out of 200 users is touched by the law.

7. In 1972, approximately $11 million or $144 per arrest was expended by county law enforcement for marijuana offenders.

8. The Department of Corrections spends approximately $900,000 per year on marijuana offenders incarcerated in State prisons. The median time served by male marijuana offenders in State prisons is 24 months.

9. According to all information available to the Committee, the classification of marijuana as a criminal offense has cost the taxpayers of California about 577 million dollars to arrest, prosecute and punish 400,000 people since 1960. Over the thirteen-year span (1960-1972 inclusive), the fiscal costs of California law enforcement have averaged $44,407,941 per year, or about $1,630 per arrest.

10. Unless present marijuana laws are modified, California may

expect to continue adding 100 million dollars each year to the almost 600 million dollars already spent since the cost of enforcement will continue to rise and the number of arrests will continue to grow.

11. The Committee finds polarization has lead to a growing lack of respect for our entire legal system. The marijuana laws, more than anything else, have caused the hostility between police and many of our citizens. As a consequence, respect for our criminal justice system has diminished to an almost irreparable stage.

12. The Committee found disrespect for the law was further engendered by the dishonesty about marijuana. Furthermore, education in the schools about drugs suffered because students felt they were lied to about marijuana.

13. Marijuana criminalization has created an unfairness and selectivity of enforcement because it has been used as a weapon and whipping device to penalize and repress people who have different lifestyles while allowing others continued use or security from arrest and prosecution.

14. The Committee found the marijuana laws as they pertain to single possession for private use are ineffective. They do not share the consensus of the people. The present system is not working. It is not stopping people from using marijuana or trafficking in it.

15. Law reform or re-setting of priorities would alleviate the dilemmas of thousands who are within the criminal justice system; those who are preparing for careers in the criminal justice system; what to do when they themselves or their superiors are users or have used marijuana, or do not use it but are confronted with situations where friends do; having to prosecute an arrestee for behavior they do not consider wrong.

16. Civil liberties of individuals are seriously jeopardized by arrests without probable cause, illegal searches and selective enforcement occurring often enough to arouse concern about the integrity of the criminal process.

17. It was found the most serious cost of criminalization of marijuana is it makes felons of a large segment of our population, especially our youth.

18. The great number of marijuana possession arrests each year clog and overload the criminal justice system.

CONTINUED

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19. The limited resources of law enforcement are heavily taxed, and diverted from other more serious concerns.

20. The impact on the increase or decrease of marijuana use will be minimal, if any, if the law is changed.

It was determined the stated fear California will become a "pot-smoking" state is greatly exaggerated and decriminalization will not put the imprimature by the legislature of approval on marijuana possession and use.

It was found in the face of the most vigorous laws, law enforcement, and uniform belief marijuana was a highly hazardous drug, a marijuana explosion occurred; and these methods just did not work.

21. It was found over 25 million persons in the United States are estimated to have used marijuana.

One million marijuana users account for 43% of the estimated 2.6 billion marijuana cigarettes consumed. Studies reporting the amount of marijuana smoked per occasion indicate the majority of users consume no more than one cigarette.

Approximately four tons of marijuana per day must be smuggled into the U.S. to meet consumption demand.

In summary, the current prevalence of marijuana use is high and is likely to continue to increase for a number of years. The present policies do not effectively deter use. The current epidemic of marijuana use among all classes and groups of people is probably a strong indication marijuana use has become permanent.

Chapter 2

SUMMARY OF RECOMMENDATIONS

The marijuana laws as they pertain to simple possession for private adult use should be amended to abolish the felony offense.

The Legislature should adopt a program of decriminalization making simple possession of marijuana for private adult use an infraction, if anything.

The Legislature should retain the criminal provisions of the marijuana laws as they pertain to cultivation, transportation, sale and selling or giving to a minor, and as they pertain to concentrated marijuana.

The Legislature should adopt a policy to:

1. Go after the major or big pusher or trafficker, that is, the top levels of the distribution pyramid.

2. Recognize the importance of the right of privacy.

3. Recognize state intrusion is only warranted when there is a threat to the public health, safety or morals.

4. Recognize the existence of serious threats to the civil liberties of people.

5. Recognize the need for the policies of all state agencies to be directed toward fulfilling the State's adopted policy.

6. Recognize the continued growth in use and the rise in arrests increases the demands on the already burdened criminal justice system, makes the law harder to enforce and encourages selectivity of enforcement since not all users can be arrested.

7. Recognize the need to redefine responsibilities of law enforcement and to provide them with guidance, authority and other assistance in order they may adopt and carry out decriminalization reform.

8. Recognize the interest of the people is protection from more serious crimes and transgressions against the person and property.

9. Recognize people criminalized by the marijuana laws are a valuable resource being lost because of felony arrest, polarization and other results of the law.

10. Lastly, recognize the present marijuana laws are not working and reform is needed.

The need for changes in the marijuana laws of California, particularly as they apply to simple possession for private adult use, has become increasingly apparent over the past several years. Broad dissatisfaction has been expressed by the public and organizations, as well as by legislators, attorneys, and others involved in the enforcement field.

Essentially, the dissatisfaction results from one basic problem. Even assuming marijuana has some undesirable or harmful properties, prohibition through criminal law is not a proper approach in controlling these properties and effects. The removal of minor marijuana related acts from the criminal laws avoids the problems of over-criminalization. The limited resources of the criminal justice system -- police, prosecutors, courts, incarceration, rehabilitation -- can be better utilized. There are arbitrary and sometimes illegal arrests and searches. There is growing disrespect for the law. There are charges of great waste in the efforts of law enforcement. The stigmatization of an arrest and conviction record inflicted upon a great number of people, especially youth, can be minimized.

To best elucidate this problem, reference is made to Edward Brecher's testimony presented to the Committee:

"I don't know your feelings about the American jail and prison systems. I cannot believe that what goes on in jails and prisons is a good thing for our young people or an appropriate public response to the smoking or possession of marijuana.

A judge in Washington, D.C. announced from the bench that he was going to stop sending marijuana offenders to the District of Columbia jail. And his statement from the bench -- it was so powerful that I hope you will let me take just a moment to read it to you. This is Judge Charles W. Halleck of the District of Columbia Court of General Sessions, testimony before the House of Representatives, September 1969, explaining why he no longer gives jail sentences to youthful marijuana smokers.

And I quote, if I send a long-haired marijuana offender to that jail, even for 30 days, Senator, he's going to be the victim of the most brutal type of homosexual, unnatural perverted assaults and attacks that you can imagine, and anybody who tells you it doesn't happen in that jail day in and day out is simply not telling you the truth. How in God's name, Seantor, can I send anybody to that jail knowing that? How can I send some poor young kid who gets caught by some zealous policeman who wants to make his record on a narcotics arrest? How can I send that kid to that jail? I can't do it. So I put him on probation or I suspend the sentence and everybody says the judge doesn't care. The judge doesn't care about drugs, lets them all go. You just simply can't treat people like that.

This is a district judge testifying before the United States House of Representatives. And this is an expurgated version of his remarks. My editors wouldn't print some of the details of what happens to marijuana offenders in prison because you want to remember that they are the vulnerable group; they are the long-hairs, they are the soft, and they are going to get it. And this has got to stop."

Chapter 3

TESTIMONY ON DECRIMINALIZATION

Thirteen witnesses testified. One did not make a recommendation. Two recommended reduction of penalties. Seven witnesses advocated some form of marijuana decriminalization. All of these felt penalties should fit the crime and major law enforcement emphasis be put on major trafficking and distribution. The various specific recommendations for decriminalization of marijuana possession for private adult use contained significant differences.

Recommendation Number 1

The National Commission on Marihuana and Drug Abuse recommends the following decriminalization models:

1. Remove criminal penalties for adult use and possession of marijuana in private.
2. Discourage use of marijuana.
3. Civil fine (without jail) for public use.
4. Marijuana found in public is subject to confiscation (two commissioners would do away with this part).
5. Continued criminal penalties for sale, importation and cultivation of marijuana, with the emphasis of law enforcement efforts directed at "the top of the distribution pyramid," i.e. major trafficking.

Recommendation Number 2

The 1974 California Marijuana Initiative recommends:

1. Remove criminal penalties for adult private use, possession, transportation, and cultivation of marijuana (provided cultivation is shielded from public access).

2. Allow local governments exclusive jurisdiction to punish public use of marijuana with a maximum fine of $100.

3. Criminal penalties for sale, importation, or commercial distribution of marijuana would remain.

Recommendation Number 3

The Consumers Union alternative regulatory models are:

1. Immediate removal of all Federal laws governing use, possession, cultivation, transporting, processing, and sale of marijuana; Similar repeal of all state laws, replacing them with new laws legalizing the cultivation, processing, and orderly marketing of marijuana "subject to appropriate legislations."

2. Urge "the widest possible experimentation" among the states as to different models for legal use, possession, and distribution of marijuana, and advocate a Federal Commission to monitor these different approaches and select the best features of each for a new system of Federal regulation.

3. It was specifically suggested to the Committee that California might try the Oregon system, or an alternative system decriminalizing possession of up to one pound of marijuana for personal use, for a period of 24 months and see how this works.

Recommendation Number 4

The Oregon decriminalization system:

1. Makes possession of up to one ounce of marijuana a civil rather than a criminal offense (similar to an infraction in California), punishable by a maximum $100 fine.

2. Retains criminal penalties for possession of more than one ounce, transportation, cultivation, supplying to a minor and sale.

3. Allows citations to be use for simple possession cases.

Recommendation Number 5

The Alcoholic Beverage Control recommends:

1. Suggests several models or projects of "legalization" or

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controlled distribution should be tried in different jurisdictions, California being one, with the hope of ascertaining what features can be relied upon to protect the rights of individuals and the legitimate interests of society.

2. Marijuana would be treated as alcohol is, allowing it to be sold under a license.

3. Allow for quality and potency control.

4. Uniformity of price control and regulation and revenue raising through taxation.

5. Decriminalize marijuana use, sale and distribution.

Recommendation Number 6

Several witnesses who favored some form of decriminalization also advocated other modifications of State laws, including:

1. Reclassification of marijuana to remove it from its present category as a "narcotic drug".

2. Prohibition of advertising of marijuana or other drugs.

3. Disallowing a plea of marijuana intoxication as a defense in prosecution of other criminal acts.

4. Warnings as to the potential hazards of marijuana if commercial preparation and marketing is allowed.

5. Modifying legal definitions to decriminalize marijuana but retain criminal penalties for possession, use, or sale of hashish or prepared cannabis products.

6. Place marijuana control under the health department, rather than under law enforcement agencies.

7. Return the reporting forms used by the Bureau of Criminal Statistics to their 1973 form or a more detailed form. Specifically, it was recommended that the four "Law Enforcement Dispositions" categories on the 1974 reporting forms (released, turned over to other jurisdictions, misdemeanor complaint filed, and felony complaint filed) be retained and that the four categories of offenses on the 1973 reporting forms (heroin and other narcotics, marijuana, dangerous drugs, other drug offenses) be reinstituted immediately.

8. Two witnesses recommended continued criminal sanctions against possession and use of marijuana, but spoke against excessive penalties for those activities and recommended jail either not be used or be used only as a last resort. Advocated education for offenders.

9. Three witnesses remained opposed to any form of decriminalization or penalty reduction and advocated retention of present California laws.

   Commander Charles Reese of the Los Angeles Police Department noted a marijuana possession offense "is a great one for the District Attorney to say, 'This is not worthy under social attitudes of felony prosecution'," pointing to Section 17 of the California Penal Code allowing District Attorneys to prosecute certain felony cases as misdemeanors.

10. All witnesses urged further educational efforts and continued research.

Chapter 4

SKEPTICISM

Skepticism was expressed when the Committee was formed because it was not known what it would do specifically.

In testimony taken from witnesses, again, skepticism resounded off the walls of the hearing rooms because it was felt the Committee was trying to "reinvent the wheel" with the same witnesses, the same kind of things and so forth done by the National Commission in greater detail and depth with a budget of over three million dollars and the specific charge of finding out the truth on marijuana.

Skepticism was expressed of the outcome in this State today. Because many other states ridicule us because of our legislative approach to the drug marijuana. California is one of only four states which continues to treat possession of marijuana for personal use as a felony arrest.

The Committee was urged to be skeptical of the witnesses and things heard on both sides of the issue as marijuana is a very symbolic issue. It is an area where there is tremendous mythology. It is an area where many people feel moral righteousness as to the inherent good or evil of one drug over another.

The Committee has taken testimony of witnesses, gathered data and information and has taken notice of various major studies done so far in its quest to particularize the issue to this State.

Therefore, the Committee respectfully submits its report in the hope it brings us closer to a resolution of the marijuana issue.

Chapter 5

MARIJUANA: THE RIGHT OF PRIVACY

While reasonable minds will differ, and while the medical evidence concerning the physical and psychological consequences of the use of marijuana is sometimes conflicting, and will continue to do so, it is found these consequences are minimal compared to the continued imposition of severe criminal sanctions for simple possession and private use, the resulting hardships on individuals and families, and the disruptive influence in our society.

Rather than attempt to settle the disagreement as to the medical effects of marijuana use, the Committee has instead decided to grapple with legal effects of marijuana law enforcement and the right of privacy.

Whether The Use Of Marijuana Is A Private Act?

The question to be determined then, is whether a fundamental constitutional right is involved in this case.

The Supreme Court of the United States has recently spoken with regard to the right of privacy as follows:

> "The Constitution does not explicitly mention any right of privacy. In the line of decisions, however, going back perhaps as far as Union Pacific Railroad Company v. Botsford,[1] the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy does exist under the Constitution. In varying contexts the Court or individual justice have indeed found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments; in the penumbra of the Bill of Rights; in the Ninth

> Amendment; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. These decisions make it clear that only personal rights that can be deemed 'fundamental' or 'implicit' in the concept of ordered liberty are included in this guarantee of personal privacy.[2]

This determination and holding of the Supreme Court of the United States seems to compel the conclusion the right of an adult to possess and use marijuana in private is an act falling within the ambit of the fundamental right of privacy. The Supreme Court of the United States has made clear the right of privacy and personal liberty is not a static, but an evolving right.

In considering this problem the National Commission on Marijuana and Drug Abuse in its report, said:

> "With possession and use of marihuana, we are dealing with a form of behavior which occurs generally in private where a person possesses the drug for his own use. The social impact of this conduct is indirect, arising primarily in cases of heavy or otherwise irresponsible use and from the drug's symbolic aspects. We do not take the absolutists position that society is philosophically forbidden from criminalizing any kind of 'private' behavior. The phrase 'victimless crimes,' like 'public health hazard,' has become a rhetorical excuse for avoiding basic social policy issues. We have chosen a discouragement policy on the basis of our evaluations of the actual and potential individual and social impact of marihuana use. Only now that we have done so can we accord appropriate weight to the nation's philosophical preference for individual privacy.
> "On the basis of this evaluation we believe that the criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of the use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with greatest reluctance."[3]

Further, in outlining the basic problems of this issue, the Commission stated:

> "The preference for individual privacy reflected in the debate over the philosophical limitations on the criminal law is also manifested in our constitutional jurisprudence. Although no court, to our knowledge, has held that government may not prohibit private possession of marihuana, two overlapping constitutional traditions do have important public policy implications in this area. The first revolves around the concept that in a free society the legislature may act only for public purposes. The 'police powers' of the states extend only to the 'public health, safety and morals.' In the period of our history when the people most feared interference with their rights by the government, it was generally accepted that this broad power had an inherent limitation. For example, early prohibitions of alcohol possession were declared unconstitutional on the basis of reasoning such as that employed by the Supreme Court of Kentucky in 1915 in the case of Commonwealth v. Campbell;"[4]

In this case, the Court declared it is not within the competency of government to invade the privacy of the citizen's life and to regulate his conduct in matters in which he alone is concerned, or to prohibit him any liberty the exercise of which will not directly injure society.

The Court, noting the defendant was "not charged with having liquor in his possession for the purpose of selling it, or even giving it to another," and "ownership and possession cannot be denied when such ownership and possession is not in itself injurious to the public," the Kentucky Court concluded:

The right to use liquor for one's own comfort, if they use it without direct injury to the public, is one of the citizen's

natural and inalienable rights... We hold that the police power--vague and wide and undefined as it is-- has limits...(Id., emphasis added). This is what is usually referred to as personal privacy. It is conduct in and of itself solely related to the life style of an individual. It is one's right to personal autonomy. Any transgression into this zone of personal autonomy requires the consent of the individual, or an explanation and/or justification. Further, this means what one eats, wears, or thinks is to be regarded as immune from outside interference, that is, "where there is significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." [5]

Furthermore, the National Commission stated, even the perceived dangers of opium were not enough to convince some members of the judiciary that the government could prohibit possession. It is historically instructive to consider these words, penned in 1890, by Judge Scott in Ah Lim v. Territory:[6]

> "I make no question but that the habit of smoking opium may be repulsive and degrading. That its effect would be to shatter the nerves and destroy the intellect; and that it may tend to the increase of the pauperism and crime. But there is vast difference between the commission of a single act, and a confirmed habit. There is a distinction to be recognized between the use and abuse of any article or substance...If this act must be held valid it is hard to conceive of any legislative action affecting the personal conduct, or privileges of the individual citizen, that must not be upheld...The prohibited act cannot affect the public in any way except through the primary personal injury to the individual, if it occasions him any injury. It looks like a new and extreme step under our government in the field of

> legislation, if it really was passed for any of the purposes upon which that character of legislation can be sustained, if at all."

The Commission proceeded to say: As a matter of constitutional history, a second tradition, the application of specific provisions in the Bill of Rights, has generally replaced the notion of "inherent" limitations. The ultimate effect is virtually the same, however. The Fourth Amendment's proscription of "unreasonable searches and seizures" reflects a constitutional commitment to the value of individual privacy. The importance of the Fourth Amendment to the entire constitutional scheme was eloquently described by Justice Brandeis in 1928 in the case of Olmstead v. U.S.:[7]

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." (emphasis added)

The Commission continued: although the Fourth Amendment is itself a procedural portection, the value of privacy which it crystallizes is often read in conjunction with other important values to set substantive limits on legislative power. The Supreme Court, in the case of Griswold v. Connecticut,[8] held in 1965 that Connecticut could not constitutionally prohibit the use of birth control devices by married persons. Although the Justices did not agree

completely on the reasons for their decision, Justice Douglas stated in the opinion of the Court:

> "The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goal by means of having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a 'governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedom.'[9] Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship."[10]

In expanding the right of privacy, four years later, the Supreme Court, in Stanley v. Georgia,[11] held even though obscenity is not "speech" protected by the First Amendment, a state cannot constitutionally make private possession of obscene material a crime. The Court's reasoning is revealed in the following language:

> "(The) right to receive information and ideas, regardless of their social worth, is fundamental to our free society. Moreover, in the context of this case -- a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home -- that right takes on an added dimension. For also, fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy". (emphasis added)

The Commission made the following conclusion: While the judiciary is the governmental institution most directly concerned with the protection of individual liberties, all policy-makers

have a responsibility to consider our constitutional heritage when framing public policy. Regardless of whether or not the courts would overturn a prohibition of possession of marihuana for personal use in the home, we are necessarily influenced by the high place traditionally occupied by the value of privacy in our constitutional scheme.

Accordingly, we believe that government must show a compelling reason to justify invasion of the home in order to prevent personal use of marihuana. We find little in marihuana's effects or in its social impact to support such a determination. Legislators enacting Prohibition did not find such a compelling reason 40 years ago; and we do not find the situation any more compelling for marihuana today.[12] (emphasis added)

The Select Committee concurs with the National Commission and concludes the State does not have a compelling interest to invade the privacy of one's home, one's personal use of marijuana. Therefore, the Committee recognized the use of marijuana in one's home as a private act with the State having no compelling interest to interfere.

Second, marijuana use is to be regarded as involving primarily a risk to the individual user. In State v. Kanter,[13] the concurring opinion of Justice Abe stated in part:

> "...one has a fundamental right of liberty to make a fool of himself as long as his act does not endanger others, and the State may regulate the conduct of a person under pain of criminal punishment only when his actions affect the general welfare, that is,

where others are harmed or likely to be harmed."

> Justice Abe went on to say, "I believe the right to the 'enjoyment of life, liberty and the pursuit of happiness' includes the smoking of marijuana, and one's right to smoke marijuana may not be prohibited or curtailed unless such smoking affects the general welfare."

Third, the State does not have sufficient compelling interests to prevent the individual from taking such risks, if any. On this point, in Kanter, supra, Justice Abe said;

> "The finding marijuana is harmful to the user does not authorize the State under its police power to prohibit its use under the threat of punishment." He further stated, "The State must prove the use of marijuana is not only harmful to the user, but also to the general public before it can prohibit its use."

The evidence is abundant to dispel old and preconceived notions marijuana is a "dangerous" drug. No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable to even very high doses of marijuana. There was no valid evidence found to support the thesis marijuana, by itself, either inevitably, generally, or even frequently causes or precipitates the commission of crime, including acts of violence, or juvenile delinquency.

Fourth, marijuana use is not a threat to public health, safety or morals so as to warrant State intrusion. In all its studies, the National Commission on Marijuana and Drug Abuse found no evidence of chromosome damage or teratogenic or matagenic effects due to cannabis, at doses commonly used by man.

Marijuana use is not a stepping-stone to the use of other drugs.

The overwhelming majority of marijuana users do not progress to other drugs. Marijuana is not addictive. The actual and potential harm of the use of marijuana is not great enough to justify intrusion by the criminal law into private behavior.

Fifth, the use of marijuana is not such a threat to society to warrant the jailing of people as a way to deal with the effects and properties of marijuana. In both of its reports, the National Commission recommended decriminalization of possession of marijuana for personal use on both the State and federal levels. The majority of the witnesses who appeared before the Select Committee recommended some form or another of decriminalization, too.

Sixth, if the individual needs to have some deterrent to overuse of a drug, bringing the individual into the criminal justice system does not constitute a desirable way of accomplishing this end.

NOTES AND REFERENCES

1. 141 U.S. 250, 251 (1891).

2. Roe v. Wade, 410 U.S. 113, 152, 35 L.Ed. 2d. 147, 176 (1973).

3. Marihuana: A Signal of Misunderstanding, first report of the National Commission on Marihuana and Drug Abuse, page 140.

4. 133 Ky. 50, 117 S.W. 383, (1909).

5. Bates v. Little Rock, 361, U.S. 516, 524 (1960).

6. 1 Wash. St. 156, 24 Pac. 588, 9 L.R.A. 395.

7. 277 U.S. 438 (1928), overruled in Katz v. U.S., 389 U.S. 347 (1967).

8. 381 U.S. 479 (1965).

9. NAACP v. Alabama, 377 U.S. 288, 307.

0. Griswold v. Connecticut, 381 U.S. at 484.

11. 394 U.S. 557 (1969).

12. Marihuana: A Signal of Misunderstanding, first report of the National Commission on Marihuana and Drug Abuse, pages 140-142.

13. 493, P. 2d 306, 315 (Hawaii 1972) cert. den. 409 U.S. 948.

Chapter 6

SOCIAL COSTS OF THE MARIJUANA LAWS

1. Impact on the people of California

In order to ascertain the facts relating to the effect of laws relating to control of the use of marijuana, the Committee sought to answer the question, "What are the social costs of marijuana criminalization?"

The Committee was found the impact on the people of California caused by the polarization resultant from marijuana criminalization; the impact on the individual; and the impact on the criminal justice system are the social costs.

a. Polarization

Alienation and polarization are one of the social costs of marijuana criminalization. Decriminalization would lessen the alienation and polarization caused by the marijuana criminalization of individuals of the group of users who have never been caught but who are nonetheless alienated from our society because they have been made criminals for an act they, in their minds, do not consider morally wrong nor criminal.

The social label of marijuana users, the experience of being a marijuana user defined by society as something, is intimately associated with polarization. If a person is labeled a criminal or deviate by society, a problem of recognition is presented. To best exemplify this, a brief excursion into testimony of a witness before the Senate Select Committee will be made. The witness testifies:

MR. CHRISTIE: In respect to college students, they are not being bombed, at least not in current times, so the processes are rather different. Apparently people evaluate situations as fairly black-white things, good-bad. Some studies have been done to indicate that people define things as good or bad, as actors, actions or objects. Certain combinations of those are consistent, they don't require any further thought, they can be processed within the scheme without any dissidents being aroused. In other kinds of patterns maybe you can call a halt and explain away the problem in some fashion. For example, for a good actor to commit a good act to a good person is consistent. For a bad actor to commit a bad act to a good person is morally wrong. For a good actor to commit a bad act to a bad actor is probably the bell-ringer of all possible combinations of the three elements with the two signs.

I would argue that the marijuana user, particularly the collegiate marijuana user, who is a success by social definition in other forms, who is definitely achievement oriented, who has survived a winning process to get into college, who is not oriented to ripping anybody off, is not in any way criminal in his own eyes, suddenly finds himself confronted with an emotional reality if he takes up the use of marijuana. At some point he has to realize that according to the law the police officer catching him doing what he is doing, he is subject to criminal penalties and a label on the part of

society. In addition, there are all of the popular methods that define marijuana users as losing the desire to work, or dirty, sloppy, generally undesirable. Confronted with that kind of label, the individual has to reconcile his view of the world.

He can do several things. Obviously he could declare himself to be a bad actor. In fact, if you check the old literature on alcoholics and heroin addicts up until two years ago, you discover that heroin addicts and alcoholics saw themselves in fact as bad actors; that is, that if the police came and harassed them and arrested them and put them in jail, that was what they deserved and the police were still good people for doing that, they were obviously protecting the interests of society because they were ripping people off, damaging their health, et cetera.

The witness, Mr. Christie, further testifies:

Returning to the question of the marijuana user at UCLA, what I think is going on there, what is consistent with this evidence, is the individual becomes emotionally aware that they are at risk as a criminal, when in fact they don't see themselves as criminals at all. They are a good person by any other definition. They have to reconcile the fact that society labels them a criminal when they are in fact a good person. Apparently the way that they do it is by labeling the police as bad actors. In other words, the police all

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through civics classes in high school and in the family are labeled as protectors and friends, yet for a college marijuana user the policeman is not a friend, he is an enemy who is out to get him.

Since 52% of the student body at the current time have tried at one time or another marijuana, the impact on the college population's point of view towards the police is enormous. With that widespread point of view it is going to have an impact on the nonusers by sheer influence. In fact, when you look at the data, items that rate attitudes toward the police are really hallmarks of the marijuana user. You can spot him right off. The police are political agents in society. It's an item which marijuana users enforce and nonusers tend not to enforce as being true.

THE CHAIRMAN: Question, please. The significance of the attitudinal change in the good actor who is a marijuana user and regards the police as a bad actor because they are to apprehend them, does that then have some further response on that individual?

MR. CHRISTIE: Well, it certainly limits the degree to which they can identify and cooperate with such agents.

THE CHAIRMAN: That is what I am asking. Does that end there or does that permeate to a greater extent?

MR. CHRISTIE: Several things appear to happen. For one thing, if the police are bad actors, then those who support their policies and direction by implication must be bad

actors. Also, the whole radical new left philosophy body of rhetoric explains this. It says, "Of course the police are bad actors, and those who direct them are bad actors. That's because America is directed by imperialists. And of course you are being persecuted by this group." It certainly makes a person much more suspect on his world view by adopting that whole frame of reference.

By simply monitoring the student press over a period of time you would see that students tend to interpret such material in negative ways, particularly anything that relates to lifestyle, anything that relates to race or social class considerations. The police are seen as being representatives of the ruling class and who are persecuting those who have lifestyles that in some way threaten the interests of that class. I see that myself as an effect of this preliminary change. Students that were not involved with marijuana in the past, most college students particularly, never had any occasion to question the influence that had come from their homes, environment, parents, school systems in which they were educated in terms of the fact that police are out basically to protect the interests of society and when they act, they generally act out of good motives.

On the side of the police, Kaplan says, "Marijuana enforcement creates resentment among the police as well as among the citizenry. Their problem is simply that they are told to do two completely inconsistent things. They are told to

> enforce a widely violated law against a victimless crime that is generally committed in private; and at the same time they are ordered to abide by a whole series of constitutional guarantees that aim at protecting the privacy and the dignity of the individual. Since the police cannot possibly do both, they tend to focus their resentment on the guarantees that interfere with the performance of their duties, rather than upon the duties themselves. This erosion of respect for constitutional principles among the police is, of course, a deep-rooted and complex problem. Nonetheless, to a considerable extent it is a cost of the marijuana laws."1/

Therefore, the Committee finds polarization has led to a growing lack of respect for our entire legal system. The marijuana laws, more than anything else, have caused the hostility between police and many of our citizens. As a consequence, respect for our criminal justice system has diminished to an almost irreparable stage.

b. Selectivity of Enforcement

Marijuana criminalization has created an unfairness and selectivity of enforcement because it has been used as a weapon and whipping device to penalize and repress people who have different lifestyle while allowing others continued use or security from arrest and prosecution.

Witnesses testified Chicanos, Blacks and other minorities, and young people who have long hair, wear beads and other things, are

more likely to be arrested and penalized by tougher sentences than somebody else with the same amount of marijuana.

The testimony of Dr. Aldrich states:

> "Real concern over the use of marijuana did not surface either publicly or with the authorities until its use started to be noticed among Mexican-American laborers in the Southwest and Blacks in New Orleans. In the Western states, including California, the main impetus for state marijuana criminalization laws was racial prejudice against ever-increasing numbers of immigrants from Mexico in each state, the migrant farm workers who harvested the sugar beet crops and used marijuana all the way up as far north as Canada just above Montana. 'Whether motivated by outright prejudice or simple discriminatory disinterest' National Commission consultants Bonnie and Whitebread state, the result was the same in each legislature--little if any public attention, no debate, pointed references to the drug's Mexican origin and sometimes vociferous allusion to the criminal conduct inevitably generated when Mexicans ate the 'killer weed.' Since the passage of the California and nationwide anti-marijuana laws, the severe sentences have always been meted out to the racial minorities--the Blacks and the Chicanos especially."

The result of using marijuana as this whipping device has given the people affected a very low opinion of law and order. It has hurt law and order more because of the great hypocrisy since it is common knowledge who gets arrested and what the disposition will

be; especially when there are a great number of users and it is obvious the police are not and cannot arrest all of them.

Lastly, it must be remembered what happens to a marijuana offender in jail is much more costly in terms of personal harm and anguish than the end sought by incarceration because they are the vulnerable; they are the Chicano, the Black, and the white long-haired; they are the soft; and they are going to get it.

The Committee is concerned about the wrecked careers and ruined lives which continue to result from the application of the criminal law to the user. Here in California, with the great number of persons in prison for possession and use, that effect is most apparent. And for what reason? Are these people better off in jail? Are we as a society better served by having these people locked up in cages? The answer to both questions is "no". The individuals involved and society would be better served if they were in school, at their jobs, and with their families.

We have a magnificent opportunity here in California to rectify this situation and to base our marijuana laws on modern knowledge of its potential risks. The Committee urges decriminalization of the personal possession and use of marijuana.

c. Honesty

In the wake of the surge of marijuana arrests and anti-marijuana propaganda campaigns, disrespect for the law and the loss of credibility were left floundering in the sea of hypocrisy because of the dishonesty with regard to marijuana.

Education in the schools about drugs suffered because kids felt they were lied to about marijuana. After reassessment of the damage done was made, it was found teaching in the schools about drugs cannot be done until there is honesty about marijuana.

It was found honesty is a big factor because people do not take a positive stance on marijuana according to their beliefs. A great many people are secretly in favor of decriminalization, lessening the penalties for simple possession for private use, but because of their position they outwardly come out against it. There are indications this attitude pervades from legislators to doctors and from district attorneys to law enforcement.

In conclusion, in order to reverse this trend of attitude it is incumbent upon all concerned to find a medium for these diverse attitudes about marijuana use to infuse efficacy in existing law. A realistic position on marijuana, removing the criminal penalties for simple possession and use, is a giant step towards restoring this necessary trust.

d. Inefficacy of the Law

Given the great number of marijuana users not touched by the law and the large number arrested, it is evident law enforcement can only try to keep marijuana use in sight and appears to be having difficulty doing this, much less containing it. It is also evident anti-marijuana propaganda campaigns and harsh laws have not deterred or discouraged marijuana use. The law and propaganda seemed to have had to the opposite effect instead, the curiosity of people has been aroused to see and find out what marijuana is

all about and test the truth of what they have been told.

It was found some people use marijuana because it is illegal, and some who do not use it because of its illegality; while still others use marijuana just to rebel against its prohibition.

Law enforcement and some witnesses appearing before the Committee expressed satisfaction the marijuana laws are stopping some people and may deter others to some extent. It was stated the existing law is viable, and should not be changed because somewhere along the line the threat of a sanction being applied is utterly necessary to forestall people from forming anti-social or socially harmful acts.

In contrast, the National Commission's report shows as to efficacy of existing law, a majority of the prosecutors polled agree the marijuana laws do not deter, or only deter minimally, but do believe it deters open use of marijuana. Further, even though most favor some lessening of the penalties, they are reluctant to give up formal, criminal control. Judges felt the same. Probation officers and clinicians were highly skeptical about formal control.

Hearing testimony revealed, when talking in terms of the entire criminal justice system, the marijuana laws are not working. They are not stopping those who choose to use marijuana or traffick in it. Further, in spite of the harsh laws and other insulation given the people, a marijuana explosion occurred.

Therefore, the Committee found the marijuana laws as they pertain to simple possession for private use are ineffective. They do not share the consensus of the people. The present system is

not working. It is not stopping people from using marijuana or trafficking in it.

e. Other Costs

(1) Dilemma

Criminalization of marijuana has created dilemmas of great magnitude with potential of serious implications to the people of the State of California.

There are thousands of career men and women within the criminal justice system, and many more preparing themselves for careers as police, deputy sheriffs, probation, parole, correction officers, and as potential public defenders and prosecutors. Some of these people use marijuana experimentally, others as an intermittent social lubricant, and others not at all--but most are very disturbed by marijuana enforcement policy.

The evidence revealed dilemmas such as:

"I do not smoke marijuana but if I become an officer will I have to arrest my friend, or inform on the ones who do? If I become a prosecutor, will I have to prosecute a friend?"

"How do I handle the matter of grass use when I face an oral board or the like? Do I lie? Do I tell the truth?"

"Should I give up thoughts of a criminal justice career?"

"I smoke marijuana, and believe the current laws are not consonant with an effective criminal justice system."

"Should I arrest a user when I come up with one in the field, or do I let him or her go with a warning?"

"If I let him or her go, am I shirking my responsibility and being derelict about my duties?"

"I am a ranking officer. My wife and I use marijuana, usually with friends on weekends. I must approve the arrest reports of my men, and some of them make marijuana arrests for possession and use.

"How can I approve these reports, when I personally use marijuana and do not regard the offense as immoral or as serious misconduct?"

These and other dilemmas are created by the marijuana law enforcement policy. The Committee did not get specific answers to these problems, and recognizes the way to alleviate them is for the people of the State of California to re-set its priorities as to what they want the police to do.

Further, the Committee may help the problem by recommending legislation to change the law, or if not, to change the policy of enforcement such as allowing more liberalization for diversion through a citation system.

(2) Civil Liberties Violated?

The National Commission found other disturbing consequences

of laws proscribing possession of marijuana for personal use are the techniques required to enforce them. Possession of marijuana is generally a private behavior; in order to find it, the police many times must operate on the edge of constitutional limitations. Arrests without probable cause, illegal searches and selective enforcement occur often enough to arouse concern about the integrity of the criminal process.

In discussing a facet of polarization of marijuana criminalization, Kaplan says:

> "This problem has an even less attractive side. While, almost certainly, the great majority of the police confine their resentment of constitutional principles to the realm of opinion, it is fairly clear that a number exert themselves to subvert these principles. Our search-and-seizure laws make this possible. A search without a warrant, as almost all in the marijuana area are, is constitutional only if it is made with the consent of the person searched or accompanying an arrest based on probable cause. Again and again, cases come up where the police officer testifies either that he made the search that turned up marijuana pursuant to the defendant's consent, or else that his attention was drawn to a car with young people in it because the car was missing a taillight and that when he approached the car he either smelled marijuana or saw someone make

a 'furtive gesture,' as if to hide something, which provided him with sufficient probable cause for the arrest and search.

The problem is, of course, that there is no way of either verifying or disproving this testimony--especially since in any particular case the police officer is probably telling the truth. After all, the officer's motive to fabricate is far less than that of the defendant. And, not only is the policeman more likely to be telling the truth, but the judge, in weighing his credibility, cannot help but be influenced by the facts that the only issue is one of constitutional search and that the defendant is clearly guilty of the crime charged.

Nonetheless, the frequency of the hotly denied 'furtive gesture' or consent to search is reason for prosecutors as well as other observers to suspect that police perjury as to search-and-seizure issues in marijuana cases is not unknown. This, as one might surmise, is an especially emotion-laden issue. It is only rarely discussed in print. A recent study in the Stanford Law Review, however, did document more than fifteen 'strange coincidences' in its sample of eighty arrests studied. In addition to several 'furtive gesture' cases:

In one case officers stopped to question four young men parked at night in an exclusive residential area. One officer stated that when he requested identification from one occupant, 'as he was leaning to one side to abstract his wallet from his pocket, I was able to notice vegetable-botanical material underneath his foot on the floor-boards.' Twenty grams of marijuana were discovered when the car was searched. This was one of five cases in which officers claimed that from outside a car at night they were able to observe marijuana seeds, marijuana debris, or a single 'roach' (the unburned end, or 'butt,' of a marijuana cigarette) inside the car on the floor. In assessing the officers' explanations, it should be noted that the interior of an automobile is lit dimly (if at all), that the floor is generally covered with dark carpeting or rubber mats, that dirt and other debris are usually present, and that seeds and particles of marijuana rarely exceed one-sixteenth of an inch in any dimension.

> The costs of even a suspicion of police perjury are extremely high. Reports of cases known to young people circulate widely, and the chances are that many believe police perjury to be far more common than it actually is. This, of course, not only weakens the confidence of a large number of our youth in our whole judicial system, but also aggravates greatly the hostility many young people feel for the police."[2/]

c. Impact on Individual

The most serious cost of criminalization of marijuana is it makes felons of a large segment of our population, especially our youth.

Criminalization of marijuana possession and use subjects an individual to being arrested for a felony; acquiring an arrest record; attaches the social stigma attendant with an arrest; and, in a certain sense, creates peer-pressure for the young user because of the aura of illegality and the opportunity to flaunt the law with impunity--thus increasing criminality.

The employability of an idividual is limited and curtailed in some instances. There is likelihood of loss of employment. Arrest or conviction may prevent a person from entering such professions as medicine, law, and teaching, or if not, it subjects them to more scrutiny. Difficulty arises in obtaining a responsible position in business or industry. Sometimes special hearings are necessary to hold a government job.

People may find their education interrupted and their future shadowed or altered by having a police record. An arrest or conviction complicates lives and plans at many turns. For example, in many states a person with a record must meet special conditions to obtain or renew a driver's license. Also, many states require a felon to register with the police or sheriff's department when they come or move into a town.

Expulsion from professional groups, membership in organizations, societies or fraternal orders may occur, or entrance into such groups denied.

Lastly, the effect of an arrest is often underestimated. A great deal of personal tragedy and social waste occurs as a result of an arrest. The question of money for bail and defense adds to this; coupled with sitting in jail until release and all the attendant problems of processing.

3. Impact on the Criminal Justice System

Noting the great number of marijuana possession arrests each year, there is no doubt another consequence of marijuana criminalization is the clogging of the judical calendars and the overloading of the criminal justice system.

A quick sojourn into the hearing testimony expresses this well:

> MR. BROWNELL: The impact on the criminal justice system at the state prison level and in the correctional system is not felt that greatly within the state prison complex. In other words, the number of individuals who

are going to state prison for simple possession in insignificant compared to the disposition of cases elsewhere in the criminal justice system. Let me rephrase that differently. Where the marijuana laws are hurting the criminal justice system is: One, taking police officers off of the streets when they make an arrest. Seventy-three thousand felony marijuana arrests in California took a large number of police officers off of the streets or off of the highways to book those individuals. That's the first effect of these laws on the criminal justice system, is that people who want protection against street crime and who want police out on the streets are losing those police that have to go back in to the booking stations taking in kids or mature adults for marijuana. That's the first impact. The second would be within the court system, the backlog and the clogging of marijuana cases mainly in the lower courts, but all of these cases have to be disposed of in one fashion or another; and most of the people now are copping pleas, or getting out, are not going to state prison, but for the period of time that they're in court, the period of time that they are awaiting pretrial hearings, and so forth, these individuals are clogging the courts and, most importantly, they are clogging our county jails. The number of individuals who are presently incarcerated in county jails and institutions in the state awaiting pretrial hearings of

one kind or another, or awaiting trial, is surprisingly high, as you know. I recall one study that said over 80% of the inmates at one county jail, one of the larger county jails in the state, were there awaiting trial. These are people who have not been found guilty, who have not been--who have not been tried yet. And this is where most of the incarceration takes place of marijuana users. It's at the county level. It's taking the police officer off of the street and then it's clogging up the district attorneys, and the judicial system and the courts where they have to deal with them."

4. Impact of Marijuana Decriminalization on Drug Use.

In attempting to assess the impact marijuana decriminalization would have on drug use, the Committee reports the following accounts on the most lenient marijuana possession law in the nation. The first account is a newspaper assessment which reads:

MARIJUANA LAW HAS LITTLE IMPACT
BUT OREGONIANS FEAR ITS POTENTIAL

Last October, the most lenient marijuana possession law in the United States went into effect in Oregon.

Under a law enacted with little controversy by the Legislature, persons found with up to one ounce of marijuana--enough for 20 cigarets--could not be found guilty of a crime but only a "violation," something like a traffic offense.

They could be punished with nothing more than a $100 fine. They could not be jailed, nor would they acquire a criminal record.

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Stiff criminal penalties remained in effect for possession of larger amounts or possession for sale.

By most authoritative accounts, the new law has produced little change in the pattern of illegal drug use in the state. Law enforcement officials said that in some respects it had made their task simpler and more efficient.

Nonetheless, some narcotics officers expressed uneasiness about the long-range effects of the law. And a citizens' group plans an initiative campaign to repeal the measure.

Critics of the law believe it was enacted in haste, without sufficient consideration of either the potential dangers of marijuana or the social impact of removing the criminal penalties.

"We get a lot of calls from parents whose sons and daughters are telling them there's practically no law against smoking marijuana anymore so why shouldn't they do it," said Sgt. Robert Skipper of the Multnomah County sheriff's vice section. "It's tough for the parents to argue with their kids when 'wise people'--the legislators--acted as they did."

A group called the Committee Against Liberal Drug Laws will begin circulating initiative petitions next month, seeking to restore criminal penalties for marijuana possession.

"The new law is going to make marijuana more available and encourage youths to use it," said Mrs. Susan Roylance of Hermiston, chiarman of the repeal effort.

Mrs. Rcylance, the mother of six children of her own and one foster child, said she became personally concerned about drug problems after seeing what she called the "very real effects" that marijuana had on the personalities of two close relatives.

Law enforcement authorities say they have detected no significant increase in the supply of marijuana, or other illegal drugs, that can be attributed to the new law.

"If Oregon is being flooded with pot or pot smokers, they haven't surfaced yet," said a federal narcotics official.

But there is some concern that in warmer weather the liberalized law might encourage an influx of out-of-state users.

"We have no evidence more marijuana is being used," said Michael T. Bailey, Multnomah County Senior Deputy District Attorney. "But realistically we can't help but believe that, with all the publicity of the new law, people who were afraid to use it before are less afraid now. I suppose people are trying it who never tried it before."

Bailey said he had "no great philosophical agreement" with the law but conceded it had "administrative and fiscal benefits."

Under the law, offenders are cited, rather than arrested and booked. The streamlined procedure saves time and expense. Offenders, facing only a minor penalty, are more inclined to plead guilty rather than demand a trial.

"So far it's been quite successful," Bailey said. "The police by and large are happy with it--they don't have to spend half a shift booking a suspect and writing a report. The judges are pleased with it because it saves court time. And our office is pleased with it because we can concentrate more on serious crimes."

Bailey's office handles the majority of drug cases in the state. He estimated that there had been "less than 50" marijuana possession prosecutions since the new law took effect--a rate about one-third less than before.

In Multnomah County, which includes Portland, judges have been imposing a $25 fine or, if the offender agrees, 16 hours of work with a local community service organization.3/

The second account is a letter in response to the following questions posed to J. Pat Horton, Oregon's Lane County District Attorney, by the Committee:

1. How is the new law change working out?;
2. Has there been any significant increase in the use of marijuana?;
3. Have there been any problems administering the law?;
4. What are the attitudes of the public, enforcement agencies and the courts?

The response to these questions reads in part, "Our new decriminalization law here in Oregon appears to be working superbly.

There has been no notable significant increase in the use of marijuana although that, of course, is really a subjective evaluation since an empirical evaluation of that is virtually impossible. There have been few, if any, problems result from administering the new law. The attitude of the public, enforcement agencies and courts appears to be uniformly in favor of the decriminalization effort. There is one caveat, however, and that was the inclusion of hashish and hashish oil into the decriminalization statute. Several weeks ago, our special session of the Legislature excised from the decriminalization statute hashish and hashish oil. That is currently a crime in the State of Oregon and the decriminalization statute applies solely to the stock, stems and leaves of the cannabis plant. We have not yet compiled any early statistics on numbers of citations issued or the frequency rate of filings under the new marijuana law."

Other than these accounts the Committee, the same as everybody else, has no indication of what impact on drug use a change in the law would have. The Committee heard testimony, it was anybody's guess. Most likely not much would happen. It is conceded use of marijuana may go up but to what extent it is not known. It was stated if marijuana is decriminalized, some people who are not involved in it will likely experiment it just to satisfy their curiosity and leave it once whetted.

The National Commission and other major commissions feel very little social impact will occur if marijuana is decriminalized.

The Commission feels marijuana, as a drug, is not the drug of choice in our aggressive, competitive society, and although marijuana use will not go away 100%, it will not become any real problem even though there will always be some people who will use it.

It was stated the fear California will become a "pot-smoking" state is greatly exaggerated and decriminalization will not put the imprimature by the Legislature of approval on marijuana possession and use.

Further, it should be kept in mind if ever a country were superbly protected against marijuana it was the United States in 1960, nd a marijuana explosion occurred in the face of the most vigorous laws, law enforcement, and uniform belief marijuana was a highly hazardous drug; and these methods just did not work.

In conclusion, from what is known about marijuana effects, use does not constitute a major threat to public health, safety or morals. However, marijuana is not an innocuous drug and needs more study and research such as the National Institute of Mental Health and other agencies.

With the National Institute of Mental Health support, scientists are now studying all aspects of marijuana effects, if it interferes with normal mental processes, and its effect upon the centers controlling emotion, alertness, sensation and behavior. The disparity between subjective estimate of performance and the objective analysis of performance is being scrutinized. The possible harmful effects of the smoke effect upon the unborn are under study.

Possible uses of THC are being researched. Most important, the answers to questions of long-term effects upon body and mind are being sought.

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Chapter 7

AVAILABILITY OF MARIJUANA

Another charge the Committee had was to ascertain the availability and use of marijuana. From the testimony heard and the evidence scrutinized, the Committee felt it would best serve its charge by incorporating in its report an analysis made by William H. McGlothlin, Ph.D.

The McGlothlin report, probably the most comprehensive done, points out, as of mid 1972, about 22 million persons in the United States are estimated to have used marijuana or about 14% of the population age 11 and over. The Committee notes the figure may be somewhat higher now.

Of the estimated 22 million persons in the United States who have used marijuana one-or-more times, 48% are further estimated to have stopped or to have used less than 10 times; 37% to be currently using one to eight times per month; and 15% three or more times per week; 80% of this group are estimated to be males.

It is of interest to note that one million marijuana users account for 43% of the estimated 2.6 billion marijuana cigarettes consumed. Studies reporting the amount of marijuana smoked per occasion indicate the majority of users consume no more than one cigarette.

Assuming a weight ration of 10.7% for crude to cleaned marijuana, an estimated 1,501,700 kg. of crude marijuana are required to satisfy the annual consumption.

90% of the crude marijuana consumed in the United States originated outside the country. The total foreign grown for U.S. market is 1,481,500 kg. or 1,899,400 short kg. The estimated annual expenditures for marijuana prior to import is 66 million dollars.

Approximately four tons of marijuana per day must be smuggled into the U.S. to meet consumption demands.

On entry into the U.S., marijuana sells for around $75 to $90 per short kilogram in lots of 100 or more bricks at points near the Mexican border. As distribution is made, the price may go from $150 to $200 per short kilogram in California and border states, to $225 to $275 in other areas of the country.

Annual expenditures run from $163,000 @$85/short kg. for 100 kg. and up, to $288,800 @$150/short kg. for 10-15 kg. and $481,300 @$250/short kg. for one kg.

The standard retail unit for marijuana is an ounce or "lid" of uncleaned material. The price per short ounce runs from $10 to $15 in California and Southwest, to $20 to $25 in Chicago and in Ohio as high $35 to $40.

The national average price of marijuana is assumed to be $250 per short kilogram and $20 per short ounce.

The estimated annual retail expenditure for marijuana and hashish combined is around 1.4 billion dollars. Cost per user is around $9 per week for daily users and $4 for those using three to six times per week.

It is estimated there is a gross retail profit of 835 million dollars since the retail level is a low profit operation. The gross retail profit estimate here would be sufficient to employ some 280,000 persons in retail selling.

The cost of processing the California adult and juvenile marijuana arrests for 1969 has been estimated to be 43 million dollars or about $780 per arrest.

These, then, are some of the facts in the analysis. It is urged a careful reading of the analysis be made so a better picture may be seen.

MARIJUANA: AN ANALYSIS OF USE, DISTRIBUTION AND CONTROL

William H. McGlothlin, Ph.D.

This paper is an effort to integrate the available information on marijuana use, distribution, economics and control into an internally consistent presentation. It also examines the extent and type of use that may result in the United States within the next few years along with alternative control policies.

Prevalence and Patterns of Use

Numerous surveys have been conducted on the prevalence of marijuana use in the past few years--especially in high schools and colleges. Berg has summarized the statistics from 69 sources.[1] Table 1 shows the percentages having-ever-used for national surveys conducted during the past two years. Results from a 1970 survey of New York State are also shown.

These data indicate that, in the general population, males are

Note: This article is based on a monograph of the same title (SCID-TR-2, June 1971) prepared for the Bureau of Narcotics and Dangerous Drugs under Contract J-70-33. Various estimates have been revised in accordance with data which became available during the past year. Funding of this study by the BNDD does not necessarily imply their endorsement of the findings or conclusions

about twice as likely to have tried marijuana as are females. For college students the male-female ratio is about 3:2, and is somewhat closer at the high school level. Two surveys have shown that the percentage of college students who have used marijuana is nearly twice that for the same age group (18-24) of non-students,[2] although this difference is probably decreasing as marijuana use becomes more widespread. Usage is still low among the older age groups; the 1970 New York State survey found 4% for the 35-49 age group and 2% for those 50 and over; the 1972 Gallup survey reported 7% for the 30-49 age group and 2% for those 50 and over. The Marijuana Commission mail survey is an exception, reporting 6% for those 50 and over.

The values presented in Table 2 represent a best estimate of the number of persons having used marijuana one or more times by mid-1972. They are based on a composite of the various survey results projected to the 1972 time period. Since data on student usage are much more extensive than those for non-students, these estimates are treated separately from the remainder of the population. In summary, as of mid-1972, about 22 million persons in the U.S. are estimated to have used marijuana, i.e. about 14% of the population age 11 and over.

Frequency of use. Until recently most survey results were only reported as percentages "having-ever-used" or in vague terms such as occasionally, frequently and regularly. Table 3 provides limited data on frequencies of use. It appears that about one-third of all persons having ever tried marijuana are currently

using one-or-more times per week. In addition to the fact that more males than females have tried marijuana, the former are also more likely to use the drug frequently. The proportion of females having-ever-used who fall in the 3-or-more-times-per-week range is about one-half that for males.[3] In schools where marijuana usage has existed for several years and prevalence is high, the proportion of frequent users tends to be relatively high, e.g., San Mateo County High Schools in California. Schools which exhibit low prevalence of use typically show 50% or more of those having-ever-used are experimenters (fewer than 10 times).[4] Limited data on usage among persons over 35 also show a high proportion of those having used are in the experimenter class.[5]

Table 4 provides frequency-of-use estimates which are consistent with the data shown in Table 3. Estimates are made by sex, student and non-student status, and by two age categories in the non-student group. The frequency-of-use data are reasonably plentiful for the student population, but scarce for other groups. In particular, the 18-34 non-student group is estimated to have a relatively high proportion in the daily-use category because of the heavy drug-using subculture which is largely contained in this segment. However, since no data are available on the size of this subculture, this estimate could be substantially in error.

In summary, of the estimated 22 million persons in the U.S. who have used marijuana one-or-more times, 48% are further estimated to have stopped or to have used less than 10 times; 37% to be

currently using 1-8 times per month; and 15% 3-or-more-times per week. Of those using 3-or-more-times per week, 80% are estimated to be males.

Amount used per occasion. Information on the amount of marijuana consumed per use is essential--both from the standpoint of assessing the impact on the user and for estimating the volume and economics of the marijuana market. In this country, marijuana is normally smoked in the form of cigarettes, so the natural unit of measure is the number of cigarettes per use or per day. Certain exceptions exist. It may be smoked in a pipe, but probably no more than 10% is used in this manner.[6] Marijuana is also occasionally taken orally, but the amount consumed in this manner is negligible.[7] Finally, use in the form of hashish is increasing, and probably represents 15-20% of the total at present. Survey data generally do not distinguish between marijuana and hashish use, however, seizure data provide the basis for an estimate. In 1971 seizures by Federal agencies were 100,627 kg. of marijuana and 3,526 kg. of hashish.[8] If it is assumed hashish is approximately 5 times as potent as marijuana by weight,[9] the hashish seizures would be equivalent to 17,630 kg. of marijuana, or about 15% of the total seizures. Hashish use is increasing, and is projected to represent 20% of the total use by mid-1972. For the purposes of this subsection, total use will be estimated in terms of marijuana cigarettes and then 20% will be subtracted as representing use in the form of hashish.

Studies reporting the amount of marijuana smoked per occasion indicate the majority of users consume no more than one cigarette. One study found that 50% reported using one cigarette or less and 10% more than 3 cigarettes.[10] Another interview study of fairly regular users (median 2 times per week) found that the large ma majority smoke 1/2 to 1 cigarette "to get high," but that 76% reported they normally smoked an additional amount subsequent to achieving this effect.[11] A third study of an older sample (mean age 44) who had typically used marijuana for many years found 63% used no more than one cigarette per occasion, while 26% stated they normally smoked 3 to 5.[12] The potency of available marijuana varies widely and contributes to the variability in amount consumed. The delta-9 tetrahydrocannabinol content varies from 0.1 to 5% in the dried material exclusive of stems and seeds. Mexican grown marijuana sold in the U.S. averages about 1% THC[13]; domestic marijuana contains only 0.1-0.5% THC.[14]

Experimental data provide further evidence on the effective marijuana dose level. When given as a single administration, smoked doses of 2 mg. THC, or its marijuana equivalent, are sufficient to produce a mild euphoria in experienced users; 7 mg. produce some perceptual and time sense changes; and 15 mg. produce a relatively high level of intoxication.[15] Assuming marijuana containing 1.0% THC, and cigarettes weighing 0.5 gm., these doses are equivalent to about 1/2, 1 1/2 and 3 cigarettes respectively. Marijuana users do not necessarily smoke it in a single dose,

previously, the amount of hashish consumed is assumed to be equivalent to about 20% of the total consumption, so we may subtract this amount (262,800 kg.) leaving 1,051,200 kg. of clean marijuana plus 52,560 kg. of hashish.[17]

Crude marijuana loses about 25-30% by weight when prepared for smoking due to the removal of seeds, stems and excess moisture.[18] Assuming a weight ratio of 10:7 for crude to cleaned marijuana an estimated 1,501,700 kg. of crude marijuana are required to satisfy the annual consumption.

In larger quantities, marijuana is usually sold in the form of wrapped bricks of compressed material ostensibly weighing one kilogram. In actual practice, the bricks typically weigh substantially less than one kilogram. Statistics from 35 seizures involving some 5,000 bricks revealed an average net weight of 780 gm., with a range of 539-995 gm.[19] The number of "short kilograms" necessary to supply 1,501,700 kg. of crude marijuana is thus 1,925,250.[20]

Source.[21] Some marijuana is cultivated or collected from low-potency wild growth in the U.S., but the large majority is grown outside the country, principally in Mexico. In the last 2 or 3 years, substantial quantities have originated in Jamaica, and to a lesser extent from Central America, Southeast Asia and other areas, but the primary source is still Mexico. For the present purposes it will be assumed that 90% of the crude marijuana consumed in the U.S. originates outside the country.

Crude marijuana consumed	1,501,700 kg.
Originating outside the U.S. (90%)	1,351,500 kg.
Marijuana seized	130,000 kg.[22]
Total foreign grown for U.S. market	1,481,500 kg.
or	1,899,400 short kg.

The estimated acreage required to produce this amount is 7600.[23] In Mexico marijuana sells for $6-10 per kilogram brick in the fields, and purchases are often of the order of several tons. It is normally trucked to points on the Mexican side of the border where it sells for $35-40 per short kg. in quantities of 100 kg. or more. At $35, the estimated annual expenditure for marijuana prior to import is $66 million.

Hashish is generally assumed to originate in Lebanon and other Middle Eastern countries. Prices paid at the point of origin are not well established, but it may be bought in several Middle Eastern countries for $35-45 per kilogram. Assuming an annual consumption of 52,560 kg. and a price of $40 per kg., the current estimated expenditure at the point of origin is $2 million.

Importation. The enormous bulk of the marijuana traffic does not impose severe restrictions on the Mexican side of the border. At the point of importation and beyond, the bulk involved imposes a severe limitation and is the major factor shaping the distribution system on the U.S. side. When one considers that (1) approximately 4 tons of marijuana per day must be smuggled into the U.S., typically in lots of no more than 50-300 kg.; and (2) the bulk of

marijuana makes it infeasible to store in quantity on the U.S. side, the prohibitive complexity of organizing more than a relatively small operation becomes apparent. By comparison, the annual import of heroin is only 1 or 2 days' smuggling activity for marijuana by weight, and it may be imported and stored in the U.S. well in advance of its distribution.

Amounts of marijuana smuggled from Mexico vary from 1 or 2 kilograms brought across the border by an individual to a recent attempt to import 5 tons by boat.[24] The vast majority of smuggling attempts involve amounts on the low end of the scale. In 1971, the mean weight of the 6,312 marijuana seizures made by Customs was less than 15 kg.[25] About 85% of that seized at the U.S.-Mexican border is intercepted in vehicles. However, some authorities are of the opinion that aircraft and boats are carrying an increasing portion of the traffic--considerably more than is indicated by the percentage of seizures.

Hashish is most frequently smuggled into the U.S. aboard commercial aircraft. The mean weight for 1757 Customs seizures in 1971 was 1.8 kg.,[26] although currently seizures of 40-50 pounds are not infrequent.

Distribution. On entry into the U.S., marijuana sells for around $75-90 per short kilogram in lots of 100 or more bricks at points near the Mexican border. Virtually all warehousing of large quantities of marijuana is done outside the U.S. Normally, the buyers for a lot of 100 kg. or more are known prior to importation,

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and dispersal or transshipment takes place immediately after delivery.

Typically, although an individual buying in 100 kg. lots would not sell in quantities of less than 5 or 10 kg., he may frequently be willing to sell much larger quantities for lower profits, particularly to another known wholesaler, a transaction which involves little risk. In general, the price is dependent on the size of transaction, extent of risk, and distance from the border. The quality of the marijuana and the actual weight of the "kilogram" bricks are also factors, especially in smaller transactions. Finally, the price will vary with availability, and there is some seasonal fluctuation corresponding to the time of harvest in Mexico. At the time of this writing (Spring, 1972) marijuana is $300-400, or about double the price for 1971. For the present purposes, the current prices are assumed to be atypical, and calculations are based on the 1971 prices, i.e., $150-200 per single short kilogram in California and other border states and around $225-275 in most other areas of the country.

Assuming an annual consumption of 1,925,250 short kilograms of marijuana (including Mexican, domestic and other origin), the annual expenditures in the U.S. as a function of lot size are estimated as follows:

Level	Price per short kg.	Annual expenditure (000)
100 kg. and up	$85	$163,600
10-15 kg.	150	288,800
1 kg.	250	481,300

Hashish sells for $600-1,000 per pound. There does not appear to be much regional variation in price, although it generally sells for less in areas where there is a relatively large market or where it is in competition with low priced marijuana, e.g., San Francisco and Los Angeles. No information was available on price for multi-pound lots. Assuming the annual consumption to be 92,560 kg., or 115,900 lbs., and a price structure similar to marijuana, the annual expenditures for hashish are estimated as follows:

Level	Price/lb.	Annual expenditure (000)
10 lbs. and up	$500	$57,950
1 lb.	800	92,700

The standard retail unit for marijuana is an ounce or "lid" of uncleaned material. In the majority of cases the "ounce" is short by about the same proportion as the brick, i.e., it averages around 22 instead of the full 28.3 gm. Marijuana is also sold in pound, half-pound and quarter-pound quantities. The current price per short ounce in California and the Southwest is $10-15. In most other areas, a short ounce sells for $20-25, and prices in Chicago and Ohio are quoted as high as $35-40. Marijuana may also be retailed in "nickel bags," containing 3-5 gm. and selling for $5. Occasionally, the smaller quantities are sold in loose cleaned (manicured) form, or as cigarettes. The addition of adulterants such as oregano is not uncommon in this form.

Hashish retails for $5-10 per gram, but it is often sold to the ultimate consumer in ounce quantities at prices ranging from $70-125.

Several authors have described the distribution of marijuana at the retail level.[27] The majority of persons who use several times per week or more, technically have also sold marijuana, although it may be no more than sharing a purchase with friends at no profit. One survey reported 85% of persons using 3-or-more-times per week fall in this category.[28] Others casually sell to a few close acquaintances to earn their own supply and a small amount of money. Others retail marijuana as a full-time occupation. Still others move further up the ladder, buying in quantities of 1-10 kg., selling some as single bricks, and retailing the remainder in ounces or fractions of a pound.

Retail expenditures. In order to estimate the retail expenditures for marijuana, it is necessary to assume the purchase size by the ultimate consumer. As would be expected, heavier users are more likely to buy larger amounts at a time. The buying of one-quarter to one pound, or even a kilogram, for sharing among a group of users is not uncommon. In one study of fairly heavy users, 17% stated they purchased a kilogram at a time about one-half of the time.[29] The size of purchase is also influenced by the economic status of the buyer and the price of marijuana, e.g., purchases of less than an ounce are relatively uncommon in California where the ounce price is $10-15, but in the East a cost of $25 an ounce reportedly results in more frequent purchases of smaller quantities, especially among lower socio economic groups. The retail expenditures for marijuana and hashish are estimated in Table 6, account

being taken of the variability in purchase sizes as a function of frequency of use. The number of users and percentage of total consumption by frequency of use are taken from Table 5. The national average price of marijuana is assumed to be $250 per short kilogram and $20 per short ounce, or $700 for a short kilogram bought in short-ounce units. The more frequent users are assumed to obtain their supplies at less than $20 per short ounce, by purchasing in larger quantities, by sharing in group purchases, or by obtaining lower prices through familiarity with dealers. The average price paid for daily and 3-6 times-per-week users is estimated to be $450 and $575 per short kilogram respectively. Of those persons using 2 times per week or less, one-half is assumed to buy at $20/short ounce and one-half in smaller units equivalent to $30/short ounce, for an average of $875 per short kilogram.

Similar assumptions were made for hashish purchases. Retail prices for hashish were assumed to be $8/gm. and $90/oz. Three-fourths of the daily users and one-half of the 3-6 x/wk. group were estimated to obtain hashish at the ounce price and the remainder at the gram price. All of the 2 x/wk. or less group were assumed to buy at the gram price.

The estimated annual retail expenditure for marijuana and hashish combined is around 1.4 billion dollars. Cost per user is around $9 per week for daily users and around $4 for those using 3-6 x per week.

Subtracting the previously estimated annual expenditure for

marijuana at the short kilogram level ($481 million) and that for hashish at the pound level ($93 million) from the retail expenditure in Table 6 leaves a gross retail profit of $835 million. Several authors have concluded that marijuana-hashish dealing at the retail level is a low profit operation--a dealer serving only some 25 customers and making $200-300 per month.[30] At this rate, the gross retail profit estimated here would be sufficient to employ some 280,000 persons in retail selling. Data are not available for estimating the number of persons involved in the wholesale marijuana-hashish market. If it were assumed that the average gross profit was $20,000 per year per person, then the gross wholesale profit subsequent to purchase on the U.S. side of the border ($353 million) would result in some 17,500 persons being employed at the wholesale level.[31] Figure 1 provides a summary of the estimated use, distribution and economics of the marijuana-hashish market for mid-1972.

Enforcement

Seizures. In 1971, U.S. Customs and the Federal Bureau of Narcotics and Dangerous Drugs seized 91,400 and 9,200 kg. of marijuana, respectively.[32] The corresponding hashish seizures were 3,100 and 400 kg. California State and local seizures in 1970 accounted for an additional 26,000 kg. of marijuana.[33] Data on seizures by other state and local agencies are generally not available, but are know to be relatively small in comparison to those for California.[34] The marijuana seizures by Customs (1971),

NDD (1971) and California (1970) represent 8% of the estimated 1972 consumption. If it is assumed that the 1971 consumption was no more than 75% that for 1972, and that state and local agencies other than California seized an additional 20,000 kg., the total 1971 marijuana seizures represented about 13% of the 1971 attempted importation.

Arrests. Statistics from the 1970 Uniform Crime Reports show 157,000 arrests for marijuana or 45% of the total 346,000 drug arrests.[35] The 1970 adult and juvenile marijuana arrests in California totaled 69,000.[36] For 1969, 34% of the 55,000 California marijuana arrests were for persons 18-20, which yields an arrest rate of 1.8 per 100.[37] Males accounted for 86% of marijuana arrests for persons 18 and over, for an arrest rate of 3.0 per 100 in the 18-20 age group. The percentage of senior high school males reporting marijuana use in San Mateo County, California during 1969 was 50.[38] If we assume the statewide average for marijuana use is about 80% that for San Mateo County, the arrest rate for males age 18-20 who used marijuana one or more times in 1969 is estimated to be 7.4 per 100. If we further assume that virtually all the arrests are among the 60% using marijuana on more than an experimental basis (≥ 10 times), the arrest rate for this group of males, age 18-20 is 12 per 100.

The number of California arrests for sale or transporting marijuana in 1969 was 7,800.[39] If we assume the number of persons involved in wholesale and retail selling in California during 1969

was 30,000, the arrest rate was 26 per 100.[40]

In summary, the risk of arrest for use or sale of marijuana is quite substantial, at least in California. The penalties imposed by the courts are also significant. Of the 37,700 adult (18 and over) non-Federal arrestees in 1969, 21% were convicted on felony charges. Incarceration rates were relatively low--0.6% and 8% of the total arrested received prison and jail sentences respectively; however, the additional implications of felony convictions are severe. The cost of processing the California adult and juvenile marijuana arrests for 1969 has been estimated to be $43 million, or about $780 per arrest.[41]

Future use of Marijuana

Current trends. Figure 2 presents some trend indicators of marijuana use and control over the past 5 years. Obviously the seizure and arrest data may reflect variations in enforcement emphasis as well as changes in usage.

As the percentage of students ever having used marijuana approaches or exceeds the 50% mark, increasing interest focuses on trends in the proportion which continues use. A comparison of the Gallup college surveys for 1970 and 1971 indicates continuing use may be nearing a plateau.[42] On the other hand, the San Mateo County secondary school data show a definite increase in one-or-more-times-per-week use over the same period.[43] This survey had tended to show a leveling out of use from 1969 to 1970, but the sharp rise resumed in 1971. Interview studies have provided

additional data on the question of duration of use. One 1970 college survey found that, of those persons initiated to marijuana more than 3 years before, and using on more than an experimental basis (> 10 times), 37% had currently either stopped or were using infrequently, and 32% and 31% reported current usage at several times per month and several times per week, respectively.[44] Another 1970 college study found 77% of those initiated to marijuana 4 or 5 years previously were still using to some degree.[45]

In summary, the currently available trend data on marijuana usage leave unanswered the question of whether it is likely to be a transient or permanent phenomenon. The number of persons who have ever used marijuana is continuing to increase, probably at a rate of 25-30% per year. In addition, there is no evidence as yet that the number of persons who discontinue after a significant period of usage are exceeding the number newly initiating such behavior. On the other hand, the behavior has many of the characteristics of a fad or temporary style: its very rapid acceptance by that segment of the population most susceptible to fads; the fact that it has been enthusiastically propagandized via music, psuedo-philosophy and the popular media; the fact that its use is, in part, an anti-establishment reaction stemming from other factors than the properties of the drug itself. In addition, the appearance of Western style (occidental) marijuana use among university students in most countries throughout the world has more the flavor of adoption of styles of music or hair length than a lasting behavior.

The contrary view holds that since cannabis (marijuana) is the second most widely used intoxicant in the world, it clearly is a drug which may prove attractive to large numbers of people on a continuing basis. Once a drug with these features is introduced into a culture on a widespread basis, it seems quite likely it will be retained by some portion of the population. Blum has noted that the history of drug use records few instances where a drug achieves widespread acceptance in a culture and is subsequently discarded.[46]

Insights from other cannabis-using cultures. Cross-cultural generalizations are hazardous; however a brief examination of the prevalence and patterns of cannabis use in cultures where it has existed for centuries may be helpful in forecasting the future use in the U.S. For instance, what proportion of the population elects to use the drug under conditions of acceptance in countries with a long history of use? Nepal is reportedly the only country in the world which imposes no restrictions on cannabis use. Approximately 4,000 acres are officially cultivated and taxed, and additional amounts of hashish are harvested from wild growth for commercial purposes.[47] In spite of the fact that cannabis is legal, readily available and inexpensive, Napalese use if very limited and virtually all of the crop is illicitly exported to India and Pakistan.

In India and Pakistan charas (hashish) was prohibited in 1945, but other preparations of cannabis (bhang and ganja) are still legal in selected states. Daily use is probably of the order of

2 or 3 million or about 4 per 1000 on a per capita basis.[48] However, since use is restricted to lower class males and is concentrated in certain states, daily usage may be as high as 5% of the relevant population in some areas.

In Morocco, occasional and regular cannabis users were estimated to represent 10% of the population prior to the drug's prohibition in 1954.[49] Since use is primarily restricted to males, this is about 25% of the adult male population. Other estimates of regular use have run as high as 50% of the native male population in some areas of South Africa,[50] and 40-50% of the male population in Jamaica.[51]

In summary, there are very few areas in the world where the prevalence of cannabis use approaches that for alcohol in the Western culture. Usage is largely restricted to lower-class males, and daily use seldom exceeds 5-10% among this group. By comparison, 2.5% of U.S. males age 14-34 are currently estimated to use marijuana daily and an additional 4.6% 3-6 times per week (Table 4).

Probably the most significant comparison between the use of marijuana in the U.S. and that in other cultures concerns the amount consumed. In Table 5, the typical U.S. dosage is estimated at 1-3 marijuana cigarettes or 5-15 mg. THC. The maximum amount consumed by heavy users is of the order of 10 cigarettes or 50 mg. THC per day. By contrast, the <u>average</u> amount consumed by daily users in India, Egypt and Morocco is estimated to contain 45-60 mg. THC, and the maximum is around 200 mg.[52] Some studies have indicated usage equivalent to over 700 mg. THC.[53] In Greece, chronic hashish

users serving as experimental subjects a routinely given smoked-THC doses of 150 mg., whereas 15 mg. is normally the maximum administered experimental subjects in this country. The current 1-3 cigarette dosage is also low in comparison to the 6-10 cigarettes per day estimated for regular users in the 1940's.[54] It is also low in comparison to the amounts currently used by American soldiers in Vietnam and Germany. One study of heavy hashish users among the U.S. military in Germany found an average use of over 3 gm. per day, i.e., the equivalent of 30 marijuana cigarettes per day.[55]

In summary, most of the current U.S. marijuana smokers are best described as playing at cannabis use in comparison to users in other cultures. It seems likely that the average amount of THC consumed by continuing users in this country is likely to increase in the next few years, although probably not to the level observed in other cultures. Additional experience, the availability of more potent preparations and the development of tolerance among frequent users will tend to increase the average amount consumed. In addition, it would not be surprising if some individuals daily consume 200 mg. THC or more in the form of hashish or other concentrated preparations, an amount greatly in excess of that previously observed in this country. Experience in other countries indicates that the use of these very large amounts occurs in about the same proportion of users as does alcoholism in the U.S., i.e., about 5-10% of the total number of users.

Predicted use in 1976. Table 7 compares higher and lower predictions of marijuana usage for 1976 with the estimate for 1972.

The predicted use of larger quantities of THC in the form of marijuana or other preparations is reflected in the 1976 estimates. Daily and 3-to-6 times-per-week users are estimated to be using 5 and 3 marijuana cigarettes, or equivalent, in comparison to 3 and 2 cigarettes assumed in Table 5 for 1972. Although the lower estimate for 1976 assumes a somewhat smaller population of users than that for 1972, the predicted larger amounts per user result in an increase in total consumption. The estimated retail expenditures are calculated on the same basis as those in Table 6.

Alternative Control Policies

Marijuana control policies have been discussed at length in previous documents.[56] The present section will be primarily limited to an examination of the major alternative policies in the context of the quantitative estimates of use, distribution and enforcement effectiveness developed in the previous sections.

Several features characterize the current marijuana-hashish market, as summarized in Figure 1. First, in the case of marijuana, the fact that 99 units of inert substance must be handled for every one unit of the active drug means that large amounts of bulky material must be transported--an estimated 4 tons are smuggled into the U.S. daily. Second, distribution within the U.S. involves numerous independent operations with little evidence of central organization. This is probably closely related to the difficulty of smuggling and storing large quantities of the drug. Third, the market involves a large number of users who make a relatively small amount of money by retail selling. Fourth, the monetary cost of

marijuana use to the individual is relatively low, i.e., fifty cents to nine dollars per week, depending on the frequency of use.

The effectiveness of the present marijuana control system may be measured: (1) in terms of enforcement statistics, e.g., drug seizures and arrests for sale and use; (2) indirectly in terms of availability and price of the drug; and (3) directly in terms of extent and type of use. An overall evaluation should also consider the costs of control, monetarily, as well as in terms of unintended side effects such as alienation of youth or diversion to more dangerous drug use. With regard to the more quantitative measures, the current marijuana control system is estimated to seize 13% of the marijuana and hashish intended for sale; to annually arrest 26% of those regularly involved in selling (California, 1969); and to annually arrest up to 3% of those using marijuana one or more times during the year (California, 1969).[57]

The present control system has had only limited success in restricting the availability of marijuana and hashish. Availability is not sufficiently open such that purchases can be easily made by persons not involved in the drug subculture but regular users generally have little difficulty obtaining the drug.[58] Periodic shortages occur, but they appear to be mostly related to seasonal fluctuations in harvesting, rapid increases in demand, and variations in supply related to the situation of storage being largely outside the U.S. The price of marijuana has increased by about 50% in the past 3 years, but this is not a limiting factor for most users. With respect to controlling the extent of marijuana

use, the present policies have obviously been unsuccessful in preventing the rapid increases over the past few years.

With respect to possible policy changes, there are three primary alternatives:

I. Increase criminal sanctions for both use and sale.

II. Decrease or eliminate penalties against use and continue or increase efforts to eliminate the supply.

III. Regulate the sale of marijuana in the manner of alcohol controls.

The adoption of the first alternative in terms of penalties as well as arrests would undoubtedly increase the level of deterrence. It seems equally clear that society would be unwilling to incur the costs of such an approach. The current trend toward decreasing or eliminating penalties at the user level is essentially being forced by the realities of the widespread usage. This leaves II and III as feasible policy changes.

Ability to suppress supply. The immediate question with regard to policy II concerns the ability to suppress the supply of marijuana and hashish. The increased pressure against smuggling by Customs in the last 3 years has clearly resulted in a sharp increase in seizures (Fig. 2). The current estimated seizure rate of 13% is very substantial when interpreted in terms of risk of arrest. While no attempt was made in the present study to estimate the results of additional enforcement efforts, it is relatively

certain that such a policy can be expected to further increase both seizures and arrests. On the other hand, there is no indication as yet that the present level of enforcement is capable of severely restricting the availability of marijuana.

Efforts are also being made to eliminate the sources of marijuana in Mexico.[59] Information is not available to evaluate the progress of this effort, but it is clear that this approach to cannabis control on a world-wide basis would be more difficult to implement than the current attempt to suppress the sources of opium. Cannabis grows wild in many portions of the world and may be cultivated with relatively little effort in any temperate or tropical climate. It requires no processing in the crude form, and relatively little for the more concentrated preparations.

Reactions to increased smuggling controls. The major difficulty in smuggling marijuana is the excessive bulk. The estimated 3700 kg. smuggled into the U.S. daily contains only about 37 kg. of THC. Further significant increases above the already high marijuana seizure rate will likely result in efforts to decrease the risks of detection via reductions of bulk. The most obvious countermeasure would be the gradual replacement of the marijuana market with hashish from the Middle East, either smuggled directly into the U.S. or via Mexico or Canada. Hashish is estimated to contain 5% THC and is also a solid, which further reduces the space below that required for the leafy marijuana. As mentioned earlier, the increased smuggling of hashish is already evident--the ratio of hashish to marijuana seizures in 1971 was double that for 1970.

Marijuana may also be converted to an extract containing up to 20% THC with very little technical skill. This method has already been employed on a small scale and seems likely to increase. In general, any method which allows importation in a more concentrated and compact form will increase the ease of concealment for smuggling, and reduce information leaks by permitting more centralized operations.

Another result of increased enforcement effectiveness would be an increase in the price paid for marijuana and hashish. One of the announced objectives of Operation Intercept in 1969 was to raise the price of marijuana outside the reach of the adolescent. The price in the U.S. has increased by around 50% in the past 3 years; however, the relative costs of comparable levels of intoxication achieved via marijuana and alcohol are probably still of the order of 1:2 to 2:3. This would indicate the current marijuana price might rise by 50 to 100% if the risks of importation and distribution are substantially increased. It is of interest to note that the price of hashish is about $1 per gram in Holland and Denmark, which have relatively permissive policies; about $3 per gram in Norway, which stresses enforcement; and $8 per gram in the U.S. ($3 per gram in ounce quantities).

Limitations on marijuana supply should also be considered in the context of availability of other drugs. For instance, during the period when the price of marijuana increased by 50%, the widespread availability of LSD resulted in its wholesale price dropping to 1/5 of its former level. Marijuana shortages apparently result

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in increases in other drug use.[59] Alcohol and hallucinogens are the most frequent substitutes, but there is also some increase in sedative, stimulant and opiate use, especially among those heavily involved in the drug subculture. Finally, increased domestic cultivation of marijuana is another possible reaction to heightened controls against importation. Marijuana plants may be grown indoors as well as outside. Should sanctions be dropped at the user level, cultivation for personal use might pose a difficult legal problem.

Contribution to criminal behavior. A control policy which attempts to deal severely with the seller, and leniently or not at all with the user, will inevitably encounter difficulty in differentiating between the two categories. A major disadvantage of maintaining marijuana in the illicit drug category is the encouragement of large numbers of young persons to become involved in retail selling. It is especially easy to begin selling marijuana on a casual basis and quickly become seriously enmeshed in a highly criminogenic subculture. As previously discussed in the section on the marijuana market, the majority of regular users have technically sold the drug at some time -- 280,000 persons are currently estimated to earn all or a significant portion of their income by retail selling. Applying the same formula of $250 per month for the retail dealer to the 1976 upper estimate of $2 billion in gross retail profits would result in some 670,000 persons employed in the retail selling of marijuana.

In addition to encouraging young marijuana users to adopt the dangerous and unproductive life of retail selling, the large wholesale profits are attractive to organized crime--a development which is considered more likely if the more concentrated preparations replace marijuana. The present estimated wholesale market of $0.6 billion per year (1 kg. level) is predicted to increase to $0.7-1.7 billion by 1976. With additional pressure against smuggling and distribution, price increases might raise these market values by 50-100%.

Regulated sale. Legal distribution of marijuana would provide the usual advantages of licensing, including control of conditions of sale, especially those relating to the age of the purchaser. Other controls employed in some countries are the limiting of amount purchased and the issuing of permits for use.

Another advantage of regulated sale is the imposition of quality and potency control. As discussed earlier, increased pressure against sales and smuggling seems likely to result in a shift to more potent forms. While the availability of the more potent preparations of cannabis does not necessarily result in the consumption of larger amounts of the active ingredient, there is general agreement that excessive use is more prevalent under such conditions. Some countries have initiated controls which allow consumption of low potency materials but prohibit the more concentrated forms.[60] Regulated sale would also prevent adulteration. This has not been an appreciable problem thus far because of the

lack of an economic incentive, but if extracts come into use it is likely they would often be mixed with other active adulterants.

Another major advantage of legal sales is the removal of large numbers of youth from the criminogenic retail sales occupation. It would also reduce the cost of enforcement, disassociate marijuana from other drug sales, and encourage a credible approach to education.

Finally, if marijuana sales were regularized in the same manner as alcohol, the profits which now go into criminal channels could presumably be converted to tax revenues. If we assume the same tax percentage for marijuana as alcohol (approximately 30%), the current estimated $1.4 billion retail expenditure for marijuana and hashish would yield around $420 million in taxes per year, or about 8% of the current alcohol tax revenue. The 1976 lower and upper estimates of retail sales would result in tax revenues of $480 and $1,100 million, or some 9-22% of the current alcohol revenues. The current retail price of marijuana could probably be doubled and still be competitive with alcohol and, since marijuana is easy to grow and process, the tax percentage could be substantially higher than 30% of the total price. Thus, it is reasonable to predict that tax revenue could be nearly one billion at present, and possibly as much as 2 billion within 5 years, or some 40% of the alcohol revenue.

Conclusions. This paper has examined some of the implications of various marijuana control policies in the context of estimates of current and future use and distribution. In summary, the current prevalence of marijuana use is high and is likely to continue to

increase for at least 2 or 3 years. Among younger age groups, the present policies do not effectively deter use, particularly in certain areas of the country. The reaction of policy makers to the failure of deterrents and the costs of criminal sanctions have been to reduce penalties against the user, while continuing or increasing pressure against distribution. It is reasonably certain that this trend will continue in the immediate future, possibly including dropping other than token sanctions against the user. Additional pressure against smuggling and sale of marijuana should further increase seizures and prices, although as yet there is no evidence that this approach is capable of severely restricting availability. A likely countermeasure is the shifting to hashish or other concentrated preparations in order to reduce the risk of smuggling. A major cost of a policy aimed at suppressing supply is the criminalizing of large numbers of young persons involved in casual sales. A policy of legalization would eliminate this problem, encourage a credible educational approach, produce a substantial tax revenue and provide potency and other controls related to legal sale. On the other hand, legalization would very likely produce greater prevalence of use, whereas strong efforts against the supply of marijuana, together with token sanctions against use, would indicate social disapproval and discourage its use, at least among some portions of the population.

The major uncertainty concerns the future trends in marijuana usage related to factors other than control policies. If the demand for marijuana continues at the present or higher level and

efforts to suppress the supply are unsuccessful, then a policy of continued prohibition would have most of the disadvantages of legalization and none of the advantages. On the other hand, the current epidemic use of marijuana among the middle class is too new to allow confident predictions as to whether or not it will be a permanent phenomenon. Early legalization would provide official, and perhaps irreversible, sanction to a potentially harmful behavior that might otherwise have been primarily a transient phenomenon.

Notes

1. D. F. Berg, The non-medical use of dangerous drugs in the United States: a comprehensive view, 5 International Journal of the Addictions 777-834, 1970.

2. C. D. Chambers, see Table 1; H. Parry, see Table 1.

3. J. L. Hochman and N. Q. Brill, Marijuana use and psychosocial adaption, Paper delivered at American Psychiatric Association meeting in Washington, D.C., May 3, 1971; W. H. McGlothlin, et al., Marijuana and the use of other drugs, 228 Nature 1227-1229, 1970.

4. W. H. McGlothlin, Marijuana: an analysis of use, distribution and control, Bureau of Narcotics and Dangerous Drugs, (SCID-TR-2), June 1971.

5. C. D. Chambers, supra, note 2.

6. L. Haines and W. Green, Marijuana use patterns, 65 British Journal of Addiction 347-362, 1970.

7. Id.

8. Bureau of Narcotics and Dangerous Drugs, 2 Directors report on Federal Performance Measurements, 1971.

9. M. Lerner and J. T. Zeffert, Determination of tetrahydrocannabinol isomers in marijuana and hashish, 20 UN Bulletin on Narcotics 53-54, 1968; R. Mechoulam, Marihuana chemistry, 168 Science 1159-1166, 1970.

10. C. T. Nisbet and F. Vakil, some social and economic characteristics of UCLA marijuana users, 52 Social Science Quarterly 179-189, June 1971.

11. L. Haines and W. Green, supra, note 6.

12. W. H. McGlothlin, et al., Marijuana use among adults, 33 Psychiatry 433-443, 1970.

13. R. T. Jones, Tetrahydrocannabinol and the marijuana induced "high" or the effects of the mind on marijuana, Paper presented at the New York Academy of Sciences Conference on Marijuana Chemistry, Pharmacology and Patterns of Social Usage, May 21, 1971, New York, New York; M. Lerner and J. T. Zeffert, supra, note 9.

14. R. Phillips, et al., Seasonal variation in cannabinolic content of Indiana marijuana, Presented at the Twenty-Second Annual Meeting of the American Academy of Forensic Sciences, Chicago, Illinois, February 27, 1970.

15. H. Isbell, et al., Effects of (-) delta 9-trans-tetrahydrocannabinol in man, 11 Psychopharmacologia 184-188, 1967; A. T. Weil, et al., Clinical and psychological effects of marijuana in man, 162 Science 1234-1242, 1968.

16. Data from 54 seizures in the Los Angeles area showed the average net weight per cigarette to be 0.61 gm., with a range of 0.25-1.12 gm. (data provided by Mr. William Arnold of the California State Bureau of Narcotics, Los Angeles office and Mr. Paul Kayne of the Los Angeles Sheriff's Crime Laboratory). The mean weight for some 9000 marijuana cigarettes seized by the New York City Police Department in 1969 and 1970 was 0.32 and 0.36 gm. respectively (N.Y. City Police Department Annual reports, 1969, 1970). Other sources indicate cigarettes used in Eastern states are smaller than those rolled in the West, possibly due to the higher cost of marijuana (see note 6 supra).

17. Assumes the potency is 5 times that of marijuana.

18. N. J. Doorenbos, Personal communication, Department of Pharmacognosy, University of Mississippi, 1971.

19. Mr. Norman Nordweir of U.S. Customs, Los Angeles Office, Mr. Lloyd Sinclair of the Bureau of Narcotics and Dangerous Drugs, Los Angeles Office, and Mr. William Arnold of the California State Bureau of Narcotics Enforcement, Los Angeles Office provided these data.

20. An alternative approach to estimating the amount of marijuana consumed is to utilize data on the number of cigarette papers sold, which is available from tax records. After subtracting those used for tobacco cigarettes, this presumably provides an estimate of the number used for marijuana. This approach has been attempted (see note 4, supra), but the instability of the recent cigarette paper sales data made the results of dubious value.

21. This subsection is largely based on information obtained in interviews with U.S. Customs, BNDD, California State and local narcotics agencies, and various other persons familiar with the source and distribution of marijuana and hashish. Some published and unpublished data on prices and seizures were obtained from BNDD and U.S. Customs, and several published descriptions of the retail marijuana market were also utilized.

22. 1971 BNDD and Customs seizures plus an estimated 30,000 kg. by California State and local narcotic agencies. The Mexican government also reported seizing 35,000 kg. of marijuana and the destruction of 390,000 kg. of dried marijuana in the fields during the period October 1969-March 1971--BNDD bulletin, U.S. Department of Justice, May-June, 1971.

23. Based on the average of 300 pounds of dried cleaned marijuana obtained per acre from experimental cultivation in Mississippi; N. J. Doorenbos, supra, note 18.

24. Los Angeles Times, May 5, 1971.

25. Bureau of Narcotics and Dangerous Drugs, supra, note 8.

26. Id.

27. Anonymous, On selling marijuana, in Marijuana, E. Goode, Ed., New York, Atherton Press, 1969; J. T. Carey, The college drug scene, Englewood Cliffs, New Jersey, Prentice Hall, 1968; E. Goode, The marijuana market, 12 Columbia forum, Winter, 1969; E. Goode, The Marijuana smokers, New York, Basic Books, Inc., 1970; J. Mandel, Myths and realities of marijuana pushing, in Marijuana myths and realities, Simmons, J. L., Ed., North Hollywood, California, Brandon House, 1967.

28. E. Goode, The marijuana smokers, supra, note 27.

29. W. L. Hochman and N. Q. Brill, supra, note 3.

30. J. T. Carey, supra, note 27; E. Goode, The marijuana market, supra, note 27; J. Mandel, supra, note 27.

31. Since both wholesale and retail dealers often sell other drugs in addition to marijuana, the total number of persons involved is likely to be substantially larger than the numbers estimated here.

32. Bureau of Narcotics and Dangerous Drugs, supra, note 8.

33. Bureau of Criminal Statistics, Drug arrests and disposition in California, reference tables, 1970.

34. W. H. McGlothlin, supra, note 4.

35. Uniform Crime Reports for the United States, 1970, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, 1971.

36. Bureau of Criminal Statistics, supra, note 33.

37. California Bureau of Statistics, Drug arrests and disposition, reference tables, 1969.

38. San Mateo County, California, Five mind-altering drugs; Five mind-altering drugs (plus 1971 addendum), The Research and Statistics Section, Department of Public Health and Welfare, San Mateo, California, 1969-70.

39. Bureau of Criminal Statistics, supra, note 37.

40. Assumes the number of persons involved in wholesale and retail selling in 1969 was 50% of the 300,000 estimated for 1972, and that 20% of the total were in California.

41. W. H. McGlothlin, supra, note 4.

42. Gallup Opinion Index, Report #80, February 1972.

43. Addendum to San Mateo County, supra, note 38.

44. J. L. Hochman and N. Q. Brill, supra, note 3.

45. M. R. Lipp, Marijuana use by medical students, 128 American Journal of Psychiatry, 207-212, 1971.

46. R. H. Blum, and Associates, Drugs I, society and drugs, San Francisco, Jossey-Bass, 1969.

47. W. H. McGlothlin, supra, note 4.

48. Id.

49. J. L. Roland and M. Teste, Le cannabisme au Maroc, No. 387 Maroc Medical, 694-703, June 1958.

50. South Africa, Interdepartmental Committee on the abuse of dagga, Report, Government Printer, U. G. 31-1952, 1952.

51. Marijuana and Health, Second annual report to Congress, 1972.

52. W. H. McGlothlin, supra, note 4.

53. R. N. Chopra and G. S. Chopra, The present position of hemp-drug addiction in India, 31 Indian Medical Research Memoirs, 1-119, 1939.

54. S. Charen and L. Perelman, Personality studies of marijuana addicts, 102 American Journal of Psychiatry, 674-682, 1946; Mayor's Committee on Marijuana Report, the Marijuana problem in the City of New York, New York, Cattell Press, 1944.

55. F. S. Tennant, et al., Medical manifestations associated with hashish, 216 Journal of the American Medical Association, 1965-1969, 1971.

56. J. Kaplan, Marijuana--the new prohibition, Cleveland, The World Publishing Company, 1970; A. H. Brill, Regulating and controlling marijuana: a first attempt, 1 Contemporary Drug Problems, 97-116, Winter 1971-72.

57. California Bureau of Criminal Statistics, Crime and arrests, reference tables, 1970, Department of Justice, Division of Law Enforcement, Sacramento, California.

58. L. Haines and W. Green, supra, note 6.

59. W. H. McGlothlin, et al., supra, note 3.

60. E. S. Krisnamoorthy, Report of a study tour of the present position in regard to the licit production and consumption of cannabis (ganja) in India and the illicit traffic thereinto from Nepal, International Narcotics Control Board, Fifth Session, Item 12 of the provisional agenda, Distr. Restricted E/INCB/W.40, October 1, 1969; J. L. Roland and M. Teste, supra, note 49.

Table 1. Prevalence of marijuana use: survey results

Sample	Year	One or more uses of marijuana (%) Total	Male	Female
General population				
Age 18-75 (National)[1]	1970-71	4	6	3
Age 18 and over (National)[2]	1971	15	21	10
Age 18 and over (National)[3]	1972	11	16	7
Age 14 and over (New York State)[4]	1970	10	-	-
College				
National[5]	1971	44	-	-
National[6]	1971	51	58	43
New York State[4]	1970	48	54	38
Secondary schools				
Age 12-17 (National)[7]	1971	15	17	14
Age 12-17 (National)[2]	1971	14	14	14
High School (New York State)[4]	1970	23	26	20

Sources:
[1]H. Parry, Unpublished data, George Washington University, Social Research Group.
[2]First National Commission on Marihuana and Drug Abuse, Marihuana a signal of misunderstanding, U. S. Government Printing Office, Washington, D. C., 1972.
[3]Gallup Poll, Los Angeles Times, February 10, 1972.
[4]C. Chambers, An assessment of drug use in the general population: drug use in New York State, Narcotics Addiction Control Commission, 1971.
[5]Johns Hopkins University, Preliminary results from national college study of life styles and campus communities (unpublished), W. E. Groves, et al., and Department of Social Relations, The Johns Hopkins University, December, 1971.
[6]Gallup Opinion Index, Report #80, February 1972.
[7]E. Josephson et al., Adolescent marijuana use: Report on a national survey, Presented September 14, 1971, First International Conference of Student Drug Surveys, Newark, New Jersey.

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[3]Gallup Poll, Los Angeles Times, February 10, 1972.
[4]C. Chambers, An assessment of drug use in the general population: drug use in New York State, Narcotics Addiction Control Commission, 1971.
[5]Johns Hopkins University, Preliminary results from national college study of life styles and campus communities (unpublished), W. E. Groves, et al., and Department of Social Relations, The Johns Hopkins University, December, 1971.
[6]Gallup Opinion Index, Report #80, February 1972.
[7]E. Josephson et al., Adolescent marijuana use: Report on a national survey, Presented September 14, 1971, First International Conference of Student Drug Surveys, Newark, New Jersey.

Table 3. Frequency of marijuana use reported in recent surveys

Sample	Year	% of population using one or more times	% or those having ever used who are in the upper ranges. Frequency range	%
General population				
Age 18 and over (National)[1]	1971	15	1-6 times/wk.	9*
			daily	3*
Age 14 and over (New York State)[2]	1970	10	≥ 6 times/mo.	34
College				
National[3]	1971	44	≥ 2 times/mo.	22
National[4]	1971	51	≥ 25 times/mo.	10
New York State[2]	1970	48	≥ 6 times/mo.	34
			male	56
			female	29
Secondary schools				
Age 12-17 (National)[5]	1971	15	> 60 times	29
Age 12-17 (National)[1]	1971	14	1-6 times/wk.	13**
			daily	5**
High school (New York State)[2]	1970	23	≥ 6 times/mo.	38
			male	43
			female	31
San Mateo Co. High School Seniors[6]	1971	54***	≥ 1 time per week	47
			male	55
			female	38

*30% of those indicating use did not reply as to frequency.
**12% of those indicating use did not reply as to frequency.
***Used during preceeding 12 months.

(See following page for Table 3 source

Table 3 sources:

[1]First National Commission on Marihuana and Drug Abuse, Marihuana a signal of misunderstanding, U. S. Government Printing Office, Washington, D. C., 1972.
[2]C. Chambers, An assessment of drug use in the general population: drug use in New York State, Narcotics Addiction Control Commission, 1971.
[3]Johns Hopkins University, Preliminary results from national college study of life styles and campus communities (unpublished), W. E. Groves, et al., and Department of Social Relations, The Johns Hopkins University, December, 1971.
[4]Gallup Opinion Index, Report #80, February 1971.
[5]E. Josephson et al., Adolescent marijuana use: Report on a national survey, Presented September 14, 1971, First International Conference of Student Drug Surveys, Newark, New Jersey.
[6]San Mateo County, California, Five mind-altering drugs; Five mind-altering drugs (plus 1971 addendum), The Research and Statistics Section, Department of Public Health and Welfare, San Mateo, California, 1969-70.

Table 4. National estimate of frequency of marijuana use for mid-1972 (among persons having used one or more times).

Group	Frequency of current marijuana use											
	< 1 x/mo.*		1-4 x/mo.		1-2 x/wk.		3-6 x/wk.		daily		Total	
	%	N (000)	%	N (000)	%	N (000)	%	N (000)	%	N (000)	%	N (000)
Students												
Male	40	2280	20	1140	21	1197	13	741	6	342	100	5700
Female	50	1655	22	728	19	629	7	232	2	66	100	3310
Non-Students (18-34)												
Male	45	2520	20	1120	14	784	13	728	8	448	100	5600
Female	55	1502	22	600	13	355	7	191	3	82	100	2730
Non-Students (≥35)												
Male	50	1680	20	672	19	638	8	269	3	101	100	3360
Female	60	1008	20	336	15	252	4	67	1	17	100	1680
Total	48	10645	20	4596	17	3855	10	2228	5	1056	100	22380
Male	44	6480	20	2932	18	2619	12	1738	6	891	100	14660
Female	54	4165	22	1664	16	1236	6	490	2	165	100	7720

* Includes persons who have stopped using marijuana and/or have used a total of less than 10 times.

Table 5. Estimated number of marijuana caragettes (or equivalent) consumed as a function or frequency of use.

Frequency of use	Mean no. cigarettes smoked/person		No. of persons $\times 10^3$	Annual consumption	
	per occasion	per month		Number of cigarettes $\times 10^6$	%
Daily	3	90	1056	1140	43
3-6 x/wk.	2	36	2228	962	37
1-2 x/wk.	1.5	9	3855	416	16
1-3 x/mo.	1	2	4596	110	4
Total			11735	2628	100

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Table 6. Estimate of retail expenditures for marijuana and hashish.

	Frequency of use			
	Daily	3-6 x/wk.	≤ 2 x/wk.	Total
Number of users	1,056,000	2,228,000	8,451,000	11,735,000
Proportion of total consumption (%)	43	37	20	100
Marijuana (short kg.)	827,850	712,350	385,050	1,925,250
Hashish (lbs.)	49,840	42,880	23,180	115,900
Retail price				
Marijuana $/short kg.	450	575	875	581
Hashish $/lb.	2,000	2,500	3,600	2,500
Annual expenditures ($)				
Marijuana x 10^3	372,530	409,600	336,920	1,119,050
Hashish x 10^3	99,680	107,200	83,450	290,330
Total x 10^3	472,210	516,800	420,370	1,409,380
Total expenditure/user				
Annual ($)	447	232	50	120
Weekly ($)	9	4	1	2

Table 7. Estimated marijuana-hashish usage and expenditures for 1972 and 1976

	1972	1976 prediction	
	estimate	lower	upper
Number of users (millions)			
Daily	1.1	0.8	2.5
3-6 x/wk.	2.2	2.0	3.5
1-2 x/wk.	3.9	3.0	6.0
1-4 x/mo.	4.6	3.0	10.0
Total	11.8	8.8	22.0
Annual national consumption (millions of kg. crude marijuana or equivalent)	1.9	2.3	5.4
Wholesale expenditures (billions of dollars; 1-kg. level; 1972 prices)	0.6	0.7	1.7
Retail expenditures (billions of dollars; 1972 prices)	1.4	1.6	3.7

Figure 1. Summary of marijuana - hashish use, distribution and economics for 1972

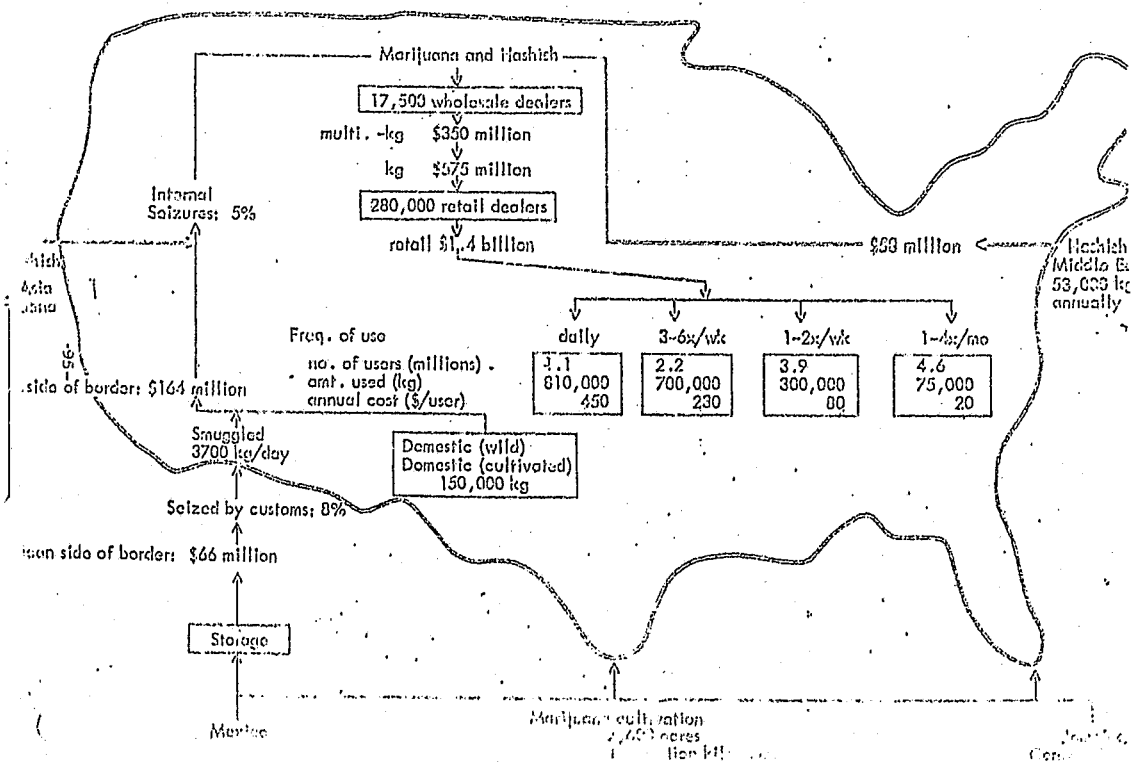
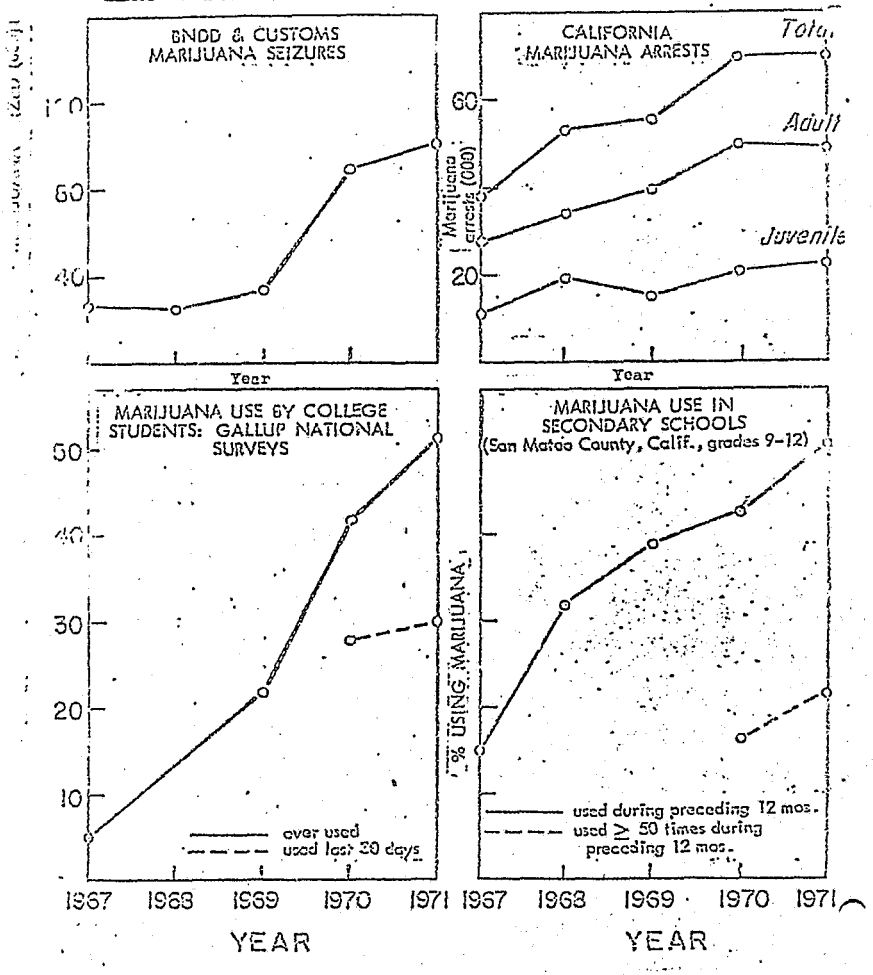


FIGURE 2. MARIJUANA TREND INDICATORS: USE AND CONTROL



Chapter 8

FISCAL COSTS OF CALIFORNIA MARIJUANA LAW ENFORCEMENT

> "...The fact that nearly one-fifth of all California felony arrests pertain to marijuana charges indicates that marijuana enforcement costs constitute a significant portion of all California law enforcement and correctional expenditures."
>
> --Legislative Analyst A. Alan Post, 1972

Because almost all marijuana offenses are classified at the point of arrest as criminal felonies, it is apparent that the cost to taxpayers is considerable. The Committee attempted to ascertain these fiscal costs by collecting evidence from the State Department of Justice Bureau of Criminal Statistics, the State Health and Welfare Agency (particularly the Department of Corrections), various law enforcement agencies, private research organizations, published state and local budgets, and a number of witnesses who presented information either orally or in writing to the Committee.

The information thus gathered is summarized below; however, as one preliminary study presented to the Committee stated, "Obtaining accurate quantitative estimates about marijuana law enforcement, court and prison activities is just about impossible. Records keeping systems are inadequate, interpretation difficult, and conclusions dangerous."

1. Arrests

Evidence presented to the Committee (See Table 1) shows that in the thirteen-year period 1960-1972, over 400,000 Californians

were arrested on marijuana charges, and almost three-fourths of those arrested were adults. This indicates that marijuana use is not primarily a youthful phenomenon. In 1972, there were 52,027 adult felony marijuana arrests comprising almost 22% of all adult felony arrests in the state, according to information filed through a monthly reporting system to the Bureau of Criminal Statistics. Similarly, the 21,034 juvenile marijuana arrests reported in 1972 were approximately 20% of the 103,347 juvenile major law violation arrests. Adult misdemeanor marijuana arrests, on the other hand, constitute a mere fraction (less than one-half of one percent) of all adult misdemeanor arrests: so small a fraction indeed, that these arrests were not recorded by the bureau for 1972 and had to be estimated, based on previous years' statistics, at approximately 3500. If this estimate is correct, there were 76,561 marijuana arrests in California in 1972.

Los Angeles County annually makes 35 to 40 percent of all marijuana arrests in the State. In 1971 the 26,074 marijuana arrests in Los Angeles were 40.4% of the State total of 64,597, and in 1972 Los Angeles accounted for 27,834 marijuana arrests, or 38.1% of the 73,061 adult felony and juvenile marijuana arrests reported for the State. Most of these arrests, as in all other counties, are made by regular uniformed police officers; according to Los Angeles Police Department Commander Charles Keese, 93% of Los Angeles marijuana arrests in 1973 were made by uniformed field officers.

2. County Law Enforcement Expenditures for Marijuana Arrests

Local police agencies and sheriff's departments make the overwhelming majority of marijuana arrests in the State. The Bureau of Criminal Statistics gave the Committee substantial information on these local arrest costs, based primarily on a 1971 study made by the office of Legislative Analyst A. Alan Post in conjunction with the Bureau. "Based upon scanty available data," it stated, "it was determined that approximately 25% of a police officer's time is devoted to the detection and apprehension of criminals. Therefore, it was concluded that 25% of the county's law enforcement budget is expended on criminal activity. The percentage of total marijuana arrests of the total arrests was computed for each county. This percentage was applied to that activity. Thus, a rough approximation was constructed of what it costs California county law enforcement agencies to effect marijuana arrests."

This method revealed that in 1971, local police and sheriff's departments spent approximately $8.9 million on investigation and arrest of marijuana offenders, an average of $138 per marijuana arrest. Using the same method, county law enforcement expenditures for marijuana arrests in 1972 were calculated for the Committee at approximately $11 million, or $144 per arrest.

Year	Total Calif. Felony and Misdemeanor Arrests	Total Mj. Felony and Misdemeanor Arrests	% Mj. of Total Arr.	Crim. Activity Expenditures For Total Arrests	Crim. Activity Expenditures For Marijuana Arrests	Cost per Mj. Arr.
1971	1,139,121	64,597	6	$148,416,401	$ 8,904,984	$138
1972	1,154,335	76,561	6.6	$167,150,502	$11,031,933	$144

Further cost analyses submitted to the Committee stated that if California Highway Patrol expenditures are added, the cost per arrest in 1971 becomes $166 and the cost per arrest in 1972 becomes $171. Approximately 63% of California Highway Patrol felony arrests in 1972 involved marijuana and other drug arrests.

3. Adult Felony Prosecution

The Committee received a substantial amount of information relative to the fiscal costs of prosecuting adult felony marijuana offenders through the judicial system. However, less information was available on lower court dispositions of adults whose felony charges were reduced to misdemeanors, and very little information was presented on proceedings against juvenile marijuana offenders; consequently neither of these areas were included in the fiscal cost estimates submitted to the Committee.

After an arrest is made, police have a legal obligation to file charges against the person arrested within two days, if not sooner. Of the 52,027 adult felony marijuana arrests in 1972, approximately 896 were transferred to other jurisdictions for prosecution. Of the remaining 51,131 adults arrested, 18% (9204) were released without charges being filed, and 82% (41,927) had complaints filed against them (Crime and Delinquency in California 1972, p. 44).

At this stage Section 17b4 of the California Penal Code allows prosecutors to file misdemeanor complaints on offenses, including marijuana possession, which carry alternate prison-jail sentences.

Section 17b5 of the Penal Code similarly allows lower court judges to adjudicate certain felony level offenses as misdemeanors instead of transferring them to superior courts for trial. Section 17 has been increasingly used in prosecuting first offense marijuana possession cases throughout the State, especially in Los Angeles County. As L.A.P.D. Commander Charles Reese noted in testimony to the Committee, "It's a great one for the District Attorney to say, 'this is not worthy under social attitudes of felony prosecution.'"

Thus in 1972 a total of 21,230 felony marijuana complaints were processed as felonies through California superior courts (8,884 felony filings) or as misdemeanors through the lower courts (12,346 felony filings). This leaves what one witness to the Committee called "a serious lacuna in the disposition information available," i.e. some 20,697 complaints unaccounted for in the Bureau of Criminal Statistics record books. This considerable number of complaints -- 40% of the 41,927 complaints originally filed -- could have been filed as misdemeanors, reduced through plea bargaining, or dropped entirely. Because their disposition is unknown, it is impossible to calculate their cost.

a. Lower Court Prosecution

Of the 12,346 felony complaints prosecuted in the lower criminal courts, 161 were dismissed but subsequently prosecuted in juvenile court or other jurisdictions, leaving 12,185 terminated without subsequent prosecution. Of these, 3875 were dismissed in lower

courts, and 8310 were convicted; 1778 of those convicted had been refiled as misdemeanors or had pled guilty to misdemeanors, while 6,532 were felonies prosecuted as misdemeanors per Section 17 (Adult Prosecution Reference Tables, p. 9).

b. Superior Court Prosecution

Of the 8,884 felony complaints filed in superior courts, 7991 received dispositions in 1972. Of these, 1,057 were dismissed; 394 were acquitted; 1,118 were found guilty; and 5422 pled guilty. Thus, 1,451 (18%) of these defendants were not convicted, while 6540 were convicted of some felony charge (Ibid., pp. 13, 16). About 45% (2,947) of those convicted were given misdemeanor sentences, and the median time from filing date to sentencing date for these 6540 felony defendants convicted in superior court was precisely the same as the median time for all felony defendants in the State, approximately two and half months. (Ibid., pp. 23,28).

However, only 6,271 of these 6,540 were convicted on felony marijuana offenses (possession 4,734; sale 1,248; other 289). An additional 379 adults not originally charged with marijuana violations as their most serious offense, were eventually convicted of marijuana offenses in superior courts in 1972, which brings the superior court total to 6,650 persons convicted. (Ibid., pp. 20, 35, 40)

c. Recapitulation

Combining the 8,310 convicted in lower courts with the 6,650 convicted in superior courts, a total of 14,960 adults were

CONTINUED

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convicted on marijuana law violations in California in 1972. This represents 29% of the 52,027 adults originally arrested on felony marijuana charges.

It is apparent from the foregoing that the most significant influence on reducing the fiscal costs of processing marijuana offenders through the criminal courts has been Section 17 of the Penal Code. Increasing use of Section 17, particularly in Los Angeles County (where the practice increased 11% in 1972, compared with a 2% increase in the rest of the State), has considerably reduced the number of cases bound over to superior court. In 1972 superior court prosecutions "dropped drumatically by 11%," according to the Bureau of Criminal Statistics, "while lower court felony prosecutions rose by over 5%." (Ibid., p. 2)

On the other hand, "the levelling-off of lower court terminations in 1972 may indicate that the use of Penal Code Section 17b5 to dispose of felonies carrying alternative sentences of jail or prison has reached its full potential." (Crime and Delinquency in California 1972, p. 36) If this is true, it may also be true that the use of Section 17 has likewise reached its maximum effectiveness in reducing the fiscal costs of prosecuting marijuana offenders under the present system.

4. Commitments

Of the 14,960 adults convicted on marijuana offenses in 1972, no information was presented to the Committee on the commitments of the 8,310 offenders sentenced in California lower courts, and

consequently these persons are not included in fiscal cost estimates. Information was available, however, on the commitments of offenders convicted in superior courts.

Commitments Of Felony Defendants Convicted In Superior Courts, 1972

Source: Adult Prosecution Reference Tables 1972, p. 40

Convicted Offense	TOTAL	Dept. of Corr. Prison	Youth Authority	Jail	Probation		Fine	Civil Commitmt.	
					With Jail	Straight		CRC	Ment. Hyg.
MARIJUANA	6650	154	54	309	2122	3816	148	45	2
Furnish minor	8				6	1		1	
Sale, transp.	717	68	15	8	452	170		4	
Poss. for sale	559	33	3	5	354	158	1	5	
Possession	5067	53	36	273	1289	3261	118	35	2
Visit premises	299			23	21	226	29		

Incarcerated, 2639 = 39.7%
Not incarcerated, 4011 = 60.3%

It may be noted that 76% (5067) of the adults sentenced in superior courts in 1972 were convicted of simple marijuana possession, with probation and probation with jail being the most common sentences for these offenders. It must also be pointed out that 40% (2,639) of the felony defendants convicted in superior courts were incarcerated for some period of time in state prisons, the Youth Authority, or county jails. Several witnesses to the Committee pointed out that county detention facilities, rather than state institutions, bear the brunt of the fiscal costs involved in marijuana law enforcement, in terms of both arrestees

held in local custody prior to trial and those convicted and sentenced in superior courts who are ultimately committed to jail.

A request to the Department of Corrections for information on how many persons were in state penal institutions for marijuana offenses disclosed the following tables showing commitments to the Department of Corrections by various classes of marijuana offenses for the first and second halves of 1972 and the first half of 1973:

COMMITMENTS TO DEPARTMENT OF CORRECTIONS
1972 and First Half of 1973

Source: Communication from Corrections Dept. 3 Jan. 1974

Offense	1972 1st	1972 2nd	1973 1st
MEN	85	76	71
Sale to minor by adult	1	-	-
Possession of marijuana	27	29	24
Possession with one prior	1	1	-
Possession for sale	19	20	18
Possession for sale with one prior	-	1	-
Possession for sale with two priors	-	-	1
Sale of marijuana	36	25	26
Sale with one prior	1	-	1
Sale with two priors	-	-	1
WOMEN	5	4	2
Possession of marijuana	3	2	-
Possession for sale	1	1	2
Sale of marijuana	1	1	-
TOTAL	90	80	73

Thus according to the Department of Corrections, a total of 170 men and women were committed to the Department in 1972. The discrepancy between this information and that provided in the previous chart of 1972 commitments may perhaps be explained by the fact that the previous chart does not include the commitments of those convicted in lower courts on marijuana charges.

The Committee was also told by the Department of Corrections that commitments are listed for statistical purposes on the basis of the most serious (as determined by the severity of the penalty) and that "therefore, it is possible there may be persons not shown in the above tables who are in on multiple commitments, one of which is more serious than the marijuana offense."

Turning for a moment from commitments to prison to release from prison, the Department of Corrections informed the Committee that 317 persons were paroled for the first time in 1972 from a commitment for a marijuana offense. Tables 6A and 6B (see following two pages) show, by men and women, these releases by offense, and the time served before being paroled, broken down between those who were narcotic addicts and those who were not.

The Committee noted from these tables that the median time served by male marijuana offenders in state prison before parole was 34 months, with those convicted of sale serving a median of 37.5 months and those convicted of possession serving a median of two years.

Table 8A - 1972

NARCOTIC OFFENSES, TIME SERVED IN PRISON BEFORE FIRST PAROLE, AND NARCOTIC HISTORY

Male Narcotic Offenders Paroled For The First Time

1972

Median time served not computed for less than 15 cases

Offense	Total			Narcotic history					
				Non-addicts			Addicts		
	Number	Time served in months		Number	Time served in months		Number	Time served in months	
		Median	Range middle 80%		Median	Range middle 80%		Median	Range middle 80%
All offenses	4,914	32	14-76	3,741	33	15-80	1,173	29	14-64
All [illegible] and dangerous drug offenses	759	30	13-60	390	31	14-49	369	34	15-74
Opiate derivative offenses	265	36	22-74	48	36	20-50	217	36	22-78
Sale to minor by adult	1	-	-	1	-	-	-	-	-
Sale to minor with prior	-	-	-	-	-	-	-	-	-
Sale to minor by person under 21	1	-	-	-	-	-	1	-	-
Possession	118	29	24-71	12	-	-	106	30	24-73
Possession with prior	4	-	-	-	-	-	4	-	-
Possession for sale	42	35	30-59	14	-	-	28	35	[illegible]
Possession for sale with prior	1	-	-	-	-	-	1	-	
Sale	83	43	27-80	17	36	36-49	66	45.5	24-93
Sale with prior	1	-	-	-	-	-	1	-	-
Forge[illegible]	2	-	-	1	-	-	1	-	-
Forgery with prior	-	-	-	-	-	-	-	-	-
Sell substance in lieu of narcotics	3	-	-	-	-	-	3	-	-
Maintain place for narcotics	5	-	-	2	-	-	3	-	-
Maintain place for narc.w/prior	-	-	-	-	-	-	-	-	-
Driving under influence of narcotics	4	-	-	1	-	-	3	-	-
Marijuana offenses	308	34	13-60	215	34	12-53	93	36	15-74
Sale to minor	5	-	-	3	-	-	2	-	-
Sale to minor with prior	-	-	-	-	-	-	-	-	-
Possession	136	24	12-51	99	24	11-26	37	24	13-69
Possession with prior	6	-	-	2	-	-	4	-	-
Possession for sale	49	28	12-47	35	25	12-37	14	-	-
Possession for sale w/prior	1	-	-	1	-	-	-	-	-
Sale	108	37.5	19-72	73	36	22-57	35	37	17-79
Sale with prior	3	-	-	2	-	-	1	-	-
Dangerous drug offenses	186	18.5	12-33	127	20	12-32	59	16	12-38
Furnish drug to minor	1	-	-	1	-	-	-	-	-
Possession	103	16	10-28	69	18	10-29	34	15	10-31
Possession with prior felony drug conviction	-	-	-	-	-	-	-	-	-
Possession for sale	24	23.5	12-25	17	24	12-27	7	-	-
Sale	50	22	12-41	35	22	12-35	15	26	15-45
Sale with prior fel. drug conv.	1	-	-	1	-	-	-	-	-
Driving under influence of dangerous drugs	2	-	-	1	-	-	1	-	-
[illegible]	5	-	-	-	-	-	-	-	-

Table 63 - 1972

NARCOTIC OFFENSES, TIME SERVED IN PRISON BEFORE FIRST PAROLE, AND NARCOTIC HISTORY

Women Narcotic Offenders Paroled For The First Time

1972

Time served not computed for less than 10 cases

Offense	Total			Narcotic history					
				Non-addicts			Addicts		
	Number	Time served in months		Number	Time served in months		Number	Time served in months	
		Median	Range middle 80%		Median	Range middle 80%		Median	Range middle 80%
All offenses	277	16	8-31	190	13	9-28	87	12	8-37
All narcotic and dangerous drug offenses	65	24	8-38	30	18.5	9-36	35	27	9-39
Sale, derivative offenses	33	20	13-39	11	26	22-38	22	28	12-39
Sale to minor	--	-	-	-	-	-	-	-	-
Sale to minor with prior	-	-	-	-	-	-	-	-	-
Possession	13	26	12-40	5	-	-	14	27.5	12-40
Possession with prior	-	-	-	-	-	-	-	-	-
Possession for sale	4	-	-	2	-	-	2	-	-
Possession for sale with prior	-	-	-	-	-	-	-	-	-
Sale	10	37	9-39	4	-	-	6	-	-
Sale with prior	-	-	-	-	-	-	-	-	-
Forgery	-	-	-	-	-	-	-	-	-
Forgery with prior	-	-	-	-	-	-	-	-	-
Sell substance in lieu of narcotics	-	-	-	-	-	-	-	-	-
Maintain place for narcotics	-	-	-	-	-	-	-	-	-
Driving under influence of narcotics	-	-	-	-	-	-	-	-	-
Marijuana offenses	9	-	-	4	-	-	5	-	-
Sale to minor	1	-	-	1	-	-	-	-	-
Sale to minor with prior	-	-	-	-	-	-	-	-	-
Possession	4	-	-	1	-	-	3	-	-
Possession with prior	-	-	-	-	-	-	-	-	-
Possession for sale	1	-	-	1	-	-	-	-	-
Possession for sale with prior	-	-	-	-	-	-	-	-	-
Sale	3	-	-	1	-	-	2	-	-
Sale with prior	-	-	-	-	-	-	-	-	-
Dangerous drug offenses	23	11	8-27	15	12	7-27	8	-	-
Possession	17	11	8-16	10	9	6-16	7	-	-
Possession with prior felony drug conviction	-	-	-	-	-	-	-	-	-
Possession for sale	4	-	-	3	-	-	1	-	-
Sale	2	-	-	2	-	-	-	-	-
[illegible]	-	-	-	-	-	-	-	-	-

5. Department of Corrections and Youth Authority Cost Estimates

Further information provided to the Committee by the Department of Corrections revealed that as of December 31, 1973, there were 621 felons in state prison whose most serious commitment offense was violation of some law pertaining to marijuana. This represents about 3% of the total prison population of 19,794 on that date. Similarly, there were 858 marijuana offenders on parole as of that date, or approximately 7% of the 12,996 felons on parole. In addition, the Department had in institutions and on parole "several thousands of other persons on civil commitments, etc."

MARIJUANA FELONS IN PRISON AND ON PAROLE
As of December 31, 1973

Source: Communication from Department of Corrections, 13 Feb. 1974

	Total Offenders	Marijuana Offenders			% Marijuana of Total
		Total	Men	Women	
Prison	19,794	621	606	15	3.14
Parole	12,996	858	817	41	6.60
Prison & Parole	32,790	1479	1423	56	4.51

In sum, the Department of Corrections had almost 1500 marijuana felons in prison or on parole at the end of last year, representing about 4½% of their felony workload. In estimating the fiscal costs involved, the Department commented: "Actual cases, both in the institutions and on parole are handled individually according to their needs, so some individuals may have taken a great amount of staff time to resolve various problems while others took relatively little . . . In agreement with the Legislative Analyst, various per capita cost figures are used in accord with circumstances.

"For example, a reduction of one inmate in the population would make virtually no difference in departmental costs, but if you reduced the institution population by 1,500 you might be able to close an entire institution. In any event in terms of the numbers involved in marijuana we would estimate their cost to the Department at approximately $900,000 a year."

An additional request to the State of California Health and Welfare Agency elicited a slightly higher cost estimate for the Department of Corrections, as well as an estimate for the Youth Authority expenditures and manpower involved in processing marijuana law offenders. In a communication to the Committee on March 7, 1974, the Health and Welfare Agency provided the following information:

"The Departments of Health, Corrections, and Youth Authority do not budget their respective narcotic and drug abuse programs by drug or substance but rather by treatment and rehabilitation modalities. While statistics are available for wards and inmates convicted of marijuana law violations, they cannot reflect the true overall extent to which these offenders absorb our resources. The data base for marijuana law-involved clients in Department of Health supervised local programs does not directly capture the sort of information you requested. Thus, the following breakdown represents our best interpolation of available data."

Department	Dollars (%)	Man yrs. (%)
Corrections	$1,085,000 (0.7%)	44.0 (0.5%)
Youth Authority	1,656,000 (2.6%)	31.9 (1.4%)
Rehabilitation	N. A.	N. A.
Employment Development	-0-	-0-
TOTALS	$2,741,000	95.9

6. Fiscal Costs of the Present Criminal Marijuana Laws

Administration of the present criminal marijuana laws permeates the entire State criminal justice system, from uniformed police officers who make the bulk of arrests, to prosecutors and judges who must review every complaint filed to determine whether to adjudicate it in lower or superior court and then must process each case through preliminary hearings, trials, and sentences; to arresting officers who often must appear in court to give evidence, and public defenders who are given numbers of indigents for simple possession; to county jail, CYA, and state prison, parole, probation, and rehabilitation program personnel who must supervise the relatively small percentage of those arrested who are finally convicted of marijuana crimes.

Any responsible attempt to estimate the fiscal costs of marijuana law enforcement must take each stage of the criminal process into account. Then legislators must determine what, if any, effect various legislative changes have had on these fiscal costs over the years. Finally, the potential effect of alternative legislation on these fiscal costs must be considered. The Committee received information on most of these factors from

several witnesses and from a wide variety of published sources.

A careful preliminary study submitted to the Committee (see Appendices) estimates that over $100 million a year has been spent by State and local government agencies since 1970 enforcing marijuana laws. This study reviewed the numbers of marijuana offenders at each stage of the criminal justice process and assigned cost/unit figures based on previous studies and all information currently available, to the numbers of offenders remaining in each stage: arrests, prosecutions, and ultimate commitments. Expenditures of local and State law enforcement agencies; prosecutor, judge, and public defender costs in lower, superior, and appellate courts; and jail, prison, Youth Authority, probation, and parole costs were included.

The lowest estimate calculated for 1972 in this preliminary study was $52 million, which did not include State law enforcement agency costs and various other State expenditures. The highest estimate obtained was $119 million, and intermediary estimates using variations on earlier techniques (modified to account for the fact that California criminal justice agency expenditures rose by 67% from fiscal 1968 to fiscal 1972) were $95 million and $105 million. These estimates included the costs of adult and juvenile marijuana arrests; the costs of prosecuting adult felony marijuana offenders on whom information could be obtained, through the judicial system; and the costs of commitments for adult offenders convicted in superior courts.

However, it was emphasized to the Committee that these estimates must be regarded as tentative and conservative, because they did not include the costs of processing approximately 20,000 adult marijuana arrestees on whom complaints were filed in 1972 but whose court dispositions are not known; nor the costs of commitments to various public agencies of some 8,310 felony marijuana defendants convicted in lower courts; nor the costs of processing juvenile marijuana law offenders through the criminal justice system; nor the costs of diversion and rehabilitation programs; nor peripheral government costs which accrue as a result of the present marijuana laws, such as welfare payments to families of those incarcerated for marijuana law violations.

Because information was not available to estimate the fiscal costs of these components of marijuana law enforcement, the Committee was informed that the figure of $100 million for 1972 is to be considered a minimum calculation: the actual costs to the taxpayer were probably much higher. It was also pointed out that the local law enforcement costs involved in making the initial 76,561 arrests in 1972 were but the tip of the iceberg: the bulk of the fiscal costs occurred at the judicial prosecution and ultimate commitment stages of the criminal process. Thus the local law enforcement expenditures of approximately $144 per arrest in 1972 may be correct, but the disposition costs turn out to be much higher. These appear to be in the neighborhood of $1,200 - $2,800 per complaint filed, depending on whether the $52 million figure

or the $119 million figure is applied to the 41,927 complaints filed against adults in 1972. Without further information the Committee was unable to obtain more precise estimates.

7. An Overview of Marijuana Enforcement Costs, 1960-1972

In an attempt to discern trends over a thirteen-year period, the Committee considered previous marijuana enforcement cost estimates in relation to the various legislative changes which have influenced these costs since 1960.

In 1968 Stanford law student Lawrence Calof wrote the definitive early study of California marijuana enforcement costs. Taking the 1966 marijuana arrest and disposition data and applying fiscal 1967-1968 budget figures, Calof arrived at a "hybrid" estimate of $29,783,418.56 for the 18,243 adult and juvenile marijuana arrests and the dispositions of 14,209 adult felony offenders through each stage of adjudication and commitment. This averages out to approximately $1,630 per arrest, or $2,100 per adult disposition.

Stanford law professor John Kaplan used the Calof method to determine the 1968 enforcement costs in his book Marijuana: The New Prohibition (1970). He arrived at a figure of about $72 million for adult felony dispositions.

U. C. L. A. researcher William McGlothlin, using a more conservative variation of the Calof method, estimated approximately $43.1 million for the cost of 1969 marijuana dispositions. McGlothlin excluded certain costs which Calof had included

(appeals, State Bureau of Narcotics, motions to suppress evidence) and used significantly lower cost/unit estimates for various commitment costs.

Tod H. Mikuriya, M.D., a consultant to the National Commission on Marihuana and Drug Abuse, estimated 1970 marijuana enforcement costs at $106 million. This figure was obtained by multiplying Calof's estimate by the percentage increase in marijuana arrests in 1970 over 1966.

Perhaps not coincidentally, an extrapolation of the Bureau of Criminal Statistics/Legislative Analyst method of determining arrest costs for 1971 gives approximately the same $106 million figure obtained for 1970. The cost estimate thus remains identical even though the number of marijuana arrests in 1971 actually declined by 3,681 from the previous year.

Between 1961 and 1968, unlawful simple possession of marijuana in California was punishable by imprisonment in State prison for one to ten years, and the offender could not be released until at least one year had been served. Possession of marijuana for sale drew two to ten years, and sale of marijuana was punished by imprisonment from five years to life. These rigorous mandatory minimum penalties began to influence enforcement costs significantly, especially at the commitments end of the process. Calof's average of $1,630 per arrest may be taken as representative of the fiscal costs involved in processing marijuana felony cases during this period.

In 1968, the penalty for unlawful simple possession of marijuana on first offense was revised. Where no prior convictions were found, judges were given discretion to punish marijuana possession as either a misdemeanor (up to one year in county jail) or as a felony (one to ten years in State prison). As judges began to use this option in 1969, the cost of commitments to State institutions (felony sentences) declined sharply, as evidenced in McGlothlin's cost estimate.

However, the number of individuals arrested and processed through the criminal court and correctional system increased so drastically from 1966 to 1970 that costs once again began to soar.

As noted elsewhere in this report, perhaps the most significant influence on reducing marijuana disposition costs since November 1969 has been the revision of Section 17 of the Penal Code which allows prosecutors and judges to adjudicate first-offense marijuana possession cases as misdemeanors in the lower courts. This primarily affected the costs in the middle of the criminal justice process, especially reducing superior court costs. But as superior courts handle fewer marijuana cases, lower courts handle more. With the number of marijuana arrests and dispositions still increasing, it appears that the effectiveness of Section 17 in reducing fiscal costs is beginning to wane. Like other legislative attempts to mitigate the costs, it appears that Section 17 has succeeded temporarily but may be overcome by the numbers of marijuana offenders annually thrust through the

criminal justice system. The apparent levelling-off of enforcement costs at $100 million might as easily be a result of not having information available on the dispositions of 49% of the complaints filed in 1972, as of hypothetical savings from increasing use of Section 17.

One clear fact emerges from the weight of evidence presented to the Committee: despite all attempts to reduce them, the fiscal costs of marijuana law enforcement throughout the criminal justice system continue to increase, slightly or suddenly, year after year. This is graphically depicted in the following chart summarizing the evidence presented to the Committee on the fiscal costs of enforcing the California marijuana laws since 1960:

Year	Marijuana Arrests	Source or Cost/Unit	Cost of Enforcement	Relevant Laws
1960	5,155	Calof-	$ 8,402,650	All arrests,
1961	3,794	$1,630	6,184,220	Prosecution,
1962	3,743	"	6,101,090	Commitments
1963	5,518	"	8,994,340	handled as
1964	7,560	"	12,322,800	Felonies.
1965	10,002	"	16,303,260	
1966	18,243	"	29,147,418	Average cost
1967	37,514	"	61,147,820	of marijuana
1968	50,327	Kaplan	72,074,860	dispositions per arrest: $1,630
1969	55,176	McGlothlin	43,100,000	"Wobbler" &
1970	69,021	Mikuriya	106,028,968	Section 17:
1971	64,597	Extrapola.	106,859,808	Average cost
1972	76,561	Aldrich	100,000,000	per arrest: $1,340
TOTAL	407,211	$1,417.70	$577,303,234	$44,407,941 yearly

Thus according to the best available information, classification of marijuana as a criminal offense has cost the taxpayers of California about $577 million to arrest, prosecute, and punish 400,000 people since 1960. Over the thirteen-year span (1960-1972 inclusive), the fiscal costs of California marijuana law enforcement have averaged $44,407,941 a year.

When all marijuana offenses were disposed of as felonies, the cost per arrest was about $1,630. The Wobbler bill in 1968 and the modification of Section 17 Penal Code in 1969 had the effect of reducing the cost per arrest about $290 because dispositions could be handled as misdemeanors in first offense possession cases. Nevertheless, the costs of enforcing the marijuana laws in California continue to rise as the number of arrests continue to grow. Cumulatively, unless present legislation is further modified, California can expect to continue adding $100 million each year to the almost $600 million already spent.

Chapter 9

LEGISLATIVE HISTORY AND HEARINGS ON SENATE RESOLUTION 401

On Wednesday, 15 April 1973, Senate Democratic Leader George Moscone appeared before the Senate Rules Committee to ask approval of SR 23.

Witnesses invited to testify in favor of SR 23 included:

1. J. Thomas Ungerleider, M.D., UCLA Neuropsychiatric Institute and Member, National Commission on Marijuana and Drug Abuse (1971-1973).

2. Mrs. Gloria Coodley, Chairman, Narcotics Committee, 1972, Los Angeles County Grand Jury and Member, Narcotics and Dangerous Drugs Commission of Los Angeles County.

3. Hank Gordon, Chairman, Narcotics and Dangerous Drugs Commission of Los Angeles County.

4. Richard Lance Christie, Research Coordinator, UCLA Longitudinal Marijuana Study.

5. Gordon S. Brownell, Member, White House Staff (1969) and Assistant to the Chairman, 1970 Re-election Campaign of Governor Reagan. Registered Legislative Advocate, AMORPHIA, a non-profit drug research, education and legal reform organization.

6. Harry V. Lehmann, Statewide Chairman, College Program, 1972, Committee to Re-elect the President and third-year law student, University of San Francisco School of Law.

7. Robert Ashford, Attorney, California Marijuana Initiative.

Senator Moscone submitted Senate Resolution No. 23 to consider what alternative laws and regulations should be placed on marijuana use in the event it should become legalized and to study regulations and models of control for legalized personal use of marijuana.

Initially, Senate Resolution No. 23 was accepted in principle,

but was held in Committee because the Select Committee's intent and purpose was not clearly and specifically spelled out.

The Resolution was then rewritten by Senator Moscone and was approved by the Senate Rules Committee as Senate Rules Committee Resolution No. 401 on May 16, 1973.

The Resolution proposed the study and analysis of information relating to the administration and effect of the laws regarding the control of the use and availability of marijuana in California.

Senator Moscone, Chairman of the Select Committee on the Control of Marijuana, asked Senators Anthony Beilenson and Craig Biddle and they agreed to serve on the Committee. Senator H. L. Richardson asked and was put on the Committee. On April 24, 1974, Senator Richardson resigned from the Committee and Senate Rules appointed Senator Milton Marks as his replacement.

Three hearings were held to carry out the purpose of the Resolution. The first hearing was held on Friday, November 10, 1973, in Los Angeles. Michael R. Aldrich, Ph.D., Research Director, AMORPHIA; Louis Bozzetti, M.D., Medical Director U.C. San Diego Psychiatric Clinic; Art Linkletter; Richard Lance Christie, Ph.D., Research Director, UCLA Longitudinal Marijuana Study; D. C. Parks, President, Addictive Drugs Educational Foundation; Charles D. Reese, Commander, Bureau of Special Investigations, Los Angeles Police Department; and A. E. LeBas, Chief, Civil Division, Los Angeles Sheriff's Department, gave testimony on various aspects of marijuana.

The second hearing was held in Sacramento on January 10, 1974. Testimony was taken from Tod H. Mikuriya, M.D., Psychiatrist,

Berkeley, California, Consultant to the National Commission on Marijuana and Drug Abuse and former director of marijuana research at the National Institute of Mental Health, who appeared at the behest of the Committee; and Hardin Jones, Ph.D., Professor of Medical Physics, Professor of Physiology, UC Berkeley; and D. Harvey Powelson, M.D., Donner Laboratory, Donner Pavillion, UC Berkeley, who appeared at the special request of Senator Richardson.

The third hearing was again held in Sacramento on February 14, 1974. Testimony was taken from J. Thomas Ungerleider, M.D., Associate Professor of Psychiatry, UCLA Medical Center, and Member, President's National Commission on Marijuana and Drug Abuse; Edward M. Brecher, author of Licit and Illicit Drugs, Consumers' Union Report; Gordon Brownell, President, AMORPHIA; and Michael R. Aldrich, Research Director, AMORPHIA.

[From the Christian Science Monitor, Feb. 18, 1975]

California Marihuana Ease-Up?

(By Curtis J. Sitomer)

Los Angeles.—Encouraged by a "successful" experiment in neighboring Oregon, California seems on the verge of liberalizing its marihuana law.

Legislation which, in effect, would reduce a charge of possession of marihuana from a felony to a misdemeanor is moving with surprising ease through committees and is heading for debate on the open floor.

If it passes the Legislature, it likely will be signed by Democratic Gov. Edmund G. Brown, Jr. Mr. Brown, who took office last month, favors lower penalties for possession and use (as opposed to sale) of marihuana. His predecessor, Republican Ronald Reagan, vigorously opposed any change in the law which now gives the courts jurisdiction to decide whether a particular "use" offense is a misdemeanor or a felony.

In 1972, a hotly debated ballot measure to decriminalize marihuana possession here was soundly defeated at the polls. And efforts by the Legislature to accomplish similar laws have since failed—or been vetoed by Mr. Reagan.

Why the possible turnaround now?

Observers say continued pressure from the National Organization for Reform of Marihuana Laws (NORML) and similar groups have gained influence in what now is a heavily Democratic and "liberally" oriented Legislature.

Also, reports on the lack of negative effects following Oregon's action in October, 1973, to abolish criminal penalties for marihuana use have had an impact in California. Oregon was the first to take such a radical stance. Recent citizen surveys there indicate that more than 50 percent still support the more liberal law—and 26 percent are reported to advocate "legalization" of sale and possession of small amounts of the drug.

However, what is still not clear is whether reduced penalties have increased use of marihuana—particularly among young people.

This has been a major dispute between backers and opponents of proposed legislation here. Also contested are the harmful physical effects marihuana may have on users.

Proponents argue: the drug has become part of the American "lifestyle"; it is widely used (regularly by as many as 8 million people); it is not physically harmful nor does it lead to use of "hard" drugs.

But valid data is still sketchy—and many state and national studies are contradictory.

For example, in 1972, the National Commission on Marihuana and Drug Abuse—after a two-year probe—concluded that criminal penalties for marihuana use should be lifted.

However, late last year, a U.S. Department of Health, Education, and Welfare report indicated that the drug has "serious implications" for users' physical and psychological health.

Advocates of abolishing or lightening criminal penalties for use point to hazards of smoking and alcohol use—which carry no strict penalties for participants.

And some surveys indicate that parents continue to oppose marihuana use by their youngsters; at the same time, many oppose jail sentences or stiff fines for this practice.

Among other things, the proposed California law would make possession of less than one ounce of marihuana a misdemeanor—carrying a "citation" instead of arrest—and resulting in a maximum $100 fine; assess a $500 fine or six months in jail for possession of more than one ounce; levy a misdemeanor penalty of no more than $100 for giving less than one ounce to somebody else.

A state law here making it a felony to sell or grow marihuana or possess the drug with the intention to sell it would continue to stand.

[From the Washington Star, Feb. 22, 1975]

Laws That Don't Work

(By Raymond Price)*

Whether California, in addition to being the most populous state, is also the pot-usingest can only be guessed at. But there's a good chance that it is. Thus it should be of considerable national interest that a bill substantially easing marihuana penalties is currently making its way through the California legisltaure, and that it recently cleared what was expected to be its toughest hurdle, the Judiciary committee of the state Senate.

The California bill stops short of outright decriminalization, much less legalization. But it's a large step in that direction, particularly for a state whose marihuana penalties are now among the harshest in the nation.

Under the proposed California law, possession of less than an ounce would be a misdemeanor, but the offender would be cited, as for a traffic offense, rather than arrested, with a maximum penalty of a $100 fine. In a complex set of other provisions, giving less than an ounce to a friend would be treated the same as possession of less than an ounce; possession of more than an ounce would be a regular misdemeanor, with a maximum six months in jail and $500 fine; growing or selling, or possession with intent to sell, would remain a felony. Personal use convictions would be purged from a person's record after two years.

As a political footnote, one sad irony was that the measure cleared the Judiciary committee on a straight party-line vote: Republican members solidly against the easing. Democratic members solidly in favor. It's high time more Republicans began recognizing that their own [illegible] against statist intrusion on personal liberties ought to apply not on[illegible] excesses of compulsory busing, but also to the right of personal choice between the uncertain evils of pot and the well-documented evils of demon rum. Unless they do, they can hardly expect to be taken seriously by the post-martini generation.

The issue of marihuana laws is of vital and intensely personal concern to millions of young Americans and it deserves a constant drum-beat of attention until the laws are changed.

How many parents have seen their children's lives ruined—not by pot, but by a pot bust? It's not the marihuana that does the harm in these cases, it's the law.

All of us have friends or relatives who use pot. Do we really want them dragged through the courts, disgraced, thrown in jail? As long as we keep the present laws on the books we're saying one of two things; either that we do, or else that we're hyprocrites who want the penalty for someone else's friends and relatives but not for our own.

The proper use of the criminal law is to protect one citizen from abuse by another, not to let one citizen tyrannize over another. Our present marihuana laws are tyranny, not protection. Scores of thousands of young lives are severely scarred, for nothing. Millions of young Americans are placed outside the law, branded as criminals, taught to fear rather than respect the law—and for what? For choosing the risk, to themselves alone, of whatever limited damage marihuana use might entail. By this logic, mountain-climbing ought to be a misdemeanor, playing professional hockey a felony and over-eating punishable by 30 years.

Marihuana use may be harmful, as some scientific studies indicate. I don't know, and I don't use it. But so are a lot of other pleasurable activities harmful. As I write this, I'm putting on a pipe and about to have a drink before dinner—and if an agent of the government, wrapped in the majesty of the law, were to march in and try to haul me off to the pokey for doing so, I'd either throw him out on his ear or start a rebellion.

That, I think, is how quite a few millions of young Americans feel about the present pot laws, and with good reason. Those laws don't work. The ones they hurt most are those they're meant to help, and they have no place in a society that prides itself on devotion to individual freedom and to the civilizing leaven of mutual tolerance and mutual respect. California, like Oregon before it, at least seems headed in the right direction.

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*Raymond Price is a former editor of the New York Herald-Tribune and was a special White House consultant to former President Nixon, serving as a speechwriter with Patrick Buchanan and William Safire.

[From the Los Angeles Times, Mar. 5, 1975]

POT AND THE LAW

State Sen. George R. Moscone's proposal to liberalize California's marihuana law is a necessary and important step toward addressing this controversial issue in a more sensible and evenhanded way. We support the adoption of SB 95.

Under current law, pot offenses are treated as a misdemeanor or a felony, depending on the court's discretion. Virtually all minor offenses are treated as misdemeanors, but the defendants often wind up with felony arrest and conviction records.

The original intent of the Moscone bill was to follow 17 months ago. Possession of less than an ounce there is not a crime, but is a civil "violation," and a defendant pays a maximum $100 fine and has no arrest record.

Oregon's experience with the nation's most relaxed pot law may be instructive. Officials there do not report a significant increase in marihuana use or a significant unclogging of the criminal justice system.

Moscone, a San Francisco Democrat, says "practical and political reasons" resulted in a revision of his original bill. Decriminalization is not an idea whose time has come in the California Legislature. But, happily, political pragmatism in this instance is not without redeeming social value.

Under SB 95, the possession of less than an ounce of marihuana would be a misdemeanor. It would be a "citable arrest" similar to a parking ticket, and would carry a maximum $100 fine. The defendant would have a criminal record, but it would be purged automatically after two years. And past records could be purged with court approval.

The record purging is the most significant element of the legislation. It was introduced as part of the compromise in which Moscone traded off the possession of less than three ounces of marihuana as a civil infraction.

By including the purging of records, the legislation begins to address the crux of the marihuana controversy—that is, whether the use of pot should be a crime, and whether a marihuana user should be marked for life as a criminal.

What the bill says, in effect, is that the use of marihuana is a crime—but only for two years. Defendants would not have to endure the lifetime stigma of a record. That seems a most humane and progressive approach.

At the same time, while the legislation proposes to reduce the penalties for using marihuana, it does not address or answer the question of whether there should be penalties at all. The legislation would not sanction the use of pot, but it would not severely punish pot users.

Any move to legalize marihuana would be premature at this time. But there can be little doubt that a serious move in this direction will be forthcoming before too long, and that it must receive honest consideration.

The most important question in determining public policy is whether marihuana should be regarded in a health rather than a criminal context. The sentiment in Sacramento is that the Moscone bill goes as far as the Legislature will go now.

SB 95 is a step forward. Let's enact it and see how it works.

[From the Los Angeles Times, July 10, 1975]

BROWN SIGNS BILL TO EASE "POT" PENALTIES

(By Jerry Gillam)

SACRAMENTO.—Gov. Brown Wednesday night signed into law a controversial bill sharply reducing potential penalties for smoking marihuana in California.

The action came about 8:45 p.m., little more than three hours before a midnight deadline for the governor to sign or veto the bill, or let it become law without his signature.

The legislation calls for a traffic-style citation and a maximum fine of $100 for possession of one ounce of marihuana or less.

One ounce of marihuana is enough to make about 50 thin cigarettes.

Possession of more than an ounce of marihuana would be punishable by six months in county jail, a $500 fine or both.

The penalty for possession of an ounce or less with three or more prior convictions in two years would be mandatory referral to a marihuana education and rehabilitation program.

Records of persons arrested or convicted for possession of marihuana would have to be purged by law enforcement agencies after two years.

Persons caught with any amount of marihuana presently can be charged with either a misdemeanor or a felony with a maximum penalty of 10 years in state prison.

The lesser penalties would become effective Jan. 1, 1976.

In a brief statement, Brown warned the new law doesn't decriminalize possession of marihuana as many suppose.

"Severe penalties still remain for possession of even less than one ounce of marihuana by minors who may be made wards of the court and incarcerated," the governor said.

"The sale to an adult of any amount of marihuana, even less than one ounce, remains punishable by a term of five years to life; and giving or selling to a minor any amount whatsoever remains punishable by a term of 10 years to life.

"Cultivation of marihuana in any amount remains punishable by a term of one year to life. Finally, possession of even less than one ounce by an adult is still a misdemeanor crime and the defendant is subject to court proceedings and a fine of $100."

Authored by Sen. George Moscone (D-San Francisco), the bill was narrowly approved by the Senate and the Assembly.

Proponents argued that existing penalties are too harsh and should be reduced to fit the crime, freeing law enforcement officers for more important work.

Opponents replied that reducing the penalties would encourage increased use of marihuana, particularly by young people, and lead to its legalization.

[From the San Francisco Examiner and Chronicle, July 20, 1975]

THE POLITICS OF MARIHUANA

(By Ira Eisenberg)

It was a chilly spring night in San Francisco, and the National Organization for the Reform of Marihuana Laws (NORML) was throwing a victory party for itself and State Senator George Moscone (D-San Francisco), author of SB95, a bill aimed at reducing the legal penalty for simple possession of marihuana.

The date was May 3rd, and the place was the elegant Victorian law offices of two prominent "dope lawyers," Michael Stepanian and Terence Hallinan, just a few blocks from City Hall. Some 400 people paid between five and ten dollars a head to join the celebration, although in point of fact, SB95 had still not cleared the Assembly.

Yet the question of ultimate victory seemed academic. The Moscone bill had already passed the more conservative Senate, the Democrats held 55 of the 80 seats in the Assembly, Assembly Speaker Leo McCarthy was confidently predicting its passage, and Governor Jerry Brown was committed to signing the bill into law.

A local band, Kindred Souls, held forth from the living room, and a smattering of the Bay Area's "high" society jammed the gilded, high-ceilinged rooms. Dr. Barry Ramer, author of the city's methadone program, danced with Beryl Feinglass of the Division of Special Programs. Eugene Schoenfeld, M.D. (Dr. Hip) mingled near the bar. Anne Daley, San Francisco Sheriff Richard Hongisto's secretary, picked over the tables loaded with "hors d'oeuvres from the Normandy Province of France." And, of course, there were the politicans: Senator Moscone, Senator Jerry Smith (D-San Jose), Senator Milton Marks (R-San Francisco), Assemblyman John Foran (D-San Francisco) and John Molinari of the San Francisco Board of Supervisors—all smiles and handshakes.

The booze flowed freely from plastic cups at fifty cents a hit, and a whiff of the weed could occasionally be detected in the upstairs bedrooms. But the crowd mainly was getting off on the prospect of California taking a first step toward decriminalizing marihuana.

Not that SB95 was such a big step. It would reduce the penalty of possessing an ounce or less of weed from a felony to a misdemeanor. Dealing would still be

a felony, as would growing your own. Simple possession would remain a "crime," but SB95 would mean an end to personal possession busts in California. A user, if caught, would be issued a citation, and if convicted would pay a fine of no more than $100. Even hard-nosed Evelle Younger, California's Republican Attorney General and the only member of the GOP in the state's administrative hierarchy to survive the 1974 elections, was willing to go that far.

But Gordon Brownell, the young Republican who is the West Coast coordinator for NORML, was visibly uneasy. He had fully expected SB95 to have passed the Assembly by this evening, and yes, the celebration of a victory was a bit premature. But the majority leaders in the lower house were confident they had enough votes. It was just a matter of timing, he said.

What Brownell did not share with his guests that night were the rumors out of Sacramento that hard-line Republicans were maneuvering for a caucus vote on SB95. If they succeeded, the Democrats would be deprived of a half dozen or so Republican votes they were counting on.

Five days later, Assembly Republicans caucused in Sacramento. Dixon Arnett, the Republican whip from Redwood City, Caucus Chairman Frank Murphy of Monterey, and Republican floor leader Bob Beverly of Redondo Beach opposed making SB95 a partisan issue. But John Briggs, a conservative from Orange County who missed becoming caucus chairman last January by a single vote, argued that marihuana reform was an issue they could defeat the Democrats on. If they took a caucus position, they could stop the majority cold.

A majority of Briggs' colleagues saw the political cunning in what he proposed. The Democrats, they knew, counted on some Republican votes to pass SB95. If the unit rule were applied and the Democrats thus denied these Republican votes, they could rob the Democrats of victory and humiliate them before their many constituents who favored marihuana decriminalization. Or they could force the Democrats to commit the votes of freshmen newly elected from conservative, normally Republican districts, and then use the marihuana issue to regain these districts in 1976, when the entire Assembly stands for re-election and the Republicans hope to regain some of what they lost in last year's post-Watergate debacle.

In defiance of their own elected leaders, the Assembly Republicans voted to bind all of their members to either vote no, or to abstain from voting on SB85.

That same morning, the Assembly voted passage of another and possibly more controversial bill, San Francisco Assemblyman Willie Brown's so-called "consenting adult" bill, which decriminalized homosexuality and other forms of nonstandard sex when practiced by consenting adults. But by this time the Democrats knew they were in deep trouble on the marihuana bill.

Seven Republicans had voted for Willie Brown's sex bill, and without them it would have failed. Now, on the very same day, they were being asked to loosen the marihuana laws. There were loud grumblings from conservatives about the impending downfall of society. And Assembly Democrats, some of them freshmen from heavily conservative, Southern California districts, were scurrying to Speaker McCarthy's office in panic. How, they asked, could they go on record in favor of marihuana reform and face their right-wing constituents next year?

Speaker McCarthy's answer was that of course, they could not risk voting on SB95. It was important that the party preserve its in-roads into normally Republican territory, and protect the weight of its majority. McCarthy claimed he could pass the marihuana bill without committing those vulnerable freshmen votes.

But events proved the Speaker wrong. In what was nothing less than a stunning defeat, the Assembly Democrats failed to muster the 41 votes required to pass SB95. The roll call was 37–36, with 14 Democrats opposing the bill and no Republicans supporting it.

Sen. Moscone was openly bitter at the defeat, accusing the Assembly of ignoring the merits of his bill in favor of purely political considerations. He even suggested dropping any further efforts to pass SB95. But Assemblyman Alan Sieroty (D-Beverly Hills), the bill's floor leader in the lower chamber, won approval for a reconsideration vote "in due course."

Sen. Moscone predicted that SB95 "absolutely" would pass the Assembly, but would not say when.

The problem was that the Democrats just weren't sure how many firm votes they had, and were holding out as long as possible. Throughout May and most of June, nobody in Sacramento could count 41 "yes" votes for SB95. So the big

question became, will Speaker Leo McCarthy pressure some freshmen into risking defeat at the polls in order to pass SB95?

The Speaker was unavailable for direct comment following the May 8th defeat. But Jack Johnson, his press aide, didn't believe SB95 was "that important" a piece of legislation. He also quoted McCarthy as believing that "we can get the bill out without those freshmen votes."

The Republicans, said Johnson, "think it's good politics to force freshmen Democrats to vote on the marihuana bill, then attack them for it in their home districts."

Consider Bill McVittie. He got elected down in San Bernardino County by only a thousand votes. It's the first time a Democrat has represented this district, which is heavily impacted with Mormons and Seventh-Day Adventists. Presumably, if McVittie voted for SB95, he'd be voting himself out of office.

"If freshman votes are necessary to pass SB95, they will be used," Johnson promised. "But why hang them out to dry?"

Sen. Moscone professed continued confidence in Assembly Speaker McCarthy's commitment to his marihuana reform bill. After all, Moscone did stay out of the long and bitter fight between McCarthy and Assemblyman Willie Brown for the speaker's job. And McCarthy realizes how important passage of SB95 is to Moscone, who wants to be Mayor of San Francisco. But some of the senator's key aides felt the Speaker "didn't do his homework" the first time around, and that McCarthy's commitment to SB95 was "lukewarm" at best.

Meanwhile, Gordon Brownell of NORML tried to keep the pressure on from his tiny office overlooking Union Street. With an autographed photo of Ronald Reagan staring down at him from the wall above his desk (he worked for Reagan in 1970), the 30 year old former member of the pre-Watergate Nixon White House churned out "Urgent—Act Today!" appeals to NORML members, who were asked to write letters to Speaker McCarthy and wavering Assembly Democrats demanding action on SB95. But he was clearly discouraged.

From where Brownell sat, SB95 was clearly "not a priority issue" with the Democrats.

"I'm very apprehensive about its ability to pass on reconsideration," said Brownell, who has been down the marihuana-reform-through-legislation road several times before. He didn't believe Assembly Speaker McCarthy had any real intention of committing freshmen votes from unsafe districts. "He considers them untouchables," said Brownell. "They must not vote on SB95. Their political careers are more important than the 106,000 people who will be arrested for marihuana possession in California next year if SB95 doesn't pass."

That was in late May. On June 24th, just days before the Legislature was due to recess, the Democrats called up the marihuana decriminalization bill on reconsideration.

Before a packed gallery, Assemblyman Willie Brown waved a hand-rolled cigarette and demanded that the Assembly pass SB95. "It is time the criminal justice system stops assuming you are a big drug pusher if you possess one, two or three joints," Brown said.

"It's quite possible that in 1976, your platform will be 'Grass, Gays and Godlessness,'" growled Assemblyman John Briggs (R-Fullerton), who had hatched the unit rule strategy that stopped the majority May 8th. After the laughter from the gallery subsided, the Democrats lined up behind SB95 and passed the marihuana decriminalization bill by a vote of 42–34—one more vote than was needed for victory.

Afterward, Assembly Speaker McCarthy accepted credit for the bill's passage, and chided those who doubted him.

Yes, the Speaker admits, he did persuade certain freshmen not to vote the first time around. But that was because he knew he had enough "safe" votes to pass SB95 without falling into Briggs' trap of exposing vulnerable freshmen to attack in their districts. Those who doubted him "just don't know the Assembly that well," says McCarthy.

Indeed, there were some additional "safe" democratic votes for SB95 the second time around. Assemblyman John Knox of Richmond was back from Europe to cast his vote. Long Beach Democrat Fred Chel, who didn't vote on May 8th, and Bill Lockyer of San Leandro, who first supported, then opposed SB95 the first time, also were counted in the "yes" column. But they only brought the count to 40 votes in favor, and 41 were needed to pass.

According to Gordon Brownell the real profiles in courage on SB95 were drawn by freshmen Democrats Floyd Mori of Pleasanton, and Richard Robinson of Santa Ana.

Assemblyman Mori, a Mormon who strongly opposes the use of marihuana or any other drug, voted "no" on SB95 the first time around. But on reconsideration he cast the crucial 41st vote in favor of decriminalization. To him it was "a question of the efficacy of legislating what is good." In a three page statement to his constituents, Mori said the use of marihuana does not warrant a jail term, and that the real answer to drug abuse was for parents and the rest of us to "teach correct principles."

Assemblyman Richard Robinson was the only "yes" vote from Orange County. He had voted "no" on May 8th, and even on reconsideration, Speaker McCarthy urged Robinson not to vote for the bill. But the freshman Democrat said his vote was a matter of conscience, even if SB95 could have passed without him.

"McCarthy delivered. He's a man of his word," says Gordon Brownell, flushed with a victory that was years in the making.

Moscone also praises the leadership of Assemblyman Speaker McCarthy: "He was ready to pull all the stops," even though he got "a deluge of heat from individuals and the press" after the May 8th vote.

Moscone credits NORML's Gordon Brownell with convincing the Speaker and key Assembly Democrats that marihuana reform was worth fighting for.

In the end, Moscone said, the fight over SB95 strengthened the Democratic majority in the Legislature. "Most freshmen in the Assembly hadn't been exposed to controversy," he points out. "The experience gave them some mettle."

There are a few rumblings on the right. Los Angeles Police Chief Ed Davis, who revels in his Blue Meanie reputation, is calling for an initiative campaign to repeal SB95. And the Republicans will no doubt try to make marihuana a campaign issue next year.

In any event, on New Year's Day, 1976, the simple possession of marihuana will cease to be a felony in California for the first time since 1915. The state will then join Alaska, Maine, Oregon and Colorado in what has become a growing movement to repeal marihuana prohibition throughout the United States.

[From the Los Angeles Times, July 28, 1975]

MOVE TO EASE "POT" LAWS GAINS FORCE

(By Tendayi Kumbula)

When Gov. Brown signed the state's controversial new marihuana law earlier this month, California joined a small but growing group of states beginning to reduce the penalties for private use of the drug.

So far legislatures in five states—Oregon in 1973 and Alaska, California, Colorado and Maine this year—have decriminalized the possession of small amounts of marihuana for personal use.

In these states, possession of small amounts of the drug is treated pretty much as a traffic citation with fines but no jail time and often no criminal record.

However, possession of large amounts and commercial trafficking are still subject to stern criminal sanctions.

Throughout the country, there is unprecedented legislative and judicial movement at both state and federal levels against the heavy penalties imposed for violations of marihuana laws.

This year alone, bills calling for reduced marihuana penalties were introduced in the legislatures of 25 states and the city council of the District of Columbia, often with strong bipartisan support.

In congress, both the House and the Senate have bipartisan marihuana bills pending.

Even the U.S. Justice Department, which previously backed the retention of strong marihuana laws, backed off this year, saying "at the moment" Atty. Gen. Edward H. Levi does not have a formal position on the marihuana issue.

And, according to some sources, a special 15-member task force of the White House Domestic Council that has been studying the issue is reportedly leaning towards decriminalization.

These sources said that when the report is released, probably in September, the task force probably will urge President Ford to support changes in marihuana laws.

Only among some law enforcement officials, including Los Angeles Police Chief Edward M. Davis and Los Angeles County Sheriff Peter J.Pitchess, and in parts of the Midwest and the South is opposition to revising marihuana penalties still unrelenting.

Yet even in the South during the current legislative session marihuana reform bills were introduced (though subsequently defeated) in the legislatures of Florida, Georgia, Tennessee and Texas.

The proponents of reform have also been bolstered by two recent landmark decisions striking down some marihuana laws in Alaska and Ohio.

In May, in a unanimous decision, the Alaska Supreme Court said possession of small amounts of marihuana in the home for personal use was protected under both federal and state constitutional provisions relating to the right of privacy.

It was the first such ruling by a state supreme court.

Less than three weeks ago, the federal 6th Circuit Court of Appeals struck down Ohio's penalties for dealing in marihuana. The laws, which carried jail terms of 20 to 40 years for marihuana trafficking, were judged cruel and unusual punishment by the court.

James M. Maddican Jr., a spokesman for the Ohio state attorney general, said the state had asked that the decision be stayed, and had served notice of its intention to appeal to the U.S. Supreme Court for what would be a definitive ruling on whether some marihuana laws constitute cruel and unusual punishment.

One legal challenge that is pending was filed in October, 1973, in federal court in the District of Columbia by former Atty. Gen. Ramsey Clark. The action, filed on behalf of the National Organization for the Reform of Marihuana Laws (NORML), challenges the constitutionality of the nation's marihuana laws.

Despite the advent of California's marihuana law, Gordon Brownell, West Coast coordinator for NORML and the state's only registered marihuana lobbyist, said his group is considering a legal attempt to have all California marihuana laws voided.

One area being studied, he said, is whether the right of privacy guarantee, which also is contained in California's Constitution, could be used as the springboard for a legal challenge as it was in Alaska.

"We feel that if somebody wants to smoke pot privately that should not be a concern of the state. There is no compelling state interest in that," he said.

"We also feel that the ounce limitations that have been imposed by the decriminalizing states are arbitrary. People who drink wine or smoke cigarettes are not subject to the same limitations. They often have more cigarettes or more wine than they can use at any one time."

Brownell said there should be no ounce limitation on possession of marihuana for personal use, and added: "We are planning to bring a number of legal challenges to the pot laws across the country."

Judges, Brownell argued, will "address themselves to the issues involved, such as right of privacy and cruel and unusual punishment, because the courts are much more objective. They are not subject to the political pressures and partisan considerations that often get in the way of legislators."

By and large, the marihuana reform forces are euphoric over their achievements the last year. Keith Stroup, executive director of the Washington-based NORML said:

"We consider that we have broken the logjam on the state level. We think that another dozen or so states will change their marihuana laws in 1976. The next step for use now is Congress."

Stroup said California's enactment of a marihuana reform bill probably would tip the scales in favor of revision in some of the wavering states.

"California is very important to win legislatively and judicially. Because of its size and population California is regarded by many states as the trend-setter," he said.

"We consider the victory in California to be the most important one to date. It was the first major and most highly sophisticated state to support the changes in marihuana laws."

Congress has several marihuana bills pending.

One, by Rep. Edward Koch (D-N.Y.), with 16 bipartisan supporters so far, is modeled after the pioneering Oregon law, substituting fines for jail time.

"He has been introducing the bill every session since 1971 but it never made any headway," an aide said. "This year we are getting more action and there are more people willing to support the bill. But it is difficult to say if we will succeed this year and get it passed. Still, we keep hoping."

In the Senate, Jacob Javits (R-N.Y.), Edward Brooke (R-Mass.), Alan Cranston (D-Calif.) and Gayloid Nelson (D-Wisc.) teamed up to introduce a marihuana decriminalization bill.

Also, Javits has tacked a marihuana amendment onto Senate bill 1, the controversial measure that seeks to revise the Federal Criminal Code.

Most legislatures around the country have adjourned for the year and except in a few states, there is not likely to be much action on marihuana legislation for the remainder of the year.

Lawmakers still are in session in Ohio, where the House overwhelmingly passed an omnibus crime bill that includes some changes in drug laws.

The bill, backed by Ohio Atty. Gen. William J. Brown, would reduce possession of up to 100 grams of marijuana to a misdemeanor punishable by a fine. A spokesman for Brown said it appears likely the Senate will pass the bill before adjourning.

Marihuana reform advocates are hoping that decriminalization in Ohio would have a rippling effect on other Midwest states.

In the District of Columbia, public hearings on marihuana decriminalization have been held and it is considered likely the D.C. Council will pass a reform bill before the end of the year.

In Wisconsin a bill to create a state system for the legal distribution of marihuana has been introduced, but there has been no committee action on it and none seems likely this year.

However, the Wisconsin Controlled Substances Board, which has been reviewing the state's drug laws, is expected in November to urge the legislature to pass a decriminalization law.

In Minnesota, the legislature adjourned after both houses passed separate bills to reduce marihuana penalties. A conference committee later agreed on a compromise version of the two bills.

A vote on that awaits the return of the legislature from its recess early in January.

In New York, although Gov. Hugh Carey supports changes in the marihuana statutes, no action has been taken because upstate Republicans led by Senate Majority Leader Warren Anderson are opposed.

[From the Baltimore Sun, Dec. 29, 1975]

California Readies Soft Marijuana Law

(By Bruce Winters)

Los Angeles—The nation's largest state is relaxing its marijuana laws January 1, offering policemen, lawyers and social workers their best laboratory yet to determine if easy laws drive up drug use.

Predictions from California law enforcement officials differ widely.

Edward M. Davis, the Los Angeles police chief, forecasts a 50 per cent increase in crime over the next two years, and a doubling of the heroin-addiction rate, coupled with more police paper work and confusion among the citizenry.

When Gov. Edmund G. Brown, Jr., signed the bill into law, making possession by adults of an ounce or less a misdemeanor subject to a traffic-style ticket of $100, Chief Davis said:

"It is obvious that Mickey Mouse and Goofy and all the other characters are alive and well in Disneyland north [Sacramento]. . . . It's unfortunate that the largest state has to be the greatest fool."

But a spokesman for San Diego's acting police chief, William Kollender, said the new law will not change things much. "For the past five years, simply possession of marijuana has been treated as a misdemeanor here," he said, "so the new law will not make much difference."

In San Francisco, Sgt. Charles Hoenisch, of the narcotics detail, said the new law "merely formalizes that our department has been doing for the past year—citing rather than arresting for simple possession."

The new law was written by San Francisco's mayor-elect, George R. Moscone, who was then a state senator.

Two years ago, Oregon became the first state to ease off on Draconian local laws that in some instances required 5- and 10-year prison terms for first offenders caught with small amounts of marijuana for personal use. Oregon pioneered the traffic-style citation procedure.

Alaska, Colorado, Maine and Ohio have since followed suit with easier laws.

Corey Busch, Mr. Moscone's administrative assistant, said neither the Oregon experience nor the legislative hearings produced evidence to support Chief Davis's alarm.

In fact, a poll in Oregon published last month showed that marijuana use there had not increased during the new law's two-year life.

Conducted for the Drug Abuse Council, of the District of Columbia, the poll involved 800 face-to-face interviews with persons 18 and older. It was a follow-up on one taken in October, 1974.

The latest survey found that 20 per cent of the sample had tried marijuana at least once, compared to 19 per cent in 1974. Eight per cent listed themselves as current users, compared to 9 per cent in 1974.

Moreover, 93 per cent of the nonusers cited simple lack of interest or possible health dangers—not legal penalties—as reasons for avoiding the drug.

Violators arrested under the new California law may be fined a maximum of $100, which can be paid like a traffic ticket without a court appearance.

Felony provisions against growing and selling marijuana, and driving while under its influence, remain unchanged. It likewise continues to be a felony to provide any amount of the drug to a minor under 18.

In addition, the 500,000 or more Californians arrested for possession before January 1 will be allowed to petition the courts to have their records purged. Persons in prison for mere possession will be freed on parole as quickly as possible.

With no arrests, no bookings, no incarceration, no processing of bail services and no jury trials, the new law very likely will save the courts money, according to the California Judicial Council.

COLORADO

Minutes

DECRIMINALIZATION OF MARIJUANA

Meeting with
Senator Birch Bayh
Friday, March 19, 1976
Colorado Division of Criminal Justice
Denver, Colorado

Attendees:

Murray C. Bond	Mark C. Pautler
Curtis A. Bridges	Paul G. Quinn
Robert K. Burke	Pat Ratliff
Robert C. Cantwell	Raymond M. Rice
Richard T. Castro	Frank Simons
Norman Early	Charles D. Weller
Jim Henderson	Richard D. Wood
Joan Keane	
Betty Miller	John Toohey, *The Denver Post*

Senator Bayh opened the meeting by stating what he considered to be one of the best vehicles in changing the way the federal government handles the marijuana problem, and that is to show how Colorado and other states have approached the problem. The purpose of this informal discussion is to assess the pluses and minuses Colorado has experienced in dealing with the new marijuana law.

Senator Bayh posed the following questions with corresponding responses from meeting attendees:

What affect has the reduction of penalties for the possession of marijuana had on the criminal docket?

Wood: Since the penalties for possession of marijuana have been reduced by state law and city (Denver) ordinance, the criminal docket has shifted from the felony court to the city ordinance court. Felony courts now have more time to prosecute more severe cases.

Cantwell: While the new law may have opened up more time for the DA's office to prosecute more severe cases, the law has created a frustrating problem for police officers who are becoming increasingly reluctant to enforce the law on possession. The process is still the same for the police officer: administer rights, file reports, lab analysis. The paperwork and time involved in a possession case are hardly worth the effort.

Bridges: In Ann Arbor, Michigan, the fine for possession of less than one ounce of marijuana was $5. Police officers became frustrated not only because of the inordinate amount of paperwork, but because it was nearly impossible to find a lab analyst who would process small amounts of marijuana. The police officer was caught between department policy and the law.

Simon: Before the law, 20 percent of the cases were for marijuana possession. Now, posession cases are virtually nonexistent, and there has only been one felony sale case (summons and complaint) since the law went into effect.

Wood: The Denver District Attorney's Office prosecuted more felony sale cases in 1974 and 1975, whereas traditionally there have been more possession cases. The downgrade of possession penalties has emphasized prosecution of narcotic and other dangerous drug cases.

Weller: Some statistics have been compiled in Denver covering the seven-month period prior to the state law and city ordinance and then again seven months after. These statistics indicate an increase in juvenile and adult cases:

	Seven Months Prior:	Seven Months After:
Juveniles	212 cases	225 cases
Adults	532 cases	564 cases
TOTAL	744 cases	789 cases

They also reveal that marijuana is more available and that the quantity and quality of marijuana arrests have increased.

Cantwell: Two years ago there were fewer policemen but more possession arrests. Marijuana arrests increase only because there are more men on the job for quantity arrests.

What effect have the new laws had on the availability and use of marijuana? (Responses to first question apply.)

Castro: A survey in Oregon showed a reduction in usage.

Weller: In Denver, the number of arrests for hard drugs which included marijuana increased from 1969 to 1974. After the law was passed, 1975 showed a decrease in arrests for hard drugs, excluding marijuana, of 900 cases. But it must be remembered that for about four months after the law was passed, arrests were still being made for marijuana possession.

How has the public reacted to the changes in the possession law? Does the use of marijuana create a public hazard? Has any decision been reached as to what effect marijuana really has on people? What possible harm does the use of marijuana cause the community?

Why I ask about public safety in regard to the use of marijuana is to know if the change in law significantly increased violations?

Castro: Drivers under the influence of alcohol or marijuana do create public concern. *Simon:* It is against the law to drive under the influence of marijuana, but the problem is that it is difficult to determine the level of marijuana. *Cantwell:* DUI car units have brought many people in for drunk driving, but when administered the breath test, there is no indication of the presence of alcohol. This suggests that they are driving under the influence of some substance, drug or narcotic, without the presence of alcohol. *Simon:* Driving under the influence of marijuana has become a substitute for alcohol.

Wood: There is no definitive answer to the question of its affect on public safety. Oregon has shown no dramatic impact on public safety. *Weller:* As to the possible harm marijuana causes the community--it is impossible to determine. HEW can't even address this question.

Have juveniles switched to wine instead of marijuana?

Henderson: It is true that juvenile alcoholics are increasing and there are no programs for juvenile offenders who are drug and alcohol abusers.

Senator Bayh asked why Colorado did not participate in the JD Act.

Miller: Colorado did not want to run the risk of not being able to comply with federal requirements, in particular the provision requiring that any state participant is to deinstitutionalize within a two-year period. This provision would require legislation.

1976 monies in the amount of $256,000 will be requested and will be used to set up some group homes or shelter care facilities.

Castro: Colorado is now ranked 47th or 49th on its taxes on liquor, but if the present legislation is passed, Colorado will be fourth in the nation. This money may be a resource for alcohol and drug abuse programs.

Bond: In the small communities of Colorado, alcohol not drugs is the primary concern a ' such communities lack treatment facilities for alcohol-related programs

Weller: Nearly all juvenile offenders suffer from learning disabilities. A Division of Youth Services youth camp survey revealed either a physical or emotional learning disability (87 to 90 percent of 444 youths studied). One problem is that it is not until a youth becomes a delinquent that it is discovered he has a learning disability.

Keane: It is hard to determine if alcohol is a direct cause of crime, because there is no way of comparing alcohol use of kids outside the system to those within the system and drawing any conclusions as to a direct relationship.

Weller: In Denver around 1970 or 1971, kids nine to ten years old begin by sniffing glue, the progressed to paint, gasoline, wine, beer, hard liquor, marijuana. At ten years they begin joy riding and progress to petty theft and upward. In Denver, substance abuse has been virtually nipped in the bud. Now we are going into alcohol abuse treatment programs. Abuse tends to be more prevalent in certain areas. *Castro:* Twenty years ago alcohol and drug abuse was almost exclusively a Chicano and Black problem, but today a far broader spectrum of society is involved in drug and alcohol abuse.

Cantwell: We have identified why kids use drugs and we provide police officers with in-service training in prevention. The Denver Police Department has a school liaison program. There are seven to eight policemen involved in this public school system program.

Early: The problem with many alcohol and drug abuse programs is that there are very few good programs in the United States. Some programs actually stimulate kids' curiosity of drugs. We want programs that approach the problem in a positive way making kids feel good about themselves. *Cantwell:* With the availability of drugs everpresent, we need to educate the parents and then the kids. Whether we are tough or loose on marijuana, marijuana is here and a part of society (25 to 30 million people have used marijuana).

Weller: I suggest boring in on the interstate transportation traffic on the sale of marijuana. This would put the pressure on legislature to deal with the marijuana problem.

Is there any magic to a specific amount of marijuana to be decriminalized?

Wood: The question of what specific amount of marijuana can be decriminalized has been wrestled with in the legislature to no avail. Where is the break between a misdemeanor and a felony?

How does the decriminalization of possession relate to the dollar figure?

Wood: Prosecution of more serious cases in the District Attorney's Office has not created the need for more lawyers. This can be attributed to the fact that marijuana possession cases are now handled by the lower court system.

What is Colorado's treatment for possession of small amounts of marijuana? Should multiple offenses be treated differently?

Wood: Up to one ounce is a petty offense with a fine of $100 and no jail. An ounce or more for a first-time offender incurs a fine of no more than $500 or jail for no longer than one year or both (still a misdemeanor). If it is a second offense involving drugs or marijuana in excess of an ounce, it is a felony and is punishable by no less than one year and not more than ten years or a fine not less than $500 or more than $1,000 or both.

Public possession of less than an ounce can have a potential penalty of 15 days in jail. Private possession of less than an ounce has a fine only.

Castro: One thing that made me favor the law was that I saw too many offenders of this type at the state penitentiary in Canon City.

Cantwell: In Denver, I have never seen a case where an offender was incarcerated for the mere possession of marijuana.

How would you design the federal treatment of marijuana?

Simon: Same as treatment for alcohol: tax it and distribute it. The problem is the age limit. *Early:* Should anyone go to jail for use of marijuana or alcohol?

Simon continued: The attitude of law enforcement people differs from officer to officer. An officer in a narcotic unit will tend to be more conservative. An officer who has a less specialized job tends to have a more liberal attitude. Just as older officers are more conservative. Police training now produces an officer who is familiar with marijuana and its effects.

Cantwell: If marijuana is decriminalized, all we are doing is falling into a pattern to decriminalize cocaine.

Melody Reed
Recording Secretary

COLORADO REVISED STATUTES 1973

ARTICLE 22
Drugs and Druggists

PART 4
Dangerous Drugs

12-22-412. Violations - penalties. (1) Any person who manufactures or dispenses dangerous drugs in violation of section 12-22-404, except as provided in this section, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and by imprisonment in the state penitentiary for not less than one year nor more than fourteen years.

(2) Any person who attempts to manufacture or dispense any dangerous drug in violation of section 12-22-404, except as provided in this section, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and by imprisonment in the state penitentiary for not less than one year nor more than fourteen years.

(3) Any person who has in his possession any dangerous drug with the intent to dispense said drug in violation of the provisions of section 12-22-404, except as provided in this section, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and by imprisonment in the state penitentiary for not less than one year nor more than fourteen years.

(4) Any person who is convicted of a second or any subsequent violation of section 12-22-404 (1) (a) or (1) (e) shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state penitentiary for not less than five nor more than thirty years.

(5) Any person who violates section 12-22-404 (1) (b), (1) (c), (1) (f), (1) (g), (1) (h), (1) (i), (1) (j), or (1) (k) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(6) Any person who possesses or uses any dangerous drug in violation of section 12-22-404 (1) (d), upon a first conviction, is guilty of a misdemeanor, and the court may:

(a) Impose a fine on the defendant in an amount not to exceed five hundred dollars, or a sentence of imprisonment in the county jail for not more than one year, or both such fine and imprisonment;

(b) Place the defendant on probation for a period not to exceed one year, and as a condition of such probation, the court may require the defendant to obtain treatment for any mental condition which, in the view of the psychiatrist making a report to the court under the provisions of subsection (9) of this section or section 16-11-102 (3), C.R.S. 1973, may be related to the use and possession of dangerous drugs by the defendant. The defendant may be permitted to obtain such treatment from any psychiatrist or at any suitable public or private medical facility of his choosing. Upon request of the defendant, the department of institutions shall admit him for rehabilitative treatment to one of the mental institutions under its control for a period not to exceed one year. The defendant may be required to remain under treatment for such time, not to exceed one year, and under such conditions as the psychiatrist responsible for his care deems necessary to improve, to the extent possible his mental condition related to the use and possession of dangerous drugs.

(7) (a) At any time prior to trial for a first violation of section 12-22-404 (1) (d), or prior to entry of a plea of guilty to a first violation thereof, the court may, with the consent of the defendant and the prosecution, order the prosecution of the offense be deferred for a period not to exceed one year, during which time the court may place the defendant under supervision of the probation department. As a condition of such supervision, the court may require the defendant to obtain treatment for any mental condition that, in the view of the psychiatrist making a report to the court under the provisions of subsection (9) of this section, may be related to the use and possession of dangerous drugs by the defendant. The defendant may be permitted to

obtain such treatment from any psychiatrist and at any suitable public or private mental health facility of his choosing. Upon request of the defendant, the department of institutions shall admit him for rehabilitative treatment to one of the mental institutions under its control for a period not to exceed one year. The defendant may be required to remain under treatment for such time, not to exceed one year, and under such conditions as the psychiatrist responsible for his care deems necessary to improve, to the extent possible, his mental condition related to the use and possession of dangerous drugs.

(b) Upon the defendant's satisfactory completion of and discharge from the court's supervision, the charge against the defendant shall be dismissed with prejudice. If the conditions of supervision are violated, the defendant shall be tried for the offense for which he is charged, and, upon conviction thereof, the court shall make disposition as provided in subsection (6) of this section.

(c) Upon consenting to a suspension of trial as provided in this subsection (7), the defendant shall execute a written waiver to his right to a speedy trial.

(d) If a defendant gives his consent to a deferred prosecution under this subsection (7), it shall not be construed as an admission of guilt, nor shall such consent be admitted in evidence in a trial for the offense of which he is charged.

(8) If any person is charged with a violation of the provisions of section 12-22-404 (1) (d), the court, prior to trial and with the defendant's consent, shall cause a probation officer to conduct an investigation of the background of the defendant which shall include, to the extent possible but not limited to, such information about his characteristics and any circumstances affecting his behavior as may be helpful to the court in determining whether prosecution should be deferred under subsection (7) of this section, or whether probation should be granted if the defendant is convicted of such violation. The court, upon its own motion or upon petition of the probation officer, may order any defendant who is subject to pretrial investigation to submit to a mental and physical examination. For the purposes of such evaluation, the court may appoint any psychiatrist in this state to conduct such examination either on an outpatient basis or in a suitable medical facility. Upon request of the court or probation officer, the department of institutions shall furnish such facility and services as are necessary to conduct a psychiatric examination.

(9) (a) Upon completion of such pretrial or presentence investigation, the probation officer and the physicians conducting the examination shall each submit written reports to the court.

(b) No substantive evidence acquired directly or indirectly for the first time as the result of any such observation and examination shall be admissible on the issue of guilt of the crime charged.

(10) A person who is convicted of a second offense under section 12-22-404 (1) (d) involving stimulant drugs or hallucinogenic drugs is guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than one year nor more than ten years, or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment. Any person convicted of a second offense under section 12-22-404 (1) (d) and not covered by section 12-22-403 (7) or (13) is guilty of a misdemeanor and shall be punished by:

(a) A fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than two years, or by both such fine and imprisonment; or

(b) Any provision of law to the contrary notwithstanding, the court may place the defendant on probation for a period not to exceed two years, and as a condition of such probation the court may require the defendant to obtain treatment for any mental condition which, in the view of the psychiatrist making a report to the court under the provisions of subsection (9) of this section or under section 16-11-102 (3), C.R.S. 1973, may be related to the

use and possession of dangerous drugs by the defendant. The defendant may be permitted to obtain such treatment from any psychiatrist and at any suitable public or private mental facility of his choosing. Upon request of the defendant, the department of institutions shall admit him for rehabilitative treatment to one of the mental institutions under its control for a period not to exceed two years. The defendant may be required to remain under treatment for such time, not to exceed two years, and under such conditions as the psychiatrist responsible for his care deems necessary to improve, to the extent possible, his mental condition related to the use and possession of dangerous drugs.

(11) Any person who is convicted of a third or subsequent offense under section 12-22-404 (1) (d) is guilty of a felony and shall be punished by:

(a) A fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment in the state penitentiary for not less than one year nor more than fourteen years, or by both such fine and imprisonment; or

(b) Any provision of law to the contrary notwithstanding, the court may place the defendant on probation for a period not to exceed five years, and as a condition of such probation the court may require the defendant to obtain treatment at one of the mental institutions under the control of the department of institutions for such time, not to exceed five years, as the superintendent or director of such institution deems necessary to rehabilitate the defendant.

Source: L. 68, p. 153, § 10; C.R.S. 1963, § 48-8-10; L. 71, p. 546, § 5.

Cross references. As to the definition of hallucinogenic drugs, see § 12-22-403(7). As to the definition of stimulant drugs, see § 12-22-403(13). As to unlawful acts concerning dangerous drugs, see § 12-22-404. As to the submission of a person eligible for probation or presentence investigation to a mental and physical examination, see § 16-11-102(3).

Possession with intent to dispense dangerous drug in violation of law consists of two distinct elements, possession of dangerous drug and simultaneous intent to illegally dispense drug. People v. Gill, ___ Colo. ___, 506 P.2d 134 (1973).

Therefore, where evidence was presented that defendant dispensed dangerous drug to undercover agent who defendant thought was illicit user of drugs, evidence more than supported jury's verdict that defendant intended to dispense dangerous drugs in violation of law, because had the facts been as defendant believed them to be, he would have succeeded in violating law as he intended, and fact that his intention was frustrated by facts unknown to him does not change his intent or relieve him of criminal responsibility, because offense was complete when he had drugs in his possession and formed intent to illegally dispense drugs. People v. Gill, ___ Colo. ___, 506 P.2d 134 (1973).

And assuming that dispensing dangerous drug to undercover police agent is exempt from criminal liability, defendant can still be guilty of possession with intent to illegally dispense dangerous drug. People v. Gill, ___ Colo. ___, 506 P.2d 134 (1973).

1975 Cumulative Supplement

12-22-412. Violations - penalties - nonseverability. (1) Any person who manufactures or dispenses dangerous drugs in violation of section 12-22-404, except as provided in this section, is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and by imprisonment in the state penitentiary for not less than one year nor more than fourteen years.

Editor's note: This subsection (1) is reprinted for reenactment to correct an editorial or typographical error contained in the original text. (See Volume 11, C.R.S. 1963.)

(12) (a) Any person who possesses not more than one ounce of cannabis is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(b) Whenever a person is arrested or detained for a violation of paragraph (a) of this subsection (12), the arresting or detaining officer shall prepare a

written notice or summons to appear in court, which written notice or summons shall contain the name and address of such arrested or detained person, the time and place where such person shall appear, and a place for such person to execute his or her written promise to appear at the time and place indicated on the notice or summons. One copy of said notice or summons shall be given to the person arrested or detained, one copy shall be sent to the court where the arrested or detained person is to appear, and such other copies as may be required by the law enforcement department or agency employing the arresting or detaining officer shall be sent to the places designated by such law enforcement department or agency. The time specified in said notice to appear must be at least five days after such arrest or detention unless the person arrested or detained demands an earlier hearing. The place specified in said notice to appear must be before a judge within the county in which the class 2 petty offense charged is alleged to have been committed, which judge has jurisdiction of such class 2 petty offense. The arrested or detained person, in order to secure release from arrest or detention, must give his or her written promise to appear in court by signing the notice or summons prepared by the arresting or detaining officer. It shall be a class 3 misdemeanor, as defined by section 18-1-106, C.R.S. 1973, for any person to violate a written promise to appear given to an officer upon arrest or detention or issuance of summons under this subsection (12).

(c) Any person who openly and publicly displays or consumes not more than one ounce of cannabis is guilty of a petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and fifteen days in the county jail.

(d) Any person who possesses more than one ounce of cannabis or any amount of cannabis concentrate, upon conviction thereof, shall be punished as provided in subsections (6), (10), or (11) of this section.

(e) Transferring or dispensing not more than one ounce of cannabis from one person to another for no consideration shall be deemed possession and not dispensing or sale thereof.

(f) The court may utilize the treatment, probation, and deferred prosecution or deferred sentencing provisions of subsections (6) (b), (7), (8), and (9) of this section for any person who violates paragraph (d) of this subsection (12).

(g) Any provision of this part 4 to the contrary notwithstanding, any person eighteen years of age or older who transfers or dispenses more than one ounce of cannabis for consideration or any amount of cannabis concentrate, with or without consideration, to another person under the age of eighteen years is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than three years nor more than fourteen years and, in the discretion of the court, by a fine of not more than ten thousand dollars. Upon a second or subsequent conviction of any person under this paragraph (g), the imprisonment prescribed in this paragraph (g) shall be mandatory, and the court shall have no jurisdiction to suspend the sentence of imprisonment or to grant probation to such person.

(h) No person knowingly shall cultivate, grow, produce, process, or manufacture, or knowingly allow to be cultivated, grown, produced, processed, or manufactured, on land owned, occupied, or controlled by him any cannabis or cannabis concentrate without first obtaining a license as a manufacturer pursuant to section 12-22-408.

(i) If the provisions of paragraph (g) of this subsection (12) are found to be invalid, such invalidity shall apply to the entire provisions of sections 12-22-301 (16), 12-22-303 (1), 12-22-311 (1) (b) and (4), 12-22-403 (1.5), (1.6), and (13.5), 12-22-403 (4), 12-22-404 (1) (d) and (1) (l), and paragraphs (a) to (f) and (h) of this subsection (12), as enacted or amended by chapter 115,

Session Laws of Colorado 1975. It is hereby declared by the general assembly that, but for the provision of said paragraph (g) of this subsection (12), the general assembly would not have enacted said sections.

Source: Added, L. 75, pp. 435, 436, § § 7, 8.

Effect of amendment. The 1975 amendment added subsection (12).

Exclusive possession of premises not required for exclusive possession of drugs. Sole and exclusive possession of the premises where drugs are found is not required to attribute to him exclusive possession of the drugs, but joint possession in a place at least partially under the dominion and control of the accused is sufficient. People v. Wilkie, 185 Colo. 149, 522 P.2d 727 (1974).

DECRIMINALIZATION OF MARIJUANA

Meeting with
Senator Birch Bayh
Friday, March 19, 1976

ATTENDEES:

1. Mr. Murray C. Bond
   Administrative Assistant/Public Information Officer
   Colorado Commission on Criminal Justice Standards and Goals

2. Mr. Curtis A. Bridges
   Crime Prevention Coordinator
   Colorado Commission on Criminal Justice Standards and Goals
   Member: Colorado Alcohol and Drug Abuse Advisory Council

3. Mr. Robert Burke
   Grant Administrator
   Colorado Division of Criminal Justice

4. Sergeant Robert C. Cantwell
   Supervisor
   Organized Crime Strike Force
   Denver Police Department

5. Representative Richard T. Castro
   Colorado House of Representatives
   Member: Health, Environment, Welfare and Institutions

6. Mr. Norman Early
   Deputy District Attorney
   2nd Judicial District (Denver)

7. Mr. Jim Henderson
   Drug Program Coordinator
   Alcohol and Drug Abuse Division
   Department of Health

8. Ms. Joan Keane
   Acting Juvenile Specialist
   Colorado Division of Criminal Justice

9. Ms. Betty Miller
   Executive Director
   Department of Local Affairs

10. Mr. Mark C. Pautler
    Director
    Colorado Commission on Criminal Justice Standards and Goals
    President Designate, Colorado Correctional Association

11. Mr. Paul G. Quinn
    Director
    Colorado Division of Criminal Justice
    Member: Colorado Alcohol and Drug Abuse Advisory Council

12. Ms. Pat Ratliff
    Evaluator
    Colorado Division of Criminal Justice

13. Mr. Raymond M. Rice
    Colorado State Representative
    Region VIII
    Law Enforcement Assistance Administration

14. Mr. Frank Simons
    Deputy State Public Defender
    Colorado Springs Regional Office
    Member: National Organization for Reform of Marijuana Laws

15. Mr. Charles D. Weller
    Executive Director
    Denver Anti-Crime Council

16. Mr. Richard D. Wood
    Pitkin County Attorney
    Former Deputy Assistant District Attorney, 2nd Judicial District

Mr. John Toohey
Staff Writer
The Denver Post

CONNECTICUT

[From the Christian Science Monitor, May 23, 1975]

CONNECTICUT PUTS ASIDE LEGALIZED-MARIJUANA BILL

LEGISLATION CALLED "BACK DOOR" APPROACH

HARTFORD, CONN.—A bill to legalize small amounts of marijuana in Connecticut has been sidetracked, at least for a year.

The State Senate, without voting yes or no on the measure, agreed to put off consideration of the proposal until the 1976 session of the General Assembly.

The bill would have removed all penalties for the use of an ounce or less of marijuana in private. But it would have set a $50 fine for possession of an ounce or less of the drug in public.

Possession of more than an ounce would have continued to carry the penalty of more than a year in jail and a $1,000 fine.

In brief debate, the Senate heard a number of opinions on the subject of legalization. State Sen. David Neiditz (D) of West Hartford said the bill received a favorable Judiciary Committee report because it wanted "the problem brought to the attention of the public. We'll be hearing from it again."

State Sen. Paul Amenta (D) of New Britain said passage of the bill would have "opened a back door approach" to the complete legalization of marijuana. "How, then, could you punish the sellers?" he asked.

In other legislative action last week.

The Connecticut House approved an increase in financial aid for most public schools, a new lottery to pay for it, and a freedom-of-information bill.

But representatives rejected a proposal to ban throwaway beverage containers in the state.

The bottle bill, rejected 90 to 51 by the House May 16, would have required a deposit on bottles and cans and outlawed pull-top containers.

The measure was patterned after laws in Oregon and Vermont. But Connecticut lawmakers feared it would intensify unemployment problems and raise retail prices. Supporters argued that neither of those happened in Oregon after a ban was passed.

Gov. Ella T. Grasso and the state Department of Environmental Protection supported the measure, which was the most lobbied bill of the legislative session.

The education measure, passed May 16 and sent to the Senate, would give more state money to the 145 communities with the smallest tax bases and least per capita income. But unlike the earlier proposal, it would not take funds away from richer towns.

Each community would receive the $250 per pupil it now gets each year. But the less affluent towns would receive the proceeds of two "instant lotteries" a year, in which ticket buyers would immediately know if they won.

Those proceeds are estimated at between $5 million and $8 million, the poorest town would get the largest increase.

The measure sets a limit of $12.50 on the additional amount per pupil any town may get.

The education package is an attempt to narrow the gap between the amount richer towns and communities with less taxable property have to spend on public elementary and secondary education.

Superior Court Judge Jay Rubinow ruled unconstitutional last year the present method of paying each community $250 per child regardless of the amount that can be raised locally.

The size of the state's share of educational funding forces all towns to raise most of their school money through local property taxes.

The state has appealed the Rubinow decision to the Connecticut Supreme Court.

The freedom-of-information bill the House sent to the Senate would open to public scrutiny the records and meetings of government agencies.

The bill would create a three-member commission to settle disputes between citizens who want access to records and meetings and agencies which don't want to open them.

The measure, supported by most Connecticut new organizations, was unani-

mously approved. It would establish penalties of up to a year in jail and a $1,000 fine for destruction of certain records.

The bill would allow some documents to remain confidential, including labor, financial, and real estate negotiations, law enforcement and security records, information concerning an attorney-client relationship, arrest records of juveniles, and records on pending court cases.

The measure also would allow agencies to withhold information if it is determined it is in the public interest. But that determination could be appealed to the commission.

The General Assembly has approved a bill legalizing hitchhiking in Connecticut, except on limited-access highways.

But there is some question as to whether Governor Grasso will sign the measure.

Mrs. Grasso said the bill raises a number of questions on safety matters. State Police Commissioner Edward P. Leonard Jr. said he is opposed to legalized hitchhiking.

The bill would legalize hitchhiking so long as the hitchhiker stays on the shoulders of the road.

DISTRICT OF COLUMBIA

[From the Evening Star, Washington, D.C., Apr. 29, 1972]

GRASS

Although marihuana is illegal and smoking it is a criminal offense, it is prevalent among high school and college students.

The Star talked at random to students at Woodrow Wilson Senior High. Of 14 students interviewed, eight said they smoke marihuana, five said they don't and one said he did, but has stopped. Some of their reasons for smoking or not smoking appear here.

THEY DON'T

"I used to smoke. When my friend got busted and told me how it was in jail, I stopped. I actually saw a friend pulling his hair on a trip."—Wilson Junior.

"There's no point in it. I don't care if my friends do, and they don't care if I don't. But what if they find out it does harm you? Why take a chance? And it's still against the law."—Ted Tavlarides.

"A few of my friends have. I don't want to get involved in it. I'm afraid in a way. They're still not sure if it's harmful."—Nandi Mangoaela.

"I'm a science freak. I have other interests. The information on marihuana isn't conclusive. I'm not going to touch it until I know for a fact that it's not harmful."—Constantine Sismanitis.

"With our social group, you don't have to smoke grass. I just don't associate with people who do. If it's harmless, I don't see anything wrong with it. I have never been tempted enough to try it."—Doris Oyelude.

"I've never had the need for it. I play sports instead."—Marc Leiber.

THEY DO

"It's a pleasant experience, like going to the movies for entertainment."—Wilson Sophomore.

"I smoke reefers once in a while. But I got busted so I've stopped. It's not my thing anymore. It wastes money and they sell you fake stuff."—Wilson Junior.

"I just like being up there."—Wilson Junior.

"It's good. I don't like to drink because I get sick. So when I want to celebrate or feel good, I smoke grass. I don't want to go to harder drugs and get messed up. Grass is good enough for me."—Wilson Senior.

"Friends told me I should try it about a year-and-a-half ago. I smoke it about once a week."—Wilson Junior.

"It's a nice high. I don't like to drink. Grass has the same effect as alcohol, but your senses are more aware because you know it's against the law. When you drink, it's legal, so you don't care and don't have to be aware."—Wilson Sophomore.

[From the Washington Post, Nov. 21, 1973]

DISTRICT OF COLUMBIA DOCTORS: LEGALIZE USE OF MARIHUANA

(By Lawrence Feinberg)

The D.C. Medical Society has recommended that use and possession of small amounts of marihuana be legalized but that sale of the drug remain a crime.

Its resolution, that there be "no criminal sanctions" for personal use of marihuana, is the most far-reaching proposal for marihuana law reform yet made by any state or big city medical organization in the country, according to a spokesman for the American Medical Association.

It is contrary to a resolution by the AMA last year that marihuana possession be considered a misdemeanor "with commensurate penalties applied." But it is in line with recent recommendations by several prominent nonmedical groups, including the American Bar Association.

Dr. Irving Burka, president of the D.C. Medical Society, said his organization adopted its resolution at its annual meeting Monday night after a year-long study by its committee on drug abuse.

The resolution says that although "use of marihuana is not recommended . . . there appear to be no serious or lasting physical or mental effects from moderate or intermittent usage in healthy adults."

The effects of marihuana "are much less than one would see with alcohol," Dr. Burka said in an interview. "Possessing a small amount of it shouldn't be a criminal offense, any more than possessing a pint of liquor is."

But Burka added that because marihuana use shouldn't be encouraged, "peddling marihuana should continue to be illegal."

Possession of marihuana here is a misdemeanor, usually dealt with in court if it comes to trial at all, and carrying a suspended sentence and small fine.

In another resolution, the medical society urged that acupuncture treatments be given only as part of research studies in hospitals or medical schools, and not by independent clinics.

Burka said the society has asked the D.C. government to close several acupuncture clinics that have opened here recently "unless they are willing to put themselves under the auspices of a hopsital."

The resolution said acupuncture treatments should be limited because there have been few studies of the procedure by Western scientists and because acupuncture might "mask" the symptoms of "a serious or perhaps fatal condition otherwise amenable to treatment."

[From the Washington Post, July 20, 1975]

SENSE AND NONSENSE ABOUT "POT"

Last December, the U.S. Attorney for the District of Columbia announced his intention to ignore cases involving simple possession of small amounts of marihuana. His reasoning was that such cases take an enormous and costly toll on the time of courts and prosecutors. He was supported by several members of the D.C. Superior Court, but the idea went nowhere for the very good reason that the police cannot be placed in the position of having to turn a blind eye to certain violations of law. The proper approach is—obviously—to amend those laws which have become obsolete.

That the laws against the simple possession of marihuana have outlived their usefulness is plain for almost all to see. Heavy use of marihuana may be harmful to health, but there is no evidence that it is sufficiently harmful to the community as to justify the present criminal sanction. Accordingly, the D.C. City Council has taken the proper course. It is considering a bill that would reduce the present penalties for possession of marihuana to a civil fine of $100 and give the offense the status of a traffic violation. While such a course would not suit everyone, it would at least maintain a method of expressing society's concern without making presumptive criminals out of the thousands of persons in this community who use the drug.

It is possible that by October the District will have joined five states—Californit, Colorado, Alaska, Maine and Oregon—in rationalizing its approach to the

problem of marihuana use. On the way to that solution, however, District residents are apparently in for some strange rhetoric, marked by a lack of information and an abundance of demagogy.

Consider the remarks of the Rev. Douglas Moore on Wednesday during the hearings on the marihuana measure. Mr. Moore suspects his colleagues on the council are proposing this measure now because there are many whites who smoke "pot," and he goes on: "A lot of whites who want to become judges and lawyers would be prevented if they had a criminal marihuana record." That logic is perverse in face of the facts. Three times as many blacks are arrested here for possession as whites. Mr. Moore's concern should be that the criminal brand will affect the futures of both black and white youths. And if he cares about that, then his position on the bill is nonsensical.

It would be good if the council could complete its debate on this bill without more of this gratuitous diversion from the real business of legislating. It demeans the council and its purposes and gives nothing in return.

[From the Washington Post, Oct. 8, 1975]

Council Acts To Cut Marijuana Penalty

(By LaBarbara Bowman)

A split D.C. City Council gave preliminary approval yesterday to a controversial bill that would greatly ease the city's penalties for possession of an ounce or less of marijuana.

After considerable debate on the issue, eight Council members—David Clarke, Arrington Dixon, Julius Hobson, Polly Shackleton, Sterling Tucker, John Wilson, Marion Barry and James Coates—voted to approve the bill on its first reading.

Four Council members—Douglas Moore, Jerry Moore, Nadine Winter, and Willie Hardy—opposed it. William Spaulding was present but did not vote.

The bill, probably the most controversial to come before the Council since it took office at the beginning of the year, would allow police officers to treat possession of an ounce of marijuana like a traffic offense. The person would be given a citation and fined $100. There would be no arrest.

The present penalty of one year in jail and/or a $1,000 fine would remain in effect for people caught possessing more than an ounce. The bill does not legalize marijuana possession.

An ounce of marijuana will make about 32 cigarettes, according to the committee report on the bill.

The sometimes emotional debate between Council members on the bill took place before a packed audience that included several prominent Baptist ministers who have vehemently opposed the bill.

The debate centered primarily on the issue of whether lessening the penalties would help or harm the city's black people. More than 70 per cent of the District's residents are black and the 13-member Council has only two white members.

"The District will become the marijuana capital of the world," said Council member Douglas E. Moore (D-at-large), a Methodist minister who has consistently opposed the bill.

"We don't need no smoke to cloud our minds for us to be in stupor," so blacks cannot recognize the injustices done to them, Moore said. This Council should never permit this," he added.

"The son of a prominent person will not be arrested for possession of marijuana because their daddy knows somebody . . . the poor people elected this Council so they will have a daddy, too," said Council member John Wilson (D-two), speaking in support of the bill.

Council member Arrington Dixon (D-four), who cosponsored the bill with Council member David A. Clarke (D-one), said he knew young black people who had been "stigmatized for the rest of their lives" because they had been arrested for having small amounts of marijuana and who were "crushed" because these arrest records kept them from getting jobs.

Council member Willie Hardy (D-seven) said she believes the bill was really saying to young people "since the law is going to be broken, let's lessen the penalties." Young people should be taught to obey the law, she said.

Council member James E. Coates (D-eight), a Baptist minister, said the debate reminded him of similar arguments that had taken place during Prohibition. "We should recognize that the use of marijuana will continue in epidemic proportion," he said, voicing general support for the bill.

Clarke, the bill's main supporter, said he introduced it to free policemen to investigate and solve more serious crimes committed in the city. He said police officers are tied up for an inordinate amount of time prosecuting people now arrested for possessing small amounts of the drug.

INDIANA

[From the Marion (Ind.) Chronicle-Tribune, April 23, 1975]

Aim New Pot Law at Dealers

WOULD LIGHTEN PENALTY FOR USERS

(By David Carlson)

If you're one of 26 million Americans who smoke marijuana, Indiana will be a little safer place for you this August.

This year's session of the Indiana General Assembly passed a new, more lenient law regarding possession and sale of marijuana—the legislators made both offenses misdemeanors. But, while the new law lightens penalties for marijuana, it stiffens sentences for sale and possession of other drugs.

Another provision in the new law allows courts to place first marijuana offenders on probation without finding them guilty. Upon fulfillment of the terms of probation, the law says, "the court shall discharge the offender and dismiss the action against him"—in other words, a first offense for possession of marijuana need never show on the user's criminal record.

The new law will not take effect, however, until about Aug. 1—if Gov. Otis Bowen signs the bill.

State Rep. Mendle Adams, D-Marion, told the Chronicle-Tribune the new marijuana law is "a step in the right direction." Adams said sentences in the current laws aren't equal to the offense committed by the marijuana user.

Adams sees a trend across the country to lighten sentences for marijuana use and expects Indiana to further lighten the penalties in the future.

State Rep. Robert Jones Jr., R-Indianapolis, House sponsor of the marijuana bill, told the Chronicle-Tribune he and other legislators drew up the bill because the tougher marijuana laws were not being enforced.

"I take the hard line on drug use," Jones said, "but many county prosecutors were not prosecuting marijuana cases under the old law. I guess they felt the penalties were too tough.

"The main idea was to reword the law. A lot of prosecutors apparently thought the first offense for marijuana possession was a felony under the old law, but the legislature didn't intend it to be that way. In the new version it is definitely stated as a misdemeanor."

"This law lightens the penalty for first offenses of marijuana and some other drugs, but it really tightens down on the drug traffickers. That's who we're aiming at—the dealers."

"Some of the more liberal members of the House felt it was the most reasonable narcotics legislation they had ever seen. I think we've added a valuable new tool to the arsenal of law enforcement," Jones said.

The new, more lenient law is definitely not a step toward decriminalization of marijuana possession in Indiana, Jones said. He indicated he doesn't feel future legislatures will further lighten the penalties.

A 23-year-old marijuana user interviewed by the Chronicle-Tribune doesn't agree with Jones, however. He sees the recent actions of the legislature as similar to the prohibition of alcohol during the 1920's.

"They tried to outlaw booze," he told the Chronicle-Tribune, "but when they found out they couldn't enforce the laws, they repealed them and made alcoholic beverages legal again. That's the same thing that's happening with marijuana in Indiana.

"They can make the penalties as tough or eas yas they please, but there's just no way they can enforce them," the user said. "Once they figure that out, they'll move to legalize pot, or at least decriminalize it like other states have."

The specific law marijuana users violate is called the "Controlled Substances Act" and has been on Indiana law books in some form since 1935. It has been revamped at least four times, 1970, 1973, 1974 and 1975.

The latest version states, "Unlawful possession of (30 grams or less of) marijuana or (two grams or less of) hashish is a misdemeanor punisable by a determinate term of imprisonment in the county jail of not more than one year and a fine not to exceed $500 . . ."

Possession of more than 30 grams of marijuana is a felony—an offense punishable by more than one year of imprisonment. A conviction carries a determinant 1–10 year prison sentence and a fine of up to $1,000.

Another major change in the new law from past ones is that sale of small quantities of marijuana is a misdemeanor. The penalty for sale of 30 grams or less of marijuana or two grams or less of hashish is identical to penalties for possession of those amounts—unless the recipient is under 18-years-old.

Under the law, "sale" doesn't necessarily mean in return for money, according to Rep. Adams. "As far as the law is concerned, giving it away is the same as selling it," Adams said.

The sale of large amounts of marijuana—more than 30 grams—is a felony. A conviction carries a determinant prison sentence of 1–20 years and a fine not to exceed $2,000. The sale of any amount to a person under 18 years old—unless the seller is also under 18—is also a felony carrying the same penalty, the law says.

While lightening the penalties for possession and sale of marijuana, the legislators stiffened the law regarding possession or sale of paraphernalia—". . . any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, or preparing marijuana, hashish, hashish oil or cocaine.

"Paraphernalia includes, but is not limited to, the following items: metal, wooden, acrylic, glass, stone, plastic, or ceramic marijuana or hashish pipes with or without permanent screens, hashish heads or punctured metal bowls; water pipes designed for use or intended for use with marijuana, hashish or other controlled substances . . ." Roach clips and marijuana cleaning devices are also included as "paraphernalia" under the law.

Unlawful possession of paraphernalia is a misdemeanor and carries a determinant term of imprisonment in the county jail or not more than one year and a fine of up to $500, the law says. A subsequent offense carries a sentence of 2–10 years and a fine of up to $1,000.

Rep. Jones said the paraphernalia section was added, "because we felt there was an internal inconsistency in the law." He said it doesn't make sense to outlaw marijuana and not outlaw articles used only for smoking it.

The current law, which will be in effect until August, carries a much stiffer penalty. Not many marijuana smokers realize that under the current laws, possession of the drug is a felony punishable by a prison sentence of up to 10 years and a fine of not more than $1,000.

Few marijuana users arrested in Grant County are charged as felons, however. Most who are arrested in Marion for the first time are charged in Marion City Court with a misdemeanor, fined $25 and costs and sent home—but not always.

The county prosecutor decides what charge to file and often that's a hard decision to make. What do you do with a "good kid" who's picked up by police with a "lid of dope" in his pocket? If he's charged with a felony he could be sent to prison for 2 to 10 years and be fined up to $1,000.

Grant Superior Court 2 tries most marijuana cases in Grant County that are charged as felonies. "I judge each case on its own merits,' says the court's judge, Thomas Wright.

"Most people who are convicted get jail time," Wright told the Chronicle-Tribune, "but that's not court policy. I have no average sentence.

"I attempt to put the seller away, help the user who is addicted and give the experimenter a taste of jail or fines. I usually follow police recommendations when sentencing," Wright said. "After all, they made the arrest and know the conditions.

"I don't try to put users away with a felony conviction," Wright said. "With small quantities, why file a felony charge? People picked up for the first time with a small quantity shouldn't go to jail."

Marion City Court Judge Thomas Michael tries more marijuana cases than any other court in the country. He sees his job as carrying out the wishes of the prosecutor.

Michael nearly always fines marijuana users $25 and costs. The judge says that if the prosecutor wanted defendants to receive a jail sentence, he'd file the charges in the county courts.

Marijuana users and even non-users can be arrested under the current law for possession of "paraphernalia"—equipment used for smoking or ingesting marijuana or other drugs.

The present law also makes some unusual quantity distinctions in possession of marijuana cases. Possession of more than 25 grams of marijuana—three grams less than one ounce—carries a felony charge.

Since marijuana is usually sold in one ounce "lids," an occasional user who purchased a new bag of marijuana would probably be subject to felony charges if arrested. Possession of less than 25 grams of marijuana can also be charged as a felony, but rarely is.

ILLINOIS

[From the Chicago Tribune, Sept. 5, 1975]

Propose Lighter Law on Pot Possession

(By Ed McManus and Chares Mount)

Decriminalization of marijuana possession was one of three plans offered for better drug abuse controls by an Illinois commission Thursday.

Under the plan possession would be reduced from a misdemeanor, for which an offender could receive a one-year jail term, to a petty offense punishable only by a fine.

The three alternatives were presented to the state legislature by the Illinois Economic and Fiscal Commission.

Tho the commission made no recommendations, a commission staff report contended there is no proof that marijuana is any more dangerous than alcohol or tobacco. Some medical authorities, however, disagree.

Another alternative offered by the commission would be to crack down on drug peddlers with stiffer prison terms.

A third would be to make greater use of drug abuse programs for those found guilty of drug law violations for the first time. But the commission urged improvement in existing drug treatment programs.

State Rep. Thaddeus Lechowicz [D. Chicago], chairman of the commission, stressed in making the report public that it is up to the legislature to decide which alternative, if any, will be accepted.

The report said decriminalizing the use of marijuana by making possession a petty offense could free law enforcement officials to fight "priority enforcement problems, such as hard drug traffic and crimes of violence."

The report estimated that 31,000 Illinois youth between 14 and 18 used heroin and 52,000 in the same age bracket sold illegal drugs of some kind. It estimated that 230,000 Illinois youths between 14 and 18 have used marijuana.

The report was critical of the state's drug release program, asserting that two-thirds of the drug addicts who seek help in the program drop out before treatment begins because of inept handling.

The report called on the Illinois Dangerous Drugs Commission to monitor and supervise the many private drug abuse programs operating in the state to prevent scandals such as that involving the West Side Organization clinic where four WSO employees were arrested on federal drug charges this week.

The report charged there is much duplication of effort by the Dangerous Drugs Commission and the Drug Abuse Program. The program operates state drug abuse clinics and assists private clinics. The Drugs Commission is supposed to regulate the program but also gets involved in treatment, the report stated.

KANSAS

[From the Kansas City (Mo.) Times, June 14, 1975]

KANSAS TO STUDY MARIJUANA LAWS

(By Laura Scott)

TOPEKA—The Kansas Legislative Co-ordinating Council voted yesterday to study reform of state laws relating to possession of small amounts of marijuana.

The council, on a 5-to-2 vote, assigned the study to the Interim Committee on Judiciary. The committee will conduct hearings during the summer with the idea of developing a report or legislation for submission to the 1976 session of the Legislature.

Reform of state laws relating to possession of marijuana has been promoted by the Kansas chapter of the National Organization for Reform of Marijuana Laws. The group has called for enactment of a civil penalty of a $100 fine for possession. It has not promoted change in the laws relating to sale of marijuana.

Craig Cornish, Kansas director of the reform group, said the organization will offer the study committee medical experts as well as witnesses from Oregon, a state which has removed criminal penalties for possession.

Cornish said he believes that the committee following hearings will recommend changing the laws relating to possession of marijuana in line with recommendations of the President's Commission on Marijuana and Drug Abuse, and other national groups.

Twenty-seven other states have studied or are studying the issue of reform of marijuana laws, he said.

Rep. Michael Glover (D.-Lawrence) also responded in favor of the study. Glover in the past has promoted legislation which would reduce criminal penalties for marijuana possession.

"The marijuana laws, as they now stand, are too harsh, too costly and very ineffective," Glover said.

In other action the co-ordinating council assigned to interim committee study three other topics:

1. Insulation and energy consumption standards in residential, commercial industrial and institutional buildings, and the potential for state action in these areas.
2. Desirability of state licensing and regulation of the use of soil additives.
3. Conditions in, and the operation of, halfway houses, sheltered living facilities and adult care homes which are serving as an alternative to institutionalization.

MAINE

[From the Washington Star-News, June 19, 1975]

MAINE EASES PENALTIES ON MARIJUANA

AUGUSTA, MAINE (UPI)—Maine has become the third state in the Union to decriminalize the personal use of small quantities of marijuana, following Oregon and Alaska. It becomes a civil offense instead.

The pot liberalization measure was included in a bill revamping Maine's entire criminal code and signed Wednesday by Gov. James Longley, the nation's only independent governor. It becomes effective March 1, 1976.

Under the measure, persons possessing less than 1½ ounces of marijuana would be subject to fine of up to $200—but no jail sentences or criminal records.

In the past, a person possessing a single marijuana cigarette in Maine could have been fined $1,000 and sentenced to up to 11 months in jail.

Possession of more than 1½ ounces would still be a criminal offense, however, under the assumption the possessor intended to sell or give the drug to others.

In a brief ceremony, Longley described the Maine Criminal Code as "a major landmark in the state's criminal statutes."

Earlier in the year Longley, a former Democrat, expressed reservations about the marijuana law. He made no mention of it during the signing ceremony.

Oregon passed the first state marijuana decriminalization law late last year. Alaska's legislature approved such a measure earlier this month. The California and Colorado legislatures are considering similar bills this week.

Also among the more controversial sections of the new code is removal of the present law that prohibits certain sexual activities between consenting adults.

The code does away with the present parole system and replaces it with a procedure in which the convict petitions the court to have his or her sentence reduced by a judge.

MARYLAND

[From the Baltimore News American, Aug. 14, 1975]

SENATORS LIKELY TO REJECT "POT" PENALTY RELAXING

(By David Ahearn)

ANNAPOLIS—Chances are dimming for state Legislative Council action to keep marijuana-smoking youths out of jail.

The State Senate Judicial Proceedings Committee next month is likely to vote against recommending any council approval of a bill that would substitute fines for prison sentences in marijuana-possession court convictions.

Committee members July 15 aired the measure and were told that marijuana use is widespread, leading to many otherwise model youths winding up in prisons and possibly heading into lives of crime.

Committee chairman J. Joseph Curran Jr., D-43-Balt., said the bill stands little chance of approval in the committee.

Committee approval would greatly increase prospects that the bill would pass into law during the 1976 General Assembly session.

Curran explained that many committee members think there is not enough information on possible bad effects on human health from marijuana use.

Several national studies have covered the subject—some saying there are no ill effects, and one saying marijuana use may cause genetic variations in users' children.

But committee members want to wait for results of still another national study, and that may not be until after the committee votes on the bill Sept. 2 or Sept. 9.

Those favoring the bill said at the hearing that society already permits use of two drugs with known and documented injurious effects on human health—alcohol and tobacco.

So, the proponents asked, why bar possession of marijuana—especially since it has not been proven to have any ill effects?

The bill would not legalize possession of marijuana, nor would it make possession a minor offense like a traffic violation as called for in the original bill.

Instead, the compromise bill now under consideration would maintain possession of small amounts of the drug as a misdemanor offense.

The bill would, though, substitute fines for possible prison sentences.

This is the second year a major effort has been mounted to change the marijuana—"pot"—laws here.

Last year, pro-pot forces—mainly University of Maryland students from College Park—noisily jammed the committee room and blew pot smoke in the faces of state police narcotics agents there to testify against the bi l.

The bill didn't even get to the Legislative Council last year.

And two days after that assembly session ended, state police staged a huge drug raid on the university campus arresting many students.

This year the students made a very low-key approach to the committee, and the bill encountered a much friendlier reception from legislators.

It even received approval on the floor of one assembly house, but died with the assembly session's end April 7.

And this year the bill made it into the Legislative Council, where it received less opposition from state police, who said they did not back the measure but could live with it.

But then Gov. Mandel said flatly he will veto the bill if the assembly passes it. And now it seems likely the assembly will fall in line with the committee and reject the bill.

[From the Washington Star, Aug. 22, 1976]

NONTRIALS WEIGHED FOR POT SMOKERS

(By Lynn Dunson)

Changing laws, lighter sentences and fines, agitation by reform groups and clogged court dockets are causing some legal minds in the metropolitan area to wonder if the occasional pot smoker shouldn't just pay a fine for the privilege when caught and bypass a court appearance.

Even with a "good" arrest and a conviction, getting the once-in-a-while offender punished is not the cream puff operation it was in the 1960s.

The typical "soft drug" arrest is not the big time grower, manufacturer or distributor. This is the typical drug bust:

In Alexandria, a man is picked up and arrested because he is wanted in traffic court in Fairfax County.

In Arlington, a couple of neighbors get into a squabble. Someone is arrested and charged with assault and battery.

In Prince Georges County, a fellow is arrested on a trespassing warrant because his girl friend no longer wants to continue the relationship, but can't get rid of him.

During a routine search of these three police discover on each a marihuana joint (cigarette) or half of a nickel ($5) bag of marihuana.

They are charged with possession of a controlled dangerous substance. But after all the paperwork, after all the pretrial investigation, chances are the drug charges will be dismissed. If there is a trial on the drug charges, chances are the fine, if any, will be small or that a sentence will be suspended.

"The penalty for possession now is so low that, as far as I'm concerned, it's a waste of time and money to prosecute possession cases," Alexandria Commonwealth's Atty. William L. Cowhig said.

Cowhig is against drugs and does not advocate a collateral system whereby an offender pleads guilty and pays a predetermined fine. However, he is resigned to it when he contemplates what he believes is now happening in Alexandria's General District Court.

Laden with a heavy criminal docket and lacking the staff and jail facilities to handle prosecution and sentencing of "soft" drug offenders, the courts are giving precedence to prosecution of what are generally considered more serious crimes than smoking pot, Cowhig said.

According to statistics kept by Cowhig, charges frequently are dropped if someone is found to have only a small amount of marihuana for personal use. If the case does go to court, fines of $50 or $100 are not uncommon.

Many of the dismissals stem from a recent state legislative measure which says that if a first offender is found guilty, the court may continue the case for as long as a year, after which, if there is no second violation, the case may be dismissed without a finding of guilt. Maryland has a similar law.

The fines, Cowhig maintains, are "hardly more than a slap on the wrist.

"I think the law should be enforced and I think the penalty should be increased. The users are beating the system by being more persistent than the system itself."

Neither the prosecutors, the courts nor the police pursue arrest and conviction for simple possession as vigorously as was the practice in the late '60s, when a few ounces of grass could net a convicted offender a jail sentence, he said.

While Sgt. Charles Cheslock of the Arlington County police vice unit agrees with Cowhig that arrests of the small users are no longer pursued the way they were in 1968 when he first joined the unit. Lt. Rocco Ricci of the Fairfax drug unit maintains the force is as energetic as ever. "Who are we to judge what's small and what's not small?" asked Ricci.

Probably more importantly, the general public is more tolerant of marijuana use. That shift is reflected in changes in the law which no longer treat simple possession as a felony.

Illustrative of the public's attitude are the results of a recent survey released by the National Organization for the Reform of Marijuana Laws (NORML),

which showed that of 300 Alexandria voters polled, almost 70 percent believed pot users should receive only minimal fines or not be punished at all.

Cowhig does not agree with the majority in that sampling. A collateral system, he claims, gives him what he wants as a prosecutor. "It not only guarantees a conviction, but it guarantees punishment," he asserted.

Since simple possession is a misdemeanor, the system could be set up by directive to the magistrates from Chief Judge Daniel F. O'Flaherty, of the General District Court. Collateral, said Cowhig, should be set at $150 or more.

The procedure would simplify matters for the person who knows he is going to admit guilt. It would require less paperwork and less time of the defendant and police, who must appear in court to testify.

Cowhig estimates Alexandria handles about 100 such minor drug cases a year at a cost of $200 to $600 a case, depending upon whether the accused pleads guilty or not guilty. He believes about 50 percent are eventually dismissed.

John K. Zwerling, Virginia coordinator for NORML, outspokenly favors "decriminalization" of marijuana, a step taken by Oregon and a few other states. A collateral system would not strike out all criminal penalties for using the drug, but Zwerling sees it as a first step in that direction.

Neither decriminalization nor a collateral system are popular among police and court officers interviewed around the metropolitan area.

O'Flaherty, who at best is lukewarm on the subject of a collateral system, does not like to compare the procedure to the paying of a parking ticket, an analogy which is commonly used.

"It conjures up an image of 'paying your way out,'" he protests, "and that is not what would happen. It wouldn't be a matter of someone coming in five or six times a year and just walking through."

As O'Flaherty points out, the posting of collateral would be subject to the court's approval, which would have the option of rejecting the plea of guilty and, instead, setting a trial date.

The chief judge of the General District Court in Montgomery County, Robert F. Sweeney, is willing to review the possibility of a prepayment system for certain other misdemeanors covered by county ordinance, but he has rejected the idea for marihuana offenses.

MICHIGAN

The Concurrent State and Local Regulation of Marijuana: The Validity of the Ann Arbor Marijuana Ordinance

The City Council of Ann Arbor, Michigan, has recently amended the City's "marijuana ordinance" so that it prohibits the possession, control, use, giving away, or sale of marijuana, and specifies a five dollar fine as punishment for violations of the ordinance.[1] The State of Michigan has also legislated to prohibit marijuana-related activities, specifying a number of different offenses with penalties ranging as high as four years in prison, or a 2,000 dollar fine, or both.[2] By

1. ANN ARBOR, MICH., CITY CODE, tit. IX, ch. 103, § 9:62(29) (1972):

No person shall: Have in his or her possession or under his or her control or use or give away or sell marijuana or cannabis which is defined as all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compounds, manufacture, sale, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber oil or cake, or the sterilized seed of the plant which is incapable of germination, unless such possession, control or use is pursuant to a license or prescription as provided in Public Act 196 of 1971, as amended.

Any violation of this Section shall be subject to a sentence of up to five dollars ($5.00) including judgment fee and costs, and no probation or any other punitive or rehabilitative measure shall be imposed; provided, however, that this Section shall not be construed to prohibit deferred sentencing. The District Court Clerk shall accept any plea of guilty which is made in the same manner as pleas of guilty are accepted at the parking Violations Bureau of the Fifteenth District Court. Persons pleading guilty of violation of this Section shall be allowed to tender the sum of five dollars ($5.00) to the District Court Clerk as a full and complete satisfaction of liability, and no appearance before a District Judge shall be required. In any prosecution for the violation of this section the burden of establishing any license or prescription shall be upon the defendant but this does not shift the burden of proof for the violation.

The City Council of the City of Ann Arbor specifically determines that the regulations herein contained concerning marijuana are necessary to serve the local purpose of providing just and equitable legal treatment of the citizens of this community, and in particular of the youth of the community who are present here as University students or otherwise, and to preserve the respect of citizens for the law and its processes.

2. The Controlled Substances Act of 1971, MICH. COMP. LAWS ANN. §§ 335.301-.367 (Supp. 1972) provides an extensive regulation of drugs in Michigan. MICH. COMP. LAWS ANN. § 335.341 (Supp. 1972) states:

(1) Except as authorized by this act, it is unlawful for any person to manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection with respect to:

. . . .

(c) . . . marijuana, is guilty of a felony and upon conviction may be imprisoned for not more than 4 years or fined not more than $2,000.00, or both.

(2) Possession of more than 2 ounces of marijuana is prima facie evidence of possession with intent to deliver.

. . . .

(4) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection with respect to:

. . . .

(d) Marijuana, is guilty of a misdemeanor punishable by imprisonment for

enacting the ordinance, the City government has minimized the criminal sanctions for an activity it has found essentially benign, pursuant to certain local purposes.[3] Since, however, there is concurrent exercise of control over marijuana by both a municipality and the State several issues for judicial determination arise concerning the constitutionality of the local ordinance.[4] Michigan cities are authorized by constitution and by statute to act only with respect to local concerns, and thus the courts must first determine whether the Ann Arbor marijuana ordinance deals with a "municipal concern" as defined by law. If the ordinance is found to deal with a problem within the ambit of permissible local authority, the courts must then consider whether the state legislation in the area of marijuana control has preempted the field, rendering ultra vires any municipal efforts at additional control. If the state marijuana laws are found to be nonpreemptive, then the Ann Arbor ordinance will be allowed to stand unless it is found to be "in conflict" with the provisions of the state law. In addition, the question arises whether the coexistence of the ordinance and the statute vests an impermissible degree of discretion in the prosecuting officer. Finally, in order to evaluate the impact of the ordinance it must be determined whether successive prosecutions by the City and the State for the same illegal activities would constitute double jeopardy in violation of the constitutions of Michigan or the United States.

Beyond the immediate interest of the City of Ann Arbor, the adjudication of the constitutionality of the ordinance will be significant as a measure of the extent to which municipalities may proceed at variance with state law in effecting independent responses to problems that relate to both local and statewide interests.

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not more than 1 year in the county jail or by a fine of not more than $1,000.00, or both.

(5) It is unlawful for a person to use a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection with respect to:

. . . .

(d) Marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 90 days in the county jail or by a fine of not more than $100.00, or both.

In addition MICH. COMP. LAWS ANN. § 335.346(2) (Supp. 1972) provides that

any person who distributes marijuana without remuneration and not to further commercial distribution and who does not violate subsection (1) is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 1 year in the county jail or fined not more than $1,000.00, or both, unless the distribution is in accordance with federal law or the law of this state.

Subsection (1) of this provision authorized penalties double those listed in section 335.341(1) for the distribution of a controlled substance by a person over 18 years of age to a person under 18 who is at least 5 years his junior.

3. *See* notes 26-36 *infra* and accompanying text.

4. *See generally* Note, *Conflicts Between State Statutes and Municipal Ordinances*, 72 HARV. L. REV. 787 (1959).

The enactment of the home-rule provisions of Michigan, as in many other states, was presumably in response to the unsatisfactory condition of city-state relations during the latter part of the nineteenth century;[5] state legislatures of the period, which were controlled by the rural populace, were notorious for meddling in municipal affairs and for their abuses of the so-called "special acts" relating to cities.[6] The home-rule amendments to the constitutions of the various states may be self-executing,[7] or may require or authorize the legislature to enact enabling home-rule legislation.[8]

The states have also manifested variations in the scope of the home-rule powers afforded the cities. The California constitution, for example, empowers cities to enact and enforce ordinances in respect to municipal affairs, "subject only to the restrictions and limitations provided in their several charters . . . ."[9] This language has been interpreted by the California courts to give cities supreme control over municipal affairs. Indeed, the cities are "independent of general laws upon municipal affairs. Upon such affairs the general law is of no force."[10] Michigan, on the other hand, has granted to cities the home-rule powers over municipal concerns, "subject to the constitution and general laws of the state."[11] Unlike California's home-rule cities, municipalities in Michigan exercise concurrent control with the State over matters of municipal concern, and the state authority is supreme. The operative effect of the home-rule provisions of any state depends, however, upon the judicial interpretation of the scope of the home-rule powers. Thus, the broad constitutional grant of power to California cities is limited by the judicial construction given to the concept of "municipal affairs."[12] Conversely, though

5. A. BROMAGE, INTRODUCTION TO MUNICIPAL GOVERNMENT AND ADMINISTRATION 157 (1950).

6. *Id.* The concept of home-rule is consonant with the emphasis on "community control" which has recently arisen in education as well as in other areas. *Cf.* Kirp, *Community Control, Public Policy, and the Limits of Law*, 68 MICH. L. REV. 1389 (1970). Home-rule and local control are intended to guard against arbitrary legislation by keeping decision-making close to the people to be governed. Fordham, *Decision-Making in Expanding American Urban Life*, 21 OHIO ST. L.J. 274, 275 (1960). As one commmentator has observed:

> Municipal Government has at least two advantages over state government. A municipal administration is more responsive to the needs of local citizens, since it must depend exclusively on these people for re-election. Second, a local government is more efficient to the extent that efficiency is increased by closeness to the scene of operations and accessibility to the criticism and suggestions of the persons governed.

Note, *supra* note 4, at 740. *See also* Fordham & Asher, *Home Rule Powers in Theory and Practice*, 9 OHIO ST. L.J. 18 (1948).

7. *See, e.g.*, OHIO CONST. art. 18.

8. *See, e.g.*, MICH. CONST. art. 7, § 22.

9. CAL. CONST. art. XI, §§ 6, 8.

10. Wiley v. City of Berkeley, 136 Cal. App. 2d 10, 12, 288 P.2d 123, 125 (1955).

11. MICH. COMP. LAWS ANN. § 117.4j(3) (1967).

12. The California courts have observed that there is no precise definition of

Michigan's home-rule provisions are not among the most extensive as written, the Michigan courts have interpreted the provisions to allow a vigorous exercise of local authority by Michigan cities.

The source of the home-rule powers of Michigan cities is article 7, section 22, of the Michigan constitution:

> Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.[13]

This provision is not of the "self-executing" type, and therefore the constitutional grant of power is implemented through Michigan's home-rule statutes, which delegate to home-rule cities, such as Ann Arbor, the authority to act

> to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of the state.[14]

"municipal affairs." Dairy Belle Farms v. Brock, 97 Cal. App. 2d 146, 154, 217 P.2d 704, 708 (1950). Instead, the determination is one of degree. Certain concerns may be characterized as "strictly" or "essentially" municipal affairs, while others may be "partaking of the characteristics of a municipal affair" and yet encompass a far greater scope of interest than strictly municipal matters. Brewer v. Feigenbaum, 47 Cal. App. 2d 171, 176, 117 P.2d 737, 740 (1941). If there is any reasonable doubt as to whether a particular matter is a municipal affair, the courts will resolve the matter against the municipality and deny the power. Dairy Belle Farms v. Brock, 97 Cal. App. 2d at 154, 217 P.2d at 709.

Municipal control over municipal affairs is "independent of general laws" (*see* text accompanying note 10 *supra*) only when a matter is exclusively a municipal affair. The independence disappears as statewide interests begin to coincide with local interests. As the California supreme court recently noted in Lancaster v. Municipal Court for the Beverly Hills Judicial District of Los Angeles County, — Cal. 3d —, 494 P.2d 681, 682, 100 Cal. Rptr. 609, 610 (1972):

> [A] local municipal ordinance is invalid if it attempts to impose additional requirements in a field that is pre-empted by general law. . . . Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates . . . contradicts . . . or enters an area fully occupied by general law, either expressly or by legislative implication . . . . If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a "municipal affair."

Comparing the law of California with that of Michigan (*see* notes 12-23 *supra* and accompanying text) it becomes apparent that despite the constitutional variations in the scope of power, the practical powers of California and Michigan cities are strikingly similar.

13. MICH. CONST. art. 7, § 22.

14. MICH. COMP. LAWS ANN. § 117.4j(3) (1967).

Both the statute and the constitution expressly limit home-rule powers to control over areas of "municipal concern," a concept that does not encourage facile definition. There has been a certain tendency in Michigan to link the municipal concern idea with the scope of the police power.[15] It has been held that except as limited by the constitution or by statute the police power of home-rule cities is "of the same general scope and nature as that of the State."[16] This police power has been broadly defined and allows the flexibility necessary to deal with changing problems.[17] The enacting body has the discretion to determine what regulations are appropriate to protect the public interest;[18] and a person asserting the unconstitutionality of a municipal ordinance has the burden of showing that it has no real or substantial relation to the public health, morals, safety, or general welfare.[19]

Yet, the fact that a locality can assert some measure of municipal interest in an area of control does not necessarily bring that area within the ambit of permissible local authority under the meaning of the "municipal concern" language of the constitution and the enabling statute. Most problems are of concern both to the State and the cities, and the inquiry focuses on the degree to which one or the other might be concerned, or perhaps which entity has the primary concern. As one commentator has observed:

15. *See, e.g.*, Watnick v. City of Detroit, 365 Mich. 600, 113 N.W.2d 867 (1962); Huron Portland Cement Co. v. City of Detroit, 355 Mich. 227, 93 N.W.2d 888 (1959), *aff'd.*, 362 U.S. 440 (1960); People v. Sell, 310 Mich. 305, 17 N.W.2d 193 (1945); Eanes v. City of Detroit, 279 Mich. 531, 272 N.W. 896 (1937).

16. People v. Sell, 310 Mich. 305, 315, 17 N.W.2d 193, 196 (1945). A rather narrow view of municipal powers was expounded in the early cases of Attorney General v. City of Detroit, 225 Mich. 631, 196 N.W. 391 (1923), and City of Kalamazoo v. Titus, 208 Mich. 252, 175 N.W. 480 (1919). *Attorney General v. City of Detroit* held that a municipality exercised the police power only as an agent of the State, and in such capacity it could not set state policy by regulating areas of statewide concern. This concept precluded local wage and hour regulation in *Attorney General v. City of Detroit*, and local fixing of public utility rates in *Titus*. *People v. Sell* upheld a Detroit ordinance enforcing federally set wartime price ceilings on commodities. This ordinance can be viewed as a local exercise of the police power in an area of statewide concern. But the impact of *Sell* as precedent is limited by the court's reliance on the wartime emergency circumstances which necessitated the ordinance, as well as the fact that it merely augmented a state price ceiling statute which was already in effect.

17. In People v. Sell, 310 Mich. 305, 315-16, 17 N.W.2d 193, 196 (1945), the Michigan supreme court stated:

> The "police power" is . . . a power or organization of a system of regulations tending to the health, order, convenience, and comfort of the people and to the prevention and punishment of injuries and offenses to the public. . . . It embraces all rules and regulations for the protection of life and the security of property . . . . It has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number." Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction.

18. Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939).

19. Austin v. Older, 283 Mich. 667, 278 N.W. 727 (1938).

> The courts have, generally speaking, been unable to devise any objective test whereby it can be determined with certainty what matters come within the term "municipal affairs," for the term has no fixed quantity, fluctuates with every change in the conditions upon which it operates, and has of necessity been determined by a slow process of judicial inclusion and exclusion.[20]

The elusive nature of the municipal concern idea may justify the Michigan courts' unwillingness to propose expansive or general definitions. The issue is more amenable to a subtle balancing process, weighing the sometimes conflicting interests of the cities and the state, considering the advantages to be derived in each case from broader local powers as opposed to more uniform regulation by the state. For example, a court might properly weigh the relative efficiency of local and state governments in the regulation of any given activity, the interest of local citizens in responsive implementation of local policies, and the possibility that local ordinances will interfere with the operation of statewide objectives or procedures. Such balancing of state and local interests seems implicit in decisions of the municipal concern issue; but whereas the balancing process is outlined in decisions of other jurisdictions,[21] the Michigan courts have not overtly subscribed to this approach.[22] In any event, the municipal concern question has traditionally been dealt with on a case-by-case basis in Michigan, resulting in lists of inclusion and exclusion.[23]

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20. C. RHYNE, MUNICIPAL LAW 64 (1957).

21. *E.g.*, State *ex rel.* Heinig v. City of Milwaukee, 231 Ore. 475, 480-85, 373 P.2d 680, 684-87 (1962).

22. In a slightly different context the Michigan supreme court made some observations that may be pertinent to the municipal concern issue. In Miller v. Fabius Twp. Bd., 366 Mich. 250, 114 N.W.2d 205 (1962), the court addressed the issue of whether the regulation of water skiing was a problem susceptible to local control under what is now MICH. COMP. LAWS ANN. § 41.181 (1967), a statute defining the scope of a township's authority to enact ordinances. The court noted:

> While the general problem with reference to water skiing and motorboating and the use of our inland lakes by different classes of sportsmen are statewide problems, there are *peculiar circumstances that are local in character*—such as the number of boat users on the lake; the amount of fishing on the lake; the congestion and conflict between fishermen and water skiers; the location of the lake to densely populated areas—which the 1959 amendment authorizes townships to deal with under the "health and safety of persons and property" clause.

366 Mich. at 259, 114 N.W.2d at 209 (emphasis added). Although the court did not explicitly balance the state interest in regulation against the local interest, it recognized that even in areas of statewide concern, peculiar local circumstances may create a need for local regulation. Such an analysis might be equally applicable to the municipal concern question and might well produce results similar to a balancing approach.

23. The Michigan courts have found the following areas to be within the scope of the "municipal concern" requirement: Watnick v. City of Detroit, 365 Mich. 600, 113 N.W.2d 376 (1962) (Sunday closing laws); Huron-Portland Cement Co. v. City of Detroit, 355 Mich. 227, 93 N.W.2d 888 (1959), *aff'd.*, 362 U.S. 440 (1960) (air pollution); People v. Sell, 310 Mich. 305, 17 N.W.2d 193 (1945) (municipal enforcement of federal wartime commodity controls); Eanes v. City of Detroit, 279 Mich. 551, 272 N.W.2d 896 (1937) (regulation of barber shops).

In determining whether the Ann Arbor marijuana ordinance deals with an area of municipal concern, it must be noted that the same strong presumption of constitutionality applies to a city ordinance as to a state statute,[24] and such presumption must be overcome by a showing of unconstitutionality beyond a reasonable doubt.[25]

In response to an opinion by Attorney General Frank Kelly,[26] and in an effort to comply expressly with the municipal concern requirement, the City Council of Ann Arbor inserted in the ordinance a section that specifically identifies a local problem.[27] The ordinance speaks of a particular concern for the youth of the community, "present here as University students or otherwise," and seeks to "preserve the respect of such citizens for the law and its processes."[28] Justice Williams of the Michigan supreme court has suggested that rational legislation with respect to marijuana should serve this same purpose.[29] The Council may also have recognized a widespread use of marijuana within the City, and acted to prevent the strain on community relations between youth and the police that might have resulted were enforcement of harsh state penalties to continue.[30] A related aspect of this problem is the criminalization of the City's citizens who use marijuana; such citizens, through fear of enforcement of the strict state laws might come to regard the police as adversaries, rather than as public servants who can be relied upon for aid and

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The case law has held the following to be of statewide concern, thus beyond the regulatory power of municipalities: Attorney General v. City of Detroit, 225 Mich. 691, 196 N.W. 391 (1923) (regulation of hours of labor and the minimum wage); City of Kalamazoo v. Titus, 208 Mich. 252, 175 N.W. 480 (1919) (fixing of rates for public utilities). The Michigan courts generally have not invalidated ordinances on the ground that they do not relate to municipal concerns. The tendency has been to find that where the legislature has acted with regard to areas of statewide concern, such statutes are pre-emptive. *See, e.g.*, City of Grand Haven v. Grocer's Co-operative Dairy, 330 Mich. 694, 48 N.W.2d 362 (1951).

24. People v. Sell, 310 Mich. 305, 314, 17 N.W.2d 193, 195 (1945). *See also* Goldstein v. City of Hamtramck, 227 Mich. 263, 198 N.W. 962 (1924).

25. Cady v. City of Detroit, 289 Mich. 499, 505, 286 N.W. 805, 807 (1939):

> A statute will be presumed to be constitutional by the courts unless the contrary clearly appears; and in case of doubt every possible presumption not clearly inconsistent with the language and subject matter is to be made in favor of the constitutionality of legislation . . . . [I]t is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.

See also text accompanying note 19 *supra*.

26. MICH. ATTY. GEN. OP., March 9, 1971.

27. *See* note 1 *supra*.

28. ANN ARBOR, MICH., CITY CODE tit. IX, ch. 108, § 9:62(29) (1972), set out in note 1 *supra*.

29. People v. Sinclair, 387 Mich. 91, 130-31, 194 N.W.2d 878, 895 (1972) (concurring opinion).

30. *See* J. KAPLIN, MARIJUANA: THE NEW PROHIBITION 33-36, 39-40 (1970); H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 340-41 (1968); Note, *Possession of Marijuana in San Mateo County: Some Social Costs of Criminalization*, 22 STAN. L. REV. 101, 118-21 (1968).

protection.[81] This attitude could diminish community cooperation with the police in other, perhaps more critical, areas of police work. By reducing the marijuana penalties, the City has de-emphasized the offense, a result of which could not only be an improvement in police-community relations but also a reordering of enforcement priorities and a reallocation of police resources to more serious criminal activities. The ordinance may have been enacted in response to a growing lack of respect for the legal system among young people who believe that the marijuana prohibition is discriminatory because one class of persons is subjected to harsh criminal sanctions for the use of one recreational drug, marijuana, while another class of persons has general approval for the use of alcohol, another recreational drug.[82] By reducing the stigma, the inconvenience, and the financial cost of a marijuana conviction, the City can claim to be minimizing a cause of citizen disrespect for the law and its processes.[83]

There are, on the other hand, arguments for viewing marijuana regulation as a matter of statewide concern. The State can claim that Ann Arbor is not unique, that marijuana use in Ann Arbor is no less contrary to an expressed state policy than it is anywhere else in the State, and that uniform enforcement of state laws regulating the

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81. *See* authorities cited in note 80 *supra*. These local interests might satisfy the "peculiar circumstances" test that the court applied under the township statute if the court chose to extend this test to the "municipal concern" question under the home-rule provision of the constitution. *See* note 22 *supra*.

82. In a concurring opinion in People v. Sinclair, 387 Mich. 91, 105-15, 194 N.W.2d 878, 881-87 (1972), Justice Swainson marshalled numerous studies and reports in a carefully documented comparison between the effects of marijuana and alcohol. Relying on THE INTERIM REPORT OF THE CANADIAN GOVERNMENT COMMISSION OF INQUIRY, THE NON-MEDICAL USE OF DRUGS 116-17, 122-23 (1970) [hereinafter CANADIAN COMMISSION]; L. GRINSPOON, MARIJUANA RECONSIDERED 39-61 (1971); J. KAPLIN, *supra* note 80, at 139-41; PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13-14, 25 (1967); REPORT BY THE ADVISORY COMMITTEE ON DRUG DEPENDENCE 12-13, 16, 20-21 (1968) (British Report); Bonnie & Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1105-07 (1970), he concluded that marijuana is not addictive, does not lead to the use of "hard" drugs, does not lead to violent crimes by the user, does not adversely affect psychomotor response (*e.g.*, driving abilities), and has no adverse physical effects on the user. Citing the CANADIAN COMMISSION at 43, 70-72, J. KAPLIN at 275-320, and the PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: DRUNKENNESS 35 (1967), he observed that alcohol, by comparison, is shown to be addictive, is clearly linked with the commission of violent crimes, and excessive use is associated with death of brain cells, mental deterioration, and cirrhosis of the liver.

83. However, it is arguable that the very coexistence of two distinct penalty schemes applicable to the same conduct will in itself cause people to view the legal policies underlying the prohibition as somewhat schizophrenic. In addition, the local interests that Ann Arbor asserts may be different from the interests of the rest of the State only as a matter of degree due to the fact that there is a greater concentration of young people in Ann Arbor because of the presence of the University. This may suggest that the limitation of marijuana offense penalties is really a matter of statewide concern which is simply more aggravated in Ann Arbor.

use of drugs is appropriate because of the statewide nature of the problem. By providing a shelter for marijuana violators, Ann Arbor may impede the ability of the State to suppress drug traffic throughout the State. This last danger, however, will be minimized to the extent that the City exercises its retained discretion to accede to prosecution of "traffickers" under state law.[84] Moreover, no reason appears why Ann Arbor's interest need be unique to justify control over a matter of great local significance.

Under the suggested balancing approach, it would appear that there are legitimate local interests furthered by the Ann Arbor marijuana ordinance which may be sufficient to prevail over the state interests involved. Thus, the Ann Arbor marijuana ordinance is capable of meeting the constitutional requirement of relation to a "municipal concern." The Michigan courts, however, have not expressly engaged in balancing in their treatment of the "municipal concern" issue, but perhaps have merged these policy considerations into their analysis of pre-emption and conflict.[85] Indeed, the Michigan courts have decided the vast majority of the cases dealing with municipal ordinances without ever mentioning the municipal concern requirement. The courts routinely uphold convictions under local ordinances, the implication being that such ordinances are valid exercises of the local police power, and the breadth accorded the concept of municipal concern has rendered this constitutional requirement somewhat ineffective as a limitation of the exercise of municipal powers. This is not to suggest that such powers are unlimited. Rather, the Michigan courts have generally chosen to impose the appropriate limits on local authority by invoking the doctrines of pre-emption and conflict.

In light of Michigan's broad judicial interpretation of the municipal concern clause, it becomes apparent that there are many areas where both the municipalities and the State can exercise legitimate control. One check upon local power is the doctrine of pre-emption. As with the municipal concern requirement, the pre-emption doctrine has its basis in the home-rule provision of the Michigan constitution.[86] Since the home-rule powers are subject to the constitution and general laws of the State, the courts have held that when the state legislature has intended to pre-empt the field in a given area, any local attempts at additional regulation in that area are void. When the legislature has manifested the necessary intent, pre-emption occurs regardless of whether the local ordinance complements or is contradictory to the statute.

In Michigan, the determination of legislative intent is of necessity

84. *See* notes 78-79 & 102-08 *infra* and accompanying text.

85. *See, e.g.*, Walsh v. City of River Rouge, 385 Mich. 623, 189 N.W.2d 318 (1971).

86. MICH. CONST. art. 7, § 22, set out in text accompanying note 13 *supra*.

made without the benefit of any recorded legislative history, and proceeds essentially on the basis of other guides to statutory interpretation. Thus, the nature and extent of the inquiry pursued by the courts in determining the legislative intent has varied considerably. In *Walsh v. City of River Rouge*,[37] the Michigan supreme court engaged in a thorough analysis of the state legislation. *Walsh* involved a Michigan statute granting emergency powers to the Governor, and a city ordinance granting similar powers to the mayor. Since the statute itself provided for discretionary grants of emergency power by the Governor to mayors, the court reasoned that the legislature intended that such powers be withheld from mayors absent a specific gubernatorial delegation thereof. Consequently, the statute was considered to embody a "legislative intent to lodge exclusive powers in the Governor, thereby pre-empting the field from local governments,"[38] thus rendering the ordinance void.

In *Richards v. City of Pontiac*,[39] the Michigan supreme court also found a state statute to be pre-emptive, but did so without the benefit of the forceful reasoning found in *Walsh*. The *Richards* court considered whether the Michigan legislature, in passing a trailer park act, had intended to pre-empt the field, rendering ultra vires a municipal attempt at additional control. The court described the provisions of the act, and, citing nothing more than the comprehensive nature of the statute and its general application throughout the State to cities as well as rural areas, stated in conclusory fashion that its "intent and purpose is to take over the entire field of regulation and supervision of trailer parks in the State."[40] The reasoning of the court is not entirely persuasive, for the factors cited by the court do not compel the conclusion that the legislature intended to occupy the field and preclude concurrent municipal regulation.

In other cases the Michigan courts have attached considerable significance to the presence or absence of express language reserving exclusive control in the legislature. In *Noey v. City of Saginaw*,[41] a city ordinance placed more restrictive closing hours on taverns than those provided for by statute. The Michigan supreme court held the ordinance void, noting that the State reserved, by legislative provision, " 'the sole right, power and duty to control the alcoholic beverage traffic . . . within the State.' "[42]

The court mentioned the absence of such an express statement of

37. 385 Mich. 623, 189 N.W.2d 318 (1971).

38. 385 Mich. at 635, 189 N.W.2d at 324.

39. 305 Mich. 666, 9 N.W.2d 885 (1943).

40. 305 Mich. at 672, 9 N.W.2d at 888.

41. 271 Mich. 595, 261 N.W. 88 (1935).

42. 271 Mich. at 598, 261 N.W. at 89, *quoting* what is now MICH. COMP. LAWS ANN. § 436.1 (1967).

legislative pre-emptive intent in upholding a city ordinance in *Miller v. Fabius Township Board*.[43] A city ordinance there imposed more restrictive hours on water skiing than those imposed by the state power-boating statute. Without any extensive analysis of the statute, the court found that the legislature "certainly" did not intend to pre-empt the field, and, furthermore, had they so intended, the legislature "could have expressly stated pre-emptive control."[44] It may be suggested that the absence of express language establishing pre-emptive intent was not the sole controlling factor in *Miller*, since the court on other occasions has declined to find significance in such a legislative omission.[45] The court's conclusion that the legislature did not intend pre-emption may have been influenced by its view that "the ordinance was enacted to prevent the many dangers and alleviate the congested local conditions that existed on Pleasant Lake."[46] In this respect it is worth noting that the Michigan supreme court in *Walsh* expressly stated that the "legal question" of pre-emption would be resolved "against [the] background of competing policy considerations."[47] Thus, this brief survey of Michigan case law demonstrates that in the absence of a readily discernible legislative intent the Michigan courts retain great flexibility in handling the pre-emption issue.

Turning to a consideration of the Ann Arbor marijuana ordinance, the question for determination is whether the Michigan legislature intended to pre-empt the field of marijuana control by passage of the Controlled Substances Act of 1971.[48] Certain factors do militate toward a finding of pre-emptive intent. First, the Act is very comprehensive in scope—marijuana is only one of many drugs regulated by the statute—and this factor was deemed relevant in *Richards*. Second, the argument that the State has an interest in the uniform application of its drug laws might suggest a presumption that the legislature intended exclusively to control marijuana-related activities.

While these considerations have merit, a reading of the Act and other factors indicate an absence of legislative pre-emptive intent. First, there is no provision in the Controlled Substances Act reserving exclusive control in the "administrator" of the Act.[49] In a rather

43. 366 Mich. 250, 114 N.W.2d 205 (1962).

44. 366 Mich. at 258, 114 N.W.2d at 208.

45. *See, e.g.*, Walsh v. City of River Rouge, 385 Mich. 623, 189 N.W.2d 318 (1971); Richards v. City of Pontiac, 305 Mich. 666, 9 N.W.2d 885 (1943).

46. 366 Mich. at 258, 114 N.W.2d at 208.

47. 385 Mich. at 634-35, 189 N.W.2d at 324.

48. MICH. COMP. LAWS ANN. §§ 335.301-.367 (Supp. 1972).

49. "'Administrator' means the state board of pharmacy or its designated or established authority." MICH. COMP. LAWS ANN. § 335.303(2) (Supp. 1972). The Act does vest discretion in the administrator to reclassify or delete controlled substances from the

analogous type of legislation, the Michigan Liquor Control Act of 1933,[50] the legislature provided for the creation of the liquor control commission,[51] and provided also that "the commission shall have the sole right, power and duty to control the alcoholic beverage traffic . . . within the state of Michigan."[52] The omission of such a clause from the Controlled Substances Act may suggest the absence of a legislative intent to pre-empt concurrent local regulation,[53] as the Michigan supreme court noted in *Miller*. Second, section 44 of the Controlled Substances Act provides: "Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law."[54] While this provision was presumably not drafted in contemplation of concurrent munipical control, it nonetheless makes clear that the Act does not contemplate pre-emption of *all* additional regulation and penalties.[55]

The brief survey and analysis of Michigan cases such as *Walsh* and *Miller* establish the principle that absent clearer indications of legislative intention, policy considerations properly may be raised in support of the Ann Arbor marijuana ordinance in response to a pre-emption challenge. This principle is not inconsistent with the fact that legislative intent is the touchstone of pre-emption. The Michi-

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proscriptions of the Act on the basis of such factors as the state of the scientific knowledge, patterns of abuse, and risk to the public health. MICH. COMP. LAWS ANN. § 335.311 (Supp. 1972). Such a broad grant of discretionary power might evidence a legislative intention of providing sufficient flexibility to obviate the necessity of local regulation.

50. MICH. COMP. LAWS ANN. §§ 436.1-.58 (1967). The two laws are parallel in many respects. Both the Controlled Substances Act and the Liquor Control Act regulate and control the availability of substances which are prone to abuse and which possess habit forming characteristics. Both Acts provide for licensing distributors (MICH. COMP. LAWS ANN. §§ 335.332 (Supp. 1972), 436.17-.28 (1967)), regulation of labeling (MICH. COMP. LAWS ANN. §§ 335.331 (Supp. 1972), 436.46-.46a (1967)), revocation of licenses (MICH. COMP. LAWS ANN. §§ 335.334 (Supp. 1972), 436.20-.21, 436.51 (1967)), and for programs to combat abuse of the substances (MICH. COMP. LAWS ANN. §§ 335.358 (Supp. 1972), 436.47a (1967)).

51. MICH. COMP. LAWS ANN. § 436.5 (1967).

52. MICH. COMP. LAWS ANN. § 436.1 (1967).

53. The Michigan Legislature is not hesitant to include pre-emptive clauses in legislation. The Liquor Control Act is but one example. The uniformity provision of the state motor vehicle code, MICH. COMP. LAWS ANN. § 257.605 (1967), reads:

> The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter.

This clause does permit concurrent regulation but requires that it be strictly uniform, and it is pre-emptive of divergent local law.

54. MICH. COMP. LAWS ANN. § 335.344 (Supp. 1972).

55. On the other hand, the specific mention of civil and administrative proceedings coupled with the omission of any reference to criminal proceedings might be read as evidence of an intention to pre-empt the field of criminal regulation of controlled substances.

gan legislature, particularly in light of the recent enactment in 1971 of the Controlled Substances Act, must have been aware of the competing policies that were outlined above in the discussion of municipal concern[56] and surely acted to promote what was deemed, on balance, sound policy.

It was suggested above that the municipality's interest in encouraging respect for the law and its processes, in providing responsive and efficient local government, and in maintaining a healthy level of autonomy outweigh the State's interest in uniform control of marijuana-related activities. What a court would view as the probable legislative judgment in balancing these factors may affect the determination of the pre-emption issue. Significantly, to the extent that municipal ordinances benefit from a presumption of constitutionality,[57] a court should require substantial evidence that establishes pre-emptive legislative intent to void the Ann Arbor marijuana ordinance.

In areas not pre-empted by the State, "the 'rule' has long been recognized that municipalities are not divested of all control even where the legislature has enacted laws."[58] If the Controlled Substances Act was not intended to be pre-emptive, the Ann Arbor marijuana ordinance would be allowed to stand unless the provisions of the ordinance are in conflict with those of the statute.[59] The conflict principle is again based upon the constitutional home-rule provision, specifically the limiting phrase "subject to the constitution and law."[60] The words "subject to" have consistently been given the judicial construction of "not in conflict with,"[61] and the general rule succinctly states that "if a city ordinance prohibits something which a State statute permits, or vice versa, there is a conflict and the State law must prevail."[62] The "vice versa" suggests, of course, the existence of a conflict when a city ordinance permits conduct

56. *See* notes 26-35 *supra* and accompanying text.

57. *See* note 25 *supra* and accompanying text.

58. Miller v. Fabius Twp. Bd., 366 Mich. 250, 257, 114 N.W.2d 205, 208 (1962).

59. It should be noted that the courts have not always drawn bright lines between their analytical treatment of the conflict and pre-emption issues. *See, e.g.*, Noey v. City of Saginaw, 271 Mich. 595, 261 N.W. 88 (1935). In Miller v. Fabius Twp. Bd., 366 Mich. 250, 258, 114 N.W.2d 205, 208-09 (1962), however, the court expressly engaged in a two-step process, reaching the conflict issue only after deciding that the ordinance was not pre-empted by the statute.

60. MICH. CONST. art. 7, § 22, set out in text accompanying note 13 *supra*.

61. *See, e.g.*, People v. Pickett, 339 Mich. 294, 63 N.W.2d 681 (1954); Conroy v. City of Battle Creek, 314 Mich. 210, 22 N.W.2d 275 (1946); People v. Sell, 310 Mich. 305, 17 N.W.2d 193 (1945); Noey v. City of Saginaw, 271 Mich. 595, 261 N.W. 88 (1935); People v. McGraw, 184 Mich. 233, 150 N.W. 836 (1915).

62. Builder's Assn. v. City of Detroit, 295 Mich. 272, 277, 294 N.W. 677, 679 (1940). *See also* City of Grand Haven v. Grocer's Co-operative Dairy, 330 Mich. 694, 48 N.W.2d 362 (1951); Richards v. City of Pontiac, 305 Mich. 666, 9 N.W.2d 885 (1943); National Amusement Co. v. Johnson, 270 Mich. 613, 259 N.W. 342 (1935).

prohibited by statute. Traditional conflict issues come most clearly into focus when both a city and the State act to regulate the same realm of activity with laws containing similar, though not identical, prohibitive provisions. At what point does permissible concurrent regulation become unconstitutional conflict and contravention? The Michigan supreme court has noted that the question is "difficult of solution, and cannot be determined by any fixed rule. Each particular case must be determined as it arises."[63]

This approach has hindered the development of any cohesive rubric, and analysis of the case law reveals a certain lack of harmony among the decisions. In *People v. McDaniel*,[64] the Michigan supreme court considered a municipal ordinance that prohibited the use of motor boats having engines of greater than five horsepower on a local lake. The State of Michigan had also legislated to control power boating, and required, *inter alia*, that power boats be equipped with specified sound control devices. Although the court acknowledged the municipal concern in eliminating the excessive disturbance to lakeshore residents caused by the larger power boats, the court held that the ordinance did in fact prohibit that which the statute permitted, and was consequently void.

An ordinance alleged to be in conflict with an amendment to the same power-boating statute was the object of the court's attention in a more recent case, *Miller v. Fabius Township Board*.[65] It was contended that an ordinance prohibiting water skiing between the hours of four p.m. and ten a.m. was in conflict with a section of the statute that prohibited water skiing during the period one hour after sunset until one hour before sunrise. Under the reasoning of *McDaniel* it would indeed seem that the ordinance prohibited that which the statute permitted, thus rendering the ordinance void. The Michigan supreme court, however, found that since the statute was not intended to be pre-emptive[66] and the field was amenable to additional regulation by the municipality, the town could properly prohibit that which the statute did not *expressly* permit.[67] This appears to be a more liberal view of the scope of permissible municipal authority than that envisioned in *People v. McDaniel*, which was cited by the dissent but ignored by the majority in *Miller*. Although *McDaniel* was not expressly overruled in *Miller*, the two cases are not easily reconciled. *Miller* may therefore suggest an increasing judicial sensitivity to the special concerns of municipalities.

63. National Amusement Co. v. Johnson, 270 Mich. 613, 616, 259 N.W. 342, 343 (1935).

64. 303 Mich. 90, 5 N.W.2d 667 (1942).

65. 366 Mich. 250, 114 N.W.2d 205 (1962).

66. *See* text accompanying notes 43-46 *supra*.

67. 366 Mich. at 258, 114 N.W.2d at 208-09.

While *Miller* and *McDaniel* treat the conflict issue as it relates to conflicting substantive provisions, it should be noted that in the case of the Ann Arbor marijuana ordinance, the question of conflict, if any, is more subtle. Since both the statute and ordinance provide some sanction for essentially similar conduct, it would not appear that a conflict arises within the literal terms of the general rule: The ordinance, while providing a different and lesser penalty, does not literally permit what the statute prohibits. On the other hand, it is arguable that the significantly lesser penalty of the ordinance conflicts with the legislative policy of the statute by implicitly condoning conduct which is prohibited by the statute and thereby undermining the statute's deterrent effect.[68] This conflict of policy, however, may be more appropriately dealt with under the municipal concern balancing approach or under the pre-emption doctrine.

It is significant that the Ann Arbor marijuana ordinance makes punishable as a misdemeanor certain offenses that are considered felonies under the statute. For example, selling or giving away marijuana is a misdemeanor under the ordinance, while "delivery" is a felony under the statute.[69] In some jurisdictions changing the classification of an offense from a felony to a misdemeanor might be conclusive evidence of a conflict.[70] Michigan does not adhere to this rule. Michigan courts have held that "a felony in this State is distinguishable from a misdemeanor as a grade of crime *only* by reason of the place and severity of punishment."[71] It could be argued that even this variation in degree creates a conflict sufficient to invalidate the ordinance. However, the Michigan supreme court's treatment of a case similar to that presented by the concurrent regulation of marijuana indicates that at least in certain instances an ordinance will be upheld despite the fact that it provides lesser penalties for conduct than the applicable state law.

The early case of *People v. Hanrahan*[72] dealt with concurrent regulation of prostitution by the City of Detroit and the State. Significantly, *Hanrahan* upheld a city ordinance that made punishable as a misdemeanor an offense that the State made punishable as a felony. The defendant was convicted under a city ordinance that prohibited keeping a house of ill fame, and that provided for a fine

68. *See* Note, *supra* note 4, at 748.

69. *See* notes 1-2 *supra*. While MICH. COMP. LAWS ANN. § 335.341 (Supp. 1972) makes delivery a felony, § 335.46(2) provides that noncommercial distribution without remuneration and not to further a commercial purpose is only a misdemeanor.

70. *See, e.g.*, City of Cincinnati v. Coy, 182 N.E.2d 638 (Ohio Ct. App. 1962); Hanbury v. Commonwealth, 203 Va. 182, 122 S.E.2d 911 (1961); City of Fort Worth v. MacDonald, 293 S.W.2d 256 (Tex. Civ. App. 1956).

71. People v. Beasley, 370 Mich. 242, 246, 121 N.W.2d 457, 459 (1963) (emphasis added).

72. 75 Mich. 611, 42 N.W. 1124 (1889).

not to exceed 500 dollars, or imprisonment for up to six months or until such fine was paid. A statute barring similar and related conduct provided for a fine not to exceed 1,000 dollars or imprisonment for not more than five years, or both. In affirming the validity of the ordinance, the Michigan supreme court addressed itself to arguments relevant to the instant problem of marijuana control. The court first noted the argument for statewide uniformity of the criminal laws

> that it is the province of the legislature to declare what shall constitute crime, and to prescribe punishment therefore; that an offense against the criminal laws of the State is the same offense in whatever locality it is committed, and should subject the offender to the same punishment.[73]

The court rejected this argument, finding such contentions "not fundamental,"[74] and noting that the legislature might make certain acts criminal and punishable as felonies in some parts of the State while those same acts, if done in different sections of the State, would not be criminal at all.[75] The court expressed no dismay that municipalities could achieve the same result through the delegated lawmaking powers.

A second argument confronted by the court raised the prospect that this authority for local control, "carried to its logical results, would authorize each township in the State, and each county to have its own code of criminal laws, differing from the others."[76] The court responded to this approach by reasoning that although the legislature has the responsibility to determine what shall constitute a crime and how it shall be punished, a portion of this responsibility and authority was necessarily delegated to municipalities in order that they might implement their mandate to protect the health, morals, welfare, and good order of their communities.[77] The court conceded

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73. 75 Mich. at 617, 42 N.W. at 1126.

74. 75 Mich. at 617, 42 N.W. at 1126.

75. 75 Mich. at 617-18, 42 N.W. at 1126.

76. 75 Mich. at 618, 42 N.W. at 1126.

77. 75 Mich. at 618, 42 N.W. at 1127. *See also* Feek v. Township Bd., 82 Mich. 393, 411-12, 47 N.W. 37, 40 (1890):

> [E]specially is it true where the constitution authorizes a delegation of legislative power for local purposes—the legislature may suspend, or authorize legislation which will necessarily operate to suspend, the general law in particular localities. The principle is a recognition of the right of local self-government. One locality may feel the need of different local regulations from another. The wants of a majority of its electors are respected in granting to the local municipality the power to enact such laws relating to their internal affairs as the feelings and wishes of the majority demand.

Feek, like *Hanrahan*, antedates the passage of the Home-Rule Act, yet its language concerning "delegation of legislative power for local purposes" becomes more significant in light of the subsequent enactment. The local police powers noted in *Hanrahan*, which gained statutory support in the Home-Rule Act (*see* notes 15-19 *supra*

the possibility of internecine strife and bitterness caused by arbitrary and inconsistent criminal laws in neighboring communities, but denied that any real likelihood of such a situation was present. The court also reasoned that

> [if such abuse of the local power] should be attempted, and result in wrong or oppression to the people, the remedy is in their hands. The legislators are chosen by them, and it is in their power to effect any needed reform.[78]

The *Hanrahan* case is not without weaknesses as precedent for similar resolution of a "conflict" problem in the home-rule context. *Hanrahan* was decided in 1889, well before the 1908 passage of the Michigan Home-Rule Act. The special charter passed by the legislature for the City of Detroit specifically authorized the City to act to " 'prohibit, prevent, and suppress the keeping and leasing of houses of ill fame.' "[79] The general conflicts rule that the city cannot permit what the statute prohibits is applicable "in the absence of specific statutory or charter power in the municipality."[80] Certainly *Hanrahan* could be distinguished on this ground. Nevertheless, the rationale underlying the court's holding seems to be based upon the general authority that the legislature delegated to municipalities to act in protection of the public order, health and welfare; the very same authority that was later embodied in the Home-Rule Act. The Michigan court has not felt constrained to limit the principles of *Hanrahan* to ordinances suppressing prostitution, but rather has recognized the breadth of its holding by citing it in support of local control in diverse areas.[81] The reasoning in *Hanrahan* supports later Michigan decisions that deal with the scope of municipal control after the passage of the Home-Rule Act:

> The [Home-Rule Act] was passed in obedience to a mandate of . . . the Constitution . . . . The new system is one of general grant of rights and powers, subject only to certain enumerated restrictions, instead of the former method of only granting enumerated rights and powers definitely specified.[82]

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and accompanying text), would be ineffective without the concomitant power to enact ordinances for their enforcement.

78. 75 Mich. at 619, 42 N.W. at 1127.

79. 75 Mich. at 614, 42 N.W. at 1125 *quoting* Local Acts of 1885, ch. 7, § 47, at 611.

80. National Amusement Co. v. Johnson, 270 Mich. 615, 616, 259 N.W. 342, 343 (1935).

81. People v. Drost, 353 Mich. 691, 91 N.W.2d 851 (1958) (regulation of traffic offenses); Eanes v. City of Detroit, 279 Mich. 531, 272 N.W. 896 (1937) (regulation of barber shops); Brennan v. Recorder of the City of Detroit, 207 Mich. 35, 173 N.W. 511 (1919) (control of city streets); City of Alma v. Clow, 146 Mich. 443, 109 N.W. 853 (1906) (licensing of hawkers and peddlars); People v. Detroit White Lead Works, 82 Mich. 471, 46 N.W. 735 (1890) (public nuisance); Feek v. Township Bd., 82 Mich. 595, 47 N.W. 57 (1890) (liquor laws).

82. Gallup v. City of Saginaw, 170 Mich. 195, 199-200, 135 N.W. 1060, 1062 (1912).

The general grant of powers described in this passage suggests the same need for latitude in local action that *Hanrahan* endorses.

To the extent that *Hanrahan* remains viable, it suggests that a reduction in the class of offense from felony to misdemeanor does not create a fatal conflict. The social and political policies that underlie Michigan's determination to allow home-rule cities wide latitude in the control of their affairs are no less persuasive when the city makes a state felony punishable as a misdemeanor. Therefore, it is suggested that the Ann Arbor marijuana ordinance does not create a constitutionally significant conflict with the Controlled Substances Act.

Given the present concurrent city and state regulation of marijuana-related offenses, the question remains whether impermissible discretion is vested in the Ann Arbor City Attorney. The City of Ann Arbor is without power to pre-empt or suspend the operation of the state law within her city limits. Thus, the Ann Arbor City Attorney recognizes the continuing validity of the statute in Ann Arbor, and may refer marijuana offenders to the Washtenaw County Prosecutor for disposition under the state law. While the city Attorney's Office has declined to specify the criteria for such a decision, stating that the problem is dealt with on a case-by-case basis, it has been indicated that the quantity of marijuana involved is one relevant factor.[83] Significantly, the previous Ann Arbor marijuana ordinance, which was superseded by the present ordinance, provided that "it shall be a violation of this code to give away or sell marijuana or cannabis, as so defined, not for profit and not as part of a commercial distribution."[84] Although this distinction was not included in the present ordinance, the mayor's office[85] has indicated that it was the Council's understanding in passing the present law, that the commercial or noncommercial nature of the offense be considered before deciding whether or not to defer to county prosecution.

The present procedure may be simply described: Enforcement

See People v. Sell, 310 Mich. 305, 312-13, 17 N.W.2d 193, 195 (1945):

> A reading of the home-rule act shows that it is rather comprehensive in its provisions as to what the city may or may not incorporate in its charter, but it leaves many things to be implied from the power conferred. . . . The purpose of the legislative enactment was to give the city a large measure of home rule . . . . Considering its purpose, it should be construed liberally and in a home rule spirit.

See also Village of Kingsford v. Cudlip, 258 Mich. 144, 148, 241 N.W. 893, 894 (1932): "The provision for a general law for their incorporation was intended to confer upon them almost exclusive rights in the control of their affairs, not in conflict with the Constitution or general laws applicable thereto.

83. Interview with Jerold Lax, Ann Arbor City Attorney. *See* note 108 *infra*.

84. Ord. 4-71, adopted March 8, 1971, *as amended*, ANN ARBOR, MICH., CITY CODE, tit. IX, ch. 108, § 9:62(29) (1972).

85. Interview with Robert J. Harris, Mayor of Ann Arbor.

within the city limits is handled almost exclusively by the Ann Arbor Police Department.[86] When the infrequent arrest is made by the Washtenaw County Sheriff's Department or by the State Police, the person arrested is invariably turned over to the Prosecutor's Office for prosecution under the statute,[87] for the Sheriff's Department and the State Police have no mandate to enforce city law. After an arrest has been made by the Ann Arbor Police for a marijuana offense, the case is given to the City Attorney, who decides whether to prosecute under the ordinance or to transfer the case to the County Prosecutor.[88] Although city police can bring persons under their arrest to the Prosecutor for authorization to prosecute, they uniformly bring marijuana cases to the City Attorney, in accordance with an established, though unwritten, department procedure.[89] Thus, in practice the discretion rests with the City Attorney, and not with the arresting officers.

It is common for a prosecuting officer to be faced with different statutes or ordinances under which he could prosecute a given case, and the law recognizes the propriety of such prosecutorial discretion. As Judge, now Chief Justice, Burger observed in his concurring opinion in *Hutcherson v. United States*:[90]

> The functions of a prosecutor afford examples of a wide variety of powers to "select" the punishment in the sense argued by appellant, and to select the forum. One is seen in the situation where the prosecutor in one jurisdiction elects to yield prosecution of an accused for an offense to a jurisdiction which has capital punishment not available in the waiving jurisdiction. Similarly a prosecutor may elect to prosecute or not to prosecute, or to indict for greater rather than lesser included offenses on facts which reasonably support either.[91]

86. Since the ordinance has been in effect, there has been one arrest by authorities other than the Ann Arbor Police. In that case a city resident called the State Police to report that his neighbor was cultivating marijuana. The State Police responded and made an arrest. Interview with Washtenaw County Prosecutor's Office.

87. Lax Interview, *supra* note 83.

88. *Id.*

89. Interview with Harold Olson, Ann Arbor Deputy Chief of Police.

90. 345 F.2d 964 (D.C. Cir. 1965).

91. 345 F.2d at 970 n.5. Judge Burger continued: "The record before us shows that the Attorney General has promulgated standards for the guidance of United States Attorneys in the exercise of their discretion in narcotics prosecutions." Judge Bazelon (concurring in part and dissenting in part) quoted the following portion of sections 86.2-.3 of the United States Attorney's Manual:

> "The principal object of enforcement is . . . to prosecute the importers, dealers and traffickers . . . . The emphasis should be on prosecutions of the sellers or purveyors, particularly those who deal with minors, and not the mere addict possessors . . . . [C]riminal prosecutions of [addicts] in some instances may be justified so as to compel an addict to undergo complete [rehabilitative] treatment. . . . [P]rosecutions for such minor offenses which are considered to be local in character may well be and often are left to the state or local authorities. Not falling within such minor category are cases against persons, whether addicts or not, who engage in the importation or transportation or are in possession of these drugs under cir-

The decision that confronts the Ann Arbor City Attorney under the dual prohibitions of the statute and the ordinance is analogous to that faced by the prosecutor who waives jurisdiction to a state that has capital punishment.

Michigan law shares the acceptance of this discretion vested in the prosecutor's office. In *Murphy v. Weideman*[92] a defendant was first charged with driving without an operator's license in his possession, in violation of a local ordinance. The charge was dismissed by the judge, and a complaint was issued under a state statute that prohibited essentially the same conduct. Defendant, convicted under the statute, then contended on appeal that he should have been tried under the ordinance. The court found the contention to be without merit, noting that the defendant "had no vested right to be tried under the ordinance," since "[t]he prosecution might have been brought in the first instance under the statute . . . ."[93]

A different situation was presented in *People v. Lombardo*,[94] where the defendant was prosecuted under a statutory felony, aiding and abetting the keeping of a house of prostitution, rather than under a misdemeanor statute that prohibited admitting any person into a building for the purpose of prostitution. Whereas the alternative laws in *Murphy* proscribed the same conduct, the two statutes in *Lombardo* proscribed different conduct. The *Lombardo* court reached a similar result, however, holding that "[p]rosecuting officers have the right to use their discretion in determining under which of applicable statutes a prosecution shall be instituted."[95] Although the result in *Murphy* is inconsistent with a requirement that the two laws available to a prosecutor must contain different sub-

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cumstances reasonably indicating that the drugs were intended for use in the illegal traffic."

345 F.2d at 975.

The standards that justified the exercise of prosecutorial discretion in *Hutcherson* are similar to those employed by the Ann Arbor City Attorney. Both consider the quantity of drugs involved, and the commercial or noncommercial nature of the offense. Neither office has seen fit to specify quantitative criteria upon which discretion is exercised. Significantly, discretion is justified in *Hutcherson* even though such discretion came very close to a sentencing type decision. By electing to proceed under one statute, the prosecutor in *Hutcherson* subjected the defendant to a more severe minimum sentence. This would not normally be the case with the discretion exercised by Ann Arbor's City Attorney, since the Controlled Substances Act provides no minimum sentences for first offenders. With multiple offenders, however, the situation would more closely parallel that of the *Hutcherson* case. The court has discretion to place a first offender on probation and may discharge such a person without an adjudication of guilt if he fulfills the conditions of his probation but may not do so with a person who has been previously convicted under the Act or under any federal or state law relating to narcotic drugs. MICH. COMP. LAWS ANN. § 335.347(1) (Supp. 1972).

92. 340 Mich. 193, 65 N.W.2d 320 (1954) (The case appears under the title Recorder's Court Presiding Judge v. Third Judicial Circuit Judge in *Michigan Reports*.)

93. 340 Mich. at 199, 65 N.W.2d at 322.

94. 301 Mich. 451, 3 N.W.2d 839 (1942).

95. Mich. at 453, 3 N.W.2d at 839.

stantive elements to justify the use of discretion, and the *Lombardo* court does not expressly mention this as a basis for its holding,[96] there are Michigan cases suggesting that the discretion is improper if the prosecutor can choose between laws with identical substantive provisions and varying penalties.[97]

For example, in *People v. Ryan*,[98] the defendant was convicted of a felony, voluntarily driving away the motor vehicle of another. The defendant contended on appeal that another statute made identical conduct a misdemeanor, and that the asserted difference in punishment for the same crime rendered the discretion vested in the prosecutor an unconstitutional delegation of authority to a nonjudicial officer. Significantly, the felony statute required the element of scienter, which was expressly discarded in the misdemeanor statute.[99] The court upheld the conviction, stating: "Since there is a distinction between the aforementioned statutes, it follows that the prosecutor had a right to use discretion in determining under which of applicable statutes a prosecution shall be instituted."[100] Thus, in *Ryan* the prosecutor's discretion is grounded upon the distinct elements of the available charges, whereas in *Murphy* it is not. This renders uncertain the presence of constitutional due process or equal protection when the prosecutor exercises discretion in charging either of two offenses with identical substantive elements but differing penalties.[101]

It is essential that the Ann Arbor City Attorney be vested with discretion to prosecute under the ordinance or to turn the case over to the County Prosecutor if a flexible system responsive to the dynamics of the individual cases is to develop. The Ann Arbor City

96. *See also* People v. Jackson, 29 Mich. App. 654, 185 N.W.2d 608 (1971).

97. People v. Mire, 173 Mich. 357, 138 N.W. 1066 (1912); People v. Graves, 31 Mich. App. 635, 188 N.W.2d 87 (1971); People v. Ryan, 11 Mich. App. 559, 161 N.W.2d 754 (1968).

98. 11 Mich. App. 559, 161 N.W.2d 754 (1968).

99. *Compare* MICH. COMP. LAWS ANN. § 750.413 (1967) (the felony statute) *with* MICH. COMP. LAWS ANN. § 750.414 (1967) (the misdemeanor statute).

100. 11 Mich. App. at 561, 161 N.W.2d at 755-56.

101. This uncertainty is not limited to Michigan case law. A majority of the United States Supreme Court declined to reach this issue in Berra v. United States, 351 U.S. 131 (1955), although it was considered by Justice Black in a vigorous dissent, 351 U.S. at 139-40:

> [T]wo statutes proscribe identical conduct and no "different proof" was required to convict petitioner of the felony than would have been required to convict him of the misdemeanor . . . .
>
> A basic principle of our criminal law is that the Government only prosecutes people for crimes under statutes passed by Congress which fairly and clearly define the conduct made criminal and the punishment which can be administered. This basic principle is flouted if either of these statutes can be selected as the controlling law at the whim of the prosecuting attorney or the Attorney General . . . .
>
> A congressional delegation of such vast power would raise serious constitutional questions.

Attorney, in deciding whether to prosecute a marijuana violator under the ordinance, or to turn the case over to the County Prosecutor for disposition under the statute, may or may not be presented with the availability of identical provisions depending upon the offense charged. Both the ordinance and the statute proscribe the "use" of marijuana. However, other provisions of the two laws contain different elements. For example, the ordinance states that no person shall "give away or sell"[102] marijuana, whereas the statute prohibits "delivery"[103] and "distribut[ion] . . . without remuneration and not to further commercial distribution."[104] Prosecution may be brought under the statute for constructive delivery,[105] whereas a constructive sale or gift is not expressly prohibited by the ordinance. This distinction could justify a decision by the prosecuting officer to let the case proceed under the statute, since this course could increase the likelihood of success in cases involving the more complex forms of delivery. There is another variation: whereas the marijuana ordinance prohibits simple possession, the statute makes it unlawful for one "knowingly or intentionally"[106] to possess a controlled substance. The statutory element of *scienter*, absent from the ordinance, might distinguish the two offenses and thereby justify prosecutorial discretion even under the *Ryan* requirement of different elements in the available charges. Significantly, it is in the "use" cases that the two laws are most similar. Therefore, the exercise of prosecutorial discretion in a "use" case would be most susceptible to attack under the *Ryan* standard. Yet, in such cases the City Attorney, under the criteria noted above,[107] has the least margin for discretion: The simple "use" cases are those which are most likely to be dealt with under the ordinance, since they would typically involve an insignificant amount of marijuana in a noncommercial setting.[108]

The discussion of the differing elements of the municipal and statutory marijuana offenses also pertains to the issue of double jeopardy. Specifically, if a person is convicted or acquitted of a marijuana offense under the Ann Arbor ordinance, can he then be prosecuted for the same criminal behavior under the Controlled Sub-

102. ANN ARBOR, MICH., CITY CODE, tit. IX, ch. 108, § 9.62(29) (1972), set out in note 1 *supra*.

103. MICH. COMP. LAWS ANN. § 335.341(1) (Supp. 1972), set out in note 2 *supra*.

104. MICH. COMP. LAWS ANN. § 335.346(2) (Supp. 1972), set out in note 2 *supra*.

105. MICH. COMP. LAWS ANN. § 335.304(1) (Supp. 1972): " 'Deliver' or 'delivery' means the actual, constructive or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship."

106. MICH. COMP. LAWS ANN. § 335.341(4) (Supp. 1972), set out in note 2 *supra*.

107. *See* text accompanying notes 83-85 *supra*.

108. Since the present Ann Arbor ordinance has been in effect, the City Attorney has prosecuted the vast majority of marijuana offenses under the ordinance. Only a few cases, all of which involved substantial quantities of marijuana, have been shifted to the Prosecutor's Office. Lax Interview, *supra* note 83.

stances Act? To prevent the State from defeating the City's purpose of lenient treatment of marijuana offenders, it is necessary that jeopardy attach to the municipal trial barring subsequent state prosecution.

The Supreme Court has held that the double jeopardy provision of the fifth amendment of the United States Constitution is applicable to the states through the fourteenth amendment.[109] The Court recently took the opportunity to consider the double jeopardy problem as it relates to successive prosecutions by a city and a state for the same offense. In *Waller v. Florida*,[110] a mural was stolen from a municipal building. The mural was subsequently recovered in a damaged condition by the police. The defendant was convicted of destruction of government property under a local ordinance. After serving his sentence, the defendant was then charged with and convicted of grand larceny under a statute. The district court of appeal upheld the conviction, disposing of the defendant's double jeopardy argument by invoking the dual sovereign doctrine.[111] This doctrine rests upon an analogy between the city-state relationship and that of a state and the federal government: Since an offense can simultaneously violate the laws of both sovereigns, both are entitled to prosecute the violator. In rejecting this argument, the Supreme Court stressed that cities are creations of the state, and derive their municipal powers and authority therefrom.[112] They are essentially subdivisions of a sovereign state, and lack the independent source of power associated with sovereigns. Thus, the Court held that

> [t]he Florida courts were in error to the extent of holding that "even if a person has been tried in a municipal court for the identical offense with which he is charged in a state court, this would not be a bar to the prosecution of such person in the proper state court."[113]

Waller changed the law in many jurisdictions,[114] but it merely served to reinforce what had long been the law in Michigan.[115]

Although *Waller* holds that a city and state cannot both prosecute a defendant for the same offense, it leaves unanswered the critical question of what constitutes the "same" offense. Michigan

109. Benton v. Maryland, 395 U.S. 784 (1969).

110. 397 U.S. 387 (1969).

111. Waller v. State, 213 S.2d 623 (1968).

112. 397 U.S. at 392-93.

113. 397 U.S. at 395, *quoting* 213 S.2d at 624.

114. Decisions of the states that appeared to treat municipalities and the state as separate sovereigns for double jeopardy purposes at the time of *Waller* are listed by the Court, 397 U.S. at 391-92 n.3.

115. People v. Hanrahan, 75 Mich. 611, 627-28, 42 N.W. 1124, 1130 (1889):

> [Where there is concurrent regulation by city and state] prosecutions may be instituted under either law, and the court that first acquires jurisdiction over the person of the accused has exclusive jurisdiction to hear, try, and determine the case; and a conviction for an offense which is the same in both laws will be a bar to a prosecution for the same offense under the other law.

courts have traditionally responded to this question by application of the "same evidence test."[116] In Michigan this test is applied "to ascertain whether the facts alleged in the second indictment would, if given in evidence, have warranted a conviction on the first."[117] Application of this test to successive prosecutions by City and State of marijuana offenses should be rather facile, and should lead to predictable results. Successive prosecutions under the "use" provisions of both laws would clearly be for the same offense, and would constitute double jeopardy. A city conviction or acquittal for "possession" should bar a later state prosecution for knowing or intentional possession, since the evidence necessary to prove the latter would warrant a conviction on the initial misdemeanor charge. Under this test, state charges of possession with intent to deliver, or of delivery itself would be barred by a prior municipal conviction or acquittal of simple possession.

There is additional protection afforded by statute:

> If, upon the trial of any person for a misdemeanor, the facts given in evidence amount in law to a felony, he shall not by reason thereof, be entitled to an acquittal of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which the trial shall be had, shall discharge the jury from giving any verdict upon such trial, and shall direct such person to be indicted for felony.[118]

Thus, for example, if a person is tried under the ordinance for violation of the possession provision and the facts given in evidence constitute delivery under the statute, such person cannot later be tried on those same facts for delivery, under the protection of both the statute and the "same evidence test." The statute is also protective in cases not covered by the Michigan "same evidence test." A person convicted of sale of marijuana under the ordinance might properly, per the "same evidence test," have then been charged under the Controlled Substances Act with possession with intent to deliver, a felony, since the facts necessary to prove possession with intent to deliver would not have warranted a conviction under the municipal "sale" provision. Since, however, in the municipal prosecution for sale, evidence sufficient to show possession with intent to deliver is likely to be presented at trial, later prosecution under the possession with intent to deliver provision would be barred by the statute.[119]

116. People v. Beverly, 247 Mich. 353, 79 N.W.2d 913 (1929); People v. Cook, 236 Mich. 333, 210 N.W. 296 (1926); People v. Compain, 38 Mich. App. 289, 196 N.W.2d 353 (1972).

117. People v. Cook, 236 Mich. 333, 335, 210 N.W. 296 (1926).

118. MICH. COMP. LAWS ANN. § 768.4 (1968).

119. *Cf.* People v. Beasley, 370 Mich. 242, 121 N.W.2d 457 (1963).

Attempting to distinguish substantively the offenses charged is but one way of evading the double jeopardy protection. Another method is to demonstrate that the first proceeding was of such a nature that jeopardy did not attach. In cases of successive prosecutions by City and State, the State might claim that jeopardy did not attach to the municipal proceeding[120] since the municipal defendant, under the Ann Arbor marijuana ordinance, is subject only to a fine.[121] If a defendant's protection against double jeopardy

120. Indeed, it has long been argued in many jurisdictions (other than Michigan) that even those municipal offenses punishable by a jail term are merely civil or petty proceedings to which jeopardy does not attach. For a brief history of this theory, see Gross, *Successive Prosecutions by City and State—The Question of Double Jeopardy*, 43 ORE. L. REV. 281 (1964). This argument is losing favor, however:

> Where once successive prosecutions by city and state could be condoned because of the insignificance of municipal punishment, today that is no longer the case. Municipal prosecutions, exercising authority unparallelled at common law, meting out penalties comparable to those imposed by higher state authority, can be considered as nothing less than prosecutions by the state itself.

Id. at 314.

The view expressed in United States v. Dickerson, 168 F. Supp. 899, 901 (D.D.C. 1958), *revd. on other grounds*, 271 F.2d 487 (D.C. Cir. 1959), that "the constitutional protection against double jeopardy . . . is applicable to all proceedings, irrespective of whether they are denominated criminal or civil, if the outcome may be deprivation of the liberty of the person" is more consonant with the policies underlying the double jeopardy clause.

121. There is presently, however, some uncertainty on this point. A local judge recently declared the penalty provision of the Ann Arbor Marijuana Ordinance unconstitutional. People v. Fuqua, No. CR-7595 (Mich. Dist. Ct., Sept. 28, 1972). The judge did not reach the critical issues of conflict, pre-emption, or municipal concern, but limited his ruling of unconstitutionality to the penalty provision. The thrust of the opinion is that the City has unconstitutionally infringed upon the court's discretion to impose sentences of up to 500 dollars and/or ninety days for violation of ordinances, in that the City has specified a five dollar fine as the only permissible penalty upon conviction under the marijuana ordinance. As authority for its finding the court cited MICH. COMP. LAWS ANN. § 117.4(i) (1967), a section of the Home-Rule Act:

> Each city may in its charter provide: for the punishment of those who violate its laws or ordinances, but no punishment shall exceed a fine of $500 or imprisonment for 90 days, or both, in the discretion of the court.

The court interpreted this statute to mean that the city exceeds its power, and intrudes into the judicial domain when it sets the penalty for violations of ordinances below the statutory maximum. The judge failed to distinguish all other Ann Arbor ordinances, *none* of which authorize a 500 dollar fine and/or a ninety day imprisonment (100 dollars and/or ninety days is the maximum provision in the Ann Arbor City Code). The judge has ruled, in effect, that all Ann Arbor ordinances are unconstitutional, and, further, that if the City is to prohibit any activity (*e.g.*, overtime parking) it must allow the local judiciary to impose punishment of up to 500 dollars and/or ninety days, in its discretion, for violations.

It is noteworthy that this issue was not raised by either of the parties, and was decided on the court's own motion. The judge also denied a city attorney the opportunity to argue the motion on the merits, although argument was heard at a later date. The court's opinion will shortly be subjected to judicial review in the circuit court, on appeal by the City.

If the district court finding is upheld, and the five dollar fine invalidated, the severability clause of the City Code would act to continue the vitality of the marijuana ordinance, and the general penalty provision of the Code (100 dollars and/or ninety days) would then apply to the ordinance, unless the general penalty provision of the Code is held unconstitutional. The provisions of the ordinance would still differ

were limited to that provided by the United States Constitution, this argument might be successful. The provision of the fifth amendment is that "nor shall any person be subject for the same offence to be twice put in jeopardy *of life and limb*."[122] The federal courts have never confronted the issue of whether jeopardy attaches to a proceeding wherein conviction is punishable only by a fine, and not by a jail sentence, and this remains an open question.[123] Michigan law, however, is more clearly protective in this situation. The double jeopardy clause of the Michigan constitution does not include the "life and limb" qualification,[124] and Michigan case law supports the principle that jeopardy attaches to municipal trials regardless of the nature or the severity of the penalty sought to be imposed: "A person is in jeopardy when he is put upon trial in a court of justice charged with a violation of law."[125] Municipal ordinances have been described as possessing the full force of law:

> An ordinance, validly enacted, prohibiting certain acts under fines, penalties, or imprisonment, is within the jurisdiction of the municipality enacting it, as much entitled to respectful obedience, and is as much the law of the land for that locality, as a law enacted by the Legislature.[126]

It thus appears that regardless of whether violation of an ordinance is punishable by a jail term or by a fine only, prosecution under an ordinance is a bar to subsequent prosecution under a statute for the same offense. Thus, the argument that jeopardy does not attach to offenses punishable only by fine should not preclude jeopardy from attaching to offenses prosecuted under the Ann Arbor marijuana ordinance.

While the matter is not free from doubt, the foregoing analysis has suggested that the Ann Arbor marijuana ordinance may be supported as a valid exercise of municipal authority, even in the face of challenges of pre-emption and conflict. Through the cooperative interaction of the municipal marijuana ordinance, the double jeopardy bar, and the City Attorney's discretion to transfer the most serious cases to the county for prosecution under the state

from those of the Controlled Substances Act, and the issues discussed herein would still be relevant to the concurrent effect of the ordinance and the statute.

122. U.S. CONST. amend. V (emphasis added).

123. This issue has assumed greater significance since *Waller* applied double jeopardy to municipal trials because it is far more likely that offenses punishable only by fine will be found in municipal ordinances rather than in the federal or state codes. The case law suggests that "life and limb" should be read broadly. *See Ex parte* Lange, 85 U.S. (18 Wall.) 163 (1873); Clawans v. Rives, 104 F.2d 240 (D.C. Cir. 1939); United States v. Farewell, 76 F. Supp. 35 (D. Alas. 1948).

124. MICH. CONST. art. 6, § 1.

125. People v. Powers, 272 Mich. 303, 307, 261 N.W. 543, 544 (1935).

126. People v. Hanrahan, 75 Mich. 611, 620, 42 N.W. 1124, 1127 (1889).

law, the City of Ann Arbor has effectively declared the following proposition: Marijuana-related offenses—which are punishable as felonies, with possible prison terms, or misdemeanors, with possible jail terms, under the state law—will in most instances be punishable only as misdemeanors subject to five dollar parking-ticket-like fines if committed within the city limits. If the ordinance is upheld in the courts, the broader implications of the power that Ann Arbor has asserted will surely prove significant.

A broad construction of the home-rule powers coupled with the application of the pre-emption and conflict doctrines only when municipalities act in contravention of a readily discernible state legislative intent would contribute a desirable, if not necessary, element of flexibility to the efficient administration of government in Michigan, a state with a broad rural constituency but with pockets of urbanization such as Detroit, Lansing, Ann Arbor, Flint, and Pontiac. Urban populations deal with different problems, are influenced by different values, and envision different priorities than their rural counterparts. One system of state law cannot always reflect or serve best the interests of both, and when such discrepancies exist it seems appropriate for local legislation to supplement state law.[127]

It is clear, however, that the obvious benefits to be derived from flexibility are gained only at the expense of some uniformity in statewide law enforcement. While there would remain a uniform application of the state law in every county of the State, the conjunctive operation of enforcement of a differing local ordinance and resultant double jeopardy bar would detract from the uniform enforcement of state law. As in the case of marijuana-related offenses, certain locally held values might lead to disrespect for the law and its processes were any number of the State's criminal prohibitions to be enforced strictly;[128] and argument can also be made that the

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127. A divergent local ordinance such as the one in question may help prompt the passage of similar state legislation. Progressive local communities, if given the freedom, can serve the function of Brandeis' famous laboratory experimenting with various socially progressive ideals of law and government. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). If such experiments prove successful, the legislature might adopt laws making such ideals the state policy. The impact of local legislation was noted by Governer Milliken in his Special Message to the Legislature on Alcohol and Drug Abuse, March 4, 1971:

> As public officials we must face squarely the need for a major revision of our laws dealing with marijuana. The hypocrisy of our present law, which falsely classifies marijuana as a narcotic, affects the credibility of our entire drug abuse program. Recent federal legislation and *the passage of local marijuana ordinances* give new urgency to the need for state action in this controversial area.

(Emphasis added.)

128. *See* H. PACKER, *supra* note 30, at 291; PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 75-76 (1967). *Cf.* Goldstein, *Police Discretion Not To Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 586-88 (1960); Kadish, *Legal*

failure of law enforcement officials to enforce unpopular laws fosters the same such disrespect.[129] Therefore, grounds would exist, not unlike those asserted by Ann Arbor, for a parade of concurrent municipal regulation that would certainly appear horrible to those who recognize the values of statewide uniformity of the criminal law. Indeed, the spectre of each locality enacting its own criminal code, is different only in degree from the situation presented by the concurrent operation of the Ann Arbor marijuana ordinance and the State's Controlled Substances Act.

While this problem does not admit of simple solution, it should not be insurmountable. The most fundamental answer is that municipalities are creatures of the State and, under the Michigan constitution and home-rule statute, have a limited authority and remain "subject to" the State's supreme command. Certainly the checks embodied in the municipal concern requirement and the pre-emption and conflict doctrines provide protection to the State should a municipality act adversely to the state welfare. Absent a clear indication of the legislative intent, the judicial determination of the appropriate limits of municipal power in Michigan has been shown to include, either expressly or implicitly, delicate questions of balance. The flexibility inherent in such a judicial inquiry allows careful consideration of the relevant competing policies, and renders unnecessary the promulgation of an angular standard to which later cases must be forced to conform. Finally, it should be kept in mind that the judicial determination is not the ultimate one in regard to these matters. Were the state legislature to take exception to certain municipal ordinances, even if upheld in the courts, it clearly would be within the power of the legislature to enact specific or general pre-emptive statutes to ensure that no significant state policy is impeded. Yet, as Michigan law has developed, no such scheme of pre-emptive statutes has been necessary, and the home-rule powers have been employed to secure to cities a healthy degree of autonomy in regard to matters of local concern.

Norm and Discretion in the Police and Sentencing Processes, 75 HARV. L. REV. 904, 909-10 (1962).

129. Arnold, *Law Enforcement—An Attempt at Social Dissection*, 42 YALE L.J. 7-8 (1932).

[From Parade, Feb. 25, 1973]

THE TOWN THAT PUNISHES MARIHUANA SMOKERS WITH A $5 FINE

(By Mark Jury)

ANN ARBOR, MICH.—Here in this city—home of the sprawling University of Michigan—students light up marihuana as they gather on the campus, in movie theaters, at the weekly concerts and even in the public gallery of the City Council Chamber.

Aren't they worried about being arrested and ruining a college career with a jail sentence? Not at all, for the City Council has declared its independence from state drug laws governing marihuana and passed its own ordinance which punishes marihuana smokers with a $5 fine.

"Actually, it's sort of like a parking ticket," says Jerold Lax, City Attorney of Ann Arbor, "it was set up so that all a violator must do is mail back the marihuana ticket to City Hall with $5. If the person wishes to plead innocent, he will have to post an appearance bond and stand trial in municipal court, but the maximum penalty will remain the same—$5."

The ordinance covers only marihuana users, not sellers. Big pushers are still hit with the tough state law. Juvenile offenders are still turned over to juvenile authorities.

20,000 SMOKE

Like many communities throughout the U.S., Ann Arbor was caught in the marihuana explosion of the 1960's. The predominantly youthful community of 110,000, 30 miles west of Detroit, now may have as many as 20,000 marihuana smokers. Police say that trying to stop the flow of grass is a hopeless task, as is arresting and prosecuting everybody smoking it. "Marihuana, as much as we hate to say it, is becoming an acceptable commodity throughout the country," says Police Chief Walter Krasny.

The marihuana situation in Ann Arbor isn't unusual. With 24 million marihuana users in the U.S., most police departments don't aggressively seek pot smokers—if they did the jails would be overflowing. What is remarkable is that the Ann Arbor City Council is the only governing body in the nation that has approached current marihuana laws head-on and "decriminalized" pot by legislation.

The Ann Arbor Council acted under a Michigan law that gives cities the option of passing their own ordinances when they have a special need not recognized by law. The debate was sharp, and the action was taken by a 6 to 5 vote. Solidly opposed were the Council's five Republican members, mostly from more affluent suburban wards.

In favor were four Democrats and two young members of the Human Rights Party, a relatively new, radical group which draws a good deal of its strength from voters who are part of or sympathetic to the university community.

The Council majority made it plain they wanted marihuana use treated like a traffic violation, including the issuance of tickets rather than hauling people off to the station house.

COURT RULING

Last September, District Court Judge S. J. Eldon ruled the sentencing section of the ordinance unconstitutional, but allowed the ordinance itself to stand. Judge Eldon's ruling would eliminate the $5 penalty ceiling, and permit marihuana users to be fined up to $100, or sent to jail up to 90 days. However, the City of Ann Arbor is appealing his decision, and in the meantime both the ordinance and the $5 fine are in effect.

Says Mayor Robert Harris: "If a City Council sets a trivial penalty, the judges usually understand there's a reason—indicating how seriously the community judges the offense. Under state law, we can't legalize marihuana, but we can make it trivial.

As a result of the $5 penalty, the Ann Arbor police are reluctant to make arrests, since the money wouldn't begin to cover prosecution costs. The Michigan State Crime Laboratory of the State Police has relegated Ann Arbor marihuana cases to bottom priority because of the low fine.

Although the community at large seems to have accepted the new ordinance quietly, opponents remain unconvinced. Some argue that the use of marihuana frequently leads to heroin and other "hard drugs"—a contention heatedly denied by proponents of the new rule.

John D. McCormick, one of the City Councilmen who battled the $5 fine, declares: "In my opinion, the sum total of it all is that for all practical purposes marihuana has been legalized in the City of Ann Arbor. This town has been made a haven for the drug culture."

Adds another Republican Councilman, Lloyd Fairbanks: "There are so many creeps in this town, and they're unemployed and causing problems in the community. They're here because drugs are here."

Answers Councilman Gerald DeGrieck, 22, U. of Michigan graduate who was elected to the Council as a member of the Human Rights Party along with Nancy Wechsler, 23: "The whole issue is ludicrous, which is fine. The $5 ordinance showed the people that laws against marihuana were ridiculous."

What actual effect has the ordinance had? Police say there has been no great upsurge in pot smoking, although more of it seems to be smoked in public. One group did celebrate the new legislation with a "Hash Bash," where a couple of hundred people smoked openly on the university campus. Chief Krasny called the event a "farce," and while his men were present as observers, no arrests were made.

PENALTIES EASING IN U.S.

Although Ann Arbor is the only community to have equated marihuana smoking with parking violations, many other areas of the country are tacitly relaxing penalties. Keith Stroup, 29-year-old head of a Washington-based organization called the National Organization for the Reform of Marihuana Law (NORML) reports that while four years ago marihuana possession was a felony in all states of the Union, today possession of "a small amount" (the definition of which varies from place to place) is considered only a misdemeanor in all but two states, Texas and Rhode Island.

"Criminal penalties for possession, as distinguished from selling or pushing, are on the way out," says Stroup. "Ann Arbor's ordinance represents a new, creative effort in decriminalizing marihuana smoking."

Also applauding Ann Arbor's new policy is John D. Finlator, former No. 2 man in the Justice Department's Bureau of Narcotics and Dangerous Drugs, who's now a board member of NORML. Says Finlator. "When this country decides to honestly deal with the marihuana question, perhaps then we can begin to make some progress in the battle against serious drug abuse in the United States."

[From the Detroit News, Sept. 21, 1975]

MARIJUANA—CRIMINAL OR CIVIL OFFENSE?

(By David L. Good)

It was July 28, 1969, and Ann Arbor radical leader John A. Sinclair was livid as he was taken from the courtroom of Detroit Recorder's Judge Robert J. Colombo.

"You're a punk," he yelled at Colombo. "You're a pig. You will die."

The event made headlines because Colombo had just sentenced Sinclair, a three-time drug offender, to a prison term of 9½ to 10 years for possession of two marijuana cigarets.

Such harsh penalties for marijuana offenses long since have been abandoned in Michigan, and Sinclair himself was released after serving 27 months when the State Supreme Court ruled his sentence amounted to "cruel and unusual punishment."

But despite—or perhaps because of—a 1972 state law which drastically lowered penalties for marijuana offenses, legal confrontations between "pot" smokers and law-enforcement officials have been spiraling during the last six years.

In 1969, only 2,823 persons were arrested for marijuana offenses. Since then, the cumulative total has hit more than 70,000, reaching a high of 18,563 in 1974.

Last year's figure represented nearly three-fourths of all drug arrests in the state; the 1969 mark, in contrast, was just under half.

Now some officials, a few of them unhappy that the law obviously is failing to free authorities to concentrate on more "serious" drug offenses, are looking toward a new solution—lowering the penalties even further.

As part of a nationwide trend toward liberalizing marijuana laws, Michigan could become the seventh state to "decriminalize"—though not "legalize"—use and possession of the drug.

Under consideration in the State House of Representatives is a bill to change possession and use of the Cannabis plant from a criminal to a civil offense.

Smoking "weed" still would be illegal, but offenders would get a ticket and maximum fine of $100 instead of a jail term, and they would not have an arrest record.

If successful, the bill would put Michigan in the same category as Oregon, California, Alaska, Colorado, Maine and—as of Aug. 22—Ohio.

Beginning with Oregon in 1973, all have removed marijuana from the "hard drug" classification and reduced penalties in most cases to a maximum $100 fine ($200 in Maine).

Bills to lower penalties for possession also are pending in Minnesota and Washington, D.C., as well as in Congress.

In Ohio, for instance, a "pot" smoker can be caught with up to 100 grams of marijuana (3½ ounces) and after the new law takes effect Nov. 21 will receive a maximum fine of only $100. Up to 200 grams will bring a maximum $250 fine and 30-day jail term.

In contrast, Michigan law stipulated—before the provision was thrown out in the State Court of Appeals last year—that possession of two ounces was enough to prove intent to deliver (sell), a felony.

Michigan law before 1972 provided for maximum prison terms of 10 years for possession of marijuana and 20 years to life for sale.

The current state law calls for maximum sentences of 90 days in jail and a $100 fine for use, a one-year term and $1,000 fine for possession and a four-year term and $2,000 fine for possession with intent to deliver.

Bills to reduce the penalties further have been introduced over the last several years but have failed to earn serious consideration. In addition, a petition drive organized last year by Rep. Perry Bullard (D-Ann Arbor) to legalize the drug fell far short of its goal.

But the current bill is considered the most promising attempt so far.

Spensored by Rep. William R. Bryant Jr. (R-Grosse Point Farms) and 10 other legislators, it is expected to gather some bipartisan support.

After having been introduced two months ago, it now is before the House Civil Rights Committee, chaired by Bullard, and could be reported out for a vote this year.

The National Organization for the Reform of Marijuana Laws (NORML), a public-interest lobby based in Washington, intends to participate in the effort.

"We've listed Michigan as our top-priority state for '76," explained Keith Stroup, NORML director.

"Michigan actually should have moved before now. I think the trouble was that the early publicity on the drug tended to be identified with radical interests, and that must have bothered some legislators.

"We're not a 'pro-pot' group. We support a discouragement policy for all drug use, but there are 13 million Americans who smoke marijuana regularly, and we don't believe they should be saddled with arrest records."

Bryant, an attorney who is Republican floor leader in the House, said he considers the pending proposal a "middle ground" between the present "hard-line" criminal approach and complete legalization.

"I don't condone the use of any drugs," he said, "but its use is becoming so widespread that I just don't think it should carry a jail term.

"I am in favor of very stiff sentences for many criminal offenses, but I think we have an obligation to make sentencing as reasonable as we can in cases like these."

Current policy toward marijuana offenders varies across the state.

A few cities, including Ann Arbor, Ypsilanti and East Lansing, have ordinances calling for a $5 fine for conviction. Arrests in such cities have tailed off since passage.

More typical is Detroit's ordinance, which provides for a 90-day jail term and $100 fine. Arrests have increased from 483 in 1970 to 1,288 last year. Most cases now go through Traffic Court under the ordinance instead of through Recorder's Court under the state law.

A spokesman for the Wayne County prosecutor said police agencies seldom request warrants under the state law except for cases involving unusually large amounts of the drug.

In other counties, however, most communities have no local ordinances and continue to deal with offenders through the county prosecutor under state law.

This is true in Oakland and Macomb counties, where spokesmen for the prosecutors said they have seen no decline in cases since 1972.

However, since the time Sinclair was convicted, public opinion on marijuana appears to have shifted markedly—both legally and medically.

Although statements to the contrary still receive wide publicity, evidence seems to be growing that:

Although the enactment of milder penalties apparently has stimulated arrests, "decriminalizing" marijuana may not increase its usage. This view is bolstered by the experience in Oregon, where officials contend the action has not contributed to any marijuana "explosion" but has channeled police work more toward violent crime and crime against property.

Marijuana may not be particularly harmful to users, perhaps less so than tobacco or alcohol. This contention is supported by the failure of many recent tests to substantiate earlier claims that the drug causes brain damage, birth defects, sterility and other disorders.

Among the organizations going on record in support of removing criminal penalties for the use of marijuana are the American Bar Association, the governing board of the American Medical Association, the American Public Health Association and the National Council of Churches.

The same position was taken in 1972 and again this year by Consumers Union, the prestigious nonprofit testing organization based in Mt. Vernon, New York.

In the April, 1975, edition of its magazine, Consumer Reports, the organization concluded that marijuana, "like any other drug, is probably harmful in at least some respects to at least some users at some dosage levels under some conditions of use."

But, the magazine asked:

"Why should marijuana smokers, unlike tobacco smokers and alcohol drinkers be deliberately subjected to damage by society in addition to any damage they may do to themselves through the use of a drug?"

NEW JERSEY

"Marihuana and Hashish: Law Enforcement's Biggest Enforcement Problem"

A Report by the New Jersey Narcotic Enforcement Officers Association

To the People of the State of New Jersey and the Governor, the Legislature, and the Judiciary

I. INTRODUCTION

Relatively new among organizations representing the interests of law enforcement, the New Jersey Narcotic Enforcement Officers Association was formed in 1965 to provide a forum for the expression and exchange of ideas, for the training of professionals in drug abuse and enforcement, and as the spokesman for all persons who resent the toll that drugs have taken upon our youth.

The Association has grown to 1,500 members, and includes persons involved in federal, state, county and municipal law enforcement, and comprised also of educators, doctors, probation officers, attorneys, pharmacists, and persons from private industry. Unlike those law enforcement-oriented organizations which seek to improve the economic conditions of their members, this Association, through its members, serves all of the people of the State of New Jersey, and it is to them that this report is addressed.

II. THE PROBLEM

This report is directed to one problem: the possession for use of small amounts of marihuana and hashish. There are other serious problems, such as bail for persons who sell narcotics, mandatory minimum sentences for those sellers, and the general failure of our courts to meet their responsibilities to the public they serve; these problems, however, are the subject of resolutions by the Association to be made public at the conclusion of the conference.

Because the response to this issue—decriminalizing the possession for use of certain small amounts of marihuana and hashish—will be more emotional, and because the consequences will be far-reaching (to our knowledge, no law enforcement group has taken such a position), this report is presented to the people of this State in the hope that thereby there will be no misunderstanding as to the Association's proposals or the reasons therefor.

III. FINDINGS OF FACT

These findings of fact are based upon personal experiences by members of the Association in the investigation, arrest, prosecution, treatment or rehabilitation of more than 10,000 drug offenders.

Regardless of what arguments may be advanced as to the detrimental or beneficial effects of marihuana upon the human body or mind, certain facts we find as incontrovertible:

(a) Marihuana is a popular drug of use and abuse in the United States;

(b) The Association is absolutely and unalterably opposed to the use of marihuana, by whomever and for whatever reason;

(c) Competent, credible, medical studies confirm that the use of marihuana is a destructive influence upon the human psychology and physiology;

(d) Entertainment personalities, who are watched by, and are an influence upon, millions of Americans, regrettably attach to the use of marihuana glamour, attractiveness, or humor;

(e) Most persons who use marihuana generally possess it in small amounts for their own use;

(f) Most of those persons will not go on to a more dangerous drug;

(g) Most of the arrests by police for marihuana possession involve the class of persons in (e);

(h) The police are thereby required to spend much time processing and prosecuting that class of persons in (e), and are prevented from uncovering or investigating those people who distribute marihuana and other drugs for gain;

(i) Nothing that has been done by the courts, law enforcement, medicine, education, or the media, has substantially influenced people in the use or non-use of marihuana;

(j) It is unheard of for a person convicted of possession of a small amount of marihuana to receive a custodial sentence;

(k) A substantial number of those people in (e) will, by reason of conviction for a marihuana offense, be denied education or employment opportunities, even if they cease using marihuana;

(l) A large segment of the public (including those young people who find the use of marihuana fashionable, and their parents who cannot understand the attraction) has become alienated from the police officers who are sworn to serve that public.

(m) Ten (10) grams of marihuana will make twenty-eight (28) to thirty (30) cigarettes, an amount which the President's Commission on Marihuana found to be a month's supply for the casual user;

(n) An amount more than ten (10) grams of marihuana tends to encourage a person to give it to friends or sell it, acts equally punishable as "distribution" by our law;

(o) No matter what jurisdictions have decriminalized the use or possession of marihuana, those jurisdictions continue to take a strong position against distribution in any form.

IV. RECOMMENDATIONS

We are not urging the adoption of our recommendations because of personal conviction or philosophy. We *do* think something should be done that will acknowledge (a) the frustration of past efforts and (b) the Associations usefulness in providing meaningful solutions to problems facing society *and* law enforcement.

We are concerned with the monumental law enforcement administrative requirements and the court proceedings that follow an arrest for a small amount of marijuana; that the efforts of these officers are needed in other areas of enforcement; that the people arrested will in all probability never commit any other type of offense (other than a marijuana offense) throughout their lives; that they are the type of offenders who would never receive a custodial sentence; and that the cost to the public and the waste of officers' energy and ability further impede the effective administration of justice.

We recommend, therefore, that Section 20 of the Controled Dangerous Substances Act. (*N.J.S.A.* 24:21-1 *et seq.*) be amended to read:

(i) Possession of ten (10 grams or less of marijuana, including any adulterants or dilutants, or possession of one (1) gram or less of hashish, is a nuisance. The substance shall be seized by any law enforcement officer. The possessor thereof shall be issued a summons and shall be subject to a fine not to exceed $100;

(ii) Possession of more than ten (10) grams of marijuana, but less than twenty-five (25) grams, including any adulterants or dilutants, or over

more than one more than one (1) gram of hashish but less but five (5) grams, is a disorderly persons offense;

(iii) In a prosecution or proceeding under subsections (i) or (ii) above, written certification by a chemist certified by the State Department of Health shall be accepted as evidence by the court in such prosecution or proceeding as proof of the results of analyses performed by such chemist.

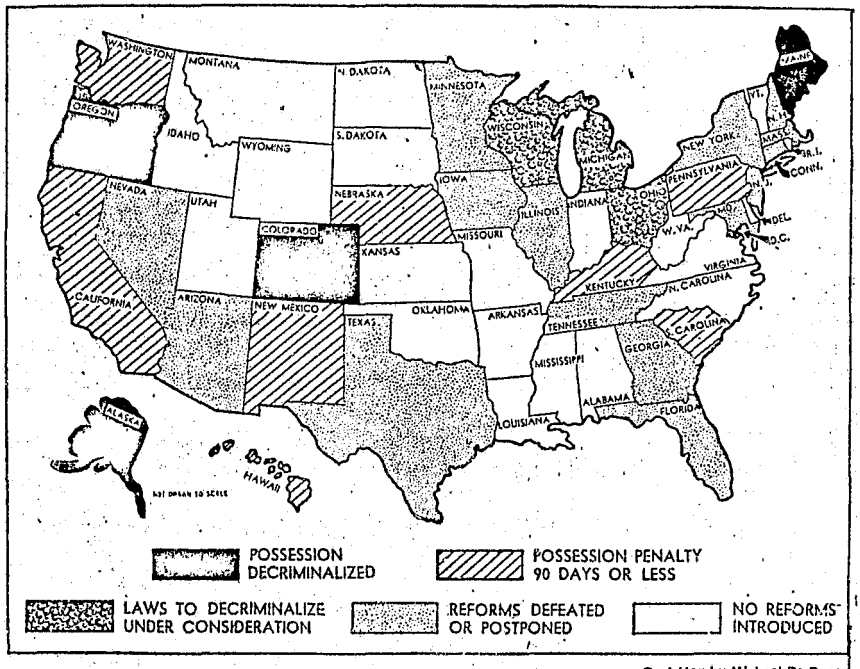
Possession of more than twenty-five (25) grams of marijuana should continue to be a high misdemeanor; and the unlawful use of any controlled dangerous substance should continue to be a disorderly persons offense.

The use and abuse of alcohol by millions, while socially acceptable, are no reasons to permit, support or encourage the disablement of another twenty million Americans thereby the use and abuse of marijuana.

We cannot stress enough the importance of understanding the position of the Association: we oppose the use of marijuana; we favor the decriminalization of the possession for use of small amounts of marijuana only as a solution to an enforcement problem—and we continue to oppose strongly any move to legalize further the possession or distribution of marijuana and hashish.

NEW YORK

[From the New York Post, July 1, 1975]



Post Map by Michael De Donno

Marijuana law reform is under way in the U.S., as this map shows. Four states have decriminalized possession, four are considering it, 15 have considered such measures without passing them, and seven have limited maximum penalties of 90 days or less.

POT BAN GOING UP IN SMOKE

(By Dick Brass)

For the first time since the U.S. outlawed marihuana in the 1930s, an end to harsh penalties for private pot possession appears a real prospect.

On Wednesday, California became the fifth state—the fourth in recent weeks—to end jail sentences for possession of small amounts of the drug.

Last May, Alaska's Supreme Court went even further and ruled private use of marihuana in one's home a constitutionally protected right.

And now, The Post has learned, a special, 15 member task force of White House Domestic Counsel studying federal drug policy is seriously considering calling for an easing of the federal marihuana laws.

If liberal consultants to the task force have their way, the group will recommend to the President in September that possession of small quantities of pot be "decriminalized."

Under this reform, violators would be subject to a fine—like the penalty imposed for going through a red light, for instance—but not to the stigma of imprisonment and a criminal record.

The Oregon, Alaska, Colorado, and Maine legislatures have already enacted similar measures (California henceforth won't jail pot users, but still considers their act a misdemeanor).

While few individuals are prosecuted under the federal law, it has served as a model for the states since Congress first outlawed marihuana in 1937.

And should Ford embrace decriminalization, state officials interviewed throughout the country agree, pressure on states to liberalize their own statutes would become intense.

The question they pose is whether Ford can afford to back a potentially controversial reform in an election year.

Or, they ask, will he chose to follow the example of President Nixon, who ignored similar advice offered by the National Commission on Marihuana and Drug Abuse in 1972?

"This is a much more open-minded Administration, from what I've been able to perceive," said Richard Parsons, the task force's director.

"I don't have any preconceived notions about the direction we're going in."

Backers of decriminalization, interestingly enough, base some of their hopes for an "open-minded" President on the Ford family itself.

It's one of Washington's non-secrets that some of the President's children have from time to time smoked pot (Mrs. Ford conceded as much in an early interview). And the pro-pot crusaders count them as well-placed lobbyists.

Generally accepted estimates put the number of regular marihuana users in the nation at 13 million, and there are roughly 30 million other Americans who have tried the drug.

The first inkling of an Administration reappraisal of marihuana laws—which led to more than 420,000 arrests last year—came in May.

Testifying before a Senate Judiciary subcommittee hearing on a marihuana decriminalization bill, introduced by several liberal Senators and until no given slim hope of passage, Justice Dept. counsel Donald Miller conspicuously deleted the department's customary, formal recommendation against such legislation from his remarks.

Indeed, a survey by The Post indicates that throughout the country a reappraisal of the various marihuana statutes is under way.

In addition to the five states which will no longer jail pot smokers, seven states now have maximum penalties of under 90 days (Nebraska has a one-week sentence for possession of amounts up to one pound).

In the District of Columbia and three states—Wisconsin, Michigan, and Ohio—decriminalization reforms are under consideration.

In 15 states—including New York—reforms were introduced in the most recent legislative session but failed to pass.

And in several states—including New York—first offenders are customarily granted a dismissal of charges or a low fine.

A FEW GET TOUGHER

In only 20 states last year no move to lighten the pot laws was made.

In a handful of states, however, the legislatures are leaning toward tougher laws. Indiana, for example, passed an act prohibiting the sale of pipes, cigaret holders, and other paraphernalia often associated with marihuana use.

The current reappraisal, many legislators admit is fueled by contradictory medical evidence on marijuana's danger.

Although it is no longer seriously maintained that the various plants of the genus Cannabis will make a smoker "mad" or lead to heroin addiction, researchers in recent years have indicted the herb for causing brain damage, lowering the body's disease resistance, disrupting chromosomes, enlarging male breasts and lowering male sex hormone levels.

But other researchers have found evidence that tends to dispute the findings—or have been unable to verify and repeat the original tests.

Because of this evidentiary jumble the Alaskan Supreme Court ruled on May 27 that the state had no right to invade citizen's constitutionally protected privacy by banning the use of marihuana in the home.

Although many states lack Alaska's specific protection of privacy in their own constitutions, Supreme Court decisions in recent years have evoked the principle of personal privacy to protect citizen's rights to contraceptive devices, abortion, and in-home pornography.

"Why not marihuana?" asks Richard Kelley, a 30-year-old Tacoma, Wash., attorney who is defending a teenager there accused of pot possession in what he hopes will be a test case similar to the Alaskan challenge.

OTHER LAWSUITS

Similar suits have been entered into in California, Louisiana, Illinois and the District of Columbia. If successful—and they may well be, according to some constitutional lawyers, including Cornell University law professor William Kaplin—private pot possession and use at home will become sanctioned.

"The problem," says Kaplin, "will be getting your marihuana home." Because the courts have allowed communities to ban the sale of certain pornography, he suggests, public use and sale of marihuana could also be outlawed.

The thrust of reform in those states where it has been enacted has been to minimize penalties for the use of marihuana. Sale of the drug is still treated as a crime.

The high court's limited definition of privacy and opposition from conservative legislators aren't the only bars to eventual full legalization of marihuana. As a signatory to the 1961 Single Convention on Narcotic Drugs, the U. S. is pledged to outlaw Cannabis.

ONE SOLUTION

One solution, according to state officials, would be to withdraw from the treaty—a solution which might even please other signatories, who stand to benefit as growers of the $3.5 billion worth of marihuana Americans are estimated to consume annually.

That "solution," if it ever comes, is, by even the most optimistic estimates, years away.

In the meantime, decriminalization, as a halfway measure is viewed warily by some pot smokers, who fear it will block eventual legalization.

The champion of decriminalization is an organization called NORML—the National Organization to Reform Marihuana Laws.

Funded by the Playboy Foundation and directed by an energetic young lawyer, Keith Stroup (a pot smoker himself), NORML has had a hand in most pro-pot lobbying and lawsuit efforts to date.

Originally demanding full legalization or nothing, NORML changed its tune for pragmatism's sake, and now counts among its allies the American Bar Assn., the Governing Board of the American Medical Assn., and B'nai B'rith.

EASTLAND PANEL

NORML's main organized opposition in Washington is from Mississippi Sen. James Eastland's Internal Security Subcommittee.

Formerly known for its anti-Communist inquiries, the subcommittee last year investigated and publicized the hazards of marihuana and its derivatives after it was discovered that U.S. soldiers guarding nuclear weapons overseas had used hashish.

"If those people think we're going to sit here and take half a million arrests, they're crazy," Stroup says.

"We represent 13 million people in this country—and we're winning. The politicians can no longer ignore us."

[From the New York Times, July 13, 1975]

In a Sometimes Bitter Fight, States and Cities Are Easing Marihuana Laws

(By Lesley Oelsner)

Washington, July 12—The criminal penalties for the private possession of marihuana are beginning to fall; so are the criminal sanctions for smoking marihuana, at least at home.

They are being toppled, in an often bitterly fought nationwide drive, by a combination of politics, practicality and a growing sense that the typical marihuana smoker is not a criminal.

In the last two months, Alaska, Maine, Colorado and California have enacted laws that make the possession of small amounts of marihuana in one's home a civil offense rather than a crime, punishable only by a small fine.

Alaska's Supreme Court went a step further, ruling unanimously on May 27 that the right to privacy protected an adult's possession of marihuana intended for personal use.

"It appears that the use of marihuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions," the court said.

Next week the Ohio Senate and the District of Columbia City Council will each hold hearings on similar so-called "decriminalization" legislation involving private possession of small amounts of marihuana. In both cases prospects for enactment are considered strong.

In Minnesota, one house of the state Legislature has passed a similar measure and the other house is expected to do so when it reconvenes in January.

In Hawaii, where the president of the state Senate, John T. Ushijima, strongly favors the abolition of criminal penalties, decriminalization is also considered likely in the next session.

In other places, prosecutors are deciding on their own not to enforce antimarihuana laws. In Montgomery County, Md., State's Attorney Andrew L. Sonner announced on June 26 that his office would no longer prosecute "small" cases involving possession in the home.

HASHISH INCLUDED

In some areas, such as Alaska, Hashish—a stronger though similar substance—is included in the decriminalization laws.

All of this takes place in the face of decades of stringent antimarihuana laws throughout the country and rapidly rising arrests for marihuana use or possession. Oregon enacted a decriminalization law in October, 1973, reducing the penalty for possession of less than an ounce to $100, with a traffic-citation-like system rather than arrest. Until this year, though, it was the only state with such a law.

The new trend still does not go so far as many reformers would like—removing all legal penalties for both possession and use, at least for adults. Legislatures in some states such as Illinois and South Carolina defeated or killed decriminalization bills this year, and in some areas, especially the South, resistance to change remains strong.

Nevada, Vermont and Wyoming tightened their marihuana laws this year, albeit slightly, so that all strains of marijuana are included in the general prohibition.

Legislatures in about half the states considered decriminalization bills this year, and in some areas, the bills picked up strong support.

In Arizona and New Hampshire, while one house of each legislature defeated bills, the other house passed them. In New Jersey, Attorney General William Hyland supports decriminalization for possession of small amounts for personal use, in Wisconsin, the state Controlled Substances Board, Dr. Joseph Benforade, says that the board plans to recommend to the Governor that decriminalization legislation be introduced in January.

SIGNIFICANT DECISION

In New York, Governor Carey—while not making a major effort on marihuana law reform—has stated his support for it.

Two bills are pending in Congress, one calling for removal of all penalties and one providing for a civil fine for possession of small amounts, similar to those enacted in states such as Oregon.

Also, in the latest development in a lengthy lawsuit brought by the National Organization for the Reform of Marihuana Laws, the major reform organization working on the matter, an administrative judge in the Justice Department's Drug Enforcement Administration recently issued a decision that could lead to significant reform.

Judge Lewis F. Parker found that the United States could, consistent with its international treaty obligations, shift "cannabis" and "cannabis resin"—the products that generally make up marihuana—from the most controlled list of drugs to a lesser list, and that it could decontrol cannabis seeds and artificial cannabis altogether.

He recommended that the administrator ask the Secretary of Health, Education and Welfare to make a scientific and medical evaluation and a recommendation regarding the appropriate schedule of controlled drugs on which the materials should be placed.

The major potential impact of the ruling, according to Peter Meyers, counsel for the National Organization for the Reform of Marihuana Laws, is in the medical area. Reclassification of marihuana could lead to authorization of its use for medical purposes, he said.

The administrator of the Drug Enforcement Administration, Henry S. Degin, is expected to decide soon whether to accept Judge Parker's recommendation.

The new decriminalization laws and bills reflect a common pattern: Private possession, generally in the home, is a civil rather than a criminal offense if the amount is small—one ounce in some places, 100 grams (about three ounces) in other places—with a citation, similar to a traffic ticket, given. The fine is relatively small, $100 or $200.

As a practical matter, this means smoking at home won't be punished as a crime either, according to Mr. Meyers. Among other things, many states' old laws on marihuana prohibited possession but not use; also, various court rulings centered on the question of whether an example of use—passing a "joint" around at a party—was enough to meet the ban on possession, and not on whether the use was a crime in itself.

Some of the new laws and bills also reduce penalties for other offenses. Public display or consumption in Colorado is subject to arrest but punishable only by a maximum of a $100 fine and 15 days in jail.

However, some of the laws and bills restate or increase the penalties for sale of marihuana and other drugs.

This raises the question: Why is it a crime—often punishable by lengthy prison terms—to sell people marihuana if it is not a crime for these people to have the marihuana sold them?

The answer lies in the trend toward decriminalization, in the reasons for the trend and for the opposition to it.

Involved are public opinion; the rising number of marihuana arrests, more than 400,000 last year, often of young people who may be burdened by the arrest records for life; the growing popularity of marihuana, not just for teen-agers and college students but for members of the middle class; the developing scientific research about the effects of marihuana; moral and religious scruples, the huge bother and cost (about $100-million a year just in California) of enforcing marihuana laws and extensive lobbying efforts across the country by the National Organization for the Reform of Marihuana Laws, directed by a lawyer named Keith Stroup.

Then there is the decades-old view of marihuana as a dangerous drug, a view still held by many people, such as Attorney General Rufus L. Edmiston of North Carolina, who said: "We feel that marihuana is a stepping stone to harder drugs and oftentimes the person selling marihuana also has harder drugs to sell."

There are disputes even in scientific circles about the effects of marihuana.

In 1972, the National Commission on Marihuana and Drug Abuse called for the abolition of criminal penalties for the personal possession and private use of

the drug. However, it also concluded that because of scientific uncertainty about the effects, the laws should continue to discourage marihuana use—hence, selling for profit should still be a crime.

[From the New York Post, July 14, 1975]

SEEMS IT'S HARD TO GET BUSTED FOR POT HERE

(By Dick Brass)

Last Thursday, a reporter placed a crudely-rolled imitation-marijuana cigaret (it contained a mixture of spices—oregano and taragon) in his pocket and went out to perform a test.

On the corner of 79th St. and Second Av., the casually-dressed young man lit up his "joint" as conspicuously as possible, puffing pungent fumes into the wind.

After a minute or so . . . a crowd waiting for a bus continued to ignore him. A man sitting against a building peered suspiciously, but said nothing. A passing police officer took no notice whatsoever.

The experiment was repeated in front of other policemen and private citizens at various Manhattan locations—in front of foreign embassies, at intersections near parked police cruisers. The reporter was not questioned, or even interrupted. No one, it semed, could care less.

All of which is to suggest that although New York boasts the toughest pot law in the nation (a single cigaret can mean a year in jail; possession of an ounce or more, 15 years) New York City cops do not appear eager to enforce it.

Nor, for that matter, are the prosecutors anxious to prosecute. First offenders caught with a small quantity of marijuana are routinely offered an adjournment in contemplation of dismissal—which means that if the offender stays clean for six months, the charges are dropped and the record is sealed.

"My position is basically we're overloaded with homicides, rapes, armed robberies—all of which are more serious matters than smoking marijuana," says Manhattan District Attorney Robert Morgenthau. "We in a sense have decriminalized marijuana here."

Other states, of course, have decriminalized pot more formally: In Maine, Colorado, Oregon, and Alaska, legislatures have decided smoking pot is equivalent to a traffic violation—the person receives a fine like a speeding ticket, but there's no formal record of arrest or imprisonment.

In California, possession of an ounce of marijuana is still a misdemeanor, but the maximum penalty is a $100 fine. Elsewhere, maximum penalties for small-time possession vary from seven days in Nebraska to the six-month and one-year penalties found in most states.

The trend toward marijuana reform has not been lost on the city's represer tatives in Albany. And during the past legislative session, five different reform measures were introduced.

The most liberal, sponsored by Assemblyman Alan Hevesi (D-Queens) and Sen. Franz Leichter (D-Man.) would have established a Marijuana Control Authority to regulate its sale in the state.

The bill never had a chance of passage, many legislators concede. Other proposals called for lightening the current penalty to 15 days in jail for first offenders, legalizing possession of up to one ounce, and legalizing up to four ounces. And still another bill would have authorized a statewide referendum on the subject.

Though Gov. Carey among others has supported some kind of marijuana reform, those particular five measures remained locked in committee. What's holding up the show, many in Albany complain, is Senate Majority Leader Warren Anderson (R- Binghamton).

"There's a very simple reason why no marijuana bills have passed in this state," said one Carey aide. "Sen. Anderson doesn't want them passed."

THEY'RE LEERY

State officials interviewed suggested that as long as the powerful Republican leader remains opposed to reform, few legislators from conservative upstate districts will take political risks for measures that have little chance of being approved.

Anderson, busy of late with budget matters, acknowledged through an aide that he was opposed to legalizing pot, but disputed the idea that his opposition had strangled reform.

Meanwhile, to be sure, city police are still arresting pot smokers. In 1971, 2,122 people were arrested here for possession. The figure rose to 2,308 in 1972 and 4,607 in 1973. It appears to be higher for last year, although complete statistics are not yet available.

But the number of people smoking marijuana and the amount being imported is also thought to have risen sharply in recent years.

"If police were arresting people today with the same vigor they used in 1970, there would be 100,000 New Yorkers in jail," insists Keith Stroup, a young lawyer and lobbyist who directs the Washington-based National Organization to Reform Marijuana Laws.

In fact, recent surveys indicate 13 million Americans regularly smoke pot—a figure representing about eight per cent of the adult population. The same figure applied to New York City alone would suggest there are more than 400,000 pot smokers here.

Interviews conducted by The Post show these include not only young adults, but middle-aged doctors, lawyers, successful businessmen, government and elected officials and even some policemen.

For more affluent smokers here, there exists a special breed of pot dealer supplying potent Thai-grown marijuana, for example, at $175 to $250 an ounce—ten times the price of the more common, domestic product.

Upstate, however, the drug scene appears less exotic—and the relative freedom from arrest and prosecution enjoyed by city residents simply does not exist in many northern counties.

"You're almost dealing with two different states," offered Clarence Sundram, Gov. Carey's assistant counsel and adviser regarding drug affairs. "What happens in New York City is not at all the same as what happens upstate. If you're caught in the north country, you can go up the river for a long time."

Upstate, fines and even prison sentences are meted out for marijuana possession as well as adjournments in contemplation of dismissal. Statistics supplied by the State Dept. of Correctional Services show 11 people went to prison last year for possessing less than a pound of pot—five for possessing an ounce or less.

And while details are somewhat sketchy, it is believed most of these offenders were sentenced in upstate counties.

But even upstate, some prosecutors are beginning to move toward easing marijuana penalties.

CLASH OF VALUES

In rural Tompkins County, in the Finger Lakes region, pot smoking has been an issue for more than a decade, reflecting at times a clash of values between the conservative residents and the student community surrounding Cornell University and Ithaca College there.

Prior to 1968, conservative DA Richard Thaler vigorously prosecuted pot smokers and dealers alike. But that year, Thaler lost his reelection bid to a former New York City lawyer, Matthew McHugh.

Now a Congressman representing the area, McHugh shifted emphasis from users to dealers, and the trend continued under his successor, William Sullivan, a local lawyer.

Sullivan, however, indicted many people for selling extremely small amounts—and liberal residents and students often complained that those indicted were only making "friendly," not-for-profit sales to police agents they failed to recognize.

Last fall, Sullivan was in turn defeated by Joseph Joch, a former New York City assistant DA, and one election issue was again marijuana.

The court calendar, Joch said, had become jammed with small-time dealing charges. And now, he says, law enforcement officials in the county will concentrate on other drugs.

"Really, it's a matter of evolution," Joch suggested. "When there is no other crime in a county, marijuana is a big problem. But in time, prosecutors find they are better served prosecuting robbery and other charges. Marijuana just seems less important."

[From the New York Times, Mar. 21, 1976]

CAREY BILL WOULD EASE PENALTY FOR POSSESSION OF MARIHUANA

(By Ronald Smothers)

ALBANY, March 20—Governor Carey has been privately circulating among legislators a rough draft of a bill to decriminalize the possession of up to two ounces of marihuana and the transfer, as a gift, of up to one ounce.

However, the proposal maintains stiff penalties for the sale of any amount.

Details of the proposed legislation were sketchy, but the outlines of the measure considerably blunted the sharp differences in the public interpretation of Governor Carey's original proposal and the views of the Senate majority leader, Warren M. Anderson, Republican of Binghamton.

When the Governor in his February State of the State message advocated decriminalization of "the sale and possession of up to two ounces" of marihuana, Mr. Anderson vowed to defeat any bill that lessened the penalties for sale. He also opposed the two-ounce ceiling as too liberal.

G.O.P. PREPARES PROPOSAL

The Governor's proposal is one of several before the Legislature this year that deal with varying degrees of decriminalization. Assemblyman Richard N. Gottfried, Democrat-Liberal of Manhattan introduced a decriminalization bill two weeks ago, and yesterday the Senate minority leader, Manfred Ohrenstein, Democrat-Liberal of Manhattan, introduced his own proposal. Senator Douglas H. Barclay, Republican of Pulaski, whose codes committee held two hearings on the subject last fall, said that a Republican proposal was being prepared and would be introduced in a few weeks.

Mr. Ohrenstein, trying to mute some expected Republican opposition, proposed the decriminalization of possession of up to two ounces of marihuana, maintaining penalties for sale and setting stiffer penalities for sale of marihuana to to someone under 18 years of age. Under current law, possession of up to a half an ounce is a felony, carrying a seven-year prison sentence, and possession of one ounce or more can mean up to 15 year's imprisonment.

Mr. Ohrenstein's bill provides reduced jail sentences, ranging from 15 days to one year, for possession of more than two ounces, and it mandates that judges adjourn proceedings involving first offenders for marihuana possession in contemplation of eventual dismissal. This would mean that first offenders with no arrests in the subsequent year would have the charges dismissed automatically.

Mr. Ohrenstein's bill proposes to make possession of under two ounce a violation punishable by a $100 fine under the public health law, rather than the penal law. An aide to the minority leader said, "You aren't really decriminalizing it unless you remove it from the penal code."

"It's a nice concept," said Senate Barclay, "but I don't think that it will be acceptable. It has to stay in the penal law because, although we are changing direction on this, we don't want to go too far and too fast."

He added that the Republicans' proposal was moving toward making possession of up to one ounce a violation under the penal code, reducing penalties but not to the level advocated by Mr. Ohrenstein.

There is, however, an agreement among the Governor and Republicans and Democrats in the Legislature that transfer of small quantities of marihuana without an "exchange of money or other valuable considerations" should also be decriminalized.

Currently when one person gives another a marihuana cigarette, that is defined in law as a sale. Mr. Gottfried's bill equates possession and transfer, levying fines and penalties ranging from a $100 penal-code violation to four years' imprisonment. Mr. Ohrenstein proposes a change in the definition of sale, making it clear that money or other valuables must be exchanged.

Mr. Barclay said that the Republicans were moving in the direction of accepting such a proposal. "We want to make sure, though, that we continue to get the people who are selling marihuana," he added.

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NEW YORK STATE BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
Committee on Revision of Criminal Law
1973-1974

July 1, 1975

Mr. John Rector
A. 504 - United States Senate
Washington, D.C. 20510

Dear Mr. Rector:

I enclose herewith the proposed legislation I have drafted which would decriminalize marijuana in New York, together with a memorandum. While the legislation has the endorsement of the leaders of our Criminal Justice Section it has not as yet been endorsed by the entire Association.

If I can in any way help to move things along towards decriminalization in the Federal arena, please do not hesitate to call on me.

Very truly yours,

DAVID S. MICHAELS
342 Madison Avenue
New York, New York 10017

PROPOSED LEGISLATION TO EFFECTUATE MARIJUANA LAW REVISIONS AND DECRIMINALIZATION. REVISED SECOND DRAFT - MARCH , 1975. *

DRAFTED BY THE COMMITTEE ON REVISION OF THE CRIMINAL LAW OF THE CRIMINAL JUSTICE SECTION OF THE NEW YORK STATE BAR ASSOCIATION.

David S. Michaels, Chairman
Sub-Committee on Drug Use,
342 Madison Avenue
New York, New York 10017

AN ACT

To amend the penal law and public health law, in relation to modifying the penalties for possession and sale of marijuana, amending the definition of sale and presumptions of possession, and repealing Section 240.36 of such penal law.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

* Substantive distinctions between this and the prior draft of this proposed legislation exist within Sections one, six and fifteen. Corrective revisions have been made in Sections three, four, eighteen and nineteen. The new crime of criminal use of marijuana, previously proposed to be enacted as a new Section 220.65, by the prior draft's Section fifteen, has been moved to 220.02, as proposed by this drafts's Section five, without substantive revisions, and the sections of this proposed legislation have been renumbered. A revised memorandum accompanies the second draft. It should be noted that this Committee draft differs from that recommended by some Section leaders as specified above, and at Sections four and twelve.

Section 1. Section 3382 of the public health law, as added by chapter eight hundred seventy-eight of the laws of nineteen hundred seventy-two, is hereby amended to read as follows:

Sec. 3382. Growing or possessing marijuana by unlicensed persons. A person who, without being licensed so to do under this article, grows any plant or plants of the genus Cannabis, or knowingly allows it to grow on his land without destroying the same, or who possesses marijuana, shall be guilty of a violation, which shall be punishable solely by the imposition of a civil fine of not more than one hundred dollars.

Section 2. Subdivision one of Section 3387 of the public health law, as added by chapter eight hundred seventy eight of the laws of nineteen hundred seventy-two is hereby amended as follows:

1. Any controlled substance which has been manufactured, distributed, dispensed or acquired in violation of this article, or the lawful possession of which cannot be ascertained /is hereby declared to be a public nuisance and/ may be seized by a peace officer and shall be forfeited, and disposed of as follows:

Section 3. Subdivision two of Section 240.45 of the penal law, as added by chapter two hundred thirty of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

2. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in /unlawful/ criminal conduct. Criminal nuisance is a class B misdemeanor.

Section 4. Subdivision one of Section 220.00 of the penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

1. "Sell" means to sell, exchange, /give or dispose of to another or offer to agree to the same/ or otherwise transfer for consideration.

Section 5. Section 220.02 of such penal law is hereby enacted to read as follows:

Section 220.02 Criminal use of marijuana.

A person is guilty of criminal use of marijuana, when he possesses marijuana in a public place and such marijuana is burning or open to public view. Criminal use of marijuana is a class B. misdemeanor.

Section six. Section 220.03 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three is hereby amended to read as follows:

CONTINUED

19 OF 33

Sec. 220.03 Criminal possession of a controlled substance in the eighth degree.

A person is guilty of criminal possession of a controlled substance in the eighth degree when he knowingly and unlawfully possesses a controlled substance, unless such possession shall be of less than four ounces of marijuana. Criminal possession of a controlled substance in the eighth degree is a class A misdemeanor.

Section 7. Section 220.04 of such penal law is hereby enacted to read as follows:

Section 220.04, Criminal possession of a controlled substance in the seventh degree.

A person is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses more than eight ounces of marijuana. Criminal possession of a controlled substance in the seventh degree is a class E felony.

Section 8. Subdivision one of Section 220.06 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three, and as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

1. A controlled substance other than marijuana with intent to sell it; or

Section 9. Subdivision three of Section 220.06 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three, as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-three is hereby repealed.

Section 10. Subdivision four of Section 220.06 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three and as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-three, is hereby repealed.

Section 11. Subdivisions ten and eleven of Section 200.09 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three, and as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-three are hereby repealed.

Section 12. Subdivision two of Section 220.16 of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three and as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-three is hereby amended to read as follows:

2. A stimulant, hallucinogen, hallocinogenic substance, or lysergic acid diethylamade, with intent

to sell it and has previously been convicted of an offense presently defined in article two hundred twenty or the attempt or conspiracy to commit any such offense, except that any such prior conviction based solely upon the possession or sale of marijuana shall not constitute a prior conviction within the meaning of this section.

Section 13. Section 220.25 of such penal law, as amended by chapter ten hundred forty-four of the laws of nineteen hundred seventy-one and chapters two hundred seventy-six and two hundred seventy eight of the laws of nineteen hundred seventy-three is hereby amended to read as follows:

Section 220.25 Criminal possession of a controlled substance; presumption.

1. The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursit of his trade, or (b) to any person in the automobile if one of them, having obtained the

controlled substance and not being under duress, be authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants, or (d) when the controlled substance is marijuana, or (e) where the occupants lack access to and a plain view of such substance.

2. The presence of a narcotic drug, or narcotic preparation /or marijuana/ in open view in a room, other than a public place, under circumstances evincing an intent by the occupants of such room to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance is presumptive evidence of /knowing/ possession thereof by each such occupant, except that such presumption does not apply to such persons if (a) any of such persons is authorized by law to possess the controlled substance and does in fact do so, or (b) one of them has such controlled substance on his person.

Section 14. Section 220.29 of such penal law is hereby enacted to read as follows:

Section 220.29 Criminal sale of a controlled substance in the eighth degree.

A person is guilty of criminal sale of a controlled substance in the eighth degree when he knowingly and unlawfully sells marijuana. Criminal sale of a controlled substance in the eighth degree is a class A misdemeanor.

Section 15. Section 220.30 of such penal law is hereby enacted, to read as follows:

Section 220.30. Criminal sale of a controlled substance in the seventh degree.

A person is guilty of criminal sale of a controlled substance in the seventh degree when he knowingly and unlawfully sells more than four ounces of marijuana. Criminal sale of a controlled substance in the seventh degree is a class E felony.

Section 16. Section 220.31 of such penal law, as added by the laws of nineteen hundred seventy-three, chapter two hundred seventy-six, is hereby amended to read as follows:

Section 220.31. Criminal sale of a controlled substance in the sixth degree.

A person is guilty of criminal sale of a controlled

substance in the sixth degree when he knowingly and unlawfully sells a controlled substance, other than marijuana.

Section 17. Subsection 220.34 (1) (c) of such penal law, as added by chapter two hundred seventy-six of the laws of nineteen hundred seventy-three, is hereby repealed.

Section 18. Subsection 220.34 (2) is hereby amended to read as follows:

2. He commits the crime of criminal sale of a controlled substance and he has previously been convicted of criminal sale of a controlled substance other than marijuana in the sixth degree.

Section 19. Section 220.39 (2) of such penal law is hereby enacted, to read as follows:

2. A stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense presently defined in article two hundred twenty or the attempt or conspiracy to commit any such offense, except that such prior conviction based solely upon the possession or sale of marijuana shall

not constitute a prior conviction within the meaning of this section.

Section 20. Section 240.36 of such penal law, as added by chapter six hundred sixty-eight of the laws of nineteen hundred sixty-eight, is hereby repealed.

Section 21. This act shall take effect sixty days subsequent to the date when it shall become a law.

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New York State Bar Association

LEGISLATIVE MEMORANDUM CONCERNING REVISED SECOND DRAFT OF PROPOSED MARIJUANA REVISIONS AND DECRIMINALIZTION

Prepared by David S. Michaels
Chairman, Sub-Committee on Drug Use
342 Madison Avenue
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The Committee on Revisions of the Criminal Law of the Criminal Justice Section of the New York State Bar Association presents herewith a revised draft of proposed legislation in accordance with the resolutions of the Section of January 27, 1973 and January 23, 1974. The primary features of the provisions proposed are the decriminalization of small quantity private possession of marijuana by the deletion of the crime of simple private possession of under four ounces of this substance only from the Penal Law and the substitution therefor of a modified Public Health Law provision covering both the possession and growing on a violation level with civil fines as deterrants to infractions instead of criminal prosecution and incarceration; the reduction of penalty levels for all other marijuana offenses, which

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would remain criminal, with the retention of felony penalties for significant possession and sales; the repeal of Sec. 240.36, concerning loitering in the first degree; the modification of the definition of sale within Sec. 220.00, so as to exclude therefrom the situations in which no actual sale transpired; the modification of Sec. 220.25 regarding presumptions of possession and the exclusion of violation-status matters from definition of criminal nuisance. The revisions proposed, aside from that defining "sale" and those modifying presumptions and loitering do not affect in any way the legal status of, or sentencing as to any controlled substance other than marijuana.

The revisions are based upon a present situation where the ounce is the standard unit of "retail" black-market distribution, which pattern outdates the 1/4 ounce misdemeanor limit of present law.

Section one would amend that provision of the Public Health Law which defines growing of marijuana to be a misdemeanor to provide violation status with civil fines for the growing or possession of marijuana. It is to be noted that such applies only to amounts of less than four ounces in the aggregate, whether growing or not. The utilization of the Public Health Law provision prohibiting growing the substance

serves to delete such offenses from the Penal Law, provide fines instead of jail sentences as continuing deterrants for such small quantity possession, and provide for users a manner of obtaining the substance no more criminal that the possessory act. This draft modifies the prior draft by setting $100 as the maximum fine. Sections two and three would delete the declaration of such small-quantity marijuana possession as a nuisance, to prevent misdemeanor criminal nuisance prosecutions based solely on violation-level possession. The wording of Section three has been corrected by this draft.

Section four amends the definition of sales to require transfer for "consideration" instead of the present offer, agreement, or gift, to better conform the definition to reality without unduly burdening the prosecution's ability to establish a sale. A technical correction has been made by this draft.

Section five would add a new provision, making the public use or display of even violation-levels of marijuana a class B misdemeanor. It is intended to insure that only the private possession of this substance is decriminalized. The prior draft hereof, at Section fifteen, enacted such provision numbered as Sec. 220.65.

Section six amends the present misdemeanor possession

provision as to all substances, which bears a one-year maximum jail sentence, to specify that, as to marijuana, such shall apply to possession of between four ounces and eight ounces. It makes no changes as to other substances. The prior draft hereof applied to between two and eight ounces.

Section seven would make felonious the possession of more than eight ounces on a class E felony level.

Section eight would delete, as to marijuana, the little-used charge of possession with intent to sell, on the theory that possession per se and sale per se constitute sufficient bases and levels of prosecution.

Section nine would delete the provission of present law by which possession of more than one-fourth ounce is defined as felonious and Sections ten and eleven would delete the computation of offense level by number of cigarettes. Present law makes all possession of over one-fourth ounce felonious, and allows C felony status, bearing a fifteen year maximum jail sentence, for possession of over one ounce, but makes no distinction whatever among levels of offenses for possession of over one ounce. Section eleven repeals the present fifteen year maximum jail sentence for possession of over one ounce.

Section twelve would delete prior marijuana convictions from the categories of prior convictions which could raise the level of a present offense to that of a class A felony, bearing mandatory jail sentence of up to life imprisonment.

Section thirteen would amend the presumptions of guilt presently specified where controlled substances are found in a vehicle or in a room under circumstances showing an intent by some individual to distribute, to provide that such resumptions shall not apply to marijuana, and that where applicable to any other controlled substance in a vehicle, such presumption arises only when the defendants had access to and a plain view of such substance. Such revision is to prevent the injustice of presuming a defendant's guilt in situations where he lacks in actuality indicia of possession or knowledge. Further, Section thirteen modifies the presumption of possession where a defendant is found in a room with controlled substances other than marijuana, to provide that for such presumption to arise, the circumstances relied upon must lead to a logical inference of the particular defendant's knowing possession and intent to distribute. The prior vague provision requiring "close proximity" by the defendant to the substance is deleted.

Sections fourteen, fifteen, sixteen, seventeen, eighteen and nineteen modify the offense levels and sentences for the sale of marijuana. While present law makes all sales of controlled substances at least a class D felony, with maximum sentences of seven years, and imposes a C felony status, with maximum sentences of fifteen years for all sales of marijuana, the proposed revision would make the sale of

more than four ounces of marijuana a class E felony, and would define a lesser sale of an amount the private possession of which would constitute only a violation to be a class A misdemeanor. The two ounce limit proposed by the prior drafr has been modified to four. It is to be noted that Section four of the proposed legislation would tighten the definition of "sale" to exclude gifts.

Section fourteen would establish the new offense of eighth degree sale, a class A misdemeanor for small-quantity sale of marijuana; marijuana sales of over four ounces are made a class E felony by Section fifteen. Sections sixteen and seventeen would delete the harsher C and D felony status previously applicable to all marijuana sales, and Sections eighteen and nineteen would delete prior marijuana convictions from the categories of prior convictions which would raise the level of a present offense to that of a class C or A-III felony, bearing mandatory jail sentences of up to life imprisonment. Sections eighteen and nineteen correct a significant omission from the prior draft.

Section twenty would repeal the present Section 240.36, making it a crime to loiter with the intention of possession controlled substances. Such is recommended because the present statute is of limited utility and is subject to abuse. This modification would not delete the violation of loitering per se.

Thus, in summary, the proposed legislation would both reduce sentences and partially decriminalize small-quantity possession of marijuana making the private possession and/or growing of less than four ounces of marijuana a violation outside the Penal Law, with civil fines of up to $100 ~~per ounce~~ and forfeiture of the substance as the sole specified penalties. Public use or display of such amounts would remain criminal as a class B misdemeanor, the possession of four to eight ounces would be a class A misdemeanor, and possession of larger amounts would constitute a class E felony. Sale would be redefined to exclude gifts, and sale of under four ounces, the possessory violation level, would constitute a class A misdemeanor, while sale of larger amounts would become a class E felony, thus treating marijuana sales somewhat less harshly than other controlled substance sales, instead of more harshly, as is the case at present.

Further, the presumptions of knowing possession within the present law would be modified to make them more realistic , prior marijuana convictions would not be used to subject defendants to increased penalties or mandatory incarceration for up to life sentences, the present crime of loitering with the intention of possessing controlled substances would be deleted, and the private use, growing or possession of small amounts of marijuana, as herein limited, could not be

considered a criminal nuisance.

It is thus intended to provide, within a coherent, logical, and complete structure, penalty reduction and decriminalization of the small-quantity private use and possession of marijuana by the abolition of jail sentences therefor and the substitution of civil fines to discourage use, while maintaining as criminal all public use and sales of marijuana and retaining the felony status of significant possession and sales. It is submitted that such limited decriminalization is more just and more economical, in both human and social terms, than is present law, especially in view of the widespread use of marijuana and the present medical knowledge concerning this substance. Therefore, such penalty reduction and decriminalization could well promote a greater respect for the law.

Submitted on behalf of the Committee on Revision of the Criminal Law of the Criminal Justice Section of the New York State Bar Association

OHIO

[From the Cincinnati Enquirer, Sept. 24, 1975]

OHIO'S NEW MARIJUANA LAW AMONG MOST LENIENT

(By Steve Wilson)

COLUMBUS.—Legal minds still argue just how far it does go, but most are not hesitant to admit that Ohio's new law on possession of small amounts of marijuana is probably the most lenient in the country.

When the new law becomes fully effective on July 1, 1976, possession of less than 100 grams will be punishable by a maximum $100 fine. There will be no increased penalty for repeat offenses and no criminal record. The penalty provision of the law becomes effective November 21.

That compares to the state's present statute which makes possession of any amount of marijuana a criminal offense carrying a maximum one year prison sentence and up to a $1000 fine. A second offense could result in a potential 10-year prison sentence.

David Weiner, a former Cincinnatian who now heads the Ohio chapter of the National Organization for Reform of Marijuana Laws (NORML), says the new law puts Ohio "neck and neck" with Alaska and better than any other state in reform of marijuana laws.

Alaska's reform came not so much through the legislative process as a state supreme court decision which contends that possession of marijuana in the home is constitutionally protected under the right to privacy.

Weiner, 31, a 1965 graduate of the University of Cincinnati and now a corporate attorney in Cleveland, terms the General Assembly's passage of a complex drug bill a "very good first step toward marijuana reform in this state."

"I think if anyone was asked even 10 months ago if we would have a decriminalization statute," Weiner said, "he would have given it a thousand to one odds. We've come a long way in a very short time."

The element of the new Ohio law which elevates it above most reform legislation passed in other states is the amount of marijuana a person is allowed to possess and still face only a minor misdeameanor.

Ohio's law will allow a person to have nearly 100 marijuana cigarettes without fear of facing a criminal sentence. Most other reform states have set the amount at less than half that figure.

As originally proposed by Attorney General William J. Brown, Ohio's law was to have a 30 gram provision. That amount was amended to 100 grams in the Ohio House.

The Senate Judiciary Committee resisted attempts to see the 30-gram limit reinserted in the legislation and a compromise amendment to decrease the amount to 45 grams was later offered on the floor of the Senate.

That amendment was resisted strongly by Cincinnati Republican Sens. Michael Maloney and Stanley Aronoff.

Aronoff says of the floor speeches that neither Republicans nor Democrats, liberals or conservatives, wanted to make a person a "pusher" because of small amount of marijuana.

"You could be making your own child a pusher," one senator said of the proposed amendment.

Aronoff's speech, coupled with supporting remarks from Maloney, the Senate's minority leader, helped in seeing the amendment defeated and the 100 gram provision retained.

Another determining factor, one observer said, was that Senate members voted on the amendment by standing rather than answering a roll call. There was no record as to how individual members voted as the amendment was defeated by an approximate two-to-one margin.

One supporter of the 100 gram provision said senators were able to vote their consciences if their consciences were not recorded. "If the vote were recorded by name," he added, "we would have lost."

Officials with the attorney general's office, admit they were disappointed in their futile attempts to reduce the amount in the law.

It was their contention that anyone possessing more than 30–45 grams could not only be a user but a distributor.

The lack of any substantial lobbying effort on the part of law enforcement officers for reducing the amount has also been credited wtih the leniency found in the Ohio law.

While the Ohio law on possession of small amounts of marijuana may be considered taking a soft stand, the overall law which includes the marijuana provision is considered "the toughest in the nation."

Depending on the amount, possession of marijuana can result in a jail term. Possession of more than 100 grams carries a potential 30-day sentence and $250 fine.

Selling marijuana in bulk amounts can result in a 2–15 year prison sentence with six months of the sentence mandatory.

The mandatory sentence for selling marijuana goes along with even harsher penalties in the new law for the selling of hard drugs.

Under the new law, a person convicted of selling 10 grams of heroin would receive a mandatory three-year prison sentence with no alternatives for parole, probation, suspension or shock treatment.

Assistant Attorney General Stephen Fitch says the state's new law on marijuana is a "recognition of conflicting testimony" concerning the possible hazards of smoking "pot" adding, "the jury is still out."

The law, he added, is aimed at discouraging the use of marijuana, but not putting people in jail for experimenting with what may or may not be a dangerous drug.

No one is quite yet willing to predict how the new law will affect the use of marijuana in Ohio.

Studies completed in Oregon following similar reform legislation indicated no significant increase in the use of marijuana, according to Fitch. "The law did point to a positive effect, however, in freeing law enforcement personnel to focus them on much more dangerous drugs like heroin and LSD.

"I would have to assume the experience in Oregon would be the same in Ohio," he said.

Meanwhile, reformer Weiner says states should continue to discourage the use of marijuana until more research can be completed. The long-range answer, he says, should be to place it under state control so that it can be regulated like alcohol and cigarettes.

"I'm surprised that we are as far as we are today," Weiner said, but added the "final step" in marijuana's reform will probably come in Ohio within five years at the outside."

OREGON

REPORT

ON

LEGAL SANCTIONS OF MARIJUANA

The Committee: Ernest Bonyhadi, Fred M. Buchwalter, Phillip D. Chadsey, William Gittelsohn, Frederick A. M. Kingery, M.D., George D. Leonard *and* Charles M. Grossman, M.D., *Chairman.*
For the Majority

A. Leighton Platt *and* Donald W. Green, III.
For the Minority

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Recommendation relating to use and possession, adopted by a vote 96-45
minority report on Sale Rejected by vote 66-69
majority report on Sale accepted by vote 56-50

as per telephone to Ella Mae Naylor Exec. Sec.

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REPORT

ON

LEGAL SANCTIONS OF MARIJUANA

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Because of the apparent wide-spread use of marijuana, particularly by young people, and the consequent public interest in and need for information about the subject, the Board of Governors, upon the recommendation of the Project Planning Board, established a research committee to study and report on the legal sanctions imposed upon the possession, use and sale of marijuana in Oregon, including in its consideration the appropriateness of the sanctions.

The Committee has limited its research to public information available from medical, law enforcement, and other private and government sources and did not attempt to develop its own independent body of data.

II. THE LEGAL ASPECTS OF MARIJUANA USE

A. Oregon Law

Prior to January 1, 1972, under Oregon Law, conviction of use or possession or sale of marijuana could be treated within the discretion of the court as either a felony punishable by a maximum of ten years in prison, or a misdemeanor. The possession of it was also subject to a fine of not more than $5,000.

In the new Oregon Criminal Code, effective January 1, 1972, the felony-misdemeanor dichotomy as it relates to marijuana is substantially retained, but with refinement. Conviction for possession or sale (now called "furnish") carries with it a term of imprisonment of up to one year in the case of a misdemeanor, or up to ten years in the case of a felony. Additionally or alternatively, a fine may be levied upon conviciton up to a maximum of $2,500 if a felony is involved or up to $1,000 for a misdemeanor violation.

Under the new law, the courts will no longer have the discretion to treat several marijuana offenses as either misdemeanors or felonies. For example, simple use of the drug is classified as only a misdemeanor. Also, if the conviction is for a first offense and less than one ounce of marijuana is involved, the penalty upon conviction must be that for a misdemeanor. However, if a person over 18 furnishes marijuana to a person under 18, and there is at least three years' difference in their respective ages, the penalty upon conviction of the furnisher must be that specified for a felony with an enhanced maximum term of imprisonment of up to twenty years.

B. Federal Law

Federal legislation concerning marijuana has recently been substantially revised. (Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, 91st Congress, approved October 27, 1970.) This Act represents the latest piece of major legislation controlling manufacture and distribution of illegal drugs including marijuana. It repeals most of the prior federal legislation dealing with this subject.

This Act introduces major changes in the legislative control of marijuana. The general tenor of the new Act is to relax the severity of penalties for possession and use. All mandatory minimum sentences are eliminated except for the engaging in "a continuing criminal enterprise". In the case of a first offense for simple possession (not for distribution) the court may place the offender on probation, and if the probational conditions have not been violated during the term of probation, the proceedings may be dismissed without a determination of guilt or

the first offense. If, in the previous instance, the offender is under 21, the court can order expunging of all official records relating to the crime. Penalties for use, possession and distribution of narcotic drugs draw more severe sentences than for similar acts involving non-narcotic drugs. Distributing "a small amount of marijuana for no remuneration" is treated as a case of simple possession with the possibility of expungement of all criminal records relating to the offense as previously stated. (The Department of Justice agreed to inclusion of this provision stating that the intended meaning was "to cover the type of situation where a college student makes a quasi-donative transfer of one or two marijuana cigarettes and receives $.50 or $1 in exchange to cover the cost of marijuana".)

Federal legislation for the first time has not included marijuana as a narcotic drug and thereby follows the pharmacological dictionary definition of marijuana as a non-narcotic. The new Oregon law, on the other hand, still defines marijuana as a narcotic.

A more severe penalty is called for where a person over 18 sells to a person under 21, the first offense calling for twice the punishment otherwise prescribed. Subsequent convictions call for three times the punishment otherwise prescribed.

C. Single Convention on Narcotic Drugs, 1961

The United States became a signatory to this Convention by ratifying it in 1967. It obligates the Federal Government to pass laws preventing any state from having a licensing system for the sale of marijuana. Article 36 provides that each signatory country shall adopt such measures as will ensure that the cultivation, production, distribution, possession, et cetera, of marijuana, except for medical and scientific purposes, shall be punishable offenses.

D. Summary

The trend under both Oregon and federal law is to relax the penalties involving the possession and use of marijuana and to make more severe the offenses involving the sale of the drug to young persons. Before the present proscriptions could be abolished and the use of marijuana legalized, the United States may either have to withdraw unilaterally from the Single Convention on Narcotic Drugs or seek appropriate amendments to its binding provisions.

III. THE MEDICAL ASPECTS OF MARIJUANA USE

The report to Congress by the Secretary of Health, Education and Welfare on "Marijuana and Health" (January 31, 1971) noted that it is relatively free from unusual hazard as compared to most drugs. However, there is an apparent variation in the effects which result from smoking the plant *Cannabis sativa,* or Indian hemp, which depends on the preparation of the material, the way it is smoked, the social setting, and the attitude of the user. The pharmacological activity depends on the content of a chemical called tetrahydrocannibinol (THC), which is found mostly in the flowering parts and upper leaves of the plant. Numerous other factors, such as the way it is cultivated, the soil, the time of harvesting, the heat, and the humidity may affect the THC content of the final product. The stems and seeds are virtually inactive, and marijuana prepared from the whole plant has relatively little activity. If only the leaves and tops are used, activity is apt to be much greater. Marijuana available on the street may also contain mescaline, methamphetamine, LSD, or other drugs as additives to make it more potent.

A stronger form of marijuana is hashish. Hashish is a brownish resin collected from the leaves of the marijuana plant and has a far higher content of THC. Although not widely available in the United States at the present time, its use has been increasing recently.

Marijuana is usually smoked by deep inhalation and retention. Its effect is noticed within a few minutes and lasts for several hours. It can also be taken orally with a similar although delayed effect.

A. Pharmacological properties

THC in the amounts used during smoking a marijuana cigarette may produce conjunctival injection (reddening of the eyes), impaired coordination, drowsiness, hunger, and slurring of speech. Tolerance or addiction is generally not believed

to occur. Contrary to the common understanding, marijuana is not medically a narcotic. There is no convincing evidence that repeated use of cannabis derivatives leads to use of harder drugs such as heroin or other opiates, although most heroin addicts have used marijuana in the past. There is no evidence that there is any more casual connection between the use of marijuana leading to the use of heroin, than the prior use of alcohol and tobacco leading to the use of heroin. Alcohol appears to be far more dangerous pharmacologically than does marijuana. The marijuana smoker in our present society, however, is often exposed to harder drugs through sellers and groups oriented to the use of harder drugs. Presumably long-term marijuana smoking can contribute to chronic bronchitis and emphysema. The potential of marijuana to induce lung cancer is not known.

B. Psychological effects

A feeling of euphoria and relaxation is common. Changes in time sense have definitely been shown to take place during marijuana intoxication. There is a tendency to overestimate the passage of time particularly while engaged in some activity. Memory, both immediate and short-term, may also be impaired while under the influence of the drug. More complex functions involving learning and comprehension are adversely affected even at the moderate levels of typical American social usage. As with the use of alcohol, the loss of inhibition commonly occurs. Marijuana has no known aphrodisiac properties. Occasionally there is a feeling of anxiety, suspiciousness, or confusion. Except in high doses marijuana is not usually associated with delusions, hallucinations, or psychoses, although adverse mental reactions have been reported from the Far East, where the THC content of marijuana is higher than in this country. Acute psychotic episodes precipitated by marijuana intoxication have been reported. These appear to occur infrequently except in cases of high dosages. Even at levels of social usage, psychosis, depression, promiscuity, and anti-social behavior may appear in particularly susceptible individuals.

The long-term physical and psychological effects of heavy marijuana use are not fully known. Strong cannabis preparations have been available for centuries in some countries, and descriptions of psychoses and apathy as a result of such use are abundant. Unfortunately the available information is anecdotal in nature.

C. Genetic effects

The search for evidence of harmful effects in infants born of marijuana-smoking mothers has yielded negative results. As in the case of the use of other drugs, pregnant women and nursing mothers are cautioned against its use.

D. Summary

The undesirable psychological and physical effects of smoking small amounts of marijuana as it is done currently in this country are relatively mild in most instances. The effects of long-term use, or the use of stronger cannabis preparations, such as hashish, are not known. The possibility of "lacing" marijuana with other drugs, as well as the exposure of the marijuana smoker to other more dangerous drugs, provides an added hurdle to an objective evaluation. Most medical authorities, however, agree that marijuana has relatively mild physiological effects and that the current penalties regarding its use are out of line with the potential danger. Like any drug, it is undoubtedly subject to abuse but less so than the most commonly used drug: alcohol.

IV. THE SOCIOLOGICAL ASPECTS OF MARIJUANA USE

When Congress initially outlawed marijuana in 1937, it did so largely on the basis of statements made by officials of the Federal Bureau of Narcotics that users of the drug commit violent crimes while under its influence. The present literature published by the Federal Government no longer supports that view. Further, although the witnesses interviewed by the Committee included a number of law enforcement officials, no witness stated that the use of marijuana either directly or indirectly results in violent or anti-social behavior. In fact, contrary to the original premise for the proscription, the evidence today shows that a person under the influence of the drug tends to become passive rather than violent or aggressive.

Also, because marijuana is neither addictive nor expensive to obtain, it does not indirectly lead the marijuana user to commit other crimes to finance his purchase and use of the drug.

At the time the drug was first made unlawful, its use was limited to a small segment of our society which for various other reasons had a high incidence of delinquency. It was for this reason that the original advocates of the proscription assumed a cause and effect relationship between incidence of violent crime and users of the drug.

Today the use of marijuana is neither confined to a small segment of our society nor limited to groups which have a high incidence of delinquency. Both nationally and locally the use of marijuana is widespread, especially among youth. At the present, 30 to 40 percent of high school students in the Portland area have tried marijuana. The educators interviewed by the Committee did not feel that marijuana use led to delinquency, but they did associate it with poor scholarship resulting from a lack of interest in academic pursuits. It is becoming increasingly popular with youth from upper and middle class economic backgrounds, and is especially popular with today's college students. Its use at the college level is casual, however, and usually does not evoke response from either college administrators or police.

Some law enforcement officials feel that marijuana is a social problem and should not be subject to legal sanctions. Most others feel that the limited resources available for fighting crime can better be spent on prosecuting other offenses. A substantial portion of time and resources of local law enforcement agencies is currently being expended on prosecuting "sellers" and "suspected sellers" for marijuana violations.

There is reason to believe that the source of marijuana being sold in Portland is no longer limited to enterprising youth supplementing their income with occasional trips to Mexico for the purpose of acquiring marijuana for their own use and for sale to friends. Two witnesses interviewed by the Committee, one a law enforcement officer and the other a person close to the youth culture, stated that there is an indication that organized crime is becoming involved in the black market distribution of marijuana in the Portland area. They stated that there are times during the year when marijuana will suddenly become scarce in this area and the price of heroin drops at the same time; thus encouraging marijuana users to try the more dangerous drug.

The use today, however, is not restricted to the young. It is becoming more popular with their elders in the same middle and upper economic strata of our society. Thus, the present law is being broken by an increasing number of persons who come from those segments of our society which have been thought of traditionally as the most law-abiding because of their economic interest in maintaining order.

V. ARGUMENTS IN FAVOR OF AND AGAINST THE PRESENT LAWS

The arguments put forth by the witnesses interviewed by the Committee who do not favor legalizing marijuana at the present time were fourfold.

1. Until the full extent of psychological and physiological effects of marijuana are known we should not make legal a substance which may be permanently damaging to the user.

2. Society already has such a large scale problem resulting from the use of alcohol that it should not legalize another drug and create a second social problem of similar magnitude.

3. Marijuana adversely affects the individual by taking away his motivation, initiative and inhibitions. If its use is allowed to become more widespread by legalization the whole character of our American society and the free enterprise system on which it is based will be altered and possibly eventually be destroyed.

4. To legalize marijuana would make its use more widespread. Further, even though marijuana itself is not addictive, it could lead to greater use of truly dangerous drugs as new users, after having legally tried the drug, may go on to seek greater "kicks" from more potent dangerous drugs or narcotics.

A number of arguments were put forth in favor of abolishing the present laws proscribing the use of marijuana.

1. Marijuana does not lead to anti-social conduct. Since any harm resulting from the use is to the individual user and not to society in general, it is not a proper subject for criminal sanctions. The enforcement of the present laws diverts the already overtaxed resources of our law enforcement agencies from their more important job of protecting society from anti-social conduct.

2. The current widespread violation of the present laws regarding the use of marijuana creates disrespect for law in general. First, a person violating the present marijuana laws tends to rationalize his position on the basis that he is required to obey only "good laws" and not those that are, in his opinion, "bad laws." Second, this disrespect for the law is not limited to those persons directly breaking the marijuana laws but has spread to those charged with the enforcement of laws proscribing its use. Critics of the present law point out that in the case of all victimless crimes, law enforcement officials, in their zeal to build a case against the violator, often resort to unconstitutional and illegal methods of gathering evidence in order to obtain a conviction.

Third, such present state laws which treat marijuana as a narcotic, when in fact it is not, in the pharmacological or scientific concept of the word, are a major factor in creating a credibility gap which separates and alienates many of our young people from their elders. Because much of the information which has been disseminated in the past, concerning the dangers of marijuana, is false, it is more difficult to educate young persons concerning the actual dangers of using true narcotics, such as heroin, or dangerous drugs such as LSD.

3. Because marijuana can only be purchased illegally, it necessarily exposes the user and society to a number of adverse side effects of the illicit sale of the drug. Often the user does not know what he is purchasing from an illegal dealer and thus he may be getting something more harmful than marijuana. Since the dealer is likely also to be selling narcotics or other truly dangerous drugs, the buyer is exposed to other substances which have been proven physically harmful or which may cause true anti-social conduct on the part of the user. The fact that a black market exists also creates a climate favorable to organized crime and the evils that go with it.

4. The present law subjects the convicted marijuana user to the possibility of having a felony record. A conviction, and its associated possible incarceration, may cause more social and psychological damage to the individual and society than the use of the drug itself.

5. The argument that the casual use of marijuana takes away the user's motivation, initiative or inhibitions to the extent that its legalized use would jeopardize our current American society and the free enterprise system is based on a false premise. Marijuana is not the cause of much of the current dissatisfaction with our society so much as it is a symptom of that dissatisfaction. Although marijuana is commonly associated with long-haired unmotivated youth, its use is no longer uncommon among highly motivated business and professional members of our society.

The report of the National Commission on Marihuana and Drug Abuse (Shafer Report) became available after your Marijuana Committee report had been submitted to and while it was being considered by the Board of Governors. The Shafer Report is a comprehensive, in-depth review of the status of marijuana with recommendations that include the first recommendation unanimously approved by your Committee.

VI. RECOMMENDATION RELATING TO THE USE AND POSSESSION OF MARIJUANA

Based on available medical and sociological data, legal sanctions governing the use and possession of marijuana are inappropriate.

The Committee, therefore, unanimously recommends that there be no criminal or legal sanctions for personal use or possession of marijuana.

VII. RECOMMENDATIONS RELATING TO THE LEGALIZED SALE AND DISTRIBUTION OF MARIJUANA

A. Majority Opinion and Conclusion

In a free society, criminal laws can only be justified on the basis that they proscribe some form of anti-social conduct. The present laws proscribing both the use and sale of marijuana are not justified on that basis.

The Minority report concurs that there should be no legal sanctions for the personal use and possession of marijuana, but members of the Minority do not feel that the sale of marijuana should be legalized.

The use of marijuana is already widespread. There is no evidence that its use will be any more widespread if the sale of it is legalized. If the Minority's view were adopted, the black market for marijuana with all of its attendant evils would still exist. The marijuana user would still be purchasing from an illicit seller who also may be selling truly dangerous drugs. The buyer would still have no way of knowing that the "marijuana" he was buying was mixed with something more harmful; the failure to legalize the sale of marijuana could present a greater health hazard than the legal marketing of the drug subject to proper quality controls. So long as there is a profit to be made in the illegal sale of marijuana, it is an invitation to organized crime to expand its activities in the black market. Because the user would still be forced to purchase from an illegal source, the disrespect for law that the present marijuana laws foster would still exist.

The Shafer Report adopted the position of discouraging the use of marijuana. Your Committee unanimously agrees with this position. However, the Shafer Report takes the position that legalization of sale will aggravate the current situation by giving the impression that it is approving the use of marijuana. They argue that they *think* marijuana use may be a passing fad and to take steps which might seemingly approve the use of marijuana would be undesirable. There is certainly no evidence that the use of marijuana is a "passing fad". There is significant experience to show that the illegal sale of marijuana contributes to organized crime and to the exposure of the purchaser to hard drugs. Unfortunately, the Shafer Report did not consider this argument at all.

The Majority of the Committee is of the opinion that the present evils resulting from the black market sale of marijuana can only be avoided by legalizing its sale under appropriate quality controls. Sales of marijuana could then be taxed and the money used to educate the public against all forms of drug abuse.

B. Majority Recommendation

The majority recommends that the manufacture and sale of marijuana be legalized and controlled by the state.

Respectfully submitted,
Ernest Bonyhadi
Fred M. Buchwalter
Phillip D. Chadsey
William Gittelsohn
Frederick A. M. Kingery, M.D.
George D. Leonard *and*
Charles M. Grossman, M.D., *Chairman for the Majority*

C. Minority Opinion and Conclusions

The Minority of your Committee is concerned with the impact of widespread legalized marijuana use on the productivity and material well-being of society. It is the Minority's judgment there is no compelling personal or social reason for legally effecting broader consumption of yet another intoxicant by members of society. For, in the final analysis, marijuana is nothing more or less than an escapist commodity. It is imperative that the tradtional values that made this country great are preserved, and those evils and values that undermine its progress are discouraged. Keeping in mind that there is no legitimate use for marijuana, involvement and motivation—not escapism—need to be encouraged.

For the first time in history exhaustive and heavily funded research into the medical aspects of marijuana is being undertaken. While the medical evidence is conflicting at this point, it is generally agreed that the typical amount of marijuana taken in the United States (1 to 1½ cigarets about twice a week) is not physiologically harmful. However, medical consensus is that marijuana, the drug, poses some danger for the individual user, either physically or psychologically. The only major disagreement in the medical community is about the degree of such danger[1]. Recurrently, almost every authority, society or commission in the field of medicine presently advocates the need for more research into the effects of marijuana use.

Heretofore, most medical studies have only covered a short-term use experience. But what of chronic or protracted use by the individual? Dr. Louis J. West, Chairman of the Department of Psychiatry at University of California at Los Angeles, states: "It is my belief that a percentage of regular users—I don't know what percentage and I don't know how to identify them in advance—will be adversely affected in terms of mental health by continued use of the drug"[2]. Why then rush to judgment on the question of legalizing marijuana? First let the results of the important medical research being done be known and let the Report of the National Commission on Marihuana and Drug Abuse (Shafer Report)[3], released this past month, be analyzed and commented upon by the experts.

Medically, then, the fact that presently there are few indications marijuana is seriously harmful when taken in moderate amounts does not mean that on-going research may not in the future reveal reasons for avoiding it completely. For if time and such research bear out Dr. West's belief that marijuana slowly exerts a personality or behavior change in some users, it will be by far the strongest argument yet against marijuana use—at least for those who hold the traditional values of motivation and achievement.

In discussing the legal aspects of marijuana use, the Majority states that . . . "Before the present proscriptions could be abolished and the use of marijuana legalized, the United States may either have to withdraw unilaterally from the Single Convention on Narcotic Drugs or seek appropriate amendments to its binding provisions". Suffice it to say that, because this would have to be done and the whole federal statutory scheme relative to the use and possession of marijuana amended before the drug could be legalized in this country, the practical — and political—likelihood that this would ever occur seems remote. To your Minority the recommendation that marijuana be legalized is not realistic.

According to the Shafer Report, 41 percent of the adults and 45 percent of the youths who have ever used marijuana reported in the National Survey authorized by the Marijuana Commission that they no longer use the drug. It is suggested that the present interest in marijuana is faddish and transient and will diminish in time of its own accord.

But the adoption of a regulatory scheme at this time legalizing marijuana would signify approval of its use and would institutionalize the availability of the drug. Your Minority believes use of marijuana should be discouraged.

Further, your Minority rejects a total prohibition scheme as it exists in the country today. The Minority does not view marijuana use as such a grave problem

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[1]"Marihuana: A Signal of Misunderstanding", First Report of the National Commission on Marihuana and Drug Abuse, Raymond P. Shafer, Chairman, March 1972, p. 119.

[2]"Marijuana: Does it change personality, conduct of user?", Los Angeles Times, January 10, 1972, article by Harry Nelson, Times Medical Writer.

[3]National Commission Report, supra.

that individuals who smoke it, and posessess it for that purpose, should be subject to criminal procedures. No sufficiently compelling social reason, predicated on existing knowledge, justifies intrusion by the criminal justice system into the private lives of individuals who use marijuana. This is primarily why the Minority concurs with the Majority of your Committee on the first recommendation.

On the other hand, it also rejects at this time the regulatory or legalization scheme offered by the Majority because it would institutionalize availability of the drug which has uncertain long term effects and which may be of transient social interest. It is submitted that, based on present knowledge, current legal sanctions relating to social use of marijuana are inappropriate, but temporal consideraions dictate that a decision be deferred on full legalization of the drug. In a word, to decriminalize the mere use of marijuana is one thing, but to recommend its complete legalization at this time is quite another.

D. Minority Recommendation

The Minority of your Committee rejects the second proposal of the Majority and recommends as follows: the cultivation or sale or possession for sale of marijuana (in amounts of more than one ounce) be treated as either a felony or a misdemeanor, within the discretion of the court.

Respectfully submitted,
A. Leighton Platt
Donald W. Green, III
For the Minority

Approved March 3, 1972 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors March 27, 1972, and ordered printed and distributed to the membership for discussion and action on April 21, 1972.

APPENDIX A

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APPENDIX B

NEW ORS NUMBERS AND "LEAD LINES"

Senate Bill 40 Section Numbers	became ORS NUMBERS	LEAD LINE
76	161.625	Fines for Felonies
77	161.635	Fines for Misdemeanors and Violations
83	161.705	Reduction of Class C Felony or Criminal Activity in Drugs to Misdemeanor
274	167.207	Criminal Activity in Drugs
276	167.217	Criminal Use of Drugs
312	51.050	Criminal Jurisdiction in Counties With or Without District Courts

APPENDIX C

INTERVIEWS

The following persons were interviewed by the Committee (titles indicate positions held at the time of the interview):

Dr. Paul Blachly, Department of Psychiatry, University of Oregon Medical School
Dennis Brand, Chief of Detectives, Multnomah County
Donald Clark, Commissioner, Multnomah County and former Sheriff, Multnomah County
Desmond D. Connall, District Attorney, Multnomah County
Dr. A. C. Germann, Professor of Criminology, California State College at Long Beach
George Van Hoomissen, District Attorney, Multnomah County
Gene Horn, Director, Charix Coffee House
Dr. Samuel Irwin, University of Oregon Medical School
Lee Johnson, Attorney General, State of Oregon
Sidney I. Lezak, United States Attorney in Oregon
Dr. William Proppe, Principal, Jefferson High School
Leonard W. Schmurr, Special Investigation, Portland Public Schools
Dr. Edwin Schneider, Principal, Lincoln High School
Dr. Charles Spray, Director, Outside-In Clinic
G. Raymond Steed, Assistant Superintendent, Portland School District
Robert L. Steel, Deputy Police Chief, Portland Police Department
Barbara Strauder, Nurse, Jefferson High School
Students from several high schools

[From the New York Times, Dec. 18, 1973.]

Oregon Has Not Become a Haven for Pushers Despite Nation's Most Liberal Drug Law

Portland, Ore., Dec. 15 (AP)—About nine weeks ago, Oregon abolished jail terms and heavy fines for possession of an ounce or less of marihuana, making the state's drug law the nation's most lenient.

The liberalization of the law has produced no startling changes. Possession of marihuana is still illegal, but now it is treated more like a traffic violation than a crime. A citation is issued and the maximum penalty on conviction is a $100 fine, regardless of the number of previous convictions. There is no criminal record.

The maximum penalty formerly was a year in prison and a $1,000 fine for the first offense, and 10 years and $2,500 for repeats.

There is no evidence that the state has become a haven for drug users and pushers, as opponents of the measure had warned.

Those who sell marihuana say that its price, supply and demand are following seasonal norms.

CHANGING ATTITUDE

For the most part, policemen, prosecutors and judges are pleased with, but not excited by the liberalization. They say the law has simply caught up with society's changing attitude toward the casual use of marihuana.

"It's a good thing," said Bill Youngman, senior deputy district attorney for Multnomah County, which includes Portland, the state's largest city. "It was getting to be hell prosecuting those cases. Marihuana use had become to common that the grand jury just wouldn't indict and when they did, the juries wouldn't convict. We were losing our credibility with the courts."

"I think this law is going to work out very well," said Michael Bailey, the Multnomah County prosecutor who handles most marihuana cases. "It's a clear statement that the legislature wants a very small amount of our resources devoted to this area. I think in a few years complete legalization of marihuana may follow suit."

"Yes, this is a step toword legalization," said Sgt. Carl Dunafon of the Portland Police Department's narcotics detail. "And I oppose it. The law is too liberal. We don't have enough information to know the exact effects of this dangerous drug and here we are trying to legalize it."

Mr. Bailey said about 40 citations had been issued in the county for marihuana possession since the new law took effect Oct. 5—"mostly to teenagers, street people, hippies, the ones who smoke in public places."

He said practically all those to whom citations have been issued have pleaded guilty and accepted a usually light penalty.

Stiff criminal penalties for sale of any amount of marihuana, and for possession of large quantities of marihuana and other drugs, remain in force. Hashish, a more potent derivative of the marihuana plant, was inadvertently included in the new law. Legislative leaders say this was an oversight and will be corrected during a special session early next year.

TOO EARLY TO TELL

"It's far too early to tell what the effect of the law is going to be on the market," said a Portland dealer who handles large quantities of marihuana. "The stuff is getting easy to come by again because of the harvest in Mexico. And the quality is going up. This is the best tme to buy so I don't know how much of the increase is due to the law."

In Lane County, home of the University of Oregon, District Attorney Pat Horton said he was using the present system almost a year before the liberalized law took effect.

"There's been a saving of time and money," he said. "The average time for a policeman to arrest, lock up and process a person is 40 minutes. That's 40 minutes the cop is not on the street protecting life and property."

Mr. Horton foresees the eventual legalization of marihuana in Oregon, but with state controls on price and supply like those on liquor.

There is not total agreement.

"All this law really is is a license to sell," said District Attorney Doye Schiffman of Douglas County, a less populous region in the southwestern part of the state. "The pusher can go on his merry way selling marihuana, and as long as he never carries more than a lid an ounce at one time . . ."

In the eastern Oregon town of Hermiston, a move is already under way to restore criminal penalties for possession.

"We don't know to what extent marihuana affects the brain, but it very definitely does," said Susan Roylance, 31-year-old mother of seven and head of the Committee Against Liberal Drug Laws.

[From Oui, August 1975]

MARIHUANA FINDS PEACE IN OREGON

(By Tom Mareman)

The day he signed the bill into law, making his state the first in the nation to ease its penalties for possession of small amounts of marihuana, Oregon Governor Tom McCall, a Republican, expected hell from the people of his state. With the stroke of a pen, he had made, in effect, possession of one ounce or less of marihuana no longer a crime but merely a civil violation—punishable by a fine of $100 or less. The governor was sure, as he later said, that his actions in supporting and signing the bill were way ahead of public sentiment at the time.

So he braced himself for a siege of public criticism. Expecting an avalanche of mail, he had printed up a large stack of replies that outlined the whys and wherefores of his decision. Some lawmakers who'd supported the bill were also uneasy, fearing they'd gone too far; others began to wonder, unhappily, about their chances for re-election. The bill that passed both houses—by a margin that was nowhere near as close as many had predicted—failed to make a distinction between marihuana and hashish and, as a result, McCall's attorney general advised him not to sign it. (This lack of distinction between marihuana and hashish was changed three months later by a special session of the legislature.) "I went ahead and signed it," McCall says now, "because I knew we'd never get there again." On the surface, anyway, it took tremendous guts, even for Tom McCall, the most popular governor Oregon has ever had.

But maybe the citizens of the state were already there. Despite a lot of press coverage all over the state, the new law decriminalizing marihuana failed to generate much controversy. The siege of criticism many had expected somehow, mysteriously, never occurred. All was quiet on the streets of Salem, in and around the capitol building. Supporters of the bill, Democrats and Republicans alike, were amazed.

So was the governor. The few letters he got were divided almost equally between supporters and critics.

What Tom McCall did, of course, is something that is just now beginning to happen in other states. California, Colorado, New York, Connecticut and New Jersey, among others, are all considering laws modeled to some extent after Oregon's. So is Congress. Politicians and lawmakers are looking at the Oregon "experiment" with both curiosity and amazement. They're not sure if the marihuana law is some kind of comic error—enacted by a kooky state legislature and a sympathetic governor—or what. They don't understand the place and its people.

Oregon conjures up pictures of lumberjacks chopping down big trees; of country hicks, with bulging Adam's apples, walking around with Pendleton shirts on their backs and horse manure between their toes; of dairy farmers in bib overalls, out to pasture, idly tending to their cows; of Okies migrating west from the Dust Bowl during the last days of the Great Depression in search of something better. Oregon brings to mind images of Paul Newman, in the movie version of Sometimes a Great Nation, floating down-river on logs, middle finger extended upward defiantly, a rebel and strikebreaker; of Ken Kesey spaced out on his farm near Springfield, a culture hero gone to seed; of Wayne Morse, the late Senator with the shock of white hair and fiery tongue, orating, long before anybody was quite willing to listen, on the evils of a distant war in Asia.

The national image of Oregon is both true and false—true because you will find loggers and farmers and Ken Kesey; false because the image is just that—an image. It doesn't tell much of anything beneath the surface, like why a state that prides itself on a kind of 19th Century rugged individualism would vote to decriminalize marihuana, why conservatives in the legislature—like Stafford Hansell, a Republican hog former from eastern Oregon—would support such a law and why citizen reaction to its enactment would be far from outrage. All those things go much deeper than what is presented on TV or in the papers and newsmagazines. Oregon is watched through the eyes of the media, yet rarely understood—much less felt.

A recent survey commissioned by the Drug Abuse Council, in Washington, D.C., offers a general idea ofhow Oregonians now feel about the marihuana law. The survey was conducted by a Portland marketing-research firm one year after the law went into effect in October 1973. It is based on interviews with 802 adults in the state. The results show that 58 percent of the public either approve of the new law or want it liberalized even further; 39 percent favor returning to stiffer penalties. (Practically all of the people in this 39 percent have never used marihuana.) The survey shows, moreover, that there has been no significant increase in the number of people smoking grass and that of those who do smoke, 40 percent report a decrease in consumption, despite the law.

Thus, the extent of marihuana use in Oregon (nine percent of state residents are current users, 19 percent have experimented) is not significantly different from that of the country as a whole (eight percent are current users, 18 percent have experimented). Interestingly enough, those in Oregon who do not smoke grass give the following reasons: 53 percent are "simply not interested," 23 percent cite "fear of health consequences," two percent point to the "unavailability of marihuana" and four percent blame "fear of legal prosecution." The remaining 18 percent are, for the most part, undecided. The criminal law, therefore, plays only a minor part in somebody's decision to smoke or not to smoke.

But the question is, how is the law working out in practice? Not too surprisingly, you won't find very many Oregonians who are doing the asking. Marihuana hardly makes news in the state anymore. Nobody talks much about it these days, maybe because they've got other things on their minds, like unemployment, lumber mills shutting down, farmers burning their fields every summer in the Williamette River Valley—polluting the air horribly.

If you ask cops around the state, they'll tell you almost to a man that marihuana is more "evident." Which is their way of saying that weed is more visible. You may see somebody taking on a joint openly in a bar or tavern; or you may see people smoking at a rock concert or a party. Yet cops like Robert Scotton, a narcotics officer with the Portland police, will add, "If 'evident' means there's more use—well, then that's a cognitive leap a person takes on his own." Scotton seriously doubts if usage has increased.

If you ask District Attorney J. Pat Horton, of Lane County, which encompasses the Eugene-Springfield area, you'll learn that he's pleased with the new law for a number of reasons: a shift in police priorities away from petty dope busts to more serious crimes, reduced caseloads in the courts, a more respectful attitude among kids toward cops. "By any measurable standard, the decriminalization of marihuana is working well," says Horton. Handsome, young, articulate, Horton is a strong advocate of the present law and has testified before the U.S. Senate urging Congress to adopt a national policy based on the Oregon model.

In the high schools, there are fewer and fewer problems with dope; kids don't come to school loaded—as they did in the past. They're very cool about smoking grass. "It's no big deal," you'll hear, "as long as you aren't, like, blatant about it." Besides, drinking has come back—if it ever really went away—in schools and on college campuses. Ask Stephen Kafoury, the Democratic representative from Portland who, along with Hansell, led the fight for the new law. He'll tell you: "We didn't expect any changes to occur because of the new law. People were or were not smoking regardless of its illegality before, so why should that pattern change?"

Kafoury, who has a strong following among young people, is now sponsoring a bill to decriminalize the cultivation of up to ten marihuana plants and the transportation and sale of up to one ounce of grass. Tom McCall, now former governor (the office in Oregon is limited to two consecutive terms), says that he is satisfied with the way the present law has been working out. "It's the fullest, most rational breakthrough on this very emotional issue," he says. "That's why it's important, and that's why we should stick with it."

What the law does—and it's important if you're caught with one ounce or less of marihuana—is eliminate any criminal-arrest record. If you're caught in Oregon, a cop can't arrest you, he can only cite you, meaning that you simply appear in court and pay your fine, usually $50 or less. Horton says, "The people who come into the courtroom now accused of selling narcotics are traffickers and profiteers —professional criminals—not young professional people." Marihuana, of course, isn't legal in Oregon; you can still be busted for transporting, promoting, cultivating or furnishing (selling) on a felony or a felony-misdemeanor charge. The Catch-22 is:

It's OK once you have marihuana, but just don't let the cops catch you getting it. Why the official $100 fine? Says Kafoury, running a hand through his thick brown beard, "One hundred dollars was what most people were being fined anyway before the law, so we decided to keep that. But the main thing now is that you don't get an arrest record." As for sticking with it, as McCall suggests, people in Oregon appear to have every intention of doing so. Resistance to the new law has been minimal, with one possible exception. A group of citizens from the city of Hermiston organized a petition drive during the last state election in order to repeal the law. They needed 45,000 signatures to get the measure on the ballot. Despite a statewide campaign, they were able to muster only about 15,000 signatures. The petition never made it.

The law is popular politically. "It's not the old pull-down-the-shades-and-lock-the-door routine," kids who smoke will tell you. Grownups, too, are far less paranoid about those who smoke, about the menace of long-haired, weirdo freaks, dope fiends high on something, who have come to take away their daughters—or whatever the grown-up fantasy was. "Used to be that somebody who smoked marihuana was considered a creep or something," says Sergeant Bert Moreland, a Eugene cop. "Now you've got respectible middle-class people who smoke." The reduction of paranoia has had another effect, too. Just walk the streets of Portland at night, of reefers or a lid, used to be one way a cop could intimidate you, maybe prove his stripes, and maybe shake you down for long hair, your appearance or whatever. Usually, the bust was a waste of time for the cop. He knew it, too. He knew you'd get off with just a fine and, possibly, a lecture from the judge. But it was the hassle involved—like getting bounced around, booked, fingerprinted, maybe even thrown into the slammer for a night or two. That's what got to you—and the cop knew it. Busts for grass had their own ritual, something repeated dozens of times.

But things are changing. There are still cops like Lieutenant Harold Berg, assistant director of the criminal division with the state police in Salem, who in one breath will tell you. "We'll use whatever means necessary to enforce the law," and then say, "Now, I don't want you to get the idea that I'm a red-neck cop or something'." Still, one girl, in her mid-20s, who'd moved up to Oregon from California, remembers the time not too long ago when she got busted for grass. It happened in a small town out on the Coast. "The cops just weren't into bustin' people," she recalls. "They were really friendly, helpful. This one cop didn't exactly know what to do, like, how to write out a citation. I was scared, bummed out. But he looked at me real friendly and said, 'What are we going to do about you people who come out here from the valley and get stoned?' "

The narcs, of course, are still around, hanging out on the street under various covers, working their own show, waiting for hours, maybe even days, just for a buy. In Lane County, at least, according to D.A. Horton, they don't buy marihuana anymore, the emphasis now being on hard drugs such as coke and heroin. In Portland—Multnomah County—it's pretty much the same. "Marihuana activity in the police department is nil," says police chief Bruce R. Baker.

Most cops will say that they don't agree philosophically with the new marihuana law. If alcohol is already a problem, they say, then you're just asking for more trouble by reducing the penalties for possession of grass. Yet the criminal law hasn't been a deterrent in the past and some cops are aware of that "Increasing the punitive measures," says Baker, "doesn't act as a deterrent in the narcotics trade."

In terms of cops and their relationship to kids since the law went into effect, it's an unusual situation. If you ask Lieutenant Berg about his relations to kids on the street, if the scene has improved, he'll look at you as though you were speaking in Swahili and turn the question around: "What part of the country are you from? There's some alienation among youth here, yes, but not to the extent you find elsewhere. Kids here have more respect for police."

At some Eugene soda bars, cops pass through from time to time—usually rookies working in pairs—take a quick look around, maybe say hello if they're in a good mood, then leave. There is little, if any, overt hostility toward them. The kids mind their own business, play cards, arm wrestle, listen to the jukebox, whatever—without getting rousted. Sometimes they even smoke grass in these places, surreptitiously, like, late at night when it's crowded beyond belief and rock is heavy in the air. The cops are hip to what's going on—and so are the kids—but they won't hassle them if they're cool. Mainly, when they pass through on patrol, they're either looking for somebody or ready to break up a fight if some rummy gets drunk and starts a brawl.

On weekends, these kids may cruise Willamette Street, the local "gut," looking for some kind of action, a perpetual re-enactment of the teen Fifties. Or they may walk the mall in downtown Eugene, which is very big on weekends, especially if there's a break in the weather and the sun comes out. Toking on a joint in public as you walk the mall isn't considered very mellow; you know you can smoke dope now without the fear of being thrown into the slammer, so why flaunt it?

"Man, the revolution is over and we won," says Bobby Sky, who used to hang out with Kesey and his regrouped band, the Merry Panksters. In a sense, Sky, with his shoulder-length hair and very casual manner, is right. The great psychedelic wars that Keysey and his Pranksters fought in the Sixties *are* over. What's left to rebel against, particularly in Oregon? Parents go out on certain nights and listen to rock music with their kids; college students with beards and long hair participate in lengthy political debates with legislators in Salem, and rarely, if ever, feel as though they have no voice in local government; cops make very polite dope busts; guys with shoulder-length hair and rep ties work in straight jobs for law firms, big companies, government agencies—and smoke dope on weekends. Hip kids have taken on straight jobs without losing whatever it was that made them hip in the first place. Conversely, many straight people—lawyers, doctors, teachers—have taken on hip values, though not necessarily hip appearances. As one girl who's grown up in Oregon says, "Everybody is fittin' right in."

Dope dealers, however—at least those who are willing to talk—are either cynical about the new law or curiously indifferent to it. Things, after all, haven't changed much for them. What they're involved in—buying and selling for profit—is, of course, still illegal. Though undercover narcs are still on the street looking for big buys, these dealers (who deal modestly in kilos, not tons) are not about to sell indiscriminately, without first checking out something about their clientele. They like to think that narcs are putting all their efforts into hard-drug busts, but at the same time, they're not so sure. If you're a dealer, paranoia follows you wherever you go. You still hide, they still seek.

The emphasis nowadays among dealers is on quality—a higher grade Mexican or Colombian grass, which sells for $20–$40 per ounce, often more, depending on the season. The market demands better shit; people want quicker highs, like a couple of hits and you're *there*, instead of those times in the past when you'd sit around for what seemed like hours toking, nauseated, on bad weed. Quicker highs obviously cost more.

To cut costs, more people are saving their seeds and growing their own. Cultivation is up, even though it's illegal under the present law. Scotton, the narcotics cop, says, "There's more cultivation; we make more arrests for that." Home-grown weed, of course, may not be as good as what's imported and it can be a lot of work, because the climate isn't exactly suited to cultivation. So cultivators have to go the heat-lamp route. Most of the grass in Oregon, naturally, comes from Mexico through California. Distribution, narcs say, is being made lately in smaller and smaller quantities. "We've seen fewer kilo blocks." Scotton will tell you, "in relation to quantity than we have in the past, which indicates that if it's coming from Mexico, it's not being packed the same."

As for enforcement of the new law, there are indications that it hasn't been handled uniformly throughout the state. It's not all sweetness and light. Gary Gortmaker, the D.A. for Marion County, which includes the state capital, has reportedly refused to allow cops in his county to issue citations. He maintains that anyone cited for marihuana possession can't be prosecuted later for more serious offenses stemming from a dope bust. What Gortmaker is doing, in effect, is busting people for transporting if they are caught smoking in a car, parked or moving; for furnishing if they are seen by a cop passing a roach to somebody else; for remaining if they are caught in the same house where people are

smoking. All of the above carry felony—or, in the latter case, misdemeanor—charges.

In a confidential directive to police, Gortmaker has instructed his subordinates that people found possessing less than one ounce of marihuana be arrested and taken into custody, rather than merely cited to appear in court. As a consequence, people are coming out with felony arrests on their records for what the legislature has said should be only a violation. Gortmaker has refused to either explain or justify his policy to anyone. He did tell one reporter, however, that "the word decriminalization is a misnomer dreamed up by somebody. Something is either legal or not legal—criminal or not criminal."

Lawmakers such as Kafoury are angry about Gortmaker"s independent policies, though they admit there's not much they can do about them. Official state policy is one of discouragement of marihuana use, as witnessed by the stiff penalties in effect for sale and distribution. Whenever Gortmaker"s policies are mentioned, Horton, Hansell and McCall shake their heads in disbelief, They're all aware of the situation—which a number of cops in Gortmaker's county are not too pleased about, either—yet they are really powerless to take any kind of action.

Outside Marion County, middle-class parents see the new law as working well, mainly because their kids no longer come away from busts with arrest records. Ease up on the law and save your kid; find ways for him to get involved in the system without becoming cynical about the law. That's part of the social consciousness of the state of Oregon—a kind of belief that if the system is to work, it has to be responsive. If you ask people about the consciousness of the state, in fact, they'll look at you and say, "The Oregon story." Just that. The Oregon story is a notion put forth by Tom McCall. In terms of the marihuana law, he says, it means "pragmatism in the area of hysteria. I predict that other states—if we can hang on to the law, and our experience would indicate that it should be hung on to—will follow suit, because it just makes good sense."

LAW & JUSTICE

Oregon's Marijuana Decriminalization: One Year Later

WHAT ARE THE RESULTS OF ABOLISHMENT OF CRIMINAL PENALTIES FOR POSSESSION OF MARIJUANA?

By Robert R. Carr
Senior Program Officer,
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A SURVEY taken in the state of Oregon one year after it had abolished criminal penalties for simple possession of small amounts of marijuana revealed that a majority of citizens favor this new approach, and that the number of individuals using marijuana has not significantly increased with the removal of criminal sanctions.

Oregon is the first of the 50 states to abolish criminal penalties for possession of one ounce of marijuana or less, and to replace them with a maximum civil fine of $100. The independent Drug Abuse Council* commissioned a survey in October, 1974—the first anniversary of the new legislation—to assess what changes occurred in marijuana usage during that year, and to find out what impressions Oregonians have of their new law.

The Oregon law received bipartisan support in both houses of the legislature and became effective in October, 1973, after being signed by Gov. Tom McCall, a Republican. The Oregon model is similar to the approach recommended by the National Commission on Marijuana and Drug Abuse—an official policy of discouragement of marijuana use by the imposition of a civil sanction, with the elimination of criminal penalties.

The Commission's First Report, *Marihuana: A Signal of Misunderstanding*, issued in March, 1972, recommended that possession of marijuana for personal use no longer be a criminal offense and that casual distribution of small amounts of marijuana for no remuneration, or insignificant remuneration not involving profit, no longer be an offense.

The new laws on marijuana use or possession do not "legalize" marijuana in Oregon any more than fines for traffic violations make such violations "legal." The laws do "decriminalize" the use or possession of one ounce or less of marijuana. Conviction of the offense is neither a misdemeanor nor a felony, and no imprisonment or fine in excess of $100 can be ordered.

It was feared by some that the adoption of such an approach would lead to a dramatic increase in marijuana use, and that the state might even be overrun by hordes of hippies. Since policy-makers at both the national and state levels are looking at the Oregon experience to guide them in their own policy determinations, the Drug Abuse Council, through its survey, sought to answer some of the questions raised by the decriminalization of marijuana.

The survey was conducted by Bardsley and Haslacher, Inc., a marketing research firm in Portland, Ore., and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues. Field work for the study was conducted between Oct. 17 and 24, 1974. The sample consisted of 802 personal, face-to-face interviews with a representative sample of adults 18 years or older.

The results of the survey are presented here in three parts: marijuana usage —ever used and presently use, frequency of use, how long used, and changes in use; reasons for present non-use of marijuana; and attitudes toward the new law and other legal alternatives.

Marijuana Usage

Two out of every 10 Oregon adults (19%) have at least tried marijuana, with one out of every 11 (nine per cent) reporting that they currently use marijuana. A sharp difference in marijuana usage, both ever used and currently use, is seen between younger adults and older adults, between men and women, and between educational levels. Of adults 18 to 29, 24% reported that they currently use marijuana, as compared to five per cent between the ages of 30 and 44, and less than one per cent of those over 45.

Over four times as many men (13%) as women (three per cent) said that they currently use marijuana. Of those who have completed college, 12% reported currently using marijuana, compared to six per cent of those with a high school education, and less than one per cent of those with a grade school education or less.

The National Commission on Marijuana and Drug Abuse classified marijuana users according to frequency of use: Experimental—at least one trial to once a month or less; Intermittent—two to 10 times monthly; Moderate—11 times monthly to once daily; Heavy—several times daily; and Very Heavy—almost constant intoxication with potent preparations, brain rarely drug-free.

The Oregon survey data indicates that 54% of the adults who have ever used marijuana reported that they no longer use it; seven per cent use marijuana sporadically. These persons can be characterized as experimental users.

Of the adults who have ever used marijuana, 14% can be designated in-

* The Drug Abuse Council, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation, and research funding in the field of drug use and misuse.

termittent users. They continue to use marijuana from two to three times per month to once per week. Some 18% of adults are moderate users, who continue to use marijuana a few times a week to once daily.

Finally, seven per cent of adults who have ever used marijuana are heavy users, using marijuana more than once daily. No distinction was made in the survey between heavy and very heavy users.

It appears that the number of individuals using marijuana has not significantly increased in Oregon during the year following removal of criminal penalties for simple possession of one ounce or less. Of those currently using marijuana, only six per cent report that they have used it for less than one year, while 91% have used it for more than one year. All of the less-than-one-year users are between 18 and 29 years of age.

Of those individuals currently using marijuana, four out of every 10 reported a decrease in usage during the first year of the Oregon decriminalization law, while one of every 20 reported an increase in usage. More than one-half (52%) of current users reported no change in consumption during the same period.

Reasons for Present Non-Use

Those individuals who reported that they do not currently use marijuana—both those who have never used it and those who have stopped using it—were asked to choose the one reason for their present non-use: possibility of legal prosecution; not available; not interested; marijuana may be dangerous to my health; or other reason.

Lack of interest was the most important reason chosen for not using marijuana by both those who have never tried it (54%) and by those who have tried, but stopped (51%). Possible health dangers were cited by 23% of never-users and by 12% of ever-users as the most important reason for not currently using marijuana.

Both the possibility of legal prosecution and the lack of marijuana availability ranked low as reasons for not currently using. Legal prosecution was named by four per cent of never-users and by seven per cent of ever-users, while not available was named by only two per cent of never-users and by one per cent of ever-users.

Attitudes Toward Marijuana Laws

A majority (58%) of Oregon adults favor the elimination of criminal penalties for the possession of small amounts of marijuana. Approximately three out of every 10 residents (32%) approve of their state law that makes simple possession of marijuana a civil "offense"—akin to a parking ticket—carrying a fine, but no jail term or criminal record; 11% favor changes in the law to make both sale and possession of small amounts of marijuana legal; and 15% favor changes in the law to make possession of small amounts and use in private legal.

Young adults—aged 18 to 29—take a more lenient view on the four legal choices regarding sale and/or possession of small amounts of marijuana. The division on legal alternatives is sharp between those who either have used or currently use marijuana and those who have never used it. Of all of those who have never used marijuana, 50% approve of the law as is or more lenient options, while 46% favor stiffer penalties, the overwhelming number of which came from the never-used marijuana group and from those 30 years of age or older.

ATTITUDE TOWARD LEGAL ALTERNATIVES

First Choice	Civil Penalties, As Is	Possession of Small Amounts Legal	Sale and Possession of Small Amounts Legal	Stiffer Penalties	Undecided
Total Adults	32%	15%	11%	39%	3%
By Age					
18-29	36%	26%	17%	19%	2%
30-44	38%	13%	8%	40%	1%
45-59	25%	13%	7%	51%	4%
60 and over	27%	5%	9%	53%	6%
By Usage					
Have used	26%	37%	29%	7%	1%
Never used	33%	11%	6%	46%	4%

Observations

The Oregon survey seems to indicate that the number of individuals using marijuana did not significantly increase in Oregon in the year after its decriminalization law went into effect, and, of those using marijuana, a large percentage reported a decrease in consumption, while only a small number reported an increase in use. Lack of interest or health concerns were the primary stated reasons for either non-use or cessation of use, while lack of marijuana availability or legal sanctions were peripheral concerns.

A majority of Oregon residents favor either their new law treating simple possession of one ounce or less of marijuana similar to a traffic ticket or changes in the law to remove all legal sanctions for simple possession of small amounts.

Significant divisions in both marijuana usage and attitudes toward marijuana law appeared among age groupings. Marijuana usage among Oregon adults is by far the heaviest in the 18- to 29-year-old group, which also favors the more lenient legal approaches.

The decriminalization approach is rapidly gaining support at the national and state levels. Legislation to remove criminal penalties for simple possession of marijuana has been introduced in the U.S. Congress by Sen. Jacob Javits (R.-N.Y.) and Rep. Edward Koch (D.-N.Y.).

California, Maine, and Colorado have recently substituted fines in place of jail sentences for possession of small amounts of marijuana, and several other states are presently considering such an approach. The Alaskan Supreme Court declared criminal penalties for marijuana possession to be an unconstitutional invasion of privacy, and the Alaska legislature approved a bill, signed by the governor, which decriminalizes private marijuana possession.

National surveys show similar use and attitude patterns among adults as among those in Oregon, and, further, indicate an even more lenient attitude toward marijuana laws among the youth who will be reaching voting age in the next few years. If younger adults maintain the attitudes they now have as they grow older, and if marijuana usage continues to remain at its present level or increases in subsequent "younger adult" groups, we can expect to find an ever-increasing acceptance of marijuana in the years ahead. If that happens, we will find increasing pressure for removing all legal sanctions for marijuana use and possession.

PENNSYLVANIA

[From the Philadelphia Bulletin, Aug. 17, 1975]

EASING OF MARIJUANA LAW URGED

PENNSYLVANIA DRUG COUNCIL SUGGESTS CITATIONS INSTEAD OF ARRESTS

(By John Benditt)

It's an ordinary August evening in center-city Philadelphia—quiet, hot and muggy. A hip young couple in their twenties stroll through Head House Square, casually passing a joint back and forth.

They cup their hands to hide the red glow of the marijuana cigaret, but it just isn't their night. A cop passing in his blue cruiser spots them.

But instead of jumping out, slapping on the cuffs, and taking the young smokers down to the Roundhouse, the cop takes out his well-worn ticket book and writes out a citation.

A pot-smoking ticket?

Such an incident could actually take place by summer if some of Pennsylvania Governor Shapp's advisers convince the Legislature in Harrisburg to accept their plan.

The Governor's Council on Drug and Alcohol Abuse has submitted an 80-page "Marijuana report" recommending that possession of small amounts of marijuana be "decriminalized."

The report urges that possession of small amounts of marijuana for personal use be made a civil offense, much like a traffic citation.

Offenders would have no arrest record, and would not face the risk of a criminal record if convicted.

There has been a rising number of pot arrests every year in Pennsylvania (9,616 in 1973) but the Council's report says the marijuana laws don't prevent anybody from smoking the weed.

Regardless of the laws, the report claims, about one in five adult Pennsylvanians will smoke marijuana some time during this year.

And present pot laws continue to cost Pennsylvania taxpayers in the neighborhood of $10 million in law enforcement costs a year, the report adds.

Council officials say they have already drawn up a bill providing for decriminalizing marijuana possession. Several legislators, they say, have already said they were interested in sponsoring the bill in the next session of the Legislature.

If the bill becomes law, possession and use of less than 30 grams of marijuana, roughly an ounce, would become a civil offense, with a maximum fine of $100. Selling pot would remain a criminal offense.

Under current Pennsylvania law, the maximum penalty for possession of less than 30 grams of pot is $500 and 30 days in jail.

YEAR AND $5,000

For possession of larger amounts, or for selling marijuana, the penalty now is up to a year in jail, and a $5,000 fine.

Similar "traffic-ticket" pot laws are already in effect in Alaska, Oregon, Colorado and California. "Ticket" laws are being considered by legislatures in Michigan, New Jersey, New York, Washington and Wisconsin.

The chairman of the Governor's Council, Dr. Richard E. Horman, a clinical psychologist, explains he has done an about-face on pot law in the last few years.

In 1970, Dr. Horman was the author of a strongly anti-marijuana book, "Drug Awareness," and a supporter of criminal penalties for pot smoking.

I WAS SO CONSERVATIVE

"Governor Shapp had misgivings about appointing me to the Council because I was so conservative," Horman said recently.

Now, Horman thinks "it's absurd to think that the law has any effect on marijuana smoking. You can't prohibit people from using something they can grow in the backyard."

His report figures seem to bear him out. A study made by the council found that 19.2 percent of Pennsylvanians over 15 use pot once a year, and 4.2 percent use it more than three times a week.

And the overwhelming majority of non-smokers said they don't smoke because of possible health hazards, not because of the existing laws.

HEDGES ON HEALTH

The report itself hedges on the possible effect of marijuana no health. There is no "conclusive evidence," it says, that "marijuana use is significantly hazardous to health."

"On the other hand," it adds, research "has not demonstrated a conclusive margin of safety, either."

"Most people know they're not going to get busted now," Dr. Horman said recently in explaining why marijuana smoking continues to increase in Pennylvania.

And although the report estimates less than one in 100 pot smokers in Pennylvania will be busted this year, the marijuana laws are costing an estimated $9.2 million in 1972.

COULD BE BETTER SPENT

Council officials believe that the amount it costs to arrest and prosecute pot smokers every year could be better spent elsewhere.

Locally, some law enforcement officers agree with them. Michael Byrne, chief of screening and diversion in the office of Philadelphia District Attorney Emmett Fitzpatrick, says "If we've got to choose between arresting murderers, rapists, robbers and pot-smokers, we might just say, 'No, we're not going to arrest the pot-smokers.' "

The Governor's Council report admits that most Pennsylvanians don't want to liberalize the pot laws—they want to toughen them.

In a survey conducted for the council by Oliver Quayle and Company, a private survey firm, 57 percent of the adults who were asked said marijuana laws should be stricter. (Republicans were tougher than Democrats or Independents).

But the same survey showed that more than half of those who thought the laws should be tougher were "not at all familiar with the present marijuana laws."

"You have to remember," Dr. Horman says, "this is a very agrarian state, and it reflects the type of norms you'd find in, say, Nebraska."

RELAXING MARIJUANA BAN WILL AFFECT PHILADELPHIA LITTLE

Even if the Governor's Council on Drug and Alcohol Abuse persuades the Legislature in Harrisburg to "decriminalize" marijuana, it won't make much difference in Philadelphia.

The office of District Attorney F. Emmett Fitzpatrick has a long-standing policy of not prosecuting those arrested with small amounts of marijuana.

"In most cases, when small amounts of relatively harmless narcotics are used, we withdraw prosecution, and that's it," Fitzpatrick says.

Philadelphia police still make arrests for any amount of marijuana possession, but cases involving small amounts are dropped when the suspect is brought to the Police Administration Building, 8th and Race sts., a spokesman for the district attorney's office said.

Because no separate records are kept for marijuana arres s and prosecutions, the district attorney's office does not know exactly how many people were prosecuted last year for possession of small amounts of marijuana.

But Michael Byrne, chief of screening and diversion for the District attorney's office here said "I know of none", when asked how many Philadephians went to jail last year for small amounts of pot.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S COUNCIL ON DRUG AND ALCOHOL ABUSE
NO. I RIVERSIDE OFFICE CENTER, SUITE "N"
2101 NORTH FRONT STREET
HARRISBURG, PENNSYLVANIA 17110

MILTON J. SHAPP
GOVERNOR

RICHARD E. HORMAN Ph. D.
EXECUTIVE DIRECTOR

September 11, 1975

The Honorable Birch Bayh
Chairman, Senate Subcommittee to
Investigate Juvenile Deliquency
363 Russell Senate Office Building
Washington, DC 20510

Dear Senator Bayh:

It is my understanding that your subcommittee will be acting on legislation to decriminalize marihuana (S. 1450) in September and October.

After an intensive seven-month study, the Governor's Council recommended in July 1975 decriminalization of simple possession of marihuana in Pennsylvania. Proposed legislation to implement that recommendation has been drafted within the report (see enclosure) and will be introduced into both the House and the Senate during the last week in September.

I, therefore, strongly urge that you respond favorably to Federal legislation which would remove the criminal penalties applied to simple possession of marihuana.

Sincerely,

Richard E. Horman, Ph.D.

Enclosure

Marihuana Report

As submitted to Governor Shapp and the Pennsylvania General Assembly • Commonwealth of Pennsylvania
July, 1975

The Governor's Council
ON DRUG AND ALCOHOL ABUSE

MILTON J. SHAPP
Governor

RICHARD E. HORMAN, Ph.D.
Executive Director

COMMONWEALTH OF PENNSYLVANIA
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MILTON J. SHAPP
GOVERNOR

RICHARD E. HORMAN Ph. D.
EXECUTIVE DIRECTOR

August 1975

To the Governor and General Assembly of the Commonwealth of Pennsylvania:

The concern associated with the extensive use of marihuana by Pennsylvanians prompted the Governor's Council to thoroughly examine and collect the pertinent material related to this dilemma.

In March 1975 my staff prepared "Marihuana: A Discussion Paper" to stimulate a debate about the effects of the 1972 Controlled Substance, Drug, Device, and Cosmetic Act. The paper was prepared because we were under the impression the Act did not significantly affect marihuana use.

This report is an extension of the discussion paper and includes our findings and recommendations. It may be thought of as exhaustive in its completeness; however, we could not justify our recommendations for altering the drug laws without systematic scrutiny of all available facts.

The report represents over seven months of research and analyses on marihuana use and the implications of this use to social policy makers.

We respectfully submit this report to you for review, discussion, and consideration.

By Direction of the Council,

Richard E. Horman

Richard E. Horman, Ph.D.

The Governor
The President of the Senate
The Speaker of the House

MARIHUANA REPORT

I. Introduction

A. Marihuana - Societal Attitudes

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B. Pennsylvania Criminal Law

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1. Pennsylvania Law: Other States Compared

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INTRODUCTION

In March 1975 "Marihuana: A Discussion Paper" was prepared by the staff of the Governor's Council on Drug and Alcohol Abuse in an attempt to evaluate the impact of the existing marihuana policies in the Commonwealth of Pennsylvania. The report explored the attitudes of the Pennsylvania public toward marihuana, the impact of current laws, the health research controversy, and law enforcement. This second and final edition is an extension of that report.

The first report in March was necessary in order to define and clarify all the issues surrounding marihuana in Pennsylvania. Only after analyzing the situation methodically could the Governor's Council consider offering concrete alternatives to the existing laws.

It is our position that three years is a responsible length of time to wait in order to evaluate the effect of the legislative policies passed in 1972 (Act 64).

Through public hearings that resulted in several hundred pages of testimony, we solicited opinions and direction from public officials, community organizations, lawyers, drug program personnel, students, and health officials. (Summaries of the testimony are included.)

As published in the first report, we initiated a statewide public opinion poll (Oliver Quayle and Company, Inc.) to ascertain public usage of marihuana, frequency of use, attitudes toward changing the present law, and knowledge of existing laws as they pertain to marihuana.

In addition, when criminal statistics were unavailable, we conducted a separate survey to all the district attorneys in order to obtain visibility on the usage of judicial alternatives to incarceration as applied to cases involving marihuana.

This expanded and final edition focuses on Pennsylvania's experience with marihuana. It compiles all the present pertinent data and includes recommendations for responding to this social dilemma.

# # #

MARIHUANA POLL: ATTITUDES & USAGE

In a poll conducted in February, 1975, by Oliver Quayle and Company for the Governor's Council on Drug and Alcohol Abuse, the following highlights the results compiled from the 1200 people interviewed:

1. THE MAJORITY OF ADULTS (57%) BELIEVE THE EXISTING MARIHUANA LAWS SHOULD BE STRICTER. HOWEVER, 61% (OF THE SAME 57%) ARE NOT AT ALL FAMILIAR WITH THE PRESENT MARIHUANA LAWS AS THEY EXIST TODAY.

The majority of people who stated they were very knowledgeable or quite familiar with the law felt the marihuana laws should remain the same or become more lenient (49%); whereas, 45% of the people in the same category felt they should be stricter.

Past and present marihuana users disagree sharply with non-users --60% of those who have tried marihuana favor a more lenient law.

An analysis by party affiliation demonstrates that Republicans are the most conservative, with Independents and Democrats leaning slightly toward lenient restrictions.

The majority of all demographic groups favor stricter laws (even among the young and college educated).

Only 1/3 of all adults between 18 and 25 years of age and 1/3 of adults with some college or a college degree favor more lenient laws. Yet, as many people from the same group favor stricter laws.

(In contrast to these statistics, the Drug Abuse Council, Inc., Washington, D.C., released in February, 1975, the results of a national survey of marihuana use and attitudes. The survey showed 39% favor eliminating criminal penalties for sale/possession/private use of marihuana, and 40% favor stricter laws.)

As stated previously, the majority of those people interviewed opposed any leniency of the law. However, 52% opposed the removal of criminal offenses of a small amount of marihuana; whereas 80% opposed legalization (complete authorization of use) of possession and sale of a similar amount.

2. ONLY 4% OF PENNSYLVANIANS OVER 18 YEARS OF AGE REPORT THAT THEY NOW USE MARIHUANA, WHILE ANOTHER 11% REPORT PAST USAGE.

	Percentage of All Adult Residents
Ever Used Marihuana	11%
Currently Use Marihuana	4%
Used Marihuana in the Past	7%
Never Used Marihuana	87%
Refused to Answer	2%

If it is assumed that those who refused to answer have indeed tried marihuana, then a total of 13% of the State's adults have had experience with it.

Some 55% of current users smoke marihuana at least once a week, but only 17% smoke it once a day or more. It is likely that usage was understated somewhat due to the nature of the telephone

interviewing.

(In contrast to the 11% figure drawn by Quayle with a telephone survey, the Governor's Council on Drug and Alcohol Abuse conducted a personal survey in 1973 of the prevalence and intensity of marihuana use in Pennsylvania. This study found that 19.2% of the population over 15 years of age used marihuana at least once during that year and 4.3% reported current usage of three or more times a week.)

There is some evidence to indicate that usage is indeed understated here. The Drug Abuse Council, Inc. conducted a survey of the national adult population in October, 1974, and found, with personal interviewing, that 18% had used marihuana at some time. Similarly, two surveys of the nation's 18 and older population conducted by the National Commission on Marihuana and Drug Abuse in 1971 and 1972 found, again in personal interviewing, that 15% and 16% respectively had tried marihuana. While it may be hypothesized that usage in Pennsylvania may be lower than on the West Coast or in the Northeast, it seems reasonable to suppose that it would not be lower than the national average.

3. AS EXPECTED, EXPERIENCE WITH MARIHUANA (11%) TENDS TO BE HIGHEST AMONG SINGLE MEN UNDER 35 YEARS OF AGE (BUT ESPECIALLY THOSE UNDER 26) AND WITH SOME EDUCATION BEYOND HIGH SCHOOL.

Recent college students are particularly in the majority, whether they are still in school, have dropped out, or graduated.

In contrast, relatively low experience is acknowledged by women, those who are 35 years of age or older, the widowed (who tend to be older), those with the least education, housewives, and Republicans.

4. WHEN THOSE WHO HAVE NEVER TRIED MARIHUANA (87%) WERE ASKED TO EXPLAIN THE REASONS FOR NON-USE, THE DOMINANT EXPLANATIONS WERE FEAR OF POSSIBLE HEALTH DANGERS AND A SIMPLE LACK OF INTEREST.

There were few and minor differences in the reasons cited by members of various demographic groups. Adults between 18 and 25 tend to cite fear of legal repercussions more than average, but less likely to report lack of opportunity. They were also more inclined to mention that they feel no personal need for it.

Health fears were most frequently cited by those with the least education, while those with some college or more were significantly less concerned about possible health hazards.

Lack of interest was the most frequently cited reasons among those with some college education (who tend to be young and presumably have opportunities to try marihuana).

# # #

MARIHUANA: THE LAW AND CRIMINAL PENALTIES IN PENNSYLVANIA

Prior to April, 1972, the criminal penalties for possession, sale, dispensing, or giving away of marihuana were defined under the "Drug, Device and Cosmetic Act," Act of September 26, 1961, (P.L. 1664).

Marihuana was then defined as a "narcotic drug" and all offenses which involved possession or delivery of marihuana were treated as a felony, and--except for the first offenders--prison sentences were mandatory.

Prior to 1972, no distinctions were made between possession, selling, distribution, or giving away of marihuana.

Penalties were the same regardless of the amount of marihuana involved. Therefore it made no difference whether or not someone was arrested for possession of one marihuana cigarette or ten pounds of marihuana. The penalties for simple possession of marihuana ranged from imprisonment of 2 to 5 years for the first offender to mandatory imprisonment for a third offender of "separate or solitary confinement at labor of not less than 10 years and not exceeding 30 years."

All this changed in June, 1972, when the "Controlled Substance, Drug, Device and Cosmetic Act," Act of April 14, 1972, (P.L. 233, No. 64) (hereinafter "Act 64") became law.

Act 64 established Schedules I-V of the controlled drugs (such as marihuana, opium, LSD, cocaine) and provided penalties for offenses under each schedule. Except for a small amount of marihuana, the penalties for sale, giving away, or possession are the same as

for LSD, barbiturates, and amphetamines.

Marihuana and hashish were defined* as Schedule I non-narcotic drugs. Furthermore, the legal distinction was made only between simple possession (misdemeanor) and possession with intent to deliver (felony). Selling and cultivation of marihuana is treated the same as possession with intent to distribute. No distinction is made.

Maximum Pennsylvania Penalties Act 64	1st Offense	2nd and Subsequent Offenses
Simple Possession (Misdemeanor)	30 grams**or less of marihuana or 8 grams or less of hashish, 30 days and/or $500.	Same Penalties
	Over above amounts, 0-1 year and/or $5,000	Same Penalties
Possession With Intent to Distribute (Felony)	0-5 years and/or $15,000	0-10 years and/or $30,000

* Act 64-Section 4 (1).
Schedule I

"In determining that a substance comes within this schedule, the secretary (of Health) shall find: a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision."

**30grams constitutes just over one ounce or comparable to the weight of tobacco in a package of cigarettes.

ALTERNATIVES TO INCARCERATION

In addition to traditional probation, three alternatives to prison for adults exist in Pennsylvania today:

1. Accelerated Rehabilitative Disposition (ARD)
2. Section 17 (Act 64) - Probation Without Verdict
3. Section 18 (Act 64) - Disposition In Lieu of Trial

ACCELERATED REHABILITATIVE DISPOSITION (ARD)

The basis for the ARD programs originally developed in Philadelphia in 1971. The next year this alternative was incorporated into the Pennsylvania Rules of Criminal Procedure. This program is aimed at the first offender charged with a less serious offense (e.g. possession of drugs, stolen property, public intoxication, trespassing).

In 1973, 95% of the 8,635 pretrial disposition cases were referred to ARD (6,831 of these cases were from Philadelphia County) from the criminal courts (figure excludes juvenile court).

An ARD program as established within the counties is generally an extension of the Probation Department where supervision is minimal. When a person is accused of a crime which the local district attorney and presiding judge agree is suitable for ARD, the defendant is given the opportunity to enter the ARD program and if the probationary period is completed without the defendant having committed an additional offense, the charges will be dismissed and the record will be expunged. At the same time, the defendant agrees to waive his rights to a speedy trial and statute of limitations.

In a survey sent to the 67 district attorneys in January, 1975, by the Governor's Council on Drug and Alcohol Abuse, 47 replies (of the 49 returned) stated their counties have established an ARD program. However, only 31 counties utilize the program for marihuana offenses, which in 1974 totalled 452 cases.

(The total figure of 452 does not include Philadelphia County because records there were not categorized according to the offense. The Philadelphia District Attorney's Office has informed the Governor's Council on Drug and Alcohol Abuse that due to the tremendous number of cases, the Philadelphia District Attorney's Office usually drops any charges for possession of marihuana when it involves 30 grams or less. Section 17 was typically applied to college students convicted of selling a relatively small amount of marihuana, and Section 18 was used less extensively.)

In 1974, however, 10,823 cases were diverted prior to trial. Of these, 1,303 were drug violations with 631 persons placed in ARD, 646 persons given Probation Without Verdict, and 26 cases processed on Disposition in Lieu of Trial.

According to the Council survey, the majority of district attorneys do NOT choose to recommend ARD for marihuana offenses. Also, in spite of expungment mandated by law (Section 19, Act 64), we know of only three counties which substantially comply with the statute (Philadelphia, Allegheny, and Centre counties).

SECTION 17 (Act 64) - PROBATION WITHOUT VERDICT

This section permits the presiding judge at the time of a

hearing to place certain persons on a special period of probation with certain stipulations (e.g. attendance in a treatment and rehabilitation program). This is only offered to offenders who have no prior drug convictions under Act 64 and who decide to plead guilty or nolo contendere or who are found guilty at the time of the trial.

Excluded from this section are nondrug abusers who are charged with delivery or possession with intent to deliver.

Unlike ARD prescribed by the Pennsylvania Supreme Court Rule, it appears the concurrence of the district attorney for treatment under this section is not necessary.

After a person successfully completes his probation, the court then discharges him and dismisses the charges against him. Furthermore, Section 19 (Act 64) requires the court to expunge the record of those people who have satisfactorily completed Section 17 probation. As stated earlier, in the vast majority of counties, this procedure is not complied with as anticipated when the law was enacted.

According to the 1974 survey, the 23 counties (excluding Philadelphia County) who utilize Section 17 placed a total of 844 marihuana cases on "Probation Without Verdict."

Furthermore, 24 counties choose not to utilize this section as provided in Act 64.

SECTION 18 (Act 64) - DISPOSITION IN LIEU OF TRIAL

This section provides an alternative for the drug abuser who has been charged with a non-violent crime and who has requested

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treatment prior to the trial.

At this time a court-appointed physician experienced in the field of drug abuse is selected to examine the defendant and may recommend that the charges be withdrawn or held in abeyance in order that the defendant may enter into a drug abuse treatment program.

Implementation of the physician's recommendations is at the discretion of the local district attorney with the court's approval.

As indicated by the 1974 survey, Section 18 is used on a limited basis. Of those polled, eleven counties (including Philadelphia County) use this section and 37 counties do not.

In conclusion, the Pennsylvania Supreme Court and the Pennsylvania General Assembly have provided constructive alternatives for both the citizens of Pennsylvania and the judicial branch of government. As demonstrated in this section, the use of alternative dispositions is far from uniform across the Commonwealth. There is a great deal of truth in the philosophy: In Pennsylvania if you are charged with drug violations, the outcome of your case may well depend on where you are arrested.

The goal is to insure that the use of alternatives to incarceration is uniform to the largest extent possible and to devise a comprehensive program which utilizes the best features of the three described from the law enforcement and treatment viewpoints.

# # #

MARIHUANA LAW ENFORCEMENT

The number of arrests for marihuana violations is steadily rising each year. Whereas 283 marihuana arrests are reported for 1965, this figure grew to 6,898 arrests in 1972. After the "Controlled Substance, Drug, Device and Cosmetic Act" (hereinafter "Act 64") became effective, marihuana arrests soared to 9,616 in 1973, representing 63% of the total narcotic and other drug arrests that year.

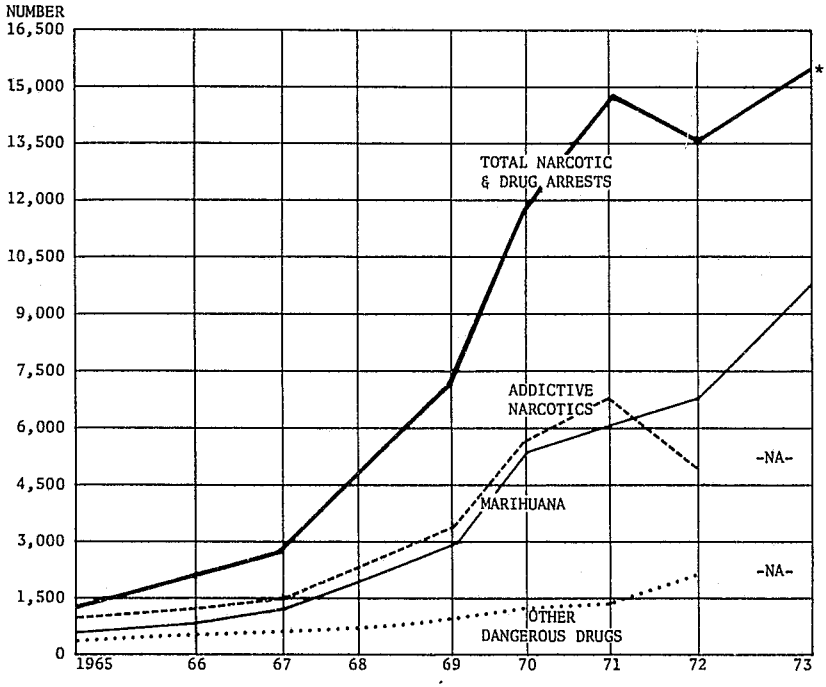
A summary of these records for the period 1965-1973 is presented in Figure 1, which was modified from Crime and the Pennsylvania Criminal Justice System, Governor's Justice Commission. This data includes arrests by both State and local enforcement officers for both levels of violations in connection with marihuana; i.e. simple possession, possession with intent to distribute. The modifications include the addition of records for 1973 obtained from the Pennsylvania State Police and the United States Drug Enforcement Administration.

As indicated in the chart, marihuana arrests account for increasingly greater proportions of the total drug arrests each year.

Figure 2 presents national statistics, excluding Federal arrests, for 1968-1972. The number of State and local arrests cannot be compared to the national Uniform Crime Report statistics because Federal law enforcement agency figures are excluded. The percentages of marihuana arrests, however, outline the same trend with heroin

Figure 1

Pennsylvania Narcotic and Drug Law Arrests 1965-1973



Percentage: marihuana/total	'68	'69	'70	'71	'72	'73
	41%	43%	43%	43%	50.5%	63%

*15,258 total narcotic and drug arrests; figure extracted from "Pennsylvania Uniform Crime Report, 1973"

"Crime and the Pennsylvania Criminal Justice System"

and cocaine dominating 1969-1970-1971 and marihuana rising again in 1972 at a faster pace.

Figure 2 NATIONAL TABLE OF STATE AND LOCAL PERFORMANCE MEASUREMENTS

State & Local Drug Law Arrests in U.S.	1968	1969	1970	1971	1972
TOTAL	162,177	232,690	346,412	400,606	431,608
Heroin & Cocaine	42,328	67,945	108,427	114,573	92,364
Marihuana	78,169	95,868	157,271	183,878	239,111
Synthetic Narcotics	8,920	15,125	19,053	26,040	38,413
Other	32,760	53,752	61,661	76,115	61,720
Percentage of Total Marihuana Arrests	48.2%	41.2%	45.4%	45.9%	55.4%

*Source: Uniform Crime Report
U. S. Department of Justice
Drug Enforcement Administration
March, 1974

OFFICE OF DRUG LAW ENFORCEMENT

The Office of Drug Law Enforcement (hereinafter "the Office") was established in the Pennsylvania Department of Justice in 1973 to coordinate and direct the enforcement of Act 64 on the State level. This office oversees the activity of the State Police Strike Force, which was created in January, 1972, in response to the increasel need for specialized enforcement efforts for drug offenses in the State. As of February, 1975, 84 officers are assigned to the Strike Force.

Presently, the Bureau of Drug Control which functions under the Office has 115 enforcement personnel, 100 of whom are narcotics agents. When the regional office structure is fully operational, there will be 8 local strike force offices shared by the Bureau of Drug Control and State Police Strike Force personnel. At that time,

the arrest statistics will be a single total for the cooperative enforcement efforts under the Office.

The drug arrest statistics, 1971-1974, for all State law enforcement officers appear in Figure #3 below.

FIGURE #3 - MARIHUANA ARRESTS BY STATE POLICE AND NARCOTICS AGENTS

	Total	Office of Drug Law Enforcement **					
		State Police Strike Force		Bureau of Drug Control & Predecessors		Other State Police	
1971	1,484	-----		294		1,190	
				sale 77	poss 217		
1972	1,358	-----		330		1,028*	
				sale 173	poss 157		
1973	1,762	-----		281		1,481*	
				sale 237	poss 44	sale 445	poss 1,036
1974	2,244	641		277		1,326 See Appendix	
		sale 577	poss 64	sale 267	poss 10		

Statistics compiled from arrest data from Joseph Reiter, Esquire, Special Deputy Attorney General
*State Police Strike Force arrests are included.
**Strike Force does not operate in Philadelphia.

The rise in marihuana arrests from 1,358 in 1972 to 1,762 in 1973, and 2,244 in 1974, reflects the Statewide increase in marihuana arrests cited earlier.

The arrest statistics from the Bureau of Drug Control for two years after Act 64 took effect indicate that after the legal distinction was made between possession and possession with intent to distribute, the special State drug authorities emphasized the distribution charge which is a felony offense.

Of the marihuana arrests in 1973 initiated by the Bureau of Drug Control, 237, or 84.3%, were for felony offenses. In 1974, 267, or 96.4%, were felony arrests.

Regarding court disposition of the above arrests, the Office of Drug Law Enforcement's conviction rate for felony offenses is 80% to 90%.

The rate of conviction for all narcotics sales offenses processed in the Pennsylvania courts in 1973 is 69% (Pennsylvania Criminal Court Dispositions, 1973, Department of Justice, Bureau of Criminal Justice Statistics). That is 69% of all defendants processed for felony offenses. If the Statewide percentage conviction rate of all those arrested for the felony could be calculated, it would be lower.

For simple possession offenses in the same year, only 42% of the cases processed resulted in convictions.

Seemingly, 9,616 marihuana arrests for 1973 represent a significant law enforcement effort by local and State officers. This enforcement effort, however, may not represent a large inroad into the incidence of marihuana use as the 1973 incidence and prevalence study of drug use conducted by the Governor's Council on Drug and Alcohol Abuse estimated that 350,000 Pennsylvanians over age 15 are "high intensity" users of marihuana.

If these figures are accurate, then this enforcement effort reaches less than 3% of its target population. The objectives of recent State enforcement efforts, however, have been to contain the

distribution of marihuana. The same survey cited above also estimates that 19.2% of the population of Pennsylvania used marihuana during 1973. This suggests that a significant impact on marihuana distribution has not been made.

PENNSYLVANIA LAW ENFORCEMENT COSTS

Although it would be useful for a complete evaluation to know the expenditure involved in the effort to enforce the laws against marihuana possession and distribution, such a cost assessment has not been conducted in Pennsylvania.

The State of California, however, has compiled the expenditures associated with marihuana law enforcement. The figures may provide a crude estimate of the expenditures realized in Pennsylvania. A detailed study of marihuana enforcement costs was conducted in California for the period 1960-1972. California, with a population of 20 million people (1970) as compared to Pennsylvania's 11.8 million, is the highest ranking state for marihuana offenses. For example, the California arrests of 10,002 in 1965 surpasses Pennsylvania's arrests of 9,616 for 1973.

Seven years ago more than half (50,000) of the nationwide marihuana arrests were made in California. The annual cost to California for the enforcement of marihuana laws rose from $8 million in 1960 to $72 million in 1968.

If one could speculate that criminal justice expenses are similar in both states, the estimated average cost per arrest of California marihuana enforcement can be used to derive a Pennsylvania estimate. The cost per arrest in California was $1,630 before 1969.

Reduction of penalties and changes in enforcement procedures brought the California cost per arrest estimated down to $1,340 after 1969. If the Pennsylvania expenses are taken as comparable to California's ($1,340), Pennsylvania's 1972 marihuana arrests would have an estimated enforcement cost of $9.2 million.

CRIMINAL PENALTIES UNDER CURRENT MARIHUANA LAWS IN OTHER STATES

The most notable feature of marihuana laws in the United States is the widely disparate treatment of offenders and offenses.

For first offenses, maximum penalties range from imprisonment up to 15 years or fine of $10,000 (Rhode Island) to legal possession of up to one pound of marihuana in the home in Alaska. For subsequent offenses of simple possession the penalties range from life imprisonment (Indiana) to 14 days and/or $1,000 fine (Nebraska).

Some important trends have emerged in all states in recent years. Most states have reduced penalties for possession, formalized a policy of lenience toward first offenders, and eliminated minimum mandatory sentences.

These trends are most apparent in connection with possession of marihuana, which at least for small amounts, is a misdemeanor in 45 states (Rhode Island continues to punish these offenders as felons). Three states, however, still make no distinction between marihuana and narcotics.

Another important trend is the special legal treatment accorded the first offender. In 32 states (including Pennsylvania) a conditional discharge is permitted for first time offenders. A conditional discharge permits the release of an offender before formal adjudication. If the conditions are met, the case is dismissed and the defendant discharged. In most states, these discharges are awarded at the discretion of the judge. In Massachusetts and West Virginia the conditional discharge of first offenders is mandatory.

A final emerging trend is a graduation of penalties administered for possession offenses. Most states now make distinctions according to the amount

of marihuana possessed, and administer a graduated severity of penalties corresponding to the amount of marihuana possessed.

In the tables on the following page, state and Federal penalties for possession of marihuana are described. These tables were prepared by the National Organization for Reform of Marihuana Laws and are current as of July 1975.

The Federal Law

The Controlled Substances Act of 1970, Pub. Law 91-513 (Oct. 27, 1970).

OFFENSE	1st Offense	2nd Offense	Subsequent Offense
Simple possession	0-1 year, $5,000*	0-2 years, $10,000	Same
Possession with intent to distribute	0-5 years, $15,000	0-10 years, $30,000	Same
Sale or distribution	0-5 years, $15,000**	0-10 years, $30,000	Same
Sale or distribution to a minor	0-10 years, $30,000	0-15 years, $45,000	Same

*For first offender, court has discretionary authority to defer proceedings and place defendant on probation, which, if successfully discharged, avoids an adjudication of guilt. For offenders under 21, court has further discretionary authority to completely expunge the records.

**Distribution of a "small amount of marijuana for no remuneration" is to be treated the same as simple possession.

Penalty Provisions for Major Marijuana Offenses
(All fines are represented as maximum amounts possible)

A. POSSESSION

	1st Offense	2nd Offense	Subsequent Offense
Alabama	0-1 year/$1,000	2-15 years/$25,000	...
Alaska	Possession of up to one pound in a private home for personal use is legal. Possession of one ounce in public: $100. Possession while driving a motor vehicle: $1,000. Public consumption: $1,000.		
Arizona	0-1 yr. in county jail and/or $1,000 or 1-10 yrs. and $50,000	2-20 yrs. and $50,000	5 yrs.-life and $50,000; parole possible after 5 yrs.
Arkansas*	0-1 yr. and/or $250	0-1 yr. and/or $250	2-5 yrs.
California	one oz.: $100 (Transporting or transfer without consideration same as possession of 1 oz.)		
Colorado	more than one oz.: 6 months/$500		
Connecticut	Non-public possession of one ounce: $100 fine. Public display or consumption: 15 days and/or $100. Possession of over one ounce for personal use: Misdemeanor 1 yr. maximum and/or $500. 0-1 year and/or $1,000 or up to 3 years in custody of commissioner	...	...
Delaware*	0-2 yrs. and/or $500	0-7 yrs. and/or $500	...
Florida	Less than 5 grams, 0-1 year and/or $1,000; More than 5 grams, 0-2 years and/or $1,000	0-2 years and/or $1,000	...
Georgia	0-1 year and/or $1,000 for up to 1 oz.; 0-2 years and/or $2,000 for over 1 oz.	0-5 years and/or $5,000	...
Hawaii*	Up to 2 oz., 0-30 days and/or $500; 2 oz. and over, 0-1 yr. and/or $1,000; 1K and over, 0-5 yrs. and/or $5,000	...	...
Marijuana Concentrates	Up to ⅛ oz., 0-1 yr. and/or $1,000; ⅛ oz. and over, 0-5 yrs. and/or $5,000; 1 oz. and over, 0-10 yrs. and/or $10,000	...	...
Idaho	0-6 months and/or $300	...	...
Illinois*	Amount		
	Less than 2.5 grams, 0-90 days	...	...
	2.5 to 10 grams, 0-180 days	...	...
	10 to 30 grams, 0-1 year	1-2 years	...
	30 to 500 grams, 1-3 years	2-6 years	...
	Over 500 grams, 1-5 years	2-7 years	...
Indiana	Less than 25 grams or 5 grams hashish, *1 year and/or $500* Over these amounts,	2-15 years and/or $3,000	...
Iowa*	*2-10 yrs. and/or $1,000*	0-18 months and/or $3,000	...
Kansas*	0-1 yr. and/or $2,500	0-10 yrs. and/or $5,000	...
Kentucky*	0-90 days or no more than $250	...	...
Louisiana*	0-1 year and/or $500	0-5 years with or without hard labor and/or $2,000	0-20 years hard labor
Maine	Up to 1½ oz: Max. $200 civil fine. Over 1½ oz.**: Max. 1 yr. — No fine.		
Maryland*	0-1 year and/or $1,000	0-2 years and/or $2,000	0-2 years and/or $2,000
Massachusetts*	0-6 months/$500	0-2/$2,000	...
Michigan*	Up to 2 oz., 0-1 yr. and/or $1,000	0-2 yrs. and/or $2,000	...
Minnesota*	Under 1.5 oz., 0-1 year and/or $1,000; Over 1.5 oz., 0-3 years	0-6 years and/or $6,000	...
Mississippi*	Under 1 oz., 0-1 yr. and/or $1,000; Over 1 oz., 0-3 yrs. and/or $3,000	Under 1 oz., 0-2 yrs. and/or $2,000; Over 1 oz., 0-6 yrs. and/or $6,000	...

* Conditional discharge for first offense possession

**Persumed for resale.

	1st Offense	2nd Offense	Subsequent Offense
Missouri*	Under 35 grams or 5 grams Hashish, 0-1 year and/or $1,000; Over these amounts, 0-5 years and/or $1,000	0-5 years and/or $1,000	. . .
Montana	Up to 60 grams marijuana or 1 gram hashish, 0-1 yr. and/or $1,000; if shown to be habitual user then committed to rehabilitation institution; 0-5 years or rehabilitation for over 60 g.	0-3 yrs. and/or $1,000	. . .
Nebraska	Less than 1 pound, 7 days in county jail to be held separately and/or $500, Over 1 pound, 0-6 months in county jail or 1 year in prison and/or $500	Under 1 pound, up to 14 days and/or $1,000; Over 1 pound, 0-1 year in county jail or 2 years in prison and/or $1,000	. . .
Nevada*	Under age 21 and under 1 oz., 0-1 yr., $1,000 and suspension of driver's license or 1-6 years, $2,000; Over age 21, 1-6 yrs. and $2,000	Under age 21 and under 1 oz., 1-6 yrs. and $2,000; Over age 21, 1-10 yrs. and $2,000;	Under age 21 and under 1 oz., 1-10 yrs. Over age 21, 1-20 yrs. and $5,000
New Hampshire	Less than 1 pound, 0-1 year and/or $500; Over 1 pound, 0-5 years and/or $2,000	Less than 1 pound 0-3 years and/or $1,000; Over 1 pound, 0-10 years and/or $5,000	. . .
New Jersey*	Under 25 grams or 5 grams hashish, 0-6 months , Over 25 grams, 0-5 years and/or $15,000	. . .	. . .
New Mexico*	Under 1 oz., 15 days and $50-$100; 1-8 oz., 0-1 yr. and/or $100-$1,000; Over 8 oz., Determination of length of sentence to be made by Corrections Department (4th Degree Felony)	0-1 yr. and/or $100-$1,000	. . .
New York*	Less than 25 cigarettes or ¼ oz., 0-1 yr.; 25-99 cigarettes or more than ¼ oz., 2½-7 yrs.; Over 100 cigarettes or more than 1 oz., 5-15 yrs.	. . .	. . .
North Carolina*	Less than 5 grams marijuana, 1 gram hash, 1/100th gram THC, 0-6 mos. or $500; Over above amounts, 0-5 yrs. and/or $5,000	Less than 5 grams marijuana, 1 gram hash, 1/100th gram THC, 0-2 yrs. and/or $1,000; Over above amounts, 5-10 yrs. and/or $10,000	Less than 5 grams marijuana, 1 gram hash, 1/100th gram THC, 0-5 yrs. and/or $5,000; Over above amounts, 15 yrs.-life and/or $15,000
North Dakota*	0-1 year and/or $500	. . .	. . .
Ohio	0-1 year and/or $1,000	1-10 years	. . .
Oklahoma*	0-1 year	2-10 years	. . .
Oregon*	*Up to 1 ounce, $100*	. . .	. . .
Pennsylvania*	Under 30 grams marijuana or 8 grams hashish, 30 days and/or $500; Over above amounts, 0-1 yrs. and/or $5,000	. . .	. . .
Rhode Island	0-15 yrs. and/or $10,000	0-20 yrs. and/or $10,000	0-30 yrs. and/or $10,000
South Carolina*	Under 1 oz. or 10 grams of hashish, 0-3 months and/or $100; and/or $1,000	Under 1 oz. or 10 grams of hashish, 0-6 months amounts, 0-1 year and/or $2,000	. . .
South Dakota*	Less than 1 oz., 0-1 year in county jail and/or $500 , Over 1 oz., 0-5 years and/or $5,000	0-15 years and/or $10,000	0-40 years and/or $20,000

* Conditional discharge for first offense possession

	1st Offense	2nd Offense	Subsequent Offense
Tennessee	Commitment to a state-operated drug treatment facility or community mental health center or, at the discretion of the court, up to 11 months, 29 days and/or $1,000	0-2 years	. . .
Texas	Up to 2 oz.—0-6 months and/or $1,000; 2-4 oz.—0-1 year and/or $2,000; Over 4 oz.—2-10 yrs., $5,000	10 years to life	. . .
Utah*	0-6 months and/or $299	0-1 year and/or $1,000	0-5 years in penitentiary
Vermont	Under 25 cigarettes or ½ oz., 0-6 mos. and/or $500	0-2 yrs. and/or $2,000	. . .
Virginia	0-12 months and/or $1,000	0-12 months and/or $10,000 or 2-20 years and/or $10,000	. . .
Washington	Under 40 grams, 0-90 days and/or $250; Over 40 grams, 0-5 yrs. and/or $10,000	Over 40 grams 0-10 yrs. and/or $10,000	. . .
West Virginia*	90 days-6 months and/or $1,000*	3-12 months, $2,000	. . .
Wisconsin*	0-1 year in county jail and/or $250	. . .	. . .
Wyoming*	0-6 months and/or $1,000	0-6 months and/or $1,000	0-5 years and/or $5,000
District of Columbia	0-1 year and/or $100-$1,000	0-10 years and/or $500-$5,000	. . .

*Conditional discharge for first offense possession

NEW CHANGES IN OTHER MARIHUANA LAWS

Various cities and states have already chosen to remove criminal penalties for simple possession of marihuana. It should be noted that by removing criminal penalties for simple possession, cities and states are not "legalizing" marihuana.

On October 6, 1973, Oregon abolished criminal penalties for simple possession, substituting civil fines of up to $100. To sell marihuana, to grow, or to possess marihuana with intent to sell remains a felony in Oregon; by decriminalization we refer to social use and personal possession.

One year after the new legislation, two evaluation studies have been conducted to ascertain the impact of the revised statutes. One study conducted by the Oregon State Police indicated a 62.1 percent rise for 1973 in the total marihuana arrests for the state. For comparison the total nationwide arrests increased 43 percent over 1972; and Pennsylvania 1973 arrests increased 40 percent over the previous year. No comparisons are yet available for 1974, however.

In another study of the Oregon law, the Drug Abuse Council, Inc. observed that 58 percent of all respondents favor the present law or more liberal statute; only 39 percent thought the present law was too lenient.

In May 1975, the California legislature gave final approval to a measure which ends the arrest and jailing of persons charged with possession of small amounts of marihuana. The new law (effective January 1, 1976) calls for a civil fine not to exceed $100 for possession of up to one ounce of marihuana. Possession of more than an ounce will be punishable by a maximum of six months in jail and/or a $500 fine. Penalties for transporting or

transfer without renumeration are the same as simple possession of one ounce.

The Alaskan legislators approved a bill in May 1975 establishing a civil fine of no more than $100 for possession of up to one ounce of marihuana. A subsequent ruling by the Alaska Supreme Court, in effect, legalized possession of up to one pound of marihuana for personal use in a private home. The landmark decision was based on a test case which charged that penalties imposed for possession in a home violated the Constitutional guarantees of privacy.

The new Colorado law also distinguishes between private and public marihauna possession. Under the law passed on June 19, 1975, non-public possession of up to an ounce of the drug is punishable by a maximum fine of $100. Public display or consumption of marihuana is subject to a maximum 15 day jail term and/or a fine of $100. Possession of more than one ounce remains a misdemeanor under Colorado law.

The most recent decriminalization legislation in the nation was signed into law on June 18, 1975, in Maine. The new law punishes possession of up to one and one-half ounce of marihuana by a civil fine not to exceed $200. Amounts of the drug over one and one-half ounce are presumed to be intended for sale and offenders are subject to a one year jail term. The new measure will become operative on March 1, 1976.

The so-called "parking ticket" model was first introduced in Ann Arbor and Ypsilanti, Michigan. In 1973 the two neighboring cities approved a referendum providing for a maximum $5 fine for simple possession of marihuana. The city of Ann Arbor originally passed the ordinance in 1971. It was partially

invalidated by a district judge in 1972 and repealed by the city council in early 1973. Later that year, however, the "parking ticket" model was reinstated by a citizen referendum.

Federal decriminalization measures have been introduced in both the House of Representatives and the Senate. The Marihuana Control Act of 1975 was introduced simultaneously on April 17, 1975, in both chambers by Representative Ed Koch and Senator Jacob Javits (S.1450/H.R.6108). The bill based on the Oregon model, calls for a maximum civil fine of $100 for possession of an ounce of marihuana.

Representative Ed Koch (D-New York) has reintroduced (first introduced in 1972) the Javits-Koch bill (H.R. 561) which would completely decriminalize the possession of marihuana for personal use. This legislation reflects the recommendations of the National Commission on Marihuana and Drug Abuse.

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THE PHYSICAL EFFECTS OF MARIHUANA

The current status of marihuana research is characterized by confusing controversies. Scientists have uncovered a wealth of information indicating that marihuana has a broader range of effects on the body than previously believed. In addition to the well known sensory alteration effects, marihuana is known to influence many biochemical functions. Some of these functions are vital to normal development, growth, and resistance to disease. On the other hand, current research does not offer a clear-cut answer to what hazards, if any, are incurred by the use of marihuana.

The greatest source of new information derives from experimentation on animals. Although animal studies contribute greatly to our understanding of drug action, they pose serious difficulties for interpreting drug safety in humans. In most animal studies, extremely large doses are employed. In some cases the doses used are equivalent to smoking 800 marihuana cigarettes daily. In many cases testing is conducted in artificial situations (e.g. tissue cultures) which leave doubt about drug action in the body. Because the life span of experimental animals (e.g. rats, mice, rabbits, monkeys) is relatively short, most of these studies only investigate short term effects. In general, animal studies are best considered preliminary research leading the way to "clinical studies."

Human research to date has not demonstrated conclusive evidence that marihuana use is significantly hazardous to health. On the other hand, this research has not demonstrated a conclusive margin of safety either.

During the past five years a large research effort has resulted from

the Department of Health, Education, and Welfare funding and reporting on the support of marihuana research. Each year the National Institute of Drug Abuse collaborates with prominent scientists to view the current research in an annual report submitted to the United States Congress. The information presented below highlights the contents of the Fourth Annual Report, Marihuana and Health, 1974.

"Previous editions have discussed in detail marihuana and its relationship to the use of other drugs. Prior use of alcohol and tobacco in youthful groups is closely associated with later cannabis use. Contrary to popular opinion, there is little evidence to support the contention that marihuana use displaces the use of alcohol and other drugs. Those who use marihuana are also likely to use alcohol--often simultaneously. Moreover, marihuana users as compared to nonusers are more likely to use or have used other, both licit and illicit, psychoactive drugs. The more heavily a user smokes marihuana, the greater the probability he has used or will use other drugs. It has been suggested that such use is related to "drug use proneness" and involvement in drug using subcultures rather than to the characteristics of cannabis, per se.

"No human research has been reported which demonstrates that disease resistance is significantly impaired by marihuana use; studies of possible genetic damage have thus far shown contradictory results.

"Two aspects of delta-9-THC which have recently been investigated may prove to be of importance in future therapeutic applica-

tion of the drug. There is a preliminary evidence that delta-9-THC delays rejection of skin grafts in rats suggesting a possible usefulness in organ transplant surgery. A second aspect, the inhibition of solid tumor growth in mice, may also eventually prove therapeutically useful in the treatment of human tumors. It should be reemphasized that this preclinical work is highly preliminary and the treatment possibilities are only speculative at this time.

"One interesting finding in animal behavioral studies is that marihuana (at least in short term administration) in a variety of animal species has been found to reduce expressions of aggression. This observation is consistent with the widespread clinical impression that marihuana in humans, unlike alcohol, tends to reduce aggressive behavior rather than to potentiate it.

"Evidence that marihuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities and to detract from performance on a divided attention task, all of which are presumably involved in driving.

The third report on Marihuana and Health indicated that "there continues to be little evidence from human case reports and research studies that cannabis preparations have either a significant teratogenic effect or have any significant effect

on chromosome breakage." In one more recent study of marihuana users an increase in chromosomal abnormalities was found while in another study utilizing known dosages of pure cannabis preparations no drug-related increase was found.

"Preliminary evidence in one study of chronic American marihuana smokers indicates that levels of the male hormore testosterone may be lowered in chronic users. This study reported that six of the twenty young men studied had reduced evidence of fertility (lowered sperm counts) and two were impotent. Testosterone levels in this group were significantly lowered though they remained within what are generally regarded as normal limits, and promptly increased upon discontinuing marihuana use. Preliminary findings from two other studies of young male subjects were inconsistent; one found a depression in serum testosterone levels, another did not. The significance and implications of these findings will require further study.

"In one large scale study of undergraduate student use comparisons were made between nonusers (including those who had done a limited amount of experimentation), occasional users and chronic users (those who had used three or more times a week for three years or more or for two years if use was almost daily). No statistical differences in academic performance were found nor was there any evidence of reduced motivation. It should, of course, be noted that some chronic

users who dropped out may have been excluded. As yet, however, there is no evidence that in a college population use is typically accompanied by impaired performance or motivation. Another study of moderately using medical students who had used regularly for three or more years and who were matched with nonusing medical students for intelligence, found no difference on an extensive battery of neuropsychological tests.

"To date, well controlled studies demonstrate few differences in psychopathology in carefully matched samples of users and nonusers.

"While cannabis is a drug of very low toxicity it has, at the same time, limitations due to the psychological effects and possible tolerance to its effects developing over time.

"A preliminary study of the possible therapeutic use of marihuana has explored several possible facets of the action of THC with a group of cancer patients. This preliminary work suggests that THC may be valuable in reducing the need for other pain reducing drugs in acting as an anti-emetic, in retarding weight loss and for its tranquilizing and mild mood elevating properties. Whether these initially observed effects will prove useful over more extended periods of use with larger numbers of patients is not known at this time. It is, however, reported that the side effect of intoxication sought by street users was not troublesome--it was not experienced by the patient sample studied. The researchers interpret this as an

indication of the importance of personal expectation (the "set" of the user) in determining one's subjective response. It is noteworthy that Jamaicans who use the drug primarily as a work adjunct and to relieve the discomfort of arduous conditions also do not characteristically report the "high" sought by American recreational users!"

Dr. Griffith Edwards Report

Dr. Griffith Edwards, director of the Addiction Research Unit at the Maudsley Hospital, London, England, has recently published a comprehensive 62-page review of the entire marihuana controversy. Entitled, "Cannabis and the Criteria for Legislation of a Currently Prohibited Recreational Drug: Groundwork for a Debate," it appeared in the Acta Psychiatria Scandinavica, Supplementum 251, 1974. In this report Dr. Edwards not only summarizes all relevant research to date, but attempts to weigh the evidence and, although it is yet incomplete, he arrives at the most reasonable conclusions possible in the current state of our knowledge.

Because presentations on this complex problem which are crucial, comprehensive, and judicious are not common, an attempt will be made here to summarize Dr. Edwards' views. In addition, certain sections of his report will be provided verbatim in Appendix B. The full text of Dr. Edwards' report is available through the Governor's Council office for those who may wish to study it carefully.

Dr. Edwards notes that the marihuana controversy must be viewed against a background of more general social developments which are contradictory in nature. On the one hand, there has been an increasing drive in recent years toward the freedom and automony of the individual. The individual is increasingly viewed as having the right to do as he wishes, and the constraints upon that right are viewed as being less and less. One of the consequences of this movement has been a less stringent view of the use of drugs, particularly marihuana.

On the other hand, an increasingly sophisticated methodology has been applied to the testing of drugs prior to public use. This has resulted in

higher and higher standards being developed before any drug is released by the government for use by the general population. Such high standards were responsible for the extremely fortunate refusal of the American government to approve the use of Thalidomide, an action which safeguarded thousands of infants from developing severe deformities.

Increasing caution in the availability of drugs has resulted from this experience, as well as such related substances as pesticides and food additives.

Dr. Edwards concludes that where government provides testing and evidence that a particular drug has been found to be safe under specified circumstances, the onus to prove that marihuana is safe under specified circumstances rests with the people who use it rather than a government agency.

> "The assumption is made that the substance is guilty until proven reasonably innocent, and the implication is that the onus of proving innocence lies with those who would wish to see the drug legalized."

Throughout the balance of the report, Dr. Edwards weighs this evidence. His conclusions are presented on pp. 46-50.

A ten-point summary of research data it presented which particularly stresses the large number of essential facts about marihuana which are not known. For example, the chemistry and pharmacology of the drug are as yet incompletely understood, though more is now known than was the case five years ago. This and the many other gaps in substantive, scientific knowledge about marihuana are reviewed. On the basis of this material, two possible but opposing positions on marihuana are suggested.

One position is that "the damage done by continuing prohibition is so much more unacceptable than the likely risks of cannabis-induced damage, that repeal should be legalized forthwith." Dr. Edwards points out that this position does not (and, in the current state of knowledge, cannot) deny the possibility that the drug may prove to be harmful, but merely holds that other considerations are more important.

The alternative position, which is favorable for prohibition or modified prohibition (decriminalization) holds "that cannabis is a substance still inadequately tested for safety, and with the provisional test evidence worrying . . . in these circumstances an ending of prohibition would be an irresponsible act which might inflict--we would certainly underline the 'might'--considerable health damage on present and future generations." Dr. Edwards adds that this recommendation is "entirely compatible with the recommendation that the stringency of the law should be modified, providing that the modification is not too abrupt, and subsequent monitoring does not show that this degree of relaxation results in an upsurge of use."

The problem, then, is to choose between these two viewpoints. Dr. Edwards emphasizes throughout his paper that this choice cannot be made on the basis of current evidence on the effect of marihuana on health though that evidence is an important factor in both positions. The reasons is that this evidence simply is not complete enough at the present time to be the decisive factor. Rather, the value judgements of those in a position to make such decisions will necessarily determine which position is finally adopted.

TREATMENT AND REHABILITATION OF MARIHUANA USERS

Although marihuana does not lead to physical dependence, a significant number of marihuana users have sought help from tertiary* drug treatment facilities in Pennsylvania. The Uniform Data Collection System of the Governor's Council on Drug and Alcohol Abuse provides a preliminary, and as yet, incomplete characterization of these treatment activities.

In November and December, 1974, 148 tertiary drug treatment facilities (slightly less than half) submitted records of 9,935 clients currently receiving some form of treatment. Of these cases, 1,679 (16.9%) report marihuana as a component of the clients' drug history.

In 656 cases (6.6%) marihuana was indicated to be the "major" problem. Twenty percent of these clients in this category entered treatment due to legal pressure.

Counseling is the primary form (89.3%) of treatment given to the majority of clients admitted to a tertiary drug program (See Figure #4). And in most cases, treatment for marihuana abusers occurs on an outpatient basis (83.3%).

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*Tertiary drug treatment facilities are aimed at dealing with those persons found to have chronic patterns (as pposed to experimental) of drug or alcohol use or abuse.

TREATMENT OF MARIHUANA USERS

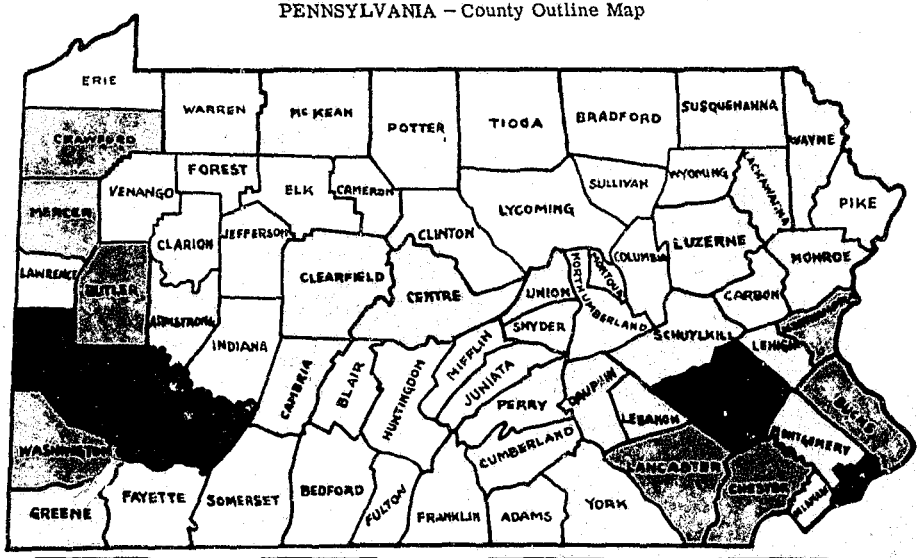
ENVIRONMENT APPROACH	CASE MANAGEMENT	RESIDENT NON-HOSPITAL	RESIDENT HOSPITAL	CORRECTIONAL FACILITY	DAY CARE	OUTPATIENT	TOTAL
Detox		1					1
Meth. Maint.							
Counseling		3		27	10	526	566
Ther. Community		56		1			57
Intermed. Care							
Halfway House				1			1
Three Qtr. Way House							
Case Mgt.	6						6
Other				1		2	3
Total	6	60		30	10	528	634

Counseling Approach used in 89.3% of cases

Outpatient Environment used in 83.3% of cases

RESIDENCE OF MARIHUANA USERS IN TREATMENT*

PENNSYLVANIA – County Outline Map



*NOTE: 108 cases failed to report residence

RECOMMENDATIONS

In its examinations of this issue, the Governor's Council on Drug and Alcohol Abuse voted unanimously to recommend that:

A. Criminal penalties be removed for the simple possession of a small amount of marihuana or hashish. (Simple possession of a small amount of marihuana is considered as 30 grams or less; a small amount of hashish is considered as eight grams or less.)

B. A civil penalty consisting of a maximum fine of $100.00 for the simple possession of a small amount of marihuana or hashish replace the present system of criminal penalties.

C. Penalties for possession with intent to sell, manufacture, or delivery of over a small amount of marihuana or hashish will remain the same.

D. The use of marihuana or hashish be actively discouraged.

E. A factual and realistic education policy concerning marihuana aimed toward young adults should be implemented.

On the basis of the above recommendations, the Governor's Council on Drug and Alcohol Abuse suggests to the Governor and the General Assembly the following legislation:

Removal of criminal penalties for marihuana offenses have been supported by the following organizations:

American Bar Association

New York State Bar Association

Philadelphia Bar Association

Consumer Union, Publishers of Consumer Report

National Conference of Commissioners on Uniform State Laws

American Public Health Association

National Advisory Commission on Criminal Justice Standards & Goals

National Council of Churches

American Medical Association (Governing Board)

National Education Association

National Commission on Marihuana and Drug Abuse

Central Conference of American Rabbis

B'nai B'rith

Canadian Commission of Inquiry into the Non-Medical Use of Drugs

San Francisco Committee on Crime

Mayors Advisory Committee on Narcotics Addiction (Washington, DC)

John Finlator, Retired Deputy Director
Bureau of Narcotics and Dangerous Drugs
U. S. Department of Justice

The Washington Post

The Washington Star

The Boston Globe

The Los Angeles Times

The New York Times

National Review

AN ACT

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The Act of April 14, 1972, (P. L. -, No. 64) known as "The Controlled Substance, Drug, Device, and Cosmetic Act" is amended as follows:

Section 13. Prohibited Acts; Penalties --

(g) Any person who violates clause 31 of subsection (a) /is guilty of a misdemeanor and upon conviction thereof/ shall /be sentenced to imprisonment not exceeding thirty (30) days, or to/ pay a civil penalty not exceeding /five hundred dollars $500.00/ one hundred dollars $100.00 /or both/.

"APPENDIX A"

A SUMMARY OF PUBLIC HEARING TESTIMONY

In May 1975, the Governor's Council on Drug and Alcohol Abuse held three public hearings in Philadelphia, Scranton, and Centre County (Penn State University) in order to gather information and insight into the issue of marihuana from educators, law enforcement personnel, community groups, lawyers, drug program personnel, and health officials.

The panel which heard testimony and addressed questions were: Dr. Richard E. Horman, executive director of the Governor's Council on Drug and Alcohol Abuse; Susan J. Hathaway, Special Assistant and Director, Public Education and Information, Governor's Council on Drug and Alcohol Abuse; Peter S. Pennington, deputy executive director of the Governor's Council on Drug and Alcohol Abuse; and Joseph Reither, Esquire, Director, Bureau of Drug Law Enforcement, Department of Justice.

# # #

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SUMMARY OF TESTIMONY

Heard at

Salon H, Commonwealth Ballroom

Marriot Inn

City Line Avenue

Philadelphia, Pennsylvania

Thursday, May 8, 1975

Statement of Stanley Kubacki, Esquire
Judge, Court of Common Pleas
Philadelphia, Pennsylvania

Statement of Keith Stroup, Esquire
Director, National Organization for
Reform of Marihuana Laws

Statement of F. Emmett Fitzpatrick, Esq.
District Attorney
Philadelphia, Pennsylvania

Statement of Mathea Falco, L.L.B.
Special Assistant to the President
Drug Abuse Council
(on behalf of Thomas Bryant, President
Drug Abuse Council, Washington, DC)

Statement of Sister Madeleine Boyd
Director and Educator
Shalom

Statement of Arthur Lewis, Regional Director
Drug Enforcement Administration
Philadelphia, Pennsylvania

JUDGE STANLEY KUBACKI
Judge, Court of Common Pleas

Judge Kubacki expressed in his testimony that he opposed the removal of legal sanctions on the possession of marihuana. However, in response to questions from the panel, Judge Kubacki indicated he would have no objection to the application of civil penalties as it relates to the marihuana issue.

Specifically, Judge Kubacki stated he would agree with the appropriateness of a civil penalty for a first offense for possession of a small quantity of marihuana below 30 grams. In the instance of a second offense, he expressed disagreement with the use of a civil penalty as opposed to criminal penalties.

Judge Kubacki went on to say the courts are not effective in dealing with marihuana possession cases at the present time. Each one of these cases, he said, properly requires a great deal of individual attention. Typically these cases result in a probationary sentence and probation officers are flooded with work that this attention is not available.

Judge Kubacki expressed concern that young people are maintaining criminal records and indicated that in instances of possession of small amounts it should not be made part of the criminal record. In Philadelphia, Judge Kubacki stated that he knew of no one who went to jail for having possession of small amounts of marihuana.

# # #

"And I believe it is Oregon where they do not--but there is a (civil) fine. It is transferred to the civil side of the court. I believe it is about $100 fine.

I would have no objection to this. But I would stay on top of the problem. But I would certainly have no objection."

(In reference to the accumulation of criminal records by young people for the possession of small amounts of marihuana:)

"For this, yes. I would agree with this. I don't think it should be made part of the criminal record, if this is all that there is."

(In reference to penalties for second offenses of marihuana possession:)

"Maybe on the second one, Doctor, it should no longer be on the civil side of the court."

"Yes . . . I have been in a drug court. And I must say, the experience is not very satisfactory for the reason that there is such a flood of this in the courts.

And as a result of this, there is a pretty cavalier attitude on the part of everybody toward it, and just moving it along. And very little or nothing is done for people who are involved in drugs."

"I do not know this for a fact. But you get a visceral reaction in the courtroom after listening to testimony.

And I have a strong feeling that the police also make a judgement. That is part of the filtering system."

# # # #

KEITH STROUP, ESQ.
Director
National Organization for the Reform of Marihuana Laws

Mr. Stroup stated that NORML supports a policy of discouragement toward the use of marihuana, but unalterably opposes the use of criminal penalties to accomplish that end.

He claimed there are certain costs inevitable with continued criminal prohibition. Stroup estimated the 420,000 arrests for marihuana offenses in 1973, the majority of which were for possession, cost around half a billion dollars. In addition the policy of criminal prohibition, Stroup suggests, produces a lack of respect for the legal system. Criminal penalties do not seem to have an effective deterrent effect. Stroup supported this claim by point out that the greatest increase in marihuana use occurred between 1956-1970, during the period of the country's strongest marihuana laws. He offered further recent evidence from a survey conducted by the Drug Abuse Council which reported only six percent of the nonusers in Oregon gave law enforcement reasons as a deterrent and only 12 percent in California stated the same reason where the penalty is a felony with a maximum ten year jail sentence. Finally, Stroup expressed concern that a significant portion of the population (13 million regular marihuana smokers) should not be treated as criminals when the only distinguishing characteristic of this group is that they perfer smoking marihuana to drinking alcohol.

Stroup suggested that there are three possible courses of action regarding the marihuana issue: The first, to continue criminal prohibition despite its costs and ineffectiveness; second, to legalize marihuana, which is untenable because of the political climate and precluded by the United States participation in the Geneva Treaty of 1961; and third, to decriminalize mari-

huana by imposing civil penalties rather than criminal penalties.

Stroup pointed out that there are many advantages to the civil citation arrangement. Applying civil penalties, he stated, still displays an official policy of discouragement, but removes the unusually harsh penalties and other disadvantages of criminal prohibition. The citation system, he claimed, would not remove the policeman from the street for several hours at a time as occurs in an arrest situation, nor would it produce the extravagent court costs for processing offenders. And finally, he stated, this approach has been shown to be preferred by the citizens of Oregon after one year of experience with the new law: 58 percent favored while 39 percent opposed the new law.

Mr. Stroup recommended that Pennsylvania adopt a partial decriminalization of marihuana by implementing a civil citation approach for possession of small quantities. He further recommended that it is the responsibility of the government to explain the law to its populace so that the new law is not interpreted as a permissive policy.

# # #

"NORML supports the discouragement policy toward the use of marihuana, and as far as that goes, toward the recreational use of all other drugs, too."

"However, if he only gives a citation, a policeman may spend two or three minutes time, and he is right out on the street. He never leaves the street.

That means basically that he is out there doing the job he is suppose to be doing."

"Now, of the 91 percent of the people who do not smoke marihuana in Oregon, despite the lack of criminal sanctions, we found that only six percent of the non-smokers gave law enforcement reasons as a deterrent."

"One, of course, is continued criminal prohibition. That is the system we have had for 35 years in this country.

Now, there are certain costs that are inevitable in that system. The most obvious one is that a lot of people are going to be saddled with arrest records."

"However, if you take those figures and multiply them times the 400,000 arrests, you see that we are spending somewhere around a half a billion dollars every year in this country on law enforcement resources."

"And only 12 percent, even in a state (California) where it is still a ten-year felony, only 12 percent of the non-users gave law enforcement reasons as a deterrent."

"I would suggest quite the contrary. The greatest increase in marihuana use this country has ever seen occurred between 1956 and 1970.

And those years, those 14 years, were the 14 years that we had the strongest penalties we have ever had in this country."

# # # #

F. EMMETT FITZPATRICK, ESQUIRE
Philadelphia District Attorney

Mr. Fitzpatrick offered no specific recommendations regarding amendment of "The Controlled Substance, Drug, Device, and Cosmetic Act." The majority of Mr. Fitzpatrick's testimony focused on finding solutions to remedy the total spectrum of drug abuse. According to Fitzpatrick the solution to the narcotics problem lies in offering more responsive treatment and rehabilitation. He pointed out that none of the courts: Criminal, Civil, Equity, and Orphans, have had an effect upon the narcotics problems.

Mr. Fitzpatrick expressed opposition to the use of civil penalties for possession of small amounts of marihuana for two reasons: First, decriminalization of marihuana does not offer a solution to the problem of drug abuse; and, second, the present law allows sufficient flexibility for a prosecutor to prosecute a person found with a minimal amount "for reasons best known to himself and law enforcement authorities." In practice, however, Fitzpatrick has seemingly decriminalized marihuana in Philadelphia as evidenced by his statement: "In most cases when small amounts of relatively harmless narcotics are used we withdraw prosecution and that's it."

Mr. Fitzpatrick urged the Council to develop more treatment centers, encourage treatment centers to examine offenders to determine if treatment can help, and to make these treatment centers aware to the prosecutors in the State. He could not, however, speculate on the possible financial impact this program would have upon the State.

# # #

"It is my feeling when I first was elected District Attorney that we could no longer afford the luxury, particularly in light of Rule 1100 of the Supreme Court requiring us to bring cases to trial within 180 days . . . of trying in criminal courts individuals who were charged with minor offenses."

"Now, I have taken it upon myself in certain first offender cases . . . to just withdraw prosecution and say we are not going to prosecute at all. Just go your way and say no more."

"I would not want to fill up treatment centers with people who are no more than first or second-time experimenters who do not have a problem that treatment centers can cure."

"I urge you, if there is to be any legislative change, to make the discretion of the prosecutor as broad as possible, because there are indeed other factors which go into whether or not a case should be sent to a rehabilitative program or should be brought to Court."

There may very well be an instance of an individual, an extremely hardened drug supplier, who is found with a minimal amount. But a prosecutor might very well wish to prosecute in his particular area for reasons best known to himself and law enforcement authorities."

"I would first of all urge you and your Council to encourage the development of treatment centers run by competent medical personnel."

"I would urge you, secondly, in the development of any of these centers, to make it a prerequisite that the centers themselves or the treatment authority tell the law enforcement authorities in each individual case that they have examined as well as they think they must the particular

defendant can benefit from rehabilitative procedures."

"I would invite you, thirdly, to recommend to the prosecutors throughout the State that these facilities either are available or let them know when (they will be established)."

"The fact of the matter is that the Courts: Criminal, Civil, Equity, Orphans, have had precious little effect upon the narcotics problem."

" . . . I do not believe that a procedure such as either calling it civil or issuing a summons or allowing someone to pay a small fine immediately rather than undergo a criminal trial is as effective a procedure in solving the overall problem."

# # # #

MATHEA FALCO, L.L.B.
Special Assistant to the President
Drug Abuse Council

Ms. Falco testified the Drug Abuse Council supports the recommendations of the National Commission on Marihuana and Drug Abuse which states that possession of marihuana for personal use or casual distribution without remuneration should not be sanctioned under criminal functions. The Drug Abuse Council maintains an "official policy of discouragement of use by civil functions."

Ms. Falco described some of the studies conducted by the Drug Abuse Council which led to the formation of their official policy.

1. Approximately 29 million Americans have tried marihuana and over 12 million use it regularly.
2. Decriminalization of marihuana in the State of Oregon has not resulted in a significant increase in use.
3. The majority of the population in Oregon favor the civil citation system.
4. Nonusers from Oregon and California cite lack of interest and health hazards as primary reasons for not using marihuana, while fear of prosecution ranked very low.
5. The consensus of distinguished scientists participating in a conference sponsored by the Drug Abuse Council (January 1975) is that the current state of medical research is not adequate to determine the extent of hazard or lack of hazard connected with marihauna use.

Ms. Falco suggested that altering social policy cannot depend on the finality of all accumulated medical data.

CONTINUED

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There are actually two problems she stated: a health problem and a criminal problem. She pointed out other substances of known hazard (e.g. alcohol) are controlled without confusion of the health problem and criminal problem. She exemplified this by pointing out that people are prosecuted for committing criminal acts while under the influence of alcohol; however, people are not prosecuted for the simple or social use of alcohol.

# # #

"We support the recommendations of the National Commission on Marihuana . . . they recommended that possession of marihuana for personal use no longer be a criminal offense, and that casual distribution for no remuneration, or insignificant remuneration not involing profit, no longer be an offense."

"What I would suggest is that we cannot afford to wait until all of the medical evidence is in concerning the effects of marihuana in determining an appropriate social policy."

"Alcohol is by far and away our nation's number one public health drug probelm . . . but we do not jail those who simply use alcohol. We do confuse potential health hazards with criminality.

Instead we invoke criminal sanctions for criminal acts committed under the influence of alcohol."

"There are two problems: a health problem and a criminal problem, and you would call it a social policy problem.

And they are just no more automatically synonymous or linked in the case of marihuana that they are in the case of alcohol or any sort of other--lots of other--substances that can be harmful."

"We are definitely against young people having criminal records for possession of small amounts. It just doesn't make any sense."

"We support criminal penalties for trafficking . . . (however) sharing of a small amount of the drug among friends, obviously not.

But for sales and transfers involving substantial profit, we support penalties."

# # # #

SISTER MADELEINE BOYD
Director and Educator, Shalom
(Prevention Program)

Sister Madeleine stated the penalty involved for simple possession cases far outweighs comparable penalties for other victimless crimes. A system of civil fines similar to the Oregon State Model, in her opinion, would be more effective and justified than the present system in Pennsylvania.

She pointed out that under the present judicial system, where one uses marihuana may be more significant than whether one uses marihuana. Penalties for the same crime vary from a jail sentence to a permanently damaged record of personal integrity, to discharge with no further consequences, all of which depend on the county. The implementation of the Oregon model, she suggested, would eliminate the discretionary interpretation allowed under the present system. It would enhance respect for the criminal justice system among youths; would eliminate 90 percent of the current marihuana arrests; would "free up" law enforcement efforts; would eliminate much of the cost of the present system; and might prove a more effective deterrent.

Sister Madeleine stated that criminal sanctions on possession of marihuana do present difficulties in dealing with the problems of youths.

From her professional experience in drug and alcohol prevention, Sister Madeleine suggested "decriminalization of marihuana will free parents, educators, community leaders, and police to work toward more enlightened solutions where marihuana use is symptomatic of deeper problems."

# # #

"In those cases where simple possession of marihuana results in a jail sentence, the penalty far outweighs comparable penalties for other victimless crimes.

My experience in working with thousands of young persons . . . has convinced me that society could benefit by a change in the penalties for those caught using marihuana."

"A swift, fairly administered civil fine similar to the Oregon state model might prove a more effective deterrent to marihuana use."

"The serious inequities that exist as a result of the discretionary interpretation allowed under the present system jeopardizes the image of how justice is administered."

"Youths would no longer fear discussing marihuana with adults. Parents and teachers would not have to fear that handling the marihuana issue in a responsible way will be construed as abetting crime."

# # # #

ARTHUR LEWIS
Regional Director, Drug Enforcement Administration

The majority of Mr. Lewis' testimony described the history of marihuana use on an international scope, and the development of international agreements to control "trafficking" of a variety of illicit drugs. The primary efforts of the Drug Enforcement Administration (DEA) are the enforcement of laws directed at large "dealers" of controlled substances, rather than persons with small amounts of marihuana for personal use.

Lewis stated a close link between "trafficking" of marihuana and trafficking of other drugs, such as heroin. He felt, therefore, that a reduction in controlling marihuana "traffic" would jeopardize the control of other illicit drug distribution.

Mr. Lewis was asked if the DEA had taken a position on the Federal bill (S.B. 1450) introduced by U.S. Senator Jacob Javits (R-New York) to decriminalize small possession of marihuana. Lewis indicated, to his knowledge, neither the DEA nor the U.S. Justice Department has taken a position on this issue. He pointed out that, typically, the Office of the U.S. Attorney General declares the Federal government's position in these cases.

United States Attorney General Edward H. Levi was quoted in the Philadelphia Inquirer (May 30, 1975) regarding his position on decriminalization, "If I had to take one at this moment--and I haven't--I think most people agree that possession of small amounts of marihuana, whether it should be decriminalized or not, out to be downgraded in terms of penalty."

# # #

"Most people assume that our policy toward marihuana is harsh and can neatly be separated from our policy toward heroin . . . let me state that illicit traffic in marihuana is big business. It is no longer the casual transfer of the weed as it was before the 1950's."

"Thousands of pounds are being smuggled into this country by large, well-financed groups. In 1970, over two million pounds of marihuana was seized . . . seizures of hashish, the resin from the top of the plant, rose from 7,000 pounds in 1970 to over 50,000 pounds in 1974."

"There is a link between heroin traffic and marihuana which is vitally important. A lessening of United States efforts to enforce marihuana laws will weaken the determination of foreign governments to assist United States is bound by treaty obligations--the Single Convention on Narcotics of 1961--to control marihuana traffic."

"And it is just impossible. If you stretched hands and reached around the border of Maine to Mexico, you could never stop or interdict large amounts of marihuana coming into the country. It is virtually impossible to do that. You just don't have the forces to do it."

"The best that law enforcement can do, given the attitudes that some people do have about law enforcement, is sort of like stick its finger in the dike and hold on and holler help, then call for the stone masons to build the thing a little bit getter."

# # # #

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SUMMARY OF TESTIMONY

Heard at

Hilton Inn

225 Washington Avenue

Scranton, Pennsylvania

Wednesday, May 14, 1975

Statement of Thomas McNevin
NORML

Statement of Captain Frank Roche
Captain of Detectives
Scranton Police Department

Statement of Robert Schwartzberg
Assistant Director
Community Volunteer Services
B'nai B'rith

Statement of Doree Goodman
Executive Director
Lackawanna County Commission
on Drug and Alcohol Abuse

THOMAS McNEVIN
Scranton, NORML

Mr. McNevin's testimony basically consisted of the text of a petition circulated by a group of NORML sympathizers in the Scranton area and signed by approximately 1,000 persons. The opening statement of this document called for "an immediate end to the criminal prohibition of private marihuana use."

The petition maintained that criminal laws dealing with marihuana use are "ineffective as a deterrent, unreasonably severe, scientifically unwarranted, and disparate in their nature and enforcement."

McNevin cited a number of official research studies which reportedly concluded that marihuana presents no significant threat to public health or society. Issuing agencies include the United States Department of Health, the National Commission on Marihuana and Drug Abuse, and the Canadian Commission on Inquiry into the Non-Medical Use of Drugs. Based on these reports, McNevin said medical risk incurred in the private use of marihuana may be categorized as "informed individual choice permitted in a free society."

NcNevin, still reading from the petition, said current governmental controls over marihuana use encourage invasion of privacy. The petition also pointed to the possible danger of "violation of individual rights and liberties by overzealous law enforcement personnel."

Mr. Joseph Reiter, Esquire, Director of the Bureau of Drug Law Enforcement, cited information contained in the Shafer Commission Report which stated a consensus of physicians surveyed by the Commission considered marihuana a dangerous drug. When asked whether he was in agreement with that opinion, McNevin said every drug was potentially dangerous, whether licit or illicit.

# # #
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CAPTAIN FRANK ROCHE
Captain of Detectives
Scranton Police Department

Early in his testimony, Captain Roche indicated his opposition to any proposed change in the Commonwealth's current marihuana laws. He said the present law contains adequate safeguards for what he called "the first time user" against acquiring a police record.

According to Roche, his main concern is not with marihuana smoking, as such. Rather he indicated a worsening situation in the Scranton area involving derivatives of marihuana, such as hashish and THC.

Captain Roche indicated he was aware that marihuana itself is not an addicting drug. He also expressed doubt that marihuana is responsible for a progression to harder drugs. He blamed this progression on peer pressure among young people.

Much of Roche's arguments were based on his belief that increased use of stronger derivatives of marihuana would lead to "victimization." He said decriminalization of marihuana would "open the door" to increased drug use.

Concerning the legal process of marihuana offenders, Roche said Scranton police "just don't have the time . . . to devote to going out and getting the marihuana users." Roche said it is "a waste of police time; a waste of court time" to prosecute persons possessing small amounts of the drug.

According to Roche, current laws allow prosecutors and judges to use discretion in various cases. In Scranton, said Roche, authorities can refer an individual to an Accelerated Rehabilitative Disposition (ARD) program, or

totally dismiss charges against a small possessor.

Roche also said he is opposed to the passage of U. S. Senate Bill 1450 which would decriminalize possession of one ounce or less of marihuana. The captain said he would, however, favor state legislation to reduce the classification of possession of 30 grams or less of marihuana to a summary offense, thereby putting these cases within the jurisdiction of a district justice or magistrate.

# # #

". . . I am also aware that marihuana in itself is not an addictive drug. However, to say that some younger groups, within their own peer groups, are more or less forced by their own peer group to try the marihuana plant or the marihuana cigarette, it can--I am not saying that it does--but it can lead to pressure from the peer group to try a more dangerous type of drug, and this is what my concern is."

". . . I think that the present law of the State of Pennsylvania relevant to marihuana are quite adequate."

"What I am saying is that the derivatives from the marihuana plant are causing us a problem. We are being stormed right now with a great deal of violation with the THC business . . ."

"If we run across somebody with 30 grams or less, a young individual, we will try and contact their parents and let their parents handle it. And we feel that 30 grams or less is a waste of court time, it is a waste of police time, and we feel that if it is for a person's own use and he is not turning around and selling it, he is not profiteering from it."

"We know the consequences of putting a tag on an individual, a criminal tag on somebody of being a drug user or a drug seller. And I make no distinction between this; I have no sympathy for the seller of drugs. But the drug user is a victim of his peer group; is a victim of his environment."

# # # #

ROBERT SCHWARTZBERG
Assistant Director of
Community Volunteer Services
B'nai B'rith

Mr. Schwartzberg, representing the national office of B'nai B'rith, read a 1973 resolution passed by the organization's Board of Governors which states "current penalties for use and/or possession (of marihuana) are out of proportion to the known facts." The resolution adds, "B'nai B'rith believes that the criminal penalties against the use of the drug are totally unrealistic." According to Mr. Schwartzberg, this policy "is now representative of the response or attitude toward drug abuse that the entire B'nai B'rith nationally has taken."

The B'nai B'rith policy agrees with medical findings disproving "the earlier notion that marihuana is physically addicting or dependence producing." In light of these findings, the organization states its opposition to penalties imposed by current marihuana laws that "can and do scar the lives of those who would otherwise be regarded as law-abiding citizens."

Commenting on the resolution, Schwartzberg said his organization "would like to see all states adopting something similar to the Oregon Plan . . ." which reduced marihuana possession to a citation offense. Under questioning, Schwartzberg said new marihuana laws are needed to protect young people from acquiring a criminal record. According to the B'nai B'rith representative, such a record is unwarranted for what he called a "victimless crime." He said current Pennsylvania provisions for expungement of criminal records are not adequate protection because "even if there is a law on the books calling for expungement under certain circumstances, I question the

ability of the state to see that the local counties are following the law."

Schwartzberg opposed the notion that current marihuana laws serve as a deterrent to drug use. "I think that efforts to deterrents or the history of the efforts of states all over the country . . . have been a waste of money and time."

# # #

"The known consequences of incarceration and a felonious criminal record far outweigh the minimal dangers presented by the use of marihuana. In many ways, the enforcement of present marihuana laws impose the very kind of cruel and unusual punishment that the Constitution of the United States specifically forbids."

"I don't dismiss any of these (medical research) reports. Quite frankly, I think the more reports we get, the more it points up to the inability to put a label on marihuana, because the more reports that there are the more contradictions there are."

"I am saying, yes, the state has an obligation to educate the public to what the facts are. I am against the state telling the public whether they should or shouldn't smoke (marihuana)."

# # # #

MS. DOREE GOODMAN
Executive Director
Lackawanna County Commission on Drug and Alcohol Abuse

In her formal opening statement to the Governor's Council panel, Ms. Goodman proposed "Pennsylvania follow the lead of Senators Javits, Cranston, and Brooks in the U.S. Senate, and states such as Oregon, in decriminalizing the personal possession of small amounts of marihuana and in substituting for a criminal penalty a minimal civil fine."

She also advocated an end to criminal penalties for non-profit transfers of small amounts of the drug.

Although public policy should be to discourage the indiscriminate use of drugs, said Goodman, "we should trust mature and intelligent persons to make intelligent decisions regarding chemical use." She continued, "It appears to me that we cannot legislate morality, that laws in and of themselves do not deter people from abusing and/or harming themselves."

Goodman questioned the amount of time and money spent by the criminal justice system dealing with victimless crimes. She suggested a change in the marihuana laws would "relieve some of the burden on the courts and public defenders and other related offices."

According to Goodman, "by labeling and stigmatizing and incarcerating young persons through the criminal process, we appear to be doing them more damage and narrowing their options even more than the personal use of marihuana." She said many young persons who have been arrested for drug violations are avoided by "straight" teenagers, thus forcing them even farther into the drug culture. This occurs, said Goodman, in spite of the fact that the individual may previously have been a casual experimenter with marihuana.

Under questioning by panel members, Goodman said treatment procedures for marihuana abusers consist largely of individual and group counseling. According to her statistics, 44 percent of the marihuana users undergoing treatment in Lackawanna County were referred by the criminal justice system. Referring to these statistics, she said, "in many cases the treatment may be ineffective because treatment itself may not even have been warranted . . . because there may not really have been any behavior to change in the first place." She said many casual experimenters opt for mandatory treatment as the only alternative to involvement with the criminal justice system and the acquisition of a criminal label.

# # #

" . . . I still believe that laws in and of themselves, the legislation, is not effective in preventing persons from using marihuana, and that we cannot really legislate against use or legislate morality."

"Let me raise one other question . . . and that is whether in a society that is as drug oriented as ours, where the media encourages the use of chemicals from morning to night, it becomes reasonable to rule out the use of any chemical as illegal."

"Criminal penalties for use and possession appear disproportionate to the degree of mental and physical risks involved."

" . . . it appears to me indefensible to equate marihuana with hard narcotics under the criminal law."

# # # #

SUMMARY OF TESTIMONY

Heard at

Hetzel Union Building

University Park Campus

Pennsylvania State University

University Park, Pennsylvania

Wednesday, May 21, 1975

Statement of Dr. Lee Upcraft, Director
Residential Life Program
University Park Campus
Pennsylvania State University

Statement of Joe Seufer, Student President
University Park Campus
Pennsylvania State University
(accompanied by Steven Rudman, State Coordinator
Penn State Organization for the Reform of
Marihuana Laws)

Statement of Dr. John Hargleroad II, Director
Health Services
University Park Campus
Pennsylvania State University

Statement of Charles Brown, Esquire
Centre County District Attorney

Statement of Alan Ellis, Esquire
Counsel
Pennsylvania Branch NORML

Statement of Joseph Diament
On Drugs, Incorporated
State College, Pennsylvania

DR. LEE UPCRAFT
Director, Residental Life Program

Referring to a "consensus view of our residence hall staff concerning drug and alcohol abuse," Dr. Upcraft said, "we see no particular advantage in changing the current (marihuana) laws." According to Upcraft, decriminalization would result, "at least temporarily and possibly permanently," in the increased use of marihuana. Increased use, said Upcraft, would lead to increased abuse and the University does not maintain the facilities to deal with police and treatment problems which might be created by increased marihuana use.

Although he opposed decriminalization, the administrator said "classifying possession of small amounts of marihuana as a misdemeanor may be too strong a punishment." Again, speaking on behalf of his staff, he said "the penalties for marihuana should be consistent with other drugs of similar impact, such as alcohol."

On the Penn State Campus, said Upcraft, the number of marihuana cases handled by the University Police and the school's discipline system has remained relatively stable while alcohol-related incidents have increased "by over 100 percent in the last three years." He said residence hall staff members believe marihuana use has actually declined in recent years for several reasons: (1) many students had experimented with the drug in high school before coming to college, (2) the price of marihuana has increased, and (3) the risk of detection and disciplinary action is greater with marihuana than alcohol.

Alcohol has become the University's chief drug problem, according to Upcraft. He called for state action to lower the drinking age to 18. He said

it is "inconsistent to declare college students as adults for all other purposes except alcohol consumption. The net result is underage drinking takes on more importance than it should for young people."

# # #

"Marihuana does not present a large, serious problem to our residence hall staff, nor to students. Decriminalization runs the risk of introducing more serious problems than we currently experience."

"It is not consistent to treat underage alcohol consumption as a summary offense, and possession of marihuana as a misdemeanor."

"I don't necessarily see that much of a connection between the law enforcement efforts and the decline in marihuana usage. I see it more as a student cultural phenomenon. It is just not as exciting. It is not as cool. The peer group is just plain not reinforcing that behavior as it did in the late 60's and early 70's."

"It is quite possible that someone who is caught in possession of marihuana could be both sanctioned or punished through the (University) discipline system as well as being prosecuted in the courts."

# # # #

JOE SEUFER
Student President

STEVEN RUDMAN
Student Coordinator, NORML

Mr. Seufer began his testimony with an enforsement of the NORML position concerning decriminalization of marihuana. "I believe the decision to smoke marihuana is a private, personal one," said Seufer, "and should not be dictated by law." He said present marihuana control laws do not deter usage, "although they continue to label a significant minority of American citizens as criminals."

Seufer cited results of a survey initiated by Pennsylvania NORML where interviews taken from a random sample of 450 students revealed, next to alcohol, marihuana was the most frequently used drug on campus. Fifty-five percent of Penn State students consider themselves regular marihuana users, according to the study.

He blamed government, in general, for creating "myths" that marihuana use would lead to "violence, rape, and murder in the public." "America'a youth lost respect for all institutions and became alienated" when older citizens attempted to impose their values on them, according to Seufer.

Rudman disagreed with the idea of mandatory rehabilitation or counseling for persons convicted of marihuana-related offenses. "I don't think the use of marihuana mandates any type of counseling," he said.

Rudman blamed much of the misunderstanding about marihuana on inaccurate drug education programs. He said students know from personal experience in many cases, that scare tactics employed in some programs provide "fallacious" information. Programs of this type, he continued, cause students to ignore official sources of information about dangerous drugs.

# # #

SEUFER

"There is a need for reform whenever a law ceases to be of social usefulness. The time has come for clearing the air of misinformation and emotion, enabling a basis to be developed for a rational social policy regarding marihuana use. The time has come to decriminalize marihuana possession in Pennsylvania."

"Not only do states have disparate laws and policies, but each county in Pennsylvania treats marihuana violations differently. Thus, where a person is arrested is very important."

"Marihuana decriminalization may very well help to bring back a united homogeneous feeling in the country."

RUDMAN

"In my opinion, alcohol is much more dangerous than marihuana."

"I believe, in our society, there should be no laws restricting what an individual wants to do to his own body."

# # # #

DR. JOHN HARGLEROAD II
Director of Health Services

"On the matter of decriminalization of marihuana, it was the consensus of the group that it should be decriminalized. It is our opinion that its use is socially acceptable by those that we have contact with, the law is not effective in prohibiting its use, and the dangers do not warrant such penalties," stated Dr. Hargleroad who presented the opinions of approximately twenty members of the University Health Services staff in his opening statement.

According to Hargleroad, staff members agree marihuana is not an addicting substance and interruption of use does not cause any type of physical withdrawal symptoms. One staff psychiatrist noted he had never seen a psychotic reaction to marihuana use.

Hargleroad estimated that some 50 percent of the Penn State student body has had some experience with the drug. Explaining the most common circumstances of student marihuana use, he said, "It seems to be the consensus that marihuana was used most frequently in a group social setting one to three times a week, but may on occasion be employed in a solitary setting."

University drug control efforts, Hargleroad said, should consist mainly of more effective drug education programs. He said individuals should be allowed to make independent decisions about drug use without criminal prohibition.

Hargleroad said University Health Services personnel treat a large number of students for the effects of alcohol and various drugs. "Marihuana

has been different," he concluded, "in the effect that we have never had a student come in with the complaint that they had had ill effects from the use of marihuana."

# # #

"As a physician here on campus, I would like to make available to any potential user as much information as we can do so, and then let him judge whether he wants to take the risk . . . I don't think, as a physician at a university, that I should act in any other way."

"I am not sure that I would want to be placed in the position of saying I would like to see prohibition of every agent which is harmful to a person's body."

"Well, can you tell me how the decrease of testosterone is going to endanger somebody else?" (On the possibility that law should be based on medical reports such as those indicating lowered testosterone production caused by marihuana use.)

" . . . I testified that I do not know of bodily harm that was done by the use of marihuana, certainly in our experience."

# # # #

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CHARLES BROWN, ESQ.
Centre County District Attorney

In his formal statement to the Governor's Council panel, Centre County District Attorney, Charles Brown, said, "I am suggesting that use of marihuana not be a crime: felony, misdemeanor, or summary offense." He further suggested "that possession of an amount which is deemed to be for use only, be no more than a summary offense."

Brown said law enforcement officials do not have the resources to pursue cases of possession of small amounts of marihuana. Enforcement efforts in Centre County are concentrated on "the so-called pusher or dealer, someone who is making a profit from the distribution of marihuana." He said current marihuana provisions impose a burden on police, prosecutors, and the courts.

" . . . if the legislature of Pennsylvania would decriminalize use, possession, and distribution of marihuana, law enforcement personnel would gladly turn their attention to the more serious matters of crimes against persons and property."

Brown, president of the Pennsylvania District Attorneys Association, said "I do find a feeling generally among the district attorneys that, frankly, they have more important things to do than to prosecute through the courts persons involved with small amounts of marihuana. And they certainly feel that way with regard to its use."

Asked whether he thought legislators might not support decriminalization legislation because of fears of not being reelected, Brown said, "that was also the feeling about the income tax. And then, all of a sudden in Pennsylvania,

everybody running for election was in favor of an income tax."

# # #

" . . . there is a feeling--not much more positive than that, however--among the public and law enforcement officials that the use of marihuana does not seriously affect a person's health."

" . . . use of marihuana is still being punished as a crime and should not be so."

"It seems to me that we are heading toward handling the matter of marihuana use, possession, and delivery much as we do cigarettes and alcoholic beverages."

# # # #

ALAN ELLIS, ESQ.
Counsel to Pennsylvania
National Organization to Reform Marihuana Laws

Mr. Ellis, an attorney specializing in narcotics law, supported "the removal of criminal sanctions for the possession of small amounts of marihuana for personal use." He also endorsed the plan for decriminalization proposed by the National Commission on Marihuana and Drug Abuse.

According to Ellis, current marihuana laws "breed bewilderment and contempt for the law: and "engender disrespect for all laws and distrust of both the agents and institutions of government." He said his contempt on the part of young people stems from selective enforcement of the laws based on unpopular lifestyles or political beliefs.

Current marihuana laws "destroy the credibility of drug education programs which seek to inform users of the very real dangers of hard drug use." As long as marihuana use is categorized as criminal, said the attorney, experimentation with more dangerous and illicit drugs is "inevitable."

"The actual and potential threat to the individual's economic and social interest posed by an arrest record has been well documented," said Ellis. Whether an individual is convicted or not, the mere fact that he has been arrested is enough to discourage a potential employer, he added. Ellis said he has knowledge of students who dropped out of school "for the sole reason that they feel this (criminal) record will effectively preclude their getting meaningful future employment (which) would otherwise be available to them as a college graduate."

Ellis called for the institution of a system of civil penalties for marihuana possession similar to that operating in Oregon. He opposed the

the classification of marihuana possession as a summary offense because "Rule 100 of the Pennsylvania rules of criminal procedure labels a summary offense as a criminal offense."

# # #

"I respectfully urge you to recommend the introduction and passage of a bill providing for decriminalization of marihuana here in Pennsylvania."

"I am not in favor of treating people who choose to freely use marihuana as criminals. They are not criminals . . . they are otherwise law-abiding citizens who, but for the fact of the marihuana laws, would never appear in the criminal justice system."

"So long as marihuana is listed as a Schedule I drug along with LSD and cocaine . . . lumping it along with more dangerous drugs, there is a risk the marihuana user might turn to these drugs."

"Even if we were to find out tomorrow that marihuana is as harmful as alcohol and tobacco, I would still fully support the decriminalization of marihuana insofar as it relates to those people who freely choose to use marihuana on a personal basis."

# # # #

JOSEPH DIAMENT
On Drugs, Inc.

In his opening statement, Mr. Diament said On Drugs, Inc., a crisis intervention and information center, "does not at the present time have a stand on the legalization issue." "This is based on our desire to avoid alienating any segment of our client population," he added. Diament said his testimony would consist, rather, of a report of his agency's experience with marihuana-related cases.

According to the agency's records, marihuana is often mentioned by clients when asked to list drugs they use or have used. However, Diament said, very few clients have ever sought On Drugs' services solely because of marihuana use.

"It is the consensus of the agency's staff," Diament continued, "that marihuana has been the least problematic drug within our client population."

Diament said some marihuana-related cases involve resolution of family disputes caused by use of the drug by a young person. Parents are usually more concerned about the legal consequences of a drug arrest and their impact on the child's future than by direct effects of the drug, he stated. "An additional fear is the 'crowd' that the son or daughter must consort with in order to partake in an illicit activity," Diament said.

# # #

"APPENDIX B"*

"Favorable to Legalization"

An entirely legitimate value-interpretation of the evidence assembled in this paper is that the damage done by continuing prohibition is so much more unacceptable than the likely risks of cannabis-induced damage, that repeal should be legalized forthwith. The convinced and honest protogonist of repeal will perceive the assembled evidence and the listed major uncertainties as accurately as the convinced and honest prohibitionist: the man who favors repeal will, however, give high value weighting to decriminalization and individual liberty. Such is an entirely legitimate stance: in the light of present evidence it would, however, be illegitimate for that man to take up the position that cannabis is of proven harmlessness. His position is coherent only if he accepts the entirely open possibility of health risk and then states that in his value system that possible risk weighs less than his regard for civil liberties. He would though be quite foolish to argue that because science has not yet come through with convincing evidence that cannabis damages the individual, and because speculative extrapolation cannot establish the likely prevalences of damage in the post-prohibition situation, therefore, the risks of damage and high damage prevalence have been ruled out. A repeal argument based on the dismissal of the possibility of risk can in light of present (and very imperfect) evidence, no longer be considered a tenable position. Neither is it convincing to argue that repeal could be on an experimental basis: there are few if any historical examples of a recreational drug use, once legalized, subsequently being effectively prohibited.

"Favorable to Prohibition or Modified Prohibition"

Anyone who surveys the established facts (and the lacunae), with a cast of mind which by habit takes the Public Health perspective--and particularly a "safety of drugs" perspective--will probably conclude that cannabis is a substance still inadequately tested for safety, and with the provisional test evidence worrying. He would argue that in these circumstances an ending of prohibition would be an irresponsible act which might inflict--he would certainly underline the "might"--considerable health damage on present and future generations. If his position were to be as honest as the honest advocate of repeal, he would, however, have to admit that he, also, was weighing the evidence in terms of his personal value judgements; he could not legitimately deny that prohibition inflicts some costs, but he openly makes the choice to give more weight to health considerations. Such a Public Health stance is, of course, entirely compatible with the recommendation that the stringency of the law should be modified provided that modification is not too abrupt, and subsequent monitoring does not show that this degree of relaxation results in an upsurge of use.

The man who recommends that the Public Health view be taken will also undoubtedly plead that more research be done. He will reject the taunt that a prohibitionist lobby is always stalling for time by asking for "more research," and he will regard as uninformed the argument that if there were anything that research could prove there would by now be proof positive; in matters as complex as these,

research is not something which can be too hurried, or held to a promise of "giving the answer" within any limited space of time. A listing of what might seem the most pressing research needs is set out in an appendix."

# # #

*Verbatim Text from "Cannabis and the Criteria for Legislation of a Currently Prohibited Recreational Drug: Groundwork for a Debate" by Dr. Griffith Edwards, Addiction Research Unit at Maudsley Hospital, London, England, as it appeared in the Acta Psychiatria Scandinavica, Supplementum 251, 1974.

TEXAS

Pot Luck in Texas: Changing a Marijuana Law

Paul Danaceau

THE DRUG ABUSE COUNCIL, INC. SS-4 9/74

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1 The Setting

On the night of May 28, 1973, just a few hours before it adjourned, the Texas Legislature approved a comprehensive revision of the state's drug laws, in which first-offense possession of up to four ounces of marijuana was reduced from a felony to a misdemeanor. Since forty-eight states and the District of Columbia had already made some form of first-offense possession a misdemeanor, the Texas vote did not seem particularly newsworthy. If anything, it seemed long overdue, and many Texans who had championed this issue over a period of two and a half years felt the same way. They couldn't quite convince themselves that they had scored an important legislative victory. To them, it was more a case of having at last pulled the mule out of the mud. But in another sense the new Texas law *was* newsworthy, because Texas had been the only place in the United States (some said in the world) where a person convicted of possession of marijuana could be sentenced to life imprisonment.

Why Texas? Nobody really knows. Part of the reason was that for forty-two years, between 1931 and 1973, Texas law had considered marijuana a narcotic. So whenever penalties for possession of narcotics were raised—always in the vain hope that tougher penalties on users would stop the flow of drugs—marijuana went along for the ride. This was exactly what happened in 1955 when the legislature raised the maximum penalty for possession of a narcotic from ten years to life imprisonment. (The minimum penalty was always two years.)[1] Some felt that U.S. Senator Price Daniel, who had been conducting national hearings on drug traffic and who later became governor of Texas,

[1] It should be noted that in Texas judges (or juries) sentence offenders to specific terms—a fixed number of years between the minimum and the maximum time allowable by statute. At least one state, California, uses indeterminate sentences whereby judges sentence offenders to prison but prison officials subsequently decide how much time beyond the minimum sentence offenders should serve. Thus, someone sentenced to a term of two years to life in California may be adjudged ready for release in two years, while someone convicted under Texas' old marijuana possession law, which carried a two years to life penalty clause, could be sentenced to a fixed term of any number of years between those extremes.

had something to do with the life sentence. Daniel, however, denied any influence and pointed out that while federal law also regarded marijuana as a narcotic, the maximum penalties contained in his 1956 federal drug law were much lower than those contained in the 1955 Texas law: five years for the first offense, ten years for the second, and twenty years for the third. Possibly Allan Shivers, governor of Texas from 1949 to 1957, knows the reasons behind the 1955 law, but he was unavailable for interviews. That left only one district attorney who was willing to venture an opinion. His guess was that penalties were raised because it was a safe as well as a visible political act, and because most of those affected were Mexicans and few of them voted.

Wherever the truth lay, Texas had certainly come a long way since 1905, the year of the state's first drug law ("An Act to regulate the sale of cocaine and other drugs"), a law in which marijuana was not even mentioned. Marijuana was mentioned, however, when the law was amended in 1919. Transfer and sale for non-medical purposes were regarded as misdemeanors and they carried penalties of not more than one year in jail and/or fines of $25 to $200. But possession of marijuana still was not listed as an offense.

Most likely the legislators did not approve of marijuana use, and most certainly they did not approve of the people who used it. For a number of years marijuana had been considered a problem in border towns such as El Paso, where a 1914 ordinance banned both possession and sale. El Paso had been characterized as a "hotbed of marijuana fiends," and use was described as common not only among Mexicans but also among "Negroes, prostitutes, pimps and a criminal class of whites." [2] But on a statewide basis, marijuana just didn't arouse that much interest. The legislature followed the pattern of restraint established by a Texas criminal appeals court in an 1897 alcohol case when the court prohibited the state from interfering with "the citizen's fundamental right to use his own property as he pleases, not injuring another person." (*Ex parte* Brown, 38 Tex. Cr. R. 295.)

But by 1923 the legislators began to change their minds, and Texas' drug laws were amended to include possession with intent to sell—as a misdemeanor. Yet the *Austin Statesman*, which normally gave heavy coverage to legislative sessions, barely noticed the change. "The McMillan Senate bill," the *Statesman* reported, "amended the anti-narcotic law so as to make unlawful

[2] Richard J. Bonnie and Charles H. Whitehead II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (Charlottesville: University Press of Virginia, 1974), p. 34.

the possession for the purpose of sale of any marijuana or other drugs. Marijuana is a Mexican herb and is said to be sold on the Texas-Mexican border." [3]

For the next eight years nothing happened. Then in 1931 marijuana was classified as a "narcotic" drug, and simple possession was included as an offense. It was made a felony and carried the same penalty as sale: up to five years in prison and/or fines of up to $2000. A second conviction for either offense was punishable by one to ten years and/or fines from $1000 to $5000. Possession with intent to sell was dropped as an offense.[4]

Six years after that, in 1937, Texas followed the national trend and adopted its own Uniform Narcotic Drug Act. The old laws were repealed and new ones written. Possession and sale of marijuana were both raised to two to ten years and no fines, just like all the other "narcotic" drugs. No penalties were listed for second and subsequent offenses, an omission the legislature corrected in 1953 when it made second offenses punishable by anywhere from five to twenty-five years and third offenses punishable by ten years to life imprisonment—the first time the life sentence penalty appeared in Texas' drug laws. Before the 1953 legislature adjourned, however, the life sentence appeared a second time, for a new offense which was added that year: any adult who in any way involved a person under nineteen years of age in the sale of or other transaction in narcotics (including marijuana) would receive a sentence ranging anywhere from five years to life imprisonment. Second or subsequent convictions would carry a penalty of ten years to life. The legislature also added a third amendment in 1953. Possession of a "contrivance used in smoking a narcotic drug" (pipes, roach clips) became a felony and carried the same two to ten year penalty.

Finally, in 1955, life imprisonment became the maximum sentence for possession, and a single penalty of ten years to life was adopted for all second and subsequent offenses. Two years

[3] *Austin Statesman*, June 19, 1923.

[4] Possession with intent to sell was useful to prosecutors only so long as the penalty for simple possession was lower than the penalty for sale, or, as in Texas between 1919 and 1931, when simple possession wasn't considered an offense. Since possession with intent carried the same penalty as sale, prosecutors used this charge when they suspected a person was selling marijuana but couldn't actually prove it, or when a person was arrested with more marijuana in his possession than the police felt he normally would have for his own personal use. However, when the 1931 legislature made it possible for a person charged with simple possession to receive the same sentence as a person charged with sale, the reason for having a separate possession with intent law no longer existed. Critics of the possession with intent law, who once claimed it permitted prosecutors to obtain sale convictions without the proper evidence, now began arguing that possession should not carry the same penalty as sale.

after that the maximum penalty for a second conviction on charges of involving persons under nineteen in narcotics transactions was changed from life imprisonment to life imprisonment or death. In 1961 the legislature made its last changes in the narcotics law: the penalty for the sale of narcotics was increased from two years to life to five years to life; second or subsequent sale offenses brought penalties of ten years to life; and the involvement of minors offense was amended to include twenty-year-olds.

Although apparently no efforts were made within the legislature to liberalize marijuana laws during all this time, numerous court cases between 1959 and 1972 sought to have possession and sale convictions overturned, as abridgments of the Eighth Amendment (cruel and unusual punishment) and the Fourteenth (lack of due process, resulting from the irrational classification of marijuana as a narcotic). None were successful. In each case the appeals judge held, as did U.S. District Judge William M. Taylor in 1970, that while the classification "may or may not be wise or desirable," the state of Texas did have the right to classify marijuana as a narcotic.

2 The 1971 Legislature

With the exception of other "narcotic" offenses, possession of marijuana was the fourth most serious offense a person could commit in Texas, ranking just below rape, robbery by firearms, and murder with malice. Those three carried maximum penalties of life imprisonment or death, whereas marijuana possession carried only a maximum of life. By comparison, the maximum penalty for possession was much more severe than the penalties for numerous other crimes of violence or property. The stiffest maximum for crimes of violence, other than the three just mentioned, was twenty-five years for assault with intent to murder and for kidnapping. Castration had a fifteen year maximum; resisting arrest with arms, a ten year maximum; and administering poison, assault with a prohibited weapon, disfiguring, and murder without malice, five year maximums. Twenty-five years was the most anyone could receive for a crime against property—in this case extortion. Arson and destruction of private property valued at over $50 drew twenty year maximums; burglary a twelve year maximum; embezzlement, swindling, and theft of property valued at over $50, ten years; and forgery carried a seven year maximum penalty.

Nor was the life sentence for possession just for show, an ultimate penalty kept in the background but never used. Indeed, on the night the legislature approved the conference committee's compromise version of the House and Senate bills, some thirteen people were serving life sentences for possession of marijuana. None, however, was the classic stereotype of the marijuana debates—the nice young kid who, never even late for breakfast, smokes one marijuana joint out of curiosity and winds up serving a long prison term. "If there was a case like that," said Griffin Smith, Jr., the thirty-year-old Austin attorney who played a major role in marijuana reform, "you can bet we would have used it." Instead, all thirteen had some kind of prior criminal record, drug or otherwise. Three were serving concurrent sentences for other offenses. Seven had served time before on marijuana charges. That left three who, though not new to prison or to the police, *were* first offenders when it came to marijuana, including one who was serving a life sentence because he had a penny match-

book of marijuana in his possession when he was arrested in 1962.

The thirteen marijuana "lifers" were not the only ones serving long sentences. Seven people were in for 50 years or more (one of them for possessing ten marijuana cigarettes); ten were serving 31 to 40 years, five were in prison for 26 to 30 years, and twenty had received sentences of 21 to 25 years. But, said the prosecutors and law enforcement officials familiar with the cases, more often than not these people, like those serving life sentences, either had been convicted of multiple charges or they were found to have marijuana in their possession when arrested on suspicion of a more serious offense, such as breaking and entering, burglary, or selling drugs. "In many of these cases," said a former prosecutor who is now a legislator, "when you check out the stories you find the people aren't as innocent as they, their families, or their friends claim. You find three or four different indictments. Or you find somebody who got twenty-three years for having one cigarette but who actually was arrested with scales and other equipment. I had a case like that, and this person wasn't just using marijuana. He was in business. He was manufacturing it and selling it. Then he made a mistake by refusing a lawyer; he handled his own defense and argued that marijuana should be legalized. Obviously the jury disagreed. But we weren't railroading anybody. We were just frequently in the position where you had to make a gut judgment that a guy either is okay or he's a bad egg. And that's when you decide whether to use the marijuana charge, and if you do it's because it's the easiest charge to make."

That was precisely the point at which many prosecutors and the early (1970) advocates of marijuana reform parted company. In the reformer's view, a law that put prosecutors in that position in the first place was a bad law, because inevitably it would lead to situations where the possession law would be used for long-term preventive detention, for getting dubious or potentially dangerous characters off the streets, perhaps even as a way of removing people believed to have a disruptive political or social effect on a particular community. A case that combined all these elements was the 1968 case of Lee Otis Johnson.

Johnson was a Student Nonviolent Coordinating Committee (SNCC) field organizer who first came to public attention in 1967 as a twenty-seven-year-old student protest leader at Texas Southern University in Houston. Raised in one of the city's five black ghettos, he wound up in prison on a stolen car conviction while still a teen-ager. Once there, however, he passed his high school equivalency exam, and when released he enrolled at Texas

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Southern. He quickly became disenchanted with college, and when the dean announced the names of all male students not in the academic upper-fifth were being sent to their draft boards, Johnson joined the protest and was instrumental in widening it to off-campus locations, activities, and confrontations. The protest dropped off, but after Johnson was arrested on a $25,000 peace bond, set to keep him from demonstrating on the TSU campus, it began anew. Shortly thereafter, in March 1968, Johnson met a man who turned out to be a police undercover agent, and, said the agent, Johnson gave him one marijuana cigarette and warned: "Don't let the police catch you with it or it'll get you twenty years." None of this information became public, however, until two months later when Johnson criticized Houston's mayor and police chief at a memorial rally for Martin Luther King, Jr. Within two days he was arrested and charged with possession and sale of marijuana.

Reporting on the trial, Molly Ivins of the *Texas Observer* wrote:

> Defense moved for a change of venue, but the judge refused. Of the 40 persons impaneled for the jury, 14 said they had read or heard of Johnson before the trial began. The defense used nine of its 10 preemptory challenges to eliminate such veniremen and then petitioned the judge for extra challenges. The motion was denied. Four members of the jury panel who were familiar with Johnson's reputation wound up on the jury, one of them as foreman. The prosecution struck all the black veniremen.[5]

After all the evidence had been presented, the jury deliberated for only thirty minutes, twenty minutes one day and ten minutes the next. Their decision: Johnson was guilty of selling marijuana (Texas law did not distinguish between casual transfers and sale for profit) and would serve thirty years in prison for giving that one marijuana cigarette to the undercover man. (A few years later, in 1972, a federal judge ruled that racial tension in Houston had prevented Johnson from receiving a fair trial. He ordered the state either to conduct a new trial within ninety days or to release Johnson. The state released him. He had served slightly more than four years.)

Though Johnson never was convicted on the possession charge, his case became an early rallying point for marijuana reform. Still, Johnson was a black, and Texas wasn't going to change its marijuana law because blacks and Chicanos were serving time for possession of marijuana. The legislature might, however, change the law if large numbers of middle-class kids were arrested, convicted, branded as felons and sent to prison. "Nice

[5] " 'Pot' Giver Gets 30-Year Taste of Texas Justice," *Washington Post*, November 29, 1970.

young kids" were much more heavily into marijuana than before, and while prosecutors said they often dropped charges or recommended probation for first offenders, the specter of imprisonment still hung over these youngsters and their families. The reformers thought this was a good argument, but it wasn't good enough, and in 1971 Texas' first effort to reduce the penalty for first-offense possession of marijuana from a felony to a misdemeanor died on the floor of the House of Representatives.

Had a major political figure endorsed marijuana reform, perhaps the change would have come on the first try. But at this early stage, with public attitudes ambiguous at best, no big name politician was going to take a chance on the marijuana issue. There simply was too much to lose and not enough to gain. Even if you won, some of your supporters were sure to go away mad. Better to wait until the balance of opinion tilted one way or the other.

One politician who might have made a difference was Ben Barnes, thirty two years old, lieutenant governor of the state, "boy wonder" of Texas politics, and heir to the John Connally mantle. In March 1970, while touring state drug abuse facilities, Barnes had become the first state official to talk openly about marijuana reform. He never said what his personal views were, but he did urge the 1971 legislature to consider reducing the possession penalty from a felony to a misdemeanor. Such a move, said Barnes, might "provide more reasonable punishment for these kids [experimenters] and result in more kids being punished." He also pointed out that convictions for driving while intoxicated had increased 400 percent after that offense was reduced from a felony to a misdemeanor in 1947. Barnes' comments stirred some controversy, and in April, as his political opponents began to argue that the misdemeanor penalty would lend an air of respectability to marijuana and encourage youngsters to try it, Barnes took another tack and suggested that judicial discretion—letting judges decide case by case between a felony and a misdemeanor—might be more suitable for first-offense possession cases. "By June," said one observer, "you couldn't pry his March words out of him."

Barnes' defection meant that the entire burden of getting marijuana reform through the legislature rested pretty much on the shoulders of the chairman of the House Committee on Agriculture, Representative Raul Longoria, a forty-nine-year-old Democrat who for eight years had represented a predominantly Chicano (70 percent) district of small towns and cities in the south Texas Rio Grande Valley. Like Barnes, Longoria had begun talking about marijuana reform in 1970; but unlike Barnes, Longoria's

position was both clear and unequivocal. "You can't imagine what it was like down here," Longoria said of his district. "The DA didn't want probation for anyone convicted of a drug offense. I represented some people in marijuana possession cases and the only time I got probation was when a kid was put on probation for *ten* years because he had *one* cigarette. I just thought kids who experiment ought to have a second chance." So in the course of his campaign for reelection, Longoria told his constituents that he would introduce a marijuana reform bill in the next legislature.

As expected, young people in the district were with him. The middle class was not. Neither were the older people. Nor was the opposition based on ethnicity. Older and middle-class Chicanos felt the same as their Anglo counterparts, Longoria reported. "The reaction was very bad from the middle class and older people," he recalled. "They thought it was horrible. But I felt that if I could spend enough time with people explaining this to them they would understand and would support me."

Longoria stuck to two main points while attempting to sway his reluctant constituents. The first dealt with research. While opponents of marijuana reform were arguing that not enough research had been conducted to determine the safety and long-range effects of marijuana, Longoria contended that enough *had* been done to strongly suggest that marijuana was not as harmful as cigarettes. "Yet here we are smoking cigarettes when we know it's going to kill us," Longoria said in response to his critics. The second point dealt with his own youthful experiences, and, by implication, those of his middle-aged and older constituents. "When we were young," he would tell his audiences, "we smoked cigarettes behind the barn and we went across the river to get tequila to see how it tasted. Kids today are doing the same things with marijuana." The net effect, Longoria would conclude in his talk, was a double standard: one for the older generation, another for the younger. Longoria didn't favor legalizing marijuana, he told his district, but as long as first-offense possession remained a felony and a person conceivably could receive a life sentence for possessing just a single marijuana cigarette, then young people were "justified" in complaining about a double standard. Furthermore, he said, since marijuana use would continue to rise—that was simply a "fact of life"—one could anticipate increased alienation of young people from the legal and political systems if no changes were made.

Longoria thought he had won his case because the voters elected him to a fifth term in the Texas House of Representatives, and he interpreted his victory as at least partial proof that a

politician did not have to fear the marijuana issue, that it did not have to be as controversial, dangerous, or emotional an issue as many legislators either thought it was or chose to make it. Buoyed by this outcome, Longoria introduced his bill when the legislature convened. It reduced first-offense possession to a misdemeanor and established penalties of ten days to two years (the maximum for a misdemeanor in Texas) and/or fines from $25 to $1000. That was all the bill did. Second and subsequent offenses for possession remained felonies, punishable by two years to life in prison. There was no change in either the law governing sale and distribution of marijuana or the law regarding involvement of minors in sales or other transactions. Penalties here were still five years to life. Though Longoria said the bill was more "conservative" than he would have liked—his personal preference was to make misdemeanors of all offenses involving adults, including sale—he felt that circumstances dictated the less sweeping approach. "I felt we couldn't pass anything more and that we would be lucky to get this," he said. "Texas is divided into so many sections, and it has so many pockets of conservatism, that what might be popular in one part of the state just isn't popular in another. So I just tried to draft a bill that would protect young people who otherwise would have been in serious trouble because of their curiosity."

Longoria believed his bill was "mild enough" to gain some support in both the House and the Senate. But he had to extend himself to find eight House co-sponsors, and he couldn't find a single senator who would even introduce the bill. He did have a promise from Ben Barnes that if he (Longoria) got the bill through the House, then Barnes would get it through the Senate where he was presiding officer. But that was all.

Five other marijuana bills were introduced in the House. The most liberal was Representative Frances T. (Sissy) Farenthold's proposal that Texas adopt the same penalty Nebraska had adopted, a maximum of seven days in jail for first-offense possession. The most rigid was Representative Walter ("Mad Dog") Mengden's bill to invoke the death penalty in cases where a person was convicted of possessing more than two marijuana cigarettes (five grams). A middle-ground proposal by Representative Curtis Graves of Houston would have classified marijuana as a dangerous drug instead of a narcotic and used the penalties contained in the Dangerous Drug Act: thirty days to two years and/or fines of up to $3000 for possession and two to ten years for sale. A fourth bill would have sealed the records of persons convicted only once of marijuana possession, provided the individual was under twenty-five years of age at the time, was convicted for possession of two ounces or less, received a probated

sentence, and had no further felony conviction. According to Representative Honore Ligarde of Laredo, sponsor of this bill, its purpose was to permit people who met these conditions to say that they had never been convicted of a felony. And the last bill, introduced by Representative Bob Salter of Waco, would have made possession a misdemeanor only for those people who identified the person from whom they received the marijuana. Salter indicated that he would have preferred to make first-offense possession in general a misdemeanor but that his constituents wouldn't support a lowering of the penalty without some strict limitation.

All the bills were referred to the House Criminal Jurisprudence Committee. Only Longoria's survived. There had been three changes in the bill. One reduced jail sentences for first-offense possession from ten days to two years to seven days to six months. A second increased the minimum fine for first-offense possession from $25 to $250. The third limited misdemeanors to cases involving sixteen ounces or less. Anyone convicted of possessing more than sixteen ounces would be "presumed" to possess with intent to sell and be subject to a felony penalty of five years to life.

House protocol did not extend to the floor of the House, however, and for all practical purposes Longoria's bill was dead the moment the Speaker of the House, Gus Mutscher, called it up for debate at the unlikely hour of 10:40 on a Friday night. Astonished and surprised, his staunchest supporters having already left for the weekend, Longoria found himself unable to recruit even a single person to work the floor with him. Literally in despair, he had to stand by and watch the House "gut" his bill. The dividing line between a possession misdemeanor and a possession felony was dropped from sixteen ounces to two ounces. The maximum sentence for possession with intent to sell was raised from five years to twenty-five years. The minimum penalty for sale went from five to ten years. Then came the killer amendment. The entire misdemeanor section was eliminated. In its place was a provision permitting defendants—after they had first stood trial on felony charges—to petition the court for a reduction in sentence. The lower sentence, a misdemeanor, could be anywhere from ten days to two years and/or fines ranging from $250 to $1000. Not everyone would be eligible, however. Courts could only act when the person making the request (1) was under twenty-one, (2) had been convicted of possessing less than two ounces, (3) could prove that he had used marijuana "for the purpose of experimentation," and (4) could prove that he had never used marijuana prior to the time of his arrest. As Griffin Smith, Jr., staff aide to the Senate Constitutional Amendments

Committee, noted some months later in a *Texas Observer* article on the marijuana bill, this particular amendment was "an open invitation to perjury. Not more than three or four persons, if that many, have been convicted in Texas under such circumstances. The only young people likely to save their skins using [this] proposal were those who had so much contempt for the system that they would unhesitatingly lie to the court." [6]

One amendment did pass with Longoria's support. By a vote of 60 to 56 the House approved a system whereby persons between eighteen and twenty-one who were charged with marijuana felonies could, if they met probation conditions imposed by a judge, have all charges dropped and records expunged after twelve months. But by then the fight was all over. And a few minutes after 1 A.M., when even Longoria had lamely praised the bill as "a start" (hoping that if it passed, the Senate would amend everything below the enacting clause and write a better bill), the House undid everything it had done that night and voted to kill House Bill 549 as amended. The vote was 63 to 51. Thirty-six members were either absent or not voting.

Longoria could have asked the House to reconsider. Several legislators expressed regret at the bill's defeat, and, according to some reports, half the House was prepared to support the bill if it came up again. But the vote would have been on the defeated bill, not on Longoria's original measure. Longoria would have none of it. In his view the defeated bill "wasn't worth the paper it was written on." He refused to give the House members who opposed his bill a second chance to pass a "meaningless" bill. Besides, Governor Preston Smith had given every indication that he would veto any marijuana reform bill that crossed his desk. "I went to see the governor before I made any decision," said Longoria, "and I asked him if he would sign it if it passed. He said he couldn't tell me what he would do but that he had made a commitment against lowering possession penalties. I decided it was better to let the bill die a natural death."

[6] "Grass—It's Still Two to Life," *Texas Observer*, July 2, 1971.

3 The Senate Interim Drug Study Committee 1972

Marijuana wasn't the only drug issue before the 1971 legislature. A related question was whether the penalty for possession of LSD and other hallucinogens, only a misdemeanor in existing law, would be raised to the felony level. A special House subcommittee studying the psychological problems of youth had recommended this action on the grounds that it didn't make much sense for possession of LSD to be a misdemeanor when possession of marijuana was a felony. Such a bill was introduced and it passed both houses without debate or objection.[7]

Griffin Smith, who had been active in drug reform in both the House and the Senate, saw in the marijuana and LSD votes more than an isolated instance of what he felt was irrational behavior on the part of the legislature. To him, the votes were a stunning reminder that Texas' drug laws had never been subjected to any systematic analysis or evaluation. While other states were adopting some version of the Uniform Controlled Substances Act,[8] Texas wasn't even doing that. It still limped along with a potpourri of laws, some thirteen in all, each written and amended at a different time and for a different purpose. Obviously the situation wasn't going to change until the legislature met again in January 1973, if indeed it changed then. But the appointment of a special study group could at least keep the issue alive and in the public eye for most of 1972. Smith drafted a resolution establishing a five-person Senate Interim Drug Study Committee, which Senator Don Kennard of Fort Worth, chairman of the Senate Public Health Committee, introduced. The resolution passed. Kennard was

[7] Afterwards, some legislators claimed that they didn't know what they were voting on because the bill's title, "An Act relating to the definition of dangerous drugs," made no mention of a penalty increase. This was true. What happened was that the bill's sponsors succeeding in placing the bill on a special calendar used to pass non-controversial measures in rapid succession during the closing days of the legislature. Once the bill was on the local and consent calendar, nobody gave it a second look.

[8] A model act drafted by the National Conference of Commissioners on Uniform State Laws.

named chairman; Barbara Jordan, who was elected to the U.S. House of Representatives in the fall of 1972, was also a member; Griffin Smith was named committee counsel.

The Kennard Committee's charge was to investigate a wide range of drug problems and issues, including treatment, research, education, and the social impact of drugs, as well as the drug laws themselves. But marijuana quickly became a priority item. ("These laws," Griffin Smith wrote in his first staff memorandum, "affect many more Texans than any other aspect of the drug laws, and . . . they are now more grossly disproportionate to the laws of other states and of the federal government than are our other drug laws.") The first job was to collect, compile, and publish whatever data had been developed throughout the state as well as whatever data could be developed. Smith and J. Alan Holman, the committee research director, assigned themselves this task. The result was a pamphlet entitled *Marijuana in Texas*,[9] a document that became a best seller of sorts, going through three printings between March and September 1972, despite the fact that its authors felt record-keeping deficiencies in the Texas criminal justice system and a plain paucity of information about marijuana use among non-student adults prevented the report from being as complete as it should have been.

Marijuana in Texas comprised two papers. The first, written by Holman, dealt with the extent of marijuana use in Texas. One question he focused on was whether marijuana use was a youth and student phenomenon or whether its use was more broadly based. There wasn't much data to go on—just one two-year-old survey. In November 1969 The Texas Poll asked a cross section of Texans twenty-one years and older the following question: "We are not interested in specific names, but just to get an idea of how many use it, do you happen to be acquainted with anyone who is a marijuana user?" Nearly one out of every five persons polled—19 percent in all—said they knew someone who used marijuana. When the data was broken down into age brackets, 37 percent of the twenty-one to twenty-five-year-olds said they knew a marijuana user; 23 percent of those in the twenty-five to thirty-four age bracket; 16 percent of those in the thirty-five to forty-nine-year-old bracket; and 14 percent of those who were fifty years or older.

The findings could only be classified as indirect evidence. Yet Holman maintained that they were sufficient to support the contention that, while marijuana is surely most prevalent among the relatively young, its use is not isolated to the student sector of

[9] *Marijuana in Texas: A Report to the Senate Interim Drug Study Committee*, 62nd Texas Legislature, State Capitol, Austin, Texas, March 1972.

the population, or even to that of the youthful." The Texas Poll survey, Holman continued, "at least elevates the possibility that marijuana use is more prevalent among Texas adults than many might tend to believe."

To support his position that marijuana use was not merely a student phenomenon, Holman drew upon survey data from two other states: one survey was conducted in an unnamed California city in 1967 and 1968; the other data came from a 1970 survey of New York State. Although the California data Holman cited applied only to men, it showed the same pattern with respect to age and use as did The Texas Poll. Use was most prevalent among people in their late twenties; it decreased as people got older, but remained at 25 percent for the thirty to thirty-four-year-old age bracket, and at 15 percent for those between thirty-five and fifty-four. Holman cautioned Texans against discounting the California data as not applicable to Texas because his observation was that student marijuana use in Texas showed trends similar to those found in California during the middle and late 1960s. "Such information must not be discharged as completely irrelevant to the drug scene in Texas," he wrote, "for it might provide a glimpse of where Texas may be in the not-too-distant future, at least in regard to the spreading use of marijuana."

The New York survey, he said, deserved the "greatest attention," because it was the most comprehensive drug use survey ever conducted. Based on what Holman believed to be "a scrupulously drawn" stratified sample of all New York State inhabitants over the age of thirteen, it reported that of the half million "regular" users of marijuana in the state, almost 30 percent were over twenty-five. Moreover, students were *not* the most regular users of marijuana. Employed persons were. Employed students were not even counted in this group, and it still totalled 36 percent of all regular marijuana users in the state.

Holman's conclusion was the following:

> It is admittedly difficult to discern, on the basis of such information as that provided above, exactly how prevalent marijuana use is among Texas' general adult population, particularly among the state's non-student citizenry. However, those data which are available—whether they be the results of The Texas Poll, surveys from California, or New York's comprehensive drug use survey—seem to lead to one inevitable conclusion: that marijuana use in Texas, while surely most prevalent among young, secondary and collegiate students, is not simply an incidence of one's being young or of one's membership in a student community; rather, use of the drug is becoming increasingly common in other quarters and among older members of our society as well.

Holman also focused on student use, for which more data existed, and recapitulated various drug use surveys conducted among

junior and senior high school students in Dallas, Houston, Fort Worth, San Antonio, Galveston, and Texas City between 1969 and 1970, and at both the University of Texas and the University of Houston in 1970 and 1971. From these he drew a number of summary points, some old, some new, and all capable of being used as ammunition by both those who favored marijuana reform and those who opposed it.

The key conclusions were these:

- Among junior and senior high school students marijuana use was highest among those who lived in large metropolitan areas, such as Dallas and Houston, where perhaps one-fourth to one-third of all students had used the drug.

- Marijuana use was considerably higher among Texas college students. In the spring of 1971, 46 percent of the students polled at the University of Texas said they had used marijuana at least once. That amounted to some 18,000 students.

- Recent increases in marijuana use had been "unusually rapid." Among Dallas high school students it had nearly doubled in just a year and a half, rising from 14 to 26 percent, and at the University of Texas it had increased from 36 to 46 percent in one year.

- Simple "experimentation" did not "adequately explain" these increases, because "a sizeable percentage" appeared to be using marijuana on a regular basis.

- There was a tendency for marijuana use data to be underestimated rather than overestimated.

- Marijuana use in secondary schools increased with grade level, educational level, and affluence, and was more prevalent among whites than Chincanos and more prevalent among Chicanos than blacks.

- There was "some evidence" to support the argument that student users "usually obtain" marijuana from their peers rather than from adult "pushers."

Finally, Holman sought to come up with "some sort of estimate" with respect to the total number of Texans who had used marijuana, realizing, as he put it, "that the results of such an endeavor must necessarily be regarded as speculative." Extrapolating from a soon-to-be-released National Commission on Marijuana and Drug Abuse (Shafer Commission) report that said that 14 percent of all Americans between the ages of twelve and seventeen had used marijuana, and a 1971 Gallup Poll that reported some 51 percent of the nation's college students as having used the drug, Holman estimated that there were at least 450,000 student users

in Texas (some 18,000 less than a straight extrapolation from the Shafer Commission report would have shown). Using this as "a point of departure or a minimal base," he then projected that between 800,000 and 1,000,000 Texans had used marijuana, and that many of these were either using it presently or on something approaching a regular basis. This was, said Holman, a conservative estimate, because if one took another figure from the Shafer Commission report—the statement that roughly 12 percent of the American population had used marijuana—and applied it to Texas, there might be as many as 1.4 or 1.5 million Texans who had used marijuana at least once.

Holman's analysis laid a foundation. The principal paper in *Marijuana in Texas* was, however, Griffin Smith's, on the position of marijuana in Texas criminal law.

Smith began by recounting two of the more familiar facts about marijuana's place in the Texas criminal code: sixty-three milligrams—one-twentieth of one cigarette—was sufficient to support a posession conviction; and a first-offense possession, the most minor marijuana offense, had a stiffer penalty than that for nearly every crime of violence and for *all* crimes against property. He then challenged the assertion that few people actually went to prison for marijuana offenses. Texas Department of Corrections data, said Smith, showed that of the 1,892 people serving time for drug offenses, 800 (42 percent) were in prison because of marijuana. Most of them (691 or 86 percent) were there on possession convictions. Nor was it true, Smith continued, that first offenders didn't go to prison. More than half of all those serving time for marijuana *were* first offenders (446), and 84 percent of all first offenders were in for possession (375).

Some people had argued that the courts were at least lenient with young people. Not so, said Smith: 245 persons under the age of twenty-two were serving first-offense convictions for marijuana. Of these, 195 were in for possession. First offenders who were between seventeen and twenty-one, Smith went on, accounted for 30.6 percent of all the people serving prison sentences for marijuana. If one looked at the other variables, such as sex, education, and ethnicity, one found that 96 percent of all offenders serving time for marijuana were male; that the majority of those serving time had not gone beyond the eighth grade in school; and that blacks, who comprised 12 percent of Texas' population, accounted for 37.5 percent of the imprisoned marijuana offenders. Data on Chicanos was somewhat more balanced. They accounted for 15 percent of the state's population and 19 percent of the inmate population. But whites, who totaled 73 percent of the overall population, represented only 43.5 percent of those sent to prison on marijuana convictions.

And what of the prison terms themselves? According to Department of Corrections data, only 13 percent of the people serving time for marijuana received the two-year minimum sentence, while some 66 percent received sentences of at least five years. "The length of a sentence," Smith wrote, "rests largely in the unbridled discretion of prosecutors, judges and juries. Amid the chaotic and inconsistent treatment of these cases, only one central fact remains: in Texas marijuana offenders still go to prison by the hundreds." By comparison, said Smith, in California, where judicial discretion prevails, 95 percent of all cases were classified as misdemeanors, and only 1.7 percent of those who were convicted on felony charges actually went to prison. The same liberalizing trend could be seen in other states. Massachusetts and New Jersey courts tried to avoid jail sentences altogether and regularly placed offenders on short periods of probation. Nebraska judges commonly imposed a $50 or $100 fine for first offenses, the same penalty they imposed for underage possession of alcohol. Tennessee law permitted first offenders to receive rehabilitation treatment rather than be fined or sent to jail.

In the two Texas counties from which sentencing information was available, Smith found some indication that the pattern in Texas might be changing. Both places reported that probation was more frequent than prison. Some 259 persons were convicted on possession charges in Tarrant County (Fort Worth) between 1968 and 1971. They received 322 years in prison and 836 years on felony probation. Eighty-six persons were convicted of possession in Lubbock County during the same period. They received 27 years in prison and 454 years on probation. However, in every instance the felony conviction remained part of the individual's permanent record. "The fact that these sentences are often probated," Smith wrote, "does not, of course, alter their length or their fundamental severity." Meanwhile, in Tennessee, Oklahoma, and Massachusetts, a judgment of guilt wasn't even being entered on a person's record, and all evidence of the charge was expunged at the completion of the probationary period.

Yet, in Smith's judgment, "the most startling" statistics were those that showed the county of residence for convicted marijuana offenders. In most cases individuals are tried in their county of residence, and, said Smith, "remarkable discrepancies" could be seen between various Texas counties as to how they regarded marijuana offenses. Dallas County, for instance, contained 11.9 percent of the state's population and El Paso County 3.2 percent. But Dallas County sent 234 people to prison (30 percent of all marijuana offenders in the state serving time, including half of

those sentenced to thirty years or more), while El Paso County sent only two. Sometimes neighboring counties showed "sharply divergent" patterns. Jefferson County (population 244,000) imprisoned twenty-one people, and adjacent Orange County (population 71,000) none. One pattern that emerged was that a marijuana user in north Texas stood a much greater chance of going to prison than one in south Texas. In the fourteen Rio Grande Valley counties bordering Mexico, from El Paso to Brownsville (population 800,000), only ten persons were imprisoned for marijuana; by contrast, Potter County (Amarillo), with a population of 90,000, imprisoned twelve.

The difference, Smith said, was not in usage; it was in enforcement. And although he wrote that, generally speaking, data on marijuana sentences "tell a story of discrimination in almost every conceivable way," with the probability of prison being "heavily influenced by a user's sex, his race, and his county of residence," he was not willing to lodge a specific charge of discrimination. Instead, he blamed the law:

> It should be emphasized that in most cases the differing treatment of marijuana offenders does not seem to be attributable to deliberate discrimination, or to discrimination against persons on account of their political or social views. What exists is simply a wide difference of attitudes among persons involved in the criminal justice system from county to county across Texas. Some prosecutors, judges and juries simply seem to regard marijuana violations as much more serious offenses than do their counterparts in other counties. Similar variations in attitudes probably could be found for other offenses as well. What makes them so noteworthy in the case of marijuana is the fact that Texas law permits an enormously wide range of penalties for these offenses, ranging from probation to life in prison. There is thus no check, no restraint, on the natural tendency to impose a widely scattered range of penalties; indeed such differences are encouraged by the broadness of the law.

Finally, Smith presented some data to document what he called the "astonishing waste of manpower and resources" that were being employed throughout the state "in a losing effort to combat marijuana usage." According to Smith, marijuana arrests accounted for more than half the total drug activity in four major cities—Houston, Fort Worth, Dallas, and Austin. In Dallas and Fort Worth, two cities whose records distinguished between possession and sale offenses, the overwhelming number of arrests were for possession. Data on whether those arrested were first offenders was not available in the larger cities. It was, however, in the smaller ones. Arlington reported 223 possession arrests between 1968 and 1971; 70 percent were first offenders. Longview had 70 possession arrests; 68 of them, or 97 percent, were first offenders. Texarkana had had 42 possession cases since 1966;

45 were first offenders. Because statewide data were unavailable, Smith, like Holman before him, cited California statistics. Eighty percent of all adult marijuana offenders and 98 percent of all juvenile marijuana offenders in California had no previous involvement with the criminal law, other than minor offenses such as traffic violations, before being arrested on marijuana charges.

The same pattern prevailed for indictments and convictions in the two counties that were able to provide such information—Tarrant and Lubbock. More than half of the drug indictments and convictions were for marijuana. Fifty-two percent of Tarrant County's drug indictments and 58 percent of its drug convictions between 1968 and 1971 were for marijuana. In Lubbock County during the same period, 62 percent of the drug indictments and 75 percent of the drug convictions were for marijuana. In 1971 alone, marijuana accounted for 84 percent of all drug convictions in Lubbock County.

As a result of this emphasis on marijuana, said Smith, police effort at controlling heroin and other "insidious" drugs had been "less effective than it might otherwise have been." He also questioned "whether law enforcement against hard drug traffic can ever be fully effective so long as the major portion of prosecutorial activity in drug cases is consumed by marijuana offenses." Furthermore, he said, the state of Texas was spending $39,030 a month and $468,300 a year simply to imprison people convicted of possessing marijuana.

In his summary, Smith argued that present marijuana laws were outdated and ineffective. "Those who contend that the use of marijuana should remain a felony," he wrote, "argue that if the evidence is uncertain, the status quo should be maintained. But the laws making marijuana a felony were enacted when legislators assumed that its dangers were far worse than a dispassionate examination of the evidence now available warrants. *If that evidence would not warrant enactment, now, of the felony prohibitions against marijuana use, it cannot justify their retention.*" (Emphasis in original.)

If the marijuana laws were working, Smith went on to say, then at the very least they should have resulted in less marijuana use in Texas than in most other places. But, he said, marijuana use in Texas "appears" to be about the same as it is in other states and may even be higher than in states with lower penalties. A second way of evaluating the laws was to see whether they had reduced the flow of marijuana that came across the Mexican border. They had not. Smith quoted a Bureau of Narcotics and Dangerous Drugs letter to the committee that said: "It appears the felony possession penalties in the present Texas drug laws

have not had an appreciable effect on reducing the flows of illegal drugs across the Mexican border."

Smith then focused on Nebraska, the state that had adopted a seven-day maximum penalty for first-offense possession back in 1969 and had reaffirmed it in 1971 by a unanimous vote of the legislature. He visited Nebraska for the Kennard Committee in January 1972. Law enforcement officials there told him that the liberal possession law had not resulted in any greater increase in use of either marijuana or hard drugs than that which was occurring in neighboring states with a one-year misdemeanor penalty. "Nebraska," wrote Smith, "has not become a 'haven' for marijuana users, nor a magnet for heroin addicts." Data from Nebraska, he said, also "indicate" a lower rate of marijuana use than in Texas, even though the *Cannabis sativa* plant grows wild over thousands of acres across Nebraska.

In conclusion, Smith discussed the policy recommendations open to the committee. Legalization, he said, was out. Though it would alleviate some of the most serious problems associated with marijuana, including underworld involvement in the marijuana distribution system, legalization was "not a realistic possibility for Texas at this time." Moreover, he said, a state could not legalize a substance which it was a crime to possess under federal law.

Judicial discretion was a possibility. It had the advantage of convenience but the disadvantage of not distinguishing between two "very different types" of acts—possession and sale. From Smith's perspective, the trouble with judicial discretion was that it purposely retained "an artificially high" penalty for possession in order to provide a mechanism for convicting persons for sale when the authorities suspect they are "sellers" but cannot prove it. This alternative, said Smith, "violates the historic legal precept that a man is innocent until proven guilty."

Misdemeanor jail sentences were a third possibility. They maintained the criminal sanction against the use of marijuana without labeling convicted users as felons. Although some forty states had passed misdemeanor laws carrying maximum penalties of one year in jail, in Smith's judgment the length of sentence bore "no significant relation" to success in deterring marijuana use, and therefore the Nebraska seven day maximum penalty "appears adequate." The Nebraska penalty also had been recommended by the U.S. House of Representatives Select Committee on Crime. Other "viable alternatives" to the one year maximum, said Smith, were New Mexico's penalty (15 days), Pennsylvania's (30 days), and Massachusetts' (6 months with automatic probation).

The next alternative—establishing misdemeanor fines—was a way of continuing to express official disapproval of marijuana use

while insuring that nobody would go to jail for merely possessing the drug. Smith said that many states were "beginning to rely heavily" upon this procedure and that in some states the fine was equivalent to the fine for underage possession of alcohol. Misdemeanor fines also had received support from the staff of the National Commission on Reform of Federal Criminal Laws. In its Study Draft of a New Criminal Code, the staff proposed that possession of marijuana for personal use should be considered an infraction. Persons so charged would be placed on probation, receive a conditional discharge,[10] or be subjected to a maximum fine of $500. The April 1970 Interim Report of the LeDain Commission of Inquiry into the Nonmedical Use of Drugs (the Canadian national commission) made a similar recommendation. Pending approval by the commission in its final report, the interim report said that possession should not be subject to criminal penalties and suggested a $100 maximum fine for this offense.

Decriminalization was the last alternative. The removal of criminal penalties, said Smith, was "the most substantial step" any state could take. Such action was not without precedent. During prohibition only five states prohibited possession of alcoholic beverages for private use in the home although the sale of alcoholic beverages was forbidden. Two prominent national organizations had already recommended decriminalization. Both the National Commission on Marihuaana and Drug Abuse and the American Bar Association's Committee on Drug Abuse had proposed that there be no criminal penalties whatsoever for possession for private use in the home. A decriminalization policy, Smith said, rested on two premises. First, the social and medical effects of marijuana have not been proved to be so serious or harmful that they warrant making criminals of people who merely use the drug. Second, marijuana has not been shown to be safe enough for the state to permit it to be sold and distributed legally. Decriminalization might, as its opponents argued, encourage greater use of marijuana. But its proponents contended that current laws had not discouraged use, and in any event that the costs of criminalization outweighed the disadvantages that might occur from increased use.

Smith also felt that penalties for sale and distribution of marijuana needed "additional attention" in Texas. Noting that many states, and the federal government, treated nonprofit transfers of small amounts as misdemeanors, he said the life sentences presently permissible under Texas law for sale of marijuana were,

[10] Conditional discharge differs from probation in that no judgment of guilt is entered if the person satisfactorily meets the conditions imposed by the court. People are placed on probation only after a judgment of guilt has already been entered on their records.

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like the possession penalties, "grossly out of line with other states." The federal maximum was five years. Among states that had revised their drug laws the usual maximum was three to five. Only ten states permitted sentences longer than ten years. "The central question now facing this Committee and the Texas Legislature," Smith summarized, "can be put this way: In view of the present state of knowledge about marijuana's medical and social effects, should a person go to jail merely for using it? The consensus of medical and legal authority in the English-speaking world answers this question overwhelmingly in the negative."

Griffin Smith's judgment that marijuana reform was the drug issue uppermost in most people's minds, regardless of how they felt about it, proved to be correct. One of the first signs came during the public hearings the Kennard Committee held in the spring of 1972. Nearly every witness who testified wanted to talk about marijuana even if he had been invited to speak on other matters. There were some rumblings to the effect that Kennard was "staging" the hearings, inviting only people who agreed with him. Still, the general support for marijuana reform that Longoria had failed to find in the legislature a year ago was now being generated in public hearings. Thus, in Houston, Mrs. James Tinsley, chairperson of the Houston School Board, and Dr. George Beto, director of the Texas Department of Corrections, advocated reducing the possession penalty to a misdemeanor, with Dr. Beto's remarks receiving the most attention because he charged that the state's harsh drug penalties made Texas the "laughingstock" of the nation. "We have," Dr. Beto told the committee, "an increasing number of these young middle-class marijuana offenders in the Department of Corrections, and my personal association with them indicates to me that there is not a clear cut conviction in their minds and hearts that they've done anything wrong. They don't propose to change their manner of living once they come out of the penitentiary because they don't see anything wrong with what they are doing. And to send them to the penitentiary with the idea that we're going to rehabilitate them is I think a vain hope."

In Dallas, marijuana reform was advocated by Dr. Charles O. Galvin, dean of the Southern Methodist University law school and a member of the National Commission on Marihuana and Drug Abuse (Shafer Commission). Accompanied by commission staff, Dr. Galvin reiterated the commission's recommendation that both private use and public possession of under one ounce of marijuana be decriminalized or legalized, but that the law prohibiting the sale of marijuana remain in effect. Dr. Galvin said the Shafer Commission was working to "demythologize" the subject of marijuana, and that if the Texas legislature was to find a reasonable

solution "there needs to be a rational and unemotional discussion of the problem."

Support for marijuana reform could also be found outside the Kennard Committee hearings. The legislature was going into special session in June 1972, and in April the board of directors of the State Bar of Texas approved a resolution asking Governor Preston Smith to seek a reduction of first-offense possession to a misdemeanor. (He didn't.) Meanwhile, police chiefs in some of the larger cities were admitting in private that they wanted to see the possession law changed because of the manpower hours they were wasting trying to enforce that law, and several said it in public. Still there was opposition. After the Bar's directors approved their resolution, Texas district judges voted 26 to 25 to kill a similar resolution. And a committee of Texas district attorneys wasn't quite willing to see the penalty reduced. They advocated revising the state's criminal code to include judicial discretion.

Nonetheless, marijuana reform was on the verge of becoming respectable even if nobody could quite agree on the specifics. To a large extent this was happening because many people in the criminal justice and law enforcement systems felt the existing law would soon be unenforceable. Some juries already were refusing to convict for both possession and sale, or else they were making decisions prosecutors found totally irrational, freeing one person found with one-hundred pounds of marijuana and sending to prison for ten years another person who had five pounds. A partial explanation was that in Texas a defendent could choose not only whether he wanted to be tried by a judge or jury but which of the two he wanted to pronounce sentence if he were found guilty. That situation, said the prosecutors, had been aggravated by the reluctance of many working-class and older people to accept jury duty. More and more juries were composed of young people with lots of leisure time on their hands.[11]

By the end of 1972, the central question, as Griffin Smith had noted earlier, wasn't whether the 1973 legislature would accept marijuana reform. It was whether the legislators would accept the reform being proposed by the Kennard Committee. If they did, then Texas would go from one extreme to the other—from

[11] This matter of jury behavior reached a peak in the U.S. District Court in Laredo on February 2, 1973. A ten-man, two-woman jury acquitted a taxi driver charged with possession of 134 pounds of marijuana, who reportedly admitted to every element of the charge in his testimony. An enraged federal judge told the jurors that in his twenty years on the bench he had never seen "a more stupid, illogical and ill-advised verdict," that this type of decision was "responsible, in my judgment, for the increasing crime rate everywhere," and that he would never permit any of the twelve jurors to serve again in his court. ("Judge Assails Jury Clearing 'Pot' Defendant," *Washington Post,* February 3, 1973.)

having the nation's harshest penalty for possession of marijuana to having the nation's softest. The Kennard Committee's final report had proposed a policy of decriminalization which, besides being a step no other legislature had taken, went beyond the one-ounce limit advocated by the Shafer Commission. It sought to decriminalize all private possession of any amount by an adult and all public possession of less than three ounces by an adult. "This is not 'legalization,' said the report, "any more than alcohol was legalized under similar regulations during prohibition. It is simply a recognition that while we do not yet know enough about marijuana to make the irreversible decision of institutionalizing its sale, we do know enough to say that individuals who simply use it should not be treated as criminals." [12]

Sale, however, would remain a felony, as would the sale, gift, or transfer of any amount to a minor. But the maximum penalty for any marijuana felony was to be only three years and/or fines of up to $2000, instead of life imprisonment with no possibility of fines. Casual transfer of marijuana among adults was not considered an offense of any kind.

Possession of more than three ounces with intent to sell was also to be a felony, but possession of less than three ounces with intent to sell was a misdemeanor, punishable by maximum penalties of six months in jail and/or fines of up to $1000. For many years possession with intent to sell had not been an offense in Texas. The Kennard Committee proposed reestablishing it for two reasons. First, to indicate that a person who possessed a drug with intent to sell was "logically no different than a person who had completed his sale." Second, to give prosecutors a reason for supporting a lower penalty for simple possession. In the absence of a possession with intent law, prosecutors had argued that they needed stiff possession penalties to cover those cases where people were known to be selling marijuana but where the prosecutors never had enough evidence to prove the case conclusively.

Other marijuana penalties proposed by the Kennard Committee were these:

- Simple possession of more than three ounces by an adult in public, or smoking or other ingestion of marijuana in public: misdemeanor fine ($100 maximum). (Two years to life in existing law.)

- Simple possession of any amount by a minor: misdemeanor fine ($100 maximum) and/or work assignment. (A delinquency

[12] *Final Report: Senate Interim Drug Study Committee,* 62nd Texas Legislature, State Capitol, Austin, Texas, January 1973, p. 24. Texas had prohibited the sale but not the possession of alcohol.

charge in existing law, with the possibility of confinement in the juvenile reformatory.)

• Cultivation of the marijuana plant: misdemeanor jail sentence (six months maximum) and/or fine ($1000 maximum). (Two years to life in existing law.)

In a marijuana-related recommendation, the committee proposed an end to vehicle seizure and forfeiture in cases of simple possession of a controlled substance. The law, the committee said, should be used only against vehicles actually involved in carrying illegal drugs and against vehicles which had been structurally altered to make it easier to conceal those drugs. Like the federal government and many states, Texas had a vehicle forfeiture law aimed at removing from circulation those vehicles used in drug traffic. But according to the committee, in recent years the law had only been used in marijuana possession cases. "In not a single instance (during an eight-month period that ended in June 1972), said the report, "has the forfeiture law been used against hard drug possession or traffic. Even more astonishingly, in not a single instance has it even been used against the marijuana traffic. Despite the fact that the commercial marijuana traffic passing through Texas is measurable in the hundreds of tons annually, only two seizures were recorded for amounts in excess of one ounce, and these were for five ounces and one pound. The remainder involved the equivalent of no more than ten cigarettes and some involved less than one cigarette."

One committee member, Republican Senator O. H. (Ike) Harris of Dallas, refused to sign the report, but no minority views were submitted. Instead, the report noted that "a minority" felt that Texas should continue to prohibit marijuana through the sanction of criminal law, while imposing fines of $100 or $200 in most instances, but that the majority opposed this position. *"We cannot see,"* the report said,

any justification for imposing a jail sentence—much less a prison sentence—upon someone whose only offense has been the personal use or possession of marijuana. No witness who has appeared at our hearings has offered any rational explanation of why a jail sentence is an appropriate penalty for such behavior, and we do not believe that such an explanation can be made. The Committee would default on its obligations to the 63rd Legislature if it recommended placing individuals behind bars for smoking marijuana, in view of the glaring absence of logical justification for doing so. We recognize that the proposed changes constitute an abrupt and sweeping shift from the way we in Texas have previously punished this activity; but we cannot justify a misdemeanor jail sentence as a halfway measure to conceal the fact that our existing marijuana laws have been a brutal and tragic error. (Emphasis in original.)

4 The Governor's Bill 1973

The Kennard Committee's marijuana recommendations received so much public attention there was a tendency to forget that the report contained many other proposals which, while not as unique to the nation as the marijuana measures, still represented fundamental and dramatic changes for Texas.

To begin with, all offenses for simple possession, regardless of the substance involved and regardless of whether it was the first, second, or third offense, were classified as misdemeanors and carried a maximum penalty of six months and/or $1000, or civil commitment to a treatment program. Amphetamines, methamphetamines, and barbiturates already were misdemeanors on first offense, but the penalty was stiffer (thirty days to two years and/or fines of up to $3000) than what the Kennard Committee had proposed, and second offenses carried felony sentences of two to ten years. The minimum second-offense penalty for possession of heroin, opiates, and cocaine also was higher (ten years instead of five).

In proposing these actions the committee said it was following federal law and the professional judgment of Dr. George Beto, the director of the Texas Department of Corrections who had recommended misdemeanor penalties for drug possession offenses at the committee's hearings. That it was following Dr. Beto was true enough. "Some people," he had testified, "labor under the wholly false impression that severity of punishment is a deterrent to crime. It's my considered opinion that the severity of punishment has little to do with deterrence." That it was following federal law was only partially true. The Federal Controlled Substances Act of 1970 did indeed categorize all first-offense possession as a misdemeanor. Second-offense possession, however, was a felony and carried maximum penalties of two years in prison and/or fines of up to $10,000.

The committee acknowledged that the legislature might balk at reducing possession of heroin to a misdemeanor. But that was

the only point on which it was willing to give, as the following paragraph from the report made clear:

If the Legislature wishes to retain felony penalties for simple possession of any drugs, it is our opinion that the *only* drug which should carry such severe consequences is heroin. A penitentiary sentence does little or nothing to help the drug user, but it does keep him off the street, and in the case of an expensive addictive drug like heroin, society may reasonably feel that the reduction in criminal activity justifies putting the sick addict behind bars and forgetting him. (Emphasis in original.)

The committee then drew a bead on the 1971 legislative action that raised possession of hallucinogens, particularly LSD, from a misdemeanor to a felony.

Such considerations clearly do not apply, however, to the simple possessor of inexpensive or non-addictive drugs, since such an individual rarely if ever must resort to crime to insure his supply of the drug. *We emphatically reject the notion that simple possession of hallucinogenic drugs, including LSD, be treated as a felony.* We consider LSD to be a highly dangerous drug for some persons; but the fact that it is dangerous does not mean its possession should be a felony. It is one thing to send a heroin user to prison simply to keep him off the street and prevent him from committing further crimes. It is quite another to take a young user of hallucinogenic drugs whose drug-taking is not associated with criminal activity and send him to Huntsville to make mops. A felony penalty can conceivably be justified as a primitive but effective way to protect society from the crime an addict can commit; it can never be justified as a way of protecting an LSD-user from himself. (Emphasis in original.)

The Kennard Committee also proposed reductions in most penalties for manufacture, delivery (sale), and possession with intent to deliver. Obviously these changes occurred because a majority of the committee felt them necessary. But their roots could be traced to a committee decision to recommend two separate drug schedules. One was a *regulatory* schedule in which drugs were classified according to medical usefulness and potential for abuse—essentially the same classification found in the Uniform Act and adopted by the federal government and by most states. The other was a *penalty* schedule in which drugs were classified according to social impact and relative harmfulness and in which heroin was placed in a category by itself; amphetamines, methamphetamines, opiates, and cocaine were placed in a second category; and barbiturates and hallucinogens were placed in a third category.

Heroin sale penalties were two years to life and/or fines of up to $20,000 for the first offense and $40,000 for the second offense. The maximum penalty of life imprisonment was a carryover from

existing law, but the two-year minimum was a reduction from the existing penalties of five years for the first offense and ten years for the second. The fines were new. At the time, Texas law did not include any fines as penalties for offenses involving manufacture and delivery.

Penalties for sale of the second category of drugs (amphetamines, methamphetamines, opiates, and cocaine) were two to ten years and $10,000 for the first offense and two to twenty years and $20,000 for the second. Amphetamines and methamphetamines already carried a two to ten year penalty, but the twenty year maximum for second offense was new. Penalties for opiates and cocaine, however, were drastically reduced. Existing law set them at five years to life for the first offense and ten years to life for the second.

Barbiturate and hallucinogen sale penalties were two to five years and $5000 for the first offense and two to ten years and $10,000 for the second on the Kennard report. Both were two to ten years in existing law.

In addition to these penalties, the Kennard report also included a recommendation that Texas adopt the "continuing criminal enterprise" provision found in federal law as a means of cracking down on the "ringleaders" of the organized heroin traffic. Unlike federal law, however, the recommendation was limited to heroin offenses. Penalties proposed were ten years to life for the first offense and twenty years to life for the second, with no prospect of parole or probation and with forfeiture of all property used in the enterprise, as well as all profit gained. Three more provisions new to Texas law were conditional discharge for first offenders, expunction of records, and resentencing.

Conditional discharge, which already existed in federal law and the laws of thirty states, was a way for first offenders to avoid criminal records and was mandatory in cases of first-offense possession by a minor. Under the terms proposed by the Kennard Committee, individuals with no prior drug offense other than simple possession would have all proceedings dismissed following completion of a probationary period not to exceed two years. No judgment of guilt would be entered in a person's record during the probationary period.

Expunction, a procedure for deleting criminal records, would be available to (*a*) first offenders who received conditional discharge, (*b*) minors who were convicted of marijuana possession and who committed no further drug offense for at least six additional months, (*c*) people found not guilty of possession or delivery charges, and (*d*) people convicted of first-offense posses-

sion of marijuana under existing law who had served their sentences.

The resentencing provision specified that any first offender convicted under previous law and still serving time could petition the court of original jurisdiction for resentencing under the new penalty provisions for the same offense. In other words, a person who had served six months of a two year possession sentence could ask the court to set him free on the grounds that he already had served the maximum sentence under the new law (assuming the Kennard proposals passed). The committee said it found "nearly unanimous agreement" with this position. "We should not," the report said, "permit individuals to languish in prison for many years when others who now commit the same act do not face prison at all." Courts, however, were required to determine whether individuals petitioning for resentencing had been convicted of simple possession or of possession with intent to deliver, and then to resentence them accordingly.

In the Kennard Committee report, these and all other recommendations—those relating to the regulation and inspection of the licit drug industry as well as education, research, and treatment—were to be the composite parts of a single piece of legislation, the Texas Controlled Substances Act. And a new agency, the Texas Drug Abuse Authority, was to administer the new act. Though aware of the "undesirability of creating yet another state agency," the committee felt "the eventual result" of this change would be to reduce, rather than to proliferate, state agencies. Moreover, the new agency had distinct advantages in the area of registering, regulating, and inspecting those people, businesses, and institutions licensed to deal in controlled substances. "Because," the committee noted, "this procedure requires a centralized registering and record-keeping agency—one which is able to note the transfer of controlled substances from one element in the chain of distribution to another—we have concluded that the power of registration should not be vested in any existing professional regulatory board but should instead be placed in a new, neutral state agency. Our professional licensing boards represent existing vested interests, no one of which should have registration power over persons outside its profession."

Yet the significance of the Kennard Committee's non-marijuana proposals went beyond the fact that they represented the first attempt to develop a comprehensive approach to drug legislation in Texas, or that they were much more liberal than many existing laws. A more compelling reason for paying attention to the Kennard proposals was that Dolph Briscoe, the newly-elected gover-

nor of Texas, had said he would support marijuana reform *only* if it occurred within the context of an overall revision of the state's drug laws.

Briscoe, a forty-eight-year-old rancher and banker from Uvalde, had been a state representative in the 1950s and an unsuccessful candidate in the 1968 Democratic gubernatorial primary. He was the surprise winner of the 1972 primary and went on to defeat former Republican State Senator Henry C. (Hank) Grover by 100,000 votes, a close election by Texas standards. Lieutenant Governor Ben Barnes had been the Democratic favorite, but both he and the incumbent governor, Preston Smith, were damaged by the Sharpstown case, a stock swindle that rocked Texas politics that year and put the voters in a turn-the-rascals-out frame of mind. Barnes and Smith finished a low third and fourth, respectively (18 and 8 percent). Representative Frances T. (Sissy) Farenthold of Corpus Christi, the liberal candidate, was second with 28 percent, just enough to force Briscoe (44 percent) into a runoff, which he won by 210,000 votes.

As a campaign issue, marijuana reform lacked the "sex appeal" of Sharpstown and other issues. Still, all four Democratic candidates had gone on record as favoring a change in the existing law. As expected, Farenthold's position was the most liberal. She wanted the Nebraska-type law she had first proposed during the sessions of the 1971 legislature—a maximum penalty of only seven days for anyone convicted of first-offense possession. Barnes also reiterated his 1971 position, making possession of small amounts for personal use a misdemeanor, and as the campaign progressed he offered up the alternative of judicial discretion, just as he had in 1971. His campaign brochure, though, stopped short of stating just what he would do if elected governor. "I do not believe," it quoted him as saying, "that the solution to the drug problem is to throw all of those who have experimented with marijuana in jail. I feel that felony punishment for drug experimentation is too severe." Governor Smith, who had actively campaigned against marijuana reform two years earlier and had hinted to Representative Longoria in 1971 that he might veto a marijuana reform bill, finally came around and reversed his position. He said he would support reducing the felony penalty to a misdemeanor. But he did it so quietly that later many journalists in Texas couldn't remember whether Smith even took a position on marijuana reform. Briscoe completed the picture by acknowledging, during the course of interviews, that he was interested in a quantitative approach to marijuana reform so that the possession law would distinguish between users and "pushers." He also laid down his condition—marijuana reform only as part of a comprehensive rewriting of the state's drug laws. Briscoe's campaign

brochure contained a quote about drug abuse but did not mention marijuana specifically: "[drug abuse] is unfortunately a growing problem in our state. We must not degenerate into a drug society. Therefore, there will be no coddling of drug pushers and addicts. We must work with first offenders to help them understand the problem, but the hardened criminal must be prosecuted to the fullest extent of the law." Hank Grover, the Republican candidate, had regularly voiced his approval of the status quo and said he would veto any marijuana reform bill that crossed his desk as governor.

As Briscoe's campaign statements indicated, he was taking a tougher position on drug legislation than the Kennard Committee had taken. And when he next spoke out on the subject, in a January 17, 1973, address to the legislature, he fleshed out the themes he had outlined in the campaign. The primary purpose of the drug legislation he would submit, Briscoe told the legislators, would be to crack down on pushers, to "expunge" them from society, as he put it. "A pusher who provides the means of subjecting an individual to the living death of heroin addiction might more kindly have shot the user in the temple," Briscoe said. He also wanted to restrict the use of drugs. "To the extent we can do so, within the confines of the Bill of Rights," he continued, "we simply must stop the use of dangerous drugs. . . . it is very important that the scale of penalties be structured to hinder, rather than encourage the traditional climbing of the ladder from marijuana and other less dangerous substances to hard drugs. In this connection, our efforts must be, while strengthening the penalties and improving the ability to relieve society of those at the top of the ladder, to encourage those who are beginning at the bottom to muster their will and stop the ascent."

Then came marijuana: "After we have a complete revision of our drug laws, after we have acted to cut off the drug supplies, after we have agreed on effective methods of dealing with pushers *in the harshest way we can,* then, and only then, should we consider a reduction of the marijuana penalty for first possession of *small* amounts of marijuana." (Emphasis in original.)

In February Governor Briscoe introduced his comprehensive drug bill. At a press briefing he reminded reporters that the legislation was written to "complement" the 1970 Federal Controlled Substances Act so that Texas law would "interlock" with federal law. He promised to "lobby hard—to work with all of the resources at my command." He also said he would appoint a blue ribbon task force to make "a continuing study of the drug problem and its possible solutions, including education, treatment and rehabilitation." But the "pushers" and the general availability of illegal drugs still were the governor's main priorities:

Texas is facing a tragic drug abuse problem and we must act promptly and decisively if we are to protect our children against the callous drug pushers, if we are to cut off the street corner supplies of illegal drugs, and if we are to remove the users of heroin and other harmful drugs from our streets.

My bill is designed to provide our law enforcement officials with the authority they need to control this trafficking in illegal drugs. This is the root of the drug abuse problem, and we are proposing the steps necessary to cut off the tentacles which are threatening to ruin the lives of thousands of Texans.

We must have the strict laws and harsh penalties against the drug pushers—those dealers in drug addiction and death—which my bill provides. The drug pusher shows no compassion when he approaches a youngster and offers to sell drugs to the child—and we will show no leniency when that merchant of despair is caught and brought before a court of law.

The bill provides the most severe penalties against those who would illegally traffic in drugs—either by the manufacture or the delivery of drugs.

Briscoe was true to his word. While the Kennard Committee recommended reducing most penalties, the governor proposed across-the-board penalty increases for all offenses, except for the possession of heroin, the opiates, and cocaine.

The most dramatic change involved possession of amphetamines, methamphetamines, and barbiturates. Misdemeanors in existing law, they were raised to felonies in Briscoe's bill, with the penalty for amphetamines and methamphetamines two to twenty years and no fines, and the penalty for barbiturates two to ten years and/or fines of up to $5000. Possession of hallucinogens, which the 1971 legislature has already boosted from a misdemeanor to a two to ten year felony, had a twenty year maximum penalty in the Briscoe bill. Possession of heroin, opiates, and cocaine, two years to life offenses in existing law, was dropped to two to twenty years.

In the area of manufacture and delivery, the Briscoe bill increased the heroin, opiate, and cocaine minimums from two years to sixteen years and kept life imprisonment as the maximum penalty; it raised amphetamines, methamphetamines, and hallucinogens from two to ten years to five years to life; and it increased the maximum for barbiturates from ten years to twenty years. The barbiturate minimum stayed at two years. Again there were no fines, just as there were none in existing law. Possession with intent to deliver—and Briscoe wanted this offense reinstituted as much as Kennard—carried the same penalties as the other two offenses.

Just as Kennard's penalty reductions could be traced in theory to a separate drug schedule for penalty purposes, so Briscoe's increases could be traced in theory to the absence of one. Hallucinogens, Schedule I non-narcotics on the regulatory schedule, were not changed for penalty purposes, while amphetamine and methamphetamine penalties were stiffer than they might have been, because Briscoe's bill raised these substances from Schedule III substances, their position in the Uniform Act, to Schedule II non-narcotics in the new legislation.

The tone of the Briscoe bill softened when it came to marijuana (a separate classification in both the Kennard and Briscoe proposals). None of the provisions went as far as the Kennard report had recommended, but compared with existing law the Briscoe bill represented major change.

Eight ounces was to be the dividing line between a misdemeanor and a felony. Anything at or below eight ounces would be a misdemeanor, subject to a maximum penalty of one year in jail and/or fines of up to $2000. If, however, a person had more than eight ounces, then, said the Briscoe bill, "it is presumed that the marijuana was possessed with intent to deliver it." Anybody so charged had the opportunity to rebut the presumption in court. But if the charge stuck and the person was convicted, he was a felon and faced a prison term of from two to ten years—a considerably stiffer penalty than the federal maximum of five years for roughly the same offense, but still lower than the two years to life for possession and the five years to life for delivery under existing Texas law. The presumption also applied to *mixtures* of marijuana and other substances whose total weight was more than eight ounces. As in federal law and most state law, the misdemeanor penalty was limited to first offenses only. Second and subsequent possession offenses of eight ounces or less carried prison terms of two to ten years and/or fines of up to $5000.[13]

When the Briscoe bill had dealt with marijuana and got back to the more general provisions, the "get tough" approach reappeared, even though these provisions had a direct bearing on marijuana. All in all, there were six. Only one lowered a penalty; another maintained an existing penalty; a third created a new offense; and three increased penalties.

[13] Eight ounces seemed like a high cutoff point in view of Briscoe's statement that he favored reducing the penalty for first-offense possession of "small amounts" of marijuana. However, his staff felt that eight ounces was a better cutoff point than four ounces or two ounces because an individual conceivably could have eight ounces of marijuana for his or her own personal use. Anyone who had more than eight ounces, the staff believed, possessed it for purposes of sale, gift, or transfer.

Possession of paraphernalia was the offense with the reduced penalty. In existing law, possession of any device or contrivance, from a hypodermic needle to a smoking pipe or a roach clip, was a felony, punishable by a prison term of two years to life. The Briscoe bill split this single offense into two offenses, one a felony, the other a misdemeanor. Possession of any instrument used for the "administration by subcutaneous injection" of a Schedule I, II, or III substance was a felony, carrying a penalty of two to twenty years. Possession of smoking paraphernalia was a misdemeanor, carrying maximum penalties of six months in jail and/or $1000 in fines. (The Kennard bill treated the former offense as a misdemeanor and did not even include the latter as an offense.)

Vehicle forfeiture was the carryover from existing law. Briscoe's provision did not contain the two recommendations made by the Kennard Committee: that forfeiture be limited only to vehicles that had been structurally altered to conceal controlled substances and that it not include cases of simple possession. Instead, it provided for the forfeiture of "any conveyance, including aircraft, vehicles, vessels, trailers and railroad cars . . . used or intended for use to transport or in any manner facilitate the transportation" of any controlled substance.

A provision regarding the maintaining of premises was new to Texas law. This established penalties of two to ten years and/or fines of up to $5000 for those who maintained any kind of premises "resorted to by persons using" controlled substances, or used for "keeping and selling" controlled substances. Aimed at eliminating pot parties, this provision was due in part to the fact that the Texas Court of Criminal Appeals had been overturning possession convictions of people who had attended pot parties but had been in an adjoining room, away from the marijuana. The Uniform Act had a similar provision but federal law did not.

The three offenses with increased penalties were manufacturing controlled substances, distributing to a minor, and repeat offenses.

By definition, manufacturing meant the "production, preparation, propagation, compounding, conversion or processing" of a controlled substance, and "production" meant the "planting, cultivating, growing, or harvesting" of a controlled substance. So the "cultivation" of marijuana, a two years to life offense in existing law, was raised to five years to life (the penalty for manufacturing) in the Briscoe bill.

Distribution to a minor underwent a slight change in definition as well as an increase in penalties. Under existing law, anyone

twenty-one years or older who made narcotics (including marijuana) available to a minor, or who involved a minor in making narcotics available to a third person, faced a prison term of ten years to life. The Briscoe bill said that anyone twenty-one and over found guilty of "delivering" a controlled substance to someone under eighteen would receive a prison sentence of sixteen years to life.[14]

Theoretically, repeat offenses were covered under the enhancement provisions of the Texas penal code and would be covered under the proposed new code. But the existing narcotics law included its own enhancement penalties. Any second or subsequent offense involving marijuana was a ten years to life prison term. The Briscoe bill made these penalties tougher. Anyone found guilty of a second felony of any kind, drug or otherwise, including "any felony under a prior law repealed by this act," received the maximum sentence for the drug offense if convicted. In other words, since possession of marijuana with intent to deliver was a two to twenty year felony, a second conviction on the same charge was an automatic twenty years. A second conviction for distribution to a minor, or a first conviction on that offense after a previous conviction for another felony, meant an automatic life sentence, since the penalty was sixteen years to life. Cultivation of marijuana was also an automatic life sentence the second time around, because manufacture carried a five years to life penalty. In addition, all third offenses carried an automatic life sentence.

Finally, the Briscoe bill instituted procedures for licensing and regulating the manufacture, distribution, and dispensing of controlled substances. Diversion—the channeling of drugs from legal to illegal sources—had become "a very significant" issue to Briscoe, and the Department of Public Safety (DPS) had about thirty cases, mostly involving pharmacists or physicians, under investigation at the time Briscoe's staff began to prepare the drug bill. For the most part Briscoe followed the Uniform Act provisions, with the only limitation being the amount of money and manpower available to enforce this section. However, the Brisco bill did include one important change. In the Uniform Act, in federal law, and in most state law, warrants were needed before state agents could inspect the records and premises of a licensee. But in May 1972, in a case involving registration and regulation of firearms (U.S. v. Biswell, 406 U.S. 311 [May 1972]), the U.S. Supreme Court ruled that agents need not obtain warrants in order to conduct administrative inspections so long as

[14] In 1973 the legislature dropped the legal age for an adult from twenty-one to eighteen.

the inspections were limited to matters previously specified in the registration statutes. The federal Bureau of Narcotics and Dangerous Drugs (BNDD) had begun to follow this interpretation in its own inspections, and Briscoe's drafters, working with BNDD personnel, decided to formalize the policy by writing it into law. The clause requiring warrants was dropped and a provision added that made it impossible for anyone to receive a license unless he signed a consent form granting the DPS "the right" to inspect his records and premises.

Two days after the Briscoe bill was introduced, Kennard held a press conference at which he announced that Senator Chet Brooks of Pasadena and Representative Andy Baker of Galveston, a fifty-eight-year-old grandfather who favored legalizing marijuana, would co-sponsor the committee's bill.[15] The Brooks-Baker bill differed from the committee proposals in only one respect: possession of heroin was a felony instead of a misdemeanor, with maximum penalties of three years and $2000. The main news at the press conference was what Kennard had to say about the Briscoe bill. He called it "an out-and-out fraud" as a drug reform package. In a statement aimed at parents, Kennard criticized nearly every one of Briscoe's marijuana and marijuana-related provisions, including the following:

- The one year maximum jail sentence for first-offense possession. ("What does jail have to do with marijuana?")

- The penalties for possession of roach clips and smoking pipes. ("The governor's bill would not only let your son be locked up for a year as a first offender; it would add another six months for each and every pipe or clip he possessed. He wouldn't even have to *use* them—all he has to do is *intend* to use them, and there's another six months or twelve or more.") (Emphasis in original.)

- The broadly defined delivery offense which did not distinguish between actual sale for profit and casual transfer of small amounts. ("Marijuana is a social drug like alcohol. You don't smoke it alone. But the moment your son hands that cigarette to his best friend, the governor's bill says he is a felon. It treats him as harshly as the biggest pusher in Texas. Your son can go to the penitentiary for up to twenty years just for handing that cigarette to his friend.")

- Repeat offenses. ("If your son is convicted again of nothing more than possessing marijuana, he must be sentenced to a

[15] After twenty years in the House and Senate, Kennard was defeated in the 1972 Democratic primary over matters having no relation to marijuana or drugs. He moved to Austin and remained active in drug legislation.

minimum of ten years in the penitentiary. If this had happened in one of our neighboring states like Nebraska, for example, he could get off with fourteen days as a second offender.")

- Maintaining premises. ("If you go ahead and give your son permission to smoke at home, you are committing a felony yourself. You can get two-to-ten years in the penitentiary, plus a $5000 fine, for letting your youngster smoke in your home. P s, of course, the penalty he himself gets. Is this reform, or is this an obsession?")

- Vehicle forfeiture. ("The state needs not even prove beyond a reasonable doubt that the cigarettes in your son's pockets were actually marijuana. Your car can be taken away—lock, stock and barrel—even if he is found not guilty.")

Kennard also attacked the Briscoe bill because it lacked provisions for resentencing and expunction of records; because it didn't distinguish between the big-time heroin dealer engaged in organized criminal enterprise and the small-time pusher who sold to support his own habit; because it granted the DPS, a law enforcement agency, the power to conduct drug education programs and to supervise drug research; and because it forced doctors to agree to inspections without warrants before they could obtain licenses to prescribe amphetamines, barbiturates, and other drugs.

"Do you think this is 'reform?'," Kennard asked. "Do you think this sort of penalty structure really represents the best we can do with marijuana? Does it show any comprehension of how marijuana actually exists as a social drug? Does it reflect any awareness of the scientific knowledge we have about marijuana? What good purpose is served by tinkering around with something called the 'first-offense penalty for possession of small amounts of marijuana' in a bill that slips these indefensible evils between its pages? The governor's bill is a publicity stunt to give the illusion of marijuana reform while it raises the penalties for simple possession of other drugs to ridiculous heights and turns over the bulk of our drug control effort to the police.

"Has the day come," Kennard went on, "that the police can conduct searches without a warrant in the name of drug control? Has the day come that the possession of a diet pill or a barbiturate—something that now carries a penalty of as little as thirty days—shall be punishable by life imprisonment? [16] Has the day come when the Department of Public Safety shall be vested with

[16] The scenario Kennard envisioned was a housewife who occasionally shared her diet pills with a neighbor. Technically, that was possession with intent to distribute, and it carried a maximum sentence of life imprisonment.

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the power to conduct drug education programs and supervise our drug research? The governor's bill does all of these things. It is a dangerous bill because it pretends to be something it is not. It pretends to be a reform of our drug laws. In reality, it perpetuates a criminal law approach that reeks of failure. If it is not a step in the direction of a police state, it will do until something else comes along."

Coming from a man who had tried to avoid emotional responses to drug problems and issues, and who had praised his own bill for "not succumbing to hysteria," Kennard's statement was startling to say the least. But, said Kennard, Briscoe's bill angered him, and he was willing to be dramatic—melodramatic even—to focus attention on what he felt was wrong with the Briscoe bill. Kennard didn't really quarrel with Briscoe's personal views, he said some time later in an interview. His quarrel was with the way, in his judgment, Briscoe and his staff had used the marijuana issue. As Kennard saw it, Briscoe, having supported George McGovern at the Democratic National Convention, needed to stake out some solid conservative positions to cut down his losses among Texas Democrats. Given the weakened political positions of Barnes and Preston Smith, Briscoe became, either actively or by default, a rallying point for all those who wanted to keep change to a minimum and maintain a hardline approach to drugs. What made this particularly distressing to Kennard was his feeling that the 1973 legislature might have been persuaded to accept decriminalization of marijuana if "the governor had exercised some skilled leadership in this direction instead of depending for guidance on a staff that lacked any real knowledge about drug problems and issues."

Kennard based his surmise on statements contained in the campaign biographies of House and Senate candidates and on some post-election polls and interviews that appeared in Texas newspapers. The *Dallas Morning News,* for example, reported that marijuana reform was the only issue on which members of the 63rd Legislature were in almost total agreement. The *News* had sent questionnaires to members of the new legislature, and 77 of 78 who responded said they favored reducing the first-offense penalty to a misdemeanor. The *Houston Chronicle* reported that during a televised bipartisan caucus the Harris County delegation "overwhelmingly" supported reducing the penalty for first-offense possession. United Press International sent out a story saying that 36 of 51 legislators favored a penalty reduction.[17] And a survey by the recently formed Texas office of the National Organiza-

[17] "Prospects Appear Excellent for Reduced Marijuana Penalties," *Dallas Morning News,* January 21, 1973; "Agree on Penalty Reduction," *Houston Chronicle,* January 5, 1973; UPI, quoted in *Dallas Morning News,* January 21, 1973.

tion for the Reform of Marijuana Laws (NORML) claimed that 27 of 29 senators and 77 of 80 representatives (there are 31 senators and 150 representatives in the Texas legislature) opposed the present felony penalty.

Though not conclusive, Kennard said the surveys and polls indicated much broader legislative support for marijuana reform than he thought existed. Furthermore, this was literally a "new" legislature. In the wake of Sharpstown, the voters had done a wholesale job on their elected representatives as well as on their gubernatorial candidates. Fully one-half of those senators and representatives who came to Austin in January 1973 had been elected for the first time, with many liberal Democrats replacing conservatives in both the House and the Senate.
But Roy Coffee, Jr., a thirty-five-year-old attorney who had been Briscoe's Dallas campaign manager before becoming his chief legislative aide, doubted that legislative support for marijuana reform was as substantial as Kennard seemed to think. Those newspaper accounts, said Coffee, focused mostly on urban legislators, while Texas remained heavily rural in spirit if not in fact. Many legislators, from small towns and cities as well as rural districts, wanted no change at all. In their view they had no marijuana "problem," and the reason they didn't was the deterrent effect of the two years to life penalty. Still other legislators, said Coffee, polled their districts and found strong sentiment for keeping the felony penalty. (As late as several weeks into the session, Representative Tim Von Dohlen, age twenty-nine, a pharmacist and attorney from Goliad who was the primary House sponsor of the Briscoe bill, asked 7,000 of his 77,000 constituents if they favored reducing the penalty for possession of marijuana from a felony to a misdemeanor. About 1,000 replied; those who did were two to one *against* any change. Von Dohlen conceded that the phrasing of the question influenced the vote. Had he asked if they felt it was fair for someone to receive a life sentence for having a single marijuana cigarette, the results probably would have been reversed. But Von Dohlen felt *that* question would not be "truly representative" of the marijuana issue either.)

What Kennard saw as narrow political manipulation of an issue, said Coffee, was in fact an accurate assessment on Briscoe's part of how the public and the legislature viewed marijuana. They probably could be persuaded to accept some kind of misdemeanor penalty for first-offense possession if someone they trusted proposed it, and if they were convinced that it was not the first step on the road to legalization. That meant forgetting about decriminalization, because, said Coffee, no matter how often Kennard or anyone else insisted that decriminalization was

not legalization, the public knew it was the first step in that direction and so did the legislature.

Liberals too had put the lid on the decriminalization issue. Anthony Friloux of Houston, president of the Texas Criminal Defense Lawyers' Association, provided an early indication in January when he told reporters that he liked the overall Kennard approach but feared that the decriminalization provision might kill the whole bill. Then Senator Chet Brooks, who had assumed Senate sponsorship of the Kennard bill, pretty well disposed of it in February, when he said, "I don't think the political climate is ready for decriminalization. But at least this will allow a full discussion of it." Not surprisingly, the one event that did not occur during the next three months was the "full discussion" of decriminalization Brooks had mentioned.

5 The House

The Briscoe and Kennard (Brooks-Baker) bills presented the Texas Legislature with a clear-cut choice, because the two men, despite their common goals of reducing the penalty for first-offense possession of marijuana and of seeking a comprehensive revision of Texas' drug laws, came at drug legislation from very different perspectives. Simply put, theirs was the difference between social control (Briscoe) and social change (Kennard), between accepting public opinion as it was (Briscoe) and trying to stimulate changes in public attitudes (Kennard). Thus, while Briscoe was calling for overall efforts to "expunge the pusher from our society," Kennard insisted that the law distinguish between the street addict who sells to support his habit and the big-time heroin dealer who sells only for profit. And when Briscoe argued that stiff felony penalties for all drug possession offenses except first-offense possession of marijuana would discourage people from "climbing the ladder" to more potent and dangerous substances, Kennard countered by saying felony penalties were "seldom if ever appropriate for a drug user." Moreover, Briscoe's proposal to have the Department of Public Safety, a law enforcement agency, supervise drug registration, licensing, education, and research drew from Kennard the reponse that a new "independent" and "neutral" agency should be created to oversee and administer these and other drug policies and activities. Last but by no means least, the Briscoe proposal to maintain criminal penalties for possession of marijuana was met with the Kennard proposal to end criminal penalties entirely for adult possession of small amounts.

The Kennard approach had many supporters in both the House and the Senate. But in the House, at least, the governor was in full control even though things almost got out of hand at one point. The extent of the governor's control was learned the hard way by a group of first-term liberals who decided to make marijuana reform their major legislative activity of 1973.

Led for the most part by urban legislators in their twenties and early thirties, the liberals had rallied around a bill introduced by Representative Jim Mattox of Dallas. Though technically not a decriminalization bill, the Mattox proposal was a first cousin of

the Kennard bill. It contained no jail sentence at all for adult possession of three ounces or less of marijuana, and a six-month maximum for possession of three to eight ounces. Fines were limited to $500 for the smaller amounts and $1000 for the larger ones.

The liberals seemed to be making some headway too, because a special seven-person legislative subcommittee appointed to handle drug legislation agreed, at the liberals insistence, to consider the Mattox bill when it began rewriting Briscoe's marijuana provisions. But three days after that agreement was reached, Representative Robert Maloney of Dallas, a Briscoe co-sponsor, introduced a Briscoe-backed substitute bill of his own.

The Maloney substitute differed from the original Briscoe bill in the following respects:

1. It changed the penalties for possession of marijuana by providing something for everyone: for conservatives a stiffer penalty for the larger amounts (up to two years and/or fines of up to $2000 for possession of four to eight ounces); and for liberals a softer penalty for the smaller amounts (up to six months in jail and/or fines of up to $1000 for possession of four ounces or less—lower than Briscoe's single penalty of one year and/or $2000 for everything, but not as liberal as Mattox' proposal that possession of three ounces or less not carry any jail sentence at all and be punishable only by a fine not to exceed $500).

2. It eliminated the provision that anyone who possessed more than eight ounces was "presumed" to possess with intent to deliver and established a penalty of two to ten years and/or $5000 for possession of more than eight ounces. In Maloney's judgment, the presumption clause was on shaky legal ground because it placed the burden of proof on the defendant instead of on the state, "where it belonged."

3. It added the category of casual transfer by making delivery of one-fourth of an ounce or less of marijuana without financial remuneration a misdemeanor, with the punishment six months in jail and/or $1000. "I don't believe," said Maloney, "the governor ever intended that a person who gives one marijuana cigarette to a friend should go to prison as a felon. This was an oversight and it was not intentional."

4. It reduced the minimum penalties for manufacture and delivery of all Schedule I and II substances, both the narcotics (heroin, opiates, and cocaine) and the non-narcotics (hallucinogens, amphetamines, methamphetamines). Briscoe had asked for minimum narcotic penalties of sixteen years. Maloney, a former

prosecutor, feared that because in Texas anyone sentenced to fifteen years or more was not eligible for bail while on appeal, juries would refuse to convict if this penalty was not changed. He dropped the narcotic minimum to five years and the non-narcotic minimum from five to two years "in order to maintain the distribution between a narcotic and a non-narcotic."

5. It eliminated the provision for repeat offenses. Maloney felt these penalties were "too severe" and that repeat offenses could be covered just as well in the proposed penal code revision where each subsequent offense was a step higher than the previous one.

6. It eliminated the provision regarding distribution to a minor. "We had a law like that on the books for a long time," said Maloney, "and it was totally unworkable. I don't recall a single case being prosecuted under it. The only way you could do it was by having underage undercover agents." The bill's delivery provision, Maloney added, was broad enough to cover distribution to a minor.

7. It transferred drug education programs from the Department of Public Safety to the Department of Community Affairs. Public acceptance of drug education programs would be greater, said Maloney, if they were conducted "outside the jurisdiction of a law enforcement agency."

Though Maloney's substitute bill included some changes the liberals wanted, it did not include the ones they wanted most—resentencing, a less inclusive vehicle forfeiture law, elimination of the maintaining premises provision (the anti-pot party clause), establishment of misdemeanor penalties for possession of amphetamines, methamphetamines, hallucinogens, and barbiturates, and above all, no jail sentences for possession of small amounts of marijuana.

More to the point, however, was the fact that the liberals were now as angry about tactics as they were about substance, because the Maloney substitute bill had caught them completely off guard. Until Maloney introduced it in an evening meeting of the subcommittee they had neither seen it nor heard of it, they said. Ron Waters of Houston, twenty-two, author of a limited legalization bill and a liberal member of the subcommittee, asked for a delay so that he and Representative Sara Weddington of Austin, the other subcommittee liberal, could study the new bill. But he lost on a tie vote of three to three. Next he offered some amendments, all of which were written on the spot because his own were still in the hands of the legislative counsel. Those that subcommittee chairman Felix McDonald didn't reject as incorrectly written were defeated by a three to three vote. The

amendments included resentencing, a less inclusive vehicle forfeiture law, and decriminalization of small amounts of marijuana. Then came the final vote. The Maloney substitute bill passed, three to two, with Waters and Weddington on the losing side.

Afterwards, Waters told reporters that the governor's staff had "railroaded" the substitute through the subcommittee. He said it had been drafted at "secret" meetings and "without the participation of some members of the subcommittee." Such actions, Waters charged, violated "the spirit of the 'open meetings' law." (The "open meetings" law did not extend to legislative committees, and House rules only required public notice of "formal" subcommittee meetings.) Roy Coffee, Briscoe's chief legislative aide, denied everything. He said the earlier meetings—one the night before and one the morning of the subcommittee meeting—were only informal gatherings, not legislative sessions, one involving nothing more than breakfast. The five legislators in attendence backed him up. Waters and Weddington weren't invited, said Coffee, because they indicated no interest in discussing the governor's bill.

The liberals' response was quick and dramatic. A week later they teamed up with hardline conservatives who wanted no change in the present law to kill the Maloney substitute bill at the full committee meeting. The vote was 12 to 9, with one vote to kill coming from Representative Craig Washington of Houston, a co-sponsor of the Briscoe bill. (A liberal and a black, Washington had agreed to co-sponsor because he felt he would have "a better chance to correct positions I disagreed with.") At that point Coffee said marijuana reform was dead, and that he personally had no qualms about letting the liberals take the blame. "I don't see what more the governor's office can do. . . . There are other bills that need our attention. We just don't have any more time to give to this one." (The vote came on April 11, with adjournment scheduled for late May.)

Nevertheless, the liberal gamble seemed to pay off. Within a few days the two sides came together to work out a compromise bill, even though each insisted the other had initiated the meeting. The compromise, offered by Mattox and Maloney as a substitute to the original Briscoe bill still pending in committee, retained the basic framework of the Briscoe bill and included four of the seven changes found in the Maloney substitute bill: it transferred the drug education authority to the Department of Community Affairs; it eliminated the provisions regarding repeat offenses and distribution to a minor; and it reduced the casual transfer of marijuana from a felony to a misdemeanor.

In addition, the new bill dropped the maintaining premises provision; it eliminated altogether possession of smoking pipes and roach clips as an offense; it lowered possession of paraphernalia for subcutaneous injections from a felony to a misdemeanor of two years and/or $3000; it prohibited vehicle forfeiture in cases involving simple possession of controlled substances; it omitted marijuana from the definition of "manufacture," an exclusion that protected people who grew small amounts; it prevented physicians and others from being forced to reveal the names of people enrolled in their treatment or research programs; and it excluded unharvested peyote "growing in its natural state" from being seized by state agents, a provision aimed at making life easier for the American Indians who used peyote in religious ceremonies.

But the key provisions were the possession and delivery penalties. Possession of marijuana carried a maximum penalty of six months and/or $1000 (Briscoe had asked for one year and/or $2000). And since the compromise bill did not specify a cutoff point for possession misdemeanors, it was generally assumed that this penalty applied to any amount kept for personal use. A second or subsequent possession conviction, however, was a felony and punishable by two to ten years and/or fines of up to $5000. But a judge could set aside such a felony verdict and impose a misdemeanor penalty at the time of sentencing if he felt "such judgment would best serve the ends of justice." Delivery or possession with intent to deliver marijuana also were felonies and carried the two to ten year penalty. They had been two to twenty years in the Briscoe bill and in the Maloney substitute.

With respect to possession and delivery penalties for other drugs, the compromise bill brought many back to where they were before Briscoe proposed his across-the-board increases. The exceptions, obviously, were those penalties Briscoe had either lowered or not raised in the first place and those that Maloney had reduced in his substitute bill. Thus, possession of Schedule I and II narcotics (heroin, opiates, and cocaine) remained at two to twenty years because Briscoe had reduced them from two years to life. But possession of amphetamines, methamphetamines, and barbiturates, raised to felonies in the Briscoe bill, remained misdemeanors in the compromise and carried the existing maximum penalty of two years and/or $3000. Possession of hallucinogens, two to twenty years in the Briscoe and Maloney bills, was reduced to two to ten years.

The same general pattern prevailed for penalties involving manufacture, delivery, and possession with intent to deliver. Barbiturates, two to twenty years in the Maloney substitute, were brought back to the current penalty of two to ten, while amphetamines,

methamphetamines, and hallucinogens, also two to ten years in existing law but raised to two years to life in the Maloney bill, were reduced to two to twenty years. The maximum penalty for heroin, opiates, and cocaine showed only an insignificant reduction—from life to ninety-nine years.

Resentencing was missing, but it was added in committee over the strenuous objections of Tim Von Dohlen, primary House sponsor of the Briscoe bill. Instead of applying to all drug offenses, however, resentencing was limited to marijuana offenses. Then on April 27, 1973, sixteen days after the House Criminal Jurisprudence Committee killed the Maloney substitute bill, it approved the Mattox-Maloney compromise. The vote was 12 to 5, and the liberals, elated by the result, felt they had regained the initiative.

In their excitement they forgot to ask themselves whether the governor's people had set them up for a fall, agreeing to provisions Briscoe didn't want as a means of getting a bill onto the House floor where it could be amended or where still another substitute could be offered. According to one Briscoe co-sponsor, that was precisely what had happened. Yet the liberals didn't seem to catch on until, six days later, Von Dohlen offered a Briscoe-approved substitute on the House floor. The House agreed, 85 to 59, to table the compromise and take up the substitute.

Actually, the Von Dohlen substitute didn't contain all that many changes. But once again, those it did contain were the ones the liberals wanted least. Misdemeanor penalties for possession of marijuana were limited to four ounces or less, half what they had been in the Briscoe bill, although Von Dohlen did retain the Mattox-Maloney penalty of six months and/or $1000, as well as their provision permitting persons convicted of possession felonies to receive misdemeanor sentences. Resentencing was dropped. ("This was not," Von Dohlen and other co-sponsors said in a joint statement, "within the bill's original purpose and is an encroachment on Executive authority.") Possession of methamphetamines—"speed" had become a great concern of some legislators—was kicked back up to a felony after the Mattox-Maloney bill had reduced it to a misdemeanor. The definition of "manufacture" again included marijuana. And an amendment was added changing certain provisions of Texas law to conform with the Von Dohlen substitute bill.

Caught asleep at the switch for the second time in five weeks, the liberals tried desperately to find something the rest of the House would buy. But when Craig Washington offered a series of amendments aimed at increasing the four ounce cutoff point for possession misdemeanors—he started at twelve ounces and

worked his way down to five—he lost by votes of 111 to 21, 112 to 20, 110 to 22, 106 to 28, and 104 to 30.

Washington lost again, 77 to 50, when he tried to convince the House to accept conditional discharge and expunction of records for first offenders. But he did persuade the House to replace Von Dohlen's civil standard of proof (preponderance of evidence) for vehicle forfeiture cases with the more stringent penal standard (beyond a reasonable doubt); and he won a narrow victory, 67 to 62, when the House restored resentencing even though Briscoe opposed the provision on constitutional grounds and promised instead to request the Board of Pardons and Paroles to review the cases of all first-time marijuana offenders convicted prior to enactment of the new law and still serving time in Texas prisons. In addition, the liberals were on the winning side when the maximum penalty for second-offense possession of marijuana was not increased from ten to twenty years (74 to 64); and they voted with Von Dohlen and Maloney to kill life sentences without parole for second offenses involving manufacture or delivery of heroin, opiates, and cocaine (73 to 59), and automatic life sentences with no parole for twenty years for second offenses involving manufacture and delivery of marijuana (93 to 38).

Whatever satisfaction the liberals took from these votes was short lived, because the House, in a "get tough" mood, and with the support of Von Dohlen, Maloney, and all of Briscoe's regular cosponsors, dropped the cutoff point for marijuana misdemeanors to one ounce or less (80 to 57); raised the maximum for delivery and possession of marijuana with intent to deliver from ten to ninety-nine years (118-11), virtually the same penalty that currently existed; and reinstated selling or offering to sell marijuana to a minor as a felony offense, while setting the penalty at five to ninety-nine years (116 to 13), another return to the harsh existing law. The House also approved amendments that increased the maximum penalty for possession of heroin, opiates, and cocaine from twenty to ninety-nine years (75 to 59); raised the penalty for manufacture and delivery offenses involving methamphetamines and LSD from two to twenty years to five to ninety-nine years (115 to 13); and established automatic life sentences with no parole for at least twenty years for second offenses involving manufacture and delivery of heroin, opiates, and cocaine (124 to 7).

The vote on final passage was 97 to 38, and the liberals were furious. Earlier, they had complained that Briscoe's staff was just tossing them bones whenever they agreed to add, delete, or amend a provision, merely ridding themselves of parts of the bill they planned to scuttle anyway. Nowhere, argued the liberals,

did they see evidence of "a serious attempt" at compromise on the part of the governor's people. Instead, everything was an ultimatum. Said one liberal legislator: "They didn't come right out and say it, but the message was loud and clear: it's our way or no way." Now, however, the liberals charged Von Dohlen and Roy Coffee with sabotaging the marijuana provisions. These two men, said an angry Jim Mattox, "frightened the House into believing a vote to liberalize marijuana laws or any other drug penalty was a vote to turn drug pushers loose on every playground and schoolyard in the state." Von Dohlen and Coffee ignored the accusation. "Nobody sabotaged anything," said Coffee. "They just didn't have the votes, and they were never able to accept that fact."

6 The Senate

In the Senate the situation was completely reversed: the liberals were in command and the governor's people were crying foul. Three explanations given for this turn of events (on paper the Senate was more conservative than the House) were the Senate's need to assert its independence from both the governor and the House, Kennard's continuing influence among his former colleagues, and the impact on conservatives of testimony presented by Richard C. Cowan, a Texan who was a charter member of Young Americans for Freedom (YAF) and a contributor to William F. Buckley's *National Review.* "The laws make criminals out of persons who otherwise would not be," Cowan had said. "While it may be reasonably argued that the people should obey the law the fact is that they are not, and petulance on the part of the legislators will only aggravate the problem."

The fourth reason was Senator Jim Wallace, age forty-five, of Houston. That really got under the skin of the governor's people, because Wallace, a moderate Democrat, was Briscoe's "liberal" co-sponsor in the Senate. (Briscoe's "conservative" co-sponsor, Senator H. J. (Doc) Blanchard of Lubbock, became ill just after the bill's introduction and never fully regained his health.) On two separate occasions strong negative words from Wallace might have killed, or at least weakened, the liberal substitute bill being offered by Senator H. Tati Santiesteban of El Paso, chairman of the subcommittee that handled the drug legislation. But both times, first in Santiesteban's Criminal Jurisprudence Subcommittee and then at the full Jurisprudence Committee, Wallace remained silent. The reason? The substitute was his own creation. It had been co-authored by Bob Shults, Wallace's chief aide, and Griffin Smith, author of the Kennard bill, and then had "found its way" to Santiesteban.

Ironically, Wallace hadn't planned to play an active role in drug legislation in 1973. An attorney, he had represented people charged with possession of marijuana, including the children of friends, but his primary concerns lay elsewhere: improving the environment, reforming the state's insurance laws, and revising the workman's compensation program and the probate court system. Wallace had earned a solid reputation as a serious and

effective legislator during his first term, so much so that both Kennard and Briscoe sought him out as a sponsor. Though more sympathetic to the Kennard philosophy on drug legislation than to Briscoe's, Wallace turned Kennard down ("I had no specific single reason not to sponsor the Kennard bill. I just wasn't sure I wanted to get involved in that particular fight."), and then a few weeks later said yes to Briscoe ("In all probability, a measure that the governor put his force behind was going to pass at some point."). However, he did reserve for himself the right to make whatever changes were "necessary to pass a good bill."

Wallace knew that he wanted to liberalize Briscoe's marijuana provisions. But the more he and Shults studied the Briscoe bill the more changes Wallace wanted to make. Like the House liberals, Wallace was troubled by the stiff felony penalties for possession of amphetamines, methamphetamines, barbiturates, and hallucinogens; the repeat offenses provision; the all-inclusive vehicle forfeiture clause; the lack of any resentencing mechanism; the broad definition of "delivery"; and the general potential he felt the bill contained for the abuse of individual rights by law enforcement officials. Wallace also questioned the sweeping authority the Briscoe bill gave to the Department of Public Safety, partly because the DPS director told Wallace he did not want his agency to register and license doctors and druggists.

But Wallace had another reason for letting Shults work with Griffin Smith on the substitute bill. The Jurisprudence Committee had been holding hearings on the Briscoe and Brooks-Baker bills, plus four marijuana bills introduced by individual senators. As in the House, they were general hearings in which both sides rolled out their big guns. For those who wanted to keep change to a minimum, the big guns were Dr. Gabriel G. Nahas of New York, author of *Marijuana—Deceptive Weed,* and Dr. Ernest S. Barratt, director of the Behavioral Sciences Laboratory of the University of Texas at Galveston. Both men listed a number of ill effects which they said marijuana could cause, such as impairment of memory, judgment, and the ability to concentrate; general mental deterioration; liver disorders; accelerated heartbeat, particularly dangerous, they said, to middle-aged men; and apathetic and lethargic behavior. Nahas also said that contrary to the contention of most studies, some marijuana users do develop tolerance to the drug and do either increase their dosage or advance to harder drugs. The liberals countered with Dr. David Lewis of the Harvard Medical School, speaking as a representative of the American Public Health Association, who urged the committee not to heed unsubstantiated experimental results, and John Finlator, former deputy director of the BNDD, who said he favored legalizing the private use of marijuana because criminal

penalties against marijuana use were "simply not effective as a deterrent." Committee liberals also circulated a review of Dr. Nahas' book by Dr. Lester Grinspoon, author of *Marihuana Reconsidered,* that said the Nahas book was full of "half-truths, innuendoes and unverifiable assertions."

The hearings didn't focus on the strengths and weaknesses of individual bills. Those would be taken up at working sessions of Santiesteban's subcommittee and then again at the full committee. (In Texas, Senate committees hold hearings both before and after subcommittees.) By the time the hearings ended, though, Wallace felt the Briscoe bill had split the committee right down the middle, that the division was strong and deep, and that unless someone proposed an alternative that was not viewed as either a Briscoe bill or a Kennard bill, one of three events would occur: stalemate; a bruising Senate battle like the one already under way in the House; or, because broad support existed within the committee to reform marijuana laws, a move to pass one of the four marijuana bills and forget about everything else. Since Wallace found all three possibilities unacceptable, he finally agreed to let Shults see what he could work out with Griffin Smith.

Smith suggested that the compromise bill include such provisions from the Kennard bill as the development of a separate schedule for penalty purposes, with heroin in one category, amphetamines, methamphetamines, opiates, and cocaine in a second, and barbiturates and hallucinogens in a third; misdemeanor penalties for simple possession of all controlled substances except heroin; establishment of a new and independent drug agency; limiting vehicle forfeiture to vehicles structurally altered to conceal controlled substances; dropping the requirement that in order to distribute controlled substances physicians or pharmacists agree to inspections without warrants; and including a resentencing provision that would apply to all controlled substances. He also urged that marijuana possession penalties be limited to fines only (no jail sentences) and that the penalties for hashish be the same as the penalties for marijuana.[18]

Shults felt that Wallace would accept these provisions but he doubted the Senate would, and he was positive that Briscoe wouldn't. Since Wallace's purpose, said Shults, was not to cut Briscoe out of the picture but to keep him in, he decided not only to exclude hashish from the definition of marijuana but to offer

[18] The Kennard bill followed the Uniform Act by including hashish—a stronger form of the *Cannabis sativa* plant—in its definition of marijuana so that the penalties would be the same. The Briscoe bill, however, excluded hashish from its definition of marijuana and listed it instead with the hallucinogens.

some less liberal counterproposals as well. These then became the basis of the substitute bill. They were as follows:

- Thirty days in jail and a $200 fine would be the maximum penalty for possession of up to four ounces of marijuana and for casual transfers, officially known as distributing one-fourth of an ounce or less without financial remuneration.

- Six months and/or $1000 would be the maximum for possession of four to eight ounces of marijuana.

- A separate drug schedule for penalty purposes would be established, but heroin, opiates, and cocaine would all be in one category, while amphetamines, methamphetamines, barbiturates, and hallucinogens would be grouped together in a second category.

- Possession of amphetamines, methamphetamines, barbiturates, and hallucinogens, felonies in the Briscoe bill, would be reduced to misdemeanors punishable by no more than one year in jail and a $2000 fine, which was double the penalty contained in the Kennard (Brooks-Baker) bill.

- Possession of heroin, opiates, and cocaine would remain felonies and would carry the two to twenty year penalty found in the Briscoe bill, and fines of $10,000 would be added.

- All possession offenses would have to involve "a usable quantity" of a controlled substance.

- Authority to administer the act would be transferred from the Department of Public Safety to the Department of Community Affairs, a quasi-cabinet-level agency located in the governor's office. This would remove the program from a law enforcement framework but still permit the governor to retain direct control.

- Vehicle forfeiture would be limited to possession of eight ounces or more of marijuana, and, in any case, marijuana or otherwise, the state would have to meet the more stringent penal standard of proof, the same provision the House adopted at a later date.

- Inspections without warrants could occur only with respect to "the records required to be kept by the registrant under this Act," and not, as in the Briscoe bill, to any and all records found on the premises.

- Resentencing would apply only to marijuana offenses.

Wherever possible, Shults tried to include Briscoe or Maloney provisions. The eight-ounce cutoff point for marijuana misdemeanors was an example. Another was the penalty of two to ten years and/or $5000 for possession of more than eight ounces of

marijuana. Manufacture, distribution, or possession with intent to distribute heroin, opiates, and cocaine had only a trivial difference, a penalty of two to ninety-nine years instead of the two years to life penalty found in the Maloney substitute bill. And Shults and Smith went along, of course, when Maloney eliminated repeat offenses, distribution to a minor, and the presumption clause for possession of more than eight ounces of marijuana.

But Shults and Smith eliminated some other offenses, such as maintaining premises (the anti-pot-party clause); possession of marijuana with intent to distribute; possession of smoking pipes, roach clips, or other marijuana paraphernalia (the penalty for possession of syringes or other instruments used for subcutaneous administration remained, but it was reduced from two to twenty years to two to ten years, and at least "a trace" of the controlled substance had to be found on the instrument); filling prescriptions for narcotic drugs three days after the prescription was issued; limiting peyote use in religious ceremonies to people who had at least 25 percent Indian blood, a distinction Shults and Smith felt was unconstitutional as well as impossible to determine; and using a possession of marijuana conviction as the basis for removing or suspending a drug license.

Added to the draft were resentencing; another clause permitting people appealing drug convictions to be sentenced under the provisions of the new law; the Mattox language that allowed persons convicted of marijuana felonies (possession of more than eight ounces and distribution) to receive misdemeanor penalties if the court felt they had not acted for profit or to "further commercial distribution"; a provision from existing law not found in the Briscoe bill which prevented the testimony of a single person from being accepted as proof of sale or an offer to sell; the Mattox-Maloney prohibition against furnishing the name or identity of persons enrolled in treatment or research programs; some language that made it possible for licensed researchers to obtain the drugs they needed, particularly LSD; and a definition of "manufacture" that resulted in cultivation of marijuana being treated as a possession offense rather than a sale offense.

Finally, the substitute bill set a penalty of two to ten years and/or fines of up to $5000 for manufacture, distribution, and possession with intent to distribute offenses involving amphetamines, methamphetamines, barbiturates, and hallucinogens. If, however, a person could prove to the satisfaction of the court that he or she did not act for profit or to further commercial distribution, then the sentence could be reduced to one year and/or $2000.

Although Shults and Smith put their substitute bill together the weekend after the House killed the Maloney substitute bill and

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a week after Shults told the governor's liaison man with the Senate, Mark White, that the Briscoe bill was stymied in committee, Coffee said the Shults-Smith draft was totally unacceptable to the governor. That left Wallace in a difficult position. He liked the draft well enough, but as primary sponsor of the original Briscoe bill he didn't think he could introduce the substitute so long as the governor opposed it. That was when the substitute "found its way" to Santiesteban. A week later, Santiesteban's drug subcommittee met to decide on a drug bill. Though not a member of the subcommittee, Wallace was present. Santiesteban asked Wallace if he knew any reason why the subcommittee should not adopt the substitute bill. Wallace shook his head to indicate that he didn't, and the substitute passed, three to one.

A week after that, the Senate Jurisprudence Committee approved the substitute bill by a vote of nine to four. This time, however, Wallace was under more pressure because he had a vote and because Briscoe had asked him to offer the Mattox-Maloney substitute on the Senate side. He did, but he didn't say much in behalf of the Briscoe-supported bill, and he lost by two votes, eight to six. Wallace also voted with the minority when the committee accepted the Santiesteban substitute by an eight to six vote, and when the committee accepted the amendment of Senator Oscar Mauzy, a member of the Kennard Committee, to reduce the penalty for possession of up to four ounces and for casual transfers from thirty days and $200 to just seven days and $200. But when the vote was taken to send the Santiesteban substitute bill to the floor of the Senate, Wallace switched sides and voted with the majority.

Briscoe's people continued their efforts as the full Senate met to take up the Santiesteban substitute. Again at Briscoe's request, Wallace offered the marijuana provisions contained in the Mattox-Maloney substitute, which, ironically, had been defeated on the floor of the House. They lost in the Senate as well, but for different reasons. Then Senator Bill Meier, age thirty-two, who had defeated Kennard in the 1972 Democratic primary, offered the House bill for the governor, but with much more liberal marijuana provisions than the House had approved. That lost too. Some other attempts at toughening up the Santiesteban bill were also unsuccessful. In fact, the only changes the Senate accepted were a couple of liberalizing amendments offered by Senator Bob Gammage of Houston. One added conditional discharge and expunction of records for first offenders, and the other was the amendment which said that possession of marijuana "shall not be considered a crime involving moral turpitude." No vote was recorded on either amendment, but the vote on final passage was 22 to 9.

7 The Conference Committee

By the time the conference committee met in mid-May, the polarization of the two sides had become so pronounced that nobody was sure what would happen to the marijuana provisions, let alone the entire bill. The governor's staff, angry because the Senate had sharply reduced marijuana penalties and established misdemeanor penalties for possession of all amphetamines, methamphetamines, barbiturates, and hallucinogens, claimed the Senate was ready to pat you on the back if you used drugs, while the liberals were convinced that Briscoe had sold out completely to the law and order types. "Do you realize," asked one opponent of the Briscoe-backed House bill, "that if this legislation passes, Texas will be the only state in the country other than Mississippi where the police are in charge of drug registration and licensing?"

Texas did indeed gain that dubious distinction, because Briscoe and Tim Von Dohlen, his floor leader in the House, wouldn't budge an inch on this provision. In fact, said Von Dohlen, if the conference committee removed this authority from the Department of Public Safety, he would speak against the final version when the House met to consider it. Neither Von Dohlen nor any other supporter of the Briscoe position was willing to settle for anything less than making the penalty for possession of LSD and methamphetamines the same as that for possession of heroin, opiates, and cocaine (two to twenty years, as it turned out).

The Senate conferees knew that if Von Dohlen opposed the conference committee report when it went back to the House—there were less than two weeks left in the session at this point—they could all pack up and forget about drug reform for another two years, until 1975 at the earliest. But possibly because Von Dohlen was adamant about what he wanted, the senators were prepared to go down the line for what they wanted—marijuana reform. And though they didn't think they could come away with the liberal provisions contained in the Senate bill, they let

it be known that they would not accept any conference committee bill in which the House did not meet them halfway on this issue.

This was exactly what happened. The cutoff point for possession misdemeanors was set at four ounces (it had been one ounce in the House and eight ounces in the Senate) and the following maximum penalties were written into law:

- Possession of up to two ounces: six months and $1000. (The House bill had the same penalty for one ounce, but anything over an ounce had been a felony.)

- Possession of two to four ounces: one year and $2000. (A felony in the House bill and a seven-day/$200 misdemeanor in the Senate version.)

- Possession of more than four ounces: two to ten years and $5000. (This felony penalty applied to anything over an ounce in the House bill but didn't take effect in the Senate bill unless a person had more than eight ounces.)

- Casual transfers (delivery of one-fourth of an ounce or less without financial remuneration): six months and $1000. (The House penalty was the same. It was seven days and $200 in the Senate version, and a felony in the original Briscoe bill.)

- Delivery (more than one-fourth of an ounce): two to ten years and $5000. (This was also the Senate penalty. After Briscoe proposed two to twenty years, the House raised it to two to ninety-nine years.)

- Reduction of sentence: all possession and delivery felonies could be reduced to misdemeanors at the time of sentencing if the court felt such action would "best serve the ends of justice." (This was the House language. In the Senate bill the reduction rested on a more specific concept—that the individual did not act "for profit or to further commercial distribution.")

Two activities listed as felonies in the House bill but not included at all in the Senate bill were also dropped by the conference committee. These were possession with intent to deliver (two to ninety-nine years) and delivery to a minor (five to ninety-nine years). In addition, the conference committee bill excluded marijuana from the definition of "manufacture," an omission that protected people who grew marijuana plants whose leaves weighed less than four ounces, though a person in this circumstance still was open to possession charges. The bill also included the Senate amendment stating that possession of marijuana should not be considered a crime of moral turpitude; and it agreed to limit marijuana arrests to people who possessed "a usable quantity"

of the drug, a Senate provision Briscoe accepted only for marijuana and not, as the Senate had intended, for all controlled substances. About the only thing missing was Senate language prohibiting a prior conviction for possession of marijuana (then a felony, now a misdemeanor) from being used as the basis for revoking or suspending a drug license.

The same pattern of accommodation extended to the rest of the provisions that eventually made up Texas' new comprehensive drug law. The House, for example, insisted that the penalties for manufacture and delivery offenses involving methamphetamines and LSD were non-negotiable, and they did in fact end up at five to ninety-nine years, almost exactly what Briscoe had wanted. (In the original bill the maximum penalty was life, just as it was for most other manufacture and delivery offenses.) And after the Maloney substitute bill reduced the minimum for manufacture and delivery of heroin, opiates, and cocaine from sixteen to five years, those penalties also passed untouched, with the maximum again being ninety-nine years. (The existing penalty was five years to life.)

Three other provisions from the more liberal Senate version were dropped from the final bill: these were expunction of records for first offenders, the limit on inspections without warrants, and a provision that excluded from prosecution on possession and distribution charges *all* members of the Native American (Indian) Church who used peyote in *bona fide* religious ceremonies, and not just those who had more than 25 percent Indian blood, as the governor's bill had specified. The Senate also lost what it felt was an important conceptual battle: retention, ironically enough, of the House provision that decriminalized illegal simple possession of narcotic cough syrups. In addition, the senators had no luck whatsoever in maintaining misdemeanor penalties for possession of hallucinogens or in killing a House provision that made it illegal for pharmacists to fill narcotic prescriptions, including codeine cough syrups, three days after the prescription was issued.

The Senate was not without some triumphs, however. Possession of amphetamines and barbiturates remained misdemeanors (Briscoe wanted them raised to felonies), and the maximum penalty was dropped from two years to one (in part because of a general revision of the Texas penal code). Manufacture and delivery penalties for these substances stayed at two to ten years and were not raised to the higher levels Briscoe recommended. Resentencing—in and out of the bill on two seperate occasions—finally stayed in despite the ruling of Attorney General John L. Hill that it represented legislative infringement on executive

power. Possession of marijuana paraphernalia (smoking pipes and roach clips) was altogether dropped as an offense, and the penalty for possession of syringes and other instruments for subcutaneous administration was reduced from a felony to a misdemeanor. Moreover, before any charge could be brought in this regard, at least "a trace" of the controlled substance had to be found on the instrument, a qualification not contained in the original Briscoe bill.

Other successes that could be considered either Senate or liberal victories included conditional discharge for first offenders; permitting judges to decide whether the police should destroy controlled substances seized as evidence, thus making it possible for researchers to obtain the drugs they needed; a provision from existing law, not found in either the Briscoe or the House bills, which prevented the testimony of a single person from being accepted as proof that another person had tried to sell him or her a controlled substance (valid proof had to consist of either a second witness or some other corroborating evidence); protecting physicians or other health practitioners from being forced to reveal the names or identities of people enrolled in their treatment or research programs; the elimination of the provisions relating to maintaining premises, repeat offenses, and distribution to a minor; and the inclusion in both the House and Senate bills of language that prohibited vehicle forfeiture in cases involving simple possession. Both bills also adopted the more stringent penal standard of proof (beyond a reasonable doubt) for these cases instead of the civil standard (preponderance of evidence) found in the original Briscoe bill, the Maloney substitute, the Mattox-Maloney substitute, and the Von Dohlen substitute.

Finally, there were some compromise provisions. The Senate succeeded in working a separate drug schedule for penalty purposes into the final bill, but it wasn't the schedule they really wanted because LSD and methamphetamines were listed with heroin, opiates, and cocaine instead of with amphetamines, barbiturates, and the other hallucinogens. As for administrative control over drug programs, research and education were transferred from the Department of Public Safety to the Department of Community Affairs, the quasi-cabinet agency in the governor's office. The liberals' joy over this move was tempered by the fact that the big prize—removing registration and licensing from DPS—had eluded them. And a liberal provision that permitted the courts to impose misdemeanor sentences on people found guilty of possession or distribution if the judge felt the individual did not act for profit or to "further commercial distribution," which at one time or another had applied to all amphetamines, methamphetamines, hallucinogens, and barbiturates, was limited in the

final bill to possession felonies involving amphetamines, barbiturates, and hallucinogens other than LSD.

Given the amount of disagreement over the drug legislation, it wasn't too surprising that the 63rd Legislature nearly adjourned without passing the conference committee bill. The Senate presented no problems and endorsed the bill by a vote of 24 to 7, two more votes than it had mustered for the Santiesteban bill. But some members of the House, led by Representative John Hoestenbach of Odessa, author of many of the "get tough" amendments added to the Von Dohlen substitute bill, were gearing up for a last-ditch effort. Hoestenbach himself complained that the conference committee had removed all the hardline provisions he had written, while one of his colleagues, Representative Wayland Simmons of San Antonio, contended that the bill virtually legalized marijuana. Simmons also took the floor to say that in his judgment the conference committee bill was soft on all other drugs too. "People in your districts," Simmons warned the House membership, "are not going to be able to hold enough jobs to buy toasters and television sets and put them in their houses for the burglars who shoot heroin to steal."

However, Represenative Von Dohlen kept his promise to support the conference bill, and in the process told the House that some penalties in the new bill were stronger than those contained in current law. A vote taken on Hoestenbach's motion to send the bill back to conference and appoint a new group of conferees lost, 80 to 60. The House then voted 84 to 58 to accept the conference committee bill . Two weeks later Briscoe signed the bill into law, and at last, on June 14, 1973, more than three years after Representative Raul Longoria (now a senator) first proposed reducing the penalty for first-offense possession of marijuana from a felony to a misdemeanor, Texas had itself a new marijuana law—and many other changes in its drug legislation as well, though the new act did not go into effect until August 27.

In the best of all possible worlds the conservatives would have preferred a tougher marijuana law, the liberals a softer one. The conservatives would have liked felony penalties for possession of amphetamines and barbiturates, while the liberals would have liked to see the penalty for possession of speed, LSD, and all other hallucinogens kept at the misdemeanor level. The conservatives also wanted the Department of Public Safety to supervise and administer the entire Act and not just the registration and licensing of doctors and druggists, whereas the liberals wanted the law enforcement agency out of the picture altogether. Nevertheless, each side had wrung from the other those provisions and changes it wanted most, by threat if not by persua-

sion, so although the bill wasn't perfect (what legislation is?), everyone connected with it was willing to concede, or perhaps had a vested interest in conceding, that the new drug law represented the best that could be done under the circumstances.

One question remained. Was resentencing for marijuana offenses constitutional or not? On October 10, some six weeks after the new law had gone into effect, the Texas Court of Criminal Appeals ruled that it was not. In a unanimous opinion, the five-man court held that resentencing was an infringement on the powers of commutation and clemency the state constitution granted to the governor, thereby rejecting the arguments of attorneys for Frank A. DeMolli that resentencing in no way interfered with these powers. (DeMolli, a University of Texas student, pleaded guilty in 1971 to possession of twenty-one pounds of marijuana and was sentenced to twenty-five years in prison. Under the new law he could not have been sentenced to more than ten years.)

Three weeks later, on October 31, the same day the court refused to reconsider its ruling, Briscoe asked the Board of Pardons and Paroles to review the cases of offenders who, though serving time for a marijuana possession felony, would have received a misdemeanor sentence if they had been prosecuted under the new law; in other words, people who were sent to prison for first-offense possession of four ounces or less and who were not also serving a concurrent sentence for another felony charge, drug or otherwise. The first seven people were not released until January 1, 1974. A month later, ten more were released. By May 14, 1974, a total of 95 persons had been identified, certified as having served the maximum sentence according to the provisions of the new law, and released. But because the new drug law did not include a provision for expunction of records, the felony conviction remained a part of each person's record even though such an act no longer was considered a felony.[19]

[19] Liberals complained that Briscoe dragged his heels on this issue and that the constant prodding of Representative Ronald Earle, age thirty-two, of Austin, was largely responsible for obtaining the release of those 95 individuals. Meanwhile, only one of the 95 had been sent to prison directly after trial and conviction. The remaining 94 had been placed on probation following their first conviction but had their probation revoked after being arrested a second time for simple possession.

8 Conclusion

When a legislature that has decided to change its state's marijuana law, and revise all its drug laws in the process, begins with two comprehensive bills that represent philosophical opposites, and then works its way through four other substitutes before finally passing a fifth substitute written by the conference committee, and when the marijuana provisions are a major feature of each of those substitutes, one possible explanation is that the state, being the forty-ninth in the country to change its marijuana laws, wants to be more than just a footnote to the other forty-eight.[20] But Texas ended up being just a footnote after all. It changed its marijuana law for the same reasons other states changed theirs, and it limited its changes to those already made by other states.

Basically, the law changed for two reasons. The first, as Griffin Smith noted in an article in the *Texas Monthly* of September 1973, was because "too many of the wrong kids were being arrested." He wrote:

> The story is really as simple as that. True, before the Legislature finally approved HB 447 a scant five hours before the 63rd session was gavelled to a close on the 28th day of May, the Capitol's chambers and committee rooms had been the stage for much soul-searching, courage, foolishness and villainy. But none of this would have happened had not marijuana jumped the tracks from the barrios and black neighborhoods to River Oaks, Highland Park and Alamo Heights [suburbs of Houston, Dallas and San Antonio, respectively]. The police in hot pursuit did not stop to notice that the rules were supposed to change too.
>
> [However], the state was peopled with good, solid, white middle-class parents who knew about that nice kid down the street, the Eagle Scout who made nothing but top grades in academics and deportment, whose parents were having to exhaust his college savings in lawyers' fees to defend him on a felony charge of having a marijuana cigarette in his car. Their anxieties were eventually, but duly, transmitted into law.

[20] At the time Texas passed its new marijuana law, Rhode Island was the only state in the country where first offense possession of marijuana was a felony. In late April 1974, however, the Rhode Island legislature reduced first offense possession to a misdemeanor.

The fact was not lost on the Legislature's black and chicano members, no mean connoisseurs of irony themselves.

The second reason was that in 1973, unlike 1971, most county prosecutors and district attorneys also wanted the law changed, because by then the two years to life penalty had become almost unworkable. Juries were simply refusing to convict, a clear sign to prosecutors that it was time to have a law the juries would respect and therefore be willing to implement. As the prosecutors saw it, nothing less than the integrity of the law itself was at stake, and no matter how much any individual prosecutor might dislike the circumstances that forced this situation, he had to support a reduction in penalties. An example is Robert O. Smith, the district attorney of Travis County (Austin) and president of the Texas District and County Attorneys Association. He testified before a House hearing that "Convictions of drug abusers are not, in my opinion, nearly as damaging to a person's future as is the unchecked continued abuse of drugs and I don't except marijuana from this indictment. When a person knows the legal consequences of his act and still chooses to commit the act, it is his responsibility and not the law's when he is called to account." But he supported the Briscoe bill.

This happened elsewhere, too. In Nebraska, one of the first states to change its marijuana law, prosecutors from Lincoln and Omaha were among the earliest and staunchest advocates of the misdemeanor penalty. And in New Mexico, local judges took up the cause when it appeared the outcome might be in doubt, because as judges they wanted a law they could believe in themselves.

Keeping middle-class kids out of prison and revising the law so that juries will respect it are acceptable reasons in anyone's book for changing a marijuana law. But a legislature might also decide to change the law because it felt prison or jail sentences were inappropriate for marijuana users; because it considered marijuana a relatively harmless drug from a medical point of view, particularly when compared with alcohol; because to continue criminal penalties would lead to further alienation of young people from the political and legal systems; or because marijuana use was judged to be more a matter of private morality than public morality.

Such reasons, however, would require legislatures to transcend the conventional concern of making the punishment fit the crime —that is, reducing the felony to a misdemeanor—and to consider instead the more fundamental and controversial issue of whether possession of marijuana should even be a crime in the first place. And though the Kennard Committee members and others hoped

that Texas might pass a decriminalization bill and thus, within a single legislative session, move from having the nation's harshest marijuana penalty to having the nation's softest (and from their perspective the most reasonable marijuana law in the country), Texas broke no new legislative ground. To be sure, Texas' four-ounce cutoff point for a possession misdemeanor was more generous than the cutoff point that existed in eighteen other states, though some of these states evened things out by having a shorter jail sentence than Texas. In addition, Texas' quantitative law [21] had the advantage of being less susceptible to arbitrary interpretation by prosecutors and judges than did the non-quantitative laws of twenty-three other states, though here again, some of these states—Massachusetts is the best example—were unusually lenient in enforcing the law. Moreover, the new Texas penal code did not contain any enhancement provision whereby a person arrested for a possession offense that was a misdemeanor the first time would be charged with a felony if he was arrested a second time. (Nebraska, Wyoming, Oregon, Georgia, and Massachusetts have laws similar to Texas in this respect.) Obviously it was of critical importance to anyone arrested and charged with possession of marijuana whether or not a state law was as liberal as Nebraska's (a maximum penalty of seven days in jail for possession of up to a pound) or as conservative as the laws of North Carolina and Florida (felony charges for anything above one-sixth of an ounce). But in conceptual terms these differences were only variations on a theme, because there wasn't a state in the country where marijuana was not governed by criminal sanctions.[22]

Why should decriminalization present so many difficulties for any legislature, and for the Texas legislature in particular? Partly because legislative change invariably comes a step, not a jump, at a time, and a small step at that; partly because many legislators

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[21] A quantitative law is one that establishes a specific dividing line between a possession misdemeanor and a possession felony, such as one ounce, two ounces, four ounces, eight ounces, etc.

[22] In July 1973, two months after Texas passed its new law, Oregon became the first state in the nation to pass a decriminalization law. But the law was very narrowly drawn: it limited decriminalization to possession of only an ounce or less but still imposed a maximum civil fine of $100 for that amount; possession of more than an ounce remained a felony. By comparison, possession of up to four ounces is a misdemeanor in Texas.

In the spring of 1974 a New England legislature came close to being the second state to pass a decriminalization law. A House subcommittee had voted to decriminalize marijuana entirely, but the members reportedly changed their minds after the chairman conducted a private poll, an action which suggests first that decriminalization isn't the kind of issue that leads politicians to challenge traditional sources of power, and second that the people who tend to champion the issue most strongly may be somewhat lacking in political clout.

CONTINUED

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are still convinced that marijuana use leads to more potent and dangerous drugs (the domino theory may be dead in Southeast Asia, but it's alive and well in drug legislation); but mostly because there is no *political* reason to compel a legislator to vote for decriminalization, nothing that remotely resembles those felony records and prison sentences for middle-class kids that induce legislators to reduce the possession penalty to a misdemeanor. No wonder, then, that in Texas many representatives and senators decided, as Senator Chet Brooks did when he introduced the Kennard bill in the Senate, that "the political climate is [not] ready for decriminalization," and that the wisest (or safest) course for a legislator would be to avoid the issue altogether.

As for the new drug law's non-marijuana provisions, one liberal observer felt they could be summed up in three sentences. First, the legislature raised the penalty for the only two non-narcotic drugs its members could name, "speed" and LSD. Second, the legislature established harsher penalties for non-prescription drugs (LSD) than it did for prescription drugs such as amphetamines and barbiturates. Third, instead of basing its penalty schedules on knowledge of a drug's pattern of use and capacity for causing social harm, the legislature established penalty schedules that represented nothing more scientific or sophisticated than the extent to which most members personally disapproved of the various drugs and substances.

All of which is just another way of saying that in this instance the legislative process was not one in which open debate and a full discussion of the issues prevailed, but rather one in which most legislators acted on a subjective, and usually unarticulated, judgment about the kinds of changes they felt they and their constituents could live with. This was particularly true of the liberals who, in the end, supported many of Briscoe's non-marijuana provisions. They did in fact believe that a "get tough" drug bill was the only path to marijuana reform. But the main reason they went along with the governor was because they didn't want the voters back home to think *they* were "soft" on drugs. That was still the bottom line, and the experience of the Texas legislature in working its way through two bills and five substitutes during a period of three and a half months had underscored once again how pervasive this single fact of legislative life really is.

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VIRGINIA

[From the Washington Star-News, Sept. 11, 1975]

DRUG PANEL ASKS ASSEMBLY TO EASE VIRGINIA POT PENALTIES

(By Sheila Kast)

The Northern Virginia Drug Abuse Council has called on the Virginia General Assembly to wipe out criminal penalties for possession of small amounts of marijuana, a recommendation already stirring up opposition from a number of prosecutors.

If the general assembly follows the drug council's advice, simple possession of marijuana will be treated like most traffic offenses—a fine, but no jail sentence. Currently, possession of marijuana is a misdemeanor that carries up to $1,000 fine and a year in jail.

The drug abuse council was set up by the legislature to develop policies for controlling drugs in Northern Virginia. It advises both the State Drug Abuse Council which funnels federal and state money to drug treatment programs, and the Northern Virginia Planning District Commission.

"This group obviously has a great deal of credibility in the state," said Keith Stroup, director of the National Organization for the Reform of Marijuana Laws (NORML). "I would say the legislative effort (to decriminalize) is off and running."

However, the recommendation is running into opposition from Northern Virginia's prosecutors. Commonwealth's attorneys in Loudoun and Fairfax counties and the city of Alexandria said yesterday they oppose any further liberalization of marijuana laws.

"I have seen too many 13, 14 and 15-year-olds thoroughly screwed up by it," said Fairfax Commonwealth's Atty. Robert F. Horan Jr. "I don't know why we keep playing with this hypocrisy of 'decriminalization.' I don't see how you can say, 'Legalize it for the user, but not for the seller.' "

The council's recommendation, reached last night by a 10-2 vote with two abstentions, covers only "small amounts of marijuana for personal use." Council members stressed they wanted to discourage the use of marijuana "by means other than criminal procedures."

Stroup said it probably will take several years to convince the Virginia legislature to change its law. But he said he expects the D.C. City Council to decriminalize marijuana this year and the Maryland legislature to follow suit next spring.

The council voted 10–1 with 3 abstentions to urge local police and prosecutors not to take persons caught with marijuana into custody.

Instead, the council said, police should invoke an 18-month-old state law that directs police officers to issue a summons to appear in court—similar to a summons for a traffic offense—and to release the person immediately.

Police in Arlington and Fairfax counties said yesterday they are not using that law because another statute directs them to fingerprint and photograph drug offenders for the Central Criminal Records Exchange in Richmond.

"There is a conflict in the law," explained Arlington Police Lt. Walter Shoup. "In one section of the code it says you will get fingerprints, and the other says you will release on the scene."

Virginia Atty. Gen. Andrew P. Miller has ruled that there is no conflict. In an opinion issued in May 1974, Miller said police should immediately take a person arrested for a misdemeanor to the nearest police station, book him, then decide whether to release him with a summons to appear in court later.

But John Zwerling, a Fairfax lawyer, told the drug council last night that once a person is booked, he usually ends up being required to post bond before he is released.

"You cannot measure the trauma that person has gone through," Benjamin N. A. Kendrick, an Arlington lawer, told the council. "You are shackled . . . you are placed quite frequently in what they call a drunk tank or lock-up . . . You are subjected to all kinds of mental and physical abuse, and you can start with rape."

"For our purposes," answered council member Harold W. Vorhies, "whether that occurs 100 percent or 10 percent of the time, the important thing is that it does occur."

Because police stations are open 24 hours a day, Zwerling argued, persons possessing marijuana could go at their convenience for fingerprinting. Or police could carry pressure-sensitive paper to take prints, like the prints some stores take when one cashes a check, he said.

According to a report of the drug abuse council's staff, Northern Virginia jurisdictions spend about $250,000—about one-third the budget for their drug treatment programs—to arrest, oversee and treat people charged with possession of marijuana.

Arrests for simple possession of marijuana account for two-thirds of all drug arrests in Northern Virginia, the report said. Arrests for possesison have nearly doubled in four years—from about 650 in 1971 to more than 1,200 in 1974.

Six states have decriminalized the personal use of small amounts of marijuana, and 25 states are considering such legislation. Stroup told the council.

In Montgomery County, State's Atty. Andrew L. Sonner has announced he will not prosecute marijuana smoking in the home if no one complains about it. In the District, U.S. Attorney Earl J. Silbert announced last fall that his office would not prosecute anyone caught with less than five "joints," or marijuana cigarettes, but dropped the policy after sharp criticism from the U.S. Department of Justice.

WISCONSIN

[From the Milwaukee Journal, Nov. 14, 1975]

Drug Panel Backs Easing of Pot Laws

Madison, Wis.—The State Council on Drug Abuse, on a 7 to 1 vote, recommended Thursday that civil, rather than criminal, penalties should apply to the possession of small amounts of marijuana.

The recommendation would continue to make possession or sale of the drug illegal, however.

The council vote capped a lengthy study on the question by the technical group which advises the council, the Controlled Substances Board.

The board held a series of public hearings on the question of decriminalization and at a meeting last month, made the recommendation adopted by the council Thursday. The board's vote was 4 to 2.

MARQUARDT OPPOSED

Karl Marquardt, executive secretary of the State Pharmacy Examining Board, cast the only negative vote on the council. He had been one of two members on the Controlled Substances Board that had opposed decriminalization.

The other opponent, Dr. Darrold Treffert, superintendent of the Winnebago Mental Health Institute, urged the council to turn down the recommendation. He is not a member of the council, but was invited to give the board's minority report.

Rep. George Klicka (R-Wauwatosa), a council member, also voted against the proposal. He has not been confirmed as a member of the group, however, and his vote was treated as unofficial.

WILL GO TO LEGISLATURE

The recommendation will be forwarded to the Legislature, which has several bills that would decriminalize marijuana pending.

If approved by the Legislature and Gov. Lucey, Wisconsin would join five other states which have decriminalized marijuana possession, Atty. Gen. Bronson C. La Follette said. It would follow enactment of a law in 1969 in which the crime was reduced from a felony to a misdemeanor.

Contending that "we are a drug deluged society," Treffert argued that he was "not sure we need to sanction another drug for its use and abuse."

"At some point," he added, "we'll have to get closer to each other, rather than using drugs to do that."

HIGH COSTS PREDICTED

Treffert said he doubted that disrespect for authority from the young resulted from bad marijuana legislation; it is a harmful drug and there will be high costs for the expansion of facilities to treat drug abuse, he said.

Dr. Joseph Benforado, of the University of Wisconsin and chairman of the council, said, however, that laws which did not express the public good should be changed. The law, as it now stands, he added, is "an inappropriate bludgeon that harms at a time when healing is needed."

La Follette said there was a tremendous social cost under the law now. In 1974, he noted, about 80% of all drug related arrests were for possession of marijuana, which meant that a tremendous amount of time and energy was expended by law enforcement agencies.

MORE BASIC CRIMES

The Division of Criminal Investigation in the State Justice Department, La Follette said, favors decriminalization.

"We see it as an opportunity to let law enforcement devote more resources to solve what are more basic crimes in our society," the attorney general said.

NATIONAL

[From the Terre Haute (Ind.), Tribune May 1, 1975]

A Lot Is Going to Pot

(An Editorial)

New insight into the widespread use of marihuana is found in a study issued by the Bureau of Narcotics and Dangerous Drugs. The study concludes that Americans smoke four tons of pot daily.

The sale of marihuana is big, though still clandestine, business. The author of the federal study, Dr. William McGlothlin of the University of Southern California at Los Angeles, says the annual bill for the stuff is 1.4 billion dollars. The dealers' profit is said to total 835 million.

Another point made in the report is of interest—particularly, no doubt, to those who indulge in the use of this euphoric drug. On the average, McGlothlin notes, a so-called ounce of pot sold in this country actually weighs just a bit over three-quarters of an ounce. This gives dealers a nice little bonus.

Questions as to the possibility of physical and psychological harm caused by marihuana, and as to the morality of its use, have been widely discussed over the past decade or so. From this controversy has emerged a growing but by no means overwhelming consensus that state marihuana statutes, most of them enacted before legislators had access to much hard information about the drug, are harsher than need be. The trend now is toward easing the penalties for possession of small amounts of marihuana, and there is even considerable public sentiment for legalizing possession and use of the drug and subjecting it to controls such as those applied to alcoholic beverages.

We believe that, on balance, this liberalizing trend is preferable to the harshly restrictive attitude that used to prevail. At the same time, we find it disturbing that so many young people smoke pot—either because it is the thing to do, or because they feel a need for its artifically induced euphoria. The report that Americans use four tons of marihuana a day, nearly 1,500 tons yearly, raises troubling questions.

[From the Washington Post, May 7, 1975]

Court Urges Emphasis on Violent Crime

(By Eugene L. Meyer)

The chief judge of the D. C. Superior Court said yesterday that law enforcement officials should reduce prosecution of "so-called victimless crimes" such as marihuana possession, gambling, prostitution and illegal liquor sales and concentrate instead on crimes of violence.

At a congressional hearing on criminal justice in the Washington area, Chief Judge Harold H. Greene lent his voice to what appears to be a growing sentiment in criminal justice circles. Given limited resources, some judges, prosecutors and defense lawyers have argued, prosecution of victimless crime must

be sacrificed to permit vigorous prosecution of more serious offenders such as murderers, rapists, robbers and burglars.

"It's a matter of emphasis," Greene explained later. "There are dozens of laws on the books which the police make very little effort to enforce, like adultery." Prosecutors, he suggested, could tell the police, "We prefer you concentrate on robbery cases," and drop charges for the "victimless crimes."

The result of this shift in emphasis, Greene said, would be more arrests for violent crimes and fewer for the minor ones, freeing misdemeanor judges to try the increased felony load. This can be accomplished without legislation legalizing or "decriminalizing" victimless crimes, Green said.

In recent months U.S. Attorney Earl J. Silbert ordered his assistants not to prosecute those arrested with small amounts of marihuana. Silbert's plan was supported by Greene and opposed by police officials before being overruled by Justice Department superiors.

Oregon and California have "decriminalized marihuana possession by subjecting offenders as they would parking violators; to a small fine. In D.C. Superior Court all victimless crimes" make up a third of the entire misdemeanor workload. Marihuana offenses account for one-fourth of victimless crime cases, which has led some judges to call for decriminalization of that offense here.

"The public," Greene testified yesterday at the first of 12 scheduled House District Committee hearings on the area's criminal justice system, "demands more action against robberies, rapes, murders, aggravated assaults and similar offenses, and that is where our priorities must be."

To this end, Greene said, the local courts should also be shorn of responsibility for trade offenses and most landlord and tenant disputes.

Persons charged with minor misdemeanors should be kept out of the courts entirely through special diversion programs, Greene said. However, he added, repeat major offenders, both juveniles and adults, should be imprisoned for longer periods of time.

Entering a national debate on whether such repeat offenders should be rehabilitated or kept in jail longer to protect the community, Greene asserted, "Some long-time recidivists simply cannot be rehabilitated."

Instead "of wasting funds on those whose past records show they are unlikely to be reformed," Greene said, the funds now allocated for their reformation should be spent on more effective probation supervision, work release and halfway houses for those who can be salvaged.

Testifying earlier, D.C. Court of Appeals Chief Judge Gerard D. Reilly cited police estimates that 25 per cent of each day's offenses are committed by recidivists.

Reilly critized the D.C. corrections department for "permitting unsupervised furloughs of convicted felons before even their minimum sentence expires," and for frequently assigning long-term prisoners to halfway houses "where custodial supervision is minimal" several months before they are eligible for parole.

Reilly and Montgomery County Juvenile Judge Douglas H. Moore Jr. both rejected the notion that recent crime increases can be attributed solely to the economic recession.

During the Depression, Reilly said, "unemployment became as high as 20 per cent and the economic hardship to the laid-off worker was not alleviated by unemployment compensation or welfare." Yet, he said, "crime statistics dropped and did not rise dramatically again until the affluent late 1950s and 1960s."

Judge Moore said there may be a correlation in big cities but he blamed any suburban crime increases on "a general breakdown in discipline in the homes and schools' ' and a belief by juveniles that nothing will happen to them if they get caught.

[From the Chicago Tribune, Aug. 3, 1975]

AMERICA'S GRASS SMOKERS LIGHT UP

(By Jerald terHorst)

WASHINGTON—Society, science and government are steadily becoming more tolerant of marihuana. Once regarded as the first step on the road to degradation, addiction, and crime, marihuana smoking seems likely to become as socially acceptable and as legally permissible as drinking hard liquor.

The changing attitude is perceptible almost everywhere. The first family's children have tried "grass," just as have many of their peers thruout the land. They are not now smoking it, according to Betty Ford, but the fact that she and the President can publicly acknowledge their children's experimentation speaks volumes about a new level of public tolerance.

A recent federally financed study failed to detect any serious or long-term effects of heavy marihuana smoking beyond those incurred by heavy tobacco smokers. Law enforcement officials at federal and state levels already are shifting toward the reduction or elimination of criminal penalties for marihuana use. America's cigaret makers, shrewd in the ways of business and merchandising, reportedly are preparing for the time of eventual legalization just as the liquor industry made ready for the repeal of Prohibition in 1932.

The most recent sign of the relaxed federal atmosphere toward marihuana occurred the other day with the Justice Department's choice of former Washington Police Chief Jerry V. Wilson to head the U.S. Drug Enforcement Administration. Wilson, who gained notoriety if not fame as the cop who cracked down on antiwar demonstrators during the Nixon years, favors a reduction of penalties for personal use and possession of small amounts of marihuana.

That is a vital first step toward the eventual "decriminalization" of pot smoking. In a recent column in the Washington Post, Wilson declared the "moderate sanction" against marihuana use "is perhaps the best way to retain a societal expression of disapproval for an infraction which few among us presently consider a serious crime."

Moderate sanctions are what we apply now against traffic law violators, public loiterers, and disturbers of the peace. Donald Santarelli, former head of the Law Enforcement Assistance Administration, and Dr. Robert Dupont, White House coordinator of drug abuse prevention programs, share Wilson's view. So do an increasing number of city and state officials.

Already this year, Alaska, California, Colorado and Maine have adopted laws making the possession of small quantities of Marihuana a civil offense rather than a crime. Nearly half of the state legislatures have debated decriminalization bills. Oregon began the trend in 1973, with a statute that treats the possession of less than an ounce of marihuana in almost the same fashion as traffic offenders are treated—subject to $100 fine but not to arrest.

Prompting the increased leniency and public acceptance has been a steady succession of medical studies debunking earlier notions that marihuana not only created an appetite for hard drugs like heroin but was itself a cause of mental deterioration, violence, and crime. Science is not saying that marihuana is good for you, but only that it is probably no more harmful than heavy consumption of alcohol or tobacco.

Additionally, the public's attitude has been reshaped by the hundreds of thousands of youths, at all levels of income and society, who have tried marihuana in the last two decades. Puffing a "joint" became fashionable among young Americans particularly during the 1960s as a means of defying the cultural values of their elders.

Now these teen-agers are adults, holding jobs, rearing families, voting in elections—in short, helping mold American society and setting its standards. Unlike older geenrations, today's young adults see nothing especially evil about pot smoking and resent the fact that the law generally deals more leniently with booze drinkers.

According to Wilson and other law enforcement officers, this helps explain why marihuana arrests are up—more than 421,000 last year. Most such arrests result from searches related to arrests on other charges. Nine out of 10 marihuana arrests are due to the abundance of the drug in the social community, not to any police crackdown on marihuana.

In that respect, today's marihuana scene is reminiscent of the Prohibition era of bootleg whisky, speakeasies, bathtub gin, and back yard stills. In time, the laws against marihuana will suffer the same public fate as the ban on drinking liquor.

[From the Washington Star-News, Oct. 16, 1975]

MARIJUANA SMOKED MORE, AND AT AN EARLIER AGE NOW

(By Michael Satchell)

What narcotics agents suspected, drug abuse experts feared and pot smokers knew in their hearts all along, has now been firmly established: marijuana has

joined alcohol and tobacco as widely used social drugs of choice for a large segment of the population.

Results of four major studies recently released by the National Institute on Drug Abuse (NIDA), make it clear that marijuana use is reaching new highs. The weed is being smoked by more and more youngsters, and at an earlier age. For many older teens and young adults, its use has evolved from sneaking the odd joint to the regular use of the drug.

The evidence from these and other studies seems clear and overwhelming. But on the question of whether marijuana smoking may be hazardous to one's health, the jury is still out and, say the experts, it will stay out for a couple of decades at least.

More than one in five of the nation's 14- and 15-year-olds smoked pot last year, double the number in 1972, according to the studies. Use among the 12- to 17-year-olds rose from 17 to 25 percent over the same two-year period. The studies also found that 6 percent of the nation's 3 million high schoolers smoked grass each day. And 56 percent of the 18- to 20-year-olds used the weed.

The "reefer madness" scare, begun in the 1930s and perpetuated almost single-handedly for three decades by Harry Anslinger who headed up the old Federal Bureau of Narcotics, has today become largely discarded and discredited. It dies hard, however.

Three months ago, for example, readers of a small newspaper in Southwest Virginia were treated to this account of the effects of pot, contained in a letter to the editor from Joseph Gabrys, a retired federal narcotics officer who lives in Arlington.

"They stripped themselves of all clothing and masturbated almost continuously; their habits became filthy, feces and urine being passed in the bed or on the floor. Some would sing at the top of their voice for hours. On seeing a nursing orderly or medical officer they would crawl abjectly along the floor and beg for more."

Gabrys, quoting from a 1949 medical account of Indian marijuana smokers in the British Army, added in his own words: "A stupid kid smoking even one marijuana cigarette can become so deranged that he will commit an act which borders on insanity. Marijuana in concentrated form is known as hashish . . . an Oriental word from which assassin is derived."

This approach, which five years ago would have been taken at face value by a lot of people, today is scorned by responsible drug prevention workers aware that such exaggeration simply reinforces the attitudes of skeptical young people who have heard adults cry wolf too often on the marijuana health issue.

Dr. Robert DuPont, for example, the head of NIDA and the government's top drug abuse expert, believes that "for people who use marijuana in moderate doses, in a safe setting and in a reasonable fashion, there is no evidence of harmful health consequences right now."

But DuPont adds the qualifier "right now" because he worries deeply about the long-term medical effects on the body. During the 1930s, he said, when the "evil killer" image of marijuana was being fashioned by the authorities, cigarettes were widely advertised as being a boon to good health and nicotine became a national habit.

"It took us 20 years to learn the truth about tobacco," DuPont said ruefully, "It may take us 20 or twice that to learn the truth about marijuana smoking."

The newest findings on the extent of its use in the United States startled DuPont, who confessed that "18 months ago, I was much more sanguine about marijuana. It seemed like a nonissue. I was preoccupied with heroin."

All along, he said, the common assumption had been that marijuana smoking was mainly an experimental experience, and that it would be used as a temporary alternative to alcohol or tobacco. But the newest findings show that it has joined, rather than replaced them, among America's popular recreational drugs.

As more and more evidence is accumulated on marijuana's apparent benign nature, people in DuPont's position find themselves in something of a bind when it comes to persuading the public that they shouldn't smoke grass—particularly in the face of established measures of damage from alcohol and narcotics.

The social costs of smoking and drinking have been estimated at $25 billion a year and 9 million alcoholics from one legal drug $10 billion from the other with all the attendant miseries of death, injury, disease and disrupted family life.

The pot lobby, chiefly the National Organization for the Reform of Marijuana

Laws, (NORML) points to this enormous cumulative effect on society and asks "why pick on us?"

Keith Stroup, NORML's executive director, says that the medical argument against marijuana smoking hasn't been a serious issue in the drive for marijuana decriminalization since the Drug Abuse Council and Consumer Reports labeled grass much less harmful than tobacco or alcohol.

"The medical issue is a red herring now," Stroup argues. "We have to convince legislators that the risk in smoking grass is a reasonable one. We don't say that pot is 100 percent safe, no drug is harmless. Adolescents should be discouraged from smoking it. Pregnant women shouldn't smoke it. But if you are a responsible adult, you should be allowed to make your own decision on whether grass is going to be harmful to you, and the overwhelming evidence is that it isn't."

An enormous amount of medical research has been done on marijuana and the National Institutes of Health funds about $5 million worth of clinical studies each year. It is generally agreed on both sides of the issue that the weed is not addictive, and is far less damaging to health than alcohol or tobacco. It is also a consensus of opponents and smokers that you shouldn't drive while stoned and that heavy smoking can lead to lung problems such as bronchitis.

Recent, highly publicized studies have found various risks associated with marijuana smoking—that it can cause chromosome damage in heavy users, that it causes brain damage, that it renders users more susceptible to infectious diseases, that it leads to deterioriation in bodily and mental functioning, and that it lowers the body's production of the male hormone testosterone and could produce temporary sterility.

Each of these findings was the result of clinical study by respected medical researchers, yet all but the testosterone study by Dr. Robert Kolodny have been challenged by other equally respected researchers.

NORML's battery of medical advisers have told Stroup that the Kolodny study is the only one that appears to be sound. Yet one of the latest studies of marijuana smoking to be made public—an extremely comprehensive battery of tests financed by the U.S. Army—found no evidence of lowered testosterone levels, a direct contradiction to the Kolodny findings.

Dr George Lundberg, professor of pathology at the USC Medical School in Los Angeles, is one of those who believe enough money has been spent on clinical research into marijuana's effects, and that funds should be switched to long-term studies of the drug's effect. He also finds pot relatively harmless.

Lundberg is best known for his computer check of 701,057 consecutive admissions to the L.A. County Hospital between 1961 and 1969 to look for patients hospitalized by marijuana use. He found nine.

"Five of them were people who tried to inject marijuana intravenously, and they all got sick as dogs," Lundberg said. "One person got sick at the stomach from ingesting it, The other three had smoked and were dizzy, confused and in a dreamy state. They got well quickly.

"How can you compare that to alcohol, for example. After heart disease and cancer, alcohol-related conditions are the third largest cause of death. I'm convinced that marijuana is less harmful than aspirin, or even caffeine. What we need to know now is what the cumulative effect is going to be on all the people who use pot."

The only sound clinical knowledge of long-term marijuana smoking is the so-called "Jamaica Study" commissioned by the National Institute of Mental Health and conducted on the Caribbean island between 1970 and 1972.

Most Jamaicans in rural areas smoke prodigious amounts of "ganja", an average of seven or eight joints a day of marijuana that is 10 times as strong as the average reefer smoked in the United States. The study of 30 heavy long-time smokers and an equal numbers of nonusers found no evidence that the smokers had suffered any damage except for a susceptibility to lung problems, the result of the smoking action rather than the chemical ingredients of the marijuana.

All of this is small comfort to a man like DuPont who has the unenviable task of trying to persuade a drug-oriented society that way to a better life is to ease up on the weed, whisky and nicotine.

Although DuPont has come as close as he politically can dare to endorsing marijuana decriminalization, he has hardened his position on the health risk of marijuana in the light of the latest findings that pot smoking is firmly established and spreading.

[From the Washington Post, Jan. 24, 1976]

Loosening the Laws on Marihuana

(By Richard J. Bonnie *)

A few months ago the administration's Domestic Council, in its White Paper on Drug Abuse, explicitly acknowledged that the Justice Department does not enforce the federal prohibition against possession of marihuana. Apparently believing that this was news, the press, including The Post, gave this statement front page coverage. But the nation's top drug law enforcement official had told the National Commission on Marihuana and Drug Abuse the same thing back in 1971.

In any event, the White Paper goes even further, explicitly ranking marihuana at the bottom of a scale of priorities among illicit drugs. In contrast to heroin, barbiturates and amphetamines, for example, the White Paper note that marihuana, as now used, poses little risk to the user or society.

Unfortunately, state and local police nevertheless arrest each year some half million persons, mostly between 18 and 25 years of age, for possession of small amounts of marihuana. In response, six states and many legislators in the other states are aiming to redirect local enforcement resources in accord with national priorities by withdrawing the criminal sanction from possession of marihuana. One would think that the administration would welcome such efforts.

But not only has the administration failed to endorse decriminalization at the state level; it has also failed to endorse repeal of the meaningless federal prohibition. This is no small point. The drug laws of virtually every state are modeled after the federal law. As long as marihuana possession remains a crime (up to one year in jail and-or a $5,000 fine) under federal law, many state legislators who might otherwise vote for reform will be hesitant to depart from apparent national policy.

Attorney General Edward Levi recently stated to the Chicago Tribune that the administration would continue to resist the decriminalization of the possession of marihuana for personal use on grounds of "symbolism," arguing that these reforms could cause other countries—Mexico in particular—to question the seriousness of this nation's commitment to prevent traffic in drugs. In turn, his argument goes, Mexico and other countries might be less forthcoming in our bilateral efforts to "clamp down" on the production of illicit drugs, especially heroin, and their importation into this country.

This argument is apparently the administration's last line of defense against what has become an overwhelming case for decriminalization. Evidently the federal government no longer contends—as it did when enacting marihuana prohibition in 1937—that cannabis use represents a serious threat to the public health, safety and welfare. Nor does the administration continue to espouse the escalation hypothesis so popular in the 1950s and 1960s—that marihuana use might lead to the use of drugs which do present such harm.

In 1972 and 1973, when scientific authority weighed in against exaggerated descriptions of marihuana's harmfulness, defenders of the status quo, including President Nixon, began to assert that changing the marihuana laws might have a domino effect, and over time would poison the attitudes of the American people toward the use of all psychoactive substances. Where there was certainty—all illicit drugs are bad—there now would be ambiguity. "The line against the use of dangerous drugs is now drawn on this side of marihuana," said Mr. Nixon in March 1973. "If we move the line to the other side and accept the use of this drug, how can we draw the line against other illegal drugs? Or will we slide into an acceptance of their use, as well?"

The Ford administration apparently recognizes the limitations of this symbolic argument as indeed it must in light of this nation's ambivalence toward use of alcohol—an intoxicating drug more harmful than marihuana by any criterion, and in light of the fact that some 15 million Americans use marihuana recreationally without harm to themselves or others. But now the Attorney General has concocted a new symbolic argument; he simply asserts that ameliorating a domestic law under which some five hundred thousand young Americans are arrested very year, will somehow have a deleterious effect on the

*The writer, an associate professor of law at the University of Virginia, was associate director of the National Commission on Marihuana and Drug Abuse (1971–73) and is a member of the National Advisory Council on Drug Abuse.

behavior of the governments of other nations. Mr. Levi apparently believes that Mexico and Turkey will doubt the seriousness of our efforts to curb the international traffic in illicit drugs, especially heroin, just because we refuse any longer to stigmatize our young people as criminals for possession of a joint.

I do not mean to ridicule the diplomatic aspects of domestic drug policy. But the Attorney General cannot be serious when he maintains that decriminalization can reasonably be regarded as a significant shift in our policy. The position recommended by the National Commission on Marihuana and Drug Abuse in 1972 and being so fervently sought by representatives of the organized bar, organized medicine, Consumers Union, the National Educational Association, the National Council of Churches and so on, is not that this nation adopt a policy of encouraging or approving the use of marihuana; indeed the reformers continually stipulate, as did the National Commission, that the appropriate policy is to discourage the use of marihuana. Nor do the reformers seek any modification of the essentially prohibitory approach toward the availability of marihuana, "decriminalization" does not, for example, refer to any modification of the laws against the commercial production, importation and distribution of marihuana, all of which are felonies under both state and federal law.

Changes in our domestic policy toward supply might have international repercussions; we are, after all, a signatory of the single convention on narcotic drugs. But the issue now on the public agenda—and the one to which Attorney General Levi was referring—is the wisdom of making criminals out of marihuana users, not marihuana traffickers.

The policy of criminalizing marihuana users has severely wounded the legal system, has eroded public confidence in criminal justice and has made mockery of respect for law. These laws are both unjust and inefficient. The case for decriminalization is overwhelming. And this is true for the same compelling reasons that convinced all but four of the United States not to go so far as to prohibit the possession of alcohol for personal use during the decade of alcohol prohibition.

Even if marihuana use is decriminalized, the U.S. government could continue to attempt to reduce the flow of illicit drugs into this country and to reduce trafficking in these substances within the borders of the United States; and the administration could devote to these tasks those law enforcement dollars commensurate with the priority which it attaches to supply-reduction. But it is not only ludicrous, but also disingenuous, to argue that the arrest and prosecution of an individual for possession of marihuana for his own use is an essential ingredient of this nation's anti-narcotics policy. To the contrary, the price that this nation pays by arresting five hundred thousand individuals each year for possession of marihuana for their own use is exhorbitant. To refuse to pay it any longer would not signal a retreat from current policy but would rather reinvigorate this nation's commitment to reduce the social cost of drug abuse.

Mr. Levi probably knows this. Even if we do not view the criminalization of marihuana use an an integral part of our anti-narcotics strategy, he would respond, the Mexicans do—or at least they say they do. Here we reach the bottom line. If the Mexicans really do view marihuana use and heroin trafficking as being of a piece, it is only because this nation convinced them, fallaciously, of this connection in the 1950s and early 1960s. Moreover, whether the Mexicans translate this misguided attitude into their domestic law is certainly none of our concern; is Mr. Levi really saying that we should permit the Mexicans to impose their imprudent politics on us? It does seem ironic that a criminal prohibition rooted in this nation's post-World War I prejudice against Mexican immigrants is now being perpetuated because of the Mexican government's objection to its repeal.

[From the Washington Post, Jan. 24, 1976]

DRUGS, SYMBOLISM, AND MR. LEVI

(An Editorial)

In an interview several weeks ago with the Washington bureau of the Chicago Tribune, Attorney General Edward H. Levi was asked his views on the subject of decriminalizing marihuana. He answered that he was concerned about the

possible "symbolism" of the United States' decriminalizing pot while trying in our bilateral talks with other countries to end international traffic in hard narcotics. On the facing page, Prof. Richard Bonnie of the University of Virginia Law School deals with the logic—or lack of it—of the attorney general's position. What was striking to us was the manner in which the attorney general, who should speak with great clarity on such a matter, folded marihuana and heroin into one larger issue called drug trafficking. He made no clear distinction between our society's legitimate interest in keeping heroin off our streets and the continued criminal sanction for the possession of small amounts of marihuana for personal use. To quote the attorney general directly:

"One of the problems in the frequent suggestions that you really shouldn't worry about marihuana is that—and that it ought to be decriminalized, its use and so on—is that we're asking other countries to clamp down and at the same time that we're apparently indicating that as far as we are concerned, we don't think it's so serious."

What this country thinks is "so serious," as the attorney general should well know, is the fact of increasing reports of Mexican brown heroin flooding the streets of the cities and the schools of the suburbs. The Drug Abuse Task Force of the Domestic Council said the priority should be on stopping that traffic and the country's drug abuse resources should be directed to that end. To the extent that law enforcement personnel are still diverted to the wasteful arrest of half a million young pot smokers a year, the Task Force found those resources were misdirected. That the attorney general confuses those two separate issues is disturbing. The organized bar, the associations of prosecutors in several states, the Domestic Council Task Force and the legislatures in six states have made the distinction and the earth has not crumbled. Why the attorney general can't manage to make it is beyond us.

[From the Washington Star, Feb. 11, 1976]

LATEST U.S. MARIHUANA STUDY MOSTLY GOOD NEWS FOR USERS

(By Michael Satchell)

The government's 5th annual Marihuana and Health Report to Congress may be the best news for pot smokers since Oregon became the first state to decriminalize marihuana possession two years ago.

For the first time the survey of new medical findings related to the marihuana and health issue contains no dire warnings that users of the drug face possible severe health consequences.

In fact, it reports that research conducted during 1975 had failed to support previous studies suggesting that smoking marihuana could lead to genetic damage, lower fertility rates or possible impotence.

The survey, which was released today, also reports on some promising new medical uses of the drug for cancer, asthma and glaucoma patients.

Dr. Robert L. DuPont, director of the National Institute on Drug Abuse which prepares the annual survey, stresses in the report that while the new survey "does not give marihuana a clean bill of health as some would hope, it does not support the fear and irrationality that still characterize some of the public debate about marihuana."

The government's top drug expert says continuing studies make it clear that marihuana intoxication, like getting drunk on alcohol, poses significant hazards. Just like drunks, people who are stoned on marihuana shouldn't fly airplanes, drive or operate industrial machinery, the report warns.

DuPont is known to privately favor scrapping criminal penalties for possession of small amounts of marihuana, and in the past he has ventured close to saying outright that he supports decriminalization.

What is holding him back is a fear that an endorsement of decriminalization by the government's chief drug spokesman will be misinterpreted as a message that smoking marihuana is medically safe.

DuPont has consistently stressed that the long-term effects of marihuana smoking still are not known, despite recent major studies of long-term smokers that show no damage to the users.

These federally funded studies of heavy long-time smokers in Costa Rica, Jamaica and Greece found no reductions in the ability of smokers to work,

nor any permanent or irreversible brain damage. They also cast serious doubt, according to U.S. researchers, on the theory that smoking lowers fertility. The NIDA report suggests that the numbers of persons studied in these recent surveys were not big enough to be conclusive.

The new report indicates that heavy smokers of marihuana can develop a physical dependency on the drug and a tolerance to its effects. New studies also confirmed the continually increasing use of the drug, mostly among young people. For the first time, a majority of the nation's 18- to 25-year-olds—some 53 percent—have now smoked marihuana, the report says.

"Unusual therapeutic promise" in the use of THC, the active ingredient in marihuana, was discovered in studies last year, the report continues.

A side effect of chemotherapy being given to cancer patients is extreme nausea and vomiting and standard anti-emetic drugs have been unsuccessful in preventing it. THC has been found to be effective anti-emetic for virtually all of the cancer patients receiving it in tests, the reports shows, adding that most of the patients also got "high" from the drug.

THC preparations have also been valuable in reducing internal eye pressure in glaucoma patients. And use of the drug was found to be effective in dilating pulmonary air passages and decreasing airway resistance in asthma patients. Because smoking is obviously a lung irritant, THC is being developed in aerosol form for bronchial patients.

[From the Christian Science Monitor, Feb. 12, 1976]

MARIHUANA: CONGRESS NUDGED

(By Robert P. Hey)

A new government report on marihuana use adds more fuel to a congressional drive to substitute fines for jail sentences for those caught with marihuana, several congressional sources say.

The drive is moving so slowly that it is unlikely Congress will act this year, although one or more subcommittees or full committees may recommend it.

This year's election complicates the issue—and makes congressional passage even less likely. Most political observers believe that a politician who supports milder penalties for marihuana use generally loses more votes than he gains.

The new report on marihuana use, released Wednesday (Feb. 11) by the federal National Institute of Drug Abuse (NIDA), says marihuana use continues to be concentrated in young people aged 18 to 25. The study, NIDA's, fifth annual report to Congress on the issue, adds that overall use continues to increase.

The report says that research over the past year does not support earlier evidence about possible long-term health hazards from sustained marihuana use—a concern that weighed heavily in stalling congressional attempts to decriminalize the drug.

But neither does it completely clear marihuana of health effects. Various research studies have provided contradictory evidence thus far, all sides in the debate admit.

This report does not give marihuana a clean bill of health as some would hope," wrote Dr. Robert Du Pont, director of the drug abuse institute. "Nor does it support the fear and irrationality that still characterize some of the public debate."

The effort to change the present federal marihuana laws centers on the Senate. New proposals would affect only persons with one ounce of marihuana or less in their possession. Such a small amount indicates they intend it solely for their own use, say backers of decriminalization, and do not intend to sell it.

All proposals now being considered in Congress would retain jail penalties for persons with more marihuana, who would be assumed to be dealers.

Last spring the Senate's juvenile-delinquency subcommittee held hearings on removing the jail penalties in federal law for simple possession or use of marihuana, as some states already have done.

Subcommittee chairman Birch Bayh (D) of Indiana is among those favoring such a proposal. His view is that it is a needless stigma to give a young person a lifelong criminal record by convicting him of the comparatively mild criminal offense of smoking marihuana.

Senator Bayh favors Oregon's approach replacing jail penalties for possession or use of marihuana with fines of not more than $100.

Additionally, many feel too much police and court effort is diverted to arrest and prosecution of marihuana users.

But the Senate subcommittee, faced with opposition from full committee chairman James Eastland (D) of Mississippi, never voted last year on a decriminalization bill. This year it might, sources say.

One reason is that Senator Eastland, long concerned about health and criminal aspects of marihuana, reportedly now has softened his opposition. He may now favor giving marihuana use offenders no more than 15 days in jail or a fine—at the judge's discretion; present federal law permits up to one year in jail, and a fine of $5,000.

[From the New York Times, Feb. 12, 1976]

PRICE OF MARIHUANA SOARS AS ITS USE INCREASES AMONG THE NATION'S AFFLUENT

(By Les Ledbetter)

PALO ALTO, Calif., Feb. 11—Gold closed in London at $130.75 an ounce today, And an ounce of very potent marihuana went for $150 in New York City.

Here in this materially and physically lush college town south of San Francisco four days ago, three young persons who regularly use and sell marihuana said that "top grade smoke" sells here for as high as $1,500 a pound.

"A greedy dealer carefully selling small amounts of truly superior smoke can easily get $200 an ounce from some of the richer heads [smokers] around here if supplies are tight," said one woman who describes herself as a part-time seller or dealer in the San Francisco-Palo Alto area.

Marihuana prices have skyrocketed in the 1970's until now some ounces of the drug sell for as much as $350, largely because the sociology of marihuana smoking is changing and a new affluent group of smokers who can pay higher prices has emerged.

COLLEGE HABIT CONTINUED

The great majority of regular marihuana smokers are still teen-agers and college students who pay from $15 to $60 an ounce for the drug and usually buy from friends.

But interviews in 14 cities and towns around the country showed that there were growing numbers of 30- and 40-year-old professionals in law, business, medicine, finance and communications who have carried on the marihuana habit they acquired in college and graduate school and who have developed more refined and expensive taste.

"Ten years ago, nobody with a position in the community would smoke it," a prosecutor in the Houston District Attorney's office said. "Now," he added, "the affluent younger professionals are, especially those who smoked it in college."

William West, secretary of the Marihuana Reform League, a group of about 100 southern Californians who fight for decriminalization of the drug, echoed this view that prices and demands for potency were rising because the middle-class college students who took to smoking marihuana in large numbers during the 1960's were now becoming affluent and upwardly mobile.

"The generation of marihuana users is now moving up in society," said Mr. West in Los Angeles.

This view was supported by drug law enforcement officers interviewed as well as by sellers and users.

"Marihuana and cocaine are being used by the more affluent sectors of society," said Capt. Jerry Campbell of the Los Angeles Police Department's Narcotics Division.

"It used to be that only people in the poorest areas of the city and rock musicians and actors and actresses in Hollywood used marihuana. But, now," he continued, "we have doctors, lawyers, and businessmen using it.

"There have been cases of wealthy people here paying as much as $1,000 a pound for Aonagold (a very potent strain from Hawaii)," Captain Campbell added.

The younger, less affluent smokers in American society appear to be turning to alcohol and other drugs, those who were interviewed say, or these people with less money wind up smoking low potency marihuana bought from friends or grown at home or in the college dorm.

According to those interviewed, and according to High Times, the two-year-old "magazine of high society" that lists soft drug prices by location and quality much as major newspapers quote commodity prices, the prices of marihuana have doubled, tripled and quadrupled in the last five years.

Low potency strains, called "domestic" and "commercial Mexican" were said to have risen from $7 and $10 an ounce on the average in 1970 to $15 and $20 an ounce today.

The much more potent Caribbean and South American varieties—Jamaican and Colombian Gold have risen in price from $15 or $20 an ounce five years ago to $40, $60 and even $100 an ounce in 1976.

And the most exotic and highly potent Asian-grown strains, specifically "Thai Sticks," which were as cheap as $20 an ounce at the height of the Vietnam war, now command prices ranging from $200 to $350 an ounce in the United States.

Everyone in the Times interviews agreed that inflation was a major factor in causing even the lowest grades of marihuana to double in cost from about $7 an ounce in 1970 to $15 an ounce today.

LIKE "EVERYTHING ELSE"

Lieut. Edward F. Connolly of the Boston Police Department's Drug Control Unit, said: "The dealers want higher prices simply because of inflation. They have the market and can usually get the price they want."

And in Florida, Dade County Sgt. Dan Pagella said philosophically, "Prices are going up on everything else, why not marihuana?"

And a woman in Los Angeles who says she sells only to entertainment stars, said: "Most of these people couldn't care about the price. They're not your pot-heads who smoke every minute of the day. They smoke on social occasions or for relaxation or before sex and they want the best quality possible."

EMBARRASSMENT AVOIDED

Several users who conceded they had purchased marihuana at prices of $100 an ounce and more said they were paying the higher prices because in their new positions they could not or did not want to buy from "street" dealers or sellers with apparent criminal connections.

"You like to buy from someone on the same professional and social standing as yourself," said a lawyer from Long Island, "You don't want some long-haired freak coming to your office or home and embarrassing you, so you pay a little more to the high-class dealers and that's another very expensive middle man."

"The rule of thumb," said John E. VanDiver, western regional director of the Federal Drug Enforcement Agency, "is that every time marihuana changes hands, it doubles in price."

But some long-term users expressed the belief that individual greed and conspiracies by exporters in foreign countries and importers here were a prime cause.

A 19-year-old Austin, Tex., man who said he had been selling marihuana since he was 12, said:

"Five years ago, somebody would bring up a ton of marihuana and sell it for $50 a pound. But now, they'll go down to Mexico and score 50 pounds of real good weed and come back and sit on it and wait for a really good price."

In Ann Arbor, Mich., where possession of small quantities of marihuana has been punishable only by $5 fines, payable like a traffic ticket, for several years, one seasoned smoker asserted that sellers "are sitting on Mexican [strains] to drive the prices up."

"The dealers are making a killing," he said. He explained that only the more exotic and potent brands were readily available to him and that these had come to cost more and more over the last few years.

A 21-year-old University of Texas psychology and transportation major, who said he sells about 80 ounces of marihuana a month, said: "The very fact that the price is going up at all is outrageous. There's an increase in the number of smokers, an increases in the number of acres planted and the laws are becoming less stringent. The prices should be going down, not up."

"I think there's a possible conspiracy to hold back all the dope and drive the prices up," he added. "I don't think it's all law enforcement causing the increase."

But a dealer in Ann Arbor defended the rising cost of his illegal product, saying that seizures of large shipments and crashes of smuggling planes has been "enough to interrupt service."

"We're charging people for the additional risks," he said. "The drug agencies have tightened down at the border and they are trying to get the Mexican officials to be more cooperative."

Among the new group of affluent marihuana smokers, snobbery has also played a key role in raising prices according to several dealers.

"When I sell to a Madison Avenue ad man, a Wall Street broker, a hotshot lawyer or one of the wealthy playboys in this town," said a youthful New York seller, "they don't care whether an ounce costs $50 or $500 as long as it's the best available and as good or better than what their peers have."

"The high prices even make the drug more attractive," he added.

Most smokers and sellers interviewed concluded that in addition to inflation, greed and higher risk, the craving by the new affluent class for the most potent variety of marihuana available had caused prices to rise.

[From the Washington Post, Feb. 13, 1976]

U.S. DRUG CHIEF SOFTENS MARIHUANA STANCE

Alcohol and cigarettes are far more dangerous to the health of the user than marihuana, the government's top official on drug abuse said yesterday.

Dr. Robert L. DuPont, head of the National Institute on Drug Abuse, also gave his personal view that civil penalties should be substituted for criminal prosecution of cases of possession of marihuana.

"There is no question that alcohol and tobacco are causing us far more health problems than marihuana does," he told a news conference called to discuss the government's fifth annual report to Congress on marihuana and health, released this week.

DuPont previously has avoided drawing comparisons among the three most widely used "recreational" drugs. Yesterday, however, he said that while none of the drugs is safe, marihuana lacks the "lethal effects" of either alcohol or tobacco.

Furthermore, said DuPont, young persons are more likely to take up alcohol and tobacco first, then move on to marihuana, than the other way around.

In a written statement, DuPont emphasized that the report concerns strictly the health aspects of marihuana use and does not reflect administration social policy.

He was asked what advice he had for the parents of teenagers who use marihuana.

"I would advise them not to get so terribly uptight, and talk with them about the consequences of their decisions," he said. "My advice is if they are not using (any of the three drugs), don't take it up.

"There are health risks associated with all of the drugs. If a young person does use (one of the drugs), I would encourage them to use less of it."

Heavy and steady marihuana use can cause respiratory problems like bronchitis, DuPont said, and its intoxicating effects can make driving and use of industrial equipment hazardous.

Despite these potential effects, he said, marihuana lacks the life-threatening overdose danger of alcohol and is more likely to cause health problems than cigarettes.

DuPont also said he favors doing away with jail sentences for possession of marihuana.

"Personally," he said, "my view is that we do not have to threaten young people with imprisonment to discourage use of marihuana."

The report reveals a continued increase in popularity of marihuana, especially among younger adults. Latest figures show that more than half the 27 million Americans between 18 and 25 have tried the drug at least once. This 53 percent figure compares with 48 percent in 1972.

Use of marihuana by persons under 18 is up even more sharply—from 14 percent in 1972 to 23 percent last year, the report shows.

The report is not "a clean bill of health" for pot, DuPont said, "nor does it support the fear and irrationality that still characterize some of the public debate about marihuana."

Some students of the legislative scene here thought that DuPont's "fear and irrationality" remark might have disturbed his HEW superiors in view of a consistently hard-line anti-pot stand by Sen. James O. Eastland (D-Mass.), the

senior member of the Senate and head of its Judiciary Committee, which must pass on all drug laws.

The report called for accelerated research on animals to learn more about a tumor-suppressing property that delta-9-THC (the active ingredient of pot) seems to have.

The report also acknowledged for the first time the therapeutic uses to which marihuana might be put. These include some applications well known to doctors for years, such as the drug's ability to reduce excessive pressure within the eyeball that make glaucoma a leading cause of blindness.

At present, marihuana cannot be used for medical purposes because the federal Controlled Substance Act lists it in "Catch-22" fashion as a substance for which there is no accepted medical use.

[From the Washington Star, Mar. 18, 1976]

THE STRAIGHT DOPE ON MARIHUANA

(By Judy Flander)

Is marihuana addictive? Is grass an aphrodisiac? Does smoking pot lead to the use of hard drugs? Is a driver under the influence of marihuana a menace on tre road? The answers to these (in order: no, no, no, yes) and nine other commonly-asked questions about marihuana are the nucleus of a television documentary tonight, "Grass Facts: A Primer on Marihuana" (WTOP-9 at 10 a.m.).

The initial part of the program, which clamly deals with some myths about marihuana, last an hour. Then, after a half-hour of regularly-scheduled news, it resumes as an open-ended audience-participation show. In addition to members of the studio audience who participate in a discussion with a panel of experts in the fields of education, drug abuse and legal and criminal justice, viewers can call in with questions and comments. Producer/director Marion Whigham says the program will run as long as viewers call in, even if the phones ring half the night.

If you want to try your hand with the 13 questions dealt with by the experts during the first hour of the show, you'll find them in an ad on the bottom of this page. Mark your answers and see how they stack up not only with those given by the experts but with those of the 863 Washington area residents who answered them as part of a pre-broadcast survey, given by the Bureau of Social Science Research. On an average, respondents answered only 6 of the 13 questions correctly.

The purpose of the questions, of course, is to give some insight into the general confusion and lack of information about marihuana. It is a confusion, as a Fairfax policeman points out, that makes it almost impossible for young people to make appropriate decisions about the use of the drug.

"Grass Facts" is skillfully done, low-key and unpreachy. In fact, there is no attempt to influence opinion other than to present the current scientific findings. The questions are answered by Dr. Thomas E. Bryant, president of the Drug Abuse Council, coproducers with WTOP of "Grass Facts," and others.

WTOP anchorman Max Robinson asks the questions, each of which are preceded by comments from people in the community: a computer expert, a Metro construction worker, a retired elderly educator, parents. Rep. Walter Fauntroy asks if the "nation is developing into a full-blown drug culture." A longhaired Georgetown street vendor who drives an ice cream truck in the suburbs in the summer tells of being hassled by police because parents erroneously assume he's pushing pot as well as popcicles.

Arlington school board president Anne Broder talks about the importance of young people, especially, needing to know "the realities of drug abuse"; an elderly couple express relief that they raised their children before marihuana use became widespread. The construction worker expresses the pragmatic belief that the schools should teach the real facts of life (he is referring to the reality of drug abuse).

There is some indication that the problem of marihuana is not one many people want to face. A WTOP spokesperson notes that "Grass Facts" is the rare documentary for which the station was unable to get even one sponsor. Yet the program is one that should be watched and probably will be watched.

[From the Philadelphia Bulletin, Aug. 12, 1976]

FINES FAVORED FOR POT SMOKERS

(By Robert W. Kotzbauer)

The chief of federal drug abuse treatment, research and prevention efforts says he favors levying fines against marihuana smokers rather than putting them in jail.

But Dr. Robert L. DuPont Jr., director of the National Institute of Drug Abuse (NIDA), says he disapproves of the term "decriminalization" used by most advocates of marihuana law reform to describe such a policy.

"That sounds too similar to legalization, and this I oppose," Dr. DuPont said at a press conference in Philadelphia yesterday.

"I support a policy of discouraging marihuana use by making it harder to get, by putting traffickers in jail," he said, adding that in fact there is now no federal prosecution of users or possessors of small amounts of marihuana.

Dr. DuPont, in Philadelphia to meet with local drug treatment and prevention officials, praised programs and services in the city as the most sophisticated and comprehensive in the Nation.

"Unquestionably, Philadelphia is a national leader in drug abuse treatment," he said, admitting that this is a subjective judgment based on number and quality of programs and not results.

There is no certain way to measure success, he said.

Illicit drug use is increasing again, according to Dr. DuPont, after a downward trend in 1972 and 1973.

He estimated that there are 400,000 daily users of heroin in the U.S. A survey of high school seniors across the nation last year, he said, found that 48 percent had used marihuana, 12 percent LSD, 9 percent cocaine and 2 percent heroin at least once.

John E. Riggan, executive director of Philadelphia's Coordinating Office for Drug and Alcohol Abuse Programs, estimated that there are 15,000 daily heroin users in the city, about one-third of whom are in treatment.

Riggan said there are 30,000 other serious drug abusers in the city, plus an estimated 160,000 problem drinkers and alcoholics.

While science has discovered no "miracle cure" for narcotic addiction, said Dr. DuPont, the encouraging trend during the last decade has been the huge expansion of treatment facilities. He said there are 241,000 persons in 3,800 drug treatment clinics across the United States.

[From the New York News, Sept. 5, 1976]

POTHEADS PUFFING FANCY GRASS

(By Dick Brass)

Every day, if official estimates are correct, America imports a staggering 20 tons of pot. It streams into every port and city by freighter, by cargo plane and on tractor-trailer trucks.

The habit of smoking pot has saturated every level of society and seems to be growing all the time. What began as a footnote to the 1960's youth culture is now a $6 billion industry. And with pot possession "decriminalized" in eight states already, grass may become as legal as, well, grass.

Consider these statistics:

The National Institute on Drug Abuse estimates there are 13 million regular pot smokers in the U.S., or about 8 percent to 9 percent of the adult population. In addition, 34 million or 19 percent of all adults have tried it.

Reflecting an increased demand and supply, pot seizures have almost doubled in the past year alone, according to the federal Drug Enforcement Administration. During the first half of 1976, 761,000 pounds of pot were seized by federal authorities in the U.S., up from 400,000 pounds for the same period last year. By contrast, less than 300,000 pounds were seized during the entire decade between 1960 and 1969.

Government agents, dope dealers and Senate investigators estimate that these seizures represent no more than 10 to 15 percent of the total imported.

Using the more conservative 10 percent figure, this means Americans will import a whopping 15.2 million pounds this year. Drug dealers and smokers figure the average nationwide price at $25 to $30 an ounce (the New York price runs $35 to $45), and at that rate Americans are spending $6 billion a year on pot. By comparison, they spend less than $3 billion on phonograph records..

Even the rolling paper and pot paraphernalia people are doing a booming business. Adams Apple Distributing Co., a Chicago-based rolling paper firm, figures it sold $6 million worth last year and expects sales of $10 million this year—most of it to pot smokers. High Times, a magazine aimed at marihuana users, is now more than two years old and boasts a circulation of 410,000. And there are two new magazines in the field: Head and Rush.

The Big Apple constitutes one of the world's largest marihuana markets where pot sells openly in some city parks. And tons of the stuff roll north weekly in what amounts to a massive, clandestine convoy.

"If it got to New York, the chances are that it came through New Jersey," complains Capt. W. J. Kennedy of the New Jersey State Police Narcotics Division. "They bring it through on all kinds of vehicles, trucks, rented trucks, vans, U-Hauls."

But even these vast quantities are apparently not enough to satisfy the burgeoning demand. For it so happens that this summer there has been a marihuana drought on the East Coast.

"It's probably the worst in the last 10 years," says Keith Stroup, a regular smoker and head of the pro-pot National Organization for the Reform of Marihuana Laws. "As marihuana's popularity increases, it gets worse. The supply is just not increasing with the demand."

Which is not to say that marihuana is unavailable. "Like the oil shortage, you can still get it—it just costs more," grumbled one law student in Brooklyn. Garden variety Mexican pot, for example, which cost him $25 to $35 an ounce last year now costs $50. And prices approaching $300 an ounce for potent, exotic types are not unusual, buyers complain.

In fact, with the general rise in pot popularity there has developed a whole class of gourmet smokers who buy only the best. "Like wine tasters, they can tell you the country, the field—even what side of the field a particular pot comes from," marvels Tim, a well-heeled dope dealer here who favors the best himself.

These exotic varieties from Asia and Africa enter the country in far smaller quantities than the grass grown in Mexico and on the Caribbean islands. Predictably, it costs much more; up to $300 an ounce for a single ounce of Congolese Black pot. Gold, the metal, is cheap by comparison.

What makes this expensive pot so popular is its potency. Much of the grass generally available a decade ago could be smoked all day with little more than dizziness. A single puff of some of today's more powerful varieties is enough to get the average smoker stoned.

Hard to believe? The active chemical agent in pot is something called THC (for delta-9-tetrahydrocannabinol). According to evidence presented last year by the Senate Internal Security Subcommittee, the pot puffed in 1965 averaged one-fifth of 1 percent THC. By 1970, Mexican dope averaging 1 percent to 1.5 percent THC was common. Now, foreign strains topping 5 percent are not unusual. One batch seized by federal agents reached 8.9 percent and that's strong.

But despite this jump in strength, more and more scientists seem to be giving pot a relatively clean bill of health— and a few even regard it as healthy.

Among it's salutary effects, researchers claim, pot can limit nausea, reduce anxiety among cancer patients and aid asthmatics as a bronchodilator in the form of THC. It can also apparently reduce internal eye pressure among glaucoma victims—and one glaucoma patient is suing the government for permission to use the stuff regularly.

To be sure, various studies have blasted marihuana for disrupting cell function, causing hormone problems, reducing disease-fighting response, dropping sperm counts and even swelling male breasts.

But a Department of Health, Education and Welfare report to Congress on marihuana this year points out that these claims have been neither proved nor disproved.

HEADED FOR LEGALIZATION

However dangerous or beneficial marihuana may be, it seems headed for eventual legalization. Since 1973, eight states have decriminalized pot posses-

sion—which means that users there are subject to a small fine rather than a jail term. These states include Maine, Colorado, California, Ohio, South Dakota, Minnesota, Oregon and Alaska. In Alaska, in fact, the state Supreme Court ruled that private possession in one's home is a constitutionally guaranteed right.

In New York, Gov. Carey this year proposed eliminating jail terms and substituting a maximum fine of $250 for people caught using or transfering without profit up to two ounces of pot. But this being an election year, political observers said that legislators were somewhat wary, so the proposal died in both houses of the Legislature.

According to Carey, "the costs of enforcing the marihuana law, both in financial and human terms, are staggering and diverts scarce law enforcement resources away from the pursuit of the real menaces to society: the violent criminals and the pushers of hard drugs." A News poll in February showed 52 percent of New Yorkers favored Carey's plan—37 percent didn't and 11 percent didn't know.

STILL RISK ARREST

"There will still be a dirty dozen states that will be slow to change," says pot lobbyist Stroup who—with funding from Playboy and High Times magazine—has fought hard for decriminalization as a first step toward legalization.

By 1978, the 32-year-old attorney predicts, half the states and the federal government will have decriminalized. Jimmy Carter, for the record, favors decriminalization. Ford opposes it.

Meanwhile, pot smokers still risk arrest and imprisonment in most states. According to FBI figures, 416,100 people were arrested for marihuana possession and sale in 1975. But for the first time in many years this figure dropped from the previous year, when arrests totalled 445,600. Stroup figures this trend will continue.

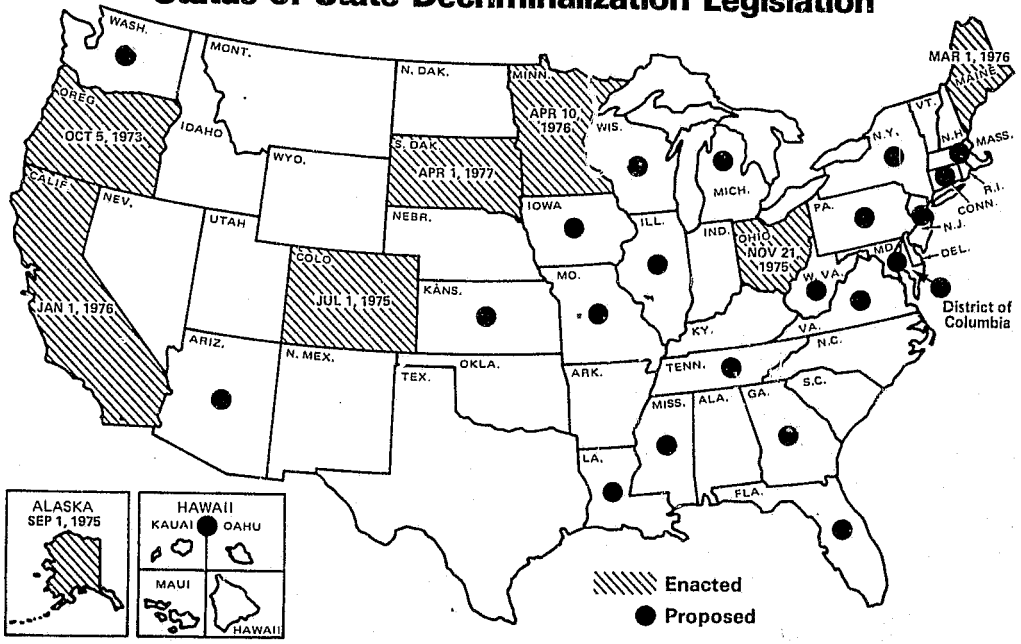
Locally, the tolerance and attitude is quite clear: In Manhattan, for example, District Attorney Robert Morgenthau rarely prosecutes pot charges. And last month, in what amounts to a policy change, Nassau County police decided to stop mass pot searches during rock concerts at the Nassau Coliseum.

Outright legalization is of course further away—years away, even Stroup concedes. And first the U.S. must resign as a signatory to a 1961 international drug agreement outlawing pot.

Even so, the die-hard opponents of marihuana decriminalization are complaining. David Martin, who heads the anti-pot effort of Mississippi Senator James Eastland's Internal Security Subcommittee, worries Americans are ignoring the dangers of the weed.

"I don't know why," he grumbles, "but the press consistently downplays the seriousness of the problem."

Possession of Marihuana: Status of State Decriminalization* Legislation



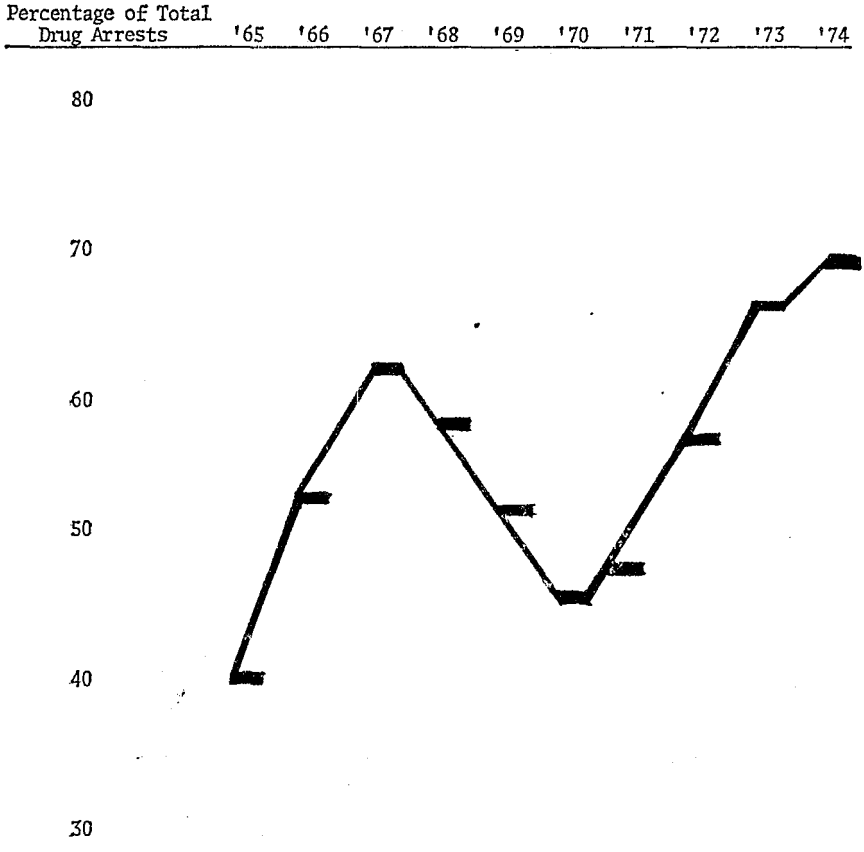
*"Decriminalization" is used to apply to all statutes or proposals providing that a person charged with a simple possession of a small amount of marihuana is not subject to arrest or imprisonment, nor left with a permanent criminal record, even though the offense may continue to be classified as "criminal" rather than "civil."

Source of information on pending legislation: National Organization for the Reform of Marihuana Laws. (NORML). All bills introduced during the current or most recent session of the State Legislature are indicated, even though receiving unfavorable action.

1927

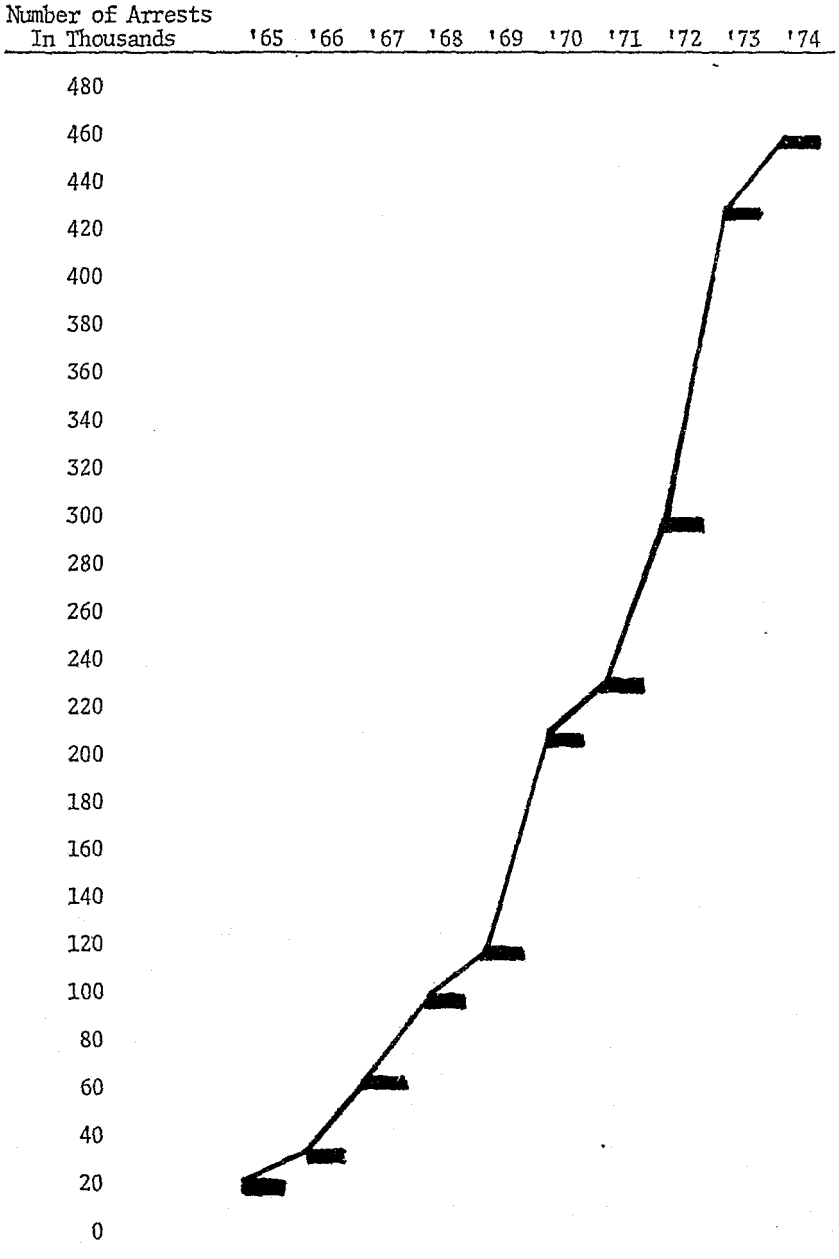
MARIJUANA ARRESTS: 1965-1974

Source: FBI, Uniform Crime Reports

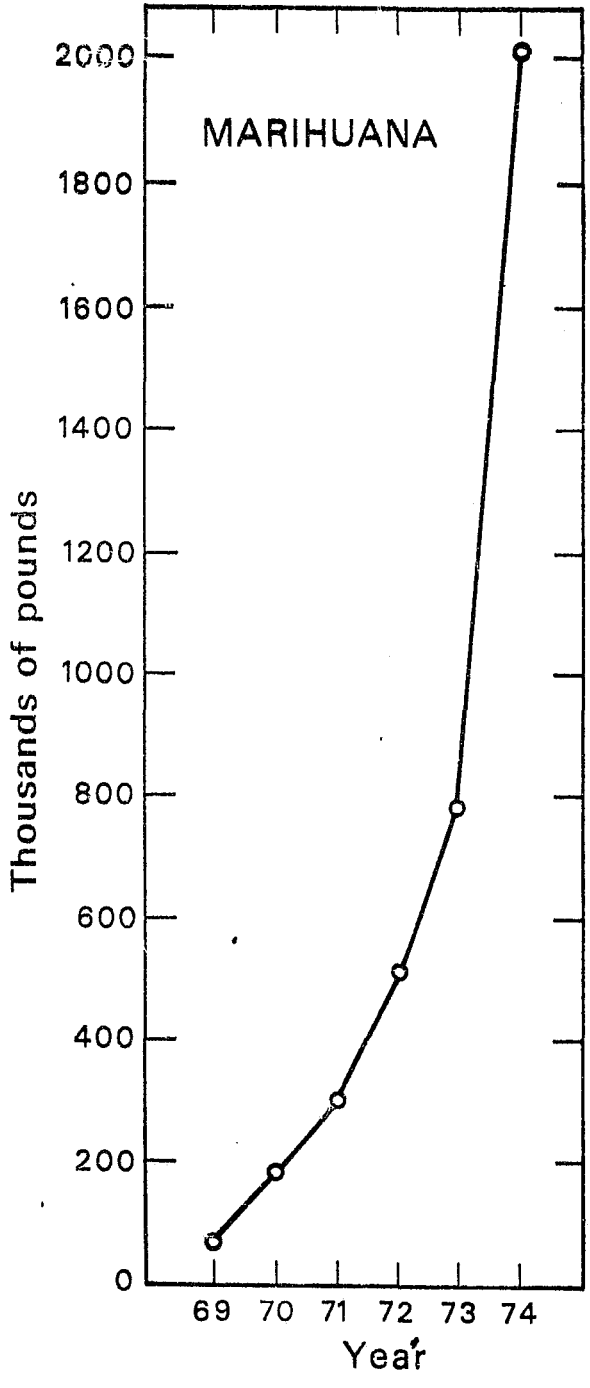


TOTAL MARIJUANA ARRESTS: 1965-1974

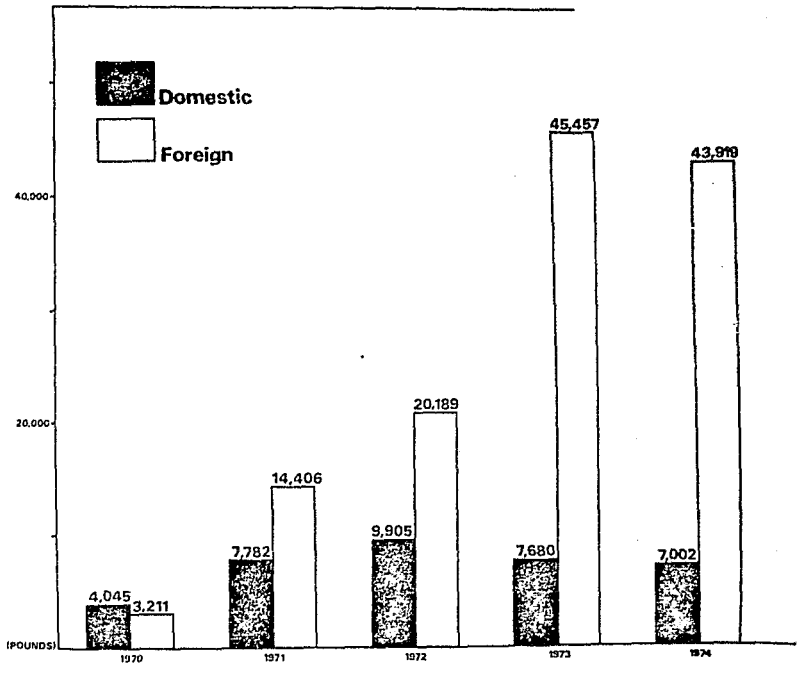
Source: FBI, Uniform Crime Reports



REMOVALS OF MARIHUANA BY FEDERAL AUTHORITIES, 1969–74
(Domestic and Foreign Cooperative)



HASHISH REMOVALS
by Federal Agents



FEBRUARY 28, 1974.

THE HARRIS SURVEY—ALCOHOL BELIEVED MORE HARMFUL THAN MARIHUANA

Alcohol is rated "more dangerous for people to take" than marihuana by a 31–29 percent margin of the American people, while a full 30 percent see them as "equally dangerous." Thus, nearly two out of three seem to accept one of the principal arguments of those who say we have a double standard in dealing with these stimulants.

A majority (53–24 percent) say they "can see the time when marihuana will be used as much as alcoholic beverages in this country." Nonetheless, a more sizable majority opposes legalizing the sale of marihuana (70–23 percent) and also rejects legalizing the use of the drug (65–25 percent).

Adoption nationally of a new Oregon law which levies a small fine and no jail term on anyone caught with a small amount of marihuana in his possession is also opposed but by a much smaller margin, 49–36 percent.

Although attitudes toward marihuana have softened some over the past few years, most adult Americans by and large still take a rather firm line against its sale and use. Easily the strongest current for legalizing marihuana is the widespread conviction that alcoholic beverages, now legal in most parts of the country, are even more dangerous.

In late January, the Harris Survey asked a nationwide cross section of 1,594 households:

"Do you think marihuana or alcohol is more dangerous for people in this country to take?"

Alcohol or marihuana more dangerous?

	Total public (percent)
Alcohol more dangerous	31
Marihuana more dangerous	29
Both equally dangerous	30
Not sure	10

Alcoholic beverages are seen as just as dangerous and possibl yeven more dangerous than marihuana. In addition, a majority answered in the affirmative when asked:

"Can you see the time when marihuana will be used as much as alcoholic beverages in this country, or can't you see this happening?"

Will marihuana be used as much as alcohol?

	Total public (percent)
Can see	53
Can't see	34
Not sure	13

A plurality is also convinced that when the present younger generation grows older it will not give up the use of marihuana:

"When the present younger generation gets older, do you think they will continue to use marihuana, or do you think it is something young people will grow out of?"

Will young people use marihuana when they grow older?

	Total public (percent)
Will continue to use marihuana	44
Will grow out of it	38
Not sure	18

Despite the expectation that marihuana is here to stay, a solid majority still stands steadfastly opposed to legalizing either the sale or use of pot. The press section was asked:

"Do you think the (sale/use) of marihuana should be legalized or not?"

SHOULD SALE OR USE OF MARIHUANA BE LEGALIZED?

[In percent]

	Sale of marihuana	Use of marihuana
Favor	23	25
Oppose	70	69
Not sure	7	6

The number who oppose legalizing the sale of marihuana has declined from 79 to 70 percent of the public since 1972, but is still a decisive majority. The division on adopting Oregon's milder penalties for possession of marihuana is much closer, however:

"In Oregon, while it is still illegal to possess marihuana, the penalty for anyone having a small amount of marihuana in his possession is a small fine and no jail term. Would you favor or oppose adopting the Oregon marihuana law nationally?"

ADOPTING OREGON MARIHUANA LAW NATIONALLY

[In percent]

	Favor	Oppose	Not sure
Nationwide	36	49	15
By age:			
18 to 29	48	43	9
30 to 49	35	51	14
50 and over	27	53	20
By education:			
8th grade or less	19	50	31
High school	33	54	13
College	49	42	9

The division is sharp between young people under 30 who would favor such a law, by 48–43 percent, and those 50 and over who would oppose it, by a decisive 53–27 percent. The difference by education is equally wide: those with the fewest years of education oppose the Oregon law by 50–19 percent, but those with a college education favor it by 49–42 percent.

Equally sharp splits exist by size of place, with residents of big cities and the suburbs favoring the adoption of the Oregon law, but with small-town and rural residents opposing it.

Substantial shifts of public opinion will have to take place before legalized use of marihuana or milder penalties for using it will reflect the prevailing climate in the country. But there are visible signs that the public has resigned itself to the fact, legal or not, that the marihuana has joined alcohol as a more or less permanent part of life in America.

JANUARY 24, 1975.

PUBLIC OPINION POLLS CONCERNING MARIHUANA

(By Keith Stroup)

I have compiled a listing of the major public opinion polls concerning marihuana from our files. Please advise if there is other useful survey data of which you are aware.

I. PUBLIC OPINION CONCERNING THE SPECIFIC OREGON CIVIL-FINE TYPE OF DECRIMINALIZATION

1. Lou Harris, January 1974, national sample showed:
   35 percent support civil-fine approach.
   49 percent opposed.
   15 percent undecided.
2. Drug Abuse Council Survey, October 1974, national sample showed:
   39 percent support a civil-fine approach, or a more liberal one.

40 percent favor stiffer penalties.
13 percent want the laws to remain as they are.
8 percent are undecided.

3. D.A.C. Survey, October 1974, Oregon state sample only, showed:
58 percent support a civil-fine approach, or a more than liberal one.
39 percent stiffer penalties.

II. PUBLIC OPINION CONCERNING DECRIMINALIZING THE USER

1. George Gallup, national samples, (asked "Should the Use of Marihuana be Legalized?"):
October 1969—12 percent favor decriminalization; 84 opposed; and 4 percent undecided.
January 1972—15 percent favor decrimination; 81 percent opposed; and 4 percent undecided.
January 1973—16 percent favor decriminalization; 78 percent opposed; and
6 percent undecided.

2. George Gallup, college sample, Fall of 1970; 50 percent favor decriminalization, 44 percent oppose, 6 percent uncertain.

3. CBS News, national, telephone sample, August 1970:
12 percent favor decriminalization.
86 percent opposed.
2 percent undecided.

4. Lou Harris, January 1974, national sample:
25 favor decriminalization.
69 oppose.
6 percent undecided.

III. PUBLIC OPINION CONCERNING LEGALIZING SALE OF MARIHUANA

1. Lou Harris, January 1974, national sample:
23 percent favor.
70 percent opposed.
7 undecided.

2. Field Poll, California sample:
May 1969—13 percent favor; 84 percent opposed; and 3 percent undecided.
November 1973—32 percent favor; 66 percent opposed; and 2 percent undecided.

3. D.A.C. Survey, October 1974.
Natinal sample—16 percent favor, 76 percent opposed and 6 percent undecided.
Oregon sample—11 percent favor; 86 percent opposed; and 3 undecided.

4. Daniel Yankelovich (for the New York Times), New York City sample:
January 1974—34 percent favor; 57 percent opposed; and 9 percent undecided.

IV. RATES OF EXPERIMENTATION WITH AND USE OF MARIHUANA

1. D.A.R. Survey, October 1974:
National—18 percent have experimented; 8 percent are current users.
Oregon—19 percent have experimented; 9 percent are current users.

2. Marihuana Commission Surveys, national sample:
1971—14 percent have experimented; 5 percent are current users.
1972—16 percent have experimented; 8 percent are current users.

3. Marihuana Commission Surveys, college sample: 1972—66.9 percent have experimented.

4. George Gallup Surveys, national sample:
January 1973—12 percent have experimented.
January 1972—11 percent have experimented.
October 1969—4 percent have experimented.

5. George Gallup, college samples:
Spring 1974—55 percent have experimented.
Fall 1974—51 percent have experimented
Fall 1970—42 percent have expermented
Spring 1969—22 percent have experimented.
Spring 1967—5 percent have experimented.
Spring 1967—5 percent have experience.

6. CBS News, national sample: August 1970—6 percent have experimented.

[From the Congressional Record, Oct. 8, 1975]

On Decriminalizing Personal Use of Marihuana

Mr. Koch. Mr. Speaker. I would like to draw to the attention of my colleagues several events in the news which should bring Members, both Republican and Democrat, to the conclusion that it is time to ease the criminal penalties for the possession of small amounts of marihuana. First, a natioonwide survey commissioned by the National Institute of Drug Abuse, Department of Health, Education, and Welfare, has found that one in five Americans has used marihuana. That percentage may increase: A majority of Americans between the ages of 18 and 25 have sampled marihuana. Furthermore, substantially more Americans view both alcohol and tobacco as addictive while a lesser percentage views marihuana as addictive. But let me cite the most significant statistics: 52 percent of Americans now favor only a fine and/or a probation for possession of marihuana: 86 percent oppose the imposition of any jail penalty for this offense.

The Domestic Council appears to be following this lead. At the direction of the President, the Council's Drug Review Task Force undertook a priority review of the Federal effort in drug abuse prevention and found that since the "widespread recreational use" of marihuana has a "relatively low social cost," the Government has "deemphasized simple possession and use of marihuana in its law enforcement efforts." Furthermore, in ranking various drugs according to their potential for harm both to society and the individual, marihuana was found to be the least serious. While the Council did not make any recommendations, it did suggest that "Federal efforts in both supply and demand reduction should be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines, and mixed barbiturates—and toward the compulsive users of drugs of any kind," including alcohol.

If these reports have not persuaded the President to give support to the easing of the penalties for marihuana possession, then I would suspect that President Ford will listen to his son, Jack. My regard for Jack Ford, who I do not know, has increased because of this courage to speak so honestly about his use of marihuana. Do any of the Members here really believe that Jack Ford and millions of our young people like him should be liable to a jail term for personal marihuana use. Should they be considered criminals?

Do the Members of the House not agree that it is time to stop wasting our law enforcement resources on the prosecution and imprisonment of marihuana users. Let me put that waste in terms of dollars and cents. There are at least 13 million who smoke marihuana on a regular basis. If in one fell swoop we were to place those regular users in jail for 1 year, the cost to the American public at more than $6,000 per person per year, would be over $79 billion. Does anyone suggest that this is practicable? Yet equal application of the law would demand such action.

Should we not remove the threat of imprisonment from millions of Americans? I have introduced two pieces of legislation to correct this situation: H.R. 561 would decriminalize the possession of small amounts of marihuana—1 ounce, H.R. 6108 would impose civil fines for the possession of 1 ounce or less of marihuana. Twenty four Members are now cosponsoring either or both of these bills. This legislation would of course only affect Federal jurisdictions. But I believe that this action would be a catalyst for State action.

Six States have already adopted liberalized marihuana laws, the legislatures of most States are considering decriminalization legislation, and Senator Birch Bayh's Senate Subcommittee on Juvenile Delinquency has held hearings on a possible civil fine approach to reform of marihuana legislation.

The District of Columbia City Council has given preliminary approval of a bill similar to the civil fine approach that I have adopted in H.R. 6108. It is time to move on this issue. All events point in that direction. If you would like to cosponsor this legislation, I shall be reintroducing it on Thursday, October 23.

I am appending parts of the two reports which I have cited for the information of my colleagues:

A comprehensive nationwide survey commissioned by the National Institute on Drug Abuse, U.S. Department of Health, Education, and Welfare, recently sampled public beliefs, attitudes and behavior with regard to a wide range of legal and illegal drugs.

The data was gathered by Response Analysis Corporation of Princeton, New Jersey, from personal face-to-face interviews (3,071 adults, 952 youths) between November, 1974 and March, 1975. This data complements similar surveys by Response Analysis undertaken for the National Commission on Marihuana and Drug Abuse in 1971 and 1972.

I have included a brief summary of the survey results concerning marihuana.

TABLE I.—MARIHUANA AND HASHISH EXPERIENCE

[In percent]

	Adults			Juveniles (12 to 17)		
	1971	1972	1974	1971	1972	1974
Ever used marihuana	15	16	19	14	14	23
Current user [1]	5	8	7	6	7	1
Began smoking marihuana within last year [2]	(2)	(2)	2	(2)	(2)	9
Ever used hashish	(2)	(2)	9	(2)	(2)	10
Current user	(2)	(2)	2	(2)	(2)	3
Began smoking hash within last year	(2)	(2)	1	1	(2)	5

[1] Not included in 1971 and 1972 surveys.
[2] Current user defined as "having used within past month."

TABLE II.—MARIHUANA EXPERIENCE AMONG PARTICULAR SUBGROUPS

[In percent]

	Have ever used	Current users		Have ever used	Current users
Age (adults):			Region (adults):		
18 to 25	53	25	Northeast	22	7
26 to 34	29	8	North-central	17	7
35 to 49	7	1	South	13	4
50 plus	2		West	29	11
Age (youth):			Region (youth):		
12 to 13	6	2	North	26	14
14 to 15	22	12	North-central	21	11
16 to 17	29	20	South	17	6
Sex (adults):			West	30	19
Male	24	9	Population density (adult):		
Female	14	5	Large metropolitan	25	9
Sex (youth):			Other metropolitan	19	8
Male	24	12	Nonmetropolitan	11	3
Female	21	11	Population density (youth):		
Education (adults):			Large metropolitan	27	14
Below high school graduate	9	3	Other metropolitan	22	11
High school graduate	20	7	Nonmetropolitan	18	10
Currently in college	61	33			
Some college completed	27	10			

TABLE III.—SUBSTANCES REGARDED AS DRUGS

[In percent]

	1972	1974
Adults:		
Alcohol	39	48
Tobacco	27	32
Marihuana	80	82
Youth:		
Alcohol	34	40
Tobacco	16	21
Marihuana	80	81

TABLE IV.—SUBSTANCES REGARDED AS ADDICTIVE

[In percent]

	1971	1972	1974
Adults:			
Alcohol	74	75	78
Tobacco	70	67	72
Marihuana	65	59	68
Youth:			
Alcohol	69	71	78
Tobacco	58	58	62
Marihuana	48	50	54

TABLE V.—AGREEMENT WITH STATEMENTS ABOUT MARIHUANA

[In percent]

	Adults		Youth	
	1972	1974	1972	1974
1. You can try marihuana once or twice with no bad effects	44	46	42	49
2. You can use marihuana without ever becoming addicted to it	26	24	31	33
3. Marihuana makes people want to try stronger things like heroin	68	62	65	59

TABLE VI.—PREFERRED HANDLING OF MARIHUANA OFFENSES

[In percent]

Adults	Possession	Sale
No penalty	16	7
A fine only	15	15
Probation	21	10
Require treatment	34	1
Up to 1 year in jail	6	27
More than 1 year in jail	4	36
No opinion	4	4

Note: A total of 52 percent now favor only a fine and/or probation, and 86 percent oppose the imposition of any jail penalty.

TABLE VII.—TOBACCO AND ALCOHOL USAGE RATES

[In percent]

	1971	1972	1974
Adults:			
Current smoker	39	38	41
Do not smoke	55	59	58
Youth:			
Current smoker	15	17	25
Do not smoke	80	82	74
Adults:			
Current drinker	(1)	(1)	58
Drank in past, but not within month	(1)	(1)	18
Always a nondrinker	(1)	(1)	24
Youth:			
Current drinker	(1)	(1)	34
Drank in past, but not within month	(1)	(1)	20
Always a nondrinker	(1)	(1)	44

[1] Not included in 1971 and 1972 surveys.

WHITE PAPER FOR THE PRESIDENT: DRUG ABUSE

EXCERPTS FROM THE REPORT: MARIHUANA*

Marihuana is the most widely used illicit drug, with an estimated 20 percent of Americans above the age of 11—25 to 30 million people—having used it at least once. In short, marihuana has joined alcohol and tobacco as one of the most widely used drugs in the United States.

SUMMARY: DRUG PRIORITIES

Chart 12 ranks the various drugs according to the following criteria (1) likelihood that a use will become physically or psychologically dependent; severity of adverse consequences, both (2) to the individual and (3) to society; and (4) size of the core problem.

SUMMARY OF DRUG PRIORITIES

		Severity of consequences		
	Dependence liability	Personal	Social	Size of core problem
Heroin	High	High	High	High, 400,000.
Amphetamines:				
Needle	High	High	High	High,
Oral	Low	Medium	Medium	500,000.
Barbiturates:				
Mixed	High	High	High	Medium,
Alone	Medium	High	Medium	300,000.
Cocaine	Low	Low	Medium	Low
Marihuana	Low	Low	Low	Low.
Hallucinogens	Medium	Medium	Medium	Low.
Inhalents	Medium	High	Medium	Low.

Though the data are flawed and the rankings therefore imprecise, a clear pattern emerges.

Heroin ranks high in all four categories;

Amphetamines, particularly those injected intravenously, also rank high in all four categories;

Mixed barbiturates rank high three out of four categories;

Cocaine, hallucinogens, and inhalants rank somewhat lower; and

Marihuana is the least serious.

On the basis of this analysis, the task force recommends that priority in Federal efforts in both supply and demand reduction be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines (particularly when used intravenously), and mixed barbiturates—and toward compulsive users of drugs of any kind.

This ranking does not mean that *all* efforts should be devoted to the high priority drugs, and none to the others. Drug use is much too complicated and our knowledge too imprecise for that. Some attention must continue to be given to all drugs both to keep them from exploding into major problems and because there are individuals suffering severe medical problems from even a low priority drug, such as marihuana.

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*A great deal of controversy exists about marihuana policy. On the one hand, recent research indicates that marihuana is far from harmless, and that chronic use can produce adverse psychological and physiological effects. Therefore, its use should be strongly discouraged as a matter of national policy.

However, in light of the widespread recreational use—and the relatively low social cost associated with this type of use—the Federal Government has been deemphasizing simple possession and use of marihuana in its law enforcement efforts for several years. For example, very few persons are arrested by Federal agents for simple possession and use; those who are charged with this offense normally are also being charged with some other, more serious offense as well. However, vigorous law enforcement aimed at major traffickers has been and should continue to be undertaken at the Federal level.

The task force endorses this moderate view and expects the lower priority that has been established for marihuana will also be reflected in our demand reduction efforts by the elimination of many non-compulsive marihuana users now in our treatment system.

However, when resource constraints force a choice, the choice should be made in favor of the higher priority drugs. For example:

In choosing whom to treat, we should encourage judges and other community officials not to overburden existing health facilities with casual users of marihuana who do not exhibit serious health consequences. (But, a person who is suffering adverse consequences because of intensive marihuana use should have treatment available.

In assigning an additional law enforcement agent, preference might be given to Mexico, which is an important source of both heroin and "dangerous drugs", rather than to Miami, where an agent is more likely to make a cocaine or marihuana case.

This drug priority strategy is essential to better targeting of limited resources and it will be further addressed in relation to supply and demand reduction activities in chapters 3 and 4. Further, the process of assessing the current social costs of drug abuse should be a continuing one, to ensure that resources are allocated on the basis of priorities which reflect current conditions and current knowledge.

JANUARY 26, 1976.

THE HARRIS SURVEY—CLOSE VOTE ON MARIHUANA LAW

Although the American people are against legalizing either the sale or use of marihuana, more and more believe that possessing small amounts of marihuana should not be a criminal offense.

In the most recent Harris Survey among 1,394 adults nationwide, only a 45–43 percent plurality opposes "penalizing anyone having a small amount of marihuana with a small fine and no jail term." (This lenient view is embodied in the Oregon law.) In 1974, a more substantial, 49–36 per cent came out against such token punishment for marihuana possession.

Part of the reason for this shift is that the American people see more dangers in the use of alcoholic beverages than in the use of marihuana. Seventy-one per cent view the problem of "heavy drinking" as very serious, while only 58 per cent feel that way about marihuana. This is a complete reversal of public attitude since 1969, when 73 percent viewed pot smoking as "very serious", compared to 53 per cent who felt the same about heavy drinking.

The same trend is evident when people are asked to choose between marihuana and alcohol as "more dangerous for people in the country to use." Although about three out of 10 feel both are equally dangerous, 35 percent single out alcohol, compared to 29 percent who choose marihuana. Back in 1969, a substantial 58 percent of the public felt that marihuana was more dangerous than alcohol was.

Nevertheless, there is no strong evidence that Americans now favor making the sale or use of pot legal. A 69–25 percent majority still opposes legalization of the sale of the drug, which represents virtually no change from 1974, when a 70–23 percent majority felt that way. A 66–28 percent majority is opposed to the use of the drug, compared to the 69–25 percent majority who felt the same in 1974.

Still, decriminalization has made real and measurable progress, judging from the very small margin by which the public opposes adopting the Oregon marihuana law nationally. Recently, the Harris Survey asked a cross section of 1,394 adults nationwide:

"In Oregon, while it is still illegal to possess marihuana, the penalty for anyone having a small amount of marihuana in his possession is a small fine and no jail term. Would you favor or oppose adopting the Oregon marihuana law nationally?"

ADOPTING THE OREGON MARIHUANA LAW NATIONALLY

[In percent]

	1975	1974
Total public:		
Favor	43	36
Oppose	45	49
Not sure	12	15

KEY GROUP ANALYSIS OF ATTITUDES TOWARD DECRIMINALIZATION OF USE OF MARIHUANA

[In percent]

	Favor	Oppose	Not sure
Nationwide	43	45	12
By region:			
East	50	37	13
Midwest	45	44	11
South	30	56	14
West	49	42	9
By age:			
18 to 29	59	29	12
30 to 49	43	45	12
50 and over	31	57	12
By education:			
8th grade or less	22	60	18
High school	40	48	12
College	56	35	9
By occupation:			
Professional	57	36	7
Executive	49	43	8
Skilled labor	37	54	9
White collar	47	39	14
By size of place:			
Cities	49	41	10
Suburbs	49	37	14
Towns	35	54	11
Rural	34	54	12

However, the closeness of that national division tends to cloak sharp differences between key groups of the public. On the one hand, people under 30, who primarily use marihuana, favor the Oregon law by better than two to one. But people who are 50 and over oppose nationalization of that law by almost two to one. Similarly, the college educated favor decriminalization by a wide margin, but those with less education stand opposed.

By region, three out of four sections of the country favor the Oregon law, but the South is adamantly in opposition. Finally, people who live in the big cities and suburbs tend to favor decriminalization, but small town and rural residents do not.

Over time, the younger, better educated and more urbanized groups appear to be gaining over the small town, older and less well educated people on this issue. But the division now is a stand-off, and the American people have not quite reached the point where they want to decriminalize the use of even small quantities of marihuana.

[From the Chicago Tribune, Jan. 26, 1976]

A Lenient Attitude On Pot Fines

(By Louis Harris)

Although the American people are against legalizing either the sale or use of marihuana, an increasing number believe that possessing small amounts of marihuana should not be a criminal offense.

In the most recent Harris Survey of 1,394, adults, nationwide, only a 45 to 43 per cent plurality opposes "penalizing anyone having a small amount of marihuana with a small fine and no jail term" [This lenient view is embodied in the Oregon Law.] In 1974, a more substantial, 49 to 36 per cent came out against such token punishment for marihuana possession.

Part of the reason for this shift is that the American people see more dangers in the use of alcoholic beverages than in the use of marihuana. Seventy-one per cent view the problem of "heavy drinking" as very serious, while only 58 per cent feel that way about marihuana. This is a complete reversal of public attitudes since 1969, when 73 per cent viewed pot smoking as "very serious," compared to 53 per cent who felt the same about heavy drinking.

The same trend is evident when people are asked to choose between marihuana and alcohol as "more dangerous for people in the country to use." Although about

3 out of 10 feel both are equally dangerous, 35 per cent single out alcohol, compared to 29 per cent who choose marihuana. Back in 1969, a substantial 58 per cent of the public felt that marihuana was more dangerous than alcohol.

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Still, decriminalization has made real and measurable progress, judging from the very small margin by which the public opposes adopting the Oregon marihuana law nationally.

Recently the Harris Survey asked:

"In Oregon, while it is still illegal to possess marihuana, the penalty for anyone having a small amount of marihuana in his possession is a small fine and no jail term. Would you favor or oppose adopting the Oregon marihuana law nationally?"

[In percent]

	1975	1974
Favor	43	35
Oppose	45	49
Not sure	12	15

[In percent]

	Favor	Oppoes	Not sure
Nationwide	43	45	12
By region:			
East	50	37	13
Midwest	45	44	11
North	30	56	14
South	49	42	9
West	49	42	9
By age:			
18 to 29	59	29	12
30 to 49	43	45	12
50 and over	31	57	12
By education:			
8th grade or less	22	60	18
High school	40	48	12
College	56	35	9
By occupation:			
Professional	57	36	7
Executive	49	43	8
Skilled labor	37	54	9
White cllar	47	39	14
By size of place:			
Cities	49	41	10
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MARIJUANA DECRIMINALIZATION

HEARING

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

Pursuant to S. Res. 72, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

S. 1450

WHICH AMENDS CERTAIN PROVISIONS OF THE CONTROLLED SUBSTANCES ACT RELATING TO MARIJUANA

Supplement II

MAY 14, 1975

Printed for the use of the Committee on the Judiciary

45856

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SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

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UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

Pursuant to S. Res. 72, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

S. 1450

WHICH AMENDS CERTAIN PROVISIONS OF THE CONTROLLED SUBSTANCES ACT RELATING TO MARIJUANA

Supplement II

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APPENDIX

SUPPLEMENT II

Part 4—Legalization of Marihuana

THE QUESTION OF MARIHUANA LEGALIZATION

(By Dr. Gabriel G. Nahas, Columbia University)

Events of recent years have polarized the scientific community and related concerned groups in regard to marihuana legalization. On the one hand, there is a large group of highly respected scientists and physicians urging caution for reasons of public health. On the other hand, an equally well respected group of such individuals are urging legalization or decriminalization for reasons of civil rights. They are motivated in this regard in large measure by concern about excessively punitive measures which have been taken against innocous individuals who have smoked a little marihuana. In this concern I join them, and laud their motives, but I lament the means with which they are going about attempting to remedy this injustice. I also deem regrettable their overreaction to an unjust situation, which, if carried through, may result in the gravest of public health consequences as well as an injury and cost to society vastly greater than the ill they are attempting to remedy.

I mentioned two regrettable trends now in play by the so-called "legalization" group: their means and their overreaction. Let us take each one of these factors in turn.

First, the means. The legalization advocates are attempting to remedy a civil rights issue by proving that marihuana is an innocuous agent. Since in a free society individuals are free to do as they please in the personal use of innocuous agents, they argue, marihuana should be legalized. In doing so, they deliberately deny a growing body of evidence being accumulated by scientists of international reputation. Dr. Julius Axelrod, the noted chemist and Nobel laureate at the National Institutes of Health has demonstrated unequivocally that the active ingredients of marihuana accumulate in fatty tissues because of their high fat solubility, and in anyone other than the very occasional smoker, marihuana ingredients continuously accumulate in the fatty tissues of the body, most notably the brain and the sex glands where it is possible that damage may be done to mental and reproductive functioning. Nobody disputes the reality of this finding of accumulation in tissues.

There have been many other findings and counter-findings in the realm of the posible hazards of marihuana. These include, to mention only a few, horomonal imbalance, inhibition of spermatogenesis, chromosomal damage, increased formation of chromosome deficient cells, decreased cell division, apathy and motivation, the so-called "amotivational syndrome", interference with memory and speech, impairment of driving performance and so on. I could go on for quite some time. To each of these findings the legalization group has a variety of rebuttals, some negotiable, some palpalbly erroneous.

In a recent article in Consumers' Union Magazine, Mr. Henry Brecher and the Editors, in a follow up to their previous book, *Licit and Illicit Drugs* put forth a notable example of the type of irresponsible consumer journalism which is being used in these rebuttals by the legalization group. He first summarized the accumulating evidence incriminating marihuana as a possible dangerous drug, apparently using the recent preview which appeared in the publication *Science* entitled "Marihuana, The Grass is No Longer So Green". This is a summary of scientific articles which appeared in renowned scientific journals. These articles were subjected to careful scrutiny by the editors of these journals, which constitute, in essence, a jury of peers. He then proceeds to rebut this summary point by

point by using the Jamaica report, completed in 1970 by Rubin and Comitas. This study of the effects of chronic marihuana usage in Jamaica apparently is so vulnerable to criticism that not one word of it has appeared in a scientific journal, the conventional route for publication of work. Instead, one of the authors has finally arranged to have it privately printed by a European publishing house. When, in a recent debate on Canadian Broadcasting Company with Mr. Brecher, I confronted him with this unusual occurrence and other misinterpretations of fact in his article, he did not reply, but immediately told me that we medical researchers should be spending our time on the far more serious public health problems of alcohol and tobacco. Well, I do, work on alcohol and tobacco, for they are serious public health problems—and if marihuana is given the green light of legalization. I will have a third public health problem of major scope on my hands.

This gets me to the second issue, the overreaction of the legalization advocates. They pooh-pooh the possibility that legalization will lead to a widespread use of marihuana in this country, since it is already easily available and not a major problem. In doing so they demonstrate an abysmal ignorance of human psychology, which is particularly surprising inasmuch as one of their advocates is a noted psychiatrist. It seems he has forgotten some of his elementary lessons in psychiatry.

Any student of human psychology knows that every individual has within him a potential for a certain amount of anti-social behavior, whether he be a college student or the president of the United States. Certain constraints operate to contain that anti-social behavior within certain limits. Most imporant are the person's own inner constraints, or personal morality, and the outer constraints, namely the deterrents imposed by the law. There are vast numbers of persons with weak inner constraints who need adequate legal deterrents. The basic problem then, and the issue which the civil rights group should be confronting, is how to develop an adequate deterrent which is not excessively punitive but which will contain the marihuana problem as a small one until the scientific issues of whether or not it is hazardous can be resolved. They should be engaged in active negotiation with legal and law-enforcement agencies to find such a deterrent, not interfering with the work of scientists who are trying to clarify the issues. It seems to me that anyone who is rushing head over heels to legalize a foreign substance which, when taken in regularly, accumulates in large quantities in brain and sex glands, because a number of users have been excessively punished, is overreacting in the extreme and may create a situation far more dangerous and harmful than the one he hopes to remedy.

The legalization group points to the recent decriminalization in Oregon as a case in point of the validity of their view. Here, it is a matter of who do you believe. Certain groups reporting from Oregon report little increase. Others report a marked increase. The truth, no doubt, lies somewhere in between. But here, let us hoist Mr. Brecher by his own petard. In his book, *Licit and Illicit Drugs*, he has a curve showing the use of what he admits (and I agree) is a very dangerous agent—cigarettes. Since the introduction of the mild inhalable flue-cured cigarettes in the late 1800's, note that the usage increase in cigarette smoking is initially gradual, but over the years it builds up as usage becomes acculturated, until today, when we have the prodigious use of cigarettes that we have, with the associated enormous public health problem which has resisted all attempts to eradicate it. Mr. Brecher has completely ignored the time factor in marihuana! It seems he has a blind spot in this regard. And also, let us not forget that it took 80 years of scientific investigation in a technologically developed country like the U.S. to finally prove the damaging effect of tobacco cigarettes on the human body, and link their usage to cancer and heart disease. This should be a warning to all those who elect today to ignore the danger signals of marihuana.

If marihuana is legalized in this country it will gradually become acculturated and will join alcohol and tobacco as a third major public health problem in this country, perhaps the most dangerous, leaving users never free of its effects, possibly causing damage to brain, gonads and dividing cells. Once it becomes acculturated, it will be impossible to root it out, just as is the case with alcohol and tobacco. This has been the case in every other country where it is de facto or de jure legal. Why should it be different here? Surely the groups concerned with civil liberties should concentrate on fairer and more merciful justice and withhold judgment on legislation and the marihuana and health issue until

the scientific community has had an opportunity to clarify the health consequences, still wide open to debate at this time. Instead, they are doing a disservice to all by trying to push through premature legalization, a potentially dangerous and socially irreversible act, and by trying to rebut with questionable data the warnings of competent scientists.

What I have said represents not only my own personal opinions. Several of my colleagues from Columbia University, Dr. Henry Clay Frick, Dr. Robert Esser, Dr. William Manger, Dr. Gabriel Nahas, who have read this statement have concurred with it, and have chosen to sign it with me.

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[From the Washington Post, Apr. 19, 1975]

A "CEASE-FIRE" ON MARIHUANA

(An Editorial)

It is now estimated that 13 million Americans are regular users of marihuana and that at least 30 million have at some time experimented with the substance. About 35 years ago, when marihuana was identified by federal bureaucrats as a "killer weed," about 50,000 Americans were thought to use it. The result of its identification as a menace was that the Congress and the states made it either a felony or a misdemeanor to possess or sell it. The evidence now is that there may indeed be medically sound reasons for avoiding the use of marihuana, but none of those reasons justifies the severe criminal sanctions that exist in the federal criminal code and in those of most of the States.

In the last several years, that situation has been remedied in several states and more each year are amending their codes in face of the legal anomaly that now exists. Few would argue that marihuana is more of a health hazard than cigarettes or alcohol, yet more than 400,000 citizens a year are arrested for possession of marihuana, and some of them do more than a year in prison for their offense. Oregon has ended that anomaly, and California, Colorado, Minnesota and Alaska are about to follow suit in this legislative season. Maine, Massachusetts and New York are reconsidering their laws.

The question now facing the Congress is what should happen at the federal level. As matters now stand, possession of an ounce of marihuana is a federal misdemeanor carrying a penalty of one year in jail and a maximum fine of $5,000. A bipartisan group in the Senate, led by Jacob Javits of New York and including Edward Brooke of Massachusetts, Gaylord Nelson of Wisconsin and Alan Cranston of California, have introduced a bill intended to remedy the current situation. It would replace current severe penalties with something called a "civil fine" and it would not exceed $100. The penalties for sale of the substance as a profitable transaction would remain intact. Only simple possession and "not for profit" would be covered by the bill.

The senators said when they introduced the new legislation that the criminal penalties for possession "are so disproportionate to the degree of mental and physical risk involved that there can be no longer any justification for their imposition." They further argue that use is so pervasive, and the arrest pattern so capricious, "that fair and impartial enforcement and prosecution are impossible."

The sentiment of the legislation is laudable, but as a solution it is hazy. If, indeed, the sponsors believe the substance is relatively "benign," as they put it, then why a penalty at all? And why a penalty that is almost unknown in our legal system. There is virtually nothing else, with the possible exception of the customs code, that recognizes a "civil fine." The legislation would create a new category of offender and a new remedy for society, the "civil offender" and the "civil fine" as punishment. Yet, that is what several of the states are now doing, and what is proposed at the federal level.

The simple answer to the question of why this route is being taken out of the marihuana morass is that it is thought to be the only politically practical one. As one proponent put it, "This is a 'cease-fire' proposal. As it now stands, 400,000 smokers a year are being arrested and stuck with criminal records. Even though this bill is not the long-range answer, at least it will stop young people from going to jail." In short, this new proposal is a compromise intended to lift the criminal sanction, without taking the logical steps that will surely follow and ultimately lead to the day when marihuana is properly controlled through taxation and standards for quality, strength and age of legal usage. In the meanwhile, the Congress will argue over passage of a vague concept called "decriminalization," which is the same as saying there is half a crime. The half of the crime called "use" would no longer exist. The half called "sale" would continue as before to be a crime. If this bill is passed, it will be interesting to see how the courts view such a hybrid notion, but it appears to be the best the sponsors believe they do. Given today's climate of opinion, they are probably right.

[From the Washington Star-News, Dec. 2, 1974]

SAXBE WARNS ON "POT" USE

(By Orr Kelly)

Atty. Gen. William B. Saxbe said today the nation needs stronger programs to stop marihuana traffic.

But he added, "While arrests for personal use and possession will continue, our priorities should be directed toward restricting the traffic in marihuana and other drugs."

Saxbe's comments on the marihuana problem were in a speech delivered at the Governor's Conference on Criminal Justice in Sacramento, Calif. The text was made available at the Justice Department here.

"Those who advocate easing the bans on marihuana argue for the right of adults to do as they choose," Saxbe said. "But if you legalize marihuana, I just don't see any way to keep it from being made available to children—and used by them—in huge numbers."

"This is already a substantial problem. It would grow worse if the ban were to be eased. The question I think we should be asking ourselves is whether we want a society where 10-year-olds can buy marihuana at the corner candy store—and no one gives a damn. I do not think that should be the wave of the future," he declared.

Saxbe's position on marihuana became a controversial issue last month when he brought pressure on Earl J. Silbert, U.S. attorney for the District of Columbia, to reverse Silbert's position not to prosecute those found in possession of five or fewer marihuana cigarettes

"Unless and until our law are changed, what we need here are more intensive programs to stop marihuana traffic—plus effective rehabilitation and public education programs," Saxbe declared "A new, deeper realization is needed of the danger of drugs—and new public support for their eradication

"More personnel and funds are needed for enforcement and efforts against traffickers. There must be an equally high priority for prosecution—and constant pressure for tough sentences. Drugs contribute to street crime, and the profits reaped by organized crime in drug sales make possible a wide range of other illicit activities," Saxbe said.

[From U.S. News & World Report, Mar. 19, 1973]

A LOOK AHEAD FROM THE NATION'S CAPITAL

Full sweep of Richard Nixon's 1973 program finally is emerging nearly two months after inauguration. Extent of shake-up involved is surprising to many.

Take the President's March 10 radio broadcast on crime and drugs. He said he wants revision of the entire code of federal criminal laws and restoration of the death penalty for murder and treason. Congress was urged to act fast.

Heroin pushers would get at least five years in jail if the President has his way, major traffickers 10 years to life. Legalization of marihuana? Forget it. "Permissive judges" are criticized. Mr. Nixon's intent:

"I do not mean to be soft on crime; I mean exactly the opposite."

THE ROLE OF THE LAW IN DRUG CONTROL†

JOHN KAPLAN*

SELF-HARMING CONDUCT AND SOCIETY

The role of the law in drug control is intimately related to the broader problem of the place of the law in preventing an individual from engaging in conduct which can harm only himself. Before considering drug control, then, there will be several advantages in undertaking a lengthy discussion of the broader issue. Not only will this allow appreciation of the problem in a broader perspective, but it will facilitate an approach to the extremely emotional drug area by a less well travelled, quieter, and more rational route. It is, perhaps, a longer journey, but it should be a smoother one.

Typically the use of the law to prevent conduct which harms only the actor himself is distinguished from the use of the law as a means of preventing the individual from harming others, including society at large. In practice, however, this is not an easy distinction to draw, for there are few actions in which one can engage that threaten harm only to himself.

The purest example of laws aimed at such conduct are the statutes which require the driver of a motorcycle to wear a protective helmet.[1] It is true that one can argue that the helmet really protects others,

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1. *See, e.g.*, MASS. ANN. LAWS ch. 90, § 7 (Supp. 1970); MICH. COMP. LAWS ANN. § 257.658(d) (1967); N.Y. VEH. & TRAF. LAW § 381(6) (McKinney 1970); N.C. GEN. STATS. § 20-140.2(b) (Supp. 1967); ORE. REV. STAT. § 483.443 (1969). Approximately two-thirds of the states have now enacted motorcycle helmet statutes. *See* Note, *Motorcycle Helmets and the Constitutionality of Self-Protective Legislation*, 30 OHIO ST. L.J. 355, 358 (1969).

THE FOLLOWING HEREINAFTER CITATIONS WILL BE USED IN THIS ARTICLE:

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R. BLUM, SOCIETY AND DRUGS (1969) [hereinafter cited as BLUM];

L. GOODMAN & A. GILMAN, THE PHARMACOLOGICAL BASIS OF THERAPEUTICS (4th ed. 1970) [hereinafter cited as GOODMAN & GILMAN];

J. KAPLAN, MARIJUANA—THE NEW PROHIBITION (1970) [hereinafter cited as KAPLAN];

H. NOWLIS, DRUGS ON THE COLLEGE CAMPUS (1969) [hereinafter cited as NOWLIS];

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J. MILL, *On Liberty*, in ON LIBERTY AND OTHER ESSAYS (E. Neff ed. 1926) [hereinafter cited as MILL].

since it shields the motorcyclist from thrown pebbles which might make him lose control and injure innocent pedestrians or automobile drivers.[2] Though this approach makes the problem easier, it is disingenuous. As a result, many courts and commentators have refused to take it and have assumed that the helmet protects only the cyclist himself.[3]

Though the helmetless cyclist does not expose others to any appreciable physical danger, he does drive in a society that is committed to preventing people from dying of their injuries. Thus, rather than allowing the cyclist to die unnecessarily, society is prepared to undertake the enormous expense of treating him until he either expires or recovers. In Professor Robert Bartels' apt phrase, the helmetless cyclist exposes others to "public ward" harm—the danger of having to treat him should he not be killed outright.[4] It is on this theory that society feels it has the right to demand that he do his share to protect himself.

The expense and inconvenience that the helmetless driver may cause does not, however, stop at public ward harm. Insofar as his failure to wear a helmet results in his own injury, he may force society to assume the cost of his neglected responsibilities to others. Here the issue cannot be avoided by saying that it is all society's fault for not letting him die in the street at minimal cost, because his responsibilities must still be fulfilled. As an emotional matter, moreover, nonsupport justifications for laws which attempt to prevent self-harming conduct often command considerably more power than do public ward justifications. Thus, despite the enormous public ward justifications for halting alcohol abuse, one of the most powerful Prohibitionist posters contained a drawing of a saloon with the father drinking at the bar while his clean, but poorly dressed, little daughter stood in the doorway saying, "Father, Father, please come home. Mother needs you." The same public interest which underlies non-support laws, then, can also justify helmetless cyclist laws—at least in the case of those who owe someone a support obligation.[5]

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2. *See, e.g.*, State v. Fetterly, 254 Ore. 47, 49-50, 456 P.2d 996-97 (1969).

3. *See* Note, 30 OHIO ST. L.J., *supra* note 1, at 366-69. *See generally* Linde, *Without "Due Process" —Unconstitutional Law in Oregon*, 49 ORE. L. REV. 125, 178 (1970).

4. R. Bartels, Better Living Through Legislation: The Control of Mind-Altering Drugs (unpublished manuscript).

5. The case of the helmetless cyclist prohibition, however, is both stronger and weaker than the more general non-support laws. It is weaker for two reasons. First, insofar as the law applies to those who do not owe anyone a support obligation or who leave a sufficient estate to meet

In addition to the public ward and non-support justifications for forbidding conduct which on first glance would appear to harm only the actor, a further justification exists which might be called the "modelling" justification. Modelling is the psychological term for the process by which one repeats a type of behavior one sees in others. Modelling of behavior may thus occur where the watcher first learns that the behavior which he had thought impossible can indeed be performed; where the watcher, by observing, learns how to do it; where he simply gets the idea from watching; or where he, for any one of many reasons, imitates the action.[6] It is true, of course, that the same values which underlie the freedom of communication may interfere with preventing the harm caused by modelling.[7] The individual who models the helmetless cyclist does so without coercion, and, apart from the indirect harms discussed, he harms only himself. Nevertheless, where those persons society tries to protect from modelling are children, the fact that the helmetless cyclist in a causal sense may have caused the modelling, which in turn might lead to injury, may be very significant. Children are regarded as much more likely than adults to model dangerous conduct, and we certainly acknowledge a greater responsibility to protect them from harm.

The final justification by which some may find social harm in conduct which appears to harm only the actor might be called the "categorical imperative" justification. This relies on the fact that although an act might harm only the actor if performed by relatively few people, it could cause harm to everyone if it were performed by

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such obligations, it is obviously too broad. Second, the fact is that most helmetless cyclists do not suffer injury for want of a helmet. At most, they take the risk that in some small percentage of cases they will be prevented from fulfilling their support obligations. Even if legislators feel better able to evaluate this risk than the cyclist, it here seems a much weaker case for prohibiting one's wilful default on his support obligations.

On the other hand, the very fact that the helmetless cyclist does not intend to default on his support obligations, but merely takes a risk of not being able to meet them, is perhaps a reason for greater, not less, involvement by the law. There is ample evidence that many human beings discount the likelihood of low-probability harmful events more than does any rational legislature. *See* W. Edwards & L. Phillips, Man as Transducer for Probabilities in Bayesian Command and Control Systems (December 26, 1962) (unpublished paper presented at symposium of the American Association for the Advancement of Science, Philadelphia). The law might then rationally prohibit small risks while allowing greater ones on the theory that in the latter case the risk was sufficiently obvious that it could rely on the rationality of the risk taker, while in the former, intervention of the criminal law is necessary to cause a proper weighting of the risks.

6. A. BANDURA, PRINCIPLES OF BEHAVIOR MODIFICATION 118-204 (1969).

7. *See generally* Roth v. United States, 354 U.S. 476, 484 (1957); Whitney v. California, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring).

almost all. This justification is not heard in the helmetless cyclist case, but it is heard with respect to some sexual and drug laws.[8] The picture which is called to mind is that of a nation where most of the population is homosexual—in which case there would be an enormous population implosion with consequent economic catastrophe—or where most of the nation is "stoned" on drugs. It is undeniable that society has a strong interest in avoiding the economic disaster of so many withdrawn from productive work. In both cases, however, the justification is often attenuated by two facts. First, there is not generally any reason to believe that, in the absence of laws justified by categorical imperative reasoning, the forbidden conduct would in fact become so widespread—the taste that impels the action may be esoteric. Second, the fact that conduct might produce a social catastrophe if engaged in by almost all does not necessarily imply that the conduct will be in any way harmful to society if engaged in by a relative few. So long as the birthrate is felt to be too high, the practicing homosexuals who thereby reduce it do no harm at all, and the economies of scale in American industry are such that withdrawal of a reasonable number of producers and consumers will similarly have no detrimental effect. The categorical imperative justification, therefore, may be fallacious, or it may simply be one way of dramatizing a harm which actually exists, by multiplying it manyfold.

Secondary Harms and the Criminal Law

Unless it is necessary to distinguish among them, public ward, non-support, modelling and categorical imperative harms can all be subsumed under the heading of secondary harms. It is interesting to note that the majority of efforts to prohibit conduct which, on first glance, appears to harm only the actor himself are rationalized as a means of preventing secondary harms, rather than as efforts to protect people from their own folly.[9] Insofar as the law acts to penalize the actor who has not taken proper care of himself, it hurts rather

8. *See, e.g.*, Grinspoon, *Marihuana*, 221 SCIENTIFIC AMERICAN 17, 21 (Dec. 1969).

9. That is not, of course, to say that there are not situations where we are willing to invoke the law simply to protect people from self-inflicted harm. The juvenile court will imprison juvenile runaways under a *parens patriae* theory, Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1192-93 (1970), and those who are mentally ill will be civilly committed, even if they are dangerous only to themselves. While the person to be protected from himself is not under age, "ill," or a member of another group with a similar claim to sympathy, however, society acts for its own benefit rather than his. It must, therefore, still be able to point to a secondary harm to justify the law.

than helps him. To the extent that societal resources are expended to prevent people from simply harming themselves, moreover, a type of public welfare program is initiated. Such use of governmental resources to improve the lot of a minority is never popular and the case in support thereof is weak indeed where the minority is neither regarded as especially worthy nor desirous of the help.

No one argues today that all risks of secondary harm should be prohibited by the criminal law. The obvious secondary harm resulting from such almost universally performed acts as overeating or poor nutrition is the *reductio ad absurdum* of such arguments. The interesting question, then, is whether these types of harm are a sufficient reason for society to intervene in *any* case. The classic statement opposing intervention is that of John Stuart Mill that "[t]he only purpose for which power can be rightly exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant."[10] Mill himself believed that an "indirect" harm, which would include the secondary harms discussed, was not a "harm to others" within the meaning of his statement.[11]

Unfortunately, one can read Mill's pronouncements again and again without discovering any substantial effort at a utilitarian calculus to support his position, and the closest Mill came to a general reason was a *reductio ad absurdum* argument. This was stated in two forms. First, that:

> [s]o monstrous a principle is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps, to that of holding opinions in secret, without ever disclosing them . . . .[12]

And second that:

> [t]he doctrine ascribes to all mankind a vested interest in each other's moral, intellectual, even physical perfection, to be defined by each claimant, according to his own standard.[13]

These arguments both focus on the lack of standards available once society undertakes to prevent a person from harming himself. The standards problem, moreover, is compounded when one attempts to value the incommensurable freedom of the actor to engage in the

10. MILL 13.
11. MILL 94-99.
12. MILL 106.
13. MILL 107.

conduct of his choice. Merely because protecting the public from secondary harms could logically justify a vast range of governmental interferences with individual liberty, and merely because we could define secondary harms as including anything lessening the full development of an individual's perfection, this does not mean that such interference is always improper. The main deficiency with the *reductio ad absurdum* arguments is actually a practical one. In the great majority of cases, the individual's freedom will not be interfered with directly simply because such regulation would be impossible to enforce without the imposition of an absolute police state.[14] Indeed, the motorcycle helmet example is one of the few prohibitions on an individual's conduct that might be enforced at reasonable cost.

Mill's thesis can perhaps be better defended on a somewhat different ground. When the legislature makes a decision to protect society from secondary harms by criminalizing individual conduct, it generally overestimates the enforceability of its decrees.[15] Where the law's reach exceeds its grasp, it may impose serious costs upon society which can far outweigh the expectable good that complete enforcement might bring. For this reason, it could be argued that, as a prudential matter, we would be better off adhering to Mill's principle as a rule of legislative self-denial. In other words, once protection against secondary harms is begun, the difficulties of knowing which are appropriate occasions for legislative action are so great that it would be better to eschew the effort entirely.

Simple legislative misjudgment as to the enforceability of the law, moreover, is not the only problem. The issue of protecting one from harm to himself usually involves two sensitive political issues—the interrelationship between law and morals and the use of the law to stigmatize unpopular groups. As to the first, few people deny that there is a connection between morality and the law. Probably the majority agree with Professor Herbert Packer that, in general, it is a necessary condition of the proper use of the criminal law that the conduct prohibited be seen as immoral.[16] The words "in general," of course, are quite important. The helmetless cyclist statute, for example, if enforceable, may be a proper use of the criminal law even though there is nothing more immoral in helmetless cycling than in

14. PACKER 156, 270-72.
15. *See* Kadish, *The Crisis of Overcriminalization*, 374 ANNALS 157, 169-70 (1967).
16. PACKER 261-69.

mountain climbing. The real problem, however, is with the converse proposition—that the immorality of conduct is a sufficient condition for declaring it illegal. The proposition that the law may be used to enforce morality without any corresponding societal benefit, other than the reduction of that immorality, is complex.[17] The issue does not arise where there is harm threatened to someone other than the immoral actor, because then the reduction of harm to others would simply be regarded as a sufficient social benefit. Where no such harm exists, however, the law must be justified either as a method of protecting against secondary harms or as a means of reducing the frequency of the immorality itself. Both justifications are extremely elastic, and the ingenious legislator can usually find both in any conduct he seeks to proscribe. The significant point is that avoidance of secondary harm can easily provide a rationalization for prohibiting conduct which is widely felt offensive on moral, but not on other grounds. The fact is that most of the situations where the criminal law is used to prevent an individual from harming himself are situations where his conduct is also felt to be immoral. There is thus an ever present temptation to enforce a dominant morality without looking to see whether the conduct to be prohibited is sufficiently harmful in terms of secondary harms, or whether the law is itself enforceable; and it is for just this reason that political pressures may further compound legislative misjudgment. The desire to enjoy the political popularity which comes from opposing sin may push legislators into enacting laws which even further exceed the possibility of enforcement. But, Professor Packer's sage advice that "if a legislator can think of no better reason to proscribe conduct than that he (or his constituency) abhors it, he had better think twice about doing it,"[18] may, as a political matter, be difficult to follow—especially where the legislator has the additional justification of attempting to lessen secondary harms.

The second political factor which may exert popular pressure to extend laws aimed at secondary harms much further than is rationally justifiable in utilitarian terms involves the stigmatization of unpopular groups in society.[19] Studies of the coming of the anti-opium,[20]

17. *Compare* P. DEVLIN, THE ENFORCEMENT OF MORALS (1959), *with* H. HART, LAW, LIBERTY, AND MORALITY (1963).

18. *See* PACKER 266.

19. J. GUSFIELD, SYMBOLIC CRUSADE 13-19 (1963).

20. T. DUSTER, THE LEGISLATION OF MORALITY—LAW, DRUGS, AND MORAL JUDGMENT 10-23 (1970).

alcohol[21] and marijuana[22] laws have, for instance, indicated that in each case the drug prohibition was only part of the story. A major part of the emotional effort to pass these laws was generated by a dislike for the groups which were, in the public mind, associated with the drug. The history of our drug control efforts includes the passage of other laws which had, and were intended—at least by a sizeable number of their supporters—to have, the effect of stigimatizing the Chinese (in the case of opium),[23] the urban Catholic (in the case of alcohol)[24] and the Mexican (in the case of marijuana).[25] The likelihood that in emotional times a legislature will use secondary harm justifications as a cloak for joining in the stigmatization of an unpopular group, as well as demonstrating its opposition to sin, is, perhaps, another reason for the adoption of Mill's view as a prudent self-restraining principle.

The likelihood that a law ostensibly attempting to protect against secondary harm will also be based on a labelling of conduct as immoral and an effort to stigmatize certain groups has one further consequence. Those at whom the law is directed may not agree that their conduct is immoral or that their groups are properly stigmatized and, in a host of ways, may make enforcement of the law even more difficult. Indeed, such laws may lead to resentment even where they are not based on the immorality of conduct or group stigmatization—take, for instance, the helmetless cyclist case. There is, moreover, no doubt that the vast majority of harms which an individual may do to himself—eating too much, exercising too much, not exercising enough, sky-diving or mountain climbing—are in no way forbidden by the law. As a result, in those atypical situations where the criminal law does attempt to make an individual take better care of himself, he will feel that he is unfairly treated as compared to all others who are not forced to take similar precautions. In a sense, he will be right. The laws requiring one to protect himself are little islands of criminal liability in a vast sea of freedom to injure one's self.

It should be noted finally that where the secondary harms with which we are concerned are limited to public ward and non-support

21. *See* J. GUSFIELD, *supra* note 19, at 27-29.

22. Bonnie & Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1010-16 (1970).

23. T. DUSTER, *supra* note 20, at 10-11.

24. *See* J. GUSFIELD, *supra* note 19, at 103, 139.

25. Bonnie & Whitebread, *supra* note 22, at 1012-16.

harms, it might be that a system of taxes or license payments would serve society's purposes better than would a criminal prohibition. These harms are, for the most part, monetarily calculable and actuarially predictable. All that need be done is to require insurance against the threatened harms as a condition of engaging in the proscribed conduct.[26] Where these insurance requirements are enforceable, Mill's principle might be defensible on a wholly different theory. The demands of Pareto optimality,[27] if not a respect for liberty, require that a prohibition not be used where the only harm to society is of the public ward and non-support type, simply because a narrower law could always be enacted preventing these activities only by those who had not made proper financial provision for the risks they were taking.

In any event, even if it cannot be proven that harm to the actor and secondary harms are never a sufficient reason for the legislature to prohibit conduct, it should be realized that the helmetless cyclist counter-example is an anomoly in balancing the advantages and disadvantages of such a paternalistic law. Helmetless driving is done in the open and the presence or absence of a helmet is extremely easy to determine. As a result, one would expect that this law could be enforced with relatively minor expenditures. This might not necessarily be the case. Under some conditions, the expenditures of enforcing the helmetless cyclist prohibition might exceed the saving to society in terms of secondary harm.[28] If this were the case, a rational legislature might repeal the law after a sufficient period of trial. The legislature could well decide that even though a rational calculus would, on first glance, favor forbidding helmetless cycling, the imperfections of the subjects of the law which prevented them from realizing their own best interests, tipped the balance against such a law.

The helmetless cyclist for yet another reason represents the sim-

26. In the case of the cyclist, he would be allowed on the road without a helmet only with an extra license plate signifying that he had made provision to compensate for any public ward or non-support harms his activity might cause.

27. "Pareto optimality" refers to the view that a change may be seen as desirable in terms of economic welfare only if it benefits someone without injuring anyone else. *See* J. DUE & R. CLOWER, INTERMEDIATE ECONOMIC ANALYSIS 461 (5th ed. 1966).

28. A situation might arise, for example, where the law had not been enforced for some while (and therefore) there were many helmetless cyclists on the road. It might then be fairly expensive to prosecute sufficient numbers of them to deter the remainder, since it would take time for the information that the law was being enforced to sink in. It is also conceivable that some cyclists might regard it a matter of principle not to wear a helmet, or, principles aside, feel that the thrill of going helmetless was worth the inconvenience of apprehension.

plest case where the legislature might attempt to protect an individual from the consequences of his own folly—because the prohibition works against the individual cyclist himself. A considerably different issue exists when legal threats are exerted not against the individual who is himself harmed by his conduct, but against someone else who also is in a position to avoid the harm.

Analytically, the use of seatbelts by motorists presents an issue quite similar to that of helmets by motorcyclists. There are, however, two major differences. First, a law which made criminal a motorist's or passenger's failure to wear seatbelts would obviously be almost impossible to enforce. Whether or not one is wearing seatbelts can only be determined from inside, or at least very close to, the automobile, and the difficulties of checking millions of drivers would be insurmountable. It is true, of course, that after an accident one might be able to determine which of the injured was not wearing seatbelts. It is hard to believe, however, that the criminal law operating at this time could exercise any substantial deterrent effect over and above the effect of the increased injuries.

The second difference is that in the case of the seat belt problem, power can be exerted upon the vehicle manufacturer. Requiring a motorcyclist to purchase a helmet may not help at all in getting him to use it. Indeed, the helmet is so easily separable from the motorcycle that checking to see whether the cyclist had a helmet would be no easier than checking to see that he was wearing one. Although a motorist cannot be made to wear a seatbelt, society can, on the other hand, make sure that he at least has the option to do so.[29] Laws requiring safety equipment are far easier to enforce against the automobile manufacturing industry than against the helmetless cyclist. There are so few automobile companies, what they sell is so public and they are so unlikely to act on principle, that there would be little difficulty in requiring seatbelts to be installed in each car sold.[30]

In all cases where an attempt is made to govern the seller, rather

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29. *See, e.g.*, Act of December 13, 1963, Pub. L. No. 88-201, §§ 1-3, 77 Stat. 361, *repealed with savings provision*, Act of September 9, 1966, Pub. L. No. 89-563, § 117(a), (e), 80 Stat. 718, 727; National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§ 1381, 1397-98 (1970). The current regulations under the National Traffic and Motor Vehicle Act are set forth in Federal Motor Vehicle Safety Standards, 49 C.F.R. § 571.21 (1971).

30. If more than the preservation of the opportunity to wear seatbelts were desired, one could also require an airbag apparatus, a buzzer which would make an annoying sound whenever the car was driven with the seatbelts unfastened or even seatbelts somehow connected to the ignition so that the car could not be driven unless the seatbelts were used. Indeed, safety

than the buyer, it can be argued that concern is transferred from the prevention of harm to one's self (including secondary harms) to that of prevention of harm to others. This reasoning, however, would not have placated John Stuart Mill in the least. In referring to a prohibition statute which attempted to protect the consumer by restricting sale of alcohol, Mill said that "the infringement complained of is not on the liberty of the seller, but that of the buyer and consumer; since the State might just as well forbid him to drink wine, as purposely make it impossible for him to obtain it."[31]

It is true that the liberty of the automobile buyer is infringed when it is impossible for him to buy a car without seatbelts. Utilitarians, however, do not regard freedom as an absolute value before which all others must give way. Rather, it would be considered as one value among many and should the balancing of values favor an infringement of the buyer's freedom by a restriction on the seller, the utilitarian will not fail to impose that restriction merely because a direct restriction on the buyer would have been impractical.

Consensual Crimes and the Criminal Law

Both the one-party case of the helmetless cyclist, where the law seeks to operate directly upon the individual to make him take care of himself, and the two-party case of the factory installed seatbelts, where the law seeks to operate on the seller to force him to make the consumer take better care of himself, are classified under the same heading—"victimless" crimes. This term is somewhat unfortunate. First of all, if secondary harms are considered, there may very well be a victim other than the actor himself.[32] Second, the term victimless crime has a somewhat bad odor in academic circles. It has been used particularly with respect to the crimes of drunkenness, prostitution, abortion, gambling and drug offenses which have contributed so heavily to what Professor Sanford Kadish calls the crisis of overcriminalization.[33] Finally, in a very real sense, the victim of even a

equipment of this nature will be required in the near future. Passenger cars manufactured from Jan. 1, 1972 to Aug. 14, 1973 must be equipped with a seat belt warning system that activates an audible and visible warning for one minute if seat belts are not fastened. 36 Fed. Reg. 4600-08, 12858-60 (1971). The National Highway Traffic Safety Administration has also proposed regulations requiring that manufacturers install seatbelts with ignition interlocks during the period from Aug. 15, 1973 to Aug. 15, 1975. 36 Fed. Reg. 19254-55 (1971). After Aug. 15, 1975, all passenger cars are to be equipped with a passive restraint system (such as the "air bag"). *Id.*

31. MILL 106.

32. *See* PACKER 151-52, 267.

33. *See* Kadish, *supra* note 15.

knowing purchase of an automobile without proper safety equipment may be the purchaser himself if he is subsequently injured. In all probability, the term "consensual" is a better way to describe these crimes.[34] From a law enforcement point of view, the important thing about such crimes is that all parties consent to the transaction, and, regardless of whether they may later regret it, they do not bring the matter to police attention at the time.[35]

In any event, whether one calls the crimes victimless or consensual, it must be admitted that there are both an enormous number of them on the statute books and that most of them are not very controversial. Whenever the law goes beyond requiring mere disclosure—such as in the Flammable Fabrics Act,[36] building codes[37] and the laws against practicing law,[38] medicine[39] or plumbing[40] without a license—it is protecting the buyer of goods or services from himself, regardless of whether it acts upon him directly or upon the seller. Indeed, even those who most often decry victimless crimes in general are those most likely to demand that we do more "to protect the consumer." For instance, regulations requiring automobile manufacturers to add collapsible steering columns,[41] which protect only the buyer, although they would not command his loyalty at their prices in the market, are in fact attempts to add new victimless crimes. It is true that such enactments can often be defended as attempts to force the automobile manufacturers to take advantage of economies of scale in the manufacture of safety devices. In this case, then, the law can be regarded as a kind of subsidy to those who wish the safety equipment to be paid for by those who do not. Interestingly enough,

34. Consensual transactions, thus, are "victimless" in the sense that they are difficult to detect because of the absence of vocal victims. *See* PACKER 267.

35. *See* Kadish, *supra* note 15, at 160.

36. 15 U.S.C. §§ 1192-93 (1970).

37. *See, e.g.*, PALO ALTO, CAL., MUNICIPAL CODE ch. 16, §§ 16.04.010 -.070 (1971); INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS, UNIFORM BUILDING CODE (1970 ed.); SOUTHERN BUILDING CODE CONGRESS, SOUTHERN STANDARD BUILDING CODE (1969 ed.). *See generally* Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1965).

38. *See, e.g.*, CAL. BUS. & PROF. CODE §§ 6060, 6062 (West Supp. 1971); CAL. BUS. & PROF. CODE § 6125 (West 1962); ILL. ANN. STAT. ch. 13, § 1 (Smith-Hurd Supp. 1971); N.Y. JUDICIARY LAW § 476-a (McKinney 1968).

39. *See, e.g.*, CAL. BUS. & PROF. CODE § 2141 (West Supp. 1971); ILL. ANN. STAT. ch. 91, § 16i (Smith-Hurd Supp. 1971); N.Y. EDUC. LAW § 6513 (McKinney 1953).

40. *See, e.g.*, ILL. ANN. STAT. ch. 111 1/2, § 116.63 (Smith-Hurd 1966); PALO ALTO CAL., MUNICIPAL CODE ch. 16, § 16.08.090 (1968).

41. See note 30 *supra*.

Mill, in what some might regard as an orgy of consistency, also opposed heavier taxation of dangerous substances[42] and, hence, would clearly have opposed this type of measure to protect the consumer.

Although most people perhaps do not realize it, minimum wage laws[43] also fall under the general heading of consensual crimes. Of course, some may consider the wage-earner who works for less than the minimum wage as himself some kind of victim. The problem with this is that it rests on one of two theories. The first is that he would otherwise work for the higher, minimum wage. If this is true, his own foolishness is to blame, and the essence of victimless crime is protecting people from their own foolishness. The second is that he is working because he needs the money—necessitous men are not free men. The difficulty with this view is that the worker driven by economic necessity to work for less than the minimum wage is no more driven than the compulsive gambler or the drug dependent individual. Nonetheless, although he is willing in this sense to work for, and his employer is willing to pay him that wage, our laws attempt to prevent the bargain just as they would prevent a bargain reached between a prostitute and her customer or a bookie and his.

If one then supports rules outlawing sales of flammable fabrics, laws against practice of medicine without a license or bargains that violate the minimum wage law, he cannot denounce without qualification victimless crime. The real problem with victimless crimes, as Professor Herbert Packer has pointed out so cogently, is that some of them produce such enormous difficulties of law-enforcement that as a practical matter they do more harm than good.[44] In order to determine whether this is the case as to any particular crime, considerable care must be used to look at the effects of the criminal law and to attempt computation of the costs and benefits it brings about.

As an initial proposition, however, a number of generalizations can be made. First, where the law imposes its major burden on the individual to force him to protect himself, it will, in general, involve such difficulties of enforcement as to be unenforceable. Typically, the conduct will be private and will come to light only rarely, and then either because of the most intrusive type of investigation,[45] or after the harm that the law attempted to protect against has already been

42. MILL 113-15, 119.
43. *See, e.g.*, Fair Labor Standards Act, 29 U.S.C. §§ 203-18 (1970).
44. PACKER 151-52, 273-75.
45. *See* Kadish, *supra* note 15, at 161.

done—in which case the law will be in the position of compounding that harm with criminal penalties against one already injured. Indeed, the helmetless driving law appears to be the only law designed to protect an individual from himself (or society from secondary harms) that is actually enforceable.

On the other hand, when the law attempts to protect individuals from harming themselves, or from causing secondary harm, by transferring its pressure from the individual actor himself to someone else—typically the seller of some commodity—it may or may not be enforceable at a reasonable cost. Where the law would impinge upon legitimate businesses which are not too numerous to watch and where it does not generate significant economic pressures toward its own violation, it may very well be enforceable. However, as the number of independent businesses which need to be watched increases and the economic incentive to violate the law increases, society comes more and more to the type of victimless crimes that have given the criminal system such a headache.

Finally, as Professor Packer has pointed out, in those areas of victimless crimes where, on the above analysis, the criminal law is most appropriate—it is also least needed.[46] Civil penalties, which are far more efficient to impose, will allow a better deployment of society's coercive resources. Moreover, as they will generally be imposed within the context of a business activity, they will involve far fewer dangers of invasion of the citizen's privacy than may occur if imposed upon individuals.[47]

There is one further objection that should be noted to all the laws thus far discussed. Given the present economic and political institutions, any attempt to protect individuals from themselves may sooner or later be used by the powerful economic interests thereby unleashed to lessen competition and to harm society as a whole. Certainly, a great deal of the recent literature concerning occupational licensing, building codes and the like supports this view.[48] Similarly, although automobile safety requirements are still in their infancy, there are already substantial allegations that the safety standards are being designed to protect American, and politically influential, automobile companies from foreign competition.[49] Finally, it has even been al-

46. PACKER 253.
47. *See, e.g.*, M. FRIEDMAN, CAPITALISM AND FREEDOM 137-61 (1962).
48. P. MOORE, ECONOMIC EFFECTS OF LICENSING (1963).
49. *Cf.* Washington Post, Dec. 6, 1970, at A-1, A-14.

leged that the helmet manufacturers have been far more influential than the analysis of secondary harms in securing helmetless cyclist legislation. Although one cannot call the case proven at this point, one can soften any zeal to protect against secondary harm by the realization that, given the apparent weakness of legislators and administrators, it is at least possible that the government itself actually needs the protection from its own folly which only a rigid adherence to Mill's principle could bring.

Discussion thus far has involved the kinds of conduct which are normally classed as protection against harm to one's self. Even where the law makes criminal the action of the seller, it does so as a means of preventing the buyer from injuring himself. Note, however, how all of the arguments previously considered change when attention is turned toward conduct that threatens harm to others. In the automobile case, for example, if concern were with automobiles with defective brakes rather than those without seatbelts, very different issues would arise. There would then be little hesitation to make it a crime to drive a car with defective brakes,[50] even though this might be almost as difficult to enforce, in the sense of catching a high percentage of violators, as would be a law against the failure to use seatbelts. Detection would not, first of all, be quite so difficult, because we would have someone other than the police to bring the matter to public attention—the one injured by a car with defective brakes. Second, it might very well be that after an accident which revealed the defective brakes, the criminal law would actually be able to increase the punishment significantly over that of the accident—at least in those cases where the driver was not himself hurt. Third, it cannot here be argued, as it was in the case of public ward and non-support harms,[51] that insurance could eliminate the need for such a law. It is one thing to say that the helmetless cyclist or seatbeltless driver can insure against the secondary harm caused; it is very different, however, to say that the driver with defective brakes can physically injure people and thrust the insurance on them in lieu of his own preventative measures. Fourth, if one engages habitually in conduct dangerous to others, it may be economical to imprison him, though it would almost certainly not be where the only concern was with reducing secondary harms.

50. *See, e.g.*, CAL. VEH. CODE § 40001 (West Supp. 1971); ILL. ANN. STAT. ch. 95 1/2, §§ 211, 234 (Smith-Hurd Supp. 1971); N.Y. VEH. & TRAF. LAW §§ 375.1, 375.32 (McKinney 1970).

51. See note 27 *supra* and accompanying text.

Finally, and, perhaps most importantly, where any activity threatens harm to the actor himself, his own sense of self-protection will generally lead him to act so as to minimize the harm to society as well as to himself. Thus, both the helmetless cyclist and the driver with faulty brakes will be restrained by self-preservation, since all that is necessary to make this restraint on behavior effective is that there be, in fact, a danger to the actor. Where an activity threatens harm to others only, however, there may be no such restraint and the criminal law may be the only force that makes the harmful activity unprofitable. This is probably the case in the widest range of criminal prohibitions which protect either the property or the person of others.

Drugs and Consensual Crimes

The interrelations between the felt dangers of drugs and the methods used to control them are, as will be seen, extremely complex. The basic problem, nonetheless, is familiar. The commonly heard argument on behalf of minimal drug control is that "it's my body and I can do what I want with it so long as I don't hurt anyone." This, of course, is simply another way of phrasing Mill's principle. Indeed, the entire problem of drug control is for the most part a special case within the problem of the regulation of conduct which harms only the actor himself. The dangers presented by most drug users are not too dissimilar from those of the helmetless cyclist, and the controls imposed upon sellers of automobiles without safety equipment are not too dissimilar to those placed upon sellers of drugs. Before going into the similarities and differences, however, a definitional problem must be discussed.

What Are "Drugs?"

A typical pharmacological definition is that a drug is a substance which, when taken into the body, alters the structure or function of any part of the organism.[52] Although this is a very broad definition, it is important to avoid too narrow a focus. Otherwise one incorporates concepts of medical helpfulness—that, for example, an amphetamine used as a diet pill under the supervision of a doctor is not a drug, but that when taken as a pep pill without prescription it is. Similarly, concepts of harmfulness must not be included. Otherwise

52. Modell, *Mass Drug Catastrophes and the Roles of Science and Technology*, 156 SCIENCE 346 (1967). *See generally* NOWLIS 5-7.

drugs may be classified according to their social utility—alcohol, for example, is often said not to be a drug simply because it is not harmful (which, of course, it is—or can be) and because of its wide social use.[53] Finally, the definition of what is a drug must avoid consideration of the legality of the substance. Legality is merely a social concept which has been applied to nature. To talk in general about how the law treats both legal and illegal drugs will require a discussion of an enormous range of substances—including coffee, tobacco, alcohol, the cyclamates, antibiotics, amphetamines, marijuana and heroin.[54]

The Damages Caused by Drugs

Social concern with drugs arises, of course, because of the feeling that they damage either their user or others. With respect to the damage to others there is a sizeable range of harms to consider. Contemporary scientific opinion implicates alcohol,[55] amphetamines,[56] and barbiturates[57] as playing a causal role in a significant number of assaults by their users by reducing inhibitions, weakening judgment or some other means.[58] Tobacco is another drug whose use poses a danger to non-users[59]—principally through loss of life and property from fires caused by smokers. Heroin also exerts sizable costs upon the non-user, since the addict will typically commit large numbers of property crimes to support his habit[60]—though, as will be seen, the law is itself a contributor to these crimes.[61] Finally, there are

53. *See* NOWLIS 6, 87.

54. *See generally* GOODMAN & GILMAN; Modell, *supra* note 52, at 347-51.

55. BLUM 289, KAPLAN 265-70; Blum, *Mind Altering Drugs and Dangerous Drugs: Alcohol*, in U.S. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: DRUNKENNESS 28, 40 (1967); Wolfgang & Strohm, *The Relationship between Alcohol and Criminal Homicide*, 17 Q.J. OF STUDIES ON ALCOHOL 411 (1956).

56. *See* Ellinwood, *Assault and Homicide Associated with Amphetamine Use*, 127 AM. J. PSYCHIATRY 1170 (1971), describing the histories of 13 persons who committed homicide while intoxicated with amphetamines. The author speculates whether the reported incidence of amphetamine-induced assaults would be higher if physicians were more fully aware of the problem. *Id.* at 1175. *See also* BLUM 289.

57. *See generally* NOWLIS 84-85.

58. *See generally* Blum, *Drugs, Behavior, and Crime*, 374 ANNALS 135 (1967).

59. *See* BLOOMQUIST 188-91; GOODMAN & GILMAN 588-92.

60. BLUM 288-89, KAPLAN 240.

61. With respect to heroin, society has adopted a categorical imperative type of reasoning, see note 8 *supra* and accompanying text, and concluded that heroin is such a seductive and addicting drug that if it were freely available the enormous number of its users would produce a national catastrophe. As a policy choice, therefore, the law has been structured so that heroin is extremely expensive. This perhaps lowers the number of addicts in the society, but it considerably magnifies the damage they do to others.

the antibiotics, where danger to others arises because exposure to an antibiotic tends to generate strains of bacteria resistant to it.[62] Others are damaged, then, simply because they are deprived of a valuable—indeed, perhaps life saving—medicine. This may, of course, happen as a result of medical practice as well, but where the antibiotic is used promiscuously—and a conclusive presumption seems to have been adopted that it will be promiscuously used if not under medical supervision, and, perhaps less realistically, that it will not be so used if under supervision—this hazard is considerably increased.

Despite these instances where drug use may damage others, it is fairly clear that the overwhelming danger in drug use is the danger to the user himself. Thus, the number of homicides committed under the influence of alcohol is dwarfed by the death rate of the users themselves from cirrhosis and other alcoholism-related diseases.[63] The dangers of tobacco to its users in terms of lung cancer, emphysema and various circulatory diseases far outweigh the damage done by smoking-caused fires.[64] Even heroin, harmful as it is to society, is, under contemporary conditions, far more destructive to its users than to others.[65] And the cost of the antibiotic-resistant bacterium is typically borne by the first sufferer from the improper use of antibiotics.[66]

With regard then to the damage to the drug user himself, there is a widely used term: drug abuse. Drug abuse means simply the use of a drug so that it interferes with either the user's physical or mental health, or his adjustment in society.[67] It is important to understand that this is a definition which applies to both legal and illegal drugs. A classic example of just how the issue of the legality of a drug can interfere with the understanding of what is meant by drug abuse is provided by the American Medical Association. Until quite recently the AMA defined drug abuse as either the over-use of a legal drug so

62. *See* GOODMAN & GILMAN 1157-58.

63. *See* BLOOMQUIST 180-81; BLUM 284-85; GOODMAN & GILMAN 135 44; T. PLAUT, ALCOHOL PROBLEMS: A REPORT TO THE NATION BY THE COOPERATIVE COMMISSION ON THE STUDY OF ALCOHOL (1967). *See also* N. KESSEL & H. WALTOM, ALCOHOLISM 30, 32-34 (1967); Moskow, Pennington & Knisely, *Alcohol, Sludge, and Hypoxic Areas of Nervous System, Liver and Heart*, 1 MICROVASCULAR RESEARCH 174 (1968).

64. *See* KAPLAN 201, 314.

65. *See* GOODMAN & GILMAN 237-55; KAPLAN 314; Baden, Deaths from Heroin Addiction among Teenagers in New York City (August 18, 1970) (unpublished paper presented at the Second World Meeting on Medical Law, Washington, D.C.).

66. *See* A. GOTH, MEDICAL PHARMACOLOGY 509-10 (5th ed. 1970).

67. BLUM 230. For a pharmacological definition of drug abuse, see GOODMAN & GILMAN 276-77.

as to impair one's physical or mental health or his adjustment in society, or any use of an *illegal* drug.[68] Such a definition merely incorporates legal standards into medical practice. It does not make a great deal of sense, for example, to define every marijuana user as a drug abuser while insisting that only the alcoholic, but not the social drinker, is an abuser of alcohol. The fact is that, as in the case of alcohol, at least some marijuana users, who use the drug in moderation, use it without any danger to themselves—aside, of course, from that of getting caught.

Indeed, one of the main fallacies in the present societal approach to the drug problem is that the illegal drugs are too often regarded as terribly dangerous and the legal drugs as perfectly safe. It is true, of course, that some drugs have a much greater potential for abuse than others, in that they injure a higher percentage of their users. But an injury produced by drug abuse is typically caused by a complex combination of the drug itself, the way it is used, the disposition of the person using it and the conditions under which it is used.[69] Some people, for instance, can apparently use heroin for quite a while without becoming addicted or otherwise harming themselves, though this would probably represent a very small percentage of users. There are, on the other hand, those who injure themselves with coffee, the "most legal" of our legal drugs. Though we cannot verify whether Honore de Balzac, as is sometimes said, really did die from excessive coffee use, it is indisputable that the coffee user may damage himself in various ways.[70] Some coffee users notice that their stomachs are always upset and that they have great trouble sleeping. Many of them stop using coffee; others just get used to having upset stomachs and insomnia, because coffee can be strongly habit-forming to some people.[71] It should be mentioned also that research on the genetic damage caused by various drugs has in the last five years pointed a considerably more suspicious finger at coffee than at several other drugs far more implicated in the public press.[72] Similarly unconfirmed, but

68. *See* E. GOODE, THE MARIJUANA SMOKERS 100 (1970).

69. *See* BLUM 230, 277-80, 284; NOWLIS 17-19.

70. Goldstein, Kaizer & Warren, *Psychotropic Effects of Caffeine in Man. I. Individual Differences in Sensitivity to Caffeine-induced Wakefulness*, 149 J. PHARMACOLOGY & EXPERIMENTAL THERAPEUTICS 156 (1965).

71. Goldstein, Kaizer & Whitby, *Psychotropic Effects of Caffeine in Man. IV. Quantitative and Qualitative Differences Associated with Habituation to Coffee*, 10 CLINICAL PHARMACOLOGY & THERAPEUTICS 489 (1969).

72. Caffeine has been found to be mutagenic in fungi, bacteria, plants, mice and *Drosophila*. Goldstein & Warren, *Lack of Relationship Between Gastric Carcinoma and Intake of Beverages*

suspicious, findings indicate a possible connection between coffee drinking and cancer of the bladder.[73] Differences of degree and kind are, however, important and a legal system which made no distinction between heroin and coffee would leave a great deal to be desired.

It is possible that if more were known about drugs it could be said that it is not that some drugs are more dangerous than others, but rather that certain drugs are more dangerous to specific types of people. Moreover, with sufficient knowledge about both drugs and people it is possible that they could be matched as accurately as are diabetics and sugar. It might also be possible to define with some precision who will be injured by a given drug. Unfortunately, it transcends the limits of present knowledge to say more than that certain types of people seem more vulnerable to one drug than another, and, as a result, society tends to proceed by making general rules about drugs based in part upon a feeling as to their overall danger.

Models of Drug Control

In order to better understand the control of drug abuse, it will be instructive to note the various models that our society has adopted to control different types of drugs.

Coffee

Coffee may be sold and used in all nations, although at times its use has been punishable by imprisonment or death.[74] Although in many countries coffee bears a tax that is disproportionate to the taxes on other imported foodstuffs, in this country no legal effort is aimed at discouraging its use.[75] The fact that it is a drug which injures at least some of its users[76] seems to be reflected solely in non-legal, social controls -- for example, the sight of an eight-year-old having a cup of coffee is sufficiently remarkable to be remembered for some while.

Containing Caffeine, 15 CANCER 1261, 1261 (1962). Kuhlmann, Fromme, Heege & Ostertag, *The Mutagenic Action of Caffeine in Higher Organisms*, 28 CANCER RESEARCH 2375 (1968). In one study caffeine induced chromatid breakages in human cells *in vitro*.

73. *See* Cole, *Coffee-Drinking and Cancer of the Lower Urinary Tract*, 1 LANCET 1335 (1971).

74. BLUM 11-12.

75. *See* NOWLIS 113.

76. The dangers of "coffee abuse" are discussed at notes 72-75 *supra* and accompanying text.

Tobacco

The regulations on tobacco are slightly more onerous than those on coffee. It is taxed far more heavily than most other consumables,[77] its advertising is restricted,[78] and its sale to minors is purportedly forbidden,[79] though in fact no attention is usually paid to this last restriction. Recently, cigarette manufacturers were required to put a notice on the packages saying that "The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health."[80] Finally, considerable amounts of money are spent to convince users of the harmfulness of this drug though nothing remotely approaching either the amounts taken in through the taxes on tobacco or the amounts spent by the cigarette industry to promote its sale.

Alcohol

To describe completely the present controls on alcohol would take a sizeable book. It is a drug which causes enormous social havoc[81] and is dangerous to a fairly sizeable proportion of those who use it.[82] To prevent its use altogether, the United States and several other western countries have, for brief periods, tried a prohibition which made the manufacture and sale—and in some countries the use—of alcoholic beverages a crime.[83] This type of control, however, has almost everywhere been abandoned and is used today only in certain Moslem countries where it is supported by a strong religious taboo.[84] Present methods of control are less ambitious but are generally regarded as more successful: the drug is sold through either a government monopoly or license,[85] which is restricted to those of good moral character, it is heavily taxed, and there are strong controls on its sale to those under the age of 18 or 21, depending on the state. Moreover, its

77. KAPLAN 313.

78. Public Health Cigarette Smoking Act of 1969, 15 U.S.C. § 1335 (1970).

79. *See, e.g.*, CAL. PENAL CODE § 308 (WEST 1955); ILL. ANN. STAT. ch. 23, §§ 2357, 2358 (Smith-Hurd 1968); N.Y. PENAL LAW § 260.20-5 (McKinney 1967).

80. Public Health Cigarette Smoking Act of 1969, 15 U.S.C. § 1333 (1970).

81. "[A]lcohol has probably caused more disease than any other drug in man's history. It is a major cause of social disability. There are at least 2,500,000 socially useless alcoholics in this country and about as many whose productivity is curtailed by alcohol . . . ." Modell, *supra* note 52, at 347.

82. *See* BLOOMQUIST 180-88 (13% of alcohol users are alcoholic); BLUM 42 (7%).

83. *See* BLUM 34, 37-39; SINCLAIR 335.

84. BLUM 238.

85. For an exposition of the detail of the licensing system, see KAPLAN 335-41. A licensing system for marijuana is discussed at length at notes 131-38 *infra* and accompanying text.

advertising is restricted and sale is forbidden close to schools or churches.[86] Furthermore, several states have "rationing" systems, while others have "posting" laws whereby a public official can determine whether an individual is abusing alcohol and thereby make it illegal for anyone to give or sell it to him. Finally, although in this nation little is spent to warn the public against the dangers of alcoholism, this method of control is not unknown.[87]

Cyclamates

The control of cyclamates exemplifies the next model of drug regulation—though this type of regulation is more commonly applied to conduct other than that associated with supply and use of drugs.[88] This is called the vice model because it is the type of legal regulation best known for its application to vices such as gambling and prostitution.[89] Where the vice model is applied to commodities or services which may injure their user, the seller is made guilty, but not the buyer. The theory behind this distinction is that sufficient control may be exercised over a product by using the criminal law to try to deter suppliers, without attempting to apply the criminal sanction to the far larger number of users.[90] Just as public policy demands the protection of motorists and passengers from traumatic injury caused by automobiles which lack seat belts or padded dashboards, through the exertion of pressure to prevent these dangerous instrumentalities from being sold, so it protects people from cancer of the bladder[91]—which they may get from dietetic soft drinks containing cyclamates (if they turn out to have a metabolism like a rat's and drink enormous quanti-

86. *See, e.g.*, CAL. BUS. & PROF. CODE § 25608 (West 1964); ILL. ANN. STAT. ch. 43, § 127 (Supp. 1971); N.Y. ALCO. BEV. CONTROL LAW § 64 (McKinney 1970).

87. France, for example, which has an even more acute problem than does the United States, devotes considerable effort to public information on its dangers. BLUM 240.

88. It has previously been discussed in connection with the laws which might make it criminal to manufacture or sell automobiles which were not equipped with seatbelts. See notes 29-30 *supra* and accompanying text.

89. *See generally* KAPLAN 315-30.

90. The explanation usually given for the differentiation is that the buyer is merely a victim who needs help not punishment, whereas the seller is guilty of the evil of exploiting the weaknesses of others. *Id.* at 316.

91. See 34 Fed. Reg. 17063-64 (1969), where the Food and Drug Administration found that cyclamates were not safe for use in food.

ties).[92] Probably the most interesting thing about the control of cyclamates is that it works.[93]

Antibiotics

The next type of drug control is that used for antibiotics—the medical model.[94] This model seems to be the preferred one for drugs which meet three conditions—drugs that have medical uses, that are capable of harming their user, and that are not especially sought by illegal users. Under the medical model, the medical profession is given control of the right to obtain the drug. The ordinary citizen can purchase it if and only if he has the permission of a physician who is given almost uncontrolled discretion as to whether he will make the prescription. If the physician approves, he will give the drug user a prescription which will allow a licensed pharmacist to sell the prescribed quantity. If the user does not have a prescription, but can still get someone to sell him the drug, he will commit no crime, but the seller will be guilty of a criminal offense—or, more significantly, if a pharmacist, he may lose his license.[95] In short, the cyclamate or "vice" model, punishing the seller, but not the user, is applied to medical drugs used without a prescription.

Amphetamines and Barbiturates

The amphetamines and barbiturates resemble the antibiotics in that they both have legitimate medical uses and can harm a certain percentage of their users. They differ, however, from the antbiotic-like drugs in that they are in substantial demand for non-medical, or recreational purposes. Although jurisdictions differ in how they treat this non-medical use, the modern trend has been to decide that the vice

92. The methods and results of the study which caused the removal of cyclamates from the FDA's "generally recognized as safe" (GRAS) list of chemical substances used as food additives are detailed in Price, Biava, Oser, Vogin, Steinfeld & Ley, *Bladder Tumors in Rats Fed Cyclohexylamine or High Doses of a Mixture of Cyclamate and Saccharin*, 167 SCIENCE 1131 (1970), which also discusses the history of research dealing with cyclamates, and the particular steps leading to their ban. The dispute as to whether the ban was required, or even prudent, has been intense. *Compare* Letter, Inhorn & Meisner, *Cyclamate Ban*, 166 SCIENCE 685 (1969) (expressing alarm that such a beneficial substance would be banned on such inconclusive evidence) *with* Letter, Epstein, Hollaender, Lederberg, Legator, Richardson & Wolff, *Wisdom of Cyclamate Ban, id.* at 1575 (that a substance without demonstrable matching benefits should be banned when it is possible it represents a long-run danger).

93. See p. 1094 *infra* and accompanying text.

94. *See generally* KAPLAN 330-32.

95. CAL. BUS. & PROF. CODE §§ 4227, 4350, 4363 (West Supp. 1971).

model is not sufficient. As a result, we have tended to treat the non-medical users of these drugs like the helmetless cyclists—that is, to deter them through the threat of criminal penalties.[96]

Marijuana and Heroin

Finally, there are the drugs such as marijuana and heroin which are subject to complete prohibition. Since these drugs have no "recognized" medical use, the medical model cannot be applied, and, because they are considered too dangerous, the vice, or cyclamate, model is also unavailable. As a result both sale and use of these drugs is criminal—without the safety valve provided by the amphetamine and barbiturate model where medical practice diverts a sizeable percentage of the drug use into legal channels.

Other Models

Two things should be noted about the models of legal treatment applied to these various drugs. First, although the differing treatments cover an enormous range, additional legal models could be devised. It has been suggested by some advocates of marijuana legalization who fear commercialization, for example, that the "flower children" model should be adopted.[97] By this model, all taint of commercialization would be removed by a law which permitted anyone to grow the drug for himself and use or give away as much as he wished. The only act that would be forbidden would be sale. Interestingly enough, this is a model which bears some relation to the treatment of prostitution--apparently, there are certain things that can be given away but should not be sold. On the other hand, the fact that the legal treatment of prostitution has not been what could be called one of the law's greater successes, may be a good reason to be cautious about adopting the "flower children" model.

Second, the assignment of drugs to the various categories, while to a certain extent determined by the dangers of the drug in question, is also subject to a host of other factors. Some forty years ago alcohol in the United States was treated according to a combination of various other models. It was available on prescription from a physician or for religious or sacramental purposes, but the manufacture,

96. 15 U.S.C. §§ 1261-74 (1970).

97. Aldrich, Notes on Structuring Legal Sale of Marijuana to Minimize Abuse (Aug. 15, 1971) (mimeo publication by AMORPHIA).

sale, or even use outside of these, and a few other narrow exceptions, was criminal.[98] It is interesting to note that at this same time a marijuana extract was treated according to the medical model.[99] The assignment of models of control to drugs varies both from nation to nation and over time. Thus, heroin is treated under the medical model in England[100] today while in Sweden amphetamines are essentially prohibited entirely.

The question, of course, raised by the large variation in the models by which drug use is controlled is how a rational society should allocate drugs among the different methods of legal treatment. Rather than attempting to lay down a systematic decisional process, six principles will be presented which should be kept in mind when deciding which models should be applied to which drugs.

PRINCIPLES OF DRUG CONTROL

Principle I: It is hard, if not impossible, to justify a criminal law which punishes the drug user himself

As was noted in discussing the helmetless cyclist case, it is relatively rare for the criminal law to force a person to take better care of himself. The drug area is probably the major exception to this rule since with respect to all the commonly used illegal drugs, the user, along with the seller, is subject to the criminal law. However, while the helmetless cyclist case was unusual in that the high visibility of the violation made enforcement of the law a comparatively easy task, the exact opposite is true with respect to drug use. Even though attempts are made to make the proscription of drug use more easily enforceable by outlawing possession as a surrogate for the forbidden drug use,[101] possession of a small amount of a substance is extremely difficult to detect—except through search, which is an expensive, time-consuming and resented police activity. Indeed, possession of a drug by a user is close to the opposite pole of detectability from the case of the helmetless cyclist.

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98. *See generally* SINCLAIR 410-11; C. WARBURTON, THE ECONOMIC RESULTS OF PROHIBITION 67-69 (1932).

99. S. SNYDER, THE USES OF MARIJUANA (1971).

100. M. GLATT, D. PITTMAN, D. GILLESPIE & D. HIELS, THE DRUG SCENE IN GREAT BRITAIN 100-01 (1967); E. SCHUR, CRIMES WITHOUT VICTIMS 152-56 (1965); Stimson, The Patterns of Behavior of Heroin Addicts (September, 1971) (unpublished paper, Addiction Research Unit, Institute of Psychiatry, London); Cardner & Connell, *One Year's Experience in a Drug Dependence Clinic*, 2 LANCET 455 (1970).

101. CAL. HEALTH & SAFETY CODE § 11500 (West Supp. 1971).

Moreover, since the overwhelming reason for applying the criminal law to the drug user is to protect him from himself, the law is caught in a conundrum. Insofar as the drug itself is dangerous, there is, all other things being equal, a better reason to try to discourage its use. To the extent that the criminal law is expected to deter this use, however, it is obviously least effective against those who are so oblivious to the consequences of their actions as to be willing to use the harmful drug in the first place. Those who can be influenced by the threats of harm imposed by the criminal law, on the other hand, will find such threats unnecessary since they are more likely to be deterred by the danger of the drug alone. Nor is the case for criminal treatment of the drug user any stronger in the case of less dangerous drugs. Here the strictures of the criminal law will be effective in discouraging use by potential users who would not be deterred by the lesser dangers of the drug. As the dangers of drug abuse grow less, however, the case for expending societal resources on the task of protecting users from themselves grows progressively weaker.

The major theoretical case for detering drug users from harming themselves, then, exists in the case of a drug which is in fact very dangerous but which is not seen to be so by the public. Presumably criminal prosecution might then supplement education. It turns out, however, that the criminal law is an anti-educative device, at least to those who are most likely to use illegal drugs.[102] They tend to oppose law enforcement to begin with and will tend to see such drug education simply as a means of getting them to obey the law. Moreover, the idea that legislators will know more about the dangers of drugs than those who use them has been refuted by every survey that has been conducted on the issue.

Similarly, none of the other purposes of the criminal law argue for its application to the drug user himself. Even assuming that the criminal law can reform drug users—a most unrealistic assumption based on today's knowledge—this is extremely expensive.[103] Even if the imprisonment and consequent reformation of drug users is seen as a method of avoiding secondary harms, any rational calculus will tell us that this is more expensive than enduring the secondary harms themselves. The disparity becomes even greater if it is recognized that

102. Kaplan, *Drug Laws Handicapping Control and Education* 4, at 1 CLINICAL TOXICOLOGY 141, 142-43 (1971).

103. The cost of the marijuana laws, for example, is explored in KAPLAN 21-48.

any proper method of cost accounting will attribute the cost of efforts to arrest and convict all drug users to the "cures" of the relatively few who are actually caught or driven into treatment programs.

The argument for penalizing the drug user himself becomes even weaker when it is remembered that the alternative is not necessarily the allowance of completely uncontrolled sale and merchandising. As has been seen, there is a whole arsenal of other control strategies available.[104] The vice model, for instance, can typically restrict the supply almost as well as a complete prohibition at the considerably lower cost of enforcement which results from concentration on the much smaller number of traffickers, at least as compared with ordinary users.[105]

There are, however, at least in theory, two situations where one might wish to consider a criminal law applied to the drug user himself. First, the drug user could be considered a source of contagion who might be "quarantined" through use of the criminal law. There are, however, several practical defects in such a justification. Though it might make sense where there are few users of the drug, in this country the simple fact is that society is unable to catch nearly a high enough percentage of drug users to significantly impede this kind of contagion. Moreover, when they are caught the drug users are typically placed in a jail and exposed there to those most, rather than least, susceptible to the contagion. The threat of prosecution, furthermore, exerts strong pressure in driving drug users into a distinct subculture from which their recruiting efforts can be most successful. Finally, the mere act of prosecuting drug users gives them a publicity and dramatic appeal which may increase the attraction of the life style for those who are most susceptible to the very contagion against which the law is trying to guard.[106]

Second, it is conceivable that a drug might move such a high percentage of its users to crimes against others that use of the drug would be an accurate predictor of such conduct. In that case, drug use could be treated as an inchoate crime against others, not unlike recklessness on the highway or criminal attempt. Even John Stuart Mill conceded that mere drunkenness itself might be a crime in one

104. See notes 75-98 *supra* and accompanying text.

105. *See* KAPLAN 316.

106. This process, of course, is the antithesis of the "modelling" justification often used to justify drug control. See notes 6-7 *supra* and accompanying text.

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"who had once been convicted of any act of violence to others under the influence of drink."[107] If there were a drug which was sufficiently predictive of acts of violence, it might make sense to treat its possession like possession of a sawed-off shotgun. With all drugs known today, except heroin, any rationale based upon the risk of harm to others, let alone violent crime, is challengeable on factual grounds.[108] With respect to heroin, however, it can admittedly be argued that its use is a sufficient predictor of criminal acts, at least in those without any legal source of sufficient income to maintain a drug habit.[109] This is so notwithstanding the irony that it is the law itself that is an equal cause of the addict's crime. Methadone maintenance programs have, on the other hand, already shown dramatic ability to decrease the criminality of a sizeable percentage of heroin addicts,[110] and, at least until this type of solution is shown to be inadequate, it makes relatively little sense to use the far more expensive and less effective methods of punishing the drug user himself.

Principle II: Drugs do people good as well as harm

Because drugs do people good as well as harm, when one considers reducing the abuse of a drug through a legal measure, he should also consider the corresponding reduction of the drug's beneficial use which the measure will cause. Thus, even if a drug prohibition were effective at preventing all use of a drug, this may not always be a cause for satisfaction because the good the drug might have done may very well exceed the harm prevented by its suppression.

This principle has been most often discussed with respect to medical drugs—even though the medical model[111] seems best adapted to distinguishing between beneficial and harmful use, since it allows physicians to make the determination on a case by case basis. The problem also arises, however, with respect to the "new" drugs that are being tested for approval. It has been alleged that bureaucratic drug administration has imposed unrealistic and expensive testing

107. MILL 115-16.

108. *See generally* NOWLIS.

109. BLUM 288-89. *See also* KAPLAN 240.

110. *See* Brill & Chambers, *A Multimodality Approach to Methadone Treatment of Narcotic Addicts*, 16 SOCIAL WORK 39 (1971); Dole & Nyswander, *Rehabilitation of Heroin Addicts After Blockade with Methadone*, 66 N.Y. ST. J. OF MED. 2011, 2012, 2016 (1966). *But cf.* Vaillant, *A Twelve Year Follow-up of New York Narcotic Addicts: Part I, The Relation of Treatment to Outcome*, 122 AM. J. OF PSYCHIATRY 727, 730, 736 (1966).

111. See notes 94-95 *supra* and accompanying text.

standards which must be met prior to putting a drug on the market.[112] Many observers have felt that although the protection afforded by these standards against another thalidomide disaster is very important, the harm done to society by unnecessarily keeping beneficial drugs off the market may outweigh the more demonstrable harm caused by allowing the prescription of potentially harmful drugs.[113] Whether or not these charges are correct, it must be remembered that the evaluation of medical drugs has been turned over to a bureaucracy and that there is a constant and strong tendency for a bureaucrat to prefer invisible to visible errors. Since he will suffer far less attack if he keeps a valuable drug off the market than if a drug he has passed does harm, the bureaucrat will always tend toward a caution which may be damaging to society as a whole.

It is even possible that this principle may have application to the cyclamates. There might be many people, for example, who should rationally take their chances on the relatively unlikely possibility of bladder cancer caused by cyclamates, rather than face the more certain health dangers of obesity. If the long-term health consequences of putting on too much weight are considered, it may be that the population as a whole would suffer greater injury from being overweight than from the threat of cancer in a small percentage of users.[114]

The cyclamates point up another aspect of this problem. With the possible exception of some medical "wonder" drugs, the good that a drug does will tend to be more widespread, but far less dramatic, than the harm. Even in the case of alcohol where the medical harm clearly outweighs the good, and in the case of marijuana where the issue is subject to acrimonious debate, there is no doubt that there are many people who avoid serious mental problems by relaxing and reducing anxiety with one or the other of these drugs. In the case of both alcohol and marijuana, then, one might still decide that complete

112. *See, e.g.*, Djerassi, *Birth Control After 1984*, 169 SCIENCE 941, 942-43 (1970); Djerassi, *Prognosis for the Development of New Chemical Birth-Control Agents*, 166 SCIENCE 468, 469, 471 (1969) (both articles dealing with the questionable requirements of using animals to test oral contraceptives for human use).

113. Djerassi, *Birth Control After 1984*, *supra* note 112, at 949; Djerassi, *Prognosis*, *supra* note 112, at 470.

114. *See generally* Hatch, *Atherosclerosis Calls for a New Kind of Preventive Medicine*, 109 CALIF. MED. 134, 136-37 (1968). *See also* Dawber, Moore & Mann, *Coronary Heart Disease in the Framingham Study*, 47 AM. J. PUB. HEALTH 4 (Supp. April, 1957); M. Duffy, *Obesity and Coronary Heart Disease* (December 9, 1970) (unpublished paper at Stanford Medical Center, Stanford, California).

prohibition is the best social response if it could be made to work at a cost proportional to its benefits. However, one would then have to consider not only the social and financial cost of making the prohibition work, but the restriction of beneficial use as well.

Attention will be later focused on the often neglected point that the greater the number of users who consider their drug use beneficial, the harder it will be to make the prohibition work. At this point it is necessary only to note that prohibition may well discourage the beneficial use much more effectively than the harmful use. The person who is dependent on and desperately needs a drug is likely not only to be the one who will work hardest to get it but also the one most likely to injure himself with it. In some situations the law works well to keep people from using a drug who might benefit from it but is relatively ineffectual to prevent use by those who harm themselves.[115] The marijuana laws today, and, so far as can be told, the prohibition of earlier years, discouraged moderate use by older more stable and cautious members of society far more than they deterred the younger, more unstable and less forward looking, who in fact are much more likely to become abusers.[116]

Principle III: An important factor in the success or failure of any method of drug control is the degree to which the users want the drug

This is one major reason why when the government ordered cyclamates off the market they simply disappeared, whereas alcohol during prohibition, and marijuana more recently, did not. The cyclamates could be successfully barred in great part because most users really did not want them very much. They were only used to save calories, and calories could be almost as effectively reduced in other ways. Although cyclamates did not have the bitter after-taste of saccharine, a combination of saccharine and a small amount of sugar was a sufficient substitute for most people. Nor did cyclamates, unlike heroin for instance, produce either addiction or psychological dependence to make its users seek the drug at substantial personal cost. Consequently, the illegal seller of cyclamates did not have a very good market.

115. *See* KAPLAN 323-26. *See generally* R. STEFFENHAGEN & P. LEAHY, A STUDY OF DRUG USE PATTERNS OF HIGH SCHOOL STUDENTS IN THE STATE OF VERMONT (1969).

116. C. Warburton, *supra* note 98, at 233-42; Sinclair 238-41. *See generally* CHAMBERS, DIFFERENTIAL DRUG USE WITHIN THE NEW YORK STATE LABOR FORCE (New York State Narcotic Addiction Control Commission, 1971).

Compare marijuana or alcohol to the cyclamates. Both cause dependence,[117] though to only a relatively small number of users and they give considerable pleasure to a high proportion of the rest. The users of each of these "social" drugs do not, in addition, seem to recognize substitutes for their drugs, as was the case with cyclamates. They are not, then, presented with easily available alternatives so as to make unnecessary their efforts to procure alcohol or marijuana.

Principle IV: The technology of drug production and consumption is an important factor in the success or failure of a drug control measure

Where the technology of drug production and distribution is not difficult to overcome, drug control will be very difficult, but where that is not the case, the control will be far more effective. Take, for example, the cyclamates. Although they do not take a great deal of technology or invested capital, unlike amphetamines they are not easily divertible from normal chains of commerce; unlike marijuana, they are neither grown wild in nature nor produced in less developed countries beyond the effective reach of law enforcement; and, unlike alcohol, they cannot easily be distilled in anyone's basement from completely untraceable ingredients. Moreover, so long as cyclamates are consumed in cans of diet drinks selling for ten or fifteen cents each, it would hardly be economical to transport large quantities of such beverages illegally; a truckload of such diet drinks would be considerably less valuable than a pocketfull of heroin, a small suitcase full of marijuana or a car full of alcohol. Of course, if there were a sufficient demand for cyclamates, and if the technology of production were simpler, it might be that legitimate business would produce non-sweet soft drinks to which the illegal drug user could add his cyclamates—much as large amounts of cigarette papers and water pipes are now sold and which, for the most part, end up being used with illegal marijuana. Until this level is reached, however, the technology of production and distribution helps make the cyclamates an example of effective drug control.

Principle V: The social cost of a drug control law can be staggering

Insofar as a drug control law accomplishes its object of preventing drug abuse, it will typically not be very costly. In the case of the

117. KAPLAN 156-67, 270-76.

cyclamates, the only cost of preventing its harmful use is that a good deal of valuable use is also prevented—which, if more were known, might turn out to be perfectly safe. And where a drug is controlled by the medical model, its major cost is the amount of medical time and effort it takes to run the system which must be paid for by the drug user.

Where the drug control law is widely violated, however, its costs can rise staggeringly. The alcohol trade during prohibition not only led to the vast expansion of organized crime in America and enormous official corruption,[118] but it added a new danger to the health of the nation as well. Although alcohol distillers did not generally sell methyl alcohol mixed with their liquor before or after prohibition, during prohibition many bootleggers did and caused a sizeable number of injuries to the unfortunate people who consumed it.

Even if one supports the present prohibition of the heroin laws because of the fear of vastly greater heroin addiction, he must recognize that in so doing he pays an enormous price in addict criminality. A major effect of the heroin laws has been to create, in Professor Packer's term, a "crime tariff" which raises the price of the drug to many times what it would be in a competitive market.[119] It is the price of the drug rather than addiction itself which requires addicts to turn to crime. Crime is necessary not so much because heroin prevents the addict from holding down a legitimate job, but because only crime can permit the relatively uneducated addict to earn enough to feed his habit. Moreover, heroin is not only a very addicting drug, it is also a drug which causes a "tolerance"—a gradual increase in the amount necessary for the user to gain a constant effect.[120] This gradually socializes the addict into criminality and makes sure that his need increases as he becomes a more experienced criminal. Although many addicts support their habit through the sale of heroin, users cannot make a living by simply selling to each other. Sooner or later the community outside must be victimized through property crimes or the manufacture of new addicts—who in turn repeat the same process. Finally, the cost of the heroin laws in terms of police corruption and erosion of civil liberties is impossible to measure.

The marijuana laws, perhaps, best demonstrate the heavy costs

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118. *See* PACKER 277-82.

119. PACKER 277-82.

120. Martin & Jasinski, *Physiological Parameters of Morphine Dependence in Man—Tolerance, Early Abstinence, Protracted Abstinence*, 7 J. PSYCHIATRIC RESEARCH 9 (1969).

that may be paid for attempts to control drug use.[121] Some of these costs could, of course, be reduced by substituting the vice model for the present prohibition—and this would be the very least demanded by Principle I. Such a change would vastly reduce the enormous expenditure of resources used in processing users. The great majority, over ninety percent, of the 70,000 marijuana arrests made during 1970 in California were of users possessing only small amounts of the drug, and almost as large a percentage of the cost of processing offenders through the criminal system was spent upon users.[122]

It is hard to prove with equal precision the other costs of criminalizing the possession of marijuana—though we should expect fairly sizeable costs from a law which turns approximately one-third of young Americans into unrepentant criminals.[123] It cannot be proven, but it is suspected that no generation of young people since prohibition has grown up as profoundly distrustful of the police and the law enforcement apparatus as has our present younger generation. It certainly is undeniable that anyone who smokes marijuana cannot possibly consider the policeman as his friend and protector as many Americans were brought up to do. Indeed, if one could somehow graph the hostility of young people toward the police with the increasing use of marijuana, he would find two sharply increasing and probably parallel curves.

The police are by no means the only major institution of our society which has been alienated from the young by the marijuana laws. Examine, for instance, organized medicine. Just a few months ago, the President-elect of the American Medical Association was widely quoted to the effect that the Association had evidence that marijuana use caused impotence and birth defects.[124] Although he later admitted that he knew of no such evidence, he said that he had allowed the misrepresentations to stand because he wished to discourage marijuana use.[125] As he put it, "If I am taken out of context and it does some good, I don't mind." When asked about the loss of

121. *See* KAPLAN 21-52. The marijuana laws themselves are extensively discussed in Bonnie & Whitebread, *supra* note 22.

122. *See* BUREAU OF CRIME STATISTICS, DRUG ARRESTS AND DISPOSITIONS; CRIME AND DELINQUENCY IN CALIFORNIA, 1970 1 (1971). *See also* KAPLAN 29.

123. KAPLAN 22-26.

124. The criminalization of marijuana may, in fact, be the single most unifying and recruiting agent available to the counter-culture of the New Left. *See* Bonnie & Whitebread, *supra* note 22, at 1098.

125. McCabe, *Clamor in the AMA*, San Francisco Chronicle, April 7, 1971, at 51.

credibility among the young caused by this type of authoritative misrepresentation, he said, "I'm tired of these phrases about credibility gap and such. We're talking about the morality of our country and the loss of respect of law and order and authority and decency."[126] In short, an attempt to support the marijuana laws led directly to the view that it was permissible to mislead young people in order to get them to respect authority and decency. Because of this type of well-publicized incident—as well as the almost equally well known lowering of scientific standards by the Journal of the American Medical Association to print articles exaggerating dangers of marijuana[127]—it is extremely unlikely that organized medicine will ever enjoy again the credibility with young people that it had before the marijuana laws became an issue—even on questions where it is not attempting to compel respect for authority.

These costs, which are for the most part attributable to the decision to make marijuana use criminal, do not exhaust the costs of the marijuana laws. Even the adoption of a vice model would still impose enormous costs upon society. Because of Principles III and IV, the law would almost certainly remain unenforceable and as a result, the marijuana laws would continue in several ways to contribute to the use of drugs which by any standard are far more dangerous than marijuana. Since drug education is the most important long-term solution to drug abuse,[128] the marijuana laws would continue to inhibit educating young people about the dangers of heroin, LSD, amphetamines, and other drugs. Although education as to drugs other than marijuana can be extremely factual and yet effective, the fact that drug education must also support the marijuana laws destroys a great part of its credibility.[129] The reason for this—as grasped intuitively by the President-elect of the American Medical Association—is that the only way to defend to young people the gross disparity between the legal treatment of marijuana and alcohol is to attempt to mislead them about the facts. The problem is that such attempts generally fail,

126. San Jose Mercury, March 25, 1971, at 17, col. 1.

127. *See, e.g.*, Kolansky & Moore, *Effects of Marihuana on Adolescents and Young Adults*, 216 J.A.M.A. 486 (1971). *See generally* BLOOMQUIST 225-30.

128. It is interesting to note that the Federal Bureau of Narcotics went to great lengths in the thirties to educate the public as to the purported evils of marijuana. This miseducation has had a lasting effect. *See* J. FORT, THE PLEASURE SEEKERS 69-71 (1969); Grinspoon, *supra* note 8, at 20-22.

129. Kaplan, *supra* note 84.

destroying in the process the factual and honest efforts to educate against the use of other more dangerous drugs.

Second, by forbidding the legal sale of marijuana society will continue, in effect, to give a monopoly on marijuana sale to drug pushers. This will continue to bring all those who would use marijuana into contact with a group which already risks severe penalties for selling it, and, therefore, has every incentive to deal in higher profit items such as LSD, amphetamines or heroin. One can liken this to what would happen if a monopoly of all coffee sales were given to one supermarket chain. Not only would their sale of coffee skyrocket, but so would sales of just about everything else because those who were in the store would be available for a hard sell on other products. It is no different with illegal commodities and, just as prohibition had to be repealed to get the "mob" out of the liquor business,[130] marijuana will have to be sold under license by legitimate businessmen to get the drug pushers out of the marijuana business.[131]

Principle VI: Marijuana is the key drug, and until substantial progress is made in controlling it, little real progress can be made on the other areas of drug control

In order to understand why a licensing system for marijuana is necessary, it must be remembered first that marijuana is by far the most widely used illegal drug in the nation; second, that it is typically the first illegal drug used by those who later use more dangerous drugs; third, that the popularity and relative lack of danger of marijuana tends to make all illegal drug-taking somewhat more respectable; fourth, that attempts to defend the legal treatment of marijuana, especially as compared with alcohol, have compromised the educational effort to reduce use of more dangerous drugs; and fifth, that the marijuana market has called into being an elaborate drug-dealing subculture which is instrumental in the sale of, and proselytizing for, other illegal drugs.[132]

One method of ending the central position of marijuana would, in theory, be to enforce marijuana laws and actually stamp out the drug. As previously discussed, however, this simply cannot be accom-

130. SINCLAIR 229-30, 415.

131. The requirements for such a licensing system are considered at length at notes 132-38 *infra* and accompanying text.

132. KAPLAN 44-45, 224-25.

plished within the constraints imposed by the police resources at hand, and the constitutional rights of privacy guaranteed to citizens. Indeed one can put the matter somewhat more strongly and say that, short of a complete police state, it will be impossible to enforce the marijuana laws sufficiently to change any of the five facts mentioned above.

The application to marijuana, however, of a licensing system similar to that presently applied to alcohol changes all five drastically. First, marijuana would no longer be the most widely used illegal drug in the United States; nor, for that matter, would it be the most widely used legal drug—alcohol and tobacco would still vie for that distinction. Second, marijuana would no longer be the first illegal, or the first legal, drug used by those who later use more dangerous substances. Third, marijuana, once classified with the legal drugs, would no longer reflect its popularity upon the illegal drugs. Fourth, the removal of the disparity between the legal treatment of marijuana and alcohol would allow more honesty in educating about both—while at the same time increasing the credibility of presently honest warnings about the more dangerous drugs. And, fifth, nothing will damage the illegal drug dealing subculture as much as exposure to honest competition by legitimate businessmen.

The Requirements of a Licensing System for Marijuana

Inasmuch as Principle VI is the most important application of the other five, it will be helpful here to sketch a model of a marijuana licensing system, as an illustration of the progress that may be made if one applies all of the principles toward a rational system of drug abuse control.

The administration of the licensing system would be turned over to an agency similar to the Alcoholic Beverage Control Commission. Indeed, the work of this agency would be so close to that presently performed by the ABC that control of marijuana would probably be added to its jurisdiction—perhaps by renaming it the Social Drug Control Agency (SDCA). The system of control, then, would provide that:

(1) Sufficient marijuana to meet the state's needs could be grown under license from the SDCA by a relatively small number of landowners. The United States National Institute of Mental Health has for several years now grown marijuana for research purposes on a

fairly large scale on its farm in Mississippi, and has been able to protect its crop from diversion and theft.[133] The SDCA would have to require similar precautions.

(2) Even in the early stages of marijuana licensing, it is likely that the competitive market will determine the price paid to the grower. The cost of producing it today is approximately one cent per ounce, while the market price of the same amount is approximately fifteen dollars. If, however, the number of licenses is, for security reasons, kept so low as to prevent a free market from operating, the SDCA should have the power to fix the price per ounce for different grades.

(3) Once the marijuana is grown, it would be sold to a packager-wholesaler licensed by the SDCA to test and mix different strength marijuanas to obtain a standard potency of 1.5 percent tetrahydrocannabinol—on the market today this would be regarded as "good grass." The mixture would then be vacuum packed (because marijuana loses its potency over a period of months when exposed to the air) in one-ounce containers as is pipe tobacco.

(4) Each one ounce "lid" would bear a tax of twelve dollars and be sold for about eighteen dollars in any store licensed to sell hard liquor. Thus, we would incorporate by reference all of the many restrictions on liquor stores—from the moral character of the seller to the spatial distance between schools and churches.

(5) At least in the early stages of the marijuana licensing, where it is important to proceed slowly and carefully, it would be illegal to sell less than a lid, or to sell marijuana for consumption on the premises.

(6) All advertising would be forbidden except that which is done within the liquor store.

(7) Each package of marijuana would carry a warning drafted by an expert medical committee, fairly stating the dangers, as well as the uncertainties of marijuana use.

(8) Sales to those under age would be prohibited under exactly the same type of regulations that now apply to hard liquor.[134]

(9) It would, of course, remain a crime to drive an automobile

133. McGlothlin, The Use and Effect of Cannabis 3, 4 (1971) (unpublished paper prepared for the Nat'l Comm'n on Marijuana and Dangerous Drugs).

134. The age for consumption of marijuana should be 18 rather than 21. The lower age is coming more and more to mark the line between the child and the adult. Needless to say, the alcohol law might have to be changed as well—though there are signs that this is happening and it is recommended by most authorities on alcoholism.

under the influence of marijuana. Although it is not presently scientifically possible to determine whether one is under the influence of marijuana, it is likely that such a test will soon be developed. If not, the SDCA should have the power to require that a biologically inert material be added to legal marijuana, which can be identified in body fluids during the period when driving might be dangerous. It should be understood, moreover, that while present research indicates that the marijuana intoxicated driver is more dangerous than the driver who has consumed no drug at all, he is much less dangerous than the drunk driver.[135]

(10) It would be a criminal offense to sell or possess marijuana outside the licensing system, and the selling of marijuana to one under age would be regarded as an aggravating factor.

(11) The growing of marijuana for one's own use would be permitted under strict regulation and taxation by the SDCA. Permission would be granted subject to the same types of rights of inspection as apply in the alcohol industry.[136] Violators would be treated as revenue offenders, but this by no means precludes a term of imprisonment in cases where commercial quantities are grown.

(12) The SDCA would be given power to raise or lower the tax on marijuana. It should have the power to lower the tax if it finds that advances in techniques of evading law enforcement have made bootleg marijuana a serious problem at the then present price; and it should have the power to raise the tax should it determine that more revenue can be derived from the sale of the drug without raising the price so high as to bring into existence an illegal market.

(13) This should be regarded as a "stripped down" licensing model. It might turn out for instance that the SDCA would be better off allowing more than one potency of marijuana. This might allow a marijuana user to use a less potent form of the drug if he wishes, while at the same time allowing the SDCA to make available a stronger variety if desire for it had been sufficient to create an uncontrollable black-market.

(14) In order to permit this licensing system to function, a federal law would have to be passed which does not forbid those activities necessary to the furtherance of the system. This would mean, for example, the federal law of possession and sale[137] would provide a

135. *See* Crancer, Dille, Delay, Wallace & Haykin, *Comparison of the Effects of Marihuana and Alcohol on Simulated Driving Performance*, 164 SCIENCE 851 (1969).

136. 26 U.S.C. §§ 5202-03 (1970).

137. *See, e.g.*, 21 U.S.C. §§ 841-45 (1970) (possession and distribution of "controlled substances").

specific exception for marijuana marketed according to a state licensing system. In addition, as a matter of international law, the denunciation provision of the Single Convention on narcotics drugs would have to be activated and the United States Government would have to serve notice that it was exercising its option to withdraw from the Convention, at least insofar as the Convention prohibited licensed sales of marijuana.[138]

CONCLUSION

Society must not, of course, delude itself into thinking that a marijuana licensing system will solve all of the problems caused by either marijuana or, *a fortiori*, the other, more dangerous illegal drugs. But it will facilitate a beginning toward the application of the rational principles of drug control to the generic problem of drug abuse. By acting upon these principles, of which the marijuana licensing system is the necessary first step, society will not be approving of drug abuse; rather it will merely be demonstrating that there is a limit to the costs it is willing to suffer—notwithstanding a general commitment to save people from themselves. Until the marijuana laws are so modified, other forms of drug abuse legislation will be ineffective and costly, if only because new drug users will be socialized by the drug subcultures as fast as the legal system can cope with present users.[139]

Just as marijuana control is the first step in a more generally effective drug control system, the problem of drug abuse is but one facet of the broader problem of using the law to protect people from their own folly.[140] Preventing self-harming conduct, however, is a basically intractable problem because voluntarily entered activities impose significant secondary costs upon society.[141] The task of drug control laws, then, is to minimize the social costs of both the activities sought to be controlled and the laws enacted to control those activi-

138. Single Convention on Narcotic Drugs, [1967] 18 U.S.T. 1407, T.I.A.S. No. 6298, 520 U.N.T.S. 151, 204 (Multilateral Treaty Between the United States of America and Other Governments), New York, March 30, 1961, ratified by United States, 1967.

139. Thus, Richard Blum notes that "with pseudo solutions and oversimplifications, the real problems grow worse and nonproblems are increasingly defined as problems, such as cannabis (marijuana) use." BLUM 243.

140. The problem of self-harming conduct and society is considered in depth at notes 1-8 *supra* and accompanying text.

141. The nature of secondary harms associated with drug abuse are discussed at notes 9-31 *supra* and accompanying text.

ties. To say that we as a society have so far done an abysmal job of tackling that task, would be to considerably overstate our success. By turning to somewhat more basic principles, however, it is hoped that in the future we will do better.

THE LAW AND MARIJUANA

American Conservatives Should Revise Their Position on Marijuana

RICHARD C. COWAN

I AM GOING to start with a few assertions of facts that, for all I know that they will be challenged, I consider to have been established by responsible scientific inquiry:

1. Marijuana is non-addictive—I use the word technically.

2. The use of marijuana does not in itself lead to the use of heroin.

3. No one has ever died from an overdose of marijuana.

4. Marijuana *used in moderation* causes no identified physical or mental problems for individuals who are otherwise healthy.

5. Marijuana does not induce criminal behavior or sexual aberration. In fact, it tends in most users to inhibit violence.

6. Marijuana *in moderate use* has little effect on the driving ability of experienced users of it—the contrast with socially equivalent alcohol consumption is to the disadvantage of alcohol.

7. Long-term abuse (gross overuse) should be assumed to be harmful but in fact there is as yet no conclusive evidence to that effect.

8. The moderate use of marijuana does not lead to changes in social behavior or to a loss of motivation. It may correspond with an observable change in people's lives but it is not the cause of that change.

9. Twenty-five million people use or have used marijuana. Marijuana is readily available today to anyone of minimum ingenuity who looks for it.

These assertions are of course contrary to what most agencies of the government have been telling us for the past forty years. (NATIONAL REVIEW has frequently ventilated the official line on marijuana.) Whether you doubt my assertions or not, please read *Marihuana Reconsidered* by Dr. Lester Grinspoon and *Marijuana, The New Prohibition* by John Kaplan. Both authors began their research, by their own admission, disposed in favor of the current legal proscriptions. Both came to the conclusion that our present laws are doing no good and a great deal of harm.

If you read those books and disagree, fine. But if you do not read them and you continue to support (or even if you fail to oppose) sending thousands of young people to prison, you are acquiescing in their punishment out of ignorance. A harsh statement, but true, I think.

It is my thesis that:

1. *Conservatives should support enlightened drug education.* Existing marijuana laws are destroying the credibility of drug education.

The key to education is credibility. Contrast the statements above with the postulates of the conventional government position. In deference to conventional notions about public enlightenment, I wish I could say that "recent discoveries" are responsible for such facts as are more commonly acknowledged nowadays concerning marijuana. In fact, many of them were available to anyone who cared to look into the matter even when the present laws were promulgated in the 1930s.

Accordingly, I ask you: If you are a young person who has found by experience—yours and your friends'—that virtually everything you have been told about marijuana is totally untrue—wouldn't you question what they tell you about LSD, heroin, speed?

Drug abuse in our schools is a serious problem. Barbiturates and amphetamines and a variety of badly made, dangerously contaminated psychedelics are taking a fearful toll, even as parents and teachers rave along about marijuana. The point is *not* that the kids should be encouraged to use pot—certainly not: but that they should be told the truth about it.

The reasons why human beings should refrain from consuming drugs (including alcohol) during adolescence are undeniable. But the fact of it is that adolescents are going to drink the contraband beer, and smoke the contraband grass, and social reform should concern itself with the discrepancy between the law and the social usefulness of that law. The

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present laws, I maintain, not only have not worked, they are counterproductive.

2. *Conservatives should encourage a uniform respect for the law.* At present, 25 million people have, by common estimate, smoked marijuana at least once. Among college students—especially at the prestigious liberal-arts universities—a majority have smoked marijuana, according to the relevant polls, at least once. A significant minority of these take marijuana with some regularity, especially on weekends.

What is it that American conservatives favor? Search-and-destroy young Americans—one-eighth of the entire population—who experiment with the forbidden drug? Inasmuch as no one in sight appears to be in favor of busting the University of Illinois—or Yale—or Ole Miss—and sending all the malefactors to jail, just what do we conservatives propose?

We are, by the current standards, raising a generation of presumptive criminals—because we have so defined them. The situation is aggravated by the necessary use of undercover agents who regularly practice entrapment. How else does one enforce laws against victimless crimes, concerning which no one files a complaint?

But the story gets worse when the harshness of the penalties is considered. In general, the sale and possession of small quantities of marijuana have been punished more severely than crimes against person and property.

In my native Texas, for example, the average sentence for possession is nine years. At least one man is serving life for possession of a matchbox-full.

Long sentences are *still* being handed out in many states.

Arrests for possession of marijuana rose tenfold from 1965 to 1970, to more than 188 thousand. The FBI recorded a continued increase in drug crimes last year, and unless there is a (most unlikely) decline it is likely that as many as 250,000 young people will be arrested on possession charges this year.

The laws are themselves scientifically indefensible insofar as they proscribe marijuana as a "narcotic stimulant to the central nervous system." Marijuana is in fact not a narcotic, and narcotics are not in fact stimulants. They are depressants. For many years, under the Uniform Narcotic Drug Act, marijuana was legally classified as a narcotic; *not* because it had ever been supposed that such a classification was scientific, but because, as one legislator put it in 1932, "there is a universal antipathy to the use of narcotics"; and it was "antipathy," rather than understanding, that the law was intended to create. The distinction between marijuana and narcotics was restored by the Controlled Substances Act of 1970, but several states still persist in lumping them together, as do many citizens.

Would you respect a law that defined yogurt as a "vegetarian meat product"?

Laws should make sense, they should be uniformly enforced, they should carry a punishment in proportion to the damage done by the offender, and they should have the effect desired (in this case the discouragement of the use of marijuana). Our marijuana laws meet none of the above specifications, and while there are those who obey them, only fools respect them.

3. *Conservatives should recognize bureaucratic incompetence in whatever guise.*

Most government programs start when a politician discovers a "national disgrace." A new department is set up, billions are appropriated—and sure enough, the problem gets worse.

Marijuana was little known in the Thirties, until it was "discovered" by Harry Jacob Anslinger, the longtime head of the Narcotics Bureau. At that time there were perhaps as few as fifty thousand users, mostly blacks and Latin Americans, plus a few bohemians and hippies.

After 35 years of propaganda and repression, the drug has been introduced to 25 million people. As bureaucratic fiascos go, not bad.

It is incredible that conservatives should continue to support the bureaucratic mess that comprises the marijuana laws.

It is even more incredible that at a time when the crime rate soars, the hard-pressed police, courts and prisons, should be burdened with 25 million putative marijuana criminals.

Finally, it is puzzling—and frightening—to suppose that American conservatives sanction a tissue of laws the effect of which is to cast lackadaisical marijuana users—if they are so unlucky as to be a) caught, by b) the wrong people —into prisons which they share with men of tempered felonious disposition. The law defines them as criminals; the enforcement of the law makes them such.

4. *Conservative leadership is essential to an effective reform of the laws.*

If the present trend continues, the use of marijuana will soon approach market saturation and the use of it will level off. However, as more and more of the population become users—and users grow older—it will be increasingly rare for a jury to convict or a judge to sentence a defendant for possession or even sale of marijuana. While this may be an improvement from a humanitarian point of view, it leaves thousands of Americans rotting in jail for what millions on the outside are routinely doing.

FOR SOCIETY as a whole it means widespread use of the drug, without any objectively sanctioned controls on strength (how strong before it becomes hash?), quality (adulteration with opiates is routine), or distribution to minors. Continued outlawing will mean the growth of a large criminal industry analogous to the fabled bootleggers, and all the social ills that result from such a situation.

It will mean that it will not be possible to discourage by taxation the use of hashish (which is to marijuana roughly what 100 proof rum is to wine). And—worst of all—it will leave marijuana distribution in the same hands as methadone, LSD, barbiturates, amphetamines, and even heroin.

Finally, when legalization does come—say ten or fifteen years from now at the latest (assuming conservative opposition), or in five years (with conservative acquiescence)—patterns of use and distribution will have been set, and control will be increasingly difficult to enforce.

If on the other hand conservatives support the fight for legalization, we can have effective and humane laws that will succeed where the present system has so dismally failed—in keeping the drug from children; in making the vital distinctions. A prudent relaxation of the law will make possible some realistic restraints. Those substances which are now promiscuously forbidden will cease to be promiscuously consumed; as society distinguishes between pot and heroin, its

children will be encouraged to learn the difference too. Moreover, gentler laws would soften the impact of their own violation: Under present laws, as has been pointed out, hard and soft drugs tend to circulate through the same channels; but under new laws, designed to regulate rather than to prohibit, even the younger teen-ager whose pot-smoking is still illegal will tend to get it from an older brother or friend who has legal access (much as he now gets beer), instead of from the specialist in illegal drugs.

5. Conservatives should take the lead in urging the decriminalization of individual use of marijuana.

The marijuana laws have encouraged a disrespect for the laws; they have destroyed the credibility of government; and, they have estranged the young.

The importance of marijuana to its youthful users is less the pleasure it gives the individual than the tribal value of it. The drug's use in the counterculture is analogous to the use of alcohol in the Establishment, as a social lubricant. Any attempt at interference with so fundamental a part of the new social life is doomed to failure in a free society.

6. The notion that marijuana can in and of itself, undermine the moral fabric of society is contrary to basic conservative philosophy.

The notion that the use of marijuana is, or leads to, moral degeneracy is not sustained by any scientific investigation of the drug.

However, a moral society, like a moral individual (or a healthy individual for that matter) will use a drug: for recreation (alcohol); to alleviate pain (aspirin); to help him face and fulfill his obligations through crises (tranquilizers); but so long as the individual loves his family, his country and himself, he is going to use drugs to further his objectives, not to undermine them.

The superstition that cannabis is responsible for the muddlement of the student generation goes contrary to established conservative premises.

The hysterical myths about marijuana that have led conservatives to condone massive programs of social engineering, interference in the affairs of individuals, monstrous bureaucratic waste, the alienation of youth whom we struggle to attract to our institutions—are a great and current social menace.

7. *How do conservatives justify the hard data*: over 250,000 young people arrested every year (seventy thousand in California alone), tens of thousands put in jail or prison for long periods, lives disrupted and even ruined, families divided, records besmirched, a life of ostracism?

This is being done in our name?

I, for one, bitterly resent this; but, more, I fear its consequences. If the effect on individuals is tragic, the effect on society is disastrous—disastrous for our institutions, the rule of law, political stability, even public health. This is not being done by the enemy without, but by those to whom *we* have delegated the power and the authority to defend us. They have been a party to superstitions that are as false in content as they are in tone, but we cannot just blame them.

If now that we know that we have been deceived, now that the evidence is there for all to see, our jails full, our youth increasingly alienated and confused, if in the face of all this we do not *take the lead*, how are we conservatives going to speak to America, and how is our America going to speak to the world—of freedom and charity? □

[From the Washington Star-News, Dec. 5, 1972]

A Conservative Approach to the Pot Question

(By James J. Kilpatrick)

In their current issue, the editors of National Review grapple with the matter of marihuana, but with deference to my conservative colleagues, I think they let the main conservative questions slip away.

The principal article, urging that marihuana be legalized, comes from Richard C. Cowan. Editors James Burnham and Jeffrey Hart take a generally opposing view. William F. Buckley, Jr., editor-in-chief, flatly supports Cowan. "I for one find his arguments not merely plausible, but overwhelming."

On the face of it, this is an astonishing position to be taken by the nation's leading journal of conservative opinion. Yet if we are prepared to accept the validity of certain assumptions advanced by the proponents of pot, the position is not astonishing at all.

The question is deeply troubling, but it is not unusual. The same issues are involved in such matters as homosexuality and pornography. And if the problem is turned upside down, one finds the same principles, applied in reverse, in such diverse matters as the automobile air bag and the fluoridation of public water supplies. The problem is to define the proper role of government in a free society.

The conservative philosophy holds, if I understand it correctly, that within certain limitations, a free people should be just that: Free. What are these limitations? They are the limitations fixed by the impact of my conduct on your rights. As a general proposition, conservatives hold that no human conduct should be prohibited by law unless that conduct causes positive harm to the innocent bystander or to society as a whole.

We see this proposition at work in a thousand ways. In theory, a man is free to build a glue factory; but he is not free to build it where it causes offense to his neighbors. The citizen is free to play his stereo; but he is not free to play it at full volume at 2 o'clock in the morning. A motorist is free to travel where he pleases, but he has to stop at the stop signs. An activist is free to harangue a crowd, but he cannot provoke a riot. And so on. In every instance, the test is simply the harm that is done.

When homosexuality was held in nearly universal abhorrence, a valid case could be made against the employment of homosexuals in sensitive government positions: They were subject to blackmail. The argument is of doubtful validity now. The justification for laws against pornography lies in the belief (a belief not susceptible to easy proof) that pornography corrupts society as a whole.

The other side of the proposition, as I say, lies in conservatives' hostility to laws that do not undertake to prohibit evil, but seek to compel good: The requirement for air bags, the fluoridation of public water supplies. But put those aside.

Getting back to the matter of marihuana: If criminal laws against the smoking of pot are to be justified, they have to be justified in terms of the harm that marihuana causes, not to the individual, but to society. There is some evidence, I understand, that marihuana tends to slow certain physical reactions, so that a driver under the influence of marihuana becomes a danger on the highway. Cowan flatly denies this. In any event, this is an argument against smoking-and-driving, not against smoking.

A second line of argument holds that the marihuana habit leads to heroin addiction; heroin is universally regarded as a serious social evil, imposing heavy burdens upon society as a whole. If this causative theory is true, this argument would suffice. Cowan and other serious students of the subject deny it absolutely.

These are the questions conservatives ought to be asking. Most persons of my generation are doubtless against marihuana. We equate it vaguely with sin and immorality. But I keep coming back to Mencken's law, that in the absence of provable social harm, when A undertakes by law to impose his moral values on B, A is a scoundrel. If conservatives are to be consistent in their philosophy, they probably should join Cowan and Buckley in urging that criminal sanctions against mere possession and use of marihuana be repealed.

[From the Congressional Quarterly, Sept. 2, 1972]

MARIHUANA

NIXON. "I am against legalizing marihuana. Now, with regard to the penalties on marihuana, that is a matter which I do think is open to a national recommendation with regard to more uniform standards. In some states they are extremely strict, and in other states they are quite lax. I believe that a penalty in some instance can have a detrimental effect in achieving our goal. But I do not believe that legalizing marihuana is in the best interests of our young people, and I do not think it is in the best interests of this country." (News conference, San Clemente, Calif., May 1, 1971)

MCGOVERN. " I have never favored legalization of marihuana—and I take a lot of heat on college campuses for that stand. I have said we don't know enough about its effect to legalize it, and in that stand I'm less radical than President Nixon's Commission on Drugs.

"I don't think younghters should go to the penitentiary for smoking marihuanna—I don't believe mere use should be a felony—but I have always opposed its legalization, and anyone who has bothered to look up my record knows that." (Speech at Fremont, Neb., May 6, 1972)

CONTEMPORARY DRUG PROBLEMS
A Law Quarterly Spring, 1972

Marijuana: tempest over pot

BY EDWARD A. WOLFSON, M.D., M.P.H., F.A.C.P. AND DONALD B. LOURIA, M.D., F.A.C.P.

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It is difficult to comprehend in this day when mere possession of marijuana is a criminal offense that there was a time in the U.S. when extracts of cannabis (the generic name for marijuana, hashish and related compounds) could be purchased without a prescription in drug stores and also could be prescribed by physicians[1] for a number of medical reasons such as relief of headaches, menstrual cramps, as an aid to sleep, in epilepsy, as an analgesic potentiator, and in childbirth; in some hands, cannabis was the drug of choice for loss of appetite and mild depression in the elderly, not surprising in view of the fact that users of "pot" often describe a ravenous appetite and cannabis often results in mood elevation.

Cannabis has been used either as a medicine, as a psychedelic (mind-altering) or as hemp for about 3,000 years. Cannabis was allegedly known in ancient China and

was supposedly listed in the 2737 B.C. pharmacopoeia, but this may be legend[2] since few Chinese dates prior to 1000 B.C. can be accepted with confidence. Cannabis was introduced into India in about 800 B.C., early Indian use being primarily for religious purposes, the weed being a holy plant to some Hindus. By the 10th century, A.D., the use of cannabis had spread throughout the Mediterranean and Arab worlds; its use was not proscribed by Mohammed (570-632, A.D.), whereas the use of alcohol was absolutely prohibited. In the 12th century, A.D., "medical" applications were described, and in the 1830's it was incorporated into "modern" Indian medicine. Cannabis was introduced to medicine in the Western World in 1839 by a British physician who had served in India.

Snyder, Blum, and Fort relate fascinating stories about the use of cannabis in Moslem cultures;[3] it appears that cannabis was one of the first psychoactive drugs to become sensationalized. Just prior to the First Crusade, about A.D. 1090, a secret and fanatical Moslem cult, led by Hasan-i-Sabba (or Hasan iben-al-Sabbah), settled in parts of Persia, Iraq and Syria. Hasan trained his followers as an army and is "known for refining the practice of assassination as an art."[4] Although most philologists agree that the *concept* of assassination derives from Hasan, there is dispute as to whether the word "assassin" comes from Hasan or from hashish; indeed, the word "hashish" itself may be derived from Hasan. Blum outlines the controversy over whether Hasan's followers killed (1) because they were under the influence of hashish, (2) because they were promised a reward of paradise induced by hashish, or (3) because they were simply a violent and politically dangerous group who came to the attention of the West, including the Crusaders, and who were subject to romantic speculation because a drug they may well have taken (but which was new to the Westerner) was given a causal role for their political behavior, or (4) because they were simply a revolutionary group and were impugned with the hashish label by their conservative rivals.

It is not entirely clear whether Hasan's followers used cannabis solely or at all, or whether alcohol (probably wine) and/or opium were utilized. Assuming that cannabis was indeed used, one could assume that it was in the form of hashish. Comparing hashish to marijuana as commonly utilized in the U.S. today is comparing a glass of straight gin to a glass of beer! Of historical interest is the fact that the descendants of Hasan's group are the contemporary Israeli sect, the leader of which, the Aga Khan, claims direct descent from Hasan.

The source of this medicine, rope or psychedelic agent, depending on one's orientation, is the plant *Cannabis sativa,* a ubiquitous plant that grows like a weed under almost any climatic or soil conditions. Until recently, the psychoactive ingredients have been assumed to come almost exclusively from the female plant, but recent chemical analyses revealed that the active substances are present in both male and female plants.[5]

Specially cultivated plants grown in warmer climates produce more of the sticky resin that contains the bulk of the psychoactive material. In 1965, scientists in Israel[6] identified the major psychoactive ingredient tetrahydrocannabinol (THC), and were able to synthesize the material from basic chemicals. Whereas small doses of THC result in the usual marijuana mild high or euphoria, large doses mimic the psychomimetic properties of the true hallucinogens such as lysergic acid diethylamide (LSD). Parenthetically, there is no chemical resemblance between THC and any of the other psychedelics or hallucinogens.

Evidence is now accumulating from psychopharmacologists and neurophysiologists that mood and behavior are determined, at least in part, by the activity of cell centers in the limbic system and hypothalamic areas of the brainstem.[7] Leake hypothesizes that when these centers are "satisfied," there is a sense of satiation and often

concomitant muscular relaxation and sleep. Drugs acting on the central nervous system are basically of three kinds; those that will stimulate and increase the activity of the brain, those that will depress such activity, and, finally, those that will distort such activity. The distorting drugs are the hallucinogenic agents such as LSD. Although cannabis as it is generally used in the U.S. (marijuana) is a mild euphoriant it does not readily fall into any of the three categories. THC in appropriate dosages can be a "distorting" agent.

Marijuana, a Mexican term initially representing tobacco and only in the last century applied to cannabis, is a preparation of chopped leaves and usually contains a low THC content. The flowering leaves of ripe hemp exude the stricky resin which contains most of the THC. By scraping the resin (especially from the specially cultivated plant) and pressing it into blocks, one obtains charas, or hashish. Hashish is generally considered to be about five to ten times as psychoactive as marijuana and is the only cannabis derivative that has significant hallucinogenic potential.

The effects of milder psychedelics are an interaction between basic pharmacological properties, including dosage and the route of administration, the personality of the drug user, the setting in which the drug is taken, the expectations of the user, and the user's ability to recognize the effects. Observed and described reactions vary considerably from individual to individual, and in the same individual from exposure to exposure. The situation in regard to marijuana is further compounded by the fact that preparations vary widely from batch to batch and from season to season. Even in its purer form (hashish), cannabis is not addictive in the physiologic sense, and does not create physical dependence. It would appear that, despite the long history of cannabis use and present availability of THC, the facts surrounding the use of

marijuana, the consequences of its use, and the meaning of its use continue to lie largely in the realm of mythology.[8]

The effects—what marijuana does and doesn't do

Any sensible classification of drugs logically should follow along clinical or pharmacological lines. Since marijuana is not derived from the opium poppy nor is a chemical equivalent, does not produce sleep or stupor, and does not relieve pain, marijuana is not a narcotic (despite the fact that legally it is often thus associated)!

There is excellent evidence that marijuana causes some temporary impairment of coordination for complex motor activities, and that there is a distortion of depth and time perception.[9] Possibly related to this impairment in time perception is the transient loss or impairment of memory for recent events[10] which may last for 30 to 90 minutes. There appears to be a fixation on the present which frees many users from concern for the future or experience of the past. While one can revel in the "now," the sensation is described by some as unpleasant or frightening. In 1968, Weil and coworkers[11] reported a "double-blind" study (that is, neither the subjects nor the researchers knew, during a given session, whether the product being smoked was real or an inactive placebo) that showed that marijuana caused a moderate increase in heart beat rate, some redness of the eyes, and virtually no other physical effects. Contrary to popular belief, marijuana in conventional dosage does not dilate the pupils. This myth apparently derives from the tradition of smoking marijuana in a darkened room or being examined by the police physician in a darkened cell, since darkness per se causes pupillary dilatation.

Only recently have there been adequate placebos for clinical marijuana experimentation. The previous lack of

placebo for smoking that would fool virtually all chronic users of cannabis created serious problems[12] in interpreting experimental data since the results depend as much on nonpharmacological factors as on pharmacological ones; the subject's reaction depends as much on the set and setting as on the drug per se. Another major problem was the lack of standardization of the THC content in the test material (a reasonably good psychoactive sample contains about 1-1.5 percent THC). Additionally, the THC content of marijuana at room temperature decreases at the rate of 3-5 percent per month, and at 100° for one month, all the THC in a potent marijuana sample may disappear.[13] Because of the decrement in the psychoactive potency of marijuana, the United Nations' marijuana reference samples are kept under nitrogen and frozen to avoid deterioration.

Until recently there has been little information regarding the metabolism and disposition of THC, mainly because of the difficulty of assaying the compound. The recent availability of C-14 labeled THC of relatively high specific activity has made possible a study of the drug's metabolism in man[14] after intravenous injection. The plasma levels of THC, its retention in body stores, and the excretion of its metabolites revealed that, (1) the THC in plasma declined rapidly during the first hour, (2) the THC persists in plasma for more than 3 days, (3) the THC is completely metabolized in man, and (4) the radioactive metabolites are excreted in urine and feces for more than 3 days. Thus, THC and its metabolites persist in humans for longer periods than its clinical effects. If one assumes that a critical degree of tissue saturation or blood level must be attained before the user attains an effective psychoactive effect, it may explain in part the phenomenon of "reverse tolerance" noted in chronic users of marijuana (lower doses required for psychoactivity after repeated exposure).

Using purified THC, Isbell and coworkers at Lexington[15] verified that regardless of the route of administration, can-

nabis causes no significant changes in pupillary size. There were no changes in respiratory rate or systolic and diastolic blood pressures, pulse rates at rest were consistently elevated, and subjects developed reddening of the conjunctivae after large doses. In small doses, changes in mood, usually euphoria, were consistently reported. Increase in the dose several fold produced alterations in sense of time, in visual and auditory perceptions, depersonalization, and hallucinations (both auditory and optical) in most subjects. In occasional individuals, psychotic episodes occurred even with low doses.

A clinical syndrome of acute psychosis associated with use of cannabis has been reported by a variety of observers in Vietnam.[16] Each case was characteristic of acute toxic psychosis with organic features, and many had paranoid features as well. Factors unique to Vietnam and combat situations seemed to be important in addition to the quality of the cannabis per se. Vietnamese marijuana was reported by the Army Chemical Laboratory in Japan to be about twice as potent in resin content as that normally sold or found in the U.S. In addition, approximately 50 percent of the cannabis contraband seized in Vietnam contains opiates. Although opiates are not usually associated with acute psychotic reactions, it is not surprising that the cannabis derivatives used in the Vietnam milieu produce a stronger effect on the consumer.

Although the incidence of psychotic or significant adverse reactions is small considering the total number of exposures to cannabis, there are a number of reports appearing in the medical literature describing various mental abnormalities. Transient panic reactions and depression apparently occur with a greater frequency than many proponents of marijuana admit. Most psychiatrists feel that the adverse reactions probably occur more often in those with substantial underlying personality distrubances.

The so-called loss of motivation syndrome observed in a certain percentage of "potheads" or marijuana habitues, is probably related to the psychological dependence on a mind-altering substance and a commitment to a drug-oriented way of life.

In testing the neurological and electroencephalographic concomitants of the marijuana-induced "social high,"[17] only minimal (and probably insignificant) cerebral electrical and neurological changes have been demonstrated. The observation that vibratory sense appreciation was slightly increased after smoking marijuana would possibly lend credence to the statements made by users that sensory impressions are enhanced. This may lead one to believe that he is now endowed with artistic creativity. More likely the pleasure derived from the drug induced some decrease in critical judgment leading the subject to believe that he is performing better under the influence of the drug; unfortunately, these subjective feelings have not been buttressed by more dispassionate and objective observations.

Marijuana and driving

One cannot leave the subject of effects without discussing the relationship of driving to a marijuana "high." There is a genuine concern that driving performance may be altered while under the influence of "pot," since there is some impairment of coordination for complex motor activities and a distortion of depth and time perception.

Many cannabis proponents compare marijuana to alcohol, and this is especially true in regard to driving performance. In a frequently quoted study on the comparison of the effects of marijuana and alcohol on simulated driving performance of experienced marijuana smokers, subjects experiencing a "social marijuana high" accumulated significantly more speedometer errors than when under control conditions, whereas there were no significant differences in accelerator, brake, signal, steering and total errors. The same subjects intoxicated from alcohol accumulated significantly more accelerator,

brake, signal, speedometer, and total errors than under normal conditions, whereas there was no significant difference in steering errors. On the surface, this study is a damning indictment of driving while under the intoxicating influence of alcohol; the study virtually exonerates marijuana from significant deleterious effect in driver performance, concluding that "impairment in simulated driving performance does not seem to be a function of increased marijuana dosage or inexperience with the drug."[18]

There are, however, some serious defects in the study and in the conclusions, both implicit and explicit. To begin with, the study focused attention on the effect of smoking marijuana rather than the effects of THC. No standardized dose of psychoactive material was used; in addition, the amount of any drug that is absorbed through the mucous membranes when the route of administration is inhalation is extremely variable. The end-point for most marijuana users is a "high" or euphoria, and the set and setting play a major role, as well as the dosage. A potential bias in a study of this type is that the experienced user may either inhale less (or less deeply) and/or overcome his mild euphoria in order to influence the result of the study (the subjects were required to be experienced marijuana smokers who had been smoking marijuana at least twice a month for the past 6 months).

Despite any possible biases, there were more speedometer errors, not allowing a general conclusion that marijuana is totally innocuous. Furthermore, the dose of ethanol utilized in this study for an average 150 pound subject was equivalent to about 7 ounces of 86 proof liquor. Clearly, comparing unlike dosages of unlike substances makes it difficult to even attempt to draw valid conclusions.

Escalation — after marijuana what?

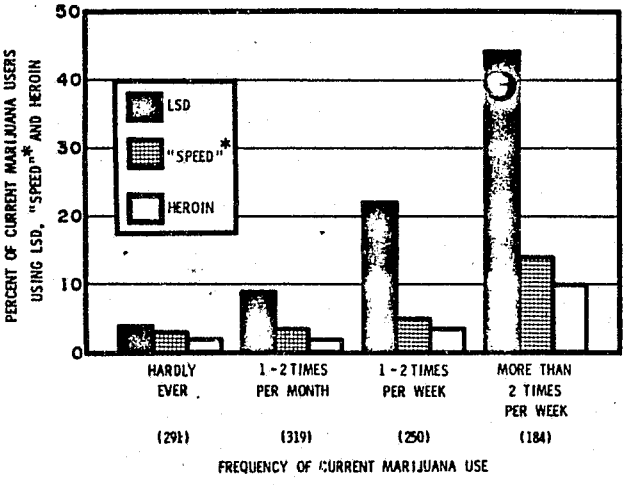
Clearly the incidence of acute untoward reactions to marijuana is limited (less than 1 percent) as is the incidence of adverse effects in those smoking repeatedly (almost surely under 5 percent). Consequently, the crux of the bitter marijuana polemic rests to a large extent on the issue of escalation from marijuana to other more potent mind-altering agents. For years the federal authorities suggested that the use of marijuana almost ineluctably led to the subsequent use of heroin. Such conclusions were obviously specious since millions of persons throughout the world use cannabis products but only a tiny percentage of these experiment with narcotics. But an insular focus on heroin is surely improper. Another relevant question is how frequently do marijuana users experiment with LSD, intravenous methamphetamine, mescaline, STP, MDA or any of the other potentially dangerous mind-altering drugs? A review of 20 major surveys indicates that approximately 1 in 5 marijuana users also experiment with more dangerous pharmacologic agents. Various sequential studies show that in the overwhelming majority of cases, marijuana experimentation preceded use of the other drugs. Thus Blum[19] found that hallucinogen users had prior marijuana experience in a ratio of 6:1 and that over 80 percent of heroin users had previous cannabis experience. Studies at the New Jersey Medical College[20] likewise showed that in the overwhelming majority of cases marijuana use occurs prior to hallucinogen or opiate use. Additionally, most surveys conducted in junior high schools show convincingly that marijuana use occurs at an earlier age chronologically than LSD experimentation.

The likelihood of using hallucinogens such as LSD can be directly correlated with the frequency of marijuana use. Thus, Goode[21] found that among those taking marijuana less than once a month, the likelihood of using LSD was 22 percent. In contrast among weekly users the percentage

using LSD was 49 percent and among daily smokers, an astonishingly high 82 percent experimented with LSD. The New Jersey Medical School studies revealed (see Fig. I) that among those using marijuana rarely there was a 4 percent chance of using LSD. Increase in frequency of cannabis use to once or twice a month increased the likelihood of LSD use to 9 percent; among those smoking at least weekly, 22 percent used LSD and 44 percent of marijuana users smoking at least two times each week admitted to the use of LSD. These two studies are buttressed by others, all indicating that the more marijuana used the more likely it is the individual will use a drug such as LSD. Furthermore, some recent reports suggest that 5 to 13 percent of repetitive marijuana users will experiment with opiates, a surprisingly high figure.

Figure 1

Percentage of 1044 current marijuana users in six suburban New Jersey high schools who currently use LSD, "speed",* and heroin, by frequency of current marijuana use



*"Speed" = Methamphetamine (Intravenous)

The available data would appear to warrant the following conclusions: (a) a substantial number of marijuana users will subsequently experiment with more dangerous drugs; (b) the likelihood of use of certain of the more dangerous agents can be correlated directly with the frequency of cannabis use; and (c) it would appear that if an individual does not use marijuana the likelihood of use of more dangerous agents is profoundly reduced.

Although the data suggest that the concept of escalation is valid, three clarifying points merit emphasis. First, marijuana is only a part of a continuum. Most studies, ours included, suggest that parental use of licit or illicit mind-altering drugs promotes subsequent illicit drug use in their children. Next in the chronological continuum is an inordinately permissive attitude of parents toward legal medicament use by young children or failure of parents to satisfactorily resolve problems brought to them by their young children when the children perceive such problems as important. At a slightly later age (preteen or early teenage), use of alcohol or cigarettes is related to later marijuana use; marijuana users are three to four times as likely to also be smokers and users of alcohol as appropriate controls. Thus, marijuana is only a step in a continuum that starts with the parental behavior, and for some young persons ends with the use of drugs such as LSD.

Second, the majority of marijuana users clearly do *not* escalate to more dangerous agents.

Third, the fact of escalation from marijuana to more dangerous drugs does not define the mechanisms thereof. Escalation could be due to physiological or biochemical reasons as yet unknown, curiosity, hedonism, peer group pressure, or underlying personality abnormalities. It also could be that use of marijuana and more dangerous drugs relates to the thrill of doing something illegal that carries only a small statistical risk of being apprehended. Finally,

escalation could occur because the individual selling illicit marijuana could be concomitantly supplying more dangerous pharmacologic agents.

Regulation or legalization?

It is crucial that society develop a rational approach to the cannabis problem. To single out marijuana as a symbol and apply sanctions that are anachronistic and based on incorrect assumptions is inappropriate, and at the very best, self-defeating. There is no reason to equate marijuana, a euphoriant, with potent hallucinogens, stimulants or opiates. It is likewise illogical in a democracy to punish marijuana users harshly on the grounds they might escalate to LSD or heroin. This controverts the legal principles upon which our American democracy was built, namely that the punishment should fit the present crime, not some potential future criminal act. Furthermore, the present laws make no sense because most marijuana users do not and probably will not escalate; thus, escalation, although important and a factor in our applying sanctions, occurs in a minority, not a majority of marijuana users.

There are basically four paths open to society: (1) Maintain the present restrictions; (2) Remove all restrictions (presumably this is what the proponents of legalization advocate); (3) Devise a new system of regulation; (4) Maintain the present framework and mitigate the harsh penalties.

Maintain the Present Restrictions. It would appear that maintaining the status quo is undesirable. Kaplan[22] argues that the disparity between the dangers of marijuana and the severity of the present laws against it is "unconscionable." In 1968, marijuana arrests accounted for one-quarter of *all* felony arrests in the State of California;

for 80 percent of the adults, it was their first arrest, as it was for 98 percent of the juveniles. The cost of applying the marijuana laws is astronomical and the benefits to society unclear. Because the potential punishment is often excessively harsh, law enforcement officials themselves frequently disregard the laws, preferring to ignore use or possession of the drugs, thus promoting disdain for our entire legal system. In other instances, the laws are applied only to those deemed undesirable or trouble makers and in some cases patently unjust and vicious sentences have been meted out for marijuana possession. At both federal and state levels the need for altering the laws to make the punishment truly consistent with the nature of the crime has been recognized and in most jurisdictions a reassessment of the marijuana laws is being made.

Remove all Restrictions (Legalization). The all-out proponents of marijuana often overstate their case in maintaining that cannabis is entirely innocuous since the preponderance of evidence is clearly against this point of view. To justify removal of all restrictions they argue that: (a) other intoxicants that are at least as dangerous (such as alcohol) are less restricted; (b) we are criminalizing respectable youngsters and exposing them to the criminal world; and (c) there are possibly 200-250 million users worldwide and 1-20 million users of marijuana in the United States and, therefore, marijuana use should be considered acceptable behavior. Clearly, however, because large numbers do something or believe something does not make that "something" desirable, necessary, or right. (Many years ago, everyone believed the world was flat.)

The legalization proponents quite correctly point out that there is an erosion of Protestant ethic and that we are now living in a hedonistic society. They say we shouldn't legislate against a chemical that the Chinese called the giver of delight, and the Indians called the heavenly guide — the soother of grief.

The proponents likewise point out the following: (1) Mr. Harry Anslinger in 1937 originally stated that there was no validity to the "stepping stone" (escalation) theory, but later enthusiastically embraced the association in order to justify the harsh laws; (2) there is no evidence marijuana induces violent behavior; (3) using marijuana does not cause sexual aberrations; (4) that we are a "drugged" society that too often turns to "better living through chemistry" and "recreational pharmacology"; (5) society has accepted the concept of taking a dried plant, putting fire to it, inhaling it, and polluting the atmosphere (the smoking of tobacco); (6) using marijuana is a crime without a victim; and (7) that we live in a tense, frustrating world in which a euphoriant such as marijuana is likely to be beneficial to many people.

The proponents make many valid points, but should accept the probability that marijuana use would increase markedly if marijuana were legalized; concomitantly, the number of persons suffering adverse effects would in all likelihood increase. And the following crucial questions are raised. Can society afford to add more intoxicants to its already burgeoning supply of mind-altering agents? Are we willing to accept the possibility of 1-2 million "potheads" in addition to our millions of alcoholics? Are we willing to accept the risk of escalation to more dangerous substances?

New System of Regulation. Kaplan summarizes the major thesis in opting for a completely new system of regulation: (1) the cost of processing marijuana offenders far outweighs the benefits to society; (2) too many juveniles are being criminalized, with jobs and futures jeopardized; (3) there is a growing disrespect for law in general. Most users of marijuana know that for each arrest there are hundreds not caught, and of those caught, most have their charge reduced (selective enforcement); (4) legal sanctions as presently constituted maintain the secretive drug culture

and "seller" contacts, and probably inhibit the users from turning to counseling; (5) the law enforcement apparatus is caught on the horn of a dilemma, with increasing hostility and resentment; and (6) increasing restrictions on the supply of cannabis will result in users turning toward more dangerous drugs with increasing frequency. Kaplan maintains that the illegality per se may lead to "harder" drugs, since the psychological association may make the use of the other drugs more respectable, possibly because marijuana users are already committed to a "serious" criminal act.

Those suggesting a new system of regulation reiterate that a decision not to criminalize does not necessarily represent approval. Marijuana can be recognized as a vice, whereby only selling or trafficking would be criminal, the user being free to use at his own risk. This model follows regulations relating to gambling or prostitution, under which the consumer is considered the victim and requires help. Recognizing that the cost of criminalizing marijuana users may be too great for society, following the "vice" model presumably would allow society to restrict the supply of all "illegal" commodities at a lower "cost" to itself.

The suggested approach is licensing the sale of cannabis as with alcohol. Quality and potency could be controlled, harsh penalties would be assessed against unlicensed sellers, age limits would be set and very strictly enforced, prices would be fixed, and the commodity would be highly taxed with the proceeds going either to enforcement measures against the more serious drugs or to drug abuse education. It is worth pointing out, however, that many of the proponents of the regulation approach ignore current adverse reactions to marijuana, are often facile about preventing use among the very young, and do not consider that escalation rates may remain high even if marijuana were legalized or regulated. Today the most abused drug among adolescents is alcohol, not marijuana. There are

some preliminary data suggesting adverse effects occur more frequently among the very young. "Regulation," like legalization, would result in increased prevalence of use among those aged 10-17 and would focus public attention on the adverse effects in this age group. Ultimately this might result in such a furor that society would reject "regulation" and return to an inordinately harsh legal approach. If marijuana is "regulated," a step close to legalization, abuse by those under age 17 or 18 would be a major problem.

Maintain the Present Framework but Mitigate the Penalties. The Indian Hemp Commission (1893-94)[23] dispassionately asked the proper questions of 1,093 witnesses in marked contrast to our 1937 congressional hearings. Their conclusions appear valid—cannabis is a euphoriant that is neither innocuous nor overly dangerous in its own right. The federal government and many states recently have recognized the inequities in the penalties and have attempted to soften the penalties against marijuana to allow for suspended sentences and permit expunging of first convictions from the record (to avoid condemning youngsters to a future in which they might have difficulty in obtaining licenses, gaining admission to certain professional schools, etc.). There does seem to be a reasonable middle ground between currently harsh laws and the dangers inherent in legalization or regulation. The advocates of this approach would have a punishment schedule somewhat as follows:

1. Possession of a moderate amount of marijuana or hashish on first or second conviction: assignment to a local hospital, poverty program, etc. for a specified number of evenings and/or weekends with automatic expungement of the sentence from public records upon its completion.
2. Possession of a moderate amount on third or subsequent convictions: a jail term not to exceed 90 days.
3. Sale of a small amount with no evidence of major financial

gain: judicial discretion but ordinarily to be treated as possession.

4. Sale: 1-10 years in jail with possibility of suspension, parole or probation, and education of the judiciary so that larger sentences are reserved for major importers and traffickers.

Such an approach would be fair to the user and society alike, would not unnecessarily criminalize young persons, would be constructive and would at long last make the punishment consistent with the nature of the crime. At this point in time, we favor this pathway but whatever the approach to marijuana, society must find pragmatic and sensible solutions; for if we cannot deal effectively with this substance, we will be incapable of placing the entire drug scene in its proper perspective.

Notes

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[From the Los Angeles Times, Mar. 23, 1972]

U.S. Panel Calls for Private Use of Marihuana

(By Harry Nelson)

A 12-member National Commission on Marihuana and Drug Abuse Wednesday recommended that private possession of marihuana for personal use no longer be a criminal offense.

Public possession or distribution of small amounts of the drug, provided the purpose was not to make a profit, should be subject only to $100 fines instead of criminal action, the commission recommended.

In its report entitled "Marihuana: A Signal of Misunderstanding," the commission rejected both the present social and legal attitude of total prohibition and the other extreme of legalization.

It urged no prohibition against private use while at the same time retaining all laws making it a criminal act to produce or distribute marihuana for profit.

PRESIDENT OPPOSED

In Washington a White House aide said "President Nixon does oppose and still opposes legalization of marihuana."

The commission's chairman, former Pennsylvania Gov. Raymond P. Shafer, said Mr. Nixon gave no indication of whether he would support the commission's recommendations.

The commission was appointed by President Nixon and Congress 18 months ago to study the extent of marihuana use in the United States, the efficacy of marihuana laws and the physiological and psychological effects of the drug.

"Marihuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out the firmly punish those who use it," the commission declared.

The commission said it suspects the "moral contempt in which some of our citizens hold the marihuana users is related to other behavior or other attitudes assumed to be associated with use of the drug.

"All of our data suggest that the moral views of the overwhelming majority of marihuana users are in general accord with those of the larger society."

However, use would still be discouraged in three main ways:

Law enforcement authorities would still make a concerted effort to reduce the supply of the drug.

The user would have to confine his use to the home.

Continuing efforts would be made by educators and others to discourage use.

PUBLIC POSSESSION INVOLVED

Other proposed legal changes:

Public possession of 1 ounce or less would not be an offense, but the marihuana would be considered contraband and subject to seizure and forfeiture.

Public possession of more than 1 ounce would be punishable by a fine of $100.

Distribution in public of small amounts not involving a profit or public use of marihuana would be punishable by a $100 fine.

Disorderly conduct associated with public use would be a misdemeanor punishable by up to 60 days in jail and $100 fine.

Driving under the influence would be a misdemeanor punishable by up to one year in jail and a fine up to $1,000.

In most states possession for personal use is a misdemeanor. In California possession can be either a felony or misdemeanor. In Los Angeles County it is most commonly adjudged as the latter.

The commission said it rejected total prohibition because "no sufficiently compelling social reason, predicated on existing knowledge, justifies intrusion by the criminal justice system into the private lives of individuals who use marihuana."

EFFECTS CITED

Legalization was discarded, the report said, because it would "institutionalize availability of a drug which has uncertain long-term effects."

Furthermore the commission said it suspects the present high level of interest in marihuana may be a fad.

The commission said there is little proved physical or psychological hazard at the dosage which is typically used in this country. For heavy, long-term users there is a health hazard, it said.

The commission noted that future policy planners might want to legalize the drug if scientists detect no long-term ill effects and if society's attitudes about marihuana change.

A major reason for the current tough public attitude about marihuana, the report states, is the threat that use of the drug is thought to present to the dominant social order.

"Use of the drug is linked with idleness, lack of motivation, hedonism and sexual promiscuity," the commission said. "Many see the drug as fostering a counterculture which conflicts with basic moral precepts as well as with the operating functions of our society.

"The 'dropping out' or rejection of the established value system is viewed with alarm. Marihuana becomes more than a drug; it becomes a symbol of the rejection of cherished values."

The commission then argued there is no rational basis for blaming marihuana for most of these fears.

"Little likelihood exists that the introduction of a single element such as marihuana use would significantly change the basic personality and character structure of the individual to any degree," the commissioners declared.

They said young people who can't cope with the pressures of adolescent development in ways which adults understand should not be "rejected, stigmatized or labeled."

Instead these youths should be given "support and understanding and the opportunity to participate in roles which have meaning for them and in ways which they feel comfortable." For some, marihuana eases the transition to adulthood "by helping them share their feelings, doubts, inadequacies and aspirations with peers with whom they feel safe and comfortable," the report said.

It said no conclusive evidence has been found demonstrating that marihuana by itself is responsible for academic or vocational failure, although it could be a contributing reason.

WORK PERFORMANCE

Although society has become increasingly disturbed by the stress of today's youth on "fun, pleasure and enjoyment," the commission found no evidence to suggest that the majority of youths are unwilling or incapable of productive and disciplined work performance.

"Where marihuana is concerned, society must try to understand its role in the lives of those who use it," the report said.

"The key to such understanding lies in the changes which have taken place in society within recent years and the effects these changes have had on succeeding generations of youth. The increased use of marihuana is only one of these effects . . .

"When the issue of marihuana use is placed in this context of society's larger concerns, marihuana does not emerge as a major issue or threat to the social order . . .

"It is unlikely that marihuana will affect the future strength, stability or vitality of our social and political institutions. The fundamental principles and values upon which the society rests are far too enduring to go up in the smoke of a marihuana cigaret."

LITTLE DANGER

As for physiological and psychological harm, the commission said there is little proven danger from the experimental or intermittent use (one to 10 times a month) which is typical in the country.

The commission declared there is no reliable evidence marihuana causes birth defects, chromosome damage, brain damage or aggressive behavior or that it can lead to death.

The commission also put down arguments that the drug produces physical dependence or that its use leads to hard drugs.

On the basis of a survey conducted last year the commission reported that about 24 million Americans have tried marijuana at least once and that about 8.5 million are still using.

The heavy user, and some moderate users, however, show strong psychological dependence. Some organ injury, especially diminution of breathing, is possible in the heavy user. Heavy long-term use may also produce specific behavioral changes.

Moderate use means 11 times monthly to once daily and heavy use is several times daily. By long term the commission means two to 10 years.

Clearcut behavioral changes and a higher incidence of biological damage occur in Asian and Middle East countries where users have been taking heavy doses for long periods.

But the commission said it is unaware of any similar pattern in this country.

Members of the commission, headed by Shafer, are Dr. Dana L. Farnsworth, former director of health services, Harvard University; Dr. Henry Brill, director of Pilgrim State Hospital, Brentwood, Long Island; Rep. Tim Lee Carter (R-Ky.), and Joan Cooney, president of Children's Television Workshop and producer of Sesame Street.

Also Charles O. Galvin, dean of Southern Methodist University law school, Dallas; Dr. John A. Howard, president of Rockford College, Rockford, Ill., and president of the American Assn. of Independent College and University Presidents; Sen. Harold E. Hughes (D-Iowa); Sen. Jacob K. Javits (R-N.Y.), and Rep. Paul G. Rogers (D-Fla.).

Also Dr. Maurice H. Seevers, chairman of pharmacology, University of Michigan; Dr J. Thomas Ungerleider, UCLA Neuropsychiatric Institute, and Mitchell Ware, Chicago attorney and former superintendent of Illinois Bureau of Investigation.

CRIMINAL LAW

In taking its stand against total prohibition the commission said the application of criminal law to the private use of marihuana possibly is unconstitutional.

It cited a number of legal precedents, including an overturned Connecticut law forbidding the use of contraceptives, as being evidence that individual privacy in certain circumstances is beyond the law.

It also reported survey results showing that law enforcement officers and prosecutors make only minimal effort to investigate and prosecute first offenders and possession cases.

Finally, it said, possession laws engender a disrespect in the young "who cannot understand why society chooses to criminalize a behavior with so little visible ill effect or adverse social impact, particularly when so many members of the law enforcement community also question the same laws."

The commissioner said legalization could "invest an otherwise transient phenomenon with the status of an accepted behavior. If marihuana were in already ingrained part of our culture, this objection would be dispelled. However, we do not believe this is the case."

HIGH RISK

The greater use which might result from legalization—an increase that might not otherwise occur—could produce a significant public health problem, the commission said.

The heavy users, who are the high-risk group, now number about 500,000 or about 2 percent of those in this country who have ever used marihuana. Inevitably this number—and the consequent physicial and psychological problems—would increase with legalization, the commission said.

Legalization would also maintain at a highly emotional level the debate between those on both sides of the issue "and perpetuate the tendency to perceive marihuana use as a symbol of the struggle between two conflicting philosophies."

[From the Los Angeles Times, Mar. 23, 1972]

BUSCH, DAVIS CRITICIZE LEGAL AMBIGUITY IN MARIHUANA REPORT

(By William Farr)

Dist. Atty. Joseph P. Busch and Police Chief Edward M. Davis Wednesday criticized the National Commission on Marihuana and Drug Abuse, saying that to enact its recommendations would cause a "schizophrenic legal situation."

Both top-ranking law enforcement officials also expressed the opinion that the commission had based its recommendations on inconclusive medical research.

The President's commission advocated "decriminalization" of marihuana and thus removal of criminal penalties for its use. The stand stopped short of outright legalization, however.

"Decriminalization will increase the market for illicit sales. It will establish a schizophrenic legal situation in which the use is legal, but the sale is illegal," Busch said.

"The user will be socially acceptable and the seller will be labeled antisocial. Users will be drawn into an even deeper contact with the counterculture forces," he added.

Davis echoed this criticism, saying:

CALLS REPORT AMBIVALENT

"The report appeared to be ambivalent in that it makes it a felony to grow and to sell marihuana while at the same time the commission held that to have marihuana in your own home for your own use was not a violation."

On the subject of marihuana research, Busch and Davis were again in concert although their statements were issued separately.

The district attorney said he believes "medical research into the habitual use of marihuana is highly inconclusive." Elaborating on this point, he said:

"Indications of liver damage, vascular brain damage, and ill effects on the immunity system and healing process—resulting from long-term use—have not been fully explored.

"Many medical researchers are not satisfied with the research studies conducted for the national commission. Habitual use of marihuana is our major concern—just as it is with any drug including alcohol.

"Criminal sanctions certainly discourage habitual use."

Davis said he was "amazed that the commission reached any findings prior to the time that an indepth study showing the psychological, physiological and pharmacological results were available."

He said he was disappointed in the commission's report and added he was opposed to any changes in California laws covering marihuana until further research had been conducted.

Busch did say that he favors modification of current laws so that there "will be minimal misdemeanor penalties for possession of small amounts of marihuana."

He also said that "minimal enforcement attention should be given to such possession."

CONSISTENT WITH ATTITUDES

The district attorney said he believes these policies "are consistent with present public attitudes."

Dealing further with the recommendation of decriminalization, Busch had this to say:

"Yet (decriminalization) does not take into account the impact of stronger strains of marihuana, as have been observed in Vietnam, the powerful extracts of marihuana, and marihuana which is laced with powerful synthetic drugs such as DMT and TCP.

"Finally, we must realize that decriminalization will not erase the failure of government to deal effectively with the marihuana problem. The fact that government in the past has subscribed to myths concerning marihuana and promoted fruitless propaganda programs does not justify decriminalization.

"The fact that research has been ineffective and federal funds have been spent in a wasteful shotgun manner does not justify decriminalization. I believe what we need is a realistic legal attitude and effective educational efforts based on conclusive research."

State Atty. Gen. Evelle J. Younger and Sheriff Peter J. Pitchess both delayed comment on the commission recommendations, saying they had not had an opportunity to study the full text.

[From McCall's magazine, Mar. 1972]

WHAT CAUSES MORE HARM, DRUGS OR THE LAWS AGAINST THEM?

(By Dorothy V. Whipple, M.D.)

To many, the title of this article will be shocking. However, an analysis of the existing situation in the U.S. leads to an unpleasant conclusion.

Since 1914, we have had laws against drugs, laws based on the philosophy that punishment will deter people from using or selling drugs. These laws have failed to accomplish their goals.

Drug use has grown enormously in spite of the laws. It has also spread to younger and younger members of society. The most recent estimates show that from 200,000 to 250,000 Americans are heroin addicts, and that marihuana smokers in this country are numbered in the tens of millions.

It is not only the failure of the laws, but the evils created by the laws themselves that compound the present dilemma.

The drug laws have helped create a black market in illegal drugs. Because the drugs in wide use are illegal, their potency and purity are not controlled. And their high price, especially heroin, has forced addicts to engage in crime to get money to pay for them.

The severity of the punishment for those young people convicted of drug crimes has wrecked many of their lives.

The impossibility of enforcing the drug laws has undermined respect for these laws and even for other laws.

The idea that the drug problem can be solved within the existing legal framework cannot be accepted by anyone who looks critically at the present state of affairs.

What are the reasons given for the present drug laws?

Laws against drugs are in the class of laws whose main object is to protect people against themselves. These laws were based on three suppositions:

1. That drug use causes damage to the individual's body and mind.
2. That drug users can be cured by being punished.
3. That nonusers can be frightened by the threat of punishment into never using drugs.
4. That drug-injured people are a menace to society.

Numbers 2 and 3 can be dismissed without further discussion. It is all to obvious that the current laws neither cure nor prevent drug use.

How about the damage caused by the drugs themselves?

Here we must talk about each drug separately. The least harmful, marihuana, does not cause physical dependence (sometimes called addiction). Its moderate use, as far as we know at present, causes relatively little harm to mature people.

Marihuana users are not a menace to society. However, even moderate use may be harmful to young teen-agers, because they are provided with a means of copping out on their problems instead of facing them and they fail to grow and mature emotionally. Excessive use doubtlessly interferes with a productive life, regardless of age.

Despite the severity of the present laws, however, the use of marihuana is increasing rapidly.

What can be done about this?

There are a number of possibilities involving some form of regulation:

1. *No restriction.*—Suppose all laws restricting marihuana were taken off the books. Enterprising Americans would go to work to entice as many people as possible to buy marihuana. Advertising campaigns would extol the virtues of pot smoking and imply that the full life must include drug experience. Surely this is not what we want.

2. *A licensing system.*—It has been suggested that marihuana be treated like alcohol. Manufacturers and sellers of alcohol are required to have a license. Restrictions are imposed on where and under what conditions the product can be sold. Age limits are imposed. Advertising is permitted.

3. *A new agency, created specifically to handle marihuana.*

This agency would be entrusted with the entire distribution of legalized marihuana. It might be a government agency, completely divorced from the Bureau of Narcotics and Dangerous Drugs, or it might be a nonprofit foundation or public corporation. It would import the crude product, process it, standardize it, and sell it. It would attempt to prevent the sale of the drug to juveniles. All advertising would be forbidden.

Anyone over eighteen would be permitted to buy limited quantities of pure standardized marihuana at a depot or a store. Buyers would be assured of the potency and purity of what they bought. They would not have to associate with black-market pushers who have other drugs with which to entice them. The black market in marihuana, with all its inherent evils, would soon disappear. Growers could sell their product legally to a legitimate outlet.

Would this kind of legal regulation increase the use of marihuana?

It might, at least for a time, but then again, it might not. The thrill of doing something illegal would be gone. How much this pushes kids into trying pot is completely unknown, though doubtless it is a factor. The evils associated with illegal marihuana would disappear, and these must be balanced against the use of the drug itself. Removing criminal penalties for use of marihuana and also permitting legal distribution of the drug does not constitute advocacy of its use.

The real hope of the future is in education. The problem of marihuana must be faced honestly if education is to be meaningful. If the facts presented are true and free from prejudice, intelligent young people will believe them, and many will act upon them.

If alcohol is legal, why not marihuana?

There are plenty of reasons for changing the marihuana laws without even bringing up the comparative dangers of these two drugs.

Alcohol is a dangerous drug in the hands of abusers. Society tried to make alcohol illegal. The experiment was a dismal failure. The evils of the law were great, but perhaps no greater than the evils of the marihuana law. Marihuana may be even less dangerous than alcohol. Both drugs are harmful when abused, and neither drug is good for young teen-agers.

Hasn't the President recently taken some action against drug use?

President Nixon is acutely aware of the problem. At his instigation, Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, which reduces, but does not eliminate, the penalties for first-time possession of marihuana. For subsequent offenses, the penalties are increased. While this law is a step in the right direction, it is nevertheless a tiny step. The drug is still illegal, and users of the drug are classed as criminals.

Section 601 of the law authorized the President to set up the National Commission on Marihuana and Drug Abuse. The first task of this commission is to submit a comprehensive report on marihuana, which is to include recommendations to the President on all aspects of the drug, including new legislation. The report is due to come out this month. The second task is a report on drug abuse generally. It is due March of 1973.

In May, 1971, when the commission was holding its first hearings, Mr. Nixon said that, should the commission recommend the legalization of marihuana, he would feel free to ignore their recommendation.

Three series of hearings were held, one in Washington, D.C., one in San Francisco, and one in Chicago. The first hearing was marked by a good deal of sarcasm from some members of the commission toward witnesses who stated that the dangerous qualities of the drug had been exaggerated.

As time went on, there was a perceptible change in attitude on the part of some of the commission members. The commission was told by so many knowledgeable experts, and told so frequently, that the havoc created by the laws exceeded any harm inherent in the drug, that attitudes changed.

What will the commission recommend?

It seems highly probable that the least the commission can recommend is that all the states reduce to a misdemeanor the offense of possessing marihuana, thus bringing state laws into conformity with federal law.

It may be this is as far as the commission will go since it is essentially a conservative group; however, it is possible that the commission will recommend eliminating all jail sentences for possession of marihuana.

If the commission should issue a majority report recommending the decriminalization of marihuana, this would be an enormous step forward. The members of the commission are intelligent people who, like many of the older generation of Americans, have reacted with horror to "dope." Many admit their attitude has been based more on emotion than knowledge. If the members of the commission can become convinced by facts and change their attitudes, perhaps the American electorate can also be convinced.

But decriminalization of the possession of marihuana, while an important step in the right direction, is not the whole answer. As long as the drug remains illegal, the black market with all its inherent evils will continue to flourish.

What can we do about heroin?

Unlike marihuana, heroin is capable of ruining the life of almost everyone who uses it. Heroin is sneaky. Almost immediately after the first injection, the user feels a blissful state of peace envelop him. His worries and tensions dis-

solve as if by magic. After a while he goes to sleep and dreams vivid, colorful, gorgeous dreams.

When he wakes up, the spell is gone; the world is as ugly and drab as ever.

The old worries come back. Why not try it again?

If the user stops with one or even a few doses, he will not get hooked. But the temptation is usually beyond his will to resist. "Just one more time" he feels will be okay. Before long, his body becomes so adjusted to the drug that he cannot function normally without it. The new fix fails to give him any of the hoped-for bliss. All it does is relieve the bad feelings of withdrawal.

As time goes on, the victim needs larger doses of his drug just to ward off withdrawal. He may get to the point where he needs three, four, or five fixes each day just to feel halfway normal.

His whole life becomes absorbed in getting his drug. He can seldom find a job that will pay enough, and he is unable to perform on the job, largely because of his preoccupation with getting his next fix. Ultimately most addicts are forced into crime.

Where does all the heroin come from?

Heroin is smuggled into this country in kilo lots (2.2 pounds). One kilo of pure heroin (1 million milligrams) yields 200,000 bags, each containing 5 milligrams of heroin plus 90 milligrams of powdered milk, sugar, or quinine. This is the usual single dose of the drug.

The actual price of heroin varies enormously, depending on the supply. In 1968 the usual price of a kilo of pure heroin was $8,000. (Recently a price of $40,000 was quoted.) The 5 mg. bags usually sell for $5 apiece, but the price can be doubled or trebled.

The profits in dealing in heroin are astronomical. The top importers make from 200 percent to 300 percent on their investment; the street peddler in a good location and with good connections can net $500 a day.

The Bureau of Narcotics and Dangerous Drugs, realizing that it is impossible to stop the smuggling of heroin, is now trying to reduce the amount of opium poppies grown. An extensive program to persuade Turkish farmers to stop growing poppies and grow other crops is now reduced in importance by the awareness of the Bureau of the poppy fields in Laos, Cambodia, and Thailand .

A federal agent said off the record, "I don't think we can ever stop anything as big as the heroin traffic. The Customs people seize more and more junk every year, the narcotic agents get more and more drug handlers, but no one who knows anything about this thinks we are making headway. The only solution is to stop the demand."

Then what can be done?

1. *Cure all addicts.*—The Narcotic Addicts Rehabilitation Act is based on this approach. Its successful accomplishment, however, is many years and many dollars in the future, if ever. The recent use of methadone for the treatment of heroin addiction is proving helpful, but even with methadone the elimination of all heroin addicts in the foreseeable future does not seem likely.

2. *Provide all heroin addicts with a cheap legal supply of the drug.*—Such a plan would take the heroin addict off the street. How many addicts would pay for a fix they could get for nothing? With stocks of heroin piling up on the pushers' hands, the importers and middlemen would soon find no market. Ultimately, the black market would wither away. This might even make the drug so unavailable that fewer and fewer new recruits would be enticed into the ranks of heroin addicts.

However, there would be enormous difficulties with such a scheme.

Clinics would have to be set up in areas where addicts could get to them. Careful records would have to be kept so that an addict could not go to several clinics and get additional amounts of drugs.

Addicts would have to be carefully screened. First, to make sure they really were addicts and, second, to find out how much drug they had been taking. Regular urine tests would help to determine the fact of addiction and the amount of drug necessary to maintain the addict in reasonable comfort.

Every dose of heroin would have to be administered in the clinic to make sure the addict did not try to sell it on the outside.

3. *Combination of heroin-maintenance and methadone-maintenance treatment.*—It is possible to combine the clinics. Heroin could be given to addicts at the same clinic where methadone was being used for maintenance treatment. The presence of ex-heroin addicts making a better go of life in a methadone-

maintenance program might induce other heroin addicts to make a serious try at abandoning heroin. However, no heroin addict who preferred to stay on heroin would be denied the drug, as it is such addicts who constitute the demand that maintains the black market.

Where would the clinics get their supply of heroin?

The government, or whatever agency operated the clinics, would import heroin legally or even offer to buy all the heroin in the country up to a certain date. Dealers convinced that their market was about to dry up might be willing to unload their supplies safely.

If the Bureau of Narcotics and Dangerous Drugs is correct in estimating that 2,000 kilos of heroin are smuggled into this country every year, it would cost the government a mere $16 million to buy it all (at an estimated rate of $8,000 per kilo).

Ultimately, when sales were made legal, agents from the organization that ran the American clinics could buy raw opium directly from farmers, process it into morphine, and then into heroin. By such an arrangement, not only would the American black market disappear but also the foreign market would come under legal control.

There would be monumental problems and costs. But the costs would not be as great as those of the present army of narcotics agents, Customs officials, police, jails, prisons, and courts who are so unsuccessfuly trying to cope with the situation.

Has supplying drugs to addicts ever been tried?

Yes, it has.

Great Britain had a problem with morphine abuse back in the early years of this century just as the United States had. In 1920 Britain passed the Dangerous Drug Laws which permitted addicts to obtain drugs from their doctors. The British considered drug addicts sick people who should be under medical care.

No black market developed in Britain because it was not needed to supply the addict with his drug. Nor did the British addict need to engage in crime to obtain money for his drug.

But hasn't the British system had problems?

Beginning in the early 1960s, British youth also took up the drug culture. British involvement with heroin, however, has always been minuscule compared with America. In 1960 Britain had 94 registered addicts in the entire country. By 1965 this number had increased to 521.

A commission found that some physicians were grossly overprescribing, and a few unscrupulous doctors were actually selling heroin prescriptions. Britain passed a new law.

The basic British philosophy that drug addicts were sick people in need of medical attention, not criminals in need of punishment, was not altered. Physicians were forbidden to prescribe heroin without a special license. Very few licenses were granted; special clinics were set up, instead, where heroin addicts could obtain their drug. It took a few years to get going, but in 1969 the Home Office indicated that for the first time the number of new heroin addicts had decreased.

The Home Office reports as "addicts" those individuals addicted to morphine, heroin, cocaine, pithidene, and methadone. In 1969, the total number in Britain was 2,881. Most of these were heroin addicts, but it is of significance to note that almost 500 were methadone addicts.

There is still a drug problem in Great Britain. But the basic British idea that drug addiction is a disease has resulted in confining this disease to a very small number of people. It has also prevented almost completely the development of a black market in drugs. Crime in Britain is not related to drug use.

Compared to the heroin situation in the United States, the British experience is remarkable. At its very worst, Britain had less than 3,000 hard drug addicts. In the city of New York alone, there are a minimum of 100,000 heroin addicts, and there is every indication that the number is increasing.

Why doesn't the U.S. use a system like the British?

Largely because the punitive approach to drug addiction has been ingrained in the American attitude. The Bureau of Narcotics and Dangerous Drugs opposes the British system. They have proclaimed it a failure. The Bureau ignores the fact that the British system operated successfully for 40 years. They cite the

rapid percentage increase in heroin addiction which descended upon Britain along with the new youth culture. The Bureau fails to mention the extremely small number of people involved, even though the percentage increase was great and they have ignored the recent decrease in the total number of addicts.

What alternatives are being suggested?

President Nixon's concern over the heroin problem, which he now describes as a "national emergency," has been caused by the shocking extent of heroin addiction among G.I.'s in Vietnam. The President has created the Special Action Office for Drug Abuse Prevention, which reports directly to him. This agency will coordinate all federal activities concerning drugs. It will work in the present legal framework but with greatly increased appropriations. All indications are, however, that it will follow the punitive approach of the present fight on narcotics, a fight which we have been losing for many years.

What does the future hold?

Slowly, a body of public opinion is growing up in this country that looks beyond the federal bureaucracy for its information. Thoughtful people, among them professors of law, sociology, medicine, economics, some public officials, a few members of Congress, and some judges, are urging basic changes in the drug laws.

As the sons and daughters of public officials are being arrested on drug charges, as some of them are being made very ill or even killed by overpotent or impure drugs, these men and women are taking a new look at the problem. Many are coming to the conclusion that our present approach will never solve the problems.

The time has come for this body of public opinion to find adequate expression in public policy. It is to be hoped that the final report of the Commission on Marihuana and Drug Abuse will reflect this growing change in the public attitude toward the drug dilemma.

MARIHUANA:

A SIGNAL OF MISUNDERSTANDING

The Technical Papers of the First Report of the National Commission on Marihuana and Drug Abuse

March 1972

(Extract pp. 513-530, Vol. I)

*History of Tobacco Regulation**

Since 1613, when John Rolfe introduced a successful experiment in tobacco cultivation in Virginia (Morison, 1965: 52) the leaf has assumed major social, industrial, economic and medical implications. Consequently, persons concerned with tobacco on a commercial or personal basis have been subject to a variety of different regulations over the past 360 years.

Tobacco has been attacked by social observers and medical authorities for the damage it has allegedly done to the social and physical condition of man. Yet it has also provided a substantial source of revenue to the state and Federal governments of the United States.

As is now the case with alcohol, tobacco has long been subject to regulatory controls over the quantity and quality of production. On the other hand, sumptuary laws affecting tobacco have been far fewer—and weaker—than those aimed at alcohol. In fact, there has never been a time when tobacco was prohibited throughout the United States although consumption under certain circumstances has been forbidden at various times in different jurisdictions.

Tobacco—associated today with smoking of cigarettes, and to a lesser extent, of pipes and cigars—has been popular at times for both snuffing and chewing. Indeed, until about 1870 cigarettes were relatively rare in the United States, and almost all tobacco consumed domestically was chewed during the mid-19th century (Gottsegen, 1940: 9–10).

Whatever the preferred mode of consumption, however, the commodity has always been the subject of debate respecting the appropriate governmental attitude. On the one hand, proponents of the leaf stress its social benefits and its economic and industrial significance. Some enthusiasts even endorse its alleged medical and psychological benefits. Opposed are those who cite the health hazards of smoking and others who are convinced of its immorality.

The motivation for regulation has come from both sides of the controversy. Most sumptuary restrictions were fostered by the latter group in an effort to suppress the habit. Those who seek to institutionalize and foster use of the drug focus on the regulation of the quantity and quality of production.

This section does not attempt to weigh the merits of the various regulatory schemes. Rather, it will trace from John Rolfe's day the three threads of regulation which have circumscribed both the producer and consumer of tobacco in the United States.

REGULATION OF PRODUCTION

In the opinion of King James I of England, tobacco was "loathsome to the eye, hateful to the nose, harmful to the brain" and "dangerous to the lungs" (Middleton, 1953: 93). Whether the King was prescient, or simply sensitive, was irrelevant

*This section is based in part on a paper prepared for the Commission by Jane Lang McGrew, an attorney from Washington, D.C.

in the 17th and 18th centuries, however, for tobacco rapidly became the mainstay of the Maryland and Virginia economies. Within seven years of John Rolfe's first imaginative experiment, Virginia exported nothing but tobacco and a little sassafrass to England (Middleton, 1953: 93–94). Almost as quickly, the leaf became the staple of the colony of Maryland and competition developed in Carolina as well.

In Massachusetts Bay, the product fared less well. The first general letter (April 17, 1629) from an official of the New England Company to the Massachusetts Bay settlers prohibited the planting of tobacco except in small quantities for medicinal purposes (Werner, 1922: 100). Next door in Connecticut, however, the colonists attempted to rival the southern planters with a local leaf. Indeed, the infant industry was coddled by the protectionist General Court at New Haven, which promulgated a rule in 1641 that:

> No persons within this jurisdiction shall [smoke] any other Tobacco but such as is or shall be planted within these [districts], except they have license from the Courte (Tobacco Institute, Connecticut, undated: 20).

Notwithstanding the royal attitude and the fear of certain patent holders of the London Company that Virginia had become a "colony founded on smoke" (Tobacco Institute, Virginia, 1971: 19; Middleton, 1953: 94), England encouraged the growth of the tobacco industry. Monopolies to import tobacco from the colonies were granted by the Crown to court favorites who soon prospered as a result of this trade.

In 1621, a bill was introduced which, according to one contemporary commentator, was "extremely remarkable": No tobacco was to be imported after the 1st of October, 1621, except from Virginia and Bermuda; and, after that day, none was to be planted in England. Although the act was initially defeated by the House of Lords, James I in 1922 himself granted the import monopoly to the Virginia and Bermuda companies and prohibited the domestic cultivation of tobacco (Brooks, 1952: 88).

The system worked well for the British importers, but the methods of financing they employed became onerous to the colonial planters. The tobacco was marketed by consignment to an English merchant who deposited the proceeds of the sale to the planters' accounts. Often, however, the high commissions charged and the cost of goods ordered by the Virginians in payment for their crop contributed to the growth of colonial indebtedness. The extension of credit to cover the deficiencies caused the debts to grow constantly, but the only alternative to the consignment system was to sell the product in the colony at a lower price (Middleton, 1953: 104–107).

Industrial competition in this market provided the impulse for certain regulatory relief. Importation of the Carolinian product into Virginia was forbidden by an act of 1679, amended in 1726 to prohibit importation by land as well as by sea. Nor was North Carolina permitted to export its tobacco from Virginia ports. In Great Britain, the Privy Council looked with disfavor upon such colonial legislation which threatened the financial well-being of the merchants and so disallowed the Virginia Act in 1731 (Middleton, 1953: 114–115).

Competition similarly induced both Virginia and Maryland to enact laws prescribing the dimensions of the hogshead in which tobacco was packaged in 1658. Vying for purchasers, the two colonies gradually enlarged the statutory size of the hogshead until, under edict from the Privy Council in Britain, Maryland was ordered to pass a gauge act establishing the size of the hogshead in the same dimensions as those fixed in Virginia.

Notwithstanding such legislation, however, the manufacture of hogsheads was still characterized by carelessness and irregularity until the warehouse inspection system went into effect in the 18th century (Middleton, 1953: 116–117).

It was not long before the colonial planters were faced with a more serious problem—overproduction—which was causing a decline in prices as well as quality of the leaf. In 1619, the first tobacco inspection law was passed by the Virginia House of Burgesses, ordering the lowest grade of tobacco to be destroyed and prohibiting "second growth" tobacco and the marketing of trash leaves.

This act was followed in 1621 by a more direct attempt to restrict production. Each cultivator was required to limit his growth to 1000 plants of nine leaves each. Although this order was soon rescinded as a patent failure, an act of 1629 permitted each planter to tend only 3000 plants with an additional allowance of 1000 for non-laboring women and each child (Brooks, 1952: 96).

Notwithstanding the statutory effort, the problem intensified. Virginia attempted to encourage the other tobacco colonies to reach agreements restricting plantings, but in Maryland, Lord Baltimore resisted. If planters were poor, he asserted:

> It is not from the low price of Tobacco, but from their owne sloth, ill husbandry and profusely spending their croppe in Brandewine, and other liquors (Robert, 1949: 11).

Carolina, Maryland and Virginia actually reached a decision to prohibit the planting of the staple from February 1667 to February 1668. This "stint" proved a less effective means of control

than the winds of 1667, which almost destroyed the crop ready for harvest that year (Tobacco Institute, Virginia, 1971:19).

Acts of God failed to provide an ultimate solution, however, and severe economic dislocation in Maryland and Virginia intensified. By 1681, the Virginia governor, Lord Culpeper, complained:

> . . . [T]hat which is more to us than all other things put together, and will be the speedy and certain ruin of the colony, is the low price of tobacco. The thing is so fatal and desperate that there is no remedy; the market is overstocked and every crop overstocks it more. It is commonly said that there is tobacco enough now in London to last all England for five years. . . . Our thriving is our undoing, and our purchase of negroes, by increasing the supply of tobacco, has greatly contributed thereto (Brooks, 1952: 112–113).

The failure of the Virginia Assembly to pass another act requiring a "stint" led the so-called "cutters and pluckers" to take the matter into their own hands in 1682 by burning both their own crops and the plants of their neighbors (Roberts, 1949:11). The riot stimulated legislative action in 1684 of a less helpful sort: the destruction of tobacco was made a criminal offense, subject to the death penalty (Brooks, 1952: 12).

Seventeenth century quality control laws proved no more successful in the effort to relieve the depression of the industry. Renewed efforts were made in early years of the next century, however. In 1713, the Virginia House of Burgesses established a warehouse system to enforce tobacco inspection. Forty public warehouses were created.

Strong opposition to the system led the Privy Council to disallow the act in 1717, but the ensuing depression of the 1720's was convincing evidence of the need for relief. Accordingly, the system was reinstated with British approval in 1730, complete with public warehouses and official inspectors (Middleton, 1953: 120–121).

The apparent success of the system appealed to Maryland, suffering also from a surfeit of tobacco. "Tobacco, our money, is worth nothing," wrote one Marylander in 1724, "and [there is] not a Shirt to be had for Tobacco this year in all our country" (Tobacco Institute, Maryland, 1971: 21).

Tobacco riots ensued when the Maryland Assembly initially refused to follow Virginia's example. One individual was moved to inform Lord Baltimore that no improvement in the economic state of the colony was possible until inspection laws were passed that "will prevent the sending to Market Such trash as is unfit for any other use but Manure" (Tobacco Institute, Maryland, 1971: 23). Accordingly, Maryland followed Virginia in the creation of an inspection system in 1747, and Carolina did likewise in 1754 (Brooks, 1952: 165).

Tobacco entirely dominated the economic and social structure of Virginia and Maryland. "Tobacco requires us to abhor communities or townships," wrote a 17th century governor of Maryland, "since a planter cannot carry on his affairs without considerable elbow room within his plantation" (Brooks, 1952: 98).

In Virginia, tobacco had gained such ascendancy that it was used as money. For example, when, in 1621, a cargo of twelve young women made its way to the colony, each one was valued at 120 pounds of tobacco leaf (Brooks, 1952: 93). By law, Virginia's ministers were paid in tobacco at 16,000 pounds annually in 1696. The law provided that:

> A competent and sufficient provision for the clergy will be the only means to supply this dominion with able and faithful Ministers whereby the glory of God may be advanced, the church propagated, and the people edified (Werner, 1922: 102).

Not until the Option Act was passed by the Virginia Assembly in 1755 could the clergy's fees be paid in either money or tobacco (Brooks, 1952: 167).

The regulation of tobacco in the colonies was devised in response to the industry with the intent to further the prosperity of the planters who dominated the economy. This theme continued to pervade all related regulatory efforts in the tobacco-producing states thereafter, as new practices developed in the marketing of the leaf.

The initial hogshead inspection system gradually gave way to the sale of loose-leaf tobacco by auction. In 1849 the Virginia Code recognized these methods in lieu of the sale of hogsheads of the leaf as provided in the 1730 Act. By 1865, the tobacco auction had completely replaced the earlier marketing techniques in Virginia (Tobacco Institute, Virginia, 1971: 28–29).

More than a half century later Maryland followed suit. In 1939, the looseleaf auction warehouse system was introduced to replace the hogshead system, and the conversion occurred almost overnight. The practices engaged in are regulated by the Maryland State Tobacco Authority, established in 1947 by law. The Authority itself is supervised by eight representatives selected by the Governor from the producing counties, the University of Maryland, the buyers and the sellers (Tobacco Institute, Maryland, 1971: 9–10).

The Federal Government came to recognize the significance of the tobacco industry in response to state pressures. Accordingly, since 1930, several bills have been enacted to aid the growers.

Enacted in 1935, the Tobacco Inspection Act directs the Secretary of Agriculture to establish quality standards and to designate auction markets (7 U.S.C. 511 (b) and (d)). The following

year, the Tobacco Control Act was passed, bestowing Congressional approval upon state compacts which regulate the production of tobacco, and subsidizing the expenses of the state commissions involved (7 U.S.C. 515). Thus, the two elements of initial colonial regulation were preserved: the encouragement of quality and the discouragement of quantity.

The latter objective was further implemented by the Agricultural Adjustment Act of 1938. Since that time, parity payments have been made to tobacco producers:

> In amounts which, together with the proceeds thereof, will provide a return to such producers which is as nearly equal to parity price as the funds so made available will permit (7 U.S.C. 1303).

In addition, the Secretary of Agriculture is authorized to set national marketing quotas respecting each kind of tobacco (7 U.S.C. 1312), to apportion the quotas among the states, and to allot the portions among the farms (7 U.S.C. 1314). Penalties are imposed for overproduction (7 U.S.C. 1314).

There is nothing subtle about these measures, of course. Their intent is obvious: to assure the economic stability of an industry which, as of 1960, provided the United States population with more than 150,000,000 pounds of manufactured tobacco for consumption annually (Heimann, 1960: 93), and which provided more than $4.8 billion in taxes in 1971 (USDA, Tobacco Situation, 1971b: 44).

During the same year, growers' gross receipts reached about $900 million (Tobacco Tax Council, 1970: 2), while cigarette sales alone grossed for the manufacturer and seller approximately $5 billion (Tobacco Tax Council, 1970: 53). The commercial motivation is sound enough if considered abstractly. When combined with the revenue incentive, however, it has largely obscured sumptuary controls.

REGULATION FOR REVENUE

Alexander Hamilton's tax package of 1794 proposed the first federal excise taxes upon tobacco products. To the distress of Philadelphia snuff manufacturers (Brooks, 1952: 146), however, the tax was restricted after serious Congressional debate to their product only.

James Madison led the opposition to a general tobacco tax; his views were summarized in the Annals of Congress on May 2, 1794:

> As to the subject before the House, it was proper to choose taxes the least unequal. Tobacco excise was a burden the most unequal. It fell upon the poor, upon the sailors, day-laborers, and other people of these classes, while the rich will often escape it (Robert, 1949: 100).

The legislative decision was probably tempered as well by considerations of the enforceability of the measure: snuff had to be manufactured, while quid and pipe tobacco were often homegrown leaf at the time (Heimann, 1960: 155). In any case, the snuff bill was ultimately enacted, modified, suspended and repealed, with small, if any, effect upon federal revenues.

The opportunity to distill tax money from tobacco was seized upon more vigorously at the time of the Civil War. On July 1, 1862, an ad valorem tax was imposed upon cigars for the first time. This tax was raised two years later when a separate tax upon cigarettes was also imposed (Werner, 1922: 358). (Even the Confederacy sought to levy a tax-in-kind upon tobacco crops, but was precluded from doing so by the inspection system which required the inspector to deliver the full amount of tobacco specified in the warehouse receipt (Robert, 1949: 117).)

Thereafter, the taxes were raised in 1865, 1866 and 1875. A temporary reduction followed, until the Spanish-American War necessitated further increases. Concurrently, taxes were levied upon smoking and manufactured tobacco and snuff, lest the burden fall unequally upon smokers (Werner, 1922: 559).

By 1880, the tobacco taxes had largely stabilized. At that time, they accounted for 31% of total federal tax receipts, or $38.9 million. Of this, 50% of the collections was derived from smoking and chewing tobacco, 49% from cigars and cheroots, and less than 2% from cigarettes (Heimann, 1960: 156).

Since that time, federal tax collections on tobacco products have risen almost annually. Between 1910 and 1920, they increased more than 500%, the greatest increase in any single decade. By 1970, they accounted for almost $2.1 billion, down slightly from the two preceding years (Tobacco Tax Council, 1970: 5).

Indicative of changing patterns of consumption, the taxes on cigarettes, as a percentage of the total federal tobacco revenue jumped from 13.6% in 1910 to 51.1% in 1920. By 1970, the percentage at 97.2% far outdistanced those revenues derived from other forms of the product (Tobacco Tax Council, 1970: 5).

Excise taxes have proved profitable and easy to collect. The revenue schemes are simple on both the federal (26 U.S.C. 5701 *et seq.*) and state levels. In the past, no justification for them has been deemed necessary since Madison's protest. No elaborate licensing or state monopoly system, such as those designed to control commerce in alcohol, has ever been imposed.

In 1921, Iowa became the first state to cash in on the crop directly by taxing cigarettes. By 1930, 11 other states had adopted the revenue measure (Robert, 1949: 256).

In 1950, 40 states and the District of Columbia taxed cigarettes. The rates ranged from one cent to five cents for a pack of 20 except in Louisiana which levied an eight cent tax on cigarettes. In 1958, Montana imposed an equivalent rate.

Between 1950 and 1962, 43 of the 47 taxing states raised their rates at least once. The frequent increase in cigarette taxes narrowed the gap between the rates in low tax states and higher tax states. In the 12-year period, the median tax rate rose from three cents to six cents per pack (Federal Trade Commission, 1970: 3); the maximum rate remained at eight cents in Texas, Louisiana, Montana and New Mexico, in contrast to the two cent rate in the District of Columbia and Kentucky.

The four leading states in terms of both production and relative dependence on the crop have been North Carolina, South Carolina, Kentucky and Virginia, the latter two being the only states in the history of cigarette taxation to decrease their taxes; the reduction was only .5 cent (from three cents to two and a half cents) in 1960 and 1961, respectively.

By 1966, Oregon became the 49th state to impose a tax on cigarettes; the rate was four cents per pack. Finally, in 1969 North Carolina imposed a cigarette tax—two cents.

The cigarette excise taxes continued to increase during the sixties. By 1970, the taxes ranged from North Carolina's two cents to Pennsylvania's 18 cents for a weighted average of 10.7 cents. Twenty-nine states levied taxes of 10 cents or more per pack (USDA, Tobacco Situation, 1971b: 40). Local governments superimposed further excise taxes on the state taxes, ranging from one cent to 10 cents per package (Tobacco Tax Council, 1970: iv).

By mid-1971, the range had widened further—Connecticut at 21 cents and North Carolina at two cents, the weighted average state tax being 11.1 cents (USDA, Tobacco Situation, 1971a: 7).

TOBACCO REVENUES

A peculiar relationship exists between production and revenue. In 1970, cash receipts from tobacco brought in $11 million for Pennsylvania; tobacco farmers and cigarette taxes amassed $194.6 million for the state. By comparison growers in North Carolina collected $576 million while the state collected only $13.4 million in cigarette revenues (USDA, Tobacco Situation, 1971b: 43).

The federal excise tax on a package of cigarettes is currently eight cents and has remained so since 1951. The *combined* state and federal tax was highest in Pennsylvania; 26 cents for 20 cigarettes, which was 58.2% of the retail price. Connecticut's 24 cents and Texas's 23.5 cents were close behind; the average for the United States was 46.8%.

To the Federal and state governments today, tobacco is a financial asset. The total federal and state revenue collected from all tobacco products in 1971 amounted to over $4.7 billion. Local governments excised the product further bringing the sum total to $4.8 million (USDA, Tobacco Situation, 1971b: 44).

From the years 1890 to 1930 cigarette tax collections from tobacco soared from approximately $1 million to over $339 million. By 1950, they exceeded $1.2 billion.

Totals for the years 1890 to 1970 are recorded in the following chart (Tobacco Tax Council, 1970: 5):

Years	Cigarette tax collections
1890	$1,100,000
1900	4,000,000
1910	7,900,000
1920	151,300,000
1930	359,800,000
1940	533,000,000
1950	1,242,800,000
1960	1,863,600,000
1970	2,036,100,000

REGULATION OF CONSUMPTION

Even as far back as the 16th century, smoking was considered to have medicinal value. Juan de Cardenas, a Spanish physician who lived in Mexico in the late 1500's, wrote that "Soldiers subject to privations, kept off cold, hunger, thirst by smoking and all the inhabitants of the hot countries of the Indies alleviate their discomforts by the smoke of this blessed and medicinal weed" (Wagner, 1971: 63-64).

During the recurrent epidemics of plague in the 17th century, it was widely believed that smokers were spared; it has been reported that men who attended the sick and accompanied the dead kept their pipes lit (Wagner, 1971: 63-64).

In 1614, one Scottish doctor praised the tobacco plant which:

> Prepareth the stomach for meat; it maketh a clear voice: it maketh a sweet breath . . . in a few words it is the princess of physical plants (Gottsegen, 1940: 87).

King James disagreed strenuously, and in 1604 ordered a substantial increase in the import duty on the leaf. Smoking, he wrote in "A Counterblaste to Tobacco", is:

> A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black stinking fume thereof, nearest resembling the hor-

rible Stygian smoke of the pit that is bottomless (Brooks, 1952: 66, 71).

Another more passionate moralist wrote:

. . . imagine thou beheldest here a fume-sucker's wife most fearfully fuming forth very fountains of blood, howling for anguish of heart, weeping, wailing, and wringing her hands together . . . while she pitifully pleads with her husband thus: Oh husband, my husband . . .! Why dost thou so vainly prefer a vanishing filthy fume before my permanent virtues? (Brooks, 1952: 72).

Notwithstanding such alliterative literature, the habit of smoking increased in popularity, particularly in the colonies. A French visitor observed in 1656 that:

Large quantities of it [tobacco] are used in this country, besides what they sell. Everyone smokes while working and idling. I sometimes went to hear the sermon; their churches are in the woods, and when everyone has arrived the minister and all the others smoke before going in. The preaching over, they do the same thing before parting. They have seats for that purpose. It was here I saw that everybody smokes, men, women, girls and boys from the age of seven years (Robert, 1949: 99).

It was said that even in New England, women of the colony "smoke in bed, smoke as they knead their bread, smoke whilst they're cooking" (Gottsegen, 1940: 147).

In the tobacco colonies, of course, there was no attempt to restrict consumption of tobacco. It was, after all, their economic mainstay.

Officials in the northern colonies were less enthusiastic about the habit, however. In 1632, the General Court of Massachusetts Bay took the initiative and forbade smoking in public under penalty of a fine (Tobacco Institute, Massachusetts, 1971: 17). In 1638, the proscription was expanded to prohibit anyone from smoking in any inn or public house except in his own room "so as neither the master of the house nor any of the guests there shall take offense thereat which if they do, then such person is forthwith to forebear upon paying of two shillings sixpence fine for every offense" (Werner, 1922: 100).

This law was followed by another in 1646 which prohibited smoking except on a journey of five miles or more from any town. Nor could a citizen of the colony bring a pipe or tobacco into the precincts of the court (Werner, 1922: 100), although he might smoke at "the ordinary tyme of repast comonly called dynner" (Heimann, 1960: 83).

Plymouth colony was similarly strict. In 1638, a law was passed forbidding anyone from smoking on the streets. The following year, it was decreed that jurymen might not smoke, on pain of a five shilling penalty.

In 1641, even the importation of tobacco was forbidden, although the law was repealed a year later. A law passed in 1646 prohibited all from smoking, but exempted "soldiers in time of their training." And, finally, in 1669, it was ordered that anyone found smoking on the Sabbath within two miles of a meeting house would be fined 12 pence (Werner, 1922: 101).

The colony at New Haven, Connecticut, essayed a like series of statutes to regulate tobacco consumption. In 1646, the General Court decreed that:

No person under the age of twenty years nor any other that hath not already accustomed himself to the use thereof, shall take any tobacko, until he hath brough a certificate under the hands of [a physician] that it is usefull for him, and also, that he hath received a license from the court for the same. . . . None shall take any tobacko, publickly in the street or any open places unless on a journey of at least ten miles (Tobacco Institute, Connecticut: 20–21).

Within three years those laws were repealed (Werner, 1922: 102). However, it was further ordered in 1655 that:

No tobacco shall be taken in the streets, yards, or aboute the howses in any plantation or farme in this jurisdiction without dores, neere or aboute the towne, or in the meeting howse, or body of the trayne Souldiors, or any other place where they may doe mischief thereby, under the penalty of 84 pence a pipe for a time, wch is to goe to him that informs and prosecuts (Heimann, 1960: 83).

As a result of the regulation, snooping became a profitable undertaking. In the end, however, the laws were of no avail in suppressing tobacco.

By 1680, the governor of Connecticut recognized the significance of the leaf and reported that, "We have no need of Virginia's trade, most people planting so much Tobacco as they spend" (Heimann, 1960: 84). Indeed, by the early 18th century, New England-grown tobacco was being produced in great enough quantity for both domestic consumption and export (Tobacco Institute, Connecticut: 22–23).

Tobacco was not one of the major concerns of the 18th century either before or after the Revolution. Social reform was generally secondary to political issues. By the end of the century, however, Dr. Benjamin Rush had published his "Observations upon the influence of the Habitual use of Tobacco upon Health, Morals, and Property" in his collection of *Essays, Literary, Moral and Philosophical*. It appeared in 1798, and stressed the Doctor's thesis that smoking and chewing provoked drunkenness:

One of the usual effects of smoking and chewing is thirst. This thirst cannot be allayed by water, for no sedative or even insipid liquor will be relished after the mouth and throat have been exposed to the stimulus of the smoke, or juice of Tobacco. A desire of course is excited for strong drinks, and these when taken between meals soon lead to intemperance and drunkenness. One of the greatest sots I ever knew, acquired a love for ardent spirits

by swallowing cuds of Tobacco, which he did, to escape detection in the use of it. . . (Robert, 1949: 106).

There was little immediate response to Rush's dire warnings, although in the year his tract was published, Boston enacted a statute to prohibit the carrying of a lighted pipe or cigar in public streets—apparently with the intent to reduce the hazard of fire (Brooks, 1952: 245).

An anti-tobacco crusade was launched in the 19th century, although with considerably less fervor that its sister movement against alcohol. Among the leaders were Rev. George Trask who said tobacco and alcohol were Satan's twins; and the Rev. Orin Fowler, who declared in 1833: "Rum-drinking will not cease, till tobacco-chewing and tobacco smoking and snuff-taking shall cease" (Robert, 1949: 107). Another, Dr. Joel Shew, attributed delirium tremens, perverted sexuality, impotency, insanity and cancer to the effects of smoking and chewing (Brooks, 1952: 219).

The crusade waned as the pipe continued to attract adherents. From the 18th century on, the cigar too began to grow in favor, particularly after 1840. It is estimated that by 1850, the average number of cigars smoked was approximately 19 per capita. Within 10 years, the number had increased to about 26 (Gottsegen, 1940: 8–10).

Women smoked and chewed as well as the men. Indeed, Mrs. Andrew Jackson and Mrs. Zachary Taylor both smoked their pipes in the White House (Heimann, 1960: 90). And, of course, the other residents of the Capital engaged heavily in the practices of both chewing and spitting, to the extent that Charles Dickens, during his tour of the States, felt called upon to report that:

Washington may be called the headquarters of tobacco-tinctured saliva. . . . In all the public places of America, this filthy custom is recognized. In the courts of law, the judge has his spittoon, the crier his, the witness his, and the prisoner his; while the jurymen and spectators are provided for. . . . The stranger will find [the custom] in its full bloom of glory, luxuriant in all its alarming recklessness, at Washington (Brooks, 1952: 215–216).

Chewing and snuffing remained popular until the time of the Civil War. Thereafter, cigarette smoking was gradually adopted in North America, a habit indirectly acquired through the British from their Turkish and French allies during the Crimean War (Werner, 1922: 105).

By 1870, approximately 13.9 million cigarettes were smoked annually in the United States, or .36 per capita. Over the next 60 years, the number was to reach 976.91 per capita (Gottsegen, 1940: 28).

As more persons took to cigarettes, the zeal of reformers, which had ebbed during the Civil War, was renewed. Pamphlets, like those of the Temperance Movement, were published, urging abstinence from smoking:

"I'll never use tobacco, no;
It is a filthy weed;
I'll never put it in my mouth."
Said Little Robert Reed.
"It hurts the health; it makes bad breath;
'Tis very bad indeed.
I'll never, never use it, no!"
Said Little Robert Reed
(Brooks, 1952: 242–243).

During the period following the Civil War and prior to the formation of the American Tobacco Company in 1890, the anti-liquor forces continued to snipe at tobacco in all forms. A reformed drinker and temperance lecturer, John B. Gough, would pull from his pocket a square of tobacco, smell it as if it were a rose, cry out "Ah you black devil, I love you" and throw it away.

The anti-tobacconists were led by Lucy Gaston, the greatest warrior in the anti-cigarette campaign who was trained in the office of the Women's Christian Temperance Union and then moved over into the anti-tobacco movement in the 1890's. Miss Gaston encouraged children to wear anti-tobacco pins or buttons and organized armies of children to sing and preach to and against their smoking elders (Wagner, 1971: 40).

"All hostility to tobacco seems nowadays to be concentrated on cigarettes," noted *Harper's Weekly*, observing the scene in 1905 (Robert, 1949: 169). It was scarcely a startling revelation. Twenty years earlier, the *New York Times* editorialized that:

A grown man has no possible excuse for thus imitating the small boy. . . . The decadence of Spain began when the Spaniards adopted cigarettes and if this pernicious habit obtains among adult Americans the ruin of the Republic is close at hand . . . (Brooks, 1952: 253).

Miss Gaston witnessed some legislation victories. Between 1895 and 1921, 14 states banned the sale of cigarettes (Neuberger, 1963: 52). Even in the city of New York it was declared unlawful for women to smoke in public (Brooks, 1952: 271). Curiously, however, the city of Boston repealed its law which prohibited smoking in public in 1880 (Gottsegen, 1940: 153).

The apparent success of the prohibitionists revived the anti-tobacconists' enthusiasm. "Prohibition is won; now for tobacco!" pledged Billy Sunday. Miss Gaston also renewed her dedication and actually announced her candidacy for the presidency of the United States in 1920 on an anti-tobacco platform.

For many anti-tobacconists, when it became apparent that the elder generation may be lost, the

war against tobacco was focused on the youth of the country. The National Education Association pledged its membership to cooperate in efforts made in the city, state and nation to safeguard the health and morals of youth from cigarette smoking to the end that high ideals for American manhood may be preserved for the coming generation (Hamilton, 1927: 168).

The National Congress of PTA, in Atlanta, Georgia, in 1926 resolved "to lend its force to the cause of eliminating throughout the United States the use of cigarettes by minors and make this a special work for the ensuing year for the good of our youth" (Hamilton, 1927: 168).

It is for these reasons that the WCTU declared an educational war against tobacco, but declined to seek prohibitory legislation (Robert, 1949: 247).

The disenchanting experience of Prohibition, the omnipresence of the tobacco industry, the need for new sources of state revenues and the prevalence and popularity of cigarette smoking combined to frustrate the anti-tobacco campaign. Cigarettes did provide a new source of revenue. Federal income from tobacco taxes soared to new heights because of increased cigarette consumption and advanced rates.

In any event, by 1927, each of the 14 states which had enacted prohibitory laws against cigarettes had repealed them (Neuberger, 1963: 52). Immediately thereafter these states imposed taxes upon the once forbidden product (Robert, 1949: 256; Federal Trade Commission, 1970: 3).

STATE REGULATION

Only those laws which forbade the sale of tobacco products to minors remain on the books, a trend set by New Jersey and Washington in 1883 (Gottsegen, 1940: 155).

All but a few statutes restricting tobacco products to minors were enacted between 1916–1920, simultaneous to the development and popularity of the domestic-blend cigarette.

All 50 states had laws banning sales to minors by 1950. Since then, Georgia, Louisiana, and Wisconsin have repealed theirs leaving 47 states plus the District of Columbia with laws prohibiting sales to minors.

The most common age of restriction for cigarettes and tobacco products today applies to persons under the age of 18. In an effort to ensure stricter enforcement 11 states have lowered the age of restriction from 21 to 15 (Tobacco Merchants Association, 1971: 1–2). In contrast to this trend, however, the California Legislature in 1971 defeated a bill to allow school smoking areas and lowering the sale to minor restrictions to 15 years old (NIC Smoking and Health, 1971: 1).

According to a Special Report released by the Tobacco Merchants Association of the United States, the liability for infractions in all states is on the vendor and donor of cigarettes. In a few states, manufacturer and persons advising or compelling the minors to smoke, or owning the premise where such behavior occurs are also liable. However, in some states the infraction does not extend to the parent or guardian. Some states penalize the minor himself and others require that he divulge his source.

Most of the statutes that prohibit the furnishing of cigarettes to minors extend the ban also to one or more other tobacco products. Only 11 states restrict the sale "only" to cigarettes. The efficacy of such statutes, in the day of the cigarette machine, is subject to substantial skepticism.

A complete listing of existing state statutes concerning possession by and sales to minors follows (Tobacco Merchants Association, 1971: 3–4).

State	Sale to minors		Use or possession	
	Prohibited	Age	Prohibited	Age
Alabama	Yes	Minor	No provision	
Alaska	Yes	Under 18	No provision	
Arizona	Yes	Minor	Yes [1]	Minor.
Arkansas	Yes [2]	Under 18	No provision	
California	Yes [3]	Under 18	Yes	(4).
Colorado	Yes	Under 16	No provision	
Connecticut	Yes	Under 16	No provision	
Delaware	Yes	Under 17	No provision	
District of Columbia	Yes	Under 16	No provision	
Florida	Yes	Minor	No provision	
Georgia	No provision		No provision	

See footnotes at end of table.

State	Sale to minors		Use or possession	
	Prohibited	Age	Prohibited	Age
Hawaii	Yes	Under 15	No provision	
Idaho	Yes	Under 18	Yes [1]	Under 18.
Illinois	Yes [2]	Under 18	Yes [1]	Under 18.
Indiana	Yes	Under 16	Yes [1]	Under 21.
Iowa	Yes	Under 18	([6 7])	Under 18.
Kansas	Yes	Under 18	Yes	Under 18.
Kentucky	Yes	Under 18	Yes	Under 18.
Louisiana	No provision		No provision	
Maine	Yes	Under 16	No provision	
Maryland	Yes [3]	Under 15	No provision	
Massachusetts	Yes [2]	Under 18	No provision	
Michigan	Yes	Under 21	Yes	Under 21.
Minnesota	Yes	Under 18	Yes	Under 18.
Mississippi	Yes [3]	Under 18	No provision	
Missouri	Yes	Under 18	Yes	Under 18.
Montana	Yes	Under 18	No provision	
Nebraska	Yes	Under 18	Yes	Under 18.
Nevada	Yes [3]	Under 18	No provision	
New Hampshire	Yes	Minor	No provision	
New Jersey	Yes	Under 16	No provision	
New Mexico	Yes [4]	Under 18 [8]	No provision	
New York	Yes	Under 18	No provision	
North Carolina	Yes	Under 17	No provision	
North Dakota	Yes	Under 21	Yes	Under 18.[9]
Ohio	Yes	Under 18	No provision	
Oklahoma	Yes	Minor	([6])	Minor.
Oregon	Yes	Under 18	Yes	Under 18.
Pennsylvania	Yes	Minor	([6])	Minor.
Rhode Island	Yes	Under 16	Yes	Under 16.
South Carolina	Yes	Under 18	([6])	Under 18.
South Dakota	Yes	Under 18	Yes	Under 18.
Tennessee	Yes	Under 18	No provision	
Texas	Yes [5]	Under 16	No provision	
Utah	Yes	Under 19	Yes [1]	Under 19.
Vermont	Yes [5]	Under 17	No provision	
Virginia	Yes	Under 18	No provision	
Washington	Yes	Under 21	Yes	Between 18 and 21.[10]
West Virginia	Yes	Under 21	Yes	Under 21.
Wisconsin	No provision		No provision	
Wyoming	Yes	Under 18	No provision	

[1] Includes a prohibition against the purchase of cigarettes by minors (in Illinois without written order of parent or guardian), as well as use or possession.
[2] If other than by parent or guradian.
[3] However, inmates in State correction institutions 16 or over, with consent of parent or guardian, may be furnished tobacco and tobacco products.
[4] Eighteen and over, in junior college, if not permitted by governing board.
[5] Without consent of parent or guardian.
[6] Minors smoking or in possession of cigarettes are required to give source of cigarettes; use or possession not otherwise regulated.
[7] In addition, high school students may not smoke
[8] And any pupil of any school in State.
[9] Or a minor pupil in any school.
[10] Purchase or possession by misrepresentation of age a misdemeanor.

THE IMPETUS FOR FEDERAL SUMPTUARY REGULATION

The effect of smoking on health has been the subject of discussion for hundreds of years. Early participants in the tobacco controversy, beginning in the late 16th century, did not associate the use of tobacco with the production of cancers although they credited it with causing or curing nearly every other known disease.

Dr. John Hill, of London, a physician, botanist and prolific writer, first suggested the relation in 1761. In *Cautions Against the Immoderate Use of Snuff*, he reported six cases of "polypusses" related to excessive indulgence in tobacco in the form of snuff. One such "polypus" was described as a swelling in one nostril that was hard, black and adherent on a broad base. Painless at first, it later developed "all the frightful symptoms of an open cancer." Dr. Hill believed that this lesion could be fatal and placed the blame for its origin on tobacco. Dr. Hill has been noted as the first to report an association of tobacco with cancer (Redmond, 1970: 21).

In 1939, the first scientific study linking lung cancer with smoking was published. Between 1950 and 1954, 14 studies associating cigarettes and serious diseases were completed (Fritschler, 1969: 145).

At the present time, there is no government agency with clear jurisdiction over the health aspects of cigarettes. The Federal Trade Commission can act on matters of advertising and package information. The Food and Drug Administration concerns itself only with foods, drugs, solids, or liquids that are eaten or drunk. Tobacco is neither a food nor a drug under current legal definitions. Nor are cigarettes eaten or drunk; they are inhaled.

The 1890 edition of the U.S. *Pharmacopoeia*, an official listing of drugs published by the government, included tobacco. In later editions, tobacco was dropped. Former Senator Maurine Neuberger has claimed that the removal of tobacco from the *Pharmacopoeia* was the price paid to get support of tobacco-state legislators for the Food and Drug Act of 1906. The leaf was thereby removed from the jurisdiction of the FDA (Wagner, 1971: 74).

The first statement from the Public Health Service on the subject was made by its Surgeon General, Leroy F. Burney, M.D., in the *Journal of the American Medical Association* in November, 1959. The heart of this statement was that "the weight of evidence at present implicates smoking as the principal etiological factor in the increased incidence of lung cancer" (Diehl, 1969: 154).

In June, 1961, the American Cancer Society, the American Heart Association and the National Tuberculosis and Respiratory Disease Association jointly requested that a commission be appointed "to consider the responsibilities of government, of business and of voluntary agencies relative to the health hazards of cigarette smoking and to recommend a solution of this health problem that would protect the public and would interfere least with the freedom of industry and the happiness of individuals" (Diehl, 1969: 155).

On June 7, 1962, the then Surgeon General, Dr. Luther Terry, announced, with the approval of the President, that he was establishing an "expert committee to undertake a comprehensive review of all data on smoking and health."

The members of this committee were respected scientists who had previously expressed no opinion about the relationship of tobacco to health. All members were approved for appointment by the tobacco industry as well as by the American Medical Association and several national health agencies. Half of the committee members were cigarette smokers.

On January 11, 1964, after some 15 months of intensive study, this Advisory Committee to the Surgeon General issued its monumental unanimous report stating that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

The committee stated unequivocally that "cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs other factors. The data for women, though less extensive, point in the same direction." Air pollution was found to be a very minor factor in the cause of the disease, far outweighed by cigarette smoking.

The death rate from heart disease, the report noted, was 70 percent higher in cigarette smokers than in nonsmokers, and although there was not enough evidence to say positively that smoking causes heart disease, there was enough to assume that it is a cause and to take action against it.

Another conclusion of great importance was that "cigarette smoking is the most important of the causes of chronic bronchitis in the United States and increases the risk of dying from chronic bronchitis and emphysema."

The report analyzed the statistical, pathological, clinical, and experimental evidence in relation to smoking and other diseases. A total of more than 4,000 published reports were studied and more than 150 investigators were personally interviewed. "The result was the most comprehensive

and authoritative report on this subject ever made" (Diehl, 1969: 156).

THE HEALTH WARNING REQUIREMENT

At the time the Surgeon General's Report was published, no statute, administrative ruling or court decision required that cigarette packaging or advertising contain any statement about the dangers to health attributable to cigarette smoking.

After Trade Regulation Rule Porceedings in March and June 1964, the Federal Trade Commission concluded that cigarette advertising was deceptive (misleading) and that advertisers had a responsibility to warn the public of the health hazards of cigarette smoking.

To accomplish this, the Commission proposed that cigarette packages state the amount of tar and nicotine in the smoke of the cigarette which the package contains and that cigarette packages and cigarette advertising carry a statement such as: "Caution: Cigarette Smoking is Dangerous to Health. It May Cause Death from Cancer and Other Diseases."

This warning was to be required on cigarette packages beginning January 1, 1965, and in cigarette advertising beginning July 1, 1965. The tobacco industry first obtained a postponement of the effective dates of this ruling and then prevailed upon Congress to vitiate the ruling by passing the Cigarette Labeling and Advertising Act, requiring all packages of cigarettes sold in this country to carry the label "Cigarette Smoking May be Hazardous to Your Health," but prohibiting the Federal Trade Commission and state and local governments from requiring any other label on cigarette packages and any warnings in cigarette advertising at least until 1969.

A *New York Times* editorial called the Cigarette Labeling and Advertising Act of 1965 "a shocking piece of special-interest legislation—a bill to protect the economic health of the tobacco industry by freeing it of proper regulation" (Cigarette Labeling and Advertising, 1965). An article in the *Atlantic Monthly* described the political maneuvering behind this legislation under the title "The Quiet Victory of the Cigarette Lobby: How It Found the Best Filter Yet—Congress" (Diehl, 1969: 162).

Public concern attending publication of the Surgeon General's report, *Smoking and Health*, and the pending FTC regulations for warnings on cigarette packages and in cigarette advertising apparently convinced the tobacco industry that some action by Congress was inevitable.

Reportedly the industry decided to accept a weak label on cigarette packages provided that the legislation would prevent any regulation of cigarette advertising. This was accomplished by inserting into the proposed law the provision precluding the FTC and all state or local governments from requiring any warning on cigarette packages other than the one approved by Congress and also preventing any warnings in cigarette advertising.

At House and Senate committee hearings, committee members friendly to the industry attempted to discredit both the Surgeon General's Report and the testimony given by the Surgeon General, the Chairman of the Federal Trade Commission, and the representatives of various medical and health organizations. The tobacco industry then presented a number of physicians who testified that they disagreed with the conclusions of the Surgeon General's Advisory Committee and that in their opinion there was no real evidence that cigarette smoking is harmful (Diehl, 1969: 162).

Although this act temporarily prevented any requirement that tar and nicotine content be indicated on cigarette packages, the Federal Trade Commission did establish a laboratory to determine the tar and nicotine content of the smoke of cigarettes on the American market, making the results of these tests available periodically to the public.

The Cigarette Labeling and Advertising Act also required that about July 1, 1967, and annually thereafter the Federal Trade Commission report to Congress concerning the effectiveness of the warning label, and upon current practices of cigarette advertising and promotion, with "recommendations for legislation that are deemed appropriate."

After an intensive study the Federal Trade Commission made a detailed report to Congress with the following summary and recommendations: "There is virtually no evidence that the warning statement on cigarette packages has had any significant effect."

Sales remained constant and the industry continued to invest hundreds of millions of dollars in advertising; $200 million a year was being spent on radio and television alone in 1967; cigarette advertisers had become the single largest product advertisers on television accounting for about eight per cent of television advertising time (Wagner, 1971: 166).

THE FAIRNESS DOCTRINE

Another government agency had become concerned with cigarette advertising. The Federal Communications Commission is mandated to as-

sure that the airways, which belong to the public, are used in the public interest.

John F. Banzhaf, III, who has been called the "Ralph Nader of the tobacco industry" was responsible for the FCC's involvement in the cigarette advertising controversy. After viewing several cigarette commercials on television, Banzhaf concluded that "what he was seeing might be considered legally 'controversial'" (Wagner, 1971: 168). He then wrote to WCBS-TV in New York on December 1, 1966, requesting that he or some other responsible spokesman be given an opportunity to present contrasting views on the issue of the benefits and advisability of smoking.

Banzhaf's letter cited three commercials that presented the view that smoking is "socially acceptable and desirable, manly, and a necessary part of a rich full life." He asked free time roughly approximate to that spent on the promotion of the "virtues and values of smoking." CBS routinely turned down the request. He sent a second letter to CBS and submitted a formal complaint against WCBS-TV to the FCC in Washington.

The FCC, in a letter to the television station dated June 2, 1967, said programs it had broadcast dealing with the effect of smoking on health were insufficient to offset the effects of paid advertisements broadcast for a total of five to 10 minutes each broadcast day. "We hold that the fairness doctrine is applicable to such advertisements" the Commission said. They rejected Banzhaf's claim for equal time, however.

The FCC called on the station to provide free each week "a significant amount of time for the other viewpoint," thereby implementing the smoking education campaigns launched by the government under the cigarette labeling law. "This requirement will not preclude or curtail presentation by stations of cigarette advertising which they choose to carry." The FCC basically decided that it was not in the public interest for the airways to be used by radio and television to advertise cigarettes without some warning of the health hazards involved with smoking (Wagner, 1971: 169).

The FCC was deluged with requests to reconsider its action. The agency stood firm in its unanimous decision. As a result of the ruling many of the voluntary health agencies and the Public Health Service made available to the television and radio industries spot announcements and other program materials on the serious consequences to health caused by cigarette smoking.

The FCC's decision was upheld by the U.S. Court of Appeals on November 21, 1968; the court said the agency could indeed use its fairness doctrine to require free time for anti-smoking commercials. "The danger cigarettes may pose to health is, among others, a danger to life itself," the Court said.

> As the Commission emphasized, it is a danger inherent in the normal use of the product, not one merely associated with its abuse or dependent on intervening fortuitous events. It threatens a substantial body of the population, not merely a peculiarly susceptible fringe group. Moreover, the danger, though not established beyond all doubt, is documented by a compelling cumulation of statistical evidence (Wagner, 1971: 166-173).

(The cigarette manufacturers then asked the Supreme Court to review their case, but the high court turned down the request, leaving the appeals court decision standing.)

"Most observers agree that the dramatic entrance of the FCC into the smoking controversy was probably the most important single event during the three-year moratorium on requiring health warnings in cigarette advertisements imposed by Congress on the FTC" (Wagner, 1971: 175).

THE BAN ON ADVERTISING

Both the U.S. Public Health Service and Federal Trade Commission have annually reported findings to Congress since passage of the cigarette labeling law. The FTC recommended that the Act should be amended to: "Warning: Cigarette Smoking Is Dangerous to Health and May Cause Death From Cancer and Other Diseases."

Additionally, the FTC recommended legislation to require the same warning to appear in all cigarette advertisements and to require statements of tar and nicotine content on all cigarette packages and in all advertising.

Legislation to accomplish these objectives as well as the following were recommended by the FTC:

> Cigarette advertising on television and radio should be barred entirely. Alternately, cigarette advertising on television and radio should be limited as to hours in which it may appear; the extent to which it may appear; and the types of programs on which it may appear;
>
> Increased appropriations should be made to the Department of Health, Education, and Welfare for education of the public (especially young people) as to the health hazards of smoking;
>
> Appropriations should be made for research under the direction of the National Institutes of Health on the development of less hazardous cigarettes.

"By 1969, the stage had been set for a showdown over cigarette advertising and promotion" (Wagner, 1971: 190). The U.S. Government was increasing its efforts to discourage the sale of cigarettes. Post office trucks carried posters: "100,000 Doctors Have Quit Smoking."

The Surgeon General continued to release reports about the adverse health effects of smoking.

Dr. Daniel Horn, director of the National Clearinghouse for Smoking and Health, was urging doctors to deliver antismoking appeals to patients in their offices.

Movie personalities had become involved in the American Cancer Society's campaign called I.Q. (for "I Quit") that passed out lapel buttons and dispatched public speakers around the country to discourage the habit. Doris Day, Debbie Reynolds and Lawrence Welk refused to allow tobacco companies to sponsor their TV shows.

Two ad agencies—Ogilivy and Mather and Doyle Dane Bernbach—and a few radio and television stations would not accept cigarette business. Several magazines did not accept cigarette advertising as a matter of principle: *Reader's Digest*, the *New Yorker*, and *the Saturday Review*. The *Christian Science Monitor* had never carried cigarette ads; the *Boston Globe* announced in May, 1969 that it would no longer accept such advertising "because accumulated medical evidence has indicated that cigarette smoking is hazardous to health" (Wagner, 1971: 220).

In April 1969, a few weeks before the House Interstate and Foreign Commerce Committee was scheduled to open hearings on the FTC proposals, a series of bills were introduced in the House by representatives of tobacco producing states. One such bill, H.R. 7177, co-sponsored by all eleven of North Carolina's House delegation, proposed "to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health."

Identical measures were introduced under the sponsorship of congressmen from Virginia, Maryland, Kentucky, and Florida. Some accounts of the activity on Capitol Hill during this period attribute these bills to the tobacco interests' intention "to prevent strengthening of the warning label and make permanent the ban on state and Federal regulation of cigarette advertising, which was due to expire on June 30. Passage of this legislation was the best tobacco interests could have hoped for under the circumstances" (Wagner, 1971: 205).

After testimony from both sides, the House Committee approved a stiffer health warning but prohibited regulatory action on cigarette advertising for six years and in other ways generally upheld the status quo.

The Senate Commerce Committee, on December 5, 1970, voted out a bill banning cigarette commercials from the air as of January 1, 1971. The FTC was prohibited from acting on cigarette ads in newspapers and magazines until the middle of 1972. The labeling provision in the Senate bill was weaker than that established in the House-voted measure, and the bill also precluded cigarette regulatory action by the fifty states and local governments.

In a session on December 12, a floor amendment was introduced which loosened the Committee's proposed restriction on the FTC by allowing the agency to require health warnings in advertising as of July 1, 1971. The bill also authorized the FTC to move sooner if it found that tobacco companies were switching from broadcast to print advertising so massively that it could be considered a "gross abuse." This bill also approved a new required health warning for cigarette packages—"Warning: Cigarette Smoking Is Dangerous to Your Health."

After Senate passage, the measure still had to pass a joint Senate-House Conference Committee where important differences between the two bills had to be reconciled.

The bill that emerged from conference differed only slightly from the Senate measure. The cautionary label to which the conferees agreed provides: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health." "In a final concession to the broadcasters, the conferees agreed to delay for one day the blackout of cigarette commercials from December 31, 1970, to midnight January 1, 1971. That would give them a last shower of cash from the New Year's Day football bowl games" (Wagner, 1971: 216). It was estimated that the loss to television and radio stations would amount to about $220 million a year, or about 7.5% of their total advertising revenues.

President Nixon signed the Act on April 1, 1970.

Some observers marvel that the bill was passed "in spite of massive pressure that had been brought to bear against it and against the regulation of cigarette advertising generally, by the tobacco industry, the broadcasting industry, and the lobbyists and their political allies. This was a combination that for years had proved invincible against a counterforce of scientists and public health and public interest advocates who, armed with formidable statistics on the damage to health and life caused by cigarette smoking, had sought to protect consumers by requiring all cigarette advertising to provide adequate warnings of these dangers" (Whiteside, 1970: 58).

There are those observers, on the other hand, who do not view the ban of cigarette advertising on television and radio as such a success for the consumer. Rather, they cite the statistics on consumption in other countries to point up the fact that bans on advertising do not reduce sales.

In Czechoslovakia, for example, no direct advertising of tobacco is permitted; yet consumption increased 14% between 1953 and 1958. Advertising of foreign cigarettes was banned in 1962 in Italy; the following year sales increased 39.4% and in 1964, 11.7%. Sales increased in England after television cigarette advertisements were banned in 1965. Consumption figures for the following three years in Britain reveal increases: 112 billion cigarettes in 1965, 118 billion in 1966; and 119.1 billion in 1967 (Cigarette Advertising, 1970: 113–114).

Robert Miller, an agricultural economist in the Department of Agriculture's Economic Research Service, reports that cigarette consumption is up in every part of the world although advertising was banned in several European countries some years ago. He predicts an eventual decrease in sales during the next five years and perhaps a 12–13% decrease in tobacco consumption (Tobacco Advertising Could End, 1970: 7).

Other observers can see a *gradual* reduction in cigarette consumpton as a result of a prohibition on advertising; some feel a ban on advertising merely makes it difficult to launch a new brand. Others predict that the ban will eliminate the social acceptability of the habit although consumption will not go down.

The "live dangerously novelty" has also been identified as a possible cause for gains in consumption; "such a philosophy might well be prevalent among the young, the very ones that antismoking advocates are most anxious to protect" (Cigarette Advertising, 1970: 112–113).

Another consequence of the ban on cigarette commercials was the FCC ruling that the broadcasters' obligation to air antismoking messages had ended. The stations continue to run them as public service spots; however, the volume was decreased considerably from the former 1 to 3 ratio established by the FCC. The anti-smoking forces are fearful that a decrease in these spots is harmful to their cause and may retard their efforts to reduce cigarette consumption.

On October 20, 1971, a U.S. District Court ruled that the Congressional ban on cigarette advertising is constitutional. The ruling stated that such advertising does not qualify under the First Amendment's guarantee of freedom of speech; a sharp distinction was drawn between guarantees of freedom of speech for individuals and the "limited extent" to which broadcast advertising qualifies for such protection.

The court also ruled that Congress had more than one "rational basis" for excluding cigarette ads from television and not the printed media—one being that broadcasts are the "most persuasive" types of advertising (Cigarette Ad Ban, 1971). Ultimately, the constitutional question will have to be decided by the United States Supreme Court.

CONSUMPTION TRENDS

Cigarette smoking is widespread in America today; 45.9% of the male population 17 years of age and over and 30.5% of females 17 and over are smokers. In 1970, about $10.6 billion of individuals' expenditures was for cigarettes.

Data on cigarette sales and advertising has been obtained by the FTC from domestic cigarette manufacturers; the table below provides cigarette sales for the years 1963 to the present (Federal Trade Commission, 1970: 3):

TOTAL CIGARETTES SOLD

	Billions
1963	516.5
1964	505.0
1965	521.1
1966	529.9
1967	535.8
1968	540.3
1969	527.9
1970	534.2

The reduction in sales in 1964 coincides with the public attention given the Report of the Surgeon General issued on January 11, 1964. Public awareness of the dangers cited in the Report was high. It was soon forgotten, for in 1965 the total number of cigarettes sold was almost 5 billion higher than the year prior to the Surgeon General's Report.

In 1969 there was another significant decline; it has been suggested that this decline is attributable to several high-visibility events and also by sales tax increases. For example, the FCC ruling was upheld in November 1968 giving impetus to the anti-smoking TV campaign; the federal government's anti-smoking campaign was in full swing during 1968–69; the public outcry was being felt by economic interests—magazines, newspapers, personalities and advertising agencies which refused sponsorship for business from tobacco companies.

There were significant state tax increases immediately prior to 1969 which probably contributed to the reduction in sales during that year. During fiscal year 1967, 15 states increased their cigarette tax rates; the average increase was 3.5 cents. The rate increase ranged from New York's, Ohio's, and Illinois' two cents to California's and Florida's seven cents. The next year, seven more states increased their cigarette taxes. The rates ranged from Massachusetts' and Vermont's two cents to Minnesota's, Rhode Island's, and Tennessee's five cents, the average increase approxi-

nately four cents (Council of State Governments, 1968: 196–197).

The ban on cigarette advertising on television and radio began on January 2, 1971, yet several calculations reflect a rise in cigarette sales during the past year. *Business Week* projections of industry sales and brand rankings show that a record 529 billion cigarettes were consumed in 1971, 1.5% more than 1970's sales (Where Cigarette Makers Spend, 1971: 56). Tobacco industry sources estimate that consumption has risen in 1971 by 1.5% to 535 billion cigarettes (Cigarette Sales Up, 1972: 3).

John C. Maxwell, tobacco analyst for Oppenheimer & Company, a brokerage firm, also reported a rise—2.3% in domestic unit sales in 1971. He relates part of the growth in cigarette consumption to the population mix—the increase in the 20–40-year age group, where smoking is heaviest. The Maxwell report suggests that the rest of this growth must be related to "government overkill, wherein many voices in Washington suggest that everything we eat or drink is harmful" (Maxwell, 1971: 1).

An industry specialist with Manufacturers Hanover Trust Company, on the other hand, attributes both the lag in sales in 1969 and the new increase to the "very effective antismoking ads on television. Since the ban, these commercials rarely appear" (Cigarette Sales Up, 1972: 3).

Another industry executive notes, "For years we have believed that the role of cigarette advertising is to attract smokers from competitive brands rather than induce nonsmokers to start smoking. We failed to convince the Federal Communications Commission of this, but it is borne out by our industry's experience since the TV ban. Within a relatively stable market, some companies have continued to gain while others lost. Some brands have increased their share of market while others have declined" (Where Cigarette Makers Spend, 1971: 56). Skeptics continue to argue that tobacco companies have also been trying to recruit new young smokers.

TOBACCO: ECONOMICS AND POLITICS

It is generally accepted that tobacco has been an extremely powerful force in American politics. Approximately 50 million smokers smoked 535 billion cigarettes in the past year. More than 100,000 employees receive $500 million in wages annually from tobacco manufacturing companies; over 4,500 wholesalers handle the distribution of tobacco products and hundreds of thousands of merchants depend on the sale of cigarettes as a source of their income.

Cigarette companies had been spending over $200 million per year on radio and television advertising, and since the ban, almost all of this money has been diverted to other media advertising providing many thousands of jobs in ad agencies and in the various media. Three million people from about 750,000 families receive $1.4 billion annually for the cultivation of tobacco used in cigarettes.

Peripherally affected are those involved in producing the 40 million pounds of moisture-proof cellophane, the 70 million pounds of aluminum foil, the 27 billion printed packs, and the 2.7 billion cartons (Cigarette Advertising, 1970: 110–111; Wagner, 1971: 120; USDA, Tobacco Situation, 1971a: 29–31).

One writer, reporting on the present public policy trend, notes that "attempts to discourage smoking would affect the lives of millions of people and would have profound economic and political consequences" (Wagner, 1971: 121).

Advocates of cigarette smoking today are organized into extremely powerful groups, each having its own specific function and plentiful resources.

The Tobacco Tax Council, established in 1949, compiles data on the taxation of tobacco products by the Federal, state and local governments. The Council's annual booklet, "Cigaret Taxes in the United States" has been superseded by "The Tax Burden on Tobacco" since 1966. This pamphlet "undertakes to trace the history of tobacco taxes from the years of the Civil War down through [the present year]" (Tobacco Tax Council, 1970: iii).

The trade association promoting the welfare of the tobacco industry is the Tobacco Merchants Association of the U.S: It is composed of manufacturers, wholesalers, retailers, importers, exporters, leaf dealers, suppliers, and firms interested in the industry. Its *Bulletins* cover legislation, trends, special reports; its numerous other publications and activities seek to improve industry operations and expand outlets (e.g., international) for potential sales (Tobacco Merchants Association, 1971: 1–4).

The tobacco industry's point of view is nurtured and protected by the Tobacco Institute, a nonprofit corporation founded in 1958. Its membership includes major U.S. manufacturers of cigarettes, smoking and chewing tobacco, and snuff: The Bloch Brothers Tobacco Company, Brown & Williamson Tobacco Corporation, Conwood Corporation, G. A. Georgopulo & Company, Helme Products, Larus & Brother Company, Liggett & Myers, Lorillard, Philip Morris Incorporated, R.

J. Reynolds Industries, Scotten-Dillion Company, and United States Tobacco Company.

The Institute is financed by contributions from the large corporations according to their share of the market. The institute reports on the pro-tobacco side of the medical story, attempting to discredit antismoking publicity, and publishes information on the historical role of tobacco, its place in the national economy, the industry itself, and the public's use of tobacco products.

The Council for Tobacco Research, created in 1953 in response to medical bulletins reporting on the hazards of smoking, processes and administers millions of research grants. "Although research money was to be awarded with no strings attached [The Council] nicely serve[s] the purpose of identifying the industry with the welfare of humanity and spreading good will through the scientific community" (Wagner, 1971: 80).

The scientific data continue to be attacked from both sides. Since 1954 a great quantity of research has been published and, in turn, disputed. For example, "the press played up the Hammond and Auerbach study and the claim that twelve beagles had developed lung cancer" from cigarettes. "The findings have subsequently been downgraded by the author to two microscopic tumors with the further revelation that two dogs in the control group also developed tumors" (Maxwell, 1971: 1).

Another area of contention has developed around the relationship between cigarette smoke itself and lung cancer. A recent paper by Dr. Geoffrey Myddelton given at the Second World Conference on Smoking and Health in London, September 20–24, 1971, compares the incidence of smoking and lung cancer in various countries. He indicates, "Japan smokes 86% as much as Britain but has only 27% of its lung cancer. Canada smokes twice as many cigarettes as the Netherlands but has only 69% as much lung cancer." He goes on to correlate the use of diesel fuel in England to lung cancer (Maxwell, 1971: 2).

From the other side, the United States Public Health Service 1972 report *The Health Consequences of Smoking* maintains that "nonsmokers as well as smokers may be harmed by cigarettes, . . . tobacco smoke in closed cars and poorly ventilated rooms can contaminate the atmosphere for everyone. . . . The chief danger is exposure to low levels of the deadly gas, carbon monoxide. Experiments with animals have shown that various concentrations of the colorless, odorless, and tasteless gas 'adversely affect' the structure and function of the heart and lungs. The implication is that this may also be true in man" (Study Says Cigarette Smoke Also May Harm Nonusers, 1972: 1).

It is estimated that at the present time one and a half to two million adults give up smoking every year. Sensing the hazards of the future, some cigarette companies sought fiscal security in diversification and substitution; tobacco manufacturers are now marketing, for example, safety razors, fertilizers, dog food, ballpoint pens, peanut butter and other non-nicotine products. By 1967, sales on non-tobacco products accounted for approximately one-third of the total sales of cigarette manufacturers.

It remains to be seen whether tobacco power will be whittled away any further in the next few years. Some feel that "the tobacco subsystem has succeeded in keeping the health question a low-priority item on the government's agenda by playing one government agency off against another. . . . This subsystem cuts across institutional lines and includes the paid representatives of tobacco-growers, marketing organizations and manufacturers. . . . Congressmen representing tobacco-growing states [are] leading members of four subcommittees, including two appropriations subcommittees and two committees in each house of Congress handling tobacco legislation. . . . Tobacco power [is] thus firmly entrenched and well supported" (Wagner, 1971: 121).

On the other hand, a strongly worded commentary by an industry spokesman cites Justice John Marshall's statement to illustrate industry's precarious position: "The power to tax involves the power to destroy." He continues with a description of the tobacco industry's present situation:

> The onslaught of state and local taxes on tobacco products . . . represents a most serious threat to all segments of our industry. . . . We are now facing a calculated attempt to destroy, or at least drastically curtail, the sale of smoking products. The political and economic climate is most favorable for this attack. Smoking and health is a prime political issue in the same context as air pollution, crime in the streets, and consumerism. At the same time, local governments are verging on bankruptcy. Revenue of any sort is therefore a must. It is a tough battle, and cigarette industry is currently bearing the largest part of the attack (Regensburg, 1971: 140).

The revenues gained from tobacco tax collections are significant. Over $2.1 billion in Federal taxes and over $2.5 billion in state cigarette taxes were collected in Fiscal Year 1971 (Tobacco Tax Council, 1970: 4–6, 8; USDA, Tobacco Situation, 1971b: 44). Total tobacco taxes were $4.8 billion in 1971 compared with $1.7 billion in 1950.

In 1970 tobacco taxes accounted for 1.1% of total federal tax receipts and represented 13.8 percent of all excise taxes (USDA, Tobacco Situation, 1971b: 40). This places the tobacco tax as the seventh largest source of collection by the Federal government behind the major giants, e.g.,

income and profit taxes (both corporate and individual), employment taxes, manufacturers excise taxes, alcohol taxes, and estate and gift taxes. In terms of individual commodities it ranks behind only alcohol. Thus, federal revenue would be importantly affected if tobacco consumption were to decline.

CONCLUSION

The big question is how the Federal government plans to proceed. Six tobacco bills are now pending in Congress. One of these bills would give the Federal Trade Commission authority to set maximum permissible limits on tar and nicotine. Another would establish a graduated cigarette tax based on tar content.

The FTC is precently carrying on negotiations with the industry to come up with a "clear and conspicuous" health warning for its print advertising. It is expected that the industry, "which has been working closely with the FTC, 'will' take some 'voluntary' labeling action" (Where Cigarette Makers Spend, 1971: 57).

The industry feels the pressure; one member explains: "We are resigned to it. Over-all, . . . the industry mood is much more relaxed—now that we have this first big year behind us" (Where Cigarette Makers Spend, 1971: 57).

The public is clamoring for government action; a 1970 College Poll surveying youths 18 and older on more than 100 campuses reveals that 96% believe that smoking is dangerous to one's health (College Poll, 1971).

Further, a 1969 study on teenage (13- to 18-year-olds) smoking attitudes, motivation and habits indicates "deep teenage dissatisfaction with cigarette smoking, considerable knowledge of its ill effects, but a very exaggerated estimate of the acceptance of smoking by the adult world" (Lieberman Research, 1969: 1–20). And, a 1970 nationwide survey of teenagers revealed: "72% of non-smokers identified physicians as the one group that could persuade them not to start smoking and 42% of those who smoked said their physician's advice would influence them to stop" (Doctors, 1970: 24).

Critics of the industry claim: "The controversy about smoking and health continues largely because of the energy, time and money spent by the tobacco industry in keeping this controversy alive" (College Poll, 1971).

In September, 1935, *Fortune Magazine* published a discussion of the medical implications of smoking. It concluded that:

> This much can be said: That the *possible* benefit to be derived from tobacco is always less than the *possible* harm (Robert, 1940: 256).

Official policy has never accepted this judgment. In recent years, steps have been taken to discourage smoking, although there is little conclusive evidence that consumption patterns are changing. It can be expected that official policy and alterations in individual behavior will both evolve slowly during the coming years. The socio-economic impact of a sudden change in official policy would be great, a circumstance reflecting the *momentum* of several centuries of intense commercial activity.

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BOOKS

Reviewed

Problems in the Cost-Benefit Analysis of Marijuana Legislation

Theodore J. Schneyer*

MARIJUANA—THE NEW PROHIBITION. By John Kaplan. New York: World Publishing Co. 1970. xii + 387 pages. $8.50.

To receive and deserve attention, a book on an issue of popular concern should combine ease of comprehension with careful scholarship. Professor John Kaplan's recent book on the marijuana issue fits this prescription. Much of the book is a painstaking and cogent refutation of each major argument that marijuana consumption is dangerous. Armed with an unusually acute understanding of social science methodology, Kaplan attacks virtually all the pharmacological, psychological, psychiatric, and sociological data, collected over many decades, which are said to support the arguments that marijuana use (1) causes aggression and therefore violent crime;[1] (2) causes psychosis or lesser mental disturbance;[2] and (3) encourages the use of patently dangerous drugs such as amphetamines, barbiturates, and especially heroin.[3] The treatment of these issues is unassailable and, on the basis of existing evidence, Kaplan's conclusion seems warranted—marijuana use can be considered no more harmful to users and other members of society than the use of alcohol.[4]

The potential influence of the book is enhanced by the fact that it is not so much an evaluation of marijuana use as it is a cost-benefit analysis of those criminal laws whose manifest purpose is to deter sale and consumption of the drug. This approach allows the author to recommend repeal of the current laws and the establishment of a licensing system for the sale of marijuana on the basis of arguments which possibly would at-

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1. Ch. IV.
2. Ch. V.
3. Chs. VI & VII.
4. Pp. 304–06. How much scientific evidence should be required before a drug is considered harmless is an open question. Popular standards seem to vary with the drug being considered. Some people, who on the basis of scant evidence have satisfied themselves that marijuana is relatively harmless, demand that insecticides and other mundane chemicals be subjected to strict and prolonged examination before they can be legally marketed.

tract the attention of a population disturbingly polarized on the issue of marijuana use itself. Kaplan is not a "pot" lover; he is the protector of a beleaguered legal system.

This review will concern three issues which are raised by an examination of the costs and benefits of the marijuana laws: (1) the effectiveness of the laws in deterring marijuana consumption; (2) the specific legal consequences or by-products of the laws; and (3) the general social consequences or by-products of the laws. This emphasis does Professor Kaplan an injustice for two reasons. First, much of his book is devoted to the effects of marijuana use itself. Second, this emphasis makes for a very theoretical review of an eminently practical book. However, Kaplan's demonstration that marijuana cannot be categorized as a particularly dangerous drug requires little comment. At the same time, his analysis of the deterrence provided by the marijuana laws and the indirect social and legal consequences of those laws, while provocative and rather novel, raises a number of theoretical and methodological problems. Further, Kaplan's arguments in these areas reach far beyond the marijuana issue: they are applicable, for example, to policymaking in the general area of "victimless" crime. Consequently, a critical tour of the side streets of *Marijuana* seems justified.

I. Effectiveness of the Marijuana Laws

Measuring the effectiveness of a law is extremely difficult. In gauging the extent to which the manifest purpose of the marijuana laws—to deter consumption—has been accomplished, the critical question is this: without the laws, how much more marijuana use would occur? The evidence which Kaplan marshalls to show that the laws are ineffective is not strongly probative. For example, he notes that in recent surveys, three-fourths of the nonusers of marijuana who were questioned did not list the laws as a reason for not having tried the drug.[5] As Kaplan admits, these reports are "subject to all the frailties of a person's evaluations of his own motives."[6] Quite possibly, persons who obey a legal norm simply because of its deterrent strength may, when questioned, prefer to cite more "moral" reasons for their conduct. These surveys would be probative only in conjunction with control data on the extent to which nonviolators of other laws cite the existence of laws as a reason for not engaging in the illegal conduct.

Next, Kaplan refers to a study which found that 73 percent of the student body at a California law school had used marijuana.[7] Of course this in itself

5. P. 323.
6. P. 324.
7. *Id.*

is not responsive to the critical question—without the marijuana laws how much more use would occur? But Kaplan argues that this data is probative because law students should be among the most deterrable members of society. At least in the case of the marijuana laws, this assumption is questionable. It is true that arrest and prosecution have uniquely unpleasant consequences for law students. But, as Kaplan himself suggests elsewhere, university students and campuses seem to enjoy an informal immunity from marijuana arrests.[8] Law students are particularly likely to recognize this fact and take advantage of it.

Finally, Kaplan argues that whatever the present effectiveness of the marijuana laws, they have become less effective in recent years, as evidenced by the fact that the incidence of marijuana use has risen more rapidly than arrest rates.[9] This argument rests on the shaky assumption that deterrence is solely a function of arrests as a percentage of total violations. Other factors such as the layman's ignorance or uncertainty about the probability of arrest and the absolute number of arrests, if well-publicized, may be relevant here.

Since marijuana violations are "victimless" crimes, rarely discovered by the police because they do not generate complainants, the marijuana laws are probably ineffective compared with criminal laws proscribing conduct that harms persons or property. Beyond this common sense notion, however, Kaplan has provided no convincing proof that the marijuana laws are ineffective and no explicit basis for comparing the effectiveness of different laws.

II. Legal Costs

One set of consequences of the marijuana laws might be termed "legal costs." These are negative effects which are borne by the legal system. They include actual enforcement costs, selective enforcement costs, negative effects on the police, and diminished respect for law. Kaplan's inclusion of these legal costs seems motivated by more than a desire for completeness or a strategic decision to attack the marijuana laws indirectly. A further motivation is his obvious sympathy with a growing attempt to publicize the systemic needs and limits of our legal machinery and the costliness of law.[10] Presently, to paraphrase the legal-cost literature, legal costs are "ex-

8. P. 40.

9. P. 323.

10. Two seminal contributions to the "legal-cost" literature are H. Packer, The Limits of the Criminal Sanction (1968); Goldstein, *Police Discretion not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 Yale L.J. 543 (1960). For a provocative discussion of the legal costs involved in government decisions to compensate parties for property taken by condemnation, see Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 Harv. L. Rev. 1165 (1967). According to Professor Michelman's schema, once a decision has been made to take property, whether to compensate should be determined

ternalities" of legal policy-making: legislators rarely take them into consideration and are not held accountable for them. Legislators are rarely blamed, for example, for the enormous discretionary power held by the police, even though this power is generated primarily by quantities of penal legislation far exceeding the police's meagre enforcement capacity.[11]

The empirical orientation of his cost-benefit methodology provides Professor Kaplan with an opportunity to make a contribution to the legal-cost literature by developing careful definitions and promising measurement techniques for heretofore elusive legal-cost variables like respect for law. Unfortunately, however, his treatment of legal costs is atypically skeletal and lacks the data-demanding pragmatism so evident elsewhere in the book.

A. *Actual Enforcement Costs*

Given the rudimentary methods used in police budgeting, segregating enforcement expenditures for particular laws is difficult. However, Kaplan cites an estimate that government agencies spent $72 million on marijuana enforcement in California in 1968.[12] Assuming these figures are correct, they say very little about whether the expense of enforcing marijuana laws is undesirably high.[13] The expense of marijuana enforcement is incurred primarily by those who favor the marijuana laws. Debate on those laws is primarily between taxpaying generations which support the laws and the younger, non-taxpaying generation, which does not.[14] In contrast to Pro-

by weighing the "demoralization costs" of not compensating (social unrest) against the "settlement costs" of providing compensation (the time, effort, and resources necessary to reach compensation settlements adequate to avoid demoralization). *Id.* at 1214–15.

11. *See, e.g.*, Goldstein, *supra* note 10, at 586–87.

12. P. 29.

13. In using the cost-benefit method of evaluating legislation, one must perform several operations. Known consequences of the legislation must be isolated and placed on the cost or benefit side, presumably according to some ethical theory. Assuming this results in entries on both sides of the ledger, the analyst must weight each according to its extent and significance. Theoretically, it is not sufficient simply to note that the marijuana laws have actual enforcement costs. There must be some basis for assigning a degree of significance to those costs.

One approach would be to consider enforcement costs in light of the manifest purpose of the marijuana laws and perhaps the degree to which that purpose is effectuated. The problem with this approach is that it involves a kind of bootstrapping. As with the traditional "armchair" method of evaluating legislation, the analyst's ultimate conclusion will tend to reflect only his assessment of the desirability of the purpose of the legislation rather than the aggregate desirability of its real consequences. Alternatively, the analyst could weight each cost or benefit according to its contribution to one or several independent positive or negative ends. For example, the actual enforcement costs of the marijuana laws could be weighted by considering the extent to which they cause taxpayer dissatisfaction, and/or by considering the opportunity costs of marijuana enforcement. With this approach it is necessary to select those independent ends that deserve consideration and to make ethical judgments about their relative significance—*e.g.*, to weight them. Since these ends might themselves constitute means to further ends, the process becomes extremely difficult and encourages "fudging."

Kaplan does not grapple with these problems and the reader gets little feel for the relative significance of the various costs of the marijuana laws which are noted. Since Kaplan finds very little on the benefit side of the marijuana law ledgers, the weighting problem does not seriously undermine his analysis. But these weighting problems will have to be solved before the cost-benefit method can be applied properly to thornier issues.

14. *See, e.g.*, pp. 13–16.

hibition, where debate was on religious and rural-urban lines, a very small percentage of those who call for repeal of the marijuana laws are taxpayers. Certainly it is no defense of a penal law that those whose freedom it constrains need not pay for its enforcement. But neither is it a strong criticism of a law that it is expensive to enforce—when the costs are knowingly borne by those who favor it. Knowingly may be a key word here. If the legal-cost literature correctly notes that legal costs are largely unrecognized, the expense of marijuana enforcement would not be an indicator of the laws' utility to taxpaying supporters.[15] But whether people actually recognize or care about the enforcement expense of the marijuana laws is an empirical question which Kaplan does not consider.

Next, Kaplan argues that enforcement of the marijuana laws involves large opportunity costs.[16] Without the marijuana laws, the considerable resources allocated to their enforcement would be available to our overburdened police, judicial, and correctional agencies for more pressing tasks. This argument rests on several assumptions which should be made explicit. It assumes—probably correctly—that enforcement agency budgets are insensitive to changes in substantive criminal law, so that repeal of the marijuana laws would not generate a corresponding reduction in budgets. Next, the argument assumes that resources used in marijuana enforcement could be used as efficiently for other tasks. Judges, for example, could effectively try more assault cases if they had no marijuana cases. With the police, however, the accuracy of this assumption is less certain. Insofar as police use specialized personnel and equipment for marijuana enforcement, shifting these resources to unrelated tasks might involve significant transfer costs.[17] Finally, for the police at least, the opportunity costs of enforcing the marijuana laws simply may be low. Insofar as police use unspecialized resources for marijuana enforcement, they may forgo very little deterrence and apprehension of non-marijuana criminals. As Kaplan himself notes in another context, a large number of marijuana arrests are mere by-products of investigations of other crimes.[18]

B. *Selective Enforcement Costs*

By Kaplan's accounting, another legal cost of the marijuana laws derives from their inevitably selective enforcement.

> Since there are far too many marijuana violators for the police to arrest or even investigate more than a small fraction, the police are forced to pick and

15. It may well be true that the tax incidence on individual taxpayers of the enforcement costs of any one criminal law are so slight that the taxpayers do not take those costs into consideration in forming an opinion about the law.

16. P. 29.

17. The resources could probably be shifted cheaply to the enforcement of other drug laws. Whether they could be used productively in that capacity is another question.

18. P. 364.

choose among possible violators. The existence on the books of laws turning a large proportion of the citizenry into criminals allows, indeed invites, the police to arrest for marijuana violations those who [*sic*] they feel should be dealt with for entirely different reasons.[19]

Contrary to Kaplan's analysis, it may be inappropriate to attribute the problems of selective enforcement to any particular set of laws. Selective enforcement is best viewed as a consequence of the large gap between full enforcement of all penal laws and our actual enforcement level.[20] So long as there is a substantial gap, selective enforcement is possible and probable. But the *marginal* selective enforcement costs of any particular law may be slight.[21] If Jerry Rubin had not been arrested three times for marijuana violations,[22] he, like many of us, could probably have been arrested for something else. Since Kaplan finds the marijuana situation analogous to Prohibition, it seems worth noting that Al Capone was convicted of tax evasion because the government wanted to halt his Prohibition violations, among other things, not vice versa.

C. *Negative Effects on the Police*

Kaplan argues that the marijuana laws pose a dilemma for enforcement agents. The police are told to enforce a victimless crime generally committed in private[23] and, at the same time, are ordered to respect a series of constitutional guarantees which protect individual privacy and dignity: "Since the police cannot possibly do both, they tend to focus their resentment on the guarantees that interfere with the performance of their duties, rather than upon the duties themselves."[24]

Why enforcing the marijuana laws is a policeman's duty but abiding by constitutional guarantees is not, is left unexplained. Nor is evidence offered that police tend to opt for the enforcement horn of the dilemma. Kaplan simply concludes that the marijuana laws, to a "considerable extent," have caused the erosion of police respect for constitutional principles.[25]

It is doubtful that American police had more than their present degree of respect for constitutional principles before marijuana violations became significant.[26] In addition, search and seizure limitations and other constitu-

19. P. 40.

20. *See, e.g.*, Goldstein, *supra* note 10, at 586–89.

21. *See* Remington & Rosenblum, *The Criminal Law and the Legislative Process*, 1960 ILL. L.F. 481, 494.

22. *See* p. 40.

23. P. 42. Later, however, Kaplan argues that we cannot expect the marijuana laws to lapse quietly into desuetude because many marijuana violations are discovered in public and the police cannot ignore these. Pp. 363–64.

24. P. 42.

25. *Id.*

26. One expert has argued that American law enforcement has always been characterized by tension between the desire for police adherence to the rule of law or constitutional principles, on the

tional principles inimical to marijuana enforcement are of recent origin and could hardly have been internalized as values by the police before marijuana use became prevalent. Kaplan's argument, then, can be reduced to the unsupported assertion that without the marijuana laws these values might have been internalized to a greater degree than they have been.

Interestingly, Kaplan suggests that police resentment of constitutional principles is undesirable even when confined to the realm of opinion.[27] He is concerned, it appears, that police opinions might have negative legal or social consequences. In this context, consideration of the possible impact of marijuana repeal on police morale might have been appropriate.

D. *Diminished Respect for Law*

Kaplan takes the position that the marijuana laws have caused diminished respect for law in our society.

> In part because marijuana-users — unlike cheaters — do not rationalize their use of the drug as an aberrant event unrelated to their total personality [*sic*], it becomes especially unhealthy for their society to declare them serious criminals. It is obvious that when any society criminalizes such a large percentage of its young people, it raises very serious social problems. We do not know whether those who violate such serious criminal laws will thereby become more likely to violate others. It may or may not be true that the second crime becomes easier — though it is perhaps no coincidence that the Prohibition era and the present are two of the most lawless periods of our history. It is hard to see, however, how a realization that one has committed what is officially a very serious crime can fail to engender at least a somewhat more generalized lack of respect for both the law and the society that has so defined his action.[28]

Since Professor Kaplan offers no explicit definition of respect for law and makes no inquiry into the extent and significance of the diminished respect engendered by the marijuana laws, it is impossible to verify his conclusion that diminished respect for law should be counted as a serious cost of those laws. Because respect for law is an elusive concept, it would be unfair to expect a precise estimate of changes in the respect-for-law variable caused by the marijuana laws. Nevertheless, in what purports to be a cost-benefit analysis, some attempt at defining respect for law and suggesting ways of measuring changes in it seems called for.[29] In order to generate

one hand, and the demand for law and order or police efficiency, on the other. But, substantive norms such as the marijuana laws seem to have made only a marginal contribution to police disregard for constitutional limits on their conduct. The major determinants of this disregard are an American work ethic which insists on discretionary power even for lowly bureaucratic workers, a technical, efficiency-oriented rather than value-oriented sense of professionalism, and community demands for law and order at any cost. J. SKOLNICK, JUSTICE WITHOUT TRIAL (1966), esp. ch. 11.

27. P. 43.

28. P. 33.

29. The cost-benefit analysis of legislation presumably evaluates that legislation in terms of its real consequences. Of course the extent and significance of some consequences can be estimated only very roughly. But this limitation should only operate because the cost of gathering particular data is

means for evaluating Kaplan's conclusion on this issue, some analysis of respect for law will be undertaken here.

Presumably, respect for law is a factor—perhaps the major factor—in the effectiveness with which a legal system influences behavior. At present, however, we have little understanding of the sources of effectiveness of legal systems. One cluster of theories suggests that effectiveness is a function of popular reaction to substantive norms and their enforcement. Among these are "behavioral theories" and certain "legitimacy theories" of law.[30] We shall consider how a respect-for-law variable might be defined under both these sets of theories.

1. *The behavioral theory and non-enforcement.*

A behavioral theory of law would suggest that the legal system controls conduct through reward, punishment, conditioning, and coercion.[31] From this perspective, an argument that the marijuana laws have diminished respect for law might be phrased as follows: Insofar as marijuana sellers and users find they can violate the laws with impunity, they become more likely to commit other crimes because they discount the threat of punishment for other violations. Accordingly, the extent to which the marijuana laws cause a reduction in general respect for law might be measured by the extent to which marijuana violations go unpunished or the extent to which the marijuana laws are unenforced.

Even if respect for law is properly understood in these behavioral terms, however, there is little reason to suppose that unpunished violations of one penal law lead inexorably to violations of others. Professor Packer, who admits that "respect for law is a somewhat vague concept at best," discusses it in these terms.[32] He finds it unlikely that perception of the law's inability to control gambling, for example, has much effect on the deterrent efficacy of laws prohibiting, say, robbery. Police inability or reluctance to enforce a particular law would probably be the basis of a perception that another law will be unenforced only when there was a similar explanation for non-enforcement in both cases. Insofar as marijuana violations go un-

too high to make it worthwhile, or because of technological deficiencies in our data-gathering capacity. It is difficult to justify the inclusion in a cost-benefit analysis of effects like diminished respect for law, which are based on variables defined so vaguely that conclusions about them could not be verified under any circumstances. To be sure, there is a thin line between the praiseworthy task of locating previously misunderstood or unnoticed consequences of legal phenomena, even if they cannot be understood clearly as yet, and drawing inferences for legal policy from essentially metaphysical concepts.

30. For a discussion of alternative theories of legitimacy, see Friedman, *On Legal Development*, 24 RUTGERS L. REV. 11, 29–33 (1969). Of necessity, these theories will be discussed superficially and only insofar as they apply to Kaplan's handling of the respect-for-law issue.

31. This approach seems most useful when applied to the more mundane areas of human activity. For the classic application of behavioral theories to legal control of automobile traffic, see Moore & Callahan, *Law and Learning Theory: A Study in Legal Control*, 53 YALE L.J. 1 (1943).

32. H. PACKER, *supra* note 10, at 288–89.

punished because the victimless nature of the crime makes enforcement difficult, marijuana users might be encouraged to commit other victimless crimes. But this is a trivial problem: users and non-users alike can perceive on independent grounds that victimless crimes are difficult to enforce. On the other hand, if users consider marijuana non-enforcement a sign of general police incompetence or shorthandedness, diminished respect costs may be more severe. Some of these costs may be short-term, however, disappearing as marijuana users learn "the hard way" that other laws are better enforced.

2. The legitimacy theory—enforcement, enactment, and repeal.

A second understanding of respect for law arises from a "legitimacy theory" of the effectiveness of legal systems. According to one such theory, the effectiveness of legal controls is a function of the "goodwill" the system enjoys among members of society, and this goodwill, manifested by an attitude of obedience or respect for law, is built on the popular perception that the values embodied in substantive law are acceptable.[33] Under this approach, when a legal norm conflicts with values held by many persons, generalized respect for law among them tends to decrease, and the effectiveness of the legal system is impaired.[34]

That Professor Kaplan adopts this understanding of respect for law seems clear from his approving quotation of the following letter from a psychologist discussing student attitudes toward the marijuana laws:

> More seriously, their attitudes generalize into a general disrespect for law. Their "reasoning," although it is not quite as logical as the statement implies, runs something along the line, "This law is stupid and unjust; probably a lot of other laws are stupid and unjust. I am not going to be too concerned about violating this law—or other laws that seem to interfere with my total freedom." [Thus] a general disrespect for law is engendered.[35]

There are serious problems with Kaplan's inclusion of diminished respect for law, under the legitimacy theory, as a major cost of the marijuana laws. First, conflict between marijuana laws and individual or group values may not be the exclusive cause of the disrespect for law prevalent among

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33. From this perspective, substantive due process may be viewed as a strategic consideration in the attempt to maintain legal effectiveness. Use of substantive due process to invalidate widely or intensely unpopular legal norms may operate as a guarantor of legal effectiveness. For a recent call for the application of substantive due process to those criminal law norms that create victimless crimes, see Packer, *The Aims of the Criminal Law Revisited: A Plea for a New Look at "Substantive Due Process,"* 44 S. CAL. L. REV. 490 (1971).

34. Those who violate the legal norm and whose values conflict with it have been termed "enemy deviants." Enemy deviants, as contrasted with repentant deviants, sick deviants, and cynical deviants (professional criminals), are said to present a threat to the legitimacy of the normative order. Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, 15 SOCIAL PROBS. 175 (1967).

35. P. 34.

young people. Extralegal factors may be important as well. Rapid social change and alienation, the Vietnam war, and hostility to all constraints on individual freedom, for example, may be prime determinants of this disrespect. From this perspective, disenchantment with the marijuana laws may be largely a manifestation of pre-existing disrespect and may contribute to that disrespect marginally or not at all.[36]

Second, because Kaplan is unclear on how an unpopular law might trigger diminished respect, it is difficult to estimate the diminished-respect-for-law costs of particular laws. It is possible that enforcement of unpopular norms is the triggering mechanism.[37] Persons who have values antithetical to those embodied in a legal norm may lose respect for law only insofar as enforcement of the norm constrains them from acting according to their values. It is also plausible, however, that the mere enactment of a law which contravenes the moral values of a subculture generates diminished respect for law among members of that group.[38] Indeed, Professor Kaplan himself suggests that the mere enactment or existence of the marijuana laws causes diminished respect for law among users.[39]

Further, if the mere enactment or existence of a legal norm antithetical to the values of some group can cause diminished respect for law in that group, there is no a priori reason to suppose that repeal of a legal norm which comports with the values of a substantial segment of society would not have similar effects.[40] This has obvious implications for the marijuana case. A large number of Americans clearly consider marijuana use improper and still support the marijuana laws. Professor Kaplan does not consider the effect of the marijuana laws on respect for law among these people. But if respect for law is properly defined according to the legitimacy theory, and if respect-for-law effects flow from enactment—and potentially, therefore, from repeal as well—this effect is a relevant consideration. Since Kaplan's ultimate conclusion is that the marijuana laws should be repealed, his analysis of respect for law should have focused on the rela-

36. While Kaplan clearly recognizes that extralegal factors may be determinants of disrespect for law, he does not consider the possibility that, given such extralegal factors, the negative impact of the marijuana laws on respect for law might be slight.

37. Using this approach, the diminished-respect-for-law costs of different laws could be estimated by multiplying the enforcement rate of each (arrests or convictions/violators) by the number of enemy-deviant violators of it, and, perhaps, by some index of the intensity with which these violators hold values antithetical to those embodied in the law. A more sophisticated estimate would include a measure of the average punishment borne by convicted violators.

38. Mere enactment of Prohibition may have generated such a reaction among Catholic and/or urban "Wets." *See* J. GUSFIELD, SYMBOLIC CRUSADE 67–68 (1963). Insofar as enactment is the triggering mechanism for diminished respect for law, one might estimate the diminished-respect costs of an unpopular legal norm simply by the number of enemy deviants from the norm and the intensity of their hostility to it.

39. In discussing the effects of the marijuana laws on marijuana users generally, rather than simply on those users who have been arrested, Kaplan says, "Each member of this far larger group has been at least partially alienated from our society by the fact that even though he has not been caught, he has nonetheless been made into a criminal." P. 32.

40. *See, e.g.*, J. GUSFIELD, *supra* note 38, at 128.

tive diminished-respect-for-law costs of retaining the laws and repealing them. Such an approach might have led Kaplan to recommend not speedy repeal, but legislative inaction until sufficiently strong norms of tolerance for marijuana use develop, so that subsequent repeal would involve small respect-for-law costs.

Rather than addressing these empirical issues, Kaplan takes a normative tack, arguing that repeal should not be perceived as an official approval of marijuana use because the costliness of the laws constitutes grounds for repeal independent of the propriety of marijuana use.[41] This approach violates the tenets of cost-benefit methodology. If a respect-for-law variable is to have a proper place in the cost-benefit analysis of legal phenomena, it must be given empirical content. The question is how marijuana repeal would be received, not how it should be perceived.

To be sure, there are pragmatic reasons to suppose that diminished-respect-for-law costs generated by speedy marijuana repeal would be slight. One might argue, for example, that those who approve of the marijuana laws tend to be our most law-abiding citizens, and that even if repeal diminished their respect for law, it would do so only to a subliminal degree. Repeal, in other words, would not render problematic the law-abidingness of those who disapprove of marijuana use. A counterargument, of course, is that even minor reductions in respect for law among a majority of Americans might be harmful.

One might also argue that disapproval of marijuana use is a demonstrably indefensible moral position, because, as Kaplan shows, marijuana use is relatively harmless to users and other members of society. Further dissemination of information about the relative harmlessness of marijuana will cause a transformation of values so that, in a short time, few people will be "offended" by marijuana repeal.[42] This position relies on the questionable assumption that most people adopt moral values and attitudes on the basis of rational inquiry and utilitarian ethics. But religious training, peer group and community pressures, and the media may be strong factors in attitude formation. Long before national Prohibition came into being, "reasonable men" understood that moderate consumption of alcohol was relatively harmless. This knowledge did not prevent adoption of the Eighteenth Amendment.

3. *Conclusions about respect for law.*

Respect for law is an enormously complex concept. Since we do not adequately understand the sources of a legal system's effectiveness, we can

41. Pp. 312–13; *cf.* H. PACKER, *supra* note 10, at 304. For criticism of Professor Packer's handling of the repeal problem, see Griffiths, *Book Review*, 79 YALE L.J. 1388, 1462 & n.291 (1970).

42. P. 18.

make no confident choice among conflicting definitions and measurement techniques for a respect-for-law variable. If a behavioral theory of law correctly explains the effectiveness of legal systems, diminished respect for law would be primarily a function of non-enforcement. On the other hand, under the legitimacy theory, diminished respect for law is caused by the enforcement or perhaps the mere existence of unpopular norms. Of course both the behavioral and the legitimacy theory may have merit; an effective legal system may require substantial degrees of both coercive power and goodwill. If this is true, the marijuana laws may indeed cause significantly diminished respect for law, since many marijuana violations go unpunished, but the laws do exist and often are enforced. If the legitimacy theory has merit, however, it is plausible that repeal of the marijuana laws might cause disrespect for law among those who disapprove of marijuana use. It is difficult to say, therefore, whether retention or repeal of the marijuana laws involves larger diminished-respect costs.

The discomforting aspect of a respect-for-law variable is its simultaneous vagueness and wide relevance to social issues. Surely there is no good reason to limit its applicability to criminal law policy.[43] Whether one favors a behavioral or legitimacy theory of law, respect for law seems vitally relevant to such issues as gun control, desegregation, and civil rights—areas in which legal control is difficult and legal intervention likely to be simultaneously hailed and despised. For the present, inclusion of respect-for-law considerations in debate on such issues is likely to spread more confusion than light. In many instances, the behavioral and legitimacy theories will have very different policy implications.[44]

III. Social Costs and Benefits

Professor Kaplan argues that the marijuana laws have certain social costs besides those incurred specifically by the legal system. For example, by discouraging research on the effects of marijuana,[45] by forcing drug educators to be dissimulating in their evaluations of marijuana,[46] and by

43. Professor Michelman's analysis of "demoralization costs" as a product of condemnation of property without compensation is an interesting application of the respect-for-law concept to property law. *See* Michelman, *supra* note 10, at 1214–15.

44. There are laws, for example, which can be effectively enforced but which embody very unpopular norms. Thus in the late 19th century, the Federal government waged a crusade against polygamous relationships among Mormons in Utah. Polygamy laws could be enforced with some effectiveness because the government controlled important incidents of marriage—divorce, legitimacy of children, and inheritance—and because it was often difficult to keep polygamous relationships secret over a period of years. On the other hand, the laws were extremely unpopular. Largely because of the hierarchical structure of the Mormon community, polygamous marriages were eventually curtailed. The point is, however, that the behavioral and legitimacy theories, when applied to this situation, would generate different predictions of the respect-for-law costs of the government crusade. *See generally* Linford, *The Mormons and the Law: The Polygamy Cases* (pts. 1–2), 9 Utah L. Rev. 308, 543 (1964–65).

45. Pp. 53–54, 156.

46. Pp. 37–38.

placing police, of whom young people are often suspicious, in the role of educators,[47] the marijuana laws hamper our drug-education effort. Further, and quite ironically, the laws may encourage use of genuinely dangerous drugs. Since our constrained drug-education effort results in too little explicit distinction between marijuana and other drugs, young people remain naive about the variable hazards of different drugs. Since users know that marijuana is illegal but believe it is harmless, they may tend to consider other sanctioned drugs harmless as well. Also, since the marijuana laws do limit somewhat the supply of the drug, imprudent users may be "forced" by the laws to seek "hard" drugs because marijuana is unavailable.[48]

Although Kaplan's arguments that the marijuana laws hamper drug education and indirectly encourage use of dangerous drugs seem sound, they are supported by little empirical evidence. Therefore, the extent of these social costs is unclear. It may be that we now have upon us a generation of drug cognoscenti, so that these social costs are not great. However, as long as drug exposure continues to trickle down to younger and more naive users, these costs will probably remain significant.

A. *Symbolic Functions*

Interestingly enough, Professor Kaplan detects certain social consequences of the marijuana laws which he does not include in his cost-benefit analysis. These are the so-called "symbolic functions"[49] of the laws.

> To understand how issues other than the costs and benefits of the law intrude into the marijuana question, we must appreciate the symbolic function of the law. Not only does the criminal law exert direct controls on behavior through deterrence and through removal of offenders from the community, but it often has a far broader impact. . . . Even where the law does not inhibit illegal behavior, it stamps as . . . inferior those groups that tolerate the behavior.[50]

On first impression, Kaplan's unexplained exclusion of the symbolic functions of the marijuana laws from his cost-benefit analysis seems inconsequential. Since these symbolic functions ostensibly involve only the arbitrary denomination of some social groups as inferior (which could

47. P. 38. That the marijuana laws hamper our drug education effort may be a minor cost of those laws. The seriousness of the cost presumably depends on the benefits of unhampered drug education. We have very little knowledge of the extent to which drug education programs reduce drug abuse.

48. Pp. 216–19.

49. The terms "symbolic legislation" and "symbolic functions" of law are fraught with ambiguity. Symbolic legislation, for example, is sometimes used to refer to laws that may be directly instrumental in deterring certain conduct, but the conduct deterred is symbolic or expressive in nature. Laws prohibiting flag desecration, draft card burning, and perhaps consumption of alcohol or marijuana fit into this category. Sometimes, however, the term symbolic legislation is applied to laws which ostensibly are intended to curb instrumental behavior, but which actually serve only to symbolize disapproval of that behavior and render quiescent those members of society who disapprove of the behavior. *See* Edelman, *Symbols and Political Quiescence*, 54 AM. POL. SCI. REV. 695, 702 (1960).

50. Pp. 3–4.

hardly be socially beneficial), and since Kaplan's ultimate conclusion is that the marijuana laws result in a net social cost, the exclusion cannot have biased the results.

However, a categorical denial that the symbolic functions of laws can be socially beneficial is unfounded. Kaplan's recognition of the symbolic functions of the marijuana laws derives from a study of Prohibition by Joseph Gusfield, a sociologist.[51] According to Gusfield, Prohibition did not successfully curb consumption of alcohol but served as a denigration of Catholics and other predominantly urban ethnic groups while affirming the life-styles of rural Protestants and "native" Americans. This is the kind of negative or neutral symbolic consequence that Kaplan finds with the marijuana laws—their existence is perceived as denigrating the life-styles of hedonists, radicals, those who question authority, and in large part the younger generation.[52] But Gusfield also hints that some laws which have essentially symbolic rather than instrumental functions may be useful in a highly pluralistic society.

> The evasion of normative patterns occurs when a pattern of behavior regularly expected in the society is performed and is unpunished although the written, publicly stated norms of the society call for punishment and proscribe the behavior . . . .
>
> Williams has interpreted institutional evasion as functional in a society of great cultural inconsistencies. Those groups who adhere to the public norm see it upheld at the public level while those whose cultural norms are offended are able to pursue the behavior they find legitimate. Conflict between the two groups is thus minimized. The existence of divergent and potentially conflicting cultures "does not necessarily constitute any particular problem for the society as a whole so long as the two groups are not in direct interaction and do not directly confront one another's differing orientations."[53]

Thus, certain laws, operating as symbols, may serve to reduce social conflict.[54] It is at least arguable that such conflict reduction would constitute a social benefit. In light of Gusfield's discussion, it is puzzling that Kaplan does not consider the possible conflict-reduction benefits of the marijuana laws. Of course, the older and younger generations whose conflict is symbolized by the marijuana issue may be forced to confront one another's values and behavior so openly and frequently that the laws do not serve to reduce the level of conflict between them.[55] This caveat suggests that

51. J. GUSFIELD, *supra* note 38 *passim*.

52. Pp. 6–16.

53. J. GUSFIELD, *supra* note 41, at 115.

54. The theory that "patterned evasion of norms" is useful in a pluralistic society may be relatively inapplicable to industrialized, mobile societies like ours, in which contending cultures inevitably have broad contact with one another. The theory might best fit conditions in societies where contending cultures are territorially segregated.

55. Contrast the generational conflict symbolized by the marijuana laws, for example, with the predominantly urban-rural split on the Prohibition issue.

the conflict-reduction consequences of marijuana legislation are difficult to measure and weigh, and, perhaps, that they could justifiably be excluded on these practical grounds from the cost-benefit analysis. However, since Kaplan elects to include the diminished-respect-for-law costs of the marijuana laws in his analysis, and since those costs seem as difficult to evaluate as the laws' symbolic functions, we must conclude that the latter are omitted for theoretical rather than practical reasons.

There are two plausible theoretical explanations for Kaplan's handling of the symbolic functions of the marijuana laws. First, he may share with Professor Packer an a priori belief that the criminal process has certain essential purposes and should serve no other "covert" functions. According to Professor Packer:

> The function of the criminal sanction is to help prevent or reduce socially undesirable conduct through the detection, apprehension, prosecution, and punishment of offenders. This is the only function that its rationale permits and this is the only function with which its processes are adequately equipped to deal. However, a number of covert functions have made an appearance, in some cases coming close to monopolizing the resources devoted to enforcing particular criminal proscriptions.[56]

Thus Packer recognizes that invocation of the criminal process sometimes must be understood as serving symbolic or otherwise covert functions. His reasons for considering these functions invariably undesirable remain unclear, however. Certainly the categorical and a priori nature of this approach seems antithetical to the cost-benefit methodology which Kaplan employs, and anyone who happens to disagree with the approach might be justified in considering Kaplan's analysis incomplete.[57]

A second reason for Kaplan's not including symbolic functions of law in his cost-benefit analysis might be the difficulty of placing such symbolic functions of law as the reduction of conflict between generations or subcultures into a utilitarian, cost-benefit framework. Utilitarianism is something more than the assertion that the social costs and benefits of actions can be determined scientifically; it is, in other words, more than a method. Utilitarianism is also the theory that the social good is nothing more than

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56. H. PACKER, *supra* note 10, at 293. For a more direct attack on the use of law to serve symbolic functions, see L. FULLER, THE MORALITY OF LAW (1964). "If, as sometimes seems to be the case, laws prohibiting the sale of contraceptives are kept on the books as a kind of symbolic act, with the knowledge that they will not and cannot be enforced, legal morality is seriously affected. There is no way to quarantine this contagion against a spread to other parts of the legal system. It is unfortunately a familiar political technique to placate one interest by passing a statute, and to appease an opposing interest by leaving the statute largely unenforced." *Id.* at 153. While it is clear that the use of law to serve symbolic or otherwise covert functions involves legal costs such as selective enforcement, it hardly follows that such use of law is never justified. Ultimately the Packer-Fuller position must rest on its assessment that the ends served by such use of law are never worthwhile when weighed against the legal costs generated.

57. *Cf.* Griffiths, *supra* note 41, at 1462 & n.291.

maximization of the aggregated welfare of the individual members of society.[58] A utilitarian will tend to consider as costs and benefits of penal laws only those consequences which involve harm and the prevention of harm to specific individuals. Because he views society as atomistic, the utilitarian has no theoretical wedge into the problems of cultural conflict and no tools for analyzing the conflict-reduction consequences of particular legal norms.

Some of the recent criticism of laws which create "victimless" crimes has been based on the practical difficulty of enforcing those laws. Much of it, however, flows from a utilitarian ethic. The typical argument is that laws proscribing certain sexual conduct, laws against marijuana use, and sumptuary laws in general have little or no utility because they proscribe conduct which results in harm to no specific individuals. But according to a long line of sociological literature, a utilitarian ethic generates insufficient social order; some ritual and symbolism is necessary to contain social conflict and reinforce social cohesion.[59] Even if this "organic theory" of society is correct, of course, penal law may still be an improper repository for ritual and symbols. But Kaplan neither argues against the organic theory nor defends an exemption for penal law from its application. Conceded, our current knowledge of social control is insufficient for us to say with assurance that the organic theory is correct. But this argues for modesty and caution in formulating criminal law policy, not for ignoring the possible symbolic functions of penal laws.

IV. Conclusion

Professor Kaplan deserves unqualified praise for his rigorous analysis and critique of the prevailing theories that marijuana use is harmful. His book should be applauded as a pioneering effort to evaluate legislation in a new and promising way. Rather than confining himself to a consideration of the desirability, in the abstract, of deterring marijuana use, Kaplan attempts a comprehensive cost-benefit analysis of the actual legal and social consequences of the marijuana laws.[60] As with early television or any other innovation, however, the cost-benefit technology employed here needs re-

58. For criticism of the atomistic aspect of utilitarianism, see T. Parsons, The Structure of Social Action 51–60 (3d ed. 1968).

59. For a discussion of Emile Durkheim's approach to these problems, see T. Parsons, *supra* note 58, at 344–49, 402–03. Professor Griffiths has argued that certain aims of the criminal law other than the prevention of harm to individuals may be reconciled with utilitarian ethics. He considers "reprobation"—the maintenance and reinforcement of the morality of a society—such an aim. At least as a matter of intellectual history this position is questionable. Durkheim's preoccupation with social cohesion and the moral dimension of society was essentially a reaction to utilitarianism. *See* Griffiths, *supra* note 41, at 1420.

60. Although not unprecedented, the cost-benefit approach has rarely been used to generate legal policy recommendations on major social issues. For another example, see G. Calabresi, The Costs of Accidents (1970).

finement. Our present understanding of the interrelationships of social institutions is so limited that many effects of the marijuana laws probably reverberate through society in currently trackless ways.[61] Necessarily, therefore, Kaplan's analysis is incomplete. It should nonetheless be extremely effective in generating more enlightened debate on the marijuana issue than we have had heretofore.

Even within the bounds of currently existing social theory, there are certain problems with Kaplan's cost-benefit method which must be overcome if it is to be generally accepted. In particular, Kaplan's handling of the respect-for-law concept and his unexplained segregation of the symbolic functions of the marijuana laws from his cost-benefit analysis need considerable clarification. For the present, Kaplan's vague assertions that the marijuana laws cause diminished respect for law, rather than sensitizing the public to the costliness and limited capacities of law, leave him sounding rather like a lobbyist for the legal system—one who equates his conception of a healthy legal system with the overall good of society.

61. One could, of course, conjure up a near infinite array of plausible positive and negative consequences of the marijuana laws which have not been given a place in Kaplan's analysis. One might argue, for example, that one benefit of the marijuana laws is that they have created considerable pressure for reform of police practices, criminal court practices, and the practices of correction agencies. This mechanism could be explained by the fact that marijuana violators, in contrast to violators of most criminal laws, are often from middle-class families, and effective pressure for reform of the criminal process requires middle-class support. Kaplan can hardly be criticized for not considering such speculative arguments, but their existence suggests that Kaplan's conclusions must be considered tentative.

THE TIME HAS COME TO LEGALIZE MARIJUANA

by Arthur D. Hellman

THE TIME HAS come to eliminate criminal penalties for the use and distribution of marijuana.

In saying this, I do not mean to advocate the use of marijuana or any other intoxicant. Nor do I deny that marijuana may prove to have some detrimental effects on physical or mental health (though the scanty evidence available today suggests that marijuana is probably less harmful than alcohol). My position, rather, is this: The laws against marijuana must be repealed because they cannot be enforced except at a cost which society cannot afford to pay.

Discussions of marijuana often bog down in disputes over basic facts. A recent law review article has summarized much of what is known about the drug:

> Marijuana comes from the flowering tops of the leaves of the female hemp plant .... In the United States, the dried leaves are smoked in the form of a cigarette ...., occasionally mixed with tobacco. ... The psychic changes induced vary with the individual, his existing mood, and environmental conditions. The usual effects are hilarity and a general breakdown of emotional restraints, although occasionally the individual becomes quarrelsome. Distortion in perception of time and space is common, and auditory perceptions of a rhythmic nature are markedly accentuated, leading to rather extensive use among musicians. ....

Beyond these facts, it would be difficult to secure agreement about what marijuana is or what it does. However, current knowledge does permit certain conclusions about what marijuana is *not*.

Marijuana is not a narcotic.

Though most state laws classify marijuana with narcotics such as heroin and opium, marijuana lacks most of the important characteristics of the true narcotics. It does not produce physical dependence or addiction. Discontinuance of use does not result in withdrawal symptoms. Users do not require ever larger doses in order to obtain a "high;" indeed, very small doses may suffice for the experienced user.

There is no evidence that use of marijuana leads to the use of heroin or other stronger drugs.

It is true that many heroin addicts, perhaps a majority, begin with marijuana and progress to the "harder" drugs. But to conclude from this that someone who uses marijuana will probably take up the use of heroin goes contrary to logic as well as experience. Logically, the argument rests on the fallacy known as the undistributed middle. And the evidence today indicates that millions of individuals have smoked marijuana casually or regularly without ever resorting to the true narcotics.

There is no evidence that the use of marijuana leads to crimes of violence.

Here again marijuana differs from the hard narcotics. The heroin addict requires ever larger doses of an expensive commodity. Often he can supply his need only through crime. But marijuana is not addictive and it is far less expensive than heroin. Virtually every study, starting with the famous LaGuardia Committee Report of 1944, has found the evidence inadequate to substantiate the reputation of marijuana for inciting people to antisocial acts.

Other questions relevant to the issue of legalizing marijuana cannot be answered at this time; some may be impossible to answer.

What are the long-term physiological and psychiatric effects of marijuana?

Because research has been so limited, very little is known even about the short-term effects. The President's Committee on Law Enforcement, after suggesting that marijuana could probably be best classified as a "mild hallucinogen," continued:

> [H]allucinations are only one of many effects the drug can produce. It can impair judgment and memory; it can cause anxiety, confusion, or disorientation; and it can induce temporary psychotic episodes in predisposed people.

In 1968, however, Drs. Andrew Weil and Norman Zinberg conducted what were probably the first scientific experiments to determine the effects of marijuana. They reported:

> Marijuana .... had no effect on pupil size, blood sugar, or respiratory rate. .... [This] makes it unlikely that marijuana has any seriously detrimental physical effects in either short-term or long-term usage. .... All in all, we think it is fair to say that in terms of medical dangers only, marijuana is a relatively harmless intoxicant.

As to psychological effects, the researchers concluded:

> [M]arijuana seems to affect little in the brain besides the highest centers of thought, memory and perception. It has no general stimulating or depressive action on the nervous system .... no influence

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on lower centers like those controlling the mechanical aspects of speech and coordination (hence no slurred words or staggering gait). As a result it seems possible to ignore the effects of marijuana on consciousness, to adapt to them, and to control them to a significant degree.

Weil and Zinberg readily admit that their experiments were exploratory, their conclusions tentative. As to long-range psychiatric effects, they could only urge further research.

However fragmentary they may be, the Weil-Zinberg experiments are thus far the only ones of their kind. At the very least, they cast grave doubt on the position that marijuana is a dangerous drug whose use must be curtailed whatever the cost.

Would legalizing marijuana lead to an increase or a decrease in its use?

The answer might seem self-evident but in fact it is not. True, many nonusers might at least try marijuana if its use were no longer subjected to criminal sanctions. On the other hand, there may be many users today for whom the illegality is as much the incentive as the prospect of a "high." It is relevant, though not conclusive, that per-capita consumption of liquor *increased* during Prohibition. One possible result of legalization would be a sharp increase in use followed by a gradual decline as the novelty wore off—if it has not done so already.

Would (or does) the widespread use of marijuana harm society?

Quite apart from the dearth of information, and the further problem of distinguishing between causes and effects, this question cannot be answered without making an individual judgment about social values. As Professor Michael Rosenthal has pointed out, what is a very serious risk to some observers may appear to others as a desirable effect, for example: "dropping out."

On the basis of today's knowledge, then, the dangers of marijuana are largely hypothetical. The consequences of criminalizing the use of marijuana, on the other hand, are real and devastating.

Under present Minnesota law—amended as recently as 1965—the sale or possession of marijuana is a felony which may be punished by a fine of up to $10,000 and a jail term for not less than 5 nor more than 20 years. Anyone convicted of selling or furnishing marijuana to a minor is to be punished by a fine of up to $20,000 and a jail term of not less than 10 years (the maximum term is 40 years). This statutory scheme is indefensible.

Penalties for the possession or distribution of marijuana are grossly out of proportion to the nature of the offense.

The minimum penalty for the possession of marijuana—5 years—is equivalent to the maximum penalty for criminal negligence in the operation of a vehicle resulting in death. And since the legislature has not prescribed minimum penalties for murder or manslaughter (except first-degree murder), it is quite possible that penalties for marijuana violations will exceed the penalties imposed in murder cases. A grand jury in Houston, Texas, noting that this has actually happened, commented: "Surely this is not justice according to our national ideals, ideals which proclaim human life as of the greatest value."

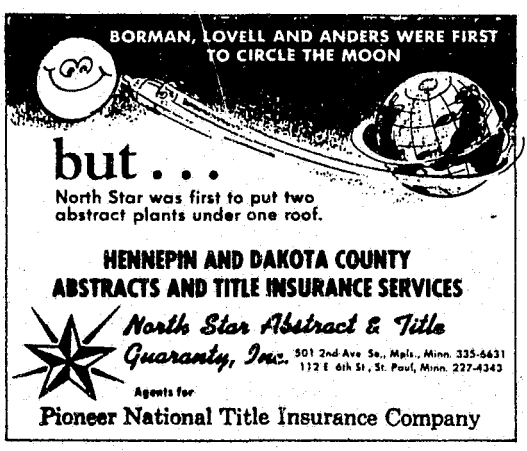
Because the penalties are so disproportionate, few individuals will be convicted of marijuana offenses, despite the widespread use of the drug. The result is disrespect for the law.

It is impossible to estimate the number of people in this state (or elsewhere) who have experimented with marijuana. We do know that the number is large and growing. Yet few are arrested; and of those arrested fewer are prosecuted and fewer still are convicted. The reason, of course, is that judges and law enforcement officials are reluctant to stigmatize an individual, especially a young middle-class person, with a felony conviction. As Herbert Packer puts it, "Given the devastating consequences of a criminal conviction to a middle-class person and the growing ambivalence among law enforcement officers about the severe marijuana laws, every avenue of discretion is used to minimize the impact of the law." Certainly I do not suggest that this humane policy be changed. But the fact that, with rare exceptions, the laws against marijuana may be violated with impunity can hardly instill respect for law generally, especially in the young.

Under the present system, enforcement of the marijuana laws must be sporadic and to a large extent arbitrary.

Marijuana smoking today is widespread; its use is difficult to detect; the courts are reluctant to brand young users as felons. Arrests and convictions, therefore, are relatively rare. But they do happen. And when arrests are made, they are as often as not the result of happenstance or, worse, arbitrariness. As Professor John Kaplan has noted, "The typical marijuana arrest occurs by chance. . . . For the . . . member of the middle class, marijuana possession arrests occur usually because of some freak occurrence."

Professor Kaplan continues, "The arbitrariness in the enforcement of the marijuana laws by no means ends with the arrest. At each further stage of the prosecution there is a decision which may be arbitrary." (He refers to the decision to prosecute, the judge's rulings at the trial, and the sentencing process.) Moreover, enforcement is not even-handed. Though there is widespread evidence that the middle class



and the professions have begun to "turn on," it is the black citizen, the student, or the fellow with a beard who is likely to be arrested.

Laws against marijuana make criminals out of a large section of the population which is otherwise law-abiding.

The effects on those who are convicted, or even arrested without ultimate conviction, are obvious enough. As Professor Rosenthal puts it: "Probably never before in our history has the mere possession of a criminal record been as serious and detrimental as it is today." But the effects of criminalization extend even to those who never come into contact with the law. "Merely labeling users and sellers also as members of a criminal class may make both themselves and others think of them as criminals or 'outsiders' and thus further alienate them from society." Professor Kaplan asks, "[W]ho can compute the social cost of a law which turns approximately 30 percent of the population of the state [California] between the ages of 16 and 25 into serious criminals?"

The laws against marijuana cannot be enforced without the use of undesirable police practices.

Marijuana is used in private. Distribution is accomplished through transactions between willing parties, neither of whom has reason to complain. To enforce the laws against marijuana, therefore, the police must resort to the least savory methods of detection. These include unlawful or borderline searches and seizures; the use of informers and undercover agents; and practices approaching entrapment. Such techniques not only invade the privacy of citizens; they also degrade the police. They are difficult to justify under the most exigent circumstances, and enforcement of the laws against marijuana hardly seems to fall into that category.

Retaining our present laws against marijuana can only result in widespread disrespect for law and alienation from society of large numbers of young people.

Certainly it would be an oversimplification to blame the marijuana laws for the disaffection with the values of "middle America" so prevalent among those under 30. But the harsh injustice of the marijuana laws is so egregious that young people can hardly be blamed for rejecting not only the particular laws but also the entire legal structure which supports them. Professor Kaplan predicts that "when the present generation of young users reaches the age at which they may sit on juries it is not unreasonable to expect the enforcement of the marijuana laws to collapse as completely as did alcohol prohibition." By that time, however, it may be too late to restore the faith in law of the generation now coming to maturity.

Within the last year or two there has developed a broad consensus (shared by many prosecutors) that the laws against marijuana are indeed too harsh. The consensus breaks down, however, over the form that changes should take. Three principal views have been put forward:

(1) Marijuana should be dealt with separately from the true narcotics, rather than lumped together with them as it is now. The offenses of possession and use should be reduced to the status of misdemeanors; special care should be taken to insure that conviction need not result in a permanent criminal record. Penalties for distribution should be retained.

(2) Penalties for use or possession should be eliminated; penalties for sale and distribution should be retained or even strengthened.

(3) All criminal sanctions for use and distribution should be eliminated, though distribution should be controlled and advertising prohibited.

For the reasons which follow, I believe that the last suggestion is the only viable one.

If the legislature is not willing to do away entirely with criminal sanctions for the use and distribution of marijuana, reducing penalties—as several states have already done—might seem to be a desirable compromise. But making possession a misdemeanor rather than a felony would not mitigate most of the problems of the present statutory scheme, and it might exacerbate some of them. Enforcement will continue to be sporadic and arbitrary; detection of offenders will still require the use of unsavory police methods; and the law will continue to criminalize a large section of the population. Indeed, if possession is reduced to the status of a misdemeanor, law enforcement officials might be less reluctant to arrest and prosecute and judges might be less reluctant to convict. As a result, the most disastrous consequences of the present system—the criminalization and alienation of a large proportion of the population under 30—will only be aggravated.

Nor will it solve the problem to legalize use and possession but continue or strengthen prohibitions against sale and distribution. As the *Vanderbilt Law Review* has pointed out, "legalization will serve no purpose unless it gives, with certain limitations, those who desire to use marijuana the opportunity to obtain it." Even Professor Rosenthal, who advocates "significant (though not inordinate) sanctions" for commercial trafficking, admits that "As long as sales are unlawful, use of informants and undercover agents is necessary, and practices approaching the borderline of entrapment are likely to occur." Moreover, legalizing the use of marijuana while prohibiting its sale will intensify the effect of what Professor Packer has called the "crime tariff." The result will not be to make marijuana so expensive that people will stop buying it; rather, the law will "secure a kind of monopoly profit to the entrepreneur

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who is willing to break the law."

Prohibition, Professor Packer points out, was a classic example of the operation of the crime tariff. The prohibition laws were also responsible for innumerable instances of police misconduct which we would today find reprehensible; during the era of Prohibition the Fourth Amendment in particular became almost a dead letter. The Volstead Act, it should be remembered, exempted from its penalties the possession of liquor in a private dwelling for personal use. To retain criminal sanctions for the sale or distribution of marijuana would expose the nation to many of the same evils spawned by Prohibition.

Legislation which would avoid these consequences while retaining reasonable controls over the sale of marijuana has been outlined by the *Vanderbilt Law Review*. The elements of the statutory scheme are these:

(1) Criminal sanctions for acquisition, use, and simple possession of marijuana would be eliminated.

(2) Sales of marijuana would be permitted, but only by those holding a license; high standards would be required for the licensees.

(3) Some restrictions would be imposed on sales: most important, sales to minors would be prohibited.

(4) Unlicensed sales of marijuana would subject the seller to heavy penalties.

(5) The production of marijuana would be regulated as to quality. Advertising would be forbidden.

(6) Consumption of marijuana would be taxed much as tobacco and alcohol are taxed today.

These suggestions follow, for the most part, the treatment accorded today to liquor. It might be better if mankind had never discovered the pleasure-inducing qualities of alcohol or marijuana. But alcohol is here to stay, and so is marijuana. The way to deal with it is not through unjust, unenforceable penalties, but through legalization under governmental control. Any other course of action will further trivialize the criminal process, debase the quality of justice and law enforcement, and alienate from society many of its most valuable constituents.

Bibliography

The literature on marijuana is voluminous, but the most useful treatment is a book which devotes only a few pages to the particular problem: Herbert Packer's *The Limits of the Criminal Sanction* (Stanford 1968). Other works quoted are: Comment, *The Legalization of Marijuana: A Realistic Approach, Part I*, 21 Vand. L. Rev. 517 (1968); Rosenthal, *A Plea for Amelioration of the Marijuana Laws*, 47 Texas L. Rev. 1359 (1969); Kaplan, Foreword to *Project—Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A. L. Rev. 1501 (1968); Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*, in *Task Force Report: Narcotics and Drug Abuse*, 24 (1967) (paper submitted to President's Commission on Law Enforcement); Zinberg & Weil, *The Effects of Marijuana on Human Beings*, New York Times Magazine, May 11, 1969, p. 28.

The law review articles cited contain references to many other relevant materials. For a polemic against the legalization of marijuana, see Tauro, *Marijuana and Relevant Problems—1969*, 7 Am. Crim. L.Q. 174 (1969).

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In Memoriam

It is with deep regret that the Hennepin County Bar Association records the passing of the following Hennepin County attorneys:

Louis C. Dorweiler, Jr.
January 14, 1907—September 17, 1969

Laroy R. Baird, Jr.
October 1, 1969

Thomas E. Wiley
September 14, 1902—October 30, 1969

Edward S. Bade
February 22, 1893—November 18, 1969

Don Morgan
August 9, 1909—December 8, 1969

Ben R. Toensing
April 5, 1895—December 9, 1969

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POT, PRAYER, POLITICS AND PRIVACY: THE RIGHT TO CUT YOUR OWN THROAT IN YOUR OWN WAY*

Jonathan A. Weiss**
and
Stephen B. Wizner***

The constitutional freedoms of religion and expression have been persistently urged as defenses to charges for violation of the drug laws. These efforts to expand the symbolic dimension of first amendment protection have been for the most part unsuccessful. The authors question the failure to recognize the defenses forwarded in these cases. To attempt a resolution of the issue, they consider the principles of liberty and procedural due process as they apply to the police power and individual rights under the Constitution. Focusing principally on the freedom of expression and its underlying rationale, they propose an analysis which logically includes drug use within the scope of the first amendment.

Drugs, narcotics and addictive substances are common topics of discussion. Positions concerning their use, however, are polarized. Devotees of psychedelic drugs, for example, claim to find in their use everything from self-knowledge to the essential roots of a new idealistic society. Opponents of drug use for pleasurable personal experience claim that it accelerates addiction, impels users into crime to maintain their habit and induces eventual self-destruction. This debate rages in the face of inadequate information about the personal effects of various drugs. For one thing, it is frequently difficult to establish whether a drug is in fact addictive or harmful; drug users claim that alcohol itself is harmful, dependence inducing and reality distorting. Secondly, the difference between addiction and habit is ill-defined;[1] many people appear dependent on caffeine, nicotine and aspirin. Finally, the personal effects of drug use vary—different people report different experiences, nor are medical pronouncements much of a guide.

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* This article was conceived and organized by Jonathan Weiss who also did the majority of the writing and research. The section on privacy and its relation to the police power is primarily Stephen Wizner's product. Both authors have discussed and criticized each other's work and together developed the affirmative thesis we present here.

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[1] M. Ostow, Drugs in Psychoanalysis and Psychotherapy (1962); *see* People v. Kimberly, 189 Cal. App. 2d 300, 11 Cal. Rptr. 519 (1961).

The law has nonetheless entered this thicket of emotional discussion and personal commitment with proscriptions and pronouncements. Distinguishing precisely between "medical drugs" and "addictive drugs," it permits the sale of the former while imposing criminal penalties on sale of the latter.[2] Further, in the case of narcotic and psychedelic drugs, the law imposes additional penalties for mere possession, perhaps regardless of a doctor's prescription.[3] The logical and factual basis of such classification is not always apparent.[4] For our purpose, however, this article need not inquire into the rationale of current drug legislation which is often factually very suspicious. It assumes arguendo that some drugs may be addictive, may cause adverse personality changes and may be factors in users' decisions to commit crimes. At the same time, we accept as honestly presented the claim of some that drugs provide progress to a new way of life. Where necessary, we indicate when disputed facts are relevant and to what degree they affect the legal issues raised by current drug laws, but the primary focus is on the roots of the controversy and claims of the contestants.

By drugs we mean any substance not normally considered food which, upon entering the blood stream, effects chemical change. We will not use the word as defined by druggists or lawyers, but instead in the broadest form possible. This article assesses major legal issues generated by drug laws and their enforcement. First, assuming that the current "narcotic" drug laws are constitutionally valid, can defenses to prosecutions for possession and use, as opposed to sale, be framed around the first amendment guarantees of freedom of religion and expression? Second, do current laws punishing possession and use violate the constitutional rights to privacy and to be left alone? Third, to what degree can taking drugs be considered an act defined as criminal?

These issues lead us to consider the relation of the self to society and, derivatively, the stake society has in the self, abnormal behavior, mental illness and self-destruction. Through this approach we attempt to locate neutral constitutional and legal principles which establish a range of rights to drug use. To that task we now turn.

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[2] *See, e.g.*, CAL. HEALTH & SAFETY CODE §§ 11501, 11531, 11532 (West 1964).

[3] *See, e.g.*, CAL. HEALTH & SAFETY CODE §§ 11500, 11530 (West 1964).

[4] Marijuana, for example, is probably not addictive. *See* Drewy, *Some Psychiatric Aspects of Marijuana Intoxication*, 10 PSYCHIATRIST Q. 232-42 (1936); Mayor's Committee on Marijuana, *The Marijuana Problem in New York* (1944). However, the importation of marijuana is strictly controlled by the federal government. *See* NARCOTIC DRUGS IMPORT & EXPORT ACT, 21 U.S.C. § 176(a) (1961); 26 U.S.C. § 4744(a)(2) (1967). *See generally Symposium — Drugs and the Law*, 56 CALIF. L. REV. 1 (1968); *Symposium — Marihuana and the Law*, 3 SUFF. L. REV. 1 (1968).

I. Freedom of Religion

One defense to prosecution for drug use has been that certain drugs, particularly peyote and other psychedelics, are essential to the user's religious life and therefore protected by the first amendment guarantee of free exercise of religion. This defense depends in part on the claim that psychedelic drugs foster mystical religious experiences.

The religious defense has failed in analogous areas. Thus, a law prohibiting polygamy was upheld despite the claim that polygamy was a Morman religious duty.[5] States have particularly proscribed the use of snakes in religious activities.[6] Fortune telling, defended on religious grounds, has nevertheless been prosecuted.[7] People have been prohibited from beating drums in the streets even for religious purposes.[8] A preacher was prohibited from advertising the performance of marriage ceremonies in order to make money.[9] Finally, in 1926, a religious defense to a prosecution for the use of peyote failed.[10] These cases seem to indicate that an act, otherwise unlawful, which endangers or inconveniences the public,[11] may not be exclusively defended against by invoking the label "religion."

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[5] Reynolds v. United States, 98 U.S. 145 (1878). More sanctions were imposed such as disenfranchisement, Davis v. Beason, 133 U.S. 333 (1890), and exclusion from office, Murphy v. Ramsey, 114 U.S. 15 (1885). One could inquire whether such rules so clearly directed against Mormons are suspect under *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

[6] *See* Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972 (1942); State v. Massey, 229 N.C. 734, 51 S.E.2d 179 (1949). *See also* Morman Church v. United States, 136 U.S. 1, 50 (1890). For a saga of snake bites and murder at a religious meeting, see Amburgey v. Commonwealth, 287 Ky. 421, 153 S.W.2d 918 (1941).

[7] *See* State v. Neitzel, 69 Wash. 567, 125 P. 939 (1912). *But see* Dolan v. Hurley, 283 F. 695 (D. Mass. 1922), where the court upheld a defense to a fraud prosecution for selling "lucky" stones on the ground that

> there is nothing immoral in a belief that gems or amulets affect the wearer's fortunes. It is an old and respectable superstition. Indeed, it is by no means sure that the confidence inspired by a belief in such objects may not be of real value. Some room must be left for the play of individual fancy." *Id.* at 693.

[8] City of Wilkes-Barre v. Garabed, 11 Pa. Super. 355 (1899).

[9] Hopkins v. State, 193 Md. 489, 69 A.2d 456 (1949), following State v. Clay, 182 Md. 639, 35 A.2d 821 (1944). One could query the test: Such advertising was "not compatible with the ministerial calling and not practiced by any respectable minister." 193 Md. at 497, 69 A.2d at 459.

[10] State v. Big Sheep, 75 Mont. 219, 243 P. 1067 (1926). One justification for the holding was that the state "may inhibit acts or practices which tend toward the subversion of the civil government." *Id.* at 240, 243 P. 1073.

[11] Although moral judgments and concern for moral corruption by polygamy and fortune-telling are certainly involved, this aspect would seem constitutionally infirm. See text accompanying notes 5-7 *supra*.

Two other groups of related cases illuminate the borderlands of the religious defense: (1) those compelling parents to act against their religious beliefs for the presumed benefit of their children, and (2) those forcing medical treatment on adults contrary to their religious convictions. Typical of the first group are criminal prosecutions for child neglect against parents who refuse to provide medical services for their children.[12]

The most difficult case in the first group is *Prince v. Massachusetts*,[13] which upheld a parent's conviction for violating the Massachusetts child labor laws by participating in her young niece's distribution of *Watchtower* on the streets. The majority of the Supreme Court felt bound by the state's characterization of the act as a "sale" and therefore unlawful under the state's child labor laws. Mrs. Prince defended on the ground that the Massachusetts law violated her child's right to freedom of religion, that is, her right "to preach the gospel . . . by public distribution of 'Watchtower' . . . in conformity with the scripture: 'A little child shall lead them.'"[14] The court, however, reasoned that the state's interest in protecting its children from "the crippling effects of child employment" justified the impingement upon a claimed religious freedom.[15] Justice Murphy dissented on the ground that the first amendment guarantee of religious freedom compelled the Court to reject the state's characterization of the act as a sale.[16] He argued that the Jehovah Witness designation of the act as essentially religious, and therefore protected, must prevail since there was no evidence of a legitimate state interest in proscribing the act. Moreover, since the Constitution commands that religious teaching never be considered harmful, the Jehovah Witness characterization must be accepted. Justice Jackson, also in dissent,[17] reaffirmed his position that, although public activities may be regulated neutrally, acts occasioned by religious principles which do not harm others are protected and may not be prohibited.

One crucial problem in *Prince* is characterizing the child's act. The state must decide whether to characterize it as a simple "sale" in vio-

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[12] Most of the cases involve a sickness and steadfast refusal to see a doctor. Courts have normally handled the question by treating it as a crime. The leading case is People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903). *See also* Regina v. Wagstaff, 10 Cox Crim. Cas. 530 (1868); Owens v. State, 6 Okla. Crim. 110, 116 P. 345 (1911). On the other hand, while acknowledging that religion is no defense to a crime of neglect, a court has reversed on a finding of no gross dereliction. Craig v. Maryland, 220 Md. 590, 155 A.2d 684 (1959).

[13] 321 U.S. 158 (1944).

[14] *Id.* at 164.

[15] *Id.* at 168.

[16] *Id.* at 171.

[17] *Id.* at 176.

lation of the child labor laws, or to characterize it in light of the act's religious aspects. Murphy maintains that we must accept its religious nature to maximize freedom; Jackson argues that a public act which harms no one can be treated as symbolically protected, but not criminally prohibited. Notwithstanding the arguments of Justices Murphy and Jackson, the majority position seems sounder to the extent that the regulated conduct is public and has tangible public consequences.[18] The state had a legitimate stake in preserving its children from harm and could prohibit child labor as a reasonable regulation toward that end. To consider activity involving money and materials as labor is possible; to characterize it as purely symbolic is mistaken. Of course, if the law were just a cloak for persecution, it would be unconstitutional in any event.[19] But as a characterization of concrete acts whose tangible aspects could be considered harmful, it is proscribable.

The *Prince* case is based on narrow grounds. If Rutledge and colleagues had been convinced that children had the same rights as adults and/or that Massachusetts could not interpret a public act or was using such a definition as a cloak to attack religious principles and perspectives, the statute would have been ruled unconstitutional. At the same time, the Justices were not directly countenancing a religious defense. Rather, they were exploring what type of proscriptions a state may formulate without infringing constitutional freedoms. In short, the leading case and conceptually related decisions indicate a judicial reluctance to proscribe or prescribe the activities of children counter to the parents' religious principles, unless such intervention will prevent a child from being physically harmed by parental acts or omissions. This formulation offers no definite guidelines for a religious defense to prosecution for drug use since the reluctance recognizes on the one hand parental rights and the sanctity of the family, while the enactment of proscriptions and their application derives in part from the special state concern for infants.

The second class of cases involves the use of coercive action against adults, such as compulsory vaccination[20] and mandatory chemical

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[18] *See* People v. Ewer, 141 N.Y. 129, 36 N.E. 4 (1894), upholding a law preventing children from theatrical performances even though the parents' rights were affected. Somehow, when aesthetic preferences rather than religious ones are at stake, the decision seems easier, although both are protected by the first amendment. *See also* Busey v. District of Columbia, 129 F.2d 24 (D.C. Cir. 1941).

[19] Yick Wo v. Hopkins, 118 U.S. 356 (1886). *See generally* Weiss, *Privilege Posture, and Protection, "Religion" in the Law*, 73 YALE L.J. 593, 608-09 (1964).

[20] Compare Jacobson v. Massachusetts, 197 U.S. 11 (1905) *with* Kolbeck v. Kramer, 84 N.J. Super. 569, 202 A.2d 889 (1964). *Cf.* Allgeyer v. Louisiana, 165 U.S. 578 (1897). *See also In re* Vremiestor, 179 N.Y. 235, 72 N.E. 97 (1904).

treatment of drinking water.[21] Denying the religious defense in these cases is fairly justified on grounds of protecting the health of others. Hence, the state's right and interest in the isolated individual's integrity is not directly at stake. More perplexing, however, are those cases involving compulsory blood transfusions. The opinions in these cases differ both within and among jurisdictions and tend to avoid the question of whether the state can compel transfusions for a person's own good against his religious convictions. Apparently, the state can compel a pregnant mother to accept a transfusion to save her child,[22] and may assume that absence of consent is not refusal.[23] Further, courts have compelled transfusions where the doctor's conscience and the threat of criminal liability for failure to administer the transfusion were involved.[24] On the other hand, courts have respected patients' refusals of blood transfusions where there is medical disagreement as to their necessity.[25] The spectacle of compulsion leads some courts to accept the patient's refusal of blood and even to acknowledge religious "rights" to refuse.[26] These cases, read together, unfortunately offer no clear guidelines for the use, context or extent of religious defenses in drug use cases.

A. The Religious Defense in Prosecution for Drug Use

Recently the courts have considered the religious defense to prosecutions for drug use. In *People v. Woody*[27] a group of Navajo Indians

[21] *See* Kraus v. City of Cleveland, 76 Ohio Op. 36, 121 N.E.2d 311 (1954); Dowell v. City of Tulsa, 273 P.2d 859 (Okla. 1954); Kaul v. City of Chehalis, 45 Wash. 2d 616, 277 P.2d 352 (1954).

[22] Raleigh Fitkin-Paul Mem. Hosp. v. Andersen, 42 N.J. 421, 201 A.2d 537 (1964).

[23] The leading case is *Application of President & Directors of Georgetown Col., Inc.* 331 F.2d 1000 (D.C. Cir. 1964). Substantially in accord are *Powell v. Columbian Presbyterian Medical Center*, 49 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1965) and *United States v. George*, 239 F. Supp. 752 (D.D.C. 1965). *See generally* Note, 33 FORD. L. REV. 513 (1965); Note, 44 TEXAS L. REV. 190 (1965).

[24] *See* Application of President & Directors of Georgetown Col., Inc., 331 F.2d 1000, 1009 (D.C. Cir. 1964); Collins v. Davis, 44 Misc. 2d 622, 254 N.Y.S. 2d 666 (Sup. Ct. 1964). *But see* Erickson v. Dilgard, 44 Misc. 2d 27, 252 N.Y.S.2d 705 (Sup. Ct. 1962). *See generally* Sharpe & Hargest, *Lifesaving Treatment for Unwilling Patients*, 36 FORD. L. REV. 695 (1968).

[25] *See* United States v. George, 239 F. Supp. 752, 754 (D.D.C. 1965).

[26] *See In re* Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

[27] 61 Cal. 2d 716, 394 P. 2d 813, 40 Cal. Rptr. 69 (1964). *Compare* id., *with In re* Grady, 61 Cal. 2d 887, 394 P. 2d 728, 39 Cal. Rptr. 912 (1964) (solitary peyote users), where the court said that the defendant had "not proved . . . an honest and bona fide" belief and remanded for a trial on that issue. Investigation into sincerity clearly is impossible under the Constitution. *See* United States v. Ballard, 322 U.S. 78, 92-95 (1944) (Jackson, J., dissenting); Clancy & Weiss, *The Conscientious Objector Exemption: Problems in Conceptual Clarity and Constitutional Considerations*, 17 MAINE L. REV. 143, 153-54 (1965); Weiss, *supra* note 19 at 599-601.

appealed a conviction for possession of peyote in violation of a California statute. The court held that since the defendants used peyote in a bona fide pursuit of a religious faith, and since the practice does not frustrate a compelling interest of the state, application of the statute improperly defeated the immunity of the first amendment.[29] It rested its analysis on two Supreme Court decisions, *Sherbert v. Verner*[30] and *In re Jennison*.[30] *Sherbert* held that a state unemployment compensation board must pay benefits to a Seventh-Day Adventist who refused to work on Saturday, her Sabbath, even though she was arguably not available for Saturday employment. (What the result would have been had her religion designated every day or week-days as a Sabbath is not clear.) The rationale was that the withholding of compensation benefits penalized petitioner for exercising her religion. The Court in *Jennison* reversed the Minnesota Supreme Court which had denied the invocation of the biblical injunction "judge not lest ye be judged" to excuse petitioner from jury duty.[31] In neither case did the Court find a compelling state interest to justify the substantial infringement on petitioners' first amendment rights.

Woody extracted the principle from these cases that a religious practice or ritual must be first examined to determine whether it presents a danger to the society which the state has a compelling interest in preventing. Utilizing this principle, the court performed a balancing test, weighing the importance of the religious freedom against the state's compelling interest, and concluded:

> Since the use of peyote incorporates the essence of the religious expression, [its] weight is heavy. Yet the use of peyote presents only slight danger to the state and to the enforcement of its laws; [this] weight is relatively light. The scale tips in favor of the constitutional protection.[32]

The opinion in *Woody* makes the Warren report appear in contrast as a model of coherence, reasoning and persuasiveness. If *Sherbert* and *Jennison* present the definite formulation of the law, which they do not, they still do not justify the approach taken in *Woody*. In *Sherbert* and *Jennison* there was no weighing of social harm against religious importance. Firstly, both involved a refusal based on a precept, a refusal that had no physical or public consequences, and both related to duties owed the government. In *Woody* members

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[29] 61 Cal. 2d at 727, 394 P.2d at 821, 40 Cal. Rptr. at 77.

[30] 374 U.S. 398 (1963).

[30] 265 Minn. 96, 120 N.W.2d 515 (1963), *rev'd per curiam and remanded*, 375 U.S. 14 (1963).

[31] Id; see Weiss, *supra* note 19 at 620-21.

[32] People v. Woody, 61 Cal. 2d 716, 727, 394 P.2d 813, 821, 40 Cal. Rptr. 69, 77 (1964).

of a group insisted that a ritual involving many people in physical acts with concretely measurable consequences can be done by those who claim it is religious. Second, just as the analogy is not there, neither is the claimed principle of harm versus religious importance. The *Sherbert* Court rests its decision on penalization of the past exercise of a claimed religious freedom,[33] and does not measure the Sabbath's religious importance against labor market needs. Further, in *Woody*, members of a group insisted that they had a religious right to engage in a ritual involving many people in illegal physical acts with concretely measurable consequences, a situation present in neither *Sherbert* nor *Jennison*.

The balancing test formulated in *Woody* cannot be administered by the courts. To do so, a court must independently evaluate both the merits of the religious act and the degree of its perceived danger. Now is not the time to engage in a dissertation about the separation of powers, but decisions about harm, degrees and competing values should be in the legislative realm. The impracticality of a balancing test reflects its factual and social rather than legal nature. Perhaps most important in this context is the point that to examine a religion to determine the importance of a particular ritual is to engage in a dissection and investigation of religion which is forbidden under the Constitution.[34] The dangers of such an inquiry are illustrated by *People v. Mitchell*[35] decided by a lower court in California two years after *Woody*. The court upheld Mitchell's conviction for possessing and using marijuana upon a finding that the courtroom discussion of the Bible and Hindu practices was an expression of "personal philosophy" rather than religious practice.[36] At the minimum, *Mitchell* limits the application of *Woody* to religious groups and rituals, a limitation seemingly contrary to the notion that the first amendment was incorporated not to safeguard institutions, but to protect and increase individual freedom, choice and action.

In particular, assessing the amount of damage which may result to society from an unlawful act is not a proper judicial function.

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[33] 374 U.S. 398, 404 (1962). *See* Leary v. United States, 383 F.2d 851 (5th Cir. 1967), where the court determined that reliance on *Sherbert* was misplaced since marijuana laws are concerned with "protection of society" while the *Sherbert* Court was concerned with protecting the individual.

[34] United States v. Ballard, 322 U.S. 78 (1944) was cited in Leary v. United States, 383 F.2d 851, 860 (5th Cir. 1967), to prevent inquiry into the "truth or verity of appellant's religious beliefs." For an extended discussion of this point, see Weiss, *supra* note 19 at 604-09. For the implications of this position and the resulting argument that a religious exemption from military service is unworkable, see Clancy & Weiss, *supra* note 27 at 152-58.

[35] 244 Cal. App. 2d 177, 52 Cal. Rptr. 884 (1966).

[36] 244 Cal. App. 2d at 182, 52 Cal. Rptr. at 888.

Courts are not free to say that acts the legislature has determined to be dangerous are not in fact dangerous. The courts are not designed, and do not function, to ascertain and weigh facts of "social" harm, particularly those of degree. Legislative concepts of danger may differ and it is those concepts which predicate enactments.[37] Extracting a nonexistent balancing test from such situations infringes religious freedom and legislative prerogatives.[38]

Woody and *Mitchell* do not provide much authority for a religious defense of drug use. Rather, viewed together, they illustrate the difficulties of implementing a balancing test which requires the judiciary to inquire into the merits of religions to assess individual belief and its importance on a scale balanced against conjectural harm. Different courts have different ideas concerning what is "personal philosophy" and what is "religious activity." One individual's religious practices and convictions may be completely private; another's public posturing may have no individual religious basis.[39] Such formulations tend to favor religious groups over individuals, orthodox beliefs over strange ones and present religions over past ones. Hence, they inhibit the growth of new, minority religions while favoring and encouraging old, established ones. This leads to protection of strongly structured groups rather than strong feeling individuals. Further, the distinction between "private" and "public" religions is not legitimate under the Constitution.

Moreover, if courts accept the religious defense, they must determine both the domain of religion generally and the boundaries of particular religions. Defining the domain of a religion may be intellectually impossible because religions often claim relevance and control in all dimensions of life.[40] To define the boundaries of a particular religion is to act as a theologian and to do what often a believer himself cannot.[41] This point cannot be over-emphasized. *Mitchell* more closely resembles *Sherbert* and *Jennison* in that it involved one person following what he believed to be religious practice. *Woody*, on the other hand, exempts "members" of a sect thereby raising issues of equal protection. Both *Woody* and *Mitchell*, however, define religion and its limits and implications in a confusing context of "harm".

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[37] *See generally* E. FREUND, STANDARDS OF AMERICAN LEGISLATION (1965), and its excellent introduction by F.A. Allen.

[38] It also raises questions of equal protection and due process. *See* Clancy & Weiss, *supra* note 27 at 154-56.

[39] *See id.* at 153-54.

[40] *See generally* Weiss, *supra* note 19 at 600-05.

[41] *See* Clancy & Weiss, *supra* note 27 at 155-56; Weiss, *supra* note 19 at 600-05.

B. Inherent Problems of the Religious Defense

Beyond the difficulties of these cases lie the problems inherent in a generalized "religious defense."[42] First, virtually any action could be defended by utilizing the religious defense, and individuals could create privileges in the courts not uniformly available to the public. Second, even if the Constitution and rational administration of criminal justice could accommodate this defense, courts would have to develop contexts and criteria of application which do not presently exist. In what areas would we countenance a religious defense and why? How would it be applied and by what government agency? As noted above, references to groups, feelings about rituals and current religious practices cannot provide such principles. Finally, as the criticism of the *Woody* decision indicates, balancing tests involve the courts in prohibited judgments about religious beliefs and intrusion into legislative prerogatives.

Given the weak case support for the religious defense, the constitutional and conceptual problems and the current lack of standards, development of a generalized religious defense seems impossible. The remainder of this article attempts to define the areas of free expression and private individual integrity which the state may not infringe in attempting to regulate drug use.

II. Freedom of Expression

Proponents of drug use, particularly LSD, believe they have discovered a new social doctrine. Not only do they often reject normal

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[42] *See* Weiss, *supra* note 19 at 602-08 for a more complete exposition. But if any individual can claim religious motives as a defense, then an indiscriminant license issues and there is no "law." Leary v. United States, 383 F.2d 851 (5th Cir. 1967). This rule would motivate the wrongful recourse to groups and is part of the proof that the religious defense is unworkable, particularly when inquiry into sincerity is precluded. *See* Reynolds v. United States, 98 U.S. 145, 166 (1878) (human sacrifice); Delk v. Commonwealth, 166 Ky. 39, 178 S.W. 1129 (1915) (swearing by a minister in church). See the failure of the religious defense to a prosecution for not carrying draft cards. United States v. Kime, 188 F.2d 677 (7th Cir. 1951), *cert. denied*, 342 U.S. 823 (1951); *cf.* Hamilton v. Regents of Univ. of Calif., 293 U.S. 245 (1954) (refusal to join ROTC); United States v. Aarons, 310 F.2d 341 (2d Cir. 1962) (free expression defense to violation of Coast Guard regulation); Gara v. United States, 178 F.2d 38 (6th Cir. 1949) *aff'd per curiam* 340 U.S. 857 (1950); People v. Penn, 16 N.Y.2d 581, 208 N.E.2d 789, 260 N.Y.S.2d 847 (1965). See notes 34-38 *supra*. For particular reference to narcotics and grand juries, see People v. Woodruff, 26 App. Div. 2d 236, 272 N.Y.S.2d 786 (1966). Consider the difficulties, finally, in construing a religious exemption previously defined by the legislature. *See* United States v. Seeger, 380 U.S. 163 (1965); Clancy & Weiss, *supra* note 27.

social values and goals, but many also assert that they are members of a "love" generation or that they are creating a new way of life.[43] Many wear buttons and picket to legalize various drugs. Some even staged a "smoke-in" in Tompkins Park in New York.[44] The constitutional question which arises is whether, given the social values implicitly expressed by use of drugs, and given the fact that social groups embodying new ideals of social living center around the drugs, drug use can be constitutionally defended as free expression under the first amendment. There are three areas of inquiry: (1) What activities are included in the concept of "expression"? (2) Is drug use included in the concept of expression? (3) If drug use is expression, is it therefore protected under the first amendment?

A. The Concept of Protected Expression

Communication by words alone is clearly expression. However, other means of communication have engendered litigation on the meaning of "expression": "The First Amendment affords protection not merely to the voicing of abstract opinions upon public issues. It also protects *implementing conduct* which is in the nature of advocacy."[45] In 1940 the Court, per Justice Murphy, held in *Carlson v. California*[46] that displaying signs and banners was a form of protected speech. Earlier, the Court in *Stromberg v. California*[47] had assumed that displaying flags was protected speech, striking down a statute prohibiting such actions on grounds of vagueness. Peaceful picketing has also been held a form of speech by a unanimous court.[48] Arguably, sit-ins have been treated as speech.[49] Performance of a "topless" dance, for the entertainment of an audience in a com-

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[43] *See The Hippies*, serialized in the New York Post, Sept. 11, 1967 at 42.

[44] New York Post, Aug., 17, 1967, at 3.

[45] NLRB v. International Longshoremen's Ass'n., 332 F.2d 992, 999 (4th Cir. 1964) (emphasis added).

[46] 310 U.S. 106 (1940). In West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943), a compulsory flag salute was held unconstitutional, thereby recognizing that gestures communicate.

[47] 283 U.S. 359 (1931).

[48] *See* Thornhill v. Alabama, 310 U.S. 88, 102 (1940). The purity and scope of this decision have been considerably weakened by such cases as Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941) in which the relation of acts of violence to picketing justified upholding the injunction against it. *Cf.* Beauharnais v. Illinois, 343 U.S. 250 (1952); Feiner v. New York, 340 U.S. 315 (1951). *See* Weiss, Book Review, 72 YALE L.J. 1665, 1669-70 (1963). In any event, the picketing cases are another illustration of non-verbal communication.

[49] Brown v. Louisiana, 333 U.S. 131 (1966); Garner v. Louisiana, 368 U.S. 157, 201-02 (1961) (Harlan, J., concurring). *See also* Adderly v. Florida, 385 U.S. 39 (1966); Cox v. Louisiana, 379 U.S. 536 (1965).

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mercial establishment, has also been considered protected expression within the first amendment.[50] On the other hand, the Supreme Court, while talking of noise control, has imposed absolute bans on sound trucks.[51] Also, lower courts have rejected the claim that flag desecration is protected speech[52] and a local court has upheld a prohibition against hanging materials on clotheslines to protest taxes.[53]

Recently the Supreme Court handed down a very narrow reading of protected "symbolic" speech. In *United States v. O'Brien*,[54] reviewing two conflicting circuit court opinions,[55] it held that draft card burning was neither political speech nor symbolic expression. With great effort, reminiscent of *Fleming v. Nestor*,[56] the Court found many practical reasons why a prohibition of draft card burning efficiently aided the Selective Service System. One could therefore argue that this case was merely a holding on the facts that a regulation justified by actual necessity will not be struck down merely because it affects methods of action by which people choose to express themselves.[57] Historically, it may also be viewed as a result of political pressure. The dangerous dicta, however, includes a thesis on how legislative intent to punish speech is irrelevant.[58] Viewed in any light, the case is hard authority against the expansion of "symbolic expression" and must be distinguished by an advocate and considered aberrational from the real rationale of other symbolic expression cases.

Although no definitive guidelines emerge concerning the protection of speech which is considered symbolic, yet public activity, the decisions have involved several common elements: (1) a clear political issue—statements on labor conditions, party loyalty, segregation and war; (2) actions clearly related to the political issue either

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[50] *In re* Giannini, 446 P.2d 535, 72 Cal. Rptr. 655 (1968).

[51] Kovacs v. Cooper, 336 U.S. 77 (1949).

[52] *See* People v. Street, 20 N.Y.2d 231, 229 N.E.2d 187, 282 N.Y.S.2d 491 (1967); New York L.J., Sept. 6, 1967, at 1. Halter v. Nebraska, 205 U.S. 34 (1907) upheld forbidding a use of flags in advertising recognizing its ideological content. Advertising is, of course, treated differently from political expression. *See* note 51 *supra*.

[53] *See* People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (1963).

[54] 391 U.S. 367 (1968).

[55] *See* United States v. Miller, 367 F.2d 72 (2d Cir. 1966); Smith v. United States, 368 F.2d 529 (8th Cir. 1966).

[56] 363 U.S. 603 (1960).

[57] Harlan concurs with a strict statement of this view. But *see* NAACP v. Alabama, 357 U.S. 449 (1958) and United States v. Carolene Prods Co., 304 U.S. 144, 152 n.4 (1938), for examples of a different approach. Compare *id.*, *with* Prince v. Massachusetts, 321 U.S. 158 (1944).

[58] But *see* Yick Wo v. Hopkins, 118 U.S. 356 (1886).

by immediate content—signs—or by dramatizing the specific grievance—draft card burning and sit-ins; and (3) individuals or groups acting in a specific locale or for a limited time. The inquiry, then, is whether these elements are present in the use of drugs, and, if not, whether they are essential to a defense based on free speech.

B. Drug Use as Political Expression

Not all drug use has clear political overtones. A man dependent on morphine after hospital treatment may have been involuntarily addicted. On the other hand, cooperative living and the growth of conventions among users of psychedelic drugs manifest a social vision. Insofar as drug users utilize drugs as an explicit rejection of society or societal modes of living, they are engaging in political action. Recently a three-judge panel enjoined the enforcement of an overvague statute proscribing nudity against a nudist colony.[59] Although this ruling was based on vagueness, Judge Darr reached the merits to hold that the nudists' privacy should be protected and that the statute violated the freedom of association,[60] and the rights to privacy and equal protection of the law.[61] One might argue that the impulse beneath the vagueness ruling and the concern for the freedom of association was a recognition that these people were living according to their social ideals. Similarly, communal use of drugs, because it embodies particular social values, could be viewed as political expression.

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[59] Roberts v. Clement, 252 F. Supp. 855 (E.D. Tenn. 1966).

[60] 252 F. Supp. at 848-49 (concurring opinion). *See also* Fenster v. Leary 20 N.Y.2d 309, 229 N.E.2d 426, 282 N.Y.S.2d 739 (1967) discussed *infra* at note 95. One might worry about an extension of the argument in the text to the proposition that anti-social behavior is necessarily protected political speech. What about thieves? Consider the movie *Thief of Paris* (1967) for an example of thievery as expression. *See also* Lynden, *The Last Holdouts*, ATLANTIC MONTHLY, Aug. 1967, at 42-43. This issue is considered implicitly in the text accompanying notes 101-107 *infra*. See Justice Jackson's discussion in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) on the right to differ on things "that touch the heart of the existing order" and make gestures in regard to them. In thievery, particular acts are prohibited that may manifest the thief's rejection of the social order. In nudity and drug sessions the style of life is at stake. Of course, alleged thieves like all others may gather socially. *See* United States v. Bufalino, 285 F.2d 408 (2d Cir. 1960).

[61] 252 F. Supp. at 850. Darr then added a humorous addendum attacking nudists. *Id.* Also, the decision of a California lower court that nudist camps are protected by the first amendment was recently upheld on narrow grounds. People v. Lang, No. 8187 (Los Angeles County Super. Ct., Dec. 4, 1968).

In the case of noncommunal use of drugs,[62] the political aspect is harder to perceive and define. It can be argued, however, that because use of illegal drugs so unequivocally sets one against public morality and defines a different way of life, a clear rejection of society and its values, it could very well be treated as political.[63]

Two famous cases have dealt with individual acts as relevant to the good moral character which aliens must maintain for the five years preceding naturalization. On *Repouille v. United States*,[64] Judge Learned Hand held for the majority of two that an alien who committed an act of euthanasia during this five-year period failed to meet the "good moral character" requirement since most people considered mercy killing to be immoral.[65] In *Schmidt v. United States*,[66] Judge Learned Hand, in dealing with a man who with "unnecessary frankness"[67] admitted occasional acts of fornication, decided that he still possessed the requisite good moral character. Both men, of course, had violated laws. If they had done so to protest or change the laws, their acts would have appeared to be political in nature.[68] In absence of an express motive, however, can we conclude that their actions were political? We can say at least that their acts had political-moral content, so much so that a single act was sufficient in one case, and almost in the other, to lead to a conclusion of 'immorality' by public standards—an act therefore of political content.

People rarely use drugs in public; such use is a seeming end in itself. While pickets and draft card burners intend to convey an idea, drug users rarely intend their acts to convey ideas explicitly. Yet drug users, like members of nudist colonies, have a style of life at stake. Both the "digger" and the solitary junkie embody their concept of life in their acts. Their acts, therefore, if not specifically oriented to communicating, are nontheless expressive of their view

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[62] Even "solitary users" often use drugs in a social group. Junkies go to shooting galleries; pot is often social; and many users belong to a little society composed of individuals with common problems and a common language.

[63] But note Justice Black's conclusion that "the First Amendment does not protect speech and assembly only to the extent it can be characterized as political." United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 223 (1967).

[64] 165 F.2d 152 (2d Cir. 1947).

[65] Judge Frank dissented on the ground that public opinion and ethical leaders should be consulted before making a decision. *Id.* at 154.

[66] 177 F.2d 450 (2d Cir. 1949).

[67] 177 F.2d at 450. One could query whether a Judge should suggest that a man lie on a governmental form. *See* 18 U.S.C. §1001 (1966).

[68] The range of criminal actions normally committed by people in protest or desperation that may be morally justifiable and even legally acceptable is discussed at length in Allen, *Civil Disobedience and the Legal Order*, 36 U. CIN. L. REV. 1 (1967).

and function for them, perhaps due to a similar psychological motivation, as would displaying banners and signs.[69] We might say that style of life may be viewed as political expression, just as a monastic life may be viewed as religious devotion.

C. *Drug Use as Protected Expression*

If drug use can be treated as political expression, is it therefore exempt from prosecution? The fact that speech is used in an act does not protect the act: "[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."[70] This position is even stronger when the act in question is not so conspicuously purposeful, political expression.[71] Clearly whispers of conspirators are not immune. Radio is regulated for content,[72] and individuals may be prosecuted for fraudulent statements.[73] A proscribed act, once labeled political, does not become less criminal.

But our inquiry does not end here. The above argument rests on the assumption that taking drugs, even if embodying a social idea or politically purposeful, is a proscribable act or proscribed aspect of an area of activity. It may be, however, that drug use is an entirely political and social act, lacking those tangible nonideological elements present in the ends and effects of conspiracy, libel, fraud or, arguably, draft interference. Our inquiry, therefore, is whether taking drugs has proscribable aspects or belongs in a scheme of activity that produces effects which are sanctionable. To do this, we must examine both the act itself and the power of the state.

III. The Right to be Self-Destructive

The keystone to this section can be found in Justice Jackson's account of the activities of infant Jehovah Witnesses: "The freedom

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[69] *Id. See also* P. Weiss & J. Weiss, Right And Wrong, A Philosophical Dialogue Between Father and son (1967).

[70] Giboney v. Empire Storage, 336 U.S. 490, 502 (1949), quoted with approval in Cox v. Louisiana, 379 U.S. 536, 555 (1965).

[71] *See* note 63 *supra*. Clearly, the claim of political vision is often more literary than actual.

[72] Cox, *The FCC, The Constitution, and Religious Broadcasting*, 34 Geo. Wash. L. Rev. 196 (1965) is an excellent attack on the efficacy and constitutionality of such regulation.

[73] 18 U.S.C. § 1341 (1958). See Weiss, *supra* note 19 at 583–609 on the conceptual problems involved.

asserted by these appellees does not bring them into collision with rights asserted by any other individual. . . . Nor is there any question in this case that their behavior is peaceable and orderly."[74] In that case, much to the consternation of many locals and local officials, Jehovah Witness students were upheld in their refusal to salute a flag while other classmates did so pursuant to a school regulation. Similarly, much to the consternation of others, drug users commit acts which may or may not have effects on their minds. The question is whether the analogy holds—Does taking physical substances because of their effects on personal attitudes and experiences have the same constitutional nature as taking or refusing to take a symbolic position because of its meaning to the individual? The resolution of this question requires an examination of our criminal system and other acts analogous to drug use.

The fundamental document in American democracy is the Constitution. Explicitly based on an accord, it establishes governmental powers and individual rights. Many specific sections deal with crimes. The fifth amendment states that no one is to be denied "liberty" without due process of law. The implication of this command is that all individuals, or at least all adult citizens, have liberty as an inherent characteristic of their citizenship. Their ability to consent implicitly or explicitly reject or affirm, and their part in the continuing pronouncement, "We, the people," rests on the recognition that all individuals have liberty. So we can say that the Constitution envisions a society composed of "free" individuals living together. Yet that freedom can be taken away. The Constitution also envisions arrests, trials and imprisonment, and a criminal process which must be conducted in a manner consistent with guaranteed procedural safeguards.

Thus, there are two elements to be considered in analyzing the imposition of criminal sanctions—liberty and procedural safeguards. Although, in a constitutional context, these elements could be considered separately, many reasons favor reading them together. First, because the Constitution is an attempt to generate fundamental principles by which government and society can function, its provisions are better viewed as related parts in a scheme. Second, the history of constitutional interpretation by the Supreme Court evidences a reading of the document as a unity, and the principles as related.[75]

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[74] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 630 (1943). *See* Weiss, *supra* note 19 at 610.

[75] *See* Mapp v. Ohio, 367 U.S. 643, 661 (1961) (Black J., concurring); Adamson v. California, 332 U.S. 46, 68 (1947) (Black, J., dissenting). *See generally* Griswold v. Conecticut, 381 U.S. 479 (1965); Boyd v. United States, 116 U.S. 616 (1886).

Third, liberty and due process are not only conceptually related, but also related in fact by specific procedural guarantees, such as reasonable bail,[76] thereby indicating that due process reasonableness was intended to serve as a protection of liberty. Procedural protections therefore serve the dual functions of guaranteeing optimum continuation of liberty and of preserving liberty during the criminal process.

How can these elements be combined? On any democratic principle one man's freedoms and rights are as valuable as another's. We all start as free individuals, but some may act in such a way as to affect other people's freedoms and rights. If we say that it is only justifiable to interfere with a person's freedom when he interferes with the freedom of others, the elements are neatly combined. What is needed then is a procedure for resolving these conflicts. The state serves this function by determining which acts so adversely affect other people's freedoms that limitations must be imposed on the freedom of the actor.

As further proof of the reasonableness of this constitutional ground of criminal law, consider the implications of a system not based on a recognition of liberty. If the state could proscribe any act and the state countenance, as it must and does, prosecutorial discretion, significant equal protection problems could arise and the whole point of procedural due process would vanish. An ordinance against breathing, selectively applied, could lead to oppression. If any act can be proscribed then we have little need for due process protections since all we need do is proscribe the acts or characteristics[77] of those we do not like. (There is more than one way to skin a cat).

But most important is the fact that the Constitution has created specific categories of exempt acts, those that only affect other people's beliefs not their freedoms. The first amendment establishes freedom to promulgate ideas. Again, in Justice Jackson's words:

> If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority whose power to prescribe would no doubt include the power to amend. . . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception they do not now occur to us. . . . It would seem that involuntary affirmation

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[76] U.S. CONST. amend. VIII.

[77] Of course, there are other constitutional guarantees such as those against bills of attainder which, if properly applied, would protect many rights. U. S. CONST. art. I, § 9. *See* United States v. Brown, 381 U.S. 437 (1965); Note, 72 YALE L.J. 330 (1962). Equal protection is also a powerful tool. *See* Hernandez v. Texas, 347 U.S. 475 (1954); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

> could be commanded only on even more immediate and urgent grounds than silence.[78]

In short, compulsion to perform a symbolic act with specific ideological content is forbidden. Persons cannot be compelled to affirm a pledge which has manifestations cognizable only by those who believe or those who are concerned with the beliefs of others.[79] There exists not only the range of freedom of expression but also the specific area of symbolic activity. In this connection, let us note a refusal to participate in a ritual when others do can be as symbolic a gesture as participation itself—an upright person amidst kneeling people; a person sitting down while others stand in tribute.

The principle we may extract is that the Constitution has defined a range of criminal acts. That range encompasses acts whose physical nonideological consequences affect the rights and freedoms of others. Restraint is justified upon proof that the acts of one have physical consequence to the detriment of another's freedom:

> [T]he power of a state to regulate and control the conduct of a private individual is confined by those cases where his conduct injuriously affects others. With his faults or weaknesses which he keeps to himself and which do not operate to the detriment of others, the state as such has no concern.[80]

Such an inchoate principle has been evidenced in analogous situations. One judge has stated that the state cannot prescribe what a man shall eat and wear or drink or think.[81] On the same rationale, peyote and LSD are eaten. Another court has stated that cigarette smoking cannot be made illegal.[82]

In a different context, courts have disputed utilizing the police power to force motorcyclists to wear helmets. The dialogue may be viewed as starting when a New York judge, later reversed,[83] stated

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[78] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 634, 642, 633 (1943). *Cf.* Torcaso v. Watkins, 367 U.S. 488 (1961) on compelling affirmation of belief.

[79] *See* Weiss, *supra* note 19 at 610-11. It is not entirely clear whether the black letter of the law is that establishing the ritual is forbidden, whether compelling children to take postures infringes religious and/or free speech rights, or whether it is the compulsion of affirmation which is the crucial distasteful element. *Id.* The objective in that article was to harmonize all facets; here to explore the theoretical underpinnings.

[80] Commonwealth v. Smith 163 Ky. 227, 234, 173 S.W. 340, 343 (1915).

[81] Eidge v. Bessemer, 164 Ala. 599, 51 So. 246 (1909).

[82] Hersberg v. Barbourville, 142 Ky. 60, 133 S.W. 985 (1911).

[83] People v. Carmichael, 53 Misc. 2d 584, 279 N.Y.S.2d 272 (Genesee County Ct. Spec. Sess. 1967), rev'd, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (Genesee County Ct., 1968). The rationales were the presumption of constitutionality, legislative fact-finding, harm to others by careening motorcycles and the need for a healthy citizenry. The decision is not persuasive but, as yet, there is no record of an appeal.

that "the police power is understood by this court . . . [to] justif[y] the regulation of the conduct of one person because of the effect of that conduct upon other persons,"[84] arguing that alcohol and narcotics are proscribable because they produce anti-social behavior, but that to force wearing of helmets is unconstitutional. This pronouncement was preceded by another decision that held the prohibition unconstitutional because it was too indefinite to meet criminal legislative standards, thereby indicating that the legislature really had no place in prescribing how people dressed.[85]

Then came the answering cases. Rather than directly deny the validity of *sic utere tuo abenum non loedas*—that there can only be crimes when things are done which are dangerous or destructive to others—courts found justification in the safety danger presented by helmetless motorcyclists.[86] For, they reasoned, if a motorcyclist was hurt for lack of a helmet, he might careen about creating a danger to others.[87] They thereby avoided the issue of the constitutionality of legislating to protect individuals from themselves, although one court intimated that because injured people were a burden on the state, the state could exercise its police power broadly to enact such legislation.[88]

To this argument, the Michigan Court of Appeals, after quoting John Stuart Mill, posed the classic answer. The aim of preventing motorcyclists from going out of control could be served by narrower legislation which did not infringe individual choice.[89] Rejecting "paternalism," the court reasoned that legislation concerning safety devices, such as motorcycle windshields, would be better adapted to the purpose of preventing injured motorcyclists from endangering others.[90]

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[84] 53 Misc. 2d at 590, 279 N.Y.S.2d at 277.

[85] People v. Smallwood, 52 Misc. 2d 1027, 277 N.Y.S.2d 429 (Monroe County Ct. Spec. Sess., 1967).

[86] Commonwealth v. Howie, 238 N.E.2d 373 (Mass. 1968); People v. Newhouse, 55 Misc. 2d 1064, 287 N.Y.S.2d 713 (Ithaca City Ct. 1968) (rejection of vagueness argument); People v. Bielmeyer, 54 Misc. 2d 466, 282 N.Y.S.2d 797 (Buffalo City Ct. 1967) (discussion of police power); People v. Schmidt, 54 Misc. 2d 702, 283 N.Y.S. 2d 290 (Erie County Ct. 1967); State *ex rel.* Colvin v. Lombardi, 241 A.2d 625 (R.I. 1968).

[87] *Id.*

[88] People v. Newhouse, 55 Misc. 2d 1064, 1065-66, 287 N.Y.S.2d 713, 714 (Ithaca City Ct. 1968).

[89] American Motorcycle Ass'n v. Davids, 158 N.W.2d 72 (Mich. 1968). For cases in which this rationale was used see Covington v. Rash, 380 U.S. 89 (1965); NAACP v. Alabama, 377 U.S. 288, 307 (1964); NAACP v. Button, 371 U.S. 415 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Cantwell v. Connecticut, 310 U.S. 296, 307 (1940).

[90] *Id.*

(Query, however, the effect of aesthetic objections by owners to such designs.) If, on that narrow ground of reasonable regulation to effectuate the purpose of safety, the Michigan court appears the most persuasive, it is clear that the principle of constitutional freedom from "paternalism" is not universally accepted and must be argued for, at least in that context. The dialogue though indicates a judicial and judicious hesitation with respect to laws which preclude people from taking personal risks. Such an approach reflects the constitutional considerations previously suggested and traditional "liberal" doctrines on the police power.[91]

Recently an alternate analysis, based upon complementary constitutional doctrines, was advanced by Professor Bork.[92] He suggested taking Justice Goldberg's concern in *Griswold v. Connecticut*[93] with the ninth amendment more seriously, reasoning that the first eight amendments could be conceived of as specific examples of the general set of natural rights protected by those eight and the ninth, and one might argue, the tenth. Dealing mainly with the issue of legal activism, Bork suggested that the Supreme Court should extrapolate on a case by case basis from the first eight amendments to give cognitive content to the concept of rights in the ninth. Unfortunately, he offers no principles, so it is hard to see how such an approach would not be an excuse for judicial legislation. On the other hand, one could argue that the ninth and tenth amendments reflect a doctrine of natural rights, if not natural law, so to invade a person's identity—manifesting and identity-constituting activities, is a suspect invasion of this realm. Bork aptly suggests that the selected invasion must be the least destructive means available: "[A]ll human behavior should be entitled to the same level of constitutional consideration . . . that is currently afforded non-political speech . . . . The new concept of rights becomes, indeed, something roughly describable as a presumption in favor of human autonomy."[94] One

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[91] Recently, the United States Supreme Court dodged this issue and entered into a confused debate on public drunkenness and criminal responsibility. Powell v. Texas, 392 U.S. 514 (1968). There is neither a majority opinion in *Powell* nor much inspirational reasoning. Since a condition of public drunkenness, as in this case, could be "dangerous," it arguably falls out of the class of action or expression without tangible harmful aspects. However, because by definition public drunkenness is a crime without an act, there is an implied undermining of the rationale of restraining only dangerous acts. Until the issue is directly confronted, *Powell* should be considered in tandem with *Robinson v. California*, 370 U.S. 660 (1962), and, although troublesome, not dispositive.

[92] Bork, *The Supreme Court Needs a New Philosophy*, FORTUNE, Dec. 1968, at 138.

[93] 381 U.S. 438 (1965).

[94] Bork, *supra* note 92 at 174.

might say, that recognizing the complexity of activity and motive, constitutional protections are relevant not only to discreet activities but also to those who engage in them.

In this regard, it should be noted that courts have increasingly emphasized the right to be the way you are regardless of how repugnant it may be to others. In striking down the New York vagrancy law, the New York Court of Appeals recently stated:

> [A] statute whose effect is to curtail the liberty of individuals to live their lives as they would and whose justification is claimed to lie in . . . police power . . . must bear a reasonable relationship to . . . the alleged public good. . . . It is also obvious that today the . . . only crime [of vagrants], if any, is against themselves, and whose main offense usually consists in leaving the environs of skid row and disturbing by *their presence* the sensibilities of residents of nicer parts of the community. . . .[95]

Reminiscent of the language in *Barnette v. West Virginia State Bd. of Educ.*,[96] the Court concluded that the unconstitutionality consisted of an "overreaching of the proper limitations of police power in that it unreasonably makes criminal . . . conduct of an individual which in no way impinges on the rights or interests of others. . . ."[97] Also recalled is Justice Brandeis' dissent in *Olmstead v. United States*:

> The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness . . . They conferred as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.[98]

The "right to be let alone," a recognition of the inviolability of a person's identity and purely personal evidencing of it, is often characterized and recognized as "privacy" and harks back to the original attempt to create a society in which men were free to "pursue happiness," to conduct their lives as seen fit, and to experience pain, pleasure and individual fulfillment. An underlying impulse and factor in the formulation of "liberty," its most recent expression by the Supreme Court was in *Griswold v. Connecticut*,[99] where the Court refused to let a state proscribe means of contraception and procreation. This decision in turn echoed older pronouncements about "the right of the citizen to be free in the enjoyment of all his faculties."[100]

The "right to be let alone" logically entitles citizens to engage in behavior which the majority might consider distasteful or even com-

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[95] Fenster v. Leary, 20 N.Y.2d 309, 314, 229 N.E.2d 426, 429-30, 282 N.Y.S.2d 739, 743-44 (1967). *But cf.* Powell v. Texas, 392 U.S. 514 (1968). *See also* Ricks v. United States, 334 F.2d 964 (D.C. Cir. 1964).

[96] 319 U.S. 624, 642 (1943).

[97] 20 N.Y.2d at 312, 229 N.E.2d at 428, 282 N.Y.S.2d at 742.

[98] 277 U.S. 438, 478 (1928).

[99] 381 U.S. 479 (1965).

[100] Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897).

pletely immoral, such as nudism or vagrancy. In analogous areas, this conduct is often potentially harmful to the person himself; yet to interfere with this constituting of his identity is to "unreasonably interfere with the right of the citizen to determine for himself such personal matters."[101]

Private personal indulgence in conscious-altering substances for reasons of personal preference concerning the constitution of identity and consciousness is an act whose essential and overriding purpose and effect is not only that of inducing a personal private experience, but also that of defining himself in part by the act. Whether the act is motivated by or described as related to a desire for religious experience or metaphysical insight or merely a wish to "get high," it is not and does not affect others or limit the freedom of others to live their lives as they see fit, except as a result of the way in which people's identities affect others. A man who swears constantly may offend some, an addict others. Both may bore even their friends, but they are not affecting another's freedom by acts or policies, but only by the identical insistence on their own mode of life. Friends or enemies may ignore them. It would appear, therefore, that the use of such drugs falls within the class of constitutionally protected private identity-constituting and identity-reflecting conduct which is placed beyond the reach of the state's police power by the Constitution and its underlying principles.

This argument must be placed at least congruently to the context of political expression. It pays nodding acknowledgement to the idea of unconscious intention and the relation and interpenetration of psychology and politics. It suggests freedom to create and affect identity and reactions may be a necessary condition for future political speculation, formulation and action. On the other hand, it recognizes that appearances and expressions reflect reactions and positions about society that may have political implications. In short, there exists a joinder of rationales—the hesitation to extend police power beyond acts harmful to others, engendered by the common-law fear of power; an interpretation of the Constitution which suggests that there are no criminals, only crimes defined in terms of liberty-deprivation; and a constitutional command of free speech whose effect is to protect its origins and, wherever, possible impure expressions. These rationales suggest a principle of law, often not strictly followed, that the rationale of state sanctioning under the Constitution prevents sanctioning for those self-directed acts which reflect ideas and express, affect and constitute personal identity.

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[101] Hershberg v. City of Barbourville, 142 Ky. 60, 61, 133 S.W. 986, 987 (1911). See cases cited in note 106 *infra*; Cortland v. Larson, 273 Ill. 602, 113 N.E. 51 (1916).

Cases both ancient and recent suggest that courts do recognize and apply the rationale developed above in analogous areas. There exist only three possible reasons for not applying such reasoning in the area of drug use: (1) use creates crime; (2) use leads to insanity, causing parents to not support their children, who then become burdens on the state; (3) use is tantamount to suicide. Noting that there is considerable factual dispute about the accuracy of these contentions, we will assume them true to discuss their relevance.

An old distinction exists, often ignored, particularly in the early 1950's, between words used in furtherance of a crime, perhaps in its commencement, and words or ideas which are considered dangerous to government and community. Those ideas which may lead to action (*e.g., Das Kapital* and *Mein Kampf*) are protected; those words involved in the action (*e.g.*, "you get the rope to hang him") do not protect the actor.[102] The rationale behind this distinction would seem to rest on a belief in individual responsibility and free will. Ultimately a man's act is his choice and his responsibility. Those things which may encourage crime do not necessarily produce it. A man regardless of temptation is guilty if he breaks the law.[103] Crimes are acts and so punished. Even to maintain that alcohol and drugs encourage or motivate to crime does not argue for proscription—we maximize freedom to receive all influences on the faith that a man chooses and is responsible and we can punish accordingly. In particular, the requirement of *mens rea* suggests it is the decision to do the act that predicates guilt, so that we look to an act of will, as it were. Since an act of will is necessary, temptation, influence and inclination are factors for the will, not direct causes. To punish factors is to change the concept of guilt. Having a law of crime, not criminals, and acknowledging the tremendous range of factors that may lead to the commission of crimes, leads to the conclusion that even if drug use

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[102] Cases like Dennis v. United States, 341 U.S. 494 (1951) and American Communications Ass'n v. Douds, 339 U.S. 382 (1950) are direct authority, if of dubious vitality, counter to the proposition. While this distinction is a theoretical one supported by some authority, requiring full argumentation perhaps beyond the scope of this article, it is, according to the authors, the only constitutionally valid one and of sufficient force to employ here. Certainly tests such as "clear and present danger" are not relevant. Since the suggested distinction is not ideologically directed toward violence or incitement thereto, its authoritative base and clear relevance justify using it as established law here.

[103] Only at the extreme limits of self-defense do we let duress or temptation excuse a crime. *See* Regina v. Dudley & Stephens, 15 Cox Crim. Cas. 624 (1884); Clancy & Weiss, *supra* note 27 at 148-49; *cf* Wallace v. United States, 162 U.S. 466 (1896).

is associated with substantially higher crime commission, it may not be proscribed on those grounds.[104]

But saying this does not mean that some controls may not be exercised. Courts have repeatedly held that dispensation of drugs and liquors may be done only pursuant to a license and/or a prescription.[105] There is no reason why this principle could not be employed to regulate sale of the drugs in question. Our argument goes to use and possession. Distributing drugs to others could be proscribed; it is not beyond the laws to issue rules about the circulation of dangerous instrumentalities.[106] The law can reasonably prohibit minors from using drugs, liquor and tobacco[107] by controlling distribution, while refraining from broad proscriptions against possession and use by the adult populace. That and that alone is protected as not being an act which directly and nonideologically affects the lives and actions of others.

While it is beyond the scope of this article to propose a regulatory scheme, it may not be entirely inappropriate to suggest the outlines of one. The unauthorized giving or selling of certain drugs could be made illegal. The state could dispense drugs or have authorized sellers, similar to state liquor store arrangements. In this way, price and quality could be regulated. Inflated prices in the illicit drug market would be decreased, making such activities less lucrative and diminishing the likelihood that potential buyers would be compelled to commit crimes to secure the purchase price. Negative propaganda campaigns akin to those presently being conducted against cigarette smoking, could also accompany drug legalization. Other crimes, such

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[104] To deny this we would have to reverse all criminal law. If junkies necessarily commit crimes, then they lack a *mens rea*. If they act without a specific guilty choice they have no requisite guilty mind. A whole line of cases has grown up in this area. *See* Townsend v. Sain, 372 U.S. 293 (1963); Hansford v. United States, 365 F.2d 920 (D.C. Cir. 1966); People v. O'Neil, 66 Wash. 2d 263, 401 P.2d 928 (1965); Robinson v. California, 370 U.S. 660 (1962). *See generally* Goldstein & Katz, *Abolish the "Insanity Defense"—Why Not?*, 72 YALE L.J. 853 (1963).

[105] Findings establish that marijuana does not cause crime. *See Hearings on Taxation of Marijuana H.R. 6385 Before the House Committee on Ways and Means*, 75th Cong., 1st Sess., (1937); Bromberg & Rodgers, *Marijuana and Aggressive Crime*, 102 AM. J. OF PSYCHIATRY 825-26 (1946). *See generally* Murphy, *The Canabis Habit, a Review of Recent Psychiatric Literature*, 15 BULL. OF NARCOTICS, No. 1 at 15, 19 (1963). On the other hand, the growth of riots following integration and demonstrations are grist for the mill of the racist right.

[106] *See* Gray v. Conecticut, 159 U.S. 74 (1895); Rosenblatt v. California State Bd. of Pharmacy, 69 Cal. App. 2d 69, 158 P.2d 199 (1945); *cf.* American Civil Liberties Union v. Board of Educ. of City of Los Angeles, 59 Cal. 2d 203, 379 P.2d 4, 28 Cal. Rptr. 700 (1963); American Civil Liberties Union v. Board of Educ. of San Diego Unified School Dist., 59 Cal. 2d 224, 379 P.2d 16, 28 Cal. Rptr. 712 (1963).

[107] *Cf.* Prince v. Massachusets, 321 U.S. 158 (1944).

as providing drugs to a minor and aiding a minor in their use could be created. Once dispensation is restricted to authorized sources, regulation, except as to quantity which is an individual choice, may be engrafted as it is for alcohol and off-track betting. In such a system, sanctions are applicable and only private individual use or communal use by adults would be permitted, and only if the drugs were obtained from legal sources.

Many also maintain that use of drugs, particularly LSD and DMT, has serious psychological consequences. But the problem is very difficult. In many cases the state-labeled "insanity" is labeled by others the ideal experience or style of life—"nervous." Claims that drug use results in bizarre behavior and unproductive people are met by claims that such behavior is ideal and that productivity is a false value. Insanity itself raises many of the issues in the range of freedom of expression.[108] Whether drugs create or manifest psychological patterns is in dispute;[109] many materials legally obtainable may contribute to a breakdown in mental functioning or lead to temptations to obtain money illegally. Against this range of considerations we may return to our previous distinction between tendency-creating acts and expressions and the act itself. The use of materials which may create a state of being characterized by some as insanity cannot be prohibited, although illegal acts committed by the user, such as child neglect,[110] may be punished. The only difficult issue is the moral question of these persons becoming a burden on the state and our right therefore to prevent those things that increase that possibility. But this issue appears to have been laid to rest by decisions in the welfare field. People are free to move and to be burdens on the state,[111] and procreate and be burdens with their children on the

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[108] The authors would like to thank H. Leroy Jackson, Jr., for this suggestion.

[109] *See* text accompanying notes 52-68 *supra;* note 99 *supra.* Note the dicta in *Allgeyer v. Louisiana* that police power must respect and not infringe the right to pursue happiness and use one's faculties in a lawful way. 165 U.S. 578, 589-90 (1897).

[110] What of the argument, if sound, that use of LSD results in chromosome damage? Even Thomas Aquinas thought a child not a murderable human until eight days after conception, so it is hard to believe a conjectural statistical effect on a non existent could be made the subject matter of a crime. We have come some way since Holmes' third-generation-of-idiocy rationale. *Compare* Buck v. Bell, 274 U.S. 200 (1927) *with* Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535 (1942) *and* Griswold v. Connecticut, 381 U.S. 479 (1965). Chromosomes are unlikely victims for crimes; eugenics is not yet jurisprudence. Let us note in passing that cigarette smoking and hunger have been better demonstrated to injure the unborn. Yet prosecutions of the welfare mother for failure to purchase foods constituting a balanced diet would violate the established money-payment principle which allows recipients to spend as wanted.

[111] *See* Edwards v. California, 314 U.S. 160 (1941); Thompson v. Shapiro, 270

state.[112] If the consequence of a protected act means direct state support, that is the unpredictable price a free society has to pay.[113]

Many maintain, although many dispute, that drug use creates a propensity to commit crimes.[114] Assuming that were the case it would make no argument. Could one prosecute for poverty? Could one prosecute for belonging to a reading society whose traditions were violence? or for having a cook-out where members were "likely" to commit crimes?[115]

Again, we must recur to the implicit model of man in criminal law. We punish for acts made after decision. Many factors, rational and psychologcial, may enter a decision and culminate in an act. We may not punish on the basis of factors, although there may be some statistical correlation between factors and acts, since the function of punishment is directed toward the individual, and must attend to his individual acts, and the utilization, manifestation and control of the various factors ingredient in a decision. A sum of factors is neither a decision or an act—it requires the *man* to do something. Moreover, factors interrelate and to prosecute for one factor without knowing what others may be necessary to trigger the result would violate even the rationale of prevention. Recognizing the complexity of decision even without the common-law assumption of free will leads to a rejection of decision-factor prohibition. And, let us note, that the acts worried about are crimes subject to prosecution (and to prosecute for drugs might lead to more irrationality in plea-bargaining) so one could increase sanctions for crimes committed while under the influence of drugs as is done for liquor and gun use.[116]

F. Supp. 331 (D. Conn. 1967). *But see* Harrell v. Board of Comm'rs, 269 F. Supp. 921 (E.D. Pa. 1967).

[112] Such would be the implication of Griswold v. Connecticut, 381 U.S. 479 (1965), particularly in conjunction with Sherbert v. Verner, 374 U.S. 398 (1963). Since travel and procreation are constitutionally protected rights, exclusion from benefits because of the exercise of those rights would be an unconstitutional classification.

[113] We encourage the payment of direct and indirect support for those things enabling choice in the area of constitutional freedom. *See* Everson v. Board of Educ., 330 U.S. 1 (1947); Weiss, *supra* note 19 at 612-17, 621-23. Armies are raised and supported so that people may live freely. The consequent loss of income and burden on the state are the price of supporting freedoms of choice.

[114] *See* TAYLOR, NARCOTICS, NATURE'S DANGEROUS GIFT 19 (1949). Consider the reverse argument that crime and happiness are inversely related to heroin use.

[115] *See* United States v. Bufalino, 285 F.2d 408 (2d Cir. 1960).

[116] Rather than violating the second amendment, proponents of gun control legislation would be better-advised to follow the English method of imposing more severe sanctions for crimes committed with guns.

One might argue for possible prosecution for attempted suicide of those who employ drugs. The analogy fails. In Russian roulette we have a clear individual probability, in drug use statistical. For some individuals, drugs might never decrease life expectancy for others certainly; it may depend on the body type. Until we know the precise mechanism for accurate prediction, we have no proof that a drug user is risking his life and arguably attempting suicide. To the degree that drugs are classified with those items which may tend to diminish life, the distinction between tendency-creating acts and direct acts of destruction still holds.

To approve of proscriptions against suicide is not inconsistent with our thesis. Suicide is a form of murder. Not only an avoidance rather than a solution of life's problems, it also can be considered immoral because it, like all human deaths, wreaks irrevocable havoc on others and destroys unduplicable potentialities. Unlike other acts which manifest or create a propensity toward acts which are destructive, suicide is irreversible and destroys the agency while creating harm. Taking the steps one at a time: (1) Suicide is an act after which there is no more. If a person does something which creates a tendency, the tendency may be resisted or even the tendency-creating acts ceased. An act of suicide is ultimate—nothing can reverse it or stop its consequences. (2) The argument against prohibition of tendency-creating acts rests on the idea that we punish on a model of free-will. Sanctioning after *mens rea* does not apply to suicide for, after its completion, there can be no free-will. The agency is no more. Suicide prevents resisting the tendency. (3) Suicide has consequences on others. On all these grounds, our argument does not prevent sanctioning suicide. If not, then the argument can be extended without ruining the rationale on policy reasons.

IV. Conclusion

There is no impediment to our conclusion. Use of drugs reveals certain perspectives and psychological patterns. When observed, it may communicate sentiments as it arouses reactions. In a society formed of equally free men with no restrictions on the pure communication of positions, with sanctions predicated on acts creating tangible harm to others, drug use is outside the range of sanctions and protected as private expression. Assuming we only punish for acts chosen by free men, those activities, including drug use, which a man does to live with himself and articulate for himself his style of life may not be forbidden.

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LEGISLATION

The Legalization of Marihuana: A Realistic Approach, Part I

"Bhang and ganja in the Old World, marihuana in the New, will never be put down by all the propaganda against them, whether true or false. Exhilaration of spirit, the flights of pure imagination, the feeling of ascending as though one floated above reality, the freedom from serious aftereffects, and most of all the lack of permanent damage —it is these that make the extermination of hemp seem quite hopeless, even to those dedicated to that enterprise."[1]

I. Introduction

All present indications point to an increase in marihuana use throughout the United States.[2] Twenty-five years ago, the drug was found almost exclusively among the working class and minority groups,[3] but the present trend has been toward increased use among people in the middle and upper income and social strata of society.[4] As a result of this trend, the "marihuana problem" is gaining widespread prominence. More and more individuals, especially youth, are being subjected to the severe penalties associated with possession and use of marihuana. Not only are people becoming more aware

1. Taylor, *The Pleasant Assassin: The Study of Marihuana*, in The Marihuana Papers 15 (D. Solomon ed. 1966).

2. A Report by the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 213 (1967) (hereinafter cited as President's Report), states: "To the limited extent that police activity is an accurate measure, use appears to be increasing. Bulk seizures of marihuana by Federal enforcement authorities totaled 5,641 kilograms in 1965 as against 1,871 kilograms in 1960. Bureau of Narcotics arrests for marihuana offenses about doubled over the same period of time." Dr. Stanley F. Yolles, director of the National Institute of Mental Health, testified that the United Nations estimated that in 1950 there were 200,000,000 users of marihuana in the world, mainly in India and in North Africa. Estimates in the United States have been as high as 20,000,000, but it is much more likely that of 4,000,000 to 5,000,000 persons have used it at least once. The National Observer Mar. 11, 1968, at 12, col. 3. *See also Lindesmith, Introduction to* The Marihuana Papers, *supra* note 1, at xxiii; New York County Medical Society Report, *The Dangerous Drug Problem*, 22 N.Y. Med. 241, No. 9, May 5, 1966 (hereinafter cited as N.Y. C'ty Med. Soc'y Report); Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

3. LaGuardia Report, The Marihuana Problem in the City of New York 8-11 (1944) (hereinafter cited as Mayor's Report); Solomon, *Editor's Foreword* to The Marihuana Papers, *supra* note 1, at xiv-xv.

4. Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*, in Task Force Report: Narcotics and Drug Abuse 24 (1967) (hereinafter cited as Blum, *Dangerous Drugs*); President's Report, *supra* note 2, *at* 213; Solomon, *supra* note 3, at xx; Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

of the legal punishments, but existing facts as to the effects of marihuana are being brought to public attention with greater frequency. Nevertheless, there remains a great gap between the known facts and risks and reputed facts and risks.[5] As is the case with other dangerous drugs, existing knowledge concerning such matters as the effects of marihuana on the individual, the types of persons who use it, and the relationship of use to crime is confused and incomplete. There is, however, sufficient information to warrant, if not require, a review of the existing system of control.

Before making such a review, it must be recognized that the programs, laws and recommendations based on existing knowledge may be of little value unless they stem from an objective analysis based upon accepted medical knowledge rather than an emotional reaction stemming from misinformation. The purpose of this note is to present the realities of marihuana generally with the hope of dispelling some unfounded myths which have been created and accepted by the majority of the public; it will examine the current method of prohibiting the use of marihuana and will then present what is believed to be a more realistic approach to the problem.

II. Marihuana

A. *General Aspects*

Marihuana comes from the flowering tops of the leaves of the female hemp plant, Cannabis indica.[6] The plant often is found growing wild, but it can be cultivated in any temperate or semi-tropical climate, including the United States.[7] Producing bizarre psychic and physical effects in man when eaten, drunk, or smoked, cannabis or hashish[8] is used extensively in Middle Asiatic, Eastern and Southern Mediterranean, and North African countries, especially Egypt.[9] In the United States, the dried leaves are smoked in the

5. Blum, *Dangerous Drugs*, *supra* note 4, at 26.

6. Cannabis sativa L., Cannabis indica, and Cannabis americana are agreed to be the same plant, varying somewhat in size and appearance with climate and soil, but always producing an intoxicating principle. It is consumed in many ways and under many names in different parts of the world. Murphy, *The Cannabis Habit: A Review of Recent Psychiatric Literature*, 15 U.N. Bull. on Narcotics No. 1, 15 (Jan.-Mar. 1963). Other names for cannabis or its products include hashish, charas, bhang, ganja, dagga, and marihuana. L. Goodman & A. Gilman, The Pharmacological Basis of Therapeutics 299 (3d ed. 1965). (The terms marihuana and cannabis will be used interchangeably throughout the note.)

7. President's Report, *supra* note 2, at 213.

8. A derivative of the hemp plant which is more potent than marihuana. It is rarely found in the United States. *Id.*

9. In these areas, the common practice is to take it orally as a liquid or solid. Proceedings, White House Conference on Narcotic and Drug Abuse 286 (1962) (hereinafter cited as Proceedings).

form of a cigarette ("reefer"), occasionally mixed with tobacco. The user must employ a technique of slow and deep inhalation of the unpleasant, irritating smoke, followed by complete consumption of the cigarette, in order to achieve maximal vaporization and absorption of the resins.[10] The psychic changes induced vary with the individual, his existing mood, and environmental conditions. The usual effects are hilarity and a general breakdown of emotional restraints, although occasionally the individual becomes quarrelsome. Distortion in perception of time and space is common, and auditory perceptions of a rythmic nature are markedly accentuated, leading to rather extensive use among musicians.[11]

Although there is some medical use for the drug in other parts of the world—especially in folk medicine—it is generally agreed that neither marihuana nor other cannabis preparations currently have any accepted medical use in the United States.[12] Despite the fact that marihuana is no longer classified as an "official drug," there is still some feeling that it might have medical value.[13] The literature of the past decade frequently mentions possible effects other than intoxication.[14] In a recent trial involving possession and sale of marihuana, Dr. Joel Fort, a respected psychiatrist and drug consultant who has worked at the Federal Narcotics Hospital in Lexington, Kentucky, testified that marihuana might be useful for some agitated persons, "'in that the tensions they live under, the depression that they might suffer from, would be relieved or alleviated by a certain pattern of marihuana use.'"[15] A pharmaceutical chemist also stated that marihuana might have therapeutic value in medicine.[16] Although reports of these effects may not now be sufficiently convincing to justify the drug's use in modern medicine, it is clear that more research can and must be done, especially in light of the extremely low cost of marihuana and its potential value to the poor in many countries.[17]

10. *Id.*

11. For a description of the immediate physical and psychological effects of marihuana use see Taylor, *supra* note 1, at 14-15. For a more detailed description of the biological aspects of marihuana and the manner in which it is used see PRESIDENT'S REPORT, *supra* note 2, at 213; PROCEEDINGS, *supra* note 9, at 286; Solomon, *supra* note 3, at xiii; Taylor, *supra* note 1, at 3.

12. PRESIDENT'S REPORT, *supra* note 2, at 213; Blum, *Dangerous Drugs*, *supra* note 4, at 26; GOODMAN & GILMAN, *supra* note 6, at 300.

13. The World Health Organization Expert Committee on Addiction-Producing Drugs feels that although marihuana has no medicinal effect which outweighs its disadvantages or which cannot be substituted for, the drug does have medicinal properties other than that of intoxication. Murphy, *supra* note 6, at 20.

14. *Id.*

15. Wall Street Journal, Nov. 20, 1967, at 8, col. 3. It is possible that marihuana might provide a safe and necessary outlet (preferable to alcohol) for persons burdened with the ever-increasing tensions and problems of today's world.

16. *Id.*

17. Murphy, *supra* note 6, at 21.

B. *Is Marihuana a Narcotic?*

Although marihuana is treated as a narcotic under many state laws and in the same manner as "hard narcotics" by federal law, it is not a narcotic.[18] In general, drugs liable to abuse are usually put into either of two classifications—"narcotics" or "dangerous drugs," and the people who abuse them are usually called "addicts" or "users."[19] The terms have been used carelessly and without the precision necessary for objective analysis. The dictionary defines a narcotic as a substance which "allays sensibility, relieves pain, and produces profound sleep."[20] Its legal definition, however, does not refer to one class of drugs, each having similar chemical properties or pharmacological effects.[21] Rather, the term is applied to a number of different classes of drugs which have been grouped together for purpose of legal control.[22]

The most accurate definition of narcotic is limited to opium, its derivatives and synthesized analogs.[23] "Narcotics" as described by law or in popular speech, however, may include a number of drugs which are not opiates and which do not produce severe psychological effects upon withdrawal as do most, but not all, of the opiates.[24] So it is that "narcotics" statutes may also include marihuana, cocaine, hallucinogens, and other drugs pharmacologically dissimilar to opiates.[25] On the other hand, substances such as alcohol which are centrally active (central nervous system affecting) and do produce strong withdrawal effects may not be classified as narcotics.[26]

The Subcommittee on Narcotics Addiction of the New York County Medical Society has called marihuana "a mild hallucinogen."[27] This

18. *See* N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241, discussed in PRESIDENT'S REPORT, *supra* note 2, at 224; Blum, *Dangerous Drugs*, *supra* note 4, at 22; Murphy, *supra* note 6, at 21.

19. PRESIDENT'S REPORT, *supra* note 2, at 211.

20. WEBSTER'S THIRD NEW INT'L DICTIONARY (1961).

21. PRESIDENT'S REPORT, *supra* note 2, at 212.

22. *Id.* It should be noted that all classifications of drugs based on presumed behavior outcomes or on legal status are inadequate and confusing. Blum, *Dangerous Drugs*, *supra* note 4, at 22.

23. Blum, *Mind-Altering Drugs and Dangerous Behavior: Narcotics*, in TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 40 (1967) (hereinafter cited as Blum, *Narcotics*). There is a large class of drugs, often referred to as psychoactive or psychotropic, which includes preparations classified as opiates, stimulants, sedatives, intoxicants, tranquilizers, antidepressants, and hallucinogens. Among these the term "narcotic" is most often applied to opium, its derivatives and synthetic analogs. Among intoxicants may be included alcohol, the volatile intoxicants such as some glues, gasoline, paint thinners, ether, etc., and in another class, cannabis-derived preparations such as marihuana. Blum, *Dangerous Drugs*, *supra* note 4, at 22.

24. Blum, *Narcotics*, *supra* note 23, at 40.

25. *Id.*

26. *Id.*

27. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. *See also* The National

characterization may not be completely accurate, however, in light of evidence that marihuana "seems more likely to produce intoxicating effects similar to alcohol" than hallucinations.[28] Although it is not this note's intention to classify marihuana, it is clear from the evidence presented that it does not fall within the medically accepted definition of narcotic. It is submitted that the drug should not be included within either the federal or state narcotic statutes.

C. *Extent of Use*

Although legalized supply of marihuana is allowed in only a few countries, its production and use is nearly worldwide.[29] In the United States the largest percentage of the marihuana comes from Mexico.[30] The consensus seems to be that its use is increasing[31] and ranges from the young urban poor through disaffected "hippies," to artistic and university communities and young professional persons in metropolitan centers.[32] Use appears to be concentrated in the 18 to 30 age group, but reports of both downward (high school) and upward (over 30) diffusion are appearing.[33] Dr. Richard H. Blum states that the "best estimate is that experimentation is far more common than regular use and that heavy use (as occurs in Africa and Asia) is quite rare."[34]

There are reports of widespread use on campuses, but estimates that 20 to 50 percent or more of certain college populations have used the drug can neither be verified nor refuted.[35] Dr. Stanley F. Yolles, the director of the National Institute of Mental Health, testified that approximately 20 percent of the college students questioned

Observer, Mar. 11, 1968, at 12, col. 3.

28. Blum, *Dangerous Drugs*, *supra* note 4, at 22. "Both in the complexity of its effects and in more specific characteristics, cannabis is much closer to alcohol than to the opiates or to cocaine." Murphy, *supra* note 6, at 21. *See also* Rosenthal, *Dangerous Drug Legislation in the United States: Recommendations and Comments*, 45 TEXAS L. REV. 1037, 1047-48 (1967) (hereinafter cited as *Recommendations and Comments*).

29. Blum, *Dangerous Drugs*, *supra* note 4, at 24; Bouquet, *Cannabis* (Part II), 3 U.N. BULL. ON NARCOTICS No. 1, 38 (Jan. 1951).

30. The plant is cut, dried, and pulverized and then smuggled across the border, either loose or compressed in brick form. PRESIDENT'S REPORT, *supra* note 2, at 213; PROCEEDINGS, *supra* note 9, at 28-29.

31. See note 2 *supra* and accompanying text.

32. See note 4 *supra* and accompanying text. In contrast to marihuana use, heroin addiction on a large scale is an urban problem. Within the cities it is largely found in areas with low average incomes, poor housing, and high delinquency. The addict himself is likely to be male, between the ages of 21 and 30, poorly educated and unskilled, and a member of a disadvantaged ethnic minority group. PRESIDENT'S REPORT, *supra* note 2, at 212-13.

33. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

34. *Id.* *See also* N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241.

35. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241; PRESIDENT'S REPORT, *supra* note 2, at 213.

in recent surveys reported some experience with marihuana. It was estimated that about 2,000,000 high school and college students have had some experience with the drug, but of those students who reported using marihuana, 65 percent had used it less than 10 times, with "once or twice" the commonest response.[36] It would thus appear that the number of steady users of marihuana in our college population is small.[37]

D. *Marihuana Myths*

Although marihuana is becoming a problem of national concern, there still is a great deal of misunderstanding regarding the actual facts and risks of marihuana use. Sufficient knowledge, however, exists to dispell the myths that exist. The major areas of confusion are summarized in the following questions: (1) Do marihuana users become physically addicted, as can users of heroin, morphine and alcohol? (2) Do users develop a psychological dependence on marihuana perhaps even harder to break than physical dependence? (3) Does it cause psychotic episodes or long-range personality changes? (4) Does marihuana cause violent crime and sexual excess? (5) Is marihuana a stepping stone to the more potent, addictive drugs?

III. Effects of Marihuana Use

A. *Addiction*

There appears to be no settled definition of addiction.[38] Most frequently it connotes physical dependence, resulting from excessive

36. The National Observer, Mar. 11, 1968, at 12, col. 2. A careful California study of 121 students showed that 14 (11%) reported marihuana experiences but the majority of these 11 percent had used it on only one or two occasions—and the study selected these students for their avowed interest in the psychedelic experience. N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 241.

37. The important point in these facts is that "in contemporary America the employment of marihuana has ceased to be a subcultural affair limited to the underprivileged and the undereducated. It has become a custom that is rapidly expanding through the byways of the middle and upper classes. Today it is evident that the use of marihuana is rapidly spreading among the privileged and the literate, college student and professor alike, and finding warm and broadening acceptance by creative people of all ages in the arts, sciences, and professions who no longer wish to limit themselves to the psychologically numbing effects of alcoholic beverages." Solomon, *supra* note 3, at xx.

38. President's Report, *supra* note 2, at 211-12. Sociologists speak of "assimilation into a special life style of drug taking." Doctors speak of "physical dependence," and alteration in the central nervous system that result in painful sickness when use of the drug is abruptly terminated; of "psychological or psychic dependence," an emotional desire, craving or compulsion to obtain and experience the drug. They speak of "tolerance," a physical adjustment to the drug that results in successive doses producing

use of certain drugs.[39] However, one can become physically dependent on substances, notably alcohol, that are not considered part of the drug abuse problem.[40] In addition, psychic or emotional dependence can develop to any substance, not only drugs, which affects consciousness and is used for escape, adjustment or simple pleasure.[41]

Despite the existing discrepancies between the medical and the legal definition of addiction,[42] it is agreed that a general definition would include the following characteristics: (1) an overpowering desire or need to continue taking the drug and to obtain it by any means; (2) a tendency to increase the doses; (3) a psychic and generally a physical dependence on the effects of the drug; and (4) a detrimental effect both on the individual and on society.[43] Habituation, on the other hand, may be distinguished by the absence of true compulsion and physical dependence, little tendency to increase the dose, and use of the drug only for the pleasurable sensations it induces, not for relief of feelings of lack.[44] The obvious illustration of a habit-producing drug is alcohol.[45]

Most studies indicate that in terms of the above definitions, cannabis is "habit-forming" rather than "addiction-producing."[46] The LaGuardia Report on *The Marihuana Problem in the City of New*

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smaller effects and, therefore, a tendency to increase doses. Many statutes speak of habitual use; of loss of the power of self-control respecting the drug and of effects detrimental to the individual or potentially harmful to the public morals, safety, health or welfare. *Id.*

39. *Id.* at 212; Murphy, *supra* note 6, at 16-17. *See also* MAYOR'S REPORT, *supra* note 3, at 144-46.

40. PRESIDENT'S REPORT, *supra* note 2, at 212; Rosenthal, *Proposals for Dangerous Drug Legislation, Appendix* B, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 127 (1967) (hereinafter cited as *Proposals*).

41. PRESIDENT'S REPORT, *supra* note 2, at 212.

42. See note 38 *supra*.

43. Murphy, *supra* note 6, at 16-17. (emphasis added).

44. *Id.* at 17.

45. *Id. See also* MAYOR'S REPORT, *supra* note 3, at 144-46.

46. Murphy, *supra* note 6, at 17-22. All the information does not suggest that the drug itself induces dependency and addiction in its subject. However, it does offer an escape from the world, and for individuals whose personal inadequacy or social misery are great enough, the desire for such escape may lead to a rejection of life without the drug, which is indistinguishable from addiction. *Id.* at 18. *See also* Allentuck & Bowman, *The Psychiatric Aspects of Marihuana Intoxication*, 99 AM. J. PSYCHIATRY 248-51 (1942); Benabud, *Psychopathological Aspects of the Cannabis Situation in Morocco: Statistical Data for 1956*, 9 U.N. BULL. ON NARCOTICS No. 4, 9-15 (Oct.-Dec. 1957); Bouquet, *supra* note 29, at 35; G. S. Chopra & P. S. Chopra, *Studies on 300 Indian Drug Addicts with Special Reference to Psychosociological Aspects, Etiology and Treatment*, 17 U.N. BULL. ON NARCOTICS No. 2, 2 (April-June 1965) (hereinafter cited as *Studies*); I. C. Chopra & R. N. Chopra, *The Use of Cannabis Drugs in India*, 9 U.N. BULL. ON NARCOTICS No. 1, 26 (Jan.-Mar. 1957) (hereinafter cited as *Use in India*); Lindesmith, *The Marihuana Problem: Myth or Reality?* in THE MARIHUANA PAPERS, *supra* note 1, at 19 (hereinafter cited as *The Marihuana Problem*).

York concluded that true addiction to marihuana does not occur.[47] The evidence available at the time—the absence of any compelling urge to use the drug, the absence of any distressing abstinence symptoms, the statements that no increase in dosage is required to repeat the desired effect in users—justified the conclusion that neither true addiction nor tolerance is found in marihuana users.[48] The continuation and frequency of marihuana use, as in the case of many other habit-forming substances, depends upon controllable desires for its pleasurable effects.[49] The Report by the President's Commission on Law Enforcement and Administration of Justice states that although marihuana is equated in law with the opiates, the abuse characteristics of the two have almost nothing in common.[50] "The opiates produce physical dependence. Marihuana does not. A withdrawal sickness appears when use of the opiates is discontinued. No such symptoms are associated with marihuana. The desired dose of opiates tends to increase over time, but this is not true of marihuana.[51] Both can lead to psychic dependence, but so can almost any substance that alters the state of consciousness."[52] Dr. H. B. M. Murphy found after a review of recent psychiatric literature that the consensus was that cannabis is much closer to alcohol than to the opiates or to cocaine.[53]

B. *Physical Dependence*

Even the strongest opponents of marihuana generally acknowledge that users do not become physically addicted.[54] The President's Report states that although nausea and vomiting may be among the immediate physiological effects, there are no lasting physical effects, and fatalities have not been noted. If tolerance develops at all, it is very slight and physical dependence does not occur.[55] Intrinsically, marihuana is less dangerous and less harmful to the human body than

47. MAYOR'S REPORT, *supra* note 3, at 144.
48. *Id.* at 146.
49. *Id.*
50. PRESIDENT'S REPORT, *supra* note 2, at 224.
51. A person experiencing pleasure with two marihuana cigarettes does not achieve any greater pleasure with six cigarettes. Allentuck & Bowman, *supra* note 46, at 249.
52. *Id.* Professor Blum's findings indicate that in the United States "*neither cannabis psychosis nor cannabis dependency* has been described, although marihuana may be one of a variety of drugs used in the multihabituation pattern, where a person takes many different drugs and appears dependent, but not on any one of them." Blum, *Dangerous Drugs*, *supra* note 4, at 24. (emphasis added).
53. Murphy, *supra* note 6, at 21. Allentuck & Bowman state that "[t]he psychic habituation to marihuana is not as strong as tobacco or alcohol." Allentuck & Bowman, *supra* note 40, at 249.
54. *Id.*; Bouquet, *supra* note 29, at 27; Chopra & Chopra, *Use in India*, supra note 46, at 19; Goodman & Gilman, *supra* note 6, at 301.
55. PRESIDENT'S REPORT, *supra* note 2, at 213.

is alcohol.[56] While the alcoholic commonly substitutes alcohol for food, marihuana stimulates the appetite.[57] Chronic alcoholism is associated with various psychotic conditions and diseases.[58] In comparison, the smoking of marihuana produces relatively trivial physical effects, although it does appear that immoderate use of the more concentrated products of the hemp plant may produce deleterious bodily effects.[59] Such effects, however, are not conspicious among American reefer smokers because of the relatively small quantities of the essential drug which are ingested from the poor-quality marihuana ordinarily consumed in this country.[60]

C. *Psychological Effects*

The psychiatric literature on cannabis smoking over the past 25 years is somewhat confused as regards the effects attributed to the drug. However, it is generally concluded that cannabis is habit-forming like alcohol and not addiction-producing like opium.[61] Dr. Blum recognized that marihuana could lead to psychological dependence, but stated that cannabis dependency has not been described in the United States.[62]

D. *Marihuana Psychosis*

Most investigators warn that it is exceedingly difficult to distinguish a psychosis due to marihuana from other acute or chronic psychoses.[63] The fact that marihuana is frequently used by the mentally unstable,[64] makes it difficult to ascertain whether marihuana was the primary

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56. Chopra & Chopra, *Use in India, supra* note 46, at 19; Lindesmith, *The Marihuana Problem, supra* note 46, at 19. *See also* Allentuck & Bowman, *supra* note 46, at 249.

57. Lindesmith, *The Marihuana Problem, supra* note 46, at 19; MAYOR'S REPORT, *supra* note 3, at 64.

58. Alcoholism is associated with Korsakoff's psychosis and cirrhosis of the liver. Lindesmith, *The Marihuana Problem, supra* note 46, at 19.

59. *Id.* Chopra & Chopra, *Use in India, supra* note 46, at 19. *See also* Bouquet, *supra* note 29, at 27; MAYOR'S REPORT, *supra* note 3, at 64.

60. Lindesmith, *The Marihuana Problem, supra* note 46, at 19. *See* also N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. The American marihuana smoker who inadvertantly uses too much when he switches to the more potent ganja plant raised in Mexico and the West Indies is likely to experience nothing more alarming than going to sleep and waking up hungry. Lindesmith, *The Marihuana Problem, supra* note 46, at 19-20.

61. *See* note 46 and text accompanying notes 46-53 *supra*.

62. *See* notes 52-53 *supra* and accompanying text.

63. Murphy, *supra* note 6, at 18-19; Chopra & Chopra, *Use in India, supra* note 46, at 24.

64. Murphy, *supra* note 6, at 19. "Like alcohol, it (marihuana) is alleged to carry no danger for the stable personality, but to attract the neurotic and psychopathic, who are also the people that tend to take the heavy doses." *Id.* at 21.

cause of insanity or whether indulgence in it was only secondary to the existing mental disorder.[65]

Although studies in India[66] and North Africa[67] show that cannabis psychoses may occur in association with heavy use of potent forms of cannabis,[68] many writers suggest that cannabis is a relatively unimportant precipitating agent.[69] In a report by Dr. I. C. Chopra and Col. Sir R. N. Chopra on the use of cannabis in India, the authors concluded that:

> the moderate use of these drugs does not lead to insanity in the majority of the individuals unless some predisposing factor is present. The will power and self-reliance of the addicts may be weakened, as is usually the case with drug habits, but the character and mental faculties of those taking small and moderate doses remain practically normal. The *social disfavor and boycott of the addicts* in certain parts of the country where the use of cannabis is not common makes it difficult for them to lead a normal life. The latter may bring about unfavorable changes in their character and gradual mental and moral deterioration, and *those who might have been otherwise law abiding citizens may break the law.* In this way they become outcasts and idlers.[70]

Other writers generally agree that a characteristic marihuana psychosis does not exist, and the drug will not produce a psychosis *de nova* in a well integrated, stable person. Dr. Murphy concluded that "evidence of chronic mental deterioration is difficult to obtain. In general the studies show no evidence of mental or physical deterioration."[71] According to Dr. Blum cannabis psychosis has not been described in the United States,[72] and in recent testimony, Dr. Joel Fort stated that he knew of no one who had been admitted to mental hospitals in this country " 'solely because of problems associated with marihuana.' "[73]

65. Chopra & Chopra, *Use in India*, *supra* note 46, at 24.

66. *Id.* at 21.

67. Lambo, *Medical and Social Problems of Drug Addiction in West Africa*, 17 U.N. BULL. ON NARCOTICS No. 1, 9 (Jan.-Mar. 1965).

68. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

69. Murphy, *supra* note 6, at 18-19. *See also* Benabud, *supra* note 46, at 4.

70. Chopra & Chopra, *Use in India*, *supra* note 46, at 18-19. (Emphasis added). In commenting on the Chopra report, Professor Murphy stated that "although it is well established that cannabis use attracts the mentally unstable, the prevalence of major mental disorders among cannabis users appears to be little, if any, higher than that in the general population. Admittedly such data may contain some fallacies, but the techniques used by the Chopras in studying their habituees differed very little from those used in more modern mental health surveys. Therefore, it would appear that true cannabis psychosis must either be very rare indeed, or that it must be substituting for other forms of psychosis. Also, the data raised the question whether the use of cannabis may not be protecting some individuals from a psychosis." Murphy, *supra* note 6, at 19.

71. Murphy, *supra note* 6, at 19.

72. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

73. Wall Street Journal; *supra* note 2, at 8, col. 3.

IV. Marihuana and Crime

Marihuana has long held the reputation of inciting individuals to commit sexual offenses and other antisocial acts.[74] The existing evidence, however, does not substantiate this claim.[75] Although proponents of the view that marihuana does not cause crime cannot conclusively prove their case,[76] they point to the prevailing lack of evidence to the contrary. Insofar as the use of marihuana is itself illicit, there can be no use of the drug without criminality. If, however, one considers crimes against person or property as opposed simply to violation of the law occurring because the drug is used, then the best evidence to date suggests that the marihuana-crime relationship depends upon "the kinds of persons who choose to use drugs, the kinds of persons one meets as a drug user, and on the life circumstances both before drug use and those developing afterward by virtue of the individual's own response and society's response to him."[77] In spite of popular beliefs to the contrary, one cannot assume that marihuana use leads inevitably to any particular type of social behavior, including criminality.[78]

One hypothesis explaining the lack of evidence that marihuana is related to crime and violence is that, given the accepted tendency of marihuana to release inhibitions, the specific effect of the drug will depend on the individual and the circumstances.[79] Marihuana use results in an accentuation of all personality traits, both those harmful and those beneficial.[80] It does not impel its user to take spontaneous action, but may make his response to stimuli more emphatic than it normally would be.[81] Thus marihuana does not alter the basic personality, but, by relaxing inhibitions may permit formerly suppressed antisocial tendencies to come to the fore.[82] It does not itself give rise to antisocial behavior,[83] and the drug may, but certainly will not inevitably, lead to aggressive behavior or crime.[84]

74. Proceedings, *supra* note 9, at 286.

75. Allentuck & Bowman, *supra* note 46, at 250; Blum, *Dangerous Drugs*, *supra* note 4, at 24-25; Mayor's Report, *supra* note 3, at 214; Murphy, *supra* note 6, at 16; N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 241; Sagoe, *Narcotics Control in Ghana*, 18 U.N. Bull. on Narcotics No. 2, 11 (April-June 1966).

76. *Id.*

77. Blum, *Dangerous Drugs*, *supra* note 4, at 23. *See also* Chopra & Chopra, *Use in India*, *supra* note 46, at 25.

78. *Id.*

79. President's Report, *supra* note 2, at 225.

80. Allentuck & Bowman, *supra* note 46, at 250. *See* Mayor's Report, *supra* note 3, at 131-32.

81. *Id.*

82. Allentuck & Bowman, *supra* note 46, at 250. *See also* President's Report, *supra* note 2, at 225.

83. *Id.*

84. President's Report, *supra* note 2, at 225.

The person then, not the drug, is "responsible" for criminal acts.[85] When an already delinquent youth takes marihuana and commits yet another delinquent act, it may well be that the timing or expression of the delinquency is shaped by the drug-induced state of mind.[86] Generally, although the scientific evidence is not adequate, one would expect that the well-integrated person under heavy marihuana doses will not do things contrary to his ordinary conduct.[87] Less mature, more neurotic, or otherwise less well–integrated persons would seem to be more vulnerable to the acting-out of impulses, the temporary expressions of conflicts or the inducement by others to misbehave.[88] Thus, a review of crimes reportedly committed under the influence of marihuana must take note of the prior criminal and sociopsychological history of the offender.

The writers, especially within the medical community, agree that although aggressive behavior can occur, it is less common with cannabis than with alcohol. The drug does not per se induce criminal behavior, juvenile delinquency or sexual excitement.[89] Even Mr. Harry Anslinger, the head of the Bureau of Narcotics and the driving force behind the 1937 marihuana laws, drastically changed his earlier views on the relationship of marihuana to crime in the congressional hearings which led to the 1956 Narcotic Control Act. He played down the connection between marihuana use and crime, emphasizing instead that marihuana was dangerous primarily because it sometimes led to heroin addiction. He pointed out that marihuana is not an addicting drug and noted that marihuana users were not being counted in the Bureau's national survey of addiction.[90]

Proponents of the view that marihuana is a major cause of crime and violence rely mainly on the hearings on the 1937 Act.[91] It found that 125 of 450 men convicted of major crimes in 1930 were regular marihuana users. Approximately one-half were murderers and one-

85. Blum, *Dangerous Drugs*, *supra* note 4, at 28.
86. *See id.*
87. *Id.*
88. *Id.* Murphy, *supra* note 6, at 210.
89. Goodman & Gilman, *supra* note 6, at 300-01; Murphy, *supra* note 6, at 15-16. The report of the New York County Medical Society states that "there is no evidence that marihuana use is associated with crimes of violence in the United States." N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. In the Chopra Report, a study of the records of criminal cases in various jails and mental hospitals revealed that "in only a very few instances (1% to 2%) temporary or permanent mental derangement induced by cannabis drugs was directly responsible for a crime." Chopra & Chopra, *Use in India*, *supra* note 46, at 22. *See also* Bouquet, *supra* note 29, at 26; Bromberg, *Marihuana: A Psychiatric Study*, 113 J. AM. MED. ASS'N 4-12 (1939).
90. Lindesmith, *Introduction*, *supra* note 2, at xxiv.
91. *Hearings on Taxation of Marihuana Before the House Ways & Means Comm.*, 75th Cong., 1st Sess. 23-24 (1937), discussed in, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13 (1967).

fifth of those tried for larceny, robbery, and assault were regular users. Excerpts from files of law enforcement agencies were used to demonstrate a marihuana-crime casual relation. The validity of such a demonstration involves three assumptions which are questioned by opponents of the present law: (1) The defendant was a marihuana user. Usually this can be determined only by the defendant's own statement or by his possession of the drug at the time of arrest. (2) He was under the influence of marihuana when he committed the criminal act. Again a statement is most often the source of the information. Chemical tests of blood, urine, and the like will not detect marihuana. (3) The influence of the marihuana caused the crime in the sense that it would not have been committed otherwise.[92]

Other writers have concluded from literature surveys and personal contact that the association between the use of marihuana and the commission of various crimes is clearly demonstrable.[93] Dr. James C. Munch bases such conclusions, in part, on a review of cases from law enforcement files where crimes of various types were apparently committed after use, and under influence of marihuana.[94] Commenting on this study, Professor Michael P. Rosenthal states that it is unclear whether in these cases the person charged was under the influence of the drug (and, if so, to what extent) at the time of the criminal act, or whether he was merely a user.[95] In either event it is extremely questionable whether such data throws light on the relationship between marihuana and crime, other than to show that: (a) some marihuana users, or (b) some marihuana users while under the influence of the drug, have committed some crimes. It does not tell us why they did so (*i.e.*, whether these persons would have been as likely to commit crime if they were not under the influence of the drug or were not users) or whether the estimated size of the group of marihuana users under the influence of the drug who do commit crime (other than the acquisition, use, and simple possession or disposition of marihuana itself) is significant or insignificant compared to the estimated size of the marihuana-using population.[96]

With regard to the relationship of marihuana use to traffic accidents, sufficient data is lacking. One study in the United States, using a cannabis-like compound, suggested that motor performance was not

92. TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13 (1967). For a more detailed description of the passage of the Marihuana Tax Act see Lindesmith, *Introduction, supra* note 2, at xxiii-xxvi.

93. Munch, *Marihuana and Crime*, 18 U.N. BULL. ON NARCOTICS No. 2, 15-16 (April-June 1966).

94. *Id.*

95. Rosenthal, *Proposals, supra* note 40, at 127 n.440.

96. *Id.*

impaired but that the ability to shift attention was reduced.[97] Effects are no doubt related to dosage, but no driving studies based on varied dosages have been done.[98] The New York County Medical Society Report emphasized that marihuana users frequently have impaired judgment in certain areas, particularly in skilled activities such as driving.[99]

V. Marihuana as a Stepping Stone to Addiction Drugs

It is a popular assumption that marihuana is a "stepping stone" to heroin in that it is a causal factor which predisposes a person to progress to heavy drug use.[100] With reference to the belief that marihuana leads to heroin use, three critical questions must be considered: (1) What proportion of marihuana users do not go on to heroin? (2) Is marihuana use an inevitable and necessary precondition of heroin use, that is, can it be shown (a) that all heroin users first took marihuana, (b) that such marihuana use is the only factor common to heroin users, and (c) that the presence of this common factor can be shown experimentally to be a determinant of heroin use?[101] (3) Whether a marihuana user is more likely to go on to heroin than a non-marihuana user?

There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marihuana.[102] This, however, does not mean that one leads to the other in the sense that marihuana has an intrinsic quality which creates heroin susceptibility.[103] There are too many marihuana users who do not graduate to heroin, and too many heroin addicts with no

97. Wendt, *Effects of Certain Drugs Used in Self Medication in Relation to Driving Performance and Traffic Hazards*, Proceedings of the Second Highway Safety Research Correlation Conference, April 5-6, 1954, discussed in, Blum, *Dangerous Drugs*, *supra* note 4, at 25.

98. *Id.*

99. N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 241. *See also* The National Observer, Mar. 11, 1968, at 12, col. 3.

100. Blum, *Narcotics*, *supra* note 23, at 52-53.

101. *Id.* at 53. The results of such tests are, of course, negative. *Id.*

102. N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 242; President's Report, *supra* note 2, at 225.

103. President's Report, *supra* note 2, at 225. Blum points out that although case studies "suggest that many identified heroin users have had earlier experience with marihuana," they are also likely to have had even earlier illicit experience with cigarettes and alcohol. Blum, *Dangerous Drugs*, *supra* note 4, at 24. The Mayor's Report concluded that marihuana was neither a significant addiction producer itself, nor a serious channel to other addictions. Mayor's Report, *supra* note 2, at 25. Finally, the New York County Medical Society recognized in its report that it was true that over 50% of heroin users have had prior marihuana experience. However, among the hundreds of thousands of persons who have had one or a few marihuana experiences, "only a small number subsequently become heroin addicts." N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 242.

known prior marihuana use, to support such a theory.[104] Moreover, there is no scientific basis for such a theory. Dr. Louis S. Goodman and Dr. Alfred Gilman state quite explicitly that marihuana habituation does not lead to the use of heroin; the casual relationship between the two has never been substantiated.[105]

Two reasonable hypotheses may explain the alleged relationship between marihuana and heroin. First, people who are predisposed to marihuana are also predisposed to heroin use.[106] Second, it may be that through the use of marihuana a person forms personal associations which later expose him to heroin.[107]

VI. Existing Law

A. *History*

In 1930—the year the Federal Bureau of Narcotics was established[108] —only sixteen states had laws prohibiting the use of marihuana, and those statutes were generally mild and rarely enforced.[109] By 1937, largely as a result of almost eight years of persistent efforts by the Bureau, every state legislature had adopted a standard bill making marihuana illegal.[110] With the passage of the Marihuana Tax Act in 1937, the plant's legal fate was effectively sealed; the Federal Bureau of Narcotics had created a "villainous *bête noir* out of whole cloth, which it then heroically proceeded to slay in a campaign that today seems more noteworthy for its zeal than for its principles."[111]

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104. President's Report, *supra* note 2, at 225. Blum states that "[m]ost persons who experiment with marihuana do not try heroin, some heroin users even in slum cultures have not first tried marihuana, and among heroin users first trying marihuana a number of other common factors are also likely to be present. Among these may be experimentation with other illicit drugs reflecting a general pattern of drug interest and availability." Blum, *Narcotics, supra* note 23, at 53. *See also* Lindesmith, *The Marihuana Problem, supra* note 46, at 27; Mayor's Report, *supra* note 3, at 13; N.Y. C'ty Med. Soc'y Report, *supra* note 2, at 242.

105. Goodman & Gilman, *supra* note 6, at 300. "There is no evidence to suggest that the continued use of marihuana is a stepping stone to the use of opiates." Allentuck & Bowman, *supra* note 46, at 250. "The truth of the matter . . . is that very few marihuana users go on to heroin, and very few alcohol users graduate to the use of heroin." Lindesmith, *The Marihuana Problem, supra* note 46, at 27.

106. President's Report, *supra* note 2, at 225.

107. *See* Blum, *Narcotics, supra* note 23, at 53.

108. Under a recent reorganization plan the Bureau of Narcotics has been shifted from the Treasury Department to the Justice Department, N.Y. Times, Feb. 8, 1968, at 1, col. 1.

109. Solomon, *supra* note 3, at xv.

110. *Id.*

111. *Id.* at xv-xvi. For a detailed discussion of the history of the state and federal marihuana laws see *id* at xiii-xvi; Lindesmith, *The Marihuana Problem, supra* note 46, at 23-27.

B. *Federal Laws*

1. *The Marihuana Tax Act.*—The Marihuana Tax Act was modeled after the Harrison Act.[112] It was designed to curb the use of marihuana by the use of federal police power, and, like the Harrison Act, imposed penalties upon both buyers and sellers. As stated, the objectives of the act were: (1) making marihuana dealings visible to public scrutiny; (2) raising revenue; and (3) rendering difficult the acquisition of marihuana for nonmedical purposes and noncommercial use.[113] The Act was the result of a publicity campaign staged by the Federal Bureau of Narcotics under Mr. Harry Anslinger's direction and leadership.[114] The bill was passed with little discussion and after brief hearings, on the ground that marihuana was a highly dangerous drug inciting its users to commit crimes of violence and often leading to insanity.[115]

At the federal level marihuana is controlled in a manner similar to heroin and other "hard narcotics." Federal control is maintained via the taxing power, and a transfer tax and an occupational tax are prescribed by the Marihuana Tax Act.[116] The Act permits the Secretary of the Treasury or his delegate, to require registrants to render information returns, verified by affidavit, setting forth the quantity of marihuana received or harvested during "such period immediately preceding the demand of the Secretary . . . not exceeding 3 months."[117] If the registrant is not solely a producer, he must set forth the persons from whom he received it and the date and quantity of each receipt.[118] Most transfers[119] are taxable and must be made pursuant to official written order.[120] The tax on transfers to registrants is one dollar an ounce;[121] transfers to unregistered persons are taxed in the prohibitive amount of one hundred dollars an ounce.[122]

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112. 26 U.S.C. §§ 4701-36 (1964). The Act was passed by Congress in 1914 to control opium and its derivatives, including heroin and morphine.

113. PRESIDENT'S REPORT, *supra* note 2, at 224.

114. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 23.

115. *Id.* The public was told that marihuana was a "scourge" which undermined its victims and degraded them "mentally, morally and physically." It had a "corroding effect on the body and on the mind, weakening the entire physical system and often leading to insanity after prolonged use." H. ANSLINGER & W. TOMPKINS, THE TRAFFIC IN NARCOTICS 20-22 (1953).

116. 26 U.S.C. §§ 4741-62 (1964). The Act was originally passed in 1937. Act of Aug. 2, 1937, 50 Stat. 551. For a detailed description of the existing law, see PRESIDENT'S REPORT, *supra* note 2, at 213-14; Rosenthal, *Proposals*, *supra* note 40, at 128-29; Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1074-77.

117. 26 U.S.C. § 4754(a) (1964).

118. *Id.*

119. Exceptions are listed in 26 U.S.C. § 4742(b)(1)-(5) (1964).

120. 26 U.S.C. § 4742(a) (1964).

121. *Id.* § 4741(a)(1).

122. *Id.* § 4741(a)(2). A transferee must obtain an official written order form in

The Marihuana Tax Act prohibits interstate shipment, transportation, and delivery, but exempts from these prohibitions registrants who have paid the occupational tax and other enumerated classes of persons who are engaged in "legitimate" dealings.[123] It also prohibits persons required to register and pay the occupational tax from importing, manufacturing, producing, dealing in, compounding, prescribing, administering, dispersing, selling, or giving away marihuana without having registered and paid the tax.[124] Where a written order is required, the Act forbids transferors to make transfers without one,[125] and prohibits transferees required to pay the transfer tax from acquiring or otherwise obtaining the drug without having paid it.[126] Proof of possession combined with failure to produce a written order after reasonable notice and demand from the Bureau of Narcotics is "presumptive evidence of guilt" of unlawful possession.[127]

2. *The Narcotic Drug Import and Export Act.*—The Narcotic Drug Import and Export Act prohibits knowing unlawful importation with intent to defraud the United States, and the receipt, concealment, purchase, or sale, or unlawful importation.[128] Unexplained possession of marihuana is "sufficient evidence to authorize conviction" under this section, just as it is in the case of the Marihuana Tax Act.[129]

3. *Federal Penalties.*—Penalties under the federal marihuana laws are the same as for violations involving narcotics, and they are harsh.[130] Particularly long sentences are prescribed for sales to juveniles.[131] In 1951, following the post-World War II upsurge in reported addiction, mandatory minimum sentences were introduced for all narcotic and marihuana offenses.[132] In addition—as in the case of

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triplicate from the Bureau of Narcotics. *Id.* § 4742(a). The original is to be given by the transferee to his transferor, and the transferee and the Bureau each keep a copy. *Id.* § 4742(d). Both the original and the transferee's copy are to be retained and made available for inspection for two years. *Id.* The written order requirement is inapplicable to transfers by registered practitioners to patients "in the course of . . . professional practice only," but the practitioner must maintain records of each transfer and keep them available for inspection for two years. *Id.* § 4742(b)(1). Similarly, transfers "made in good faith" pursuant to written prescription must be retained for inspection for two years. *Id.* § 4742(b)(2).

123. *Id.* § 4755(b).

124. *Id.* § 4755(a).

125. *Id.* § 4742(a).

126. *Id.* § 4744(a).

127. *Id.*

128. 21 U.S.C. § 176(a) (1964).

129. *Id.* § 174.

130. 26 U.S.C. § 7237 (1964). The present federal narcotics and marihuana laws equate the two drugs. An offender whose crime is sale of a marihuana reefer is subject to the same term of imprisonment as the peddler selling heroin. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 42.

131. 26 U.S.C. § 7237(b).

132. Boggs Act of 1951, 65 Stat. 767. United States drug control policies have

narcotics—probation, suspended sentence,[133] and young adult treatment[134] were unavailable for violations of the illegal importation and written-order provisions. Under a law enacted in November, 1966, violators of the federal marihuana laws were made eligible for parole.[135] Previously, violators of the illegal-importation and written order provisions were ineligible for parole,[136] and violators of other provisions were not eligible for parole for any offense after the first offense.[137]

C. *State Laws*

Marihuana is included as a narcotic under the Uniform Narcotic Drug Act,[138] which is, either in whole or in part, the basis of narcotics regulation in forty-eight states.[139] Simple possession is prohibited in virtually every state, and some states also prohibit use. State penalties for marihuana violations are frequently severe,[140] as the statutes often make no distinction between penalties for marihuana and hard narcotics violations.

traditionally been built around two judgments: (1) that drug abuse was an evil to be suppressed; and (2) that this could most effectively be done by the application of criminal enforcement and penal sanctions. As a result, the one traditional response to an increase in drug abuse has been to increase the penalties for drug offenses. The premise has been that the more certain and severe the punishment, the more it would serve as a deterrent. Typically this response has taken the form of mandatory minimum terms of imprisonment, increasing in severity with repeated offenses, and provisions making the drug offender ineligible for suspension of sentence, probation, and parole. PRESIDENT'S REPORT, *supra* note 2, at 222-23. The mandatory minimum sentences were originally 2 years for the first offense, 5 years for the second, and 10 years for the third and subsequent offenses. In 1956 the mandatory minimum sentences were raised to 5 years for the first and 10 years for the second and subsequent offenses of unlawful sale and importation. They remained at 2, 5 and 10 years for the offense of unlawful possession. *Id.* at 223; 26 U.S.C. § 7237 (1964).

133. 26 U.S.C. § 7237(d)(1) (1964).

134. Pub. L. No. 85-752, § 7, 72 Stat. 845 (1958). In the case of other violations, they are not available after the first offense. 26 U.S.C. § 7237(d)(2); Pub. L. No. 85-752, § 7, 72 Stat. 847 (1958).

135. Pub. L. No. 89-793, § 502, 80 Stat. 1449 (1966). The President's 1963 Advisory Commission on Narcotic and Drug Abuse recommended that the sentencing of the petty marihuana offender should be left entirely to the *discretion* of the federal courts. There should be no mandatory minimum penalties for marihuana offenders and no prohibition of probation and parole. The Commission is opposed to mandatory minimum sentences even in the case of multiple offenders. PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 42. (Emphasis added).

136. 26 U.S.C. § 7237(d)(1) (1964).

137. *Id.* § 7237(d)(2) (1964).

138. *See* 9B UNIFORM LAWS ANNOTATED 415 (1966).

139. Rosenthal, *Proposals, supra* note 40, at 128-29. The exceptions are California and Pennsylvania. Legislation in some states is only in part based on the Act. Also, there have been varying amendments in a number of other states. Consequently, the law in those states having legislation based on the Act is not entirely uniform. *Id.* at 129 n.479.

140. *E.g.*, ALA. CODE tit. 22, § 258 (1958) (possession and sale: first offense, 5 to 20

D. *Evaluation*

Despite its objectives, the Marihuana Tax Act raises a small amount of revenue and exposes an insignificant number of marihuana transactions to public view, since only a handful of people are registered under the Act.[141] It has become, in effect, solely a criminal law imposing sanctions upon persons who sell, acquire, or possess marihuana.[142] Even in this respect the law has not been very successful.[143] In spite of legal controls, marihuana is said to be obtainable in most metropolitan centers in the United States.[144] The penalty has clearly not prevented the recent upsurge in use, and to what extent controls have reduced use cannot be said.[145]

The complex pattern of offenses under the federal marihuana laws also has created a special sentencing problem[146] in that a single sale of marihuana may violate several statutory provisions. It may constitute concurrently a violation of the prohibition of the Narcotic Drugs Import and Export Act against trafficking in illegally imported narcotics,[147] a failure to comply with the requirement of the Marihuana Tax Act that a transfer of narcotic drugs be made pursuant to a written order on the prescribed Treasury form,[148] and a failure to comply with the requirement of the Marihuana Tax Act that narcotic drugs shall be sold in or from the original package containing the requisite tax stamps.[149] If there is a verdict of guilt on several counts, separate sentences may be imposed upon each, the result being a cumulative sentence considerably more severe than the total marihuana transaction warrants.

The effect of the introduction of mandatory minimum penalities can be determined to a certain extent. First, in spite of the application of

years and not more than $20,000; subsequent offenses, 10 to 40 years and not more than $20,000); IND. ANN. STAT. § 10-3538 (Supp. 1966) (Sale: first offense, 5 to 20 years and not more than $2,000; subsequent offenses, 20 years to life and not more than $5,000. Possession: first offense, 2 to 10 years and not more than $1,000; subsequent offenses, 5 to 20 years and not more than $2,000); PA. STAT. ANN. tit. 35, § 780-20(c), (d) (1964) (Possession: first offense, 2 to 5 years and not more than $2,000; second offense, 5 to 10 years and not more than $5,000; subsequent offenses, 10 to 30 years and not more than $7,500. Sale: first offense, 5 to 20 years and not more than $5,000; second offense, 10 to 30 years and not more than $15,000; subsequent offenses, maximum of life imprisonment and not more than $30,000). For a complete summary of state penalties for narcotics violations see W. ELDRIDGE, NARCOTICS AND THE LAW, 177-225 (2d ed. 1967).

141. PRESIDENT'S REPORT, *supra* note 2, at 224.
142. *Id.*
143. *See* note 2 *supra* and accompanying text.
144. Blum, *Dangerous Drugs*, *supra* note 4, at 25.
145. *Id.*
146. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTICS AND DRUG ABUSE 42-43.
147. 21 U.S.C. § 176(a) (1964).
148. 26 U.S.C. § 4742(a).
149. *Id.* § 4771(b).

such sanctions to marihuana, the traffic in that drug appears to be increasing.[150] Second, there has been a substantial increase in the percentage of the federal prison population serving sentences for narcotic and marihuana offenses.[151] Third, these sentencing provisions have deprived the federal courts of almost all discretion in sentencing.[152] Fourth, they have made rehabilitation of the convicted narcotic offender much more difficult.[153] The Bureau of Narcotics maintains that the present severe penalties act as a powerful deterrent.[154] This conclusion appears doubtful in light of the fact that the illicit traffic in marihuana seems to be continuing and even increasing.

VII. RECOMMENDATIONS

A. *Education*

There is convincing evidence that a critical need exists for an extensive and enlightened educational effort on marihuana use and,

150. PRESIDENT'S REPORT, *supra* note 2, at 223. *See also* note 2 *supra* and accompanying text.

151. At the close of fiscal 1965 there were 3,998 drug-law violators confined in all federal institutions. This number represented 17.9% of all persons confined. The average sentence being served by the drug-law violators was 87.6 months, and 75.5% of them were ineligible for parole. These figures compare with the 2,017 drug-law violators confined at the close of fiscal 1950, comprising 11.2% of all persons confined at that time. The 1950 violators were all eligible for parole, and while average sentence data is not available for that year, it would be safe to estimate that sentences averaged much less than one-half of 87.6 months. PRESIDENT'S REPORT, *supra* note 2, at 223.

152. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40. The Senate Subcommittee on Juvenile Delinquency, in a joint project with the Subcommittee on National Penitentiaries, sent a questionnaire to federal district judges, federal chief probation officers, federal prison authorities, and United States Attorneys, inquiring into the effects of the mandatory minimum sentence provisions, and the elimination of probation and parole in the handling of narcotic offenders. The answers to this questionnaire, digested and broken down, are as follows: (1) Of federal prison wardens, 92% were opposed to the mandatory minimum sentence provisions; 97% were opposed to the prohibition of probation or parole. (2) Of the federal district judges responding to the questionnaire, 73% opposed the mandatory minimum sentence provisions and 86% opposed the prohibition of probation or parole. (3) Of the probation officers who responded, 83% opposed the mandatory minimum sentence provisions and 86% opposed the prohibition of probation or parole. (4) Of the United States District Attorneys who responded, a group which understandably is predisposed toward more rigid punitive statutes, 50% opposed the mandatory minimum sentence provisions and 55% opposed the prohibition of probation or parole. The overall figures for the survey showed that approximately 75% of all those who responded, people who deal with the Narcotics Control Act of 1956 from day to day, oppose the two basic provisions of the act and seek their modification. PROCEEDINGS, *supra* note 9, at 230.

153. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40. This situation may have improved in regard to marihuana violators after enactment of the federal law making violators of marihuana laws eligible for parole. *See* notes 134 & 137 *supra* and accompanying text.

154. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40.

more generally, drug abuse. The problem areas are still clouded by misconceptions and misinformation about the perils of marihuana and the viciousness of the pusher.

Educational and legal efforts should reflect a rational policy, and that program should be based on the facts in order to make the public aware of the effects of marihuana. Since physicians, lawyers, social workers, and educators are frequently uninformed, an education program for professional personnel whose activities touch upon some aspect of this problem is likewise in urgent need. Finally, the program should also be directed toward the teenager, who should be made conscious of the full range of effects—physical and psychological—which marihuana, narcotics and other dangerous drugs can produce. It is believed that the best approach on this level would be a candid analysis of the problem by competent individuals in our schools.

To educate successfully, a variety of materials is needed. They should extend from suitable publications in professional journals to those designed for the mass media, ranging from books and articles to tapes and films. The federal and state governments must play an important role in this educational process from the standpoint of supplying facilities and providing financial resources.[155]

B. *Research*

Under the present system of prohibition it is difficult to obtain marihuana for research purposes.[156] While federal funds are available to finance worthwhile research projects,[157] there do not appear to be sufficient researchers or research organizations willing and able to carry them out. The broad policy of a general research program should be to increase research done on the private level and that done by organizations. In the former instance, the increase in the ease of access to drugs would provide added incentive to the individual scientist. In the latter case, an affirmative approach must be taken to encourage programs directed at filling the gaps in our present knowledge. The traditional approach of those administering federal research funds has been to wait for a researcher or research

155. For an extensive discussion of this problem see *id.* at 17-20.

156. Blum, *Narcotics, supra* note 23, at 65.

157. The National Institute of Mental Health granted more than $145,000 in the fiscal year ended June 30, 1967 for private research programs to determine in detail the chemical nature of the drug, its physical and psychological effects and the incidence of its use. In its 1968 budget, the Department of Health, Education and Welfare has asked Congress for $1 million to establish an information and education center on narcotics and dangerous drugs, including marihuana. The center was recommended by President Johnson in his report to Congress on the findings of the national crime commission in February. N.Y. Times, Aug. 13, 1967, § 1, at 46, col. 1.

organization to initiate a project proposal.[158] This process should be reversed, with the federal government becoming more active in encouraging and assisting researchers and research organizations to undertake desired projects. It may also be valuable to assist in the enlargement of existing, and the establishment of new research centers dealing with drug abuse at universities and hospitals. Colleges and universities should bear a portion of the responsibility for further development of our knowledge of drug abuse since their resources encompass all techniques used in research on drug abuse. The research efforts of the government should be meshed where possible with the formal educational program of the nation.[159]

C. *Legal Control*

1. *Legislative Approach.*—A general revision of the criminal law pertaining to marihuana must be undertaken. Further lawmaking in this regard should consider two key issues: (1) A law which is not based on facts and which has an unknown effect as far as control is concerned is not likely to solve real problems associated with marihuana use. (2) The apparent satisfaction produced by passing a criminal law directed at marihuana users must have some social function. It must do more than merely alleviate public anxiety or single out for punishment someone who represents what the public thinks is a social menace.[160]

New legislation cannot be expected to satisfy everyone, nor should it attempt to do so; but it must find its basis in the correction of current inconsistencies, in the anticipation of known effects, and in meeting standards of economy, humanity, and good sense. Similarly, any effort to modify present programs by developing new social policy must expect to follow the traditional American legislative process of: (a) generating pressure for change; (b) participating in the debate over those changes; and (c) compromising the interests of important existing groups affected by the policy.[161] In this light, this note's proposal is not designed with the idea that it would be a political compromise which might be subject to immediate acceptance by the general public; rather, it is an approach which probably finds its support within a minority of the public at the present time.

2. *Legalization of Marihuana.*—It is submitted that neither distribution nor possession with intent to distribute, nor simple possession, use or acquisition of marihuana should be treated criminally. Although

158. *Supra* note 152, at 27.
159. For an extensive discussion of this problem see *id.* at 21-30.
160. Blum, *Dangerous Drugs*, *supra* note 4, at 32.
161. Blum, *Drugs, Dangerous Behavior, and Social Policy*, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 69 (1967).

specific statutory recommendations will be suggested in Part II, it is appropriate to mention here a few general factors which must be considered. First, the legalization of marihuana will not be an easy task. The problems and issues involved are very complex and must be examined with care under the guidance of experts from both the medical and legal professions if a viable statute is to be enacted. Second, legalization will serve no purpose unless it gives, with certain limitations, those who desire to use marihuana the opportunity to obtain it. Certainly, complete legalization without restrictions should not be permitted, but by placing a heavy tax on the drug or by severely limiting the age of the consumer and the amount available, the legislatures will only perpetuate, under the guise of legalization, the evils inherent in the present system of regulation. An approach somewhat similar to that taken with alcohol is envisioned with a number of additional restrictions.[162]

3. *Other Recommendations.*—Other writers have already recommended partial legalization, *i.e.*, that simple possession, use and acquisition no longer be punishable, but that the prohibition on the distribution of marihuana or possession with intent to distribute be maintained. Professor Rosenthal[163] has recommended that marihuana be regulated like any other dangerous drug, rather than like narcotics. At the federal level he would include it under the Drug Abuse Control Amendments where "neither simple possession, use, nor acquisition would be punishable."[164] He feels that if the drug is not to be included under the Drug Abuse Control Amendments, "federal law should prohibit possession of the drug with a purpose to sell or otherwise dispose of it, and section 4744(a) . . . should be repealed."[165] Dr. James L. Goddard, Food and Drug Administration Commissioner, appears to have taken a similar position. In a confidential memorandum recently circulated among top Health, Education and Welfare officials over the signature of Dr. Goddard, it was recommended that "legal penalties for possession of marihuana when it is intended for personal use only" should be removed.[166] Finally, Dr. Alfred R. Lindesmith, commenting on the President's Advisory Commission's position that because of the relatively trivial nature of the marihuana

162. Limitations might include restricting the age of the consumer, the process and quality of production and the method of distribution and advertisement. The scope of this note does not permit a more detailed analysis of specific proposals in this area.

163. Author of *Proposals for Dangerous Drug Legislation*, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 80 (1967).

164. Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1088.

165. *Id.* at 1120. Section 4744(a) of the U.S.C. prohibits obtaining or otherwise acquiring the drug without paying the transfer tax. Proof of possession coupled with failure after reasonable demand to produce a written order is "presumptive evidence of guilt."

166. Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

evil all mandatory sentences should be eliminated for crimes involving marihuana, stated:

> These suggestions are excessively timid and not entirely logical for there is no reason why a mere user of marihuana should be subjected to a jail sentence at all. The marihuana user probably ought to be dealt with by the law along the same lines that are used with persons who drink alcohol.[167]

The recommendation that simple possession, use and acquisition not be punished has three objectives: (1) The recommendation would eliminate the unreasonably harsh treatment to which the user is presently subjected. (2) It would permit federal and state control over the use of the drug. (3) It would permit the government to punish the pusher who is probably anxious to encourage users to progress to truly addiction-producing drugs.[168] Partial legalization would, however, tend to increase the use of marihuana but not permit this increased use to be supplied by legitimate distributors. As a result, the user-pusher contacts will be increased, probably leading to increased crime and increased heroin use, as the pusher would not be content to limit his sales to marihuana.[169]

4. *Reasons for Legalization.*—In light of our present knowledge regarding marihuana and the objectives which the above approach is designed to achieve, there is no logical reason why only a half step should be taken by legalizing use and prohibiting distribution. It is no longer believed that the dangers of marihuana support the current narcotic-like system of prohibition. Marihuana is not only less dangerous than the "hard narcotics" but is in many respects less dangerous than those drugs regulated under the Drug Abuse Control Amendments.[170] If the dangers of marihuana do not support the criminal treatment of the user solely for his use, it is submitted that they do not support the punishment of the distributor.

It is agreed that use does not lead to physical dependence, and that marihuana psychosis does not exist in the United States. The latter occurs, if at all, among those who have used large amounts of the highly potent derivatives of cannabis for a long period of time, and there are few such users in the United States.[171] There is

167. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 31.

168. *See* note 169 *infra* and accompanying text.

169. This is true because (1) marihuana is not addiction-producing and (2) tolerance is not a result of marihuana use, as the user can always achieve the same result with the same dosage.

170. Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1118.

171. The legislatures must address themselves not only to the quality and quantity of the drug which should be sold, but also to the derivative of the drug used from the standpoint of potency.

also no reliable evidence that marihuana causes crime. The present evidence tending to support this view is not nearly sufficient to warrant the present prohibitions. Despite the number of heroin addicts who have had marihuana experience, apparently relatively few persons who have used marihuana become heroin addicts. In addition, making marihuana available would increase the amount of research done in this area and might produce beneficial results.

Finally, it is questionable whether the current narcotic-like system of regulation is any more effective in controlling marihuana traffic than the system of regulation embodied in the recommendation that marihuana be legalized and controlled. Legalization would undoubtedly increase use; but in light of existing knowledge and the regulation which could be maintained, it is likely that society would benefit in the long run from such an approach. Government-regulated distribution would probably eliminate a great deal of the user-pusher contact which at present appears to be a major factor in the marihuana-crime, marihuana-heroin relations.[172] It would also eliminate the severe social and legal treatment of the marihuana user which in many cases is a factor which causes persons who might otherwise have been law-abiding citizens to become hardened criminals.[173] This factor becomes more significant when it is noted that young adults make up a major part of the marihuana using population today.

5. *Opposition to Complete Legalization.*—Admittedly, there would be opposition to the permissive position of total legalization. The more conservative reformer can call attention to the fact that, outside of a few Asian and African countries, the use of this substance is everywhere subject to legal restrictions. It is possible that legal sanctions exercise some deterrent effect and that without them the use of this drug might spread even more rapidly and assume more virulent forms. Should the use of marihuana become as widespread as that of alcohol, it might be too late to talk of effective restrictions, since the users would command too many votes. In addition a legal marihuana industry which advertised its product and sought to improve it through research and experimentation could be embarrassing to the nation as a whole, as well as a direct economic threat to the alcoholic beverage industries and possibly to the tobacco industry. A final and decisive argument seems to be that public opinion is not likely in the foreseeable future to accept indulgence in marihuana as an equivalent of, or substitute for, indulgence in alcohol.[174]

It appears that the legalization of marihuana under regulation can meet all the above objections and achieve the desired goals of partial

172. *See* notes 77, 106 & 107 *supra* and accompanying text.
173. *See* note 70 *supra* and accompanying text.
174. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 32.

legalization. First, it is much more realistic to regulate the distribution of marihuana by federal and state control, rather than by prohibiting distribution. Second, and probably most importantly, legalization would eliminate the pusher from the picture, since the user would be able to obtain marihuana from a government distributor or some other licensed seller. Assuming marihuana is not a predisposing principle which causes the user to progress to heroin, the legalization of marihuana would thus reduce the number of heroin users. The government could insure that the licensed distributors would not also be selling addiction-producing drugs, and if marihuana sale were legal, the distributor who was making a profit from his sales would not be tempted to sell other drugs, because such sales would place him under the constant threat of loss of license. Third, the recommendation which advocates the elimination of penalties for simple possession, use, and acquisition has implicit in it the proposition that the use of marihuana is not harmful, in which case there is no valid reason for prohibiting the distribution of marihuana.

As for the other objections to legalization, there appears to be no sufficient basis for rejecting such a move. The fact that almost all of the other countries have disapproved of and subjected marihuana to legal restrictions should not prevent the United States from taking this step. General disapproval of the use of marihuana does not mean that the preventive approach is the correct manner in which to treat the problem, or that the United States should follow the pattern set by other countries. The United States has recently signed a treaty requiring the prohibition of marihuana.[175] Although this action re-

175. The Senate on May 8, 1967, consented to the multilateral Single Convention on Narcotic Drugs, 19 CONG. Q. WEEKLY REP. 782 (May 12, 1967). The treaty was ratified by the President on May 15, 1967. LVI DEP'T STATE BULL. 897 (June 12, 1967). The treaty for the first time brings marihuana under international control: Article 4. *General obligations.* 1. The Parties shall take such legislative and administrative measures as may be necessary: (a) To give effect to and carry out the provisions of this Convention within their own territories . . . . (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. Article 28. *Control of Cannabis.* . . . 3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant. Article 33. *Possession of drugs.* The Parties shall not permit the possession of drugs except under legal authority. Article 36. *Penal Provisions.* 1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation, and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offenses when committed intentionally, and that serious offenses shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. Rosenthal, *Recommendations & Comments, supra* note 28, at 1121 n.424. Rosenthal

quires that any impetus for change emanate from the federal government, it should not be used as an excuse for failing to take an appropriate step toward solving the marihuana problem. It has been demonstrated that the present system has in fact failed to prevent the recent upsurge in the use of marihuana. As mentioned above, the legalization of marihuana might increase the extent of use in this country, but in the long run it probably would have a beneficial effect. The argument that legalization of marihuana might lead to excessive use and distribution as a result of advertising and experimentation by the cigarette companies can easily be met by including restrictions on advertising in marihuana legislation. Since the prohibition of the use and possession of marihuana is not a violation of due process, the goverment would be free to regulate the distribution of the drug in any manner it might see fit. Finally, the existence of adverse public opinion is not a valid argument for failing to enact an appropriate statute. Admittedly, it is unlikely, in light of present public sentiment that such a proposal would be enacted in the near future. This factor, however, is not a valid reason for not examining the facts and proposing a proper solution to the problem.

The one valid argument against the legalization of marihuana is that the extensive use of this drug will cause social problems similar to those associated with alcohol. Dr. Blum recognized that if there is a parallel in kinds of outcomes between marihuana and alcohol, there is "clearly a risk of unknown proportion that increased marihuana availability, as for example with its legalization, might lead to increased dependency and dangerous outcomes of the sort associated with alcohol itself, the latter unquestionably being a 'dangerous' drug in the social rather than legal sense."[176] Assuming that marihuana is a socially undesirable drug, the question which must be answered is whether, in light of the pleasurable results derived from its use and the absence of any serious mental or physical consequences, the use of the drug can be prevented. There is no question that the use of the drug can be prohibited by law, but as with alcohol there is reason for serious doubt that the law actually prevents its use.

The present marihuana laws are not only grossly unfair in light of the inherent risks of marihuana use, but also they have not proved

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stated that the treaty probably would not prevent the adoption of the recommendation that simple possession, use and acquisition be no longer punishable. *Id.* The Commissioner of the Federal Bureau of Narcotics stated, however, that "it would be a violation of United States international treaty obligations to make possession of marijuana legal in this country . . . . 'The treaty requires imposition of criminal penalties for possession . . . . Failure to continue to provide such penalties for possession would be a violation of our treaty obligation'." N.Y. Times, Nov. 16, 1967, at 38, col. 4.

176. Blum, *Dangerous Drugs, supra* note 4, at 26.

successful in preventing an increase in the use of the drug by all sectors of our society. It is widely believed that the punishments associated with marihuana possession and distribution must be mitigated, but mitigation will only lead to increased use and thus increased contact between the user and the pusher of drugs. In this light, the only realistic and practical approach to the regulation of this drug is through its legalization under governmental control. Marihuana use cannot be eliminated. Any approach to the regulation of this drug which hopes to solve its associated problems must find its basis in this general assumption.

VIII. Conclusion

The present is an ideal time for the revision of our federal and state marihuana laws. The President has just created a Bureau of Narcotics and Dangerous Drugs under the Justice Department, replacing the Bureau of Narcotics under the Treasury Department and the Bureau of Drug Abuse Control under the Department of Health, Education and Welfare.[177] Legalization of marihuana is the proposed solution, but if this step is not taken, it is mandatory that there be a revision of the presently existing laws with the objective being to bring the penalties for marihuana use and sale more in line with the known risks inherent in the use of the drug. Specific approaches to this problem will be examined in Part II of this note, but it is necessary at this time to set forth some general guidelines which will be followed. Legislation legalizing use and sale of marihuana should be adopted along the following lines:

1) Legalize acquisition, use and simple possession of marihuana.
2) Legalize licensed sale of marihuana under restricted circumstances, requiring high standards for the licensees.
3) Provide stiff penalties for unlicensed sale of marihuana.
4) Require licensed production of marihuana with high standards of quality, and prohibit private advertisement.
5) Tax consumption similarly to alcohol and tobacco.

In addition to discussing the legalization of marihuana use and sale, Part II of this note will examine alternative approaches to the problem, such as mitigation of present penalties and the treatment of use and sale as misdemeanors. It will also discuss in detail the recent treaty signed by the United States regulating marihuana.[178] If it is concluded at that time that the treaty precludes legalization, steps which can be taken to relieve the United States of its obligation will also be discussed.

177. N.Y. Times, Feb. 8, 1968, at 1, col. 1.
178. *See* note 175 *supra*.

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"LIFE, LIBERTY, AND LIQUOR": A NOTE ON THE POLICE POWER.

"It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare * * * with regard to the police power, as elsewhere in the law, lines are pricked out by the gradual approach and contact of decisions on the opposing sides." *Mr. Justice Holmes, in Noble State Bank* v. *Haskell*, 219 U. S. 104.

PERHAPS the most striking development of American constitutional jurisprudence during the past quarter of a century has been the greatly increased—and as yet undefined and unlimited—scope which the courts have allowed the "police power." Successive and increasingly radical assaults on personal liberty and property rights have been sustained; *stare decisis* has not been allowed to thwart the legislative will, and while there are, of course, a few conspicuous instances in which the courts have refused to sanction police regulations,[1] it is nevertheless unquestionable that there has been a more and more liberal interpretation of "fundamental principles as they have been understood by the traditions of our people and our law." The judicial reluctance to pervert "the word liberty in the Fourteenth Amendment" by making it "prevent the natural outcome of a dominant opinion" [2] has been strikingly evident in the decisions on State liquor laws. National prohibition under the war powers of Congress and by constitutional amendment is revolutionary and spectacular; but it should not go unnoticed that coincident with these developments the courts have been sustaining, with scant ceremony, exceedingly stringent laws forbidding the possession and use of intoxicants.[3] Twenty, even five years ago, such enactments would have been declared uncon-

[1] E. g., Lochner *v.* New York, 198 U. S. 45 (1905); Hammer *v.* Dagenhart, 247 U. S. 251 (1918).

[2] Mr. Justice Holmes, dissenting opinion in Lochner *v.* New York, 198 U. S. 45, 76 (1905).

[3] Crane *v.* Campbell, 245 U. S. 304 (1917), and cases cited below.

stitutional; that they are permitted today is in consonance with the political metamorphosis that resulted in national prohibition and with the extreme war-time restrictions which were placed on liberty and property. The decisions of courts are evidence that constitutional law is sometimes practical politics.[4]

All prohibition laws have been designed, in the last analysis, to check the consumption of intoxicating liquors, and thus to reduce "the misery, pauperism, and crime, which," the Supreme Court of the United States has said, "have their origin in the use and abuse of ardent spirits." [5] With the exception of a few early laws of a particularly stringent character, it may be said, I think, that the trend of prohibition enactments towards the accomplishment of their ultimate purpose—the non-use of intoxicants—has been from indirect methods to direct control. Thus, after moral suasion had proved inadequate to cope with the evils of intemperance, the New England States attempted license laws—notably those which came before the Supreme Court of the United States in 1847. The manufacture and sale of intoxicants were put under a legislative ban in 1850, when the Maine law was adopted. "Gradually the battle for temperance shifted from the drinker to the drink seller and those behind him," and "the appeal for personal abstinence became dangerously subordinated in the temperance campaigns." A number of States followed the example of Maine, but few of them maintained the prohibition principle without temporary abandonment; laws were either repealed or not enforced and three

[4] GRAY, THE NATURE AND SOURCES OF THE LAW, pp. 116, 213. The police power, says Professor Brooks Adams, "could not be determined in advance by abstract reasoning. Hence, as each litigation arose, the judges could follow no rule but the rule of common sense, and the police power, translated into plain English, presently came to signify whatever, at the moment, the judges happened to think reasonable. Consequently, they began guessing at the drift of public opinion, as it percolated to them through the medium of their education and prejudices. Sometimes they guessed right and sometimes wrong, and when they guessed wrong they were cast aside, as appeared dramatically enough in the temperance agitation." THE THEORY OF SOCIAL REVOLUTIONS, p. 94. See also T. R. Powell, "The Logic and Rhetoric of Constitutional Law," 15 JOURNAL OF PHILOSOPHY, PSYCHOLOGY, AND SCIENTIFIC METHODS, 645.

[5] Mugler v. Kansas, 123 U. S. 623.

substitutes were attempted: high license, inaugurated by Nebraska; the dispensary system tried first by South Carolina, and then by other Southern States; and finally, "While local prohibition was applied both in Europe and the United States prior to the state-wide experiment of Maine, the distinction of legally recognizing the principle that the local community has the right to license or veto the drink traffic belongs to this country." [6] These substitutes, however, utterly failed to satisfy the agitators for a "saloonless nation," and soon, particularly after the rise of that group of professional reformers working through the Anti-saloon League—the movement for state-wide prohibition began to be successful until, in 1913, twenty-nine states had forbidden the manufacture and sale of intoxicating liquors.

These enactments were characterized by far greater stringency than the earlier ones. In order to make them completely effective the legislative authority in many cases provided that the possession of more than specified quantities of intoxicants should be *prima facie* evidence of intent to sell, but this proved inadequate and regulations were therefore passed limiting the amount that a man might import or possess, even for personal use. Until recently the right to import existed under the commerce clause of the Federal Constitution, and the States were powerless to interfere before the liquors reached the consignee. The Webb-Kenyon Act,[7] the Reed "bone-dry" amendment to the Post Office Appropriation Bill of 1916,[8] and the decisions sustaining them gave the States well-nigh plenary authority. To the accomplishment of this end a number of very difficult questions were raised as to the respective powers of the States and of Congress over intoxicating liquors in interstate commerce; but while these were important and will doubtless be precedents in the settlement of the conflicts of jurisdiction that will arise under the amendment,[9] they have now become academic by reason of national prohibition.

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[6] KOREN, ALCOHOL AND SOCIETY, pp. 69, 70, 73.

[7] Act of March 1, 1913, 37 Stat. L. 699.

[8] 39 Stat. L. 1058, 1069.

[9] Section 2 of the amendment provides: "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

But, as I have said, the amendment to the Federal Constitution was necessary only to have uniform regulations on the subject and to force prohibition on those States which did not desire it. Constitutional provisions had protected life and liberty but not liquor, except in one class of cases: the traffic in intoxicants could be dealt with at the will of the legislature, but until very recent decisions, laws so radical as to forbid possession for individual use, have not been of absolutely indubitable constitutionality, and it may be worth while to consider the chief developments (1) since 1852, when the Maine law was sustained, and 1856 when the New York Court of Appeals held unconstitutional a law which prohibited the sale of intoxicating liquors, and (2) the cases relating to possession. The summary will be a sort of obituary notice of the constitutional protection which the courts have given property and personal rights in intoxicants.

I.

The question of intoxicating liquors in interstate commerce first came before the Supreme Court of the United States in 1847, in three cases arising under the laws of Massachusetts, Rhode Island and New Hampshire, which were passed at that period when the New England States were without any very consistent policy towards the sale of liquors. The court was called upon to determine whether the three laws conflicted with the commerce clause of the Federal Constitution, but the cases are notable on account of the frequently quoted *dicta* of the judges as to the propriety with which the police power of the State might be used to prevent the manufacture and sale of intoxicating liquors. Thus Chief Justice Taney said: "And if any State deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce idleness, vice, or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic or from prohibiting it altogether, if it thinks proper." Nevertheless he added: "but broad and comprehensive as is this power [of police], it certainly cannot extend to the individual tastes and habits of the citizen which are confined entirely to himself." [10]

[10] The License Cases, 5 How. 504 (1847).

But the question of property rights as well as the individual habits of the citizen worried the State courts when they were called upon to decide the constitutionality of local regulations. The Maine prohibitory law came before the Supreme Judicial Court in 1852. Looking to the design of the enactment—"The suppression of drinking-houses and tippling-shops"—the court held that it was not the intention of the legislature to provide—and none of the language could receive such a construction—that property should not be acquired in intoxicating liquors. Thus, when an officer of the State seized eight barrels of rum, which was not to be sold in violation of any law of the State, an action of replevin could be brought in spite of the provision of the statute that no action could be "maintained in any court in this State for the recovery or possession of intoxicating or spirituous liquors, or the value thereof." The court said, however, that the legislature could declare articles capable of injuring the public health or morals not to be property; it could come to the conclusion that spirituous liquors for harmful purposes—waste of time, disorder, injury to health, etc.—should not be subjects of property, and "there would be no occasion for complaint that it had violated any provision of the constitution." The Maine law expressly recognized that liquors were property for medicinal or mechanical purposes and for transportation—not for sale—through the State; nor was there any inhibition against personal possession and use. The court, therefore, limited the general language of the prohibitory law and held it to forbid only "the maintenance of any action for the recovery or possession of such liquors or their value, that were liable to seizure and forfeiture, or intended for sale in violation of the provisions of the Act." This interpretation was necessary to make the statute constitutional.[11]

[11] Preston *v.* Drew, 33 Me. 558 (1852). The court said: "It may be said that a court of justice is not authorized to introduce by construction such a limitation; that it savors more of legislation than of construction. It may be so; and if the Court may not introduce any such limitation without encroaching upon the forbidden province of another department of the government, it cannot omit its duty to declare that provision to be in violation of the provisions of the Constitution, and void." (p. 563.) The Constitution provided, "that every person for

In nine other cases,[12] decided from 1852 to 1858, prohibitory laws were held constitutional, in some instances with scant consideration of the argument as to vested interests or property rights. The Illinois Court said that "a government that did not possess the power to protect itself against such and similar evils [the traffic in liquors] would be scarcely worth preserving"; the Massachusetts Court said in a four-line opinion that no principle of the State constitution was violated; the Iowa Court relied largely on the *dicta* of The License Cases. In only two jurisdictions were laws declared unconstitutional. This was very remarkable. In the words of the leading authority on the police power:[13]

> "We thus find only two cases in which prohibition is declared unconstitutional, mainly or exclusively in reliance upon the protection due to vested rights; there is no constitutional recognition of a right of reasonable exercise of civil liberty, except perhaps in Indiana and in a dissenting opinion in Michigan. The general judicial acquiescence in an unprecedented exercise of legislative power is all the more noteworthy, as the legislation in question was for the time almost unenforceable and in most states short-lived."

The two cases in which the power of the legislature was denied were in Indiana and New York. The Indiana Court held that the legislature was powerless to pass a prohibitory law and to destroy property rights in liquors. The State Constitution provided that the inalienable rights of the citizens of Indiana were "life, liberty, and the pursuit of happiness;" to ascertain the meaning of these "natural rights," the court looked to the common law and found that the rights of individuals included "the right of personal security, the right of personal liberty, and the right to acquire and enjoy property."[14] It was therefore

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an injury done him in his person, reputation, property, or immunities, shall have remedy by due course of law."

[12] Jones *v.* People, 14 Ill. 196 (1852); Commonwealth *v.* Kendall, 12 Cush. (Mass.) 414 (1853); People *v.* Hawley, 3 Mich. 330 (1854); Santo *v.* State, 2 Iowa 164 (1855); Lincoln *v.* Smith, 27 Vt. 326 (1855); People *v.* Gallagher, 4 Mich. 243 (1856); State *v.* Wheeler, 25 Conn. 289 (1856); State *v.* Paul, 5 R. I. 185 (1858); State *v.* Allmond, 2 Hous. (Del.) 612 (1856).

[13] FREUND, STANDARDS OF AMERICAN LEGISLATION, p. 199.

[14] 2 KENT'S COM. 1.

held that intoxicating liquors were property; that they could not be taken for public use without compensation; that the legislature could not enlarge its power over certain kinds of property by declaring that they were nuisances and forbidding their enjoyment, and that whether property was a nuisance was a question for judicial determination.[15]

A somewhat narrower view was taken by the New York Court of Appeals which held that the act of 1855, to prevent intemperance, was void so far as, by forbidding sale, it destroyed property in intoxicating liquors possessed at the time the act took effect, although, if the provisions of the statute had been confined to liquors imported or manufactured subsequent to the act, the due process of law clause of the State constitution would not have had the same application.[16]

[15] Beebe *v.* State, 6 Ind. 501, 63 Am. Dec. 391 (1855). Two judges dissented and the ruling was not followed in later cases. The opinion contains some curious statements: "It is easy to see that when the people are smarting under losses from depreciated bank paper, a feeling might be aroused that would, under our plurality system, return a majority to the legislature which would declare all banks a nuisance, confiscate their paper and the buildings from which it is issued. So with railroads, when repeated wholesale murders are perpetrated by some of them. And in Great Britain and France we have examples of the confiscation of the property of the churches even, which here the same constitution that protects the dealer in beer would render safe from invasion by the legislative power." (p. 408.) "Even in Great Britain, esteemed to have the most liberal constitution on the eastern continent, Magna Charta is not of sufficient potency to restrain the action of parliament, as their judiciary does not, as a settled rule, bring laws to the test of its provisions. Laws are there overthrown only occasionally by judicial construction. Such a thing, indeed, as deciding a law or royal decree unconstitutional, in an absolute government is unknown. Hence the oppression of the people." (p. 396.) President Lowell, in commenting on this statement, says: "But ridiculous as this scream of the American eagle certainly is, it may not be very long before we can say with truth: Hence the oppression of the minority." ESSAYS ON GOVERNMENT, p. 83 (1889).

[16] Wynehamer *v.* The People, 13 N. Y. 378 (1856). Of the case, Professor Brooks Adams says: "In that cause Mr. Justice Comstock, who was one of the ablest jurists New York ever produced, gave an opinion which is a model of judicial reasoning. He showed conclusively the absurdity of constitutional restrictions, if due process of law may be held to mean the enactment of the very statute drawn to work confiscation * * * in 1887, after controversies of this category had

The traffic in intoxicating liquors, Justice Comstock said, could be prevented with benefit to the State; nevertheless, if arguments as to the harmful character of liquors "can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of the legislature, and the guarantees of the constitution are a mere waste of words." He declared that the views in The License Cases were "*obiter dicta* merely, and even as such had no reference to the limitation of legislative power contained in state constitutions." [17] But, as has been said, in most jurisdictions, the laws were sustained, and due process clauses in State constitutions were held not to bar the enforcement of prohibitory legislation.

Until the adoption of the Fourteenth Amendment, the Federal Constitution could not be appealed to in order to protect the manufacture and sale of intoxicants; but, after 1868, cases were decided by the Supreme Court of the United States. In Bartemeyer *v.* Iowa,[18] the Supreme Court was called upon to say whether an act of the Iowa legislature was void by abridging the privileges and immunities of citizens of the United States, or depriving the liquor seller of his property without due process of law. As to the first question the Court said that the Iowa statute was in existence before the adoption of the amendment, and unless the amendment conferred privileges and immunities which Bartemeyer did not previously possess the argument failed. In the opinion, the Court said:

"But the most liberal advocates of the rights conferred by

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begun to come before the Supreme Court of the United States under the Fourteenth Amendment, Mr. Justice Harlan swept Mr. Justice Comstock aside by quietly ignoring an argument which was unanswerable." [Mugler *v.* Kansas, *infra.*] ADAMS, THE THEORY OF SOCIAL REVOLUTIONS, pp. 95-96.

[17] At p. 405. Five concurring opinions were filed and there was one dissent. Judge T. A. Johnson held that the constitutional provision "has no application whatever to a case where the market value of property is incidentally diminished by the operation of a statute passed for an entirely different object, and a purpose in itself legitimate" although he accepted the qualification of not affecting "the title, possession, personal use or enjoyment of the owner." (pp. 466, 467).

[18] 18 Wall. 129 (1873).

> that amendment have contended for nothing more than that the rights of the citizen previously existing, and dependent wholly on State laws for their recognition, are now placed under the protection of the Federal government, and are secured by the Federal Constitution. The weight of authority is overwhelming that no such immunity has heretofore existed as would prevent State legislatures from regulating and even *prohibiting* the traffic in intoxicating drinks, with a solitary exception. That exception is the case of a law operating so rigidly on property in existence at the time of its passage, absolutely prohibiting its sale, as to amount to depriving the owner of his property. A single case, that of Wynehamer *v.* The People, has held that as to such property the statute would be void for that reason. But no case has held that such a law was void as violating the privileges or immunities of citizens of a State or of the United States. If, however, such a proposition is seriously urged, we think that the right to sell intoxicating liquors, so far as such a right exists, is not one of the rights growing out of citizenship of the United States * * *."

If the liquor involved in the case had been owned at the time the sale was forbidden by the State Law, the Court said two grave questions would arise: "whether this would be a statute depriving him of his property without due process of law; and, secondly, whether if it were so, it would be so far a violation of the fourteenth amendment in that regard as would call for judicial action by this court?" [19] These questions "are not to be lightly treated, nor are we authorized to make any advances to meet them until we are required to do so by the duties of our position."

Later, in the case of Beer Company *v.* Massachusetts, the Supreme Court of the United States sustained a State prohibitory law but still adhered to the distinction which it had taken over from the New York Court of Appeals. The Boston Beer Com-

[19] At p. 133. Two concurring opinions were filed in which Mr. Justice Bradley (for himself and Mr. Justice Swayne) and Mr. Justice Field re-argued the reasons for their dissents in the Slaughter House Cases, 16 Wall. 36, and distinguished the Iowa statute from the one involved in these cases. These concurring opinions also suggested that the law might not have been upheld had the liquor been possessed prior to its passage.

pany had been incorporated for the purpose of manufacturing malt liquors, but the legislature had reserved the right to amend or repeal the charter. Under the prohibitory liquor law of 1869, liquors belonging to the company were seized and forfeited. The appeal was made to the Supreme Court of the United States on the ground that the prohibitory law impaired the obligations of contracts. This appeal the Court denied. Mr. Justice Bradley said:[20]

> "If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State.
>
> "We do not mean to say that property actually in existence, and in which the right of the owner has become vested, may be taken for the public good without due compensation. But we infer that the liquor in this case, as in the case of Bartemeyer *v.* Iowa (18 Wall. 129), was not in existence when the liquor law of Massachusetts was passed."

But this distinction could not be used when the Supreme Court of the United States was called upon to consider the prohibitory legislation of Kansas. One Mugler had engaged in the manufacture of beer for several years prior to the adoption in 1880 of an amendment to the Kansas Constitution, declaring that the manufacture and sale of intoxicating liquors should be forbidden. He continued in his business in defiance of the enforcing statute passed in 1881, and the single sale of which he was found guilty was of beer manufactured before the passage of the prohibitory law. It was shown that the buildings and machinery which Mugler used in manufacturing the liquor had little value for any other purpose, and the question was whether by denying him the privilege of engaging in his business and selling the liquors in his possession the Kansas statute deprived him of his property without due process of law.

The opinion of the court was given by Mr. Justice Harlan and was based largely on the evils attributable to the use of in-

[20] 97 U. S. 25, 32 (1877).

toxicating liquors. The Fourteenth Amendment, he said, did not take from the States any powers of police that were reserved at the time that the original Constitution was adopted; he answered the argument as to compensation for property destroyed or made valueless by disregarding it, and went so far as to hold that, in order to make effective its regulations against sale, the State might forbid manufacture for personal use. He said:[21]

> "There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights; for we cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil. If, therefore, a state deems the absolute prohibition of the manufacture and sale, within her limits, of intoxicating liquors for other than medical, scientific, and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation. Indeed, it is a fundamental principle in our institutions, indispensable to the preservation of public liberty, that one of the separate departments of government shall not usurp powers

[21] Mugler v. Kansas, 123 U. S. 623, 662 (1887). In a separate opinion, Mr. Justice Field agreed that there is nothing in the Constitution or laws of the United States affecting the validity of any State statute prohibiting the sale of intoxicating liquors manufactured in the State. But he expressed doubt as to whether the State could prohibit the manufacture of such liquors for exportation or forbid their sale if imported. As for the first question, the Court answered it in 1888, when it held that the Iowa law forbidding the manufacture of liquors even for transportation outside the State was constitutional. Kidd v. Pearson, 128 U. S. 1 (1888). The second question was answered by Leisy v. Hardin, 135 U. S. 100 (1890), and gave rise to the Wilson Act, the Webb-Kenyon Act and numerous decisions. See my papers, "State Legislation under the Webb-Kenyon Act, 28 HARV. LAW REV. 225, and "Unlawful Possession of Intoxicating Liquors and the Webb-Kenyon Act," 16 COLUMBIA LAW REV. 1.

committed by the Constitution to another department. And so, if, in the judgment of the legislature, the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. So far from such a regulation having no relation to the general end sought to be accomplished, the entire scheme of prohibition, as embodied in the constitution and laws of Kansas, might fail, if the right of each citizen to manufacture intoxicating liquors for his own use as a beverage were recognized."

After this case, the question was no longer open; the manufacturer or seller of intoxicating liquors had no constitutional rights whatever which could prevent the operation of the police power of the State, and the only Federal question involved was the extent of protection afforded by the commerce clause of the Federal Constitution to shipments from without a State [22]

II

The Supreme Court of the United States, as has been seen, went so far as to deny the right to manufacture for personal use, but until December, 1917, it was not called upon to decide the truth of Taney's *dictum* that the police power could not extend to the individual tastes and habits of the citizen. There were a number of decisions in the State courts—and some contrary authority also—holding that possession for personal use could not be prevented.[23] The leading case was State *v.* Gil-

[22] In Mr. Chief Justice White's opinion on the scope of the Webb-Kenyon Act, January, 1917, there is this *dictum:* "That government can, consistently with the due process clause, forbid the manufacture and sale of liquor and regulate its traffic, is not open to controversy; and that there goes along with this power full police authority to make it effective, is also not open. Whether the general authority includes the right to forbid individual use, we need not consider, since clearly there would be power, as an incident to the right to forbid manufacture and sale, to restrict the means by which intoxicants for personal use could be obtained, even if such use was permitted." Clark Distilling Co. *v.* Western Md. R. Co., 242 U. S. 311, 320 (1917).

[23] The text writers were unanimous in maintaining that constitutional

man,[24] but that decision was based in large part on the clause of the West Virginia Constitution which authorized the legislature to pass laws "regulating or prohibiting the sale of intoxicating liquors within the limits of this state." [25] The court held that this was "an implied inhibition to the exercise of any authority in regard to that subject which is not embraced in the grant," and declared unconstitutional a law which made it a crime to "solicit or receive orders for, or keep in his possession for another" any intoxicating liquors. The authority of the case, by reason of this constitutional provision, did not extend outside of West Virginia but it was frequently quoted.

A similar conclusion was reached by the Kentucky court. The State constitution empowered the legislature to provide a means whereby the sense of the people of any district might be taken on the question of regulating or prohibiting the "sale" of intoxicating liquors, and it was further provided that "the General Assembly shall prescribe such laws as may be necessary for the restriction or prohibition of the sale or gift of spirituous, vinous, or malt liquors on election days." Assuming that a town council had as much police power as the General Assembly, the court held invalid a local ordinance making it unlawful for any person to bring within the town, even for personal use, more than a quart of intoxicating liquor. While the

provisions protected possession. Thus it is said in WOOLLEN & THORNTON, THE LAW OF INTOXICATING LIQUORS, § 99 (1910): "A legislature has no power to prevent an inhabitant of a state keeping in store intoxicating liquors for others; for such a law is an invasion of the constitutional provision guaranteeing every person the free use and exercise of his property." Another writer maintained that since "liquors may be a legitimate subject of property, the state can not prohibit one from having them in his possession." H. J. JOYCE, THE LAW RELATING TO INTOXICATING LIQUORS, § 85 (1910). To the same effect is BLACK, INTOXICATING LIQUORS, § 38 (1892).

[24] 33 W. Va. 146, 10 S. E. 283, 6 L. R. A. 847 (1889).

[25] Constitution of West Virginia, Art. 6, § 46. However, the court said: "The keeping of liquors in his possession by a person, whether for himself or for another, unless he does so for the illegal sale of it, or for some other improper purpose, can by no possibility injure or affect the health, morals, or safety of the public; and, therefore, the statute prohibiting such keeping in possession is not a legitimate exertion of the police power. It is an abridgment of the privileges and immunities of the citizen without any legal justification, and therefore void."

point decided was simply as to the validity of this municipal ordinance, the opinion rested on the ground that it was not competent for the legislature "to prohibit a citizen from having in his own possession spirituous liquors for his own use." [26] The court said:

> "The right to use liquor for one's own comfort, if the use is without direct injury to the public, is one of the citizen's natural and inalienable rights, guaranteed to him by the Constitution, and cannot be abridged as long as the absolute power of a majority is limited by our present Constitution."

The court quoted a page from Blackstone on the absolute and relative rights of man and two pages from Mill's Essay on Liberty. This was in 1909! The decision, however, really rested on what the court deemed a restricted grant of authority to the legislature,[27] and although the case was followed in subsequent decisions, [28] it had no force outside of Kentucky.

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[26] Commonwealth *v.* Campbell, 133 Ky. 50; 117 S. W. 383, 24 L. R. A. (N. S.) 172 (1909). "We are confronted, therefore," said the court, "with the proposition as to whether or not, in this state, it is competent under the police power for any legislative body to prohibit the possession or use of liquor by one for his own necessity or comfort. Broadly stated, the question before us is whether or not it is competent for the legislature to prohibit a citizen from having in his own possession spirituous liquor for his own use. It will not require any elucidation to show that, if the citizen may be prohibited from having liquor in his possession, he can be prohibited from drinking it, because of necessity, no one can drink that which he has not in possession. So that if it is competent for the legislative body of any given city or district, or even the legislature of the state, to prohibit the citizen from having liquor in his own possession, then a new and more complete way has been discovered for the establishment of total prohibition. * * *"

[27] The whole of Kentucky was under "local option" (Constitution, § 61) and the local option statute operated uniformly throughout the whole territory in which it was put into effect by a vote of the people. A prosecution could be instituted either under the State law or a local ordinance. The general law provided penalties for violation and had many enforcement provisions. See 1 Kentucky Statutes (Carroll, 1915), ch. 81, § 2554ff.; Burdette *v.* Board of Council, 125 S. W. (Ky.) 275 (1910), and Commonwealth *v.* Barbour, 121 Ky. 463, 89 S. W. 479 (1905).

[28] In Commonwealth *v.* Smith, 163 Ky. 227, 173 S. W. 340 (1915) the court held invalid a statute (Acts 1914, ch. 7, page 25) providing that

In State *v.* Williams,[29] however, the Supreme Court of North Carolina held that when "the legislature makes it an indictable offense to carry more than a certain quantity [of intoxicating liquors] into a specified county, within a specified time, prohibiting its sale and not prohibiting its use but authorizing its use for certain purposes, it is unconstitutional, for that is taking property without due process of law and not within the police power of a state." But, as the Mississippi Supreme Court later declared,[30] the North Carolina majority opinion was accompanied by a strong dissent which propounded a question "hard to answer:"

> "* * * if the manufacture, though exclusively for one's own use and out of one's own apples and peaches, in the county can be forbidden by statute without breaking the Constitution, why cannot the importation of the same article across the county line, in a greater quantity than a half gallon per day, even for one's own use, be prohibited by the same power? The truth is that the Legislature having jurisdiction of the subject, the limitations upon its exercise

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in any county or district where the sale of intoxicating liquor was prohibited, it should be unlawful "for any person to keep, store or possess any such liquors in any room, building or structure other than the private residence of such person and which is not used as a public resort." This differed from the statute making unlawful the possession of intoxicating liquor in prohibited territory for purposes of sale. When the purpose of the owner was unlawful, the regulation was effective. The court said: "Here it is sought to go one step further, and make the possession for an innocent purpose considered from the standpoint of the police power as much of an offense as if the possession were for an unlawful purpose. Manifestly, if the Legislature has the power to prohibit such possession at places other than one's private residence, then it has the like power to prohibit such possession even at a private residence, and this is exactly what was held in Commonwealth *v.* Campbell, *supra*, could not be done. There must of necessity be limits beyond which the Legislature cannot rightfully go. We think that limit is reached when it prohibits such possession for sale or other unlawful purpose." The cases cited for authority were Gilman *v.* State, *supra*, and Eidge *v.* Bessemer, 164 Ala. 599, 51 South. 246.

[29] 146 N. C. 618, 61 S. E. 61 (1908). Chief Justice Clark, in a dissenting opinion, said that the power of the courts to declare laws unconstitutional was judicial usurpation, and if the power was to be exercised there must be an explicit provision of the constitution which was clearly violated.

[30] State *v.* Phillips, 109 Mass. 22, 87 South. 651 (1915).

rest in the wisdom and sound judgment of the Legislature, subject only to review by the people, not by the courts."

The North Carolina decision is the one of the few which did not rest upon some particular provision of the State constitution regarding the powers of the legislature.[31] But there were, a number of cases which held that municipal corporations had not the right to forbid possession. Apart from *dicta* these furnished little authority against the power of the legislature.

Eidge *v.* Bessemer[32] was the leading case. The court was dealing with a municipal ordinance and the liquors involved were lawfully acquired as property. In the later case of Williams *v.* State[33] the same judge who wrote the opinion in Eidge *v.* Bessemer carefully limited its scope:

"Attention to the question there presented for review will disclose the fact that, as against a municipal ordinance which was construed as prohibiting the keeping of intoxicating liquors for the personal use of the keeper, or rather, perhaps, as based upon a principle which involved that result, we endeavored to state some reservations in favor of the property rights and personal liberty of the individual with which the Legislature of the state had made no attempt to interfere. There was no denial of the right of

[31] The Oklahoma prohibitory law of 1911 forbade the possession of more than one quart of any alcoholic liquor. The opinion of the Oklahoma Criminal Court of Appeals quoted at great length from the Kentucky cases and its own decision [Titsworth *v.* State, 2 Okla. Cr. 268, 101 Pac. 288 (1909)], and declared that research had not "disclosed a single case in conflict with the doctrine of the authorities quoted and cited * * *. The only conclusion that we can legitimately arrive at is that the act in question is not within a reasonable exercise of the police powers of the state—is unconstitutional and void." *Ex parte* Wilson, 6 Okla. Cr. 451, 119 Pac. 596 (1911). The court said, however, that the possession of an unusual quantity of intoxicating liquors might be "a circumstance which, together with other competent proof, is admissible against the defendant in the trial of cases involving violations of the prohibitory statute. But such possession alone is insufficient to sustain a conviction." (p. 606.) See also *Ex parte* Brown, 38 Tex. Cr. App. 295, 42 S. W. 554 (1897).

[32] 164 Ala. 599, 51 South. 246 (1909). This case was definitely overruled by the Alabama Supreme Court when it sustained the possession section of the Anti-Shipping bill. Southern Express Co. *v.* Whittle, 194 Ala. 406, 69 South. 652 (1915).

[33] 179 Ala. 50, 60 South. 903.

municipal corporations to pass ordinances in accord with prohibition laws, and of course there was no denial of the right of the Legislature to enact statutes, to prohibit the traffic in intoxicating liquors, and such ordinances and statutes to prevent evasions as have real and substantial relation to the purpose of prohibition without invading the rights secured by the fundamental law." He further expressed the object of the decision by saying:

"The object of the decision was to develop a statement of the right of persons in this state, under *existing conditions, to keep liquors for their own use* and to affirm the invalidity of municipal ordinances so broadly phrased *as to deny that right.*" [34]

On the other hand, there were a number of cases which held that the right to possess intoxicating liquors was not absolute and was not protected by the Federal or State constitutions. The legislature could forbid the possession of more than a specified amount or could apply the inhibition to certain territory or buildings in the State. California courts decided both ways: [35] An ordinance forbidding possession was first de-

[34] Sullivan *v.* City of Oneida, 61 Ill. 242 (1871), held that the city under its charter was not authorized to make it an offense for any person to have in his possession any intoxicating liquors. The court said that the charter only contemplated a search if the liquors were for sale within the city, while the ordinance authorized a search and seizure "if the liquors were kept in the city, whether the intention was to sell them, or ship them and sell them elsewhere." Hence the ordinance was *ultra vires.* But the court said: "To lessen and prevent the evils of intemperance and the innumerable ills flowing therefrom, it is within the power of the legislature to declare the possession of intoxicating liquors, for the purpose of sale, as *quasi* a nuisance, and provide a well guarded system for the suppression of their use, and to enact that such possession shall be *prima facie* evidence of the unlawful intent." See also Henderson *v.* Heyward, 109 Ga. 373, 34 S. E. 590 (1899).

[35] Selma *v.* Brewer, 9 Cal. App. 70, 98 Pac. 61 (1908). But the court decided differently in *Ex parte* Luera, 28 Cal. App. 185, 152 Pac. 738 (1915). An ordinance of the city of Azusa provided: "Every person having in his possession, within the city of Azusa, any spirituous, vinous, malt or mixed liquors, or any alcoholic or intoxicating drinks, shall be deemed guilty of a misdemeanor." The ordinance did not apply to the keeping of the intoxicating liquors for medical or scientific purposes. The court said there was "abundant authority holding that such attempted legislation is void, as being in violation not only of constitutional rights, but of the inherent right of the individual."

clared constitutional and later, when another case arose, "the inherent right of the individual" to possess liquors was asserted. Laws were declared constitutional, however, in Georgia, Alabama, New Hampshire, South Carolina and Mississippi.[36]

In addition to these cases, which involved prohibitory laws, there were a number of instances in which the possession of certain kinds of property was made a crime; lotteries,[37] opium,[38]

[36] Easley *v.* Pegg, 63 S. C. 98, 41 S. E. 18 (1901); Cohen *v.* State, 7 Ga. App. 5, 65 S. E. 1096 (1909); State *v.* Clark, 28 N. H. 176 (1854); State *v.* Phillips, 109 Miss. 22, 67 South. 651 (1915). By the act of 1783, the City Council of Charleston was vested with authority to make regulations "requisite and necessary for the security, welfare, and convenience of said city, or for preserving peace, order and good government within the same." An ordinance of the city made it unlawful for shop-keepers, other than those licensed, to keep any intoxicating liquors in their shops or in any adjacent room. The ordinance "is no doubt one of the many restraints imposed on the liberty of the citizen, to prevent, if possible, the vending of spirituous liquors to slaves. Such regulations are sometimes apparently tyrannical; but they must be submitted to as necessary police regulations. If they are tyrannical and unnecessary, the popular will can repeal them through the city council, or if redress should fail there, by an appeal to the Legislature." Heissembrittle *v.* City Council, 2 McMul. (S. C.) 233 (1842).

[37] Ford *v.* State, 85 Md. 465, 37 Atl. 172 (1897). In this case it was no defense that the traverser did not know the nature of the tickets in his possession.

[38] Ah Lim *v.* Territory, 1 Wash. 156, 24 Pac. 588 (1890); *Ex parte* Mon Luck, 29 Or. 421, 44 Pac. 693 (1896). In the case of Chino Lee *v.* United States, 231 U. S. 735 (1915), the Supreme Court of the United States held constitutional (without opinion) a statute of the Philippine Islands making it unlawful to possess opium for other than medical purposes. The question was presented to the court on a writ of error to the Supreme Court of the Philippine Islands, brought on behalf of the defendant who had been convicted of having opium in his possession. The following passage from the government's brief in this case gives an idea of the theory on which the constitutionality was argued: "Of course, no one can have a vested right, as against the State, to destroy either his morals or his health even if they are his own. The moral well-being of the public (the aggregate of the individuals) is a sufficient reason; but a plainly decisive one, though a sordid one, is that such processes fill the poorhouses, the asylums, and the jails, and so put expense on the state. If the state does not choose to subject itself to such damage, it surely can protect itself by stopping the causes at their source."

photographs of United States Treasury notes,[39] wild game,[40] seines [41] and shot guns and rifles.[42] The last named case was the most important. It upheld the authority of the State of Pennsylvania to forbid the possession of a shot gun or rifle by an unnaturalized foreign born resident. This prohibition was justified on the ground that the statute forbade the killing of wild game by any such person. "The possession of rifles and shotguns is not necessary for other purposes not within the statute," said Mr. Justice Holmes, and the possession of intoxicating liquors would seem equally unnecessary.

Nevertheless, the weight of authority in the State courts was probably against the constitutionality of laws forbidding possession when the question was reopened in Alabama by the passage of a statute which prevented a citizen from having more than specified quantities of liquor. Largely on the authority of Mugler *v.* Kansas, the Alabama Supreme Court held the provision constitutional. It was one of a number of instances "where ancillary prohibitions of acts and conduct, innocent in themselves, have been sustained and confirmed as an exercise of the police power of the state; and so upon the theory that some valid legislative purpose might be * * * prevented or hindered of accomplishment." [43]

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[39] *Ex parte* Holcomb, 2 Dill. 392, 12 Fed. Cas. 328 (1871).

[40] Roth *v.* State, 51 Ohio St. 209, 37 N. E. 259 (1894); Magner *v.* People, 97 Ill. 320 (1881). Silz *v.* Hesterberg, 211 U. S. 31 (1908), sustained a State statute forbidding the possession of wild game, even though brought in from a foreign country. It should be noted, however, that the doctrine of *ferae naturae* played some part in the decision of this case.

[41] State *v.* Lewis, 134 Ind. 250, 33 N. E. 1024 (1893).

[42] Patsone *v.* Pennsylvania, 232 U. S. 138 (1914).

[43] Southern Express Co. *v.* Whittle, 194 Ala. 406, 69 South. 652 (1915). Later the Alabama Court of Appeals was called upon to decide whether it was constitutional to prohibit the possession of intoxicants which had been acquired before the law went into effect. The court held that this distinction could not persuade them to depart from the ruling made in the earlier case. "It could make no difference and would be immaterial when, where, or under what circumstances the prohibited liquors were acquired, for the offense is, by the act held to be valid and not invasive of constitutional rights, declared to consist in having in possesson more than the specified amount, without regard to the time or manner or purpose of acquiring it." O'Rear *v.* State, 15 Ala. App. 17, 72 South. 505 (1916). See 4 VA. LAW REV. 236.

This decision was speedily followed in many other jurisdictions. Georgia, Idaho, Nebraska, Nevada, North Carolina, South Carolina, Tennessee, Utah and Washington all passed laws limiting possession even for personal use.[44]

The Utah case was the most important since it went to the Supreme Court of the United States. The laws of 1915 provided that it should be unlawful to possess any intoxicating liquors in a prohibition district without a permit. The court reviewed but declined to follow the cases headed by State *v.* Gilman and considered above:

> "Probably the author of none of these opinions would hesitate in holding that the sale of intoxicating liquor may be prohibited as a legitimate exercise of the police power, and that such a law would not abridge any of the privileges or immunities of the citizens in such a way as to violate any constitutional provision. Still it must be admitted that, if the possession of such liquor 'can by no possibility injure or affect the health, morals, or safety of the public,' the sale is equally harmless; for it only transfers the possession from one person to another. The fact is that the harm consists neither in the possession nor sale, but in the consumption of it. That is the evil which the people of Idaho, acting through the Legislature, are trying to eradicate, and since 'it will not require any elucidation to show that, if the citizen may be prohibited from having liquor in his possession, he can be prohibited from drinking it, because, of necessity, no one can drink that which he has not in his possession,' and since great difficulty has been encountered in enforcing the prohibitory laws, the statement made by the learned jurist in the case of Mugler *v.* Kansas, *supra,* relative to the manufacture of intoxicating

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[44] Delaney *v.* Plunkett, 146 Ga. 547, 91 S. E. 561 (1917); Kracken *v.* State, 147 Ga. 198, 93 S. E. 198 (1917); Jackson *v.* State (Ga.), 96 S. E. 1001 (1918); Saddler *v.* State (Ga.), 97 S. E. 79 (1918); *Ex parte* Crane, 27 Idaho 671, 151 Pac. 1006 (1915); Fitch *v.* State (Neb.), 167 N. W. 417 (1918); *Ex parte* Zwissig (Nev.), 178 Pac. 20 (1919); State *v.* Carpenter, 173 N. C. 767, 92 S. E. 373 (1917); Brennen *v.* Southern Exp. Co., 106 S. C. 102, 90 S. E. 402 (1916); Liquor Transportation Cases, 140 Tenn. 582, 205 S. W. 423 (1918); State *v.* Certain Intoxicating Liquors (Utah), 172 Pac. 1050 (1918); Seattle *v.* Brookins, 98 Wash. 290, 167 Pac. 940 (1917); State *v.* Brown (S. D.), 167 N. W. 400 (1918). These cases are reviewed and summarized in a note in 2 A. L. R. 1085,

liquors for the maker's own use, as a beverage, might well be said with respect to its possession, which would make it read:

'And so if, in the judgment of the Legislature, the manufacture of intoxicating liquors * * * would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question.' "[45]

When the case came before the Supreme Court of the United States a brief opinion by Mr. Justice McReynolds settled the question and declared the law constitutional.[46] Mill's Essay on Liberty and Say's Political Economy, which had figured in the decisions in State courts, were not referred to; nor was any consideration given to the "right to liquor" which some of the State judges said was protected by the due process clauses of the State and Federal constitutions. Mr. Justice McReynolds' brief opinion, however, did offer two theories on which the law might be sustained: (1) The State may forbid possession if this is necessary to make effective its regulations restricting manufacture and sale, and (2) To hold that there is a constitutional right to possess liquor would be inconsistent with the decisions sustaining laws against manufacture, sale or gift, the only ways of procuring intoxicants. In the words of the opinion:

"It must now be regarded as settled that, on account of their well-known noxious qualities and the extraordinary evils shown by experience commonly to be consequent upon their use, a State has power absolutely to prohibit manufacture, gift, purchase, sale, or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment.

"As the State has the power above indicated to prohibit, it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective. And,

[45] *Ex parte* Crane, *supra*. Commenting on this decision that possession could be prohibited, a recent writer remarked that "Evidently the citizens of Idaho have no rights which the Supreme Court of that State is bound to respect." Lee J. Vance, "The Roa' to Confiscation," 25 YALE LAW JOURNAL 285, 297 (1916).

[46] Crane v. Campbell, 245 U. S. 304 (1917).

considering the notorious difficulties always attendant upon efforts to suppress traffic in liquors, we are unable to say that the challenged inhibition of their possession was arbitrary and unreasonable or without proper relation to the legitimate legislative purpose.

"We further think it clearly follows from our numerous decisions upholding prohibition legislation that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no State may abridge. A contrary view would be incompatible with the undoubted power to prevent manufacture, gift, sale, purchase or transportation of such articles—the only feasible ways of getting them. An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the State."

The second ground on which the constitutionality of the statute could be sustained left open the question whether possession could be penalized even though the liquor was acquired before the regulation went into effect. But the Supreme Court has since held that this makes no difference.[47]

III.

The constitutional position of property in the United States has been much stronger than in any European country and it has been our boast that Bills of Rights guarantee American citizens individual liberties greater and more secure than those enjoyed by the nationals of states with flexible constitutions and legally omnipotent legislatures.[48] The summary which I have

[47] Barbour *v.* State, 39 Sup. Ct. 316 (1919), affirming 146 Ga. 667, 92 S. E. 70 (1917). See O'Rear *v.* State, *supra*. In August, 1918, however, the Supreme Court of Florida held unconstitutional a law prohibiting the possession of intoxicating liquors in certain counties of the State. The opinion was based on the provisions of the Florida Constitution which reserved to the people the right, by their direct vote, to prohibit the *sale* of intoxicating liquors. The Court said that the Legislature in inhibiting private ownership exceeded its authority. A concurring opinion said that the law was unconstitutional also under the State constitution because it did not apply uniformly to the whole State. There was, however, a strong dissenting opinion. *Ex parte* Francis, 79 South. 753 (Fla. 1918).

[48] HADLEY, UNDERCURRENTS IN AMERICAN POLITICS, p. 32. Professor Freund points out that the early applications of the idea of due process

given of the decisions in which the courts have sanctioned successive legislative assaults on liquors as property and subjects of individual use and possession would seem to indicate an exception to these two principles of the American constitutional system, and the astounding thing is that there has been little if any discussion of the question of compensation for the value of the property destroyed.

In England state purchase and control has been looked upon, not only as a possible preventive of the evils of intemperance, but also as a measure of justice to those who are deprived of their hitherto legitimate businesses, and it is worthy of note that in a country where there is "oppression of the people,"[49] prohibition is being urged with some regard for property rights.[50] American state legislation and congressional enforcement of the Eighteenth Amendment, on the other hand, have been based on the principle of confiscation and rights of property or of individual liberty will be regarded even less in the future. The

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turned upon the protection of vested rights. "It was a very different matter," he says, "to insist in the name of the idea of due process upon an immunity of individual action from legislative control. Until the middle of the nineteenth century no such idea was suggested by lawyers, courts, or text-writers. The prohibition legislation of the fifties gave the first opportunity of asserting such a liberty, but the slight attempts made in that direction found practically no judicial response." Later opportunities were given by the Granger and Workmen's Compensation legislation. FREUND, STANDARDS OF AMERICAN LEGISLATION, p. 209.

[49] Beebe *v.* State, *supra*.

[50] "The sale of alcoholic drinks is a lawful trade recognized by the State itself. It affects many other interests than those of the manufacturers who provide, and the publicans who dispense, the drinks. The confiscation of property in distilleries and breweries, in public-houses and beer-houses, would cause widely-spread misery among innocent people. If the choice of reform lies between confiscation and compensation, it is then reasonable that the State, which in 1833 paid the sum of £20,000,000 to the slave-owners when it abolished slavery in the British Colonies, should pay a corresponding sum to the owners of shares in the Liquor Trade if it decides to abolish the Trade." J. E. C. Welldon, "State Purchase as Practical Politics," THE CONTEMPORARY REVIEW, July, 1918. Nor is this a voice crying in the wilderness. See ROWNTREE AND SHERWELL, STATE PURCHASE OF THE LIQUOR TRADE (London, 1919) and CARTER, THE CONTROL OF THE DRINK TRADE (London, 1919).

court in the Indiana case suggested that when the people smarted under losses from depreciated currency or accidents on railroads, they might feel inclined to take radical action against banks and common carriers. It is worthy of consideration whether, in the fight which is to come over the control of the railroads, the precedent of the prohibition legislation is not an ominous one. There are to be sure, a number of different circumstances: the liquor traffic had very harmful effects and attempted to retain its position by an alliance with politicians and a control of the press which, happily, have not been duplicated in the case of railroads. But that, under the State police power acting for the general welfare, and under the amendment to the Federal Constitution, businesses worth millions of dollars should have been made valueless is an indication of what a powerful, well-organized minority can do if it is arguing a moral issue. I am not here maintaining that liquor dealers should have been compensated by the state, but am simply suggesting that the precedent is not one which is in keeping with President Hadley's remarks about the protected position of property under the American constitution and may bode ill for the owners of the railroads or the coal mines.

Litigation under the Eighteenth Amendment will probably be frequent but, I take it, there will be few if any restrictions put upon legislative control. The language of the amendment is:

> "Section 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes is hereby prohibited.
>
> "Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

The suggestion is made that possession and use are still matters of State regulation and that the jurisdiction of Congress is limited to the manufacture, sale and transportation. But, as has been seen above, the courts have sanctioned restrictions on

possession in order to make effective the laws as to sale, and there is no reason to believe that the Supreme Court of the United States will be any less liberal when it comes to pass upon what is "appropriate legislation" to enforce the amendment. So with the definition of what constitutes an "intoxicating" liquor. The Supreme Court of the United States has held that a State may prohibit the sale of malt liquors which are not intoxicants if this is necessary to enforce the regulations against real intoxicants:

> "It is also well established that, when a State, exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. * * * With the wisdom of the exercise of that judgment the court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended." [51]

It is not likely that the Supreme Court will deny this right to Congress, and while a legislative fiat cannot make "2.75%" intoxicating, and the Federal prerogative is confined to liquors which are "intoxicating," nevertheless the Court will probably say that a law forbidding the manufacture and sale of "2.75%"

[51] Purity Extract Co. *v.* Lynch, 226 U. S. 192 (1912). In State *v.* George (La.), 67 South. 953 (1915), a statute provided that "it shall be unlawful to sell or offer for sale any other beverage of any nature, kind, or description, whether intoxicating or non-intoxicating, or any article of merchandise under the same roof where near beer is sold as a beverage." The court brought the statute under the police power of the State by considering it primarily a regulation of the sale of near beer, not a regulation of the sale of other merchandise. Jackson *v.* State (Ga.), 96 S. E. 1001 (1918), sustained a State statute which prohibited the sale of malt which, when diluted, could be used as a beverage. The question is argued to some extent in the reports made by the Senate and House Committees on the prohibition enforcement bill. See 66th Congress, 1st Session, House Report No. 91, Parts 1 and 2, and 66th Congress, 1st Session, Senate Report No. 151.

is "appropriate" legislation for the enforcement of national prohibition. Certainly an unbroken line of decisions by the Supreme Court of the United States indicates that this will be the case.

Many such questions will come before the courts for determination. The enforcement of the amendment by concurrent Federal and State legislation will raise a number of interesting points. Federal administration of the enforcement will show more clearly than any other national activity the vanishing authority of the States, and we will soon begin to assess the results of the political metamorphosis caused by the success of a powerful, well-organized minority in forcing the adoption of national prohibition by constitutional amendment. This policy is immutable. A two-thirds majority in both branches of Congress and three-fourths of the State legislatures can in all probability never be secured to take prohibition out of the constitution. The citizen still has a right to life and a right to liberty, but he no longer has any constitutional right to liquor.

Lindsay Rogers.

UNIVERSITY OF VIRGINIA.

Part 5—Litigation Concerning Marihuana

[From Playboy magazine, November 1976]

THE OZARK CONNECTION

For selling about a third of an ounce of marihuana to a state undercover agen Jerry Mitchell, 19, was sentenced to 12 years in the Missouri state penitentiar Had his case n t come to the attention of a legal reform group, he would be i prison already, instead of in college, while his case is appealed. He may end up i prison yet; contrary to the belief of many young people, pot offenses are not ye on a par with underage beer drinking, especially in the rural parts of the countr

West Plains, Missouri, is a pleasant, friendly farming community of abou 10,000 near the Ozark tourist area in the south central part of the state. It's th seat of Howell County and the birthplace of country singer Porter Waggone for whom the main street is named. Compared with most places, it doesn't hav much of a drug problem, but the townspeople are worried that this is changing More and more city people are settling in the area, and over the past two or thre years, the local youngsters have discovered long hair, rock music and marihuan which grows wild from the days when it was cultivated for hemp fiber. Rarel a month goes by without an arrest for either possessing or growing pot. It wa Mitchell's extraordinary bad luck to be the first Howell County youth ever t be caught selling it.

Mitchell has lived in West Plains since he was born. In 1975, he graduate from the local high school with good grades and a good record, and last fal he entered Southwest Missouri State University in Springfield to study politica science and philosophy. These interests and his longish hair make him about th closest thing West Plains has to a "hippie." He was busted in the usual fashion A neighborhood friend, who had become an informant, introduced Mitchell t one of the state's roving undercover agents. Mitchell first was charged wit supplying the agent with a pound of locally picked marihuana, but the charge wa dropped when he agreed to plead guilty to selling one third of an ounce for fiv dollars.

At the time, a guilty plea seemed like the sensible thing. Both of Mitchell' parents are blind and living on a pension and Social Security; their home an property were posted to meet his $15,000 bond; he had borrowed $1500 from hi grandmother to pay his initial legal fees but he could not raise the additional $50 his attorney demanded in advance to represent him at sentencing. He hoped tha his lack of a criminal record, the nonprofit nature of the sale and his otherwis good reputation would earn him less than the maximum sentence, and it did He got 12 years; under Missouri law, he could have gotten life.

If 12 years seems like something less than leniency, it's because Circuit Judg Winston Buford—and he probably represents the community's general attitude— considers drug selling as serious as murder. The local paper quoted him as saying "Most crime are on one, one person robbing, killing or assaulting another. . . A pusher has the means to poison the whole community, particularly the youn people of the community. . . . It is only by the hard work of undercover agent that people such as yourself are brought to our attention." When Mitchell wept promised he would never get into trouble again and asked the court to conside probation for the sake of his parents, who have no other children, the judge sai he should have thought of his parents before getting into drugs.

Judge Buford is no ignorant Ozark hillbilly; he is intelligent, articulate thoughtful and quite aware that scientists have found no evident dangers i marihuana smoking. But he does consider its use symptomatic of a dangerou national trend toward drug abuse, and he apparently believes that harsh crimina penalties deter young people from using drugs—a dubious proposition in ligh of the rest of the country's experience. Yet this attitude seems to prevail i

Howell County and it's quite possible that a jury would have recommended an even longer sentence.

When Mitchell told his story to the National Organization for the Reform of Marihuana Laws, national director Keith Stroup volunteered his services as an attorney and also retained Michael Stepanian, a prominent San Francisco lawyer with experience in drug cases. Both flew to Missouri to represent Mitchell at a hearing for reduction of sentence and to plan an appeal, in which they will be assisted by the Playboy Foundation. The hearing, which "Playboy" attended, followed lengthy negotiations in the judge's chambers and was more like Mitchell's public confession of guilt and contrition than like a legal proceeding. Judge Buford, deciding he could now see a "ray of hope" for the defendant, reduced his sentence accordingly—to 7 years.

Until last year, the Missouri drug law provided five years to death for anyone convicted of even sharing a joint of marihuana with a minor. In its penalties, it still makes no distinction between selling marihuana or heroin, providing five years to life in prison for the sale of any amount of either substance to anyone. The statute's shotgun quality permits NORML to challenge it on at least two constitutional grounds. By simple common sense, any law that provides a minimum of five years and permits a life sentence for a joint of marihuana should be in violation of the Eighth Amendment's ban on cruel and unusual punishment. Unfortunately, common sense plays no great role in matters of law, and courts have traditionally held that no penalty short of mutilation or burning at the stake is cruel if legislators vote it into law. The 14th Amendment provides a second and better ground for argument. Its equal-protection clause has been interpreted to require some rational connection between the seriousness of a crime and the severity of its punishment, and the supreme courts of both Illinois and Michigan have held that it's legally improper to treat marihuana offenses the same as those involving heroin, barbiturates or other drugs known to be addictive or dangerous.

Herein lies the legal significance of the Mitchell case. By making no proper distinction among different drugs, many state laws permit the courts to treat a stash-sharing pot smoker as though he were the French Connection.

The difficulty NORML's appeal faces is that courts, especially state courts, are reluctant to "usurp the authority of the legislature" in matters of statutory law. But where a legislature refuses to reform or repeal a law inspired by unwarranted fear and based on misinformation, the courts are the only recourse.

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

NORML

2317 M STREET, N.W., WASHINGTON, D.C. 20037 · 202-223-3470

November 9, 1976

Ms. Mary Jolly
Juvenile Delinquency Subcommittee
U.S. Senate
A-504
Washington, D.C. 20510

Dear Mary:

I am enclosing the documents we discussed over the phone on Friday. These documents are:

1. Brief for Petitioner in NORML v. DEA, No. 75-2025, U.S. Court of Appeals for the D.C. Circuit. This case is the appeal from the DEA's rejectionof NORML's petition to reschedule marijuana from Schedule I of the Controlled Substances Act. The brief contains the history of NORML's petition from the time it was first filed in 1972, and also contains an extensive discussion of U.S. treaty obligations with respect to marijuana, and the potential medical uses for marijuana.

2. Comments of NORML to the U.S. Parole Board on Proposed Rulemaking, 41 Fed. Reg. 19326-40 (May 12, 1976). The Comments suggested that the Parole Board reclassify possession of marijuana and hashish into the least serious category of offenses, so that federal prisoners who had been convicted of these offenses could be released on parole earlier. This change, and some others proposed by NORML, were adopted by the Parole Board in their final guidelines published at 41 Fed. Reg. 37316 (Sept. 3, 1976).

3. Petition for Writ of Certiorari to the U.S. Supreme Court, La. NORML v. Gusti, 44 U.S.L.W. 3205 (Oct. 6, 1975). This case involved a constitutional challenge to the marijuana laws, primarily based upon the Right of Privacy. The petition was denied by the Supreme Court.

If I can be of any further assistance, please give me a call.

Sincerely,

Peter H. Meyers
Chief Counsel

PHM:pes
Enclosures

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-2025

The National Organization for the Reform
of Marijuana Laws (NORML), Petitioner,

v.

Drug Enforcement Administration (DEA),
U.S. Department of Justice, Respondent.

On Petition for Review of an Order
of the Drug Enforcement Administration

BRIEF FOR PETITIONER

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-2025

The National Organization for the Reform of Marijuana Laws (NORML), Petitioner,

v.

Drug Enforcement Administration (DEA), Department of Justice, Respondent.

Certificate Required by Rule 8(c) of the General Rules of the United States Court of Appeals for the District of Columbia Circuit

The undersigned, counsel of record for petitioner, certifies that the following listed party has an interest in the outcome of this case. These representations are made in order that judges of this Court may evaluate possible disqualification or recusal:

The American Public Health Association, 1015 18th Street, N.W., Washington, D.C. 20036, was a co-petitioner when this case was previously before this Court, NORML v. Ingersoll, 162 U.S. App. D.C. 67, 497 F.2d 654 (1974), and was a co-petitioner in the proceeding at the Drug Enforcement Administration below on remand from this Court.

Peter H. Meyers
Attorney of Record for Petitioner

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IN THE UNITED STATES COURT OF APPEALS
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No. 75-2025

The National Organization for the Reform of Marijuana Laws (NORML), Petitioner,

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Drug Enforcement Administration (DEA), Department of Justice, Respondent.

On Petition for Review of an Order of the Drug Enforcement Administration

---

BRIEF FOR PETITIONER

Issues Presented

1. Whether there is any latitude or discretion to reschedule cannabis from Schedule I of the Controlled Substances Act, consistent with treaty obligations.

2. What amount of rescheduling would be consistent with treaty obligations, with respect to:

(A) Cannabis and cannabis resin (as those terms are defined by treaty),

(B) Cannabis leaves (when unaccompanied by the tops),

(C) Cannabis seeds (when unaccompanied by the tops), and

(D) Synthetic cannabis or THC.

3. Since there is discretion to reschedule cannabis materials from Schedule I, should the NORML petition be formally referred to the Secretary of HEW, pursuant to Section 201 of the Act, for scientific and medical findings and recommendations and for the other procedures specified in Section 201(a)-(c).

4. Is the letter from Doctor Cooper, Acting Assistant Secretary for Health, comparable with, or an adequate substitute for, the full procedures specified in Section 201(a)-(c).*

References to Parties and Rulings

This case involves review of an order of the Acting Administrator of the Drug Enforcement Administration, Mr. Henry S. Dogin, which was published in the Federal Register on September 25, 1975, 40 Fed. Reg. 44164-68. This order, which denies NORML's petition to reschedule marijuana "in all respects," 40 Fed. Reg. at 44168, is contained in the Appendix To Brief For Petitioner.

---

*This case was previously before this Court, NORML v. Ingersoll, No. 72-1854, and the order now under review was entered pursuant to the remand of this Court, reported at 162 U.S. App. D.C. 67, 497 F.2d 654 (1974).

This case is also related to a case which is now pending before a three-judge district Court in this Circuit, NORML et al. v. Wilson et al., Civil Action No. 1897-73, U.S. District Court for the District of Columbia. That case involves a Constitutional challenge to the marijuana prohibition contained in the Controlled Substances Act and the D.C. Uniform Narcotic Drug Act, primarily as it relates to the private possession and use of marijuana. The three-judge Court ordered that that case be stayed pending the conclusion of the DEA proceeding below, and after the Acting Administrator entered his final order in the proceeding below, the three-judge Court vacated the stay (order filed Dec. 23, 1975).

The Acting Administrator received a Report containing Proposed Findings and a Recommended Decision from the Administrative Law Judge who presided over the hearing below, Mr. Lewis F. Parker, on May 21, 1975. This Report is contained in the Appendix To Brief For Petitioner.

Review is sought pursuant to Section 507 of the Controlled Substances Act, 21 U.S.C. Sec. 877.

Statutes and Regulations

The Statute involved in this case is the Controlled Substances Act, 21 U.S.C. Sec. 801 et seq. The principle area of controversy in this case involves the interpretation and application of Section 201 of the Act, 21 U.S.C. Sec. 811, which is set out in full in the Addendum to this brief.

The treaty involved in this case is the Single Convention on Narcotic Drugs, 18 U.S.T. 1407 (1967). The official text of the Single Convention was introduced in evidence at the hearing below as Administrative Law Judge Exhibit No. 29, and is contained in the Appendix To Brief For Petitioner.

The pertinent provisions of the Single Convention are discussed in part F of the Statement of the Case.

STATEMENT OF THE CASE

This case involves a petition to reschedule marijuana from Schedule I of the Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which was originally filed on May 18, 1972, with the Director of the Bureau of Narcotics and Dangerous Drugs (BNDD) by NORML and other parties. See ALJ Ex. No. 1.[1]

In response, the Director of the BNDD published a notice in the Federal Register on September 7, 1972, which stated that the petition was not "accepted for filing" on the ground that rescheduling marijuana to Schedule V or decontrolling marijuana, as requested in the petition, would violate treaty obligations, particularly the Single Convention on Narcotic Drugs. The Director of the BNDD also stated that since marijuana was controlled by treaty obligations, Section 201(d) of the Controlled Substances Act applied and gave him sole authority over the

---

1. The following abbreviations are used herein:

ALJ Ex. -- Document received in evidence as an Administrative Law Judge Exhibit at the hearing below, Jan. 28-30, 1975.

Tr. -- Transcript of hearing, Jan. 28-30, 1975.

Cert. Ind. -- Certified Index to the Record filed in this Court by the respondent.

scheduling of marijuana, without regard to the procedures contained in Section 201(a)-(c) of the Act. See ALJ Ex. No. 2.

A petition for review of this decision was filed in the U.S. Court of Appeals for the District of Columbia Circuit, and on January 15, 1974, the Court issued its decision reversing and remanding the case for further proceedings at the Drug Enforcement Administration. NORML v. Ingersoll, 162 U.S. App. D.C. 67, 497 F.2d 654 (1974).

A. The Court's Decision in NORML v. Ingersoll

The Court's decision indicated that the Court was "uneasy" over the Director's procedure in rejecting the petition even for purpose of filing, 497 F.2d at 659:

> Moreover, we are uneasy that respondent's own unorthodox procedural devices may have contributed to a procedural impasse and a non-responsive discussion on different planes of discourse.
>
> Respondent refused to accept the petition for filing. The outright rejection of the filing of a petition is an executive or administrative action that has only a narrow role....But if this had been handled properly by respondent as a decision on the merits, petitioners could have refined their alternative position in the light of respondent's decision.
>
> Instead they considered respondent's "rejection" of even a filing to signal short shrift for a serious presentation. It was not the kind of agency action that promoted the kind of interchange and refinement of views that is the lifeblood of a sound administrative process.

The Court stated that it could not make a final determination on treaty obligations and the rescheduling of marijuana, 497 F.2d at 661:

> Obviously, this court is in no position to decide this case in its present posture. Having in mind our doubts as to

the propriety of the respondent's action in rejecting even the filing of the petition, we think the optimum course, in the interest of justice, 28 U.S.C. Sec. 2106, and a sound disposition, is to remand the case to respondent for further consideration, to be demoninated a consideration on the merits.

In response to the BNDD Director's interpretation of Section 201(d) of the Controlled Substances Act, the Court did not make any final determination, but did state that "we doubt that this was the intent of Congress," 497 F.2d at 660-61:

> The decision under review rightly refers to Sec. 201(d) of the Act as establishing a basis for control under the Act if required by treaty obligations. But the decision seems to go further and say that if some control is required by treaty then the decision of which Schedule is appropriate is a matter for the exclusive decision of the respondent as the delegee of the Attorney General. This is a matter that gives us pause. The respondent seems to be saying that even though the treaty does not require more control than schedule V provides, he can on his own say-so and without any reason insist on Schedule I. We doubt that this was the intent of Congress. (footnote omitted)

The Court suggested that the proceeding on remand be divided into two phases, 497 F.2d at 661 fn. 17:

> A rule-making proceeding may be established in phases. In the first phase, the Department of Justice could consider whether there is any latitude consistent with treaty obligations, and herein receive expert testimony limited to this treaty issue. The second phase would arise only if some latitude were found, and would consider how the pertinent executive discretion should be exercised.

The Court's decision also contained some specific directions for the remand, the most important of which were as follows, 497 F.2d at 660,661:

> This consideration will embrace the subject of removal or transfer of control of the leaves of the plant.
>
> On the remand, respondent will also supply findings that will sharpen and clarify the issue whether control under Schedules I and II is required as to the flowers.

* * *

> The matter is not one on which the expertise of respondent is exclusive, and it would seem appropriate for the court to have the benefit of the views of sources in the State Department and the international organizations involved.

The Court's opinion concluded, 497 F.2d at 661:

> Our conclusion that such a remand is appropriate is fortified by the reorganization and redelegation of authority within the Department of Justice, under which the pertinent functions of the Attorney General now have been transferred to the [Administrator] of the Drug Enforcement Administration, an official who can provide a new look and a hard look at the questions raised by the petition.[2]

The Court's opinion also described the scheme of the Controlled Substances Act ("CSA") and the procedures for rescheduling substances which are contained in the Act, see 497 F.2d at 656-58, and there is no need to set this out in detail here.[3] It might be helpful, however, to set out a few of the basic features of the CSA's procedure for rescheduling:

The Controlled Substances Act contains five schedules of controlled substances, listed as Schedules I-V. A controlled substance listed in Schedule I has the greatest number

---

2. A reorganization occurred within the Department of Justice while NORML v. Ingersoll was pending in the Court of Appeals. See 497 F.2d at 657 fn. 1. The BNDD was abolished, and the Drug Enforcement Administration was created. The DEA was given the authority to reschedule substances in the Controlled Substances Act which had previously been delegated by the Attorney General to the BNDD.

3. cf. United States v. Moore, ___ U.S. ___, 44 U.S.L.W. 4023 (December 9, 1975), which involved the issue of whether a licensed physician registered under the Controlled Substances Act, could be prosecuted for violation of Section 841 of the Act. The Court's decision did not consider any of the sections of the CSA which are involved in this case.

of restrictions and controls, and a controlled substance listed in Schedule V has the least. Congress set out in the Act the substances which would initially be included in each schedule, and it placed marijuana in Schedule I. See 21 U.S.C. Sec. 812, Schedule I(c)(10).

Congress did not intend, however, that "its initial placement of marijuana in Schedule I should be immutable." Administrative Law Judge's Report, Cert. Ind. No. 19, at p. 10.

In Sections 201(a)-(h) of the Act, which are set out in full in the Addendum hereto, Congress created a procedure by which substances could be rescheduled. Upon petition filed by any "interested person," the Attorney General is authorized to reschedule a substance to a different schedule or to "remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule." Section 201(a)(2), 21 U.S.C. Sec. 811(a)(2) (emphasis added).

Section 201(b) of the Act, 21 U.S.C. Sec. 811(b) provides that the Attorney General shall request from the Secretary of Health, Education, and Welfare a scientific and medical evaluation of the substance, and recommendations on control. The factors which the Secretary of HEW considers are set out in Sections 201 (b)-(c), 21 U.S.C. Sec. 811(b)-(c), and include: "The state of current scientific knowledge regarding the drug or other substance"; "What, if any, risk there is to the public health"; "Its psychic or physiological dependence liability."

After receiving the scientific and medical recommendations from the Secretary of HEW, the Attorney General's final decision must be "made on the record after opportunity for a hearing...." Section 201(a), 21 U.S.C. Sec. 811(a). At this hearing, "The recommendations of the Secretary [of HEW] to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters...." Section 201(b), 21 U.S.C. Sec. 811 (b).

B. Proceedings at the DEA on Remand

On June 26, 1974, the DEA Administrator published a Notice of Proposed Hearing in the Federal Register, 39 Fed. Reg. 23072 et seq., ALJ Ex. No. 3, which stated that the DEA had adopted the Court's suggestion for a two-phase proceeding, and would hold a hearing, limited to the treaty issue, if requested by petitioners:

> Therefore, should the petitioners or any of them so request, the Drug Enforcement Administration is prepared to hold a hearing, limited to the petitioners or any of them, for the purpose of receiving factual evidence and expert opinion on the issue and by the method described by the court as "whether there is any latitude (on the scheduling of marihuana under the Cpntrolled Substances Act) consistent with treaty obligations, and herein receive expert testimony limited to this treaty issue". 39 Fed. Reg. at 23075.

This Notice of Proposed Hearing also included a letter from the Assistant Legal Advisor, Department of State, which had been requested by the DEA. The letter refers to two Resolutions adopted by the U.N. Economic and Social Council. Copies of these two Resolutions were subsequently made available to petitioner, and were introduced in evidence as part of ALJ Ex. No. 3.

By letter dated July 19, 1974, NORML and the American Public Health Association responded to this Notice and requested a hearing. ALJ Ex. No. 4. Petitioners agreed that the issue involved at the hearing would be treaty obligations, as framed in the Notice of Proposed Hearing. Petitioners further indicated that in their view this issue contained a number of sub-parts, one of which was: "Whether there is any discretion to remove the leaves and/or the seeds of the marijuana plant from Schedule I." Id., p. 2 (emphasis added).

Pursuant to an order of Administrative Law Judge Lewis F. Parker, counsel for petitioners and for the DEA staff held a prehearing conference in the absence of Judge Parker on September 18, 1974. Prehearing conferences, presided over by Judge Parker, took place on September 23, 1974, and October 23, 1974. See Cert. Ind. Nos. 2 and 3.

On January 16, 1975, a Notice of Hearing was published in the Federal Register by the Acting Deputy Administrator of DEA, which reiterated that the forthcoming hearing would be "limited to this treaty issue," 40 Fed. Reg. 2841, ALJ Ex. No. 25.

A three-day hearing was then held before Judge Parker on January 28-30, 1975. The four-volume transcript of this hearing is listed at Cert. Ind. No. 4. At the hearing, petitioners called two witnesses who were qualified as experts on the treaty issue and gave testimony concerning treaty obligations, Mr. Lawrence Hoover and Dr. Joel Fort. The background of these

witnesses is well summarized in the Administrative Law Judge's Report and Recommended Findings, Cert. Ind. No. 19, at pp. 5-6:

> Mr. Hoover is an attorney who is presently engaged in the private practice of law (TR, p. 23). In 1963, he was employed by the Department of State as a legal advisor in the negotiation and interpretation of treaties (TR, p. 25). Between 1968-1971 he was the U.S. liaison with international drug control bodies located in Geneva, Switzerland which had the responsibility for implementing the Single Convention on Narcotic Drugs (TR, p. 27), and in 1972 was a consultant to the Bureau of Narcotics and Dangerous Drugs (TR, p. 31). He has co-authored an article dealing with the Single Convention and other international drug treaties (TR, pp. 33-34). Dr. Joel Fort is a specialist in social problems involving drug abuse and criminal law (TR, p. 140) and has made several trips to foreign countries in connection with his work on narcotic drugs (TR, pp. 143, 146, 155). As a consultant to the World Health Organization, he was assigned in 1963 to study the use of drugs in 16 Asian countries (TR, p. 143). He has authored or co-authored approximately 30 books and 50 articles, about half of which deal with cannabis from a historical, scientific or international perspective (TR, p. 150). He testified in two prior BNDD-DEA proceedings involving the scheduling of drugs under the Controlled Substances Act (TR, pp. 152-153).

The DEA staff called three witnesses, Mr. Philip B. Porto, Dr. Carlton Turner, and Mr. Donald E. Miller. Only the last witness called -- Mr. Miller -- was qualified as an expert on treaty obligations and testified concerning treaty obligations. The background of these DEA witnesses is also set out in the Administrative Law Judge's Report, Cert. Ind. No. 19, at p. 6:

> Mr. Porto is a chemist and is Director of DEA's Northeastern Regional Laboratory in New York City (TR, p. 250). He is experienced in the laboratory analysis and identification of narcotics, cannabis and other drugs (TR, p. 251). Dr. Carlton Turner is a chemist and is Associate Director of the Research Institute of Pharmaceutical Sciences, School of Pharmacy, University of Mississippi and is Director of the National Institute on Drug Abuse,

Marihuana Project (TR, p. 296). He has published many articles dealing with the cultivation and harvesting of cannabis, and techniques for its identification (TR, p. 297). Mr. Donald Miller is DEA's Chief Counsel and was previously Chief Counsel of BNDD and the Bureau of Narcotics (TR, pp. 407-408). He is a part-time advisor to the Department of State and has been a representative of the United States in conferences on narcotic and psychotropic substances (TR, pp. 408-409) and was involved in discussions at the Bureau of Narcotics on the proposed Single Convention on Narcotic Drugs (TR, pp. 408-409).

A number of documents relating to the Single Convention on Narcotic Drugs were also introduced in evidence at the hearing as Administrative Law Judge exhibits. These documents are discussed below, in part E of the Statement of the Case. Petitioner would mention here three particularly important documents which were introduced at the hearing:

1. Memorandum from the Deputy Assistant Attorney General, Office of Legal Counsel of the Department of Justice, to the Director of the BNDD, dated August 21, 1972, entitled "Petition to Decontrol Marihuana; Interpretation of Section 201 of the Controlled Substances Act of 1970." This Memorandum was supplied to NORML in response to a general request for documents to the DEA staff, and was introduced in evidence at the hearing as ALJ Ex. No. 28. See Tr. 8-10. The Memorandum states that it was prepared in response to a request from the Director of BNDD for the Justice Department's legal opinion on what procedure should be followed with respect to the NORML petition, which had just been filed. The Memorandum, which was not available to the

Court when it first heard this case, is perhaps the single most important document on the procedure the DEA must follow if there is discretion to reschedule cannabis from Schedule I.

2. Document entitled "Registrants for Marihuana as of January 3, 1975," which was prepared by the DEA, supplied to counsel for petitioner upon request, and introduced in evidence at the hearing as ALJ Ex. No. 50. See Tr. 534-35. This document demonstrates that the DEA (and through it, the United States) is not at the present time complying with treaty obligations involving marijuana, as Mr. Donald E. Miller, the DEA's Chief Counsel, acknowledged under cross-examination at the hearing below. See Tr. 535-39.[4]

3. Report of the World Health Organization Expert Committee on Drug Dependence, No. 407, which was introduced in evidence at the hearing below by the DEA staff as ALJ Ex. No. 40. See Tr. 19-21. This was the only document introduced in evidence at the hearing below by the DEA staff which related to the Single Convention or international obligations.

After the hearing had concluded on January 30, 1975, Proposed Findings of Fact and Conclusions of Law, and Reply Briefs, were filed by petitioners and the DEA staff with the Administrative Law Judge. See Cert. Ind. Nos. 10-13.

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4. The Certified Index to the Record filed by respondent did contain ALJ Ex. No. 1-49, but not this exhibit, ALJ 50. On January 21, 1976, petitioner filed a Motion for Leave to Supplement Certified Index, etc., which included this exhibit. This Motion is pending before the Court.

Upon petitioners' request, the Administrative Law Judge held an oral argument on April 18, 1975. See Transcript of Oral Argument, Cert. Ind. No. 16. At this oral argument the DEA staff introduced in evidence a letter from Dr. Theodore Cooper, Acting Assistant Secretary for Health, Department of Health, Education, and Welfare, to Mr. Jerry N. Jenson, Acting Deputy Administrator of DEA, dated April 14, 1975. Cert. Ind. No. 16, pp. 1-3. Since this letter from Dr. Cooper is so brief, and since the Acting Administrator relies so heavily on it in his final decision and order for his conclusion that CSA Section 201(a)-(c) procedures did not have to be complied with, the letter is set out in full below.[5]

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5. The letter, introduced as Gov. Ex. No. 79, states:

Dear Mr. Jenson:

At your request, we have prepared the following statement giving our position on the medical uses of Cannabis sativa L. (marihuana).

There is currently no accepted medical use of marihuana in the United States. There is no approved New Drug Application for Cannabis sativa L. (marihuana) or tetrahydrocannabinol, the active principle in marihuana. There are Investigational New Drug Applications on file to determine possible therapeutic uses and potential toxic effects of the substance.

We have included for your information a copy of the most recent report on these studies and a copy of the FDA policy regarding clinical studies with marihuana.

Sincerely yours,

/s/

Theodore Cooper, M.D.
Acting Assistant Secretary
for Health

Accompanying this letter from Dr. Cooper as part of Gov. Ex. No. 79 is a letter dated April 17, 1975, from Mr. Robert J. Rosthal, DEA Deputy Chief Counsel and principal DEA attorney in the proceeding below, to Mr. Peter H. Meyers, one of the counsel for petitioners. This letter from the DEA Deputy Chief Counsel ascribes a much more modest significance to the Dr. Cooper letter than the significance accorded it by the Acting Administrator in his final decision. The Deputy Chief Counsel's letter stated, Gov. Ex. No. 79, at pp. 1-2:

> Since this letter is simply corroborative of the testimony of Donald E. Miller on the fact that the Food and Drug Administration had issued no New Drug Application for any part of the cannabis plant, it should occasion no delay in the oral argument scheduled for April 18.

C. Report and Recommended Decision of the Administrative Law Judge

The Administrative Law Judge filed his Report containing recommended findings of fact and conclusions of law, and a Recommended Decision, on May 21, 1975. See Cert. Ind. No. 19. This Report is contained in the Appendix To Brief For Petitioner.

In this Report, the Administrative Law Judge set out the issue involved as follows (Id., pp. 7-8):

> This is the first phase of the proceeding. The only issue which must be decided is whether there is any latitude with respect to the scheduling of marihuana, consistent with treaty obligations. If there is, the extent to which such latitude permits descheduling or rescheduling is an issue which would more properly be decided in the second-phase proceeding after the views of the Secretary of Health, Education, and Welfare are considered by the Administrator of DEA.

In a footnote, the Judge added (Id.):

> Even this single issue presents complex problems because of the different definitions of cannabis in the Single Convention and the Controlled Substances Act. Thus, the issue has several parts, namely, whether control is required as to 1) the flowering or fruiting tops and cannabis resin; 2) the leaves when not accompanied by the tops; 3) the seeds when not accompanied by the tops; or 4) synthetic cannabis.

The Report proceeds to review the documents and testimony which had been introduced, and makes the following conclusions on treaty obligations:

1. The United States is not required by treaty obligations to control either synthetic cannabis (Id., p. 14) or cannabis seeds, when unaccompanied by the tops (Id., pp. 11-12).

2. The United States is required to control cannabis leaves, when unaccompanied by the tops, but this obligation would be satisfied if such cannabis leaves were rescheduled to Schedule V of the CSA (Id., pp. 28-29).

3. Finally, with respect to "cannabis" and "cannabis resin" (as those terms are defined by the Single Convention), the Report concluded that rescheduling to Schedule II, but no lower, would be consistent with treaty obligations (Id., pp. 18-21). While acknowledging that there was a "substantial dispute" over whether cannabis and cannabis resin could be rescheduled below Schedule II (Id., p. 21), the Administrative Law Judge concluded:

> [A]ny uncertainty that lesser controls would be adequate must be resolved by adhering to a control regime under which there is no question of adequacy. In this case, there is no question that placing cannabis in Schedule II meets treaty obligations. Placement in a lower schedule, or decontrol, raises too many questions about our ability to meet those obligations.

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The Administrative Law Judge then analyzed Section 201 of the Controlled Substances Act (Id., pp. 31-34), rejecting the DEA staff's interpretation of Section 201(d):

> Despite Congress' intent as revealed in Sections 201(a) and (b); the Government insists that all of these procedures can be ignored and that the Administrator, because of Sec. 201(d), can decree, without referring the matter to the Secretary of HEW and without holding hearings, that cannabis shall remain in Schedule I so long as some control over cannabis and cannabis leaves is required by treaty, even though the treaty could be satisfied by placing these drugs in a less restrictive schedule.
>
> Congressional history does not in my opinion support the Government's interpretation of Sec. 201(d)....
>
> The hearing and referral provisions of Secs. 201(a) and (b) clearly reveal Congress' desire to place the responsibility for the medical and scientific evaluation of drugs in the hands of the Secretary of HEW, not the Administrator of DEA. (Id., pp. 32-33)

The Administrative Law Judge then set out his Recommended Decision at pp. 34-35 of the Report. This Recommended Decision, with one exception,[6] is identical to the order NORML seeks in this Court:

> The United States is not required by any treaty, convention or protocol to control cannabis seeds or artificial cannabis (Findings 22, 25 and 26 b) (1), (2)). Therefore, I recommend that the Administrator, pursuant to Sec. 201(b) of the Controlled Substances Act, 21 U.S.C. 811(b), request from the Secretary of Health, Education, and Welfare a scientific and medical evaluation and the Secretary's recommendation as to the appropriate schedule in which cannabis seeds and artificial cannabis should be placed or whether these drugs should be removed from the schedules as controlled substances. After receiving these recommendations, the Administrator should hold hearings pursuant to Sec. 201(a).

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6. The one difference concerns the amount of rescheduling for cannabis and cannabis resin that is consistent with treaty obligations.

The United States is required by the Single Convention to control cannabis, cannabis resin, and cannabis leaves (Findings 21, 23, 24 and 26 a) (1) and (2)). However, its obligations thereunder can be satisfied if cannabis and cannabis resin are placed in Schedule II of the Controlled Substances Act and if cannabis leaves are placed in Schedule V of the Act. Therefore, I recommend that the Administrator, pursuant to Sec. 201(b), 21 U.S.C. 811(b), of the Controlled Substances Act, request from the Secretary of Health, Education, and Welfare a scientific and medical evaluation and the Secretary's recommendation as to the appropriate schedule (within the limits of the United States' treaty obligations)* in which cannabis, cannabis resin and cannabis leaves should be placed. After receiving these recommendations, the Administrator should hold hearings pursuant to Sec. 201(a).

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*This phrase is included to make it clear that the Secretary, while he might recommend it, could not bind the Attorney General to place cannabis and cannabis resin in Schedules III-V or decontrol cannabis leaves since such action would violate the United States' treaty obligations.

D. Final Decision of the Acting Administrator

After the Administrative Law Judge filed his Report, petitioners filed on June 13, 1975, a motion entitled "motion for Oral Argument and Appeal From Rulings of Administrative Law Judge." Cert. Ind. No. 17. In response, the Acting Administrator write a letter to Peter H. Meyers, Counsel for petitioners, dated July 14, 1975, which, generally, deferred until the final decision in the proceeding any ruling on the motion. (NORML has requested that this letter, which was not included in the Certified Index, be added thereto. See p. 13, fn.4, above.)

On September 25, 1975, the Acting Administrator published in the Federal Register his final decision and order in the

proceeding. 40 Fed. Reg. 44164-68, Cert. Ind. No. 21. The order denies NORML's petition "in all respects," 40 Fed. Reg. at 44168 col. 3.

In his decision, the Acting Administrator does acknowledge, however, that there is latitide to reschedule marijuana from Schedule I, consistent with treaty obligations. In fact, in terms of specific categories of cannabis materials, there is not that much difference between the Acting Administrator and the Administrative Law Judge on what amount of rescheduling would be consistent with treaty obligations.

The Acting Administrator held that there was no international obligation to control synthetic cannabis or THC, as had the Administrative Law Judge. See 40 Fed. Reg. at 44166 col. 1 and 44167 col. 1. The Acting Administrator also agreed that there was no obligation to control certain cannabis seeds (i.e., those incapable of germination), but that some control was required over other cannabis seeds (i.e., those capable of germination). See 40 Fed. Reg. at 44166 col. 1 and 44167 col. 1. (The Acting Administrator further held, wrongly we believe, that cannabis seeds and synthetic cannabis were "not at issue in this proceeding" 40 Fed. Reg. at 44168, col. 1, 44167, col. 1).

Turning to the question of cannabis leaves, when unaccompanied by the tops, the Acting Administrator concluded that such leaves could be rescheduled to Schedules II-IV of the

CSA, but not Schedule V, as the Administrative Law Judge had concluded. 40 Fed. Reg. at 44167 col. 1, 44168 col. 1. Finally, the Acting Administrator also agreed with the Administrative Law Judge that cannabis and cannabis resin could be rescheduled to Schedule II, but no lower, consistent with treaty obligations. 40 Fed. Reg. at 44167 col. 1 and col. 3.

Turning to the question of what he should do with the NORML petition since there was discretion to reschedule marijuana, the Acting Administrator stated, 40 Fed. Reg. at 44165 col. 2:

> It is unnecessary to decide whether Section 201(d) requires the Attorney General to seek the views of HEW on a substance included in an international treaty. In the instance of marihuana he has done so and he has received a reply.

The reference here is to the letter from Dr. Theodore Cooper, Acting Assistant Secretary for Health, which was introduced at oral argument before the Administrative Law Judge as Gov. Ex. No. 79, and is quoted in full on p. 15, fn. 4, above. The Acting Administrator's argument, insofar as petitioner can understand it, appears to be that this letter from Dr. Cooper is equivalent to the referral procedures contained in Section 201(a)-(c) of the CSA. The Acting Administrator concludes that this letter makes the placement of marijuana in Schedule I "mandatory" rather than "discretionary," 40 Fed. Reg. at 44168 col. 2:

> Placement of marihuana in Schedule I is therefore less discretionary than mandatory. Considering the Single Convention and the Act together there is in fact no discretion unless the appraisal of the Secretary, HEW, can be ignored. The Court of Appeals indicates that it should not be ignored and we have not done so here.

Petitioner would point out here one additional aspect of the Acting Administrator's final decision. The Acting Administrator refers repeatedly to the statement in this Court's prior decision that "it would seem appropriate for the Court to have the benefit of the views of ... the international organizations involved." NORML v. Ingersoll, 497 F. 2d at 661. The Acting Administrator states that the DEA has complied with this direction by introducing in evidence the two Resolutions from the Economic and Social Council (ALJ Ex. No. 3) and the Report from the World Health Organization (WHO) Expert Committee on Drug Dependence (ALJ Ex. No. 40). See 40 Fed. Reg. at 44164 col. 2, 44165 col. 1, 44166 col. 2, 44168 col. 2-3. The Acting Administrator states that these three documents "require the closest attention." 40 Fed. Reg. at 44166 col. 2.

The two Resolutions from the Economic and Social Council deal primarily with the medical and social aspects of marijuana use, and do not address at all the legal issue of what amount of rescheduling would be consistent with treaty obligations. The Report of the WHO Committee deals exclusively with scientific and medical questions about marijuana.

Mr. Donald E. Miller, the DEA's Chief Counsel, testified under cross-examination at the hearing below that there were two other international organizations -- the Division of Narcotic Drugs and the International Narcotics Control Board -- which do have the responsibility for determining whether a country's laws satisfy treaty obligations, Tr. 469-70:

> A. You make it sound like that I have no concern. Well, I do have concern. I just simply hadn't thought

that a country would be in derogation of their treaty obligations. I do not make it my job to read laws of all countries to make a determination as to whether they are in derogation of their treaty obligations. That is the concern of an international agency, the Division of Narcotic Drugs specifically.

* * *

A. Once again, you are going back to putting me into the position of accusing me of misfeasance of not being concerned about that is not my responsibility. And I keep pointing out to you, and I hope I can clarify it this time, that the Division of Narcotic Drugs in Geneva is the responsible agency to make a determination as to whether the laws are adequate in a certain country to carry out their treaty obligations.

The International Narcotics Control Board also functions in that area to make a determination as to whether or not they are satisfying their treaty obligations.

There is no indication in the record of whether the DEA attempted to contact the Division of Narcotic Drugs or the International Narcotics Control Board for their views on what rescheduling of cannabis would be consistent with treaty obligations.

The contents of the three documents introduced by the DEA staff are discussed in more detail below. Dr. Joel Fort, one of petitioners' witnesses at the hearing, testified on the nature of the organizations which prepared these documents, and responded to a number of the scientific and medical claims which are contained in the documents.

The Acting Administrator published a Correction to his final decision (of a minor nature) in the Federal Register on September 30, 1975, 40 Fed. Reg. 44856, Cert. Ind. No. 22.[7]

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7. The Correction substituted the phrase "leaves which are entirely detached from the tops and seeds," for the phrase "leaves which are capable of germination," at 40 Fed. Reg. 44168 col. 1.

On October 22, 1975, NORML filed a Petition for Review of the Acting Administrator's decision and order in this Court.

E. Sources for Interpreting the Single Convention

The only treaty or other international obligation which was cited in the Acting Administrator's final decision as imposing an obligation on the United States to control marijuana was the Single Convention on Narcotic Drugs ("Single Convention"). The Single Convention is the only treaty that has ever been at issue in this proceeding. The official text of the Single Convention is continued in the Appendix To Brief For Petitioner

The Single Convention was adopted at the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which met at United Nations Headquarters, in New York City, from January 24 to March 25, 1961. The deliberations of the Conference are set out in the two-volume Official Records, E/CONF. 34/24 and E/CONF. 34/24/Add.1. Volume I of the Official Records, which was introduced as ALJ Ex. No. 31, contains the summary records of the plenary meetings of the Conference. Volume II of the Official Records contains the Final Act of the Conference (ALJ Ex. No. 29), the third draft of the Single Convention (ALJ Ex. No. 30), and the summary records and reports by the committees of the Conference, preparatory documents, amendments and miscellaneous papers circulated at the Conference (ALJ Ex. No. 32). The third draft of the Single Convention,

which had been prepared by the Commission on Narcotic Drugs, was the principal working document of the Conference. ALJ Ex. No. 29, p. 298, para. 12.

Two documents relating to United States accession to the Single Convention in 1967 were introduced in evidence. See, Message from the President Transmitting the Single Convention to the Senate, Exec. G, 90th Cong., 1st Sess. (1967), ALJ Ex. No. 35; Report on the Single Convention by the Senate Committee on Foreign Relations, Exec. Rept. No. 11, 90th Cong., 1st Sess. (1967), ALJ Ex. No. 36.

Also introduced into evidence was the Commentary on the Single Convention on Narcotic Drugs, 1961 ("Commentary"), ALJ Ex. No. 39. The Commentary was prepared by the Secretary-General of the United Nations pursuant to a resolution of the Economic and Social Council, and published in 1973. It is a definitive and official United Nations interpretation of the Single Convention. Hoover Tr. 70. The Commentary contains an Article-by-Article (and often word-by-word) analysis of the Single Convention, relying upon the Official Records of the Conference, earlier negotiating history, subsequent practice of the parties, and other sources. See generally, Hoover Tr. 69-71. The Commentary was relied upon extensively by the Administrative Law Judge in his Report.

For a concise discussion of the background of the Single Convention, the early drafts, and the Conference for the Adoption of the Single Convention, see Lande, "The Single Convention

on Narcotic Drugs, 16 International Organization 776-97 (1962), introduced as ALJ Ex. No. 37. For a more comprehensive article on current international drug treaties, including a detailed analysis of the Single Convention, see Lande, "The International Drug Control System, ALJ Ex. No. 38, Appendix, Vol. III, pp. 6-132, Second Report of the National Commission on Marihuana and Drug Abuse (March 1973).[8]

F. Single Convention Controls Over Cannabis

The Single Convention provides for different measures of control for different parts of the cannabis plant. The definitions contained in Article 1 of the Single Convention provide:

> (b) "Cannabis" means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.
>
> (c) "Cannabis plant" means any plant of the genus cannabis.
>
> (d) "Cannabis resin" means the separated resin, whether crude or purified, obtained from the cannabis plant.

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8. Mr. Adolf Lande, the author of these two articles, was Deputy Executive Secretary of the Conference for the Adoption of the Single Convention, and actively participated in the conference deliberations on marijuana. See, e.g., Official Records, Vol. I, ALJ Ex. No. 31 at p. 186; Vol. II, ALJ Ex. No. 32 at pp. 177-78, 272.

Mr. Hoover, petitioner's witness at the hearing below, testified that he knew and had worked with Mr. Lande in Geneva, and that Mr. Lande was probably more than any other individual responsible for the drafting of the preparatory documents which became the Single Convention. Tr. 66. See generally, Hoover Tr. 66-70.

In the forward to the Commentary, the Secretary-General of the United Nations commends Mr. Lande "for his valuable assistance...." ALJ Ex. No. 39, at p. v.

"Cannabis" and "cannabis resin," as those terms are defined above, are listed in Schedules I and IV of the Single Convention, and are subject to all of the controls applicable to substances listed in those schedules. When the leaves and seeds of the cannabis plant accompany the tops, they are included within the Single Convention's definition of "cannabis," and are subject to the same controls.

Article 2(1) of the Single Convention lists the Articles and controls applicable to all substances listed in Schedule I of the Single Convention. Important features of the Schedule I control regime include:

-- Parties must license and control persons engaged in the manufacture (Art. 29), trade and distribution (Art. 30), and international trade (Art. 31).

-- Parties must prepare estimates of their drug requirements (Art. 19) and statistical returns of drugs consumed (Art. 20) for the International Narcotics Control Board.

-- The parties shall take such measures as may be necessary to limit the production, distribution, possession, etc., to authorized medical and scientific purposes. Art. 4(c).

-- The parties shall not permit the possession of drugs except under legal authority. Art. 33.

-- Subject to their constitutional limitations, the parties shall make certain activities "punishable offenses" and "serious" offenses must be subject to imprisonment penalties. Art. 36(1).

Substances listed in Schedule IV of the Single Convention, including cannabis and cannabis resin, are also subject to Article 2(5):

> The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter schedule, and in addition thereto:
>
> (a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and
>
> (b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party. (emphasis added)

The United States is also obligated to apply to cannabis and cannabis resin the controls set out in Article 23 of the Single Convention, because the United States presently authorizes the cultivation of the cannabis plant for scientific research. Miller Tr. 526-27; Administrative Law Judge Report, Cert. Ind. No. 19, at p. 12.

When the leaves and seeds of the cannabis plant do not accompany the tops, they are not defined as cannabis by the Single Convention, and are not subject to the obligations which the Single Convention imposes on "cannabis." As the Commentary states, marijuana cigarettes "containing material derived only from the leaves are consequently not subject to the provisions [of the Single Convention] governing cannabis." ALJ Ex. No. 39, at p. 3. In India, the leaves of the cannabis plant are widely used, most commonly in a liquid preparation called "bhang." Fort Tr. 196-97; Administrative Law Judge's Report, Cert. Ind. No. 19, at p. 9.

The only provision of the Single Convention which applies to cannabis leaves, when unaccompanied by the tops, is Article 28, para. 3. Commentary, ALJ Ex. No. 39, at p. 315. Art. 28(3) provides:

> The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

There is a dispute concerning whether any article in the Single Convention requires control of cannabis seeds, when unaccompanied by the tops. The Acting Administrator concluded that Article 2, para. 8 required control over certain cannabis seeds which were unaccompanied by the tops (i.e., seeds capable of germination). 40 Fed. Reg. at 44165 col. 3.[9] The Administrative Law Judge concluded that Article 2, para. 8 did not require the United States to control any cannabis seeds, when unaccompanied by the tops. Cert. Ind. No. 19, at. pp. 11-12.

Finally, there is no dispute that the Single Convention covers only the cannabis plant, and the various parts of the plant. The Single Convention does not apply to synthetic cannabis or THC, i.e., THC produced from chemicals in the laboratory, rather than naturally-occurring in the plant. The United States has no international obligation to control synthetic cannabis. Acting Administrator's final decision, 40 Fed. Reg. at 44166 col. 1; Administrative Law Judge's Report, Cert. Ind. No. 19, at pp. 14-15.

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9. Article 2, para. 8, provides that:

> The parties shall use their best endeavors to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be practicable.

Summary of Argument

The Acting Administrator acknowledged in his final decision that there is discretion to reschedule cannabis materials from Schedule I of the Controlled Substances Act, consistent with treaty obligations, and this is not in dispute. There is a dispute on the amount of rescheduling which would be consistent with treaty obligations.

It is NORML's position in this appeal that the following rescheduling would be consistent with treaty obligations: (1) decontrol of synthetic cannabis; (2) decontrol of all cannabis seeds, unaccompanied by the tops; (3) rescheduling of cannabis leaves, unaccompanied by the tops, to Schedule V; (4) rescheduling of "cannabis" and "cannabis resin" to Schedule II, or in the alternative, to Schedule V through the DEA's rule-making authority.

A chart contained on the following page compares NORML's position with the Acting Administrator's final decision and the Administrative Law Judge's recommended decision, on the amount of rescheduling which would be consistent with treaty obligations.

Rescheduling of Cannabis Materials Which Would Be Consistent With Treaty Obligations

	Acting Administrator's Final Decision	Administrative Law Judge's Recommended Decision	NORML's Position in This Appeal
Synthetic Cannabis	Decontrol	Decontrol	Decontrol
Cannabis Seeds*	Decontrol and Control[1]	Decontrol	Decontrol
Cannabis Leaves*	Schedule IV	Schedule V	Schedule V
"Cannabis" and "Cannabis Resin"	Schedule II	Schedule II	Schedule II or Schedule V[2]

*When unaccompanied by the tops.

[1]The Acting Administrator held that seeds capable of germination had to be "controlled," but never indicated the CSA schedule of control which would be sufficient. Presumably this would be CSA Schedule V. The Acting Administrator also held that the Single Convention did not require control of seeds incapable of germination.

[2]NORML concedes for the purpose of this appeal that "cannabis" and "cannabis resin" could not be rescheduled below CSA Schedule II, unless the DEA has the authority to reschedule these materials to a lower schedule (III-V) and require additional controls through its rulemaking powers.

As this chart indicates, there is much more agreement than disagreement on the amount of rescheduling which would be consistent with treaty obligations. The only dispute between NORML and the Acting Administrator involves these three narrow areas:

(1) Whether cannabis leaves could be rescheduled to Schedule IV or V,

(2) Whether cannabis seeds capable of germination must be controlled, and

(3) Whether the DEA has the authority to reschedule "cannabis" and "cannabis resin" below Schedule II through the use of its rulemaking authority.

There is, however, a very substantial dispute on the other issue involved in this case -- what procedures should the DEA follow in the "second phase" of its proceeding, since there is discretion to reschedule cannabis materials from Schedule I.

NORML believes that the correct procedure for the second phase of the DEA proceeding is the procedure contained in the Administrative Law Judge's Recommended Decision, which included the formal referral of the NORML petition to the Secretary of HEW, pursuant to Sections 201(a)-(c) of the Act, for consideration of such rescheduling as would be consistent with treaty obligations. After the Acting Administrator receives the Secretary's scientific and medical recommendations, Sec. 201(b), he would hold hearings, on the record, and then issue his final decision in this proceeding, Sec. 201(a). See Administrative Law Judge Report, Cert. Ind. No. 19, at pp. 34-35.

The Acting Administrator held that while it was "unnecessary" to interpret Section 201, the procedures specified in Sections 201(a)-(c) did not have to be complied with because of the letter from Dr. Cooper, Assistant Secretary for Health. 40 Fed. Reg. at 44165 col. 2. NORML argues below that this letter from Dr. Cooper is in no way comparable with, or an adequate substitute for, the full Section 201(a)-(c) procedures.

NORML has also requested below that a number of specific directions be included in the Court's decision remanding this case.

Finally, petitioner would point out that while the Courts must give due weight and consideration to the interpretation of a treaty made by a member of the Executive branch, the Courts are not required to give a strained construction to the language of a treaty, or to place an unreasonable interpretation upon it. See, e.g., Geofroy v. Riggs, 133 U.S. 258, 271 (1890); Oklahoma v. Texas, 260 U.S. 606, 633 (1923).[10]

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10. The well-established rule is that the Courts are the ultimate arbiters of what a treaty or statute provides, and have the final authority to interpret treaties as they affect the domestic law of the United States. See, e.g., Factor v. Laubenheimer, 290 U.S. 276 (1933); Arizona v. California, 373 U.S. 546 (1963); United States v. Texas, 339 U.S. 707 (1950). This is based upon the scope of the judicial powers, set out in Article III, Section 2 of the Constitution. See American Law Institute, Second Restatement of the Foreign Relations Law of the United States (1965), at p. 461 et seq.

ARGUMENT

I. Cannabis Substances Can Be Rescheduled from Schedule I of the CSA Consistent With Treaty Obligations

A. Rescheduling of "Cannabis" and "Cannabis Resin" to Schedule II, Or in the Alternative, to Schedule V

The Acting Administrator concluded that "cannabis" and "cannabis resin," as those terms are defined in the Single Convention, could be rescheduled to Schedule II of the CSA, but no lower, consistent with treaty obligations. 40 Fed. Reg. at 44167 col. 1, col. 3. The Acting Administrator is clearly correct that "cannabis" and "cannabis resin" could be rescheduled to Schedule II. See, Administrative Law Judge Report, Cert. Ind. No. 19, at pp. 18-26; Miller Tr. 431, 437; Hoover Tr. 51-54; Fort Tr. 203.

Mr. Miller, the DEA's Chief Counsel, testified below that the only difference between substances in CSA Schedules I and II is that substances in Schedule I are deemed to have "no currently accepted medical use" and cannot be prescribed by physicians, while substances in Schedule II are deemed to have "a currently accepted medical use" and can be prescribed by physicians. See Miller Tr. 473-74, 488. Compare CSA Sec. 201(b)(1)(B) with (b)(2)(B). See also Sec. 303 (f).[11]

11. Mr. Miller testified that there were substances listed in Schedule II of the CSA, including poppy straw, which did not have a "currently accepted medical use," Tr. 473-74, and Mr. Miller acknowledged that "cannabis" could be rescheduled to Schedule II under Section 201(d) even without "a currently accepted medical use." Tr. 487-88. (continued on following page)

Two provisions of the Single Convention relate to the question of whether "cannabis" can be prescribed for medical purposes. Article 4(c) expressly authorizes the medical use of all substances listed in Schedule I of the Single Convention, including "cannabis" and "cannabis resin." Hoover Tr. 51; Commentary, ALJ Ex. No. 39, at p. 111.

"Cannabis" and "cannabis resin" are also placed in Schedule IV of the Single Convention, and are therefore subject to Article 2(5)(b), which requires parties to limit the use of Schedule IV drugs to medical and scientific research, but only if in the party's opinion "the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare...."

The DEA staff did request a Proposed Conclusion of Law which stated that this article "obligates the United States to limit the use of cannabis and cannabis resin to medical and scientific research" (emphasis added). Government's Proposed Findings of Fact and Conclusions of Law, Cert. Ind. No. 11, at p. 38.

The Administrative Law Judge correctly rejected this proposed finding in his Report, Cert. Ind. No. 19, at pp. 20-21, stating that:

> While Article 2(5) of the Single Convention reveals the concern of the parties as to the medical use of cannabis, I find that it imposes no requirement on the

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(footnote continued from preceding page)
This point is important in connection with the discussion below on the significance which should be accorded to the letter from Dr. Cooper. For purposes of this discussion, we assume that Schedule II drugs must have an accepted medical use.

parties to prohibit its use. It is left to the good faith discretion of each party to determine whether prohibition of use is the most appropriate means of protecting the public welfare. See Commentary on the Single Convention on Narcotic Drugs (U.N. 1961) (ALJ 39, p. 65). Thus Article 2(5) does not amount to an obligation within the meaning of Sec. 201(d) of the Controlled Substances Act, and does not prohibit the United States from rescheduling cannabis to Schedule II, under which it could be prescribed for legitimate medical purposes.

See generally, Petitioners' Proposed Findings of Fact, Cert. Ind. No. 10, at pp. 17-22.

As indicated above, petitioner conceeds that CSA Schedule II controls are required for "cannabis." See Sec. 306 of the Act, which only applies to substances listed in Schedules I and II. Petitioner's argument that "cannabis" could be rescheduled below Schedule II, to Schedules III-V, focuses exclusively on the question of whether the DEA could reschedule "cannabis" to Schedules III-V, and in that same order indicate that "cannabis" would continue to be subject to Schedule II controls to fulfill treaty obligations, pursuant to the DEA's rulemaking powers.

This would allow the Secretary of HEW to consider whether "cannabis" should be rescheduled to Schedules III-V, and if the Secretary's recommendation indicated that "cannabis" should be rescheduled to one of those schedules based upon the scientific and medical criteria, the DEA could place "cannabis" in that schedule and continue to require Schedule II controls to fulfill treaty obligations.

It would be desirable for the Secretary of HEW to consider the broadest possible rescheduling of "cannabis," especially whether it should be rescheduled to Schedules III-V. The criteria for Schedules III-V reflect, in petitioner's view, a more realistic assessment of the potential for abuse of "cannabis" than the criteria for Schedule II. On a more practical level, rescheduling "cannabis" below Schedule III would significantly reduce the potential penalties for persons who are convicted of the unauthorized manufacture, distribution, or possession with intent to distribute, of "cannabis."[12]

The Administrative Law Judge believed that "despite the DEA's broad rulemaking power and the court's traditional deference to the exercise of that power," there might be a successful challenge to the adoption of the rule sought by NORML. See Cert. Ind. No. 19 at p. 25.

NORML submits that the rule sought is clearly within the authority of the DEA, and the argument below is based in large part upon the testimony at the hearing of Mr. Donald Miller, the DEA's Chief Counsel.

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12. The penalties for these offenses are set out in Section 401 of the Act. If "cannabis" is scheduled in Schedules I-III of the Act, the penalty for committing any of these offenses is up to five (5) years imprisonment and/or a fine of up to $15,000. Sec. 401(b)(1)(B). If "cannabis" were rescheduled to Schedule IV, the penalty for the above offenses would be up to three (3) years imprisonment and/or a fine of up to $10,000. Sec. 401(b)(2). If "cannabis" were rescheduled to Schedule V, the penalty for the above offenses would be up to one (1) years imprisonment and/or a fine of up to $5,000.

Rescheduling "cannabis" would not effect the penalty for simple possession, however, which is a maximum of one (1) years imprisonment and/or a fine of up to $5,000, for all controlled substances. Sec. 404(a).

Mr. Miller testified at length in his direct examination about the authority of the DEA to require by rulemaking the controls specified in the Single Convention. See Tr. 425-27. Mr. Miller testified that, in his opinion, the DEA did have authority to implement treaty obligations (specifically referring to Article 23) for cannabis by rulemaking, but only if cannabis were scheduled in Schedule I or II of the CSA. Tr. 425-26. Mr. Miller testified that, in his opinion, the DEA would not have authority to implement treaty obligations for cannabis by rulemaking if cannabis were rescheduled to Schedules III-V of the Act. Tr. 526.

The difference which Mr. Miller points to is that the Attorney General is directed to consider treaty obligations in granting registrations to manufacture Schedule I and II substances, but is not explicitly directed to consider treaty obligations in granting registrations to manufacture Schedule III-V substances. Tr. 526.27. This cannot be disputed. Compare CSA Sec. 303(a) and 303(d).

Mr. Miller did acknowledge, however, that Congress was not authorizing the DEA to register an applicant to manufacture Schedule III, IV, or V drugs in violation of treaty obligations, or disregarding treaty obligations. Tr. 505.

In addition, the Controlled Substances Act does not explicitly provide that the Attorney General shall consider treaty obligations in registering distributors of controlled substances in Schedules I and II [see CSA Sec. 303(b)] or distributors of controlled

substances in Schedules III-V [see CSA Sec. 303(e)]. The Controlled Substances Act also does not explicitly provide that the Attorney General shall consider treaty obligations in registering practitioners to dispense or conduct research in controlled substances. CSA Sec. 303(f).

In light of the fact that one of the primary purposes of the Controlled Substances Act was to fulfill treaty obligations, particularly the Single Convention, see Hoover Tr. 101-02; Miller Tr. 430-32, there should not be any question that the DEA must consider treaty obligations in granting registrations to manufacture Schedule III-V drugs, and registrations to distribute and dispense drugs in all schedules, even though this is not explicitly set out in the Act.

In addition, petitioner submits that the DEA has the authority to reschedule "cannabis" below Schedule II and to require all persons who manufacture, distribute, or dispense "cannabis" to continue to apply Schedule II controls, if those controls are required by treaty obligations.

There are a number of provisions in the CSA which give the DEA broad authority over persons registered under the Act, including the authority to "promulgate rules and regulations" to carry out the Act, Section 301, and the authority to consider "such other factors as may be relevant to and consistent with the public health and safety." Sections 303(a)(6), (b)(5), (d)(6), and (e)(5). See also Sections 302(b), 1008(e) and (f).

There are a number of recent cases in which agency rulemaking similar to that proposed by NORML has been upheld. These cases reflect what the Administrative Law Judge termed the "court's traditional defense" to agency rulemaking. In Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), the Supreme Court recently reaffirmed that agency rulemaking will be sustained as long as it is "reasonably related to the purposes of the enabling legislation." 411 U.S. at 369.

In Mourning, the validity of Regulation Z, enacted by the Federal Reserve Board under the Truth-in-Lending Act was in question. Regulation Z implemented disclosure requirements on credit transactions where no finance charges were involved. The Regulation was attacked on the ground that it was inconsistent with some portions of the statute, in that the statute itself authorized disclosure requirements with respect to transactions actually involving a finance charge. The Court stated:

> Neither the sections of the Truth-in-Lending Act which refer specifically to transactions involving finance charges nor any other sections of the Act indicate that Congress attempting to list comprehensively all types of transactions to which the Board's regulations might apply. To the contrary, the broad grant of rule-making authority reflects an intention to rely on those attributes of agency administration recognized in American Trucking. We cannot then infer that references in the Act to transactions involving credit were intended to limit the deterrent measures which the Board might choose. 411 U.S. at 372-73.

Similarly, in Public Service Commission of New York v. F.P.C., 327 F.2d 893 (D.C. Cir., 1964), the petitioner challenged the authority of the Federal Power Commission to issue regulations

permitting the issuance of temporary certificates on grounds other than those explicitly set out in the National Gas Act. This Court stated:

> The question is whether the regulation is valid. We think it is. The power to issue temporary certificates is not limited to emergencys "to assure maintenance of adequate service or to serve particular customers." As the legislative history makes clear, this language has a special relationship to pipelines. The courts should not construe this affirmative grant of authority as excluding authority in other situations if its exercise finds justification in the Act as a whole....[W]e are unable to say now that the action of the Commission ... was so clearly arbitrary and unreasonable as to justify us in setting it aside. 327 F.2d at 897.

The Seventh Circuit faced an analogous situation in Rex Chainbelt, Inc., v. Volpe, 486 F.2d 757 (7th Cir. 1973). The National Traffic and Motor Vehicle Safety Act requires every manufacturer or distributor of a motor vehicle to furnish a certificate of conformity with federal motor vehicle safety standards. The statute also gives the Secretary of Transportation the authority to "issue, amend, and revoke such rules as he deems necessary" to carry out the statute. The Secretary enacted a rule providing that manufacturers and installers of cement mixers on truck bodies must certify the entire vehicle, since such person is the "final-stage manufacturer" of the motor vehicle. Plaintiff, a cement mixer manufacturer and installer, argued that the Act does not authorize the imposition of any kind of certificate requirement upon manufacturers not selling through distributors or dealers. The Court stated:

> Regulations promulgated pursuant to this delegation of power are to be upheld by a reviewing court if they conform to purposes and policies of the Act and if they do not contravene any of its terms. Sec. 1403 does not prohibit the imposition of further certification requirements by regulations of the Secretary but merely specified who must certify their vehicles. We therefore find that the Secretary has power under the Act to require manufacturers not working through distributors and dealers to certify their vehicle or equipment. 486 F.2d at 761.

See also, National Petroleum Refiners Ass'n v. F.T.C., 482 F.2d 672 (D.C. Cir. 1973); National Broadcasting Co. v. United States, 319 U.S. 190, 217 (1943); American Airlines, Inc. v. C.A.B., 359 F.2d 624 (D.C. Cir. 1966).

B. Rescheduling of Cannabis Leaves (When Unaccompanied by the Tops) to Schedule V.

The Acting Administrator held that cannabis leaves, when unaccompanied by the tops, could be rescheduled to Schedule IV of the CSA, consistent with treaty obligations. 40 Fed. Reg. at 44167 col. 1. This follows the testimony of Mr. Miller at the hearing below, see Tr. 448-50, and the Proposed Findings of Fact and Conclusions of Law filed by the DEA staff. Cert. Ind. No. 11 at p. 25.[13]

The Administrative Law Judge concluded that cannabis leaves, when unaccompanied by the tops, could be rescheduled to Schedule V. Cert. Ind. No. 19, at pp. 28-29. It is clear beyond a reasonable doubt that the Administrative Law Judge is correct and the Acting Administrator is wrong.

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13. The Acting Administrator did acknowledge that he "might agree" to Schedule V if the question was presented "in the framework of an academic discussion." 40 Fed. Reg. at 44167 col. 1..

The only provision of the Single Convention which applies to cannabis leaves, when unaccompanied by the tops is Article 28, para. 3. Commentary, ALJ Ex. No. 39, at p. 315; Hoover Tr. 41. Article 28, para. 3 provides in full:

> The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

Mr. Miller testified that the only material difference in control exercised over substances listed in Schedules IV and V of the CSA is that Schedule IV drugs require a medical prescription, while Schedule V drugs do not. Tr. 453-54. See CSA Sec. 309.

The Single Convention contains a provision requiring "medical prescriptions for the supply or dispensation of drugs to individuals." Article 30(2)(b)(i)(emphasis added). However, there is no dispute that cannabis leaves are not "drugs" as defined in the Single Convention [See Article 1(J)], and that this prescription requirement in Article 30 is not applicable to cannabis leaves. Miller Tr. 450-51, 454; Commentary, ALJ Ex. No. 39, at pp. 9, 315.

The fact that the Single Convention contains a medical prescription requirement, which it is agreed does not apply to cannabis leaves, is a strong indication, to say the least, that the United States is not required to distribute cannabis leaves by medical prescription only.

In addition, it is somewhat absurd to argue that medical prescriptions are required when all authorities, including Mr.

Miller, agree that cannabis leaves need not even be limited to medical uses. Article 28(3) allows a party to authorize to non-medical, or recreational, use of leaves. Miller Tr. 445,452; Hoover Tr. 43, 48; Commentary, ALJ Ex. No. 39, at p. 316.

In fact, a number of countries which are parties to the Single Convention presently permit the non-medical use of cannabis leaves. The National Commission on Marihuana and Drug Abuse reported in 1972 that there was extensive use of cannabis leaves in India for non-medical purposes, primarily in a liquid preparation referred to as "bhang." ALJ Ex. No. 47, p. 10. The National Commission stated (Id.):

> High-caste Hindus are not permitted to use alcohol. But they are allowed "bhang" at religious ceremonials, and also employ it as an intoxicant at marriage ceremonies and family festivals. "Bhang" is used by laborers in India in much the same way as beer is used in the United States.

Dr. Fort testified that in India:

> [T]here is open and widespread use by millions of people of cannabis leaves, particularly in beverage form and in foods, or confections. Most commonly this is in a preparation called bhang, b-h-a-n-g, where people can walk into, in a sense, an equivalent of our bar and have this liquid concoction prepared for them, a mixture of leaves and spices and water, and drink it down and leave and go about whatever they were going to do.
>
> They also, I would say even more commonly, prepare it themselves at home and have easy access to it.... Tr. 196.

The Administrative Law Judge found this evidence "convincing" on the question of whether leaves could be rescheduled to Schedule V, Cert. Ind. No. 19, at p. 28:

The experience of India in this respect is convincing. Dr. Fort's testimony reveals that if, indeed, it can be said that India applies any controls over cannabis leaves, such control is minimal (TR, pp. 196-97). Yet there is no doubt that India believes, and the United Nations is satisfied, that it is meeting its treaty obligations insofar as misuse of, and illicit traffic in, leaves is concerned.

The Controlled Substances Act provides for the following measure of control for all substances listed in all schedules, including Schedule V, of the Act:

-- Every person who manufactures, distributes or dispenses any controlled substance must register annually. Sec. 302(a).

-- All registrants must make complete and accurate records of all stocks on hand and of each substance manufactured, received, sold, delivered, or otherwise disposed of. Sec. 307(a)

-- The Attorney General is authorized to make administrative inspections of the records, and of the places of business, of all registrants. Sec. 510(a).

-- It is a criminal offense subject to imprisonment penalties, to manufacture, distribute, etc., any controlled substance except for authorized purposes. Sec. 401, 404.

-- All of the above controls also apply to importers and exporters. Secs. 1002-03, 1008.

It is virtually inconceivable that these controls over CSA Schedule V substances are insufficient to satisfy Art. 28(3) of the Single Convention.

Article 28(3) is drafted in very general terms, and does not require any specific or particular controls. Hoover Tr. 127; Miller Tr. 415. A party to the Single Convention need only apply the controls it feels are necessary and appropriate. Hoover

Tr. 43, 48. The determination of what measures are necessary to prevent misuse and illicit traffic are essentially a matter for each party to decide for itself. Hoover Tr. 43, 48; Miller Tr. 445, 452. A party to the Single Convention would not object to the failure of another party to adopt any specific measures of control. Hoover Tr. 127. See also letter from the Assistant Legal Advisor, Department of State, incorporated in ALJ Ex. No. 3, 39 Fed. Reg. at 23073:

> The provision regarding measures necessary to prevent the misuse of the leaves is not elaborated upon by any other provision of the convention. It appears to be dependent solely upon a judgment in good faith of the party concerned as to what constitutes misuse. With respect to illicit traffic in the leaves, the Convention does not specify any particular measures that are to be adopted in preventing such traffic.

The discussion of control over the leaves at the Conference for the Adoption of the Single Convention is set out in detail in Petitioners' Proposed Findings of Fact, Cert. Ind. No. 10 at pp. 14-21. This history, together with the other considerations set out above, demonstrate that the Administrative Law Judge was correct in concluding that, Cert. Ind. No. 19 at pp. 27-28:

> Although the Single Convention imposes an obligation on the United States to adopt some control measures over cannabis leaves when they are not accompanied by the flowering or fruiting tops of the cannabis plant (Finding 26 a) 2), supra), the Convention does not require the United States to adopt any particular control scheme as to the leaves (Finding 23, supra).
>
> Thus, any measures which the United States adopted when, viewed objectively, amounted to a good faith effort to prevent the "misuse of, and illicit traffic in, the leaves of the cannabis plant" (Article 28(3) of the Single Convention) would satisfy our obligations under the Convention.

C. Decontrol of Cannabis Seeds
(When Unaccompanied by the Tops)

The Administrative Law Judge concluded that cannabis seeds, when unaccompanied by the tops, could be decontrolled consistent with treaty obligations. Cert. Ind. No. 19, at pp. 11-12. The Acting Administrator made a distinction between cannabis seeds which were incapable of germination (these did not have to be controlled), and cannabis seeds which were capable of germination (which the Single Convention required to be "controlled"). 40 Fed. Reg. at 44166 col. 1, 44167 col. 1. As far as NORML can determine, the Acting Administrator never indicates the schedule of control required for seeds capable of germination. Presumably this would be the lowest schedule of control, Schedule V. The Acting Administrator also stated that, in his view, cannabis seeds were "not at issue" in the proceeding. 40 Fed. Reg. at 44167 col. 1, 44168 col. 1.

The Article in the Single Convention which the Acting Administrator refers to as requiring control of cannabis seeds capable of germination is Article 2(8), See 40 Fed. Reg. at 44165 col. 3. Article 2(8) provides:

> The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be practicable.

Clearly Article 2(8) does not require the United States to control cannabis seeds, or any other substance in particular. The Commentary describes this provision as leaving it "practi-

cally to the discretion of each Party to decide to what substances it should apply the control provided in that paragraph, and what measures it would be practicable to take." ALJ Ex. No. 39, at p. 71. See also, Administrative Law Judge Report, Cert. Ind. No. 19, at pp. 11-12.

The Acting Administrator also stated that cannabis seeds were "not at issue" in this proceeding. 40 Fed. Reg. at 44167 col. 1, 44168 col. 1.

While this Court, in its prior decision, did not specifically direct that findings be made on cannabis seeds, petitioner believes that the Court's intent was for the DEA to make a complete record, and comprehensive findings, on all the different cannabis materials the Single Convention controls and does not control. Mr. Miller testified at the hearing below that this was also his view, Tr. 487:

> Q. Do you think that is a valid point anymore, that we failed to ask for the right thing in our original petition?
>
> A. I think the Circuit Court -- and it has been a while since I have read that case through -- sort of resolved it by saying we will consider everything.

Cannabis seeds were specifically listed as a "sub-issue" in petitioners' original request for a hearing, ALJ. Ex. No. 4, at p. 2. At the hearing, witnesses Hoover and Miller testified, without objection, on controls applicable to the seeds. Hoover Tr. 40-41; Miller Tr. 458-59. Dr. Turner, who was called by the DEA staff, testified at length concerning the physical appearance,

THC content, and other aspects of cannabis seeds and other parts of the plant. Tr. 308-35. Petitioners' Proposed Findings, submitted at the conclusion of the hearing, included the seeds as an issue, Cert. Ind. No. 10, at pp. 14-15. The Administrative Law Judge's Report treats the seeds as an issue, and recommends that cannabis seeds (when unaccompanied by the tops) be referred to the Secretary of HEW as a separate category. Cert. Ind. No. 19, at pp. 34-35. The Acting Administrator himself makes findings on the control required over seeds by the Single Convention.

Cannabis seeds are "at issue" in this proceeding, and since there is no international obligation to control cannabis seeds, unaccompanied by the tops, there should be no question that the procedures for rescheduling contained in Sections 201(a)-(c) of the CSA must be followed.

D. Decontrol of Synthetic Cannabis or THC

The Acting Administrator and the Administrative Law Judge agreed that neither the Single Convention nor any other treaty presently in force requires the United States to control synthetic cannabis or THC. 40 Fed. Reg. at 44168 col. 1; Cert. Ind. No. 19, at pp. 14-15. The Acting Administrator also stated that since synthetic THC is not controlled by treaty, "therefore, U.S. control of synthetic tetrahydrocannabinol is not an issue in this proceeding." 40 Fed. Reg. at 44167 col. 1. See also, 40 Fed. Reg. at 44166 col. 1 and 44168 col. 1.

Synthetic THC is THC which is produced from chemicals in the laboratory, as distinct from the THC which is naturally-occurring in the plant. In his letter, Dr. Cooper described THC as "the active principle in marihuana." Gov. Ex. No. 79, at p. 1. Synthetic THC was not included in the Controlled Substances Act as passed by Congress, but was added to Schedule I by rulemaking by the BNDD in 1971. See Notice of Rulemaking, 36 Fed. Reg. 7803 (April 24, 1971). This Notice of Rulemaking listed synthetic THC at Schedule I(c)(17) and defined it as follows, 36 Fed. Reg. at 7803:

> (17) Tetrahydrocannabinols ----------
> Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
> Δ1 cis or trans tetrahydrocannabinol, and their optical isomers.
> Δ6 cis or trans tetrahydrocannabinol, and their optical isomers.
> Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers.
> (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

In a recent update of the CSA schedules, the DEA redesignated synthetic THC as Schedule I(c)(20), without changing the language of the provision. 40 Fed. Reg. 23306 (May 29, 1975).

The definitions contained in Article 1 of the Single Convention include, and require control over, THC which is nationally-occurring in the plant or obtained from the plant, but do

not require control over synthetic THC. Hoover Tr. 49; Miller Tr. 471. Synthetic THC is controlled by the Convention on Psychotropic Substances, but this Convention is not yet in force. Hoover Tr. 49. The United States has at present no international obligation to control synthetic THC. Hoover Tr. 49; Miller Tr. 471. See Petitioner's Proposed Findings of Fact, Cert. Ind. No. 10, at p. 14.

The Acting Administrator also states that since synthetic THC is not controlled by treaty obligations "therefore" synthetic THC "is not an issue" in this proceeding. 40 Fed. Reg. at 44167 col. 1. This statement turns logic on its head. The conclusion to be drawn from the premise that synthetic THC is not controlled by treaty obligations is that the DEA must, without question, comply with the procedures set out in Sections 201(a)-(c) of the Act for substances which are not affected by treaty obligations and section 201(d).

In his Report, the Administrative Law Judge expressed a different concern on whether synthetic THC was an issue in this proceeding. The Administrative Law Judge correctly noted that petitioners had not listed synthetic THC in their initial letter requesting a hearing, ALJ Ex. No. 4. Despite this, the Administrative Law Judge held that synthetic THC was an issue in this proceeding. Cert Ind. No. 19 at p. 15. Witnesses Hoover and Miller testified concerning synthetic THC at the hearing, without objection. Hoover Tr. 49; Miller Tr. 49. The Administrative

Law Judge added that the DEA staff did not "point out what evidence it might have adduced at the hearing which it did not because of lack of notice." Cert. Ind. No. 19, at p. 15 (footnote).

Even the Acting Administrator made findings concerning synthetic THC, concluding that treaty obligations did not require control. In light of this Court's prior decision (See Miller Tr. 4871, and in light of the fact that there is no dispute on whether international obligations require control of synthetic THC, petitioner requests that the Administrative Law Judge's Recommended Decision be followed, and that the question of rescheduling synthetic THC be referred to the Secretary of HEW as a separate category of cannabis material.

II. Since there is Discretion to Reschedule Cannabis Materials, the Procedures Contained in Sections 201(a)-(c) of the CSA Must be Complied With

Since there is discretion, as the Acting Administrator acknowledged, to reschedule cannabis materials from Schedule I of the Controlled Substances Act, the other issue involved in this case concerns the proper procedures for the DEA to follow in the "second phase" of its proceeding.

NORML believes that the correct procedure for the second phase of the DEA proceeding is the procedure contained in the

Administrative Law Judge's Recommended Decision, which included the formal referral of the NORML petition to the Secretary of HEW, pursuant to Sections 201(a)-(c) of the Act, for consideration of such rescheduling as would be consistent with treaty obligations. After the Acting Administrator has received the Secretary's scientific and medical recommendations, Sec. 201(b), he would hold hearings, on the record, and then issue his final decision in this proceeding, Sec. 201(a). See Administrative Law Judge Report, Cert. Ind. No. 19, at pp. 31-35.

The Administrative Law Judge rejected the DEA staff's argument that Section 201(d) of the CSA gave the DEA sole authority over the rescheduling of marijuana, Cert. Ind. No. 19 at pp. 32-33:

> Despite Congress' intent as revealed in Sections 201(a) and (b), the Government insists that all of these procedures can be ignored and that the Administrator, because of Sec. 201(d), can decree, without referring the matter to the Secretary of HEW and without holding hearings, that cannabis shall remain in Schedule I so long as some control over cannabis and cannabis leaves is required by treaty, even though the treaty could be satisfied by placing these drugs in a less restrictive schedule.
>
> Congressional history does not in my opinion support the Government's interpretation of Sec. 201(d)....
>
> The hearing and referral provisions of Secs. 201(a) and (b) clearly reveal Congress' desire to place the responsibility for the medical and scientific evaluation of drugs in the hands of the Secretary of HEW, not the Administrator of DEA.[14]

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14. The DEA staff had proposed the following finding, Government's Proposed Findings of Fact and Conclusions of Law, Cert. Ind. No. 11, at p. 30:

> This provision [Section 201(d)] is clear on its face, when an international obligation is present, the Attorney General

(continued on following page)

In his final decision, the Acting Administrator stated that it was "unnecessary" for him to interpret Section 201(d), because the letter from Doctor Cooper, Acting Assistant Secretary for Health, Gov. Ex. No. 79, resolved the questions which would have been involved in the "second phase" of the proceeding. 40 Fed. Reg. at 44165 col. 2. See also, 40 Fed. Reg. at 44167 col. 2.

NORML argues below that Dr. Cooper's letter does not resolve the issues involved in the "second phase" of this proceeding, and is in no way comparable with, or an adequate substitute for, the full Section 201(a)-(c) procedures.

While the Acting Administrator stated that it was "unnecessary" to interpret Section 201(d), it should be pointed out that the Acting Administrator did decide in his final decision that the full Section 201(a)-(c) procedures did not have to be complied with, including formal referral of the petition to the Secretary of HEW for findings and recommendations, Sec. 201(b), and then hearings, on the record, at DEA, Sec. 201(a).

It should also be pointed out that the Acting Administrator bases his authority to issue the final order upon Section 201(d).

(continued from preceding page)
need not utilize the scheduling procedures for drugs as delineated in CSA Sections 201(a) and (b) and 202(b), 21 U.S.C. 811(a) and (b) and 812(b). Congress has given the Attorney General absolute discretion to 1) determine what obligations are required by treaty, and 2) place substances in CSA schedules consistent with these treaty obligations.

This finding was based upon the testimony of Mr. Miller, the DEA's Chief Counsel. See Tr. 476-99. Mr. Miller testified that: "I have no problems with the DEA making the medical and scientific determination. If control is required by treaty obligations, then that decision is made by DEA." Tr. 496.

The final order begins, 40 Fed. Reg. at 44168 col. 2:

> Order
>
> Under the authority vested in the Attorney General by Section 201(d), of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USC 811(d), and redelegated to the Acting Administrator of the Drug Enforcement Administration....

For these reasons, NORML believes that Section 201(d) is at issue in this appeal. The interpretation of Section 201(d) was an issue before this Court when this case was here on Petition for Review of the BNDD's order in 1972 initially rejecting the petition. The Court, while not making a final interpretation of Section 201(d), did state, 497 F. 2d at 660-61, that:

> The decision under review rightly refers to Section 201(d) of the Act as establishing a basis for control under the Act if required by treaty obligations. But the decision seems to go further and say that if some control is required by treaty then the decision of which Schedule is appropriate is a matter for the exclusive decision of the respondent as the delegee of the Attorney General. This is a matter that gives us pause. The respondent seems to be saying that even though the treaty does not require more control than schedule V provides, he can on his own say-so and without any reason insist on Schedule I. We doubt that this was the intent of Congress.

There is no dispute that Section 201(d) is applicable to "cannabis" and "cannabis resin" (as those terms are defined in the Single Convention) and to cannabis leaves (either accompanied by or unaccompanied by the tops). There should also be no dispute that Section 201(d) is inapplicable to synthetic THC and cannabis seeds (unaccompanied by the tops) because Section 201(d), by its terms, is only applicable "if control is required by United States obligations under international treaties, conventions, or protocols...." (emphasis added)

Perhaps the single most important document on the proper procedure the DEA must follow, in light of Section 201(d), is the Memorandum from the Deputy Assistant Attorney General, Office of Legal Counsel of the Department of Justice, to the Director of the BNDD, dated August 21, 1972, entitled "Petition to Decontrol Marihuana; Interpretation of Section 201 of the Controlled Substances Act of 1970." This Memorandum was supplied to NORML in response to a general request for documents to the DEA staff, and was introduced in evidence at the hearing as ALJ Ex. No. 28. See Tr. 8-10. The Memorandum states that it was prepared in response to a request from the Director of BNDD for the Justice Department's legal opinion on what procedure should be followed with respect to the NORML petition, which had just been filed. The Memorandum was not available to the Court when it first heard this case.

The Memorandum indicates that the views of the BNDD and of the Special Action Office for Drug Abuse Prevention ("SAODAP") were solicited on the interpretation of Section 201. The BNDD's position on Section 201 was that since cannabis was controlled by the Single Convention, the BNDD could decide the issues involved in the NORML petition without referring it to the Secretary of HEW. Id., p. 3. SAODAP's interpretation of Section 201(d) was "diametrically opposite" (Miller Tr. 484) -- SAODAP construed that section only to apply to newly added drugs, and not to the rescheduling of drugs, such as cannabis. Id., pp. 2-3.

The Memorandum evaluates the respective interpretations of Section 201 by BNDD and SAODAP, and the legislative history behind the Controlled Substances Act, and then provides its own interpretation of Section 201. Id., pp. 4-10. The Memorandum's conclusion, which represented a "compromise" between the BNDD and SAODAP positions, stated that Section 201 should be construed to require the Attorney General to refer a petition for rescheduling of a substance controlled by the Single Convention to the Secretary of HEW for his medical and scientific findings and for consideration of such rescheduling, and only such rescheduling, as would be consistent with treaty obligations:

> Given the wording of subsection 201(d), in the context of the other provisions, it is our view that the subsection is intended to give the Attorney General final authority to ensure compliance with treaty obligations in all cases in which the propriety of the scheduling of a substance is at issue under subsection 201(a). Id., p. 6.
>
> * * *
>
> While the Attorney General retains primary authority for scheduling procedures, certain important inputs in the decision-making process are delegated to the Secretary of Health, Education, and Welfare. In particular, under subsection 201(b), the Attorney General is instructed to request from the Secretary a scientific and medical evaluation of a substance and recommendations as to its proper scheduling. Id., p. 2.
>
> * * *
>
> Nonetheless, it is possible that Congress has placed marihuana on a schedule imposing stricter controls than international obligations require. If the Attorney General were to find that classification under Schedule V were sufficient to satisfy these obligations, the scheduling procedures outlined in section 201 of the Act could still be followed in determining whether a rescheduling from Schedule I to Schedule V is warranted. Id., p. 10.
>
> * * *

> Should the petition be modified to seek a rescheduling consistent with our international obligations, the Attorney General would be obliged to follow the prescribed procedures in obtaining a medical and scientific evaluation from the Secretary of Health, Education, and Welfare. Id., p. 14.

The last statement, which suggests that the NORML petition "be modified to seek a rescheduling consistent with our international obligations," refers to the fact that the original petition only requested that marijuana be rescheduled to Schedule V or decontrolled, actions which the Memorandum stated would violate treaty obligations. In light of the remand from this Court, and the subsequent proceedings at DEA, it is no longer necessary for NORML to amend its petition to seek lesser rescheduling than sought in the original petition. See Miller Tr. 486-87. Even the Acting Administrator made findings on rescheduling to all schedules, not just the rescheduling requested in the initial petition.

The Memorandum also indicates that most of the substances which are listed in the schedules of the Controlled Substances Act are also controlled by the Single Convention. Id., p. 3. The interpretation of Section 201 therefore involves not just cannabis, but most of the substances controlled in the CSA. Congress could not have intended that the DEA have sole authority to reschedule all of these substances.

The Memorandum from the Office of Legal Counsel discusses and quotes from the legislative history of the Controlled Substances Act in support of its interpretation of Section 201.

See Id., pp. 5-9. The Memorandum relies primarily upon the House and Senate reports on the Act. House Report No. 91-1444, 91st Cong., 2d Sess. (1970); Senate Report No. 91-613, 91st Cong., 1st Sess. (1969). Additional portions of the House and Senate reports which are not quoted in the Memorandum, but which support the Memorandum's conclusion that Section 201(d) gives the Attorney General authority to prevent violations of treaty, but not authority to make medical and scientific findings, are as follows:

A). House Report, supra., Pt. 1, at pp. 22-23:

> Considerable controversy arose during the hearings over this provision of the bill [Section 201], with respect to the proper role of the Attorney General and the Secretary of Health, Education, and Welfare in making determinations concerning which drugs should be controlled. The reported bill strikes a balance between the extent to which control decisions should be based upon law enforcement criteria and the extent to which such decisions should be based on medical and scientific determinations. The bill provides that the ultimate authority for decision as to whether or not drugs should be controlled, and the schedule in which they are to be placed, shall rest with the Attorney General, based upon all the evidence, with all scientific and medical determinations being made by the Secretary of Health, Education, and Welfare, and these determinations being made binding upon the Attorney General.

B). House Report, supra, Pt. 1, at p. 4:

> An exception [to the rescheduling procedures contained in Section 201(a) and (b)] is made in the case of treaty obligations of the United States. If a drug is required to be controlled pursuant to an international treaty, convention, or protocol in effect on the enactment of the bill, the drug will be controlled in conformity with the treaty or other international agreement obligations.

C). Senate Report, supra, p. 5:

> This title [Title II] vests the authority for control of the substances enumerated under its provisions with the Attorney General.
>
> There has been a point of controversy evident among the professions involved in drug control and drug research on whether or not the Justice Department has the expertise to schedule or reschedule drugs since such decisions require special medical knowledge and training.
>
> This difficulty is resolved by the provision contained in this title which requires the Attorney General to seek advice from the Secretary of Health, Education, and Welfare and from the Scientific Advisory Committee on whether or not a substance should be added, deleted or rescheduled with respect to the provisions of the bill.[15]

This legislative history supports the conclusion reached by the Office of Legal Counsel of the Department of Justice, and by the Administrative Law Judge below, that Section 201(a)-(c) procedures must be complied with for consideration of such rescheduling as would be consistent with treaty obligations.

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15. See also, Hearings on S.1895 et al. Before the Sub-Committee to Investigate Juvenile Delinquency of the Senate Judiciary Committee, 91st Cong., 1st Sess., pp. 279, 317 (1969), statement of Dr. Henry Brill, Chrmn., Amer. Med. Assoc. Comm. on Alcoholism and Drug Dependence (at 317), and testimony of Dr. Stanley Yolles, Dir., Nat'l. Inst. of Mental Health (at 279).

III. The Letter from Doctor Cooper is Not Comparable with, or an Adequate Substitute for, the Full Procedures Specified in Sections 201(a)-(c).

The Letter for Doctor Cooper, Acting Assistant Secretary for Health, Gov. Ex. No. 79, is in no way comparable with, or an adequate substitute for, the full procedures contained in Sections 201(a)-(c) of the CSA. The complete text of this letter is set out in the footnote below.[16]

This letter focuses exclusively on the question of whether marijuana has a currently accepted medical use in the United States, and indicates that it does not, and that no New Drug Applications ("NDA") have been filed for marijuana under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

NORML recognizes that marijuana does not have a "currently accepted" use in medicine in the United States. This is obvious -- marijuana is still in CSA Schedule I. What NORML has been arguing since it first filed its petition for rescheduling in

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16. The letter states, 40 Fed. Reg. at 44165 col. 2:

Dear Mr. Jenson: At your request, we have prepared the following statement giving our position on the medical uses of Cannabis sativa L. (marihuana).

There is currently no accepted medical use of marijuana in the United States. There is no approved New Drug Application for Cannabis sativa L. (marihuana) or tetrahydrocannabinol, the active principle in marihuana. There are Investigational New Drug Applications on file to determine possible therapeutic uses and potential toxic effects of the substance.

We have included for your information a copy of the most recent report on these studies and a copy of the FDA policy regarding clinical studies with marihuana.

Sincerely yours,

/s/

Theodore Cooper, M.D.,
Acting Assistant Secretary
for Health.

1972 is that the petition should be referred to HEW, for findings and a recommendation on whether marijuana should be recognized as having "currently accepted" medical uses in the United States. It is clear that the consideration which HEW will give this question, pursuant to Section 201 of the CSA, is far more than just checking the files to see whether any NDA's have been granted.

A recent article in Drug Enforcement, a magazine published by the DEA, contains a detailed description of what happens in practice when a petition is referred by DEA to HEW under Section 201 of the Act. Vodra, "The Controlled Substances Act," Drug Enforcement, Spring 1975, at pp. 2 et seq. Mr. William Vodra, the author of this article, is in the Office of General Counsel, Department of HEW, and was formerly Assistant Chief Counsel of the DEA. The article states (Id., p. 34):

> Once DEA has collected the "necessary data," the Administrator of DEA (by authority of the Attorney General) requests from HEW a "scientific and medical evaluation" and recommendations as to whether the drug or other substance should be controlled or removed from control. This request is filed with the Commissioner of FDA, who has the responsibility for coordination of activities within HEW. The Commissioner solicits evaluations and recommendations from the affected bureaus within FDA (e.g., Bureau of Drugs, Bureau of Veterinary Medicine), from the National Institute of Drug Abuse, and from the Controlled Substances Advisory Committee. There is no statutory requirement that HEW receive comments from, or provide a hearing to, interested parties in preparing its evaluation and recommendations. A reason for creating this advisory committee, however, is to provide a forum whereby HEW can hear from interested persons, the medical and scientific community, and the public. Once these evaluations are received, the Commissioner submits a report and recommendations to the Assistant Secretary for Health. The Assistant Secretary (by authority of the Secretary) then transmits back to DEA his medical and scientific evaluation regarding the substance and his recommendations as to whether the drug should be controlled.

After reviewing HEW's evaluation and recommendations, DEA then would hold hearings, on the record, pursuant to Section 201(a) of the Act. At this hearing, the "recommendations of the Secretary to the Attorney General [DEA] shall be binding on the Attorney General [DEA] as to such scientific and medical matters." Section 201(b).[17]

It should also be pointed out again that the scientific and medical evaluation of HEW covers far more than just the question of medical use. The different factors which HEW considers are set out in Sections 201(b)-(c) of the CSA, and include: "The state of current scientific knowledge regarding the drug or other substance"; "What, if any, risk there is to the public health"; "Its psychic or physiological dependence liability." Dr. Cooper's letter does not consider any of these additional factors.

Furthermore, Mr. Miller testified that there were substances listed in Schedule II of the CSA, including poppy straw, which did not have a "currently accepted medical use," Tr. 473-74, and Mr. Miller further testified that "cannabis" could be rescheduled

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17. The article by Mr. Vodra in Drug Enforcement, supra., states on p. 34:

> The medical and scientific evaluations are binding on DEA with respect to scientific and medical matters. The recommendation on scheduling is binding only to the extent that if HEW recommends that the substance not be controlled, DEA may not control the substance. While the issue has never been legally resolved, it is understood by DEA and HEW that DEA may not exceed the level of control recommended by HEW but may take final action for a lower level of control than that recommended. For example, if a drug is recommended by the assistant Secretary for Health for control in Schedule III, DEA may place the drug in Schedule III, IV or V, but may not place it in Schedule II.

to Schedule II under Section 201(d) even without a "currently accepted medical use." Tr. 487-88. If Mr. Miller is correct, then Dr. Cooper's letter would be totally irrelevant to the "second phase" of the proceeding, because Dr. Cooper's letter deals exclusively with the medical use question.[18]

The Acting Administrator's heavy reliance on the fact that there are no NDA's for marijuana is also misplaced. First, as pointed out above, the consideration of medical uses by HEW pursuant to Section 201 of the CSA is far greater than merely checking the files to see whether any NDA's have been granted. Second, the procedure for obtaining NDA's under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., is a procedure for persons who want to ship substances "in interstate commerce." See 21 U.S.C. Sec. 355(a). This is a procedure primarly designed for drug manufacturers. NORML itself does not seek to ship cannabis "in interstate commerce." Congress created two complimentary procedures -- the NDA procedure for shipment of substances in interstate commerce, and the CSA procedure for rescheduling substances controlled by the CSA. The NDA procedure does not subsume or eliminate the procedure Congress created in the CSA. See generally, American Pharmaceutical Ass'n v. Weinberger, 377 F.Supp. 824, 825-31 (D.D.C. 1974).

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18. In petitioner's view, it is unnecessary for this Court to decide whether cannabis could be rescheduled to Schedule II without a "currently accepted medical use" under Section 201(d) of the Act. Petitioner only cites Mr. Miller's testimony to show that, even in Mr. Miller's view, the letter from Doctor Cooper would be totally irrelevant to the "second phase" of the proceeding below.

The Acting Administrator attempts to read far too much significance into Dr. Cooper's letter. When the letter was introduced at oral argument before the Administrative Law Judge (See Transcript of Argument held April 18, 1975, Cert. Ind. No. 16 at pp. 1-3), it was accompanied by a letter from the DEA's Deputy Chief Counsel to counsel for NORML, dated April 17, 1975, which contained a much more modest view of the letter's significance, Gov. Ex. No. 79, at pp. 1-2:

> Attached is a letter dated April 14, 1975, addressed to Acting Deputy Administrator Jerry N. Jenson, by Dr. Theodore Cooper, Acting Assistant Secretary for Health, Department of Health, Education, and Welfare.
>
> Since this letter is simply corroborative of the testimony of Donald E. Miller on the fact that the Food and Drug Administration had issued no New Drug Application for any part of the cannabis plant, it should occasion no delay in the oral argument scheduled for April 18.

In this letter, the DEA's Deputy Chief Counsel also stated that the letter from HEW was requested by the DEA "pursuant to [the] direction" of this Court.[19] This is a totally different rationale for the Dr. Cooper letter than that given by the Acting Administrator in his final decision. In his final decision, the Acting Administrator indicated that the letter from Dr. Cooper

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19. The letter from the Deputy Chief Counsel states, Id., p. 1:

> In NORML et al. v. Ingersoll et al., 497 F.2d. 654, the United States Court of Appeals for the District of Columbia Circuit directed the Administrator to provide "a new look and a hard look at the questions raised by the (NORML) petition."
>
> Pursuant to that direction, the Drug Enforcement Administration requested a statement of the position of the Department of Health, Education, and Welfare on whether there exists a currently accepted medical use of marihuana in the United States.

was sought because Dr. Fort, one of petitioners' witnesses, was allowed by the Administrative Law Judge to testify on matters outside the "first phase" of the proceeding, including testimony on the medical uses for cannabis. See 40 Fed. Reg. at 44165 col. 1. Petitioner submits that this is misleading and unfair, both as to petitioner, and as to the Administrative Law Judge.

In petitioner's view it was the DEA staff which first injected the medical issue into this proceeding by introducing into evidence, before Dr. Fort was called to testify, the Report from the WHO Expert Committee on Drug Dependence, ALJ Ex. No. 40, Tr. 19-21, which contained such statements as:

> As pointed out by previous WHO Expert Committees concerned with drug dependence, medical need for cannabis as such no longer exists. Id., p. 1.
>
> This Committee strongly reaffirms the opinions expressed in previous reports that cannabis is a drug of dependence, producing public health and social problems.... Id., p. 2.

A portion of Dr. Fort's testimony was directed at these statements, Tr. 159-60, 177-82, and to similar medical and scientific statements made in the two Reports from the U.N. Economic and Social Council, introduced by the DEA staff prior to the hearing as part of ALJ Ex. No. 3. See Tr. 183-92.

However, putting aside the question of who first injected the medical issue into the "first phase," petitioner would agree that the Administrative Law Judge gave both petitioners and the DEA staff leeway in presenting testimony at the hearing, and that some of this testimony went beyond the strict "first phase" of the proceeding. The most prominent example of this is that the Adminis-

tive Law Judge permitted Mr. Porto and Dr. Turner, two witnesses called by the DEA staff, to testify at length on chemical and botanical subjects. Neither of these witnesses were qualified as an expert on treaty obligations, and neither testified on treaty obligations. See Porto Tr. 250-94; Turner Tr. 295-404. The Acting Administrator doesn't criticize the Administrative Law Judge for allowing this testimony, which the DEA staff believed was somehow relevant.

The important point, however, is that when the Administrative Law Judge prepared his Report, he stated that insofar as the testimony or Proposed Findings of either petitioners or the DEA staff involved medical and scientific questions they "are not relevant to the issues which must now be decided." Cert. Ind. No. 19, at p. 18.

The Administrative Law Judge concluded that since there was discretion to reschedule cannabis, the NORML petition should be referred to the Secretary of HEW for medical and scientific findings. This is what NORML sought when this petition was first filed in 1972, and it is what NORML still seeks today.

Petitioner sets out below certain suggested directions which it requests the Court to include in its decision remanding this case, if the Court so decides.

Suggested Directions For the Decision Remanding this Case

If the Court reverses and remands this case for further proceedings, NORML requests that the following directions be included in the Court's decision:

1. The Acting Administrator should be directed to refer the NORML petition to the Secretary of HEW, pursuant to Sections 201 (a)-(c) of the CSA, for medical and scientific findings and for consideration of such rescheduling as this Court determines would be consistent with treaty obligations. See the Administrative Law Judge's Recommended Decision, Cert. Ind. No. 19, at pp. 34-35.

2. NORML also requests that the Acting Administrator be directed to "immediately" refer the NORML petition to HEW, or refer the petition within thirty (30) days after entry of this Court's decision. There is almost nothing left for the DEA to do prior to referring the petition to HEW.

3. The Secretary of HEW should be directed to make separate evaluations for each of the following cannabis materials, and make a separate recommendation for rescheduling each of these materials, within the limits authorized by treaty obligations:

A. Synthetic Cannabis or THC (decontrol),

B. Cannabis seeds (decontrol)

C. Cannabis leaves (Schedule V),

D. "Cannabis" and "cannabis resin" (Schedule II, or V through rulemaking).

4. The Secretary of HEW should be directed that he has unlimited discretion, unaffected by the Single Convention, to recognize therapeutic uses for cannabis in the United States.[20] In considering the rescheduling of cannabis materials, the Secretary of HEW also has unlimited discretion to consider, for example, different dosage or THC levels. It would be consistent with treaty obligations if, for example, a synthetic substance having a low THC content were decontrolled, the same synthetic substance having a higher THC content were rescheduled to Schedule V, and the synthetic substance containing the highest THC content were rescheduled to Schedule II.

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20. See Lande, "The International Drug Control System," ALJ Ex. No. 38, at p. 42:

> [D]ifferent interpretations by governments of the term "medical purposes" have also continued under the regime of the Single Convention and no party has protested against the use of the controlled drugs for the purpose of maintenance programs such as in the United Kingdom. It must be concluded that governments have a very wide discretion in interpreting the term "medical purposes" in accordance with their own conditions.
>
> Moreover, the term "medical purposes" can not have exactly the same meaning at all times and under all circumstances. Its interpretation must also depend on the stage of medical science at the particular time in question. There may also be a legitimate difference of view among medical experts as to what is proper medical use in a particular case. It is suggested that the meaning of the phrase "medical purposes" must in all cases be determined by medical considerations.... (footnotes omitted)

5. The DEA, after receiving the Secretary of HEW's evaluation and recommendations, shall hold hearings, on the record, pursuant to Section 201(a) of the CSA. At this hearing the scientific and medical findings and the recommendations of HEW are binding upon DEA. Section 201(b).

6. NORML also requests that this Court's decision indicate that the scientific and medical findings made by the Acting Administrator, in his final decision[21] were (1) outside the scope of the hearing below and (2) for the Secretary of HEW, and not the Acting Administrator of DEA, to make. If the DEA seeks any medical or scientific findings, such as those set out in the footnote below, the DEA should include this in their formal referral to HEW.

7. Finally, petitioner requests certain directions to the Acting Administrator which are not directly related to the issues involved in this appeal. At the hearing below, Mr. Miller, the DEA's Chief Counsel, testified that the DEA (and through it, the United States) was violating three separate provisions of Article 23 of the Single Convention. Petitioner requests that the Acting Administrator be directed to look into these serious questions of United States noncompliance with treaty obligations, perhaps in the form of a rulemaking proceeding. The background for this requested direction is set out at pp. a3-a5 of the Addendum hereto.

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21. See, e.g., 40 Fed. Reg. at 44166 col. 1:

> The administrative hearing developed certain facts which were not included in Judge Parker's findings:
>
> 1. The plant material of what is commonly called marihuana in the United States consists of a mixture of crushed leaves, flowers and twigs of the Indian Hemp plant, an annual belonging to the single species of Cannabis sativa.
>
> 2. Resin is found in all parts of the cannabis plant including the leaves and the psychoactive element tetrahydrocannabinol (THC) is found in all parts of the plant. It is possible to extract THC from a separated cannabis leaf....

Conclusion

NORML requests that the final decision and order of the Acting Administrator be reversed, and that this case be remanded with directions to refer the NORML petition to the Secretary of HEW, pursuant to Sections 201(a)-(c) of the Controlled Substances Act, for consideration of such rescheduling of cannabis materials as would be consistent with treaty obligations. NORML also requests that the Court include in its decision the other suggested directions contained above.

Respectfully submitted,

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Dated: February 1976.

ADDENDUM

Section 201 of the Controlled Substances Act, 21 U.S.C. Sec. 811, provides:

> Sec. 201. (a) The Attorney General shall apply the provisions of this title to the controlled substances listed in the schedules established by section 202 of this title and to any other drug or other substance added to such schedules under this title. Except as provided in subsections (d) and (e), the Attorney General may by rule --
>
> (1) add to such a schedule or transfer between such schedules any drug or other substance if he --
>
> (A) finds that such drug or other substance has a potential for abuse, and
>
> (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 202 for the schedule in which such drug is to be placed; or
>
> (2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.
>
> Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of title 5 of the United States Code. Proceedings for the issuance, amendment, or repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.
>
> (b) The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in

paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a).

(c) In making any finding under subsection (a) of this section or under subsection (b) of section 202, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.
(2) Scientific evidence of its pharmacological effect, if known.
(3) The state of current scientific knowledge regarding the drug or other substance.
(4) Its history and current pattern of abuse.
(5) The scope, duration, and significance of abuse.
(6) What, if any, risk there is to the public health
(7) Its psychic or physiological dependence liability.
(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

(d) If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section.

Summary of Present United States
Non-Compliance With Article 23
Of The Single Convention

Mr. Miller, the DEA's Chief Counsel, testified at the hearing below that the United States was violating three separate provisions of Article 23 of the Single Convention, See Tr. 526-39, and that:

> I would concede that one thing that has been brought out by this hearing are certain inadequacies on our part, which will be straightened out. Tr. 539.

Mr. Miller acknowledged that the DEA licenses persons to import and export cannabis, in violation of Article 23(2)(e), which requires a "national agency" to itself do all of the importing and exporting of cannabis. Tr. 536-37. Mr. Miller also testified that the DEA did not "purchase and take physical possession" of all cannabis cultivated in this country by persons licensed to cultivate, including Dr. Carlton Turner, as required by Article 23(2)(d). Tr. 529-30. Finally, Mr. Miller acknowledged that the United States was required by Article 23(3) to have "a single government agency" to discharge the obligations required by Article 23, but that the United States, at the present time, has three such agencies -- (1) the Department of Justice, (2) the Department of HEW, and (3) the Department of Agriculture. See Tr. 528-29, 538-39.

The Proposed Findings of Fact and Conclusions of Law filed by the DEA staff below did recognize that Article 23 is binding upon the United States, Cert. Ind. No. 11 at pp. 12-13, but in

a long footnote the DEA staff attempts to gloss over those inadequacies. Id., p. 13. The Final Decision of the Acting Administrator is silent on these questions, and petitioner is aware of no action taken by the DEA to "straighten out" these problems.

Petitioner requests this Court to direct the Acting Administrator of DEA to look into these serious questions of noncompliance with treaty obligations, perhaps in the form of a rule-making proceeding.* At the present time, the United States can be accused of following the treaty obligations it "likes" and ignoring the obligations it doesn't "like."

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*Cf., United States v. Castro, _____ F. Supp. _____, 16 Cr. L. Rep. 2511 (D.C.N.Ill.1975), where the Court, in upholding the constitutionality of classifying cocaine as a "narcotic" drug in the Controlled Substances Act, in a criminal prosecution, suggested that the Attorney General consider the rescheduling of cocaine, 16 Cr. L. Rep. at 2512:

> While there is some question as to whether the Attorney General could reclassify cocaine as a non-narcotic, hopefully this route will be pursued to obtain consideration of some of the unresolved questions surrounding the impact of cocaine as highlighted by the expert testimony before us. It is clearly preferable that the drug laws be based upon more substantial factual evidence than the slender threads of minimum rationality present here. As has been the experience with the marijuana laws, hopefully, a more enlightened factual foundation, grounded upon our expanding medical and scientific knowledge, will allow us to deal firmly, but also more fairly, with our drug problems. (emphasis added)

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

NORML

2317 M STREET, N.W., WASHINGTON, D.C. 20037. 202-223-3170

July 14, 1976

United States Board of Parole
Federal Home Loan Bank Board Building
320 First Street, NW
Washington, D.C. 20537

RECEIVED
JUL 13 1976
Chairman, Parole Commission

Attention: Rulemaking Committee

Dear Sir or Madame:

Re: Proposed Parole Regulations

Please find attached hereto the comments of NORML on the Parole Board's proposed regulations governing the parole of prisoners in federal institutions, which were published in the Federal Register on May 12, 1976, 41 Fed. Reg. 19326-40.

Sincerely,

Peter H. Meyers
Chief Counsel

PHM:pes
Attachment

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BEFORE THE
UNITED STATES BOARD OF PAROLE

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders and Juvenile Delinquents — Proposed Rulemaking
(28 C.F.R. Part 2)

COMMENTS OF NORML

The National Organization for the Reform of Marijuana Laws (NORML) submits these comments on the proposed regulations published by the U.S. Parole Board in the Federal Register on May 12, 1976, 41 Fed.Reg. 19326-40.

These comments are directed at Section 2.20 of the proposed regulations, which contains guidelines for parole release based, in part, on the severity of the offense.[1] NORML proposes that when the Parole Board issues its final regulations, the following three changes be made in these guidelines:

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[1] Section 2.20 categorizes offenses into six levels of severity--Low, Low Moderate, Moderate, High, Very High, and Greatest. To determine the customary range of time to be served before release, the Parole Board will consider the level of severity of the offense and the parole prognosis of the individual offender.

Section 2.20 establishes separate guidelines for adult offenders, youth offenders, and persons sentenced under the Narcotic Addict Rehabilitation Act (NARA). See 41 Fed.Reg. at 19330-33. In each of these three guidelines, the severity levels for offenses are substantially identical, as is more fully discussed below.

(1) Simple possession of marijuana should be reduced one level in severity, from "Low Moderate" to "Low," and the other marijuana-related offenses should similarly be reduced one level in severity;

(2) Hashish should not be defined as a "soft drug," which have higher severity levels than comparable marijuana offenses; and,

(3) There appear to be a number of internal inconsistencies in the severity levels for "soft" and "hard" drug offenses, which require correction by the Parole Board, whatever view it has of their severity.

I. INTERESTS OF NORML

NORML is a non-profit organization working to decriminalize possession and use of marijuana. NORML maintains a National Headquarters in Washington, D.C., and state affiliates in 38 states. NORML is supported by more than 20,000 members, including hundreds of persons who are presently incarcerated in federal and state prisons for marijuana offenses. NORML has initiated and participated in numerous federal administrative proceedings and court cases involving the marijuana laws, including a petition to reschedule marijuana in the Federal Controlled Substances Act, petition denied, 40 Fed.Reg. 44164-68 (Sept. 25, 1975), appeal pending, NORML v. DEA, No. 75-2025, U.S. Court of Appeals for the D.C. Circuit; and lawsuits challenging the constitutionality of the marijuana laws, particularly as they relate to private possession and use, e.g. NORML v. Cullinane, Civ. Act. No. 1897-73, U.S. Dist. Court for the D.C. Circuit (three-judge court); NORML v. Gain, No. 697-445, Superior Court for the City and County of San Francisco.

II. ARGUMENT IN SUPPORT OF PROPOSED CHANGES

A. Reducing Marijuana Offenses One Severity Level

NORML has proposed that simple possession of marijuana be reduced one level in severity, from "Low Moderate" to "Low," and that the other marijuana offenses similarly be reduced one level in severity. The proposed guidelines for adult offenders, youth offenders, and persons sentenced under the NARA contain the identical three severity levels for marijuana offenses:[2]

-- "simple possession (less than $500)," in the "Low Moderate" category.

-- "possession with intent to distribute/sale (less than $5,000)," in the "Moderate" category.

-- "possession with intent to distribute/sale ($5,000 or more)," in the "High" category.

1. Reducing Simple Possession of Marijuana

Simple possession of marijuana (less than $500) is obviously an offense of much less severity than many of the other offenses listed in the "Low Moderate" category, including: passing or possessing counterfeit currency (less than $1,000), forgery or fraud (less than $1,000), theft from the mail (less than $1,000), and income tax evasion (less than $10,000). There are also a number of offenses presently listed in the "Low" category which appear to be on a much greater order of severity than simple possession of marijuana (less than $500), including: larceny and simple possession of stolen property (less than $1,000).

Even putting aside the dollar ceilings specified for these offenses, which range from double to 20 times the dollar ceiling for simple possession of marijuana, the inherent nature of these offenses are much more serious, and pose much more of a danger to society, than possession of marijuana.

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[2] 41 Fed. Reg. at 19330, 19332, 19333.

A number of recent government reports and scientific studies have confirmed that the effects of marijuana are relatively innocuous, particularly when compared with the effects of other substances, such as narcotics, barbiturates, and alcohol. These reports and studies also show that marijuana presents no substantial danger to the public health, safety, or welfare.

In 1972, the National Commission on Marihuana and Drug Abuse issued its First Report, entitled Marihuana: A Signal of Misunderstanding (March 1972).[3] Among the significant findings of the report were the following, Id. at pp. 56-57:

> A large amount of research has been performed in man and animals regarding the immediate effect of marihuana on bodily processes. No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana.
>
> * * *
>
> These few consistently observed transient effects on bodily function seem to suggest that marihuana is a rather unexciting compound of negligible immediate toxicity at the doses usually consumed in this country. The substance is predominantly a psychoactive drug. The feelings and state of consciousness described by the intoxicated seem to be far more interesting than the objective state noted by an observer.

The Commission further found that use of marijuana generally does not cause any significant psychological disturbance or aberration. Id. at p. 59. When study subjects were given high doses of marijuana over several weeks, "no harmful effects were observed on general bodily functions, motor functions, mental functions, personal or social behavior or work performance." Id. at p. 60. Nor is there evidence that long-term use of marijuana directly causes alienation, "dropping out," or loss of motivation. Id. at p. 62. The studies failed to demonstrate any significant difference in mental or social functioning, occurrence of psychosis, motivation, or behavioral changes between even very heavy, very long-term users of cannabis preparations and the non-using population. Id. at pp. 63-64.

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[3]The National Commission was created by Congress in the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, and given a broad mandate to study marijuana and other drugs, and then issue two reports, the first on marijuana alone, and the second on all other drugs. 84 Stat. at 1280.

The National Commission recommended that possession of marijuana for personal use no longer be a criminal offense. Id at pp. 152-54. A summary of this report is attached hereto as Appendix A.[4]

The Canadian Commission of Inquiry into the Non-Medical Use of Drugs also published its report on marijuana, Cannabis, in 1972. The Canadian Commission reached similar conclusions to those reached by the U.S. National Commission. The Canadian Commission stated, Id. at p. 114:

> In summary, at typical doses of cannabis use, few acute physiological effects have been detected. Those which have been identified generally seem to have little clinical significance. Even at relatively high doses, few substantial physiological changes occur.

Both the Canadian Commission and the National Commission found that marijuana does not cause criminal or violent behavior, Canadian Commission Report at 110, National Commission Report at 73; does not lead to the use of other drugs, Canadian Commission Report at 130, National Commission Report at 88-89; is not a narcotic or addicting drug, Canadian Commission Report at 123, National Commission Report at 87; and posed no danger of death from overdose, Canadian Commission Report at 113-114, National Commission Report at 56-57.

For the last five years, the U.S. Department of Health, Education and Welfare has issued annual reports on the health consequences of marijuana use, as required by Title V of the Marijuana and Health Reporting Act, P.L. 91-296. These annual reports have confirmed the findings of the National and Canadian Commissions concerning the relative harmlessness of marijuana. Attached hereto as Appendix B is a recent HEW publication which contains the 8-page summary of the most recent Fifth Annual Report, entitled Marihuana and Health (1975), and the comments of Dr. Robert Dupont, Director of the National Institute on Drug Abuse, at a press briefing releasing this report. Putting the health consequences of marijuana in perspective, Dr. Dupont stated, Id. at p. 9:

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[4] The National Commission published its second and final report a year later. Drug Use in America: Problem in Perspective (March 1973). In this report, the Commission concluded, Id. at p. 467:

> 1. The Commission reaffirms its recommendations concerning marihuana as set out in its First Report.
>
> 2. The unauthorized possession of any controlled substance except marihuana for personal use should remain a prohibited act. . . .

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> I would say that for all of the drugs we have mentioned there are many people who use them without suffering negative health consequences. For each of the drugs, there is a spectrum of negative health risks that a user takes. . . I would say today, at our current use levels and our state of knowledge, that there is no question that alcohol and tobacco are causing us far more health problems than marihuana does. There is no question on that point.

Focusing on the appropriate penalty for possession of marijuana, Dr. Dupont stated, Id. at pp. 7-8:

> A few years ago, there was a very polar extreme in this country in thinking about penalties for marihuana possession ranging from legalization, that is, making it as available as we make cola or cigarettes in this country, to locking possessors up and throwing away the key on the other extreme. We have progressed a long way since then, and the current debate in the United States is very narrow in terms of what the right penalty ought to be for marihuana possession. If I can state it this way, on the extreme of the hard-line view about this is the use of very short prison sentences. For example, S.1., the new reform legislation in the Senate now includes, as I understand, up to 30-days imprisonment for marihuana possession, which is a very light penalty. That now represents one extreme. The other extreme is the policy that has been adopted by a number of States to substitute fines for imprisonment. Personally, my view on this is that we do not need to threaten young people with imprisonment to discourage their use of marihuana, and that we should substitute in place of imprisonment a fine, a monetary fine that signals to the public that we as the Government and as a country are opposed to the use of marihuana, but that we do not consider the possession of small quantities for personal use the kind of problem to be dealt with by putting people in prison.

In September, 1975, the Domestic Council Drug Abuse Task Force submitted a report to the President, entitled White Paper on Drug Abuse. The Task Force, which consisted of the federal government's chief officials involved with drugs and drug abuse, made a number of significant recommendations. The report urged that marijuana possession offenses be "deemphasized" because they posed the least risk of harm to the individual and to society of the drugs commonly used in the United States. Id. at p. 33. The report called for a "better targeting of limited resources. . .on the basis of priorities which reflect current conditions and current knowledge." Id. at p. 34.

The report contains the following chart which compares the severity of consequences, both personal and social, from drug use, Id. at p. 33:

SUMMARY OF DRUG PRIORITIES

		DEPENDANCE LIABILITY	SEVERITY of CONSEQUENCES		SIZE OF CORE PROBLEM
			PERSONAL	SOCIAL	
HEROIN		HI	HI	HI	HI 400,000
AMPHETAMINES	NEEDLE	HI	HI	HI	HI
	ORAL	LOW	MED	MED	500,000
BARBITURATES	MIXED	HI	HI	HI	MED
	ALONE	MED	HI	MED	300,000
COCAINE		LOW	LOW	MED	LOW
MARIHUANA		LOW	LOW	LOW	LOW
HALLUCINOGENS		MED	MED	MED	LOW
INHALENTS		MED	HI	MED	LOW

It is obvious that marijuana has the lowest severity of these drugs.[5] Selected portions of this report are attached hereto as Appendix C.

In considering how serious an offense simple possession of marijuana should be treated, the Parole Board should also consider recent legislative developments. In the past few years there has been a marked trend toward reduced penalties for marijuana possession. In the 1970 Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., Congress reduced the penalty for simple possession of marijuana and other drugs from felony to misdemeanor status, and provided for probation and record expungement for first offenders. By today, simple possession of small amounts of marijuana is a misdemeanor in all states except Nevada and Arizona. In Nevada, while possession is still a felony, conditional discharge is authorized for first offenders. In Arizona, possession can be prosecuted as either a felony or misdemeanor.

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[5]This chart also suggests that the Parole Board should consider redefining cocaine as a "soft drug" rather than a "hard drug" in its guidelines. See footnote 6 to adult, youth, and NARA guidelines, 41 Fed. Reg. at 19331, 19332, 19333.

In addition, there are now eight states which no longer arrest or imprison persons for possession of a small amount of marijuana. While the provisions of these eight states laws vary, they are all similar in that possession of a specified amount of marijuana is subject to a citation-enforced fine, rather than arrest and possible imprisonment, and there is no permanent criminal record. The first state to adopt this approach was Oregon in 1973, which provided for a $100 maximum civil fine for possession of up to 1 ounce of marijuana. Since 1973, similar laws have been adopted in Alaska, Maine, Colorado, California, Ohio, South Dakota, and Minnesota. The following chart summarizes the provisions of these laws:

SUMMARY CHART - MARIJUANA CITATION LAWS

State	Max. Fine Imposed	Max. Amount Possessed	Criminal or Civil Violation	Effective Date
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$100.00	Any amount in private for personal use or 1 oz. in public	Civil	Mar. 1, 1976
Maine	$200.00	Any amount[a] for personal use	Civil	Mar. 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense - no criminal record	July 1, 1975
California[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (approx. 3½ oz.)	Minor misdemeanor - no crim. record	Nov. 22, 1975
South Dakota	$ 20.00	1 oz.	Civil	April 1, 1977
Minnesota[b]	$100.00[c]	1½ oz.	Civil	April 10, 1976

[a] There is a rebuttable presumption that possession of less than 1½ oz. is for personal use, and possession of more than 1½ oz. is with an intent to distribute.

[b] Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in four states: California (for up to 1 oz.), Colorado (up to 1 oz.), Ohio (up to 20 gr.), and Minnesota (up to 1½ oz.).

[c] Only Minnesota provides for increased penalties for second offenses: 0-90 days in jail and/or a $300 fine for second offense within a two year period.

The provisions of these laws are set out in greater detail in Appendix D hereto.[6]

[6] For an excellent legal history of the marijuana laws, see Bonnie and Whitebread, "The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition," 56 U.Va. L. Rev. 971, 1010-1081 (1970); Bonnie and Whitebread, The Marihuana Conviction -- A History of Marihuana Prohibition in the United States (Univ. Virginia Press 1974).

In light of the above considerations, NORML requests that simple possession of marijuana (less than $500) be reduced one level in severity, from "Low Moderate" to "Low," in the Parole Board's final guidelines. If the Parole Board decides not to make this change, NORML requests, in the alternative, that simple possession of a smaller amount of marijuana — perhaps $250 — be placed in the "Low" category.

2. Reducing the Other Marijuana Offenses One Severity Level

If the Parole Board reduces simple possession of marijuana (less than $500) to the "Low" category, the Board should consider similarly reducing the other marijuana offenses contained in the guidelines one level in severity. Specifically, possession with intent to distribute/sale (less than $5,000) should be reduced from "Moderate" to "Low Moderate," and possession with intent to distribute/sale ($5,000 or more) should be reduced from "High" to "Moderate."

We will not repeat here what was stated above concerning the relative seriousness of marijuana offenses. We would note only the following two additional considerations: First, lowering these other marijuana offenses one severity level would be consistent with the intent of the originally proposed guidelines, which list marijuana offenses in 3 consecutive levels of severity. Second, these other marijuana offenses appear to be of much less severity than other offenses listed in their categories. For example, in the "Moderate" category, the following offenses are listed in addition to possession with intent to distribute/sale of marijuana (less than $5,000): Embezzlement (less than $20,000), bribery of public officials (no amount specified), receiving stolen property with an intent to resell (less than $20,000), and transportation of explosives (no amount specified). In the "High" category, together with possession of marijuana with intent to distribute/sale ($5,000 or more), are the following offenses: Passing or possessing counterfeit currency ($20,000-$100,000), theft, forgery, fraud, embezzlement, and receiving stolen property (all $20,000-$100,000), unauthorized purchase or sale of machine guns or sawed-off shotguns (no amount specified).

B. Hashish Should Not be Classified as a "Soft Drug."

The Parole Board's proposed guidelines classify hashish as a "soft drug," which have higher severity levels than comparable marijuana offenses.[7] This distinction is not supported by the scheme of the Federal Controlled Substances Act or current knowledge about these substances. Simple possession of hashish (less than $500) is not a more serious offense than simple possession of marijuana (less than $500). The dollar ceilings for these offenses make any further distinction unnecessary.

Marijuana and hashish are both derived from the marijuana, or cannabis, plant. Marijuana generally consists of the flowering tops, leaves, stalks, and seeds of the plant. Only the flowering tops and leaves are used for smoking, the stalks and seeds being discarded because they contain negligible levels of tetrahydrocannabinol (THC). THC, which is found in greatest percentages in the flowering tops and the leaves, is generally presumed to be the chemical substance which produces the effects of the drug. According to current information, the amount of THC present determines the potency of the preparation. Hashish is made by collecting and compacting the THC-rich resin contained in the flowering tops and leaves into a powdery or brick-like substance. Hashish is more potent than the marijuana from which it was made, but potency of different marijuana and hashish samples varies widely. Marijuana of "high quality" often has a greater percentage of THC than "low quality" hashish. See, Marihuana: A Signal of Misunderstanding (March 1972), at p. 50; Cannabis, Report of the Canadian Commission of Inquiry into the Non-Medical Use of Drugs (1972), at pp. 11-12; Edward Brecher and the Editors of Consumer Reports, Licit and Illicit Drugs (1972), at p. 396; PharmChem Newsletter, Vol. 3, No. 8 (1974) at p. 1.

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[7] See footnote 6 to the adult, youth, and NARA guidelines, 41 Fed.Reg. at 19331, 19332, 19333, which states:

> 6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes; "soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD and hashish.

There is no basis in the Federal Controlled Substances Act (CSA), 21 U.S.C. Sec. 801 et seq., for distinguishing between marijuana and hashish. The CSA treats them in an identical manner. The definition of "marihuana" contained in Sec. 102 (15) of the CSA includes concentrated forms of the plant:

> (15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. . . .

All of the substances defined as "marihuana" are placed, without distinction, in Schedule I of the CSA, and are treated identically for penalty purposes and all other purposes. See CSA Schedule I (c) (10). By contrast, there are a number of substances in the CSA which are distinguished by potency level, including opium, codeine, and morphine. Schedule II (a) (1) of the CSA lists "Opium and opiate," but Schedule III (d)(7) lists substances containing "not more than 500 milligrams of opium per 100 milliliters. . .," and Schedule V (5) lists substances containing "not more than 100 milligrams of opium per 100 milliliters. . . ." Similarly, codeine preparations containing "not more than 1.8 grams of codeine per 100 milliliters" are in Schedule III (d)(1), while codeine preparations containing "not more than 200 milligrams of codeine per 100 milliliters" are in Schedule V(1). Certain morphine compounds are in Schedule I (b)(14)-(16), while morphine compounds containing "not more than 50 milligrams of morphine per 100 milliliters" are in Schedule IV (b)(8).

Also by way of contrast, there are a number of state drug laws which do distinguish between marijuana and hashish. The new Ohio law, House Bill No.300, amending Ohio Rev. Code Ann. Sec. 3719.01 et seq., effective Nov. 22, 1975, decriminalizes possession of up to 100 grams of marijuana and up to 5 grams of hashish. See Appendix D hereto at p. 6. The new California law, Senate Bill No. 95, amending Sec. 11357 et seq. of the Health and Safety Code, effective Jan. 1, 1976, decriminalizes possession of up to 1 ounce of marijuana, and lowers the penalty, but does not decriminalize, possession of hashish ("concentrated cannabis"). See Appendix D at p. 5. Pennsylvania's statute provides for a maximum 30

days in jail and/or a $500 fine for possession or distribution of "a small amount of marihuana" which is defined as "thirty (30) grams of marihuana or eight (8) grams of hashish. . . ." Pennsylvania Code, Title 35, Sec. 780-113 (a)(31).[8]

It is neither necessary nor desirable for the Parole Board to distinguish between marijuana and hashish in its guidelines. First, as indicated above, the guidelines have dollar ceilings which distinguish between the severity of the offense — less than $500, less than $5,000, and $5,000 or more. These dollar ceilings accomplish the same objective as the state statutes discussed above which distinguish between marijuana and hashish by weight. Hashish is generally more potent and more expensive than the marijuana from which it was made, but a person would have to smoke less to become "high." As John Kaplan has stated, "the significance of using stronger forms of the drug would simply be that they would take less." Marijuana: The New Prohibition, (World Publishing Company 1970), at p. 166. See also, Brecher and the Editors of Consumer Reports, Licit and Illicit Drugs, (1972) at p. 462.

Both the U.S. National Commission on Marihuana and Drug Abuse and the Canadian Commission of Inquiry into the Non-Medical Use of Drugs have recommended against distinguishing between cannabis materials on the basis of potency. The National Commission stated in Marihuana: A Signal of Misunderstanding, (March 1972), at p. 166:

> The predominant pattern of use in the United States is experimental or intermittent use of less potent preparations of the drug. Even when hashish is used, the predominant pattern remains the same. In addition, whatever the potency of the drug used, individuals tend to smoke only the amount necessary to achieve the desired drug effect.
>
> Given the prevailing patterns of use, the Commission does not believe it is essential to distinguish by statute between less potent and more potent forms of the natural plant. Reinforcing this judgment are the procedural and practical problems attending an effort to do so.

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[8]Other states which distinguish between marijuana and hashish for penalty purposes include: Florida, see Fla. Stat. Ann. Sec. 404.15; Indiana, see Burns Ind. Stat.Ann. Sec. 10-3561 (c); Missouri, see Mo.Stat.Ann. Sec. 195.200 (a); Montana, see Mont.Rev.Code Sec. 54-133 (b); South Carolina, see S.C.Code Laws Sec. 32-1510.49; New Jersey, N.J. Stat.Ann. Sec. 24:21-20(3).

If the criminal liability of an individual user is dependent on the THC content of the substance, neither he nor the arresting officer will know whether he has committed a crime until an accurate scientific determination is made. Even if such accurate determinations were feasible on a large scale, which is not now the case, such after-the-fact liability is foreign to our criminal laws.

Under present circumstances, then, a statutory line based on potency is neither necessary nor feasible.

The Canadian Commission stated in Cannabis (1972) at pp. 31, 48:

It is clear that it is not possible to discriminate consistently between hashish and marijuana on a potency basis, since considerable overlap occurs between the respective THC distributions. THC in hashish ranged from a mere trace to an unusually high value of 14.3% and, in marijuana, from 0.02% to 3.46%. The potential for overlap is made even more explicit by reports of greater than 10% THC in selected marijuana flowering tops and bracts grown in Mississippi, England and Jamaica.

* * *

Although hashish may be many times more potent than marijuana, the effects of these two forms of cannabis, as usually used in North America, are generally similar and often indistinguishable. It has been reported that most experienced individuals smoke to attain a certain effect or level of "high" and adjust the dose according to the potency of the substance used.

Current data about marijuana and hashish samples tested in the United States indicate a very great variance in THC levels, and a significant range of overlap. The PharmChem Research Foundation in Palo Alto, California, does anonymous street drug testing for marijuana and other substances. The PharmChem Newsletter, Vol. 3, No. 8 (1974) at p. 1, reported that:

(M)ost hashish consumed in the U.S. is no more potent than "good quality" marijuana, yet commands three to five times the price. The average THC content for the (hashish) samples analyzed in this report is 2.3% THC. . . . The average THC content of marijuana samples analyzed is 3.6% THC, which is considerably greater than the hashish samples examined.

The PharmChem Newsletters contain many examples of hashish with very low THC levels. See, e.g., Vol. 2, No. 6 (1973) at p. 2, which lists hashish samples containing 2.4%, 0.1%, 1.9%, and 1.7% THC. The PharmChem Newsletters also contain many examples of marijuana with higher THC levels. See, e.g., Vol. 3, No. 2 (1974), at p. 3, which lists marijuana samples containing 4.6%, 3.7%, 3.8%, 5.7%, 5.5%, 5.6%, 4.2%, and 6.9% THC. In 1975, the PharmChem Research Foundation tested marijuana samples which contained 9.3%, 10.5%, and 14.0% THC. Letter from Carmen Helisten, Director, PharmChem Research Foundation, to Peter H. Meyers, NORML, dated July 6, 1976.

The Street Drug Analysis Program of the Los Angeles County--University of Southern California Medical Center also does anonymous testing of marijuana and other drugs. Recent marijuana samples have been found to contain 7.5%, 8.6%, 9.7%, 13.0%, 13.2%, and 19.1% THC. Letter from Sallie Montgomery, Street Drug Analysis Program, to Gordon Brownell, NORML, dated June 9, 1976.

The Drug Enforcement Administration has estimated the average THC content of domestic marijuana at 0.2%--4.0%, the average THC content of Jamaican marijuana at 4.0%--8.0%, and the average THC content of hashish at 5.0%--12.0%. DEA Fact Sheets (1975), at p. 36. Even these percentages indicate significant overlap.

These wide variances in THC levels, together with the other considerations set out above, indicate that the Parole Board should not put hashish offenses in a higher level of severity than comparable marijuana offenses. NORML requests that hashish be deleted from the list of "soft drugs" in footnote 6 to the adult, youth and NARA guidelines, and that marijuana be defined to include hashish.

C. Apparent Inconsistencies in the Severity Levels for "Soft" and "Hard" Drugs

There appear to be internal inconsistencies in the severity levels for "soft" and "hard" drug offenses, which require some correction by the Parole Board.

1. The dollar ceilings for "soft drug" offenses in the adult guidelines are as follows: "Moderate" category -- "possession with intent to distribute/sale (less than $5,000)"; "High" category -- "possession with intent to distribute/sale ($500 to $5,000)." 41 Fed. Reg. at 19330-31. If this inconsistency were resolved by changing the dollar ceiling in the "Moderate" category from "less than $5,000" to "less than $500," the adult guidelines on soft drugs would exactly parallel the youth and NARA guidelines on soft drugs. See 41 Fed. Reg. at 19332-33.

2. Neither the adult, youth, nor NARA guidelines contain the offense of "simple possession" of soft drugs. The lowest category of soft drug offenses is "Moderate," which contains the offense of "possession with intent to distribute/sale." 41 Fed. Reg. at 19330, 19332, 19333. The Parole Board could either change the "Moderate" category from "possession with intent to distribute/sale" to "simple possession," or the Board could leave the "Moderate" category as is, and put "simple possession" of soft drugs into the "Low Moderate" category. The latter alternative would be especially appropriate if simple possession of marijuana were reduced to the "Low" category.

3. Neither the adult, youth, nor NARA guidelines contain the offense of "simple possession" of hard drugs. The first listing of hard drugs is in the "Very High" category, which contains the offense of "possession with intent to distribute/sale," no dollar ceiling being specified. 41 Fed. Reg. at 19331, 19332, 19333. "Simple possession" of hard drugs should be added to the guidelines, perhaps in the "Moderate" category.

III. Conclusion

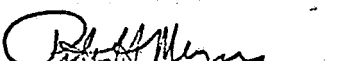
For the reasons set out above, NORML requests that the Parole Board modify Section 2.20 of its guidelines in the following respects:

1. Simple possession of marijuana and the other marijuana offenses should be reduced one level in severity.

2. Hashish should not be defined as a "soft drug."

3. Internal inconsistencies in the severity levels for "soft" and "hard" drugs should be corrected.

Respectfully submitted,



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Dated: July 14, 1976

Appendix A — Summary of

Marihuana: A Signal of Misunderstanding

(March 1972), First Report of the

National Commission on Marihuana and Drug Abuse.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, SECOND SESSION

Vol. 118 WASHINGTON, WEDNESDAY, MARCH 22, 1972 No. 44

Senate

MARIHUANA AND THE LAW—NATIONAL COMMISSION REPORT

Mr. JAVITS. Mr. President, the National Commission on Marihuana and Drug Abuse—of which the Senator from Iowa (Mr. HUGHES) and I are members—today made public its long-awaited report and recommendations to the President and the Congress on the subject of marihuana.

The report deals in great detail not only with the medical and health implications of marihuana use, but also with the legal, economic, and social issues.

It covers the nature and scope of use, effects of the drug, the relationship of marihuana use to other social behavior, and the efficacy of existing law.

The Commission held formal and informal hearings developing extensive evidence from all points of view, including those of public officials, community leaders, district attorneys throughout the country, young people, medical, and other professional experts and students.

More than 50 projects were funded, ranging from a study of the effects of marihuana on man to a field survey of enforcement of the marihuana laws in six metropolitan jurisdictions.

Mr. President, I ask unanimous consent that there be included in the RECORD at the conclusion of my remarks a summary of the major findings presented in the report and recommendations of the Commission.

Of singular importance is the recommendation of the Commission that criminal penalties be eliminated for the private possession and use of marihuana. The Commission has taken a forthright and enlightened position which should go far toward deemphasizing marihuana as a confusing and controversial public policy issue. It is a most salutary and significant step.

But, my distinguished colleague, Senator HUGHES, chairman of the Special Senate Subcommittee on Alcoholism and Drug Abuse, and I would carry the decriminalization recommendation further, and have filed a joint statement containing our separate views so indicating.

We differ from the other commissioners in our view that certain activities involving possession and use of marihuana, which are deemed to be necessarily incident to private possession and use, ought also to be decriminalized. It is for this reason that we have taken exception to those parts of the recommendations dealing with the doctrine of contraband, the casual not-for-profit sale and the limited public possession of marihuana.

Mr. President, I ask unanimous consent that the full text of our separate views be printed in the RECORD following the summary of the findings and recommendations of the Commission, and that a list containing the names of the members of the Commission also be printed.

The report is comprehensive and thorough, and will assist materially in clearing the air of much misinformation and emotion which has heretofore prevented the development of rational social policy regarding this drug.

I urge Members of Congress to give their closest attention to this important report and the recommendations of the Commission. Senator HUGHES and I intend to introduce shortly appropriate legislation to accomplish several of the objectives found in the recommendations of the Commission.

We hope that others—in Congress, as well as parents, young people and others throughout the Nation—will take a fresh look at the problem of marihuana in our society with the new perspective provided by the Commission's report.

I commend the distinguished former Governor of Pennsylvania, Raymond P. Shafer, who, as Chairman of the Commission, provided important leadership in the development of the report. I commend also the Vice Chairman, Dr. Dana L. Farnsworth, other members of the Commission and its Executive Director, Michael Lowenreich—Americans of dedication and insight—who devoted much time away from their personal and professional interests to participate so productively in this effort. Lastly, I wish to congratulate the staff of the Commission which worked particularly effectively under great pressure to complete the first year's work of the Commission.

I look forward to the second-year study of the Commission which will deal with the critically important subject of drug abuse in the United States.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF FINDINGS AND RECOMMENDATIONS AND MEMBERSHIP OF THE COMMISSION

WHO USES THE DRUG

At least 24 million Americans 12-years-old and over have used marihuana at least once, and at least 8.3 million are current users.

More than 40% of college and graduate students have tried the drug.

Of those persons who have ever used marihuana, 41% of the adults (18 and older) and 45% of the youth (12-to-17) no longer use it.

The great majority of marihuana users use the drug less than once a week, probably on weekends, or at a party.

Two percent (500,000) of "ever-users" can be classified as heavy users and use the drug more than once a day.

THE EFFECTS OF MARIHUANA

There is no evidence that experimental or intermittent use of marihuana causes physical or psychological harm. The risk lies instead in the heavy, long-term use of the drug, particularly of the most potent preparations.

Marihuana does not lead to physical dependency. No tortuous withdrawal symptoms follow the sudden cessation of chronic, heavy use. Some evidence indicates that heavy, long-term users may develop a psychological dependence on the drug.

The immediate effects of marihuana intoxication on the individual's organs or bodily functions are transient and have little or no permanent effect. However, there is a definite loss of some psychomotor control and a temporary impairment of time and space perceptions.

No brain damage has been documented relating to marihuana use, in contrast with the well-established brain damage of chronic alcoholism.

A careful search of literature and testimony by health officials has not revealed a single human fatality in the United States proven to have resulted solely from use of marihuana.

Tests on monkeys have demonstrated that the dose required for "overdose death" is enormous and for all practical purposes unachievable by humans smoking marihuana.

No reliable evidence exists indicating that marihuana causes genetic defects in man; however, since fetal damage cannot be ruled out, the use of marihuana is not advisable during pregnancy.

The incidence of psychosis from marihuana use is exceedingly rare, and such reactions tend to occur in predisposed individuals.

MARIHUANA AND PUBLIC SAFETY

The evidence indicates that marihuana does not cause violent or aggressive behavior or crime.

Recent research has not proven that marihuana use significantly impairs driving ability; however, reliable research has not yet been conducted and the Commission strongly suspects that the acute effects of marihuana use (such as spatial and time distortion and slowed reflexes) may impair driving. The Commission believes that driving while under the influence of any intoxicant is a serious risk to public safety.

MARIHUANA AND PUBLIC WELFARE

From what is now known about the effects of marihuana, its present level of use in American society does not constitute a major threat to public health; the high-risk group constitutes the 2% of American "ever-users" who use the drug heavily and pose a concern for public health officials.

The Commission emphasizes the need for increased research into long-term psychological effects, especially with regard to effects on motivation.

Although some segments of society fear that marihuana use leads to idleness and "dropping out," little likelihood exists that the introduction of a single element such as marihuana use would significantly change the basic personality of any person; rather, an individual is more likely to drop out when circumstances join to produce pressures which he cannot handle effectively.

MARIHUANA AND OTHER DRUGS

Recognizing that one of the most controversial issues in the study of marihuana is its relationship to other drugs, the Commission explored in depth the hypothesis that marihuana use leads to the use of other drugs.

The overwhelming majority of marihuana users do not progress to other drugs, although statistically marihuana users are more likely to experiment with other drugs than are non-users.

Marihuana use does not dictate whether or which other drugs will be used.

As stated by Governor Shafer, "If any one reason can characterize why people in the United States escalate their drug use and become multidrug users, it is peer pleasure."

ENFORCEMENT OF THE MARIHUANA LAWS

The Commission was directed by Congress to evaluate the existing federal and state laws relating to marihuana. The vast majority of arrests occur at the state level (at least 200,000) as opposed to the federal level (approximately 4,000). In a study of enforcement in six metropolitan jurisdictions in different states, the Commission found:

93% of the arrests in the sample were for possession.

69% of the arrests were preceded by no investigation, occurring in vehicles or on the street.

Arrests were concentrated among the young (88% were 25 or under); typically the arrestee was a white male, in a school or employed in a blue collar job, without a prior record.

Two-thirds of the arrestees were arrested for possession of an ounce of marihuana or less.

Offenders were generally (67%) arrested in groups of two or more persons.

The Commission pointed out that the criminal justice system often responded to this unusual group of "criminals" in a lenient way:

At least 48% of the adult cases and 70% of the juvenile cases were dismissed by the police, the prosecution or the judiciary.

One-third of the arrestees were convicted and sentenced.

Of those convicted of possession, 24% were incarcerated, usually for a year or less.

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The Commission concluded that the law enforcement community has adopted a policy of "containment." "Although effort is sometimes expended to seek out private marihuana use," the Report states, "the trend is undoubtedly to invoke the marihuana possession laws only when the behavior (possession) comes out in the open." Governor Shafer added: "The overriding feature of the present marihuana laws is the threat of arrest for indiscretion."

After considering the effects and social impact of marihuana use, the Commission considered four alternative social control policies for the drug: (1) Approval; (2) Elimination; (3) Neutrality; and (4) Discouragement.

The Commission emphasized that society should not approve or encourage the recreational use of any drug. On the other hand, the Commission concluded that elimination of marihuana and its use is unachievable, and the drug's relative potential for harm to individuals and society does not justify a social policy designed to seek out and firmly punish those who use it.

The most difficult question, the Commission explained, was whether society should try to dissuade its members from using marihuana or should defer entirely to individual judgment, remaining neutral. After lengthy consideration of this issue, the Commission chose to recommend to the public and its policy-makers a social control policy seeking to discourage marihuana use, while concentrating primarily on the prevention of heavy and very heavy use.

The Commission's next step was to consider three legal responses as a means of implementing the discouragement policy: (1) total prohibition (2) partial prohibition; and (3) regulation.

The Commission explained that the total prohibition scheme now in effect prohibits all marihuana-related behavior, including possession for personal use. Partial prohibition would prohibit cultivation and distribution of the drug but would not prohibit private consumption or acts related to consumption. The distinct feature of a regulation scheme (legalization) is that distribution of the drug is legal.

The Commission, rejecting both the present system and the regulatory scheme, was of the unanimous opinion that marihuana use is not a sufficiently grave problem to subject its users to criminal procedures, but that legalization was inadvisable for a drug which does alter short-term perception, which has uncertain long-term effects and which may be of transient social interest.

Instead, the Commission recommended a partial prohibition scheme which symbolizes a continuing societal disapproval of use, yet removes the criminal stigma and threat of incarceration for users, and also maximizes the flexibility of future public responses as new information comes to light.

The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially;

Marihuana would be contraband subject to confiscation in public places;

Criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the state level, fines would be imposed for use in public;

In order to keep use private, possession of more than one ounce in public would be prohibited;

In addition, casual, not-for-profit transfers of small amounts, permitted in private, would be prohibited in public.

(Specific recommendations for federal and state law are attached).

Five of the 13 Commissioners differed in minor respects regarding the recommendations. Commissioners Rogers, Carter and Ware agree with the discouragement policy and the decriminalization aspects of the recommendations but would recommend, in addition, a civil fine for possession of any amount of marihuana and would limit casual transfers only to those instances where there is no remuneration at all. Commissioners Hughes and Javits believe that marihuana should not be contraband, that all not-for-profit sales should be excluded from the criminal sanction, and that the "ounce or less" requirement for possession in public should be removed.

"A most important question," said Governor Shafer in explaining the Commission's position, "and one which is still too early to answer, is whether the use of marihuana is fad or fashion. It is possible that the widespread use of marihuana could well disappear of its own accord."

In the Commission's opinion, the proposed partial prohibition scheme would permit the law enforcement community to concentrate on what it is best able to do, reduce trafficking and supply of the drug. At the same time, the Commission believes that responsibility for discouraging consumption should rest with non-legal institutions, such as family, schools, church, and the medical profession.

In anticipation of the Commission's responsibility to present a report on all drugs in 1973, Governor Shafer said:

"From the many surveys and research studies, and from our formal and informal hearings and deliberations, it is evident that the phenomenon of drug abuse in our country poses a very serious threat to our society which will require a massive and sustained effort in drug education and in the revision of our laws to make them uniform, appropriate, effective, and humane. However, such responses are in effect only medications that will help to contain the social illness of drug abuse. The causes of drug abuse must be identified more precisely and must be attended to by the cooperative efforts of all institutions of our society. We will not be able to deal effectively with the problem of drug abuse until we find answers to the larger problem of the diminishing concern among some of our citizens for such matters as long-range personal objectives, self-discipline and the sense of public obligation."

RECOMMENDATIONS*

I. Federal

a. Possession of marihuana for personal use would no longer be an offense, but marihuana possessed in public would remain contraband subject to summary seizure and forfeiture.

b. Casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit would no longer be an offense.

c. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence, nor shall proof of such intoxication constitute a negation of specific intent.

II. State

a. Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies (although we do recommend uniform penalties).

b. Possession in private of marihuana for personal use would no longer be an offense.

c. Distribution in private of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would no longer be an offense.

d. Possession in public of one ounce or under of marihuana would not be an offense, but the marihuana would be contraband subject to summary seizure and forfeiture.

e. Possession in public of more than one ounce of marihuana would be a criminal offense punishable by a fine of $100.

f. Distribution in public of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would be a criminal offense punishable by a fine of $100.

g. Public use of marihuana would be a criminal offense punishable by a fine of $100.

h. Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail, a fine of $100, or both.

i. Operating a vehicle or dangerous instrument while under the influence of marihuana would be a misdemeanor punishable by up to one year in jail, a fine of up to $1,000, or both, and suspension of a permit to operate such a vehicle or instrument for up to 180 days.

j. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence nor shall proof of such intoxication constitute a negation of specific intent.

k. A person would be absolutely liable in civil court for any damage to person or property which he caused while under the influence of the drug.

ANCILLARY RECOMMENDATIONS

In addition to these legal recommendations for federal and state action, the Commission believes certain other ancillary recommendations should be presented for action.

Legal and Law Enforcement Recommendations

I. Federal

a. Federal law enforcement agencies, especially the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, should improve their statistical reporting systems so that policies may be planned and resources allocated on the basis of accurate and comprehensive information.

b. The Federal Bureau of Narcotics and Dangerous Drugs should increase its training programs of state and local police with special emphasis on the training in the detection of trafficking cases.

c. Increased border surveillance, a tightening of border procedures, and a realistic eradication program to diminish the supply of drugs coming into the country, coupled with a more effective program for diminishing the domestic production and distribution of marihuana, are required.

II. State

a. All states should adopt the Uniform Controlled Substances Act to achieve uniformity with regard to marihuana and other drug laws, with the exception that the legal response to possession for one's own use be uniformly adopted in accordance with our recommendation in Chapter V of this report.

b. Each state should establish a centralized compulsory reporting and record-keeping authority so that adequate and accurate statistics of arrests, sentences and convictions on a statewide basis are available.

c. Those states requiring physicians to report drug users seeking medical assistance should change such requirements to insure the confidentiality of the drug user's identity, so that persons needing medical help will feel free to seek it.

III. International

If the United States should become a signatory of the proposed Psychotropic Convention, we recommended that cannabis be removed from the existing Single Convention and consideration be given to listing it in the proposed Psychotropic Convention among drugs which have similar effects.

MEDICAL RECOMMENDATIONS

1. Fuller coordination of the marihuana research conducted by governmental and private agencies is needed to reduce the duplication of effort, assure a diversity of new approaches and new objectives, and to provide efficient integration of findings into the available body of knowledge.

2. Research efforts to develop an inexpensive, easy method for detecting and quantifying the presence of marihuana in the blood, breath or urine of a person suspected of being intoxicated should be accelerated.

3. An accelerated program for funding foreign research should be undertaken immediately.

4. Increased support of studies which evaluate the efficacy of marihuana in the treatment of physical impairments and disease is recommended.

5. Community-based treatment facilities should be promoted in caring for problem drug users utilizing existing health centers when possible and appropriate.

6. Public health courses on the social aspects of drug use should be included in the curricula of the schools of the health professions.

OTHER RECOMMENDATIONS

1. The Commission recognizes that several state legislatures have improperly classified marihuana as a narcotic, and recommends that they now redefine marihuana according to the standards of the recently adopted Uniform Controlled Substances Law.

2. A single federal agency source should disseminate information and materials relating to marihuana and other drugs. The National Clearinghouse for Drug Abuse Information should be charged with this responsibility.

3. The Special Action Office for Drug Abuse Prevention in the White House should be responsible for the coordination, development and content review of all federally-supported drug educational materials and should issue a report as soon as possible, evaluating existing drug education materials.

4. The Commission notes the significant role played by the voluntary sector of the American community in influencing the social, religious and moral attitudes of our nation's citizens and recommends that the voluntary sector be encouraged to take an active role in support of our recommended policy of discouraging the use of marihuana.

SEPARATE VIEWS OF SENATORS JAVITS AND HUGHES

Commissioner Hughes (Senator from Iowa) and Commissioner Javits (Senator from New York) believe that the Commission has taken a major, highly laudable step in recommending that the private use of marihuana be taken out of the criminal justice system. They concur in its threshold judgment that overall social policy regarding this drug should seek to discourage use, while concentrating primarily on the prevention of irresponsible use. They disagree, however, with three specific recommendations relating to the implementation of this discouragement policy.

First, they would eliminate entirely the contraband provision from the partial prohibitory model adopted by the Commission. They want it eliminated first because its legal implications are confusing and the subject of disagreement even among lawyers. Whether or not possession of a given substance is criminal, possession of material designated as contraband makes that possession *unlawful*. Also, marihuana designated as contraband would be subject to government search and seizure, even though the underlying possession is no longer criminal. The provision—which does not apply to marihuana held for personal use within the home—is considered by both Commissioners to be an unnecessary "symbol" of the discouragement policy. It will not foster elimi-

*The 13 Commissioners are in basic agreement with the Report and its recommendations. However, several Commissioners diverge with specific recommendations and their opinions are presented in a footnote on pages 151–156. A brief summary of this footnote follows:

Commissioners Rogers and Carter agree with the discouragement policy and the decriminalization aspects of the recommendations, but feel that the contraband concept is not a sufficiently strong expression of societal disapproval of the use of marihuana. They would recommend, in addition, a civil fine for possession of any amount of marihuana in private or in public. This civil fine would not be reflected in a police record.

Commissioner Ware agrees completely with the statements of Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. He advocates some penalty short of criminalizing the users, such as a civil fine or some type of extensive drug education. Further, he is opposed to the use of any drug, including alcohol, for the express purpose of becoming intoxicated.

Commissioners Hughes and Javits, while agreeing with the Commission's recommendation that the private use of marihuana be taken out of the criminal justice system, disagree with three specific recommendations relating to the implementation of the discouragement policy.

First, they would eliminate the contraband provision from the partial prohibition scheme adopted by the Commission. Second, believing the Commission has not set forth a clear standard as to what constitutes the casual not-for-profit sale, they recommend that all not-for-profit sales be excluded from criminal sanction. Third, they feel there is no need to retain criminal sanction on public possession of more than one ounce of marihuana and would permit public possession of "some reasonable amount" for personal use.

nation and the misunderstanding and mistrust which is a hallmark of our current marihuana policy.

Commissioners Hughes and Javits seek to eliminate it also because as a practical matter it serves no useful law enforcement purpose within the overall partial prohibitory model. If marihuana held for personal use within the home is not contraband, why should marihuana held for personal use within one's automobile be contraband? As a matter of fact, the area of operation of the contraband provision is extremely narrow. If one possesses *more* than one ounce of marihuana in public, it may be seized without regard to the contraband doctrine since such possession is a criminal violation.

Since the contraband provision does not apply to marihuana possession and use in private, the only effective area covered by the contraband provision is the area of possession in public of *less* than one ounce. The Commission has chosen to remove the stigma of the criminal sanction in this kind of case. To impose instead a contraband provision, which it is argued is in the nature of a civil "in rem" seizure which does not operate against the person, is to cloud the issue and to weaken the force of the basic decriminalization step. A persuasive justification simply has not been made.

Both Commissioners seek to eliminate it also because they believe that the voice of the Commission should be loud and clear that the preservation of the right of privacy is of paramount importance and cannot be casually jeopardized in the pursuit of some vague public or law enforcement interest which has not been defined and justified with clarity and precision.

The second area of disagreement with the Commission's recommendations concern the casual distribution of marihuana and the not-for-profit sale. As they understand:

(1) The totally donative transfer is not subject to criminal penalty, regardless of where it takes place.

(2) The transfer of *small* amounts for *insignificant* remuneration not *involving a profit* is not subject to criminal penalty, (except if it is accomplished in public, in which case it is subject to criminal sanction), but,

(3) The transfer of *"large* amounts" for *"significant"* remuneration not involving a profit is subject to criminal penalty.

In a footnote on page 63 of the Report, the Commission refers to a Report of the Senate Judiciary Committee on the Comprehensive Drug Abuse Prevention and Control Act of 1970. In substance, it implies that within the meaning of the Act transfers of more than one or two marihuana cigarettes in return for 50 cents or one dollar to cover cost are not intended to be covered as casual transfers, but rather are to be treated as unlawful sales.

Commissioners Hughes and Javits feel that the Commission has failed to set forth a clear standard which will adequately inform the public of their obligations under the law. The recommendation and its discussion in the Report are confusing and fail to provide the individual with sufficient guidance to allow him to act without having to dodge in and out of illegality. It also undermines a basic, stated objective of the Commission i.e., to concentrate the weight of the criminal sanction upon significant supply and distribution activities rather than upon casual consumption.

Moreover, proscribing even the most casual not-for-profit transfers when they occur in public is, in their opinion, incorrect. Such transfers are necessarily incident to private possession and use. To hold that they should be subject to criminal sanction is logically inconsistent with the Commission's rationale and recommendation on decriminalization of such private activities.

Instead, both Commissioners recommend that all not-for-profit sales be excluded from the criminal sanction. It is fundamental that there be a clear separation between the serious, commercial, profit-making-seller, or "pusher" as he is known, and the individual who merely splits the cost of a reasonable supply of the drug with his friends or acquaintances.

Thirdly, exception is taken to the retention of the criminal sanction on public possession of more than one ounce.

The individual who buys an ounce and a half would be a criminal when he buys on the corner, when he puts it in his pocket, when he gets in his car and drives home, when he is on his doorstep, but not when he crosses the threshold of his home. Again Commission policy should direct the attention of the law enforcement community to the person who sells the drug for profit, and not to the person who uses the drug privately.

If an individual has more than a few ounces in his possession, and there is probable cause to believe that he intends to sell it for profit, that activity is already covered under the Commission's recommendation that possession with intent to sell is illegal. Therefore, there is no need to further proscribe simple public possession.

All the component parts of the recommended policy of the Commission should be consistent with its objective of non-interference with casual transfers, and possession and use which is essentially and fundamentally private and personal.

The contraband device, the not-for-profit sale, and public possession of some reasonable amount which should be presumed to be necessarily incident to private use should all be removed from the ambit of legal sanction. To do so would be to strike down "symbols" of a public policy which had never been adequately justified in the first instance. Such steps would in no way jeopardize the firm determination of the Commission that the use of marihuana ought to be discouraged.

COMMISSION MEMBERS

By law, the National Commission on Marihuana and Drug Abuse has 13 members. Nine public members were appointed by the President who also named the Chairman and Vice Chairman (five maximum from one political party).

Of the four congressional members, two were named by the President of the Senate and two by the Speaker of the House (two from each political party).

Raymond P. Shafer, Chairman, former Governor of Pennsylvania, Chairman of the Board and Executive Director, Teleprompter Corporation, New York.

Dana L. Farnsworth, M.D., Vice-Chairman, former Director of Health Services, Harvard University, Cambridge, Massachusetts.

Henry Brill, M.D., Director of Pilgrim State Hospital, West Brentwood, Long Island.

Representative Tim Lee Carter (R-Kentucky).

Mrs. Joan Cooney, President of the Children's Television Workshop and Producer of "Sesame Street," New York, New York.

Charles O. Galvin, Dean of Southern Methodist University, Law School, Dallas, Texas.

John A. Howard, Ph.D., President of Rockford College, Rockford, Ill. and President of the American Association of Independent College and University Presidents.

Senator Harold E. Hughes (D-Iowa).

Senator Jacob K. Javits (R-New York).

Representative Paul G. Rogers (D-Florida).

Maurice H. Seevers, M.D., Professor and former Chairman of the Department of Pharmacology, University of Michigan, Ann Arbor.

J. Thomas Ungerleider, M.D., Assistant Professor of Psychiatry, U.C.L.A. Neuropsychiatric Institute, Los Angeles.

Mitchell Ware, Attorney, Mazza, Mazzio and Ware, Chicago, former Superintendent of the Illinois Bureau of Investigation, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

LOUISIANA AFFILIATE OF THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML), *et al.*,

Petitioners,

v.

HON. WILLIAM J. GUSTE, JR., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Peter H. Meyers
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Washington, D.C. 20037

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

LOUISIANA AFFILIATE OF THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML), *et al.*,

Petitioners,

v.

HON. WILLIAM J. GUSTE, JR., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 17, 1975.

OPINIONS BELOW

The *per curiam* judgment of the Court of Appeals is not officially reported, and is reprinted at p. 1 of the Appendix hereto. The opinion of the District Court denying the application for a three-judge court is reported at 380 F. Supp. 404, and is reprinted at pp. 2-12 of the Appendix. The judgment and minute entry of the District Court subsequently dismissing the Complaint is not reported, and is reprinted at pp. 12-14 of the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on April 17, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

Petitioners filed a Complaint in U.S. District Court alleging that the Right of Privacy, and other Constitutional guarantees, were violated by statutes which make it a criminal offense for adults to possess and use marijuana in private. The District Court denied petitioners' application for a three-judge court, and subsequently dismissed the Complaint, on the ground that the Constitutional issues raised were "obviously without merit." The Court of Appeals affirmed *per curiam.* The questions presented are:

1. Should a three-judge court be empanelled to hear this case, because the Right of Privacy, and the other Constitutional issues raised in the Complaint, are not obviously without merit or clearly precluded by this Court's previous decisions.

2. What standard should be used in evaluating the Constitutionality of these criminal prohibitions: the "compelling state interest" test, the "rational basis" test, or an "intermediate" test similar to that recently adopted by the Supreme Court of Alaska.

3. Was the lower court correct in concluding that *Ferguson v. Skrupa*, 372 U.S. 726, forecloses any judicial scrutiny of the legislative interests supporting the marijuana prohibition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved in this case are the Right of Privacy embodied in the Fourteenth Amendment, the Equal Protection Provisions of the Fifth and Fourteenth Amendments, and the Cruel and Unusual Punishment provision of the Eighth Amendment.

The statutes involved in this case are the Federal Controlled Substances Act, 21 U.S.C. Sec. 801, *et seq.*, and the Louisiana Controlled Dangerous Substances Law, LSA-R.S. 40:961, *et seq.*, the pertinent provisions of which are reprinted at pp. 14-17 of the Appendix hereto.

STATEMENT OF THE CASE

On January 21, 1974, petitioners filed a Complaint in the U.S. District Court for the Eastern District of Louisiana challenging, on Constitutional grounds, the Federal and Louisiana statutes which make it a criminal offense for adults to possess and use marijuana in private. The Complaint sought a declaratory judgment that the Federal Controlled Substances Act, 21 U.S.C. Sec. 801, *et seq.*, and the Louisiana Controlled Dan-

gerous Substances Law, LSA-R.S. 40:961, *et seq.*, were unconstitutional insofar as they make such private possession and use a criminal offense in the State of Louisiana. Injunctive relief was also sought against the enforcement of these statutes.[1]

Petitioners co-filed with their Complaint an application requesting that a three-judge Court be empanelled pursuant to 28 U.S.C. Secs. 2281-84, because the Constitutional issues raised in the Complaint were not "obviously without merit" or "wholly insubstantial." *Goosby v. Osser*, 409 U.S. 512, 518-19 (1973).

The Complaint alleged that imposing criminal sanctions upon the private possession and use of marijuana by adults violated three Constitutional guarantees – the Right of Privacy and liberty embodied in the Fourteenth Amendment, the Equal Protection provisions of the Fifth and Fourteenth Amendments, and the Cruel and Unusual Punishment provision of the Eighth Amendment.

In connection with the Right of Privacy, which was the principal cause of action contained in the Complaint, it was alleged that the marijuana prohibitions invade a number of "fundamental" interests or zones of privacy, including (1) the privacy of the home, in and of itself, and (2) the right

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[1] Plaintiffs below, and Petitioners in this Court, are the Louisiana Affiliate of the National Organization for the Reform of Marijuana Laws (NORML), and a person employing the pseudonym "John Doe." The Complaint contained class action allegations, but this was never reached by the District Court.

Defendants below, and Respondents in this Court, are the Governor and Attorney General of Louisiana (hereinafter "Louisiana Respondents"), the Attorney General of the United States and the Administrator of the Drug Enforcement Administration, U.S. Department of Justice (hereinafter "Federal Respondents").

to be let alone by government to develop one's personality as one sees fit. Since these fundamental interests were involved, the Complaint alleged that the criminal prohibitions were subject to "particularly careful scrutiny" by the Court, they must be "necessary" to the fulfillment of "overriding and compelling governmental interests," and must be "narrowly drawn so as not to invade protected freedoms." In the alternative, it was alleged that even if the case did not involve fundamental interests; it was necessary to scrutinize the statutory prohibitions to determine whether they satisfy the less stringent "rational relationship" test. An intermediate test was also proposed in the Complaint.[2]

The Complaint alleged that the criminal prohibitions against the private possession and use of marijuana were unconstitutional under any of these tests.[3] The Complaint sought a factual inquiry into the state interests supporting these prohibitions, and in support it was alleged that:

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[2] The Complaint alleged:

> The police power of the states and the federal government is inherently limited to the protection of the public welfare. Before the *private* possession and use of marijuana can be criminalized, it must be shown (a) that private use of marijuana adversely affects the public welfare, and (b) that the adverse effect upon the public welfare outweighs the intrusion into *prima facie* private conduct.

[3] Simple possession of marijuana is a misdemeanor under Federal and Louisiana law. The penalty for simple possession, first offense, under Federal law is up to one year's imprisonment and/or a fine of up to $5,000. 21 U.S.C. Sec. 844(a). The penalty under Louisiana law is up to 6 months imprisonment and/or a fine of up to $500. LSA-R.S. 40:966(D). These provisions are set out in Appendix D.

> Each of the successive rationales put forward to justify the marijuana prohibition has been demonstrated to be unsupported and unsupportable by modern scientific evidence. Specifically, marijuana is not a narcotic, and its use does not lead to physical addiction or dependence; marijuana use does not cause crime or aggressive behavior; marijuana does not lead to the use of dangerous or so-called hard drugs such as heroin; marijuana does not cause insanity; and, marijuana does not cause users to "drop out" of society.

The Federal and Louisiana defendants filed motions opposing the application for a three-judge Court, and seeking dismissal of the Complaint.

On May 29, 1974, the District Court handed down its decision denying the application for a three-judge court. See p. 2, *et seq.* of the Appendix hereto. The opinion of the District Court indicates that the application was denied for the single reason that the constitutional issues raised in the Complaint were not substantial. The District Court recognized that "insubstantiality" for the purpose of empanelling a three-judge court meant that the issues must be "obviously without merit" or so clearly foreclosed as to "leave no room for the inference that the question sought to be raised can be the subject of controversy." See p. 4 of the Appendix, quoting from *Ex parte Poresky*, 290 U.S. 30, 32 (1933).[4]

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[4] The District Court specifically found that jurisdiction existed with respect to the Federal Defendants through 28 U.S.C. Sec. 1331, and that jurisdiction existed with respect to the Louisiana defendants through 42 U.S.C. Sec. 1983. See p. 5 of the Appendix. Neither the District Court decision, nor the Court of Appeals *per curiam* affirmance, discusses any other issue.

The District Court's opinion addresses each of the three constitutional issues raised in the Complaint. With respect to the Right of Privacy, the Court held that the private possession and use of marijuana in one's own home "is not and cannot be classified as a fundamental right," and that the "compelling state interest" test was therefore not applicable. See p. 7 of the Appendix. The District Court then stated that even if it were to apply the "compelling state interest" test, there was a compelling interest supporting the marijuana prohibitions, which was protection of the public health and welfare. The Court reasoned that since these prohibitions were based upon the authority to legislate for the public health and welfare, the Court could not "substitute its judgment" for that of the legislatures (App., p. 10):

> Congress and the state legislature have both found it necessary for general health and welfare to regulate the use and possession of dangerous drugs. This Court is in no position to substitute its judgment for that of the legislature.

In support of this conclusion, the Court cited *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

The District Court then addressed the Cruel and Unusual Punishment allegations, and concluded that they are also without merit, stating that "the court finds that the conduct is legitimately proscribed by the legislatures." See p. 10 of the Appendix. Finally, the Court held that the Equal Protection allegations were also without merit, citing *Ferguson* again, and stating that the Court could not question the legislative prohibitions because they were based upon "the authority to legislate for the public health and welfare." See p. 11 of the Appendix. The District Court's opinion concluded (App., p. 11):

> The Plaintiffs' request for the convening of a three-judge court is hereby and the same denied for lack of a substantial federal question since the allegations are plainly without merit.

Subsequently, the District Court granted motions to dismiss the Complaint, adopting as its reasons the opinion it had issued denying the application for a three-judge court. See App., pp. 12-14.

An appeal was taken to the U.S. Court of Appeals for the Fifth Circuit, seeking an order reversing the District Court and directing that a three-judge court be empanelled. On April 17, 1975, the Fifth Circuit handed down a *per curiam* decision affirming the District Court, which stated in full (App., p. 1):

> AFFIRMED, on the basis of the well-reasoned opinion of District Judge Comiskey, 380 F. Supp. 404 (1974).

REASONS FOR GRANTING THE WRIT

1. This case involves important questions concerning the Right of Privacy which have not been, but should be, decided by this Court

In previous cases involving the Right of Privacy, this Court has followed a two-tiered test: If the rights involved were deemed to be "fundamental," the statute infringing those rights had to be shown to be "necessary" to furthering a "compelling state interest"; if the rights were not deemed to be fundamental, any "rational basis" that might be conceived to justify the legislation was held to be sufficient. *Roe v. Wade*, 410 U.S. 113, 155 (1973); *Stanley v.*

Georgia, 394 U.S. 557, 564 (1969); *Griswold v. Connecticut*, 381 U.S. 479, 497 (1965).

The principal questions concerning the Right of Privacy which are raised in this case are: First, do statutes which make the private possession and use of marijuana by adults a criminal offense infringe upon "fundamental" interests? Second, should this Court consider a new "intermediate" test similar to that formulated by the Supreme Court of Alaska in a recent case involving marijuana and the Right of Privacy provision contained in the Alaska Constitution? *Ravin v. State*, Op. No. 1156, File No. 2135 (May 27, 1975). Third, whatever test should be applied, is it "obviously without merit" that the private possession and use of marijuana by adults could be protected by the Right of Privacy?

(A) Is the privacy of the home, in and of itself, a "fundamental" zone or interest? In *Stanley v. Georgia*, 394 U.S. 557 (1969), this Court held that the possession of obscene materials in a person's home involved fundamental interests. The Court's opinion focused upon two distinct interests – the right to receive information and ideas and the privacy of the home:

> It is now well established that the Constitution protects the right to receive information and ideas. . . . This right to receive information and ideas, regardless of their social worth . . . is fundamental to our free society. Moreover, in the context of this case – a prosecution for mere posssession of printed or filmed matter in the privacy of a person's own home – that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy. 394 U.S. at 564.

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In cases subsequent to *Stanley* involving transportation, distribution, and "commercial" presentation of obscene materials, this Court has emphasized that *Stanely* did not involve the right to receive information and ideas so much as it did the privacy of the home. See, *e.g., United States v. 12 200-Ft. Reels of Super 8 MM. Film,* 413 U.S. 123, 126 (1973). In *Paris Adult Theatre I v. Slaton,* 413 U.S. 49, 66 (1973), Mr. Chief Justice Burger, writing for the Court, indicated that the "privacy right encompasses and protects the personal intimacies of the home," and described *Stanley* as "hardly more than a reaffirmation that 'a man's home is his castle.'"

It would now be appropriate for this Court to rule directly on this important question of whether the privacy of the home or other residence is, in and of itself, a "fundamental" interest in terms of the Right of Privacy.

The privacy of the home, contrary to the District Court below (see App., p. 7), is related to, and emanates from, a number of specific guarantees in the Bill of Rights, including the Third Amendment ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner . . .") and the Fourth Amendment ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . .").

The privacy of the home is also an area about which Americans entertain legitimate expectations of privacy. See, *e.g.,* Mr. Justice Powell's concurring opinion in *United States v. Robinson,* 414 U.S. 218, 236 (1973).

In a number of different contexts, this Court has indicated that the privacy of the home is "fundamental," "basic to a free society" and "implicit in the concept of ordered liberty."

See, *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949); *Mapp v. Ohio*, 367 U.S. 643, 656 (1961); *Weeks v. United States*, 232 U.S. 383, 390-91 (1914); *Boyd v. United States*, 116 U.S. 616 (1886). In *Boyd*, the Court stated in 1886:

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property . . . (116 U.S. at 630).

(B) Is the right to be let alone by government to develop one's personality as one sees fit a "fundamental" interest in terms of the Right of Privacy? This Court has indicated in a number of different contexts that the right to be let alone – the right of personal autonomy – is a fundamental value in this country. In *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891), the Court stated:

> No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley, "the right to one's person may be said to be a right of complete immunity: to be let alone."

Similarly, in *Meyer v. Nebraska,* 262 U.S. 390, 392 (1923), it was stated:

> [W]e should not overlook the fact that the spirit of America is liberty and toleration – the disposition to allow each person to live his own life in his own way, unhampered by unreasonable and arbitrary restrictions.

See also, *Allgeyer v. Louisiana,* 165 U.S. 578, 589 (1897); *Eisenstadt v. Baird,* 405 U.S. 438, 453-54 (1972); *Stanley v. Georgia,* 392 U.S. 557, 564 (1969), quoting from *Olmstead v. United States,* 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); *Roe v. Wade, supra,* 410 U.S. at 154.

John Stuart Mill eloquently stated this principle in *Principles of Political Economics,* Vol. II, pp. 560-61 (1848):

> There is a circle around every individual human being, which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question.

This Court should now rule on whether the right of personal autonomy, either standing alone or in conjunction with the privacy of the home, represents fundamental interests in terms of the two-tiered Right of Privacy test.

(C) Petitioners respectfully suggest that this Court consider the adoption of a new "intermediate" test for judging the constitutionality of statutes which are alleged to violate the Right of Privacy, as this Court has done in analyzing Equal Protection claims. See, *e.g., Weber v. Aetna Cas. & Sur. Co.,* 406 U.S. 164 (1972); *Eisenstadt v. Baird,* 405 U.S. 438 (1972).

The Supreme Court of Alaska recently formulated a new test by which it judged the constitutionality of the State's marijuana prohibition in terms of the Right of Privacy provision contained in the Alaskan Constitution. *Ravin v. State,* Op. No. 1156, File No. 2135, May 27, 1975. The Court's opinion, recognizing that there was "considerable dissatisfaction" with the two-tiered privacy test, Slip Op. at 5, formulated the following test:

> It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear a substantial relationship to the legislative purpose. If governmental restrictions interfere with the right of privacy, we will require that *the relationship between means and ends be not merely reasonable but close and substantial.*
>
> * * *
>
> The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. *Here, mere scientific doubts will not suffice. The state must demonstrate a need based upon proof that the public health or welfare will in fact suffer*

if the controls are not applied. (Slip Op. at 6-7, 40) (emphasis added).

Employing these principles, the Alaskan Supreme Court unanimously held that the private possession of marijuana for personal use by adults was protected by the Right of Privacy contained in the Alaskan Constitution.[5] The opinion of the Court, issued subsequent to the Fifth Circuit's *per curiam* affirmance below, was written by Chief Justice Rabinowitz. Justices Boocher and Conner filed concurring opinions.

All of the Justices on the Alaskan Supreme Court agreed that possession of marijuana by adults for personal use in the home was constitutionally protected. See Slip Op. at 40-41, 51-52, 53. All of the Justices also agreed that the prohibition against the possession or use of marijuana while operating a motor vehicle was valid and constitutional, stating, in the words of the Court: "The one significant risk in use of marijuana which we do find established to a reasonable degree of certainty is the effect of marijuana intoxication on driving." Slip Op. at 33; see also, Slip Op. at 39-40.

The Court's opinion indicates that it would decide in future cases whether the possession and/or use of marijuana in other contexts outside the home would be constitutionally protected. Slip Op. at 39-40. The concurring opinions

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[5] Art. I, Sec. 22 of the Alaskan Constitution provides: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." As the Alaskan Supreme Court noted, however, the mere fact that the Constitution contains an express provision recognizing the right of privacy does not "yield answers" concerning the test to be applied when statutes allegedly infringe on that right, or determine what scope should be accorded the right. Slip Op. at 13.

filed by Justices Boochever and Conner indicated that in their view the Right of Privacy protects some activities outside the home, but they agreed with the Court's opinion that this should be reserved for future cases depending on the specific facts of the case. Slip Op. at 52 and 54.

The Court's opinion also indicates that there is no constitutional protection to buy or sell marijuana, and no protection for possession at home of amounts of marijuana indicative of an intent to sell, rather than for personal use. See Slip Op. at 40-41. The Court also implied that the right to possess in the home might be limited to adults, and might not be extended in future cases to include juveniles, noting that "distinct government interests with reference to children may justify legislation that could not properly be applied to adults." See Slip Op. at 40 and fn. 69.

Petitioners have lodged copies of the *Ravin* Slip Opinion with the Clerk's Office, and would commend it to the attention of the Court. Petitioners believe it would be desirable for this Court to consider adopting a new test for the Federal Right of Privacy, similar to the test adopted by the Supreme Court of Alaska in *Ravin*.

(D) Whatever test or principles should be applied, a three-judge court should be empanelled because the Right of Privacy allegations contained in the Complaint are not "obviously without merit."

There has never been any dispute in this case that the standard for empanelling a three-judge court is whether the Constitutional claims are "obviously without merit," "wholly insubstantial," or so clearly foreclosed as to "leave no room for the inference that the question sought to be raised can be the subject of controversy." See, *e.g.*, *McLucas v. De Champlain*, __U.S.__, 43 U.S.L.W. 4453, 4456 (April 15,

1975); *Goosby v. Osser,* 409 U.S. 512, 518-19 (1973); *Ex parte Poresky,* 290 U.S. 30, 32 (1933).

The District Court below, in holding that the Right of Privacy and the other claims were "obviously without merit," relied primarily on *Ferguson v. Skrupa,* 372 U.S. 726 (1963). Whether this reliance upon *Ferguson* is "well-reasoned" (as the Fifth Circuit believed, App. p. 1) or constitutes an unwarranted and inappropriate expansion of *Ferguson* (as petitioners believe), is discussed in Part II of this petition, below.[6]

The District Court also relied upon a footnote in *Stanley v. Georgia, supra,* where the Court, taking care to limit its holding to possession of obscene materials by an individual in his home, indicated that its ruling did not affect the power of the states or federal government to prohibit the possession of "narcotics," firearms, stolen goods, and other articles, noting that no First Amendment interests are ordinarily involved. 394 U.S. at 568 fn. 11. Petitioners would point out that they do not challenge the power of the States or Federal Government to prohibit in the home the possession of truly dangerous substances or items. However, there is another side to this issue which must be faced: what if the substance is not truly dangerous, and its private possession and use does not pose any substantial danger or harm to the public health and welfare? Petitioners must have an opportunity to show that, whatever standard is appropriate, there is no sufficient government interest to justify the criminal sanctions against private possession and use of marijuana. Whether

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[6] Petitioners have focused on the privacy issue herein, but the Complaint also contained allegations involving Cruel and Unusual Punishment and Equal Protection, and the District Court applied *Ferguson* to each of these allegations. See p. 7, *supra.*

this footnote in *Stanley* used the term "narcotic" in its literal sense, *i.e.*, opiates and opiate-derivatives, or in the broader sense of "dangerous" drugs, it does not foreclose the issues raised here.[7] In addition, as pointed out above, this Court has indicated in cases subsequent to *Stanley* that even in the absence of First Amendment interests, the privacy of the home, in and of itself, may be a "fundamental" interest. See, *e.g.*, *Paris Adult Theatre I v. Slaton, supra,* 413 U.S. at 66.

Another case which is relevant in this appeal, but was not cited by the District Court, is *Crane v. Campbell,* 245 U.S. 304 (1917), where this Court held that the states could prohibit the private possession of alcoholic beverages without violating the guarantees of the Fourteenth Amendment. *Crane* does not "clearly foreclose" the constitutional issues raised in this case involving marijuana. First, the Court in *Crane* based its decision, in part, upon the "well known noxious qualities and extraordinary evils," attendant to the use of alcoholic beverages. 245 U.S. at 307. As pointed out above, Petitioners are arguing that the private use of marijuana does not have such consequences, and that a three-judge court should be empanelled to hear this issue.

Second, the Court in *Crane* reasoned that the right to possess alcohol would "necessarily imply" the right to procure it, and the Court noted that it had previously rejected

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[7] We do not think that Respondents would claim that marijuana is a "narcotic" drug under any accepted criteria for, or definition of, that term. Two state supreme courts have recently declared unconstitutional state statutes which classified marijuana as a "narcotic" drug and penalized marijuana-related offenses the same as "narcotic"-related offenses. *People v. McCabe,* 49 Ill.2d 338, 275 N.E.2d 407, 413 (1971); *People v. Sinclair,* 387 Mich. 91, 194 N.W.2d 878, 887 (1972).

Constitutional arguments dealing with the right to procure and transport alcohol. 245 U.S at 308. However, this reasoning was explicitly rejected in *Stanley v. Georgia,* when the Court enunciated a right to private possession of obscene materials, see 394 U.S. at 567-68, and in *Paris Adult Theatre I v. Slaton, supra,* 413 U.S. 49, 66 (1973), where the Court, while not questioning *Stanley,* refused to extend this right to the transportation or procurement of obscene materials.

In connection with whether the issues involved in this case are "insubstantial," petitioners would also bring to the attention of the Court a suit now pending in the U.S. District Court for the District of Columbia Circuit, *The National Organization for the Reform of Marijuana Laws (NORML), et al. v. Wilson, et al.,* Civil Action No. 1897-73. The Complaint in that suit is similar to the Complaint in the instant suit. The District Court Judge who initially received the Complaint denied motions to dismiss based upon a number of grounds, including lack of a substantial federal question, and granted the application for a three-judge court. The three-judge court was empanelled on March 14, 1974. The three-judge court then received motions to dismiss on a number of grounds, including lack of a substantial federal question. The three-judge court denied these motions in an order without opinion dated November 11, 1974, but in that same order the Court stayed the case until the conclusion of an administrative proceeding in the U.S. Department of Justice (Drug Enforcement Administration). Whether or not the doctrine of exhaustion of administrative remedies will still be relevant when this case is remanded for a three-judge court is an issue we believe should be addressed to the three-judge court, if one is to be empanelled, and not to this Court. The District Court below did not mention or discuss the exhaustion doctrine, and this Court has long held that the application of the exhaustion doctrine is within the "sound

discretion" of the trial court. See, *e.g., McKart v. United States,* 395 U.S. 185, 193 (1969); *N.L.R.B., v. Industrial Union of Marine and Shipbuilding Workers,* 391 U.S. 418, 426 (1968); *United States v. Abilene & So. R.R. Co.,* 265 U.S. 274, 282 (1924). See also, *United States v. Kiffer,* 477 F.2d 349 (2d Cir. 1973), *cert. denied,* 414 U.S. 831 (1973).

2. The Court Below Erroneously Applied *Ferguson v. Skrupa*, 372 U.S. 726, As Have Other Courts.

The District Court held that even if the private possession and use of marijuana involved "fundamental rights," the Constitutional claims contained in the Complaint were still "obviously without merit." The District Court reasoned that even if it were to apply the compelling state interest test, there was a compelling state interest supporting the marijuana prohibitions, *i.e.*, protection of the public health and welfare. Since these prohibitions were based upon the authority to legislate for the public health and welfare, the Court concluded that it could not "substitute its judgment" for that of the legislatures (App., p. 10):

> Congress and the state legislature have both found it necessary for general health and welfare to regulate the use and possession of dangerous drugs. This Court is in no position to substitute its judgment for that of the legislature.

For this conclusion, which was the heart of the District Court's decision, the Court relied exclusively on *Ferguson v. Skrupa, supra,* 372 U.S. 726 (1963).

The Fifth Circuit found this to be "well reasoned" (App., p. 1), but Petitioners submit that the opposite is true: This

decision elevates the phrase "protection of the public health and welfare" into a magic incantation that merely must be invoked to foreclose absolutely any constitutional challenge. The Court's reasoning, and its use of *Ferguson,* in denying petitioners even a three-judge court eliminates entirely the historic role of the Courts in protecting individual rights and liberties.

This Court has indicated over and over again that the courts have the power, and *the duty,* to inquire into the facts behind a statute. In *Mugler v. Kansas,* 123 U.S. 623, 661 (1887), the Court stated:

> The Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty – indeed, under a solemn duty – to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute proporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of the rights secured by the fundamental law, it is the duty of the Courts to so adjudge, and thereby give effect to the Constitution.

See also, *United States v. Carolene Products Co.,* 314 U.S. 144, 153-54 (1938):

> [W]e recognize that the constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to show that the statute as applied to a particular article is without support in reason because the article, although within the prohibited class, is so different from others of the class as to be without the reason for the prohibition.

More recently, this Court reversed the Fifth Circuit in a case involving a presumption in the previous federal marijuana law. *Leary v. United States,* 395 U.S. 6 (1969). One of the issues decided in *Leary* was whether the presumption in 21 U.S.C. Sec. 176a, which provided that a possessor of marijuana was deemed to know of its unlawful importation into the United States, denied petitioner Due Process of Law. The Court, in declaring the presumption unconstitutional, stated, 395 U.S. at 38:

> [W]e have not confined ourselves to data available at the time the presumption was enacted in 1956, but have also considered more recent information, in order both to obtain a broader general background and to ascertain whether the intervening years have witnessed significant changes which might bear upon the presumption's validity.

In a footnote, the Court added (*Id.*, fn. 68):

> A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration. See *Block v. Hirsh,* 256 U.S. 135, 154-155 (1921); *Communist Party v. SACB,* 367 U.S. 1, 110-114 (1961).

In this Court's previous decisions involving the Right of Privacy, *Griswold v. Connecticut, Stanley v. Georgia,* and *Roe v. Wade, supra,* it was argued by the State that the prohibitions involved were supported by considerations of the public health and welfare. In each of these cases the Court

scrutinized the legislative purposes supporting the challenged statutes. Such scrutiny is also appropriate here.[8]

Moreover, the Complaint in this case does not ask the Court to substitute its judgment on the wisdom of the law for that of the legislature, but to fulfill the historic judicial role of defining the constitutional rights of individuals and the limitations on government powers.[9]

Ferguson v. Skrupa involved a state statute which prohibited the practice of debt adjusting except as incident to the practice of law. In reversing the lower court's use of the Due Process Clause to strike down this statute, the Court stated, 372 U.S. at 731:

> We emphastically refuse to go back to the time when courts used the Due Process Clause to strike

---

[8] In *Roe v. Wade*, Mr. Chief Justice Burger, concurring, indicated that he was "somewhat troubled that the Court has taken judicial notice of various scientific and medical data in reaching its conclusion." 410 U.S. at 208. In this case, petitioners seek a full factual inquiry before the three-judge court.

[9] In *Ravin*, the Supreme Court of Alaska recognized that the wisdom of legislative enactments was for the legislatures, not the Courts, Slip Op. at 44:

> In opposition, the State argues that under Alaska's Constitutional system of separate but equal branches of government the issue is a "political controversy over the State's fundamental policy toward the drug marijuana." Thus, the "issue should be properly determined by the peoples' elected representatives." We agree that determination of the wisdom of a particular legislative enactment is more properly the subject of investigation and resolution by the legislature rather than the judiciary.

> down State laws regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought.

Each of the state laws which were referred to in *Ferguson* as being mistakenly stricken involved the regulation of commercial or economic practices. See, *e.g., Adkins v. Childrens Hospital,* 261 U.S. 525 (1923) (minimum wage for women); *Lochner v. New York,* 198 U.S. 45 (1905) (maximum working hours for bakeries); *Coppage v. Kansas,* 236 U.S. 1 (1915) ("yellow dog" contracts).

This Court has consistently applied *Ferguson* when economic regulations have been challenged as unwise or undesirable under the Due Process Clause. See, *e.g., Seagram & Sons v. Hostetter,* 384 U.S. 35, 47 (1966) (regulation of distillers and wholesalers by state liquor control board); *Fireman v. Chicago, R.I. & P.R. Co.,* 393 U.S. 129, 143 (1968) ("full crews" on railroads).

However, there is confusion among the lower federal courts as to the reach of *Ferguson,* and particularly whether the principle of judicial nonintervention applies when statutes are alleged to violate the Right of Privacy or other individual rights and liberties. In cases involving hairlength regulations, a number of courts have applied *Ferguson,* improperly we believe, in sustaining the regulations. The Tenth Circuit, in *Freeman v. Flake,* 448 F.2d 258 (10th Cir. 1971), sustained a school hairlength regulation using language substantially indentical to that used by the District Court below:

> We doubt the applicability of the test of reasonableness in the determination of the nebulous constitutional rights here asserted. The issue should not turn on views of a federal judge relating to

> the wisdom or necessity of a school regulation controlling the length of hair worn by a male student in a state public school. In Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S. Ct. 1028, 1031, 10 L. Ed.2d 93, the Court said that the courts will not "substitute their social and economic beliefs for the judgment of legislative bodies." The same principle is pertinent to dress codes of school boards. We do not read Griswold v. Connecticut as over-ruling Ferguson v. Skrupa. The Griswold decision turned on the specific issues there presented. 448 F.2d at 261.

See also, *Karr v. Schmidt,* 460 F.2d 609, 614-15 (5th Cir. 1972); *Ashley v. City of Macon, Ga.,* 377 F. Supp. 540, 543 (D.C. Ga. 1974); *Farmer v. Catmull,* 339 F. Supp. 70, 72-73 (D.C. Utah 1972).

In other cases involving hairlength regulations, the Courts have inquired into the interests supporting these regulations, and have declared them unconstitutional when not supported by legitimate state interests. See, *e.g., Bishop v. Colaw,* 450 F.2d 1069 (8th Cir. 1971); *Richards v. Thurston,* 424 F.2d 1281 (1st Cir. 1970); *Breen v. Kahl,* 419 F.2d 1034 (7th Cir. 1969); *Barry v. Dwen,* __F.2d __(2d Cir. 1975), *cert. granted,* 43 U.S.L.W. 3621 (May 27, 1975) (No. 74-1269).

Barry v. Dwen involves a regulation issued by the Suffolk County Police Department specifying the acceptable length of hair, mustaches, etc., for individual police officers. Petitioners believe it is significant that the Commissioner of the Suffolk County Police Department, in his Petition for a Writ of Certiorari filed in this Court, does not argue the extreme position of total judicial nonintervention based upon *Ferguson.* Instead, it is argued that the regulation is justified by

a number of legitimate state interests, including the safety of the officer and the "morale factor." See Pet. at pp. 2, 6-7. Whatever the merit of these asserted state interests, this is a fundamentally different position from that adopted in *Freeman v. Flake, supra,* and by the Court below, which was that the Courts could not even inquire into the state interests supporting the challenged statute or regulation.

A distinction must be carefully drawn between legislation involving commercial and economic matters and legislation which infringes upon personal rights and liberties. In *Levy v. Louisiana,* 391 U.S. 68 (1968), the Court discussed *Ferguson* and related cases in the context of a constitutional challenge based upon the Equal Protection Clause, and made the following distinction which we believe is also appropriate in connection with the privacy claims involved in the case, 391 U.S. at 71:

> In applying the Equal Protection Clause to social and economic legislation, we give great latitude to the legislature in making classifications. . . . However that might be, was have been extremely sensitive when it comes to basic civil rights (*Skinner v. Oklahoma, supra,* at 541; *Harper v. Virginia Board of Elections,* 383 U.S. 663, 669-670) and have not hestitated to strike down an invidious classification even though it had history and tradition on its side. (*Brown v. Board of Education,* 347 U.S. 483; *Harper v. Virginia Board of Elections, supra,* at 669).

As Justice Levinson of the Supreme Court of Hawaii recently stated, *State v. Kantner,* 53 Haw. 327, 493 P.2d 306, 317-18, *cert. denied,* 409 U.S. 948 (1972):

> Any criticism which attempts to deter courts from inquiring into the constitutionality of laws must

> distinguish between legislation which seeks to regulate economic and social relationshhips and that which intrudes into the purely private sphere of human life. In the former instance courts rightfully grant the legislature wide latitude for experimentation in the promotion of the general good. But, where the State endeavors to intrude into the individual's private life and regulate conduct having no public significance, it is the duty of the courts to offer a haven of refuge where the individual may secure vindication of his right to be let alone.

See also, Hamilton, Federalist Paper No. 78, *The Federalist Papers* at p. 469 (Rossiter Ed. 1961):

> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the acts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: July, 1975.

APPENDIX A – Judgment of the Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-2528

LOUISIANA AFFILIATE OF THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, *et al.*,

Plaintiffs-Appellants,

v.

HON. WILLIAM J. GUSTE, JR., Attorney General of the State of Louisiana, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

(April 17, 1975)

Before GIBSON*, THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM:

AFFIRMED, on the basis of the well-reasoned opinion of District Judge Comiskey, 380 F. Supp. 404 (1974).

* Of the Eighth Circuit, sitting by designation.

APPENDIX B – Memorandum of the District Court Denying The Application for a Three-Judge Court

UNITED STATES DISTRICT COURT
Eastern District of Louisiana

Civil Action No. 74-163

The Louisiana Affiliate of the National Organization For the Reform of Marijuana Laws (NORML), *et al.*,

Plaintiffs,

v.

Hon. William J. Guste, Jr., Attorney General of the State of Louisiana, *et al.*,

Defendants.

March 19, 1974

COMISKEY, District Judge

MEMORANDUM OF REASONS

The plaintiffs herein have filed suit seeking declaratory and injunctive relief against the Federal Controlled Substances Act and the Louisiana Controlled Dangerous Substance Law insofar as they make the private use and possession of marijuana by adults a crime in Louisiana. The federal statutes which prohibit the possession of marijuana are contained in 21 U.S.C. § 801-904. The Louisiana provision is encompassed in LSA-R.S. 40:966.

Plaintiffs allege that these statutes violate their rights of privacy and personal liberty guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments and by the Ninth Amendment as well as constituting cruel and unusual punishment under the Eighth Amendment. They contend that these laws encroach on constitutionally protected zones of privacy since social, medical and historical facts show that there can be neither an overwhelming compelling state interest nor any possible relationship to a legitimate state interest which can justify the exercise of the police powers of the state. In addition they allege that the criminalization of the mere possession of marijuana is a violation of the equal protection clause of the Fifth and Fourteenth Amendments which constitutes invidious and arbitrary discrimination since other more potentially harmful substances such as alcohol and cigarettes are not subject to the same control.

The anonymous representative John Doe seeks to maintain a class action. Doe's identity is to be revealed to the Court in a sealed affidavit.

Presently before the Court for consideration is the propriety of the plaintiff's request for convening a three-judge court pursuant to 28 U.S.C. 2284.

The scope of a district court's considerations when a three-judge court has been requested is set out in *Idlewild Bon Voyage Liquors Corp. v. Epstein,* 370 U.S. 713, 82 S. Ct. 1294, 1296, 8 L.Ed. 794 (1962):

> "When an application for a statutory three-judge court is addressed to a district court, the court's inquiry is appropriately limited to determining whether the constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise

comes within the requirements of the three-judge statute."

The present question at issue is the substantiality of the question presented. Several general principals emerge from the cases.

> "The existence of a substantial question of constitutionality must be determined by the allegations of the bill of complaint."

Mosher v. Phoenix, 287 U.S. 29, 53 S. Ct. 67, 7 L.Ed. 148, 1922; *Levering-Garriques & Co. v. Morrin*, 289 U.S. 103, 53 S. Ct. 549, 77 L.Ed. 1062 (1933); *Local U. No. 300 Amal. Meat Cutters & B. Work v. McCulloch*, 428 F. 2d 396 (5th Cir. 1970). The Supreme Court in *Ex Parte Poresky*, 290 U.S. 30, 54 S. Ct. 3, 4, 78 L.Ed.2d 152 (1933) set forth the dual standards under which substantiality must be determined.

> "The question may be plainly insubstantial, either because it is "obviously without merit" or because "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy."

These two criteria have been somewhat refined by the appellate courts,

> "Insubstantiality in the claim may appear because of absence of federal jurisdiction, lack of substantive merit in the constitutional claim, or because injunctive relief is otherwise unavailable. Such insubstantiality may be evident from the frivolous nature of the claim or from previous decisions of

> the Supreme Court which require an adverse answer. *Maryland Citizens for a Rep. Gen. A. v. Governor of Md.*, 529 F.2d 606 (4th Cir. 1970)

In the present case the issues of jurisdiction against the federal and state defendants as well as the question of preclusion of substantiality through prior decisions is not present. The state defendants come within the provisions of 42 U.S.C. 1983 since state action is attacked which allegedly results in the deprivation of constitutional rights. The federal defendants are covered by the issue of a federal question as alleged in the complaint under 28 U.S.C. § 1331. Although attacks on the constitutionality of these statutes have been made in criminal proceedings, research reveals no civil action for declaratory or injunctive relief in which a decision has been rendered.

The Eighth Circuit in *The Herald Company v. Harper*, 410 F.2d 125 (8th Cir. 1969) commented on the problem of substantiality which we ourselves face in resolving this issue:

> "At the outset we realize, as Judge Friendly has stated, "these tests cannot be of mathematical precision. Previous decisions do not always foreclose new considerations even though they are directly on point, as the single district judges correctly thought in convoking three-judge courts in the second flag salute case . . . and in the desegregation cases. The other basis for finding lack of substantiality, obvious lack of merit, is still less precise; judges have not been fitted with identical lenses for detecting just when lack of merit is obviously such." *Id.* p. 128.

Plaintiff's causes of actions may be categorized into three general categories: 1) violation of right of privacy; 2) cruel and unusual punishment and 3) violation of equal protection of the laws.

The plaintiffs' allegation regarding privacy springs from *Roe v. Wade*, ____U.S.____, 93 S. Ct. 705 (1973) and *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L.Ed.2d 542 (1969). Plaintiff alleges that the concept of the constitutional right of privacy has now evolved to the point that its mere invocation raises a constitutional issue. In the recent case of *Roe v. Wade, supra*, the court said,

> "The Constitution does not explicitly mention any right of privacy. In a line of decisions . . . the Court has recognized that a right of personal privacy, or a guarantee of certain zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or implicit in the concept of ordered liberty are included in this guarantee of personal liberty." *Id.*, p. 726.
>
> "The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a state may properly assert important interests in safeguarding health, in maintaining medical standards and in protecting potential life."

Plaintiff in the present case bases his claim to privacy on a far too expansive interpretation of this phrase. The present case does not rest its roots in the First Amendment, *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L.Ed.2d 542 (1969), in the Fourth and Fifth Amendment, *Terry v. Ohio*,

392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968); *Katz v. U.S.*, 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967), in penumbras of the Bill of Rights, *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 14 L.Ed.2d 510 (1965) or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. All of the above cases have involved concepts of basic and fundamental rights such as the right to marry, to bear children, to think and read what one wishes, to worship God according to the dictates of his conscience, to acquire useful knowledge. Even *Roe* and *Doe* came within these basic provisions and to a large extent are no more than a logical extension of the *Griswold* philosophy of marital privacy as applied to women. Plaintiffs' claim in the present case rests on bare allegations of a general right to privacy to do what one wishes in his own home and with his own body. Although plaintiff does claim enforcement of this right of privacy through the Fifth and Fourteenth Amendment and through the Ninth Amendment he does not ground it or even attempt to ground it on any one of the amendments which protect certain guaranteed rights and which in doing so create constitutionally guarded zones of privacy. The right of plaintiff to possess marijuana in his own home can under no factual or legal interpretation be classified as fundamental or implicit in the concept of ordered liberty.

The Supreme Court in *Stanley v. Georgia*, the very case relied on so strongly by plaintiff, qualified its approval of private possession of obscene material with the following:

> "What we have said in no way infringes upon the power of the State or Federal Government to make possession of other items such as narcotics, firearms, or stolen goods, a crime. Our holding in the present case turns upon the

> Georgia statute's infringement of fundamental liberty protected by the First and Fourteenth Amendments. No First Amendment rights are involved in most statutes making mere possession criminal. *Stanley*, footnote 11 at 394 U.S., at 568, 89 S. Ct. at 1249, 22 L.Ed.2d 551.

The Fifth Circuit in *U.S. Drotar*, 416 F.2d 914 (5th Cir. 1969) used this very expression of the Supreme Court in *Stanley*, to uphold an attack on the constitutionality of a guilty plea under the now repealed provision of 26 U.S.C. § 4741(a) in violation of 26 U.S.C. 4744(a)(1) for possession of marijuana without payment of the tax imposed by law. The court's reasoning in *Drotar* reflects the part "fundamental liberties" plays in defining the concept of privacy.

However, even conceding that plaintiff's right to possess is fundamental even *Roe & Doe* recognized that they may be curtailed by "compelling state interest", *Roe v. Wade*, ___ U.S.___, 93 S. Ct. 705, 728 (1973). 21 U.S.C. § 801 and LSA-R.S. 40:962 expresses the state interest behind the federal and state prohibitions.

> "The Congress makes the following declarations:
>
> (1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
>
> (2) The illegal importation, manufacture, distribution and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people." 21 U.S.C. § 801 (1) & (2).

The legislative intent of the state in controlling dangerous drugs is found in the criteria set out in LSA-R.S. 40:962(A)(1-8) and in LSA-R.S. 40:963(A). The fact that they are addressed to the State Board of Health reflects the considerations which moved the Louisiana legislature to control dangerous drugs:

> "In making such a determination the State Board of Health shall consider the following:
>
> (1) Its actual or relative potential for abuse;
> (2) Scientific evidence of its pharmacological effect, if known;
> (3) State of current scientific knowledge regarding the substance;
> (4) Its history and current pattern of abuse;
> (5) The scope, duration and significance of abuse;
> (6) What, if any, risk there is to public health;
> (7) Its psychic or physiological dependence liability; and
> (8) Whether the substance is an immediate precursor of a substance already controlled by this section.
>
> "In determining that a substance is to be added to these schedules, the State Board of Health shall find the following:
>
> A. As to Schedule I:
>
> (1) The drug or other substance has a high potential for abuse;
> (2) The drug or other substance has no currently accepted medical use in treatment in the United States;
> (3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Plaintiff alleges that this reasoning is incorrect by virtue of recent scientific findings and investigations and urges this court to upset this specific finding of the legislature. In order for the court to do this it would be necessary for this court to substitute its judgment based on social, economic, historical and scientific evidence for that of the respective legislatures. The Supreme Court has specifically turned away from such an approach in *Ferguson v. Skrupa*, 372 U.S. 726, 83 S. Ct. 1028, 10 L.Ed.2d 93 (1963). Congress and the state legislature have both found it necessary for general health and welfare to regulate the use and possession of dangerous drugs. This court is in no position to substitute its judgment for that of the legislature.

Plaintiffs also contend that the criminal sanctions imposed for the possession and use of marijuana constitute cruel and unusual punishment under the Eighth Amendment. Plaintiff's allegation under this cause of action has validity only if the conduct proscribed is disproportionate to the offense, *Kasper v. Brittian*, 245 F.2d 92, cert. den. (6th Cir. 1957), 355 U.S. 834, 78 S. Ct. 542 L.Ed.2d 46 (1957), reh. den., 355 U.S. 886, 78 S. Ct. 147, 2 L.Ed. 115 (1957). The punishment becomes disportionate only if the conduct should not be proscribed or only if the punishment is clearly arbitrary and without rational relationship to the crime. Since the court finds that the conduct is legitimately proscribed by the legislatures and that it encompasses no fundamental right the Eighth Amendment argument has no validity.

Plaintiff rests finally on the prohibitions of equal protection. Plaintiff alleges that invidious discrimination is present since no rational basis exists for treating marijuana different from cigarettes or alcohol. Classification becomes unreasonable only when they are arbitrary and rest upon no rational basis, *Lindsley v. National Carbonic Gas Company*, 220 U.S.

61, 31 S. Ct. 337, 55 L.Ed. 369 (1911); *Morey v. Doud*, 354 U.S. 457, 77 S. Ct. 1344, 1 L.Ed.2d 1484 (1957). The legislatures, both federal and state, rest their distinction in treatment on their obligation and authority to legislate for the public health and welfare. It is only by substituting a judicial judgment that this is incorrect that these statutes can be overturned, see *Ferguson, supra.*

The Fifth Circuit's admonition in *Jackson v. Choate*, 404 F.2d 910 (5th Cir. 1968):

> "Except for cases on which there can be no doubt at all, the alternatives to certification and constituting of a three-judge court as unsatisfactory and administratively disadvantageous with no compensating redeeming virtue of a substantive kind." *Id.*, p. 912.
>
> "In this day and time of dynamic expansion of constitutional principles and their application to new and sometimes unheard of situations it takes judicial prescience of a delphic order to say with certainty that the attack is insubstantial. It is the better course – certainly from an administrative standpoint – to forego the doubts, constitute a three-judge court, and allow that court to determine initially this and other issues." *Id.*, p. 913.

is not applicable under the circumstances of the present case.

The plaintiff's request for the covening of a three-judge court is hereby and the same denied for lack of a substantial federal question since the allegations are plainly without merit. The right to possess and use marijuana in one's own

home is not and cannot be classified as a fundamental right protected by a constitutional zone of privacy.

/s/ Judge Comiskey
UNITED STATES DISTRICT JUDGE

March 19, 1974

APPENDIX C – Judgment and Minute Entry of the District Court Dismissing the Complaint

UNITED STATES DISTRICT COURT
Eastern District of Louisiana

Civil Action No. 74-163

[Title omitted in printing]

May 31, 1974

JUDGMENT

The Court having on May 29, 1974, for the reasons dictated into the record and the memo of reasons filed herein on the 19th day of March, 1974, granted the motions of defendants, Hon. William J. Guste, Jr., Hon. Edwin Edwards, William B. Saxbe and Hon. John R. Bartels, to dismiss:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Hon. William J. Guste, Jr., Attorney General of the State of Louisiana; Hon. Edwin Edwards, Governor of the State of Louisiana; William

B. Saxbe, Attorney General of the United States and Hon. John R. Bartels, as Administrator of the Drug Enforcement Administration of the Federal Government, and against plaintiffs, The Louisiana Affiliate of the National Organization for the Reform of Marijuana Laws (NORML) and John Doe, on behalf of himself and all others similarly situated, dismissing said plaintiffs' suit at their costs.

New Orleans, Louisiana, this 31st day of May, 1974.

BENJAMIN W. REISCH, Clerk
By: /s/ Nelson B. Jones
Chief Deputy Clerk

APPROVED AS TO FORM:

/s/ Judge Comiskey
UNITED STATES DISTRICT JUDGE

* * *

[Title omitted in printing]

Minute Entry

July 1, 1974

On May 29, 1974, there came on for hearing motions to dismiss by each of the three defendants. At that time the Court ruled from the bench granting the motions and orally adopted its previous Memorandum of Reasons denying the plaintiffs' request to convene a three-judge court. The Court now formally adopts as its reasons for judgment granting

defendants' motions to dismiss its March 19, 1974 Memorandum of Reasons denying plaintiffs' request for a three-judge court. In consideration of these reasons, a copy of which is attached, the defendants' motions are hereby granted and the case dismissed.

/s/ Judge Comisky
UNITED STATES DISTRICT JUDGE

APPENDIX D – Statutory Provisions Involved

(1) The Federal Controlled Substances Act, 21 U.S.C. Sec. 801, *et seq.*

Sec. 404(a), 21 U.S.C. Sec. 844(a). Penalty For Simple Possession.

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

Sec. 202, 21 U.S.C. Sec. 812. Schedules of Controlled Substances.

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the

following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Schedule I

* * *

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

* * *

(10) Marihuana

* * *

(2) The Louisiana Controlled Dangerous Substances Law, LSA-R.S. 40:961, *et seq.*

Sec. 966, LSA-R.S. 40:966. Prohibited acts – Schedule I; penalties.

C. **Possession.** It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule I unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner or as provided in R.S. 40:978, while acting in the course of his professional practice, or except as otherwise authorized by this part. Any person who violates this subsection with respect to:

(1) A substance classified in Schedule I which is a narcotic drug (all substances in Schedule I preceded by an asterisk "*"), shall be imprisoned at hard labor for not less than four years nor more than ten years without benefit of probation

or suspension of sentence and may, in addition, be required to pay a fine of not more than five thousand dollars.

(2) Any other controlled dangerous substance classified in Schedule I, shall be imprisoned at hard labor for not more than ten years, and may in addition, be required to pay a fine of not more than five thousand dollars.

D. **Possession of marijuana.** (1) On a first conviction for violation of Subsection C of this section with regard to marijuana, the offended shall be fined not more than five hundred dollars and/or imprisoned in the parish jail for not more than six months.

(2) On a second conviction for violation of Subsection C of this section with regard to marijuana, the offender shall be fined not more than two thousand dollars and/or imprisoned with or without hard labor for not more than five years.

(3) On a third or subsequent conviction for violation of Subsection C of this section with regard to marijuana the offender shall be sentenced to imprisonment with or without hard labor for not more than twenty years.

Sec. 964, LSA-R.S. 40:964. Composition of schedules.

Schedules I, II, III, IV and V shall, unless and until added to pursuant to R.S. 40:962, consist of the following drugs or other substances, by whatever official name, common or unusual name, chemical name, or brand name designated:

SCHEDULE I

* * *

C. **Hallucinogens.** Unless specifically excepted or unless listed in another Schedule, any material, compound, mixture, or preparation, which contains any quantity of the following

hallucinogenic substances, or which contains any of their salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

* * *

(10) Marijuana

* * *

NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

NORML

2317 M STREET, N.W., WASHINGTON, D.C. 20037 202-223-3170

July 27, 1976

John Rector
Staff Director and Chief Counsel
Senate Subcommittee to Investigate Juvenile Delinquency
Washington, DC 20510

Dear John:

Pursuant to our conversation today, I've enclosed the amicus curiae brief recently filed by NORML in the California Supreme Court. The question involved here is one of "moral turpitude" and the dismissal of a teacher, but the issue of marijuana decriminalization is discussed at some length and may provide for you a worthwhile current legal index.

I've also enclosed a bibliography of books of merit on the subject.

Regards,

Larry A. Schott
Member, Board of Directors

LAS:pes
Enclosures

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Supreme Court No.
L.A. 30608

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

GOVERNING BOARD, RIALTO UNIFIED SCHOOL DISTRICT,	)
Plaintiff and Respondent,	)
vs.	)
THOMAS RICHARD MANN,	)
Defendant and Appellant.	)

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

HONORABLE JAMES E. CUNNINGHAM, SR., JUDGE

BRIEF OF NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML) AS AMICUS CURIAE IN SUPPORT OF DEFENDANT AND APPELLANT

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QUESTION PRESENTED

The Petition for Hearing filed in this Court contains a number of issues relating to petitioner's dismissal by the Governing Board of the Rialto Unified School District. This amicus curiae brief will focus on the following issue:

> Whether a conviction for possession of a small amount of marijuana is cause for dismissal of a public school teacher under Section 13403(h) of the California Education Code, as a conviction of "a felony or of any crime involving moral turpitude."

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BRIEF OF AMICUS CURIAE

INTRODUCTORY STATEMENT: INTERESTS OF AMICUS CURIAE

The National Organization for the Reform of Marijuana Laws (NORML) is a non-profit corporation, incorporated in the District of Columbia. NORML maintains a National Headquarters in Washington, D.C., and active affiliates in more than 40 states, including California. NORML maintains a West Coast regional office in San Francisco.

NORML was organized, and its members joined and continue to support NORML, for the purpose of NORML's representing and advocating, before legislative and judicial forums the personal and collective interests of its members in securing the decriminalization of private possession and use of marijuana and the relegation of such matters to personal choice rather than criminal sanction. NORML is supported by approximately 20,000 dues-paying members, including more than 300 persons who are presently serving sentences in prison for violation of state and federal marijuana laws.

NORML is presently a plaintiff in two California lawsuits seeking declaratory judgments that various provisions of the California Uniform Controlled Substances Law, Health and Safety Code sections 11000 et seq., are unconstitutional insofar as they criminally punish private possession and use of marijuana by adults. Such lawsuits are NORML v Gain, No. 697-445 (Superior Court, City and County of San Francisco), and NORML v Davis,

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No. C140940 (Superior Court, County of Los Angeles).

In various other cases in the courts of this state and other states and in federal courts, NORML has petitioned for and been granted leave to file briefs amicus curiae for the purpose of advancing and representing the interests of its members on the several issues represented therein. For example NORML has recently been granted leave to file briefs amicus curiae in the following cases on the issue of the constitutionality of the record destruction provisions of Health & Safety Code Section 11361.5: In re Goldberg, No. CR 231566 (Superior Court, Los Angeles County); In re Mack, No. 40072 (Superior Court Sacramento County).

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STATEMENT OF FACTS

On the evening of January 31, 1969, Thomas R. Mann was arrested in his home for possession of a small amount of marijuana (enough for approximately three cigarettes). At that time he was employed as a tenured teacher by the Rialto Unified School District. He was chairman of the Social Studies Department of Eisenhower High School, where he had taught since 1964. Police officers found the marijuana among Mann's personal papers in a filing cabinet in his bedroom.

A criminal complaint was filed against Mann, and on February 5, 1969, the Governing Board of the school district took action to place him on compulsory leave of absence, pursuant to Section 13409 of the Education Code. In the criminal proceeding, Mann sought to suppress the marijuana seized from his home, under Section 1538.5 of the Penal Code, but was unsuccessful Mann v Superior Court, 3 C.3d 1 (1970). On January 4, 1971, he pleaded guilty to violation of then Section 11530 of the Health and Safety Code, possession of marijuana, a felony. On February 8, 1971, the court placed Mann on probation and noted in the minutes that it would "consider the reduction to a misdemeanor if and when probation is successfully completed."

That same day, February 8, 1971, the Superintendent of the Rialto School District formally alleged in a letter to the district's Governing Board that cause existed to dismiss Mann,

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as provided for in Section 13403(h) of the Education Code.[1] On February 17, 1971, the Governing Board gave notice of its intent to dismiss Mann. The Governing Board then filed a complaint in Superior Court on March 26, 1971.

Before a hearing was held on the complaint, Mann successfully completed probation, and on July 14, 1972, the Superior Court, upon the request of the probation officer and pursuant to the provisions of Sections 17[2] and 1203.4[3] of the Penal Code,

1/ Education Code Section 13403(h) provides, in pertinent part:

§13403. Grounds for dismissal of permanent employee

No permanent employee shall be dismissed except for one or more of the following causes:

* * *

(h) Conviction of a felony or of any crime involving moral turpitude.

2/ Penal Code Section 17 provides in pertinent part:

§17. Felony defined: Misdemeanor defined: Commitment to Youth Authority: Effect of granting probation.

(a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime of public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

* * *

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

3/ Penal Code Section 1203.4 provides in pertinent part:

§1203.4. Right of discharged probationer to change plea: Vacation of verdict: Dismissal: Release from disabilities: Subsequent offense.

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ordered that the offense be declared a misdemeanor, that probation be terminated, that the plea of "guilty" be set aside, a plea of "not guilty" entered, and the case dismissed.

A hearing on the Governing Board's complaint was held in June, 1973. The four-day hearing dealt primarily with the "moral turpitude" issue. Evidence about marijuana, including scientific reports and expert testimony, was introduced. The Supeior Court held that the Governing Board had cause to dismiss Mann, and the Court of Appeal for the Fourth District affirmed. Governing Board of Rialto Unified School District v Mann, 54 C.A.3d 368 (1976) [hereinafter, Mann].

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has beendischarged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and he shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted. The probationer shall be informed of this right and privilege in his probation papers. The probationer may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed.

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ARGUMENT

I. DISMISSAL OF THOMAS MANN FROM HIS TEACHING POSITION WAS ONLY PROPER IF HE WAS CONVICTED OF A CRIME INVOLVING "MORAL TURPITUDE."

A. THE JUDGE CASE HOLDS THAT TEACHERS CANNOT BE DISMISSED FOR CONVICTION OF A FELONY UNDER EDUCATION CODE SECTION 13403(h) UNLESS THE FELONY INVOLVES MORAL TURPITUDE.

Board of Trustees v Judge, 50 C.A.3d 920 (1975), involved the attempted dismissal of a teacher by his school board, under Education Code Section 13403(h), on the grounds of his conviction of violation of Health and Safety Code Section 11530.1 (now Section 11358), cultivation of a single marijuana plant, a felony. The Court of Appeal for the Second District held that Education Code Section 13403(h) "applies only to conviction of felonies involving moral turpitude," 50 C.A.3d at 926, that the offense of cultivation of marijuana does not involve moral turpitude as a matter of law, id. at 925-25, and that "conviction of a felony, standing by itself, is not enough to warrant discipline under Education Code Section 13403, Subdivision (h)," id. at 928.

The Court of Appeal based its conclusion that teachers cannot be dismissed under Section 13403(h) unless the felony involves moral turpitude on an analysis of prior cases involving teacher dismissal under the Education Code and other California statutes regulating various trades and professions and containing similar grounds for discipline as those contained in Section 13403(h) of the Education Code. Id. at 926-27 and nn. 3 & 4. Agreeing with the trial court that the factual circumstances did

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not warrant a finding of moral turpitude, the Court of Appeal affirmed the judgment of the trial court that Judge could not be dismissed from his teaching position.

The Court of Appeal for the Fourth District, in its decision below, expressly disagreed with Judge on the issue of statutory construction, holding that conviction for any felony was sufficient cause for dismissal. Mann, supra, 54 C.A.3d at 375. The Mann court's decision on this point is not based upon any new analysis of the issue, but is merely a "respectful" difference of opinion with the conclusion drawn in Judge. Id. Amicus submits that the Judge holding is better-reasoned and is based upon an extensive analysis of the disciplinary provisions for a wide variety of trades and professions in California, and accordingly should be adopted by this Court.

B. EVEN IF THIS COURT INTERPRETS EDUCATION CODE SECTION 13403(h) AS STATING TWO INDEPENDENT GROUNDS FOR DISMISSAL, THOMAS MANN WAS NOT CONVICTED OF A FELONY AT THE TIME OF HIS DISMISSAL BY THE TRIAL COURT AND CONSEQUENTLY HIS DISMISSAL WAS ONLY PROPER IF THE CRIME OF WHICH HE WAS CONVICTED INVOLVED "MORAL TURPITUDE."

As indicated above, on January 4, 1971, Thomas Mann pleaded guilty to violation of then Section 11530 of the Health and Safety Code, possession of marijuana, a felony. On February 8, 1971, the court placed Mann on probation and stated that it would consider reduction of the charge to a misdemeanor upon the completion of probation. On July 14, 1972, Mann completed probation and the court ordered that the charge be reduced to a misdemeanor that the plea of guilty be set aside and a plea of not guilty

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entered, and the case dismissed.

The hearing on the Governing Board's complaint in the instant matter was not held until eleven months later, on June 12, 1973. Realizing that the Superior Court had reduced the charge against Mann to a misdemeanor and dismissed the case, and that the charging allegation in paragraph VII of the Board's complaint made reference only to "conviction of a felony" as cause for dismissal, the county counsel, over Mann's objection, successfully moved to amend the complaint to add a "second" cause for dismissal under Section 13403(h), i.e., conviction of a crime involving moral turpitude. Mann, supra, 54 C.A.3d at 374.

As the county counsel evidently understood, and contrary to the rulings of the Superior Court and the Court of Appeal below, the court order reducing the charge against Mann to a misdemeanor and dismissing the case operated to remove from Mann the legal stigma of a felony conviction.

The leading case of People v. Banks, 53 C.2d 370 (1959), is determinative on this point.[4/] This Court discussed the effects of the provisions of Penal Code Section 1203.4 at length, noting that when a defendant charged with an offense punishable either as a misdemeanor or a felony enters a plea of guilty to the felony

4/ Appellant Banks had pleaded guilty to violation of then Section 503 of the Vehicle Code, an offense punishable either as a felony or a misdemeanor. Imposition of sentence was suspended, and Banks successfully completed his term of probation. He did not move to have the charge reduced to a misdemeanor and dismissed, as he was entitled to do under Penal Code Section 1203.4. Banks was subsequently convicted of violation of Penal Code Section 12021, possession of a firearm by a convicted felon, and the issue on appeal was wehther the Vehicle Code conviction was chargeable against Banks as a prior felony. 53 C.2d at 375.

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charge and the court does not impose a prison sentence, but instead grants probation and suspends the proceedings without entry of judgment, the court retains jurisdiction over the defendant and the res of the action. Id. at 383-87. At that time, and unless and until the defendant avails himself of the benefits of Penal Code Section 1203.4, the defendant stands convicted of a felony. Id. at 387. His status as a convicted felon, however, is "not then final, and conditionally subject to expungement..." Id. Such status is "...only provisional; it could, in due course, [be] changed to that of a misdemeanant by pronouncement of a sentence to the county jail or for a fine. And even the record of a misdemeanor conviction could [be] changed to not guilty and the accusation dismissed by compliance with section 1203.4" Id. Thus, a defendant who obtains an order under Penal Code Section 1203.4 for entry of a misdemeanor judgment and dismissal of the charge no longer has the status of a convicted felon. Id. at 380, 383. He is, in the plain words of the statute, "released from all penalties and disabilities resulting from the offense of which he has been convicted." To be sure, he must obtain an appropriate order under Section 1203.4. Id. at 388. Once he obtains the order, however, he is entitled to the full benefits of the statute. Id. Indeed, to hold to the contrary would be to ignore the clear rehabilitative and remedial legislative purposes of Section 1203.4.

In the instant case, the Court of Appeal below apparently misinterpreted the applicable law by assuming that a plea to a felony once entered constitutes an immutable judgment of conviction

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of a felony. Mann, supra, 54 C.A.3d at 879-80. As Banks makes clear, upon appropriate order under Section 1203.4, the status of convicted felon is lifted and the defendant stands, at most, convicted of a misdemeanor. Such was the status of Thomas Mann at the time of the hearing on the Governing Board's complaint. Consequently, he did not at that time stand convicted of "a felony" within the meaning of Education Code Section 13403(h), and he could only be dismissed if the crime of which he was convicted involved "moral turpitude."

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II. CRIMES INVOLVING "MORAL TURPITUDE" ARE THOSE WHICH ARE "BASE, VILE, OR DEPRAVED," OR WHICH DEMONSTRATE UNFITNESS TO PRACTICE ONE'S PROFESSION

In a recent case involving an attorney disciplinary proceeding, In re Higbie, 6 C.3d 562 (1972), this Court described the concept of "moral turpitude" as follows:

> "Moral turpitude" is an elusive concept incapable of precise general definition. One dramatic exposition of the term was rendered by this court in 1938, and has since been consistently followed: "an act of baseness, vileness or depravity in the private or social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and men." (In re Craig (1938) 12 Cal.2d 93, 97...; see also Yakov v Board of Medical Examiners (1968) 68 Cal.2d 67, 73...; In re Boyd (1957) 48 Cal.2d 69, 70...

6 C.3d at 569. The Court particularly emphasized the issue of whether the conduct demonstrated unfitness to practice one's profession:

> "In evaluating conduct that may or may not involve moral turpitude, we must recognize the purpose for which we have established the "moral turpitude" standard: to ensure that the public, the courts, and the profession are protected against unsuitable legal practitioners. (See Hallinan v Committee of Bar Examiners (1966) 65 Cal.2d 447, 471-472...; In re Rothrock, supra, 16 Cal.2d at p. 454; cf. Yakov v Board of Medical Examiners, supra, 68 Cal.2d at p. 75 and fn. 6 (medical doctor).) The objective is not to impose punishment upon members of the profession. To hold that an act of a practitioner constitutes moral turpitude is to characterize him as unsuitable to practice law.

6 C.3d at 570. Accord, Cartwright v. Board of Chiropractic Examiners, 16 C.3d 762, 767 (1976). Thus, in terms particularly appropriate to the instant case, this Court emphasized in

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Morrison v State Board of Education, 1 C.3d 214 (1969), that private conduct of a teacher may not be the basis for dismissal unless it significantly impairs his ability to teach:

> Terms such as..."moral turpitude" stretch over so wide a range that they embrace an unlimited area of conduct. In using them the Legislature surely did not mean to endow the employing agency with the power to dismiss any employee whose personal, private conduct incurred its disapproval. Hence the courts have consistently related the terms to the issue of whether, when applied to the performance of the employee on the job, the employee has disqualified himself.

Id. at 224-25 (emphasis added).

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III. PRIVATE POSSESSION OF A SMALL AMOUNT OF MARIJUANA IS NOT A CRIME INVOLVING "MORAL TURPITUDE."

A. THE HIGBIE CASE HOLDS THAT POSSESSION OR USE OF MARIJUANA IS NOT A CRIME INVOLVING "MORAL TURPITUDE."

In In re Higbie, supra, this court clearly indicated that simple possession or use of marijuana, in and of itself, is not a crime involving moral turpitude:

> Possession or use of marijuana is, of course, unlawful (see Health & Safety Code, §11530 et seq.), but measured by the morals of the day (In re Hatch, supra, 10 Cal.2d at p. 151) its possession or uses does not constitute "an act of baseness, vileness, or depravity...contrary to the accepted and customary rule or right and duty between man and man" (In re Craig, supra, 12 Cal.2d at p. 97), or indicate that an attorney is unable to meet the professional and fiduciary duties of his practice.

6 C.3d at 572.[5/] See also Board of Trustees v Judge, supra, 50 C.A.3d at 923.

There have been a number of important developments--in the legislatures, courts, scientific community, and in public opinion--since the Higbie decision in 1972 which confirm this

5/ The differences between the factual circumstances of Higbie and those of the instant case underline the significance of this Court's statements. In Higbie, this Court held that respondent Higbie's conduct involved moral turpitude because he was intimately involved in a scheme to smuggle marijuana into the United States from Mexico, conduct for which he ultimately pleaded guilty to violations of federal law. 6 C.3d at 567-68, 573. The distinction between such a course of conduct and Thomas Mann's possession of less than an ounce of marijuana in his bedroom is evident. Even considering the nature of Higbie's offense, however, this Court did not disbar Higbie, but instead imposed only a two-year suspension of the practice of law, with the second year being a probationary period during which Higbie was actually allowed to engage in the practice of law. Id. at 574.

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Court's judgment that possession or use of marijuana is not a crime involving moral turpitude. These developments are discussed in the succeeding sections of this brief.

B. RECENT LEGISLATIVE DEVELOPMENTS IN CALIFORNIA AND OTHER JURISDICTIONS DEMONSTRATE A CLEAR TREND TOWARD GREATLY REDUCED PENALTIES FOR POSSESSION OF MARIJUANA.

In In re Higbie, supra, this Court noted the trend, evident even at that time, toward sharply reduced penalties for marijuana possession offenses:

> ...[T]he possession and use of marijuana at the present time raises controversial questions, to which automatic answers cannot be given. Lawmakers, legal scholars, physicians, and sociologists are divided in opinion as to the wisdom of prohibiting or punishing these acts. In response to demands from sources of the highest integrity that marijuana be treated differently from other drugs, and that punishments for its use be eliminated or significantly ameliorated, the Congress in 1970 reduced the crime of unlawful possession or unremunerated distribution of marijuana from felony to misdemeanor status, providing for the probation and eventual expunging of records of those who are first offenders. (See 21 U.S.C. §§841(b)(4), 844.) The California Legislature had in 1968 similarly responded, reducing the crime of first offense marijuana possession from a felony to a felony-misdemeanor, and providing for incarceration in county jails rather than the state prisons. (Health & Saf. Code, §11530.)

6 C.3d at 571 (footnotes omitted).

This trend toward reduced penalties for marijuana possession has continued and accelerated since the Higbie decision in 1972. In 1972, possession of marijuana was still punishable as a felony in a number of states; as of today, possession of a small amount of marijuana is a misdemeanor in all states except Nevada and Arizona. In Nevada, while possession is still a felony, conditional discharge is authorized for first offenders. In Arizona, possession can be prosecuted as either a felony or misdemeanor.

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In addition, there are now eight states, including California, which no longer arrest or imprison persons at all for possession of a small amount of marijuana. While the provisions of these eight state laws vary, they are all similar in that possession of a specified amount of marijuana is subject to a citation-enforced fine, rather than arrest and possible imprisonment, and there is no permanent criminal record. The first state to adopt this approach was Oregon in 1973, which provided for a $100 maximum civil fine for possession of up to 1 oz. of marijuana. Since 1973, similar laws have been adopted in Alaska, Maine, Colorado, California, Ohio, South Dakota, and Minnesota. The following chart summarizes the provisions of these laws:

STATE	MAX. FINE IMPOSED	MAX. AMT. POSSESSED	CRIMINAL OR CIVIL VIOLATION	EFFECTIVE DATE
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$200.00	Any amount in private for personal use or 1 oz in public	Civil	Mar. 1, 1976
Maine	$200.00	Any amount for personal use[a]	Civil	Mar. 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense --no criminal record	July 1, 1975
Calif.[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (appx. 3-1/2 oz.)	Minor misdemeanor - no crim. record	Nov. 22, 1975
South Dakota	$ 20.00	1 oz.	Civil	Apr. 1, 1977

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STATE	MAX. FINE IMPOSED	MAX. AMT. POSSESSED	CRIMINAL OR CIVIL VIOLATION	EFFECTIVE DATE
Minn.	$100.00[c]	1-1/2 oz.	Civil	Apr. 10, 1976

[a] There is a rebuttable presumption that possession of less than 1-1/2 oz. is for personal use, and possession of more than 1-1/2 oz. is with an intent to distribute.

[b] Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in four states: California (for up to 1 oz), Colorado (up to 1 oz.), Ohio (up to 20 gr.), and Minnesota (up to 1-1/2 oz.).

[c] Only Minnesota provides for increased penalties for second offenses: 0-90 days in jail and/or a $300 fine for second offense within a two year period.

The provisions of these laws are set out in more detail in Appendix A of this Brief, attached hereto.

Most significant for the instant case, of course, is the substantial change in California law brought about by the enactment law year of Senate Bill No. 95, which became effective January 1, 1976. Passage of S.B. 95 followed an extensive investigation by a Select Committee of the State Senate of the medical and scientific evidence, constitutional and law enforcement considerations, and social policy priorities related to the possession and use of marijuana. The major conclusions of the Select Committee demonstrate a legislative determination to minimize penalties for possession and use of marijuana:

1. The Committee finds, even assuming marijuana has some undesirable or harmful properties, attempts at prohibition through utilization of the criminal law is not a proper approach in controlling these properties and effects.

2. The Committee further finds private use of marijuana is a private act.

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3. Marijuana use is to be regarded as involving primarily a risk to the individual user.

4. The State does not have sufficient compelling interest to prevent the individual user.

5. Marijuana use is not a threat to public health, safety or morals so as to warrant state intrusion.

6. The use of marijuana is not such a threat to society to warrant the jailing of people as a way to deal with the attendant issues.

7. The State does not have the responsibility to protect an individual against the potentially harmful effects of a drug when these are still unknown and when all the evidence suggests they are no greater in severity, and possibly not so much different in kind, than those from other socially acceptable drugs.

8. If the individual needs to have some deterrent to over-use of a drug, bringing the individual into the criminal justice system does not constitute a desirable way of accomplishing this end.

9. The benefits, compared to the dollars spent by the State and the social costs suffered by the individual, are not worth the use of the criminal process.

10. One cannot justify a law which in actual practice can only be selectively enforced.

California Legislature, Senate Select Committee on Control of Marijuana, Final Report, Marijuana: Beyond Misunderstanding 3-4 (May, 1974).

The enactment of S.B. 95, amending Health and Safety Code Sections 11357 and 11360, and adding Section 11361.5 to the Health and Safety Code, means that possession of up to one ounce of marijuana in California, while still technically a misdemeanor, is subject to a maximum fine of $100.00 enforced by citation, and there is no permanent criminal record of the offense.

Moreover, the new Health and Safety Code Section 11361.5

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now provides a mechanism for the destruction, by the Superior Courts of arrest and conviction records for marijuana offenses. The record destruction provision applies to arrests under the new marijuana law and its statutory predecessors. Section 11361.5 further provides that after the records have been ordered destroyed, no public agency within the State shall deny or limit any license or privilege on account of conviction for marijuana-related offenses. The language of this latter provision is extremely broad, indicating a clear legislative intent to end the imposition of any type of collateral penalties for arrests or convictions of marijuana possession offenses:

> (d) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for a violation of Section 11357 or 11360, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) or pursuant to an order of the court authorized by subdivision (b). As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

Thus, California law now makes record destruction available, and specifically precludes a school board, or any other public agency, from dismissing an employee on the grounds of a conviction for possession of marijuana after such record destruction has been ordered.

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C. STATE AND FEDERAL COURTS HAVE RECOGNIZED THE IRRATIONALITY AND UNCONSTITUTIONALITY OF MARIJUANA PROHIBITIONS.

1. Ravin v State: The Right of Privacy

There have been a number of important judicial decisions involving the marijuana laws since In re Higbie, supra, the most important of which is undoubtedly Ravin v State, 537 P.2d 494 (1975) in which the Supreme Court of Alaska held that the right of privacy protects the personal possession and use of marijuana in the home. After reviewing the testimony of expert witnesses present at the hearing at the trial court and numerous studies and scientific reports on the effects of marijuana, the court concluded:

> It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco.

Id. at 506. Upon analyzing federal and state decisions on the right of privacy the court declared:

> It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol, barbiturates and amphetamines. Moreover, the current patterns of use in the United States are not such as would warrant concern that in the future consumption patterns are likely to change.
> . . . Thus we conclude that no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrustion to a legitimate governmental interest. Here, scientific doubts will not suffice. The state

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> must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

Id. at 509-511 (footnote omitted).

The right of privacy has long been recognized by this Court and by the United States Supreme Court. Mr. Justice Brandeis termed it "the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." Olmstead v United States, 277 U.S. 438, 478 (Brandeis, J., dissenting). See Griswold v Connecticut, 381 U.S. 479 (1965); Stanley v Georgia, 394 U.S. 557 (1969); Eisenstadt v Baird, 405 U.S. 438, 453 (1972); Roe v Wade, 410 U.S. 113 (1973); Doe v Bolton, 410 U.S. 179 (1973); People v Belous, 71 C2d 954 (1969).

Except for the specific nature of the items seized by police, the factul circumstances of the instant case are virtually identical to those in Stanley v Georgia, supra. In Stanley, the defendant had been arrested when police found pornographic films in a desk drawer in his bedroom. 394 U.S. at 558. In the instant case, Thomas Mann was convicted for keeping a small amount of marijuana in a file drawer in his bedroom. In Stanley, the United States Supreme Court said:

> [W]e think that mere categorization of these films as "obscene" is insufficient justification for such a drastic invasion of personal liberties guaranteed by the First and Fourteenth Amendments. Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch.

Id. at 565.

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Although the Court spoke in terms of First Amendment interests, it is clear that the keystone of the Court's opinion was not the First Amendment's protection of speech and expression, but, rather, the declaration that governmental intrusion into personal conduct in the privacy of one's own home is only justified in extraordinary and compelling circumstances. This is evident because the Court assumed that the films were obscene, thereby placing them outside the scope of First Amendment protection. See, also, In re Klor, 64 C.2d 816, 820-821 (1966).

Moreover, the Alaska Supreme Court's ruling in Ravin v State is particularly relevant to the instant case in view of the specific constitutional basis of the decision. The court held that the possession and use of marijuana in the home was protected by the right of privacy provision recently adopted as an amendment to the Alaska Constitution, Article I, Section 22: "The right of the people to privacy is recognized and shall not be infringed." 537 P.2d at 500, 511.

Like Alaska, California has recently added a right of privacy provision to its constitution. Article I, Section I of the California Constitution, as amended, reads:

> All people are by nature free and independent, and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

In the only case construing the right of privacy amendment to the California Constitution, this Court indicated that the amendment is to be read as having a broad reach. In White v Davis, 13 C.3d 757

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(1975), this Court concluded that the right of privacy prohibited surveillance and data gathering activities by undercover police on college campuses. The Court considered as part of the legislative history of the amendment the following statement in a brochure advocating adoption of the amendment:

> The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose.

13 C.3d at 774.

This Court has been particularly scrupulous in protecting "the sanctity of a private home" against unwarranted and unjustifiable intrusion. See People v Ramey, 16 C.3d 263, 272 (1976), quoting People v Privett, 55 C.2d 698, 703 (1961). This Court has not ruled on the exact issue whether personal possession and use of marijuana in the privacy of one's own home is constitutionally protected. NORML is presently raising this issue in civil lawsuits filed in San Francisco, NORML v Gain, No. 697-445 (Superior Court, City and County of San Francisco), and Los Angeles, NORML v Davis, No. C140940 (Superior Court, County of Los Angeles).

With respect to the instant case, it is clear that in Alaska, under the Ravin decision, Thomas Mann could neither be prosecuted nor dismissed from a teaching position for possessing or using marijuana in his home. See Comment, "Ravin v State: A Case for Privacy and Possession of Pot," 5 U.C.L.A.-Alaska L. Rev. 178 (1975).

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Amicus curiae NORML submits that the considerations thoroughly discussed by the court in Ravin are equally applicable in the instant case, that Thomas Mann's possession of a small amount of marijuana in his home was constitutionally protected, and that his subsequent dismissal from his teaching position for such possession violated his right of privacy guaranteed by Article I, section I of the California Constitution.

2. Other Significant Judicial Decisions

Several other courts have declared marijuana laws unconstitutional on a variety of grounds.[7] A number of the most significant decisions have focused particularly on the effects of marijuana and the relative harmlessness of the drug when its effects are compared with those of other controlled substances.[8] Thus in State v Zornes,

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7/ See, e.g., Leary v United States, 395 U.S. 6 (1969).

8/ Although not ruling on constitutional grounds, the New Jersey Supreme Court, in State v Ward, 57 N.M. 75, 270 A.2d 1 (1970), granted certification "primarily to establish guidelines for the sentencing of first offenders who were found guilty of possessing marijuana for their own use." 270 A.2d at 5. Defendant was sentenced to serve a state prison term of two to three years for illegal possesion of marijuana, although a first offender. The Court stated, 270 A.2d at 5:

> [I]t remains the policy of the law to reform the youthful offender. Sentencing judges should direct the punishments they impose to the goal of reformation. Too severe a punishment will do little towards advancing this goal. Incarceration is a traumatic experience for anyone. The effect must be particularly devastating upon young persons such as the defendant here. A sentence of two to three years in State Prison in a case like this will probably be more detrimental to both the offender and society than some other discipline. Even a sentence to a reformatory as suggested by the Appellate Division may be more punitive than is required. We think that generally a suspended sentence with an appropriate term of probation is sufficient penalty for a person who is convicted for the first time of possessing marijuana for his own use. (emphasis added).

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78 Wash.2d 9, 469 P.2d 552 (1970), the defendants had been convicted for possession of marijuana under a statute which classified marijuana as a narcotic. The Supreme Court of Washington compared empirical evidence on the effects of marijuana with evidence of the effects of narcotics and concluded that the effects of the drugs were so different that the statutory classification was arbitrary and irrational. Noting, "It is doubtful whether a legislative declaration contrary to all the evidence can be sustained as constitutional," 78 Wash.2d at 20, the court held that the convictions could not stand.

In People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971), the Supreme Court of Illinois held that classification of marijuana with narcotic drugs under the state Narcotic Drug Act was arbitrary and deprived the defendant of the constitutional guarantee of equal protection of the laws. After comparing the effects of marijuana with those of narcotics and other dangerous drugs, the court concluded:

> Observations to be drawn on marijuana are that it is not a narcotic and it is not truly addictive. Its use does not involve tolerance, physical dependence or the withdrawal syndrome. Physical ill effects from its use are, so far as is known, relatively moderate. Its abuse does not have the profound and ill consequences observed in the use of some of the other drugs considered. Its use does not singularly or extraordinarily lead to opiate addiction or to aggressive behavior or criminal activity . . . We do not find a rational basis for the classification . . .

275 N.E.2d at 413.

In People v. Lorentzen, 387 Mich. 167, 194 N.W.2d 827

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(1972), the Supreme Court of Michigan held that the penalty of 20 years imprisonment prescribed by statute for selling a narcotic drug, as it included sale of marijuana, violated constitutional prohibitions against cruel and unusual punishment. After comparing the statute with penalties for the sale of various substances, offenses against persons or property, and provisions of the state Controlled Substances Act of 1971, the court concluded that the term of imprisionment was "in excess of any that would be suitable to fit the crime," 194 N.W.2d at 831, offended "the evolving standards of decency that mark the progress of a maturing society," id. at 832-33, and would not serve the goal of rehabilitation.

At the same time the Supreme Court of Michigan announced the Lorentzen decision, it reversed the defendant's conviction for possession of marijuana in People v Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972). Two judges were of the opinion that the statutory categorization of marijuana along with "hard drug" narcotics for purposes of imposition of penalties denied defendant equal protection of the laws, one judge was of the opinion that the statute denied defendant the right to liberty and the pursuit of happiness, two judges were of the opinion that incriminating evidence should have been excluded as evidence obtained as a result of illegal entrapment, and two judges were of the opinion that the minimum sentence of 9-1/2 years constituted cruel and unusual punishment. The opinion of the court, written by Swainson, J., declared:

> Comparison of the effects of marijuana use on both the individual and society with the effects of other drug use demonstrates not only that there is no rational

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> basis for classifying marijuana with the 'hard narcotics' but, also, that there is not even a rational basis for treating marijuana as a more dangerous drug than alcohol.

194 N.W. 2.d at 881 (emphasis added).

The court concluded, "We agree with the Illinois Supreme Court in People v McCabe, supra, that marijuana is improperly classified as a narcotic and hold that (the Michigan statute prohibiting possession of marijuana) in its classification of marijuana violates the equal protection clasue. . ." Id. at 887. Subsequent Michigan decisions indicate that the McCabe holding, i.e., that marijuana cannot rationally be classified as a narcotic, has been adopted as a matter of law. See People v Waxman, 41 Mich.App. 277, 199 N.W.2.d 884 (1972), rev'd on authority of People v Sinclair, 388 Mich. 774, 200 N.W. 2.d 322 (1972). See also People v. Griffin, 39 Mich.App. 464, 198 N.W.2.d 21 (1972).

In State v Carus, 18 N.J. Super. 159, 286 A.2d 740 (1972), Carus was convicted of violation of a motor vehicle statute which provided: "No person shall operate a motor vehicle on any highway while knowingly having in his possession or in the motor vehicle any narcotic drug within the meaning of section 24:18-2 of the Revised Statutes . . ." Section 24:18-2 defined narcotic drugs as including "coca leaves, opium, marijuana and every substance not chemically distinguishable from them." Citing empirical studies on the effects of marijuana and recent changes in state drug statutes, the court held that marijuana could not be classified as a narcotic drug within the meaning of the motor vehicle

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statute.

In Sam v State, 500 P.2d 291 (Okla.Ct. Crim.App. 1972) the defendant had been charged with possession of marijuana. At the close of the evidence the trial judge instructed the jury as follows:

> You are instructed that if you believe from the evidence in this case beyond a reasonable doubt that the defendant did . . . possessed (sic) a narcotic drug, to wit: marihuana, you shall find the defendant guilty as charged in the information. If you fail to so find, your verdict shall be not guilty.

500 P.2d at 296.

Sam argued on appeal that the trial court erred in instructing the jury that marihuana was a narcotic, and the Court of Criminal Appeals agreed. Citing State v Carus and People v McCabe, supra, the court concluded that "Marihuana is not a narcotic drug . . . and the trial court's instructions to that effect are error." Id. at 297.

More recently, last year the California Court of Appeal, in People v Ruiz, 49 C.A.3d 730 (1975), held that a provision of the Health and Safety Code, precluding parole consideration for five years for a person convicted of possession of marijuana, who had previously been convicted twice of narcotics violations, violated the constitutional ban against cruel and unusual punishments.

Finally, in State v Anonymous, 32 Conn. Sup. 324 (1976), the Connecticut court held that the classification of marijuana with barbiturates and amphetamines for penalty purposes in the state statute prohibiting possession of marijuana with intent to sell

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was irrational and unreasonable, and therefore in violation of the equal protection clauses of the state and federal constitutions. Reviewing the testimony of expert witnesses and scientific studies and reports on the effects of marijuana, barbiturates and amphetamines, submitted by the defendant therein, the court concluded that "the overwhelming evidence presented to this court indicates that experimental, intermittent and moderate use of marijuana 'carries minimal risk to the public health' and 'neither the marijuana user nor the drug itself can be said to constitute a danger to public safety.'" Id. at 337 (footnotes omitted). The court went on to state that there was no state of facts which could reasonably be conceived to justify the statutory classification. Id. at 346.

The cases discussed above indicate that statutory marijuana prohibitions may suffer a number of constitutional infirmities. 9/ See generally, Soler, "Of Cannabis and the Courts: A Critical Examination of Constitutional Challenges to Statutory Marijuana Prohibitions," 6 Connecticut L. Rev. 601 (1974). With respect to the instant case, People v Ruiz, supra, and other recent California cases on the constitutional ban on cruel and unusual punishments, suggest that the constitutional prohibition may be applicable to the imposition of severe punishment for possession of a small amount of marijuana. See People v Anderson, 6 C.3d 628 (1972); In re Lynch, 8 C.3d 410 (1972); In re Foss, 10 C.3d 910

9/ See, also, State v Kantner, 53 Hawaii 327, 493 P.2d 306 (1972), cert. denied 409 U.S. 948 (1972); Downey v Perini, 518 F.2d 1288 (6th Cir. 1975), judgment vacated, case remanded to Sixth Circuit for reconsideration in light of amendment to Ohio Revised Code Section 2925.03, effective November 21, 1975, 44 U.S.L.W. 3330 (Dec. 1, 1975).

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(1974); In re Rodriquez, 14 C.3d 639 (1975); In re Grant, 47 C.A.3d 927 (1975). Cf. Weems v United States, 217 U.S. 349 (1910); Trop v Dulles, 356 U.S. 86 (1958); Robinson v California, 370 U.S. 660 (1962); People v Lorentzen, supra. See generally, Comment, "Marijuana Possession and the California Constitutional Prohibition of Cruel or Unusual Punishment." 21 U.C.L.A. L. Rev. 1136 (1974).

These cases indicate that in determining whether the constitutional prohibition has been breached, the court must weigh the harmfulness of the conduct prohibited against the severity of the pubishment imposed. This analysis is particulary significant in circumstances such as those of the instant case in which the constitutional right of privacy is applicable, see Ravin v State, supra, Stanley v Georgia, supra, and where the burden on the government to justify intrusions on personal privacy in the home is, consequently, great. Thus, if the constitutional ban on cruel and unusual punishments is properly applicable in "civil" contexts, see, e.g., Meola v Fitzpatrick, 322 F.Supp. 878 (D. Mass. 1971), then the Governing Board's dismissal of Thomas Mann from his teaching position for his possessing a small amount of marijuana -- in effect, the banishment of Mann from his profession for conduct which may be constitutionally protected -- may well amount to a violation of Mann's rights under the Eighth Amendment to the United States Constitution and Article I, Section 17 of the California Constitution.

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D. OTHER RECENT CASES INDICATE THAT POSSESSION OF MARIJUANA IS NOT CONSIDERED A CRIME INVOLVING "MORAL TURPITUDE."

There are a number of recent cases from California and other jurisdictions which involve the question of whether marijuana offenses involve "moral turpitude," or similar language. In Vielehr v. State Personnel Board, 32 C.A.3d 187 (1973), where a tax representative trainee was convicted of the possession of marijuana outside of office hours, in violation of the Health and Safety Code, the court held that this conduct did not constitute such a failure of good behavior as to cause discredit to his employer, and that the employee should be reinstated. The court found no relationship between the tax representative's duties on the job and his possession of marijuana off the job. The court stated that private possession on marijuana, "without more, does not ipso facto cause discredit to the agency for which appellant works or to his employment." 32 C.A.3d at 194.

Two recent decisions from federal agencies are also applicable. The U.S. Energy Research and Development Administration, Personnel Security Board, has recently recommended unanimously that security clearance be granted to an individual who admitted the use of marijuana and other drugs, the sale of small quantities of these substances to friends for no profit, and the cultivation of less than ten marijuana plants. In the Matter of Richard J.D. ***, Findings and Recommendations issued November 13, 1975. At pp. 11-12 of the Board's Findings and Recommendation the Board stated:

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> [T]he use of the aforementioned drugs, the use and sale of marijuana and hashish and the growing of marijuana plants are express violations of the criminal laws of the State of New Mexico. The Board does not approve of or condone the violation of those laws, however, the expert testimony presented to the Board establishes in the Board's opinion that neither the violation of those laws nor the use of marijuana and hashish cause the respondent to be unreliable or untrustworthy, not that he would therefore be a likely subject of coercion, influence or pressure which may cause him to act contrary to the best interests of the national security.

The U.S. Civil Service Commission's Federal Employee Appeals Authority, Philadelphia Office, has held that a civilian employee (tank cleaner) at the Philadelphia Naval Shipyard who admitted using marijuana was not disqualified under the Civil Service regulations. Appeal of Mr. * * *, PH Ø7315ØØ16, issued December 3, 1974. The Appeals Authority's decision stated at pp. 3-4.:

> It is the responsibility of the Commission to determine whether applicants and appointees are of good conduct and character, and it attempts to evaluate the qualifications and fitness of candidates and appointees in such a manner as to promote good government and yet assure fair, impartial and equitable treatment of individuals. Further, an employee must be evaluated with respect to the effect the particular offense will have on the service, i.e. a rational connection between the employee's conduct and the efficiency of the service.
>
> * * *
>
> The evidence of record also illustrates that there presently exists no rational connection between the appellant's conduct, i.e. continued use of marijuana while off duty, and his ability to more than satisfactorily perform the duties and responsibilities of the position in which he is presently employed, Tank Cleaner. We also find that the appellant's admitted conduct while off duty, and in light of the position he now occupies and performs satisfactorily, neither adversely reflects on the government as his employer for the present position, poses a threat to any other employee, nor threatens the employer-employee relationship.

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See, also, In re Dileo, 307 S.2d 362 (La. 1975) holding that conviction for a failure to pay marijuana transfer tax did not consititute moral turpitude such that the petitioner should be banned from practicing law in the State of Lousiana; and Bush v Minister of Manpower and Immigration, No. A-79-74 (Canadian Federal Court of Appeal, Feb. 24, 1975), holding that possession of marijuana is not a "crime involving moral turpitude," which is one basis for deportation under the Canadian Immigration Act.

E. SCIENTIFIC STUDIES AND GOVERNMENT REPORTS ESTABLISH THAT MARIJUANA IS A RELATIVELY HARMLESS SUBSTANCE.

A number of major scientific studies and government reports on marijuana and other drugs have been published since this Court's ruling in In re Higbie, supra, that simple possession and use of marijuana, in and of itself, is not a crime involving moral turpitude. These studies and reports establish that the effects of marijuana are relatively innocuous, particularly when compared with the effects of other controlled substances such as narcotics and barbiturates. These studies and reports also confirm that marijuana presents no substantial danger to public safety, health, or welfare.[10/] The major findings of these studies and reports will be summarized below.

1. Reports of the National Commission on Marijuana and Drug Abuse

One month after Higbie was decided, the National Commission on Marihuana and Drug Abuse published its report, entitled

10/ See, also, the testimony of Dr. Richard Lance Christie, introduced by Thomas Mann in the Superior Court below.

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Marihuana: A Signal of Misunderstanding (1972). A copy of this report, with appendices, was introduced by Thomas Mann in the Superior Court below.

The National Commission was created by Congress in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §801 et seq., and given a broad mandate to study marijuana and other drugs, and then issue two reports to Congress and the President, the first on marijuana alone, and the second on all other drugs. See 21 U.S.C. §801 note.

The National Commission investigated many aspects of marijuana use, held hearings, both formal and informal, reviewed the research which had been done on marijuana in this country and in other countries, and itself commissioned more than 50 research projects in areas where additional information was needed. The Commission issued its report on marijuana in March, 1972. Among the significant findings of the report were the following:

> A large amount of research has been performed in man and animals regarding the immediate effect of marihuana on bodily processes. No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marihuana.
>
> * * *
>
> These few consistently observed transient effects on bodily function seem to suggest that marihuana is a rather unexciting compound of negligible immediate toxicity at the doses usually consumed in this country. The substance is predominantly a psychoactive drug. The feelings and state of consciousness described by the intoxicated seem to be far more interesting than the objective state noted by an observer.

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> [In a study of very heavy marijuana use in Jamaica, no] significant physical or mental abnormalities could be attributed to marijuana use, according to an evaluation of medical history, complete physical examination, chest x-ray, electrocardiogram, blood cell and chemistry tests, lung, liver or kidney function tests, selected hormone evaluation, and psychological testing. There was no evidence to indicate that the drug as commonly used was responsible for producing birth defects in offspring of users

Marihuana: A Signal of Misunderstanding, supra, at 56-57, 63.

The Commission further concluded that use of marijuana generally does not cause any significant psychological disturbance or aberration. Id. at 59. When study subjects were given high doses of marijuana over several weeks, "no harmful effects were observed on general bodily functions, motor functions, mental functions, personal or social behavior or work performance." Id. at 60. Nor is there evidence that long-term use of marijuana directly causes alienation, "dropping out," or loss of motivation. Id. at 62. The studies failed to demonstrate any significant difference in mental or social functioning, occurence of psychosis, motivation, or behavioral changes between even very heavy, very long-term users of cannabis preparations and the non-using population. Id. at 63-64.

The National Commission recommended that the possession of marijuana for personal use no longer be a criminal offense. Id. at 152-154. After studying other drugs, the Commission then published its second and final report, entitled Drug Use in America: Problem in Perspective (1973). In this report, the Commission concluded:

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1. The commission reaffirms its recommendations concerning marijuana as set out in its First Report.

2. The unauthorized possession of any controlled substance except marijuana for personal use should remain a prohibited act...

Id. at 467.

2. Report of the Canadian Commission of Inquiry Into the Non-Medical Use of Drugs

The Canadian Commission of Inquiry into the Non-Medical Use of Drugs also published its report on marijuana, Cannabis, in 1972. The Canadian Commission reached similar conclusions to those reached by the U.S. National Commission. The Canadian Commission stated:

> In summary, at typical doses of cannabis use, few acute physiological effects have been detected. Those which have been identified generally seem to have little clinical significance. Even at relatively high doses, few substantial physiological changes occur.

Id. at 114.

Both the Canadian Commission and the National Commission found that marijuana does not cause criminal or violent behavior, Canadian Commission Report at 110, National Commission Report at 73; does not lead to the use of other drugs, Canadian Commission Report at 130, National Commission Report at 88-89; is not a narcotic or addicting drug, Canadian Commission Report at 123, National Commission Report at 87; and posed no danger of death from overdose, Canadian Commission Report at 113-114, National Commission Report at 56-57.

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3. Reports of the U.S. Department of Health, Education, and Welfare.

For the last five years, the U.S. Department of Health Education and Welfare has issued annual reports on the health consequences of marijuana use, as required by Title V of the Marijuana and Health Reporting Act, P.L. 91-296. These annual reports have confirmed the findings of the National and Canadian Commissions concerning the relative harmlessness of marijuana. Attached to this brief, as Appendix B, is a recent HEW publication which contains the 8-page summary of the most recent Fifth Annual Report, entitled Marihuana and Health (1975), and the comments of Dr. Robert Dupont, Director of the National Institute on Drug Abuse, at a press briefing releasing this report. Putting the health consequence of marijuana in perspective, Dr. Dupont stated:

> I would say that for all of the drugs we have mentioned there are many people who use them without suffering negative health consequences. For each of the drugs, there is a spectrum of negative health risks that a user takes...I would say today, at our current use levels and our state of knowledge, that there is no question that alcohol and tobacco are causing us far more health problems than marihuana does. There is no question on that point.

Id. at 9.[11/]

4. Report of the Domestic Council Drug Abuse Task Force

The Domestic Council Drug Abuse Task Force submitted a

11/ See, also, Marihuana and Health, Second Annual Report to Congress from the Secretary of Health, Education and Welfare, 111-132 (1972); Marihuana and Health, Third Annual Report to Congress from the Secretary of Health, Education and Welfare, 129-153 (1973); Marihuana and Health, Fourth Annual Report to Congress from the Secretary of Health, Education and Welfare, 93-121 (1974)

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report to the President entitled "White Paper on Drug Abuse" in September, 1975. The Task Force, which consisted of the federal government's chief officials involved with drugs and drug abuse, made a number of significant recommendations. The report urged that marijuana possession offenses be "deemphasized" because they posed the least risk of harm to the individual and to society of the drugs commonly used in the United States. Id. at 33. The report called for a "better targeting of limited resources...on the basis of priorities which reflect current conditions and current knowledge." Id. at 34.

The Task Force summarized the the consequences of drug usage and risks as follows:

SUMMARY OF DRUG PRIORITIES

	DEPENDENCE LIABILITY	SEVERITY OF CONSEQUENCE PERSONAL	SOCIAL	SIZE OF CORE PROBLEM
HEROIN	HI	HI	HI	HI 400,000
AMPHETAMINES				
Needle	HI	HI	HI	HI
Oral	LOW	MED	MED	500,000
BARBITURATES				
Mixed	HI	HI	HI	MED
Alone	MED	HI	MED	300,00
COCAINE	LOW	LOW	MED	LOW
MARIJUANA	LOW	LOW	LOW	LOW
HALLUCINOGENS	MED	MED	MED	LOW
INHALENTS	MED	HI	MED	LOW

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Id. at 33. Excerpts from the Task Force's Report are also attached hereto as Appendix C.12/

12/ In the past few months, additional studies have been published which indicate that even very heavy use of cannibis over long periods of time does not have deleterious physiological or psychological effects. See, e.g., Mendelson, Behavioral and Biological Concomitants of Chronic Marihuana Use (U.S. Army Medical Research and Development Command 1974) [released to public in November, 1975], finding no significant adverse effects on physiological, cognitive or neurological functioning following chronic marijuana smoking, including no changes in testosterone level following chronic marijuana smoking.

Particuarly significant is a very carefully controlled study conducted in Jamaica for the National Institutes of Mental Health, United States Department of Health, Education and Welfare, in which the study subjects were thirty males who had smoked an average of seven marijuana cigarettes of relatively high potency each day for an average of seventeen years, and thirty controls. The results of the study support the findings of the National and Canadian Commissions: no significant physiological or psychological differences were found between long-term smokers and non-smokers, there was no evidence of physical dependency (addiction), severe overdose reactions, insanity, cerebral atrophy, brain damage, personality deterioration, or "amotivational syndrome." V. Rubin and L. Comitas, Ganja in Jamaica, 83-84, 150-151, 165-166 (1975).

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CONCLUSION

From the foregoing it is evident that considerations of law and public policy dictate that simple possession and use of marijuana cannot be considered a crime involving "moral turpitude." This Court has explicitly so held, In re Higbie, supra, and the trend in the legislatures toward drastic reductions in penalties for possession and use of marijuana is confirmation of the soundness of this Court's conclusion. Upon reviewing the scientific and medical evidence on the effects of marijuana, several courts have struck down statutory marijuana prohibitations as violative of constitutional guarantees. And the recent scientific studies and government reports on marijuana and other drugs demonstrate that marijuana is a relatively innocuous substance, the private possession and use of which poses no substantial danger either to the user or to the public health and safety.

Indeed, "measured by the morals of the day," In re Higbie, supra, 6 C.3d at 572, the suggestion that possession or use of marijuana is "an act of baseness, vileness, or depravity," id., is ludricrous. Attached to this Brief as Appendix D is a copy of a report of a recent survey on marijuana use in California conducted for the Drug Abuse Council. The survey indicates that almost three out of every ten California adults have tried marijuana, with nine percent of California adults currently using marijuana. With regard to current attitudes toward the marijuana laws, the survey indicates that 46% of California adults favor some form of elimination of penalties for sale and/or possession of small

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amounts of marijuana, while 19% favor the law as it now is regarding possession of small amounts of marijuana, and 29% favor stiffer penalties.

Thus, it is evident that an enormous number of people in California are "guilty" of exactly the same conduct for which Thomas Mann was prosecuted and later dismissed from his teaching position. Obviously, no other course of conduct carrying criminal penalties occurs so often, performed by so many people, as possession and use of marijuana. No other "crime" is prosecuted so rarely in relation to the number of times it is committed, and no other behavior is so obviously rejected as "criminal" by so many Californians.

Moreover, there was no credible evidence introduced at the trial as to Thomas Mann's "unfitness" to teach. Clearly, the fact of his conviction for possession of marijuana does not per se indicate unfitness to teach. In re Higbie, supra. The "experts" called as witnesses by the Governing Board were woefully deficient in their knowledge of marijuana and other drugs. They were subject to the kind of ignorance and misinformation regarding drugs and drug abuse which has stifled reasonable and informed discussion on the subject. See Bonnie & Whitebread, "The Forbidden Fruit and the Tree of Knowledge: An Inquiry Into the Legal History of American Marijuana Prohibition," 56 Virginia L. Rev. 971 (1970). Mann introduced evidence at the trial showing that his arrest and conviction has not impaired his ability to teach, and there is no indication that the events which took place in 1969 "have become

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so notorious as to impair petitioner's ability to command the respect and confidence of students and fellow teachers..." Morrison v State Board of Education, supra, 1 C.3d at 237. Indeed, it would appear that Mann would better be able to teach about drug abuse after this incident: he is knowledgeable as to the relevant scientific and medical data, his teaching would not suffer from the hypocrisy which plagues so much drug abuse education, and he can describe the consequences of arrest and conviction from his first-hand experience.

Accordingly, amicus curiae NORML urges this Court to reverse the judgment of the Court of Appeal and rule that Thomas Mann's dismissal under Education Code Section 13403(h) was erroneous and improper.

DATED: July 1, 1976

Respectfully submitted,

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Appendix A: Compilation of State Citation Laws for Minor Marijuana Offenses

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NORML A SPECIAL REPORT

May, 1976

A COMPILATION OF STATE CITATION LAWS

FOR MINOR MARIJUANA OFFENSES

In October 1973, Oregon became the first state to eliminate criminal arrest and jail penalties for possession of small amounts of marijuana, substituting a citation-enforced civil fine. The results of this innovative approach have been overwhelmingly favorable: there has been no demonstrable increase in marijuana smoking; thousands of young people have been spared the debilitating aspects of a life-long criminal record; and the police have been freed of a costly and time-consuming burden to concentrate on serious crime.

As a result, seven other states have recently enacted similar laws: Alaska, Maine, Colorado, California, Ohio, South Dakota, and Minnesota. The provisions of these laws are summarized below, and copies are available from NORML. In each state, regardless of whether marijuana may now technically be said to be "decriminalized" or not, the person who smokes marijuana or possesses a small amount is no longer subject to arrest or jail, nor left with any permanent criminal record.

SUMMARY CHART - MARIJUANA CITATION LAWS

State	Max. Fine Imposed	Max. Amount Possessed	Criminal or Civil Violation	Effective Date
Oregon	$100.00	1 oz.	Civil	Oct. 5, 1973
Alaska	$100.00	Any amount in private for personal use or 1 oz. in public	Civil	Mar. 1, 1976
Maine	$200.00	Any amount[a] for personal use	Civil	Mar. 1, 1976
Colorado[b]	$100.00	1 oz.	Class 2 petty offense - no criminal record	July 1, 1975
California[b]	$100.00	1 oz.	Misdemeanor - no permanent criminal record	Jan. 1, 1976
Ohio[b]	$100.00	100 grams (approx. 3½ oz.)	Minor misdemeanor - no crim. record	Nov. 22, 1975
South Dakota	$ 20.00	1 oz.	Civil	April 1, 1977
Minnesota[b]	$100.00[c]	1½ oz.	Civil	April 10, 1976

a There is a rebuttable presumption that possession of less than 1½ oz. is for personal use, and possession of more than 1½ oz. is with an intent to distribute.

b Distribution of marijuana by gift, or for no remuneration, is treated the same as possession in four states: California (for up to 1 oz.), Colorado (up to 1 oz.), Ohio (up to 20 gr.), and Minnesota (up to 1½ oz.).

c Only Minnesota provides for increased penalties for second offense: 0-90 days in jail and/or a $300 fine for second offense within a two year period.

PROVISIONS OF STATE LAWS

	First Offense	Subsequent Offense
1. OREGON		
House Bill No. 2936, amending O.R.S. 167.207, effective October 5, 1973.		
Possession (Up to 1 oz.)	$100 fine only	Same

Note: Possession of up to 1 oz. of marijuana is considered a non-criminal "violation" with a maximum fine of $100, enforced by a citation system. Possession of more than 1 oz., cultivation, and sale of any amount, remain criminal offenses, subject to 0-10 years and/or $2500.

2. ALASKA		
Senate Bill No. 350, amending A.S. 17.10.010 et seq., approved May 16, 1975, effective September 1, 1975.		
Possession (any amount in private for personal use, or up to 1 oz. in public)	$100 fine only	Same
Possession (while driving a motor vehicle)	$1000 fine only	Same
Public use	$1000 fine only	Same

Note: The Alaska law is similar to the Oregon law in that it provides for civil fines enforced by citations. The Alaskan Supreme Court has generally held that possession of amounts up to 8 oz.—1 lb. are presumed to be for personal use. The Supreme Court of Alaska's recent decision holding that possession of marijuana by adults in the home is constitutionally protected by the Right of Privacy, appears to invalidate certain of the civil fines involved in the new law. Ravin v. State, 537 P.2d 494 (1975). Possession of more than 1 oz. in public remains a criminal offense, subject to 0-1 yr. and/or $1000. Sale remains punishable by 0-25 yrs. and/or $20,000.

	First Offense	Subsequent Offense
3. MAINE		
Maine Criminal Code revision, Title 17-A of Maine Revised Statutes Annotated, Chapter 45 et seq., approved June 18, 1975, effective March 1, 1976.		
Possession (any amount for personal use—see note)	$200 fine only	Same
Possession (with intent to distribute)	0-1 yr. and/or $500	Same
Sale or distribution	0-1 yr. and/or $500	Same
Sale or distribution (to persons under 16)	0-5 yrs. and/or $1000	Same

Note: Possession of any amount of marijuana for personal use is a civil violation, subject to a maximum $200 fine, enforced by citation. There is a rebuttable presumption that possession of more than 1½oz. is with an intent to distribute. A "usable" amount is required, and residue found in a pipe, or a few seeds, would not be sufficient. The new law also provides that as an alternative to the fines indicated above for sale, a fine of up to twice the "pecuniary gain" involved in the sale may be imposed.

4. COLORADO		
House Bill No. 1027, amending Sec. 12-22-401 et seq., of the Colorado Dangerous Drug Act, effective July 1, 1975.		
Possession (up to 1 oz.)	$100 fine only	Same
Public display or consumption (up to 1 oz.)	$100 fine mandatory and up to 15 days	Same
Possession (more than 1 oz.)	0-12 months and/or $500	0-2 years and $500-$1,000
Transfer "for no consideration" (up to 1 oz.)	$100 fine only	Same
Transfer of more than 1 oz. of of any amount to a minor	3-14 years and up to $10,000	Same (except prison term mandatory)

Note: Possession of up to 1 oz. of marijuana is a non-criminal "violation" punishable by a maximum $100 fine. Transferring not more than 1 oz. "for no consideration" is defined as simple possession, and is subject to the same $100 maximum fine. Transferring more than one ounce, or any amount to a minor, is subject to imprisonment for 3-14 years and up to $10,000. Cultivation is subject to imprisonment for 1-14 years and a fine of up to $1,000.

	First Offense	Subsequent Offense
5. CALIFORNIA		

Senate Bill No. 95, amending Sec. 11357 et seq. of the Health and Safety Code and Sec. 853.6 of the Penal Code, effective January 1, 1976.

Possession (up to 1 oz.)	$100 fine only	Same (see note)
Possession (more than 1 oz.)	0-6 months and/or $500	Same
Possession (hashish)	0-5 yrs. and/or $500	Same
Furnishing "without consideration" (up to 1 oz.)	$100 fine only	Same (see note)
Furnishing "w/c" (more than 1 oz.) or sale of any amount	5 years—life (must serve 3 years)	Same (must serve 5 years)

Note: Possession, furnishing "without consideration", and transporting up to 1 oz. is technically still a misdemeanor, subject to a maximum $100 fine and enforced by citation, although there is no permanent criminal record. If the person charged was previously convicted three or more times for these offenses within a two-year period, he shall be diverted to an educational or treatment program in lieu of the fine, and if no program can be found, the fine is imposed.

Cultivation of any amount remains a felony punishable by a jail term from one to ten years.

The new law abolishes the previous offenses consisting of (1) use of marijuana, (2) possession of marijuana paraphernalia, and (3) being in a place where marijuana is being used. The new law also requires that all records pertaining to the arrest or conviction for possession of marijuana be destroyed within two years, and that no public agency within the State shall deny or limit any license or privilege on account of a conviction for marijuana-related offenses.

	First Offense	Subsequent Offense
6. OHIO		

House Bill No. 300, amending Ohio Rev. Code Ann. Sec. 3719.01 et seq., approved August 22, 1975, effective November 22, 1975.

Possession (up to 100 grams) (up to 5 gr. hashish or 1 gr. hash oil)	$100 fine only	Same
(100-200 gr.) (5-10 gr. hashish or 1-2 gr. hash oil)	0-30 days and/or $250	Same
(200-600 gr.) (10-30 gr. hashish or 2-6 gr. hash oil)	6 mos.-5 yrs. and/or $2,500	1-10 yrs. and/or $5,000
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	1-10 yrs. and/or $5,000	2-15 yrs. and/or $7,500
Gift (20 gr. or less)	$100 fine only (criminal record maintained)	0-60 days and/or $500
Sale (up to 200 gr.) (up to 10 gr. hashish or 2 gr. hash oil)	6 mos.-5 yrs. and/or $2,500	1-10 yrs. and/or $5,000
(200-600 gr.) (10-30 gr. hashish or 2-6 gr. hash oil)	1-10 yrs. and/or $5,000	2-15 yrs. and/or $7,500
(over 600 gr.) (over 30 gr. hashish or 6 gr. hash oil)	2-15 yrs. (6 mos. mandatory) and/or $7,500	2-15 yrs. (1 yr. mandatory) and/or $7,500
Furnishing to a Minor (who is at least 4 yrs. younger than the transferor)	6 mos.-5 yrs. (3 mos. mandatory) and/or $2,500	1-10 yrs. (3 mos. mandatory) and/or $5,000
Cultivation (any amount)	6 mos.-5 yrs. and/or $2,500	1-10 yrs. and/or $5,000

Note: Possession of up to 100 grams of marijuana (approx. 3½oz.) is classified as a "minor misdemeanor", as are possession of up to 5 grams of hashish or 1 gram of hash oil. There is no criminal record for these offenses.

Criminal penalties are maintained, though drastically reduced, for all sale offenses and for cultivation, as well as for possession of over 100 grams.

	First Offense	Subsequent Offense

7. SOUTH DAKOTA

Senate Bill NO. 29, criminal code revision, Chapter 22, approved February 29, 1976, effective April 1, 1977.

Possession (up to 1 oz.)	max. $20 civil fine	Same
(1 oz.-1 lb.)	0-1 yrs. and/or $1,000	Same
(1 lb. or more)	0-2 yrs. and/or $2,000	Same
Distribution (up to ½oz. without consideration)	0-30 days and/or $100	Same
Sale (up to 1 oz.)	0-1 yrs. and/or $1,000	Same
(1 oz.-1 lb.)	0-2 yrs. and/or $2,000	Same
(1 lb. or more)	0-5 yrs. and/or $5,000	Same

Note: Possession of up to 1 oz. is classified as a "petty offense", violations of which are enforced by "civil proceedings" in which the state may be "granted an award not to exceed twenty dollars."

8. MINNESOTA

H.F. No. 749, amending Sec. 152.15 of Minn. Stat. 1974, approved March 11, 1976, effective April 10, 1976.

Possession (up to 1½ oz.)	max. $100 fine only	0-90 days and/or $300
(over 1½oz.)	0-1 yrs. and/or $1,000	0-2 yrs. and/or $2,000
(over .05 oz. while driving a motor vehicle)	0-90 days and/or $300	Same

Note: Possession of up to 1½ oz. is classified as a non-criminal "petty misdemeanor" subject to a fine of up to $100 and participation in a 5-hour general drug education program if appropriate. A second violation within a two year period is classified as a "misdemeanor" subject to 0-90 days in jail, a fine of up to $300, and participation in a diagnostic examination for chemical dependency.

(continued on following page)

Minnesota, continued

The owner of a motor vehicle, or the driver if the owner is not present, who "knowingly keeps or allows to be kept" more than .05 oz. inside the motor vehicle (including the glove compartment, but excluding the trunk) is guilty of a misdemeanor, subject to 0-90 days in jail and/or a fine of up to $300.

Distribution of up to 1½ oz. by gift, or for no remuneration, is treated the same as simple possession (as in California, Colorado, and Ohio).

Penalties for sale are not affected, and remain 0-5 years and/or $15,000 for first offense, and 1-10 years and/or $30,000 for second offense.

Appendix B: Marihuana and Health: In Perspective

Summary and Comments on the Fifth Annual Report to the U.S. Congress from the Secretary of Health, Education and Welfare

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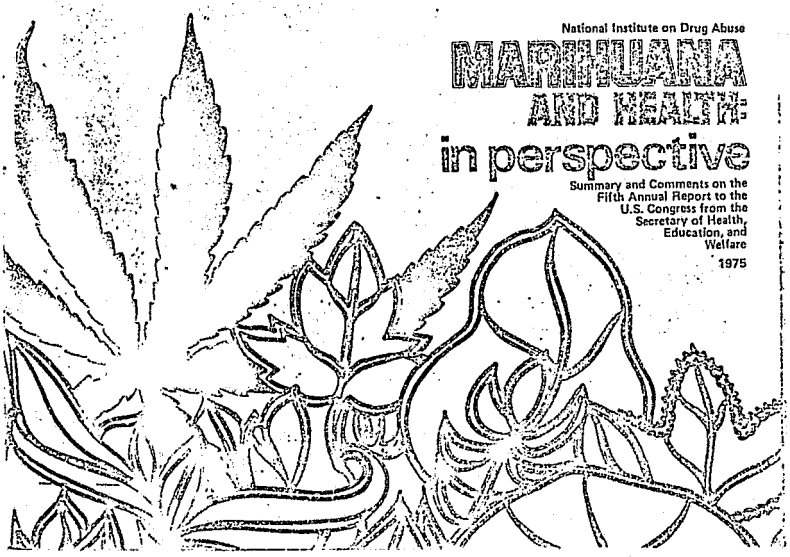
National Institute on Drug Abuse
MARIHUANA
AND HEALTH:
in perspective
Summary and Comments on the Fifth Annual Report to the U.S. Congress from the Secretary of Health, Education, and Welfare
1975

Foreword

Marihuana use, an issue once marked by emotionalism, is increasingly being examined thoughtfully. Much has been learned about marihuana use and its personal and social consequences. Yet, much remains to be understood. It is clear that marihuana is not a subject for simplistic analysis.

The current edition of *Marihuana and Health* represents the fifth in a series of annual reports from the Secretary of Health, Education, and Welfare to the Congress as required by Title V of Public Law 91–296. Last year, the fourth report in this series raised fundamental questions about the role of cannabis in altering the body's immune response, endocrine functioning, and basic cell metabolism. Although more data are now available, the direct health implications of these earlier laboratory findings are still not certain.

The *Marihuana and Health* Report does not give marihuana a clean bill of health as some would hope. Nor does it support the fear and irrationality that still characterize some of the public debate about marihuana. Instead, it is a progress report on our effort to understand a challenging health problem with immense social, political, and economic implications.

The Report is limited to a discussion of health issues and does not focus on the related social policy issues of decriminalization and law enforcement. Nevertheless, a discussion of any aspect of marihuana prompts concerns and questions about these broader public policy issues. Therefore, we have included a question and answer section from the *Marihuana and Health* Report press briefing to bring this added dimension to our dialogue. While it is important to understand the relationship between health and public policy concerns, it is essential to keep the health issue separate from decriminalization activities. Decriminalization at the State and local levels should not be interpreted as a signal that marihuana is safe.

So far, the public debate on the health aspects of marihuana has itself been misleading because too much of that discussion focuses only on biological changes resulting from marihuana use and not on the immediate hazards of marihuana intoxication. Although areas of serious concern remain, no convincing evidence has been uncovered to indicate permanent biological harm. On the other hand, the evidence on marihuana intoxication shows that it clearly presents a danger. Even with small dosage levels of marihuana, psychomotor performance is impaired.

Such intoxication can have dangerous consequences in such areas as traffic safety and job performance. Even intellectual performance, and in particular, immediate memory, are also impaired while under the influence of marihuana.

Currently 33.6 million Americans have used marihuana and 13.3 million continue to use it on a regular basis. This should cause all of us to rethink the consequences of increased marihuana use. We hope this summary of the *Marihuana and Health* Report will be useful to that end.

Robert L. DuPont, M.D.
Director
National Institute on Drug Abuse

Press Briefing: General Observations

In terms of the public's concern about marihuana and the health consequences, the primary concern appears to be: What does marihuana use do to the body? What are the long-term consequences? There are a number of ways that question gets formulated. One of the most major concerns has been the concept of progression from one drug to another—the idea that somehow if a person uses marihuana, he will go on to use other, presumably more dangerous, drugs. We've had some research reported in the last year that is very interesting on this point. And just to make a very brief summary of that: There are clear stages in drug-using behavior, but this progression does not appear to start with marihuana. Marihuana is a link in a chain, or a step in a stairs if you will, and not unique in itself. It appears that young people, as they are going through adolescence, begin their drug consumption with beer and wine. Following that step, there's a next step in two directions; one is to cigarettes and the other is to hard liquor. The next step for both groups, if the young person goes on, is almost inevitably to marihuana use. Many people, of course, stop at any one of these steps, but for those who continue, the next step is to other illicit drugs—most often tranquilizers, amphetamines, and barbiturates. Then—for those who go on—the next step is to LSD and other hallucinogens, followed by the final step in this progression to the use of what are generally known as the hardest drugs, heroin and cocaine. Similarly, it's interesting that as young people or any people are giving up drug use at each of these steps, they tend to go back down the same series of steps in the reverse order. A person who is giving up heroin tends to do that and comes back down the steps to the use of other illicit drugs, including marihuana, hard liquor, and tobacco, to beer and wine. So our earlier assumptions that there were no stages or progression have not been confirmed. It does indeed look like there is a predictable progression.

The second point in this area has to do with the heavy consumption problem. Here I think we have some new data that are of concern. It appears that people who are using marihuana have somewhat more difficulty limiting their consumption than many of us would have thought. [The statistics show that in contrasting frequent marihuana use with alcohol use,] . . . only 9 percent of the people who had used alcohol at all had used it as many as 20 times, whereas among the marihuana users, this figure was 22.5 percent. This means that almost one-fourth of the people who had used marihuana at all had used it about 20 or more times. That's clearly different from the pattern with alcohol. It is much more like the pattern with cigarettes where about two-thirds of those who had used that drug at all reported using it on a daily basis, or the drug heroin where 33 percent who had used it at all reported use on a daily basis. . . . so that the issue of a progression to very heavy use is one that we are concerned about.

Finally, I will just say a word about the marihuana intoxication area. In our preoccupation with looking for long-term permanent health consequences, we have overlooked the fact that the marihuana user, while using the drug and in the immediate hours after using it; does have a performance deficit associated with the intoxication that is not too different in terms of its effect on performance from that produced by alcohol. Oftentimes, the

accounts that are carried in the press emphasize the absence of negative health consequences. I am concerned that by this process we reinforce the concept that the marihuana user doesn't have to worry about the intoxication effect. There is clearly a problem here that must be of concern to the individual. Of course, most users understand this in the area of driving, the performance in industrial settings, or any other settings which require attention, adequate motor performance, and intellectual performance. These are temporary changes, but nonetheless they are very important. I reviewed the very high levels of marihuana use, particularly in the youth population, and am very gravely concerned about motor vehicle accidents in that population.

Well, with that as a very brief summary, I'm open to questions.

Press Briefing: Some Questions and Answers

Question:

Dr. DuPont, I would like to frame this question very precisely so that we will both be talking about the same thing. Yesterday, in New York, the American Cancer Society released a survey of the smoking habits of teen-aged women, 15–18, and compared it with 1969. They found that not only are more women and more girls smoking but they are also smoking more. Now, taking into account the way that these two drugs, tobacco and marihuana, are normally used, which is the greater public health menace?

Dr. DuPont:

At the current use levels, obviously cigarette smoking is causing more health problems than marihuana. I think, though, that you point out something that I meant to cover in my presentation. These behaviors are linked so that, in fact, this rise in marihuana use among youth, which I described, has also occurred for cigarettes and alcohol and other drugs. The use levels of these drugs have all advanced as a front, and when they go down, they go down as a front also. We once thought that they behaved like a teeter-totter. For example, if a person were using alcohol, he would not also be using marihuana, and the other way around. This is not the case. People who use alcohol tend to use more marihuana; people who use cigarettes tend to use more marihuana; people who use more marihuana are more likely to smoke cigarettes and use alcohol. That is, all drug-using behaviors are linked.

Question:

Dr. DuPont, what is your position on decriminalizing the use of marihuana? Do you fully agree with that?

Dr. DuPont:

I find the word "decriminalizing" one that confuses communication rather than promotes it. So I am going to do my best to avoid using that word, and instead of using the word, I'll describe the concept. With respect to what penalties are talked about when we talk about lessening, there is room for some difference of opinion—some range of ideas. Let me describe briefly what it is I am talking about. A few years ago, there was a very polar extreme in this country in thinking about penalties for marihuana possession ranging from legalization, that is, making it as available as we make cola or cigarettes in this country, to locking possessors up and throwing away the key on the other extreme. We have progressed a long way since then, and the current debate in the United States is very narrow in terms of what the right penalty ought to be for marihuana possession. If I can state it this way, on the extreme of the hard-line view about this is the use of very short prison sentences. For example, S. 1., the new reform legislation in the Senate now includes, as I understand, up to 30-days imprisonment for

marihuana possession, which is a very light penalty. That now represents one extreme. The other extreme is the policy that has been adopted by a number of States to substitute fines for imprisonment. Personally, my view on this is that we do not need to threaten young people with imprisonment to discourage their use of marihuana, and that we should substitute in place of imprisonment a fine, a monetary fine that signals to the public that we as the Government and as a country are opposed to the use of marihuana, but that we do not consider the possession of small quantities for personal use the kind of problem to be dealt with by putting people in prison. For some people that means decriminalization and for others it doesn't. I know I have been too long on this, but one last point. We talk about six States in the United States that have "decriminalized" marihuana. I call your attention to the fact that two of those States, Ohio and California, continue to use the criminal law but have substituted a fine within the criminal law. This is a very complex distinction for some very high-powered lawyers to start making. The point I want to make that does not require the understanding of a high-powered lawyer is that we want to get away from using prison or the threat of prison for the simple possession of marihuana.

Question:

Can we go over again your views on—I won't call it "decriminalization"—what should be done to someone who is arrested for possession of a small amount of marihuana? And what should not be done?

Dr. DuPont:

Yes. There is now a very broad consensus in the United States that marihuana use should be discouraged and that the Government's role is to discourage marihuana use. But there's a question about how the Government does that. Basically, I think most people agree that it does not make sense to put people in prison for the possession of small amounts of marihuana. To some people, that means "decriminalization." I, myself, support the concept of the use of a civil fine, a noncriminal fine of a modest kind, something in the range of $25.00, to convey the message that marihuana use is prohibited behavior, but also not to threaten the young people with a criminal record or incarceration. There is some variation from State to State on that, but I think it is a position that has very broad support throughout the country.

Question:

Do you think that we are getting closer to seeing this?

Dr. DuPont:

Oh yes, it's happening across the country right now. There are six States that have substituted nonimprisonment penalties, and I think there will be more. The problem is that the word "decriminalization" has gotten to be kind of a buzz word—a scare word—that politicizes people and induces a kind of fighting, contentious attitude. That's probably the biggest problem we have right now. We should step aside from that and ask, What do we really want to do to the person, young or old, who is caught with small amounts of marihuana? What should happen to him? When we get to this question, there is very little feeling that that person ought to go to jail.

Question:

(A question about the consequences of marihuana and alcohol use.)

Dr. DuPont:

This is the thrust of the question about cigarettes. I would say that for all of the drugs we have mentioned there are many people who use them without suffering negative health consequences. For each of the drugs, there is a spectrum of negative health risks that a user takes. Marihuana has some of the negative characteristics of both alcohol and tobacco. That is, it is taken in the lungs, so it has the respiratory irritating effects, including the bronchitis and, potentially, the lung cancer problems associated with cigarettes, plus it has the negative intoxicating effects of alcohol. I'll tell you one difference that is very striking: the overdose potential of alcohol. Alcohol really does kill people from overdoses through respiratory suppression. The public does not understand this, but many people are dying from overdoses of alcohol. Marihuana is not that kind of a drug—in fact, the single most striking characteristic about marihuana is the low toxicity in terms of death. It is virtually impossible to die from an overdose of marihuana. So I would try to avoid comparing the drugs because I don't think we know enough about marihuana. I'm as concerned about the potential danger of marihuana as I am about cigarettes and alcohol. I would say today, at our current use levels and our state of knowledge, that there is no question that alcohol and tobacco are causing us far more health problems than marihuana does. There is no question on that point. The question of the potential and the question of new knowledge leaves open the door to the possibility that consequences of marihuana use will be much more serious than we know now. But on the basis of our present facts, it's clear that those traditional drugs cause more health problems than marihuana does.

Question:

Dr. DuPont, you have an interesting chapter in this book on therapeutic aspects, and you do point out that it is likely that if cannabinoids become standard medicine, they would be synthetics rather than derivatives of the natural thing. But, at any rate, do you see any likelihood in the near future of rescheduling cannabis from schedule 1, which states that there is no therapeutic use, to perhaps schedule 2?

Dr. DuPont:

I can imagine rescheduling cannabis. Yes, that's not inconceivable at all. In fact, one of the things we want to do is to apply the routine standards to cannabis. The Government, in the last few years, has gone through a very great, wrenching crisis around the issue of drug use. One of the things we have done through the Controlled Substances Act is to establish some criteria for handling drugs in a rational fashion. I think it is time to apply the same rational decisionmaking to cannabis and to other drugs that we apply to the more conventional pharmaceutical products. That's a process that I very much support. Now let me describe the therapeutic status of marihuana. It is in an investigational status. While it remains in an investigational status, there is no reason for rescheduling it. I can imagine, in the not too distant future, there being approved uses for products derived from or similar to the products that are in marihuana. When that happens, and I think it probably will, that will be the time, it seems to me, to act in terms of rescheduling. We should treat this not in a scary, politicalized, emotion-laden way but treat it just as we would any other pharmaceutical product. After all, opium is the substance that scares the heck out of most people, and yet we use codeine routinely in the United States. Codeine is a product that is derived from opium; heroin is also derived from opium. We don't

want to use heroin, but codeine we do use. And I think the same kind of evolution will go on with marihuana.

Question:

Dr. DuPont, could you succinctly restate what you were saying about the lethal effects of alcohol and tobacco compared to marihuana?

Dr. DuPont:

We have clear evidence of the lethal effects of alcohol and tobacco—alcohol through the overdose effects as well as obviously through intoxication. The overdose effect I'm talking about occurs when people take so much alcohol that their respiratory center is suppressed and they die of the overdose. We do not have any similar evidence for marihuana. In fact, we know that marihuana is not a drug that is susceptible to causing death even in extreme situations. One of the most striking characteristics of marihuana is its freedom from this kind of lethal toxicity.

Question:

Dr. DuPont, the United States Government and society are perfectly happy to allow people to make the decision for themselves with regard to alcohol and tobacco. We know that it is bad for us—we are told that it is bad for us. Why this terrible resistance to something that you've just said we know is not as lethal as tobacco and alcohol?

Dr. DuPont:

Well, it is a great wonder to me how we approach the issue of safety in this recreational drug field. The argument generally goes something like this: If everyone who uses it doesn't keel over, then we must let people make individual decisions. Let me show you another area that is related to that but to which we apply a totally different scale. That's in the pharmaceutical area. We are talking about drugs that are used by the American public. If we find a negative health consequence to a pharmaceutical substance such as the antibiotic, chloramphenicol, a useful antibiotic which produces negative consequences in 1 per 10,000 cases, the drug is removed from the market. For example, there is an argument right now about removing birth control pills from the market because they produce thromboembolism in 1 or 2 or 3 in 10,000 cases. We're not talking about giving people the right to decide individually whether they use these drugs; we're talking literally about taking the drugs off the market. And, yet, here in this other area, we've got a whole different view of the issue of safety. Now I don't know how to put those two things together, but there's obviously something to be said for thinking about risks. Just because we allow people to take risks with one substance, or several substances, is not a very good argument to have more of that go on. On the other hand, it is a good argument for not putting people in jail. I think we can deal with chloramphenicol or with birth control pills without putting the users in prison! And I think that similar kinds of regulatory approaches make a lot of sense for cannabis and for alcohol and tobacco.

Question:

Dr. DuPont, what kind of ammunition does this report give to a parent of a teenaged child to discourage him from consuming marihuana for purely health reasons if the use is recreational, infrequent, not taken before an

examination, or while driving. What ammunition does this still give to the parent of that teenager to discourage the use, and if you were the parent of the teenager and your child came home and said, "I'm going to take one of the three—booze, cigarettes, or marihuana," which one would you choose for your child?

Dr. DuPont:

Well, I think that a parent in relating to a child really has to approach the drug problem as a whole and not pick out any particular drug. One should recognize the fact that the child is going to be exposed to a wide variety of substances, both legal and illegal, and that many children will use a variety of these substances. I think it's important for the parent not to get so terribly uptight about whether the child does or does not use any particular drug once or twice, or even a number of times, recreationally. This is certainly the approach I have to my children, although they are a little young for that, the oldest being 10. The parent should talk with the young person about the consequences of the decisions that he or she is making, and will have to make, in the context of his adolescence. And personally, my advice with respect to any of these substances—if you are not using them—I would recommend that you not begin. Drug use is expensive, it's messy, it's of very limited value in terms of the person's lifestyle, and there are serious health risks associated with all the drugs. On the other hand, I think that if a person does decide to use them, and this applies to my children or myself or anyone in my family, I would say to use as little as possible and as responsibly as possible. Now with respect to my family and all of us, unfortunately everybody does not have the ability to control their consumption of these drugs the way they would like. This is the point I was making about marihuana earlier, about the likelihood of going on to heavy use. The same thing is true of alcohol, as many of you know. Not all people can control their consumption of alcohol. Before they start using alcohol, there is no way for them to know that it can have a very disastrous effect—they may be one of those who cannot control their consumption. So I would say that this is one of the things that I'm concerned about. If a young person does use any of these drugs, then I want to help him in a nonhysterical, nonscary way, to use them responsibly. I would encourage him to use less of them. But that, I think, is an individual matter. I think we have got to get into that frame of mind and out of the hysterical-scare approach. Rather than seeing things as extreme, I've heard people say, "Well, if my child used one marihuana cigarette, I'd throw him out of the house." I think that's ridiculous. If a parent thinks a little about that, he would appreciate how ridiculous that approach is. Parents of teenaged children are not unfamiliar with these kinds of problems, not that they like them, but they can't avoid them. The same kinds of issues come up about work, about sexuality, about friends. They are all very complex issues for a young person who is deciding who he is and how he is going to conduct his life.

Question:

(Question about young people's attitudes toward drug penalties.)

Dr. DuPont:

Well, I wish I had the study with me about this, but I don't. One of the things that you find, even in young people, is the remarkable polarization on these subjects with amazing percentages favoring relatively harsh penalties for users of these drugs. I've never quite understood that, but the polarization that goes on in American society is not just limited to older people but

goes on in youth as well. Obviously, the users tend to have a much more lenient attitude than nonusers on the question of penalties for use. I can get you some statistics; I don't have them with me. We have very good data on precisely what the public attitudes are in various age segments toward the issues of legality and drug-using behavior. I think, though, one point that may need emphasizing is that there is a tendency to get very discouraged about the news of the continual rises in drug use; for example, the recent news of women smoking more cigarettes, and the marihuana use data for youth. There is another side to that. A lot of young people are coming to a more sophisticated view of what drugs are and what their lives are all about than ever before. In the long run, this is going to be a very positive evolution for our society. It will be good for all of us to think a lot more soberly about all of our drug consumption. We must not compartmentalize it into "our" drugs and "their" drugs.

MARIHUANA AND HEALTH, 1975: SUMMARY AND OVERVIEW

EXTENT AND NATURE OF USE

Present evidence indicates that cannabis use has significantly increased among Americans during the last two years.

Throughout most of its history American marihuana use has consistently involved a minority of any national age group; however, the most recent national survey data indicate that in the 18-25 age group a majority (53%) have now tried the drug, up from 48% in 1972. Among those surveyed under 18, nearly one in four (23%) has ever tried marihuana -- an increase from the one in seven (14%) who reported in the 1972 survey ever having done so.

Current use -- defined as use within the past month preceding the survey -- has also significantly increased among those under 18. Seven percent reported such use in 1972, 12% did so in the most recent survey. There does not appear to have been a similar increase in such use among those over 18 -- among whom current use has remained the same or has slightly diminished depending on age, since 1972.

When questioned regarding their plans for future use, one third of those who have used marihuana indicate they definitely intend to do so again. Another third of this group indicate they might do so. Slightly smaller numbers of adults than of youths indicated their intention to continue use (1-1).

While there has been an increase in use by high school and junior high school age groups (attested to by both local and national survey results), future trends of marihuana use in America continue to be uncertain. Despite the other increases noted, use among adults has not increased. In part, this may be explained by research reported in the fourth Marihuana and Health report: changes such as marriage, parenthood and the assumption of other adult roles are inimical to continued marihuana use.

Support for the above interpretations is also found in data garnered from research conducted on a national sample of 20-30 year old men. This nationwide survey found that even within this restricted age group, larger proportions of the men in the younger subgroups used marihuana than did those who were older. Men pursuing more conventional life styles in that they were married and employed full time, were considerably less likely to be using marihuana than were either the unmarried or the unemployed (1-23).

Although there is good evidence of a continuing increase in marihuana use among younger people, there is little indication that such use has come to involve a significant proportion of the older population. For example, if we examine the behavior of those ages 26-34, in contrast to the 18-25 age group less than one third (29%) have ever used marihuana compared to over half (53%) of the younger group. One in four of the 18-25 group had, in fact, used in the month preceding the survey but less than one in twelve (8%) of those 26-34 had done so. In still older age groups use is even less common. Only 7% of those between 35-49 have ever used and only 2% of those over 50 have ever done so. Less than one in one hundred of the over 35 group had used during the month prior to the interview (1-1).

Despite the indications that marihuana has not become popular with older groups and the evidence that its use may be diminished as adult roles are adopted, any prediction regarding the future of cannabis in American society must be hedged with caution. A Gallup poll conducted in 1967 among college students indicated that only one in twenty had ever used the substance, but by 1974 over half (55%) reported use in the Gallup survey (1-9). In seven years, what was once clearly statistically deviant behavior has become the norm for this age group. While in previous years use was correlated with level of education, the percentage now reporting marihuana use is virtually identical for high school drop-outs, high school graduates and college graduates in similar age ranges.

National trends and use patterns mask distinctly different patterns in particular communities or geographical areas. In one Northern California county in which a survey of junior and senior high school students has been conducted each year since 1968, even the earliest findings indicated over one quarter of the ninth grade males (27%) had had some experience with marihuana during the previous year. Among male seniors nearly half (45%) reported use in the year preceding. Current (1975) comparable figures are now 49% for ninth graders and 64% for senior boys. However, the percentage reporting use on 50 or more occasions in the previous year has not markedly increased for the past five consecutive years (1971-1975) (1-4).

During the past five years since the first Marihuana and Health report, cannabis use in the United States has changed in character. Originally marihuana's popularity was concentrated among young people associated with a "counter culture." It was regarded as symbolic of their opposition to traditional values and to the prevailing political climate (Cf. the first Report, 1971).

*Numbers in parentheses refer to the several technical chapters and their lists of references. Thus, 1-1 refers to reference one in Chapter 1. This is the specific study from which the data are abstracted.

As use has spread to involve larger numbers and to more conservative segments — it has now been experienced by a majority in many groups — it has lost some of its nontraditional, antiestablishment symbolism. Early use often involved opposition to more traditional alcohol use. Now those who use marihuana are also very likely to use alcohol -- frequently simultaneously. Marihuana use seems unlikely to displace more traditional alcohol use even among the young. Continuing research on patterns of multiple drug use and drug using contingencies may better enable us to predict both individual and group drug use.

Use patterns in other countries, even those in which cannabis use has been endemic for many years, provide few clues to future use in the United States. In other countries use is typically class related with the lower classes, the traditional users. While in some of these countries of traditional use there are now middle or upper class users, such users seem to have adopted marihuana as part of an international youth culture rather than by diffusion from native users. Expectations with respect to drug effects also differ in that traditional users do not share the recreational orientation that characterizes American users.

CHEMISTRY AND CHARACTERISTICS OF CANNABIS

Although a detailed discussion of developments in cannabinoid chemistry is of primary interest to the specialist, there is a range of developments of more general interest. The plant, cannabis sativa, far from being a simple substance is, in fact, chemically quite complex. The last several years of research have resulted in an increasingly sophisticated knowledge about this complex substance. There is a growing awareness of the need to much more adequately describe several major cannabis constituents if we are to adequately specify the nature of the material. The United Nations has now recommended that all research reports on cannabis describe not only the amount of delta-9-tetrahydrocannabinol (the major psychoactive ingredient) but that of cannabidiol and cannabinol as well.

The ability to synthesize various chemical components of marihuana as well as the drug's metabolites (i.e., compounds resulting from the biological transformation of the originally ingested material) is a significant advance. Availability of such pure substances provides researchers with necessary materials for careful study of the physiological role of marihuana's various components.

While primary interest has tended to center on delta-9-THC because of its role as the principal psychoactive ingredient in cannabis, the part played by several other ingredients may be important in producing other cannabis effects. These other ingredients alone or in combination, may account for possible adverse health consequences or contribute to the possible therapeutic usefulness of the drug.

The detection and analysis of marihuana in body contents such as blood, saliva, urine and breath is a problem important both to basic research and to forensic medical applications. For research, it is important to develop methods that accurately determine how much smoked or otherwise ingested marihuana actually becomes physiologically available. These amounts may be substantially different than the amount ingested because of losses that occur in consuming marihuana, delayed bodily absorption, and individual differences in ability to metabolize the drug.

In the clinical setting, appropriate treatment of the unconscious patient brought to the Emergency Room following an accident may be dependent on knowing whether he or she is marihuana intoxicated. In other medical situations being able to determine with certainty the level or fact of being intoxicated may make the diagnosis of the patient much easier.

The general increase in marihuana use has undoubtedly brought with it an increase in the numbers who drive while cannabis intoxicated. Recent evidence (Cf. Driving Effects) further confirms cannabis adversely affects driving. Thus, there is a real need for the development of one or more roadside methods that can be rapidly employed in much the same way as current tests for alcohol intoxication.

Although simple, rapid detection methods are badly needed, detecting marihuana use is inherently much more difficult than detecting alcohol use. The quantities of drug involved are much smaller and they are very rapidly transformed into metabolites which differ chemically from the originally consumed material. As with alcohol, it is important to quantify the level of use for all of the purposes outlined. During the past year considerable progress has been made in improving detection techniques.

In addition to newer, thin layer chromatography and high pressure liquid chromatography methods, two other techniques have shown unusual promise. Radioimmunoassay (RIA) is a technique in which an antibody specific to a drug or its metabolites is developed and then "tagged" by means of a radioactive molecule in its structure. When a solution of the tagged antibodies and of the body fluid in which the drug to be detected is made, the radioactive markers are displaced proportionately to the drug quantity present. The accuracy of RIA is now being compared with that of more cumbersome procedures.

A second technique under development is called the enzyme multiplied immunoassay test, or EMIT. The antibody reaction which is its basis is similar to that used in the radioimmunosassay technique. EMIT has the added advantages of involving less work, less sophisticated equipment and is more rapid thus making it more suitable for

rapid screening. Field trials on EMIT are ongoing.

A third method which also shows promise of shortly becoming available is likely to be most useful for traffic safety purposes. It utilizes breath samples in a manner roughly analogous to present roadside alcohol intoxication detection.

As has been repeatedly emphasized, marihuana and hashish vary widely in THC content and thus in their ability to intoxicate. This variability results from differences in plant genetic origin, conditions of cultivation and preparation of the material including the degree of concentration of leaves and flowering tops. A relatively recent addition to the illicit market is hashish oil, a substance having a THC concentration of 40-50% as compared to the 1-2% THC content of most marihuana ordinarily available in the United States. Increasing availability of such more potent cannabis preparations may have quite different implications from the more commonly used, weaker preparations that have been available in the past. Use of stronger material, particularly by relatively naive users unaccustomed to its effects, is considerably more likely to result in acute panic and other adverse reactions. Stronger cannabis and cannabis derivatives used under conditions in which the dose is more difficult to control, may also result in marked impairment in driving or other complex psychomotor skills. Such unexpected effects could have serious implications.

ANIMAL RESEARCH

A wide range of research on the effects of marihuana has been conducted with animals because their genetic and learning histories, unlike those of humans, can be accurately specified. Animal models also permit the use of high doses and other procedures not possible in human research. Apart from studies of various physiological effects of the drug which have been discussed primarily in relation to human findings, there are some behavioral observations in animals that are of interest.

Because there has been some question about the role of marihuana as a possible releaser of aggression, studies of animal aggression following marihuana or THC administration have been done. Generally, these drugs have been consistently found to suppress aggression when the animals are not under stress. When animals are stressed by a variety of means (e.g., food deprivation, sleep deprivation, morphine withdrawal, etc.) THC or marihuana tends to increase aggression.

The results of behavioral studies in animals suggest that the effects of cannabis on aggression may be complexly related to the degree to which the animal is subject to stress and the length of time over which it has received the drug. The degree to which these observations are relevant to human behavior is unknown although they do provide a basis for devising related human studies.

In an experiment which studied monkeys in three to six member social groups several changes of interest were found. Given oral doses equivalent to very heavy human cannabis use, the monkeys responded much like humans. They slept and rested more frequently; active social interaction such as grooming of others was reduced. Over more extended periods of administration, the monkeys gradually showed less and less of these effects. While aggression was initially reduced, after receiving THC for weeks or months during the year-long study the monkeys became irritable and aggressive (hitting, biting, chasing behavior increased). There was no evidence of the reduction in testosterone levels that has been reported in humans nor were menstrual cycles of females apparently disturbed (4-67).

More detailed discussion of the extensive research that has been done with animals is to be found in the technical chapters of this report.

HUMAN EFFECTS AND HEALTH IMPLICATIONS

Effects of marihuana can conveniently be divided into: 1) the acute effects of cannabis intoxication and 2) the longer range consequences of regular or chronic use. It is considerably easier to study acute effects and so after eight years of intensive investigations many, if not most, of these effects have been elucidated.

Human Acute Physiological Effects

An increase in heart rate and a reddening of the eyes have been the most consistently reported physiological effects of marihuana. Heart rate increases are closely dose related. Early awareness of this marihuana-induced tachycardia created concern over possible adverse cardiovascular effects of the drug especially in those with coronary disease. Several reports issued in the past year have confirmed a preliminary finding from last year. Marihuana use decreases exercise tolerance prior to the onset of chest pain (angina) in those with heart disease (7-137, 3, 4). Use by those with already existing cardiovascular deficiencies, therefore, appears to be unwise. The contrasting finding that marihuana produces minimal changes in heart function (aside from a rate increase) in young, healthy men illustrates that the drug's effects may significantly differ in persons with pre-existing medical problems from those in normals.

A number of reports have confirmed and extended initial evidence that smoked marihuana when acutely administered, results in improved pulmonary function as measured by bronchodilation (7-156, 157, 158). Optimism created by this finding has since been tempered by evidence that under conditions of more chronic use pulmonary function is impaired, rather than enhanced (7-62).

Evidence that marihuana and especially its principal psychoactive ingredient, delta-9-THC, are effective in reducing intraocular pressure in both normals and in glaucoma patients has been further confirmed. While some question exists whether this effect is due to a nonspecific drug-induced relaxation shared with other sedative drugs or to a more specific marihuana reaction, more recent evidence suggests it is THC-specific (Cf. Therapeutic Aspects).

Understanding of the metabolism and the mechanisms of action responsible for various marihuana effects has increased although many questions remain open.

More sophisticated attempts to measure various aspects of psychological and psychomotor performance have been generally consonant with subjective reports. Impaired memory, altered time sense and performance decrements on a variety of tasks have been experimentally confirmed. Generally, the more complex the task, the greater the degree of disruption produced by acute intoxication. Tasks which are relatively simple and with which the person is familiar are minimally affected. As the task becomes more demanding and novel and/or the dose of drug increases, performance decrements become larger. At lower doses, evidence confirms users' assertions that they are often able to "suppress the marihuana high" when the situations so demand.

Although users have reported enhanced auditory, visual and tactual awareness and sensitivity, experimental research has not confirmed these reports.

Driver Performance and Traffic Safety

Because of the prominent role the automobile plays in our society, the possible implications of marihuana intoxication for traffic safety have been emphasized. Early reports were more optimistic about driver performance than recent evidence. Those consuming alcohol to the level of legal intoxication were originally found to make significantly more driving errors in a driving simulator situation than those who had consumed a "social dose" of marihuana. While the marihuana-intoxicated subjects indicated that their driving performance was affected, they felt they could compensate by driving more slowly and cautiously.

Present evidence, whether derived from driver test course performance, from actual traffic conditions or from the experimental study of components of the driving task, all indicates that driving under the influence of marihuana is hazardous (7-90). The increasing simultaneous use of both alcohol and marihuana by drivers poses a threat that may well exceed that of either substance alone. While the parameters of risk connected with the use of marihuana alone or in combination with alcohol prior to driving are not yet known, discouragement of such use appears justified. A more accurate determination of the extent of risk involved in the various levels of intoxication would be desirable. Such studies are complicated by individual differences but are by no means impossible to execute.

Although there has been little systematic study of the relationship of marihuana smoking to possible pilot error, evidence related to driving is at least partially germane. Such skills as detection of peripheral stimuli and complex psychomotor coordination involved in driving are probably equally important in flying. In fact, the inherently greater complexity of flying suggests that performance is even more likely to be impaired under conditions of marihuana intoxication than is driving. Only one preliminary report of pilot performance has appeared in the research literature. This report indicates that under flight simulator test conditions experienced pilots show marked deterioration in their performance while marihuana intoxicated (7-103). More detailed studies are planned to better understand the nature of the performance deficits produced and their duration. A danger common to both driving and flying is that some perceptual or other deficits may persist for some time beyond the period of subjective intoxication. Under such circumstances an individual may attempt to fly or drive without realizing that his functioning is still impaired although he no longer feels "high."

Chronic Use-Special Problem Areas

Last year's report singled out several special problem areas involving potentially serious adverse consequences of chronic cannabis use. Subsequent research has not definitively resolved the questions raised but has expanded our knowledge base.

Some apparent inconsistencies in research findings regarding reduced plasma levels of the male hormone, testosterone, may be explained by the differing length of time users had been smoking before such levels were assessed. For example, the findings of one study that did not show a decrease during a several week period were matched by those in another study in which there were early negative findings. However, after four weeks elapsed a definite drop occurred (7-100). The decreases that have been found have still been within what are generally conceded to be normal limits. Their biological significance remains in considerable doubt. A preliminary finding that a marked reduction of sperm count (58%) occurred in five cannabis smokers following controlled conditions of smoking has been reported (7-171). While this poses the possibility of diminished fertility in chronic users, the small size of the sample and the study's preliminary nature make the work inconclusive.

With regard to hormonal aspects, two other adverse effects remain possibilities: 1) Inter-

ference with normal growth and sexual development of adolescent heavy users and, 2) Abnormal sexual differentiation of the male fetus developing in a mother who heavily uses marihuana during early pregnancy. No actual evidence for either of these speculative possibilities has yet appeared in the scientific literature.

The question of a cannabis induced impairment of the body's immune response remains important because of its potentially far reaching clinical implications. While a number of investigators have published findings that suggest that marihuana may interfere with cell-mediated immunity, other investigators have not found such evidence. Some of these differences may reflect procedural variations; nevertheless, the clinical significance of the positive findings remains in considerable doubt. At least one study of experienced marihuana smokers under well-controlled, closed experimental ward conditions found initial evidence of impaired immunity upon their admission to the study. However, by the 63rd day of controlled cannabis administration, their immune response had apparently returned to normal (8-39). This finding suggests that the impairment of immunity initially detected in these and other marihuana smokers may be related to factors other than marihuana use.

The implications of laboratory findings of inhibition of DNA, RNA and protein synthesis, all basically related to cellular reproduction and metabolism, are at present unknown. These findings based on in vitro (outside the body) study of animal and human tissue cultures are also being followed up and extended.

Similarly, no conclusive evidence exists regarding damage to human genetic functioning (i.e., chromosomal damage produced by marihuana). While the most carefully controlled studies have failed to demonstrate such damage, the research to date must be regarded as insufficient to permit definitive conclusions.

Presently, preliminary evidence of a range of potentially serious consequences of marihuana use exists. As indicated, these include: Disruption of basic cell metabolism through interference with DNA and RNA synthesis, possible interference with pituitary function, in turn, affecting testosterone production and possibly having other endocrine effects and interference with the body's disease defenses by affecting the immune response. Despite this laboratory evidence, the clinical implications remain in doubt. While no evidence has appeared indicating that marihuana users here or abroad suffer from unusually high rates of infectious disease or cancer which might result from defects in the immune response, carefully controlled large scale clinical studies have not yet been conducted. Similarly, there is no evidence — but neither have there been adequate systematic studies — to establish whether users have significantly lower fertility rates or more serious problems with impotence than non-users.

The failure to detect gross clinical findings that might be expected does not, of course, mean that these issues have been resolved. To date systematic studies of matched samples have been modest in size. Detection of rarer consequences of use is less likely in studies of limited size and extent. As the number of chronically using Americans increases, larger scale epidemiological studies are becoming feasible. Plans for such studies are underway.

OTHER CHRONIC HUMAN EFFECTS

Tolerance and Dependence

Tolerance to cannabis — diminished response to a given repeated drug dose — has been substantiated by research evidence. Development of tolerance to marihuana's effects was originally suspected because of the obvious ability of cannabis users overseas to ingest larger quantities of the drug without disruptive effects than was possible for less experienced American users. Systematic, controlled studies in which known doses of marihuana or THC were administered over extended periods have now confirmed this (8-53, 80, 109, 111).

The meaning of cannabis dependence is often somewhat vague. If we define it as a physical dependency manifested by physical symptoms following drug withdrawal, there is now evidence that it can occur. The symptoms that have been reported following discontinuance of high dose chronic administration of delta-9-THC include: Irritability, restlessness, decreased appetite, sleep disturbance, sweating, tremor, nausea, vomiting and diarrhea (8-80). It should be noted, however, that the after effects reported followed unusually high doses of orally administered THC under research ward conditions. Such changes have not commonly been observed in other studies nor has a "withdrawal syndrome" typically been found among users here or abroad.

Psychopathological and Neurological Aspects

The question of possible prolonged behavioral effects of chronic cannabis usage has been an area of fundamental concern throughout the American cannabis research program. As indicated in earlier reports, foreign observers have argued that a range of such effects occurs, including a specific cannabis psychosis, diminished intellectual performance and an "amotivational syndrome" (characterized by a loss of interest in work and other conventional activity). Interpretation of such reports has unfortunately been complicated by the lack of adequate control groups, poor research design, use of opium and other drugs, poor diagnostic criteria, nutritional deficiencies and other differing factors of life style.

Even when a particular consequence is correlated with marihuana use, it is often erroneously attributed to the drug use. A recent study of 38 first admissions to a psychiatric hospital illustrates the problem of interpretation involved: While there was a correlation between marihuana and subsequent psychiatric illness, it was less than with such causally unrelated variables as having danced and having drunk beer (7-2).

The acute panic anxiety reaction, previously mentioned in the discussion of acute effects, is probably the most common adverse reaction. However, a more prolonged cannabis psychosis has been reported in Eastern literature. It appears to occur under conditions of unusually heavy use or as a result of ingesting a larger amount than usual. Descriptions do not always distinguish between an acute brain syndrome or toxic delirium marked by clouded mental processes, disorientation, confusion and marked memory impairment and a more prolonged psychotic reaction precipitated by cannabis use. Often it is difficult to isolate the causative role of marihuana from that of pre-existing psychopathology or other drug use (7-64, 112).

Three NIDA-supported research studies of heavy chronic users conducted in Jamaica, Greece and Costa Rica have failed to detect evidence for a cannabis psychosis. However, given the comparative rarity of this syndrome and the small sample sizes used, it is possible that such a consequence was missed.

Studies of college student performance have generally failed to prove evidence of impaired intellectual performance related to marihuana use.

While there was no evidence of differences in grade point average or in educational achievement, marihuana users in one major study had greater difficulties than non-users in deciding career goals and were more likely to have dropped out of college to reassess their goals (7-11). Some of these studies suffer from several shortcomings, however; the samples studied may not have adequately emphasized college drop-outs thus excluding the very group that might have been most adversely affected by heavy use. A second consideration is that students typically have higher levels of ability than the general population. Particularly in more competitive academic environments, they may have above average motivation allowing them to better compensate for cannabis effects. Finally, even moderately heavy American student users use this drug less frequently, in less potent forms and in lesser quantity than more heavily using overseas populations.

Assessing the psychosocial effects of marihuana use in chronically using populations can be complicated. Changes in values and behavior attributed to marihuana use may, in fact, have preceded use rather than the use affecting the change in values. Especially in earlier years, users were much more likely to hold counter-culture, antiestablishment views. For these users marihuana had symbolic value as a means of indicating their disdain for the prevailing value system. This disdain was frequently accompanied by a rejection of the traditional work ethic with its emphasis on competitive achievement. The group dynamics of marihuana use may, however, reinforce these counterculture views of more conventional motivation rather than result from any pharmacological action of the drug itself.

Similarly, attempts to create experimental models for testing the existence of such an "amotivational syndrome" have had serious limitations. Tasks chosen as tests may significantly depart from more realistic work tasks; the artificial environment of the research setting may not provide more typical motivational conditions. Two studies involving marihuana administration coupled with monetary reward for work performance did find a decline in productivity with heavier marihuana consumption. In one the task was simple and relatively undemanding, involving repetitive button pushing that could be carried on simultaneously with other activity (7-111). In the other, a more typical work task -- the making of wooden stools -- was carried on (7-13). The distinction between a direct effect on performance as a result of marihuana and on performance as a result of a decline in motivation is not easily made, however. In a third, quite limited study of agricultural performance undertaken in connection with the Jamaican study of chronic users, researchers found some decline in work performance although the decline was not dramatic (7-141).

When one turns to the neurological evidence there is little question that there are acute effects of marihuana intoxication although these are not easily distinguished from those of other psychoactive drugs as measured by conventional electroencephalograms. The EEG changes resulting from electrodes implanted deeply in the brain are dissimilar to other psychoactive drugs (7-67). The behavioral significance of the EEG changes that have been found in chronically using monkeys and in very limited human studies is not presently known.

Work in Greece has not supported previously cited evidence suggesting that brain damage marked by enlarged ventricles may result from marihuana use. The Grecian study, using non-invasive echo-encephalographic techniques for measurement of ventricle enlargement, found no evidence of such brain damage in heavily hashish using men matched with non-using controls (7-49).

Field Studies of Chronic Users

Although other portions of this and previous reports touch on one or another of the three Federally sponsored studies of chronic marihuana use in Jamaica, Greece and Costa Rica, it may be useful to summarize their findings, strengths and weaknesses here. The Jamaican study has been extensively reported in previous Marihuana and

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Health reports, a recently published book and in the research literature (7-141). A report on the Greek study was delayed in order to make the data base as complete as possible. The third study in Costa Rica was just completed; its detailed findings will be released by Spring, 1976. In each of these research efforts, an attempt was made to match drug-using subjects with appropriate non-using counterparts. In the Jamaican and Costa Rican projects rather careful matching was done; in the Greek study such matching was less possible. All subjects were males because male use predominates in the cultures studied. Numbers of subjects were necessarily limited by the detailed procedures followed (Jamaica: 30 experimental, 30 control; Greece: 47 experimental, 40 control; Costa Rica: 40 experimental, 40 control, although 80 and 140 users and non-users respectively were actually examined).

The Jamaican study found few physiological or psychological differences between the matched smoker nonsmoker populations. A rather extensive battery of tests of physical and psychological functioning found no differences that could be directly attributed to marihuana use as such. While an attempt was also made to assess chromosomal abnormalities, that portion of the study must be regarded as inconclusive because of technical deficiencies in the methodology for that phase of the project.

The Greek study arose from a clinical impression by Greek observers that Greek hashish users, because of their heavy use patterns and already established researcher-subject rapport, would make a good study population for examining the effects of unusually heavy cannabis use.

A variety of neurological, psychological and physical measures found few changes attributable to cannabis use. Heavy emphasis was placed on possible brain damage as measured by electroencephalographic, echo-encephalographic (Cf. preceding section) and psychological test procedures. None of these measures showed evidence of brain damage (7-49).

The most recent Costa Rican study also examined matched samples of users and non-users especially carefully matched on such variables as age, marital status, education, tobacco smoking and alcohol use. Emphasis was placed on extensive medical examinations with special attention to pulmonary and neuropsychological functioning. Although detailed results have not yet been published, no evidence for a greater incidence of disease or of psychological deterioration has been found in the cannabis-using group (7-23).

None of the three studies found evidence of increased psychopathology or of an amotivational syndrome stemming from the use of cannabis.

While results of these studies must be regarded as somewhat reassuring of the lack of grossly adverse consequences of marihuana use, they can not, of course, be regarded as conclusive for several reasons. All three studies involve relatively small numbers of subjects. Equally limited studies of cigarette smoking, for example, which is known to have serious adverse health consequences, would not have been likely to detect those consequences. Psychological testing techniques are less apt to be satisfactory when used with subjects markedly different from the original standardization samples. To the extent that they are not culture free, performance for both experimental and control groups in cultures unlike those on which they were standardized may both show a culturally derived deficit. This deficit may mask a drug-related deficit in performance. Thus, the tests used may not be sufficiently sensitive to detect a difference that may in fact exist. Finally, it may be argued that the demands of a less technologically oriented society are less complex than those of the industrialized United States. Thus, the failure to find a drug-related decrement in social or work performance may reflect an unimpaired ability to meet the demands of a simpler situation that would not be true under more demanding circumstances.

THERAPEUTIC ASPECTS

Although cannabis has been used for over 3,000 years as a medicinal herb in native and scientific medicine, its use in Western medicine sharply declined in modern times. By the 1930s, American medicine had largely supplanted cannabis with more convenient and more stable pharmaceutical preparations. Our relatively recent concern with marihuana as a drug of abuse has led to scientific investigation into its properties by means of modern pharmacological techniques. Synthesized constituents of the natural material have been produced enabling researchers to study the properties and effects of each of the components of this complex material. This recent study has reawakened scientific interest in possible therapeutic uses for the natural material or its synthesized ingredients.

Although some of marihuana's properties -- notably its psychoactivity and its tendency to accelerate heart rate -- are undesirable for most medicinal purposes, cannabis has one highly desirable property. Compared to most pharmaceuticals it is very low in biological toxicity. Indeed, it is questionable whether any deaths can be directly attributed to an overdose of marihuana or hashish.

Whether or not cannabis or perhaps some modified constituent again becomes useful in medical practice will depend on whether some of the drug's promising therapeutic properties prove to be sufficiently persistent and its side effects controllable. Marihuana's usefulness as a medication for chronic disorders may also prove to be limited by the development of tolerance to its therapeutic effects.

The most promising therapeutic applications of the drug are in the treatment of glaucoma, as an anti-emetic for cancer patients receiving chemotherapy and possibly in the treatment of

asthmatics. Other applications as a sedative-hypnotic, an anticonvulsant, an antidepressant, an analgesic and in connection with the treatment of alcoholics have been attempted, but the results have either been inconsistent or highly preliminary.

The use of cannabis and THC in treating the elevated intraocular pressures in glaucoma patients arose from the observation in normals that internal eye pressures were reduced by the drug. Subsequent research with patients has confirmed that the effect is also produced in the diseased eye and is as great as that produced by more traditional medications. Topical preparations applied to the eyes of rabbits have successfully reduced pressure raising the possibility of using such a preparation with humans. Human experimentation is not, however, expected in the immediate future because of the formidable problems in making certain that such a preparation is safe and can meet regulatory requirements (9-12, 25, 26).

The use of THC as an anti-emetic with cancer patients receiving chemotherapy shows unusual promise. One of the undesirable side effects of chemotherapeutic agents administered to cancer patients is that they produce marked nausea and vomiting. This side effect is very difficult for patients to tolerate and is also debilitating. Standard anti-emetic drugs have not, unfortunately, been notably successful in reducing this side effect. THC, by contrast, was found in a recent double-blind study (neither patient nor physician knew whether the drug received was active or inert) to be effective in virtually all of the patients receiving it. While 13 of the 16 patients receiving the drug became "high" and one third developed drowsiness, these effects were viewed as minor compared to the therapeutic benefit achieved (9-58).

Use of THC in the treatment of asthmatics is predicated on the observation that it dilates pulmonary air passages and decreases airway resistance (9-64). Based on observations in normals, research with asthmatics has demonstrated that marihuana relieves bronchospasm and has a more persistent action than traditional medication (9-65). Since smoked marihuana has obvious lung irritant properties, more recent research has employed aerosolized THC, also with promising results (9-46).

There has been a growing awareness that constituents other than delta-9-THC may have valuable therapeutic properties if freed of some of the undesirable side effects noted with THC. It is also possible for the organic chemist to produce a very wide range of chemical compounds which are broadly based on the chemical structure of the cannabinoids, but with changes in that structure which can markedly alter their action. Such chemically more remote compounds may ultimately prove more useful therapeutically than either the natural material itself or its synthesized ingredients. Because they are not the parent compounds they must, of course, be carefully tested for toxicity and therapeutic properties like any other new compound.

Appendix C: White Paper on Drug Abuse

A Report to the President

from

The Domestic Council Drug Abuse

Task Force

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WHITE PAPER
ON
DRUG ABUSE

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National Institute on Drug Abuse

September 1975

A REPORT TO THE PRESIDENT
FROM
THE DOMESTIC COUNCIL DRUG ABUSE
TASK FORCE

THE VICE PRESIDENT
WASHINGTON

September 29, 1975

Dear Mr. President:

I am pleased to submit for your consideration the White Paper on Drug Abuse prepared at your request by the Domestic Council Drug Abuse Task Force. The White Paper documents the principal findings of the Task Force, assesses the current extent of drug abuse in America and presents a number of recommendations for improving the Federal government's overall program to reduce drug abuse.

Drug abuse is one of the most serious and most tragic problems this country faces. Its cost to the nation is staggering: counting narcotics-related crime, health care, drug program costs and addicts' lost productivity, estimates range upwards of $17 billion a year. In addition to these measurable costs, the nation bears an incalculable burden in terms of ruined lives, broken homes and divided communities.

The Task Force believes that the optimism about "winning the war on drugs" expressed so eloquently and confidently only a few years ago was premature. It urgently recommends that the federal government reaffirm its commitment to combatting drug abuse and that public officials and citizens alike accept the fact that a national commitment to this effort will be required if we are to ultimately succeed.

The Task Force submits this White Paper in the knowledge that it does not provide all of the answers to solving the drug abuse problem. The issues are complex and changing and the Federal effort represents only part of the nation's total response. However, I believe that the recommendations contained in the White Paper provide a solid base upon which a re-invigorated national effort can be built.

The Members of the Task Force, the contributors to the White Paper and I appreciate the opportunity to have participated in this vital undertaking.

Respectfully submitted,

Nelson A. Rockefeller

The President
The White House
Washington, D. C.

DOMESTIC COUNCIL DRUG ABUSE TASK FORCE

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MARIHUANA [10]

Marihuana is the most widely used illicit drug, with an estimated 20 percent of Americans above the age of 11—25 to 30 million people—

[9] The phrase "as currently used" is important. The effects of cocaine if used intensively—particularly if injected—are not well known, but recent laboratory studies with primates, as well as reports of the effects of chronic cocaine injection during the early 1900's suggest that violent and erratic behavior may result. For this reason, the apparently low current social cost must be viewed with caution; the social cost could be considerably higher if chronic use began to develop.

[10] A great deal of controversy exists about marihuana policy. On the one hand, recent research indicates that marihuana is far from harmless, and that chronic use can produce adverse psychological and physiological effects. Therefore, its use should be strongly discouraged as a matter of national policy.

However, in light of the widespread recreational use—and the relatively low social cost associated with this type of use—the Federal Government has been deemphasizing simple possession and use of marihuana in its law enforcement efforts for several years. For example, very few persons are arrested by Federal agents for simple possession and use; those who are charged with this offense normally are also being charged with some other, more serious offense as well. However, vigorous law enforcement aimed at major *traffickers* has been and should continue to be undertaken at the Federal level.

The task force endorses this moderate view and expects the lower priority that has been established for marihuana will also be reflected in our demand reduction efforts by the elimination of many non-compulsive marihuana users now in our treatment system.

having used it at least once. In short, marihuana has joined alcohol and tobacco as one of the most widely used drugs in the United States.

Historical Trends

National attention first focused on marihuana following reports of widespread use during the mid-1930's. Discussion culminated in legislation which imposed Federal criminal sanctions against both the distribution and use of marihuana. Although proscribed by Federal law, the use of marihuana continued during the ensuing years, but at relatively low levels. Marihuana use was most common among urban minority groups and Mexican-American workers in the Southwest during this period.

A significant increase in the use of marihuana began to occur during the mid-1960's when its use became associated with artistic and anti-establishment life-styles; use then rapidly spread across geographic, demographic, and social boundaries.

The sources of supply have traditionally been Mexico, the Caribbean and South America. They remain so today.[11]

Current Situation

Rates of marihuana use have been rising steadily over recent years as shown in chart 10.

Chart 10

TRENDS IN THE USE OF MARIHUANA

EVER USED

	1968	1969	1970	1971	1972	1973	1974
National Sample of Adults	—	—	—	15%	16%	—	19%
National Sample of Youths	—	—	—	14%	14%	—	23%
Regional Sample of High School Graduates	32%	40%	43%	50%	51%	55%	—
National Sample of High School Graduates	—	20%	35%	—	—	—	62%

CURRENTLY USED

	1968	1969	1970	1971	1972	1973	1974
National Sample of Adults	—	—	—	5%	8%	—	7%
National Sample of Youths	—	—	—	6%	7%	—	12%
Regional Sample of High School Graduates	18%	25%	25%	33%	35%	36%	38%
National Sample High School Graduates	—	6%	9%	—	—	—	21%

[11] In addition, there is an unknown but presumed small amount of domestic growth.

Current estimates suggest that up to 20 percent of the general population over the age of 11 has used marihuana at least once, and that use is encountered in nearly all population groups. Over 40 percent of those who have ever used marihuana are current users, and at least half of the current users use it at least once a week.

Rates of use may be considerably higher or considerably lower, depending on the segment of the population under study. The highest rates of use have been reported among so-called "hippies" and high school dropouts. There appears to be a slight preponderance of males among marihuana users, although this distribution varies considerably from study to study. Other findings which occur consistently include the following:

- Urban residents use at higher rates than rural residents;
- Use is greater among those with higher levels of education and income;
- Use is more frequent in the northeastern and western United States than in other regions.

A recent development which is cause for great concern is the increasing availability of the much more potent marihuana derivations—hashish, and other preparations of high THC (tetrahydrocannabinol) content. Unlike common forms of marihuana, these potent drugs are known to have serious physical and social effects on the user.

DAWN provides some interesting data on various drug crises attributed to marihuana. During the nine months between July 1973 and March 1974, marihuana comprised only one percent of all emergency room drug mentions, but 51 percent of all crisis center drug mentions. This distribution of mentions by facility type reflects the kind of acute psychological problems likely to occur in association with the use of marihuana, with panic reactions or "bad trips" predominating over the more life-threatening reactions which would lead to appearance in an emergency room.

From a treatment point of view, data show that approximately 17 percent of patients admitted to Federally funded drug treatment programs from January to April 1975, reported marihuana as their primary drug of abuse.[12] There is considerable controversy regarding the interpretation of these data for a number of reasons. The frequency of use reported by these "primary marihuana abusers" is less than once a week for nearly 45 percent of the patients. It seems clear that these people do not have a serious drug problem and should not be in treatment. Most likely, they were referred to treatment by the criminal justice system, by schools, or by parents who were concerned about

[12] This includes NIDA, VA, and DOD. When NIDA is viewed alone, the marihuana figure is 21 percent.

the marihuana use. But when treatment facilities are full, this is a poor utilization of resources and these occasional marihuana users should not be occupying treatment slots. (Chapter 4 will develop this concept further.)

OTHER DRUGS

In addition to these four major categories of drugs, Americans abuse a variety of other substances.

Hallucinogens [13]

Except for the use of peyote in the religious ceremonies of some American Indian tribes, the use of hallucinogens is a recent development in the United States.

Limited, nonmedical use of LSD began in California in the 1950's, but was greatly accelerated in the early 1960's as publicity associated with its use grew. In the early 1960's this drug was diverted from legitimate research sources, but by 1964 illegal manufacture of LSD was established. Today, virtually all LSD in the United States is produced illicitly and, because only very small amounts are needed to produce an effect, it is easily concealed.

Hallucinogen use is very different from most other drugs. Addiction, or even extended regular use is very unusual. These drugs are rarely used more than twice a week. Since a major reason people use these drugs is to experience unusual mental effects, most users stop taking these drugs entirely after the "trips" lose their novelty.

Surveys of hallucinogen use show that most who use do so less than once a month, and that weekly use is very rare. None of the surveys support conclusively the widespread belief that these drugs are not as popular as they once were, but there has been a definite decline in the number of hallucinogen-related medical problems.

Hallucinogens can cause a number of side effects, including panic reactions and long psychotic or depressive episodes. Most reactions are unpredictable and the negative side effects can occur after several "safe trips." The possibility of medical side effects such as chromosomal or genetic change has neither been thoroughly documented nor entirely eliminated.

Solvents and Inhalants

These are chemicals that are used for a variety of medical, industrial, and household purposes, and can also be inhaled to produce intoxication. The ingredients of these products are often unknown to the purchaser, abuser or doctor treating an adverse reaction.

---

[13] LSD, (Lysergic Acid Diethylamide Tartrate), mescaline, psilocybin, peyote, etc.

Very little is known about the pharmacology of solvents. Partial tolerance may develop, and the effects of these substances are intensified when used with other depressants, especially alcohol.

Data on solvent use are sparse. The few available surveys indicate that about 7 percent of junior and senior high school students may have inhaled solvents once or twice and that about one percent of these experimenters continue to inhale periodically.

Volatile substance abuse occurs almost exclusively among the young, perhaps because solvents are often the most readily available intoxicants to children. Accordingly, maturing out of the inhalant habit is the general rule. Even heavy users will persist for only a few years, and then abandon solvent sniffing by their teens. (Many of these individuals, however, then begin the excessive use of alcohol, barbiturates or other substances.)

The fact that solvent inhalation lasts for such a short time for most users leads to the conclusion that it is primarily a reflection of the immaturity of those young people who become involved with it. Nonetheless, abuse must be monitored and action taken as appropriate. One simple action might be to use unpleasant additives in the manufacturing process. Further, the task force believes that the intervention efforts using peer groups discussed in chapter 4 will help some young people resist the pressure to experiment with these substances if and when the inhaling of solvents becomes temporarily popular among their friends.

B — DRUG PRIORITIES

One of the major themes of the Federal strategy discussed in chapter 1 was the importance of differentiating in terms of the particular drug of abuse, and the frequency and quantity of use. Implicit in that decision to differentiate is the assumption that public policy should be most concerned with those drugs which have the highest costs to both society and the user, and with those individuals who have chronic, highly intensive patterns of drug use.

In order to determine the social cost of a particular drug, we should consider the following factors:

- *The likelihood that a user will become a compulsive user, either physically or psychologically dependent on the drug:* closely linked to this concept is the ability of the drug to produce tolerance, requiring successively higher intake to achieve the same result.
- *Severity of adverse consequences of use, both to the individual and to society:* in terms of criminal behavior, health consequences, economic dependence and the like. (This is discussed in greater detail below.)

- *Size of the core problem:* the number of compulsive users who are currently suffering (or causing others to suffer) adverse consequences.

ADVERSE CONSEQUENCES TO THE INDIVIDUAL

The adverse consequences of drug use are of two types: consequences which are the direct result of drug use, and indirect consequences which are associated with drug use. *Direct* consequences include:

- *Illness or death:* Illness or death can occur from overdose, a severe toxic or allergic reaction to a drug, or from rapid withdrawal. In New York City, drug-related deaths are a major cause of death for males aged 15 to 25. Death due to drug abuse is often the result of ignorance—ignorance of possible contaminants in drugs, ignorance of the danger of using combinations of drugs, ignorance of the strength of the drug purchased and of techniques to determine nonlethal doses. If drug use affects reproductive organs, or when certain drugs are taken during pregnancy, a second generation may suffer casualties.
- *Acute behavioral effects:* The paranoia produced by intravenous injection of amphetamines can cause violent behavior and consequent criminal acts such as rape and homicide. Acute paranoia and extreme anxiety from the effects of hallucinogenics, and depression (in the withdrawal state) from stimulants such as amphetamines, are other examples of behavior effects.
- *Chronic behavioral impairment:* Adverse behavioral effects may also be chronic as with the inertia, apathy and depression associated with long-term heroin use. Also, impairment can be measured in things such as loss of productivity, health costs, welfare assistance, and criminal costs.
- *Intellectual Impairment:* Some evidence of intellectual impairment has been reported by clinicians on the West Coast. Specifically, mental status evaluations of chronic users of hallucinogens who stopped after two or more years revealed a clinical impression not unlike that of mild chronic brain disease.

Indirect consequences include:

- *Injury or death associated with impaired judgment:* Potent, mind-altering drugs such as LSD can affect judgment, which may for example, result in accidental death by succumbing to bizarre hallucinations, such as believing one can fly. Even a "mild" drug such as marihuana may distort preception and thus increase the risk of death in automobile accidents of either a driver or pedestrian.
- *Injury or death associated with conditions of use:* Poor nutrition and neglected hygiene stemming from the total focus of energy

on obtaining drugs can cause damage to vital organs. Transmission of viral hepatitis from shared needles is another medical problem of drug abusers. Young people in the drug culture are particularly susceptible to pneumonia. Infections associated with injections using unsterile needles may be fatal.

- *Developmental difficulties:* The potential for personality impairment due to drug use is an important consequence, but one difficult to assess. There are crisis periods in the course of every individual's development, but adolescence is a particularly vulnerable period because the individual seems inundated with crises. These crises provide an opportunity for growth, formation of new ideas, and the emergence of a healthier and more mature personality. The use of drugs as a means to deal with these crises may diminish, delay, or prevent this maturation process.
- *Barriers to social acceptance:* The public image of the drug user is extremely negative; thus, the user is often stigmatized, making it extremely difficult for a current or former drug user to find acceptance in society. Moreover, arrest and conviction for violation of drug laws results in the creation of a criminal record which may follow a user for the rest of his life.

ADVERSE CONSEQUENCES TO SOCIETY

Obviously the above adverse effects to individual drug users are society's loss, too. But there are also more directly measurable costs to society. A recent study estimated that the total measurable cost of drug abuse—direct program costs, health care costs, property losses attributable to drug-related theft, and lost productivity—was $10 billion to $17 billion per year.[14]

Still another way to look at the social cost of drug abuse—one which is of particular interest in this discussion of drug priorities because it can be broken down by drug—is to look at drug users' appearances in the various institutions we have established to deal with people in trouble.

Among the largest and most important of these institutions are the welfare system, the criminal justice system, and the health care delivery system. Drug users often appear in these institutions, and may be identified as users. If we assume that at least part of the reason for their appearance is drug use, the frequency of appearance provides one rough indicator of the magnitude of the social cost of drug abuse.

[14] Social Cost of Drug Abuse, Special Action Office for Drug Abuse Prevention, 1974: This excellent survey is summarized in the *Federal Strategy, 1975.*

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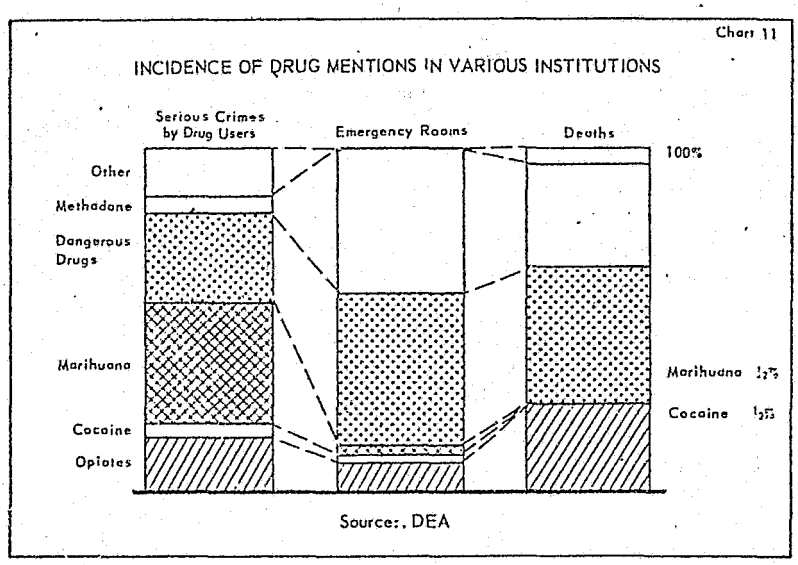
Our capability to monitor these appearances is irregular and limited in scope, but some data exist. Chart 11 illustrates the fraction of drug users who had used various drugs prior to their appearance in three different places where people in trouble show up: the criminal justice system (serious crimes only);[15] emergency rooms and medical examiners' offices.



SUMMARY: DRUG PRIORITIES

Chart 12 ranks the various drugs according to the following criteria: (1) likelihood that a user will become physically or psychologically dependent; severity of adverse consequences, both (2) to the individual and (3) to society; and (4) size of the core problem.

[15] The large proportion of marihuana mentioned is probably a reflection of its widespread use in society.

Chart 12

SUMMARY OF DRUG PRIORITIES

		DEPENDANCE LIABILITY	SEVERITY of CONSEQUENCES		SIZE OF CORE PROBLEM
			PERSONAL	SOCIAL	
HEROIN		HI	HI	HI	HI 460,000
AMPHETAMINES	NEEDLE	HI	HI	HI	HI
	ORAL	LOW	MED	MED	500,000
BARBITURATES	MIXED	HI	HI	HI	MED
	ALONE	MED	HI	MED	300,000
COCAINE		LOW	LOW	MED	LOW
MARIHUANA		LOW	LOW	LOW	LOW
HALLUCINOGENS		MED	MED	MED	LOW
INHALENTS		MED	HI	MED	LOW

Though the data are flawed and the rankings therefore imprecise, a clear pattern emerges.

- Heroin ranks high in all four categories;
- Amphetamines, particularly those injected intravenously, also rank high in all four categories;
- Mixed barbiturates rank high three out of four categories;
- Cocaine,[16] hallucinogens, and inhalants rank somewhat lower; and
- Marihuana is the least serious.

On the basis of this analysis, the task force recommends that priority in Federal efforts in both supply and demand reduction be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines (particularly when used intravenously), and mixed barbiturates—and toward compulsive users of drugs of any kind.

This ranking does not mean that *all* efforts should be devoted to the high priority drugs, and none to the others. Drug use is much too complicated and our knowledge too imprecise for that. Some attention must continue to be given to all drugs both to keep them from exploding into major problems and because there are individuals suffering severe medical problems from even a low priority drug, such as marihuana.

[16] This ranking is on the basis of current use patterns. As mentioned earlier, if intensive use patterns develop, cocaine could become a considerably more serious problem.

However, when resource constraints force a choice, the choice should be made in favor of the higher priority drugs. For example:

- In choosing whom to treat, we should encourage judges and other community officials not to overburden existing health facilities with casual users of marihuana who do not exhibit serious health consequences. (But, a person who is suffering adverse consequences because of intensive marihuana use should have treatment available.)
- In assigning an additional law enforcement agent, preference might be given to Mexico, which is an important source of both heroin and "dangerous drugs", rather than to Miami, where an agent is more likely to "make" a cocaine or marihuana case.

This drug priority strategy is essential to better targeting of limited resources and it will be further addressed in relation to supply and demand reduction activities in chapters 3 and 4. Further, the process of assessing the current social costs of drug abuse should be a continuing one, to ensure that resources are allocated on the basis of priorities which reflect current conditions and current knowledge.

Appendix D: Drug Abuse Council Survey

Marijuana Use in California

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MARIJUANA SURVEY - STATE OF CALIFORNIA

Washington, D.C. . . . March 8 . . . The results of a statewide marijuana use and attitude survey released today by the independent national Drug Abuse Council show that almost three out of every ten California adults have tried marijuana. Of those adults who currently do not use marijuana, only 12 percent cite the possibility of legal prosecution or the lack of availability as their primary reasons for not using. Forty-six percent of those surveyed favor the elimination of criminal penalties for the possession of small amounts of marijuana and use in private.

The survey, commissioned with Field Research Corporation, San Francisco, is part of an on-going series of activities sponsored by the Drug Abuse Council to provide public information on current drug issues. The survey consisted of 1,004 personal in-home interviews, representing a balanced sample of the California population. Interviews were conducted between February 5-11, 1975.

Twenty-eight percent of California adults report having at least tried marijuana, with nine percent currently using it. In Washington, Dr. Thomas Bryant, President of the Drug Abuse Council, stated that this level of current use is the same as was recently determined in a national survey as the national average level of current use. The percentage of the California population who have tried marijuana is higher than the national average.

A sharp difference in marijuana usage is observed between younger adults and older adults and between men and women. Some differences in usage can also be seen among regions of the state.

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MARIJUANA USAGE

	Have used	Currently use
	%	%
Total adults	28	9
By age		
18-29	54	24
30-39	35	5
40-49	10	1
50-59	6	-
60 & over	6	1
By sex		
Male	34	13
Female	21	6
By area		
Southern California	27	8
Los Angeles-Orange	25	8
Other Southern	32	10
Northern California	29	11
Bay Area	35	15
Other Northern	21	6

The possibility of legal prosecution and the lack of marijuana availability rank low as reasons given for not using marijuana by those who have either never used it or those who have stopped using it. Lack of interest is cited by 50 percent of non-users as the reason for not currently using marijuana and possible health dangers is named by 38 percent.

REASON FOR NOT CURRENTLY USING MARIJUANA*

	Current Non-users
	%
Possibility of legal prosecution	8
Not available/Not exposed	4
Not interested/Don't need it	50
May be dangerous to my health	38
Habit forming/Addictive/Loss of control	7
Don't smoke/Don't smoke anything	4
Tried/Didn't like it	3
Religious/Moral reasons	2

*Adds to over 100 percent since some respondents gave more than one reason.

Of the five choices of optional legal approaches regarding sale and/or possession of small amounts of marijuana and use in private, 46 percent of adults favor some form of elimination of criminal penalties: 15 percent favor making the sale and possession of small amounts legal; 20 percent favor making the possession only of small amounts legal; and 11 percent favor making the possession of small amounts subject to a fine, like getting a traffic ticket. Nineteen percent favor the California law as it now is regarding possession of small amounts of marijuana and 29 percent favor stiffer penalties.

The division on legal choices is particularly sharp between those who either have or currently use marijuana and those who have never used it. Young adults - ages 18 through 29 - take a more lenient view than do older adults, particularly those 50 and over.

ATTITUDE TOWARD MARIJUANA LAW

	Possession and sale of small amounts legal	Possession of small amounts legal	Possession of small amounts subject to fine	Law remain as is	Stiffer penalties
	%	%	%	%	%
Total adults	15	20	11	19	29
By age					
18-29	25	29	13	15	17
30-39	17	24	11	22	22
40-49	7	13	14	25	30
50-59	11	11	11	12	44
60 and over	5	10	8	24	46
By area					
Southern California	14	18	9	21	33
Los Angeles-Orange	14	13	10	21	36
Other Southern	13	31	9	21	23
Northern California	17	22	14	15	25
Bay Area	19	25	15	14	21
Other Northern	15	19	14	17	31
By usage					
Have used, not now	32	37	14	11	5
Now use	42	47	8	3	1
Never used	7	12	11	23	39

The Drug Abuse Council, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation and research funding in the field of drug use and misuse. Similar marijuana surveys have recently been completed on the national level and in the State of Oregon, which in 1973 adopted a system of civil fines as the sanctions for possession and use of small amounts of marijuana.

######

[From Juris Doctor, May 1975]

The Budding Marihuana Bar

(By Larry Simonberg)

Not since Prohibition has there been so enormous a group of affluent criminals as the one created by current marihuana laws in most of the United States. And it is a group that, despite an apparent lessening of police efforts in some large cities, continues to grow. The number of marihuana arrests nationwide skyrocketed from a mere 18,815 in 1965 to more than 420,000 in 1973.

Not surprisingly, a new class of lawyers has emerged to defend these new criminals. Statutory variations from state to state and inconsistent enforcement make the field a tricky one, but dozens of sympathetic practitioners specialize in the law of pot. They are for the most part young, street-wise, hip to the plea bargain and the constitutional challenge, and almost uniformly committed to decriminalization—no matter what the effect on their pocketbooks. "These are guys who are making money from marihuana," says Frank Fioramonti, New York legislative counsel for the Washington-based National Organization for the Reform of Marihuana Laws (NORML), "and yet they still want to see the laws changed."

In October 1973 Oregon became the first state to actually decriminalize possession of marihuana, making it a civil violation subject to a maximum fine of $100. In every other state, those in possession of even the smallest quantity still risk expenses for bail and legal fees, a damaging criminal record, and possible imprisonment. So far, generational conflict, hypocrisy, and scientific controversy have frustrated efforts to repeat the Oregon breakthrough. Although Draconian laws have been eased in many states, the threat of an arrest—called in the drug subculture a bust—looms large and is still a traumatic affair, especially in rural areas.

"In Georgia," says Tim Skidmore, "rural people regard marihuana in the same light as they regard rape and heroin." A 29-year-old native of Elmira, New York, the moustachioed Skidmore attended law school at Emory University in Atlanta, and decided to settle there. One of three or four pot specialists most heavily in demand in his area. Skidmore has handled 250 cases in only two years. Why does he spend so much time defending these clients? "Partly for compassionate reasons," he says. "A $1,000 fine for an ounce is a ridiculous situation." While probation is still the usual penalty for simple possession in Atlanta, fines are far more common elsewhere. "It's a great revenue medium for small cities," Skidmore explains. "My definitive approach in a marihuana case outside Atlanta is finding every possible technical means of throwing out the case."

Skidmore claims that the "emotional" reactions of rural judges tend to lead them into reversible error in pot cases. Since he thinks that federal judges are less susceptible to political pressure than locally elected officials, he tells all clients that if the case gets to the federal level, "we're probably going to win on appeal, if at all."

Although he does make a point of trimming his hair and moustache for small-town appearances, Skidmore still finds his cases listed on the docket after those of local attorneys. "Judges," he comments, "think of me first as an Atlanta lawyer." He has been told, he says, by more than one district attorney that those judges "enjoy being able to send Atlanta attorneys home with their tails between their legs."

Skidmore is concerned about the possible grim after effects of arrests. "Rather than face the criminal process," he explains, "clients commit suicide. Twice that's happened." He is also aware of police attempts to apprehend dealers by turning users into informers. "There's a tremendous need to expose issues of entrapment," he says, recalling a client arrested at a rock festival after undercover agents persuaded him to sell them marihuana.

Personal experience has also led him to worry that pot arrests breed bewilderment and contempt for the law among young people. Some years ago, Skidmore took custody of a 16-year-old boy from the juvenile court. His ward, now in college, has been arrested several times for possession, which "made me more committed to defending marihuana cases."

As NORML's Georgia coordinator, Skidmore spends "probably 60 percent of my professional working hours" on pot matters, defending clients, speaking at high schools, working for law reform, and helping other attorneys. He frequently

takes cases involving the children of his colleagues' business clients. But even though it would mean a loss in fees (he charges between $100 and $500 as a pretrial retainer), Skidmore would prefer to see civil attorneys take up the cudgels. "I'd much rather they learn," he says. Once you take on a pot case, he explains, you become committed to reforming the laws that have made an estimated 26 million people actual or potential criminals. "I get more and more fed up with each case that produces an inhuman result."

Bill Risner of Tucson, Arizona is another pot practitioner who is dismayed by the state of the law. "It's just manifestly unfair," he says. "You have people who drink alcohol passing laws against a drug they just don't understand." In Arizona, simple possession can be either a misdemeanor or, at the judge's discretion, a felony carrying a sentence of one to ten years.

"I'm in Pima County, and that's the liberal part of the state," Risner points out. "For any small quantity at all, the result is probation. There's so much pot around here they just can't put people in jail. It's quite an industry in Tucson. In Maricopa County [Phoenix]—that's the conservative Republican area—they can really do some strange things."

Tucson's location near the Mexican border often leads to seizures of huge amounts of marihuana. Risner recalls clients who were arrested for possession of two tons of it. Four defendants got off without jail terms, but two—one of whom was already on probation—were given stiff sentences—six to eight years, with parole eligibility after two. "It's just terribly sad," laments Risner.

A graduate of the University of Arizona Law School, Risner, 31, says that his long hair and moustache have been no problem in court. "In a way, Tucson is a small town," he says. "The judges know me and I know them. The first several cases I had, I sort of won a reputation, and they started coming in." His four-lawyer firm, Risner, Wolf & Raven, gets more than half its business from marihuana cases; Risner himself has handled about 150 in five years. His fees are similar to those of others in his field, ranging from $300 to $500. In complicated cases, however, he has charged as much as $20,000. But there is satisfaction even in cases that don't bring in big money. "If I keep somebody out of jail," Risner concludes simply, "I feel good."

Alan Ellis of State College, Pennsylvania agrees. Ellis attended Villanova Law School, clerked for several judges, and taught at Golden Gate College School of Law in San Francisco before deciding two years ago to enter private practice. State College, home of Pennsylvania State University, has its share of people who sell drugs, says Ellis, "because this is the way to become a big man on campus." The bearded 31-year-old attorney says that the prevalence of marihuana in the community produces a strong reaction. "The police use binoculars," he says. "They sit up on a roof and scan student apartments for marihuana plants." Fortunately, he reports, "the small cases in Pennsylvania are generally dealt with under a probation-without-verdict section of the new law," a two-year-old reform statute. For simple possession, a defendant can start out again with a clean record after a month's probation.

Despite this comparatively lenient punishment, Ellis says his student clients are anything but blase. " 'Will my parents find out?' That's their first concern," he says. "Jail isn't the problem. It's the stigma of the arrest." And, of course, they have Ellis's $500 fee to consider.

Ellis says he has no trouble with small-town authorities because "we're dealing with them on a professional, human level," and hopes to parlay his reputation into a county judgeship in the 1976 elections. "I find that whenever a client comes in with an out-of-town lawyer, they know they're going to get a fight," Ellis says. "My clients ask, 'Should I shave?' I tell them I'm not going to; once they hear lawyer or doctor, they don't see the beard or long hair."

According to Bill Rittenberg of New Orleans, such enlightenment has not penetrated rural Louisiana. In the cities, juries are increasingly reluctant to convict, and suspended sentences have become the rule. But possession is still a tough rap to beat elsewhere. "It's a substitute for the speed trap in the country," he explains. "We have a conditional discharge on the books, but it's very difficult to get. The judges like that $100 fine." Like many of his colleagues, 29-year-old Rittenberg, a graduate of Tulane Law School, doesn't bother to cut his hair for court appearances in rural areas; he doesn't think it's necessary. "When I go out into the country, I'm not looking for a deal," he says. "They know that whenever somebody from New Orleans takes a case, they've got a fight."

Rittenberg's marihuana cases make up about a quarter of his business. He says he gets so many because rural lawyers have an unpopular habit of collecting

$2,000 retainers and then pleading the client guilty. "It's a real ripoff," he says. "The worst lawyers charge the most and do the least. I'd say a couple of times a month I got a call from a friend of a friend, or from the client himself, who's paid another lawyer and pleaded guilty and wants to to know what to do."

Rittenberg has had success in discrediting inexpert witnesses on identification of the drug. And he finds that feigning inexperience can be an effective ploy, lulling the prosecution into careless errors. And "if you're willing to take a low hourly fee and make half a dozen court appearances," Rittenberg advises, "your chances for acquittal are improved. There are so many variables."

Energetic tactics like Rittenberg's often tempt the prosecution to let a case fade away after arraignment. He points to the case of a young woman who was caught with two marihuana plants and charged with intent to distribute. After several months' delay, she was indicted for simple possession. After several months more, following Rittenberg's motion to suppress evidence (no search warrant could be found), the case was dropped.

"I think that's the key thing," Rittenberg explains. "It's all a bluff. If you call their bluff, many times they're going to fold." Rittenburg is clearly willing to hustle for his $250 or $500.

"You do a lot more work and you make mistakes," he says, but "you learn how to practice by doing it. I tried my first jury case without ever having seen a jury."

Although he's a former staff counsel for the ACLU, Rittenberg is "trained in the gut-alleys of private practice. I think you have a much more realistic view than you do as a movement lawyer. Do-good movement lawyers have a tendency to be very self-righteous and won't talk to the other side."

But not all the attorneys concerned with marihuana law are specialized "hustlers" like Rittenberg. Dave Weiner of Cleveland, for example, spends a good deal of time working with reform efforts like NORML, although he does not practice in the field. An unabashedly straight corporate lawyer, Weiner sees no conflict whatever between his practice and his reformist activities. "We have a referral system throughout the state with lawyers who will take the cases," he says, "We get a lot of calls, and we make a lot of referrals."

On a nationwide scale, NORML headquarters in Washington is probably the readiest and most comprehensive source of referrals and information. Staff counsel Peter Meyers says that lists of individual attorneys and state coordinators are available, and that NORML can also supply briefs, transcripts, law review articles, scientific reports, bibliographies, and summaries of "commonly reoccurring issues and defenses."

Last November, at NORML's third annual national conference, pot practitioners traded ideas on strategy and evaluated the progress of legal reform. Their chief concern was still to determine and increase the chances for the continued spread of decriminalization sentiment among legislators and police officials. "This past year was not a very good year," admitted Frank Fioramonti, "because it was an election year." The 1975 campaign will be directed primarily toward getting Congress to pass the Hughes-Koch-Javits bill, which would decriminalize marihuana on the federal level.

NORML is also anxious to remove marihuana from its current classification as a narcotic. Although most attorneys who handle drug cases see hashish and marihuana in the same light, cases involving hard drugs are, as Bill Risner puts it, "a whole different thing." It's a matter of "moral judgment," adds Tim Skidmore. "It would be very hard for me to accept a heroin sales case."

NORML continues to lobby for reform in state legislatures, eager to develop a nationwide consensus that the use of pot should be no more criminal than the use of alcohol or tobacco. NORML has been supported in its hope that public opinion will swing toward decriminalization by support from such prestigious organizations as the American Bar Association, the American Medical Association, and the National Council of Churches, and such prominent public figures as William F. Buckley, Jr. and Ann Landers.

Recent research studies alleging serious effects of marihuana on the male sex hormone and on human immunity have threatened to slow the liberalizing trends, but NORML's distinguished medical supporters have dismissed them as biased and unscientific. Like any drug, they argue, marihuana has potential side effects, but that is surely no reason to make outlaws out of the millions of otherwise law-abiding people who use it.

According to Pat Horton, district attorney in Eugene, Oregon, decriminalization of marihuana has been accepted quite well by the public, and has actually

helped to clear court calendars and allow police and prosecutors to concentrate on more pressing problems. There has been no measurable influx of users from other states, says Horton, and no significant increase in the use of marihuana among Oregonians since the new law took effect. "I think it is inevitable in the next few years," he predicts, "that the legislatures in the vast majority of states are going to decriminalize marihuana."

Anyone who has ever worried about a bust will be delighted by that prospect. And that includes, oddly enough, the pot practitioners themselves.

[From Juris Doctor, May 1975]

THE CASE FOR MARIHUANA

(By Graham Hughes)

Few issues have more vexed public opinion in the United States in recent years than the spread of drug abuse. There may be parts of the country that have scarcely been touched by the problem, but in large urban centers the prohibited use of drugs has become a great breeder of misery and crime and a constant preoccupation of law enforcement authorities.

The one feature that virtually all of the abused drugs have in common is that they are mood altering. If they were not, there would be little reason to take them. People in Western society, and probably in most human societies, have always indulged in taking such psychoactive drugs. The report of the Task Force on Narcotics and Drug Abuse, published in 1967, contains the provocative but surely accurate comment that the really abnormal behavior in our society would be to take no mood-altering drugs at all.

Side by side with restrictions on the use of some drugs, however, we manage to be very permissive about the use of others, including that very powerful mood-altering drug, alcohol. This ambivalence in our approach surely stems from an uneasy connection between drugs and our notion of what it means to be happy. Happiness is an inner state, but we traditionally connect it with certain valued social arrangements. We think it includes having good and loving relationships with other people, in one's family and outside the family. And the notion of the good life, the happy life, has encompassed, particularly in the Western world, the idea of doing good work, which takes many different forms. This may be artistic or intellectual work, but most people are not gifted with that kind of talent. They may still do good work in the sense that what they do is useful, that it helps others either in an immediate individual way or by making a contribution to the well-being of society in some collective sense. A lack of any feeling of accomplishing such good work no doubt contributes significantly to personal feelings of unhappiness.

Historically there has been an important link between the pursuit of happiness and the ingestion of mind- or mood-altering drugs. The explanation is not hard to find. The stress that ordinary life imposes on most of us often makes the components of happiness frustratingly elusive. Certain drugs have remarkable capacities for liberating us so that we can achieve joy and peace, at least fleetingly.

Traditionally in Western society the great mood-altering drug of fashion has gained such social acceptance that it plays a central part in the most solemn sacrament of the Christian religion. The established place of alcohol in our social life is a recognition that the sensible and moderate use of a drug can, by relieving us of tension and anxiety, liberate us better to pursue happiness. But there is a conflict here, for we have also known, as far back as history goes, that mood-altering drugs may at times work in a quite contrary way. When we take them excessively on one occasion or consistently over a long period, we may become besotted or enslaved to them so that they cripple us in our attempt to lead a good and happy life.

Our dilemma is sharpened by the grip that fashion and tradition have on us. Alcohol is still our primary drug of addiction. The number of alcoholics enormously exceeds the number of heorin addicts, and the total damage done by alcohol in society is incalculably greater than that done by heroin. In the simplest terms of lives cut short, lives that are crippled, work hours lost, the infliction of accidental death and injury on others, and the unhappiness caused to family members, alcohol wins the race by a vast distance. But while we maintain

a polite level of lip service to the dangers of alcohol, we are not frenziedly preoccupied with it in the way that many of our public spokesmen have been with heroin, or for that matter, marihuana. The *prima facie* strangeness of this contrast in attitudes makes it important for us to heed some preliminary cautions.

In the first place, it makes no sense to think in terms of one appropriate solution to the drug problem. The properties and effects of marihuana, barbiturates, cocaine, and heroin are so different that widely differing schemes of regulation may be appropriate for each of these drugs.

Second, the alternatives are not as simple as a start choice between criminalization and decriminalization. There are many habitable way stations between these terminals. One would be to make the use of marihuana and heroin, and possession of small quantities for use, no crimes at all, while retaining criminal penalties for dealing in the drugs. A slightly more generous step would lift the criminal ban from "casual transfers" of small amounts of marihuana for personal use that do not indicate a pattern of dealing for profit.

Here the contrast between heroin and marihuana becomes crucial. For while heroin remains for most Americans (and with some good reasons) a drug that inspires fear and revulsion, cannabis has become as familiar to millions as alcoholic drinks are to others. The chasm between official legal condemnation and popular attitudes may not yet yawn as wide as in the days of Prohibition, for there is a generation gap, with middle-aged and older people, who grew up on a diet of whisky and martinis, remaining suspicious of the newfangled psychoactive substitute used by their children. In many rural areas this popular suspicion and, indeed, distaste may still be very strong. But unless fashion veers off in another direction, each year is likely to see more widespread community contempt and disdain for the marihuana laws.

Cannabis has come under the most intensive scrutiny by public commissions of inquiry in Britain (1968), Canada (1970), and the United States (1972). The commissions examined with considerable thoroughness every contention of harmfulness that had been made about using the drug and every argument that could be advanced for decriminalization. They all came to the conclusion that, while cannabis use should not be encouraged, there was no good case for making its use and possession of small quantities or casual transfers offenses of any gravity. The British and Canadian commissions recommended that use and possession of small quantities be a very minor offense, while the United States commission advocated the complete removal of penalties for private use. All three studies, however, were in favor of continuing severe penalties for private trafficking or possession of large quantities with intent to sell.

No professional authority would assert that there is a finally proven case of marihuana's total harmlessness. Majority scientific opinion holds that there is no convincing evidence of any harm to the user from regular moderate use; but there remains a substantial element of doubt about the possibility of deleterious effects from continued heavy usage. In *United States* v. *Kiffer* (1973), the Second Circuit Court of Appeals, on the question of the constitutionality of the marihuana laws, considered evidence on the harmfulness of use. The principal defense witness had been Dr. Lester Grinspoon, a clinical professor of psychiatry at Harvard Medical School and the author of a leading text on marihuana. The court said: "In addition it was stipulated that five other experts would have supported Dr. Grinspoon's conclusions . . . that marihuana is neither physically nor psychologically harmful to most users and not particularly susceptible of abuse, and that those few who might suffer ill effects through overindulgence probably have personality disorders that would lead them to abusive use of whatever drugs they might succeed in obtaining."

In rebuttal a government witness, also a psychiatry professor, testified that use of high-grade marihuana by volunteers in a study in which he was engaged often induced psychotic episodes. Dr. Grinspoon himself conceded that an article in a British medical journal asserted that long-term use of marihuana led to brain damage. While Dr. Grinspoon did not believe that article to be credible, he agreed that "the effect of marihuana regarding brain damage is not known."

J. W. Fairbairn has pointed out that what we know about marihuana would give us considerable pause if it were a new substance that a drug house was wanting to release for medical use: "Suppose a pharmaceutical firm proposed to releasse a drug with the possible side effects reported at Stockholm [a symposium on cannabis in 1971] or in the World Health Organization Technical Report No. 478, 1971—accumulation in body fat, interference with microsomal

enzymes, tachycardia, teratogenecity, serious effects on driving skill, amotivation which may be related to actual brain damage, and sometimes unpleasant psychotic effects. Although some of this evidence is based on animal work, some on humans, there would be quite enough warning signals to resist approval."

These comments are obviously important, but the analogy is misleading. We may agree that we should scrutinize with a supercritical eye any new substance that a commercial house wishes to launch into the world solely for claimed therapeutic purposes. But marihuana occupies a quite different social setting. Hardly anyone claims that we ought to discount the possible harmful effects of its long-term use because we need it for medical reasons. Marihuana is already in use as a drug of choice for reasons of pleasure by a substantial minority of the population, who seem strongly disinclined to give it up in spite of the existence of criminal penalties. For this reason the only realistic comparison is with licit and licensed pleasure-giving drugs.

All experts agree that whatever may be said about the possible harmful effects of marihuana can be topped by much more horrifying pictures of the damage done by cigarette smoking, the use of alcohol, and perhaps even caffeine. Cigarettes, alcohol, and coffee are legal, so how, some ask, can we without hypocrisy and injustice ban marihuana and punish its users?

But this, in its turn, is also too simple a response. Cigarettes, alcohol, and coffee are deeply ingrained in our culture and are used by millions of people. Though we now know enough about at least cigarettes and alcohol to realize that it would be much better for most people if they did not use them at all, it may be too late to go back and attempt by penal legislation to wipe out such familiar and cherished accouterments of our way of life. But marihuana use has hardly yet reached such an entrenched status. Even if its use is less dangerous than that of cigarettes and alcohol, the argument might run, there is no warrant for reversing an existing situation of illegality when there is still considerable doubt about how harmful it may be. The doctrine of equal protection, after all, does not demand that government continue to make equal mistakes.

Another hallowed argument holds that marihuana smoking has a tendency to lead to the use of more dangerous drugs, notably heroin. It may well be true that most heroin users smoked marihuana before they first used heroin, but, as someone has pointed out, most of them also drank milk before they used heroin. A sequence of events in itself tells us nothing about cause and effect. Most searchers have not been impressed by the claim that the use of marihuana leads people to heroin. The truth is more likely that certain people have a disposition to experiment with drugs and to become imprisoned by them. It is natural for such people to work their way up the ladder of available substances. But it would be rash to assume that if marijuana were unavailable, the move onward and upward could be frustrated. To put this more strongly, one might assert that the sort of person who is likely to experiment with heroin is very unlikely to be diverted in his progress by knowledge that the use of marihuana is prohibited by a criminal penalty.

The arguments in favor of legalizing at least the private use of marihuana are impressive. Advocates point to the fact that the drug is widely used and accepted and is, at the least, probably less harmful than legal drugs such as alcohol and tobacco. Its use is certainly a victimless crime, and the only possible justification for continuing criminal liability is the fragile one of protecting the user from him/. Young people, it is said, are led into contempt for the law when they di er the apparent harmlessness of a substance they have been told must be pro ited because it is so dangerous. This cynicism about teaching on the subj may positively encourage young people to use drugs (such as barbiturates and amphetamines) that are extremely dangerous, simply because officially disseminated information about these drugs will have lost credibility.

The present state of the law also opens an extra market for organized crime and induces young people to make contact with criminals in order to obtain the drug. Law enforcement in this area is expensive, resource depleting, and extremely ineffectual. A few unlucky users and dealers suffer disgrace and punishment, while the vast majority remain untouched.

The most modest proposal, that of the United States Commission, would legalize only private use, while retaining penalties for dealing and possession of large quantities. The most radical advocates would allow legal sale. So sweeping a change would involve a host of subsidiary questions, including who

should control the commercial distribution (free enterprise or a government monopoly), what the quality of the substance should be, and what regulations should surround the commerce in the nature of licensing.

The problem here is in one important sense very different from those of heroin law reform. With heroin we are dealing with addicted persons, and much of the discussion has to do with affording them some legal access to the drug or a satisfactory substitute. With marihuana, the claim is not that it is cruel or useless to deny addicts access to what they crave, but rather that people have a legitimate claim to pursue a pleasure that is not vicious or self-destructive.

In this way, the case for decriminalization of marihuana is at once both simpler and more complex than with heroin. It is simpler in that marihuana lacks the powerful chemistry with which heroin may impose addiction and enslave the user. And so we have naturally regarded marihuana as much less dangerous and have been inclined toward legalization. But this very lack of a powerful addictive property also speaks against legalization—we cannot view the marihuana user as being a sick person, driven by an irresistible impluse to pursue the drug. This makes it seem more defensible to punish him. In the end, the only way we can resolve this problem is by returning to a consideration of the proper boundaries of licensed pleasure.

There are many substances—including alcohol, tobacco (nicotine), and marihuana (cannabis)—that many people have come to find supportive, tranquilizing, relaxing, and thus a prop and a shield when confronted with the discomforts and tensions of ordinary life. Alcohol and marihuana have the capacity to induce euphoria and alteration of mood, the extent of which depends on the amount ingested. Regular users are able, through experience, to control the extent of this mood alteration to a point where it is usually pleasurable. None of these drugs appears to be significantly harmful if used in small quantities occasionally. But the regular use of them in substantial quantities poses different degrees of danger. With tobacco such use markedly increases the risk of heart disease, lung cancer, or other pulmonary afflictions. Alcohol, used in such a way, may cause a variety of illnesses and lead to debility and death in extreme cases. Less is known about the long-term heavy use of marihuana, but, as we have seen, some researchers suggest there is a possibility of brain damage. Other studies point to the fact that substances contained in marihuana are built up over a long period of time in the body and may cause damage to offspring, if not disease in the user.

To this we must add that of the three drugs, the most powerfully addicting is tobacco. Alcohol is not necessarily physiologically addictive, though psychological dependence on it may habituate a minority of users to such regular intake of large quantities that they become in fact addicted and can suffer severe withdrawal symptoms. Marihuana has no addictive properties, though a small minority of users may become so dependent that their lives become largely devoted to the drug.

If mankind were clamoring for a tranquilizing, mildly euphoric substance and only one of these drugs could be legalized, which would we choose? Imagine that a national commission, set up to respond to the public demand, studies all that is known about tobacco, alcohol, and marihuana, with a view to selecting one for legal production and distribution. It is difficult to see how the choice could rationally not be marihuana.

Tobacco has little to commend it. It has no euphoric effect and little capacity to induce mild and pleasant alterations of mood or consciousness. Its tranquilizing effect has to be learned, and for many users eventually wears off as use becomes a mere satisfaction of a physical need, as with heroin. It is extremely addicting and very dangerous to health. Surely tobacco would not be the winner of the contest.

Alcohol appears more attractive. It is transquilizing and euphoric and may be pleasantly effective in altering consciousness. Its use is surrounded with agreeable and elaborate social rituals that have to do with food, conversation, and erotic encounters. For the majority of people who are able to maintain a controlled relationship with the drug, alcohol has a soothing, humanizing, and enriching impact on their lives. But against this must be set the fact that the powers of alcohol are as great for evil as for good. Occasional excessive use may lead to the disease of alcoholism, which works huge amounts of social and physiological damage. An authoritative decision maker would probably strike it from the list.

Marihuana we admittedly know much less about, precisely because it has no history of legal use. But what we do know tends to show that it has considerable powers for tranquilizing and producing pleasurable states of consciousness. A minority of users may become heavily dependent on it, but there is no evidence that marihuana destroys their bodies or that occasional excessive use has the potential, as does alcohol use, to lead to violence. On the existing evidence, the Commission of Choice ought to pick marihuana.

The use of marihuana may have a longer Western history than many suppose, but it has been a submerged, working-class one, never breaking through into circles of fashion until recent years. The seventeenth-century Dutch peasants who are depicted in the paintings of Adriaen Brouwer as being "drunk on tobacco" had probably added a little of the hemp plant to the contents of their pipes. Much more important is the fact that it is now the drug of choice of a great many people.

We suggested earlier that we ought not to legalize marihuana only because it is less harmful or no more harmful than tobacco and alcohol, which are already legal. But we should now add that, given the fact of actual use by many people, the comparative harmlessness of marihuana does become an argument that should count for something. The claim to use a drug of pleasure no more harmful than others that are legal may not be ripe for constitutional recognition as a claim to equal protection, but it is a social argument of some cogency for a legislature to ponder. The drug of choice of the young and many minority groups is banned, while the drugs of the white, middle-aged, middle class are legal. This exaggeration contains an uncomfortable grain of truth.

So, on the one hand, we hear the clamor of those who claim a right to have their pleasure in a way that is not demonstrably more harmful than other people's way of getting their pleasure. From the other side comes the reasonable-sounding caution that the licit presence of dangerous drugs on the social scene is not a very good reason for liberating another substance of some unknown degree of danger. But it is not impossible to accommodate both sides of the argument in a compromise.

The argument that it is unfair to punish the use of marihuana while we permit the use of alcohol and tobacco is persuasive, and we ought, therefore, to abolish penalties for the use of marihuana and possession of small quantities for the purpose of personal use or casual transfer. But the warnings about the unknown dangers and the unknown number of people who might be turned on if there were full legalization have good utilitarian roots and deserve some accommodation. This can be done by retaining the penalties for sale of marihuana or possession of substantial quantities for sale.

Certainly this would leave the situation in a somewhat perverse posture. It would be legal to use a drug for which there is no legal source of supply. In practice this would mean that the user would have to go to some trouble to obtain the drug and have to pay a somewhat inflated price. This may have precisely the desired effect in inhibiting an increase in use and a growth in the number of users. The formal paradox of the solution may be a price worth paying for the practical sense of the outcome—at least in the short run. But such a position should only be retained for a stipulated number of years, while marihuana research is vigorously pressed. In a reasonably short time, we should know enough to make a final decision on legalizing sale and distribution.

Growing recognition of the comparative harmlessness of marihuana will no doubt in time dilute our perception of its dangers. But drug use in general is not likely to diminish, only to change its forms. If life in America leads many young people to experiment foolishly and dangerously with drugs of destructive potential, certainly some organized public response is called for. This can be best shaped by dropping the obsession with marihuana, and heroin as well, and concentrating instead on the provision of services to deprived and disturbed people. We should remember that there are ways in which drugs for a time do help people to cope with or escape from their problems. In the long run the remedy is usually worse than the disease, but while we offer no alternatives, it is natural enough that this foolish self-medication will be tried. While penal law enforcement has a place of some importance in the overall attack on the danger from drugs, it should be much less central than the provision of services to help the unhappy and bewildered members of our society.

MARIJUANA POSSESSION AND THE CALIFORNIA CONSTITUTIONAL PROHIBITION OF CRUEL OR UNUSUAL PUNISHMENT*

I. INTRODUCTION

The use of marijuana in the United States has increased at an extraordinary rate in recent years. It has been estimated that 24,000,000 Americans over eleven years of age have used marijuana, including about one-half of those individuals in the eighteen to twenty-five age group.[1] The increased use of marijuana, and

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[1] NATIONAL COMM'N ON MARIHUANA AND DRUG ABUSE, FIRST REPORT: MARIHUANA: A SIGNAL OF MISUNDERSTANDING 32 (1972) [hereinafter cited as FIRST COMM'N REPORT]; NATIONAL COMM'N ON MARIHUANA AND DRUG ABUSE, SECOND REPORT: DRUG ABUSE IN AMERICA: PROBLEM IN PERSPECTIVE 65 (Joint Comm. Print 1973) [hereinafter cited as SECOND COMM'N REPORT].

The National Commission on Marihuana and Drug Abuse was established by the Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1236, 1280-81. The Commission consisted of two members of the United States Senate, two members of the House of Representatives, and nine persons appointed by President Richard M. Nixon.

The literature on marijuana is vast and sometimes contradictory. The controversial nature of the "marijuana question" often casts doubt upon otherwise "objective" conclusions reached in marijuana studies and commentaries. Problems of bias induced by the predominant selection of favorable research source material appear to be particularly troublesome in articles considering the use and effects of marijuana. Furthermore, scientific studies are often subject to criticism for their use of inappropriate research methodologies. To minimize the use of biased source material, and to avoid the problems inherent in the selection of "accurate" scientific studies, this Comment relies principally on the conclusions drawn by the National Commission on Marihuana and Drug Abuse for the following reasons:

(a) The Commission's Reports constitute the most comprehensive and recent study of the marijuana problem in the United States. The First Commission Report was accompanied by a two-volume Appendix of Technical Papers, consisting of more than 1,200 pages of the results of the various studies conducted for the Commission, as well as an analysis of the studies conducted previous to the Commission's investigation. In addition, a budget of $1 million was authorized by Congress for the Commission's activities. *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, § 601(f), 84 Stat. 1236, 1281.

(b) The National Commission on Marihuana and Drug Abuse has the official status of a United States Government commission.

the attendant increase in arrests for its possession,[2] have intensified the controversy surrounding the propriety of statutes subjecting marijuana users to criminal punishment. In response to these problems, Congress established the National Commission on Marihuana [*sic*] and Drug Abuse to study, among other things, the extent of marijuana use and the efficacy of existing marijuana laws.[3] After intensive study, the Commission concluded that private possession of marijuana for personal use should no longer be a criminal offense.[4] The Commission determined that "criminalization of possession of marihuana for personal use is socially self-defeating as a means of [discouraging its use]."[5]

The Commission further observed that "several recent [judicial] opinions have confirmed our judgment that the possession penalty for marihuana is constitutionally suspect."[6] Indeed, many legal commentators have condemned the constitutionality of possession statutes on a variety of grounds,[7] concluding that such

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(c) The Commission's Reports are the most credible, objective, and nonpartisan of all such studies available. The Commission recognized the importance of "an independent, nonpartisan appraisal of the nature of marihuana and the consequences of its use . . . ." FIRST COMM'N REPORT, *supra* at 3. It is also interesting to note in this connection that most of the Commission members had been previously opposed to the decriminalization of personal use and possession of marijuana, and that President Nixon had stated before the issuance of the Reports that should the Commission recommend decriminalization, he would decline to follow that recommendation. *See* U.S. NEWS & WORLD REPORT, Feb. 21, 1972, at 75.

[2] *See* note 107 *infra*.

[3] *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 601(d)(1)(A), (d)(1)(B), 84 Stat. 1236, 1281.

[4] FIRST COMM'N REPORT, *supra* note 1, at 154.

[5] FIRST COMM'N REPORT, *supra* note 1, at 167. The Commission's reasoning was quite similar to that of John Stuart Mill, who argued over a century earlier:

> Nor is there anything which tends more to discredit and frustrate the better means of influencing conduct, than a resort to the worse. If there be among those whom it is attempted to coerce into prudence or temperance, any of the material of which vigorous and independent characters are made, they will infallibly rebel against the yoke. No such person will ever feel that others have a right to control him in his concerns, such as they have to prevent him from injuring them in theirs; and it easily comes to be considered a mark of spirit and courage to fly in the face of such usurped authority, and do with ostentation the exact opposite of what it enjoins . . . .

J.S. MILL, ON LIBERTY (1859), *quoted in* R. WASSERSTROM, MORALITY AND THE LAW 17-18 (1971).

[6] SECOND COMM'N REPORT, *supra* note 1, at 248, *citing* State v. Kantner, 53 Hawaii 327, 493 P.2d 306, *cert. denied*, 409 U.S. 948 (1972), and People v. Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972).

[7] *See* Bonnie & Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971 (1970) [hereinafter cited as Bonnie & Whitebread]; Boyko & Rotberg, *Constitutional Objections To California's Marijuana Possession Statute*, 14 UCLA L. REV. 773 (1967) [hereinafter cited as Boyko & Rotberg]; Comment, *The California Marijuana Possession Statute: An Infringement on the Right of*

statutes infringe upon constitutional guarantees of due process,[8] equal protection,[9] and the right of privacy.[10] In addition, there is recent judicial authority for the proposition that statutes imposing criminal liability for the possession of marijuana violate the "fundamental constitutional right" to the "enjoyment of life, liberty and the pursuit of happiness."[11] Although some commentators have suggested also that marijuana possession statutes constitute a violation of the cruel and unusual punishment clause of the eighth amendment to the United States Constitution,[12] the validity of California's marijuana possession statute[13] under the cruel *or* unusual punishment clause of the California constitution[14] has escaped

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Privacy or Other Peripheral Constitutional Rights?, 19 HAST. L.J. 758 (1968) [hereinafter cited as *Possession & Privacy*]; Greenstein & DiBianco, *Marijuana Laws—A Crime Against Humanity*, 48 NOTRE DAME LAW. 314 (1972); *see also* FIRST COMM'N REPORT, *supra* note 1, at 140-42, and FIRST COMM'N REPORT, *supra* note 1, App., vol. II, at 1123; SECOND COMM'N REPORT, *supra* note 1, at 247-49.

[8] *See* Bonnie & Whitebread, *supra* note 7, at 1128-33; Boyko & Rotberg, *supra* note 7, at 791-94.

[9] *See* SECOND COMM'N REPORT, *supra* note 1, at 249; Bonnie & Whitebread, *supra* note 7, at 1128-33; Boyko & Rotberg, *supra* note 7, at 785-89.

[10] *See* SECOND COMM'N REPORT, *supra* note 1, at 248-49; Bonnie & Whitebread, *supra* note 7, at 1145-47; *Possession & Privacy*, *supra* note 7; Packer, *The Aims of the Criminal Law Revisited: A Plea for a New Look at "Substantive Due Process"*, 44 S. CAL. L. REV. 490, 496 n.40 (1971).

[11] *See* concurring opinions of Abe, J., in State v. Kantner, 53 Hawaii 327, 334, 493 P.2d 306, 312, *cert. denied*, 409 U.S. 948 (1972); and T.G. Kavanagh, J., in People v. Sinclair, 387 Mich. 91, 131, 194 N.W.2d 878, 895 (1972).

[12] *See* Bonnie & Whitebread, *supra* note 7, at 1133-40; Boyko & Rotberg, *supra* note 7, at 791; Oteri & Norris, *The Use of Expert and Documentary Evidence in a Constitutional Attack on a State Criminal Statute: The Marijuana Test Case*, 56 CALIF. L. REV. 29, 30 (1968); *Possession & Privacy*, *supra* note 7, at 762.

[13] CAL. HEALTH & SAFETY CODE § 11357 (West Supp. 1973) provides, in relevant part, as follows:

> Every person who possesses any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison for a period of not less than one year or more than 10 years.

The provisions of Health and Safety Code section 11530, the former marijuana possession statute, were substantially the same as those of section 11357. Section 11357 was added by [1972] CAL. STAT., ch. 1407, § 3.

[14] Article I, section 6 of the California constitution provides, in relevant part, as follows: "Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted." The significance of determining the validity of Health and Safety Code section 11357 under article I, section 6 of the California constitution lies in the fact that the state constitution provides a basis independent of the eighth amendment to the United States Constitution for invalidation of the statute. Should the California Supreme Court invalidate section 11357 on the basis of article I, section 6 of the California constitution, such decision could not be reviewed by the United States Supreme Court; the "adequate state ground" rule prescribes that "there can be no [United States Supreme Court] review if the state court has decided the case exclusively on some ground of state law, and has never reached a federal question present in the case." C. WRIGHT, FEDERAL COURTS § 107, at 488 (2d ed. 1970). For a discussion of the significance of challenging cruel or unusual punishment on *state*

their attention. Moreover, despite the constitutional objections expressed by the commentators, the California Supreme Court has never passed upon the constitutionality of California's marijuana possession statute.[15] There are recent indications, however, that the cruel or unusual punishment clause of the California constitution is violated by the California marijuana possession statute.[16]

Accordingly, this Comment will examine the effect of article I, section 6 of the California constitution with respect to the existing prohibition against the possession of marijuana, as em-

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constitutional grounds, and an analysis of the "adequate state ground" rule in this context, see Bice, Anderson *and the Adequate State Ground*, 45 S. CAL. L. REV. 750 (1972); Packer, *The Aims of The Criminal Law Revisited: A Plea for a New Look at "Substantive Due Process"*, 44 S. CAL. L. REV. 490 (1971).

[15] In 1967, two commentators noted that "there has never been a definitive constitutional review of the California marijuana possession statute. . . . [J]udicial finger-tapping where marijuana is concerned has all the signs of continuing indefinitely." Boyko & Rotberg, *supra* note 7, at 774. Unfortunately, the justices of the California Supreme Court are still "tapping."

A number of California Court of Appeal cases have rejected challenges of the marijuana possession statute brought on the basis of the cruel or unusual punishment clause. *See, e.g.*, People v. Tharp, 272 Cal. App. 2d 268, 78 Cal. Rptr. 412 (2d Dist. 1969); People v. Sheridan, 271 Cal. App. 2d 429, 76 Cal. Rptr. 655 (4th Dist. 1969), and cases cited therein. It should be noted, however, that these cases rejected the cruel or unusual punishment challenge in rather summary fashion; most cases decided the issue with only a few sentences of discussion. In addition, these cases were all decided prior to People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972), and *In re* Lynch, 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972), discussed in Sections II(*A*) & II(*B*) *infra*.

[16] The California Supreme Court has acknowledged changing social attitudes with respect to the possession and use of marijuana. *See, e.g., In re* Higbie, 6 Cal. 3d 562, 493 P.2d 97, 99 Cal. Rptr. 865 (1972), in which the court held that an attorney's conviction for failure to pay the federal marijuana transfer tax did not demonstrate, per se, moral turpitude. The court noted:

> [T]he possession and use of marijuana at the present time raises controversial questions, to which automatic answers cannot be given. Lawmakers, legal scholars, physicians, and sociologists are divided in opinion as to the wisdom of prohibiting or punishing these acts. . . .
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> . . . Possession or use of marijuana is, of course, unlawful, but measured by the morals of the day its possession or use does not constitute "an act of baseness, vileness or depravity . . . contrary to the accepted and customary rule of right and duty between man and man", or indicate that an attorney is unable to meet the professional and fiduciary duties of his practice.

6 Cal. 3d at 571-72, 493 P.2d at 102-03, 99 Cal. Rptr. at 870-71 (citations and footnote omitted).

In addition, in *In re* Jones, 35 Cal. App. 3d 531, 110 Cal. Rptr. 765 (1st Dist. 1973), Brown, J. (dissenting), became the first California judge to express the view that a defendant's sentence upon conviction for sale of marijuana under Health and Safety Code section 11531 (currently renumbered section 11360 (West Supp. 1973)) constituted cruel or unusual punishment under article I, section 6 of the California constitution. Although the majority of two judges rejected petitioner's challenge to his sentence, the dissenting judge would have held that petitioner's sentence was invalid under the tests announced in In re *Lynch*, discussed in Section II(*B*) *infra*. 35 Cal. App. 3d at 542-54, 110 Cal. Rptr. at 772-80 (dissenting opinion). *See* notes 56-57 & accompanying text *infra*.

bodied in section 11357 of the California Health and Safety Code.[17] First, the indicia of cruel or unusual punishment, as disclosed by major judicial decisions, will be reviewed. This consideration will focus on two recent opinions of the California Supreme Court: *People v. Anderson*[18] and In re *Lynch*.[19] In addition, recent decisions by other state supreme courts determining the constitutionality of their states' marijuana possession and sale statutes will be discussed. These principles will then be applied in an analysis of the constitutional status of California's marijuana possession statute. Finally, it will be suggested that the punishment prescribed by section 11357 is cruel or unusual in the constitutional sense and, indeed, that any sentence of imprisonment for the private possession of marijuana for personal use is invalid under the California constitution.

II. The Indicia of a Cruel or Unusual Punishment

The prohibition against cruel or unusual punishment may appear, to those unfamiliar with the subtleties of constitutional jurisprudence, to constitute a formidable limitation upon the imposition of punishment. Its place among the "fundamental rights" protected by the Bill of Rights in the United States Constitution, and the Declaration of Rights in the California constitution, suggests the importance which the respective framers attached to the proscription of cruel or unusual punishments. Traditionally, however, the most notable characteristic of the limitation has been its disuse.[20] It has been suggested that the reluctance of the judiciary to invoke the prohibition against cruel or unusual punishment results from the failure of the courts and commentators to develop constitutional standards for determining whether a punishment is unconstitutionally cruel or unusual.[21]

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[17] Although many of the constitutional objections to section 11357 discussed in this Comment may be equally applicable to California Health and Safety Code sections 11358 (cultivation of marijuana), 11359 (possession of marijuana for sale), and 11360 (transportation, sale, and importation of marijuana), a consideration of the constitutionality of those statutes is beyond the scope of this Comment. In addition, although this Comment deals primarily with the constitutionality of the present sanctions for *first offense* marijuana possession, the constitutional objections discussed in this Comment should be equally applicable to the sentence which can be imposed for second and subsequent offenders under section 11357. *See* notes 123 & 132 *infra*.

[18] 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972).

[19] 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

[20] *See* Note, *Revival of the Eighth Amendment: Development of Cruel-Punishment Doctrine by the Supreme Court*, 16 STAN. L. REV. 996, at 996 (1964).

[21] *Id.* at 996; Bonnie & Whitebread, *supra* note 7, at 1133-34. *See* Note, *The Cruel and Unusual Punishment Clause and the Substantive Criminal Law*, 79 HARV. L. REV. 635 (1966).

These "constitutional standards," however, have been refined and expanded in a remarkable series of recent developments. Justice Mosk of the California Supreme Court accurately predicted these developments when he observed that "there are straws in the wind to suggest the next section upon which legal fashions focus will be the eighth amendment."[22] The increase in judicial invocation of the cruel and/or unusual punishment clauses within the past three years bears witness to the accuracy of his augury.[23] The cruel or unusual punishment clause of the California constitution has been significantly clarified and developed by the supreme court in the recent cases of *People v. Anderson*[24] and In re *Lynch*.[25] Discussion of these cases follows, as well as an analysis of the standards for determining whether a given punishment violates California's prohibition against cruel or unusual punishment.

A. Anderson: *Contemporary Standards of Decency and Infrequency of Enforcement*

In *Anderson*, the California Supreme Court held that capital punishment constituted both cruel *and* unusual punishment prohibited by article I, section 6 of the California constitution. The case presented a unique opportunity for the court to consider and apply the cruel or unusual punishment clause.[26] In a lengthy and carefully reasoned opinion, Chief Justice Wright discussed the several factors which must be considered when deciding whether a punishment is cruel or unusual.

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[22] Mosk, *The Eighth Amendment Rediscovered*, 1 LOYOLA (L.A.) L. REV. 4, at 4 (1968) [hereinafter cited as Mosk].

[23] *See, e.g.*, Furman v. Georgia, 408 U.S. 238 (1972); *In re* Foss, Crim. No. 16690 (Cal., filed Mar. 14, 1974); People v. Schueren, 10 Cal. 3d 553, 516 P.2d 833, 111 Cal. Rptr. 129 (1973); *In re* Lynch, 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972); People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972); *In re* Jones, 35 Cal. App. 3d 531, 110 Cal. Rptr. 765 (1st Dist. 1973); People v. Lorentzen, 387 Mich. 167, 194 N.W.2d 827 (1972); People v. Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972); State v. Ward, 57 N.J. 75, 270 A.2d 1 (1970).

[24] 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972).

[25] 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

[26] For an interesting account (written by one of the participating attorneys) of the litigation culminating in the *Anderson* case, see M. MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT 141-42, 266-85 (1973) [hereinafter cited as MELTSNER]. Not only was the California Supreme Court squarely presented with the issue of whether capital punishment constituted cruel or unusual punishment under the California constitution, but the court also was apparently hurrying to decide the *Anderson* case before the United States Supreme Court decided Furman v. Georgia, 408 U.S. 238 (1972). MELTSNER, *supra* at 267. The California Supreme Court's haste apparently resulted from the belief that "[t]he Justices of the United States Supreme Court could not fail to be influenced by the California decision." *Id.* at 285. *See also* Barrett, *Anderson and the Judicial Function*, 45 S. CAL. L. REV. 739, 740 (1972).

Initially, the court indicated that the use of the disjunctive in the state constitution (*i.e.*, cruel *or* unusual punishment) was a significant and deliberate departure from the language of the eighth amendment to the United States Constitution, which proscribes cruel *and* unusual punishment.[27] The court noted that the drafters of the California constitution of 1849 were concerned not only that *cruel* punishments be prohibited but also that *disproportionate* and *unusual* punishments also be independently proscribed.[28] Thus, the court held that a punishment can be prohibited if *either* cruel *or* unusual.[29]

Chief Justice Wright next turned to a consideration of the role of the judiciary in giving effect to the clause. In response to the argument that prohibiting the imposition of the death penalty on the basis of the cruel or unusual punishment clause would intrude upon the authority of the Legislature, the court stated that "the cruel or unusual punishment clause of the California Constitution . . . operates to restrain legislative and executive action and to protect fundamental individual and minority rights against encroachment by the majority."[30] The important constitutional question, the court held, could not "be avoided by deferring to any other court or to any other branch of government."[31] The court firmly indicated that while the enactment of penal statutes and the specification of punishment for crime constitute a legislative function, the final judgment as to whether the punishment decreed by the Legislature exceeds constitutional limits is a judicial function.[32]

Having asserted its authority to construe and apply the cruel or unusual punishment clause, the court proceeded to consider the standards which should be applied in such cases. Relying principally on *Trop v. Dulles*[33] and *Weems v. United States*,[34] the court stated that the proper test for determining whether a punishment is "cruel or unusual" can be discerned from the "evolving standards of decency that mark the progress of a maturing society."[35] Because the constitution is a "progressive document," it must be "applied consistently with the standards of the age in which the

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27 6 Cal. 3d at 634-37, 493 P.2d at 883-86, 100 Cal. Rptr. at 155-58.

28 *Id.* at 636, 493 P.2d at 885, 100 Cal. Rptr. at 157.

29 In arriving at this conclusion, the court acknowledged its indebtedness to Justice Mosk, who had argued earlier that the use of the disjunctive in article I, section 6 was of much potential significance. *See* Mosk, *supra* note 22, at 17-18.

30 6 Cal. 3d at 640, 493 P.2d at 888, 100 Cal. Rptr. at 160.

31 *Id.* at 640, 493 P.2d at 887, 100 Cal. Rptr. at 159.

32 *Id.* at 640, 493 P.2d at 888, 100 Cal. Rptr. at 160.

33 356 U.S. 86 (1958).

34 217 U.S. 349 (1910).

35 6 Cal. 3d at 648, 493 P.2d at 893, 100 Cal. Rptr. at 165.

questioned punishment [is] sought to be inflicted."[36]

Of course, the principal problem with this "decency inquiry" lies in determining precisely what the contemporary standards of decency are. In its attempt to specify these standards, the court held that public acceptance of capital punishment was a "relevant, but not controlling factor."[37] Chief Justice Wright concluded that an essential indicator of contemporary standards of decency is the frequency with which the questioned punishment is actually applied. The infrequency of application of a legislatively prescribed punishment "suggests that among those persons called upon to actually impose or carry out the [punishment] it is being repudiated with ever increasing frequency."[38] Thus, an important element of any "decency inquiry" is the reluctance (if any) of those responsible (*e.g.*, judges and juries) for imposing the questioned punishment actually to inflict such measures.[39] The court stated that the death penalty was suspect because it was rarely imposed, and rarely carried out.[40] The *Anderson* court was impressed in this regard by the Report of the President's National Crime Commission, which concluded that "[t]he most salient characteristic of capital punishment is that it is infrequently applied."[41] On the basis of its investigation of statistics showing that the death penalty was rarely enforced, the court concluded that capital punishment was offensive to contemporary standards of decency, and therefore excessively cruel under article I, section 6 of the California constitution.

In arriving at this conclusion, the court further observed that a "cruel" punishment is not limited to the infliction of bodily pain or mutilation. The "dehumanizing effects" of capital punishment were held to be "often so degrading and brutalizing to the human spirit as to constitute psychological torture."[42] The court noted that the psychological impact of the punishment had been dispositive in *Trop v. Dulles*.[43] It therefore concluded that "[t]he

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36 *Id.*

37 *Id.*

38 *Id.* at 648, 493 P.2d at 894, 100 Cal. Rptr. at 166.

39 *Cf.* MELTSNER, *supra* note 26, at 275: "Juries are indeed the conscience of the community, but what they have done is to impose death rarely." *See* notes 172-75 & accompanying text *infra*.

40 6 Cal. 3d at 653, 493 P.2d at 897, 100 Cal. Rptr. at 169.

41 *Id.* at 649, 493 P.2d at 894, 100 Cal. Rptr. at 166.

42 *Id.*

43 356 U.S. 86 (1958). Trop had been convicted of a violation of section 401(g) of the Nationality Act of 1940, which provided that a citizen "shall lose his nationality" by "[d]eserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as a result of such conviction is dismissed or dishonorably discharged from the service . . . ." Chief Justice Warren, writing for a plurality of four members of the court, held that deprivation of citizenship as a punishment for wartime desertion was invalid under the cruel and unusual punishment clause of the

dignity of man, the individual and the society as a whole, is today demeaned by our continued practice of capital punishment."[44]

Finally, Chief Justice Wright turned to a consideration of the "unusual" nature of capital punishment. He rejected the state's argument that a punishment is not unusual in the constitutional sense unless unusual in the form or method by which it is imposed.[45] He held that an excessive or disproportionate punishment is "unusual" in the constitutional sense.[46] The dramatic decrease in executions in the United States and California, as well as the world-wide abolition movement, also indicated the "unusual" nature of capital punishment. The death penalty had become unusual because it was rarely imposed or carried out, and hence was proscribed by the cruel or unusual punishment clause.

Thus, *Anderson* laid the foundation for challenging infrequently enforced punishments. Less than a year after the *Anderson* decision, the court in In re *Lynch*[47] held a punishment invalid under the cruel or unusual punishment clause because it was disproportionate to the offense committed. In the course of that opinion, the court provided a series of principles for determining whether such disproportionality exists.

B. *In re* Lynch: *The Proportionality Requirement*

In the *Lynch* case, the California Supreme Court again seized a propitious opportunity to interpret and apply the state constitutional prohibition against cruel or unusual punishment. John Lynch had written a letter to the supreme court explaining the circumstances of his imprisonment. He was serving an indeterminate sentence for his second conviction for indecent exposure. For three and one-half of the five years he had spent in prison for the offense, he had been confined in the maximum security unit at Folsom State Prison.[48] On the basis of this letter, the court decided to hear his case on writs of habeas corpus.[49]

On these facts, for the first time in its history the court struck down the *length* of a sentence when measured against the cruel or unusual punishment clause of the state constitution. Justice Mosk, writing for the court, voided the recidivist provision of California Penal Code section 314 which made a second conviction

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eighth amendment. The Court stated that denationalization in these circumstances violated "the dignity of man" and the "evolving standards of decency that mark the progress of a maturing society." 356 U.S. at 101.

44 6 Cal. 3d at 650, 493 P.2d at 895, 100 Cal. Rptr. at 167.

45 *Id.* at 653, 493 P.2d at 897, 100 Cal. Rptr. at 169.

46 *Id.* at 654, 493 P.2d at 897, 100 Cal. Rptr. at 169.

47 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

48 *Id.* at 438, 503 P.2d at 940, 105 Cal. Rptr. at 236.

49 Remarks of Justice Mosk to student discussion group at UCLA School of Law, April 1973.

for indecent exposure punishable by one year to life imprisonment in the state prison.[50]

Justice Mosk first determined that the constitutional validity of an indeterminate sentence must be judged by the *maximum* sentence which can be imposed for the offense.[51] Because the indeterminate sentence was, in legal effect, a sentence for the maximum term prescribed by the statute, the court held that the "maximum must in the first instance be constitutionally valid."[52] The court thus deemed petitioner to be serving a life sentence.

The court next responded to the petitioner's argument that his life sentence for indecent exposure was constitutionally invalid because grossly disproportionate to the offense. Justice Mosk noted that the court had already held in *Anderson* that " 'punishment of excessive severity for ordinary offenses' may be both cruel *and* unusual within the meaning of article I, section 6, of the California Constitution."[53] After reviewing a number of United States Supreme Court cases,[54] the court stated that " 'it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.' "[55]

In support of that observation, the court also considered decisions of other state supreme courts which had invoked the "rule of proportionality." It was in this discussion that the court first implied that the present California penalties for the possession of marijuana might be unconstitutionally disproportionate to the offense. As an example of sentences which had been held impermissibly excessive, Justice Mosk cited *People v. Lorentzen*,[56] a case in which the Michigan Supreme Court held that a mandatory minimum sentence of twenty years was disproportionate to the crime of *selling* marijuana and thus violative of the Michigan cruel or unusual punishment clause. Then, in a footnote, he emphasized his point:

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[50] 8 Cal. 3d at 439, 503 P.2d at 940, 105 Cal. Rptr. at 236.

[51] The court stated:

> [W]hen a defendant under an indeterminate sentence challenges that sentence as cruel or unusual punishment in violation of the California Constitution, the test is whether the maximum term of imprisonment permitted by the statute punishing his offense exceeds the constitutional limit, regardless of whether a lesser term may be fixed in his particular case by the Adult Authority.

Id. at 419, 503 P.2d at 926, 105 Cal. Rptr. at 222 (footnote omitted).

[52] *Id.* at 418, 503 P.2d at 926, 105 Cal. Rptr. at 222.

[53] *Id.* at 420, 503 P.2d at 927, 105 Cal. Rptr. at 223 (emphasis added; citation omitted).

[54] Furman v. Georgia, 408 U.S. 238 (1972); Trop v. Dulles, 356 U.S. 86 (1958); Weems v. United States, 217 U.S. 349 (1910); O'Neil v. Vermont, 144 U.S. 323 (1892).

[55] 8 Cal. 3d at 421, 503 P.2d at 928, 105 Cal. Rptr. at 224, *quoting* Weems v. United States, 217 U.S. 349, 366-67 (1910).

[56] 387 Mich. 167, 194 N.W.2d 827 (1972).

> Nor is disproportionality confined to *long* prison sentences: in *State v. Ward* (1970) 57 N.J. 75 [270 A.2d.1], a punishment of *two to three years' imprisonment* for possession of marijuana was held excessive when inflicted on youthful first offenders . . . .[57]

The court thus suggested that a "long" prison sentence for the possession of marijuana could be held to be disproportionate to that offense. As a result of the court's review of these cases, it announced the "proportionality rule":

> [A] punishment may violate article I, section 6 . . . if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.[58]

Conceding that the determination of whether a particular punishment violates the "proportionality rule" constitutes a "question of degree," Justice Mosk presented what he described as three "techniques" to be utilized as an aid in administering the rule. First, the court must look to "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society."[59] In his discussion of this first technique, Justice Mosk added to the implications of his previous footnote.[60] He specifically announced the first technique in the context of a discussion of cases which had held that sentences imposed for the possession and sale of marijuana constituted cruel or unusual punishment.[61] And he again emphasized, with reference to the *Ward* case, that "if the offense is deemed of *minimal danger to society* the penalty may be disproportionate even though the defendant is neither young nor a first offender . . . ."[62] It was further suggested that punishment for the so-called *"victimless crimes"*[63] may be subject to invalidation by this first technique,

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57 8 Cal. 3d at 423 n.13, 503 P.2d at 929 n.13, 105 Cal. Rptr. at 225 n.13 (emphasis added). The court held in *Ward* that, as a matter of law, sentences *must* be suspended upon first conviction for possession of marijuana for personal use. 57 N.J. at 83, 270 A.2d at 5. The court in *Ward* also stated that a two- to three-year sentence for first offense marijuana possession for personal use was "far too severe." *Id.* at 82, 270 A.2d at 5.

58 8 Cal. 3d at 424, 503 P.2d at 930, 105 Cal. Rptr. at 226.

59 *Id.* at 425, 503 P.2d at 930, 105 Cal. Rptr. at 226.

60 *See* text accompanying notes 56-57 *supra*.

61 People v. Lorentzen, 387 Mich. 167, 194 N.W.2d 827 (1972); State v. Ward, 57 N.J. 75, 270 A.2d 1 (1970).

62 8 Cal. 3d at 425, 503 P.2d at 931, 105 Cal. Rptr. at 227 (emphasis added).

63 It has been suggested that "victimless crimes" might more appropriately be termed "crimes for which no witnesses exist," or "complaintless crimes," but both of these terms have their own definitional difficulties. Junker, *Criminalization and Criminogenesis*, 19 UCLA L. REV. 697, 698-99 (1972); Kaplan, *Foreword* to *Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 UCLA L. REV. 1501, 1504 (1968) [hereinafter

because "an offender may *'gain nothing'* from this crime and *'injure nobody.'* "[64] Justice Mosk noted that the *minor nature* of the offense in question may be dispositive of the proportionality issue. Also relevant to the question of proportionality is the *nonviolent* nature of the offense in question.[65]

In its application of the first technique to the crime in question, the court noted that at common law indecent exposure was punished as a misdemeanor, and that a similar punishment prevailed in California until 1952.[66] It was also observed that the crime was nonviolent in nature and that although indecent exposure is not a "victimless crime," any harm that it may cause is minimal at most.[67]

The second technique propounded by the court consists of a comparison of the challenged penalty "with the punishments prescribed in the *same jurisdiction* for *different offenses* which, by the same test, must be deemed more serious."[68] Borrowing from *O'Neil v. Vermont*,[69] *Weems*, and *Lorentzen*,[70] Justice Mosk noted that these cases had given great weight to disparities in sentences. He reasoned that the Legislature may be depended upon to act with due and deliberate regard for constitutional restraints in the vast majority of punishments prescribed in the penal statutes it enacts. But, if among this "vast majority" of statutes, some are found which were enacted through "honest zeal generated in response to transitory public emotion, which provide for more serious penalties than the penalties prescribed for "more serious crimes," then the challenged penalty becomes suspect.[71] In applying the second technique, the court conducted an extensive

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cited as *L.A. Empirical Study*]. *See generally* Skolnick, *Criminalization and Criminogenesis: A Reply to Professor Junker*, 19 UCLA L. REV. 715 (1972); Kadish, *More on Overcriminalization: A Reply to Professor Junker*, 19 UCLA L. REV. 719 (1972); Skolnick, *Coercion to Virtue: The Enforcement of Morals*, 41 S. CAL. L. REV. 588 (1968); E. SCHUR, CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY (1965); Olivieri & Finkelstein, *Report on "Victimless Crime" in New York State*, 18 N.Y.L.F. 77 (1972); SAN FRANCISCO COMMITTEE ON CRIME, A REPORT ON NON-VICTIM CRIMES IN SAN FRANCISCO (1971).

[64] 8 Cal. 3d at 425, 503 P.2d at 931, 105 Cal. Rptr. at 227 (emphasis added; citation omitted).

[65] In view of the relevance of these suggestions to the nature of the offense of marijuana possession, it seems difficult to imagine a more express statement of the potential invalidity of Health and Safety Code section 11357 under the cruel or unusual punishment prohibition. *See* section III(*A*) *infra*.

[66] 8 Cal. 3d at 429, 503 P.2d at 933-34, 105 Cal. Rptr. at 229-30.

[67] *Id.* at 431, 503 P.2d at 934-35, 105 Cal. Rptr. at 230-31.

[68] *Id.* at 426, 503 P.2d at 931, 105 Cal. Rptr. at 227 (emphasis in original).

[69] 144 U.S. 323 (1892).

[70] Weems v. United States, 217 U.S. 349 (1910); People v. Lorentzen, 387 Mich. 167, 194 N.W.2d 827 (1972).

[71] 8 Cal. 3d at 426, 503 P.2d at 931-32, 105 Cal. Rptr. at 227-28. *See* note 160 *infra*.

analysis of the punishments provided for "more serious crimes," and concluded that "the increased punishment provided by section 314 is far more severe than those of other recidivist statutes penalizing conduct that is indisputably more serious."[72]

The third technique for determining proportionality presented by the *Lynch* court is a "comparison of the challenged penalty with the punishments prescribed for the *same offense* in *other jurisdictions* having an identical or similar constitutional provision."[73] The rationale for this technique is that the majority of such other jurisdictions presumably will have prescribed punishments for the questioned offense which are within the constitutional limit of severity. If the challenged punishment is found to exceed the penalties decreed for the offense in a significant number of other jurisdictions, the disparity is a further measure of the excessiveness of the punishment. In applying this third technique, the court noted the unusual severity of California's punishment for second offense exhibitionism when compared with the punishment which could be imposed for the same offense in other states.

In holding the recidivist provisions of the indecent exposure statute void under the cruel or unusual punishment clause of the California constitution, the *Lynch* court laid down three distinct principles which could be utilized in subsequent cases challenging punishments on the basis of their disproportionality to the offense committed. In so doing, the court implied that the present penalties for marijuana possession are suspect. In the ensuing discussion, it will be demonstrated that the principles articulated in the *Anderson* and *Lynch* cases, when applied to the current sentencing provisions of California's marijuana possession statute, render those provisions void under article I, section 6 of the California constitution.

III. The Constitutional Requirements and Marijuana Possession

In applying the principles enunciated in *Anderson* and *Lynch* to section 11357 of the California Health and Safety Code, a considerable array of medical, sociological, and criminological data

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[72] *Id.* at 431-36, 503 P.2d at 935-38, 105 Cal. Rptr. at 231-34. Crimes which the court considered "far more serious" included, *inter alia*, manslaughter (Penal Code section 193), assault with intent to commit murder (Penal Code section 217), assault on a peace officer or fireman engaged in the performance of his duties (Penal Code sections 241, 243), shooting at an inhabited dwelling (Penal Code section 246), poisoning food or drink with the intent to injure a human being (Penal Code section 347), and drunk driving causing bodily injury (Penal Code section 367e and Vehicle Code section 23101).

[73] 8 Cal. 3d at 427, 503 P.2d at 932, 105 Cal. Rptr. at 228 (emphasis in original).

concerning the questioned offense should be considered. Accordingly, in order that the *Anderson* and *Lynch* principles may be properly applied, the following discussion will present and analyze such data regarding the use and possession of marijuana.

A. The Degree of Danger Presented by Marijuana Use

The first technique set forth in *Lynch* for determining whether a punishment is disproportionate to the crime for which it is imposed consists of an examination of "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society."[74] In order to ascertain whether or not such dangers exist, an analysis of the medical and social effects which accompany the use of marijuana is necessary.

1. Medical Effects

One of the principal reasons for the initial criminalization of the possession and use of marijuana was the belief that its use resulted in physiological and psychological impairment. It was once thought that marijuana use produced insanity, addiction, and death.[75] Indeed, the first marijuana legislation in California was included in the State Poison Act, which referred to marijuana as "loco weed."[76]

These beliefs are in distinct contrast to the conclusions drawn from the medical evidence by the National Commission on Marihuana and Drug Abuse.[77] The Commission observed that although a large amount of medical research had been conducted on the subject,

> [n]o conclusive evidence exists of any physical damage, disturbance of bodily processes or proven human fatalities attributable solely to even high doses of marihuana. . . .
>
> . . . .
>
> [T]here is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis . . . .[78]

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74 *In re* Lynch, 8 Cal. 3d 410, 425, 503 P.2d 921, 930, 105 Cal. Rptr. 217, 226 (1972). *See* notes 59-67 & accompanying text *supra*.

75 *See generally* Bonnie & Whitebread, *supra* note 7. *See also* L. GRINSPOON, MARIJUANA RECONSIDERED 363-84 (Bantam ed. 1971) [hereinafter cited as GRINSPOON]; FIRST COMM'N REPORT, *supra* note 1, at 8, 83.

76 [1915] CAL. STAT., ch. 604, at 1068. *See* Boyko & Rotberg, *supra* note 7, at 781-82.

77 Regarding this Comment's emphasis upon the findings and conclusions drawn by the National Commission on Marihuana and Drug Abuse, see note 1 *supra*.

78 FIRST COMM'N REPORT, *supra* note 1, at 56-57, 65. *See also* GRINSPOON, *supra* note 75, at 363-84. A research study conducted for the Commission concluded as follows:

Furthermore, the Commission concluded that there is no reliable evidence that marijuana use produces genetic defects,[79] injury to brain tissue or other organs,[80] or significant physical, biochemical or mental abnormalities (even from long term use).[81] These findings are consistent with a number of previous studies conducted by various governmental commissions, which concluded that "the long-term consumption of cannabis in *moderate* doses has no harmful effects."[82]

The Commission contrasted these findings with the known effects of alcohol use, which can result in death by overdose, specific pathology of brain tissue, and withdrawal symptoms.[83] Furthermore, in dramatic contrast to the American experience with alcohol,[84] there is no reliable scientific evidence demonstrating that chronic psychosis can be caused by marijuana use. In short, the Commission concluded that "alcohol dependence is without question the most serious drug problem in this country today."[85]

The National Commission on Marijuana and Drug Abuse also rejected the assumption that marijuana use is addictive. The

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> [N]o harmful effects were observed on general bodily functions, motor functions, mental functions, personal or social behavior or work performance. . . .
>
> No evidence of physical dependence or signs of withdrawal were noted. . . .
>
> . . . Marihuana intoxication did not significantly inhibit the ability of the subjects to improve with practice through time or these psychological-motor tasks.
>
> Neither immediate nor short-term (21-day) high-dose marihuana intoxication decreased motivation to engage in a variety of social and goal-directed behaviors.

FIRST COMM'N REPORT, *supra* note 1, at 60.

[79] *Id.* at 84.

[80] *Id.* at 66, 85.

[81] *Id.* at 61.

[82] *See* People v. Sinclair, 387 Mich. 91, 112, 194 N.W.2d 878, 886 (1972), citing studies by the Indian Hemp Drugs Commission (appointed by the government of India) in 1893-94, The New York Mayor's Committee on Marijuana ("The LaGuardia Report") in 1944, the British government in 1968, and the Canadian government in 1970. *See also* Editor's Page, 2 CONTEMP. DRUG PROB. 223 (1973), and *Marijuana: A Panel Discussion*, *id.* at 267.

[83] FIRST COMM'N REPORT, *supra* note 1, at 64-65, 85, 87; SECOND COMM'N REPORT, *supra* note 1, at 143-44, 157-58, 183-84, 192-93. *See also* Powell v. Texas, 392 U.S. 514, 562 (1968) (Fortas, J., dissenting): "It is well established that alcohol may be habituative and can be physically addicting." In addition, it has been observed that there is "no evidence to suggest marijuana is cancer producing as is the case with cigarettes." *See In re* Jones, 35 Cal. App. 3d 531, 547, 110 Cal. Rptr. 765, 775 (1st Dist. 1973) (Brown, J., dissenting), *citing* SECRETARY, U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, MARIJUANA AND HEALTH 8 (1971).

[84] *See* People v. Sinclair, 387 Mich. 91, 111, 194 N.W.2d 878, 885 (1972), *citing* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: DRUNKENNESS 35 (1967) [hereinafter cited as PRESIDENT'S COMM'N].

[85] SECOND COMM'N REPORT, *supra* note 1, at 143.

Commission categorically concluded that marijuana "does not induce physical dependence and no significant degree of tolerance is developed."[86] No withdrawal symptom follows even the sudden cessation of chronic, heavy use of marijuana.[87] Indeed, the argument that marijuana use can result in addiction has been officially rejected in California.[88] These effects of even heavy marijuana use are clearly distinguishable in type and degree from the effects of alcohol abuse, which can result in severe withdrawal symptoms.[89]

The Commission also discredited the so-called "stepping-stone theory," which holds that the use of marijuana leads to the use of other "harder" drugs. The Commission observed that the "stepping-stone" theory avoids the real issue and has no basis in fact.[90] The Report emphasized that the overwhelming majority of marijuana users do not progress to the use of other drugs, and that if any drug (including marijuana) is associated with the use of other drugs, it is tobacco, followed closely by alcohol.[91] The Commission concluded that "marijuana use *per se* does not dictate whether other drugs will be used; nor does it determine the rate of progression, if and when it occurs, or which drugs might be used."[92]

In summary, marijuana use presents minimal risks to users in terms of its physiological and psychological effects. The "addiction" and "stepping-stone" arguments have been discredited. Present research indicates that the abuse of alcohol and the use of

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[86] *Id.* at 147; FIRST COMM'N REPORT, *supra* note 1, at 62, 87. *See* GRINSPOON, *supra* note 75, at 256-80; People v. Sinclair, 387 Mich. 91, 111-12, 194 N.W.2d 878, 883-86 (1972). In addition, experimental and intermittent users develop little or no psychological dependence on the drug. FIRST COMM'N REPORT, *supra* note 1, at 66.

[87] FIRST COMM'N REPORT, *supra* note 1, at 87.

[88] Boyko & Rotberg, *supra* note 7, at 777.

[89] *See* People v. Sinclair, 387 Mich. 91, 108, 194 N.W.2d 878, 883 (1972), *citing* PRESIDENT'S COMM'N, *supra* note 84. The court noted:

> Acute alcohol abuse can lead to death from overdosage. In addition, chronic alcohol abuse leads to alcoholism where a clear withdrawal syndrome is observable (an easily discernible physical shaking and later *delirium tremens*), and death of brain cells, mental deterioration, and cirrhosis of the liver may occur.

[90] FIRST COMM'N REPORT, *supra* note 1, at 87-88. The Commission observed:

> This so-called stepping-stone theory first received widespread acceptance in 1951 as a result of testimony at Congressional hearings. At that time, studies of various addict populations repeatedly described most heroin users as marihuana users also. The implication of these descriptions was that a causal relationship existed between marihuana and subsequent heroin use. When the voluminous testimony given at these hearings is seriously examined, no verification is found of a causal relationship between marihuana and subsequent heroin use.

Id. at 88.

[91] *Id.* at 87.

[92] *Id.* at 88-89. The court in People v. Sinclair, 387 Mich. 91, 111-12, 194 N.W.2d 878, 885 (1972), arrived at much the same conclusion. *See also* GRINSPOON, *supra* note 75, at 256-80.

tobacco result in significantly more serious physiological consequences than does the use of marijuana. In short, it appears that the use of marijuana in this country constitutes a minimal risk to public health.[93] Yet, marijuana possession remains subject to severe criminal penalties, while possession of alcohol and tobacco is "legal." It will be shown that such disparities in treatment cannot withstand the proportionality test.

2. Social Effects

An examination of the marijuana possession offense, with particular regard to the degree of danger it presents to society, is essential to the application of the first *Lynch* technique. In terms of this first technique, perhaps the most conspicuous aspect of the marijuana possession offense is its status as a "victimless crime."[94] Clearly, the mere private possession or use of marijuana does not directly affect the legally protectible interests of other individuals, whereas theft, physical assaults, and a myriad of other crimes against persons and property clearly affect these interests. A marijuana possessor "gains nothing" and "injures nobody" by his crime.[95] As one judge has observed, marijuana possession constitutes an offense *malum prohibitum;* the possession or ingestion of a natural growing plant can hardly be *malum in se.*[96] It has been demonstrated in the preceding section that marijuana use does not result in significant physical or mental detriments to users; the *malum prohibitum* status of the possession offense must therefore be justified by some other rationale. It might be suggested that the aggregate social effects produced by the total use and possession of marijuana warrant its criminalization.

The principal social effects rationale advanced for criminalizing marijuana possession has been the theory that marijuana use leads to the commission of other crimes.[97] The theory was based

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[93] *See* FIRST COMM'N REPORT, *supra* note 1, at 91. Despite the considerable evidence that marijuana use does not pose a substantial risk to the health of the user, it has been suggested that the current harsh penalties which can be imposed for marijuana possession are justified because future research may expose presently unknown health dangers. In his dissenting opinion in In re *Jones*, Judge Brown responded to that argument as follows:

> If this court, therefore, is to justify the sentence of five years to life imprisonment in the present case, it must do so, in my opinion, on the ground that marijuana is a danger to society, and not on the basis that future studies may disclose the possibility of physical damage to the user in the far distant future from continued use.

35 Cal. App. 3d 531, 550, 110 Cal. Rptr. 765, 777 (1st Dist. 1973).

[94] *See* notes 63-64 & accompanying text *supra.*

[95] *See* note 64 & accompanying text *supra.*

[96] *See* People v. Sinclair, 387 Mich. 91, 152, 194 N.W.2d 878, 905 (1972) (Brennan, J., concurring).

[97] *See, e.g., In re* Jones, 35 Cal. App. 3d 531, 548 n.4, 110 Cal. Rptr. 765,

on the belief that marijuana intoxication induced acts of violence and aggression. Again, the Commission debunked these unfounded allegations:

> Indeed, if any relationship [between the use of marijuana and the commission of violent or aggressive acts] was indicated [by research conducted for the Commission], it was not a positive and direct causal connection but an inverse or negative statistical correlation.
>
> Rather than inducing violent or aggressive behavior through its purported effects of lowering inhibitions, weakening impulse control and heightening aggressive tendencies, marihuana was usually found to inhibit the expression of aggressive impulses by pacifying the user . . . .[98]

Alcohol use presents a substantially greater potential for violent criminal activity than does marijuana: "data show that marihuana users were much less likely to commit aggressive or violent acts than were those who preferred amphetamines or alcohol."[99] Furthermore, statistics indicate that only a small number of marijuana users have been previously arrested or convicted of violent crime.[100] "Indeed, the only crimes which can be directly attributed to marihuana-using behavior are those resulting from the use, possession or transfer of an illegal substance."[101]

The Commission summarized its findings on the social effects of marijuana use by concluding that "neither the marihuana user

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776 n.4 (1st Dist. 1973); FIRST COMM'N REPORT, *supra* note 1, at 68-69, 71; Bonnie & Whitebread, *supra* note 7, at 1024-26, 1055-58.

[98] FIRST COMM'N REPORT, *supra* note 1, at 71-72.

[99] *Id.* at 73. The Commission further concluded:

> Various empirical studies on the relationship between the use of alcohol and the commission of violent crimes have shown that, in the case of homicide and other assaultive offenses, alcohol was used by at least half the offenders directly prior to the crime.

SECOND COMM'N REPORT, *supra* note 1, at 157.

Moreover, a study conducted for the United States Bureau of Narcotics and Dangerous Drugs indicated that, in Los Angeles, arrestees charged with violent crimes were proportionately *more* likely to be *non*-drug users than marijuana users. For example, whereas 18.6 percent of all non-drug-using arrestees were arrested for aggravated assault, only 6.2 percent of the arrestees who currently used marijuana were arrested for the same offense. Similar patterns were observed for criminal homicide, forcible rape, larceny-theft, non-aggravated assault, weapons offenses, sex crimes, and other offenses. RESEARCH TRIANGLE INSTITUTE, FINAL REPORT (23U-570), DRUG USAGE AND ARREST CHARGES: A STUDY OF DRUG USAGE AND ARREST CHARGES AMONG ARRESTEES IN SIX METROPOLITAN AREAS OF THE UNITED STATES 228-31 (prepared for Bureau of Narcotics and Dangerous Drugs, U.S. Dep't of Justice, Contract No. J-70-35, 1971).

[100] FIRST COMM'N REPORT, *supra* note 1, at 72. Only 5.6 percent of all California defendants convicted of possession of marijuana in 1972 had been previously incarcerated in state prison. CALIFORNIA DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS: DRUG ARRESTS AND DISPOSITIONS (1972), at 17 (1973) [hereinafter cited as DRUG ARRESTS AND DISPOSITIONS]. *See also* Note, *Possession of Marijuana in San Mateo County: Some Social Costs of Criminalization*, 22 STAN. L. REV. 101, 107 (1969) [hereinafter cited as *San Mateo Study*].

[101] SECOND COMM'N REPORT, *supra* note 1, at 159.

nor the drug itself can be said to constitute a danger to public safety."[102] Because the use and possession of marijuana do not present a threat to public safety or constitute any other threat of danger to society substantial enough to justify criminalization,[103] application of the "danger to society" element of the first *Lynch* technique to the marijuana issue suggests that the proper "danger" inquiry be directed not toward the dangerous social effects of marijuana use and possession, but toward the threat posed to society by the fact that use and possession is a criminal offense. The more appropriate question in this context is "What danger (or detriments) does the *prohibition* of marijuana use and possession tender society?"

The inquiry into the detriments which society incurs from marijuana criminalization has most frequently been conducted in the context of a "cost analysis." Professor John Kaplan, one of the leading expositors of the marijuana "cost analysis" technique, concludes that social costs incurred by marijuana criminalization far outweigh any conceivable benefits received by society.[104] For example, he observed that one of the principal costs incurred by society is simply that involved in any criminal statute that is enforced. It has been estimated that California spends about $100 million per year to enforce its marijuana laws.[105] One state assemblyman has lamented that the enforcement of California marijuana laws takes up "about twenty percent of the time as well as

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[102] FIRST COMM'N REPORT, *supra* note 1, at 78.

[103] Following an extensive analysis of the social effects of marijuana use, the Commission concluded:

> [I]t is unlikely that marihuana will affect the future strength, stability or vitality of our social and political institutions. The fundamental principles and values upon which the society rests are far too enduring to go up in the smoke of a marihuana cigarette.

Id. at 102.

[104] J. KAPLAN, MARIJUANA—THE NEW PROHIBITION (Pocket Book ed. 1971) [hereinafter cited as KAPLAN]. Note in particular chapter II, at 22-53. *See also* Kaplan, *Foreword* to *L.A. Empirical Study*, *supra* note 63, at 1501-06. Professor Kaplan's analysis has proven persuasive to some judges, *see, e.g.*, People v. Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972), especially concurring opinion of Williams, J., *id.* at 123, 194 N.W.2d at 895; State v. Kantner, 53 Hawaii 327, 493 P.2d 306, *cert. denied*, 409 U.S. 948 (1972), especially dissenting opinion of Kobayashi, J., *id.* at 371, 493 P.2d at 320; to the National Commission on Marihuana and Drug Abuse, *see* FIRST COMM'N REPORT, *supra* note 1, at 143-46; and to the State Committee On The Revision of the Penal Code, *see* STATE OF CALIFORNIA, JOINT LEGISLATIVE COMMITTEE FOR THE REVISION OF THE PENAL CODE, PROPOSED TENTATIVE DRAFT, DRUGS—PART I: MARIJUANA 1-19 (Mimeo 1968), reprinted in S. KADISH & M. PAULSEN, CRIMINAL LAW AND ITS PROCESSES—CASES AND MATERIALS 24-28 (2d ed. 1969). The Committee was very critical of the California marijuana possession statute; it recommended decriminalization. For a discussion of the Committee's work, and the subsequent "dismissal" of the Committee, *see* Bartels, *Book Review*, 17 WAYNE L. REV. 256 (1971); *Letters*, 22 STAN. L. REV. 160 (1969).

[105] Wall Street Journal, Aug. 25, 1971, at 1, col. 1.

the money of our overworked law enforcement people and our backlogged courts."[106] For example, in 1972, marijuana arrests accounted for 22 percent of all state-wide adult felony arrests[107] and 41 percent of all felony arrests in Los Angeles County.[108]

Furthermore, serious and unique enforcement problems are presented by the continued criminalization of the possession of marijuana. Selective enforcement of marijuana statutes constitutes a serious social cost inherent in marijuana prohibition.[109] The Commission noted:

> Possession of marihuana is generally a private behavior; in order to find it, the police many times must operate on the edge of constitutional limitations. Arrests without probable cause, illegal searches and selective enforcement occur often enough to arouse concern about the integrity of the criminal process.[110]

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[106] 85 L.A. Daily Journal, Nov. 17, 1972, at 1, col. 6 (remarks of State Assemblyman John Burton).

[107] A total of 52,027 of the 240,231 1972 California felony arrests were for marijuana offenses. *See* DRUG ARRESTS AND DISPOSITIONS, *supra* note 100, at 4; CALIFORNIA DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS: CRIMES AND ARRESTS (1972), at 5 (1973). Note that the term "marijuana offenses" presumably included offenses other than a violation of CAL. HEALTH & SAFETY CODE § 11530 (*now* § 11357 (West Supp. 1973)). However, it has been estimated that more than 95 percent of marijuana-related arrests at the state and local levels are for personal possession and casual sales of marijuana. FIRST COMM'N REPORT, *supra* note 1, at 144. In addition to the 52,027 marijuana felony arrests in 1972, there was an "unknown number of misdemeanor arrests." CALIFORNIA DEP'T OF JUSTICE, BUREAU OF CRIMINAL STATISTICS, THE DRUG DIVERSION PROGRAM: AN INITIAL REPORT 5 (1973) [hereinafter cited as DIVERSION PROGRAM].

Statistics indicate that harsh criminal penalties have failed to deter use and possession of marijuana. There were more than *fifteen times* as many felony marijuana arrests in California in 1972 as there were in 1962. DRUG ARRESTS AND DISPOSITIONS, *supra* note 100, at 4. Furthermore, the United States Senate Internal Security Subcommittee estimated that enough marijuana entered the United States in 1973 to produce 5,000,000,000 marijuana cigarettes, a quantity sufficient to provide over twenty "joints" for every person in the nation. The 17,000,000 pounds of marijuana consumed nationally in 1973 represents roughly ten times the total amount of marijuana seized by law enforcement authorities. The Subcommittee report stated that "consumption [of marijuana] far exceeds any previous estimates" (presumably including estimates made by the National Commission on Marihuana and Drug Abuse). L.A. Times, Jan. 6, 1974, § I-A, at 4, col. 1.

[108] DRUG ARRESTS AND DISPOSITIONS, *supra* note 100, at 7.

[109] *See, e.g.*, FIRST COMM'N REPORT, *supra* note 1, at 143-46; KAPLAN, *supra* note 104, at 40-45; *L.A. Empirical Study*, *supra* note 63, at 1536, 1539-42.

[110] FIRST COMM'N REPORT, *supra* note 1, at 145. The questionable police practices encouraged by marijuana possession statutes were exemplified by the Giglotto-Askew raids of April 1973. The mistaken raids, which received a great deal of attention in the national news media, were conducted by drug agents dressed as "hippies" with long hair. The agents, in search of drugs, first raided the Giglotto home by breaking down the front door, rushing upstairs, handcuffing Giglotto and his wife, and, at gunpoint, threatening to kill Giglotto if he didn't tell the agents where to "find the drugs." The agents ransacked the home for ten to fifteen minutes, then left. At no time did the agents identify themselves. About an hour later, the same agents raided (again "mistakenly") the Askew

In addition, the widespread use of marijuana in itself creates monumental enforcement problems.[111] Other social costs, enumerated and extensively analyzed by Professor Kaplan and others,[112] include the fact that criminalization combined with widespread use makes felons of an unusually large portion of the population (especially young people). This, in turn, engenders unnecessary disrespect for the law, and alienation among citizens who believe that marijuana use and possession do not constitute activities which are serious enough to warrant imprisonment as a penalty. Marijuana criminalization hampers efforts directed toward educating young people about the serious dangers resulting from the use of "hard" drugs.[113] Furthermore, the prohibition of marijuana use and possession encourages the proliferation of organized crime (compare alcohol prohibition in the 1920s). In summary, "the possession offense is of little functional benefit to the discouragement policy and carries heavy social costs."[114]

The negligible danger that marijuana use and possession pose to society, when compared with the costs attributable to the enforcement of the marijuana prohibition, amply satisfies the first *Lynch* proportionality requirement. The marijuana possession offense neatly falls within the principles announced for application of that technique: Marijuana possession constitutes a victimless, minor, nonviolent crime which "gains nothing" for the offender (other than personal pleasure) and "injures nobody."[115] The present punishment is clearly disproportionate to the degree of danger to society presented by the marijuana possession offense and the typical offender.

B. Disproportionate Punishment

The second technique announced in *Lynch* to aid in determining whether a punishment is disproportionate to a given offense is a comparison of the challenged penalty with the punishments pre-

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home. Mr. Askew noticed some "hippie looking" men outside his house. He tried to hold the kitchen door shut as the men outside attempted to kick it down, while his wife tried to call the police. However, he was restrained by agents pointing guns through the window. Since disclosing these events, the Giglottos and the Askews have been frequently exposed to "mysterious harassment." L.A. Times, Oct. 30, 1973, § I, at 1, col. 1.

111 *See* note 107 *supra.*

112 *See* note 104 *supra.*

113 For an excellent discussion of this effect, see KAPLAN, *supra* note 104, at 38-39.

114 FIRST COMM'N REPORT, *supra* note 1, at 146. For a full analysis of the foregoing (and other) social costs inherent in marijuana criminalization, see authorities cited in note 104 *supra.*

115 *See* notes 62-65 & accompanying text *supra.*

scribed in the same jurisdiction for other "more serious" offenses.[116] A maximum sentence[117] of ten years in state prison can be imposed under Health and Safety Code section 11357 for possession of marijuana. (California criminal offenses for which a maximum sentence of ten years or less in state prison can be imposed are summarized in Table I of the Appendix.)

A comparison of the ten-year maximum sentence which can be imposed for marijuana possession under section 11357 with the maximum sentences which can be imposed for other more serious crimes makes a convincing case for a finding of disproportionality. For example, it is inconceivable that marijuana possession can be considered a more serious crime than the unlawful killing of a human being. Yet, felony drunk driving resulting in death[118] and vehicular manslaughter[119] are each punishable by a maximum imprisonment of five years in state prison. The maximum sentences which can be imposed for violent crimes against the person, such as assault,[120] battery,[121] and willful infliction of unjustifiable physical pain upon a child under circumstances likely to produce death[122] are less than or equal to that which can be imposed for marijuana possession. And a most peculiar example of sentencing priorities is disclosed by a comparison of the ten-year maximum for marijuana possession with the two-year maximum for assault on a fireman or police officer engaged in the performance of his duties.[123]

Crimes constituting a substantial threat to human life, such as incitement to kill a police officer resulting in death of same,[124]

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116 *See* note 68 & accompanying text *supra*.

117 The validity of an indeterminate sentence under article I, section 6 is determined by the maximum sentence which can be imposed. *See* notes 51-52 & accompanying text *supra*.

118 CAL. VEHICLE CODE § 23101 (West 1970).

119 CAL. PENAL CODE §§ 192, 193 (West 1970).

120 *Id.* § 241 (West Supp. 1973).

121 *Id.* § 243 (West Supp. 1973).

122 *Id.* § 273a (West 1970).

123 *Id.* § 241 (West Supp. 1973).

The disparity between the maximum imprisonment which can be imposed for violent crimes against the person and the maximum sentence which can be imposed for second and subsequent offenses under section 11357 is also apparent. The maximum penalty which can be imposed under section 11357 for a second conviction for marijuana possession is twenty years in state prison; for third and subsequent possession offenses, a maximum of life imprisonment can be imposed. *Cf.* California Penal Code sections 190 (second degree murder; maximum life imprisonment), 193 (manslaughter; maximum 15 years imprisonment), 264 (rape; maximum life imprisonment), 208 (kidnapping; maximum 25 years imprisonment), 217 (assault with intent to commit murder; maximum 14 years imprisonment), 220 (assault with intent to commit rape, robbery, etc.; maximum 20 years imprisonment).

124 CAL. PENAL CODE § 151 (West 1970).

possession of a loaded firearm in the State Capitol or Governor's office,[125] shooting at an inhabited dwelling or at aircraft,[126] drawing a firearm in a threatening manner,[127] and possession of machine guns, bombs, grenades, and tear gas weapons[128] all warrant potential punishment which is significantly less severe than that incident to marijuana possession. Incredibly, poisoning food, drink, or water supplies with the intent that the poisoned substance shall be taken by a person to his injury carries the same maximum penalty as possession of marijuana.[129]

Comparison of section 11357 with statutes regulating the use and possession of other illicit drugs also makes a convincing case for disproportionality.[130] For example, despite the fact that heroin use is much more dangerous in terms of its physiological and social consequences than marijuana use,[131] the maximum imprisonment which can be imposed for first offense heroin possession is the same as that which can be imposed for first offense marijuana possession.[132] Likewise, the maximum punishment which can be imposed for the possession of "harder drugs" such as opium, morphine, codeine, LSD, mescaline, peyote, psilocybin, and amphetamine is equal to that which can be imposed for marijuana possession.[133] Moreover, the possession and use of tobacco and alcohol, activities which most nearly resemble use and possession of marijuana, are not criminal offenses at all.

Finally, the most bizarre instance of sentencing disparity stems from the fact that driving under the influence of a drug (including marijuana), when it results in bodily injury, is punishable by a maximum of five years in state prison,[134] whereas *mere possession* of marijuana is punishable by a maximum of ten years' imprisonment. Surely the use of a drug, when such use results

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125 *Id.* § 171c (West 1970).

126 *Id.* §§ 246, 247 (West 1970).

127 *Id.* § 417 (West 1970).

128 *Id.* §§ 12220, 12303, 12420 (West 1970).

129 *Id.* § 347 (West 1970).

130 In its application of the "second technique," the *Lynch* court compared the indecent exposure statute at issue in that case with other statutes regulating sexual activity, as well as other statutes designed to protect the same interests which the challenged statute sought to protect. 8 Cal. 3d at 432, 503 P.2d at 935, 105 Cal. Rptr. at 231.

131 SECOND COMM'N REPORT, *supra* note 1, at 175, 193.

132 CAL. HEALTH & SAFETY CODE §§ 11054, 11350 (West Supp. 1973). Also note that the maximum imprisonment which can be imposed for second and subsequent marijuana possession convictions under section 11357 is identical with the maximum which can be imposed for second and subsequent convictions for possession of other "harder" controlled substances under Health and Safety Code section 11350.

133 CAL. HEALTH & SAFETY CODE §§ 11054, 11055, 11350 (West Supp. 1973).

134 CAL. VEHICLE CODE § 23106 (West Supp. 1973).

in bodily injury to another, is a far more serious offense than mere possession of the drug. On the basis of a comparison of the offenses discussed above (as well as those listed in Table I) with the offense of marijuana possession, it is clear that in a substantial number of instances, crimes which are far more damaging to society than marijuana possession are punished less severely. Accordingly, a judicial determination is warranted that the imprisonment which can be imposed under Health and Safety Code section 11357 is disproportionate to the offense.

C. *Punishment in Other Jurisdictions: The National Decriminalization Trend*

The third technique to be used in the proportionality inquiry consists of an examination of the penalties prescribed for the same offense in other jurisdictions.[135] A comparison of the maximum penalty which can be imposed for possession of marijuana in California with the maximum penalties in other states and foreign nations discloses significant disparities in punishment.

As a result of the increased use of marijuana and more extensive knowledge about the effects of the drug, a substantial nationwide trend toward a reduction in penalties, and indeed toward decriminalization, has occurred in recent years.[136] California has participated negligibly in this trend: in 1968, the state amended its marijuana possession statute to provide for alternative felony or misdemeanor penalties.[137] Furthermore, the State Legislature in 1972 passed a bill which would have provided for a maximum imprisonment of six months in county jail upon conviction of possession of marijuana, but the measure was vetoed by the Governor.[138] Thus, despite attempts by the Legislature to enact more rational marijuana possession legislation, the maximum penalty which can be imposed for marijuana possession is as severe today as at any other time in California's history.[139]

The preservation of the ten-year maximum penalty for marijuana possession in California compares unfavorably with the nationwide trend towards a reduction in penalties. Only one state,

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[135] *See* note 73 & accompanying text *supra*.

[136] *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 548-50; SECOND COMM'N REPORT, *supra* note 1, at 245-46.

[137] Former CAL. HEALTH & SAFETY CODE § 11530, which provided for mandatory felony punishment prior to 1968, was amended by [1968] CAL. STAT., ch. 1465, at 2930.

[138] A.B. 1778 (Cal. Reg. Sess. 1972), sponsored by Assemblyman Alan Sieroty, was passed by the Legislature on December 1, 1972, but vetoed by Gov. Ronald Reagan on December 29, 1972. FINAL CALENDAR OF LEGISLATIVE BUSINESS 660 (Cal. Reg. Sess. 1972).

[139] *See* Boyko & Rotberg, *supra* note 7, at 783-85.

Rhode Island, maintains a more severe maximum penalty for possession of marijuana (for personal use) than does California, and Arizona is the only other state which provides for the same maximum that California does.[140] With the exception of just six states,[141] every state in the nation provides for a maximum imprisonment of one year *or less* for the possession of marijuana for personal use. Even Texas, which until 1973 prescribed a maximum punishment of life imprisonment for possession of marijuana, reduced its maximum penalty to 180 days for possession of two ounces or less.[142]

Moreover, a number of states have eliminated (or nearly eliminated) imprisonment as a punishment for marijuana possession. Possession of up to one ounce of marijuana is punishable by a maximum fine of $100 in Oregon; incarceration has been eliminated as a sanction.[143] In Massachusetts, probation is mandatory upon first conviction for possession.[144] West Virginia law provides that any first possession or distribution offense (less than fifteen grams) *must* be conditionally discharged.[145] Likewise, a conviction as a "disorderly person," a quasi-criminal non-indictable offense, is the maximum which can be imposed for possession of twenty-five grams or less in New Jersey.[146] Nebraska imposes a maximum penalty of seven days' imprisonment for conviction of possession of up to *one pound* of marijuana.[147] Other states provide for minimal imprisonment.[148] In addition, at least

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140 FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 552-57. These pages list the penalties for marijuana offenses in the fifty states and the United States possessions. Since publication of the Appendix, certain penalties have been reduced in some states: *See* Note, *Is Hawaii Going to Pot?*, 41 U.M.K.C.L. REV. 133, at 133 (1972) (Hawaii); 13 CRIM. L. RPTR. 2545-46 (Sept. 19, 1973) (Oregon); TEXAS REV. CIV. STAT., art. 4476-15, §§ 4.05(b)(3), 4.01(a)(2)(B) (Supp. 1974).

141 Arizona, California, Delaware, Nevada, Pennsylvania, and Rhode Island. *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 552-57.

142 Texas Controlled Substances Act of 1973, § 4.05(b)(3); TEXAS REV. CIVIL STAT. ANN., art. 4476-15 (Supp. 1974).

143 13 CRIM. L. RPTR. 2545-46 (Sept. 19, 1973).

144 MASS. LAWS ANN., ch. 94C, § 34 (Supp. 1972).

145 FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 550.

146 N. J. STAT. ANN. § 24:21-20.(a)(3) (Supp. 1973-74). However, the National Commission on Marihuana and Drug Abuse observed that "[i]t is unlikely that this penalty is often imposed [since the New Jersey Supreme Court held in State v. Ward, 57 N.J. 75, 270 A.2d 1 (1970), that sentences must be suspended for first offenders]." *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 563; note 57 *supra*.

147 FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 554.

148 Examples are Illinois (ninety-day maximum for two and one-half grams or less), Hawaii (maximum of thirty days), New Mexico (maximum of fifteen days for one ounce or less), Michigan (maximum of ninety days), South Carolina (three months maximum for twenty-eight grams or less), and Washington (ninety-day maximum for forty grams or less). *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 552-57.

thirty-two states now have statutes resembling the conditional discharge provisions of the Uniform Controlled Substances Act.[149] These statutes provide for dismissal without an adjudication of guilt upon completion by the arrestee of conditions set by the court. Although California has purportedly enacted the Uniform Controlled Substances Act,[150] the substantially less severe penalties for marijuana possession recommended in the Uniform Act were excluded in the California Act.[151]

A comparison of California penalties with those imposed in foreign nations indicates that the great majority of other countries impose substantially less severe maximum penalties than does California.[152] In five nations—Chile, Denmark, the Netherlands, Sweden, and Nepal—marijuana possession for personal use is either legal, or punishable by only a small fine.[153] In at least twenty-five other countries, possession for personal use is punishable by a maximum of one year's imprisonment.[154]

California retains the second highest maximum punishment for possession of marijuana in the nation. Amidst a clear trend towards decriminalization, California balks at providing a rational maximum punishment for a relatively trivial offense. Under these circumstances, there is a compelling necessity for a judicial finding that the

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149 FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 548-50; SECOND COMM'N REPORT, *supra* note 1, at 246. Section 407 of the Uniform Act provides:

> Whenever any person who has not previously been convicted of any offense under this Act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceeding and place him on probation upon terms and conditions. . . . Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceeding against him. Discharge and dismissal under this Section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 408. (There may be only one discharge and dismissal under this Section with respect to any person.)

FIRST COMM'N REPORT, supra note 1, Appendix, vol. I, at 549-50. *Cf.* the California Drug Diversion Program, discussed at note 179 & accompanying text *infra*.

150 CAL. HEALTH & SAFETY CODE §§ 11000 *et seq.* (West Supp. 1973).

151 Prior to the preliminary recommendation for decriminalization made by the National Conference of Commissioners on Uniform State Laws, discussed at note 169 & accompanying text *infra*, the maximum penalty recommended in the Uniform Act for possession of marijuana for personal use was misdemeanor punishment (which presumably would permit a maximum imprisonment of one year in county jail). *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 548-49.

152 *See* FIRST COMM'N REPORT, *supra* note 1, Appendix, vol. I, at 536-42.

153 *Id.*

154 *Id.*

possible imprisonment for possession of marijuana is disproportionate to the offense.

D. *Infrequency of Enforcement*

In *People v. Anderson*,[155] the California Supreme Court held that a punishment can be proscribed as cruel or unusual if offensive to contemporary standards of decency.[156] The principal method used to determine whether contemporary standards of decency were violated in *Anderson* was to investigate the frequency with which the questioned punishment was imposed. Infrequency of actual application of a statutorily prescribed penalty suggests that the punishment is offensive to contemporary standards of decency. The infrequency with which imprisonment is currently imposed for conviction of marijuana possession under section 11357[157] strongly suggests that the statute will not withstand a "contemporary standards of decency" inquiry.

The "evolving standards of decency that mark the progress of a maturing society" test adopted in *Trop*[158] and *Anderson*[159] is particularly appropriate with respect to marijuana criminalization. Early marijuana legislation resulted primarily from misinformation and racism.[160] Today, however, the relative harmlessness of marijuana use has been authoritatively established,[161] and marijuana use is prevalent among all racial groups.[162] Indeed, the widespread

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155 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972).

156 *See* Section II(*A*) *supra*.

157 *See* notes 172-79 & accompanying text *infra*.

158 Trop v. Dulles, 356 U.S. 86, 101 (1958); *see* note 43 *supra*.

159 People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972). *See* note 35 & accompanying text *supra*.

160 FIRST COMM'N REPORT, *supra* note 1, at 91-92; *id.*, Appendix, vol. I, at 481-94; GRINSPOON, *supra* note 75, at 324-84. Bonnie and Whitebread summarized an extensive historical analysis as follows:

> The early laws against the cannabis drugs were passed with little public attention. Concern about marijuana was related primarily to the fear that marijuana use would spread, even among whites, as a substitute for the opiates and alcohol made more difficult to obtain by federal legislation. Especially in the western states, this concern was identifiable with the growth of the Mexican-American minority. It is clear that no state undertook any empirical or scientific study of the effects of the drug. Instead they relied on lurid and often unfounded accounts of marijuana's dangers as presented in what little newspaper coverage the drug received. It was simply assumed that cannabis was addictive and would have engendered the same evil effects as opium and cocaine. Apparently, legislators in these states found it easy and uncontroversial to prohibit use of a drug they had never seen or used and which was associated with ethnic minorities and the lower class.

Bonnie & Whitebread, *supra* note 7, at 1021-22.

161 *See* section III(*A*) *supra*.

162 FIRST COMM'N REPORT, *supra* note 1, at 32.

contemporary use of marijuana[163] in itself suggests that imprisonment for marijuana use and possession is contrary to contemporary standards of decency. Furthermore, public opinion surveys conducted for the National Commission on Marihuana and Drug Abuse disclosed that 53 percent of the public are unwilling to give young users a criminal record, and 87 percent object to the incarceration of users.[164] It is apparent that there has been a substantial "evolution" of public attitudes concerning the use and possession of marijuana.

A further indication that the imprisonment penalty is offensive to contemporary standards of decency is contained in the policy statements issued by various public organizations. For example, the National Commission on Marihuana and Drug Abuse recommended that all criminal penalties be abolished for private use and possession, and for distribution in small amounts for no (or insignificant) remuneration.[165] The American Bar Association's

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[163] *See* notes 1, 107 & accompanying text *supra*.

[164] FIRST COMM'N REPORT, *supra* note 1, at 144. Note that the California Supreme Court has held that public opinion is a "relevant, but not controlling" factor in the "decency inquiry." *See* note 37 & accompanying text *supra*. Accordingly, public opinion polls are of only limited value in determining whether contemporary standards of decency are violated by a given punishment. Note, however, that recent public opinion polls conducted in California indicate that 51 percent of all Californians favor reduction in present penalties for marijuana offenses, and that about one-third of the public favors the legalization of marijuana. Recent polls show a "liberalizing trend in public opinion toward marijuana legality" when compared with similar polls taken in 1969. Field, *Tolerance Over Marijuana Grows*, L.A. Times, Feb. 8, 1974, § I, at 3, col. 4. In addition, the court has stated that the cruel or unusual punishment clause operates to protect minority rights against encroachment by the majority. *See* note 30 & accompanying text *supra*.

The results of the Proposition 19 referendum, the so-called marijuana decriminalization initiative in the 1972 California general election, seem ambiguous, and certainly not decisive with respect to the inquiry into contemporary standards of decency. Proposition 19 would have abolished all criminal penalties for the use, possession, cultivation, and transportation of marijuana. However, the measure was defeated, with about two-thirds of the electorate voting against it. NEWSWEEK, Nov. 13, 1972, at 40. Although it might be suggested that the results of Proposition 19 show that public standards of decency are not offended by the present penalties for marijuana possession, it is equally plausible to suggest that the opposite is the case. The rejection of Proposition 19 may have resulted from a belief that cultivation and transportation should remain criminal, despite a voter preference for decriminalization of mere possession of marijuana. Furthermore, the fact that as many as one-third of California voters would decriminalize possession, transportation, and cultivation suggests that contemporary standards of decency are offended by continued criminal penalties for mere possession. In any event, *Anderson* has established that the cruel or unusual punishment clause serves to protect minority rights against encroachment by the majority, a constitutional safeguard which should also apply to marijuana possessors. For the text of Proposition 19, and related discussion, see *Marijuana: A Panel Discussion*, 2 CONTEMP. DRUG PROB. 267, 287, 301 (1973).

[165] FIRST COMM'N REPORT, *supra* note 1, at 154. Public use of marijuana would be subject to a maximum fine of $100.

House of Delegates recommended decriminalization of marijuana possession.[166] The California State Bar Association and the San Francisco Bar Association voted to support the "marijuana decriminalization" initiative in the November 1972 general election in California.[167] The Los Angeles County Grand Jury recommended that "private possession of marijuana for personal use [should] no longer be a criminal offense."[168] The National Conference of Commissioners on Uniform State Laws has given preliminary approval to an amendment to the Uniform Controlled Substances Act, which provides for decriminalization of personal use and possession, and of distribution of small amounts for no or insignificant remuneration.[169] In addition, the Board of Trustees of the American Medical Association approved a recommendation of its Council on Mental Health, submitted by the Committee on Alcoholism and Drug Dependence, that "possession of insignificant amounts of marijuana for personal use should not be a criminal act."[170] Finally, the California Medical Association recommended a reduction of all penalties for possession of marijuana for personal use.[171] These requests for decriminalization by prestigious organizations directly concerned with the marijuana issue indicate that contemporary standards of decency are offended by the current criminalization of marijuana use and possession.

But perhaps the principal indication that imprisonment for possession of marijuana violates contemporary standards of decency can be found in the reluctance of those responsible for imposing the sanction to do so in the overwhelming number of cases.[172] Surveys conducted by the National Commission on Marihuana and Drug Abuse show that the major participants in the criminal justice process reject imprisonment as a sanction. The Commission noted that the nation's judges expressed an overwhelming disinclination to imprison marijuana possessors; only 13 percent thought it appropriate to incarcerate an adult for possession, and only 4 percent would jail a juvenile for marijuana possession.[173] It further found

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166 13 CRIM. L. RPTR. 2436-38 (Aug. 15, 1973).

167 U. S. NEWS & WORLD REPORT, Sept. 4, 1972, at 50.

168 COUNTY OF LOS ANGELES, 1972 GRAND JURY POSITION PAPER ON MARIJUANA RECOMMENDATION. A copy of the recommendation statement is on file in the *UCLA Law Review* office.

169 86 L.A. Daily Journal, July 31, 1973, at 1, col. 4. These recommendations were made in response to the National Commission on Marihuana and Drug Abuse decriminalization recommendation.

170 222 J.A.M.A. 84 (1972).

171 L.A. Times, March 14, 1973, § I, at 23, col. 1.

172 *See* notes 37-41 & accompanying text *supra*, and notes 176-79 & accompanying text *infra*.

173 FIRST COMM'N REPORT, *supra* note 1, at 144. Empirical studies in California have also found that judges are reluctant to impose imprisonment in

that "even among the nation's prosecutors, a substantial majority favor the present trend toward avoiding incarceration for first offenders."[174] The Commission concluded:

> Our empirical study shows that 48% of the adult cases, and 70% of the juvenile cases, were dropped from the system at some point between arrest and conviction. The picture displayed is one of a large expenditure of police manpower to enforce a law most participants further along the line are not anxious to apply.[175]

This nation-wide trend is similar to the infrequency of enforcement of the imprisonment sanction prescribed by California Health and Safety Code section 11357. In 1972, only 1.5 percent of all California defendants *convicted* of violation of the marijuana possession statute received a felony sentence and were committed to state prison.[176] In the same year, about 63 percent of all defendants convicted under the statute received no sentence of imprisonment whatsoever.[177] Furthermore, about two-thirds of all felony complaints issued for marijuana offenses in 1972 were dismissed prior to Superior Court filing without being refiled.[178] Finally, under the terms of the two-year experimental state Drug Diversion Program, an estimated 18,000 persons charged with a violation of section 11357 are annually diverted from prosecution and trial at an annual cost of $4.5 million.[179]

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marijuana possession cases. *See, L.A. Empirical Study, supra* note 63, at 1562; *San Mateo Study, supra* note 100, at 111-12.

174 FIRST COMM'N REPORT, *supra* note 1, at 145.

175 *Id.*

176 DRUG ARRESTS AND DISPOSITIONS, *supra* note 100, at 19.

177 *Id.*

178 *Id.* at 13. Note that this figure includes convictions for the more serious marijuana offenses such as cultivation, transportation, and sale.

179 DIVERSION PROGRAM, *supra* note 107, at 5. The estimate of 18,000 marijuana possession diversions is based on the fact that 75.3 percent of all persons diverted under the program were charged with a violation of CAL. HEALTH & SAFETY CODE § 11357 (West Supp. 1973); approximately 24,000 persons have been "diverted" annually. *Id.*

The requirements for entry into the Drug Diversion Program are codified in CAL. PENAL CODE §§ 1000-1000.4 (West Supp. 1973). Significantly, the California Department of Justice states that the Drug Diversion Program was instituted "to unclog court dockets," and

> to lower the cost of trials and the administration of justice. However, the chief reason for founding the Diversion Program was to *de-criminalize* "simple possession of controlled substances" for first offenders, who are otherwise good citizens, so that their records will not be permanently marred by one act of indiscretion.

DIVERSION PROGRAM, *supra* note 107, at 23 (emphasis added). In addition, the report notes the increasing reluctance on the part of participants in the criminal justice system to subject those accused of marijuana possession to imprisonment: "In 1972 only 29 percent of those convicted of a drug law violation were placed under probation department supervision for a marijuana offense, compared to the 75.3 percent of those diverted which were charged with possession of marijuana." *Id.* at 9. Furthermore, certain Los Angeles County deputy district attorneys have disclosed that they believe "all or nearly all" of the defendants

The pattern which emerges from these statistics unquestionably shows that present imprisonment penalties for marijuana possession are rarely imposed in California. Under the principles announced in *Anderson*, the infrequency of imposition of imprisonment for violation of section 11357 warrants the conclusion that the present imprisonment penalties violate contemporary standards of decency. This conclusion is supported by a large and growing demand by responsible public groups for the elimination of criminal penalties, and by the widespread use of the drug. Because the imprisonment sanction is rarely invoked, a judicial determination that present penalties prescribed by section 11357 violate the cruel or unusual punishment clause is mandated.

IV. Conclusion

The California Supreme Court never has considered the validity of California's marijuana possession statute, with respect to the cruel or unusual punishment clause of the California constitution. The previous discussion of the *Anderson* and *Lynch* cases demonstrates that the principles announced therein provide ample authority for invalidating the sentencing provisions of Health and Safety Code section 11357. Indeed, all of the four major principles discussed in those cases, when applied to section 11357, militate in favor of invalidation of the imprisonment provisions of the statute.

Assuming that the court were persuaded that the present punishment provisions of section 11357 are disproportionate to the offense of private use and possession of marijuana, the court might next be expected to consider the degree of punishment which could validly be imposed for the offense. The unresolved issue of the extent to which imprisonment would be proportional to the possession offense might be addressed in various ways. Of course, the court might choose merely to declare the present punishment provisions invalid and leave it to the Legislature to prescribe new punishment provisions. This approach, however, seems excessively cumbersome. If no guidance were given the Legislature in its attempt to enact a constitutionally valid punishment, a drawn-out process of legislative prescription and judicial rejection might well

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arrested for marijuana possession for the first time are diverted from imprisonment under Cal. Pen. Code § 1000 (West Supp. 1973). Future reports on the Drug Diversion program, which will be prepared by the State Department of Justice, will likely provide more accurate statistics on the percentage of section 11357 arrestees who are diverted from prosecution and imprisonment.

It seems patently absurd to expend $4.5 million each year in an attempt to "decriminalize" first offense marijuana possession when the same result can be obtained much more fairly and cheaply by eliminating the present penalties for marijuana possession.

ensue. How much imprisonment would be proportional to the offense? A week? Six months? Six years? There simply would be no judicial suggestion as to the validity of any sentence which subsequently might be prescribed by the Legislature. If the court were to determine that the present punishment provisions of section 11357 are invalid, it would seem only reasonable that the court should suggest a permissible degree of punishment.

The court might instead focus upon the felony-misdemeanor distinction contained within the statute. The case against the felony sentencing provisions of section 11357 is particularly strong. While marijuana use and possession present little danger to the individual user, or to society at large, California nevertheless maintains the second highest maximum sentence in the nation, a sentence which in turn is imposed on only 1.5 percent of all those convicted under section 11357. Furthermore, there is no evidence to indicate that the present trend toward leniency will abate. The fact is that those individuals who are responsible for the imposition of felony penalties (and, indeed, the imposition of *any* imprisonment) almost uniformly refuse to mete out such penalties. The Supreme Court, therefore, should be compelled, on the basis of *Anderson* and *Lynch*, to declare at least the felony sentencing provisions of sections 11357 void under article I, section 6 of the California constitution.

Although the use of the felony-misdemeanor distinction in section 11357 might provide a superficially attractive answer to the punishment dilemma, and a convenient demarcation line for determining a constitutionally valid punishment for marijuana use and possession, the adoption of that distinction would serve to exalt the form of the statute over the substance of the current status of marijuana criminalization. The mere fact that the present felony penalties appear clearly invalid should not serve as a basis for avoiding the question of whether *any* imprisonment is invalid. There is an equally compelling justification for a judicial determination that the imposition of *any* imprisonment for the private use and possession of marijuana is disproportionate to the offense.[180] Such a determination is warranted by the minimal danger resulting from the use and possession of marijuana, the national trend toward decriminalization, and the disuse of imprisonment as a sanction in

[180] This is not to suggest that *any* criminal punishment (*e.g.*, a fine) is proscribed by the cruel or unusual punishment clause. The extent to which criminal punishment can be *totally* proscribed on the basis of the cruel and/or unusual punishment prohibition seems unclear in light of Powell v. Texas, 392 U.S. 514 (1968). *Cf.* Robinson v. California, 370 U.S. 660 (1962); Packer, *Making The Punishment Fit The Crime*, 77 HARV. L. REV. 1071, 1071 (1964); Comment, *The Cruel and Unusual Punishment Clause and the Substantive Criminal Law*, 79 HARV. L. REV. 635, 645-46, 655 (1966).

the great majority of California possession cases. Such a decision would hardly be novel; the New Jersey Supreme Court in *State v. Ward* has already held that imprisonment is an excessive punishment for first offense marijuana possession.[181] In addition, a determination by the court that imprisonment for personal use and possession of marijuana is disproportionate to the offense would obviate any necessity for the court to "draw the line" between terms of imprisonment which would be constitutionally valid and those which would be excessive.

Moreover, the disparate treatment accorded use and possession of alcohol and marijuana suggests that imprisonment for marijuana possession is disproportionate to the offense. For purposes of a proportionality inquiry, possession of alcohol is most closely analogous to possession of marijuana. Both substances are possessed and used for substantially the same reasons, and the use of both substances is widespread. Yet, despite the fact that alcohol use poses a greater threat of physiological harm and anti-social activity than does marijuana, alcohol possession is "legal." The disparity in treatment of alcohol and marijuana possession may well be determinative with respect to the extent to which imprisonment can be constitutionally tolerated. It should, in fact, result in a determination that any sentence of imprisonment is constitutionally impermissible.

The purpose of this Comment has been to demonstrate that there presently exist ample legal authority and compelling justification for the California Supreme Court to invalidate present imprisonment penalties for the private use and possession of marijuana. The "unusual" nature of current criminal penalties, in both the literal and legal sense of the word "unusual," has been demonstrated. Certainly, a criminal law which authorizes the incarceration of enormous numbers of otherwise law-abiding citizens[182] for the commission of a relatively harmless, nonviolent, and "victimless" act is unusual in any conceivable sense of the word. It is difficult to imagine a more appropriate case for the protection of "minority rights against encroachment by the majority." In the words of the National Commission on Marihuana and Drug Abuse, "[w]e must be willing to change when change is indicated."[183]

ROBERT J. ALBRECHT

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181 *See* note 57 & accompanying text *supra*.

182 The subjection of large numbers of otherwise law-abiding citizens to arrest, imprisonment, and other aspects of the criminal process for the possession of marijuana may be so dehumanizing as to be demeaning to the dignity of man within the proscription of the *Trop* and *Anderson* tests. *See* notes 41-44, 100 & accompanying text *supra*.

183 SECOND COMM'N REPORT, *supra* note 1, at 5.

APPENDIX

TABLE I*

FELONY OFFENSES

California Vehicle Code Section	Offense	Maximum Imprisonment
23101	Driving under influence of alcohol, resulting in death or bodily injury	5 years in state prison
23106	Driving under influence of drug, resulting in bodily injury	5 years in state prison

California Health and Safety Code Section	Offense	Maximum Imprisonment
11368	Forging or altering prescription for a narcotic drug	6 years in state prison; 10 years for second and subsequent convictions

California Penal Code Section	Offense	Maximum Imprisonment
38	Misprision of treason	5 years in state prison
85	Offering bribe to member of the Legislature	10 years in state prison
92	Bribing judges or jurors, etc.	10 years in state prison
132	Offering forged or altered evidence	5 years in state prison
148.3	False report of an emergency resulting in great bodily injury or death	5 years in state prison
148.4	Tampering with fire alarms resulting in great bodily injury or death	5 years in state prison
151	Incitement to kill or injure police officer resulting in death of same	5 years in state prison
171c	Possession of loaded firearm in State Capitol or Governor's office	5 years in state prison
192(3), 193	Vehicular manslaughter with gross negligence	5 years in state prison
214	Train robbery	5 years in state prison
222	Administering stupefying drugs to assist in the commission of a felony	5 years in state prison
237	False imprisonment effected by violence, fraud, or deceit	10 years in state prison
241**	Assault against policeman or fireman engaged in the performance of his duties	2 years in state prison
243**	Battery against a policeman or fireman engaged in the performance of his duties	10 years in state prison
246	Shooting at an inhabited dwelling or occupied building	5 years in state prison
247	Shooting at aircraft	5 years in state prison
273a, 273d	Willful infliction of unjustifiable physical pain on a child under circumstances or conditions likely to produce great bodily harm or death; or willful infliction on a child or by a husband on his wife of any cruel or inhuman corporal punishment or injury resulting in a traumatic condition	10 years in state prison

California Penal Code Section	Offense	Maximum Imprisonment
347	Poisoning food, drink, medicine, or water supply with intent to injure human being	10 years in state prison
401	Aiding or advising suicide	5 years in state prison
424	Embezzlement by public officer	10 years in state prison
489	Grand theft	10 years in state prison
514	Embezzlement	10 years in state prison
520	Extortion	10 years in state prison
631	Wiretapping	3 years in state prison; 5 years for second and subsequent convictions
12020	Possession, manufacture, and sale of certain deadly weapons	5 years in state prison
12220	Unauthorized sale, transportation, or possession of machine gun	5 years in state prison
12303**	Possession of destructive device (bombs, grenades, rockets, "molotov cocktails")	5 years in state prison
12420	Sale, transportation, or possession of tear gas weapons	2 years in state prison

MISDEMEANOR OFFENSES

California Vehicle Code Section	Offense	Maximum Imprisonment
23105	Driving vehicle while under influence of a drug	6 months in county jail for first conviction

California Penal Code Section	Offense	Maximum Imprisonment
70	Solicitation or receipt of gratuities by executive officers or public employees	6 months in county jail
73	Buying appointments to office	6 months in county jail
74	Accepting awards for appointment to public office	$5,000 fine and forfeiture of office
94	Solicitation or acceptance of gratuities by judicial officers	6 months in county jail
135	Destruction of evidence	6 months in county jail
146a	Impersonating public officer	1 year in county jail
148	Resisting or obstructing officer	1 year in county jail
148.5	False report of criminal offense	6 months in county jail
241**	Assault	6 months in county jail
243**	Battery	6 months in county jail
314	Indecent exposure	6 months in county jail; 1 year for second and subsequent offenses
374c	Shooting on public highways	6 months in county jail
403	Disturbance of public assembly or meeting	6 months in county jail
404.6	Incitement to riot	6 months in county jail
408	Unlawful assembly	6 months in county jail

California Penal Code Section	Offense	Maximum Imprisonment
415.5	Disturbance of the peace of community college, state college, or university	90 days in county jail for first conviction
417	Drawing firearm in threatening manner	6 months in county jail
418	Forcible entry and detainer	6 months in county jail
466.3**	Possession of tools for breaking into coin-operated machines with intent to commit theft	1 year in county jail
490	Petty theft	6 months in county jail
602.10**	Obstructing community college, state college, or university students or teachers by physical force	1 year in county jail
12025	Carrying concealed weapon	6 months in county jail for first conviction
12031**	Carrying loaded firearm	6 months in county jail
12551**	Sale of firearm to minor	6 months in county jail

* Table I is divided into two sections. The first section presents selected California felony offenses and the maximum imprisonment which can be imposed for each offense. The second section presents misdemeanor offenses and the maximum imprisonment which can be imposed. This division permits individual comparison of the misdemeanor and felony provisions of California Health and Safety Code section 11357 with other California felony and misdemeanor offenses.

** Indicates citation to West Supp. 1973.

109 Ariz. 59

The STATE of Arizona, Appellee,

v.

Lee Anthony WADSWORTH, Appellant.

No. 2399.

Supreme Court of Arizona,
In Banc.

Jan. 19, 1973.

Rehearing Denied Feb. 27, 1973.

Defendant was convicted in the Superior Court, Coconino County, Cause No. 5844, J. Thomas Brooks, J., of furnishing marijuana, and he appealed. The Supreme Court, Cameron, V. C. J., held, inter alia, that retention of marijuana under Narcotic Drug Act, with its resulting severer penalties, rather than classifying it with drugs listed in Dangerous Drug Act with its lesser penalties, is justifiable and is not violative of equal protection.

Affirmed.

Lockwood, J., did not participate.

1. Drugs and Narcotics ⇐43

Fact that a drug in list of narcotic drugs may be less harmful than those listed in dangerous drug statute does not make

classification unreasonable. A.R.S. §§ 32–1901, subsec. 9, 32–1991, 32–1992, subsec. A, 32–1996, subsec. C, 36–1001, subsecs. 13, 14, 36–1002.07.

2. Drugs and Narcotics ⇐43

There is a reasonable basis for classification of marijuana with narcotic drugs rather than dangerous drugs inasmuch as legislative intent was to proscribe use of marijuana, not to scientifically categorize it according to its composition and effect. A.R.S. §§ 32–1901, subsec. 9, 32–1991, 32–1992, subsec. A, 32–1996, subsec. C, 36–1001, subsecs. 13, 14, 36–1002.07.

3. Criminal Law ⇐304(1)

Supreme Court would take judicial notice of fact that marijuana was one of the most widely used drugs among the young and would also note that Arizona's geographical proximity to Mexico, a primary source of marijuana, contributed to magnitude of problem in State.

4. Constitutional Law ⇐250.1(2)
Drugs and Narcotics ⇐43

Retention of marijuana under Narcotic Drug Act, with its resulting severer penalties, rather than classifying it with drugs listed in Dangerous Drug Act with its lesser penalties, is justifiable and is not violative of equal protection. A.R.S. §§ 32–1901, subsec. 9, 32–1991, 32–1992, subsec. A, 32–1996, subsec. C, 36–1001, subsecs. 13, 14, 36–1002.07; U.S.C.A.Const. Amend. 14.

5. Drugs and Narcotics ⇐133

Accepting proposition that legislature may, under police power, prohibit use of marijuana, it follows that stronger penalties designed to prevent widespread use of marijuana are reasonable. A.R.S. §§ 32–1901, subsec. 9, 32–1991, 32–1992, subsec. A, 32–1996, subsec. C, 36–1001, subsecs. 13, 14, 36–1002.07.

6. Drugs and Narcotics ⇐133

Sentencing defendant to a term of not less than five nor more than five years and one day on conviction of furnishing marijuana was not an abuse of discretion, notwithstanding defendant's age and allegedly "small amount" of marijuana involved, where defendant entered into a plea agreement through his attorney to plead guilty to crime of "possession," which would have allowed court to sentence him to a year in county jail rather than five-year minimum sentence for "furnishing," but, after original charge was withdrawn and "possession" charge filed, defendant refused to plead guilty and "possession" charge was then dropped and "furnishing" charge was refiled. A.R.S. §§ 36–1002.05, subsec. A, 36–1002.07.

Gary K. Nelson, Atty. Gen. by William P. Dixon, Asst. Atty. Gen., Phoenix, and Al Vermeire, Law Student, University of Arizona, Tucson, for appellee.

Lewis & Roca by Paul G. Ulrich, David L. Grounds, Richard L. Parrish and William C. Lewis, Jr., Phoenix, for appellant.

CAMERON, Vice Chief Justice.

This is an appeal from a jury verdict and judgment of guilty to the crime of furnishing marijuana in violation of § 36–1002.07 A.R.S. with a sentence of not less than five years nor more than five years and one day in the Arizona State Prison.

The defendant raises only one question on appeal which he states in his brief as follows:

> "Does the continued classification of marijuana with the 'narcotic drugs' rather than with the 'dangerous drugs' and the attendant draconian penalties for a first conviction for furnishing a small amount of marijuana violate the equal protection clauses of the Arizona and United States Constitutions?"

The facts necessary for a determination of the matter on appeal are as follows: On 16 November 1970, the defendant, in the company of others, including Agent William Greenlee of the Arizona Department of Public Safety, "pulled out a baggie of marijuana, * * * and rolled a cigarette, * * * and passed it around to the people in the room." After the second time the cigarette was passed around, Agent Green-

lee pinched out the fire and placed the butt in his coat pocket.

Thereafter, a conversation ensued between Agent Greenlee and the defendant regarding the possible purchase of a hundred kilograms of marijuana. The defendant provided Agent Greenlee with a second marijuana cigarette before leaving. Upon these facts the defendant was convicted and this appeal followed. Defendant does not deny that he violated the statute in question, § 36-1002.07 A.R.S., but attacks the statute itself.

Arizona has two basic drug statutes. The first, under Title 32, Chapter 18 (Pharmacy), 10 A.R.S., concerns regulation of the so-called "dangerous drugs." Dangerous drugs are defined in § 32-1901, subsec. 9 A.R.S. which lists such compounds as amphetamines, barbiturates, mescaline, and central nervous system depressants and includes the substances commonly called "L.S.D." and "speed." § 32-1992, subsec. A A.R.S. provides:

"Nothing in this chapter shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana as defined in the applicable federal and state laws relating to narcotic drugs and marihuana."

§ 32-1991 A.R.S. provides that the State Board of Pharmacy, the "division of narcotics enforcement and criminal intelligence within the department of public safety, all officers exercising police powers, and county attorneys shall enforce the provisions of" Chapter 18 concerning dangerous drugs.

Persons convicted of selling or delivering or otherwise disposing of dangerous drugs are to be punished by an imprisonment of one year to life, § 32-1996, subsec. C A.R.S.

The second of the Arizona drug statutes is found in Title 36, Chapter 9 (Regulation of Narcotics, Alkalies, Acids and Poisons), 11 A.R.S. Article 1 is titled "Uniform Narcotic Drug Act" and § 36-1001, subsec. 14 A.R.S. states:

"14. 'Narcotic drugs' means coca leaves, opium, cannabis, isonipecaine, amidone, isoamidone, ketobemidone, any other drug of natural or synthetic origin that may be classified as a narcotic by the federal narcotics commissioner, and any substance neither chemically nor physically distinguishable from them."

Cannabis is defined in Section 13 of § 36-1001 A.R.S. as including marijuana.

The furnishing of a narcotic drug is punished under § 36-1002.01 A.R.S. which provides in relevant part:

"A. Except as otherwise provided in this article every person who possesses for sale any narcotic drug other than marijuana shall be punished by imprisonment in the state prison for not less than five years nor more than fifteen years, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison."

The furnishing of marijuana is punished as follows in § 36-1002.07 A.R.S.:

"A. Every person who transports, imports into this state sells, furnishes, administers or gives away, * * * any marijuana shall be punished by imprisonment in the state prison from five years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than three years."

Our statutes, then, provide that the sale or furnishing of marijuana, though included in the narcotic drugs section, is punished somewhat less severely than the sale of narcotic drugs "other than marijuana", but more severely than the sale or giving away of dangerous drugs including "L.S.D." and "speed."

In evaluating defendant's claim of denial of equal protection in the classification of marijuana with narcotic drugs, we must

look to the United States Supreme Court for guidance. That court has said:

"The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these:

"1. The equal-protection clause of the 14th Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

"4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377 (1911).

And:

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. (citations omitted)" McGowan v. Maryland, 366 U.S. 420, 425–426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 399 (1961).

The defendant contends that scientists are now in virtually unanimous agreement that marijuana has fundamentally different effects than heroin, opium, morphine and other so-called "hard drugs," and that in response to this "overwhelming" scientific evidence the continued classification of marijuana with narcotic drugs rather than with dangerous drugs and the resulting severe penalty is a violation of defendant's rights under the equal protection clause of the Fourteenth Amendment of the United States Constitution. The defendant quotes the United States Supreme Court as follows:

"* * * When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as an invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. * * *" Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655, 1660 (1942).

Defendant has filed with this court an extensive if not exhaustive appendix on the subject, containing numerous articles by recognized authorities who discuss the alleged arbitrary classification of marijuana with narcotic rather than with dangerous drugs. These articles in the main are concerned with the characteristics of the various drugs discussed and their effects on the human body and resulting behavior of the user. For the purpose of this opinion, we will admit that dangerous drugs such as "L.S.D." and "speed" are more harmful to the user than marijuana, and that scientifically marijuana may not necessarily be included with the drugs defined in the narcotic drug statute, § 36-1001 A.R.S.

[1] This is not, however, persuasive. The fact that a drug in the list of narcotic drugs may be less harmful than those listed in the dangerous drug statute does not make the classification unreasonable.

The classification, we believe, is reasonable and not arbitrary despite the fact that some of the drugs listed could be classified differently. We agree with the dissent of Chief Justice Underwood of the Illinois Supreme Court who said:

"The majority's lengthy discussion of the characteristics and effects of marijuana as compared to other prohibited drugs clearly illustrates that no two drugs are identical and that marijuana is also quite different from the stimulant or depressant drugs with which defendant seeks to classify it. The fact that a substantial body of scientific and medical opinion now considers marijuana to be more nearly like the drugs included in the Drug Abuse Control Act than those prohibited by the Narcotic Drug Act does not, in my opinion, necessitate the conclusion that there was no rational basis for the classification in question. Medical and scientific opinion is even now by no means unanimous in condemnation of classifications of marijuana with 'hard drugs' and, as the majority notes, 'knowledge in this whole area is not nearly complete.' In the absence of more nearly conclusive evidence that the legislative judgment was devoid of any rational basis, a finding of unconstitutionality is unwarranted, for few rules of law are more soundly bottomed than that which proscribes judicial interference with legislative discretion." People v. McCabe, 49 Ill.2d 338, 352, 353, 275 N.E.2d 407, 414 (1971).

[2] The legislative intent in this State was to proscribe the use of marijuana, not to scientifically categorize it according to its composition and effect, and we believe there was a reasonable basis for the classification of marijuana with the narcotic drugs rather than the dangerous drugs.

[3, 4] We believe there is, however, another reason why the classification and especially the penalties imposed can be sustained. The fact that an objectionable practice is widespread may mandate a stiffer penalty in order to discourage its continued use than a more harmful, less often used practice. We take judicial notice of the fact that marijuana is one of the most widely used drugs among our young. Also, we note that Arizona's geographical proximity to Mexico, a primary source of marijuana, contributes to the magnitude of the problem in this State. These are facts which our State legislature may have considered as justification for retaining marijuana under the Narcotic Drug Act, with its resulting more severe penalties, rather than classifying it with the drugs listed in the Dangerous Drug Act with its lesser penalties.

We have stated:

"This court is not concerned with the wisdom of the [legislation] nor may we substitute our judgment for that of the legislature in its choice of method of enforcement * * *. Our inquiry is limited to the question of whether the Act contravenes the state and federal constitutions. Wisdom, necessity, propriety or experience of the Act are matters exclusively within the province of the legislature * * *. If the facts underlying the * * * [Act] * * * are fairly debatable as the number of decisions of appellate courts attests, the judgment of the legislature prevails. * * *" Skaggs Drug Center, Inc. v. United States Time Corporation, 101 Ariz. 392, 397, 398, 420 P.2d 177, 182, 183 (1966). Accord, McKinley v. Reilly, 96 Ariz. 176, 393 P.2d 268 (1964), appeal dismissed, 381 U.S. 276, 85 S.Ct. 1457, 14 L.Ed.2d 431 (1965). See also Patsone v. Pennsylvania, 232 U.S. 138, 34 S.Ct. 281, 58 L.Ed. 539 (1914); Tigner v. Texas, 310 U.S. 141, 60 S.Ct. 879, 84 L.Ed. 1124 (1940); McGowan v. Maryland, supra, Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898 (1969); State v. Kantner, Haw., 493 P.2d 306 (1972).

[5] It should be noted that the defendant does not contend that the legislature lacks the power to prohibit the sale, use or possession of marijuana, but questions the legislative classification with the "at-

tendant draconian penalties." Accepting the proposition, as defendant does, that the legislature may, under the police power, prohibit the use of marijuana, it follows that stronger penalties designed to prevent the present widespread use of marijuana are reasonable. We may doubt whether the legislation is wise and does in fact accomplish the ends desired, but we cannot constitutionally question the reasonableness of the legal classification and the resulting penalty.

[6] We believe that a comment on the sentence in this case is indicated. The statute (§ 36-1002.07 A.R.S.) provides for a statutory minimum of five years, three years of which must be served before the defendant is eligible for parole. The trial court, therefore, was faced with giving defendant either five years or probation. Because of the defendant's age and because of the amount of marijuana involved in the offense, we searched the record carefully to satisfy ourselves that the sentence did not constitute an abuse of the trial court's discretion. The record indicates that the defendant, after having been arrested on the charge of furnishing marijuana, entered into a plea agreement through his attorney to plead guilty to the crime of "possession" (§ 36-1002.05, subsec. A A.R.S.) which would have allowed the court to sentence him to a year in the County Jail rather than the five year minimum sentence in the Arizona State Prison. After the original charge was withdrawn and the "possession" charge filed, the defendant refused to plead guilty and the "possession" charge was then dropped and the "furnishing" charge refiled. At the time of sentencing, the following transpired:

"THE COURT: Mr. Wadsworth, your attorney has mentioned that you were convicted of furnishing only two marijuana cigarettes, and this is correct; but, there was evidence presented at the time of trial, and there are indications in the Presentence Report, that at the time that this incident took place, you were attempting to purchase approximately 100 kilos of marijuana. Do you deny that this was the reason for your visit with the narcotics officer and the other people?

"MR. WADSWORTH: No, sir, I don't deny it.

"THE COURT: Approximately 100 kilos of marijuana would weigh approximately 220 pounds, would it not?

"MR. WADSWORTH: I guess so; something like that.

"THE COURT: And I would assume that this wouldn't have been for your own use?

"MR. WADSWORTH: No, it wouldn't have been.

"THE COURT: Did you have any idea as to the penalty for pushing marijuana when you were arrested?

"MR. WADSWORTH: No, sir.

"THE COURT: Weren't you aware from newspaper publicity and other matters that it was a serious felony?

"MR. WADSWORTH: Yes, I knew it was against the law."

And before passing sentence, the court discussed the defendant's past record:

"THE COURT: Mr. Wadsworth, there have been numerous attempts over the past years, in your situation, to turn you into a good citizen to rehabilitate you; and you have been placed on probation. You were confined for some period of time at the Arizona Industrial School. You were sent from the Industrial School to Northern Arizona University, at a time when the Institute for Human Development at the University was accepting people from Fort Grant for rehabilitation purposes; and apparently, you were there and receiving their counseling for about a year.

Subsequent to this, you had the benefit of psychiatric counseling in Phoenix; having seen a doctor there approximately nine times in 1964, fifteen times in 1965, and six times in 1966. In other words, when you first had your

problems with the law, Mr. Wadsworth, you just weren't locked up in a cell. You were given many opportunities which many people do not have."

We find no abuse of the trial court's discretion in imposing the sentence the defendant received in the instant case.

Judgment affirmed.

HAYS, C. J., STRUCKMEYER and HOLOHAN, JJ., and EINO M. JACOBSON, Court of Appeals Judge, concur.

LOCKWOOD, J., did not participate in the determination of this matter.

Thomas Anderson BOSWELL

v.

STATE of Alabama.

SC 272.

Supreme Court of Alabama.

March 29, 1973.

Rehearing Denied May 10, 1973.

Defendant was convicted in the Circuit Court of Mobile County, Joseph M. Hocklander, J., of selling marijuana, and he appealed. The Supreme Court, Faulkner, J., held, inter alia, that the Uniform Controlled Substances Act is not unconstitutional, either on theory that it fails to contain but one subject clearly expressed in its title or on theory that it arbitrarily classifies marijuana with "hard" narcotic drugs.

Affirmed.

Heflin, C. J., filed concurring opinion.

1. Statutes ⇐107(3)

Uniform Controlled Substances Act satisfies constitutional requirement of having a single subject clearly expressed in its title. Code of Ala., Tit. 22, § 258(25) et seq.; Const.1901, § 45.

2. Statutes ⇐107(1)

Purposes of constitutional provision that each law shall contain but one subject,

which shall be clearly expressed in its title, are notification to the public of nature of pending legislation, avoidance of fraud on the legislature, and prevention of hodgepodge, conglomerate, or "logrolling" legislation. Const.1901, § 45.

3. Statutes ⇐109.1

Title of bill may be very general and need not specify every clause in the statute; it is sufficient if all clauses are referable and cognate to the subject expressed, and when subject is expressed in general terms, everything which is necessary to make it a complete enactment or which results as a complement of the thought contained in the general expression is included in, and authorized by it. Const.1901, § 45.

4. Statutes ⇐107(1)

"Subject" of bill, within constitutional provision that no bill shall contain more than one subject, may include innumerable minor subjects, provided all these minor subjects are capable of being combined as to form only one grand and comprehensive subject. Const.1901, § 45.

See publication Words and Phrases for other judicial constructions and definitions.

5. Drugs and Narcotics ⇐43

Legislature properly could punish sale of marijuana equally with the sale of other controlled substances, and Uniform Controlled Substances Act was not subject to attack on grounds of arbitrary classification in classifying marijuana with "hard" narcotic drugs. Code of Ala., Tit. 22, § 258(47).

6. Criminal Law ⇐1114(1)

Claims were not properly presented for review where there was nothing in the record with respect to such claims.

7. Indictment and Information ⇐86(1), 87(1)

Indictment charging sale of marijuana was not fatally defective in failing to give the place or date of the alleged offense. Code of Ala., Tit. 15, §§ 237, 238.

8. Criminal Law ⇐627(7)

By pleading not guilty, defendant waived any argument that he had not been furnished with a copy of the indictment. Const.1901, § 6.

9. Criminal Law ⇐173

"Jeopardy" begins when the jury has been impaneled and sworn, and the indictment read, and thus defendant was not placed in double jeopardy by the dropping of charges at a preliminary hearing and subsequent indictment by the grand jury.

See publication Words and Phrases for other judicial constructions and definitions.

10. Criminal Law ⇐633(1), 637

No error was shown in that defendant on one occasion prior to trial was brought into court handcuffed, chained, barefoot, dirty, unshaven and disheveled; it could not be assumed that such was other than the way defendant had dressed and groomed himself.

11. Criminal Law ⇐590(2)

Denial of continuance which was requested on ground that counsel had been unable to prepare was within trial court's discretion where any problems defendant had in preparation were caused by his refusal to cooperate with his counsel.

12. Criminal Law ⇐1144.10

Any attorney who has been admitted to practice in state is presumed capable of providing effective and successful representation.

13. Criminal Law ⇐641.13(1)

Relief is available for failure of counsel to provide effective representation only where his conduct reduces the trial to a farce, sham, or mockery of justice.

14. Criminal Law ⇐641.13(1)

Fact that client is ultimately convicted is no reflection on performance of counsel.

15. Criminal Law ⇐37(8)

Fact that course of conduct leading to offense of sale of marijuana began with request by customs agent to buy marijuana did not preclude finding by the jury that there was no entrapment.

16. Criminal Law ⇐991

Defendant's transfer back to federal custody following state trial did not serve to void his state sentence.

17. Criminal Law ⇐1182

Where record was searched for possible error and none appeared, judgment and sentence would be affirmed. Code of Ala., Tit. 15, § 389.

David L. Barnett, Mobile, for appellant.

William J. Baxley, Atty. Gen., and Thomas W. Sorrells, Asst. Atty. Gen., for the State.

FAULKNER, Justice.

Thomas A. Boswell appeals from a judgment of conviction for selling marijuana, in violation of Title 22, § 258(47), Code of Alabama 1940, Recompiled 1958, and sentence of six years in the penitentiary imposed thereon.

The testimony at trial tended to show that Jerry Owensby, an undercover criminal investigator with the U. S. Customs Department, had been working to combat the sale of unlawful drugs in the area of Mobile, Alabama. He testified to having informed the defendant that he wished to buy a pound of marijuana. The defendant, an acquaintance, told Owensby to meet him in twenty minutes. When they met, a conversation ensued:

"Q. What was the essence of that conversation?

"A. The essence of it was that Tommy asked me how much I expected to pay for the pound [of marijuana] and I replied $80.00. He then stated if I would like to buy more than one pound. I stated what would the difference in price be. Tommy then stated that one pound would be $80, five pounds would be $75 per pound, and ten pounds would be $70 per pound.

* * * * * *

"A. I told Tommy that I could purchase three pounds and Tommy stated to me that he would sell it to me for $75 a pound for a total of $225.00 for the three pounds. Tommy then asked me why was an old man like myself purchasing marijuana. He stated usually when old people buy marijuana, they're trying to put people in jail and I just stated that I had some friends in the northern part of Alabama that wanted some marijuana."

Later, the parties met again in the Flaming Hearth Lounge to consummate the deal:

"Q. When he came into the Flaming Hearth, what did you observe him do?

"A. He entered through the rear door and as he walked by me he elbowed me in the back because I hadn't actually seen him and recognized him. I turned to my left as he walked by and I recognized Tommy and I followed him into the men's room which is located to the south of the front entrance.

"Q. Did you have a conversation with him at that time?

"A. Tommy stated to me that he had already placed the marijuana in the truck and had locked the door. I

then gave him the $225.00. He counted it, verified it * * *."

Witness Whatley, hiding in nearby weeds, testified to having observed the defendant placing the marijuana in the back of Owensby's camper.

The defendant himself admitted on the stand to having sold the marijuana to Owensby, but claimed to have turned all of the money over to his supplier, except for $35.00 which he kept as a "commission." Defendant stated in open court:

"I never denied that the transaction was made."

Despite the absence of factual dispute as to the unlawful sale, defendant appealed to the Alabama Court of Criminal Appeals, urging that procedural errors below entitled him to a reversal. On February 28, 1973, the cause was transferred to this court by authority of Title 13, § 111(11a) of our Code.

Appellant's counsel, in his brief, assigns two grounds of error: (1) that the statute defendant was convicted of violating is unconstitutional because it contains more than one subject; and (2) that the statute arbitrarily and unconstitutionally classifies marijuana with "hard" narcotic drugs. Appellant himself, in a 57-page pro se brief, assigns, insofar as we can interpret his turgid and lachrymose prose, at least 21 additional grounds: (3) that he was improperly extradited from Federal prison in Texas to stand trial in Alabama; (4) that he lacked counsel to fight his extradition; (5) that the indictment was vague, and failed to advise him of the nature and cause of the accusation against him; (6) that the indictment was fatally defective in that it lacked the date on which the alleged offense took place; (7) that the indictment was fatally defective in that it omitted the place at which the alleged offense took place; (8) that he never received a copy of the indictment; (9) that he was placed in double jeopardy, because charges at a preliminary hearing were dropped when the judge was advised that the grand jury was indicting defendant for the same offense; (10) that the jury panel composition was improper, lacking young adults; (11) that he was prejudiced by being taken in front of the jury panel handcuffed, chained, barefoot, dirty, unshaven, and disheveled; (12) that the court failed to rule on a motion for his mental examination; (13) that he was given insufficient time to prepare his case; (14) that the performance of his first counsel, Mr. Haas, was so incompetent as to entitle him to reversal; (15) that the performance of his trial counsel, Mr. Alonzo, was so incompetent as to entitle him to reversal; (16) that his appellate counsel, Mr. Barnett, did not communicate with him, and was so incompetent as to deny him due process of law and entitle him to a reversal; (17) that his prosecution was due to a vendetta against him by the district attorney; (18) that certain Negro jurors were Black Muslims, and were railroading him to jail just to punish a "blue-eyed devil" in accordance with the tenets of their faith; (19) that reversible error was made to appear in that two jurors slept soundly throughout the trial; (20) that the whole jury was prejudiced against him; (21) that he was entrapped into committing the offense; (22) that he was denied a transcript to prepare an appeal; and (23) that his transfer back into the Federal penetentiary in Texas after his Alabama trial served to void his state sentence as a matter of law.

The pro se brief sums up:

"Appellant has shown the sordid story of this case in grim relief. Luckless Tom Boswell, a country boy, just back from Alaska, set upon and victimized by the lawless criminal strike force prosecution team paid by tax money extorted from Alabama's citizens—from widows and the working man alike!"

[1] Appellant's initial argument is that the Alabama Uniform Controlled Substances Act, Title 22, § 258(25) et seq. of our Code, under which he was convicted, is

unconstitutional. The Act is divided into five parts: Definitions; Standards and Schedules; Regulation of Manufacture, Distribution and Dispensing of Controlled Substances; Offenses and Penalties; and Enforcement and Administrative Provisions. See "The Uniform Alabama Controlled Substances Act: An Appraisal," 24 Ala.L.Rev. 491 (1972). Appellant contends that covering so many subjects in one statute is violative of the "single subject" clause of our Alabama Constitution, Article 4, § 45:

> "* * * Each law shall contain but one subject, which shall be clearly expressed in its title * * *."

He invokes the case of State v. Welkner, 259 La. 815, 253 So.2d 192 (1971), in which the Louisiana Supreme Court quashed a prosecution for possession of pills under a Narcotics Drug Law provision regulating hard drugs and marijuana. In that case the Louisiana Legislature had amended the body of a law without changing the title to reflect the new contents. This precedent is clearly inapplicable to the Alabama law, which regulates "controlled substances," a term broadly inclusive of all drugs listed therein.

[2] The purposes of this constitutional provision that every law contain but one subject, clearly expressed in its title, have been much commented upon in our case law. They are generally stated to be notification to the public of the nature of pending legislation, avoidance of fraud on the legislature by inadvertent passage of provisions not related to the title thereof, and prevention of hodgepodge, conglomerate, or "logrolling" legislation. State ex rel. Bozeman v. Hester, 260 Ala. 566, 72 So.2d 61 (1954); State ex rel. Bassett v. Nelson, 210 Ala. 663, 98 So. 715 (1923).

[3, 4] Many years ago, in Ballentyne v. Wickersham, 75 Ala. 533 (1883), we stated the test for determining whether a law violates this constitutional provision:

> "[T]he title of a bill may be very general, and need not specify every clause in the statute. Sufficient if they are all referable, and cognate to the subject expressed. And when this subject is expressed in general terms, every thing which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in, and authorized by it." 75 Ala. at 536.

Quoting the Kansas Supreme Court with approval, we continued:

> "'The "subject" to be contained in a bill under section 16, article 2 of the Constitution, which provides that "no bill shall contain more than one subject, which shall be clearly expressed in its title," may be as broad and comprehensive as the legislature may choose to make it. It may include innumerable minor subjects, provided all these minor subjects are capable of being so combined as to form only one grand and comprehensive subject; and if the title of the bill, containing this grand and comprehensive subject, is also comprehensive enough to include all these minor subjects as one subject, the bill and all parts thereof will be valid.'" Id.

It is clear that the component subjects, marijuana possession, heroin possession, marijuana sale, heroin sale, etc., do combine into the "grand and comprehensive" subject of regulation of controlled substances, and that the title of the Act does include all the component parts.

All the limbs of this tree belong to the tree. No alien branch is hidden in the foliage. We hold that the Alabama Uniform Controlled Substances Act satisfies the constitutional requirement of having a single subject clearly expressed in its title.

[5] Appellant next contends that the classification of marijuana with so-called "hard" drugs is unconstitutional. He cites People v. Lorentzen, 387 Mich. 167, 194

N.W.2d 827 (1972), where a 20-year prison term for selling marijuana was held excessive. We are unable to ascertain the relevance of that case to the 6-year sentence imposed here, or in what manner it supports the argument based upon classification of differing drug offenses. Appellant also cites People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971), where classification of marijuana with hard drugs, rather than with stimulants and depressants, was held unconstitutional. The reasoning of McCabe was rejected in State v. Wadsworth, 109 Ariz. 59, 505 P.2d 230 (1973).

Four principles have been laid down by the United States Supreme Court in Lindsley v. Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377 (1911), to determine whether a statutory classification is proper:

1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

Appellant has fallen far short of carrying the burden of showing that the classifications made by § 258(25) et seq. are invalid. Unlike the statutes in *McCabe*, supra, and *Wadsworth*, supra, which involved different scales of penalties, our statute imposes a single range of punishment for selling different controlled substances. (Code, § 258(47)). We hold that the Legislature properly could punish sale of marijuana equally with sale of other controlled substances, and that the Uniform Controlled Substances Act is not subject to attack on the grounds of arbitrary classification.

[6] Next, appellant contends that he was denied counsel to fight his extradition from Federal prison in Texas to Mobile, Alabama, and that the extradition itself was unlawful. There is nothing in the record that would allow us to pass on either of these claims, hence they are not properly presented for review. Edwards v. State, 287 Ala. 588, 253 So.2d 513 (1971); Walker v. State, 223 Ala. 294, 135 So. 438 (1931).

[7] Appellant argues that the indictment was vague, and was fatally defective in that it omitted the place at which the alleged offense was committed. Unfortunately for this contention, Title 15, § 238 of our Code provides:

"It is not necessary [for an indictment] to allege where the offense was committed * * *."

Appellant further argues that the indictment was fatally defective in failing to give the date of the alleged offense. Our Code, Title 15, § 237, states:

"It is not necessary to state the precise time at which the offense was committed; but it may be alleged * * * generally before the finding of the indictment * * *."

Boswell's indictment stated:

"* * * before the finding of this indictment * * * [Boswell] did unlawfully sell marijuana * * *."

Thus, the statutory requirement was satisfied, and appellant's contention is without merit.

CONTINUED

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[8] Appellant urges that he did not receive a copy of the indictment and thus had no notice of the charges against him, in violation of Article 1, § 6, Alabama Constitution. Again, there is nothing in the record on this question. We do note, however, that he waived the reading of the indictment during his arraignment on September 25, 1972. By pleading not guilty, he waived any argument that he had not been furnished with a copy of the indictment. See Howard v. State, 146 Ala. 149, 41 So. 301 (1906).

[9] Appellant contends that he was placed in double jeopardy by the dropping of charges at a preliminary hearing and subsequent indictment by the grand jury. In this state, jeopardy begins when the jury has been impaneled and sworn, and the indictment read. Scott v. State, 110 Ala. 48, 20 So. 468 (1896). Thus the defendant was not placed in double jeopardy.

Appellant argues that the jury panel composition was improper, because its members were on the whole much older than the average citizen of Mobile County. There is not one word in the record as to this issue; hence we cannot review it. Edwards v. State, supra; Walker v. State, supra.

[10] Appellant complains of having been brought to court on one occasion prior to trial handcuffed, chained, barefoot, dirty, unshaven and disheveled. The record is incomplete on this issue; however, we cannot assume other than that was the way the defendant had dressed and groomed himself, and that he was brought to court "as is." No error appears on this point.

Appellant complains that the trial judge failed to rule on a motion that he be given a mental examination. Both the record and appellant's own brief state that the motion was ruled on and denied.

[11] Appellant next complains that he was given insufficient time to prepare his case. His second counsel was appointed on September 15. On September 26, this counsel complained to the court that he had been unable to prepare:

> "[F]or the entire week in visiting with Mr. Boswell in the Mobile City Jail, I was unable to communicate with him. * * * Maybe you call it lack of cooperation I got from the Defendant, I just call it lack of communication because of his obsession with other points."

The judge then set the trial for the next day, and denied a motion for a longer continuance. The two main grounds for the motion were the unavailability of a witness and a request to examine the alleged contraband. The record shows that by the beginning of proceedings next morning the witness was available and the alleged contraband had been examined by a defense expert. We hold that the trial judge's ruling was within the limits of his discretion. Any problems defendant had in preparation were caused by his refusal to cooperate with his counsel.

Appellant contends that each of the three attorneys he had at various stages of the case was so incompetent that his constitutional right to the assistance of counsel was effectively denied.

[12, 13] Every litigant is not necessarily entitled to counsel with the skill and silver-tongued eloquence of Daniel Webster, Clarence Darrow, or Rufus Choate. Any attorney who has been admitted to practice in this state is presumed capable of providing effective and successful representation. If, through carelessness or indolence he does not do so, relief is available, but only where his conduct reduces the trial to a farce, sham or mockery of justice. Gore v. State, 45 Ala.App. 146, 227 So.2d 432 (1969), cert. denied 284 Ala. 729, 227 So.2d 435 (1969), cert. denied 397 U.S. 966, 90 S.Ct. 1002, 25 L.Ed.2d 258 (1970).

[14] It would be superfluous to review in detail the actions of the three attorneys

whose competence is challenged here. Suffice it to say there is no showing whatever that they did not do their jobs well. Every evidence is that their client was a difficult man to deal with, resulting in frequent breakdowns in attorney-client communication. The fact that the client was ultimately convicted is no reflection on their performance. Aldridge v. State, 278 Ala. 470, 179 So.2d 51 (1965).

Appellant asserts that his prosecution was due to a vendetta against him by the District Attorney. There is nothing in the record regarding this allegation, hence nothing is presented for our review. Edwards v. State, supra; Walker v. State, supra.

Appellant contends that certain Negro jurors were Black Muslims, and were prejudiced against him as a "blue-eyed devil" in accordance with the tenets of their faith. Nothing appears of record to indicate the religious affiliation of the jurors, hence nothing is presented for our review. Edwards v. State, supra; Walker v. State, supra.

Appellant complains of sleeping jurors. There was no objection made to this at the time, if the jurors were in fact sleeping, and the record is silent. Nothing is presented for review on this point. The same is true of the contention that the jurors in general were biased against him.

Appellant complains that he was entrapped into committing the crime.

In Johnson v. State, 36 Ala.App. 634, 636, 61 So.2d 867, 869 (1952), our Court of Appeals stated:

> "[E]ntrapment is not available as a defense to a person who has the intent and design to commit a criminal offense and who in fact does commit the essential acts constituting it, merely because an officer of the law, in his effort to secure evidence against such person, affords him an opportunity to commit the criminal act * * *."

[15] There is no doubt that the course of conduct leading to the criminal activity began with the request by Owensby, the customs agent, to buy marijuana. The defendant sold the marijuana in response to this request. However, the agent's conduct, merely affording defendant the opportunity to commit a criminal act, falls short of what is necessary to constitute entrapment. Johnson v. State, supra. See also Brewer v. State, 23 Ala.App. 100, 123 So. 86 (1929), in which officers induced defendant to sell them liquor, then prosecuted him for violating prohibition laws. No entrapment was found.

In this case the entrapment issue was submitted to the jury with unusually full and fair instructions from the trial judge. The jury found no entrapment. We hold they could properly so find.

Appellant complains of failing to receive a transcript to use in preparing his appeal. The problem appears to have arisen between appellant, jailed in Texas, and his counsel in Mobile, Alabama as to who would use the single transcript available. Appellant ultimately did receive the transcript in Texas, and used it to prepare his 57-page pro se brief. No error appears on this point.

[16] Finally, appellant contends that his transfer back to Federal custody following his Alabama trial served to void his state sentence as a matter of law. We are unaware of any authority in support of this position.

[17] As mandated by Title 15, § 389 of our Code, we have searched the record for possible error. None appearing, the judgment and sentence must be and are affirmed.

Affirmed.

HEFLIN, C. J., and MERRILL, HARWOOD and MADDOX, JJ., concur.

HEFLIN, Chief Justice (concurring):

If "sufficient doubt" of the mental capacity of the defendant to stand trial had been shown then I would have been of the opinion that a hearing should have been held separate from the trial to determine the defendant's mental capacity to stand trial. See Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815. See also my dissenting opinion in Seibold v. State, 287 Ala. 549, 253 So.2d 302.

While the defendant did interpose a plea of not guilty by reason of insanity, he withdrew such plea before it went to the jury. A review of the record in this case indicates that there was not manifested during the trial "sufficient doubt" pertaining to the mental competency of the defendant to stand trial so as to justify a hearing on that issue.

I, therefore, concur in the opinion.

387 Mich. 91

PEOPLE of the State of Michigan, Plaintiff-Appellee,

v.

John A. SINCLAIR, Defendant-Appellant.

No. 19.

Supreme Court of Michigan.

March 9, 1972.

Defendant was convicted before the Recorder's Court of Detroit, Wayne County, Robert J. Colombo, J., of illegal possession of marijuana and he appealed. The Court of Appeals, 30 Mich.App. 473, 186 N.W.2d 767, affirmed. After granting leave to appeal, the Supreme Court held that conviction would be reversed and defendant discharged; two judges being of opinion that statutory categorization of marijuana along with "hard drug" narcotics for purposes of imposition of penalties denied equal protection, one judge being of opinion that statute denied right to liberty and pursuit of happiness, two judges being of opinion that marijuana cigarettes should have been excluded as evidence obtained as result of illegal entrapment, and two judges being of opinion that minimum sentence of 9½ years constituted cruel and inhuman punishment.

Judgment reversed.

Criminal Law ⇐1186(1)

Conviction of unlawful possession of two marijuana cigarettes would be reversed and defendant discharged; two judges being of opinion that statutory categorization of marijuana along with "hard drug" narcotics for purposes of imposition of penalties denied equal protection, one judge being of opinion that statute denied right to liberty and pursuit of happiness, two judges being of opinion that cigarettes should have been excluded as evidence obtained as result of illegal entrapment, and two judges being of opinion that minimum sentence of 9½ years constituted cruel and inhuman punishment. M.C.L.A. §§ 335.1 et seq., 335.106, 335.151, 335.151 et seq., 335.153, 335.301 et seq., 769.1; U.S.C.A. Const. Amends. 4–6, 8, 9, 14; M.C.L.A. Const.1963, art. 1, §§ 2, 16, 17; art. 6, § 5.

William L. Cahalan, Wayne County Pros. Atty., Dominick R. Carnovale, Chief, Appellate Dept., Angelo A. Pentolino, Asst. Pros. Atty., Detroit, for plaintiff-appellee.

Justin C. Ravitz, Detroit, for defendant-appellant.

David Hood, Wayne State University, Detroit, of counsel for Subcommittee on Drug Treatment, New Detroit, Inc., amicus curiae.

R. Keith Stroup, Washington, D. C., National Organization for the Reform of Marijuana Laws, amicus curiae.

Sol Plafkin, Detroit, for Representatives Jackie Vaughn III, William Brodhead, James Bradley, Edward Suski, Mrs. Daisy Elliott, Senators Coleman Young, Basil Brown and Jack Faxon, amici curiae.

Michael Schumann, Highland Park, Gary Roth, Southfield, for YPC–Center House of Ferndale, amicus curiae.

Bernard D. Fischman, New York City, for The American Orthopsychiatric Assn., Inc., amicus curiae.

Philip J. Hirschkop, Alexandria, Va., Executive Director, Penal Reform Institute, amicus curiae in support of appeal.

Joel M. Shere and Sheridan Holzman, Co-Chairmen, Legal Committee, by Wallace H. Glendening, Detroit, American Civil Liberties Union of Mich., amicus curiae.

Ernest Winsor, Boston, Mass., for the Committee for a Sane Drug Policy, amicus curiae.

Goodman, Eden, Robb, Millender, Goodman & Bedrosian by William H. Goodman, Detroit, for Medical Committee for Human

Rights, amicus curiae, in support of the appellant, John Sinclair.

Thomas Meyer, M. Gerald Schwartzbach, Glotta, Adelman & Dingus by Ronald D. Glotta, Gage, Burgess & Knox by Laurence C. Burgess, Neal Bush, Lafferty, Reosti, Jabara, Papakhian, James & Stickgold by Marc Stickgold, Mark Weiss, Colista, Moore & Baum by Warfield Moore, Jr., Detroit, for Detroit Chapter, National Lawyers Guild, amicus curiae.

Before the Entire Bench, except BLACK, J.

PER CURIAM.

For the reasons set forth in our several opinions, the judgment of conviction of defendant Sinclair is reversed and set aside and the defendant discharged.

SWAINSON, Justice.

Defendant, John A. Sinclair, was arrested on January 24, 1967, and charged with the unlawful sale[1] and unlawful possession[2] of two marijuana cigarettes. Defendant was convicted by a jury in the Recorder's Court for the city of Detroit of unlawful possession of the two marijuana cigarettes, on July 25, 1969, and on July 28, 1969, he was sentenced to nine and one-half to ten years imprisonment. During the two and one-half years between his arrest and trial, defendant was free on bond in the amount of $1,000, and never failed to appear when required to do so.

Prior to the trial, a special three-judge panel of Recorder's Court was convened to consider the constitutionality of the Michigan statutes prohibiting sale or possession of marijuana. On April 17, 1968, the panel upheld the statutes against the contentions that they violated the equal protection of the laws;[3] denied defendant due process of law;[4] violated rights of privacy retained by the people;[5] and that the penalty provisions imposed cruel and unusual punishment.[6] Judge Robert J. Colombo a member of the three-judge panel, in a concurring opinion stated that he personally believed that there was a question of whether defendant had been entrapped.[7] The trial judge (Hon. Robert J. Colombo), on June 23, upon motion of defense counsel, dismissed the count for unlawful sale on the ground that the sale was entrapped by the police officers.[8] Defendant was thereafter convicted of the unlawful possession of marijuana based on the two cigarettes introduced into evidence. The Court of Appeals affirmed the conviction. 30 Mich.App. 473, 186 N.W.2d 767. We granted leave to appeal. 385 Mich. 786.

The Detroit Police Department Narcotics Bureau had instructed Patrolman Vahan Kapagian and Policewoman Jane Mumford Lovelace to assist in an investigation of illegal activities involving narcotic violations in an area surrounding Wayne State University and, in particular, an es-

1. M.C.L.A. § 335.152; M.S.A. § 18.1122.

2. M.C.L.A. § 335.153; M.S.A. § 18.1123.

3. U.S.Const.Am. XIV; Const.1963, art. 1, § 2.

4. U.S.Const.Am. XIV; Const.1963, art. 1, § 17.

5. U.S.Const.Am. IX.

6. U.S.Const.Am. VIII; Const.1963, art. 1, § 16.

7. "My concurrence in the decision of the Court on the issues raised here are limited solely to the issues raised here, as there appears to this writer to be another important legal issue not raised in this opinion which may well apply to count one in the People's Information, namely, Sale and Possession of Narcotics and that is the issue of unlawful and illegal Entrapment, an issue which suggests itself to this writer and which suggested itself to the learned Assistant Prosecuting Attorney who presented this case on behalf of the People at the preliminary examination of the Defendant Sinclair in this matter."

8. "We've talked a lot about it. It's up to me to come to grips with the problem. I hold that count one, Sale and/or Dispensing of marijuana should be dismissed on the grounds of entrapment."

tablishment known as the Artists' Workshop which was located at 4863 John Lodge, in the city of Detroit. Defendant Sinclair made his residence above the Artists' Workshop, at 4867 John Lodge.

In pursuance of this assignment, Patrolman Kapagian grew a beard and began to let his hair grow long, in late August 1966. On October 18, 1966, using the aliases of Louis Cory and Pat Green, the officers commenced their assignment. They continued working until January 24, 1967, on this particular assignment. The officers assisted in doing typing and other odd chores at the Artists' Workshop, including sweeping floors and collating literature. They sat in at communal dinners and provided the food for one of these dinners. They joined a group called LEMAR, which advocated that marijuana be legalized. They listened to poetry and helped in the preparation of certain literature. Patrolman Kapagian visited the shop and saw defendant approximately two or three times a week until the defendant's arrest. As part of the assignment, Patrol Kapagian took a job at the Candle Shop. Patrolman Kapagian was equipped with a Portatalk radio transmitter which allowed him to keep in contact with other police officers stationed outside and nearby.

Patrolman Kapagian testified at the preliminary examination that on two occasions prior to December 22, 1966, during the investigation, the police officers asked defendant for marijuana. He denied this at the trial, despite the fact that his testimony to that effect at the preliminary examination was read to him from the transcript. Policewoman Lovelace stated that she had asked defendant on previous occasions to obtain marijuana for them.

Officer Kapagian testified that on December 22nd, at about 7:00 P.M., defendant appeared at the Workshop and following an exchange of greetings, defendant asked whether they had received any marijuana the previous night. The officers responded affirmatively and stated that they were looking for some more. At approximately 8:55 that evening, Kapagian told the defendant that they had to leave and defendant asked them to accompany him upstairs to his residence. Once inside the residence, the officers were seated at the kitchen table. Defendant went to a shelf and removed a brown porcelain bowl which he set down on the table before him. Defendant took some cigarette paper and from the contents of the bowl rolled a cigarette, which he gave to Kapagian. Kapagian handed this cigarette to Lovelace, who inserted it into a partially filled Kool pack. Defendant then rolled a second cigarette, lit it, and handed it to Kapagian. The officer said he did not want to smoke it then because he had to drive and the cigarette would make him dizzy. Kapagian gave the cigarette to Lovelace after defendant Sinclair had butted it. She placed the cigarette in the same Kool pack. At that time they said they had to leave, and departed. Sinclair was not arrested for committing a felony in the officers' presence because, as Kapagian stated, he did not want to tip his hand since numerous arrests were to be made as the result of this investigation.

At the trial, the only witnesses were the two police officers.[9] No corroborating evidence was introduced. Although officer Kapagian was equipped in a manner to enable the transmission of his conversation to other officers, no arrangements were made to tape the conversations, which allegedly occurred between defendant and the police officers. In addition, officer Kapagian testified that he did not preserve his log book for the year 1966 because he decided that it was not worth saving. He did admit that if the log book had been preserved, the presence or absence of entries relating to the transactions of December 22nd and all previous transactions during

9. Defendant did not take the stand because the trial court ruled on July 22nd that if he did testify he could be cross-examined on his prior convictions.

the investigation, would either confirm or disprove his testimony.

Prior to trial, the defendant made several motions to quash the information and to exclude the marijuana cigarettes from evidence. These were denied by the trial court.

Defendant raises ten issues on appeal, and the prosecutor lists five. We will deal with two of these:

1) Whether the classification of marijuana as a narcotic under M.C.L.A. § 335.151 violates the equal protection of the laws under the U.S.Const. Am. XIV, and

2) Whether the two marijuana cigarettes should have been excluded from evidence on the ground that they constituted evidence obtained as the result of an illegal police entrapment?

I.

It is not denied that the State of Michigan has the power to pass laws against the sale and use of marijuana. Rather, the issue is whether marijuana may be constitutionally classified as a narcotic drug if, in fact, it is not a narcotic. A threshold question is raised—and that is whether this Court has the power to determine the actual state of facts concerning marijuana and other drugs. It cannot be doubted that the judiciary has the power to determine the true state of facts upon which a law is based. Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

A trial court may take judicial notice of any records of the court where it sits. Knowlton v. Port Huron, 355 Mich. 448, 452, 94 N.W.2d 824 (1959). Moreover, it is clear that "an appellate court can properly take judicial notice of any matter which the court of original jurisdiction may take notice." Pennington v. Gibson, 57 U.S. (16 How.) 65, 14 L.Ed. 847 (1853). Const.1963, art. 6, § 1, provides:

"The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house."

As such, the records of all courts of this State may be examined by the Supreme Court since they are all part of the record of the "one court of justice" of the State of Michigan. Hence, in addition to the record made by the court below, we may properly look at the evidence introduced and the findings of fact made by the trial court in People v. Lorentzen, Mich., 194 N.W.2d 827 (1972).

We now turn to a comparison of the properties of marijuana and the other drugs classified as narcotics under M.C.L.A. § 335.151, *et seq.*; M.S.A. § 18.1121, *et seq.*

II.

Comparison of the effects of marijuana use on both the individual and society with the effects of other drug use demonstrates not only that there is no rational basis for classifying marijuana with the "hard narcotics," but, also, that there is not even a rational basis for treating marijuana as a more dangerous drug than alcohol. This is not to say that our scientific knowledge concerning any of the mind-altering drugs is at all complete. It is not.[10] Even our society's vast experience with the mind-altering effects of alcohol has not led to complete scientific knowledge of that drug, as the Canadian Government Commission of Inquiry pointed out:[11]

"Little is known as to the specific mechanism by which alcohol produces its

10. People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407, 409 (1971).

11. Interim Report of the Canadian Government Commission of Inquiry, The Non-Medical Use of Drugs (Penguin ed. 1970), pp. 65-66 [hereinafter referred to as "Canadian Commission Report"].

psycho-pharmacological action. As with most drugs, alcohol effects, especially those resulting from low or moderate amounts, depend to a large extent on the individual and the situation in which the drinking occurs. A drink or two may produce drowsiness and lethargy in some instances, while the same quantity might lead to increased activity and psychological stimulation in another individual, or in the same person in different circumstances. Furthermore, a dose which is initially stimulating may later produce sedation."

Despite our lack of complete knowledge though, we do have sufficient scientific knowledge to categorize drugs according to their relative level of danger to both the individual and society. Proceeding to a comparison of marijuana with other mind-altering drugs, we find marijuana is a euphoria producing, mind-altering drug, whose effects are generally obtained by smoking, but can also be obtained by oral ingestion of the drug, usually mixed with other food or drinks.[12] Coming from the hemp plant, cannabis sativa, the psychoactive strength of the drug varies greatly with the part of the plant used, quality of the seed stock, and the growing conditions.[13]

The psychoactive ingredient of cannabis sativa has been isolated as two isomers of tetrahydrocannabinol (THC although additional active ingredients of cannabis sativa may be discovered and isolated in the future).[14] Thus the strength of any given amount of marijuana depends primarily on the amount of THC it contains. The ordinary street form of marijuana, commonly available and used in the United States, is composed of the leaves and flower clusters of the female plant, which are dried and crushed to make up the variable strength mixture. The resin from the flowering tops of the mature female plants is known as hashish (*charas* in India) and is apparently the strongest form of the naturally occurring drug because it contains the highest concentration of THC. Hashish is as much as eight times as strong as ordinary marijuana.[15]

Consideration of the scientifically observed physical and psycho-motor effects of marijuana indicates that it is overall, the least dangerous mind-altering drug. Observed physical effects of marijuana use include dryness of mouth and throat, slight increase in pulse rate, and slight conjunctival reddening of the eyeball.[16] No known tolerance develops to marijuana—in fact negative tolerance has been observed, that

12. The Illinois Supreme Court in People v. McCabe, *supra* p. 410, point out that knowledge concerning marijuana has been developing rapidly in the last decade. For an example of a case where the United States Supreme Court relied on the current writing of authorities in a then rapidly developing field, see Brown v. Board of Education, 347 U.S. 483, 494, fn. 11, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed., 1971), p. 46.

13. L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed., 1971), pp. 39–40.

14. Stipulated Findings of Fact (No. 19) in People v. Lorentzen, *supra*, reads: "There is no proven relationship between the use of marijuana and the use of heroin. As marijuana use has increased greatly in American society, heroin addiction in proportion to the population has remained essentially the same, or only slightly increased."
See, also, L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed., 1971), pp. 47–61.

15. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse (1967), p. 3: "Other derivatives of the hemp plant, such as hashish, which are more potent than marijuana, are rarely found in the United States."
See, also, L. Grinspoon, M.D., Marijuana Reconsidered (Bantam ed., 1971), pp. 41–43.

16. People v. Lorentzen, *supra*, Stipulated Findings of Fact (No. 8): "The major physical effect of THC that can be detected is a marked increase in pulse rate."
See, also, Canadian Commission Report, p. 122.

is, a decreased amount of the drug taken on subsequent occasions produces the same level of physical and euphoric effect.[17] No physical dependency is produced by use of the drug and, hence, there are no withdrawal symptoms or "abstinence syndrome" when the drug is unavailable to the user.[18]

No lethal dose for marijuana has been established.[19] The lack of harmful physical effects from marijuana use has been well summarized by Dr. Grinspoon in Marijuana Reconsidered (Bantam ed., 1971), p. 60:

> "What is so striking about the pharmacology of cannabis is that it has such limited and mild effects on human nonpsychic function. This is consistent with the equally striking observation that there has never in its long history been reported an adequately documented case of lethal overdosage. Nor is there any evidence of cellular damage to any organ."

Both the opiates and alcohol provide a dramatic contrast to the lack of physical harmfulness of marijuana. With the opiates[20] high levels of tolerance develop,[21] severe physical addiction results from repeated use,[22] and deaths resulting from overdosage also occur.[23] Occasional social use of alcohol in moderate dosage as a mind-altering drug has few deleterious physical consequences. However, tolerance does develop in alcohol use and the drug is subject to a great, acute and chronic abuse.[24] Acute alcohol abuse can lead to death from overdosage.[25] In addition, chronic alcohol abuse leads to alcoholism where a clear withdrawal syndrome is observable (an easily discernible physical shaking and later *delirium tremens*), and death of brain cells, mental deterioration, and cirrhosis of the liver may occur.[26]

17. People v. McCabe, *supra*, 275 N.E.2d p. 411; People v. Lorentzen, Stipulated Findings of Fact (No. 4): "There is no currently known tolerance to marijuana but the question is still under investigation." Canadian Commission Report, p. 122.

18. People v. Lorentzen, Stipulated Findings of Fact (No. 5): "Marijuana does not produce physical dependency." Canadian Commission Report, p. 123.

19. People v. McCabe, *supra* p. 411; People v. Lorentzen, Stipulated Findings of Fact (No. 7): "Marijuana does not produce death, even with a single large overdose, which is characteristic of depressant drugs including alcohol."

20. "These drugs are obtained from the juice of the unripened seed pod of the opium poppy plant [papaver somniferum] soon after the flower petals begin to fall—no other part of the plant produces psychoactive substances." Canadian Commission Report, p. 137. Heroin, codeine and morphine are all processed derivatives of opium. Isonipecaine and anileridine are synthetic "opiates" whose physicl effects and addictive liability are equivalent to morphine. Stedman's Medical Dictionary (1966), p. 95.

21. Canadian Commission Report, p. 43; Report by the Advisory Committee on Drug Dependence, Cannabis, (Her Majesty's Stationery Office, London, 1968), p. 14 (hereinafter referred to as "British Report").

22. Canadian Commission Report, pp. 153–154; British Report, p. 15.

23. Canadian Commission Report, p. 151; British Report, p. 14; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse, p. 54: "One of the special features of the opiates (and certain other mind-altering drugs such as barbiturates and some tranquilizers) is that death may also be produced by not giving the drug. That is the classical withdrawal or abstinence syndrome associated with opiate deprivation in an organism which has been receiving heavy doses of the opiate."

24. Canadian Commission Report, pp. 43, 70–72.

25. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p. 35.

26. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness, p. 35; J. Kaplan, Marijuana: The New Prohibition (Pocket Book ed., 1971), pp. 275–320, specifically p. 318.

Damaging effects of alcohol on psychomotor coordination are so well known as to need no documentation. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness, commenting on alcohol, observed that (p. 39):

> "There is probably no other area in the field of drug research and related dangerous behavior where the role of a drug as a precipitating factor in dangerous behavior is so clear."

On the other hand, the evidence available concerning marijuana's effect on psychomotor functions seems to show very little impairment, at least in experienced users.[27]

Psychological Effects:

Marijuana is a mild hallucinogen, which in view of its lack of any other harmful effects, leads us to conclude that there is no rational basis for penalizing it more severely than the other hallucinogens (M.C.L.A. § 335.106; M.S.A. § 18.1106). Indeed, mild hallucinogenic effects are reported almost exclusively from use of more potent hashish type preparations and rarely, if ever, from the use of ordinary street variety marijuana. The Canadian Commission Report states (pp. 116–117):

> "Cannabis is one of the least potent of the psychedelic drugs, and some might object to its being classified with LSD and similar substances. It is often suggested that marijuana is a mild intoxicant, more like alcohol. * * * It would be incorrect to say that cannabis in moderate dose actually produces a mild LSD experience; the effects of these two drugs are physiologically, behaviourally and subjectively quite distinct. Furthermore, since no cross-tolerance occurs between LSD and THC the mechanism of action of these two drugs is thought to be different."

The Canadian Commission Report comprehensively summarized the various possible psychological effects of marijuana use as follows (pp. 117–118):

> "A cannabis 'high' typically involves several phases. The initial effects are often somewhat stimulating and, in some individuals, may elicit mild tension or anxiety which usually is replaced by a pleasant feeling of well-being. The later effects usually tend to make the user introspective and tranquil. Rapid mood changes often occur. A period of enormous hilarity may be followed by a contemplative silence.
>
> "Psychological effects which are typically reported by users include: happiness, increased conviviality, a feeling of enhanced interpersonal rapport and communication, heightened sensitivity to humour, free play of the imagination, unusual cognitive and ideational associations, a sense of extra-ordinary reality, a tendency to notice aspects of the environment of which one is normally unaware, enhanced visual imagery, an altered sense of time in which minutes may seem like hours, changes in visually perceived spatial relations, enrichment of sensory experiences (subjective aspects of sound and taste perception are often particularly enhanced), increased personal understanding and religious insight, mild excitement and energy (or just the opposite), increased or decreased behavioural activity, increased or decreased verbal fluency and talkativeness, lessen-

27. People v. Lorentzen, *supra*, Stipulated Findings of Fact (No. 30): "It is a debatable and equivocal question as to whether or not one under the influence of marijuana and driving on the highway is a better or worse driver. The experienced marijuana smoker performs as well under the influence of the drug as he does when he is not using it. The inexperienced user performs less well."

See, also, R. Bonnie and C. Whitebread, II, The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition, 56 Va.L.Rev. 971, 1107 (1970).

ing of inhibitions, and at higher doses, a tendency to lose or digress from one's train of thought. Feelings of enhanced spontaneity and creativity are often described, although an actual increase in creativity is difficult to establish scientifically. While most experts agree that cannabis has little specific aphrodisiac (sex stimulating) effect, many users report increased enjoyment of sex and other intimate human contact while under the influence of the drug.

"Less pleasant experiences may occur in different individuals, or possibly in the same individuals at different times. Some of these reactions may include: fear and anxiety, depression, irritability, nausea, headache, backache, dizziness, a dulling of attention, confusion, lethargy, and a sensation of heaviness, weakness and drowsiness. Disorientation, delusions, suspiciousness and paranoia, and in some cases, panic, loss of control, and acute psychotic states have been reported."

There is no reliable scientific evidence demonstrating that chronic psychosis can be caused by marijuana use[28] in dramatic contrast to the American experience with alcohol.[29] The argument that marijuana use causes or contributes to assaultive crime is now largely discredited.[30] Again by contrast, considerable evidence points to a substantial connection between alcohol use and commission of violent crimes.[31]

Finally, the "steppling stone argument" that marijuana use leads to use of "hard narcotics" has no scientific basis. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse, found at pp. 13–14:

> "The charge that marihuana 'leads' to the use of addicting drugs needs to be critically examined. There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marihuana. But this does not mean that one leads to the other in the sense that marihuana has an intrinsic quality that creates a heroin liability. There are too many marihuana users who do not graduate to heroin, and too many heroin addicts with no known prior marihuana use, to support such a theory. *Moreover there is no scientific basis for such a theory.* The basic text on pharmacology, Goodman and Gilman, *The Pharmacological Basis of Therapeutics* (Macmillan 1960) states quite explicitly that marihuana habituation does not lead to the use of heroin." (Emphasis added)[32]

All of the preceding factual findings with respect to the effects of marijuana use, are substantiated by the trial court's findings of fact made after five days of expert testimony in People v. Lorentzen, *supra*.

Virtually every major commission which has studied the effects of marijuana use agrees that it is improperly classified with

28. British Report, p. 16.

29. Canadian Commission Report, p. 69; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p. 35.

30. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Narcotics and Drug Abuse (1967), p. 25; British Report, p. 16; Report of the Indian Hemp Drugs Commission (1893–94), p. 264; J. Kaplan, Marijuana: The New Prohibition, pp. 139–141; Bonnie and Whitebread, The Forbidden Fruit and The Tree of Knowledge, p. 1105.

31. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967), p. 41: "On the basis of the present data one can say that there is a strong link between alcohol and homicide and that the presumption is that alcohol plays a causal role as one of the necessary and precipitating elements for violence."

32. People v. McCabe, *supra*, 275 N.E.2d pp. 412, 413. See, also, British Report, pp. 12–13.

the "hard narcotics." The British Report found (pp. 6–7):

"Having reviewed all of the material available to us we find ourselves in agreement with the conclusion reached by the Indian Hemp Drugs Commission appointed by the Government of India (1893–1894) and the New York Mayor's Committee on Marihuana (1944), that the long-term consumption of cannabis in *moderate* doses has no harmful effects." [33]

Further, counsel for the People admitted in oral argument that the differences between marijuana and the opiates call for different classifications:

"ADAMS, J.: If we have two extremes here, and not a gray area in the middle, doesn't that call for different classifications?

"ASSISTANT PROSECUTOR: I think it does, I think it does, and I think every State in the country is graduating to that particular state where they are now recognizing and they are classifying marijuana in a separate statute. The government has done so in its control and abuse act."

Finally, Governor William Milliken, in his Special Message to the Legislature on Alcohol and Drug Abuse (Mar. 4, 1971), recognized that the present classification of marijuana with the opiates is irrational and provided an illuminating comment on the relative danger of alcohol:

"As public officials, we must face squarely the need for a major revision of our laws dealing with marijuana. The hypocrisy of our present law, *which falsely classifies marijuana as a narcotic,* affects the credibility of our entire drug abuse program. Recent federal legislation and the passage of local marijuana ordinances give new urgency to the need for state action in this controversial area. * * *

"Alcohol continues to be a larger problem than drugs. It accounts for more broken homes, wasted lives, accidental deaths, and greater expense for society than any drug. It is an established fact that alcohol can destroy brain tissues and cause cirrhosis of the liver which ultimately produces death. A significant portion of crime is committed by people under the influence of alcohol and alcohol-related problems are estimated to account for 15% to 25% of our welfare costs." (Emphasis added)

The murky atmosphere of ignorance and misinformation which casts its pall over the State and Federal legislatures' original classification of marijuana with the hard narcotics has been well documented in the 250-page article by R. Bonnie and C. Whitebread, II, The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition, 56 Va.L.Rev. 971 (1970).[34]

We can no longer allow the residuals of that early misinformation to continue choking off a rational evaluation of marijuana dangers. That a large and increasing number of Americans recognize the truth about marijuana's relative harmlessness can scarcely be doubted.[35]

33. People v. McCabe, *supra*, p. 411. Also, the British Report concluded on the classification question (pp. 20–21): "We believe that the association of cannabis in legislation with heroin and the other opiates is *entirely inappropriate* and that new and quite separate legislation to deal specially and separately with cannabis and its synthetic derivatives should be introduced as soon as possible. We are also convinced that the present penalties for possession and supply are altogether too high." (Emhasis added)

34. The unavailability of the Indian Hemp Drug Commission Report and the general lack of information upon which most legislatures criminalized marijuana is pointed out by J. Kaplan's introduction to the 1969 reprint of the Report of the Indian Hemp Drugs Commission 1893–1894, vii–xiii (Jefferson ed., 1969).

35. People v. Lorentzen, *supra*, Stipulated Findings of Fact Nos. 37–42: "From the general public standpoint, the general marijuana user would require no treat-

The truth compels us to conclude at the minimum that marijuana has been erroneously classified with the opiates, and thus it is clear that based on current scientific knowledge, marijuana is not a narcotic drug.

Indeed, the Michigan legislature has recognized the erroneous classification of marijuana as a narcotic by its passage of the "Controlled Substances Act of 1971" (1971 P.A. 196; M.C.L.A. § 335.301 to § 335.367; MSA _____ to _____), effective April 1, 1972, which classifies marijuana as a distinct type of substance and provides drastically reduced penalties for its sale and possession.

We agree with the Illinois Supreme Court in People v. McCabe, *supra*, that marijuana is improperly classified as a narcotic and hold that M.C.L.A. § 335.151; M.S.A. § 18.1121, in its classification of marijuana violates the equal protection clauses of the U.S.Const., Am. XIV and Const.1963, art. 1, § 2.[36]

III.

Defendant contends that that the two marijuana cigarettes should not have been admitted into evidence because they were the result of an illegal police entrapment. The prosecution asserts that the two cigarettes were admissible because the defendant possessed them independently of the undercover officers' request for them.

The trial court ruled that the sale count should be dismissed because the defendant had been entrapped into committing this

ment at all. Most marijuana users do not have problems that would require any treatment from a medical or psychiatric point of view. Those that seek help because they have had an adverse reaction to marijuana or because they think they are using too much of the drug ordinarily need some guidance and some support and not much else. The majority of current marijuana users are using but not abusing the drug in the sense that one would normally think of dangerous drug abuse. To say that marijuana is an absolutely harmless drug is untrue, on the other hand to say it is a horrendous drug is equally untrue. Marijuana is a drug with potential dangers for some people when taken in conventional doses. Marijuana is safe for most people in conventional doses. Occasional, recreational use of marijuana for most individuals will be a pleasurable experience, involving no adverse reactions. The vast majority of recreational marijuana users will emerge from their drug experience without any apparent harm, either to themselves or to society."

J. Kaplan, in "Marijuana: The New Prohibition," p. 338, stated: "Another attempt to measure the deterrent effect of the marijuana laws was a careful study by two law students, Ellen Green and Bruce Blumberg, who sampled the student body at the University of California Law School at Berkeley. They found that seventy-three percent of this student body had used marijuana, a figure that is quite striking when one considers that law students would be expected to be among the most deterrable members of our society. Being involved in the law, they are more likely to know of its consequences; studying for a profession that regards moral character as one of its prerequisites, they they would be risking more than arrest or imprisonment if detected using marijuana; and, finally, at least most observers have considered lawyers and law students to be among the more conservative and cautious groups of our student population."

36. The decision today does not mean that persons arrested for sale or possession of marijuana cannot be prosecuted under the laws of the State of Michigan. Until April 1, 1972, the effective date of 1971 P.A. 196, prosecutions must be commenced under M.C.L.A. § 335.106; M.S.A. § 18.1106, which reads:

"Any person who violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500.00, or imprisonment in the county jail not more than 1 year, or both such fine and imprisonment in the discretion of the court. Any person, firm, partnership, association or corporation who sells, offers for sale, barters or otherwise disposes of or is in possession of d-lysergic acid diethylamide, peyote, mescaline and its salts, dimethyltryptamine, silocyn, or psilocybin or any salt or derivative of any of the aforementioned substances or any other drug possessing similar hallucinogenic properties is guilty of a felony unless in accordance with the federal food, drug and cosmetics act."

offense. Our Court has long recognized the defense of entrapment and the public policy behind this rule. In Saunders v. People, 38 Mich. 218 (1878), the Court reversed Saunders' conviction for breaking and entering by night a court room not connected with a dwelling and "taking therefrom certain recognizances described as contracts in force and public records." The Court held:

> "Decoying, or conniving with persons suspected of criminal designs, for the purpose of arresting them in the commission of the offense, is denounced by the Supreme Court." (syl. 1)

Justice Cooley, writing for the Court, reversed on the grounds that the testimony of a witness named Dunnebacke, should not have been excluded. Two of the Justices held that the conviction should be reversed because of impermissible police conduct. Justice Marston stated (pp. 221–222):

> "I cannot, however, silently permit the extraordinary course adopted by the police officers in this case to pass unnoticed and uncondemned. * * *
>
> "The course pursued by the officers in this case was utterly indefensible. Where a person contemplating the commission of an offense approaches an officer of the law, and asks his assistance, it would seem to be the duty of the latter, according to the plainest principles of duty and justice, to decline to render such assistance, and to take such steps as would be likely to prevent the commission of the offense, and tend to the elevation and improvement of the would-be criminal, rather than to his farther debasement. Some courts have gone a great way in giving encouragement to detectives, in some very questionable methods adopted by them to discover the guilt of criminals; but they have not yet gone so far, and I trust never will, as to lend aid or encouragement to officers who may, under a mistaken sense of duty, encourage and assist parties to commit crime, in order that they may arrest and have them punished for so doing. The mere fact that the person contemplating the commission of a crime is supposed to be an old offender can be no excuse, much less a justification for the course adopted and pursued in this case. If such were the fact, then the greater reason would seem to exist why he should not be actively assisted and encouraged in the commission of a new offense which could in no way tend to throw light upon his past iniquities, or aid in punishing him therefor, as the law does not contemplate or allow the conviction and punishment of parties on account of their general bad or criminal conduct, irrespective of their guilt or innocence of the particular offense charged and for which they are being tried. Human nature is frail enough at best, and requires no encouragement in wrong-doing. If we cannot assist another and prevent him from violating the laws of the land, we at least should abstain from any active efforts in the way of leading him into temptation. Desire to commit crime and opportunities for the commission thereof would seem sufficiently general and numerous, and no special efforts would seem necessary in the way of encouragement or assistance in that direction."

Chief Justice Campbell stated (p. 223):

> "[T]he encouragement of criminals to induce them to commit crimes in order to get up a prosecution against them, is scandalous and reprehensible."

Two theories have been advanced concerning the issue of entrapment. The first view was articulated by Chief Justice Hughes in Sorrells v. United States, 287 U.S. 435, 451, 53 S.Ct. 210, 216, 77 L.Ed. 413 (1932), when he stated:

> "[T]he defense of entrapment is not simply that the particular act was committed at the instance of government officials. That is often the case where the proper action of these officials leads to

the revelation of criminal enterprises. * * * The predisposition and criminal design of the defendant are relevant. But the issues raised and the evidence adduced must be pertinent to the controlling question whether the defendant is a person otherwise innocent whom the Government is seeking to punish for an alleged offense which is the product of the creative activity of its own officials. If that is the fact, common justice requires that the accused be permitted to prove it. The Government in such a case is in no position to object to evidence of the activities of its representatives in relation to the accused, and if the defendant seeks acquittal by reason of entrapment he cannot complain of an appropriate and searching inquiry into his own conduct and predisposition as bearing upon that issue."

In Sherman v. United States, 356 U.S. 369, 78 S.Ct. 819, 2 L.Ed.2d 848 (1958), the majority of the Court adopted the position of Chief Justice Hughes in *Sorrells, supra.* Thus, according to the majority view, whenever the defense of entrapment is raised, the court must look at 1) the conduct of the police, and 2) the predisposition of the defendant. The second view was stated by Justice Roberts in *Sorrells* (287 U.S. pp. 458–459, 53 S.Ct. p. 219):

"It has been generally held, where the defendant has proved an entrapment, it is permissible for the government to show in rebuttal that the officer guilty of incitement of the crime had reasonable cause to believe the defendant was a person disposed to commit the offense. This procedure is approved by the opinion of the court. The proof received in rebuttal usually amounts to no more than that the defendant had a bad reputation, or that he had been previously convicted. Is the statute upon which the indictment is based to be further construed as removing the defense of entrapment from such a defendant?

"Whatever may be the demerits of the defendant or his previous infractions of law these will not justify the instigation and creation of a new crime, as a means to reach him and punish him for his past misdemeanors. He has committed the crime in question, but, by supposition, only because of instigation and inducement by a government officer. To say that such conduct by an official of government is condoned and rendered innocuous by the fact that the defendant had a bad reputation or had previously transgressed is wholly to disregard the reason for refusing the processes of the court to consummate an abhorrent transaction. It is to discard the basis of the doctrine and in effect to weigh the equities as between the government and the defendant when there are in truth no equities belonging to the latter, and when the rule of action cannot rest on any estimate of the good which may come of the conviction of the offender by foul means. The accepted procedure, in effect, pivots conviction in such cases, not on the commission of the crime charged, but on the prior reputation or some former act or acts of the defendant not mentioned in the indictment."

In *Sherman, supra,* Justice Frankfurter, writing for four justices of the court, adopted the views advanced by Justice Roberts in *Sorrells, supra.*

The factual situation confronting us here demonstrates the practical problems that arise when the majority test is employed. The basis of the entrapment defense is that the methods used by the police are repugnant to fair play and justice. As the court stated in United States v. Chisum, 312 F. Supp. 1307, 1312 (C.D.Cal., 1970):

"Entrapment is indistinguishable from other law enforcement practices which the courts have held to violate due process. Entrapment is an affront to the basic concepts of justice. Where it exists, law enforcement techniques become contrary to the established law of the land as an impairment to due process."

In an attempt to discourage these practices and uphold "public confidence in the fair and honorable administration of justice" (Sherman v. United States, *supra*, 356 U.S. p. 380, 78 S.Ct. p. 825 [Frankfurter, J.]), courts refuse to allow convictions based on entrapment. Thus, when the trial court ruled as a matter of law that the defendant was entrapped into giving the two cigarettes to the police officers, count one, sale, was dismissed and the police were prevented from obtaining a conviction based on their reprehensible methods.

However, the defendant was still prosecuted for possession. The two marjuana cigarettes obtained purely as a result of illegal police conduct were the sole basis of defendant's conviction. To allow the conviction to stand, based on this evidence, is to subvert the public policy rule behind the entrapment defense. If the conviction stands, the police can ignore with impunity the doctrine of entrapment in narcotic cases. Citizens could be enticed and entrapped to give marijuana to police undercover agents, using methods condemned by the courts of this State and our sister states.[37] While a court might dismiss the information based on sale, it would still allow the evidence obtained by repugnant methods to be used as the basis of a conviction for possession.

In other areas of the law, the courts have fashioned exclusionary rules against the use of evidence obtained by means of illegal police conduct. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 84 A.L.R.2d 933 (1961); Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966).

The People contend that the exclusionary rules set out in *Mapp* and *Miranda* are not applicable to this case because they involve specific constitutional rights.[38] However, there are examples of both State and Federal cases where exclusionary rules have been fashioned under the general supervisory powers of the court.

To illustrate, in McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 (1943), the United States Supreme Court excluded from evidence a confession obtained from defendant. Although the court held that the confession was not involuntary in the sense that it was factually incorrect, nevertheless the court felt that it should not be allowed into evidence because to do so would be to countenance reprehensible methods of interrogation. The court based this on its specific supervisory powers over procedure in Federal courts.

Likewise in a situation analogous to *McNabb*, our Court applied the same rule depending on its supervisory powers over the courts in People v. Hamilton, 359 Mich. 410, 411, 102 N.W.2d 738, 739 (1960). In *Hamilton*, Justice Black, speaking for a unanimous Court, relied on United States Supreme Court cases which stated:

> "'The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence whether true or false.' Lisenba v. People of State of California, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed. 166, quoted in Blackburn v. State of Alabama, 361 U.S. 199, 80 S.Ct. 274, 280, 4 L.Ed.2d 242, 248."

Const.1963, art. 6, § 5, grants to this Court general supervisory powers over the practice and procedure in this case.[39] The

37. For examples of cases where the courts have condemned the use of entrapment, see People v. McCord, 76 Mich. 200, 205–206, 42 N.W. 1106 (1889); People v. Pinkerton, 79 Mich. 110, 44 N.W. 180 (1889); United States v. Adams, 59 F. 674 (D.Or.1894); Woo Wai v. United States, 223 F. 412, 415 (CA 9, 1915); Butts v. United States, 273 F. 35, 37–38 (CA 8, 1921); State v. Neely, 90 Mont. 199, 300 P. 561 (1931); and Evanston v. Meyers, 70 Ill.App. 205, 207 (1897).

38. *Mapp* involved the Fourth Amendment right to be free from unreasonable search and seizure. *Miranda* involved the Fifth Amendment right of freedom from self-incrimination and the right to counsel in criminal proceedings guaranteed by the Sixth Amendment.

39. "The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited."

excesses of police conduct which the Court in *Hamilton, supra,* held justified exclusion of evidence, were also present in this case. The trial court found as a matter of law that defendant was entrapped into the sale. This case is distinguishable from other entrapment cases where the courts did not exclude the evidence.[40] We are dealing with a limited factual situation. This occurs when a trial court has ruled as a matter of law that a defendant was entrapped into the sale of marijuana or narcotics. In such circumstances, we hold that the evidence thus obtained through the illegal entrapment cannot be used to prosecute a defendant for possession of marijuana or narcotics.

In the case at bar, the trial court determined that defendant was entrapped into the sale of marijuana. The same police misconduct (ante pp. 880–881) that occurred in the sale of the marijuana was also involved in the possession. Defendant did not volunteer the two cigarettes to the undercover agents; he only gave the cigarettes to them after repeated requests by the officers, who had deceived him over a lengthy period of time.

We hold that on the facts of this case the two marijuana cigarettes should not have been admitted into evidence. The judgment is reversed and the defendant is discharged.

WILLIAMS, Justice (for reversal).

This is an opinion concerning a problem whose time has come. The name in the entitling is happenstance as the defendant could have been any mother's son or daughter.

The specific issue this opinion will consider is whether the categorization of marihuana in Public Act No. 310 (1929) [1] along with the "hard drug" narcotics such as heroin, cocaine, and opium with the same penalty is denial of equal protection of the law because of unreasonable classification.

The defendant raised other issues such as entrapment and cruel and unusual punishment but inasmuch as the issue of equal protection is dispositive of the case neither those issues nor the factual details supporting them will be here considered. My Brother Brennan's opinion concerning the issue of cruel and unusual punishment is well-reasoned, and I am in agreement with it as far as it goes, but it goes only to the length of defendant's sentence, not to his conviction.

For the purposes of this opinion the facts of the case are that the defendant prepared two marihuana cigarettes from a jar in his private quarters and handed them to two undercover police personnel. The defendant was subsequently charged on separate counts with sale and with possession of marihuana, the charge of sale being dismissed by the trial court because of entrapment. Defendant was tried, convicted, and sentenced to 9½–10 years in prison.

The Court of Appeals affirmed the defendant's conviction in People v. Sinclair, 30 Mich.App. 473, 186 N.W.2d 767 (1971). This Court granted the defendant's application for leave to appeal on September 1, 1971.

The Michigan statute penalizing the possession of marihuana is M.C.L.A. § 335.153; M.S.A. § 18.1123. It was one of a number of state acts of similar type pass-

40. In none of the cases cited by the People did the police engage in their efforts of entrapment over a prolonged period of time. See People v. McIntyre, 218 Mich. 540, 188 N.W. 407 (1922); People v. Murn, 220 Mich. 555, 190 N.W. 666 (1922); People v. Christiansen, 220 Mich. 506, 190 N.W. 236 (1922); People v. England, 221 Mich. 607, 192 N.W. 612 (1923), and People v. Smith, 296 Mich. 176, 295 N.W. 605 (1941).

1. Public Act No. 92 (1923), as amended by Public Act No. 9 (1925) was the forerunner of this act, but did not include marihuana as a narcotic drug. Marihuana was first grouped with the "hard drugs" in 1929. The Act of 1929 has subsequently been amended in 1931 (Public Act No. 172), in 1937 (Public Act No. 343), in 1952 (Public Act No. 266), in 1957 (Public Act No. 63), and in 1961 (Public Act No. 206).

ed around the time of the passage of the Marihuana Tax Act in 1937.[2]

At the time of passage of the Marihuana Tax Act of 1937, marihuana was linked with heroin and other so-called "hard drugs" based on testimony indicating that marihuana was similarly dangerous. For example, in his testimony before the House Ways and Means Committee Narcotics Commissioner Harry J. Anslinger relied on a number of authorities including a paper by Dr. Frank R. Gomila, at that time Commissioner of Public Safety of the City of New Orleans, and Miss Madeleine Gomila, Assistant City Chemist. That paper among other things said "we find that in comparison with other important habit-forming drugs, heroin, morphine, opium, and cocaine, marihuana has an established place." Taxation Of Marihuana—Hearings Before The Committee On Ways And Means, House of Representatives, 75th Cong. 1st Session on H.R. 6385, 1937, p. 35.

The Commissioner made further points which are summarized by the Congressional Research Service (LRS, 13) as follows:

"1. A person under the influence of marihuana is dangerous behind the wheel of an automobile or while performing other functions which require coordination and judgment.
2. A habitual marihuana user is liable to commit a violent crime while under the influence of the drug.
3. Prolonged use of marihuana may produce 'mental deterioration' or even lead to insanity.
4. The drug may 'operate to destroy the will' and 'gradually weaken physical powers.'"

Based on such data it may not have been unreasonable for the Congress and the state legislatures at that time to have passed legislation coupling marihuana with opium and similar "hard drugs" in penal offenses. However, the situation today is quite the opposite. While experts cited in the briefs and appendices for plaintiff, defendant and *amici curiae* are not in complete agreement as to the exact properties of marihuana, it is quite clear that today few, if any, responsible experts would classify marihuana in the same category with opium and similar "hard drugs."[3]

2. The passage of the Marihuana Tax Act of 1937 and numerous similar state statutes took place in a climate of ignorance and misconception. See The Forbidden Fruit And The Tree of Knowledge: An Inquiry Into The Legal History of American Marijuana Prohibition, 56 Va.L.Rev. 971 (1970).

3. We are well aware of the great wealth of written material which exists concerning marihuana. The vast majority of these works are in agreement that marihuana is not a narcotic drug. We have relied upon the National Institute of Mental Health as the most authoritative spokesman for establishing this fact.

We have quoted the 1969 statement of Dr. Yolles, Director, National Institute of Mental Health, because it is the most pertinent comparison of marihuana with the hard drugs. However, since the original filing of this opinion, new authority has become available. The NIMH produced Second Annual Report to Congress from HEW (released February 11, 1972) continues to classify marihuana separate from hard drugs and states ". . . there seems to be agreement that physical dependence comparable to that produced by the opiates, alcohol and barbiturates does not exist with Cannabis" (p. 190). This report incidentally notes the recent British report of cerebral atrophy in ten young cannabis smokers as serious but requiring further research as eight out of the ten youths were multiple drug users (pp. 22, 23).

We note also the findings of the National Commission on Marihuana and Drug Abuse. In its first report released on March 22, 1972, the Commission recommended as follows:

"I. Reclassification of Cannabis

"Recommendation: The Commission Recognizes that Several State Legislatures have Improperly Classified Marihuana as a Narcotic, and Recommends that They Now Redefine Marihuana According to the Standards of the Recently Adopted Uniform Controlled Substances Law.

"Scientific evidence has clearly demonstrated that marihuana is not a narcotic drug, and the law should properly reflect this fact. Congress so recognized in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as did The Conference of Commissioners on Uniform State Laws in the Uniform Controlled Substances Law.

The United States Congress, particularly the House of Representatives, has been especially concerned with the properties and effects of marihuana, apparently in connection with H.R. 14012, a bill to provide for the establishment of a commission on marihuana. Stanley F. Yolles, M.D., Director of the National Institute of Mental Health appeared before the Sub-Committee on Public Health and Welfare of the Interstate and Foreign Commerce Committee on September 17, 1969, more than two years ago to testify on this general subject. His testimony establishes quite clearly that "in the past, dangerous drugs were grouped arbitrarily sometimes by historical accident rather than with regard for their differing characteristics and their specific and distinct effects." He then went on to outline as well the present significant knowledge concerning the characteristics of marihuana. This Court can certainly take judicial notice that the characteristics of marihuana are quite different from narcotic drugs like heroin.

Dr. Yolles discusses this in his statement in brief form. The pertinent part of Dr. Yolles' statement is as follows:

"In the past, dangerous drugs were grouped arbitrarily, sometimes by historical accident rather than with regard for their differing characteristics and their specific and distinct effects. The bill before you today, Mr. Chairman, if read in conjunction with H.R. 13742, now before the House Ways and Means Committee, would provide for the first time a more logical grouping of substances according to the degree of danger in the abuse of each. It also wisely requires all decisions to add, delete, or reclassify a substance to be made by the Attorney General *only after* obtaining the advice of the Secretary of Health, Education, and Welfare, and of the Attorney General's own scientific Committee.

"There is one comment which I must make with regard to the content of the schedules. One substance which I know is being considered by another House Committee—because through historical accident it has been traditionally regulated as a narcotic—is marihuana.

"There is total agreement among competent scientists and physicians that marihuana is not a narcotic drug like heroin or morphine but rather a mild hallucinogen. To equate its risks—either to the individual or to society—with the risks inherent in the use of hard narcotics is neither medically nor legally defensible. I am certainly not advocating the removal of all restrictions on marihuana. It can be a dangerous drug. We need to know much more about the long-term effects of marihuana and other forms of Cannabis, particularly the more potent hashish. Based on what we already *do* know about the substance, however, it should not be dealt with [illegible]ally or medically, as a narcotic. [illegible]mphasis supplied.)

* * * * * *

"Mr. Chairman, the patterns of marihuana use, as well as the properties of the drug, are very different from the other substances under consideration here. No one really knows how many people smoke marihuana in the United States today. From collegiate studies and other sources, it can be estimated that the number of people who have smoked marihuana at least once is something between 8 and 12 million; and it may be closer to 20 million.[4]

"In those states where the Uniform Controlled Substances Law has not yet been adopted, twelve of which continue to classify marihuana as a 'narcotic', the Commission recommends that the legislature distinguish marihuana from the opiates and list it in a separate category. The consequence of inappropriate definition is that the public continues to associate marihuana with the narcotics, such as heroin. The confusion resulting from this improper classification helps to perpetuate prejudices and misinformation about marihuana." Marihuana, A Signal of Misunderstanding, p. 177.

4. A recent nationwide survey revealed that 61.7% of the country's college students have used marihuana at least once. Over one-third of the students, 38.6%, stated they had used marihuana 10 or more times. "Playboy's Student Survey; 1971."

"The marihuana debate continues but the differences between the facts about marihuana and the fables surrounding its use are now much more widely recognized than was the case even six months ago."

* * * * * *

The above data indicates that factually the categorization of marihuana with narcotics and other "hard drugs" is not a reasonable classification.

The United States Constitution [5] and the Michigan Constitution [6] each guarantee every citizen of the State of Michigan the equal protection of the law. Both the United States Supreme Court and this Court have held that a classification which does not rest upon a reasonable basis and which is essentially arbitrary in nature constitutes a violation of the Equal Protection Clause. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L. Ed. 369 (1911); Naudzius v. Lahr, 253 Mich. 216, 234 N.W. 581 (1931).

Recent cases have outlined a stricter test in certain cases involving an interpretation of the Equal Protection Clause. These cases have held that when a fundamental constitutional right is in question, any classification which penalizes the exercise of that right is unconstitutional unless it is necessary "to promote a compelling governmental interest." Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600 (1969); Traverse City School District v. Attorney General, 384 Mich. 390, 185 N.W.2d 9 (1971).

Under either of the above standards the classification of marihuana as a "hard drug" in M.C.L.A. § 335.151; M.S.A. § 18.1121, constitutes a violation of the Equal Protection Clause of the United States Constitution. Such a classification is irrational in view of the present evidence which exists concerning marihuana. This is particularly true since other hallucinogenic drugs such as d-lysergic acid, diethylamide, peyote, and mescaline are grouped together. (M.C.L.A. § 335.106; M.S.A. § 18.1106) The penalties for the use of these drugs are less severe than those for the possession of the narcotic drugs with which marihuana is included. This classification promotes no "compelling governmental interest." Therefore such classification of marihuana deprived the defendant of his constitutional right to equal protection of the law.

The Supreme Court of the State of Illinois recently considered this same issue in its review of a case involving an Illinois statute classifying marihuana with narcotic drugs. In People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971), that Court stated, "Marijuana, in terms of abuse characteristics, shares much more in common with the barbiturates, amphetamines and, particularly, the hallucinogens than it does with the 'hard drugs' classified in the Narcotic Drug Act." 49 Ill.2d 347, 275 N.E.2d 412. The Court concluded that the grouping of marihuana with narcotic drugs was irrational and violated the Equal Protection Clause.

It is of interest to note that the Michigan Legislature itself has decided that the classification of marihuana with narcotics and other so-called "hard drugs" is not rational in the light of present scientific knowledge. The legislature has removed marihuana from the category containing "hard drugs," and has lowered the penalties for the marihuana crimes.[7]

The legislature also has recognized the problem arising from the fact that the Controlled Substances Act of 1971 may only be applied prospectively. Aware of its inability to pass a retrospective law, the legislature has wisely called for a committee to review the sentences of those individuals presently incarcerated for drug offenses. Such a committee can make recommendations concerning the commutation of sentences to the Governor. Unlike the legislature, however, this Court does have the authority to apply its decisions retro-

5. United States Constitution, Amendment XIV.

6. Constitution of The State of Michigan, 1963, Art. 1, § 2.

7. See the Controlled Substances Act of 1971, effective April 1, 1972.

spectively. Justice demands that we so apply this decision.

The legislature's action is in line with the following conclusion reached by the United States House of Representatives Select Committee On Crime which in their April 6, 1970 report (91st Congress, 2nd Session H.R. 91-978), concluded as follows:

"Certainly, savagely repressive and punitive laws cannot be defended as a solution to the marihuana problem. It destroys our criminal justice system to have penal statutes that are not uniformly enforced—and perhaps in some instances are unenforceable. Our committee heard many general statements of harsh and oppressive prison sentences that had been meted out to young marihuana users or possessors. Many lament that we are 'making criminals of our young people.' The facts, however, do not support these statements. We have observed that the penalties for marihuana possession or even for selling are generally not imposed and that jail sentences are the rare exception rather than the rule.

"This situation is not desirable. Our criminal statutes must be uniformly enforced or they make a mockery of the effective administration of criminal justice. Nothing brings about a disrespect for the law more effectively than penal statutes which are selectively enforced. Those who receive the penalty which the law provides rightfully feel discriminated against if most violators go free. A major and perhaps the most serious need in relation to marihuana is to make the penalties relating to violations rational and then to bring about uniform and even enforcement of the laws. No society can exist if disrespect for its laws is widespread."

Reversed, defendant discharged.

T. M. KAVANAGH, C. J., concurs.

T. G. KAVANAGH, Justice.

John Sinclair was convicted of the crime of possession of marijuana contrary to the provisions of M.C.L.A. § 335.153, M.S.A. § 18.1123, and was sentenced to serve 9½–10 years in prison therefor.

I agree with my brother Brennan that a minimum sentence of 9½ years for the possession of marijuana is cruel and/or unusual punishment prohibited by the U.S. Const., Ann. VIII and the Const.1963, art. 1, § 16, for the reasons he states.

I also agree for the reasons he states, that in the discharge of our duty we have the power to review sentences.

I do not agree that the other issues urged on appeal here were adequately treated by the Court of Appeals or that on the basis of their reasoning—or any other —that the conviction can stand.

My brother Swainson has written that the police procedure followed in this case was tantamount to entrapment and does not meet a standard of practice which we can countenance. I agree with him in this for his stated reasons. His quotations from Justice Marston and Campbell in Saunders v. People, 38 Mich. 218 (1878), and Justice Roberts in Sorrells v. United States, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932) strike me as most apt.

Here because of the way it was obtained, the evidence should have been suppressed for all purposes, so defendant's conviction based upon it was improper.

My brothers Williams and Swainson, however, both write to the effect that our statute denied the defendant equal protection and due process of the law on account of its classification of marijuana with heroin and other "hard narcotics", prescribing the same penalty for their possession and use. They demonstrate that the overwhelming weight of scientific opinion today is that marijuana is not a narcotic at all, but rather a mild hallucinogen which should, with propriety, be treated with other hallucinogens. They hold that classification of marijuana with the "hard" drugs is wholly unreasonable and unconstitutional.

Although I am persuaded that our statute is unconstitutional, I cannot agree that my brothers have ascribed the correct or even permissible reasons for this conclusion.

The testimony and data upon which this legislation was based may indeed be out of date and of exceedingly doubtful validity today, but I do not perceive it the prerogative of a court to substitute its assessment of such testimony and data for that of a legislature. Rather I believe our duty is to determine whether what the legislature *did* conformed to constitutional limits.

I find that our statute violates the Federal and State constitutions in that it is an impermissible intrusion on the fundamental rights to liberty and the pursuit of happiness, and is an unwarranted interference with the right to possess and use private property.

As I understand our constitutional concept of government, an individual is free to do whatever he pleases, so long as he does not interfere with the rights of his neighbor or of society, and no government —State or Federal—has been ceded the authority to interfere with that freedom. As has been said:

> ". . . the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of these number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant." J. S. Mill, On Liberty, Chapter 1.

Whatever the validity of the concept that *traffic* in marijuana is freighted with a proper public interest, it is extending the concept entirely too far to sanction proscription of possession and private use of it. Although it is conceivable that some legitimate public interest might warrant state interference with what an individual consumes, "Big Brother" cannot, in the name of *Public* health, dictate to anyone what he can eat or drink or smoke in the *privacy* of his own home.

In my view when the legislature proscribed the possession and private use of marijuana as a *Public* health measure it did so unconstitutionally.

John Sinclair's conviction should be set aside and the prosecution dismissed.

BRENNAN, Justice.

Defendant was convicted of possession of two marijuana cigarettes in violation of M.C.L.A. § 335.153.

The offense occurred in the defendant's home, and in the presence of two police officers whose identity as such was unknown to the defendant.

Defendant did not testify at his trial.

On July 28, 1969, defendant, in the company of his attorney, appeared before the trial judge for sentencing.

The following is a transcript of that hearing:

"THE CLERK: File No. A-134588, People vs. John A. Sinclair. You were found guilty by a jury July 25th of Possession of Marijuana. You are here today for sentence. Do you have anything to say to the Court?

"THE DEFENDANT: I do.

"THE CLERK: Speak up.

"THE COURT: You want the microphone, Mr. Sinclair?

"THE DEFENDANT: Not particularly.

"THE COURT: All right.

"THE DEFENDANT: I haven't had a chance to say anything and so far I'd like to say a few things for the record. The Court is aware these charges have been fabricated against me by the Detroit Nar-

cotic Squad. He came to me one day and said a month and three days ago, you did this, you gave so and so this, you did that. I had no opportunity, I didn't do that and I had no opportunity to construct a defense. But I know what was going on all along and it was a conspiracy by these people, Warner Stringfellow, Vahan Kapagian and Joseph Brown and the rest of them, to frame me on this case and to bring me right here and to manufacture two marijuana cigarettes and say I gave them to them and then let the rest of you who are in it with them manufacture this cold case and bring me here. The punishment I have received already in the two and a half years since this case started is cruel and unusual, if I had committed the crime of possessing two marijuana cigarettes. And everyone who is taking a part of this is guilty of violating the United States Constitution and violating my rights and everyone else's that's concerned. And to take me and put me in a pigsty like the Wayne County Jail for the weekend is a cruel and unusual punishment, to sleep on the floor, to have no sheets, no blankets, pig swill to eat. You see, but you can get away with this and you can continue—I don't know what sentence you are going to give me, it's going to be ridiculous, whatever it is. And I am going to continue to fight it. The people are going to continue to fight it because this isn't justice. There is nothing just about their, there is nothing just about these courts, nothing just about these vultures over here.

"THE COURT: One more word out of the crowd and I will clear the courtroom.

"THE DEFENDANT: Right. And that will continue in the tradition that's been established here. I am not done, but no sense talking any more.

"MR. RAVITZ: If your Honor please, Mr. Sinclair is twenty-seven years of age, he is married, he has one child in the audience today, two years of age. A beautiful child, she is there. His wife is pregnant. He's lived in the State of Michigan all his life. He has three prior convictions, two are for marijuana. In each instance, he pled guilty. In the second instance, he never, ever should have pled guilty. It was the subject of illegal entrapment by Vahan Kapagian. He was induced, he was seduced, he was led by Kapagian to be an intermediary. To be an intermediary to a transaction which he never would have been a party to. To be an intermediary to a transaction which the major person on both sides of the transaction were, of course, not charged with an offense.

"John Sinclair stands convicted in Oakland County of assaulting a police officer who wasn't even a police officer. Of assaulting a person who assaulted him. He's been given a sentence of thirty days in that case, which is on appeal. The Court knows something about the history of cases involving alleged assaults upon police officers where the alleged assailants were persons of the nature of John Sinclair.

"If there are two crimes in this country which are political prosecutions, they are in one instance, those of claimed assaults against police officers and in another instance, those cases which can be proved easily by fabricated stories and not easily disproved by citizens. Namely, offenses such as the one before this Court.

"John Sinclair has another pending case. That pending case is an oddity in the annals of jurisprudence in this country or anywhere else. That case is for violation of the Federal law, which is on its face, palpably unconstitutional. It stated as many as twelve years ago in the case of Lamberg versus California, by the Supreme Court, I wonder who it was who came up with the clever notion of saying that John Sinclair is a criminal because he kept a business engagement in another state, in Canada, and went across the line not registering as a person convicted of a narcotic offense? Who else has been charged with that case and when and who is behind that case? I wonder? But one need not wonder, one need only look.

The community's attitude and the establishment's attitude and the narcotics officer's attitude and the unmitigated power which they have to exercise. The only way that power can be checked is by having an independent judiciary. The only way that power can be checked is by having jurors who aren't going to be servants to police state power that are going to stand as a bullwark against the improper exercise of that power. And we don't have that in America today. We didn't have that in this court this past week and that's regrettable.

"In America, which has never known anything but the history of racism, and in America which practices those imperialistic and those brutalistic and inhumane wars in Asia and elsewhere around the globe, and in America which sends a man to the moon while millions of its citizens starve, John Sinclair is brought before this Court and he is said to be a criminal. He isn't a criminal. He isn't a criminal at all. The criminals with respect to this law, are the doctors, the legislators, the attorneys who know, who know, because they have knowledge that these laws are unconstitutional. That these laws defy all knowledge of science. That this sumptuary legislation, like its predecessors and like other forms of sumptuary legislation, are on the books to go after and to impress politically unpopular people and groups and minorities. That's the only reason they are on the books.

"This very day, 25% of the future doctors of America who are studying medicine at Wayne State University Medical School, have possessed marijuana. Twenty-five percent of the future lawyers, indeed future judges who will be sitting on that bench some day, have possessed and have smoked marijuana.

"THE COURT: That's your opinion.

"MR. RAVITZ: That's my opinion.

"THE DEFENDANT: That's a fact.

"MR. RAVITZ: My opinion and based on studies.

"Persons brought before the bar of the Court aren't the middle-class, aren't the popular, they are the oppressed. They are the unpopular. It's a terrible law, it's a criminal law. I know that the Court might not agree with my evaluation of it. I know and ask and hope for only this, your Honor. I think the Court has been involved in enough of these cases to know that the law itself, whether it's unconstitutional per se, is a cruel law and isn't a law that is properly and fairly dispensed. I know that the Court, and I hope that the Court recognizes that the two cigarettes in this case were really—the officers in this case really had utter disregard for John Sinclair. They never treated him as a human being to whom the Constitution extended itself. What I really hope the Court recognizes is that other judges and other persons of this society charged with responsibilities, come to recognize is that America cannot single out unpopular leaders and go into their arsenal of over-kill, be it through stone or rifles or highly punitive sentences and think that the problems in this country can ever be solved in that fashion. Yet all around this country, we see political prosecutions. We see the Tom Haydens, we see the Huey Newtons, the John Sinclairs singled out. And somewhere in the warped minds of those so-called leaders, they think that they are going to cure the generation gap. They think that they are going to stem the tide of revolution by picking out leaders. Well, they are simply not going to do so because leaders are no longer indispensable in this country. Because there are a great many people who are awake to the crimes and the atrocities committed by governments and because it simply cannot work. The only way to deal with it is to deal with it rationally, to deal with it constitutionally and to follow those laws written by those legislators. And I will ask that the Court do just that. And I would ask that the

Court insulate itself from public pressures which I recognize to be very weighty. But to be equally irrational. Those are the same public pressures that lead to all those acts that called for the conclusions brought forward in the Kerner Commission Report. And yet those conclusions haven't been acted on in any way by government. I hope that this Court in particular begins to act upon them by exercising some degree of rational thought process and by recognizing the realities of the situation.

"Thank you.

"THE COURT: Well, in this matter here, Mr. Sinclair was arrested in January of 1967 in connection with an offense that took place on December 22nd, 1966. It's interesting to me that he, and you, assert that he has been violated of his constitutional rights because all of the rights that he's entitled to as any citizen is under the Constitution, have been asserted in his defense. In addition to that, there have been appeals to the Court of Appeals, to the Michigan Supreme Court on his behalf, which have held up the trial of this case for a long and lengthy period of time.

"Now, Mr. Sinclair is not on trial and never was on trial in this courtroom because of his beliefs. He represents a person who has deliberately flaunted and scoffed at the law. He may think that there is nothing wrong with the use of narcotics, as many people think that there is nothing wrong with the use of narcotics. Although enlightened and intelligent people think to the contrary and otherwise. And medical studies back them up far more completely than they do the people on his side of the particular question.

"The public has recognized that the use of narcotics is dangerous to the people that use it. The public, through its legislature has set penalties for those who violate and traffic in narcotics.

"Now, this man started in 1964, in which he first came to the attention of this Court and upon the offense of Possession of Narcotics, on a plea of guilty, was placed upon probation. We have tried to understand John Sinclair, we have tried to reform and rehabilitate John Sinclair.

"In 1966, while still on probation for that offense, he committed another offense for which he pleaded guilty. And this Court again showed supreme leniency to John Sinclair, placing him on probation again while ordering him to serve the first six months thereof in the Detroit House of Correction.

"This placed him in violation of his other probation, which resulted in that Judge extending that probation on again, so that for you or for John Sinclair to assert that the law has been out to get him, is sheer nonsense. John Sinclair has been out to show that the law means nothing to him and to his ilk. And that they can violate the law with impunity and the law can't do anything about it.

"Well, the time has come. The day has come. And you may laugh, Mr. Sinclair, but you will have a long time to laugh about it. Because it is the judgment of this Court that you, John Sinclair, stand committed to the State Prison at Southern Michigan at Jackson or such other institution as the Michigan Corrections Commission may designate for a minimum term of not less than nine and a half nor more than ten years. The Court makes no recommendation upon the sentence other than the fact that you will be credited for the two days you spent in the County Jail.

"Now, as to bond, in view of the fact that Mr. Sinclair shows a propensity and a willingness to further commit the same type of offenses while on bond, and I am citing you to the case of People versus Vita Giacalone just cited by the Michigan Court of Appeals, this is one instance where there is a likelihood of that type of danger and which the Court of Appeals said that refusal to set bond is a good grounds. And based on that, and my belief that he will continue to violate the law and

flaunt the law in relation to narcotics, I deny bond pending appeal.

"THE DEFENDANT: You just exposed yourself even more. And people know that. You give somebody nine and a half to ten years—(noise in the courtroom)."

Statistics of the Michigan Department of Corrections show that since 1964, 1,663 persons have been convicted in Michigan for violation of M.C.L.A. § 335.153.* Of these, 214 were given short jail terms, fined or given suspended sentences. 982 were placed on probation. 467 were committed to prison.

Of the 467 sent to prison, only 46 received minimum terms exceeding five years. Only five persons have been committed to prison for minimum terms of nine and one-half years, or more, for possession of any amount or species of narcotics since 1964.

Defendant appeals his conviction and sentence on many grounds. All of these have been dealt with adequately by the Court of Appeals, with one exception.

That issue is this: Whether under the circumstances of this case, the imposition of a minimum term of imprisonment of nine and one-half years is prohibited by the U.S.Const., Am. VIII, or Const.1963, art. 1, § 16.

The U.S.Const., Am. VIII, provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Const.1963, art. 1, § 16, provides:

"Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained."

Cummins v. People (1879), 42 Mich. 142, 3 N.W. 305 was submitted to the Supreme Court on October 29, 1879, and decided the next day. It involved:

"BURGLARY. Criminal information charging George Linden, Michael Moore, William Cummins and John Seipher with breaking into the dwelling house of Anne McFarlin, in the township of Hamtramck, and feloniously taking therefrom a bottle of sherry and a lot of cigars. Cummins was convicted and sentenced to imprisonment in the State Prison for seven years."

The Court, held, without citation of precedents:

"It is also alleged as error that the sentence was unusually severe, and that, in the light of all the facts, it was in violation of the constitutional provision which declares that 'cruel or unusual punishment shall not be inflicted.' The sentence was not in excess of that permitted by statute, and when within the statute this court has no supervisory control over the punishment that shall be inflicted. The statute gives a wide discretionary power to the trial court upon the supposition that it will be judicially exercised in view of all the facts and circumstances appearing on the trial. Unless the case presented differed materially from what it would appear to have been, as shown by the bill of exceptions, we think the punishment inflicted was unusually severe, and have no doubt but that on a full presentation of the facts to the chief Executive, relief would be promptly and cheerfully granted."

In Robison v. Miner and Haug (1888), 68 Mich. 549, 37 N.W. 21, a provision of the liquor law of 1887 calling for forfeiture of business in addition to fine and imprisonment was struck down as cruel and unusual punishment.

People v. Murray (1888), 72 Mich. 10, 40 N.W. 29, was a case in which:

"The respondent in this case was convicted in the Kalamazoo circuit on the

* State of Michigan, Department of Corrections, Criminal Statistics (1964–1970).

28th day of February, 1888, of the crime of carnally knowing and abusing a young girl under the age of 14 years, and was sentenced to imprisonment at Jackson for the term of 50 years."

The reported decision contains a detailed description of the events which led to the arrest and conviction of the defendant Murray, concluding with these words (p. 13, 40 N.W. p. 31):

"The case does not show the aggravating circumstances which so frequently accompany criminal conduct of the character charged, and especially is this true when we consider the intoxicated condition of the respondent. While this cannot furnish any legal excuse for what he did, it has an important bearing upon the turpitude of the respondent, and the quality of his crime, and should have had an important influence in determining the extent of the punishment to be inflicted after conviction had. Such considerations, however, seem to have been entirely without weight with the court below, as is very clearly manifest from the extent of the punishment meted out to the respondent."

In *Murray*, the Court found errors in the trial, and directed remand for new trial.

But the Court also directed its attention to the punishment issue, in these words (pp. 16–17, 40 N.W. p. 32):

"There is another feature of this case to which we wish to call special attention, and that relates to the sentence imposed. It is for 50 years, and will very likely reach beyond the natural life of the respondent, unrestrained of his liberty, and overreach by 10 or 15 years his natural life if so restrained. We see nothing in this record warranting any such sentence, and it must be regarded as excessive. It will not do to say the executive may apply the remedy in such a case. We do not know what the executive may do, and it is but a poor commentary upon the judiciary when it becomes necessary for the executive to regulate the humanity of the bench.

"But the Constitution has not left the liberty of the citizen of any state entirely to the indiscretion or caprice of its judiciary, but enjoins upon all that unusual punishments shall not be inflicted. Where the punishment for an offense is for a term of years, to be fixed by the judge, it should never be made to extend beyond the average period of persons in prison life, which seldom exceeds 25 years.

"We are all of opinion that the present case shows an abuse of the discretion vested by the statute in the circuit judge in this respect."

The *Murray* decision makes no reference to *Cummins*, although it is clear that the Court took a very different view of the strictures of the cruel and unusual punishment prohibition in the two cases.

In People v. Morris (1890), 80 Mich. 634, 45 N.W. 591, there is a rather extensive discussion of cruel or unusual punishment. There, two defendants pled guilty to larceny of a horse, and were sentenced to seven years and six years nine months, respectively. The statute on horse theft carried a minimum sentence of three and a maximum sentence of 15 years.

It was alleged in *Morris* that the statute was unconstitutional. No claim seems to have been made, as in *Murray*, that the sentence itself constituted the infliction of cruel or unusual punishment.

The historical discussion in *Morris* discloses that the precursor of our constitutional ban on cruel or unusual punishment was originally aimed at the infliction of punishments by judges, and was not a limitation upon the legislative branch of government in defining crimes and declaring punishments.

"'We first find the injunction against cruel and unusual punishment in the

Declaration of Rights, presented by the convention to William and Mary before settling the crown upon them in 1688. That declaration recites the crimes and errors which had made the revolution necessary. These recitals consist of the acts only of the former king and the judges appointed by him, and one of them was that "illegal and cruel punishment had been inflicted." * * * The punishments complained of were the pillories, slittings, and mutilations which the corrupt judges of King James had inflicted without warrant of law, and the declaration was aimed at the acts of the executive; for the judges appointed by him, and removable at pleasure, were practically part of the executive. It clearly did not then refer to the degree of punishment, for the criminal law of England was at that time disgraced by the infliction of the very gravest punishment for slight offenses, even petit larceny then being punishable with death. But the declaration was intended to forbid the imposition of punishment of a kind not known to the law or not warranted by the law.'" (p. 638, 45 N.W. p. 592)

While the Court in *Morris* was only asked to consider the constitutionality of the statute, nonetheless, the Court repeated the *Cummins* rule that any sentence within the statutory limits was beyond appellate consideration.

"But for the disposition of this case we may adopt the rule contended for, and then we must find (in order to declare the law unconstitutional) that the minimum punishment provided by the law is so disproportionate to the offense as to shock the moral sense of the people. Imprisonment for larceny is, and always has been, in this country and in all civilized countries, one of the methods of punishment. There may be circumstances surrounding the commission of larceny where fifteen years would not be considered too severe a punishment. When punishment is commensurate with the depravity of the criminal, as shown in the commission of the act, justice is done. Under most of our criminal laws, cases may arise where the punishment inflicted might be considered cruel, but that does not condemn the law. The judge in such case has acted within the jurisdiction of constitutional law, and other means must be resorted to to right the wrong. Appellate courts cannot interfere if the proceedings have been regular. The law itself must therefore be cruel or unusual to warrant the interposition of the courts." (p. 639, 45 N.W. p. 592)

The *Morris* Court also pointed out that the act of stealing a horse was *malum in se*. Details of the horse theft were not recounted.

The *Cummins* rule was followed again in People v. Cook (1907), 147 Mich. 127, 110 N.W. 514. There a statute calling for indeterminate sentences was upheld. The Court said (p. 133, 110 N.W. p. 517):

"The law does not provide for any unusual punishment. The legislature may fix one definite punishment for any crime, or it may fix a minimum and a maximum. When a constitutional law has fixed the punishment for an offense, a sentence under that law is not cruel or unusual within the meaning of the Constitution. One judge might sentence a man convicted of larceny for one year, and another might sentence the same man for the same offense for five years. When the judge imposes a sentence within the law, his sentence is not a cruel or unusual punishment. It is laws providing for cruel and unusual punishments that the Constitution refers to and prohibits, and not sentences by courts under constitutional laws."

People v. Mire (1912), 173 Mich. 357, 138 N.W. 1066, dealt with a conviction of burglary with explosives. The defendant there argued that the statute provided a

cruel and unusual punishment. Affirming the sentence, the Court said (p. 361, 138 N.W. p. 1067):

"The punishment prescribed in the act in question is imprisonment, a most common and usual method of punishment the world over. The claim that it is cruel and unusual must of necessity be directed, not to its nature, but to its limits of time, 'not less than 15 years nor more than 30.' That class of cruel and now unusual punishments at one time sanctioned and prevalent under the common law of England, such as burning at the stake, drawing and quartering, mutilation, starvation, and lesser forms of physical torture, to which the constitutional prohibitions were primarily directed, is not involved here. Approaching the dividing line, the inquiry as to what does in any particular case constitute cruel and unusual punishment under the constitutional provisions turns, not only upon the facts, circumstances, and kind of punishment itself, but upon the nature of the act which is to be punished."

As in *Morris,* the Court agreed that the minimum term was the measure of the constitutionality of a punishment statute.

"We are not prepared to hold that the punishment prescribed in this act does not fit the crime, or that the minimum punishment, which is the test, should be regarded as so unusual and cruel, and so disproportionate to the offense as to shock the moral sense of the public." (p. 362, 138 N.W. p. 1068)

Also following the lead of *Morris,* the Court in *Mire* discussed the legislative rationale, pointing out the peculiar dangers inherent in the use of explosives.

People v. Smith (1893), 94 Mich. 644, 54 N.W. 487, and People v. Whitney (1895), 105 Mich. 622, 63 N.W. 765, are both cases in which the constitutionality of legislatively determined punishments were considered and upheld. In both cases, the Court said "upon the legislature alone is conferred the power to fix the minimum and maximum of the punishment for all crimes."

In People v. Baum (1930), 251 Mich. 187, 23 N.W. 95, defendant was convicted of violation of the liquor laws, sentenced to pay a fine of $500 and $500 costs. In addition, defendant was placed on probation for five years, during which time it was ordered that he "must leave the State of Michigan within 30 days and not return for period of probation." It was held that such a method of punishment was impliedly prohibited by public policy. The case was remanded with instructions to enter a legal sentence.

In People v. Jagosz (1931), 253 Mich. 290, 235 N.W. 160, defendant was convicted of rape. There was no discussion of the basis for the claim that the sentence imposed was cruel or unusual. The Court said (p. 292, 235 N.W. p. 161):

"It is claimed that the sentences to imprisonment from twelve to thirty years constitute cruel and unusual punishment. There is no merit in this. The statute (3 Comp.Laws 1915, § 15211 [3 Comp. Laws 1929, § 16727]) provides imprisonment for life or any such period as the court in its discretion shall direct."

In People v. Harwood (1938), 286 Mich. 96, 281 N.W. 551, 552, defendant was sentenced five to 15 years for placing a foul and offensive substance in a taxicab, rendering it unuseable for two weeks.

The Court cited United States Supreme Court cases to support its finding that the Eighth Amendment did not apply to the states, then, without discussing the similar provision of the Michigan Constitution, affirmed the conviction on the ground that the "length of imprisonment for felony is for legislative determination and not subject to judicial supervision." Citing *Morris, Smith* and *Whitney.*

Defendant appealed his conviction of rape in People v. Commack (1947), 317

Mich. 410, 26 N.W.2d 924. This was a delayed appeal in which there appeared to have been some possibility of doubt as to the defendant's guilt, based upon certain after discovered evidence. Defendant's appellate counsel asked to withdraw because he did not wish to be a party to a fraud on the Court. Thereafter, the Court made short shrift of the appeal, and disposed of the cruel and unusual argument with the simple statement that the sentence was within the statutory limits, and was not "'cruel, inhuman and unjust punishment' in view of the nature of the crime charged."

In re DeMeerleer (1948), 323 Mich. 287, 35 N.W.2d 255, imposed a sentence of six months to 15 years for manslaughter. The Court reiterated the holding of *Harwood* without discussion.

Defendant was sentenced to a minimum term of eight years in People v. Connor (1957), 348 Mich. 456, 83 N.W.2d 315. He challenged the sentence as an abuse of discretion. The Court there held:

> "The sentence imposed is within the penalty imposed by statute. * * * In such cases the Supreme Court is without power to alter or change a sentence."

In People v. Krum (1965), 374 Mich. 356, 132 N.W.2d 69, defendant was convicted of obstructing an officer. He claimed that his sentence of 30 days in jail, $1,000 fine and $346.20 in costs, was grossly excessive under all the circumstances and taking account of his past exemplary record. That claim was disposed of with one sentence:

> "As to the claim that the sentence was excessive, it is found to be within the limits set by the statute, and that precludes our altering it."

It is apparent that our cases on the subject of cruel or unusual punishments have not considered the parameters of the constitutional prohibition in any great depth.

It is clear from *Murray, Miner* and *Baum* that the Court does have, and will occasionally exercise authority to vacate sentences which are illegal. But it is also clear that our Court has consistently declined to consider punishments challenged as being cruel and unusual where the sentence is within the range permitted by statute.

The conclusion that the prohibitions of the Eighth Amendment and of Const.1963, art. 1, § 16, are directed only to legislative acts and not judicial actions, does not seem warranted.

As pointed out in *Morris*, the history of the "cruel and unusual" punishment bar was otherwise. Moreover, the punishments prohibited by the Constitution are those "inflicted" and not those permitted or authorized by law. The prohibition against "excessive bail" would seem obviously directed against courts and judges who set bail, and not against legislatures which ordinarily leave the amount of bail to judicial discretion.

Further, the action of State courts has been held to constitute State action within the meaning of the Fourteenth Amendment. Shelley v. Kraemer (1948), 334 U. S. 1, 68 S.Ct. 836, 92 L.Ed. 1161.

Since the Eighth Amendment has now been held applicable to the States, via the Fourteenth Amendment (Robison v. California, [1966] 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758), it would follow that the sentence imposed by a State court, could be made the basis for a Federal claim, even though State legislative action is not challenged.

Where the legislature provides an indeterminate sentence, which contains no minimum term, the constitutionality of the legislation would have to be determined on the basis of the maximum penalty established. In such a case, a showing would have to be made that no set of facts could be posited under which the commission of the crime defined in the law would warrant the imposition of the maximum penalty.

In such a case, the legislature leaves the setting of the minimum sentence to the court for the very purpose of creating latitude so as to relieve from the maximum penalty those defendants whose conduct contained some circumstances of mitigation, or at least no circumstances of aggravation.

But it does not follow that because the legislature has left the setting of the minimum term to the courts, no minimum term can ever be excessive.

We reject the proposition that punishments can be "cruel and unusual" in the popular sense, but not in the constitutional sense. The Constitution is a popular document. It must be construed by the courts to have that meaning which the people intended it to have.

It is ludicrous to suppose that the people who prohibited excessive fines and bail and cruel or unusual punishment intended thereby to vest unbridled power in judges to require bail, impose fines and inflict punishments.

It is equally unrealistic to conclude that the people intended to permit the legislature to give such unbridled power to the trial courts in the name of indeterminate sentencing.

Many examples could be given in which maximum statutory punishments are at variance with the realities of the administration of justice.

Traffic violations, for instance, are punishable under the motor vehicle code as misdemeanors, carrying a maximum of 90 days in jail and $100 fine.

While certain aggravated circumstances might be supposed justifying such penalties in some cases, it would be shocking indeed if the maximum penalty should be meted out for a commonplace left turn violation!

Surely this Court would not consider itself powerless to interpose in such a case.

Our constant reiteration that an appellate court is without authority to review a sentence has no basis in law or logic. M. C.L.A. § 769.1 provides that Justices of the Supreme Court have sentencing power, as fully as circuit judges. There is no reason to suppose that such authority is idly given or has no relation to the appellate function.

The authority, indeed the duty, of this Court to vacate sentences which exceed the permissible limits of statutory provisions is clear. Such sentences are illegal. They violate the law. As such, they are null and void.

The Constitution is the fundamental law. It is as explicit and as binding on courts as the pronouncements of the legislature. A sentence of a court which violates the Constitution is illegal. This Court is not without the power to support and observe the Constitution and to apply it to the actions of judges, even when such actions are literally within the discretion vested by statute.

The legislature has no power to invest a court with discretion to violate the Constitution.

This case of *Sinclair* has been given much notoriety. Defendant and his supporters have used his conviction and sentence as a vehicle to attack the wisdom and efficacy of the marijuana laws.

We have declined to enter into that controversy. The judicial fact-finding process is not adaptable to finding mixed questions of fact and policy.

But we do note that the possession of narcotic drugs is a crime *malum prohibitum* only. This is particularly apparent in the case of marijuana. The statute prohibits possession of any part of the cannibus sativa plant. Possession of a natural growing plant can hardly be *malum in se*.

As officers sworn to uphold the Constitution we recognize with understanding, the action of the learned trial judge.

The attitude of hostility and remorselessness displayed by the defendant and the disruption of orderly proceedings by his supporters surely combined to tax the patience of the court. And certainly if reha-

bilitation were the sole purpose of sentencing, the measure of the imprisonment would be more the posture of the defendant than the gravity of the offense.

But rehabilitation is not the only function of punishment. It is not even always possible. Where the defendant is recalcitrant, whether from principle or out of sheer meanness, the law cannot, in a free society, disregard the nature of the offense and address itself only to the character of the offender.

Where a minimum sentence is imposed which is demonstrably and grossly excessive, in the light of the depravity of the criminal as shown in the commission of the act and in light of the usual and customary disposition of those convicted of like conduct, such minimum sentence violates the constitutional prohibition against the inflicting of cruel or unusual punishment, and is illegal and void.

The sentence is vacated, and the cause is remanded for re-sentencing. In the meantime defendant will be admitted to bail with bond in the amount of $1,000.00.

ADAMS, J., concurs.

37 Mich.App. 442

PEOPLE of the State of Michigan,
Plaintiff-Appellee,

v.

Joseph PAYNE, Defendant-Appellant.

Docket No. 9392.

Court of Appeals of Michigan,
Div. 1.

Dec. 22, 1971.

Released for Publication March 9, 1972.

By a judgment of the Recorder's Court of Detroit, Wayne County, George W. Crockett, Jr., J., the defendant was convicted of taking indecent liberties and he appealed. The Court of Appeals held that admission of the concededly hearsay testimony of policewoman as to what victim, with whom defendant allegedly took indecent liberties, told policewoman regarding incident two days earlier was harmless error, if any, in view of fact that policewoman's testimony was largely cumulative of that given by the victim.

Affirmed.

1. Criminal Law ⇐366(6)

In sex offenses, hearsay statements made by victim of tender years to witness who subsequently testifies as to contents of these declarations are admissible as part of res gestae if delay from time of incident to time of conversation is adequately explained.

2. Criminal Law ⇐1169(2)

Admission of the concededly hearsay testimony of policewoman as to what victim, with whom defendant allegedly took indecent liberties, told policewoman regarding incident two days earlier was harmless error, if any, in view of fact that policewoman's testimony was largely cumulative of that given by the victim. M.C.L.A. § 750.336.

3. Criminal Law ⇐260(11)

Where inadmissible hearsay is presented to trial court sitting alone, Court of Appeals can assume that it rendered its verdict upon evidence properly offered and not upon inadmissible testimony.

4. Assault and Battery ⇐59

Penetration is not an element to be proven in an indecent liberties prosecution. M.C.L.A. § 750.336.

5. Assault and Battery ⇐59

In view of amendment of indecent liberties statute to include conduct of females as well as male, amended statute under which defendant was prosecuted could not

timony of the policewoman was largely cumulative of that of the victim.[2] Where inadmissible hearsay of this nature is presented to a trial court sitting alone, we can assume that its verdict rested upon evidence properly offered and not upon the inadmissible testimony. People v. Davison, supra, at 433, 163 N.W.2d 10.

[5–7] Further, defendant attacks the constitutionality of the indecent liberties statute as unduly vague.[3] We cannot accept this contention. The legislation penalizes conduct that is of such character that the common sense of society regards it as indecent and improper. People v. Hicks (1893), 98 Mich. 86, 56 N.W. 1102; People v. Szymanski (1948), 321 Mich. 248, 32 N.W.2d 451; People v. Healy (1933), 265 Mich. 317, 251 N.W. 393; People v. Visel (1936), 275 Mich. 77, 265 N.W. 781; People v. Lakin (1938), 286 Mich. 282, 282 N.W. 149; People v. Brandt (1969), 18 Mich.App. 267, 171 N.W.2d 59; People v. Dexter (1967), 6 Mich.App. 247, 148 N.W. 2d 915; Armstrong v. Bannan (C.A.6, 1959), 272 F.2d 577. A penal statute, proscribing sexually offensive, anti-social conduct, is not unconstitutionally ambiguous because it fails "* * * to graphically outline the acts encompassed by the crime * * *." People v. Green (1968), 14 Mich.App. 250, 251, 165 N.W.2d 270, 271.[4]

[8] Finally, defendant took the stand to deny the allegations of the complainant. The prosecutor on cross-examination and for the purposes of testing defendant's credibility brought defendant's past convictions to light. It remains the law of Michigan that, whenever defendant chooses to testify, his past convictions may be used by the prosecution to impeach his credibility. M.C.L.A. § 600.2158 (Stat.Ann.1962 Rev. § 27A.2158); People v. DiPaolo (1962), 366 Mich. 394, 115 N.W.2d 78; People v. Cybulski (1968), 11 Mich.App. 244, 160 N.W. 2d 764; People v. Roney (1967), 7 Mich. App. 678, 153 N.W.2d 175.

[9] The final allegation of error is that the trial court failed to make specific findings of fact at the conclusion of the case. While GCR 1963, 517.1, requires the court in a nonjury case or in a case tried with an advisory jury to make findings of fact and state separately its conclusions of law thereon, this court rule does not apply to criminal cases.

Affirmed.

2. That the policewoman indicated that defendant entered the victim is not, in and of itself, significant since this fact need not be proven in an indecent liberties prosecution. The testimony as to penetration cannot be said to have influenced the outcome.

3. Defendant also challenges the statute as unconstitutionally discriminatory; we find this totally without merit. While the legislation originally punished the misconduct of *males* only, the legislation was amended in 1954 to include females. P.A. 1954, No. 51, § 1. Defendant's prosecution is under this later, amended version.

4. See also, People v. McMurchy (1930), 249 Mich. 147, 178, 179, 228 N.W. 723, in which it is noted that some crimes by their very nature must necessarily be couched in broad language so that the legislation can accomplish its end of proscribing socially undesirable conduct. No legislation of this genus could ever possibly recite a litany of wrongdoing for which one remained criminally responsible.

Jamie EGAN and Benita Egan, Appellants,
v.
SHERIFF, CLARK COUNTY, Nevada, Respondent.
No. 6970.

Supreme Court of Nevada.
Nov. 17, 1972.

Appeal from an order of the Eighth Judicial District Court; Clark County, Howard W. Babcock, J., denying a pretrial petition for writ of habeas corpus. The Supreme Court, Zenoff, C. J., held that although state obtained a continuance at a scheduled preliminary hearing in justice court because of absence of their expert

(b) If the battery is not committed with a deadly weapon, and serious physical injury to the victim does result, for a gross misdemeanor.

(c) If the battery is committed with the use of a deadly weapon, by imprisonment in the state prison for not less than 2 years nor more than 10 years.

witness, a chemist, and although expert testimony was not essential to establishment of probable cause in respect to sale of marijuana, there was no basis for concluding that affidavit in support of motion to continue was false nor that state became obligated to produce expert testimony before grand jury to establish probable cause once it used absence of expert to gain continuance in justice court, and probable cause for bringing of indictment was established, where testimony of undercover agent before grand jury was sufficient to establish that petitioner had either directly, or by necessary implication, represented that substance he was selling was marijuana; however, mere physical presence of other petitioner during time undercover agent made arrangements to purchase marijuana and statement of other petitioner as to price a "baggie" of marijuana would be may well have subjected her to criminal charges but was insufficient to establish probable cause that she had made a "sale" of marijuana and indictment brought against her charging sale should have been dismissed.

Affirmed as to one petitioner and reversed as to other petitioner.

1. Indictment and Information ⇐10.2(1)

"Non-expert" testimony may be sufficient to establish probable cause for return of an indictment in grand jury proceedings.

2. Indictment and Information ⇐10.2(8)

Standard of probable cause is satisfied if person against whom an indictment charging sale of marijuana is sought either directly, or by necessary implication, represents that substance he is selling is marijuana. N.R.S. 453.030, 453.210, subd. 2.

3. Criminal Law ⇐234
Indictment and Information ⇐10.2(2)

Although state may use an expert to establish probable cause at a preliminary hearing or before grand jury, it is not mandatory that it do so if other testimony meets required standard.

4. Indictment and Information ⇐10.2(8)

Although state obtained a continuance at a scheduled preliminary hearing in justice court because of absence of their expert witness, a chemist, and although expert testimony was not essential to establishment of probable cause in respect to sale of marijuana, there was no basis for concluding that affidavit in support of motion to continue was false nor that state became obligated to produce expert testimony before grand jury to establish probable cause once it used absence of expert to gain continuance in justice court, and probable cause for bringing of indictment was established, where testimony of undercover agent before grand jury was sufficient to establish that petitioner had either directly, or by necessary implication, represented that substance he was selling was marijuana. N.R.S. 453.030, 453.210, subd. 2.

5. Drugs and Narcotics ⇐102

Mere physical presence of petitioner's wife during time undercover agent made arrangements with defendant to purchase marijuana and her statement as to price a "baggie" of marijuana would be may well have subjected her to criminal charges but was insufficient to establish probable cause that she had made a "sale" of marijuana and indictment brought against her charging sale should have been dismissed. N.R.S. 453.030, 453.210, subd. 2.

6. Constitutional Law ⇐50

The legislature has full and exclusive authority in all matters of legislation so long as it does not transgress the bounds of some constitutional limitation.

7. Criminal Law ⇐5

The power to define crimes and penalties lies exclusively in the legislature.

8. Constitutional Law ⇐250.1(2)
Drugs and Narcotics ⇐43

Provision of former statute classifying marijuana as a narcotic was neither arbitrary nor violative of equal protection. N.R.S. 453.011 et seq., 453.020, subd. 2, 453.32½; U.S.C.A.Const. Amend. 14.

9. Criminal Law ⇐15

Although statutes under which petitioner was charged with sale of marijuana were only effective until January 1, 1972, grand jury indictment was not invalid by reason of fact that it was not returned until February 17, 1972, where statute enacted to replace former statutes specifically provided that prosecution for any violation of law occurring prior to effective date of newly enacted statute was not affected or abated. N.R.S. 453.030, 453.210, subd. 2.

Peter L. Flangas, Las Vegas, for appellants.

Robert List, Atty. Gen., Carson City, Roy A. Woofter, Dist. Atty., and Charles L. Garner, Deputy Dist. Atty., Las Vegas, for respondent.

OPINION

ZENOFF, Chief Justice:

An indictment was returned by the Clark County Grand Jury charging appellants with selling marijuana in violation of N.R.S. 453.030 and 453.210(2). In this appeal from the denial of a pre-trial writ of habeas corpus they challenge (1) the sufficiency of the evidence to establish probable cause, (2) the constitutionality of the statute and (3) contend the statute under which they are charged was repealed by Stats. of Nev.1971, ch. 667. [N.R.S. 453.-011 et seq.]

The grand jury heard the testimony of only one witness, John Adamo, an undercover agent for the Clark County Sheriff's office. He testified that on September 22, 1971, he met with appellants and arrangements were made with Jamie Egan to purchase marijuana. While Adamo and Jamie Egan were haggling over the price Bonita Egan stated the price would be $20.00. A rendezvous was scheduled in the parking area of a shopping center. After a brief period the Egans arrived at the parking lot. Bonita went into the grocery store and Jamie entered the Adamo car where he exchanged what he *represented* to be a baggie of marijuana for $20.00.

[1, 2] 1. We have previously held similar "non-expert" testimony sufficient to establish probable cause in grand jury proceedings. "The standard of probable cause is satisfied if the person against whom an indictment is sought either directly, or by necessary implication, *represents* that the substance he is selling is marijuana." Glosen v. Sheriff, 85 Nev. 145, 148, 451 P.2d 841, 842 (1969). [Emphasis added]. We have restated this rule in DuFrane v. Sheriff, 88 Nev. 52, 495 P.2d 611 (1972) and Zampanti v. Sheriff, 86 Nev. 651, 473 P.2d 386 (1970).

[3, 4] Appellants concede *Glosen* is the law in this state but contend that it should not apply to them because of the following circumstances. Prior to the indictment appellants had been charged with the same offense in the justice court.[1] At a scheduled preliminary hearing the state obtained a continuance because of the absence of their expert witness, a chemist. Appellants suggest that since expert testimony was not essential that the affidavit in support of the motion to continue was false and since the state used the absence of the expert to gain the continuance in justice court they became obligated to produce expert testimony before the grand jury, to establish probable cause. This is simply not the law. Although the state may use an expert to establish probable cause at a preliminary hearing or before the grand jury, it is not mandatory that it does so if other testimony meets the standard we required in *Glosen*. Adamo's testimony met that test as to Jamie Egan.

[5] The mere physical presence of Bonita Egan during the negotiations and her statement of the price of a baggie may well subject her to criminal charges; however, such participation is insufficient to establish probable cause that she made a "sale". The charge against her should

1. The justice court proceedings were subsequently dismissed.

have been dismissed in the writ proceedings below. Cf. Tigner v. State, 88 Nev. 280, 496 P.2d 159 (1972).

[6-8] 2. The Uniform Narcotic Drug Act, Stats. of Nev.1937, ch. 23, (N.R.S. 453.020(2)) classified marijuana as a narcotic.[2] Appellants argue that recent scientific knowledge proves that marijuana is not a narcotic and complain that such classification, with its attendant punishment and sentencing provisions is arbitrary and deprives them of equal protection in violation of their Fourteenth Amendment rights. We reject this contention.[3] The legislature has full and exclusive authority in all matters of legislation so long as it does not transgress the bounds of some constitutional limitation. McCormick v. District Court, 67 Nev. 318, 218 P.2d 939 (1950). "The power to define crimes and penalties lies exclusively in the legislature." Lapinski v. State, 84 Nev. 611, 613, 446 P.2d 645, 646 (1968). "The inclusion of marijuana in the statutory definition of 'narcotic' in a class with heroin and other physically addicting drugs is not an unreasonable and arbitrary classification violative of due process and equal protection of the law." Reyna v. State, 434 S.W.2d 362, 366 (Tex.Cr.App.1968) quoted with approval in Hunter v. State, 481 S.W.2d 806 (Tex.Cr.App.1972).

[9] 3. Appellants' final contention is that since the grand jury indictment was not returned until February 17, 1972, and N.R.S. 453.030 and 453.210(2) were only effective until January 1, 1972, that the statute was repealed and they cannot be charged under the old law. The argument is without merit. Stats. of Nev.1971, ch. 667, § 66 specifically provided that "[p]rosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this chapter." N.R.S. 453.030 and 453.210(2) were fully viable and applicable to the offense charged.

Affirmed as to Jamie Egan.

Reversed as to Bonita Egan.

BATJER, MOWBRAY, THOMPSON, and GUNDERSON, JJ., concur.

2 The Uniform Controlled Substances Act, Stats. of Nev.1971, ch. 667, p. 1660 et seq., supplanted the Uniform Narcotic Drug Act, effective January 1, 1972. Under the new act (NRS 453.011 et seq.) marijuana is no longer classified as a narcotic but marijuana offenses continue to be felonies. NRS 453.321.

3 We are aware of recent contrary decisions in People v. Sinclair, 387 Mich. 91,

MARIJUANA AND THE LAW: A JUDICIAL OPINION †

COMMONWEALTH V. JOSEPH D. LEIS AND IVAN WEISS*

Defendants were convicted in the East Boston District Court for the violations of the Massachusetts Laws on the illegal possession of a narcotic drug (marijuana),[1] conspiracy to violate the narcotic drug-laws of Massachusetts[2] and illegal possession of a narcotic with the intent to sell it.[3] Defendants appealed to the Superior Court and claimed that the Massachusetts laws relating to the possession, use and sale of marijuana are unconstitutional because it is arbitrary, irrational and unsuited to the accomplishment of any valid legislative purpose. They further contend that such laws violate the defendant's rights secured under the Ninth Amendment of the United States Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. They finally argue that these statutes impose cruel and unusual punishments upon users, possessors and sellers of marijuana in violation of the

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* Commonwealth of Massachusetts, Suffolk Superior Court Nos. 28841-2, 28844-5, 28864-5 (1968). Permission was granted by Chief Justice G. Joseph Tauro to publish excerpts from his opinion.

[1] MASS. GEN. LAWS ch. 94, § 205 as amended by the Acts of 1958, ch. 95, § 1.

[2] MASS. GEN. LAWS ch. 94, § 213a as amended by the Acts of 1960, ch. 204, § 2.

[3] MASS. GEN. LAWS ch. 94, § 217b as amended by the Acts of 1960, ch. 204, § 3.

Eighth Amendment as applied to the states by the Fourteenth.

TAURO, C.J.:

FUNDAMENTAL RIGHTS

The defendants maintain that among the hierarchy of individual rights guaranteed by the Constitution of the United States, there are certain fundamental rights which may be abridged by the states only upon the showing of a compelling state interest. Those rights encompass those "privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."[4] In addition to those specifically enumerated in the Constitution, they also include the right to travel freely, to contract, to acquire useful knowledge, to marry, establish a home, raise a family, and educate children to earn a livelihood, to exercise the franchise, to read, to inquire, to teach, to associate and to privacy in one's associations.[5] Although no decision appears to have attempted to propound an all inclusive list of fundamental rights, an examination of those cases cited by the defendants indicates that only those rights are to be considered as fundamental whose continuation is *essential* to ordered liberty. In other words, fundamental rights are those without which democratic society would cease to exist. Furthermore, those rights which are recognized as fundamental are also, in many instances, closely related to some commonly acknowledged moral or legal duty and not merely to a hedonistic seeking after pleasure. No claim of any such duty which would demand the possession, use or sale of marijuana has been advanced in this case.[6]

I conclude that the alleged rights of the defendants to

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[4]Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

[5]*Id.*; Aptheker v. Sec. of State, 378 U.S. 500 (1964); Spevak v. Klein, 35 L.W. 4140 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965) cases cited at 482-83; Harper v. Va. Bd. of Elections, 383 U.S. 663 (1966).

[6]*See* People v. Woody, 61 Cal. 2d 889, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

possess, use or sell marijuana, which I find to be a harmful and dangerous substance, is neither essential to the preservation of ordered liberty, nor to the orderly pursuit of happiness by free men, nor required by any commonly recognized legal or moral duty. I rule that these alleged rights do not rise to the level of fundamental rights nor fall within the periphery or penumbra emanating from such rights. Therefore, it is not necessary that a compelling state interest be shown in order to subject them to regulation under the exercise of the state's police power.

EXTENT OF POLICE POWER: BURDEN OF PROOF: PRESUMPTION OF VALIDITY: TEST OF VALIDITY

The non-fundamental right to possess, use or sell intoxicating substances such as marijuana or alcohol can be regulated or even absolutely prohibited by the state in the exercise of its police power, provided such statutory restrictions are reasonably suited to achieve a valid legislative purpose.[7]

A properly enacted statute is presumed to be constitutionally valid and the burden is upon its assailants to demonstrate its unconstitutionality. "Unless the act of the Legislature cannot be supported upon any basis of fact that can reasonably be conceived to sustain it, the court has no power to strike it down as violative of the Constitution."[8] Thus, when enacting legislation in the exercise of the state's police power, the legislature is presumably supported by facts known to it "unless facts judicially known or proved preclude that possibility."[9]

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[7] Clark Distilling Co. v. West'n Md. Rwy. Co. & State of West Va., 242 U.S. 311 (1917); Crane v. Campbell, 245 U.S. 304 (1917); Hornsby v. Allen, 326 F.2d 605, 609 (5th Cir. 1964).

[8] Sperry & Hutchinson Co. v. Dir. of Div. of Necessities of Life, 307 Mass. 408, 418, 30 N.E.2d 269, 274 (1940).

[9] South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 191 (1938); Borden's Farm Prod., Inc. v. Baldwin, 293 U.S. 194, 209 (1934); United States v. Carolene Prod. Co., 304 U.S. 144, 153 (1938); Sperry & Hutchinson Co. v. Dir. of Div. of Necessities of Life, 307 Mass. 408, 413, 30 N.E.2d 269, 274 (1940); Merit Oil Co. v. Dir. of Div. of Necessities of Life, 319 Mass. 301, 305, 65 N.E.2d

During the course of these proceedings, there was some reference to the legislative history of our narcotic drug laws or rather, more properly, to the lack of any such complete history. While the existence of such a legislative history may be helpful in ascertaining the intent of the legislature when construing a statute, it is not, however, essential to a determination of the points in issue in this case. The court's function in a case such as this is not to conduct an historical survey to determine the facts known or reasonably conceived to exist by the legislature at the time of the statute's enactment. Rather, it is to determine whether facts now exist or could now be reasonably conceived to exist by the legislature which would sustain the statute. To rule otherwise would involve the courts in the absurd position of upholding clearly erroneous statutes on the grounds that they were reasonable in the light of the state of knowledge existing at the time of their enactment, and of striking down presently justifiable statutes on the grounds that the legislature could not have known the facts necessary to sustain them at the time of their enactment.

Since legislative regulations are of continuing effect until they expire by their own terms, are repealed or are invalidated by the courts, I rule that they should be tested according to the facts known or reasonably received to exist at the time of their challenge. This is especially so in view of the fact that amendments were made to MASS. GEN. LAWS c. 94, §197, as late as 1966.[10]

INCLUSION OF MARIJUANA AS A NARCOTIC

The defendants argued that MASS. GEN. LAWS c. 94, §197 is irrational and arbitrary insofar as it defines marijuana as a narcotic drug in the same category with such "hard" narcotics as morphine, cocaine and heroin.

The testimony elicited at the hearing from expert witnesses indicated that the term "narcotic", as currently used,

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529, 532 (1946); Coffee-Rich Inc. v. Comm'r of Pub. Health, 348 Mass. 414, 422, 204 N.E.2d 281, 287 (1965).

[10]As amended by the Acts of 1966, ch. 71, § § 1,2.

is a legal term with no precise, technical meaning, and is employed to describe a varied assortment of harmful and dangerous drugs. Section 197 makes no effort to provide a generic definition of "narcotic", but resorts to definition by specific inclusion. The fundamental question with regard to such a definition then, is whether those drugs included in it are so distinguishable from one another as to render marijuana's classification as a narcotic so arbitrary and unreasonable as to be unconstitutional.

Despite some pharmacological differences between other drugs, such as heroin, and marijuana and despite the physiological differences in their effects, most notably with regard to physical dependence, I do not find that the inclusion of marijuana in the statutory definition of a narcotic drug is constitutionally offensive.[11]

As with the other drugs included in §197, the use of marijuana does cause psychic disorientation. It is a hallucinogenic, mind altering drug whose common usage and usual effect is to cause a state of euphoria or intoxication and which can lead to the user's habitual, psychological dependence on the drug.

The term "narcotic" is broad enough to include marijuana as well as the other drugs prescribed by §197. The failure to include other known drugs, such as alcohol, or yet undiscovered synthetics in this category either by generic definition or specific inclusion does not make marijuana any less of a narcotic.

REASONABLENESS OF THE LEGISLATION: DANGERS OF MARIJUANA

This Commonwealth's statutory scheme of regulating the possession and sale of narcotic drugs, admittedly a virtual prohibition as applied to marijuana, is predicated upon the premises that its use is harmful or dangerous and that its strict regulation and virtual prohibition is a rational means

[11]People v. Stark, 157 Colo. 59, 66, 400 P.2d 923, 927 (1965) and cases cited therein.

of preventing the harm and damage attendant upon its use. The next and central issue would logically seem to be a determination of whether there are facts in existence or which reasonably could be conceived to exist that would sustain a legislative conclusion that the use of marijuana is harmful or dangerous.

It is my opinion, based on the evidence presented at this hearing, that marijuana is a harmful and dangerous drug.

The effects of marijuana are not readily predictable and, to a great extent, depend upon and accentuate the psychological predisposition of the user. The drug, as it is commonly used, has as its primary and, as far as I can ascertain, its only purpose the induction of a state of intoxication or euphoria. While under the influence of marijuana, a person's mental processes are disoriented, his perception of time and space is distorted, his coordination is impaired, but his strength remains undiminished. Marijuana tends to cause the user to lose perspective and to focus his attention on one object to the exclusion of all others.

The drug has a great attraction for young men and women of college age or less during the formative years when they should be gaining the education and experiences upon which to build their future lives. Furthermore, there is widespread emotional instability among the users of marijuana. The use of the drug allows them to avoid the resolution of their underlying problems rather than to confront them realistically. In addition, users naturally associate with other users, who are also likely to have emotional problems and compound one another's difficulties. In such persons, the use of marijuana may cause temporary psychotic episodes. They develop a drug-oriented culture which is marked by a peculiar proselytism, whereby users strive to introduce non-users to the drug. Marijuana users customarily use the drug with the specific intent of becoming intoxicated. No evidence was introduced to show any significant number of persons who use marijuana to achieve a state of relaxation short of intoxication. Even the so-called regulatory process of "self-titration" is employed

to attain a desired state of intoxication, not to stop short of intoxication.

A great deal of testimony was devoted to the addictive qualities of marijuana. While marijuana is not physically addictive in the sense that heroin is, it can cause psychological dependence in the user. The user can come to depend upon marijuana as a crutch and its usage becomes habitual. It is this form of addiction which modern medical experts assert is the proper definition of the term.

Given the effects of marijuana and the character of its users, the possible dangers associated with its use are clearly discernible. Its tendency to release inhibitions, both verbally and actively, and the dependence of its unpredictable effects on the disposition of the user, marijuana can be especially volatile when used by a despondent, hostile or unstable person. Its impairment of motor coordination, coupled with the retention of muscular strength and the distortion of time and space relationships, makes its use extremely hazardous among those operating machinery, especially automobiles, and among those individuals responsible for the care and custody of other persons, such as the parents of young children.

The propensity of marijuana users to concentrate on one object, while ignoring all others, leads to a loss of awareness and frustrates the formation of rational judgments by them. This narrow, subjective pre-occupation of users, especially the young, with drugs and their effects can cause irreparable distruptions of education, family ties or careers whose adverse personal and social effects can last long beyond the period of actual marijuana use. Further, by centering their attention on the attainment of a state of euphoria through drug consumption, marijuana users are apt to neglect their health and that of others in their care and to submit to a life of indolence. The effects of these patterns of living are not limited to the users themselves. Ultimately, society must assume the burden created by their use of marijuana.

Much of the testimony concerned the relationship between the use of marijuana and the progression to "hard"

narcotics, between its use and crimes other than violations of laws pertaining to marijuana and between its use and sexual promiscuity. There is no allegation by the Commonwealth that physical addiction to "hard" narcotics, crime and promiscuity would disappear if marijuana use were to disappear. Nor is there any claim put forth that marijuana use necessarily and inevitably leads to addiction to "hard" narcotics, crime and promiscuity in each and every case. Nevertheless, there is abundant evidence that marijuana use is closely associated with these other social evils in a great many instances. Although no definitive link of efficient casuality can be demonstrated with scientific exactness at present, the coincidence between addiction to "hard" narcotics, crime and promiscuity is too great to be passed off as merely accidental. The defendants answer that the fault lies not with the nature of the drug but rather with the user and his environment. Admittedly, in such complex and intertwined social problems, no one factor can be singled out as the sole efficient cause. Yet, it is reasonable in the light of facts now known to conclude that the use of marijuana contributes to "hard" narcotic addiction, crimes other than those related to the violation of the marijuana laws and sexual promiscuity. Furthermore, if the fault does lie with the instability of the persons prone to use marijuana, it would seem that this fact would lend added support to the laws prohibiting its use.

REGULATION V. PROHIBITION

The defendants also contend that the prohibition of marijuana exceeds the power of the legislature, that marijuana should be regulated, as is alcohol, not prohibited. This argument merges with the contention that our narcotic drug laws, as applied to marijuana, constitute a denial of the equal protection of the laws and will also be dealt with further in conjunction with that latter contention. However, the state may, in the exercise of its police power, absolutely prohibit the possession and use of alcohol by

individuals.[12] The fact that the legislature has chosen to regulate the use of alcohol and prohibit the use of marijuana does not deny its power to prohibit the use of marijuana. The difference in the legislative treatment of the two substances is reasonable in view of factual differences between them.

The customary use of alcohol, by the glass or bottle, is conspicuous and, thereby, susceptible of regulation and limitations regarding time, place and age. The customary use of marijuana, by smoking, is not conspicuous and is not susceptible of regulation and limitations regarding time, place and age. It can be used in public places, at work, on the streets and in vehicles without detection until its effects are manifested, whereas comparable uses of alcohol can be detected much more readily.

The social harm caused by the abuse of alcohol cannot be denied. The number of alcoholics and of highway fatalities and crimes which occur under the influence of alcohol speak for themselves, but the fact remains that alcohol has uses other than as a means of becoming intoxicated. The vast majority of alcohol users do not consume it with the intention of becoming intoxicated. It has a social value as an relaxant and, in some instances, as a therapeutic. Marijuana, on the other hand, has no generally recognized medical use and is used solely as a means of intoxication.

The history and cultural acceptance of alcohol and marijuana in this country cannot be ignored. Alcohol has been in widespread use among the general population since colonial times. It is customarily consumed with meals and on social occasions which do not center on the avowed purpose of drinking to the point of intoxication. So ingrained is its use in our culture that all prior statutory and constitutional prohibitions of its use have failed. Marijuana also first appeared in our country during the colonial period, but its use was never widespread among the general population. As has been noted previously, its use is not

[12]Crane v. Campbell, 245 U.S. 304 (1917).

associated with any purpose other than to become intoxicated. Nor has its use become so ingrained in our culture as to make laws strictly prohibiting its use impractical.

In view of the undesirable effects attendant upon the use of marijuana, the state has not exceeded its authority or acted arbitrarily and unreasonably by prohibiting the use, sale and possession of marijuana, a harmful and dangerous drug, while merely regulating the use, sale and possession of alcohol, which is also capable of serious abuse.

The defendants maintain that the narcotic drug laws, as applied to marijuana, are not wholesome and reasonable, as required by the Constitution of Massachusetts,[13] in that they are criminogenic. Such an assertion by itself begs the question. Any statute which prohibits certain acts is criminogenic insofar as the commission of the prohibited act constitutes a crime. However, the defendants do raise a worthwhile point. They claim that the link between crime and marijuana use occurs because the marijuana user must resort to criminals for his supply and this contact leads to involvement with other criminal activity. There is undoubtedly some truth in this statement. However, much of the criminal and anti-social activity of marijuana users undoubtedly arises from the instability of the user and the effect of the drug itself as well.

The legislature is faced with a dilemma. It knows from past experience with alcohol that the prohibition of marijuana will create problems. It also knows that the toleration of the use of marijuana, even with regulation, will also create problems. The legislature must balance and weigh the evils attendant upon prohibition against those attendant upon the toleration of its regulated use. I cannot say that the provisions of MASS. GEN. LAWS ch. 94, §§197 to 217E inclusive, as applied to marijuana, are not "reasonable and wholesome".

UNREASONABLE BROADNESS OF DEFINITION

The defendants also maintain that the statutory defini-

[13]MASS. CONST. pt. 2, ch. 1 § 1, art. 4.

tion of marijuana is too broad, and, therefore, arbitrary and irrational in that it proscribes the possession or sale of parts of the female cannabis plant which do not contain the hallucinogenic ingredient of marijuana, tetrahydrocannabinol, as well as the harmless male plant and other harmless species of the cannabis plant. However, there was undisputed testimony that it would take an expert to distinguish marijuana from other processed parts of the female, marijuana-producing plant or of the male plant or of other harmless varieties of the cannabis plant. This broad definition is necessary to provide for effective enforcement. The extension of the definition of marijuana in MASS. GEN. LAWS ch. 94, §197 to include all of the female plant, the male plant and harmless varieties of cannabis is not arbitrary and unreasonable. If the definition were contracted to cover only those specific portions containing the hallucinogenic substance, the enforcement of the statute with regard to marijuana would be a practical impossibility.

In their argument, the defendants set up the hypothetical situation of an individual being prosecuted for a violation of §213A because, unknown to him, harmless varieties of cannabis sativa grew wild on his property. I have never heard of such a case. Nor is any justiciable question in this regard raised in the case at bar. Therefore, I decline to rule on the constitutionality of §§213A and 197 as applicable to such circumstances.[14]

EQUAL PROTECTION

The defendants also argue that the diverse statutory treatment of alcohol and marijuana constitutes a denial of the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States. However, the evidence produced at the hearing established that, while both substances are dangerous, there

[14]Bowes v. Secretary of the Commonwealth, 320 Mass. 230, 245, 69 N.E.2d 115, 126 (1946).

is a factual difference between alcohol and marijuana which would sustain the different treatment accorded each by the legislature.

Attempts to compare the dangers and evils associated with these two substances are both medically irrelevant and illogical. The ordinary user of marijuana is quite likely to be a marginally adjusted person who turns to the drug to avoid confrontation with and the resolution of his problems. The majority of alcohol users are well adjusted, productively employed individuals who use alcohol for relaxation and as an incident of other social activities.

The defendants' equal protection argument would fall even if marijuana's nature and effects could not be distinguished from those of alcohol. They rely on *Skinner v. Oklahoma*[15] in which the Supreme Court invalidated a state statute providing for the sterilization of "habitual criminals", a definition including the defendant chicken thief but excluding other criminals, such as embezzlers. There, the Court stated that "when the law lays an unequal hand on those who have committed intrinsically the same quality of offense . . . it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment."[16] The defendants also cite *McLaughlin v. Florida*[17] in which the Supreme Court invalidated a statutory prohibition of cohabitation between members of different races.

Neither *Skinner* nor *McLaughlin*, in which the denial of equal protection was an intrinsic element of the statutes in question, and which concerned basic rights, can be interpreted as exceptions to the general rule "that a state may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed."[18] The state may reach out and treat certain evils without dealing with

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[15]316 U.S. 535 (1942).
[16]*Id.* at 541.
[17]379 U.S. 184 (1964).
[18]Central Lumber Co. v. So. Dakota, 226 U.S. 157, 160 (1912).

every related evil.[19] A court cannot condemn the legislature's failure to act in one area by invalidating prohibitions it has enacted in other similar or related areas. It would seem apparent that, if the legislature is free to prohibit one activity and ignore another similar or related activity, then *a fortiori*, it may prohibit one and regulate the other.

The defendants attempt to rationalize this line of cases by arguing that they focus on kinds of behavior among which the legislature is free to choose, while the essence of the marijuana—alcohol dichotomy is that the legislature has proscribed the behavior of one class, those who use marijuana as their intoxicant, and tolerates the behavior of another class, those who use alcohol as their intoxicant. There are several defects in this argument. First of all, the law does not permit voluntary intoxication by means of alcohol.[20] Secondly, as has been stated previously, there are substantial differences between the usual users of alcohol and of marijuana. In light of the prevailing patterns of use of the two drugs, it is fair to characterize marijuana as an intoxicant and alcohol merely as a potential intoxicant. The legislature might properly conclude that the consequences of the use of the two drugs are distinguishable and that alcohol is susceptible of regulation and marijuana is not.

In a certain sense, all penal statutes are discriminatory. They differentiate between those who engage in the proscribed forms of behavior and those who do not, but such discrimination is not vulnerable to attack under the Equal Protection Clause if any state of facts can reasonably be conceived to justify it.[21] On the other hand, a statutory discrimination must be found to be arbitrary unless it is based on some distinction bearing a substantial relationship

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[19]*See* N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 46 (1947); New York *ex rel.* Bryant v. Zimmerman, 278 U.S. 63 (1928); Whitney v. California, 274 U.S. 357 (1926).

[20]MASS. GEN. LAWS ch. 272, § § 44-48 as amended by the Acts of 1959, ch. 313, § § 10, 11.

[21]*See* Commonwealth v. Chamberlin, 343 Mass. 49, 175 N.E.2d 486 (1961); Connors v. Met. Dist. Water Supply Comm'r, 314 Mass. 33, 49 N.E.2d 593 (1943).

to the purpose of the legislation.[22] I rule that the legislature was warranted in treating alcohol and marijuana differently.

CRUEL AND UNUSUAL PUNISHMENT

The defendants have raised the contention that the penalties attached to violations of MASS. GEN. LAWS ch. 94, §§205, 213A and 217B constitute cruel and unusual punishments in violation of the Eighth Amendment to the Constitution of the United States and, presumably, in violation of the Declaration of Rights of the Constitution of Massachusetts.[23]

In a somewhat analogous case, *People v. Stark*[24] considered the same contention.

> With reference to the argument that the several offenses defined in the statute are punishable by "cruel and unusual punishments" we hold that until some person has been convicted of a crime and a sentence has been imposed which is then asserted to be "cruel and unusual" there is no justiciable issue presented. . . . Where there is a wide spread between the minimum and maximum punishment, whether any punishment is "cruel and unusual" is a matter to be determined under all the facts and circumstances surrounding each offense.[25]

Prior to sentencing, unless the minimum prescribed sentences are, in themselves, cruel and unusual, the defendants cannot be heard to say that they risk the imposition of a cruel or unusual punishment.

There is little authority to support the defendants' view that they can raise the issue of cruel and unusual punishment at this preliminary stage of the proceedings. In *Weems*

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[22]Russell v. Treas. & Rec'r Gen'l, 331 Mass. 501, 120 N.E.2d 388 (1954); Comm'rs of Corp. & Taxation v. Cooperative League of America, 246 Mass. 235, 140 N.E. 811 (1923); Lindsey v. Nat'l Carbonic Gas Co., 220 U.S. 61 (1910).

[23]MASS. CONST. pt. 1, art 26.

[24]157 Colo. 59, 400 P.2d 923 (1965).

[25]*Id.* at 68, 400 P.2d at 928.

v. United States[26] the Supreme Court did confine its consideration to the minimum sentence for falsifying a public record in the Philippine Islands. There, however, the statute demanded a sentence of twelve years and one day in confinement at *cardena temporal*, a holdover from the Spanish penal system, under which the defendant was not only imprisoned but also forced to work at hard and painful labor in chains and without any assistance whatsoever, and subjected to absolute, perpetual civil disqualification, civil interdiction and surveillance for life upon release. Clearly, even this minimum sentence was cruel and unusual, and Weems had, in fact, been sentenced to 15 years at *cardena temporal*.

The defendants raise another argument, based on *Robinson v. California*[27] which should also be considered. In that case, the Supreme Court held that the punishment of the mere status or condition of being a narcotics addict, a sickness and not a crime in the Court's view, was cruel and unusual. *Robinson* would only be applicable if the legislation in question and as applied prohibited and penalized the status or condition of being a narcotics addict.[28] *Robinson*, however, is restricted to a condemnation of statutes punishing status, conditions or disease as contrasted to acts, such as use, sale or possession. Even if *Robinson* were to be extended to cover those acts constituting or compelled by the status, condition or disease, the expert witnesses have testified, without exception, that there is no status, condition or disease involved in the use of marijuana, that is, it does not cause physical addiction. Moreover, the violations with which the defendants have been charged include possession with intent to sell marijuana[29] and conspiracy to violate the narcotic drug laws of the Commonwealth[30] which involve no question of status,

[26]217 U.S. 349 (1909).

[27]370 U.S. 660 (1962).

[28]*See also* United States *ex rel.* Swanson v. Reincke, 344 F.2d 260 (2d Cir. 1965), *cert. den.*, 382 U.S. 869 (1965).

[29]MASS. GEN. LAWS ch. 94, § 217b as amended by the Acts of 1960, ch. 204, § 3.

[30]MASS. GEN. LAWS ch. 94, § 213a as amended by the Acts of

condition or disease, even though possession might if it could be shown that marijuana is physically addictive.

Defendants further contend that the penalties are excessive in relation to the seriousness of the offenses with which they are charged and also in relation to similar offenses regarding "hard" narcotics and alcohol. These contentions are closely related to the issues of equal protection and arbitrary classification previously discussed. The defendants attempt to read into the Eighth Amendment the proposition that punishments must not only be graduated and proportionate with regard to the particular offense charged but also in relation to penalties for other offenses. There is scant authority for such a proposition. *Weems v. United States*[31] appears to be the only decision of the United States Supreme Court that even approaches such a result. However, *cardena temporal* for the falsification of a public record, unlike mere imprisonment for a term of years, was there viewed as so barbaric, indecent and conscience-shocking as to be classified as a cruel and unusual punishment in the abstract.

In *Gallego v. United States*[32] the court upheld a statute imposing a minimum five year prison sentence without suspension or probation for the first offense of illegal importation of marijuana. The statute was held not to "exhibit an inclination to visit upon offenders such as appellant a penalty so out of proportion to the crime committed that it shocks a balanced sense of justice."[33]

The right of the legislature to impose apparently disproportionate penalties so long as they are not wholly arbitrary or unreasonable was upheld in *Williams v. Oklahoma*,[34] in which the defendant claimed that the imposition of a death penalty for kidnapping was disproportionate in relation to a previously imposed life sentence for the murder

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1960 ch. 204, § 2.

[31]217 U.S. 349 (1910).

[32]276 F.2d 914 (9th Cir. 1960).

[33]*Id.* at 918; *See also* United States *ex rel.* Swanson v. Reincke, 344 F.2d 260 (2d Cir. 1965) which clearly distinguishes both *Weems* and *Robinson*.

[34]358 U.S. 576 (1958).

of his victim. "But the Due Process Clause of the Fourteenth Amendment does not, nor does anything in the Constitution, require a state to fix or impose any particular penalty for any crime it may define or to impose the same or 'proportionate' sentences for separate and independent crimes."[35]

In short, as is succinctly stated in the twin cases of *Schultz v. Zerbst*,[36] and *Sansone v. Zerbst:*[37] "The fixing of penalties for crime is a legislative function. What constitutes an adequate penalty is a matter of legislative judgment and discretion, and the courts will not interfere therewith unless the penalty prescribed is clearly and manifestly cruel and unusual."[38]

The minimum penalty for unlawful possession of marijuana is a fine of not more than $1,000.00 (one thousand dollars) or a term of imprisonment of not more than 3½ (three and one-half) years in the state prison or not more than 2½ (two and one-half) years in a jail or house of correction.[39] The minimum penalty for conspiracy to violate the narcotic drug laws is a fine from $500.00 (five hundred dollars) to $5,000.00 (five thousand dollars) or imprisonment for not more than 5 (five) years in the state prison or not more than 2 (two) years in a jail or house of correction.[40] The minimum penalty for the first offense of illegal possession of marijuana with the intent to sell it is a term of imprisonment in the state prison of no less than 5 (five) nor more than 10 (ten) years.[41] For subsequent offenses, the term of imprisonment is from 10 (ten) to 25 (twenty-five) years. In all of these instances, except for the second and subsequent offense of possession with intent to

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[35]*Id.* at 586.

[36]73 F.2d 668 (10th Cir. 1934).

[37]73 F.2d 670 (10th Cir. 1934).

[38]*Id.* at 670, 672; *See also* People v. Stark, 157 Colo. 59, 66, 400 P.2d 923, 927 (1965).

[39]MASS. GEN. LAWS ch. 94, § 205 as amended by the Acts of 1958, ch. 95, § 1.

[40]MASS. GEN. LAWS ch. 94, § 213a as amended by the Acts of 1960, ch. 204, § 2.

[41]MASS. GEN. LAWS ch. 94, § 217b as amended by the Acts of 1960, ch. 204, § 3.

sell, the execution of the sentence may be suspended and parole and probation may be granted. The penalties provided for in MASS. GEN. LAWS ch. 94, § § 205, 213A and 217B, as applied to the stipulated facts of this case not unconstitutional as being cruel and unusual.

PROTECTION OF PRIVACY

According to the defendants, the enforcement of the virtual prohibition of the possession, use or sale of marijuana must necessarily entail unreasonable invasions of privacy by the police. Although this problem was discussed in *Griswold v. Connecticut*,[42] the holding of that case is not predicated on any invasion of privacy by police searches for evidence of the crime but rather on the absence of the state's authority to interfere with marital relations without a compelling reason.

That marijuana may customarily be used in the privacy of the home does not preclude the prohibition by the state of its use. "Crime, even in the privacy of one's quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing."[43] Thus, the citizen's right to privacy is not to be protected by excluding otherwise criminal conduct from regulation as long as it is confined to the home, but rather by a strict adherence to the statutory and constitutional provisions relating to the power of the police to arrest and search and of the courts to issue warrants. Furthermore, there is nothing in the allegations or stipulated facts of this case which raise any justiciable issue on this point.

CONCLUSION

To my knowledge, this has been the most extensive judicial inquiry into the legal and factual aspects concerning the use of marijuana. At this hearing, many eminently well qualified experts on the subject from here and abroad have

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[42] 381 U.S. 479 (1965).

[43] Johnson v. United States, 333 U.S. 10, 14 (1947).

had their opinions subjected to searching cross-examination and careful analysis by learned and thoroughly prepared counsel. One of the principle factual issues presented for determination is whether marijuana is a harmful and dangerous drug. Several legal issues are raised by defendants' motion to dismiss, but basically this is the question which requires an answer.

I found the testimony of the experts in the various branches of science very illuminating and helpful—although often controversial. On the other hand, there were areas of agreement among them, which are delineated elsewhere in this decision.

Of grave and immediately apparent importance is the growing appeal marijuana has for young people of high school and college age and for those having underlying instabilities or personality disorders of varying degrees. In many instances, the ones least capable of coping with the mind altering effects of the drug are the ones most likely to be adversely affected by its use.

The serious effects of marijuana superimposed upon mental and personality disorders have been described at length and in great detail by competent experts. I find this testimony persuasive. Actually, there is little, if any dispute, in this area between the defendants' experts and the Commonwealth's experts. Furthermore, all of them testified that they do not advocate the use of marijuana.

In its application to youngsters of high school and college age, the problems presented by the use of this drug assume tremendous proportions. There is no persuasive evidence that its use produces any beneficial results. The defense asserts that the drug causes no direct physical harm. But neither do heroin and other "hard" drugs, nevertheless few youngsters dare to experiment with these. Unfortunately, many marijuana users do not have the same apprehension or fear concerning its use as they do of the physically addictive drugs. This, I feel, is one of the real dangers which permeates the problem. Marijuana is likely to be used, at least initially, as a lark, as an adventure without fear of serious consequences. Thus, the first and apparently

innocuous step may be taken in a succession of others possibly leading to drastic results.

This phase of the problem is further complicated by those who unwittingly and perhaps unintentionally create the impression that marijuana is harmless, because it is not physically addictive. The young seize upon such utterances to rationalize their conduct.

While it is generally agreed that marijuana does not cause *physical* addiction as do heroin and the other "hard" narcotics, there was ample and compelling testimony that its use causes psychological dependence. Its users may not be driven to its repeated use by a physical craving, but they may come to resort to it habitually in order to compensate for real or imagined inadequacies or to avoid real or imagined problems. This pernicious and insidious form of addiction is sometimes the first step in the direction of the more potent or physically addictive drugs.

It is a universally accepted fact that marijuana is a mind-altering drug and is used for that specific purpose. It is also a generally accepted fact that the drug has no medically recognized therapeutic value. In addition to its adverse effect on ill-adjusted persons, at best, it provides an insubstantial crutch to its user, giving him a feeling of intoxication in varying degrees. It provides a false sense of capabilities, strength and courage. This is of great importance when the drug user is faced with a problem which demands exercise of judgment and where the drug substitutes a euphoric and unreal feeling of exhiliration for the calm and logical thinking required by the circumstances.

In place of positive thinking and positive action, the user's mind is altered and distorted causing serious interference with his powers of perception and coordination and his ability to judge the passage of time and space.

The defendants assert that marijuana provides a certain amount of happiness or relaxation without harmful results. I am not persuaded by the evidence that the resulting euphoria is, in fact, a pleasurable and rewarding experience. I remain unconvinced by the evidence that the average user is made happy or contented—even for a short period of

time. The normal brain function is altered or suspended, making the user more susceptible to the influence of others. The use of the drug also tends to accentuate any tendency toward improper conduct. In addition, it induces an abnormally subjective concentration on trivia. In short, marijuana produces a state which is analogous to a temporary mental aberration. Its prolonged and excessive use may induce a psychotic state, especially in those individuals with pre-existing psychological problems.

In my opinion a proper inference may be drawn from the evidence that there is a relationship between the use of marijuana and the incidence of crime and anti-social behavior. Within the limitations of our present statistical information, we can only speculate as to the precise nature and scope of the relationship. This is, to a certain degree, the hidden aspect of the problem. We cannot, at present, ascertain to what extent marijuana is a contributing factor in motor vehicle and other accidents, school dropouts, criminal activity, cases of "hard" narcotic addiction, broken homes and ruined careers, irrational and deviate acts, or losses of ambition and of the desire to become productive members of society. Although the *extent* of such results may be speculative, it is my opinion that a strong inference may be drawn from the evidence presented at this hearing that a casual relationship does exist between the use of marijuana and these assorted social evils. In order to establish more firmly the nature and scope of this relationship, exhaustive and incisive studies must be undertaken.

In any event, there is no indication from the evidence that the user of marijuana becomes, through its use, a better student, a better worker, more dedicated to the public interest, or more efficient or productive in any undertaking. On the contrary, there is convincing evidence that the converse is true.

Many succumb to the drug as a handy means of withdrawing from the inevitable stresses and legitimate demands of society. The evasion of problems and escape from reality seem to be among the desired effects of the use of marijuana. Its use is not so much a symbol of dissent in

order to effectuate changes in our social system, but rather a manifestation of a selfish withdrawal from society.

The lessons of history and the experiences of other nations teach us that such artificial alteration of the normal brain function by the use of drugs has been harmful both to the individual and to the society in which he lives. The evidence clearly indicates that where a subculture has developed which tolerates the general use of marijuana or its derivatives, the harmful results have become clearly manifest. It is of great significance that the vast majority of nations have outlawed its use.

Although its relevancy is doubtful, there was the unavoidable comparison of marijuana with alcohol. Alcohol has some therapeutic value and its use is not limited solely to the achievement of a state of intoxication or the alteration of the mental processes. Furthermore, the use of alcohol is supported here and elsewhere by many centuries of cultural experience. Admittedly, its misuse has posed serious problems and continues to do so. But these problems, as they now exist, could be greatly expanded and compounded by the legalization of the use of marijuana. It is difficult to justify any law which would permit an expansion in the use of marijuana to the point where conceivably it would fall into the same category as alcohol and become a part of our national culture. That the use of marijuana may have results similar to those associated with the abuse of alcohol is hardly a persuasive argument for its legalization.

Marijuana users must, of necessity, consort with opportunistic pushers and other hardened members of the criminal element. In the case of youngsters, this is especially dangerous. It introduces them to and establishes a rapport with persons whose total influence is apt to be corruptive. As serious, if not morose, as the young user's association with pushers and the criminal element is the frequency, duration and intimacy of his contacts with other basically unstable users who do not only involve him in their problems but compound his own.

The defendants argue that the statutes are also crimino-

genic in nature, as well as cruel and unusual, in that they prescribe serious criminal penalties for what may be relatively minor offenses. These arguments certainly do not apply to pushers. The legislation might profitably be reviewed with regard to the penalties provided for possessors as opposed to pushers or where the evidence indicates a first offense with the improbability of repetition. In such cases, the judge should be given wide discretionary powers so that the imposition of a criminal record may be avoided whenever warranted by the facts.

Because of the harmful and dangerous nature and effects of marijuana, the statutory prohibition of its possession, sale and, thereby, its use does not constitute a legislative interference with any fundamental right of a citizen. Nor do the specific provisions involved, MASS. GEN. LAWS ch. 94, §§205, 213A and 217B as applied to these cases, involve any denial of due process or of the equal protection of the laws. Neither do they present any issue of cruel and unusual punishment. Nor does their proper enforcement necessarily entail any unreasonable invasion of privacy. Sections 205, 213A and 217B of chapter 94 of the General Laws bear a real and substantial relation to public health, safety, morals and the general welfare and are a valid exercise of the police power of the Commonwealth.[44]

On the basis of the findings and conclusions above, I further conclude and rule that the defendants, Joseph D. Leis and Ivan Weiss, are not entitled to have any of the indictments or complaints against them in these cases . . . dismissed on any of the grounds alleged in support of their amended motions to dismiss, which are hereby denied.

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[44]Sperry & Hutchinson Co. v. Dir. of Div. of Necessities of Life, 307 Mass. 408, 418, 30 N.E.2d 269, 274 (1940); Coffee-Rich, Inc. v. Comm'r of Pub. Health, 348 Mass. 414, 422, 204 N.E.2d 281, 287 (1965).

COMMONWEALTH V. LEIS & WEISS[1]: THE CASE AGAINST MARIJUANA †

JAMES D. ST. CLAIR*

One of the most perplexing problems facing law enforcement agencies today is the relatively sudden and widespread increase in the use of psycho-active drugs, particularly marijuana, by young people in open defiance of federal and state law. Entire communities have sprung up in several of our major cities consisting of large numbers of young people living a completely drug-oriented existence, in spite of stringent laws prohibiting the transfer, possession and use of such drugs.

Generally speaking, these young people are not, as one might suppose, uneducated persons from the lower economic or otherwise disadvantaged groups. Rather they are often reasonably well educated individuals from middle to upper income groups and are quite able to articulate their views. They have been supported in their use of marijuana by a relatively small but very vocal group of medical doctors, psychologists and sociologists who contend that marijuana is a relatively harmless and innocuous drug.[2] On the other

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[1]Nos. 28841-2, 28844-5 and 28864-5, (Massachusetts Superior Court, June 4, 1968). This case has been reported to the Massachusetts Supreme Judicial Court. *See* No. 14113 (Massachusetts Supreme Judicial Court, filed June 5, 1968). References hereafter to transcipt pages refer to the transcript of evidence in the Superior Court.

[2]Transcript, Vol. 11 at 8-157, the closing argument by Joseph Oteri, Esq., Attorney for the Defendants.

hand, it is apparent that the great weight of medical opinion supports the view that marijuana is a harmful and dangerous drug.[3]

The reason for such widely divergent views among the professional disciplines involved is attributable to the fact that there has been a surprising lack of medical research and scientific investigation in this country into the causes and effects of chronic use of marijuana. There has been an abundance of literature published on the subject but until very recently little original research has been done. The most significant work that has been done was performed under the auspices and direction of a committee appointed by Mayor LaGuardia of New York in 1938. Their findings were published in 1944.[4] The study made by this committee was conducted by professionally qualified people but it had several serious shortcomings. The number of subjects used for testing and experimentation was limited (77 in the main group) and many of the tests conducted involved the use of orally ingested samples whereas the almost universal method of using marijuana in this country is by inhalation of smoke from a cigarette containing the drug. The latter method has recently been determined to be approximately three times more potent than oral ingestion.[5]

The relative paucity of medical research is probably due to public apathy to the problem following the end of World War II until the early 1960's. During this time, due to overly strict governmental limitations, samples of mari-

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[3]Transcript, Vol. II at 3-79, closing argument by James St. Clair, Special Assistant District Attorney appearing on behalf of the Commonwealth.

[4]MAYOR'S COMMITTEE ON MARIHUANA, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK, (1944) (hereinafter called the "LaGuardia Report"). *See* Transcript, Vol. 1 at 145.

[5]Transcript, Vol. 7 at 50, 51, testimony of Dr. Harris Isbell, Professor of medicine in pharmacology at the University of Kentucky Medical Center—Director of the Addiction Research Center at the United States Public Health Service Hospital (Lexington, Ky.) from 1944-63. Dr. Isbell bases his conclusion on the results of an experiment in which he employed a synthetic substance, tetrahydrocannabinol, which produced the same qualitative results as those of the marijuana plant when ingested by smoking or by oral ingestion in liquid form. Vol. 7 at 46.

juana, even for research purposes, were not readily available. The materials that were available were samples of the natural substance which were of varying strengths, thus making it difficult to reach authoritative conclusions. Recently, these conditions have changed. An alarmed public is clamoring for definitive information and governmental authorities, in response, have relaxed controls on drug supplies for research purposes.[6] A synthetic tetrahydrocannabinol, thought to be the active ingredient in marijuana, has been developed recently enabling investigators to use uniform test samples with a greater integrity of result.[7]

The limited authoritative information that has been available has permitted the young people using marijuana to formulate their own conclusions regarding the effects of the chronic use of marijuana. These conclusions have been based on their interpretation of their own experiences and those reported by others. These interpretations, as we have seen, have been relatively free from contradiction because of the lack of medical research and other scientific investi-

Since, for the most part, the older generations have lacked personal experience with marijuana, they are ill-equipped to cope with the contentions made by the young people supporting the drug. Not having the benefit of personal experience, or the backing of authoritative scientific research to support them, the older generations have resorted to asserting exaggerated or unsupported grounds to justify the laws prohibiting marijuana. Since these views are not in accord with the experience of the young people, they have lost confidence in the judgment and wisdom of their elders on the subject of drug use and the laws for which the older generations are responsible.

This conflict between the young people and the laws written and administered by their elders has led to recent challenges to the constitutionality of the laws pertaining to marijuana. The most determined challenge was made recent-

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[6] *See* 21 U.S.C.A. § 355(i) (1938); § 188(i) (1943); 26 U.S.C.A. § § 4721, 4751 and 4772 (1954).

[7] Transcript, Vol. 7 at 15, testimony of Dr. Harris Isbel, *supra* note 5.

ly in a case brought before Chief Justice Tauro of the Massachusetts Superior Court.[8] The challenge was grounded on the argument that marijuana was not a deleterious drug and that the imposition of criminal sanctions was an unwarranted exercise of the police power. Other cases have sought to challenge similar laws, but no case involved a judicial inquiry of the depth and scope of the *Leis* case.[9]

In all, eighteen experts were called; eight by the prosecution and ten by the defendants. They consisted of medical doctors, psychiatrists, psychologists, sociologists, pharmacologists, a botanist, a theologian and philosopher and two foreign experts, one from Greece and one from India.

The case against marijuana outlined by the prosecution dealt principally with the physiological, psychological and sociological effects of chronic marijuana use. The testimony relating to the physiological effects was not remarkable as these effects are probably least significant. Smoking marijuana results in increased pulse rate and blood pressure and other alterations in the function of body organs, however, no effect has been identified on the organs themselves.[10] Dr. Chopra[11] of India, called by the prosecution, based on his studies and observations in his country, attributes bronchitis, along with diarrhea and dysentery to the use of the equivalent drug in his country.[12]

The arguments advanced by the defendants relied in part on the limited evidence available of adverse physiological effects of marijuana. They pointed out that, in this regard marijuana, at least, is not as deleterious as alcohol. The relevance of any comparison of marijuana with other drugs, particularly alcohol, is questionable; however, it should be noted that the knowledge of possible serious adverse physiological effects from the chronic use of a drug acts as a

[8] *Supra* note 1.

[9] *Supra* note 1.

[10] *See* "LaGuardia Report", *supra* note 4 at 64.

[11] Dr. Isawar C. Chopra is Asst. Director General, Scientific Industrial Research, Ministry of Education, Government of India, and Director of the Indian Institute of Experimental Medicine at Calcutta.

[12] Transcript, Vol. 9 at 57, 58.

restraint against abuse of such drugs. The unpleasant after-effects of excessive use of alcohol can hardly encourage continued and repeated abuse. Furthermore, if comparison with other drugs is thought to be relevant, it should be realized that no significant physiological damage or injury has been found to result from the chronic use of heroin, and yet there can be little doubt that heroin is an extremely harmful and dangerous drug.[13]

The most significant effects from the chronic use of marijuana developed in the evidence were psychological in nature. It is not possible to consider those psychological effects without some consideration being given to the psychological make-up of the typical chronic drug user. Scrutiny of the literature on the subject and the testimony of experts in the field is virtually unanimous in the view that the chronic drug user is a person with an unstable personality; he is a marginally adjusted individual with at least a character disorder.[14] It is especially significant that these same unstable persons who are most prone to the chronic use of marijuana are most seriously affected by its mind-altering effects.[15]

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[13]Transcript, Vol. 3 at 40, testimony of Dr. Nicholas B. Malleson of London, England, Member of Her Majesty's Government Standing Advisory Committee on Drugs. In response to a question regarding known physical deterioration that is associated with the use of heroin, Dr. Malleson replied, "I think in particular the resistance to infection, the resistance to the diminished respiratory efficiency and diminished appetite and diminished neurophysiological conduction."

[14]Transcript, Vol. 7 at 115, testimony of Dr. Isbell, *supra* note 5; Transcript, Vol. 9 at 47, testimony of Dr. Chopra, *supra* note 11; Transcript, Vol. 3 at 138, testimony of Dr. John H. P. Hooker, Senior Psychiatrist, Medfield State Hospital, Member of the Law and Medicine Council for the Northern New England Branch of the American Psychiatric Association. Dr. Hooker stated that a user of cannabis (marijuana) is, "... someone who is in need of probable psychiatric treatment,...." When asked if they might be neurotic, he replied, "Neurotic, depressed, anxious, psychosomatic, psychotic. You name it."

Transcript, Vol. 6 at 130, testimony of Dr. Henry Brill, Vice Chairman of the New York State Narcotic Addiction Control Commission and a Member of the Committee on Drug Dependence of the American Medical Association. Dr. Brill testified that, "... taking the drug, certainly taking the drug in excess, is a manifestation of psychiatric instability or psychiatric problems;...."

[15]Transcript, Vol. 10 at 21, testimony of Dr. Dana L. Farnsworth,

To properly appraise the psychological effects of marijuana, consideration must also be given to the motives of the typical chronic user. It is generally conceded that the motivation of the chronic user is to achieve in each instance a mental state of intoxication sometimes referred to as "euphoria". This state is achieved relatively quickly by inhaling smoke. No other motive is suggested for the regular user. Euphoria is a state of altered mental processes in which the judgment and perceptive abilities of the individual are distorted. It has been described as an "overshooting of self-satisfaction" that leads to over-optimism.[16]

Compare this motivation with the motivation of the regular user of alcohol. One who takes a drink of alcohol in the evening before dinner may do so to achieve a modest measure of relaxation, or perhaps only to be sociable, but in most cases certainly not to become intoxicated. Furthermore, alcohol is often ingested with food which delays or "spreads out" its effects on the central nervous system and the brain. Conversely, marijuana, which is usually smoked, almost immediately begins to affect the mental processes producing a state of intoxication within a relatively short time. Of course the ingestion of food would not ordinarily affect this method of intake.[17]

Director of the University Health Services of Harvard University. Of marijuana users Dr. Farnsworth states, ". . . one might say that many of them are immature, insecure, have strong feelings of inadequacy, they fear and resent the authority of adults, they have a fear of growing up and finding a place in the social system, they are often dependent upon others, are likely to be passive and don't understand their own psychological motivation very well.

And the drugs, while they do not cause the disorders from which they suffer, amplify and complicate them and thus prevent them from attempting sound solutions. They postpone solutions so their problems, as a result of this device or practice, remain." *See also* Dr. Farnsworth, *marihuana and the Law: A Medical Approach,* this edition page 97; Transcript, Vol. 2 at 10, testimony of Dr. Donald B. Louria, President, New York State Council on Drug Addiction, Chairman, Public Health Committee for the County of New York; Transcript, Vol. 6 at 130, testimony of Dr. Brill, *supra* note 14.

[16]Transcript, Vol. 6 at 158, testimony of Dr. Brill, *supra* note 14.

[17]Transcript, Vol. 2 at 167, testimony of Dr. Joel Fort, Resident Psychiatrist, United States Public Health Service Federal Narcotics Hospital (Lexington, Ky.) 1956-57. Consultant to the World Health Organization on Marijuana.

One of the most serious psychological effects identified with marijuana is the disinhibition of the user.[18] If the chronic user were a reasonably well adjusted person in full control of his inhibitions, this might not be so significant, but, as we have seen, that is usually not the type of person we are dealing with. Consequently, if we have a person who is marginally adjusted and not in good control of his inhibitions, we can expect him to lose some significant measure of control, perhaps with disastrous results.

This tendency to disinhibit is further affected by the tendency of the drug to also expand the mood of the user at the time of becoming intoxicated. Thus, if the user is in pleasant surroundings and in a peaceful and pleasurable mood, his pleasure is expanded, he becomes even happier, and his surroundings become more pleasant. As long as no serious interruptions occur in these arrangements, all is serene and the individual has a "good trip". The tendency toward disinhibition under these circumstances is generally not thought to be dangerous. It is these circumstances that are often cited to support the allegation that marijuana is harmless and relatively innocuous.[19]

This same tendency to expand the existing mood of the user has an obverse side. If the mood of the individual is anti-social or combative and he is or believes himself to be in a stressful situation at the time of becoming intoxicated, we can expect that he will become more prone to anti-social or combative conduct without control of any inhibitions he otherwise would have.[20]

Even the drug intoxicant in the midst of a "good trip" may react violently if there is any such antagonistic distur-

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[18]*See* "LaGuardia Report", *supra* note 4 at 218.

[19]Transcript, Vol. 2 at 21, testimony of Dr. Louria, *supra* note 15. Dr. Louria states of the user, "If he is feeling happy and contented, marijuana is likely to make him euphoric."

[20]*Id.* at 22.

bance to the peace and tranquility of his immediate circumstances. Police experience in making arrests of persons using marijuana, thus interrupting an otherwise calm and peaceful scene, are often met with forcible resistance.[21]

It is no answer to suggest that the chronic marijuana user will exercise judgment and discretion in choosing the times of his use, for, almost by definition, we are dealing typically with unstable, marginally adjusted individuals whose judgment is impaired by the use of the drug.[22]

This inconsistency of result from the use of marijuana has rendered it relatively useless as a therapeutic agent of any value by the medical profession in this country today. Contrast this with opium and its derivatives which have recognized and significant medical value even though the danger of their continued use is also well recognized.[23]

There is evidence that persons under the influence of marijuana have a distorted ability to judge time and space relationships.[24] In addition, the use of this drug produces a psycho-motor disturbance that, in combination with distorted time-space relationships, renders the individual unfit to operate a motor vehicle or any other machinery with safety to himself and others.[25] It should be further noted that a person under the influence of this drug does not lose muscular strength as a result of his intoxication. Thus he

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[21]Transcript, Vol. 7 at 144, testimony of Matthew O'Connor, Supervising Agent of the Bureau of Narcotic Enforcement, Justice Department, State of California. Mr. O'Connor testified that, "[t]hey have a tendency to resist severely. It is necessary in most occasions involving marihuana to handcuff the individuals. Quite often it is necessary to overcome their resistance."; Transcript, Vol. 2 at 12, testimony of Dr. Louria, *supra* note 15.

[22]Transcript, Vol. 9 at 175-78, testimony of Howard S. Becker, A.B., M.A., Ph.D. (in Sociology from the University of Chicago), Professor of Sociology, Northwestern University.

[23]Transcript, Vol. 2 at 16, testimony of Dr. Louria, *supra* note 15, who stated that, "... there is not one accepted medical use for this [marijuana]...."

[24]Transcript, Vol. 2 at 29, testimony of Dr. Louria, *supra* note 15; Transcript, Vol. 7 at 37, testimony of Dr. Harris Isbell, *supra* note 5.

[25]Transcript, Vol. 3 at 29, 85, testimony of Dr. Malleson, *supra* note 13; Transcript, Vol. 5 at 144, 162, testimony of Dr. Constan-

has the strength to perform acts, even though his judgment and perception may prevent him from performing them safely. This feature is also significant with regard to an individual whose inhibitions controlling a tendency to violence are released by marijuana intoxication; he retains the physical strength to commit acts of violence.[26]

Another psychological effect of the drug shown by the evidence is the *psychological dependence* created by chronic use.[27] Chronic marijuana use normally is not considered to result in addiction in the sense that it does not create a physical demand for the drug. This fact is often seized upon to support the view that marijuana is a relatively harmless drug. The opiate type drugs, particularly heroin, do produce such a physical demand and for that reason are thought to be more dangerous.[28] The fact of the matter is

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tinos J. Miras of Athens, Greece; Transcript, Vol. 2 at 78, 79, testimony of Dr. Louria, *supra* note 15; Transcript Vol. 7 at 37, testimony of Dr. Isbell, *supra* note 5. All of the above witnesses agree on this proposition which was found to be true as early as the "LaGuardia Report" which states that, "[h]and steadiness and complex reaction time may be affected adversely to a considerable degree by the administration of both large and small doses of marihuana." *Supra* note 4 at 81.

[26]Transcript, Vol. 7 at 133, 144, testimony of Matthew O'Connor, *supra* note 20.

[27]Transcript, Vol. 7 at 8, Dr. Harris Isbell, in answering the question of whether or not patients at the United States Public Health Service Hospital at Lexington, Ky. have had any dependence on marijuana as distinguished from any other drug, said, "[y]es, sir. The majority of the patients there, of course, are people who have been dependent on opiate type drugs. Most of these have had, in addition to that, dependence on marijuana at one time in their career. Moreover, there were, especially in the 1940's, a number of people who gave histories of being dependent only on marijuana." Transcript, Vol. 10 at 17, Dr. Dana L. Farnsworth, in answering the question of whether or not marijuana is a harmful and dangerous drug, replied that, "[t]hose who stop using marijuana early suffer no demonstrable harm. Those who continue to use it and become dependent upon it all too often lose their ability to use their intellectual capacities constructively and become lost to society. . . ."

[28]Transcript, Vol. 7 at 11, Dr. Harris Isbell, in replying to the question as to the derivation of the word drug dependence, stated that, ". . . it is attaching a new meaning to an old term. . . . We have spoken of people being dependent on opiates for probably the last seventy-five years. However, when we spoke of them being dependent on opiates, we meant they were physically dependent on opiates. . . ."

that if all we were concerned with was the physical demand for the drug, the problem would be far less serious than it is. This is evidenced by the fact that modern medical techniques have been developed that can and do cure heroin addicts of their physical demand in a relatively short time.[29] However, a high percentage of heroin addicts return to the use of heroin after they have been cured of their physical demand because of a psychological dependence they have developed for the drug. This psychological dependence is not susceptible to cure in most cases and represents the real danger of addiction.[30]

Chronic marijuana use, while it does not produce physical addiction, does result in a well recognized psychological dependence on the drug just as in the case of heroin and the other opiate type drugs. The existence of such psychological dependence in connection with chronic use of marijuana has been recognized by all responsible medical authorities and has been defined by the World Health Organization as "psychological dependence of the marijuana type".[31] Even though some have suggested that it is improper and perhaps unconstitutional to classify marijuana and heroin under the same classification, as is done under the Massachusetts statutes,[32] it would seem clear that each drug has substantially similar psychological dependency consequences and are therefore properly included under the same classification. Indeed, they are so classified together by the World Health Organization in the Single Convention

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[29]Transcript, Vol. 6 at 134, testimony of Dr. Henry Brill, *supra* note 14; Transcript, Vol. 7 at 11, testimony of Dr. Harris Isbell, *supra* note 5.

[30]Transcript, Vol. 6 at 134, testimony of Dr. Henry Brill: "The psychological dependence is troublesome because it tends to promote relapse periodically, even throughout the entire life of the individual. Once the habit is established, the tendency to relapse is always in the background."

[31]*Id.* at 135, Brill, *supra* note 14.

[32]MASS. GEN. LAWS ch. 94, § 197 (1958): "The following words and phrases as used in this section . . . shall have the following meanings unless the context otherwise requires:

"Narcotic drug": shall include . . . opium . . . heroin; and cannabis (sometimes called marihuana or marijuana). . . ."

promulgated by it and subscribed to by sixty nations, including all of the major nations of the world.[33]

Marijuana intoxication also produces mind-altering effects, including hallucinations. This hallucinogenic effect is the principal one sought after by the regular user. As has been noted, it may have its seemingly pleasurable side. Often the user, in the state of euphoria, will fix his attention on a single object, sound, color or odor to the exclusion of all else. The danger to the user and others is apparent if he is operating a motor vehicle or otherwise engaged in mobile activity.[34]

The mind-altering effect of marijuana is further manifested in a marked increase in the susceptibility to suggestion of the person under its influence. Unpleasant experiences of the user may be suggested to be pleasurable while he is under the drug's influence. He will tend to agree, thus deprive himself of the protection of a warning at the outset of illness or danger.[35] Musicians have long been recognized as being susceptible to the suggestion that they play better while using marijuana, although a realistic appraisal of their performance after they have recovered from their intoxication confirms for them that their performance was not at all improved.[36]

The increased receptiveness of the marijuana user to suggestion further enlarges the scope of the dangers to himself and others. While under the influence of marijuana

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[33]Single Convention on Narcotic Drugs, World Health Organization (1961).

[34]Transcript, Vol. 2 at 29, Dr. Donald B. Louria indicated that the person who takes marijuana has distortions of time and space perception. To amplify, he stated, "[i]t is our opinion in the Medical Society of New York that the marihuana driver behind the wheel of a car is inordinately dangerous because he has a feeling of omnipotence and yet at the same time he has distortion of time and space perception as well as some incapacities relating to skilled movements. . . ."

[35]Transcript, Vol. 9 at 171, testimony of Dr. Howard S. Becker, *supra* note 22.

[36]Transcript, Vol. 9 at 168, testimony of Dr. Howard S. Becker, *supra* note 22; Transcript, Vol. 2 at 164, testimony of Dr. Joel Fort, *supra* note 17.

the typical chronic user being a marginally adjusted individual to begin with, susceptible to suggestion, disinhibited and lacking time-space perception but having physical strength to perform acts can only result in tragedy under the right set of circumstances.

In addition to the foregoing psychological effects, other effects of a serious nature have also been identified. These include temporary psychotic breaks, panic reactions, spells of paranoia and other mental disturbances.[37] As stated in the LaGuardia Report: "The conclusion seems warranted that given the potential personality make-up and the right time and environment, marijuana may bring on a true psychotic state".[38]

The evidence of the psychological effects of chronic marijuana use thus supports the continued imposition of criminal sanctions against marijuana.

The evidence with regard to the sociological effects of chronic marijuana use support the conclusion that marijuana is deleterious. The typical chronic user apparently seeks refuge from his problems in the euphoria of marijuana. This way he imagines he will shed his problems and responsibilities and enjoy a trouble free period of time. When the effect wears off, of course, the problems are not solved and the responsibilities have not disappeared. They may, in fact, be enlarged without solution only to be solved by repeated refuge in drug induced euphoria. Marijuana does not cure the problem but probably prevents effective treatment.[39] The student drug user typically decreases his performance and interest in his studies and eventually drops out of school.[40]

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[37]Transcript, Vol. 2 at 8, 9, 46, 49, 70, testimony of Dr. Donald B. Louria, *supra* note 15; Transcript, Vol. 3 at 52, testimony of Dr. Nicholas B. Malleson, *supra* note 13; Transcript, Vol. 5 at 202, testimony of Dr. Constantinos J. Miras, *supra* note 25; Transcript, Vol. 6 at 126, 161, testimony of Dr. Henry Brill, *supra* note 14; Transcript, Vol. 7 at 19, 20, testimony of Dr. Harris Isbell, *supra* note 5; Transcript, Vol. 9 at 60, 71, testimony of Dr. Isawar C. Chopra, *supra* note 4 at 11.

[38]*See* "LaGuardia Report", *supra* note 4 at 51.

[39]Transcript, Vol. 10 at 10, 17, 21, testimony of Dr. Dana L. Farnsworth, *supra* note 15.

[40]Transcript, Vol. 10 at 22, 23, 27, testimony of Dr. Dana L.

Continued use of marijuana without doubt has and will tend toward stronger and stronger dosages. This would be especially true if criminal sanctions were removed from marijuana. Just as the legal use of alcohol in this country graduated from beer to distilled spirits, so we can expect marijuana use to extend to hashish, which is the pure resin from the flowering top of the female India hemp plant and the most potent form of the drug. No one seriously contends that hashish is not a dangerous drug, producing psychotic breaks and other serious mental disturbances.[41]

Evidence produced by both sides indicated clearly that marijuana is closely associated with the use of other drugs of the hallucinogenic or mind-altering type as well as with heroin and other opiate drugs.[42] Opponents to the continuation of criminal sanctions on marijuana almost uniformly contend that the use of marijuana does not "cause" the use of more dangerous drugs such as heroin. Here they use "cause" in a limited technical sense. Since larger numbers of chronic marijuana users do not become heroin addicts, it cannot be said it "causes" heroin use.[43] On the other hand, nearly 90% of all heroin addicts either started on or used marijuana at some time before becoming addicted to heroin, therefore, it is clear that there is at least an association between the two.[44]

Farnsworth, *supra* note 15.

[41]Transcript, Vol. 9 at 61, hashish is known as ganja in India. In describing ganja uses, Dr. Isawar C. Chopra stated that, "... mental injury is more likely to occur in the case of those individuals who take large doses for prolonged periods, especially by smoking." In detailing the incidence of psychosis among ganja smokers, he stated that, "... emotion and character and judgment are affected more in the case of smokers of ganja. ..."

[42]Transcript, Vol. 3 at 101, testimony of Dr. Nicholas B. Malleson, *supra* note 13; Transcript, Vol. 2 at 28, Dr. Donald B. Louria stated that, "... the use of marihuana unequivocally leads some people on to the use of more dangerous drugs such as heroin or LSD. . . . In our own figures at Bellevue Hospital among heroin users approximately 80 per cent have had experience with marihuana before." Further, he added that, "... the majority of people who use LSD have had experience with marihuana. ..."

[43]Transcript, Vol. 10 at 121, testimony of Dr. John C. Ball, Research Associate at the Addiction Research Center, Lexington, Ky.

[44]Transcript, Vol. 10 at 97, Dr. John C. Ball discussed a two year study of the association between marijuana smoking and the subse-

There can be little doubt that there is also a close association between marijuana use and the use of other hallucinogenic or mind-altering drugs such as LSD. Sociological studies show that the same groups use both drugs, as well as others, interchangeably, thus establishing a sociological connection, at least among this class of drugs.[45]

The evidence produced as to the physiological, psychological and sociological effects of chronic use of marijuana satisfied the trial judge that marijuana was indeed a harmful and dangerous drug and that the statutes under which the defendants were being prosecuted were constitutional.[46]

It is generally recognized that legal controls, although by no means perfect, are one of the most effective aspects for preventing the spread of drug use. If the public policy supporting legislation imposing legal controls is confirmed by increased authoritative research, the public acceptance of such controls will obviously be increased immeasurably and thus make the controls even more effective. The probable cause for widespread defiance of laws pertaining to marijuana is the belief that they represent a public policy of the past, based not on knowledge derived from scientific research, but more from public hysteria.

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quent use of opiates. He stated, "... our view is that marihuana smoking leads to heroin addiction, in particular, in the same way you might say delinquency often leads to adult criminality." To further clarify, he stated, "So I am not saying that everyone who uses marihuana goes on to heroin addiction but I am saying that most of the people who become heroin addicts have come through the process which includes marihuana use."

Dr. Ball testified that, "... the smoking of marihuana cigarettes is a predisposing influence on subsequent addiction, particularly to illicit drugs, which would mean especially to heroin addiction. ..." Vol. 10 at 103.

Finally, he stated that of those, "... who go on to heroin, approximately 80 to 90 percent have used marihuana first." Vol. 10 at 109.

[45]Transcript, Vol. 3 at 101, testimony of Dr. Nicholas B. Malleson, *supra* note 13; Transcript, Vol. 2 at 142, 143. In describing the association between marijuana and LSD, Dr. Joel Fort said, "... the two drugs have been artificially thrown together by our social and legal policies and the sources of supply have come to overlap, and their being defined as a deviant thing has tended to make both of them attractive in similar ways to some people."

[46]Commonwealth v. Leis and Weiss, partially reported, p. 23, this edition.

Medical research to develop authoritative conclusions, confirmed by laws consistent therewith, is the best and perhaps the only way to deal effectively with this problem.

This is not to say, however, that consideration should not now be given to reappraisal of the existing laws and especially the penalties called for. It is difficult, for example, to justify the five-year mandatory offense under federal law for transferring marijuana.[47] While this statute was undoubtedly aimed at the persons engaged in large-scale commercial traffic in marijuana, its breadth covers the student who hands a marijuana cigarette to another or divides his small supply with a friend. The imposition under Massachusetts law of a larger penalty for being present where marijuana is illegally kept than for actually possessing it is also hard to justify.[48]

Adjustments can and should be made to correct such excesses and inconsistencies. If they are corrected, much of the disrespect for the drug laws now existing among many of the youth of the country may disappear. If at the same time the other interested professions concentrate on research programs to evaluate the effects of the use of marijuana and the other psycho-active drugs and the law is then made consistent with those results, a solid basis will be established to recommend such laws to the youth who predictably will be inclined to accord such laws far more respect.

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[47] 26 U.S.C. § 4742 (1954).

[48] MASS. GEN. LAWS. ch. 94, § 213A (as amended through St. 1960, ch. 204, § 2) reads as follows:

> Whoever is present where a narcotic drug is illegally kept or deposited, or whoever is in the company of a person, knowing that said person is illegally in possession of a narcotic drug . . . may be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a . . . house of correction for not more than two years or by a fine of not less than five hundred dollars nor more than five thousand dollars.

The Massachusetts Supreme Judicial Court has recently resolved doubts as to the constitutionality of this statute as applied to one not shown to have knowledge of the existence of the illegally kept marijuana by deciding that the statute properly interpreted requires a showing of such knowledge. Commonwealth v. Buckley, 1968 Mass. Adv. Sh. at 981.

THE PURSUIT OF PLEASURE: CONSTITUTIONAL DIMENSIONS OF THE MARIHUANA PROBLEM †

JOSEPH S. OTERI* and
HARVEY A. SILVERGLATE**

AN UNORTHODOX PREFACE

It may be contended with some degree of persuasion that in certain areas of the law, the judicial and judicious reaction of judges and lawyers is finally coming close to the "guts reaction" of many untutored laymen as to what governments can and cannot do. Laymen, of course, resort to something called common sense, while jurists find their guidelines in such concepts as "due process of law".

Thus, let us suppose that the General Court of the Commonwealth of Massachusetts were to pass a law prohibiting citizens from listening to the music of Beethoven in the privacy of their living rooms.[1] Most laymen would probably react with the exclamation—"They can't do that." Yet until relatively recently most judges and lawyers might

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The authors express their appreciation to Lawrence H. Norris, Esq., Suffolk University Law School, 1964, and Richard L. Zisson, Esq., Suffolk University Law School, 1967, for their assistance and scholarly advice.

[1] The authors are indebted to Stan Freeburg who planted the germ to this analogy.

well have reacted by pointing out that while perhaps the wisdom of such legislation was questionable, nevertheless "they" certainly could pass such a law. Since such a set of facts or circumstances could be conceived which would, in the eyes of a legislature, justify such legislation; and, since listening to Beethoven can hardly be considered one of those "fundamental liberties" upon which Western Civilization is based, the individual citizen does not have any "fundamental right" which would require the state to show a "compelling state interest" before putting the ban on Beethoven.

Beethoven, it may be argued to a legislature or by a legislature, poses some danger to society. His music contains passages which are so powerful that they tend to produce in some people (admittedly not all or even most people) a wild fluctuation of emotion running alternately from the very calm to the extremely violent. In exceptionally unstable individuals such music might conceivably produce psyhotic-like reactions. In other cases, excessive listening to Beethoven has been known to produce a psychological dependence of sorts, such that an avid listener might get somewhat depressed if his stereo set broke for a week, or if the Philharmonic decided for an entire season to leave Beethoven out of its program. He might become a bit irritable, even fidgety, and be driven to his FM radio in a frenzied attempt to satisfy his craving for the great composer.

Even if Beethoven's music in itself could not be proven or shown to be dangerous, nevertheless is there not always the possibility that one of the composer's avid fans might become so excited by the more resonant and powerful sections of the Fifth or Ninth Symphonies and then turn to even louder music, such as our modern "electronic rock", which some ear specialists say produces decibel ratings so high as to threaten permanent damage to the ears of the hip generation? Is it not possible also that a flirtation with Beethoven might lead listeners to seek out still other German composers, with the affect of turning attention away from what the legislature might consider the "genius"

of home-grown American music, thus damaging a significant domestic entertainment industry and a segment of the American economy?

Are we to ignore completely the fact that a legislature might be told and believe that some Beethoven listeners are so lulled by the master's music that they desist from working while under its nefarious influence, and thus become a potential cause of widespread lethargy, and a threat to our activity-oriented culture. And what about those other listeners who might be inspired to go out and introduce Beethoven to a neighbor's youngster, or perhaps attempt to write a symphony of his own, thus propagating the curse by proselytyzing and imitating?

The example need not be drawn out too far. The reader need merely substitute the word "marihuana" for Beethoven's music, and the subject matter of this article comes into focus. Precisely how far can legislature go, in a legal sense, in protecting the public and Western Civilization from a supposed menace, and upon what kinds of evidence is the factual existence of such a menace to be determined? More specifically, where does the concept of due process stop the lawmaker and the police from treading any further?

FACTUAL UNDERPINNINGS OF DUE PROCESS

Constitutional attacks on state marihuana legislation are several faceted.[2] They include claims that the classification of marihuana with narcotics and dangerous hallucinogens is arbitrary and without basis in pharmacology, psychiatry,

[2]While the same arguments used against state marihuana laws may and have been used in attacking federal legislation in this area, it is generally recognized that at the present time the Fifth Amendment provides a better method of attacking the Marihuana Tax Act, 26 U.S.C. § 4701 (1954); and the Marihuana Import and Export Act, 21 U.S.C. § 176*(a)* (1930). Such an attack, which involves a relatively neat question of law and eliminates the necessity of getting involved in a medical dispute on the effects of marihuana on the mind and body, is based upon the doctrine enunciated by the Supreme Court in Marchetti v. United States, 390 U.S. 85 (1968); Grosso v. United States, 390 U.S. 39 (1968); and Haynes v. United States, 390 U.S. 62 (1968). Such an argument is pending before the Supreme Court in

sociology, or even botany; that treating marihuana use as a criminal offense invades the individual's privacy without serving any legitimate state interest; that the imposition of harsh penalties on marihuana use constitutes cruel and unusual punishment; that the entire marihuana law structure is criminogenic in effect and hence harmful to society; that the scope of present marihuana legislation is overly-broad and unnecessarily interfers with protected rights while trying to get at a much narrower abuse; and that there is an inequality of treatment of marihuana users as opposed to alcohol or tobacco users. With the exception of the last argument, all of these lines of attack are rooted in the concept of substantive due process; the latter argument is, of course, based upon the Equal Protection clause of the Fourteenth Amendment.

In Massachusetts, defense lawyers are extraordinarily endowed with constitutional ammunition to supplement the Fourteenth Amendment. Particularly, the Massachusetts Constitution provides, in part, that "further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of *wholesome and reasonable* orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without . . ." (emphasis supplied).[3]

Perhaps even more to the point, the Massachusetts Constitution provides that the "Government is instituted for the common good; for the *protection, safety, prosperity and happiness* of the people . . ." (emphasis supplied).[4]

Finally, approaching the nub of the matter frontally, that same revered and time-honored document provides that "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting

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Leary v. United States, 36 U.S.L.W. 3466 (1968), but was rejected recently by the Court of Appeals for the Second Circuit in United States v. Minor, (2d Cir. 1968).

[3]MASS. CONST. pt. 2, ch. 1, § 1, art. IV.

[4]MASS. CONST. pt. 1, art. VII.

property; in fine, *that of seeking and obtaining their safety and happiness*" (emphasis supplied).[5]

Yet the combination of these provisions and the Fourteenth Amendment have not yet enabled a marihuana defendant to elicit from a court of record so much as a hint that state marihuana legislation is unconstitutional. It is submitted that the major reason for the lack of success to date is attributable not to the willingness of courts to accept the proposition that the citizen has a right to happiness, but rather to the inability of attorneys to convince the courts that there is not a sufficient state interest to justify legislative intrusion into any "right" that the individual might arguably have to use marihuana.

This article will not re-argue the admittedly troublesome question of whether or not there is a "fundamental right" to use marihuana or any other similar hallucinogen or intoxicant. The entire legal controversy has the air of a semantic dispute. This was particularly evident in perhaps the most comprehensive opinion yet rendered on this question, the opinion of the Massachusetts Superior Court (Tauro, C.J.) in the case of *Commonwealth v. Joseph Leis and Ivan Weiss*.[6] In that opinion, the court, while admitting that "... no decision appears to have attempted to propound an all inclusive list of fundamental rights ..." nevertheless it went on to limit the list to "... those rights which are recognized as fundamental ... [and] are also, in many instances, closely related to some commonly acknowledged moral or legal duty and not merely to a hedonistic seeking after pleasure."[7] Once the court dismissed any claim that a fundamental right was involved, it did not have to examine the question of the state's interest in prohibiting marihuana.[8]

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[5]MASS. CONST. pt. 1, art. I.

[6]Nos. 28841-2, 28844-5 and 28864-5 (Massachusetts Superior Court, June 4, 1968); Partially reported herein p. 23 of this edition.

[7]*Id.* p. 24 this edition.

[8]"Therefore, it is not necessary that a compelling state interest be shown in order to subject them to regulation under the exercise of the state's police power." P. 24 this edition. It

Other courts have attempted to deal with the legal issues regarding marihuana without a sufficient appreciation of or inquiry into the factual issues. Some of these courts have not even felt that it mattered very much what the true state of facts turned out to be. Thus, in what is generally a clear and well-written exposition of certain legal principles, a California intermediate appellate court which did not have the benefit of expert testimony[9] stated that in dealing with marihuana "... if reasonable men may entertain the belief that the use of these drugs, once begun, almost inevitably leads to excess, such belief affords a sufficient justification for applying restrictions to these drugs."[10] The California Court went even further in expressing the doctrine that the *actual* truth or falsity of the facts upon which a state interest is based is irrelevant: "The validity of legislation which would be necessary or proper under a given state of facts does not depend upon the actual existence of the supposed facts. It is enough if the law-making body may rationally believe such facts to be established."[11]

This, of course, is an extreme position and would hardly find sanction with the Supreme Court of the United States,

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should be noted nevertheless despite the fact that Chief Justice Tauro felt that the court did not have to go further, he did go on to consider the question of marihuana on the basis of evidence taken by the court in a unique two and one half week hearing with expert testimony on every phase of the so-called "marihuana problem." While Chief Justice Tauro concluded from the evidence that "marihuana is a harmful and dangerous drug," his finding in this regard will presumably be reviewed by the Supreme Judicial Court, which will have the benefit of the full transcript of evidence before it when the matter reaches the full court. By thus receiving and preserving the evidence given by the experts, Chief Justice Tauro has given the reviewing courts the widest latitude possible.

[9]People v. Aguiar, 257 A.C.A. 691, 65 Cal. Rptr. 171, 172 (1968), opinion written by Molinari, P.J. The court noted that the bulk of the defendant's argument "consists of a law review article." *See*, Boyko and Rotberg, *Constitutional Objections to California's Marijuana Possession Statute*, 14 U.C.L.A. L. REV. 773 (1967).

[10]*Id.* at 695, 65 Cal. Rptr. at 173, citing People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (1952).

[11]*Id.* at 695, 65 Cal. Rptr. at 173, citing *Ex Parte* Yun Quong, 159 Cal. 508, 114 P. 835 (1911), the latter case dealing with opium.

which has stated time and time again that a statute must have sufficient factual underpinnings. As Justice Holmes wrote, even the judge, being bound to declare the law "... must know or discover the facts that establish the law."[12] And as to the proposition that the mere statement of a proposition is sufficient to establish that proposition as a factual justification for a statute, Justice Holmes warned: "Obviously the facts should be accurately ascertained and carefully weighed; and this can be done more conveniently in the Supreme Court of the District than here. The evidence should be preserved so that if necessary it can be considered by this Court."[13]

Unless our trial courts take more seriously their duty to inquire into the facts now known which justify or fail to justify marihuana legislation,[14] all of the effort presently being put into the attempt to bring the use of marihuana within a classification of "protected" or "fundamental rights" will be wasted. For without such inquiry, courts will feel free to give credence to the many myths and misrepresentations which have been promulgated since at least the mid-1930's which have cast marihuana as a villain and an assassin.[15] Unless these myths are discredited in the courts, it is a simple matter for any court, looking to the state of the "evidence", to uphold even the most restrictive marihuana legislation, regardless of whether or not an

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[12]Chastleton Corp. v. Sinclair, 264 U.S. 543, 548 (1924).

[13]*Id.* at 549.

[14]It might be pointed out here that common sense would dictate that the court look into the factual situation in the light of present day knowledge, and not at the situation as it might have appeared to the legislature when the law was passed or last re-enacted, amended, or revised. This is part of the court's on-going duty to examine legislation in the light of modern developments. One may cite various cases, for example, where legislation which was previously upheld in the face of factual attack was later thrown out because of the discovery of new facts. *See, e.g.*, 264 U.S. 543; Brown v. Board of Educ., 347 U.S. 483 (1954). *See also, In re* Jenison, 267 Minn. 136, 125 N.W. 2d 588 (1963), where the court held that persons whose religious convictions prohibit compulsory jury duty must be exempt "until and unless further experience indicates . . . a serious threat to the effective functioning of our jury system. . . ." *Id.* at 589.

[15]*See* SOLOMON, THE MARIHUANA PAPERS (1966).

abstract inquiry into the question of fundamental rights leads that court to the conclusion that there is a right to happiness and that marihuana may foster happiness, or that there is a right to privacy and that marihuana is used in private and that such use falls within the zone of privacy. For it is axiomatic that where behavior leads to adverse and deleterious social consequences, even a fundamental right embodying such behavior may be limited or proscribed entirely.[16]

It is enlightening to note the nature of some of the evidence which the Massachusetts legislature has relied upon in passing the many versions of the marihuana statute which has been on the books in the Commonwealth continuously for many decades.[17] It appears from the limited legislative history of this statute that it was passed and has been maintained (indeed, made yet more stringent) on the statute books without any investigation by the legislature into the medical and scientific evidence. In view of the substantial amount of evidence available, it would appear that such a procedure violates certain minimal standards of rationality which must be part of the legislative process. It is part of the concept of due process of law that the legislature pass statutes, and periodically revise statutes, in such a way that the laws remain at least roughly consonant with the state of knowledge of mankind.

Marihuana has been illegal within the Commonwealth of Massachusetts at least as early as 1911.[18] There were several narcotic drug commissions appointed subsequent to the passage of the statute. The most extensive and the only one in which cannabis was even considered was Senate Report No. 100 (1930). Hearings were held, interviews and ques-

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[16]The classic expressions of this proposition are those of Mr. Justice Holmes in his famous illustration explaining that despite freedom of speech, one may not shout "Fire!" in a crowded theatre. Schenk v. United States, 249 U.S. 47 (1919). *See also*, Reynolds v. United States, 98 U.S. 145 (1878).

[17]For the purposes of this article emphasis will be given to the Massachusetts statute on marihuana which is typical of many state statutes.

[18]LAWS AND RESOLVES OF MASS., ch. 372 (1911).

tionnaires taken. Cannabis was not cited as a problem, except that in the entire study two so-called "cannabis indica addicts" were reported. But the Commission was careful to point out that:

> In considering the answers received to the first part of the question,—whether the drugs listed presented problems of addiction,—it should be remembered that "addiction" has many interpretations. It may be defined by some as meaning simply "habitual use". This undoubtedly explains the rather significant number of times that aspirin was inserted in the space left for drugs of addiction other than those specified. "Addiction" in the narrower sense, means a condition in which the body becomes dependent upon the taking of the drug, and reacts with serious symptoms, often with collapse, upon withdrawal of it.[19]

There is no mention of, nor evidence concerning marihuana, in subsequent House Reports.[20]

It would be quite reasonable for a legislature to outlaw murder without hearings on the subject, since that is a crime malum in se and no evidence is needed of the harm caused by the act of killing. But in a case such as the marihuana question, it would seem that some investigation into the facts must be made, and that the findings be considered. True, the Court may not substitute its conclusions for the conclusions of a legislature when examining a state of facts which was before the legislature. But in a case such as this, where the legislature, despite numerous investigations into drugs, which often led to alterations in the narcotic drugs law, never informed itself about marihuana, it becomes the duty of the Court to perform that function. As stated by Karst:

> The urgency of the need for particularization arises out of the rapidity of contemporary social, technological, political and economic changes which require the courts to uncover and delineate in a short period of

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[19]MASS. LEGISLATIVE DOCUMENTS, S.R. No. 100 at 25 (1931).

[20]MASS. LEGISLATIVE DOCUMENTS H.R. No. 2390 (1954); H.R. No. 2780 (1960); H.R. No. 3075 (1966).

> time many new interests worthy of constitutional protection. It is not an exaggeration to say that the . . . government depends upon the continued success of the judiciary in performing this legislative function.[21]

It is also pointed out that a principal justification for granting a court the power of judicial review over legislation "lies in the ability of a court to weigh constitutional claims on the basis of experience which was not available when the legislature acted."[22] "Although some of the justices have been reluctant, they now appear to be unanimous in accepting the necessity of weighing the factual justification of state regulation."[23] As Mr. Justice Brandeis wrote in *O'Gorman & Young v. Hartford Fire Ins. Co.*,[24] ". . . [if the] evils did not exist . . . for which this statutory provision was an appropriate remedy. . . ." this circumstance, if supported by ". . . some factual foundation of record for overthrowing the statute. . . ."[25] would enable a court to overturn the statute on the basis of the evidence presented.

It is important to note that the kind of case here envisioned is not one where the constitutional attack is directed toward showing that the statutory classification is invalid merely as applied to a particular defendant or merely in a specific single instance.[26] The determination of constitutionality in such a case may turn on the activities or characteristics of the challenging party, and of the effect of the statute upon him. Such facts are adjudicative in nature. The findings thereon can have no effect upon future cases. They are therefore made by the trier of fact—and will be reviewed, as in the ordinary case, only to

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[21]Karst, *Legislative Facts in Constitutional Litigation*, 1960 THE SUPREME CT. REV., 75, 76.

[22]*Id.* at 76-77; *see also*, HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 77-79 (1953).

[23]Karst, *supra* note 21, at 78.

[24]282 U.S. 251 (1931).

[25]*Id.* at 257, 258.

[26]*See e.g.*, Fiske v. Kansas, 274 U.S. 380 (1927).

discover whether they are warranted by the evidence presented at the trial.[27]

But where, as here, extrinsic factual matter is offered for the purpose of showing the factual basis—or want of one—for a statutory classification or treatment, and where the facts are beyond the sphere of judicial notice in the traditional sense, the matter is properly the subject of a *judicial inquiry*.[28] And because the inquiry is judicial in character it must be conducted by a judge, and not by a jury or trier of fact.[29] So also, the facts as determined at the trial are open to a much broadened form of appellate review.[30] For example, the appellate court may draw its own conclusions as to a state of facts from information obtained at the trial,[31] and/or from additional information received for the first time on appeal.[32]

The reasons for all this are obvious; the Court is deciding a question of general application of which the ultimate determination will and must be *stare decisis*,[33] at least until future experience or discovery demonstrate that the basis for the decision no longer exists.[34]

The sine qua non of this entire process is an expansion of the means and methods by which the Court receives and records relevant information and evidence. The entire process itself is denied by such decisions as *R.C. Tway Co. v. Glenn*,[35] which holds that legislative findings cannot be

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[27]*See* Taylor v. Mississippi, 319 U.S. 583, 585-86 (1943); Feiner v. New York, 340 U.S. 315, 316 (1951).

[28]United States v. Carolene Products Co., 304 U.S. 144, 158 (1937).

[29]9 WIGMORE ON EVIDENCE § 2555*(d)* (3d ed. 1950); *See* Laurel Hill Cemetery v. San Francisco, 216 U.S. 358, 364065 (1910).

[30]*Cf.* WIGMORE, *supra* note 29, at n.6.

[31]*See* 264 U.S. at 549.

[32]Muller v. Oregon, 208 U.S. 412, 420-21 (1908); *see* 347 U.S. at 494 n.11; Commonwealth v. D'Avella, 339 Mass. 642, 162 N.E.2d 19 (1959).

[33]*See, e.g.*, Commonwealth v. Chamberlain, 343 Mass. 49, 53, 175 N.E.2d 486, 488 (1961).

[34]*See* Karst, *supra* note 21; *see also* Justice Brandeis' dissent in Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-08 (1932).

[35]12 F. Supp. 570, 582 (W.D. Ky. 1935).

impeached, for the supposed reason that the same statute might be found constitutional in one case and unconstitutional in another, depending upon the testimony. Of course, it would be irrational to permit such an issue to be varyingly decided, case by case, on the basis of what different triers of fact might reasonably conclude from testimony (which itself will vary from case to case depending upon the availability of witnesses) offered to them by counsel under the rules of evidence applicable in ordinary *ad hoc* private and criminal litigation. Considerations of equality in the treatment of litigants, at least, demand that the question of a statute's inherent constitutionality not be decided one way in one case and another way in another case.[36] Conversely, it would be no more rational to permit the lottery of such traditional fact finding in one case to become *stare decisis* to another.[37] The only way to avoid either such result is readily apparent. The Court must be informed of all relevant data, and by whatever appropriate means.

In *Chastleton Corp. v. Sinclair*,[38] there was a question whether the facts upon which certain legislation was postulated had ceased to exist, and if so should the statute be rendered unconstitutional. Justice Holmes, speaking for the Court, stated:

> We need not inquire how far this Court might go in deciding the question for itself, on the principles explained in *Prentis v. Atlantic Coast Line Co.*, 211

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[36]Bickle, *Judicial Determination of Questions of Fact Affecting The Constitutional Validity of Legislative Action*, 38 HARV. L. REV. 6, 11 (1924-25).

[37]Consider the following: in Commonwealth v. Wright, 137 Mass. 250 (1884), a jury was "warranted in finding" a certain definitely described and popularly known game to be a lottery. The game came before the court again in Commonwealth v. Sullivan, 146 Mass. 142, 15 N.E. 491 (1888), where it was said: "This having been determined to be a lottery in *Commonwealth v. Wright*, it is not necessary to go on forever taking the opinion of the jury in each new case that comes up." *Id.* at 145, 15 N.E. at 494. With all due respect, it is submitted that to make the accident of a first jury-type *finding* decisive of a question of law is patently absurd.

[38]264 U.S. 543.

> U.S. 210, 227 [where Holmes, J., had said: "As the judge is bound to declare the law *he must know or discover* the facts that establish the law," (emphasis added)] . . . These cases show that the Court may ascertain *as it sees fit* any fact that is merely a ground for laying down a rule of law. . . . Obviously the facts should be accurately ascertained and carefully weighed, and this can be done more conveniently in the Supreme Court of the District than here. The evidence should be preserved so that if necessary it can be considered by this Court. (Emphasis supplied)[39]

The proponents of the statute in *Chastleton* had prevailed in both the trial and intermediate appellate courts. Even though the Supreme Court has been reluctant to remand in cases of this sort because of the fear that "the trial of legislative facts will be hedged in by restrictive rules of evidence and procedure which would not hamper its own investigation."[40] Nevertheless, here the Supreme Court remanded.[41]

In *Brown v. Board of Education*[42] the Supreme Court relied upon a lower court "finding" that segregation leads to the development of a sense of inferiority among Negro children affecting their motivation to learn. It stated that "this finding is amply supported by modern authority."[43] The decision in *Brown* is obviously *stare decisis*; it could not have been founded on the kind of fact finding which one sees in an ordinary *ad hoc* contest (where only the rights of the immediate contending litigants are at stake) and thus the restrictions imposed by technical rules of evidence were inappropriate.

It is thus apparent that the kind of fact finding hearing required to resolve the "marihuana question" is in reality a kind of legislative hearing held in a courtroom by a judge acting as the finder of fact. Of course, it is often argued

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[39] *Id.* at 549.
[40] Karst, *supra* note 21, at 96.
[41] 264 U.S. at 549.
[42] 347 U.S. 483.
[43] *Id.* at 494 n.11, where the Court cited a welter of published social psychological materials.

that since this is a matter which lies within the province of the legislature, and since a legislature is better suited to make such fact findings, the courts should decline jurisdiction even to hear such evidence.[44] But where the legislature has clearly avoided a reasonable fact finding process, and where, for reasons political or otherwise, the legislature refuses to investigate the "marihuana problem" with any degree of objectivity or thoroughness, it behooves the judiciary to ensure that the law is changed, even in a rough way, in accordance with the increasing knowledge of mankind.

Indeed, there is a good argument that the courtroom is a better forum for airing the facts in an area such as we deal with here. The profusion of pseudo-experts and "medical politicians" who profess expert knowledge of marihuana and its uses and effects is such that the enormous amount of misinformation spewed forth by such men might be most readily pierced by the skillful and diligent cross-examination of an advocate, rather than by the often timid and acquiescent questioning of a member of a legislative committee aware of the public eye. It is all too common and all too easy for any man with a medical degree or title to make a flat statement on a subject in which he has little or no more knowledge or experience than an ordinary layman; and it is unfortunate when such statements become the "rational" basis for legislation. However, while a legislator may cross-examine and need not believe such "evidence," an advocate would be more likely to probe deeply and expose all sham and falsity. It is therefore quite possible that the "legislative question" of marihuana may be resolved by the judiciary more quickly and more rationally than by the legislative branch. Indeed, the proliferation of recent constitutional attacks on state marihuana legislation indicates perhaps a frustration of attempts to obtain legislative relief and a necessary resort to the courts.[45]

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[44]Karst, *supra* note 21, and cases cited therein.

[45]Within recent months such attacks have been prosecuted in

LIMITATIONS ON HAPPINESS AND THE LEAST RESTRICTIVE ALTERNATIVE

As has been noted above, a controversy rages over the question of whether or not there is a "right" to smoke or possess marihuana, or whether, if such a right exists, it is a "fundamental" right. The superior court in its opinion in *Commonwealth v. Joseph Leis and Ivan Weiss*[46] appeared to feel that the distinction between "fundamental rights" and other rights or privileges[47] was crucial since that determination defines the burden that the state has to meet in order to prohibit or restrict conduct involving that right. Thus, the court said:

> . . . those rights which are recognized as fundamental are also, in many instances, closely related to some commonly acknowledged moral or legal duty and not merely to a hedonistic seeking after pleasure. No claim of any such duty which would demand the possession, use or sale of marijuana has been advanced in this case. . . .
>
> I conclude that the alleged rights . . . do not rise to the level of fundamental rights nor fall within the periphery or penumbra emanating from such rights. Therefore, it is not necessary that a compelling state interest be shown in order to subject them to regulation under the exercise of the state's police power.[48]

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some states. State v. Raines & Borras, Cir. Ct. of 2d Jud. Cir., Leon County (now before the Florida Supreme Court); State (California) v. Knesevich, last year mooted and decided on a search and seizure issue; People (Michigan) v. Sinclair, Recorder's Court for Detroit; In the Matter of the Exemptions of Marihuana (Oregon) from the Application of O.R.S. Chapter 474, before the Oregon State Board of Pharmacy.

[46]On Report to Massachusetts Supreme Judicial Court. Partially reported p. 23 of this Law Review.

[47]One might well ask whether a *non-fundamental right* does not in fact differ from what is commonly known as a mere *privilege*. If, after all, the state can restrict a *non-fundamental right* without a strong showing of a compelling state interest, then it would seem that the *right* becomes in effect a privilege revocable at the will and whim of the state.

[48]Commonwealth v. Leis and Weiss, p. 24 this edition; *see* People v. Woody, 40 Cal. Rptr. 69, 394 P.2d 813 (1964).

The California Court in *People v. Aguiar*,[49] begged the question where it pointed out "... that there is no constitutionally protected right to indulge in the use of euphoric drugs."[50] At another point in the seemingly well-reasoned opinion the court makes what appears to be an untenable distinction:

> An act may not be held to be unconstitutional merely because it may contain provisions which seem to be unjust or oppressive, or because it may be deemed to violate the natural, social or political rights of citizens, unless it appears that those features of the fact contravene rights which are guaranteed by the Constitution.[51]

The inutility of the "fundamental" rights concept is thus demonstrated. The concept of "fundamental" rights loses much of its importance as an analytical tool in an era when the interpretation of due process has gone well beyond a literal reading of the rights specifically enumerated in the first Ten Amendments, and has now encompassed "penumbras" which "emanate" from the enumerated rights.[52]

It is here suggested that Courts must begin to analyze and balance the rights of the individual versus the regulatory or prohibitory powers of the state by resort to the balancing concept of "the least restrictive alternative."[53] Indeed, court decisions in several areas have already begun to adopt this concept, although it was not discussed by the trial courts which rendered either the Massachusetts or California marihuana opinions discussed herein.[54] The doc-

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[49]257 A.C.A. 691, 65 Cal. Rptr. 171.

[50]*Id.* at 698, 65 Cal. Rptr. at 175.

[51]*Id.* at 696, 65 Cal. Rptr. at 174.

[52]Griswold v. Connecticut, 381 U.S. 479 (1965).

[53]Struve, *The Less-Restrictive-Alternative Principle and Economic Due Process*, 80 HARV. L. REV. 1463 (1967), and Warmuth and Mirkin, *The Doctrine of the Reasonable Alternative*, 9 UTAH L. REV. 254 (1964).

[54]It should be noted, however, that defense counsel in *Commonwealth v. Leis and Weiss* relied heavily on this theory, and presumably this concept will be discussed when the case comes before the Supreme Judicial Court of Massachusetts.

trine is simply a very flexible version of the conventional theory of rights, although it embodies more functional analaysis and less "analysis by label." The basic principle involved is that the state should not and may not restrict the breadth of individual liberties (defined in the broadest sense) without a countervailing justification for doing so.

This question was faced by the California Supreme Court, which saw the conflict between state "police Power" and the demands of the Fourteenth Amendment when the right of an ex-convict to vote was concerned. In *Otsuka v. Hite*,[55] he court held that a California constitutional provision which disfranchises all persons convicted of "infamous crimes" must be narrowly construed to encompass only those crimes which bear a "reasonable relation" to the protection of the integrity of the elective process, such as corruption, bribery, forgery, and malfeasance in office. The court said to include other crimes within this category would violate the Equal Protection Clause of the Fourteenth Amendment. The state could not establish voting qualifications inconsistent with the Equal Protection Clause. Because of the importance of the right to vote, a rigid standard of equal protection has to be applied.[56] The classifications that are created must be reasonable in light of some "compelling state interest."[57]

In a critical analysis of the *Otsuka* case, it was stated that "every inquiry into the reasonableness of a classification should begin with a postulation of all possible purposes; there must be a reasonable relation between any one of these purposes and the characteristics used to define the statutory classification."[58] In *McLaughlin v. Florida*[59] the Supreme Court struck down a Florida statute making

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[55]64 Cal. 2d 596, 414 P.2d 412, 51 Cal. Rptr. 284 (1966).

[56]*See* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966), where the Court held that it was a violation of the Equal Protection Clause for the state to condition the franchise on the payment of a poll tax.

[57]51 Cal. Rptr. at 289, 414 P.2d at 417.

[58]Note, 60 COLUM. L. REV. 1357 (1966) citing McLaughlin v. Florida 379 U.S. 184, 191 (1964).

[59]379 U.S. 184 (1964).

inter-racial cohabitation a crime. Mr. Justice White, in delivering the opinion of the Court, pointed out that "[n]ormally the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." Nevertheless, ". . . we deal here with a racial classification embodied in a criminal statute. In this context, where the power of the State weighs most heavily upon the individual or the group, we must be especially sensitive to the policies of the Equal Protection clause. . . ."[60]

While there is admittedly a multiplicity of possible legislative purposes of the California disfranchisement statute in *Otsuka* there can be little doubt that the Massachusetts Narcotic Drugs Law can serve but one purpose—protection of the public health, safety or morals. Unless marihuana comes under a classification of substances which threaten the public health, safety or morals, it would appear clear that the statute including it as a dangerous drug, and virtually banning its use and sale completely, is unreasonable. Even Mr. Justice Clark, in his dissent in *Robinson v. California*,[61] assumed, and explained that the majority also assumed that a state may punish persons who purchase, possess or use narcotic drugs "because of the grave threat of future harmful conduct which they pose."[62] He specified lying, stealing and violent crime as a frequent result of narcotic use. Unfortunately, cannabis has for so long been erroneously legally classified with the narcotics that we indulge the assumption that it too is dangerous. The logical conclusion from Mr. Justice Clark's statements is that if the drug is found not to be a threat to a vital state interest, the police power may not be turned against the substance or its use.

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[60] *Id.* at 192.
[61] 370 U.S. 660 (1962).
[62] *Id.* at 683.

In view of the medical, psychological, sociological and pharmacological properties of marihuana, and in light of the evidence compiled in the testimony given by the experts in *Commonwealth v. Leis and Weiss*, Massachusetts would be hard pressed to show any compelling state interest which may be protected by this statutory scheme. In *People v. Woody*[63] the California Supreme Court noted that the state provided no evidence that the practice of smoking peyote among the Indians was harmful to the public health. And as Mr. Justice Goldberg noted in *Griswold v. Connecticut*,[64] "Although the Connecticut birth-control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any 'subordinating state interest which is compelling' or that is 'necessary . . . to the accomplishment of a permissible state policy'."[65] Mr. Justice Goldberg went on to discuss the state's contention that the law discourages extra-marital relations, and he dismissed the contention as being of dubious rational, for the law cannot, in fact, deter extra-marital relations, nor is it tailored to foster marital fidelity. In view of Mr. Justice White's contention that "a statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment, . . ." the statute could not stand.[66]

It is interesting to note that in the case of alcoholic beverages, Massachusetts has resorted to licensing procedures in an effort to control use and distribution of alcohol, and has invoked criminal penalties only for the *abuse* of alcohol, i.e., for drunkenness.[67] In a dissenting opinion in *Robinson v. California*[68] Mr. Justice Clark said: " 'Status' offenses have been long known and recognized in the criminal law. . . . A ready example is drunkenness, which plainly is as involuntary as is the taking of drugs."[69]

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[63]61 Cal.2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).
[64]381 U.S. 479 (1965).
[65]*Id.* at 497-98.
[66]*Id.* at 503.
[67]MASS. GEN. LAWS ch. 272, § 48 (1956).
[68]370 U.S. 660 (1962), holding that it is cruel and unusual punishment to convict a man of being a narcotics addict.

Perhaps Mr. Justice Clark answered unwittingly his own puzzlement at how the Supreme Court majority could strike down a state statute which made the status of being a drug addict a crime, while upholding state statutes which made drunkenness (a normal condition of alcohol addicts) a criminal offense. For as Mr. Justice Clark noted earlier in this same dissent: "Although none of these acts [i.e. purchase, possession or use of narcotics] are harmful to society in *themselves*, the State constitutionally may attempt to deter and prevent them through punishment because of the grave threat of future harmful conduct which they pose."[70] Perhaps one explanation of the *Robinson* decision lies in the very fact that the status of being a narcotics addict was considered less harmful to society than the status of being an alcoholic. And perhaps Mr. Justice Clark's assumption that the use, possession or purchase of all "narcotics" is dangerous would not have been so easily made if this factual question was before the Court. Indeed, if the status of being a true, *hard narcotics* addict may not constitutionally be made a crime, what justification is there for making it a crime to possess the non-narcotic cannabis, or for that matter to possess it with intent to sell? The implication here is that only the abusive use of cannabis, as it results in conduct harmful to society, ought to be the target of the police powers.

Licensing schemes for regulatory purposes are often struck down in state courts. In *Abodoo v. The City and County of Denver*[71] the Colorado Supreme Court struck down a municipal ordinance that required licensing of portrait photographers, finding that the business of photography is a lawful activity which is harmless and useful, and that the police power cannot be invoked to regulate its practice, specifying technical or moral qualifications for people wishing to enter that field of endeavor. The statute was held to be an unwarranted invasion of the constitutional freedoms of the individual. Thus, a harmless activity

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[69] *Id.* at 684.
[70] *Id.* at 683 (emphasis supplied).
[71] 156 Colo. 127, 397 P.2d 222 (1964).

was held to be immune even to mere regulation. Certainly a total prohibition of the occupation of photography would not have survived scrutiny at all.

Other regulatory schemes, involving occupations or activities which are potentially dangerous or subject to abuse, have often been upheld in state courts. In the case of *Norman v. City of Las Vegas*[72] the Nevada Supreme Court held that the business of gambling and of selling intoxicating liquors had a "deleterious tendency" and that the police powers of the state and city could be invoked to regulate these activities. Other cases used only when the business or activity regulated has a tendency to be dangerous to the public health, safety or morals.[73] Adherents to the so-called "incorporation theory"[74] would hold that the specific guaranties of the Bill of Rights are incorporated into the Fourteenth Amendment Due Process clause, and it would appear that the Ninth Amendment would be taking its place now beside the first eight. Adherents to the so-called "ordered liberty"[75] theory would hold that the rights involved in this case are part of the Fourteenth Amendment Substantive Due Process. But lurking beneath these "categories of rights" seems to be a basic balancing process between the interests and rights (fundamental or otherwise) of the individual and the interests of the state.

Perhaps the most important of all is the observation that where the state has no interest at all, the individual interest does not have to be very strong to prevail. Thus, in the recent case of *Fenster v. Leary*[76] the court struck down a vagrancy law on two grounds, one of which was that the vagrant did not harm society, and thus there was no state interest in outlawing his being a vagrant.

From another point of view, the broadness of the sweep of the California disfranchisement statute in *Otsuka v.*

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[72]64 Nev. 38, 177 P.2d 442 (1947).

[73]*See, e.g.*, Friedman v. Valentine, 177 Misc. 437, 30 N.Y.S.2d 891 (1941) (regulation of carbarets); Simone v. Kennedy, 26 Misc.2d 748, 212 N.Y.S.2d 838 (1961) (carbaret employees).

[74]Adamson v. California, 332 U.S. 46 (1947), (Black dissenting).

[75]Palko v. Connecticut, 302 U.S. 319 (1937).

[76]53 Misc.2d 774, 279 N.Y.S.2d 743 (1967).

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Hite,[77] would have been unconstitutional had the court not chosen to save its constitutionality by a narrowing interpretation. As Mr. Justice Douglas wrote in the Court's opinion in *Griswold*, "[s]uch a law cannot stand in light of the familiar principal, so often applied by this Court, that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[78] Mr. Justice Brennan and Chief Justice Warren agreed with this and concurred with Mr. Justice Goldberg in his concurring opinion, where he said, "[i]n any event, it is clear that the state interest in safeguarding marital fidelity can be served by a more discriminately tailored statute, which does not, like the present one, sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with and intruding upon the privacy of all married couples."[79]

As has been noted, Massachusetts statutory scheme dealing with alcoholic beverages purports to deal with only the abuses and dangerous effects of the substance. Despite the evidence that alcohol is harmful and potentially dangerous even if taken in relatively moderate doses, Massachusetts has narrowed the scope of its alcohol regulatory scheme drastically.[80]

Yet the marihuana statute, dealing with a substance which, according to the present state of medical knowledge, is relatively harmless, unless, perhaps, taken in massive doses or high concentrations; throws a blanket prohibition over use of the substance in any manner and in any quantities; this is so even though there is a lack of evidence on the part of Massachusetts, that ordinary use is deleterious. It might be found by a court that, in the balancing process, marihuana might indeed be susceptible to some kind of regulatory scheme, but it is submitted that in order to be reasonable, the scheme would have to regulate at

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[77]64 Cal.2d 596, 414 P.2d 412 (1966).
[78]381 U.S. at 485.
[79]*Id.* at 498.
[80]*See* note 98 *infra*.

least as leniently as the scheme which regulates alcoholic beverages, rather than prohibit entirely. This is not to ask that a state necessarily leave itself without any controls at all over marihuana. A state should, however, limit itself to a statute which regulates rather than prohibits, and which regulates to an extent that is reasonable and rational in the light of modern scientific and medical evidence. If it is found that such evidence is as yet inconclusive, then a state must await further experimentation and not discourage such experimentation. In justifying any regulatory scheme controlling marihuana, a state has some burden, and it would seem that this burden could be met in a scientific age only by allowing proven facts to enter into the legislative decision, and by relegating myths to the realm of gossip rather than law. The courts may not tell the legislature upon which facts they must rely, but the courts must furnish guidelines outside of which a legislature may not go before it must find a rational basis for curtailing the freedom of its citizens. If marihuana is to be proven dangerous, it will have to be with experimentation by scientists with the substance cannabis, rather than by court experimentation with the liberty of the citizen. This is in accord with Mr. Justice Goldberg's comment when he stated, "I quite agree with Mr. Justice Brandeis that . . . a . . . State may . . . serve as a laboratory, and try novel social and economic experiments. . . . [yet] I do not believe that this includes the power to experiment with the fundamental liberties of citizens. . . ."[81]

The instant case is very much like the problem that faced the New York Court of Appeals[82] when a constitutional challenge was levelled against a section of the Federal Agriculture and Markets Law,[83] which section prohibited canned condensed skimmed milk from being sold in small quantities, which in effect barred the product from house-

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[81]381 U.S. at 496.

[82]Defiance Milk Products Co. v. DuMond, 309 N.Y. 537, 132 N.E.2d 829 (1956).

[83]N.Y. AGRICULTURE AND MARKETS LAW §64 (McKinney 1954).

hold consumption. The court observed that the answer to this challenge revolved around the Supreme Court's opinions in the two *Carolene Products* cases[84] which decisions upheld a federal statute barring "filled milk" from interstate commerce. The New York Court observed that when the Congress passed the filled milk statute in 1923[85] it put forth as the reasons for the statute that filled milk was harmful, and that it was often confused with whole milk. The New York Court went on to note that the Supreme Court upheld the federal statute only on the latter ground —the confusion between products in the marketplace.

> We must keep in mind that the *Carolene* statute was passed in 1923 and that the two Carolene cases were decided in 1938 and 1944, respectively. Congress had characterized "filled milk" as being "injurious to health" and "a fraud upon the public" [citing 304 U.S. 152]. Time has certainly disproved completely the first of those indictments. Ultimately, the court's basis for the ban was "deception" and fraudulent substitution. . . .[86]

The New York Court noted in the *Defiance* case there was neither harm from the product, nor confusion, and therefore the court could not uphold the statute on the "confusion of products" ground that the Supreme Court found still existing in *Carolene*. The claim of harm could no longer be accepted since "even though a police power enactment may have been or may have seemed to be valid when made, later events or later-discovered facts may show it to be arbitrary and confiscatory."[87] The court then

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[84]United States v. Carolene, 304 U.S. 144 (1938); United States v. Carolene, 323 U.S. 18 (1944).

[85]Filled Milk Statute, 21 U.S.C.A. § 61-64 (1964).

[86]309 N.Y. 537, 543, 132 N.E.2d 829, 831 (1956).

[87]*Id.* at 541, 132 N.E.2d at 830, citing Abie State Bank v. Bryan, 282 U.S. 765, 772 (1931). The New York court, while noting its feeling that it was highly unlikely, in view of labeling procedures, that the consumer would confuse canned evaporated skimmed milk with whole milk, deferred to the legislative finding to some extent by stating in *dictum* that if more distinctive marking was thought necessary, the Legislature could have demanded other kinds of labels or special sizes, shapes or colors of containers. Instead, it issued its

stated that the heart of its decision was that "the property of a citizen including his right to sell nondeleterious substances may not be taken from him without rhyme or reason."[88]

In a similar vein the Supreme Court of Kentucky in *Commonwealth v. Campbell*[89] held that possession of alcohol could not be banned, while sale of the substance could be prohibited. The court stated:

> It is not within the competency of a free government to invade the sanctity of the absolute rights of the citizen any further than the direct protection of society requires. Therefore, the question of what a man will drink, or eat or own, provided that the rights of others are not invaded, is one which addresses itself alone to the will of the citizen. It is not within the competency of the government to invade the privacy of a citizen's life or to regulate his conduct in a matter in which he alone is concerned, or prohibit him any liberty the exercise of which will not directly injure society.[90]

It has been recently argued that the "less-restrictive alternative" principle should be adopted by the Supreme Court of the United States as a substitution to a balancing test in the area of economic due process.[91]

In an *Opinion of the Justices*, the Supreme Judicial Court of Massachusetts[92] dealt with a statute purporting to prohibit all agencies owning, maintaining or operating cemeteries and their officers, agents and employees from selling or engaging in the business of selling monuments for cemetery lots. The court said that such a statute was

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fiat that these household size quantities could not be sold at all. Such a prohibition was . . . not a reasonable way of dealing with such confusion . . . as the legislators might have found to exist." *Id.* at 541, 132 N.E.2d at 831.

[88] *Id.* at 541, 132 N.E.2d at 831.

[89] 133 Ky. 50, 117 S.W. 383 (1909).

[90] *Id.* at 58, 117 S.W. at 385.

[91] Struve, *supra* note 53. Furthermore, this principle is not a new one in judicial thinking. *Id.* at 1464 n.7, citing the Opinion of the Justices, 322 Mass. 755, 79 N.E.2d 883 (1948) as an example of the use of the principle in state jurisdictions.

[92] 322 Mass. 755, 79 N.E.2d 883 (1948).

unconstitutional under Articles 1, 10 and 12 of the Declaration of Rights since "[w]e have been unable to perceive in the proposed act any rational tendency to promote the safety, health, morals or general welfare of the public."[93]

The court first proceeded to discuss any possible justifications for the statute, justifications which may have been suggested by the legislature, or which may have come to the minds of the Justices independently of other sources. The court found few reasons to justify it.[94]

Yet in this opinion, the court noted that while the selling of monuments "presents no occasion for special or peculiar regulation," nevertheless cemeteries "are subject to a substantial degree of special and peculiar regulation. . . ."[95] To solve this problem of a mixture within the same statute of subjects some of which were suitable for regulation and others which were not, the court resorted to the less-restrictive-alternative principle:

> If any evils lurk in the association of a cemetery with the selling of monuments we would suppose that they

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[93] *Id.* at 760, 79 N.E.2d at 887.

[94] Certainly it is not a health regulation. We do not see what evil arises if any individual or a religious society owning or operating a cemetery also sells monuments, perhaps even merely as a convenience to the public and not for profit, since the proposed act makes no distinction in this respect. It is common for an individual or group of individuals to engage in more than one lawful occupation. And we see no incompatibility between the two occupations here involved which might be thought to operate to the public detriment. If it is suggested that a bereaved family seeking a place to bury their dead might possibly be exposed to undesirable importunity in the matter of purchase of a monument or might be discriminated against for refusal to buy, it might equally well be argued that for similar reasons an undertaker should be forbidden to sell caskets or a lawyer to act as an administrator. Equal grounds exist for the separation of many forms of activity which are commonly carried on together without objection and to the general convenience of the public. The reason just suggested for the proposed act seems fanciful rather than real, but we have been unable to think of any other object to be promoted, and neither the order of the Senate nor the proposed act discloses any.

Id. at 760-61, 79 N.E.2d at 887.

[95] *Id.* at 760, 79 N.E.2d at 887.

> could be met by direct attack without the sweeping prohibitions contained in the proposed act. The proposed act is especially drastic in its effect upon officers, agents, and employees. In this respect it seems a regulation more of sellers of monuments than of cemeteries. Under this part of the act no seller of monuments could become a member of a standing committee or a vestryman or warden or even sing for pay in the choir of a church that owned a cemetery, even though he had nothing whatever to do with the cemetery. Such restrictions upon persons carrying on a lawful occupation seem to us unrelated to any public good and unreasonable. For the foregoing causes we are of the opinion that the proposed act would not constitute a valid exercise of the police power.[96]

This principle has been commonly used, and it is in frequent use today, both legislatively and judicially, within Massachusetts and in other jurisdictions. Where restrictions are unreasonable, and not narrowly drawn, they unconstitutionally "burn down the house to roast the pig."[97] Within Massachusetts, many things are regulated narrowly.[98]

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[96]*Id.* at 761, 79 N.E.2d at 887-88.

[97]Butler v. Michigan, 352 U.S. 380 (1957).

[98]There is a basic statute regulating alcoholic beverages in which commercial sale and manufacturing is included. *See* MASS. GEN. LAWS ch. 138, § 2 (1943). But it is important to note that *private manufacture* or use of alcoholic beverages for *personal consumption* is not prohibited or regulated, MASS. GEN. LAWS ch. 138, § 3 (1935). There is a penalty for adulteration, MASS. GEN. LAWS ch. 138, § 16 (1936). There are restrictions on the sale of alcoholic beverages near churches and schools, MASS. GEN. LAWS ch. 138, § 16C (1965). Peddling is prohibited, MASS. GEN. LAWS ch. 138, § 32 (1934). Sale on Sundays and Legal Holidays are regulated, MASS. GEN. LAWS ch. 138, § 33 (1967), and sales to minors are restricted, MASS. GEN. LAWS ch. 138, § 34A (1962). Tobacco is similarly, although less elaborately, regulated. Sales to minors are prohibited, MASS. GEN. LAWS ch. 270, § 6 (1909). Smoking in a stable is outlawed, MASS. GEN. LAWS ch. 272, § 86C (1924), as well as smoking on a public conveyance, MASS. GEN. LAWS ch. 272, § 43A (1947). Other examples of narrow restrictions include: MASS. GEN. LAWS ch. 270 (Crimes Against Public Health), MASS. GEN. LAWS ch. 94, § § 186-94 (1966) (Adulteration and Misbranding of Food and Drugs) and MASS. GEN. LAWS ch. 269, § 12A (1959) (sale of air rifles to a minor under sixteen). For other examples of judicial rules involving the less-restrictive-alternative principle *see* Commonwealth v. Smith, 163 Ky. 227, 173 S.W. 340 (1915)

In *Schneider v. New Jersey*,[99] the Supreme Court of the United States struck down ordinances of Los Angeles, Milwaukee, and Worcester (Massachusetts), forbidding the distribution of handbills in public places as applied to persons passing out handbills on matters of public interest or in labor disputes. It was argued that these ordinances were intended to prevent the littering of the streets; and the Milwaukee ordinance could be enforced only if the recipients of the handbill actually threw it in the street. Justice Roberts, speaking for the Court stated that, "[a]ny burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. . . . There are obvious methods of preventing littering. Among these is the punishment of those who actually throw papers on the streets."[100]

MARIHUANA INTOXICATION AND EQUAL PROTECTION

Much has been written on the medical, pharmacological, psychological and sociological aspects of marihuana use, and the evidence need not be elaborated upon here.[101] But the available evidence would seem to indicate that in terms of physical and psychological effect, marihuana is basically an intoxicant or a mild hallucinogen. There are many similarities between marihuana and alcohol, although it is widely believed that marihuana is less dangerous, certainly in liability and physical damage.

Given such a factual basis, the question must be asked whether the users of one of these drugs (marihuana) may

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(possession of alcohol may not be outlawed); *Ex parte* Francis, 76 Fla. 304, 79 So. 753 (1918) (could not outlaw possession of alcohol, but could prohibit possession with intent to sell); State v. Gilman, 33 W. Va. 146, 10 S.E. 283 (1889) (cannot outlaw possession of alcohol); Roberts v. Clement, 252 F. Supp. 835 (E.D. Tenn. 1966) (cannot outlaw nudists).

[99]308 U.S. 147 (1939).

[100]*Id.* at 162.

[101]*See* SOLOMON, THE MARIHUANA PAPERS (1966).

be subject to heavy penalties for indulging in their chosen intoxicant, while the users of the other drug (alcohol) are free to indulge themselves so long as their use does not edge over into abuse.

Put another way, we must ask whether the present laws, by treating unequals (marihuana and the opiates or LSD) as equals, and by treating substantial equals (alcohol and marihuana, although alcohol is generally acknowledged to be the more harmful)[102] as unequals, thereby run afoul of the requirements of equal protection.

If two substances have essentially the same effects and pose essentially the same dangers, and if they would both be regulated (or prohibited) for the very same reason or reasons, and if an examination of the evidence reveals no substantial difference between the two, there is therefore no basis for the statutory distinction. Thus, in the classic case of *Skinner v. Oklahoma*[103] the Supreme Court of the United States struck down as a violation of equal protection, a statute which would apply sterilization to "habitual criminals," and which included certain classes of criminals, such as a chicken thief, but which excluded others, such as embezzlers. The Court said that:

> When the law lays an unequal hand on those who have *committed intrinsically the same quality of offense* and sterilized one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. Yick Wo v. Hopkins, 118 U.S. 356; Gaines v. Canada, 305 U.S. 337. Sterilization of those who have thrice committed grand larceny, with immunity for those who are embezzlers, is a clear, pointed, unmistakable discrimination (emphasis supplied).[104]

Similarly, the Supreme Court invalidated a Florida statute which outlawed cohabitation by members of different

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[102]FORT, THE USE AND ABUSE OF ALCOHOL AND NARCOTICS AROUND THE WORLD, Proceeding of the Third World Congress of Psychiatry (University of Toronto Press 1964).

[103]316 U.S. 535 (1924).

[104]*Id.* at 541-42.

races only.[105] A lack of equal protection was found, not because the state could not outlaw cohabitation, but rather because if it outlawed it for some, it had to do so for all. The Court noted that there appeared to be "... nothing in [the] suggested legislative purpose [to deal with illicit extramarital and premarital promiscuity] ... which makes it essential to punish promiscuity of one racial group and not that of another."[106]

How then is the Court justified in attaching heavy penalties to those who choose to become intoxicated or relax by using marihuana, while allowing others to indulge in another intoxicant which the marihuana users will not resort to because of its physically debilitating properties?

A state might argue that the legislature may outlaw what appears to it to be an evil without "covering the whole field of possible abuses.... If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely, logically not distinguishable from others not embraced in the law."[107] Yet all this says is that a legislature may pick and choose the kinds of behavior that it wishes to proscribe. It does not mean that a legislature may actually prescribe behavior of one class of people (e.g., those who choose to obtain a mild state of intoxication with marihuana) and allow another class of people to freely indulge in behavior of an exactly similar nature (e.g., those who choose to obtain a mild state of intoxication with alcohol). The only justification for making any such distinction would have to be more than a mere technical one. It would have to be grounded in fact.

In an *Opinion of the Justices of Massachusetts*,[108] the court said that equal protection requires that all in the same category and the same circumstances be treated alike.

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[105]McLaughlin v. Florida, 379 U.S. 184 (1964).

[106]*Id.* at 193.

[107]Central Lumber Co. v. South Dakota, 226 U.S. 157, 160 (1912).

[108]332 Mass. 769, 126 N.E. 2d 795 (1955).

It is true that a statutory discrimination will not be set aside as a denial of Equal Protection if any state of facts reasonably may be conceived to justify it.[109] Yet a statutory classification is arbitrary if it does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation.[110]

It has been recently stated that:

> The equal protection principle of *Skinner* and *McLaughlin* may be stated as follows: the statute must cover all persons who are logically, scientifically or by dint of common sense includable in order to effectuate the legitimate goals of the statute [citations omitted]. In applying this principle, the reviewing court must inevitably pass judgment on the soundness (i.e., legitimacy) of the statutory policy [citations omitted]. Since this role is one of independent fact-finding, courts are often reluctant to expressly challenge the legislature's decision to enact statutes, even those predicated on such questionable bases as superstition or racism. Fortunately, in recent years, the Supreme Court as well as the California appellate courts have been willing to undertake the necessary task of reviewing the completeness of the statutory class in view of the proscribed conduct.[111]

CONCLUSION

Several avenues have been suggested by which a court, without appearing to be taking a totally unprecedented or legally-unsound step, might declare part or all of the drug laws of several states, as they apply to possession and perhaps sale of marihuana, unconstitutional. Other approaches are, of course, available. But it is suggested that none of these legal theories have a chance of success unless accompanied by a sufficient amount of factual information

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[109]Connors v. Metropolitan District Water Supply Comm., 314 Mass. 33, 49 N.E.2d 593 (1943).

[110]Russell v. Treasurer and Receiver General, 331 Mass. 501, 120 N.E.2d 388 (1954); Lang v. Co-operative League of America, 246 Mass. 235, 140 N.E. 811 (1923).

[111]Boyko and Rotberg, *supra* note 9 at 787-88.

given to the court in a manner acceptable to a judicial fact-finding forum.

Perhaps the state of scientific knowledge on the marihuana question is still too embryonic for a court to feel easy about overturning a statute which is so controversial and which has such staunch supporters among many segments of the population. However, it is suggested that there is a duty of the courts to intervene where the legislatures have left their task undone. Unless this is done quickly, a whole generation of our youth will be decimated by criminal records and deep-seated hostility to a system which has produced and enforced, often with a vengeance, a law which to many laymen appears irrational, unjust and unwise, and to many lawyers and jurists appears to violate the basic tenets of Due Process and Equal Protection of Law.

49 Ill.2d 338

The PEOPLE of the State of Illinois, Appellee,

v.

Thomas McCABE, Appellant.

No. 42674.

Supreme Court of Illinois.

Oct. 15, 1971.

Rehearing Denied Nov. 24, 1971.

Defendant was convicted in the Circuit Court of Kane County, John A. Krause, J., of unlawful sale of marijuana, and he appealed. The Supreme Court held that classification of marijuana under Narcotic Drug Act, which provides for mandatory ten-year minimum sentence upon first conviction, rather than under Drug Abuse Control Act, which provides for maximum jail term of but one year upon first conviction and does not prohibit probation, was arbitrary and deprived defendant of equal protection.

Reversed.

Underwood, C. J., and Ryan, J., dissented and filed opinions.

Schaefer, J., did not participate.

1. Constitutional Law ⇐48

Determining whether statutory classification violates equal protection clause, court must begin with presumption that the classification is valid and must impose burden of showing invalidity on party challenging classification.

2. Constitutional Law ⇐211

Equal protection clause does not deny states the power to classify in the exercise of their police power, and it recognizes the existence of a broad latitude and discretion in classifying.

3. Constitutional Law ⇐48

If any state of facts may reasonably be conceived which would justify statutory classification, it must be upheld.

4. Constitutional Law ⇐208(1)

There must be reasonable basis for distinguishing class to which a law is applicable from the class to which it is not.

5. Constitutional Law ⇐208(1)

Although appropriate respect should be given to act of a legislative classification, there is a judicial obligation to insure that the power to classify has not been exercised arbitrarily and, if it has been, the legislation cannot be justified under the label of classification.

6. Criminal Law ⇐913(1)

Contention of defendant that classification of marijuana under Narcotic Drug Act rather than under Drug Abuse Control Act was unconstitutional was not the character of claimed error to be raised on a motion for a new trial. S.H.A. ch. 38, § 22–1 et seq.; ch. 111½, § 801 et seq.

7. Criminal Law ⇐1044, 1064(1)

Defendant, who raised constitutional question in his pretrial motion to quash indictment, who argued it and secured the trial court's ruling on the question, and who referred to the constitutional point orally on his posttrial motion for arrest of judgment, preserved the constitutional question for review even though it was not raised in his written motion for new trial.

8. Constitutional Law ⇐250

Poisons ⇐2

Classification of marijuana under Narcotic Drug Act, which provides for mandatory ten-year minimum sentence upon first conviction, rather than under Drug Abuse Control Act, which provides for maximum jail term of but one year upon first conviction and does not prohibit probation, was arbitrary and deprived defendant charged with unlawful sale of marijuana of equal protection. S.H.A. Const.1970, art. 4, § 13; S.H.A. ch. 38, § 22-1 et seq.; ch. 111½, § 801 et seq.

Thomas P. Sullivan and Douglas C. Nohlgren, Chicago (Jenner & Block, Chicago, of counsel), for appellant.

William J. Scott, Atty. Gen., Springfield, and William P. Ketcham, State's Atty., Elgin (Joel M. Flaum, James B. Zagel, and Warren K. Smoot, Asst. Attys. Gen., of counsel), for the People.

PER CURIAM.

Following a jury trial in the circuit court of Kane County the defendant, Thomas McCabe, was found guilty of the unlawful sale of marijuana in violation of the Criminal Code of Illinois. (Ill.Rev.Stat.1969, ch. 38, par. 22-3). Pursuant to the provisions for mandatory minimum penalties for the unlawful sale of a narcotic drug (Ill.Rev.Stat.1969, ch. 38, par. 22-40) the defendant, who had no prior convictions, was sentenced to the penitentiary for a period of ten years to ten years and a day. On this appeal he raises these grounds for reversal: (1) the classification of marijuana in the Narcotic Drug Act (Ill.Rev.Stat.1969, ch. 38, par. 22-1 et seq.), with mandatory minimum statutory penalties for a first conviction, deprives the defendant of due process and equal protection of the law in violation of the constitution of Illinois and the constitution of the United States; (2) the Narcotic Drug Act's mandatory minimum ten-year sentence and its prohibition of probation or the suspension of sentence upon a first conviction for the sale of even a trifling amount of marijuana to an adult constitutes cruel and unusual punishment in violation of the constitution of Illinois (S.H.A. Const. of 1870, art. II, sec. 11) and the constitution of the United States (U.S. Const., amend. VIII); (3) the defendant was deprived of equal protection of the law in that no meaningful post-trial hearing in mitigation was held; (4) the trial court erred in numerous evidentiary rulings; (5) the closing argument of the prosecutor was improperly prejudicial to the defendant; (6) the trial court erred in instructing the jury; and (7) the mandatory minimum penalty provision of the Narcotic Drug Act unconstitutionally interferes with the prerogative and the duty of the judiciary to impose sentence as the exercise of sound discretion may direct.

To begin it will be helpful to exclude some of the potential questions the defendant does not raise regarding the classification of marijuana. It is not denied, for example, that the State has authority under its general police power to prohibit the sale, use, or possession of marijuana. Nor does the defendant contend that the State must limit its exercise of that power to the regulation, as opposed to the prohibition, of the drug. Finally, the defendant does not claim that the State, having chosen to proscribe the use, possession, and sale of marijuana, must similarly act in the cases of substances such as alcohol, tobacco and caffeine, whose use may be harmful.

The equal-protection argument which is raised is narrow and limited. It simply is that the present placing or classifying of marijuana under the Narcotic Drug Act rather than classifying it under the Drug Abuse Control Act (Ill.Rev.Stat.1969, ch. 111½, par. 801 et seq.) with the "stimulant or depressant" drugs is constitutionally invalid as an improper classification, considering the present state of knowledge concerning the comparative natures and ef-

fects of the drugs named in the two statutes. Unlike the Narcotic Drug Act, which provides for a mandatory ten-year minimum sentence upon a first conviction for the sale of marijuana, the Drug Abuse Control Act provides, upon a first conviction for the sale of drugs named in it, a maximum jail term of but one year and probation is not prohibited. The defendant says that there is no rational basis for distinguishing a first sale of marijuana from the first sale of a stimulant or depressant drug under the Drug Abuse Control Act and that the gross disparity between the penalties violates his rights under the equal-protection clause.

[1-5] In determining whether a statutory classification violates the equal-protection clause, we must begin with the presumption that the classification is valid and must impose the burden of showing invalidity on the party challenging the classification. (City of Rockford v. Grayned, 46 Ill.2d 492, 263 N.E.2d 866; Thillens, Inc. v. Morey, 11 Ill.2d 579, 591, 144 N.E.2d 735; People ex rel. Vermilion County Conservation District v. Lenover, 43 Ill.2d 209, 219, 251 N.E.2d 175). The equal-protection clause does not deny the States the power to classify in the exercise of their police power and it recognizes the existence of a broad latitude and discretion in classifying. (Begich v. Industrial Com., 42 Ill.2d 32, 36, 245 N.E.2d 457). If any state of facts may reasonably be conceived which would justify the classification, it must be upheld (see Begich v. Industrial Com., 42 Ill.2d 32, 245 N.E.2d 457). The right of judicial questioning of a classification under the equal protection clause is thus limited. As this court put it in Thillens, Inc. v. Morey, 11 Ill.2d 579, 593, 144 N.E.2d 735, 743, "Whether the enactment is wise or unwise; whether it is based on sound economic theory; whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." But it is required that there be a reasonable basis for distinguishing the class to which the law is applicable from the class to which it is not. (People ex rel. County of Du Page v. Smith, 21 Ill.2d 572, 578, 173 N.E.2d 485.) Appropriate respect should be given to the fact of a legislative classification, but there is a judicial obligation to insure that the power to classify has not been exercised arbitrarily and, if it has been, the legislation cannot be justified under the label of "classification." (Begich v. Industrial Com., 42 Ill.2d 32, 36, 245 N.E.2d 457). It was observed recently: "[A] state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated." Lake Shore Auto Parts Co. v. Korzen, 49 Ill.2d 137, 148, 273 N.E. 2d 592.

Measuring by these criteria we must determine whether any rational basis exists to justify the substantially greater penalties imposed for a first conviction for the sale of marijuana than for a first conviction for the sale of a drug named in the Drug Abuse Control Act. This consideration will require an assessment of the relevant scientific, medical and social data found, including the voluminous materials assembled by the parties here, which are pertinent to support and to defeat the classification. We are aware that any compilation and examination of materials cannot comprehend all studies that have been made. We know, too, that knowledge in this whole area is not nearly complete. We proceed not to determine scientific questions, but to judge whether the data presently available provides a reasonable basis for the described classification of marijuana. (*Cf.* Precision Connecting Rod Service v. Industrial Com., 40 Ill.2d 277, 281, 239 N.E.2d 823.) The consideration of this data, of course, will not extend to the wisdom or unwisdom of the legislative classification. We confine our examination to the question whether the challenged classification can be supported on any rational basis.

Knowledge of the characteristics and effects of the drug commonly called marijuana, which is obtained from the leaves of the female hemp plant, *cannabis sativa*, has developed rapidly in the last decade. Studies by Presidential commissions, whose memberships have included psychiatrists, pharmacologists, sociologists and law enforcement officials as well as intensified research in the medical and scientific communities have contributed to this advancement. The consensus is that although marijuana has been commonly associated with the opiates, such as morphine and heroin, there are important differences between the so-called abuse characteristics of the two. Heroin and morphine are true narcotic analgesics in the sense that their use produces a marked indifference to pain. In addition, when injected intravenously a warm flushing of the skin and intense pleasurable sensations in the lower abdomen will result. Repeated usage of these drugs in a comparatively short time will result in the development of a tolerance, that is, a state which requires a gradually increasing dosage to permit the drug to attain the effect desired. Both a psychological and compelling physical dependence result from the use of "hard narcotics." The physical dependence develops in intensity with continued use and requires the continued administration of the drug to avoid withdrawal symptoms. It appears that the subjective action of the morphine-type drugs also involve changes in mood, an inability to concentrate and the development of apathy. Physical degeneration occurs, arising from drug preoccupation, personal neglect, malnutrition and susceptibility to infections. Overdosage can cause death through excessive respiratory depression.

Early withdrawal symptoms include lacrimation, nasal discharge, yawning and perspiration. Later, dilated pupils, loss of appetite, gooseflesh, (thus, the expression "cold turkey") restlessness and increased irritability and tremor will appear. At its peak intensity, the syndrome includes high irritability, insomnia, violent yawning, severe sneezing and lacrimation. Nausea and vomiting are common, as are intestinal spasms and diarrhea. Increased heart heat and elevated blood pressure, as well as muscular spasms, abdominal cramps and pains in the bones and muscles of the back are common. Death due to cardiovascular collapse can result from withdrawal. The symptoms are caused by the drug-induced alterations at the cellular level, most prominently in the central nervous system. Most authorities consider that the drug addict's frequent involvement in criminal activity results from his acute need for the drug rather than because of the action of the drug itself. The term addiction refers to the physical, rather than a psychological dependence on the drug.

Cocaine, which is placed with marijuana and the opiates in the Narcotic Drug Act, is a powerful stimulant, whereas the morphine-type drugs have a depressing action. Too, cocaine is further unlike the opiates in that it does not have effects of tolerance or physical dependence and abstention does not cause acute withdrawal symptoms. However, because of its potent nature, it induces intense physical and mental excitation and a marked reduction in normal inhibitions which often results in aggressive and even violent behavior. Intense hallucinations and paranoid delusions are common and, because of this, cocaine users frequently attempt to dilute the experience with a depressant such as heroin or morphine.

The properties and consequences of the use of marijuana differ from those attending the use of opiates or cocaine. The acute physical symptoms of marijuana use typically induced are an increase in pulse rate, a slight elevation in blood pressure, conjunctival vascular congestion, a rise in blood sugar, urinary frequency, dryness of the mouth and throat. Nausea, vomiting and occasional diarrhea have been observed, as has the inability to coordinate voluntary muscular movements. There is usually a marked increase in appetite.

Deaths due to overdose apparently have not been reported.

The mental or subjective effects of the administration of this drug are variable and depend on the interaction of several factors including the physical and pharmacological properties of the particular marijuana used, the amount of dosage, and more importantly, what has been called the character structure of the user, (including his experience with the drug, his attitude and expectations) and the social setting or environment in which the drug is used. The most common reaction is the development of a euphoric state of altered consciousness in which ideas seem disconnected, uncontrollable and freely flowing. Time perception is distorted with minutes seeming like hours. Spatial conception may also be disturbed. Vivid hallucinations, usually, but not always, pleasant, can occur with increased dosage. There may be marked alterations of mood, usually manifested by an extreme feeling of well being which is often accompanied by uncontrollable laughter. Later a more somber or depressed mood will appear. The drug's influence can cause anxiety, confusion or disorientation, and with larger doses temporary psychotic episodes have been observed in predisposed individuals. Inhibitions are reduced but violent or otherwise aggressive behavior seem to be rare.

Almost all authorities agree that marijuana is not a narcotic or addictive in the sense that the terms are precisely used. Unlike the opiate drugs, it does not produce a physical dependence, and upon abstention there are no withdrawal symptoms. A tolerance to the drug does not develop. Marijuana use does, however, lead to a mild psychological dependence. The short-hand descriptive phrase most often applied to the drug is "mild hallucinogen," although this refers to only one of its many effects.

The depressant and stimulant drugs within the Drug Abuse Control Act include the barbiturates (depressants,), the amphetamines (stimulants), and the hallucinogens. The drugs psilocybin, peyote, mescaline and what is commonly called LSD are examples of the hallucinogens. Frequent use of the barbiturates at high dosage levels leads invariably to the development of physical dependence, tolerance and severe withdrawal symptoms, similar to those associated with heroin use. The effects of barbiturate intoxication resemble those of alcoholic intoxication. There is a general sluggishness, difficulty in concentrating and thinking, speech impairment, memory lapse, faulty judgment and exaggeration of basic personality traits. Irritability and quarrelsomeness are common. Hostile and paranoid ideas as well as suicidal tendencies can occur. Barbiturates are said to be the most frequently used chemical in suicides in the United States. Accidental death from an overdose also can occur. There is a clear association between barbituric intoxication and accidents and traffic fatalities. The drug can depress a wide range of functions, including the nerves, skeletal muscles and the cardiac muscle. Barbiturates are frequently used by heroin addicts to boost the effect of weak heroin.

The consensus of the amphetimines (stimulants) is that, unlike the barbiturates, their abuse does not lead to a physical dependence, but the development of a high tolerance and a strong psychological dependence are common. Occasional dosage under medical supervision causes only an elevation in mood and a state of well-being. Long term dependence, however, leads to serious mental and physical problems. Malnutrition and debilitation due to self-neglect will appear. A well known complication of amphetamine abuse is paranoid schizophrenia. The user may react violently to his persecutive delusions. Visual and auditory hallucinations occur and can persist long after use is discontinued. Although true withdrawal symptoms do not occur, the latter stages of excitement and mental disarrangement are difficult to endure. To take the edge off this tense euphoria, the user will sometimes turn to barbiturates or the opiates.

Special mention should be made of one particular amphetamine, methamphetamine, commonly called "speed." Its effects are generally the same as other amphetamines, only markedly intensified. There is evidence that large doses result in permanent brain damage. The drug's lethal qualities are well documented. The potential for violence, paranoia and physical depletion are substantially more severe.

Also placed under the Drug Abuse Control Act are the hallucinogens or the "psychedelics." LSD is the best known and one of the highly potent forms of these drugs. Less potent hallucinogens include psilocybin, peyote, and mescaline and hashish (another derivative of the plant from which marijuana comes). As with marijuana usage, a true physical addiction does not occur with LSD, in that withdrawal effects do not follow abstinence. Frequent use of LSD will lead rapidly, however, to the development of a high tolerance. Psychological dependence develops as it does with exposure to almost any substance which alters the state of consciousness. During LSD-intoxication severe panic and paranoid reactions are encountered. Attempts at suicide as well as uncontrolled aggression are among the dangers to the intoxicant. Hallucinations are common, accompanied by feelings of grandiosity and omnipotence. Recurrences of the LSD experience weeks or months after the last drug intake are well known. Various emotional disorders have been observed following exposure to LSD. A chronic anxiety state is the most common. Prolonged psychotic reactions also have been identified with LSD. Too, there is also growing evidence that LSD can cause chromosomal damage.

Against this background of comparison one would conclude that neither the chemical properties of the drugs nor their effects on the behavior of the users provides any justifiable or reasonable basis for the sharply disparate penalties which are imposed for a first sale of marijuana and for a first sale of a drug under the Drug Abuse Control Act. Too, the consequences of abusive use of marijuana certainly appear not to be comparable to the demonstrated and profound ill-effects of opiate or cocaine addiction. Marijuana, in terms of abuse characteristics, shares much more in common with the barbiturates, amphetamines and, particularly, the hallucinogens than it does with the "hard drugs" classified in the Narcotic Drug Act. Marijuana does differ from the barbiturates and amphetamines in that it has no established medical use, but neither do LSD, peyote, or mescaline. Thus, one cannot reasonably distinguish marijuana from the substances under the Drug Abuse Control Act on this basis.

Nor is there any reasonable basis for placing marijuana under the Narcotic Drug Act and not under the Drug Abuse Control Act because of any compulsion to abuse. The compulsion associated with marijuana has been described as moderate or mild. The same is true of the amphetamines. The opiates and cocaine, on the other hand, have a maximal compulsive quality in this regard. Barbiturates, too, have this quality. Thus, in this respect, marijuana is dissimilar from the other drugs in the Narcotic Drug Act. Indeed, from this limited standard of comparison it is the barbiturates under the Drug Abuse Control Act, and not marijuana, which approximate the characteristics of the true narcotics.

Another factor which has been frequently advanced to provide a justifiable basis for classifying marijuana under the Narcotic Drug Act rather than under the Drug Abuse Control Act is that the use of marijuana progresses to heroin use and addiction. This thesis, once broadly entertained, has recently encountered serious challenge. Today it is reported that the vast majority of marijuana users do not graduate to the use of heroin. In 1969, Dr. Stanley F. Yolles, then Director of the National Institute of Mental Health, testified before the Congress that there is nothing in the properties of marijuana which predisposes the

use of heroin. He also estimated that only a small percentage of chronic users of marijuana go on to use heroin. This is not to deny any association between marijuana and heroin. The most commonly accepted thesis today is that a drug sequence or movement from one drug to another results from the cumulative effect of several factors, including: the pharmacological properties and effects of the drugs, the personality structure of the user, and the pressures of the so-called host environment. Thus, the chronic use of any drug presents a danger of graduation to other and more dangerous drugs. Observed, for example, has been a clear association between barbiturate abuse and heroin addiction. The barbiturate-heroin connection is also true with respect to the criminal trafficking in these drugs. Whatever can be said of marijuana use leading to the use of other and so-called harder drugs can be applied, and to a probably greater extent, to barbiturates, methamphetamine and LSD.

The extensive criminal involvement of persons addicted to heroin is well known. The intense craving for the drug, and the dread of symptoms following its withdrawal lead addicts to engage in criminal activities to finance their habit. It has been said that marijuana use also causes violence, crime and antisocial acts. However, since tolerance, physical dependence, or withdrawal symptoms do not attend its use, this thesis has been criticized. Some say that since the effect of marijuana is to induce a passivity in the user, the drug has a negative relation to criminality and aggressive behavior. But as marijuana is generally a disinhibitor, it must be recognized that antisocial conduct can occur in a predisposed individual. But this is, of course, equally true regarding the stimulant or depressent drugs and the hallucinogens. And, violent and aggressive conduct is a more common reaction to these latter drugs because of the paranoiac psychosis which they can produce in the user. Thus, it can be concluded that the thesis that marijuana use, as does the use of the opiates and cocaine, leads to criminal activity cannot provide a basis for distinguishing marijuana from the depressant and stimulant drugs or the hallucinogens.

Observations to be drawn on marijuana are that it is not a narcotic and it is not truly addictive. Its use does not involve tolerance, physical dependence or the withdrawal syndrome. Physical ill effects from its use are, so far as is known, relatively moderate. Its abuse does not have the profound and ill consequences observed in the use of some of the other drugs considered. Its use does not singularly or extraordinarily lead to opiate addiction or to aggressive behavior or criminal activity.

Against the entire background of the drugs considered we judge that the classification of marijuana under the Narcotics Drug Act rather than under the Drug Abuse Control Act has been arbitrary. A comparison of the drugs leads to a conclusion that marijuana more closely resembles drugs placed in the Drug Abuse Control Act. It is, comparatively speaking, dissimilar from drugs under the Narcotic Drugs Act. We do not find a rational basis for the classification, a consequence of which is that one first convicted of the sale of marijuana must without qualification receive a sentence ten times greater than one permitted to be imposed on one convicted for the first time of a sale of drugs under the Drug Abuse Act. The absence of a rational basis for distinguishing first convictions for sales of marijuana from first convictions for sales of drugs placed in the Drug Abuse Control Act compels the conclusion that the present classification of marijuana offends the equal-protection clause of the United States constitution and our new constitution of Illinois and was in violation of section 22 of article IV of the former constitution of this State.

We would observe that the legislature has recently removed marijuana from the Narcotic Drug Act and reclassified it under the Cannabis Control Act, H.B. 788,

P.A. 77-758, approved August 16, 1971. Henceforth, a first sale of a small quantity of marijuana to an adult, as was the case here, will result in only minor criminal penalties. This reclassification is not inconsistent with what we have said here.

It is appropriate to note that we are not unmindful of the prior Federal and State decisions which had rejected constitutional attacks on Federal and State statutes classifying marijuana with the "hard drugs." (See United States v. Eramdjian (S.D. Cal.1957), 155 F.Supp. 914; State v. White, 153 Mont. 193, 456 P.2d 54; Borras v. State (Fla.), 229 So.2d 244; Raines v. State (Fla.), 225 So.2d 330; People v. Stark, 157 Colo. 59, 400 P.2d 923; Spence v. Sachs, 173 Ohio St. 419, 183 N.E.2d 363; People v. Walton, 116 Ill.App.2d 293, 253 N.E.2d 537; Gonzales v. State (Tex. Crim.App.) 373 S.W.2d 249; Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898.) We would point out that the constitutional ground raised by the defendant here was not presented in any of the cited cases.

[6, 7] The State contends that the constitutional argument which the defendant has presented here was waived and not preserved for review because it was not raised in his written motion for a new trial. The record shows that the defendant plainly raised the constitutional question in his pretrial motion to quash the indictment, argued it, and secured the court's ruling on the question. It was not the character of claimed error to be raised on a motion for a new trial. (People v. Irwin, 32 Ill.2d 441, 444, 207 N.E.2d 76) He referred to the constitutional point orally in his post-trial motion and we regard that as an oral motion for arrest of judgment. We consider that the defendant preserved the constitutional question for review. People v. Irwin, 32 Ill.2d 441, 444, 207 N.E.2d 76.

[8] We hold that the present classification of marijuana is arbitrary and deprives the defendant of equal protection of the law. The remainder of the Narcotic Drug Act is not affected by this holding, as we judge it is severable (see People ex rel. Adamowski v. Wilson, 20 Ill.2d 568, 170 N.E.2d 605) from that portion of the statute which concerns marijuana.

It will not be necessary to consider the other contentions advanced by the defendant. For the reasons given, the judgment of the circuit court of Kane County is reversed.

Judgment reversed.

SCHAEFER, J., took no part in the consideration or decision of this case.

UNDERWOOD, Chief Justice (dissenting).

Subsequent to defendant's conviction under the Narcotic Drug Act and while this appeal was pending, the General Assembly enacted the Cannabis Control Act, H.B. 788, P.A. 77-758, which provides for substantially reduced criminal penalties for possession and sale of marijuana. Section 18 of that Act provides: "Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted would be a violation of this Act, and has not reached the sentencing stage or *a final adjudication*, then for purposes of penalty the penalties under this Act apply if they are less than under the prior law upon which the prosecution was commenced." (Emphasis supplied.)

In my opinion, this provision regarding sentencing may reasonably be interpreted to include all cases still in the appellate process (People v. Bailey, Ill.App., 273 N.E.2d 74; People v. Carleton, 116 Ill.App.2d 450, 252 N.E.2d 702) and would therefore apply to this case. Accordingly, I would not reach the constitutional question presented and would remand for resentencing in compliance with the sentencing provision of the Cannabis Control Act.

However, since the majority concludes that the inclusion of marijuana in the Nar-

cotics Drug Act is an unconstitutional classification, it is necessary to state my further disagreement with that conclusion. Defendant concedes that when the first Illinois drug act was passed in 1931, the combining of marijuana with "hard drugs" seemed to be legitimate, and that if only "hard drugs" were prohibited in Illinois, it still might not be irrational to put marijuana in that category. Defendant contends, however, that after the legislature created a second and lesser category of prohibited drugs by enacting the Drug Abuse Control Act in 1967, it was no longer rational to continue "to assign marijuana to the category with which it has much less in common, rather than to the category with which it has much more in common."

The majority's lengthy discussion of the characteristics and effects of marijuana as compared to other prohibited drugs clearly illustrates that no two drugs are identical and that marijuana is also quite different from the stimulant or depressant drugs with which defendant seeks to classify it. The fact that a substantial body of scientific and medical opinion now considers marijuana to be more nearly like the drugs included in the Drug Abuse Control Act than those prohibited by the Narcotic Drug Act does not, in my opinion, necessitate the conclusion that there was no rational basis for the classification in question. Medical and scientific opinion is even now by no means unanimous in condemnation of classifications of marijuana with "hard drugs" and, as the majority notes, "knowledge in this whole area is not nearly complete." In the absence of more nearly conclusive evidence that the legislative judgment was devoid of any rational basis, a finding of unconstitutionality is unwarranted, for few rules of law are more soundly bottomed than that which proscribes judicial interference with legislative discretion. As this court said in Thillens, Inc. v. Morey, 11 Ill.2d 579, 593, 144 N.E.2d 735, 743: "Whether the enactment is wise or unwise; whether it is based on sound economic theory; whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." In the context of current drug knowledge I would uphold the former statutory classification of marijuana within the Narcotics Drug Act as a constitutional exercise of legislative discretion.

Accordingly, I would affirm the conviction and remand for resentencing under the sentencing provision of the Cannabis Control Act.

RYAN, Justice (dissenting).

I join in the dissent of Chief Justice Underwood and add thereto the following:

The majority opinion does not focus on what I consider to be the critical aspect of the question of classification. The majority is concerned with the characteristics of the various drugs discussed and their effects on the human body and behavior pointing out similarities and differences. I do not consider these comparisons important. Instead we must be concerned with the purpose of the classification and the problems the legislature was attempting to alleviate thereby. In Billings v. Illinois, 188 U.S. 97, at 102, 23 S.Ct. 272, at 273, 47 L.Ed. 400, the court stated: "Things may have very diverse qualities, and yet be united in a class. They may have very similar qualities, and yet be cast in different classes. * * * All classification must primarily depend upon purpose—the problem presented".

In 1931 marijuana, opium and cocoa leaves were classified together in the Narcotic Drug Control Law (Ill.Rev.Stat.1931, Ch. 38, par. 192(a) et seq.) and penalties were provided for the illegal sale and possession thereof. In 1957 Illinois adopted the Uniform Narcotic Drug Act. (Ill. Rev.Stat.1957, Ch. 38, par. 192.28-2.17).

The list of drugs brought within the Act had increased to eleven in number and by 1967 the number of drugs included in the classification had grown to fifteen. A reading of these various Acts makes it clear that the legislature was not attempting to classify drugs of similar characteristics and effects but was attempting to classify these drugs for the purpose of combating the social evil found in the illegal sale, possession and use of the same.

In 1967 the legislature enacted the Drug Abuse Control Act, (Ill.Rev.Stat.1967, Ch. 111½, par. 801 et seq.) In this Act, as the Uniform Narcotic Drug Act, drugs of diverse characteristics and effects are grouped together for the purpose of controlling the illegal traffic in the various members of the class. The majority opinion concludes that marijuana more closely resembles the new list of drugs classified under the Drug Abuse Act, thus rendering the present classification of marijuana violative of the equal-protection clause.

The conclusion of the majority ignores the fact that traffic in marijuana had been a social problem of sufficient magnitude to warrant legislative action for many years. Material submitted with the briefs indicates that although a relatively small percentage of marijuana users become addicted to the so-called "hard drugs" a high percentage of "hard drug" addicts first became acquainted with the use of drugs through the use of marijuana. Also, certain studies indicate that marijuana is the most widely used drug among the young drug users. These are facts which the legislature may well have considered as justification for retaining marijuana under the Uniform Narcotic Drug Act and for not classifying it with the drugs listed in the Drug Abuse Control Act. The presumption of the reasonableness of the classification is with the State and the same will not be set aside as a denial of equal protection if any facts reasonably may be conceived to justify it. Salsburg v. Maryland, 346 U.S. 545, 74 S.Ct. 280, 98 L.Ed. 281; Metropolitan Casualty Ins. Co. of New York v. Brownell, 294 U.S. 580, 584, 55 S.Ct. 538, 79 L.Ed. 1070, 1073.

The defendant's brief has also focused on the characteristics and effects of the various drugs and has ignored the problem-to-be-solved approach. The burden is on the defendant to present evidence which shows that the apparently reasonable basis for this classification does not exist. (Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563; McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393.) The defendant has failed to produce any evidence concerning the nature of the traffic in the various drugs or the need to control the same. The presumption of the validity of the classification must therefore prevail.

A further reason for my dissent concerns the failure of the defendant to present any evidence on the subject of the invalidity of the classification. A motion to quash the indictment raised the question but no evidence was offered by the defendant at the hearing thereon. The evidence offered at the trial concerned the question of guilt or innocence and not characteristics and effects of the drugs. The majority opinion acknowledges that "we must begin with the presumption that the classification is valid and must impose the burden of showing invalidity on the party challenging the classification." This burden is not satisfied by argument or briefs but by coming forward with proof, by presenting evidence. This the defendant has not done so there is no basis in the record for the findings and comparisons set forth in the majority opinion concerning the properties of the various drugs. Both the defendant and the People filed lengthy briefs containing citations to and quotations from many, many articles, reports, and studies. The briefs represent a very detailed and well prepared presentation of the entire subject but *are not evidence*. The burden was on the defendant to present facts and circumstances in evidence from which the determination could be made that the classification in question

violates the equal-protection clause. (Gadlin .. Auditor of Public Accounts, 414 Ill. 89, 95, 110 N.E.2d 234; Thillens v. Hodge, 2 Ill.2d 45, 56, 116 N.E.2d 886; Thillens v. Morey, 11 Ill.2d 579, 591, 144 N.E.2d 735.) In Union Cemetery Ass'n of City of Lincoln v. Cooper, 414 Ill. 23, 110 N.E.2d 239 this court held that a distinction in legislation is not arbitrary if any state of facts can be reasonably conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed *in the absence of proof or judicial knowledge* to the contrary.

There is a great diversity of opinion as to the effects of marijuana. As the majority opinion states, knowledge in this area is not nearly complete. This court cannot, therefore, take judicial notice thereof. (People v. Price, 257 Ill. 587, 594, 101 N.E. 196.) The defendant having offered no evidence thereon, this court cannot make findings and comparisons of marijuana with the other drugs. With the record in this state, the defendant has not sustained the burden of proving the classification invalid.

Syllabus.

STANLEY *v.* GEORGIA.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 293. Argued January 14–15, 1969.—Decided April 7, 1969.

Under authority of a warrant to search appellant's home for evidence of his alleged bookmaking activities, officers found some films in his bedroom. The films were projected and deemed to be obscene. Appellant was arrested for their possession. He was thereafter indicted, tried, and convicted for "knowingly hav[ing] possession of . . . obscene matter" in violation of a Georgia law. The Georgia Supreme Court affirmed, holding it "not essential to an indictment charging one with possession of obscene matter that it be alleged that such possession was 'with intent to sell, expose or circulate the same.'" Appellant contends that the Georgia obscenity statute is unconstitutional insofar as it punishes mere private possession of obscene matter. Georgia, relying on *Roth* v. *United States*, 354 U. S. 476, argues the statute's validity on the ground that "obscenity is not within the area of constitutionally protected speech or press." *Id.*, at 485. *Held:* The First Amendment as made applicable to the States by the Fourteenth prohibits making mere private possession of obscene material a crime. Pp. 560–568.

(a) Neither *Roth*, *supra*, nor subsequent decisions of the Court were made in the context of a statute punishing mere private possession of obscene material, but involved governmental power to prohibit or regulate certain public actions respecting obscene matter. Pp. 560–564.

(b) The Constitution protects the right to receive information and ideas, regardless of their social worth, and to be generally free from governmental intrusions into one's privacy and control of one's thoughts. Pp. 564–566.

(c) The State may not prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct, *Roth*, *supra*, distinguished, or proscribe such possession on the ground that it is a necessary incident to a statutory scheme prohibiting distribution, see *Smith* v. *California*, 361 U. S. 147. Pp. 566–568.

224 Ga. 259, 161 S. E. 2d 309, reversed and remanded.

Wesley R. Asinof argued the cause and filed a brief for appellant.

J. Robert Sparks argued the cause for appellee. With him on the brief was *Lewis R. Slaton.*

MR. JUSTICE MARSHALL delivered the opinion of the Court.

An investigation of appellant's alleged bookmaking activities led to the issuance of a search warrant for appellant's home. Under authority of this warrant, federal and state agents secured entrance. They found very little evidence of bookmaking activity, but while looking through a desk drawer in an upstairs bedroom, one of the federal agents, accompanied by a state officer, found three reels of eight-millimeter film. Using a projector and screen found in an upstairs living room, they viewed the films. The state officer concluded that they were obscene and seized them. Since a further examination of the bedroom indicated that appellant occupied it, he was charged with possession of obscene matter and placed under arrest. He was later indicted for "knowingly hav[ing] possession of . . . obscene matter" in violation of Georgia law.[1] Appel-

[1] "Any person who shall knowingly bring or cause to be brought into this State for sale or exhibition, or who shall knowingly sell or offer to sell, or who shall knowingly lend or give away or offer to lend or give away, or who shall knowingly have possession of, or who shall knowingly exhibit or transmit to another, any obscene matter, or who shall knowingly advertise for sale by any form of notice, printed, written, or verbal, any obscene matter, or who shall knowingly manufacture, draw, duplicate or print any obscene matter with intent to sell, expose or circulate the same, shall, if such person has knowledge or reasonably should know of the obscene nature of such matter, be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for not less than one year nor more than five years: Provided, however, in the event the

lant was tried before a jury and convicted. The Supreme Court of Georgia affirmed. *Stanley* v. *State*, 224 Ga. 259, 161 S. E. 2d 309 (1968). We noted probable jurisdiction of an appeal brought under 28 U. S. C. § 1257 (2). 393 U. S. 819 (1968).

Appellant raises several challenges to the validity of his conviction.[2] We find it necessary to consider only one. Appellant argues here, and argued below, that the Georgia obscenity statute, insofar as it punishes mere private possession of obscene matter, violates the First Amendment, as made applicable to the States by the Fourteenth Amendment. For reasons set forth below, we agree that the mere private possession of obscene matter cannot constitutionally be made a crime.

The court below saw no valid constitutional objection to the Georgia statute, even though it extends further than the typical statute forbidding commercial sales of obscene material. It held that "[i]t is not essential to an indictment charging one with possession of obscene matter that it be alleged that such possession was 'with intent to sell, expose or circulate the same.'" *Stanley v. State, supra,* at 261, 161 S. E. 2d, at 311. The State and appellant both agree that the question here before us is whether "a statute imposing criminal sanctions upon the mere [knowing] possession of obscene matter" is constitutional. In this context, Georgia concedes that the present case appears to be one of "first

jury so recommends, such person may be punished as for a misdemeanor. As used herein, a matter is obscene if, considered as a whole, applying contemporary community standards, its predominant appeal is to prurient interest, i. e., a shameful or morbid interest in nudity, sex or excretion." Ga. Code Ann. § 26-6301 (Supp. 1968).

[2] Appellant does not argue that the films are not obscene. For the purpose of this opinion, we assume that they are obscene under any of the tests advanced by members of this Court. See *Redrup* v. *New York*, 386 U. S. 767 (1967).

impression . . . on this exact point," [3] but contends that since "obscenity is not within the area of constitutionally protected speech or press," *Roth* v. *United States*, 354 U. S. 476, 485 (1957), the States are free, subject to the limits of other provisions of the Constitution, see, *e. g.*, *Ginsberg* v. *New York*, 390 U. S. 629, 637–645 (1968), to deal with it any way deemed necessary, just as they may deal with possession of other things thought to be detrimental to the welfare of their citizens. If the State can protect the body of a citizen, may it not, argues Georgia, protect his mind?

It is true that *Roth* does declare, seemingly without qualification, that obscenity is not protected by the First Amendment. That statement has been repeated in various forms in subsequent cases. See, *e. g.*, *Smith* v. *California*, 361 U. S. 147, 152 (1959); *Jacobellis* v. *Ohio*, 378 U. S. 184, 186–187 (1964) (opinion of BRENNAN, J.); *Ginsberg* v. *New York*, *supra*, at 635. However, neither *Roth* nor any subsequent decision of this Court dealt with the precise problem involved in the present case. Roth was convicted of mailing obscene circulars and advertising, and an obscene book, in violation of a federal obscenity statute.[4] The defendant in a companion case, *Alberts* v. *California*, 354 U. S. 476 (1957), was convicted of "lewdly keeping for sale obscene and indecent books, and [of] writing, composing and publishing an obscene advertisement of them . . . ." *Id.*, at 481. None of the statements cited by the Court in

[3] The issue was before the Court in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), but that case was decided on other grounds. MR. JUSTICE STEWART, although disagreeing with the majority opinion in *Mapp*, would have reversed the judgment in that case on the ground that the Ohio statute proscribing mere possession of obscene material was "not 'consistent with the rights of free thought and expression assured against state action by the Fourteenth Amendment.'" *Id.*, at 672.

[4] 18 U. S. C. § 1461.

Roth for the proposition that "this Court has always assumed that obscenity is not protected by the freedoms of speech and press" were made in the context of a statute punishing mere private possession of obscene material; the cases cited deal for the most part with use of the mails to distribute objectionable material or with some form of public distribution or dissemination.[5] Moreover, none of this Court's decisions subsequent to *Roth* involved prosecution for private possession of obscene materials. Those cases dealt with the power of the State and Federal Governments to prohibit or regulate certain public actions taken or intended to be taken with respect to obscene matter.[6] Indeed, with one

[5] *Ex parte Jackson*, 96 U. S. 727, 736–737 (1878) (use of the mails); *United States* v. *Chase*, 135 U. S. 255, 261 (1890) (use of the mails); *Robertson* v. *Baldwin*, 165 U. S. 275, 281 (1897) (publication); *Public Clearing House* v. *Coyne*, 194 U. S. 497, 508 (1904) (use of the mails); *Hoke* v. *United States*, 227 U. S. 308, 322 (1913) (use of interstate facilities); *Near* v. *Minnesota*, 283 U. S. 697, 716 (1931) (publication); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571–572 (1942) (utterances); *Hannegan* v. *Esquire, Inc.*, 327 U. S. 146, 158 (1946) (use of the mails); *Winters* v. *New York*, 333 U. S. 507, 510 (1948) (possession with intent to sell); *Beauharnais* v. *Illinois*, 343 U. S. 250, 266 (1952) (libel).

[6] Many of the cases involved prosecutions for sale or distribution of obscene materials or possession with intent to sell or distribute. See *Redrup* v. *New York*, 386 U. S. 767 (1967); *Mishkin* v. *New York*, 383 U. S. 502 (1966); *Ginzburg* v. *United States*, 383 U. S. 463 (1966); *Jacobellis* v. *Ohio*, 378 U. S. 184 (1964); *Smith* v. *California*, 361 U. S. 147 (1959). Our most recent decision involved a prosecution for sale of obscene material to children. *Ginsberg* v. *New York*, 390 U. S. 629 (1968); cf. *Interstate Circuit, Inc.* v. *City of Dallas*, 390 U. S. 676 (1968). Other cases involved federal or state statutory procedures for preventing the distribution or mailing of obscene material, or procedures for predistribution approval. See *Freedman* v. *Maryland*, 380 U. S. 51 (1965); *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58 (1963); *Manual Enterprises, Inc.* v. *Day*, 370 U. S. 478 (1962). Still another case dealt with an attempt to seize obscene material "kept for the purpose

exception, we have been unable to discover any case in which the issue in the present case has been fully considered.[7]

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of being sold, published, exhibited . . . or otherwise distributed or circulated . . . ." *Marcus* v. *Search Warrant*, 367 U. S. 717, 719 (1961); see also *A Quantity of Books* v. *Kansas*, 378 U. S. 205 (1964). *Memoirs* v. *Massachusetts*, 383 U. S. 413 (1966), was a proceeding in equity against a book. However, possession of a book determined to be obscene in such a proceeding was made criminal only when "for the purpose of sale, loan or distribution." *Id.*, at 422.

[7] The Supreme Court of Ohio considered the issue in *State* v. *Mapp*, 170 Ohio St. 427, 166 N. E. 2d 387 (1960). Four of the seven judges of that court felt that criminal prosecution for mere private possession of obscene materials was prohibited by the Constitution. However, Ohio law required the concurrence of "all but one of the judges" to declare a state law unconstitutional. The view of the "dissenting" judges was expressed by Judge Herbert:

"I cannot agree that mere private possession of . . . [obscene] literature by an adult should constitute a crime. The right of the individual to read, to believe or disbelieve, and to think without governmental supervision is one of our basic liberties, but to dictate to the mature adult what books he may have in his own private library seems to the writer to be a clear infringement of his constitutional rights as an individual." 170 Ohio St., at 437, 166 N. E. 2d, at 393.

Shortly thereafter, the Supreme Court of Ohio interpreted the Ohio statute to require proof of "possession and control for the purpose of circulation or exhibition." *State* v. *Jacobellis*, 173 Ohio St. 22, 27–28, 179 N. E. 2d 777, 781 (1962), rev'd on other grounds, 378 U. S. 184 (1964). The interpretation was designed to avoid the constitutional problem posed by the "dissenters" in *Mapp*. See *State* v. *Ross*, 12 Ohio St. 2d 37, 231 N. E. 2d 299 (1967).

Other cases dealing with nonpublic distribution of obscene material or with legitimate uses of obscene material have expressed similar reluctance to make such activity criminal, albeit largely on statutory grounds. In *United States* v. *Chase*, 135 U. S. 255 (1890), the Court held that federal law did not make criminal the mailing of a private sealed obscene letter on the ground that the law's purpose was to purge the mails of obscene matter "as far as was consistent with the rights reserved to the people, and with a due regard to the security of private correspondence . . . ." 135 U. S., at 261. The

In this context, we do not believe that this case can be decided simply by citing *Roth*. *Roth* and its progeny certainly do mean that the First and Fourteenth Amendments recognize a valid governmental interest in dealing with the problem of obscenity. But the assertion of that interest cannot, in every context, be insulated from all constitutional protections. Neither *Roth* nor any other decision of this Court reaches that far. As the Court said in *Roth* itself, "[c]easeless vigilance is the watchword to prevent . . . erosion [of First Amendment rights] by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests." 354 U. S., at 488. *Roth* and the cases following it discerned such an "important interest" in the regulation of commercial distribution of

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law was later amended to include letters and was sustained in that form. *Andrews* v. *United States*, 162 U. S. 420 (1896). In *United States* v. *31 Photographs*, 156 F. Supp. 350 (D. C. S. D. N. Y. 1957), the court denied an attempt by the Government to confiscate certain materials sought to be imported into the United States by the Institute for Sex Research, Inc., at Indiana University. The court found, applying the *Roth* formulation, that the materials would not appeal to the "prurient interest" of those seeking to import and utilize the materials. Thus, the statute permitting seizure of "obscene" materials was not applicable. The court found it unnecessary to reach the constitutional questions presented by the claimant, but did note its belief that "the statement . . . [in *Roth*] concerning the rejection of obscenity must be interpreted in the light of the widespread distribution of the material in Roth." 156 F. Supp., at 360, n. 40. See also *Redmond* v. *United States*, 384 U. S. 264 (1966), where this Court granted the Solicitor General's motion to vacate and remand with instructions to dismiss an information charging a violation of a federal obscenity statute in a case where a husband and wife mailed undeveloped films of each other posing in the nude to an out-of-state firm for developing. But see *Ackerman* v. *United States*, 293 F. 2d 449 (C. A. 9th Cir. 1961).

obscene material. That holding cannot foreclose an examination of the constitutional implications of a statute forbidding mere private possession of such material.

It is now well established that the Constitution protects the right to receive information and ideas. "This freedom [of speech and press] . . . necessarily protects the right to receive . . . ." *Martin* v. *City of Struthers*, 319 U. S. 141, 143 (1943); see *Griswold* v. *Connecticut*, 381 U. S. 479, 482 (1965); *Lamont* v. *Postmaster General*, 381 U. S. 301, 307–308 (1965) (BRENNAN, J., concurring); cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925). This right to receive information and ideas, regardless of their social worth, see *Winters* v. *New York*, 333 U. S. 507, 510 (1948), is fundamental to our free society. Moreover, in the context of this case—a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

See *Griswold* v. *Connecticut*, *supra*; cf. *NAACP* v. *Alabama*, 357 U. S. 449, 462 (1958).

These are the rights that appellant is asserting in the case before us. He is asserting the right to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his own home. He is asserting the right to be free from state inquiry into the contents of his library. Georgia contends that appellant does not have these rights, that there are certain types of materials that the individual may not read or even possess. Georgia justifies this assertion by arguing that the films in the present case are obscene. But we think that mere categorization of these films as "obscene" is insufficient justification for such a drastic invasion of personal liberties guaranteed by the First and Fourteenth Amendments. Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds.

And yet, in the face of these traditional notions of individual liberty, Georgia asserts the right to protect the individual's mind from the effects of obscenity. We are not certain that this argument amounts to anything more than the assertion that the State has the right to control the moral content of a person's thoughts.[8] To

[8] "Communities believe, and act on the belief, that obscenity is immoral, is wrong for the individual, and has no place in a decent society. They believe, too, that adults as well as children are corruptible in morals and character, and that obscenity is a source of corruption that should be eliminated. Obscenity is not suppressed primarily for the protection of others. Much of it is suppressed for the purity of the community and for the salvation and welfare of the 'consumer.' Obscenity, at bottom, is not crime. Obscenity is sin." Henkin, Morals and the Constitution: The Sin of Obscenity, 63 Col. L. Rev. 391, 395 (1963).

some, this may be a noble purpose, but it is wholly inconsistent with the philosophy of the First Amendment. As the Court said in *Kingsley International Pictures Corp.* v. *Regents*, 360 U. S. 684, 688–689 (1959), "[t]his argument misconceives what it is that the Constitution protects. Its guarantee is not confined to the expression of ideas that are conventional or shared by a majority. . . . And in the realm of ideas it protects expression which is eloquent no less than that which is unconvincing." Cf. *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952). Nor is it relevant that obscene materials in general, or the particular films before the Court, are arguably devoid of any ideological content. The line between the transmission of ideas and mere entertainment is much too elusive for this Court to draw, if indeed such a line can be drawn at all. See *Winters* v. *New York*, *supra*, at 510. Whatever the power of the state to control public dissemination of ideas inimical to the public morality,. it cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts.

Perhaps recognizing this, Georgia asserts that exposure to obscene materials may lead to deviant sexual behavior or crimes of sexual violence. There appears to be little empirical basis for that assertion.[9] But more important, if the State is only concerned about printed or filmed materials inducing antisocial conduct, we believe that in the context of private consumption of ideas and information we should adhere to the view that "[a]mong free men, the deterrents ordinarily to be

[9] See, *e. g.*, Cairns, Paul, & Wishner, Sex Censorship: The Assumptions of Anti-Obscenity Laws and the Empirical Evidence, 46 Minn. L. Rev. 1009 (1962); see also M. Jahoda, The Impact of Literature: A Psychological Discussion of Some Assumptions in the Censorship Debate (1954), summarized in the concurring opinion of Judge Frank in *United States* v. *Roth*, 237 F. 2d 796, 814–816 (C. A. 2d Cir. 1956).

applied to prevent crime are education and punishment for violations of the law . . . ." *Whitney* v. *California*, 274 U. S. 357, 378 (1927) (Brandeis, J., concurring). See Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 877, 938 (1963). Given the present state of knowledge, the State may no more prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits.

It is true that in *Roth* this Court rejected the necessity of proving that exposure to obscene material would create a clear and present danger of antisocial conduct or would probably induce its recipients to such conduct. 354 U. S., at 486–487. But that case dealt with public distribution of obscene materials and such distribution is subject to different objections. For example, there is always the danger that obscene material might fall into the hands of children, see *Ginsberg* v. *New York*, *supra*, or that it might intrude upon the sensibilities or privacy of the general public.[10] See *Redrup* v. *New York*, 386 U. S. 767, 769 (1967). No such dangers are present in this case.

Finally, we are faced with the argument that prohibition of possession of obscene materials is a necessary incident to statutory schemes prohibiting distribution. That argument is based on alleged difficulties of proving an intent to distribute or in producing evidence of actual distribution. We are not convinced that such difficulties

[10] The Model Penal Code provisions dealing with obscene materials are limited to cases of commercial dissemination. Model Penal Code § 251.4 (Prop. Official Draft 1962); see also Model Penal Code § 207.10 and comment 4 (Tent. Draft No. 6, 1957); H. Packer, The Limits of the Criminal Sanction 316–328 (1968); Schwartz, Morals Offenses and the Model Penal Code, 63 Col. L. Rev. 669 (1963).

exist, but even if they did we do not think that they would justify infringement of the individual's right to read or observe what he pleases. Because that right is so fundamental to our scheme of individual liberty, its restriction may not be justified by the need to ease the administration of otherwise valid criminal laws. See *Smith* v. *California*, 361 U. S. 147 (1959).

We hold that the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime.[11] *Roth* and the cases following that decision are not impaired by today's holding. As we have said, the States retain broad power to regulate obscenity; that power simply does not extend to mere possession by the individual in the privacy of his own home. Accordingly, the judgment of the court below is reversed and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK, concurring.

I agree with the Court that the mere possession of reading matter or movie films, whether labeled obscene or not, cannot be made a crime by a State without vio-

[11] What we have said in no way infringes upon the power of the State or Federal Government to make possession of other items, such as narcotics, firearms, or stolen goods, a crime. Our holding in the present case turns upon the Georgia statute's infringement of fundamental liberties protected by the First and Fourteenth Amendments. No First Amendment rights are involved in most statutes making mere possession criminal.

Nor do we mean to express any opinion on statutes making criminal possession of other types of printed, filmed, or recorded materials. See, *e. g.*, 18 U. S. C. § 793 (d), which makes criminal the otherwise lawful possession of materials which "the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation . . . ." In such cases, compelling reasons may exist for overriding the right of the individual to possess those materials.

lating the First Amendment, made applicable to the States by the Fourteenth. My reasons for this belief have been set out in many of my prior opinions, as for example, *Smith* v. *California*, 361 U. S. 147, 155 (concurring opinion), and *Ginzburg* v. *United States*, 383 U. S. 463, 476 (dissenting opinion).

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE join, concurring in the result.

Before the commencement of the trial in this case, the appellant filed a motion to suppress the films as evidence upon the ground that they had been seized in violation of the Fourth and Fourteenth Amendments. The motion was denied, and the films were admitted in evidence at the trial. In affirming the appellant's conviction, the Georgia Supreme Court specifically determined that the films had been lawfully seized. The appellant correctly contends that this determination was clearly wrong under established principles of constitutional law. But the Court today disregards this preliminary issue in its hurry to move on to newer constitutional frontiers. I cannot so readily overlook the serious inroads upon Fourth Amendment guarantees countenanced in this case by the Georgia courts.

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The purpose of these clear and precise words was to guarantee to the people of this Nation that they should forever be secure from the general searches and unrestrained seizures that had been a hated hallmark of colonial rule under the notorious writs of assistance of the British Crown. See *Stanford* v. *Texas*, 379 U. S. 476, 481. This most basic of Fourth Amendment guarantees was frus-

trated in the present case, I think, in a manner made the more pernicious by its very subtlety. For what happened here was that a search that began as perfectly lawful became the occasion for an unwarranted and unconstitutional seizure of the films.

The state and federal officers gained admission to the appellant's house under the authority of a search warrant issued by a United States Commissioner. The warrant described "the place to be searched" with particularity.[1] With like particularity, it described the "things to be seized"—equipment, records, and other material used in or derived from an illegal wagering business.[2] And the warrant was issued only after the Commissioner had been apprised of more than adequate probable cause to issue it.[3]

There can be no doubt, therefore, that the agents were lawfully present in the appellant's house, lawfully authorized to search for any and all of the items specified in the warrant, and lawfully empowered to seize any such

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[1] "[T]he premises known as 280 Springside Drive, S. E., two story residence with an annex on the main floor constructed of brick and frame, in Atlanta, Fulton County, Georgia, in the Northern District of Georgia . . . ."

[2] "[B]ookmaking records, wagering paraphernalia consisting of bet slips, account sheets, recap sheets, collection sheets, adding machines, money used in or derived from the wagering business, records of purchases, records of real estate and bank transactions, the money for which was derived from the wagering business, and any other property used in the wagering business, which are being used and/or have been used in the operation of a bookmaking business or represent the fruits of a bookmaking business being operated in violation of Sections 4411, 4412 and 7203 IRC of 1954."

[3] Before the Commissioner were no less than four lengthy and detailed affidavits, setting out the grounds for the affiants' reasonable belief that the appellant was engaged in an illegal gambling enterprise, and that the paraphernalia of his trade were concealed in his house.

items they might find.[4] It follows, therefore, that the agents were acting within the authority of the warrant when they proceeded to the appellant's upstairs bedroom and pulled open the drawers of his desk. But when they found in one of those drawers not gambling material but moving picture films, the warrant gave them no authority to seize the films.

The controlling constitutional principle was stated in two sentences by this Court more than 40 years ago:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron* v. *United States*, 275 U. S. 192, 196.

This is not a case where agents in the course of a lawful search came upon contraband, criminal activity, or criminal evidence[5] in plain view. For the record makes clear that the contents of the films could not be determined by mere inspection. And this is not a case that presents any questions as to the permissible scope of a search made incident to a lawful arrest. For the appellant had not been arrested when the agents found the films. After finding them, the agents spent some 50 minutes exhibiting them by means of the appellant's projector in another upstairs room. Only then did the agents return downstairs and arrest the appellant.

Even in the much-criticized case of *United States* v. *Rabinowitz*, 339 U. S. 56, the Court emphasized that "ex-

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[4] The fact that almost no gambling material was actually found has no bearing, of course, upon the validity of the search. The constitutionality of a search depends in no measure upon what it brings to light. *Byars* v. *United States*, 273 U. S. 28, 29.

[5] See *Warden* v. *Hayden*, 387 U. S. 294.

ploratory searches . . . cannot be undertaken by officers with or without a warrant." *Id.*, at 62. This record presents a bald violation of that basic constitutional rule. To condone what happened here is to invite a government official to use a seemingly precise and legal warrant only as a ticket to get into a man's home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant.

Because the films were seized in violation of the Fourth and Fourteenth Amendments, they were inadmissible in evidence at the appellant's trial. *Mapp* v. *Ohio*, 367 U. S. 643. Accordingly, the judgment of conviction must be reversed.

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THE CALIFORNIA MARIJUANA POSSESSION STATUTE: AN INFRINGEMENT ON THE RIGHT OF PRIVACY OR OTHER PERIPHERAL CONSTITUTIONAL RIGHTS?

By

Michael A. Town

The question of the constitutional validity of the California marijuana possession statute in light of recent decisions will be examined in this comment. Before undertaking the constitutional analysis, a review of the statute itself is in order.

Under California law, a person who "plants, cultivates, harvests, dries... processes... or possesses" marijuana[1] is committing a felony,[2] and, if convicted, faces a mandatory sentence of 1 to 10 years in the state prison for a first offense, up to 20 years for a second offense, and 5 years to life imprisonment for a third offense.[3] In contrast to the harsh penalties for offenses involving the possession of marijuana, using marijuana or being under its influence are misdemeanors, punishable by county jail sentences ranging from 90 days to 1 year.[4] The severity of punishment for possession of marijuana may also be contrasted with the misdemeanor penalty assessed for possession of LSD (lysergic acid diethylamide).[5]

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[1] The statutory definition of marijuana is: "all parts of the plant Cannabis sativa L. (commonly known as marijuana), whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seed or resin." Cal. Health & Safety Code Section 11003.1.

[2] Under Cal. Pen. Code Section 17 a felony is defined as "a crime which is punishable with death or by imprisonment in the state prison."

[3] Cal. Health & Safety Code Section 11530.

[4] Cal. Health & Safety Code Section 11721. In practice the part of the statute prohibiting use of marijuana has little importance because if the accused possesses marijuana he will be prosecuted under the felony provisions of section 11530; if he does not possess marijuana but is under its influence then section 11721 will be applied. Boyko & Rotberg, Constitutional Objections to California's Marijuana Possession Statute, 14 U.C.L.A.L. Rev. 773, 785 n.63 (1967).

[5] Cal. Health & Safety Code Section 11910 treats a first conviction for the possession of LSD (classified as a restricted dangerous drug in Cal. Health & Safety Code Section 11901 (c)) as a misdemeanor subject to a maximum punishment of a $1000 fine and 1 year imprisonment in the county jail.

If the narcotic possessed is one of the "hard" narcotics such as heroin, morphine, or cocaine, which are addictive whereas marijuana is not,[6] the punishment is quite similar to the penalties for marijuana possession. The statute assesses penalties of 2 to 10 years for a first conviction, 5 to 20 years for a second conviction and 15 years to life imprisonment for a third conviction.[7]

As a further contrast, it is noted that there is no law against the mere possession of alcoholic beverages in spite of the well-known dangers of this intoxicant.[8] Criminal penalties are imposed only when alcohol is used in some abusive manner, such as when a person is intoxicated in public[9] or operates a motor vehicle while under the influence of alcohol.[10]

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[6] Cal. Welf. & Inst'ns Code Section 3009 states: "A 'narcotic addict,' as used in this subdivision refers to any person, adult or minor, who is addicted to the unlawful use of any narcotic as defined in Division 10 of the Health and Safety Code, except mairjuana." (emphasis added).

[7] Cal. Health & Safety Code Section 11500.

[8] Even where possession by certain groups likely to misuse alcohol is discouraged, the method of control is to restrict the sale of alcoholic beverages to them. For example, Cal. Bus. & Prof. Code Section 25658 (a) makes sale of alcoholic beverages to a minor a misdemeanor, and Cal. Pen. Code Section 397 makes the sale of alcoholic beverages to any habitual drunk a misdemeanor. See In re Luera, 28 Cal. App. 185, 152 P. 738 (1915), holding a municipal ordinance making the possession of alcohol illegal to be an unconstitutional abridgment of the privileges and immunities guaranteed a citizen by U.S. Const. art. IV, Section 2, and amend. XIV, Section 1. But see In re Yun Quong, 159 Cal. 508, 114 P. 835 (1911), where the privileges and immunities argument failed when used to attack a conviction for possession of opium. For an interesting view why different societal attitudes concerning marijuana and alcohol prevail, see not 178 infra.

[9] Cal. Pen. Code Section 647(f) punishes as a misdemeanant one "(w)ho is found in any public place under the influence of intoxicating liquor...."

[10] Cal. Vehicle Code Sections 23101-02.

The legislative history of marijuana regulation shows a trend of increasingly severe penalties for its possession. In 1907 marijuana was first regulated by the California Legislature when it was included within the class of substances which had to be labeled as "poison."[11] Possession of marijuana was lawful until 1915 when possession unless prescribed by a physician was prohibited.[12] In 1929 the legislature passed the State Narcotic Act[13] which regulated the possession of marijuana by including it among habit forming, narcotic and other dangerous drugs and substances. Thus marijuana was at this time first included among the "hard" narcotics such as heroin, morphine, and cocaine.[14]

In 1939 the Narcotics Act was incorporated into the California Health and Safety Code[15] along with the same illicit narcotics gathered together in 1929.[16] Marijuana possession and the planting provisions were placed in section 11530, a separate section, in 1959.[17] The present mandatory felony sentences were part of a scheme by which longer sentences for possession of all narcotics were imposed in 1961.[18] Prior to 1961 the punishment for marijuana possession was in the alternative so that the trial judge in his discretion could make the offense either a misdemeanor or a felony depending on the sentence imposed.[19]

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[11] Cal. Stats. 1907, ch. 102, Sections 1-10, at 124-26 (Indian hemp, another name for marijuana, is used in the statute).

[12] Cal. Stats. 1915, ch. 604, Section 2, at 1067-71 (Loco weed, another name for marijuana, is used in the statute).

[13] Cal. Stats. 1929, ch. 216, Section 1, at 380-83.

[14] Id.

[15] Cal. Stats. 1939, ch. 60, Sections 11000-797, at 755-76.

[16] Cal. Stats. 1939, ch. 60, Section 11712, at 771.

[17] Cal. Stats. 1959, ch. 1112, Section 7, at 3194-95.

[18] Cal. Stats. 1961, ch. 274, Section 7, at 1305.

[19] Cal. Stats. 1959, ch. 1112, Section at 3194-95

It is clear that the most recent development in a long history of regulation of marijuana possession is by far the most severe.[20] But even in the face of felony punishment it appears that more and more arrests are made and convictions obtained in California for the possession of marijuana.[21] Reliable sources claim that use of marijuana and its availability are on the upswing.[22] These facts tend to indicate that the statute is punishing offenders without any significant deterrent effect.

Timeliness of Constitutional Attack

The question of the constitutionality fo the marijuana possession statute is of more than purely academic interest because of the increasing number of arrests,[23] the severity of the punishment,[24] the inconclusive evidence available on the nature of the drug and its effects,[25] and the growing public controversy over the entire subject of marijuana regulation.

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[20] See Boyko & Rotberg, supra note 4, at 781-85 for a thorough legislative history of the marijuana possession laws in California.

[21] Bureau of Criminal Statistics, Drug Arrests and Dispositions in California 1964, at 51, shows that arrests for possession of marijuana have tripled since 1960. The report also indicates that juvenile arrests for marijuana possession have increase over 500% since 1960. Id. at 88.

[22] Id. at 10. Testimony of Dr. Joel Fort before a hearing of the Assembly Committee on Public Health, San Francisco, September 28, 1967. Dr. Fort has served on the medical staff of the U.S. Public Health Service Hospital in Lexington, Kentucky, and with the United Nations Division of Narcotic Drugs. He has been the director of both the Center for Treatment and Education on Alcoholism in Oakland, California, and the Health Department Center for Special Problems in San Francisco, California. He is a consultant on drug addiction to the World Health Organization.

[23] See note 21 supra.

[24] See text accompanying notes 2-3 supra.

[25] For a discussion of the evidence on the nature of marijuana see Boyko & Rotberg, supra note 4, at 777.

Recently there has been increasing debate across the nation over the harshness of the marijuana possession laws as compared to the alleged effects of the drug.[26] The Commissioner of the United States Food and Drug Administration has said that the "severity of the penalties is inconsistent with the nature of the drug itself."[27] The United States Presidential Commission on Law Enforcement and Administration of Justice has called for a reevaluation of the marijuana laws.[28] Even in the light of increasing arrests and growing public controversy there is little likelihood of immediate repeal of the California marijuana possession statute although there is a possibility that legislation may be introduced making possession of marijuana subject to alternative felony-misdemeanor sentencing or reducing the punishment to a misdemeanor.[29]

Up to the present time there have been no cases raising well-argued constitutional objections to the California marijuana possession statute.[30] Whatever the

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[26] See generally The Marijuana Papers (Solomon ed. 1966); The Utopiates (Blum ed. 1964). For some historical background on marijuana, see R. DeRopp, Drugs and the Mind. 61-114 (1957).

[27] San Francisco Chronicle, Oct. 15, 1967 (This World), at 19, col. 3.

[28] President's Comm'n on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 224-25 (1967).

[29] Interview with Mr. Thomas Carroll, consultant to the Assembly Committee on Criminal Procedure, in San Francisco, California, September 28, 1967.

[30] Cases where constitutional objections have been raised include People v. Mitchell, 244 Cal. App. 2d 176, 52 Cal. Rptr. 884 (1966), which involved a challenge to Cal. Health & Safety Code Section 11530 based on the free exercise of religion clause of the first amendment. The appeal failed as the defendant did not show he sincerely believed marijuana was essential to the practice of his religion and that no antisocial consequences were involved. People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (1965), and People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (1952), both involved challenges to marijuana possession statutes on the ground that due process of law was denied the appellants since the state had no basis for making marijuana, an allegedly beneficial herb according to appellants, illegal to possess. The court in each case decided that since possession of marijuana was a public offense, the legislative showing of a rational relationship between the statute and the recognized purpose of the state to legislate for the health, safety and general welfare of the people was sufficient.

reason for the scarcity of constitutional attack, it seems that without legislative action modifying the statute, constitutional objections will be raised with greater frequency.[31]

Constitutional Objections to the Marijuana Possession Statute - A General View

Two possible constitutional defenses to the California marijuana possession statute are raised in this comment. The first defense would bring the possession of marijuana within the right of privacy. This doctrine of privacy as a substantive bar to a criminal statute was first recognized in Griswold v. Connecticut[32] and that case will be used as a starting point for analysis.

The second defense is based on the reasoning of Griswold, not the holding. This defense would bring possession and use of marijuana within other unnamed but fundamental guarantees included in the amendments to the Constitution.[33]

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[31] Apparently the vast majority of those persons prosecuted under the statute have defended on theories of illegal search and seizure, e.g., People v. Reeves, 61 Cal. 2d 269, 391 P.2d 393, 38 Cal. Rptr. 1 (1964), or lack of knowledge of the actual possession of marijuana, e.g., People v. Redrick, 55 Cal. 2d 282, 359 P.2d 255, 10 Cal. Rptr. 823 (1961) (opium); People v. Perez, 213 Cal. App. 2d 436, 28 Cal. Rptr. 751 (1963). In People v. Rodrigues, 151 Cal. App. 2d 598, 601, 312 P.2d 272, 274 (1957), the court said that it is "essential to the crime... that the defendant have physical or constructive possession, coupled with knowledge of the present and narcotic nature of the substance."

When evidence of possession is dubious or sketchy, Cal. Health & Safety Code Section 11556 is often employed. This section makes it a misdemeanor to visit or be in a place where marijuana is being used. The provision can be resorted to for practical reasons in charging the defendant who might willingly plead guilty to this offense but would contest felony prosecution under the possession statute.

[32] 381 U.S. 479 (1965).

[33] For the discussion of fundamental peripheral rights see text accompanying notes 64-110 infra.

These defenses constitute a two-pronged attack which have the same origins in the Constitution.[34] The reasoning of Griswold is basic to both the right of privacy and the other peripheral yet fundamental rights. The potential success of these constitutional defenses will be best understood by a consideration of how the California courts have applied Griswold and other cases involving personal rights.

Before discussing the two-pronged attack mentioned above it should be amphasized that these are not the only possible constitutional objections to the marijuana possession statute. In a proper case the right to free exercise of religion as expressed in the first amendment could be used to carve out an exception to the statute as was done in People v. Woody[35] where a California statute prohibiting the possession of peyote[36] was under consideration. The right to the free exercise of religion would be applicable to the marijuana possession statute if a user could show that the use of marijuana was essential to his religion as well as showing his sincerity in his religious belief.[37]

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[34] See Griswold v. Connecticut, 381 U.S. 479, 484, where the Court spells out its penumbra theory in which the peripheral rights, of which privacy is one, are expanded.

[35] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

[36] Cal. Health & Safety Code Section 11500.

[37] This was a major point in People v. Wood-, 61 Cal. 2d 716, 720-22, 394 P.2d 813, 817-18, 40 Cal. Rptr. 69, 73-74 (1964). See In re Grady, 61 Cal. 2d 887, 394 P.2d 728, 39 Cal. Rptr. 912 (1964), where the California Supreme Court granted habeas corpus to a defendant in a peyote possession case and remanded the case to the trial court on the question of whether defendant's belief that the use of peyote for religious purposes was honest and bona fide. But see Leary v. United States, 36 U.S.L.W. 2218 (5th Cir. Sept. 29, 1967), where appellant, Dr. Timothy Leary, failed to show to the court's satisfaction that the use of marijuana was essential to his practice of Hinduism; see Finer, 19 Hastings L.J. 667 (1968); State v. Bullard, 267 N.C. 599, 148 S.E.2d 565 (1966), noted in 28 Ohio St. L.J. 369 (1967), where the court refused to follow the Woody case on the grounds that even if defendant were sincere, the first amendment would not protect him in his use of marijuana and peyote.

Also it might be argued that the California marijuana possession statute violates the constitutional guarantee against cruel and unusual punishment found in the eighth amendment. The statute might be invalidated by the guarantee against cruel and unusual punishment if the possession of marijuana is conduct which the court would consider not within the legislative power to punish as a felony. It is the discrepancy between the conduct and the punishment which makes the punishment cruel and unusual under the ruling of Robinson v. California.[38] By making possession of marijuana a felony, thus equating such conduct with the whole spectrum of common law felonies such as rape, arson, larceny and murder, the statute would seem to be imposing cruel and unusual punishment.[39]

There is also an argument that the classification of marijuana as a narcotic in section 11001 and the prohibition of possession in section 11530 of the California Health and Safety Code violate the equal protection clause of the fourteenth amendment. In order to satisfy the equal protection guarantee the statute must "cover all persons who are logically, scientifically or by dint of common sense includable in order to

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[38] 370 U.S. 660 (1962). The case struck down as unconstitutional a California statute making criminal the status of being "addicted to the use of narcotics." Justice Douglas in a concurring opinion, id. at 676, said: "A punishment all out of proportion to the offense may bring it within the ban against 'cruel and unusual punishments.'" See Driver v. Hinnat, 356 F.2d 761 (4th Cir. 1966), and Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966), where the cruel and unusual punishment argument was successfully applied to drunkenness prosecutions of alcoholics under local statutes.

[39] For discussion of the cruel and unusual punishment argument, see Boyko & Rotberg, supra note 4, at 791.

effectuate the legitimate goals of the statute."[40] Making possession of marijuana illegal, while excluding other euphorics such as alcohol, might be considered a violation of the guarantee of equal protection, by this test.

In considering the constitutional defense of equal protection the court would have to pass on the legislative policy behind the classification, a step which the courts have been reluctant to undertake in cases where the question of marijuana has arisen.[41] In the two cases where the statutory classification of marijuana has been considered, the court assumed that the classification was rational.[42] In light of recent cases where courts have reviewed legislative policy, it would seem that a court might now take more initiative in reviewing the statutory policy in applying the equal protection test.[43]

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[40] Id. at 787-88.

[41] People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (1965); People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (1952). Both cases are discussed in note 30 supra.

[42] Id.

[43] E.g., People v. O'Neil, 62 Cal. 2d 748, 401 P.2d 928, 44 Cal. Rptr. 320 (1965), where the court thoroughly reviewed the legislative policy behind the statute in determining the legal test for addiction within the meaning of Cal. Vehicle Code Section 23105, which prohibits the operation of a motor vehicle by a narcotic addict; Wollam v. City of Palm Springs, 50 Cal. 2d 276, 379 P.2d 481, 29 Cal. Rptr. 1 (1963), where pursuant to an examination of municipal policy the court found that there were alternative methods of controlling traffic congestion other than by the broad regulation of loudspeaker trucks by the unconstitutional municipal ordinance in issue. See generally McLaughlin v. Florida, 379 U.S. 184, 191 (1964); Skinner v. Oklahoma, 316 U.S. 535, 541, 543 (1942).

Although the foregoing discussion demonstrates there are a number of potential constitutional objections to the California marijuana possession statutes,[44] this comment will discuss in detail only the two constitutional attacks raised by the Griswold decision, i.e. the right of privacy and the other peripheral rights found within the Bill of Rights. These possible constitutional attacks are more thoroughly examined in the next section.

Griswold v. Connecticut

Support from United States Surpeme Court cases is necessary in order to raise the dual attack of the peripheral fundamental rights and the right of privacy since these rights are not found specifically in the Constitution. As noted, the leading case supporting the existence of the right of privacy and the proposition that there exist other peripheral but fundamental constitutional rights which are not expressly enumerated in the Constitution is Griswold v. Connecticut.[45] Consequently, a thorough understanding of the Griswold decision is necessary before examining how the California courts have applied it.

The Court in Griswold overturned the Connecticut "anti-birth control" statute.[46] This "uncommonly silly law" as it was called by Justice Stewart,[47] was an antiquated, rarely invoked statute making it a criminal offense to use birth control devices for

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[44] For a general discussion of the constitutional arguments against the marijuana possession statute, see Boyko & Rotberg, supra note 4, at 785-95.

[45] 381 U.S. 479 (1965).

[46] Id. at 485.

[47] Id. at 527 (dissent).

the purpose of preventing conception.[48] It was no surprise that the law was invalidated. The importance of the case lies in the way in which the statute was held unconstitutional.

Privacy was the basis for the Court's decision,[49] and as a substantive right privacy was raised as a defense to any application of the Connecticut statute.[50] The right of privacy relied on in Griswold is not the procedural right of privacy which protects an individual from unreasonable searches and seizures employed in enforcing constitutionally valid statutes.[51] The right of privacy recognized in Griswold is also to be distinguished from the right of privacy found in the law of torts which allows one to recovery monetary compensation for an invasion of his privacy.[52] The right of privacy applied in Griswold is a direct substantive bar to any statute in question.[53]

In Griswold the Court held that the statute infringed on the zone of privacy which a married couple possessed.[54] Within this zone the couple was free to decide whether or not they would use contraceptive devices.[55] Support for this right of

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[48] Conn. Gen. Stat. Rev. Section 53-32 (1958). "Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

[49] 381 U.S. at 485.

[50] Id.

[51] E.g., Mapp v. Ohio, 367 U.S. 643, 655 (1961); People v. Cahan, 44 Cal. 2d 434, 438, 282 P.2d 905, 907 (1955), where the court said that "important as efficient law enforcement may be, it is more important that the right of privacy... be respected."

[52] See generally W. Prosser, Torts Section 112, at 829-51 (3d ed. 1964); Warren & Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193 (1890).

[53] 381 U.S. at 485.

[54] Id.

[55] Id.

privacy was found by looking to the "specific guarantees in the Bill of Rights having penumbras, formed by emanations from those guarantees that help give them life and substance."[56] The Court found that the right of privacy protected in Griswold was created by "several fundamental constitutional guarantees"[57] and based its decision on five of these guarantees contained in the Bill of Rights:

> Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one... The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[58]

The Court reinforced its argument that penumbral zones of privacy existed by showing that past decisions had found fundamental constitutional rights not specifically mentioned in the Constitution.[59] Rights such as freedom of inquiry, freedom of thought, and freedom to teach were designated as peripheral rights.[60] These rights were considered essential because "(w)ithout those peripheral rights the specific rights would be less secure."[61]

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[56] Id. at 484.

[57] Id. at 485.

[58] Id. at 484.

[59] Id. at 482-83.

[60] Id. at 482, citing Frankfurter's concurring opinion in Wieman v. Updegraff, 344 U.S. 183, 195 (1952).

[61] 381 U.S. at 482-83.

While the language of Griswold is broad, the holding itself is narrow. The case is significant in that six Supreme Court Justices found a right of privacy within the Constitution.[62] Of greater importance than the holding of Griswold is the reasoning of the Court that the peripheral rights do exist and are essential to the specific rights.[63] A close examination of the California cases is necessary in considering the scope of privacy and the other peripheral rights.

California's Treatment of Griswold

The rule of Griswold is clear with regard to the right of privacy in its effect on a statute prohibiting the use of birth control devices. The question presented here is whether or not possession of marijuana can be brought either within the right of privacy, or within any of the peripheral but fundamental

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[62] Although six justices found privacy, they did not all find it in the same place in the Constitution. Justices Goldberg, Brennan and Chief Justice Warren joined with Justice Douglas in finding privacy supported by fundamental personal rights found in the penumbra of the Bill of Rights. Such personal rights are not confined to the specific terms of the Bill of Rights. Id. at 486.

Justices Goldberg, Brennan and Chief Justice Warren went on to use the ninth amendment as authority for the right of privacy as "there are additional fundamental rights, protected from governmental infringement which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." Id. at 488.

Justice Harlan found support for privacy in the due process clause of the fourteenth amendment. "The Due Process Clause of the Fourteenth Amendment stands... on its own bottom." Id. at 500.

Justice White also relied on the fourteenth amendment as the Connecticut statute deprived married couples of "liberty" without due process of law. Id. at 502.

[63] Id. at 483.

constitutional guarantees. This is the question which will plague the lawyer who has but one significant United States Supreme Court decision on the substantive right of privacy from which to work.

Peripheral but Fundamental Constitutional Rights

In looking to the California cases the right of privacy as a substantive right has not been applied by the courts. Instead two California cases have cited Griswold for the proposition that broad unnamed peripheral rights exist within the Bill of Rights.[64] This reliance on the reasoning of the court in Griswold appears to be the significance of that case to the California courts although it may be that the proper fact situation has not come before the courts where the right of privacy might be applicable. An examination of the actual California cases will better indicate if these two attacks are applicable to the marijuana possession statute.

A key California case using Griswold as authority is In re Klor.[65] The case involved construction of section 311.2 of the California Penal Code dealing with preparation and distribution of obscene material.[66] The trial court interpreted

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[64] In re Klor, 64 Cal. 2d 816, 820, 415 P.2d 791, 794, 51 Cal. Rptr. 903, 906 (1966); Finot v. Pasadena City Bd. of Educ., 250 Cal. App. 2d 226, 235, 58 Cal. Rptr. 520, 527 (1967).

[65] 64 Cal. 2d 816, 415 P.2d 791, 51 Cal. Rptr. 903 (1966).

[66] Cal. Pen. Code Section 311.2 reads: "Every person who knowingly:... prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor."

the statute to mean that the accused was guilty if he prepared the obscene photographs found in his possession or intended to distribute the photographs. The alleged error in the trial court's instruction was allowing the jury to find error in the trial court's instruction was allowing the jury to find the accused guilty for mere preparation and possession of the obscene material without the essential intent to distribute it.[67]

The California Supreme Court in Klor held that this construction given by the judge in his instructions to the jury was not what the legislature intended and would attribute to the statute an unwarranted unconstitutional extension.[68] The court said that "(n)o constitutionally punishable conduct appears in the case of an individual who prepared material for his own use or for such personal satisfaction as its creation affords him."[69] Griswold was cited in support of the court's statement that the judge's instruction would be clearly unconstitutional.[70]

The court's theory seems to be that the purpose of the obscenity statute is to prohibit possession of obscene material with the intent to distribute it.[71] This is conduct which is clearly within the legislative power to sanction criminally.[72]

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[67] 64 Cal. 2d at 818-19, 415 P.2d at 792-93, 51 Cal. Rptr. at 904-5.

[68] Id. at 818, 415 P.2d at 792, 51 Cal. Rptr. at 904.

[69] Id. at 821, 415 P.2d at 794, 51 Cal. Rptr. at 906.

[70] Id. at 820, 415 P.2d at 794, 51 Cal. Rptr. at 906.

[71] For discussion see id. at 820-21, 415 P.2d at 794-95, 51 Cal. Rptr. at 906-07.

[72] Id. at 819-20, 415 P.2d at 793-94, 51 Cal. Rptr. at 905-06.

On the other hand possession without the necessary intent to distribute the obscene photographs must be distinguished. Mere possession of the photographic material, obscene or not, is conduct so essential to the first amendment's freedom of expression that it lies within a constitutionally protected area and therefore is not subject to criminal sanction.[73]

A square decision on the constitutionality of the statute was avoided by the court in Klor. Instead, the statute was construed in such a way as to avoid finding it unconstitutional.[74] Nevertheless material for one's own use or satisfaction would be constitutionally protected is as much a part of the holding of the case as the construction of the statute.[75]

Finot v. Pasadena City Board of Education[76] is a well considered case which finds protected personal rights in the periphery of the constitutional amendments

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[73] Id. at 821, 415 P.2d at 794, 51 Cal. Rptr. at 906.

[74] Id. at 821, 415 P.2d at 795, 51 Cal. Rptr. at 907, where the court said: "A fundamental canon of statutory interpretation requires that a statute be construed to avoid unconstitutionality if it can reasonably be so interpreted."

[75] The court said, id. at 818, 415 P.2d at 792, 51 Cal. Rptr. at 904: "We hold that the construction placed on the statute by the trial court does violance to the legislative intent and, moreover, would attribute to the statute a gratuitous unconstitutional reach." For a similar case using Klor as authority, see People v. Samuels, 250 A.C.A. 571, 58 Cal. Rptr. 439 (1967). See also State v. Wetzel, 173 Ohio St. 16, 179 N.E.2d 773 (1962), which held that the Ohio obscenity statute does not prohibit the mere possession of obscene material for private gratification. The requisite intent to distribute the material is necessary.

[76] 250 A.C.A. 226, 58 Cal. Rptr. 520 (1967).

using Griswold as authority.[77] In Finot the California Court of Appeal held that a high school teacher could wear a beard without losing his job.[78] This right to wear a beard came within the periphery of the first amendment right of free speech.[79] The wearing of a beard, while not speech, is expression through nonverbal conduct which is brought within the scope of the right of free speech.[80] The court in Finot emphasized this point:

> It seems to us that the wearing of a beard is a form of expression of an individual's personality and that such a right of expression, although probably not within the literal scope of the First Amendment itself, is as much entitled to its peripheral protection as the personal rights established... with respect to the right of parents to educate their children as they fit.[81]

The wearing of a beard was also held to be a liberty protected by the due process provisions of the state and federal constitutions.[82] The court considered this right to be one of the "constitutionally unnamed but constitutionally protected personal liberties."[83]

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[77] Id. at 235, 58 Cal. Rptr. at 527.

[78] Id.

[79] Id.

[80] Id.

[81] Id. (emphasis added). The cases cited by the court and omitted from the quotation recognize a fourteenth amendment "liberty" to educate one's children as one desires. Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

[82] 250 A.C.A. 226, 234, 58 Cal. Rptr. 520, 526 (1967), relying on U.S. Const. amend. XIV, Section 1; Cal. Const. art. 1, Section 13.

[83] Id. at 235, 58 Cal. Rptr. 526-27.

By a careful reading of the Klor[84] and Finot[85] cases it is apparent that the California courts are using Griswold as authority for the proposition that fundamental peripheral rights exist within the specific amendments of the Bill of Rights. This approach used by the California courts may be the significance of the Griswold decision in the near future. Instead of finding a right of privacy and relying on the holding of Griswold,[86] the reviewing court can rely on the reasoning of Griswold that there are broader constitutional rights than those embodied in the amendments themselves.[87] For this approach Griswold v. Connecticut is authority, and indeed very good authority.[88]

Notwithstanding the persuasiveness of the Griswold decision that peripheral fundamental rights are necessary and present,[89] the real problem is to demonstrate that possession of marijuana factually comes within these peripheral rights. By considering the nature of marijuana, the reasons for its use and the conduct punished by the statute (i.e. mere possession), it would seem that possession of marijuana could be brought within a constitutional right.

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[84] 64 Cal. 2d 816, 820, 415 P.2d 791, 794, 51 Cal. Rptr. 903, 906 (1966), citing Griswold v. Connecticut, 381 U.S. 479, 482 (1965).

[85] 250 A.C.A. 226, 235, 58 Cal. Rptr. 520, 527 (1967), citing Griswold v. Connecticut, 381 U.S. 479, 482-83 (1965).

[86] The Griswold decision has been criticized as ill-founded and vague. See for example, the dissent of Justice Black in Griswold v. Connecticut, 381 U.S. 479, 507 (1965); Kauper, Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten: The Griswold Case, 64 Mich. L. Rev. 235, 244, 252 (1965).

[87] 381 U.S. at 482-83.

[88] It is quite easy to come to the unwarranted conclusion that the citation of a court to Griswold is a recognition of the right of privacy. See Boyko & Rotberg, supra note 4, at 794, where the authors did just that.

[89] For a discussion, see 381 U.S. at 482-83.

Possession of marijuana is conduct essential to its use. This type of possession is conduct wholly personal to the user or the possessor since no one else is involved. If possession of obscene literature is protected by the first amendment under the freedom of expression as it was in Klor,[90] it is difficult to distinguish the possession of marijuana factually. Expression through the taking of photographs as was the case in Klor and expression through the use of marijuana are both forms of sensory perception. It would seem that possession as conduct absolutely necessary to such personal expression should come within the first amendment whether it is obscene material or marijuana which is possessed.

Possession of marijuana might be protected as a fundamental liberty within the due process clause of the fifth or fourteenth amendment. The court in Finot v. Pasadena City Board of Education[91] held that the wearing of a beard was a liberty within the due process clause of the fourteenth amendment as well as conduct which came within freedom of expression guaranteed by the first amendment.[92] Reliance was placed on the United States Supreme Court decision of Kent v. Dulles[93] where the Court said: "(Travel) may be as close to the heart of the individual as the choice of what he eats, or wears, or reads."[94] Just as the court in Finot found that

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90 64 Cal. 2d at 820, 415 P.2d at 794, 51 Cal. Rptr. at 906.

91 250 A.C.A. 226, 58 Cal. Rptr. 520 (1967).

92 Id. at 235, 58 Cal. Rptr. at 527.

93 357 U.S. 116 (1958).

94 Id. at 126 (emphasis added).

appellant had a right to wear a beard which could not be denied him in the absence of a compelling interest on the part of the state,[95] the user of marijuana who smokes or ingests it might bring himself within the scope of the personal liberties of the due process clause of the fifth or fourteenth amendment by similar reasoning.[96]

The Right of Privacy

The right of privacy as a substantive bar to a criminal statute has not been specifically adopted by the California courts in any particular case. In cases where privacy might have been applied, other more historically protected constitutional rights have been relied upon. For example, as has been noted, Klor and Finot relied on the freedom of expression in safeguarding the possession of obscene material and the wearing of a beard. In People v. Woody[97] the free exercise of religion was another long protected constitutional right which the court applied to protect the use of peyote by the members of the Native American Church.

In the absence of California cases the right of privacy as a substantive guarantee has only Griswold v. Connecticut to support it. Earlier United States Supreme Court cases have indicated that within the "spirit" of the Constitution privacy has long been recognized.[98] Justice Brandeis emphasized this in his dissent in Olmstead v. United States:[99]

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95 250 A.C.A. at 238, 58 Cal. Rptr. at 529.

96 See In re Luera, 28 Cal. App. 185, 152 P. 738 (1915), discussed in note 8 supra.

97 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 68 (1964).

98 Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); Boyd v. United States, 116 U.S. 616 (1886).

99 277 U.S. at 478.

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.[100]

The problem raised with respect to the marijuana possession statute and the Griswold decision is the extension of the zone of privacy from the "sacred precincts of marital bedrooms"[101] to an individual who purposefully induces a mild hallucinatory mental condition through the use of marijuana.

Just as there is now a zone of marital privacy, there are individual zones of privacy which the Court in Griswold went to great lengths to describe.[102] Just as the individual may express himself graphically,[103] verbally,[104] and physically[105] in certain constitutionally protected ways, it can be argued that the individual has a zone of privacy in which he can express himself mentally through the use of marijuana. It may be for spiritual purposes, as was the case in People v. Woody,[106] or for the

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[100] Id. (emphasis added).

[101] 381 U.S. at 485.

[102] Id. at 484.

[103] E.g., In re Klor, 64 Cal. 2d 816, 415 P.2d 791, 51 Cal. Rptr. 903 (1966); People v. Samuels, 250 A.C.A. 571, 58 Cal. Rptr. 439 (1967).

[104] E.g., Saia v. New York, 334 U.S. 558 (1948); Wollam v. City of Palm Springs, 59 Cal. 2d 276, 379 P.2d 481, 29 Cal. Rptr. 1 (1963).

[105] E.g., DeJonge v. Oregon, 299 U.S. 353 (1937) (freedom of assembly).

[106] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

mere enjoyment of the experience. Griswold certainly indicates that a zone of privacy exists with respect to conduct essential to free expression.[107] For the reason that expression dealing solely with the mind is the most private form of expression possible, it is submitted that possession of marijuana as a necessary incident to its use is conduct which could be brought within the zone of privacy which exists within the first amendment. With more decisions defining the contours of the right of privacy, the step to possession of marijuana could be made.

Certainly the recent cases which have been decided in California such as In re Klor and Finot v. Pasadena City Board of Education might have applied the right of privacy as a constitutional defense. Instead, as noted earlier,[108] the cases were decided on the basis of rights found in the periphery of the first amendment. It is not surprising that a court would apply a long protected and more specific right such as the freedom of expression rather than the recently enunciated right of privacy. This was clearly the choice of the court in Finot when it said with respect to the right of privacy:

> (T)he unnamed rights retained by the people under the Ninth Amendment generally have received little, if any, specification as such by the United States Supreme Court... (W)e deem it unnecessary to decide whether appellant's right to wear a beard while engaged in classroom teaching... is protected by the Fourth, Fifth and Ninth Amendments to the United States Constitution....[109]

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[107] See 381 U.S. at 484.

[108] Text accompanying notes 84-88 supra.

[109] 250 A.C.A. at 233, 58 Cal. Rptr. at 525.

It is evident from Finot and Klor that the California courts are reluctant to apply the right of privacy as the sole constitutional basis for a decision.[110] It seems that the right of privacy has been and will be treated only as an additional basis for a court's decision until the United States Supreme Court further defines the right of privacy or a case is raised where the California courts have no alternative but to apply or reject it. The California marijuana possession statute may present such a case.

Personal Rights in Conflict with the Police Power of the State

If a court were to find that possession of marijuana for personal use was within one of the constitutional rights raised above, the marijuana possession statute would not be automatically invalidated. In order to hold the statute unconstitutional the court must also find that the state has no valid reason for prohibiting such conduct.[111] Consequently, it is important to examine the general approach of the courts in handling constitutional questions in which personal liberties are limited by state law.

There seems to be a very similar analysis of questions involving state infringements upon personal liberties by both the United States Supreme Court and the California courts. In this section the approach of the California courts to such constitutional questions is examined generally with the specific consideration of the marijuana possession statute raised in a later section.[112]

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[110] See text accompanying notes 84-88 supra.

[111] See text accompanying notes 119-25 infra.

[112] See text accompanying notes 148-78 infra.

The Bagley v. Washington Township Tests

The California Supreme Court expressly provided a three-step analysis for questions involving state infringment of personal liberties in Bagley v. Washington Township.[113] This analysis emphasizes that the state must justify its infringement of the individual's rights by showing a compelling interest and that the infringement, even if justified, must be as narrowly worded as possible.[114] In Bagley Justice Tobriner speaking for the court laid down the tests:

> (W)e hold that a governmental agency which would require a waiver of constitutional rights as a condition of public employment must demonstrate: (1) that the political restraints rationally relate to the enhancement of the public service, (2) that the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights, and (3) that no alternatives less subversive of constitutional rights are available.[115]

This test has been followed expressly in Finot v. Pasadena City Board of Education[116] and in other cases involving the right of government employees to keep their jobs irrespective of their political activities[117] as well as in a case involving recipients of social welfare benefits.[118]

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[113] 65 Cal. 2d 499, 501-02, 421 P.2d 409, 411, 55 Cal. Rptr. 401, 402 (1966). The case involved the permissible limits of public restrictions on political activities of public employees under the first amendment.

[114] Id.

[115] Id.

[116] 250 A.C.A. 226, 236, 58 Cal. Rptr. 520, 527 (1967).

[117] E.g., Rosenfield v. Malcolm, 65 Cal. 2d 559, 561, 421 P.2d 697, 698, 55 Cal. Rptr. 505, 506 (1967).

[118] Parrish v. Civil Serv. Comm'n, 66 A.C. 253, 425 P.2d 223, 57 Cal. Rptr. 623 (1967); 18 Hasings L.J. 228 (1966); see Emerson, NineJustices in Search of a Doctrine, 64 Mich. L. Rev. 219, 233 (1965). Professor Emerson was counsel for appellant in the Griswold case.

While the tests of the Bagley decision have not been expressly set out in a decision protecting the personal liberties of an individual citizen who is not a government employee or one receiving government benefits, such tests would seem to apply to criminal legislation. The language of the California Supreme Court in People v. Woody[119] shows that the Bagley type of reasoning is present with special emphasis on the state's compelling interest in a case where no state benefit is in issue. The Woody case is an excellent example of the court's refusal to go off on the mere rational relation of the statute to the state's avowed purpose.[120] Instead the court applied the technique of balancing the infringement on the personal liberty against the interest of the state in regulating the individual's conduct.[121]

The defendant in Woody was convicted for possession of peyote,[122] but contended that the law conflicted with his use of it as a form of religious expression as a member of the Native American Church. The court, considering the record independently,[123] examined the conflicting interests of the state and the individual and reversed the conviction.[124] For the court Justice Tobriner stated:

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[119] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

[120] Id. at 722-23, 394 P.2d at 818-19, 40 Cal. Rptr. at 74-75.

[121] Id.

[122] Cal. Health & Safety Code Section 11500 makes possession of any narcotic other than marijuana a felony. For the planting provisions, see Cal. Health & Safety Code Section 11540. Peyote grows in small buds on the top of a small, spineless cactus, Lophorphora williamsii, in Texas and northern Mexico. When taken internally, it causes vivid hallucinations and beyond this its users experience greater comprehension and even a sense of friendliness towards others. People v. Woody, 61 Cal. 2d 716, 720, 394 P.2d 813, 816, 40 Cal. Rptr. 69, 72 (1964).

[123] 61 Cal. 2d at 722, 394 P.2d at 818, 40 Cal. Rptr. at 74.

[124] Id. at 727, 394 P.2d at 821, 40 Cal. Rptr. at 77.

> We have weighed the competing values represented in this case on the symbolic scale of constitutionality. On the one side we have placed the weight of freedom of religion as protected by the First Amendment; on the other, the weight of the state's "compelling interest." Since the use of peyote incorporates the essence of the religious expression, the first weight is heavy. Yet the use of peyote presents only slight danger to the state and to the enforcement of its laws; the second weight is relatively light. The scale tips in favor of the constitutional protection.[125]

The burden on the state to show a compelling interest why personal liberties should be impaired is found in many United States Surpreme Court decisions as well.[126] For example in Griswold v. Connecticut the Court rejected the minimum rationality standard and reviewed the judgment of the state legislature.[127] Justice Goldberg gave the reason for this in a concurring opinion:

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[125] Id.

[126] E.g., McLaughlin v. Florida, 379 U.S. 184, 196 (1964); Sherbert v. Verner, 374 U.S. 398, 406 (1963); Gibson v. Florida Legislative Investigative Comm., 372 U.S. 539, 546 (1963); NAACP v. Button, 371 U.S. 415, 438-39 (1963); Bates v. City of Little Rock, 361 U.S. 516, 524 (1960).

[127] 381 U.S. at 482. In cases where economic interests are involved, the Supreme Court has invoked the minimum rationality standard holding that as long as the state law in question is rationally related to some permissible purpose within the police power of the state, the exercise of power is constitutional. E.g., Williamson v. Lee Optical, Inc., 348 U.S. 483, 487-88 (1955); Lochner v. New York, 198 U.S. 45, 64 (1905). The California courts have applied this standard to two of its drug statutes. In re Yun Quong, 159 Cal. 508, 114 P. 835 (1911) (possession of opium); People v. Glaser, 238 Cal. App. 2d 819, 48 Cal. Rptr. 427 (1965); People v. Mistriel, 110 Cal. App. 2d 110, 241 P.2d 1050 (1952) (possession of marijuana).

The reasoning behind this standard lies in the reluctance of the courts to substitute their judgment for that of the state legislature thereby usurping the primary function of the legislature. In Purity Extract & Toxic Co. v. Lynch, 226 U.S. 192, 201-02 (1912) the Court said: "(U)nless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended. To hold otherwise would be to substitute judicial opinion of expediency for the will of the legislature, - a notion foreign to our constitutional system." See also Mugler v. Kansas, 123 U.S. 205 (1887).

> In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."[128]

In Griswold the alleged purpose of the Connecticut legislature was to discourage extramarital relations and the statute rationally related to this purpose.[129] In spite of the rational relationship, the state did not carry the burden of demonstrating that the purpose of the statute was compelling enough to warrant the infringement of the individual right of privacy.[130]

Even when a compelling interest is shown by the state, a further test must be satisfied. This is the test enumerated in Bagley that there must be no alternative less subversive of constitutional rights available.[131] Under this test even when the state has a "compelling interest" strong enough to outweigh the intrusion into the citizen's rights, outright prohibition is not permitted if there is a suitable

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[128] 381 U.S. at 497, quoting from Bates v. Little Rock, 361 U.S. 516, 524 (1960).

[129] 381 U.S. at 498, 505-06.

[130] Id. at 497-98, where Justice Goldberg said in a concurring opinion: "Although the Connecticut birth control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any 'subordinating (state) interest which is compelling' or that is 'necessary... to the accomplishment of a permissible state policy.'"

[131] 65 Cal. 2d at 501-02, 421 P.2d at 411, 55 Cal. Rptr. at 402.

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alternative.[132] California recognized this rule in Wollam v. City of Palm Springs.[133] In Wollam a city ordinance banning the use of sound trucks was held unconstitutional as it was too broad a criminal sanction.[134] The court stated:

> An ordinance narrowly drawn may properly reach to the evils which it seeks to avoid. Instead, here, the ordinance sweeps within its broad ambit the constitutional right to tell a whole story by means of this method of communication.[135]

The broad sweep of the Connecticut statute was also a major point in Griswold[136] and Justice Douglas emphasized it in the majority opinion when he said:

> (A) "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by mea-s which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[137]

The Connecticut legislature sought to attain its avowed purpose through means which had a "maximum destructive impact" on the rights of an individual.[138] In such a situation narrower means are appropriate to achieve the same ends.[139]

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[132] Id. See also note 150 infra.

[133] 59 Cal. 2d 276, 379 P.2d 481, 29 Cal. Rptr. 1 (1963); see Saia v. New York, 334 U.S. 558 (1948).

[134] 59 Cal. 2d at 288, 379 P.2d at 488, 29 Cal. Rptr. at 8.

[135] Id.

[136] 381 U.S. 485.

[137] Id., quoting from NAACP v. Alabama, 377 U.S. 288, 307 (1964); see Shelton v. Tucker, 364 U.S. 479, 488 (1960), where the Court said: "(E)ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

[138] 381 U.S. at 485.

[139] Id.; see, e.g., NAACP v. Button, 371 U.S. 415, 433 (1963); Shelton v. Tucker, 364 U.S. 479, 488 (1960); Talley v. California, 362 U.S. 60, 63 (1960); Fort v. Civil Serv. Comm'n, 61 Cal. 2d 331, 339, 392 P.2d 385, 389, 38 Cal. Rptr. 625, 629 (1964).

Independent Review of the Record

When constitutional questions have been presented involving personal liberties, the California Supreme Court has relied on its own evaluation of scientific facts and expert testimony by independently reviewing the whole record.[140] This has also been the approach taken in some United States Supreme Court cases.[141] The courts review the entire record because a constitutional question involving the "compelling interest" of a state is a mixed question of law and fact.[142] Therefore the question before the court is subject to a constitutional judgment in which the lower court's findings are not binding upon the appellate court.[143]

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[140] See, e.g., People v. Woody, 61 Cal. 2d 716, 720-23, 394 P.2d 813, 816-19, 40 Cal. Rptr. 69, 73-75 (1964); People v. O'Neil, 62 Cal. 2d 748, 401 P.2d 928, 44 Cal. Rptr. 320 (1965), where the court looked to outside sources to determine the definition of a narcotic addict within the meaning of Cal. Vehicle Code Section 23105.

[141] Robinson v. California, 370 U.S. 660, 668-69 (1962) (Douglas, J., concurring).

[142] In reviewing the state's "compelling interest" the court must look to the facts the state has relied on to see if such facts are sufficient to permit an impairment of the individual's constitutional rights. For discussions, see Sherbert v. Verner, 374 U.S. 398, 406 (1963); People v. Woody, 61 Cal. 2d 716, 722, 394 P.2d 813, 818, 40 Cal. Rptr. 69, 74 (1964).

[143] People v. Woody, 61 Cal. 2d 716, 722, 394 P.2d 813, 818, 40 Cal. Rptr. 69, 74 (1964). See also the dissent of Harlan, J. in Roth v. United States, 354 U.S. 476, 497-98 (1957), where he said of the Court's determination of an obscenity issue: "I do not understand how the Court can resolve the constitutional problems now before it without making its own independent judgment upon the character of the material upon which these convictions were based."

A California example of this procedure is People v. Woody where the court looked at the whole record and drew its own inferences from the facts and expert testimony in holding that peyote could not work a permanent deleterious injury on the user.[144] This was contrary to the decision of the trial court. The court in Woody said:

> The state asserts that the compelling reason for the prohibition of Peyotism lies in its deleterious effects..., We set forth the reasons why we believe the contentions to be unfounded.
>
> The record... does not support the state's chronicle of harmful consequences of the use of peyote.[145]

Were the marijuana possession statute to be attacked as depriving an individual of his right of privacy or of one of the other peripheral but fundamental rights, it would appear that the reviewing court would take under consideration the entire record for independent judgment on the constitutional question.[146] The court would then apply the test laid down in Bagley v. Washington Township[147] in analyzing the constitutionality of the statute.

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[144] 61 Cal. 2d at 722, 394 P.2d at 818, 40 Cal. Rptr. at 74.

[145] Id. (emphasis added). The court, id. at 720, 394 P.2d at 816, 40 Cal. Rptr. at 72, also said: "An examination of the record as to the nature of peyote and its role in the religion practiced by defendants... compels the conclusion that the statutory prohibition most seriously infringes upon the observance of the religion." (emphasis added). For the view of the California Attorney General's Office to the contrary, see 39 Ops. Cal. Att'y Gen. 276 (1962).

[146] See cases cited notes 140-41 supra.

[147] 65 Cal. 2d at 501-02, 421 P.2d at 411, 55 Cal. Rptr. at 402. See text accompanying note 115 supra.

The State's Compelling Interest: What Dangers Does Marijuana Hold for the User and Society?

As this discussion has indicated, even if a court were to find that possession of marijuana comes within the right of privacy or could be included as one of the unnamed but constitutionally protected rights, there would be no assurance that the marijuana possession statute would be declared unconstitutional.[148] If the state can successfully show a "compelling interest"[149] why it can abridge a personal right by methods which are not unnecessarily broad[150] the statute will stand. For this reason it is important to examine the facts and information available which might be introduced into the record as evidence concerning marijuana and its effects on the user and society. By the presence of such evidence in the record on appellate court could independently examine the record in making its decision[151] as was the case in People v. Woody.[152]

It is not within the scope of this comment to delve in detail into the factual bases of the arguments for and against marijuana. This has been done elsewhere.[153]

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[148] See cases cited notes 140-41 supra.

[149] Cases cited note 126 supra.

[150] Cases cited note 130 supra. It would seem that the presence of alternatives less subversive of the individual liberty is really part of the compelling interest argument. The state cannot have a "compelling interest" strong enough to outweigh the infringement on one's personal liberties if there are other alternatives less subversive to constitutional rights available. See text accompanying notes 131-32 supra.

[151] See text accompanying notes 131-32 supra.

[152] 61 Cal. 2d at 722, 394 P.2d at 818, 40 Cal. Rptr. at 74.

[153] Boyko & Rotberg, supra note 4, at 775-81. See id. at 783 n.44 for citations to authorities supporting the present method of regulating marijuana.

This section will briefly outline and analyze some of the leading arguments which law enforcement agencies,[154] legislative committees,[155] and others[156] have advanced as reasons why the use and possession of marijuana should remain illegal. It must be emphasized that the body of available research concerning marijuana is not extensive and the results are quite inconclusive.[157] This is particularly evident when the information concerning marijuana is compared with what is known about other substances such as alcohol, tobacco and the hard narcotics such as morphine, heroin and cocaine.[158]

The three most frequently advanced and widely publicized arguments against the use of marijuana and therefore its possession, are: (1) that the use of marijuana leads to criminal acts, (2) that the use of marijuana is a steppingstone to addiction to more serious drugs, and (3) that marijuana's use is per se harmful to the user.[159]

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[154] E.g., Bureau of Narcotic Enforcement, The Narcotic Problem: A Brief Study 12 (4th ed. 1965).

[155] Hearings on Narcotics and Dangerous Drugs Before the California Assembly Interim Comm. on Criminal Procedure 24 (1963); California State Assembly Interim Comm. on Public Health, Report of Subcomm. on Narcotics and Dangerous Drugs 11-15 (1959).

[156] Boyko & Rotberg, supra note 4, at 783 n.44.

[157] President's Comm'n on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 224-25 (1967).

[158] The only authoritative study on marijuana in the United States is the report by the Mayer's Committee on Marihuana, the Marihuana Problem in the City of New York (1944). Better known as the LaGuardia Report, it is based on a controlled study of regular marijuana users in New York City in 1944. The significant parts of the LaGuardia Report are reprinted in The Marijuana Papers 233-360 (Solomon ed. 1966). Reference will be made to that source.

[159] Boyko & Rotberg, supra note 4, at 775-81.

Criminal Activity

The charge that the use of marijuana leads to criminal acts must be divided into two parts. The first argument is that a person under the influence of marijuana is likely to commit serious crimes. This view is roundly criticized in the LaGuardia Report.[160] Although published in 1944 the LaGuardia Report is the only extensive, authoritative study on marijuana and its consequences.

The statistics that the majority of marijuana users arrested are first offenders[161] do not support the charge that it leads to an increase in criminal acts. Such statistics simply show that the use of marijuana may lead to being arrested for the criminal offense of possession of marijuana.

The second part of the charge is that the use of marijuana introduces the user into a criminal underworld. If this is so, it is because the use[162] and possession[163] of marijuana are illegal. The user is naturally going to be involved with those who supply and sell marijuana. Also marijuana is not addictive as recognized by statute

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160 Conclusions 10 and 11 by the Mayor's Committee on Marihuana, in The Marijuana Papers, supra note 158, at 260 read: "Marihuana is not a determining factor in the commission of major crimes.... Juvenile delinquency is not associated with the practice of smoking marihuana...." For views to the contrary, see H. Anslinger & W. Tompkins, The Traffic in Narcotics 18-26 (1953); The Marijuana Papers 439 (Solomon ed. 1966).

161 Bureau of Criminal Statistics, Drug Arrests and Dispositions in California 1966 at 63. This report indicates that 65.3% of those adults arrested for possession of marijuana had no prior record, and 22.1% had only a record for minor offenses.

162 Cal. Health & Safety Code Section 11721.

163 Cal. Health & Safety Code 11530.

in California[164] and by the legal tests of addiction laid down in recent cases.[165] Therefore the user will not be driven to illegal means to acquire it.

Marijuana as a Steppingstone to Addictive Narcotics

The argument that the use of marijuana leads to heroin addiction and addiction to other disabling drugs has been made by California law enforcement agencies and legislative committees.[166] Recent official state sources discredit this argument.[167] In addition one of the leading texts on pharmacology states that marijuana habituation does not lead to the use of heroin.[168]

Harm to the User

The harmful effects which marijuana might have on the user is one of the most important yet least researched problems. Before considering the physiological effects, if any, which marijuana may have, it is pertinent to examine the immediate psychological effects a person experiences after use. It is for these mental reactions

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[164] Cal. Welf. & Inst'ns Code Section 3009. The statute is set out in note 6 supra.

[165] People v. O'Neil, 62 Cal. 2d 748, 755, 401 P.2d 928, 932, 44 Cal. Rptr., 320, 324 (1965) (distinguishing habituation from addiction); People v. Victor, 62 Cal. 2d 280, 302-04, 398 P.2d 391, 405-06, 42 Cal. Rptr. 199, 213-14 (1965). Both cases hold that an addict must be one who is physically and emotionally dependent on a narcotic as well as having developed a tolerance for the drug.

[166] Bureau of Narcotic Enforcement, The Narcotic Problem: A Brief Study 12 (4th ed. 1965); California State Assembly Interim Comm. on Public Health, Report of Subcomm. on Narcotics and Dangerous Drugs 11-15 (1959).

[167] Bureau of Criminal Statistics, Drug Arrests and Drug Dispositions in California 1964 at 10. It has been suggested that addiction to narcotics is based on the user's own psychological structure and his environment rather than the fact that he once used marijuana. See Clausen, Social and Psychological Factors in Narcotics Addiction, 22 Law & Contemp. Prob. 34, 43 (1957).

[168] L. Goodman & A. Gilman, The Pharmacological Basis of Therapeutics 300 (3d ed. 1965).

or effects that marijuana is taken. Dr. Joel Fort, a leading authority in the field of drugs,[169] has described these reactions:

> Marijuana is taken for euphoria, reduction of fatigue, and relief of tension... Small to moderate doses also increase appetite, distort the time sense, increase self-confidence and, like alcohol, can relax some inhibitions.[170]

This description is remarkably similar to the reasons why the average individual has a cocktail before dinner.

According to the LaGuardia Report the psychological effects of marijuana are only temporary and:

> (N)either the ingestion of marihuana nor the smoking of marihuana cigarettes affects the basic outlook of the individual except in a very few instances and to a very slight degree... In other words, reactions which are natively alien to the individual cannot be induced by the ingestion or smoking of the drug.[171]

Concerning the more serious question of the permanent effects which marijuana may have on the user, there is very little information available.[172] The LaGuardia Report did not find any direct effect on the organs of the body aside from the psychological experiences temporarily induced by marijuana.[173] Dr. Fort is in accord with this view:

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169 See note 22 supra for a description of Dr. Fort's qualifications.

170 Fort, Social and Legal Response to Pleasure-giving Drugs, in The Utoplates 213-14 (Blum ed. 1964).

171 The Marijuana Papers, supra note 158, at 334.

172 President's Comm'n on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 224-25 (1967).

173 The Marijuana Papers, supra note 158, at 284.

> (U)nlike alcohol marijuana does not produce, even with prolonged or excessive use, addiction or irreversible physical damage to the boyd, although dependency or habituation and toxic effects can occur.[174]

It is also significant in considering possible harm to the user to remember that California by statute and case law in 1965 recognized that marijuana itself was not an addictive drug.[175]

Clearly the evidence of the effects of marijuana on the user and society is insufficient and inconclusive. While lawyers and judges may speculate on the medical and sociological effects of marijuana, there does remain the fact that possession of marijuana is a felony in California.[176] While it would be preferable to have more evidence on the subject, the statute should be considered in the light of those facts presently available. As one of the few legal articles on marijuana has said:

> Serious questions as to the soundness of legislative judgment arise when the abusive drinker faces few and minor penalties and a cigarette smoker is prompted and cajoled to incur the risk of fatal or incapacitating disease, while, in contrast, onerous reprisals await the marijuana smoker merely for privately using or having possession or control of the drug.[177]

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[174] Fort, supra note 170, at 213.

[175] See notes 164-65 supra.

[176] Cal. Health & Safety Code Section 11530.

[177] Boyko & Rotberg, supra note 4, at 781.

Inconclusive facts, ignorance and fear of the effects of marijuana are not proper bases for making possession of marijuana criminal and certainly not for making possession of marijuana a felony.[178]

Conclusion

A constitutional attack on the marijuana possession statute would be extremely timely. Considering the legislative inertia in thia area,[170] the harsh penalty assessed for marijuana possession,[180] the recent development of California case law with respect to personal rights as evidenced in People v. Woody,[181] In re Klor,[182]

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[178] At least one writer feels that the attitude taken towards marijuana in the United States stems from the puitan work ethic and its intolerance of inaction. Murphy, The Cannabis Habit: A Review of Recent Psychiatric Literature, 15 U.N. Bull. on Narcotics 20 (1963). See also W. Eldridge, Narcotics and The Law 13-34 (1962), for the same view with respect to all drugs. These views would suggest the various reasons given for the illegality of marijuana are nothing more than convenient rationalizations when compared with the permissive treatment which alcohol and toabcco receive under the law.

[179] See text accompanying note 29 supra.

[180] Cal. Health & Safety Code Section 11530.

[181] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

[182] 64 Cal. 2d 816, 415 P.2d 791, 51 Cal. Rptr. 903 (1966).

and Finot v. Pasadena City Board of Education,[183] a constitutional objection raised to the marijuana possession statute should receive prompt and perhaps sympathetic judicial consideration.[184]

It is submitted that the advocate would have to emphasize the following points in presenting his case:

(1) Possession of marijuana for mere personal use comes within one of the peripheral but fundamental constitutional rights. Finot v. Pasadena City Board of Education and In re Klor are authority for inclusion of possession as conduct essential to a means of expression within the first amendment's periphery. Finot might also be used as authority for calling the right to possess marijuana a constitutional "liberty" within the fourteenth amendment.[185] In order to bring marijuana within a zone of privacy also implicit in the first and other amendments, Griswold v. Connecticut[186] is the proper authority.

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[183] 250 A.C.A. 226, 58 Cal. Rptr. 520 (1967).

[184] It would seem significant that most of the California Supreme Court opinions involving personal liberties are presently being written by Justice Tobriner. In these opinions Justice Tobriner has reflected a deep concern for the individual and his creative spirit in the same vein that Justice Douglas has in his United States Supreme Court opinions. See, e.g., People v. Woody, 61 Cal. 2d 716, 727-28, 394 P.2d 813, 821-22, 40 Cal. Rptr. 69, 77-78 (1964), where Justice Tobriner said: "In a mass society which presses at every point toward conformity, the protection of self-expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using peyote one night at a meeting in a desert hogan...." See also Zeitlin v. Arnebergh, 59 Cal. 2d 901, 922-23, 383 P.2d 152, 166, 31 Cal. Rptr. 800, 814 (1963), where, in an obscenity case, he said: "The quicksilver of creativity will not be solidified by legal pronouncement; it will sometimes flow into new and sometimes frightening fields. If, indeed, courts try to forbid new and exotic expression, they will surely and fortunately fail." It would seem that such libertarian views could easily encompass the possession and use of marijuana as a means of "self-expression" or "creativity" within the periphery of the first amendment.

[185] See 250 A.C.A. 226, 235, 58 Cal. Rptr. 520, 527 (1967), where the wearing of a beard is considered such a liberty; see text accompanying notes 91-96 supra.

[186] See text accompanying notes 97-110 supra.

(2) Once the possession of marijuana is considered to be a fundamental constitutional right, then the balancing of the state's interest against the infringement of the individual's rights is in issue. The test of Bagley v. Washington Township is in point. The state must show a "compelling interest" why it should limit the personal rights according to People v. Woody.[187] The appellate court under the Woody decision may make an independent examination of the record in ascertaining whether a compelling interest is shown.[188]

If it is thought that the statute is so broad as to be unnecessarily restrictive of constitutional rights, both Griswold v. Connecticut and Wollam v. City of Palm Springs are good authority that a narrower statute is in order, i.e. one criminally sanctioning abuses of marijuana and not its mere use and possession.[189]

(3) Although the state has the burden of showing a "compelling interest," the advocate would have to assemble the facts on marijuana and introduce them into the record in order to show a lack of harm to the user and society. It is not necessary to show marijuana is absolutely harmless. A showing of slight harm would be sufficient as then the state's "compelling interest" requirement would not be satisfied when balanced with the individual's fundamental rights.[190]

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[187] See text accompanying notes 113-39 supra.

[188] See text accompanying notes 140-47 supra.

[189] See text accompanying notes 131-39 supra.

[190] See People v. Woody, 61 Cal. 2d 716, 727, 394, P.2d 813, 821, 40 Cal. Rptr. 69, 77 (1964), where the court said that since "(t)he use of peyote presents only slight danger to the state and to the enforcement of its laws... (t)he scale tips in favor of the constitutional protection." (emphasis added).

Whether or not an argument such as that set forth in this comment is feasible in light of practical circumstances is left up to the advocate to decide. Considering the injustice the statute creates through felony arrests and convictions and the abridgment of the individual's freedom to experience and to express himself without harm to others, the California marijuana possession statute ought to be declared unconstitutional in its present form.

Addendum

The case of People v. Aguiar[191] was decided by the California Court of Appeal as this issue went to press. This case held that the equal protection clause of the fourteenth amendment to the United States Constitution did not invalidate the California marijuana possession statute. In answering appellant's argument that marijuana should be classified in the same way as alcohol and other euphorics, the court first examined the power of the state to legislate against drugs in general. This due process analysis of the court depended upon finding some rational relationship between the statute and the state's promotion of the public health, safety, comfort, and welfare.[192] Although it was judicially noticed that respected medical opinion considered that marijuana was neither habit-forming nor harmful,[193] the court concluded that as long as there was "some" evidence upon which the statute could be based then the court must uphold the statute.[194] This conclusion was qualified with the provision

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[191] 257 A.C.A. 691, 65 Cal. Rptr. 71 (1968).

[192] Id. at 697, 65 Cal. Rptr. at 174.

[193] Id. at 697, 65 Cal. Rptr. at 174.

[194] Id. at 697, 65 Cal. Rptr. at 175.

that such a rule so obtains unless the statute invidiously discriminates against any group (the equal protection argument) and unless it does not intrude on specially protected areas enumerated in the Bill of Rights.[195]

The discussion of constitutionally protected areas is relevant since if possession of marijuana were within such an area, then more than just "some" evidence upon which the legislature could act would be necessary in order for the statute to be upheld. Indeed under the analysis which has been advanced in this comment, the state would have to show a compelling interest why it should infringe upon the constitutional rights.[196] The court found that it was not up to it to weigh fact-finding studies against each other since only some evidence of marijuana's harm was sufficient to uphold the statute.[197] This statement is not borne out by the California cases where the state's compelling interest has been in issue. Where the state must demonstrate a compelling interest to justify the statute then just such a judicial resolution of the factual issues is required in order to determine the interest of the state.[198] This was clearly the situation in People v. Woody[199] discussed in this comment.

The court pointed out that there is no constitutionally protected right to indulge in the use of euphoric drugs. For this proposition a number of United States

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[195] Id. at 697, 65 Cal. Rptr. at 175.

[196] See text accompanying notes at 119-30 supra.

[197] 257 A.C.A. at 697, 65 Cal. Rptr. at 175.

[198] See text accompanying notes 140-47 supra.

[199] 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

Supreme Court cases were cited which upheld the state's power to legislate against the possession, use and manufacture of alcoholic beverages.[200] These cases dealt with the right of a citizen to use alcohol within the privileges and immunities clause and the due process clause of the fourteenth amendment. In light of the broad interpretation of personal liberties in the intervening years since the decisions of the cases cited and in light of the subsequent incorporation of much of the Bill of Rights into the fourteenth amendment, it is submitted that these cases are very much in doubt today. It can also be noted that since the alcohol possession cases also deal with infringements on the privileges and immunities of citizens rather than the constitutionally protected areas of the Bill of Rights discussed in this comment, the cases can be distinguished.

The opinion also discussed Griswold v. Connecticut[201] and In re Klor[202] In noting that the principles of Griswold did not apply to the possession of marijuana, the court restricted itself to the holding of Griswold that only marital privacy was protected.[203] In fact the court expressly mentioned that appellant invoked no constitutional principle analogous to marital privacy to protect the right to use euphoric drugs.[204] Thus the door was left open for such an argument as that advanced in this comment that a right of privacy exists with respect to expression dealing solely with the mind.[205]

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[200] 257 A.C.A. at 698, 65 Cal. Rptr. at 175.

[201] 381 U.S. 479 (1965).

[202] 64 Cal. 2d 816, 415, P.2d 791, 51 Cal. Rptr. 903 (1966).

[203] 257 A.C.A. at 700, 65 Cal. Rptr. at 176.

[204] Id.

[205] See text accompanying notes 97-109 supra.

The court's discussion of Klor was limited to deciding that the case did not hold that the United States Constitution protects all private conduct.[206] This is indeed true. As has been suggested in this comment, only conduct essential to freedom of expression is to be protected by the first amendment as construed by Klor.[207] The similarity between possession of obscene material for personal gratification and possession of marijuana for personal use has already been discussed in this comment and was not mentioned by the court in its opinion.

Basically the decision of People v. Aguiar[208] holds that the state has a right to legislate against use and possession of marijuana as long as there is some evidence available that it is harmful, provided that no area of constitutional protection is invaded and provided that the equal protection test is met. The purpose of this comment has been to advance the proposition that areas of constitutional protection do exist with respect to possession and use of marijuana thus requiring the state to come forward and show a compelling interest why it can infringe upon these rights. This proposition is still unanswered in California.

Michael A. Town*

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[206] 257 A.C.A. at 700, 65 Cal. Rptr. at 176.

[207] See text accompanying notes 89-90 supra.

[208] 257 A.C.A. 691, 65 Cal. Rptr. 171 (1968).

* Member, Third Year Class.

Syllabus.

GRISWOLD ET AL. v. CONNECTICUT.

APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT.

No. 496. Argued March 29–30, 1965.—Decided June 7, 1965.

Appellants, the Executive Director of the Planned Parenthood League of Connecticut, and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife's use. A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute as applied violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment. *Held:*

1. Appellants have standing to assert the constitutional rights of the married people. *Tileston* v. *Ullman*, 318 U. S. 44, distinguished. P. 481.

2. The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. Pp. 481–486.

151 Conn. 544, 200 A. 2d 479, reversed.

Thomas I. Emerson argued the cause for appellants. With him on the briefs was *Catherine G. Roraback*.

Joseph B. Clark argued the cause for appellee. With him on the brief was *Julius Maretz*.

Briefs of *amici curiae*, urging reversal, were filed by *Whitney North Seymour* and *Eleanor M. Fox* for Dr. John M. Adams et al.; by *Morris L. Ernst, Harriet F. Pilpel* and *Nancy F. Wechsler* for the Planned Parenthood Federation of America, Inc.; by *Alfred L. Scanlon* for the Catholic Council on Civil Liberties, and by *Rhoda H. Karpatkin, Melvin L. Wulf* and *Jerome E. Caplan* for the American Civil Liberties Union et al.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a center open and operating from November 1 to November 10, 1961, when appellants were arrested.

They gave information, instruction, and medical advice to *married persons* as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

The statutes whose constitutionality is involved in this appeal are §§ 53–32 and 54–196 of the General Statutes of Connecticut (1958 rev.). The former provides:

> "Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 54–196 provides:

> "Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute as so applied violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of Errors affirmed that judgment. 151 Conn. 544, 200 A. 2d 479. We noted probable jurisdiction. 379 U. S. 926.

We think that appellants have standing to raise the constitutional rights of the married people with whom they had a professional relationship. *Tileston* v. *Ullman*, 318 U. S. 44, is different, for there the plaintiff seeking to represent others asked for a declaratory judgment. In that situation we thought that the requirements of standing should be strict, lest the standards of "case or controversy" in Article III of the Constitution become blurred. Here those doubts are removed by reason of a criminal conviction for serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime.

This case is more akin to *Truax* v. *Raich*, 239 U. S. 33, where an employee was permitted to assert the rights of his employer; to *Pierce* v. *Society of Sisters*, 268 U. S. 510, where the owners of private schools were entitled to assert the rights of potential pupils and their parents; and to *Barrows* v. *Jackson*, 346 U. S. 249, where a white defendant, party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection although no Negro was a party to the suit. And see *Meyer* v. *Nebraska*, 262 U. S. 390; *Adler* v. *Board of Education*, 342 U. S. 485; *NAACP* v. *Alabama*, 357 U. S. 449; *NAACP* v. *Button*, 371 U. S. 415. The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.

Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments

suggest that *Lochner* v. *New York*, 198 U. S. 45, should be our guide. But we decline that invitation as we did in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *Olsen* v. *Nebraska*, 313 U. S. 236; *Lincoln Union* v. *Northwestern Co.*, 335 U. S. 525; *Williamson* v. *Lee Optical Co.*, 348 U. S. 483; *Giboney* v. *Empire Storage Co.*, 336 U. S. 490. We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce* v. *Society of Sisters*, *supra*, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer* v. *Nebraska*, *supra*, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (*Martin* v. *Struthers*, 319 U. S. 141, 143) and freedom of inquiry, freedom of thought, and freedom to teach (see *Wieman* v. *Updegraff*, 344 U. S. 183, 195)—indeed the freedom of the entire university community. *Sweezy* v. *New Hampshire*, 354 U. S. 234, 249–250, 261–263; *Barenblatt* v. *United States*, 360 U. S. 109, 112; *Baggett* v. *Bullitt*, 377 U. S. 360, 369. Without

those peripheral rights the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP* v. *Alabama*, 357 U. S. 449, 462, we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." *Ibid.* In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members. *NAACP* v. *Button*, 371 U. S. 415, 430–431. In *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, we held it not permissible to bar a lawyer from practice, because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (*id.*, at 244) and was not action of a kind proving bad moral character. *Id.*, at 245–246.

Those cases involved more than the "right of assembly"—a right that extends to all irrespective of their race or ideology. *De Jonge* v. *Oregon*, 299 U. S. 353. The right of "association," like the right of belief (*Board of Education* v. *Barnette*, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See *Poe* v. *Ullman*, 367 U. S. 497, 516–522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourth and Fifth Amendments were described in *Boyd* v. *United States*, 116 U. S. 616, 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."* We recently re-

*The Court said in full about this right of privacy:

"The principles laid down in this opinion [by Lord Camden in *Entick* v. *Carrington*, 19 How. St. Tr. 1029] affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,—it is the invasion of this sacred right which underlies and constitutes the essence of

ferred in *Mapp* v. *Ohio*, 367 U. S. 643, 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup. Ct. Rev. 212; Griswold, The Right to be Let Alone, 55 Nw. U. L. Rev. 216 (1960).

We have had many controversies over these penumbral rights of "privacy and repose." See, *e. g.*, *Breard* v. *Alexandria*, 341 U. S. 622, 626, 644; *Public Utilities Comm'n* v. *Pollak*, 343 U. S. 451; *Monroe* v. *Pape*, 365 U. S. 167; *Lanza* v. *New York*, 370 U. S. 139; *Frank* v. *Maryland*, 359 U. S. 360; *Skinner* v. *Oklahoma*, 316 U. S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the *use* of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP* v. *Alabama*, 377 U. S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The

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Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." 116 U. S., at 630.

very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

I agree with the Court that Connecticut's birth-control law unconstitutionally intrudes upon the right of marital privacy, and I join in its opinion and judgment. Although I have not accepted the view that "due process" as used in the Fourteenth Amendment incorporates all of the first eight Amendments (see my concurring opinion in *Pointer* v. *Texas*, 380 U. S. 400, 410, and the dissenting opinion of MR. JUSTICE BRENNAN in *Cohen* v. *Hurley*, 366 U. S. 117, 154), I do agree that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights. My conclusion that the concept of liberty is not so restricted and that it embraces the right of marital privacy though that right is not mentioned explicitly in the Constitution [1] is supported both by numer-

[1] My Brother STEWART dissents on the ground that he "can find no . . . general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court." *Post*, at 530. He would require a more explicit guarantee than the one which the Court derives from several constitutional amendments. This Court, however, has never held that the Bill of Rights or the

ous decisions of this Court, referred to in the Court's opinion, and by the language and history of the Ninth Amendment. In reaching the conclusion that the right of marital privacy is protected, as being within the protected penumbra of specific guarantees of the Bill of Rights, the Court refers to the Ninth Amendment, *ante*, at 484. I add these words to emphasize the relevance of that Amendment to the Court's holding.

The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder* v. *Massachusetts*, 291 U. S. 97, 105. In *Gitlow* v. *New York*, 268 U. S. 652, 666, the Court said:

> "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the *fundamental* personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." (Emphasis added.)

Fourteenth Amendment protects only those rights that the Constitution specifically mentions by name. See, e. g., *Bolling* v. *Sharpe*, 347 U. S. 497; *Aptheker* v. *Secretary of State*, 378 U. S. 500; *Kent* v. *Dulles*, 357 U. S. 116; *Carrington* v. *Rash*, 380 U. S. 89, 96; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *NAACP* v. *Alabama*, 360 U. S. 240; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Meyer* v. *Nebraska*, 262 U. S. 390. To the contrary, this Court, for example, in *Bolling* v. *Sharpe*, *supra*, while recognizing that the Fifth Amendment does not contain the "explicit safeguard" of an equal protection clause, *id.*, at 499, nevertheless derived an equal protection principle from that Amendment's Due Process Clause. And in *Schware* v. *Board of Bar Examiners*, *supra*, the Court held that the Fourteenth Amendment protects from arbitrary state action the right to pursue an occupation, such as the practice of law.

And, in *Meyer* v. *Nebraska*, 262 U. S. 390, 399, the Court, referring to the Fourteenth Amendment, stated:

> "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also [for example,] the right . . . to marry, establish a home and bring up children . . . ."

This Court, in a series of decisions, has held that the Fourteenth Amendment absorbs and applies to the States those specifics of the first eight amendments which express fundamental personal rights.[2] The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments.

The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights[3] could not be sufficiently broad to cover all es-

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[2] See, *e. g.*, *Chicago, B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226; *Gitlow* v. *New York*, *supra*; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Wolf* v. *Colorado*, 338 U. S. 25; *Robinson* v. *California*, 370 U. S. 660; *Gideon* v. *Wainwright*, 372 U. S. 335; *Malloy* v. *Hogan*, 378 U. S. 1; *Pointer* v. *Texas*, *supra*; *Griffin* v. *California*, 380 U. S. 609.

[3] Madison himself had previously pointed out the dangers of inaccuracy resulting from the fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist, No. 37 (Cooke ed. 1961), at 236.

sential rights and that the specific mention of certain rights would be interpreted as a denial that others were protected.[4]

In presenting the proposed Amendment, Madison said:

> "It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the

[4] Alexander Hamilton was opposed to a bill of rights on the ground that it was unnecessary because the Federal Government was a government of delegated powers and it was not granted the power to intrude upon fundamental personal rights. The Federalist, No. 84 (Cooke ed. 1961), at 578–579. He also argued,

"I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power." *Id.*, at 579.

The Ninth Amendment and the Tenth Amendment, which provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," were apparently also designed in part to meet the above-quoted argument of Hamilton.

last clause of the fourth resolution [the Ninth Amendment]." I Annals of Congress 439 (Gales and Seaton ed. 1834).

Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

> "In regard to . . . [a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis . . . . But a conclusive answer is, that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people." II Story, Commentaries on the Constitution of the United States 626–627 (5th ed. 1891).

He further stated, referring to the Ninth Amendment:

> "This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmation in particular cases implies a negation in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others." *Id.*, at 651.

These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people.[5]

While this Court has had little occasion to interpret the Ninth Amendment,[6] "[i]t cannot be presumed that any

[5] The Tenth Amendment similarly made clear that the States and the people retained all those powers not expressly delegated to the Federal Government.

[6] This Amendment has been referred to as "The Forgotten Ninth Amendment," in a book with that title by Bennett B. Patterson (1955). Other commentary on the Ninth Amendment includes Redlich, Are

clause in the constitution is intended to be without effect." *Marbury* v. *Madison*, 1 Cranch 137, 174. In interpreting the Constitution, "real effect should be given to all the words it uses." *Myers* v. *United States*, 272 U. S. 52, 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery and may be forgotten by others, but since 1791 it has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that

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There "Certain Rights . . . Retained by the People"? 37 N. Y. U. L. Rev. 787 (1962), and Kelsey, The Ninth Amendment of the Federal Constitution, 11 Ind. L. J. 309 (1936). As far as I am aware, until today this Court has referred to the Ninth Amendment only in *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94–95; *Tennessee Electric Power Co.* v. *TVA*, 306 U. S. 118, 143–144; and *Ashwander* v. *TVA*, 297 U. S. 288, 330–331. See also *Calder* v. *Bull*, 3 Dall. 386, 388; *Loan Assn.* v. *Topeka*, 20 Wall. 655, 662–663.

In *United Public Workers* v. *Mitchell*, *supra*, at 94–95, the Court stated: "We accept appellants' contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments [is] involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party official or worker to further his own political views. Thus we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment."

"[t]he enumeration in the Constitution, of certain rights, shall not be *construed* to deny or disparage others retained by the people." (Emphasis added.)

A dissenting opinion suggests that my interpretation of the Ninth Amendment somehow "broaden[s] the powers of this Court." *Post*, at 520. With all due respect, I believe that it misses the import of what I am saying. I do not take the position of my Brother BLACK in his dissent in *Adamson* v. *California*, 332 U. S. 46, 68, that the entire Bill of Rights is incorporated in the Fourteenth Amendment, and I do not mean to imply that the Ninth Amendment is applied against the States by the Fourteenth. Nor do I mean to state that the Ninth Amendment constitutes an independent source of rights protected from infringement by either the States or the Federal Government. Rather, the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive. As any student of this Court's opinions knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States. See, *e. g.*, *Bolling* v. *Sharpe*, 347 U. S. 497; *Aptheker* v. *Secretary of State*, 378 U. S. 500; *Kent* v. *Dulles*, 357 U. S. 116; *Cantwell* v. *Connecticut*, 310 U. S. 296; *NAACP* v. *Alabama*, 357 U. S. 449; *Gideon* v. *Wainwright*, 372 U. S. 335; *New York Times Co.* v. *Sullivan*, 376 U. S. 254. The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments. I do not see how this broadens the author-

ity of the Court; rather it serves to support what this Court has been doing in protecting fundamental rights.

Nor am I turning somersaults with history in arguing that the Ninth Amendment is relevant in a case dealing with a *State's* infringement of a fundamental right. While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon *federal* power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And, the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94–95.

In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] . . . as to be ranked as fundamental." *Snyder* v. *Massachusetts*, 291 U. S. 97, 105. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' . . . ." *Powell* v. *Alabama*, 287 U. S. 45, 67. "Liberty" also "gains content from the emanations of . . . specific [constitutional] guarantees" and "from experience with the requirements of a free society." *Poe*

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v. *Ullman*, 367 U. S. 497, 517 (dissenting opinion of MR. JUSTICE DOUGLAS).[7]

I agree fully with the Court that, applying these tests, the right of privacy is a fundamental personal right, emanating "from the totality of the constitutional scheme under which we live." *Id.*, at 521. Mr. Justice Brandeis, dissenting in *Olmstead* v. *United States*, 277 U. S. 438, 478, comprehensively summarized the principles underlying the Constitution's guarantees of privacy:

> "The protection guaranteed by the [Fourth and Fifth] Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

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[7] In light of the tests enunciated in these cases it cannot be said that a judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion. In fact, a hesitancy to allow too broad a discretion was a substantial reason leading me to conclude in *Pointer* v. *Texas*, *supra*, at 413–414, that those rights absorbed by the Fourteenth Amendment and applied to the States because they are fundamental apply with equal force and to the same extent against both federal and state governments. In *Pointer* I said that the contrary view would require "this Court to make the extremely subjective and excessively discretionary determination as to whether a practice, forbidden the Federal Government by a fundamental constitutional guarantee, is, as viewed in the factual circumstances surrounding each individual case, sufficiently repugnant to the notion of due process as to be forbidden the States." *Id.*, at 413.

The Connecticut statutes here involved deal with a particularly important and sensitive area of privacy—that of the marital relation and the marital home. This Court recognized in *Meyer* v. *Nebraska, supra,* that the right "to marry, establish a home and bring up children" was an essential part of the liberty guaranteed by the Fourteenth Amendment. 262 U. S., at 399. In *Pierce* v. *Society of Sisters,* 268 U. S. 510, the Court held unconstitutional an Oregon Act which forbade parents from sending their children to private schools because such an act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U. S., at 534–535. As this Court said in *Prince* v. *Massachusetts,* 321 U. S. 158, at 166, the *Meyer* and *Pierce* decisions "have respected the private realm of family life which the state cannot enter."

I agree with MR. JUSTICE HARLAN'S statement in his dissenting opinion in *Poe* v. *Ullman,* 367 U. S. 497, 551–552: "Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its pre-eminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right. . . . Of this whole 'private realm of family life' it is difficult to imagine what is more private or more intimate than a husband and wife's marital relations."

The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected.

Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Con-

stitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution.

My Brother STEWART, while characterizing the Connecticut birth control law as "an uncommonly silly law," *post*, at 527, would nevertheless let it stand on the ground that it is not for the courts to " 'substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.' " *Post*, at 528. Elsewhere, I have stated that "[w]hile I quite agree with Mr. Justice Brandeis that . . . 'a . . . State may . . . serve as a laboratory; and try novel social and economic experiments,' *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 280, 311 (dissenting opinion), I do not believe that this includes the power to experiment with the fundamental liberties of citizens . . . ." [8] The vice of the dissenters' views is that it would permit such experimentation by the States in the area of the fundamental personal rights of its citizens. I cannot agree that the Constitution grants such power either to the States or to the Federal Government.

The logic of the dissents would sanction federal or state legislation that seems to me even more plainly unconstitutional than the statute before us. Surely the Government, absent a showing of a compelling subordinating state interest, could not decree that all husbands and wives must be sterilized after two children have been born

[8] *Pointer* v. *Texas*, *supra*, at 413. See also the discussion of my Brother DOUGLAS, *Poe* v. *Ullman*, *supra*, at 517–518 (dissenting opinion).

to them. Yet by their reasoning such an invasion of marital privacy would not be subject to constitutional challenge because, while it might be "silly," no provision of the Constitution specifically prevents the Government from curtailing the marital right to bear children and raise a family. While it may shock some of my Brethren that the Court today holds that the Constitution protects the right of marital privacy, in my view it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection against such totalitarian limitation of family size, which is at complete variance with our constitutional concepts. Yet, if upon a showing of a slender basis of rationality, a law outlawing voluntary birth control by married persons is valid, then, by the same reasoning, a law requiring compulsory birth control also would seem to be valid. In my view, however, both types of law would unjustifiably intrude upon rights of marital privacy which are constitutionally protected.

In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling," *Bates* v. *Little Rock*, 361 U. S. 516, 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida*, 379 U. S. 184, 196. See *Schneider* v. *Irvington*, 308 U. S. 147, 161.

Although the Connecticut birth-control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any "subordinating [state] interest which is compelling" or that it is "neces-

sary . . . to the accomplishment of a permissible state policy." The State, at most, argues that there is some rational relation between this statute and what is admittedly a legitimate subject of state concern—the discouraging of extra-marital relations. It says that preventing the use of birth-control devices by married persons helps prevent the indulgence by some in such extra-marital relations. The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried as well as married, of birth-control devices for the prevention of disease, as distinguished from the prevention of conception, see *Tileston* v. *Ullman*, 129 Conn. 84, 26 A. 2d 582. But, in any event, it is clear that the state interest in safeguarding marital fidelity can be served by a more discriminately tailored statute, which does not, like the present one, sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with and intruding upon the privacy of all married couples. See *Aptheker* v. *Secretary of State*, 378 U. S. 500, 514; *NAACP* v. *Alabama*, 377 U. S. 288, 307–308; *McLaughlin* v. *Florida*, *supra*, at 196. Here, as elsewhere, "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U. S. 415, 438. The State of Connecticut does have statutes, the constitutionality of which is beyond doubt, which prohibit adultery and fornication. See Conn. Gen. Stat. §§ 53–218, 53–219 *et seq.* These statutes demonstrate that means for achieving the same basic purpose of protecting marital fidelity are available to Connecticut without the need to "invade the area of protected freedoms." *NAACP* v. *Alabama*, *supra*, at 307. See *McLaughlin* v. *Florida*, *supra*, at 196.

Finally, it should be said of the Court's holding today that it in no way interferes with a State's proper regula-

tion of sexual promiscuity or misconduct. As my Brother HARLAN so well stated in his dissenting opinion in *Poe* v. *Ullman, supra,* at 553.

> "Adultery, homosexuality and the like are sexual intimacies which the State forbids . . . but the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow, but which always and in every age it has fostered and protected. It is one thing when the State exerts its power either to forbid extra-marital sexuality . . . or to say who may marry, but it is quite another when, having acknowledged a marriage and the intimacies inherent in it, it undertakes to regulate by means of the criminal law the details of that intimacy."

In sum, I believe that the right of privacy in the marital relation is fundamental and basic—a personal right "retained by the people" within the meaning of the Ninth Amendment. Connecticut cannot constitutionally abridge this fundamental right, which is protected by the Fourteenth Amendment from infringement by the States. I agree with the Court that petitioners' convictions must therefore be reversed.

MR. JUSTICE HARLAN, concurring in the judgment.

I fully agree with the judgment of reversal, but find myself unable to join the Court's opinion. The reason is that it seems to me to evince an approach to this case very much like that taken by my Brothers BLACK and STEWART in dissent, namely: the Due Process Clause of the Fourteenth Amendment does not touch this Connecticut statute unless the enactment is found to violate some right assured by the letter or penumbra of the Bill of Rights.

In other words, what I find implicit in the Court's opinion is that the "incorporation" doctrine may be used to *restrict* the reach of Fourteenth Amendment Due Process. For me this is just as unacceptable constitutional doctrine as is the use of the "incorporation" approach to *impose* upon the States all the requirements of the Bill of Rights as found in the provisions of the first eight amendments and in the decisions of this Court interpreting them. See, *e. g.*, my concurring opinions in *Pointer* v. *Texas*, 380 U. S. 400, 408, and *Griffin* v. *California*, 380 U. S. 609, 615, and my dissenting opinion in *Poe* v. *Ullman*, 367 U. S. 497, 522, at pp. 539–545.

In my view, the proper constitutional inquiry in this case is whether this Connecticut statute infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values "implicit in the concept of ordered liberty," *Palko* v. *Connecticut*, 302 U. S. 319, 325. For reasons stated at length in my dissenting opinion in *Poe* v. *Ullman*, *supra*, I believe that it does. While the relevant inquiry may be aided by resort to one or more of the provisions of the Bill of Rights, it is not dependent on them or any of their radiations. The Due Process Clause of the Fourteenth Amendment stands, in my opinion, on its own bottom.

A further observation seems in order respecting the justification of my Brothers BLACK and STEWART for their "incorporation" approach to this case. Their approach does not rest on historical reasons, which are of course wholly lacking (see Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding, 2 Stan. L. Rev. 5 (1949)), but on the thesis that by limiting the content of the Due Process Clause of the Fourteenth Amendment to the protection of rights which can be found elsewhere in the Constitution, in this instance in the Bill of Rights, judges will thus be confined to "interpretation" of specific constitutional

provisions, and will thereby be restrained from introducing their own notions of constitutional right and wrong into the "vague contours of the Due Process Clause." *Rochin* v. *California*, 342 U. S. 165, 170.

While I could not more heartily agree that judicial "self restraint" is an indispensable ingredient of sound constitutional adjudication, I do submit that the formula suggested for achieving it is more hollow than real. "Specific" provisions of the Constitution, no less than "due process," lend themselves as readily to "personal" interpretations by judges whose constitutional outlook is simply to keep the Constitution in supposed "tune with the times" (*post*, p. 522). Need one go further than to recall last Term's reapportionment cases, *Wesberry* v. *Sanders*, 376 U. S. 1, and *Reynolds* v. *Sims*, 377 U. S. 533, where a majority of the Court "interpreted" "by the People" (Art. I, § 2) and "equal protection" (Amdt. 14) to command "one person, one vote," an interpretation that was made in the face of irrefutable and still unanswered history to the contrary? See my dissenting opinions in those cases, 376 U. S., at 20; 377 U. S., at 589.

Judicial self-restraint will not, I suggest, be brought about in the "due process" area by the historically unfounded incorporation formula long advanced by my Brother BLACK, and now in part espoused by my Brother STEWART. It will be achieved in this area, as in other constitutional areas, only by continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles that the doctrines of federalism and separation of powers have played in establishing and preserving American freedoms. See *Adamson* v. *California*, 332 U. S. 46, 59 (Mr. Justice Frankfurter, concurring). Adherence to these principles will not, of course, obviate all constitutional differences of opinion among judges, nor should it. Their continued recogni-

tion will, however, go farther toward keeping most judges from roaming at large in the constitutional field than will the interpolation into the Constitution of an artificial and largely illusory restriction on the content of the Due Process Clause.*

MR. JUSTICE WHITE, concurring in the judgment.

In my view this Connecticut law as applied to married couples deprives them of "liberty" without due process of law, as that concept is used in the Fourteenth Amendment. I therefore concur in the judgment of the Court reversing these convictions under Connecticut's aiding and abetting statute.

It would be unduly repetitious, and belaboring the obvious, to expound on the impact of this statute on the liberty guaranteed by the Fourteenth Amendment against arbitrary or capricious denials or on the nature of this liberty. Suffice it to say that this is not the first time this Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," *Meyer* v. *Nebraska*, 262 U. S. 390, 399, and "the liberty . . . to direct the upbringing and education of children," *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535, and that these are among "the basic civil rights of man." *Skinner* v. *Oklahoma*, 316 U. S. 535, 541. These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. *Prince* v. *Massachusetts*, 321 U. S. 158, 166. Surely the right invoked in this case, to be free of regulation of the intimacies of

*Indeed, my Brother BLACK, in arguing his thesis, is forced to lay aside a host of cases in which the Court has recognized fundamental rights in the Fourteenth Amendment without specific reliance upon the Bill of Rights. *Post*, p. 512, n. 4.

the marriage relationship, "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper,* 336 U. S. 77, 95 (opinion of Frankfurter, J.).

The Connecticut anti-contraceptive statute deals rather substantially with this relationship. For it forbids all married persons the right to use birth-control devices, regardless of whether their use is dictated by considerations of family planning, *Trubek* v. *Ullman,* 147 Conn. 633, 165 A. 2d 158, health, or indeed even of life itself. *Buxton* v. *Ullman,* 147 Conn. 48, 156 A. 2d 508. The anti-use statute, together with the general aiding and abetting statute, prohibits doctors from affording advice to married persons on proper and effective methods of birth control. *Tileston* v. *Ullman,* 129 Conn. 84, 26 A. 2d 582. And the clear effect of these statutes, as enforced, is to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control. *State* v. *Nelson,* 126 Conn. 412, 11 A. 2d 856; *State* v. *Griswold,* 151 Conn. 544, 200 A. 2d 479. In my view, a statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment. *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Skinner* v. *Oklahoma,* 316 U. S. 535; *Schware* v. *Board of Bar Examiners,* 353 U. S. 232; *McLaughlin* v. *Florida,* 379 U. S. 184, 192.

An examination of the justification offered, however, cannot be avoided by saying that the Connecticut anti-use statute invades a protected area of privacy and association or that it demeans the marriage relationship. The nature of the right invaded is pertinent, to be sure, for statutes regulating sensitive areas of liberty do, under

the cases of this Court, require "strict scrutiny," *Skinner* v. *Oklahoma*, 316 U. S. 535, 541, and "must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker*, 364 U. S. 479, 488. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *Little Rock*, 361 U. S. 516, 524. See also *McLaughlin* v. *Florida*, 379 U. S. 184. But such statutes, if reasonably necessary for the effectuation of a legitimate and substantial state interest, and not arbitrary or capricious in application, are not invalid under the Due Process Clause. *Zemel* v. *Rusk*, 381 U. S. 1.*

* Dissenting opinions assert that the liberty guaranteed by the Due Process Clause is limited to a guarantee against unduly vague statutes and against procedural unfairness at trial. Under this view the Court is without authority to ascertain whether a challenged statute, or its application, has a permissible purpose and whether the manner of regulation bears a rational or justifying relationship to this purpose. A long line of cases makes very clear that this has not been the view of this Court. *Dent* v. *West Virginia*, 129 U. S. 114; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Douglas* v. *Noble*, 261 U. S. 165; *Meyer* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *Aptheker* v. *Secretary of State*, 378 U. S. 500; *Zemel* v. *Rusk*, 381 U. S. 1.

The traditional due process test was well articulated, and applied, in *Schware* v. *Board of Bar Examiners*, *supra*, a case which placed no reliance on the specific guarantees of the Bill of Rights.

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. *Dent* v. *West Virginia*, 129 U. S. 114. Cf. *Slochower* v. *Board of Education*, 350 U. S. 551; *Wieman* v. *Updegraff*, 344 U. S. 183. And see *Ex parte Secombe*, 19 How. 9, 13. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. *Douglas* v. *Noble*, 261 U. S. 165; *Cum-*

As I read the opinions of the Connecticut courts and the argument of Connecticut in this Court, the State claims but one justification for its anti-use statute. Cf. *Allied Stores of Ohio* v. *Bowers*, 358 U. S. 522, 530; *Martin* v. *Walton*, 368 U. S. 25, 28 (DOUGLAS, J., dissenting). There is no serious contention that Connecticut thinks the use of artificial or external methods of contraception immoral or unwise in itself, or that the anti-use statute is founded upon any policy of promoting population expansion. Rather, the statute is said to serve the State's policy against all forms of promiscuous or illicit sexual relationships, be they premarital or extramarital, concededly a permissible and legitimate legislative goal.

Without taking issue with the premise that the fear of conception operates as a deterrent to such relationships in addition to the criminal proscriptions Connecticut has against such conduct, I wholly fail to see how the ban on the use of contraceptives by married couples in any way reinforces the State's ban on illicit sexual relationships. See *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 239. Connecticut does not bar the importation or possession of contraceptive devices; they are not considered contraband material under state law, *State* v. *Certain Contraceptive Materials*, 126 Conn. 428, 11 A. 2d 863, and their availability in that State is not seriously disputed. The only way Connecticut seeks to limit or control the availability of such devices is through its general aiding and abetting statute whose operation in this context has

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mings v. *Missouri*, 4 Wall. 277, 319–320. Cf. *Nebbia* v. *New York*, 291 U. S. 502. Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory." 353 U. S., at 238–239. Cf. *Martin* v. *Walton*, 368 U. S. 25, 26 (DOUGLAS, J., dissenting).

been quite obviously ineffective and whose most serious use has been against birth-control clinics rendering advice to married, rather than unmarried, persons. Cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356. Indeed, after over 80 years of the State's proscription of use, the legality of the sale of such devices to prevent disease has never been expressly passed upon, although it appears that sales have long occurred and have only infrequently been challenged. This "undeviating policy . . . throughout all the long years . . . bespeaks more than prosecutorial paralysis." *Poe* v. *Ullman*, 367 U. S. 497, 502. Moreover, it would appear that the sale of contraceptives to prevent disease is plainly legal under Connecticut law.

In these circumstances one is rather hard pressed to explain how the ban on use by married persons in any way prevents use of such devices by persons engaging in illicit sexual relations and thereby contributes to the State's policy against such relationships. Neither the state courts nor the State before the bar of this Court has tendered such an explanation. It is purely fanciful to believe that the broad proscription on use facilitates discovery of use by persons engaging in a prohibited relationship or for some other reason makes such use more unlikely and thus can be supported by any sort of administrative consideration. Perhaps the theory is that the flat ban on use prevents married people from possessing contraceptives and without the ready availability of such devices for use in the marital relationship, there will be no or less temptation to use them in extramarital ones. This reasoning rests on the premise that married people will comply with the ban in regard to their marital relationship, notwithstanding total nonenforcement in this context and apparent nonenforcibility, but will not comply with criminal statutes prohibiting extramarital affairs and the anti-use statute in respect to illicit sexual relationships, a premise whose validity has not been

demonstrated and whose intrinsic validity is not very evident. At most the broad ban is of marginal utility to the declared objective. A statute limiting its prohibition on use to persons engaging in the prohibited relationship would serve the end posited by Connecticut in the same way, and with the same effectiveness, or ineffectiveness, as the broad anti-use statute under attack in this case. I find nothing in this record justifying the sweeping scope of this statute, with its telling effect on the freedoms of married persons, and therefore conclude that it deprives such persons of liberty without due process of law.

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

I agree with my Brother STEWART'S dissenting opinion. And like him I do not to any extent whatever base my view that this Connecticut law is constitutional on a belief that the law is wise or that its policy is a good one. In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers HARLAN, WHITE and GOLDBERG who, reciting reasons why it is offensive to them, hold it unconstitutional. There is no single one of the graphic and eloquent strictures and criticisms fired at the policy of this Connecticut law either by the Court's opinion or by those of my concurring Brethren to which I cannot subscribe—except their conclusion that the evil qualities they see in the law make it unconstitutional.

Had the doctor defendant here, or even the nondoctor defendant, been convicted for doing nothing more than expressing opinions to persons coming to the clinic that certain contraceptive devices, medicines or practices would do them good and would be desirable, or for telling people how devices could be used, I can think of no reasons at this time why their expressions of views would not be

protected by the First and Fourteenth Amendments, which guarantee freedom of speech. Cf. *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U. S. 1; *NAACP* v. *Button*, 371 U. S. 415. But speech is one thing; conduct and physical activities are quite another. See, *e. g.*, *Cox* v. *Louisiana*, 379 U. S. 536, 554–555; *Cox* v. *Louisiana*, 379 U. S. 559, 563–564; *id.*, 575–584 (concurring opinion); *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; cf. *Reynolds* v. *United States*, 98 U. S. 145, 163–164. The two defendants here were active participants in an organization which gave physical examinations to women, advised them what kind of contraceptive devices or medicines would most likely be satisfactory for them, and then supplied the devices themselves, all for a graduated scale of fees, based on the family income. Thus these defendants admittedly engaged with others in a planned course of conduct to help people violate the Connecticut law. Merely because some speech was used in carrying on that conduct—just as in ordinary life some speech accompanies most kinds of conduct—we are not in my view justified in holding that the First Amendment forbids the State to punish their conduct. Strongly as I desire to protect all First Amendment freedoms, I am unable to stretch the Amendment so as to afford protection to the conduct of these defendants in violating the Connecticut law. What would be the constitutional fate of the law if hereafter applied to punish nothing but speech is, as I have said, quite another matter.

The Court talks about a constitutional "right of privacy" as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not. There are, of course, guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities. Such, for example, is the Fourth

Amendment's guarantee against "unreasonable searches and seizures." But I think it belittles that Amendment to talk about it as though it protects nothing but "privacy." To treat it that way is to give it a niggardly interpretation, not the kind of liberal reading I think any Bill of Rights provision should be given. The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. He simply wants his property left alone. And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.

One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning. This fact is well illustrated by the use of the term "right of privacy" as a comprehensive substitute for the Fourth Amendment's guarantee against "unreasonable searches and seizures." "Privacy" is a broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures. I have expressed the view many times that First Amendment freedoms, for example, have suffered from a failure of the courts to stick to the simple language of the First Amendment in construing it, instead of invoking multitudes of words substituted for those the Framers used. See, *e. g.*, *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 293 (concurring opinion); cases collected in *City of El Paso* v. *Simmons*, 379 U. S. 497, 517, n. 1 (dissenting opinion); Black, The Bill of Rights, 35 N. Y. U. L. Rev. 865. For these reasons I get nowhere in this case by talk about a constitutional "right of privacy" as an emanation from

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one or more constitutional provisions.[1] I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision. For these reasons I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional.

This brings me to the arguments made by my Brothers HARLAN, WHITE and GOLDBERG for invalidating the Connecticut law. Brothers HARLAN [2] and WHITE would invalidate it by reliance on the Due Process Clause of the Fourteenth Amendment, but Brother GOLDBERG, while agreeing with Brother HARLAN, relies also on the Ninth Amendment. I have no doubt that the Connecticut law could be applied in such a way as to abridge freedom of

[1] The phrase "right to privacy" appears first to have gained currency from an article written by Messrs. Warren and (later Mr. Justice) Brandeis in 1890 which urged that States should give some form of tort relief to persons whose private affairs were exploited by others. The Right to Privacy, 4 Harv. L. Rev. 193. Largely as a result of this article, some States have passed statutes creating such a cause of action, and in others state courts have done the same thing by exercising their powers as courts of common law. See generally 41 Am. Jur. 926–927. Thus the Supreme Court of Georgia, in granting a cause of action for damages to a man whose picture had been used in a newspaper advertisement without his consent, said that "A right of privacy in matters purely private is . . . derived from natural law" and that "The conclusion reached by us seems to be . . . thoroughly in accord with natural justice, with the principles of the law of every civilized nation, and especially with the elastic principles of the common law . . . ." *Pavesich* v. *New England Life Ins. Co.*, 122 Ga. 190, 194, 218, 50 S. E. 68, 70, 80. Observing that "the right of privacy . . . presses for recognition here," today this Court, which I did not understand to have power to sit as a court of common law, now appears to be exalting a phrase which Warren and Brandeis used in discussing grounds for tort relief, to the level of a constitutional rule which prevents state legislatures from passing any law deemed by this Court to interfere with "privacy."

[2] Brother HARLAN'S views are spelled out at greater length in his dissenting opinion in *Poe* v. *Ullman*, 367 U. S. 497, 539–555.

speech and press and therefore violate the First and Fourteenth Amendments. My disagreement with the Court's opinion holding that there is such a violation here is a narrow one, relating to the application of the First Amendment to the facts and circumstances of this particular case. But my disagreement with Brothers HARLAN, WHITE and GOLDBERG is more basic. I think that if properly construed neither the Due Process Clause nor the Ninth Amendment, nor both together, could under any circumstances be a proper basis for invalidating the Connecticut law. I discuss the due process and Ninth Amendment arguments together because on analysis they turn out to be the same thing—merely using different words to claim for this Court and the federal judiciary power to invalidate any legislative act which the judges find irrational, unreasonable or offensive.

The due process argument which my Brothers HARLAN and WHITE adopt here is based, as their opinions indicate, on the premise that this Court is vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable, or oppressive, or on this Court's belief that a particular state law under scrutiny has no "rational or justifying" purpose, or is offensive to a "sense of fairness and justice." [3] If these formulas based on "natural justice," or others which mean the same thing,[4] are to prevail, they require judges to determine

[3] Indeed, Brother WHITE appears to have gone beyond past pronouncements of the natural law due process theory, which at least said that the Court should exercise this unlimited power to declare state acts unconstitutional with "restraint." He now says that, instead of being presumed constitutional (see *Munn* v. *Illinois*, 94 U. S. 113, 123; compare *Adkins* v. *Children's Hospital*, 261 U. S. 525, 544), the statute here "bears a substantial burden of justification when attacked under the Fourteenth Amendment."

[4] A collection of the catchwords and catch phrases invoked by judges who would strike down under the Fourteenth Amendment laws which offend their notions of natural justice would fill many pages. Thus it has been said that this Court can forbid state action

what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary. The power to make such decisions is of course that of a legislative body. Surely it has to be admitted that no provision of the Constitution specifically gives such blanket power to courts to exercise such a supervisory veto over the wisdom and value of legislative policies and to hold unconstitutional those laws which they believe unwise or dangerous. I readily admit that no legislative body, state or national, should pass laws that can justly be given any

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which "shocks the conscience," *Rochin* v. *California*, 342 U. S. 165, 172, sufficiently to "shock itself into the protective arms of the Constitution," *Irvine* v. *California*, 347 U. S. 128, 138 (concurring opinion). It has been urged that States may not run counter to the "decencies of civilized conduct," *Rochin*, *supra*, at 173, or "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," *Snyder* v. *Massachusetts*, 291 U. S. 97, 105, or to "those canons of decency and fairness which express the notions of justice of English-speaking peoples," *Malinski* v. *New York*, 324 U. S. 401, 417 (concurring opinion), or to "the community's sense of fair play and decency," *Rochin*, *supra*, at 173. It has been said that we must decide whether a state law is "fair, reasonable and appropriate," or is rather "an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into . . . contracts," *Lochner* v. *New York*, 198 U. S. 45, 56. States, under this philosophy, cannot act in conflict with "deeply rooted feelings of the community," *Haley* v. *Ohio*, 332 U. S. 596, 604 (separate opinion), or with "fundamental notions of fairness and justice," *id.*, 607. See also, *e. g.*, *Wolf* v. *Colorado*, 338 U. S. 25, 27 ("rights . . . basic to our free society"); *Hebert* v. *Louisiana*, 272 U. S. 312, 316 ("fundamental principles of liberty and justice"); *Adkins* v. *Children's Hospital*, 261 U. S. 525, 561 ("arbitrary restraint of . . . liberties"); *Betts* v. *Brady*, 316 U. S. 455, 462 ("denial of fundamental fairness, shocking to the universal sense of justice"); *Poe* v. *Ullman*, 367 U. S. 497, 539 (dissenting opinion) ("intolerable and unjustifiable"). Perhaps the clearest, frankest and briefest explanation of how this due process approach works is the statement in another case handed down today that this Court is to invoke the Due Process Clause to strike down state procedures or laws which it can "not tolerate." *Linkletter* v. *Walker*, *post*, p. 618, at 631.

of the invidious labels invoked as constitutional excuses to strike down state laws. But perhaps it is not too much to say that no legislative body ever does pass laws without believing that they will accomplish a sane, rational, wise and justifiable purpose. While I completely subscribe to the holding of *Marbury* v. *Madison*, 1 Cranch 137, and subsequent cases, that our Court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process Clause or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notions of "civilized standards of conduct." [5] Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not of the power to interpret them. The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination—a power which was specifically denied to federal courts by the convention that framed the Constitution.[6]

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[5] See Hand, The Bill of Rights (1958) 70:

"[J]udges are seldom content merely to annul the particular solution before them; they do not, indeed they may not, say that taking all things into consideration, the legislators' solution is too strong for the judicial stomach. On the contrary they wrap up their veto in a protective veil of adjectives such as 'arbitrary,' 'artificial,' 'normal,' 'reasonable,' 'inherent,' 'fundamental,' or 'essential,' whose office usually, though quite innocently, is to disguise what they are doing and impute to it a derivation far more impressive than their personal preferences, which are all that in fact lie behind the decision." See also *Rochin* v. *California*, 342 U. S. 165, 174 (concurring opinion). But see *Linkletter* v. *Walker*, *supra*, n. 4, at 631.

[6] This Court held in *Marbury* v. *Madison*, 1 Cranch 137, that this Court has power to invalidate laws on the ground that they exceed

Of the cases on which my Brothers WHITE and GOLDBERG rely so heavily, undoubtedly the reasoning of two of them supports their result here—as would that of a number of others which they do not bother to name, *e. g.*,

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the constitutional power of Congress or violate some specific prohibition of the Constitution. See also *Fletcher* v. *Peck*, 6 Cranch 87. But the Constitutional Convention did on at least two occasions reject proposals which would have given the federal judiciary a part in recommending laws or in vetoing as bad or unwise the legislation passed by the Congress. Edmund Randolph of Virginia proposed that the President

". . . and a convenient number of the National Judiciary, ought to compose a council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by [original wording illegible] of the members of each branch." 1 The Records of the Federal Convention of 1787 (Farrand ed. 1911) 21.

In support of a plan of this kind James Wilson of Pennsylvania argued that:

". . . It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature." 2 *id.*, at 73.

Nathaniel Gorham of Massachusetts "did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures." *Ibid.*

Elbridge Gerry of Massachusetts likewise opposed the proposal for a council of revision:

". . . He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It [the proposal] was

Lochner v. *New York*, 198 U. S. 45, *Coppage* v. *Kansas*, 236 U. S. 1, *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504, and *Adkins* v. *Children's Hospital*, 261 U. S. 525. The two they do cite and quote from, *Meyer* v. *Nebraska*, 262 U. S. 390, and *Pierce* v. *Society of Sisters*, 268 U. S. 510, were both decided in opinions by Mr. Justice McReynolds which elaborated the same natural law due process philosopy found in *Lochner* v. *New York*, *supra*, one of the cases on which he relied in *Meyer*, along with such other long-discredited decisions as, *e. g.*, *Adams* v. *Tanner*, 244 U. S. 590, and *Adkins* v. *Children's Hospital*, *supra*. *Meyer* held unconstitutional, as an "arbitrary" and unreasonable interference with the right of a teacher to carry on his occupation and of parents to hire him, a

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making the Expositors of the Laws, the Legislators which ought never to be done." *Id.*, at 75.

And at another point:

"Mr. Gerry doubts whether the Judiciary ought to form a part of it [the proposed council of revision], as they will have a sufficient check agst. encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. . . . It was quite foreign from the nature of ye. office to make them judges of the policy of public measures." 1 *Id.*, at 97–98.

Madison supported the proposal on the ground that "a Check [on the legislature] is necessary." *Id.*, at 108. John Dickinson of Delaware opposed it on the ground that "the Judges must interpret the Laws they ought not to be legislators." *Ibid.* The proposal for a council of revision was defeated.

The following proposal was also advanced:

"To assist the President in conducting the Public affairs there shall be a Council of State composed of the following officers—1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U. S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union . . . ." 2 *id.*, at 342. This proposal too was rejected.

state law forbidding the teaching of modern foreign languages to young children in the schools.[7] And in *Pierce*, relying principally on *Meyer*, Mr. Justice McReynolds said that a state law requiring that all children attend public schools interfered unconstitutionally with the property rights of private school corporations because it was an "arbitrary, unreasonable and unlawful interference" which threatened "destruction of their business and property." 268 U. S., at 536. Without expressing an opinion as to whether either of those cases reached a correct result in light of our later decisions applying the First Amendment to the States through the Fourteenth,[8] I merely point out that the reasoning stated in *Meyer* and *Pierce* was the same natural law due process philosophy which many later opinions repudiated, and which I cannot accept. Brothers WHITE and GOLDBERG also cite other cases, such as *NAACP* v. *Button*, 371 U. S. 415, *Shelton* v. *Tucker*, 364 U. S. 479, and *Schneider* v. *State*, 308 U. S. 147, which held that States in regulating conduct could not, consistently with the First Amendment as applied to them by the Fourteenth, pass unnecessarily broad laws which might indirectly infringe on First Amendment freedoms.[9] See *Brotherhood of Railroad Trainmen* v. *Virginia ex rel.*

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[7] In *Meyer*, in the very same sentence quoted in part by my Brethren in which he asserted that the Due Process Clause gave an abstract and inviolable right "to marry, establish a home and bring up children," Mr. Justice McReynolds also asserted the heretofore discredited doctrine that the Due Process Clause prevented States from interfering with "the right of the individual to contract." 262 U. S., at 399.

[8] Compare *Poe* v. *Ullman*, 367 U. S., at 543–544 (HARLAN, J., dissenting).

[9] The Court has also said that in view of the Fourteenth Amendment's major purpose of eliminating state-enforced racial discrimination, this Court will scrutinize carefully any law embodying a racial classification to make sure that it does not deny equal protection of the laws. See *McLaughlin* v. *Florida*, 379 U. S. 184.

Virginia State Bar, 377 U. S. 1, 7–8.[10] Brothers WHITE and GOLDBERG now apparently would start from this requirement that laws be narrowly drafted so as not to curtail free speech and assembly, and extend it limitlessly to require States to justify any law restricting "liberty" as my Brethren define "liberty." This would mean at the

[10] None of the other cases decided in the past 25 years which Brothers WHITE and GOLDBERG cite can justly be read as holding that judges have power to use a natural law due process formula to strike down all state laws which they think are unwise, dangerous, or irrational. *Prince* v. *Massachusetts*, 321 U. S. 158, *upheld* a state law forbidding minors from selling publications on the streets. *Kent* v. *Dulles*, 357 U. S. 116, recognized the power of Congress to restrict travel outside the country so long as it accorded persons the procedural safeguards of due process and did not violate any other specific constitutional provision. *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, held simply that a State could not, consistently with due process, refuse a lawyer a license to practice law on the basis of a finding that he was morally unfit when there was no evidence in the record, 353 U. S., at 246–247, to support such a finding. Compare *Thompson* v. *City of Louisville*, 362 U. S. 199, in which the Court relied in part on *Schware*. See also *Konigsberg* v. *State Bar*, 353 U. S. 252. And *Bolling* v. *Sharpe*, 347 U. S. 497, merely recognized what had been the understanding from the beginning of the country, an understanding shared by many of the draftsmen of the Fourteenth Amendment, that the whole Bill of Rights, including the Due Process Clause of the Fifth Amendment, was a guarantee that all persons would receive equal treatment under the law. Compare *Chambers* v. *Florida*, 309 U. S. 227, 240–241. With one exception, the other modern cases relied on by my Brethren were decided either solely under the Equal Protection Clause of the Fourteenth Amendment or under the First Amendment, made applicable to the States by the Fourteenth, some of the latter group involving the right of association which this Court has held to be a part of the rights of speech, press and assembly guaranteed by the First Amendment. As for *Aptheker* v. *Secretary of State*, 378 U. S. 500, I am compelled to say that if that decision was written or intended to bring about the abrupt and drastic reversal in the course of constitutional adjudication which is now attributed to it, the change was certainly made in a very quiet and unprovocative manner, without any attempt to justify it.

very least, I suppose, that every state criminal statute—since it must inevitably curtail "liberty" to some extent—would be suspect, and would have to be justified to this Court.[11]

My Brother GOLDBERG has adopted the recent discovery[12] that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks

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[11] Compare *Adkins* v. *Children's Hospital*, 261 U. S. 525, 568 (Holmes, J., dissenting):

"The earlier decisions upon the same words [the Due Process Clause] in the Fourteenth Amendment began within our memory and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts."

[12] See Patterson, The Forgotten Ninth Amendment (1955). Mr. Patterson urges that the Ninth Amendment be used to protect unspecified "natural and inalienable rights." P. 4. The Introduction by Roscoe Pound states that "there is a marked revival of natural law ideas throughout the world. Interest in the Ninth Amendment is a symptom of that revival." P. iii.

In Redlich, Are There "Certain Rights . . . Retained by the People"?, 37 N. Y. U. L. Rev. 787, Professor Redlich, in advocating reliance on the Ninth and Tenth Amendments to invalidate the Connecticut law before us, frankly states:

"But for one who feels that the marriage relationship should be beyond the reach of a state law forbidding the use of contraceptives, the birth control case poses a troublesome and challenging problem of constitutional interpretation. He may find himself saying, 'The law is unconstitutional—but why?' There are two possible paths to travel in finding the answer. One is to revert to a frankly flexible due process concept even on matters that do not involve specific constitutional prohibitions. The other is to attempt to evolve a new constitutional framework within which to meet this and similar problems which are likely to arise." *Id.*, at 798.

violates "fundamental principles of liberty and justice," or is contrary to the "traditions and [collective] conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not consider "their personal and private notions." One may ask how they can avoid considering them. Our Court certainly has no machinery with which to take a Gallup Poll.[13] And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment[14] to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way, and the very material quoted by my Brother GOLDBERG shows that the Ninth Amendment was intended to protect against the idea that "by enumerating particular exceptions to the grant of power" to the Federal Government, "those rights which were not singled out, were intended to be assigned into the hands of the General Government [the United States], and were con-

[13] Of course one cannot be oblivious to the fact that Mr. Gallup has already published the results of a poll which he says show that 46% of the people in this country believe schools should teach about birth control. Washington Post, May 21, 1965, p. 2, col. 1. I can hardly believe, however, that Brother GOLDBERG would view 46% of the persons polled as so overwhelming a proportion that this Court may now rely on it to declare that the Connecticut law infringes "fundamental" rights, and overrule the long-standing view of the people of Connecticut expressed through their elected representatives.

[14] U. S. Const., Amend. IX, provides:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

sequently insecure." [15] That Amendment was passed, not to broaden the powers of this Court or any other department of "the General Government," but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly or by necessary implication. If any broad, unlimited power to hold laws unconstitutional because they offend what this Court conceives to be the "[collective] conscience of our people" is vested in this Court by the Ninth Amendment, the Fourteenth Amendment, or any other provision of the Constitution, it was not given by the Framers, but rather has been bestowed on the Court by the Court. This fact is perhaps responsible for the peculiar phenomenon that for a period of a century and a half no serious suggestion was ever made that the Ninth Amendment, enacted to protect state powers against federal invasion, could be used as a weapon of federal power to prevent state legislatures from passing laws they consider appropriate to govern local affairs. Use of any such broad, unbounded judicial authority would make of this Court's members a day-to-day constitutional convention.

I repeat so as not to be misunderstood that this Court does have power, which it should exercise, to hold laws unconstitutional where they are forbidden by the Federal Constitution. My point is that there is no provision

[15] 1 Annals of Congress 439. See also II Story, Commentaries on the Constitution of the United States (5th ed. 1891): "This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmation in particular cases implies a negation in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others. The maxim, rightly understood, is perfectly sound and safe; but it has often been strangely forced from its natural meaning into the support of the most dangerous political heresies." *Id.*, at 651 (footnote omitted).

of the Constitution which either expressly or impliedly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and set aside their laws because of the Court's belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious or irrational. The adoption of such a loose, flexible, uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts and worse for the country. Subjecting federal and state laws to such an unrestrained and unrestrainable judicial control as to the wisdom of legislative enactments would, I fear, jeopardize the separation of governmental powers that the Framers set up and at the same time threaten to take away much of the power of States to govern themselves which the Constitution plainly intended them to have.[16]

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[16] Justice Holmes in one of his last dissents, written in reply to Mr. Justice McReynolds' opinion for the Court in *Baldwin v. Missouri*, 281 U. S. 586, solemnly warned against a due process formula apparently approved by my concurring Brethren today. He said:

"I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred. Of course the words 'due process of law,' if taken in their literal meaning, have no application to this case; and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Consti-

I realize that many good and able men have eloquently spoken and written, sometimes in rhapsodical strains, about the duty of this Court to keep the Constitution in tune with the times. The idea is that the Constitution must be changed from time to time and that this Court is charged with a duty to make those changes. For myself, I must with all deference reject that philosophy. The Constitution makers knew the need for change and provided for it. Amendments suggested by the people's elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers, and being somewhat old-fashioned I must add it is good enough for me. And so, I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law concept as a reason for striking down this state law. The Due Process Clause with an "arbitrary and capricious" or "shocking to the conscience" formula was liberally used by this Court to strike down economic legislation in the early decades of this century, threatening, many people thought, the tranquility and stability of the Nation. See, *e. g., Lochner* v. *New York*, 198 U. S. 45. That formula, based on subjective considerations of "natural justice," is no less dangerous when used to enforce this Court's views about personal rights than those about economic rights. I had thought that we had laid that formula, as a means for striking down state legislation, to rest once and for all in cases like *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *Olsen* v. *Nebraska ex rel. Western Reference & Bond Assn.*, 313 U. S. 236, and many other

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tution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass." 281 U. S., at 595. See 2 Holmes-Pollock Letters (Howe ed. 1941) 267–268.

opinions.[17] See also *Lochner* v. *New York*, 198 U. S. 45, 74 (Holmes, J., dissenting).

In *Ferguson* v. *Skrupa*, 372 U. S. 726, 730, this Court two years ago said in an opinion joined by all the Justices but one [18] that

> "The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."

And only six weeks ago, without even bothering to hear argument, this Court overruled *Tyson & Brother* v. *Banton*, 273 U. S. 418, which had held state laws regulating ticket brokers to be a denial of due process of law.[19] *Gold*

[17] *E. g.*, in *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423, this Court held that "Our recent decisions make plain that we do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." Compare *Gardner* v. *Massachusetts*, 305 U. S. 559, which the Court today apparently overrules, which held that a challenge under the Federal Constitution to a state law forbidding the sale or furnishing of contraceptives did not raise a substantial federal question.

[18] Brother HARLAN, who has consistently stated his belief in the power of courts to strike down laws which they consider arbitrary or unreasonable, see, *e. g.*, *Poe* v. *Ullman*, 367 U. S. 497, 539–555 (dissenting opinion), did not join the Court's opinion in *Ferguson* v. *Skrupa*.

[19] Justice Holmes, dissenting in *Tyson*, said:

"I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." 273 U. S., at 446.

v. *DiCarlo*, 380 U. S. 520. I find April's holding hard to square with what my concurring Brethren urge today. They would reinstate the *Lochner, Coppage, Adkins, Burns* line of cases, cases from which this Court recoiled after the 1930's, and which had been I thought totally discredited until now. Apparently my Brethren have less quarrel with state economic regulations than former Justices of their persuasion had. But any limitation upon their using the natural law due process philosophy to strike down any state law, dealing with any activity whatever, will obviously be only self-imposed.[20]

In 1798, when this Court was asked to hold another Connecticut law unconstitutional, Justice Iredell said:

> "[I]t has been the policy of all the *American* states, which have, individually, framed their state constitutions since the revolution, and of the people of the *United States*, when they framed the Federal Constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries. If any act of Congress, or of the Legislature of a state, violates those constitutional provisions, it is unquestionably void; though, I admit, that as the authority to declare it void is of a delicate and awful nature, the Court will never resort to that authority, but in a clear and urgent case. If, on the other hand, the Legislature of the Union, or the Legislature of any member of the Union, shall pass a law, within the

[20] Compare *Nicchia* v. *New York*, 254 U. S. 228, 231, upholding a New York dog-licensing statute on the ground that it did not "deprive dog owners of liberty without due process of law." And as I said concurring in *Rochin* v. *California*, 342 U. S. 165, 175, "I believe that faithful adherence to the specific guarantees in the Bill of Rights insures a more permanent protection of individual liberty than that which can be afforded by the nebulous standards" urged by my concurring Brethren today.

> general scope of their constitutional power, the Court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard: the ablest and the purest men have differed upon the subject; and all that the Court could properly say, in such an event, would be, that the Legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice." *Calder* v. *Bull*, 3 Dall. 386, 399 (emphasis in original).

I would adhere to that constitutional philosophy in passing on this Connecticut law today. I am not persuaded to deviate from the view which I stated in 1947 in *Adamson* v. *California*, 332 U. S. 46, 90–92 (dissenting opinion):

> "Since *Marbury* v. *Madison*, 1 Cranch 137, was decided, the practice has been firmly established, for better or worse, that courts can strike down legislative enactments which violate the Constitution. This process, of course, involves interpretation, and since words can have many meanings, interpretation obviously may result in contraction or extension of the original purpose of a constitutional provision, thereby affecting policy. But to pass upon the constitutionality of statutes by looking to the particular standards enumerated in the Bill of Rights and other parts of the Constitution is one thing; to invalidate statutes because of application of 'natural law' deemed to be above and undefined by the Constitution is another. 'In the one instance, courts proceeding within clearly marked constitutional boundaries seek to execute policies written into the Constitution; in the other, they roam at will in the limit-

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less area of their own beliefs as to reasonableness and actually select policies, a responsibility which the Constitution entrusts to the legislative representatives of the people.' *Federal Power Commission* v. *Pipeline Co.*, 315 U. S. 575, 599, 601, n. 4." [21] (Footnotes omitted.)

The late Judge Learned Hand, after emphasizing his view that judges should not use the due process formula suggested in the concurring opinions today or any other formula like it to invalidate legislation offensive to their "personal preferences," [22] made the statement, with which I fully agree, that:

"For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I

[21] *Gideon* v. *Wainwright*, 372 U. S. 335, and similar cases applying specific Bill of Rights provisions to the States do not in my view stand for the proposition that this Court can rely on its own concept of "ordered liberty" or "shocking the conscience" or natural law to decide what laws it will permit state legislatures to enact. *Gideon* in applying to state prosecutions the Sixth Amendment's guarantee of right to counsel followed *Palko* v. *Connecticut*, 302 U. S. 319, which had held that specific provisions of the Bill of Rights, rather than the Bill of Rights as a whole, would be selectively applied to the States. While expressing my own belief (not shared by MR. JUSTICE STEWART) that all the provisions of the Bill of Rights were made applicable to the States by the Fourteenth Amendment, in my dissent in *Adamson* v. *California*, 332 U. S. 46, 89, I also said:

"If the choice must be between the selective process of the *Palko* decision applying some of the Bill of Rights to the States, or the *Twining* rule applying none of them, I would choose the *Palko* selective process."

Gideon and similar cases merely followed the *Palko* rule, which in *Adamson* I agreed to follow if necessary to make Bill of Rights safeguards applicable to the States. See also *Pointer* v. *Texas*, 380 U. S. 400; *Malloy* v. *Hogan*, 378 U. S. 1.

[22] Hand, The Bill of Rights (1958) 70. See note 5, *supra*. See generally *id.*, at 35–45.

knew how to choose them, which I assuredly do not." [23]

So far as I am concerned, Connecticut's law as applied here is not forbidden by any provision of the Federal Constitution as that Constitution was written, and I would therefore affirm.

MR. JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

In the course of its opinion the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Four-

[23] *Id.*, at 73. While Judge Hand condemned as unjustified the invalidation of state laws under the natural law due process formula, see *id.*, at 35–45, he also expressed the view that this Court in a number of cases had gone too far in holding legislation to be in violation of specific guarantees of the Bill of Rights. Although I agree with his criticism of use of the due process formula, I do not agree with all the views he expressed about construing the specific guarantees of the Bill of Rights.

teenth. But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.

We *are* told that the Due Process Clause of the Fourteenth Amendment is not, as such, the "guide" in this case. With that much I agree. There is no claim that this law, duly enacted by the Connecticut Legislature, is unconstitutionally vague. There is no claim that the appellants were denied any of the elements of procedural due process at their trial, so as to make their convictions constitutionally invalid. And, as the Court says, the day has long passed since the Due Process Clause was regarded as a proper instrument for determining "the wisdom, need, and propriety" of state laws. Compare *Lochner* v. *New York*, 198 U. S. 45, with *Ferguson* v. *Skrupa*, 372 U. S. 726. My Brothers HARLAN and WHITE to the contrary, "[w]e have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson* v. *Skrupa*, *supra*, at 730.

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States.[1] It has

[1] The Amendments in question were, as everyone knows, originally adopted as limitations upon the power of the newly created Federal Government, not as limitations upon the powers of the individual States. But the Court has held that many of the provisions of the first eight amendments are fully embraced by the Fourteenth Amendment as limitations upon state action, and some members of the Court have held the view that the adoption of the Fourteenth Amendment made every provision of the first eight amendments fully applicable against the States. See *Adamson* v. *California*, 332 U. S. 46, 68 (dissenting opinion of MR. JUSTICE BLACK).

not even been argued that this is a law "respecting an establishment of religion, or prohibiting the free exercise thereof." [2] And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of "the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." [3] No soldier has been quartered in any house.[4] There has been no search, and no seizure.[5] Nobody has been compelled to be a witness against himself.[6]

The Court also quotes the Ninth Amendment, and my Brother GOLDBERG'S concurring opinion relies heavily upon it. But to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history. The Ninth Amendment, like its companion the Tenth, which this Court held "states but a truism that all is retained which has not been surrendered," *United States* v. *Darby*, 312 U. S. 100, 124, was framed by James Madison and adopted by the States simply to make clear that the adoption of the Bill of Rights did not alter the plan that

[2] U. S. Constitution, Amendment I. To be sure, the injunction contained in the Connecticut statute coincides with the doctrine of certain religious faiths. But if that were enough to invalidate a law under the provisions of the First Amendment relating to religion, then most criminal laws would be invalidated. See, *e. g.*, the Ten Commandments. The Bible, Exodus 20:2–17 (King James).

[3] U. S. Constitution, Amendment I. If all the appellants had done was to advise people that they thought the use of contraceptives was desirable, or even to counsel their use, the appellants would, of course, have a substantial First Amendment claim. But their activities went far beyond mere advocacy. They prescribed specific contraceptive devices and furnished patients with the prescribed contraceptive materials.

[4] U. S. Constitution, Amendment III.

[5] U. S. Constitution, Amendment IV.

[6] U. S. Constitution, Amendment V.

the *Federal* Government was to be a government of express and limited powers, and that all rights and powers not delegated to it were retained by the people and the individual States. Until today no member of this Court has ever suggested that the Ninth Amendment meant anything else, and the idea that a federal court could ever use the Ninth Amendment to annul a law passed by the elected representatives of the people of the State of Connecticut would have caused James Madison no little wonder.

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy "created by several fundamental constitutional guarantees." With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.[1]

At the oral argument in this case we were told that the Connecticut law does not "conform to current community standards." But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases "agreeably to the Constitution and laws of the United States." It is the essence of judicial

[1] Cases like *Shelton* v. *Tucker*, 364 U. S. 479 and *Bates* v. *Little Rock*, 361 U. S. 516, relied upon in the concurring opinions today, dealt with true First Amendment rights of association and are wholly inapposite here. See also, *e. g.*, *NAACP* v. *Alabama*, 357 U. S. 449; *Edwards* v. *South Carolina*, 372 U. S. 229. Our decision in *McLaughlin* v. *Florida*, 379 U. S. 184, is equally far afield. That case held invalid under the Equal Protection Clause, a state criminal law which discriminated against Negroes.

The Court does not say how far the new constitutional right of privacy announced today extends. See, *e. g.*, Mueller, Legal Regulation of Sexual Conduct, at 127; Ploscowe, Sex and the Law, at 189. I suppose, however, that even after today a State can constitutionally still punish at least some offenses which are not committed in public.

duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect the standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books.[8]

[8] See *Reynolds* v. *Sims*, 377 U. S. 533, 562. The Connecticut House of Representatives recently passed a bill (House Bill No. 2462) repealing the birth control law. The State Senate has apparently not yet acted on the measure, and today is relieved of that responsibility by the Court. New Haven Journal-Courier, Wed., May 19, 1965, p. 1, col. 4, and p. 13, col. 7.

Part 6—Medical and Scientific Consideration

[From the Washington Star, Mar. 21, 1976]

MARIHUANA EASES CANCER SUFFERING

(By Chrisine Russell)

BOSTON—The Sidney Farber Cancer Center scientists had informally heard descriptions of the medicinal magic of marihuana from patients undergoing chemotherapy for cancer. When conventional antivomiting drugs had proven unsuccessful, smoking marihuana helped control the violent nausea and stomach upset which frequently were side-effects of their anti-cancer treatments.

To find out whether these anecdotes about marihuana's therapeutic effects were folklore or fact. Drs. Stephen Sallan, Norman Zinberg, and Emil Frei III decided to conduct a controlled study of the principal chemical ingredient in marihuana—delta-9-tetrahydrocannabinol, or THC.

They took a group of 22 hospitalized cancer patients for whom nothing else worked and, in a controlled experiment, provided them with oral doses of either THC or placebo (sugar pills) when they were undergoing the cancer-countering but nausea-producing chemotherapy.

Each person was to serve as his own control, assessing nausea, vomiting and food intake on the day after treatment through the use of a self-administered questionnaire.

The results were dramatic. No person vomited while experiencing a subjective "high." Overall, significant reduction in nausea and vomiting was observed at least 70 percent of the time with THC, but occurred in none of the placebo tests.

The Boston researchers presented these findings last fall in the prestigious New England Journal of Medicine.

Since the study was published, Sallan has heard from dozens of physicians anxious to find a better way of treating their own cancer patients. He has heard from the families of cancer patients. And he has heard from the patients themselves.

In each case Sallan has necessarily given the same unsatisfactory reply. Since the drug is illegal, he cannot provide it to those who want to try its medicinal properties.

Writes Sallan: "I regret to inform you that because tetrahydrocannabinol is a Schedule I drug, it is not available by prescription . . . I appreciate your dilemma and am aware of one's suffering and helplessness in the face of the severe nausea and vomiting associated with chemotherapy. I wish I could be of more help to you at this time, but I am only licensed to use the drug within our institution under very tightly controlled circumstances. Hopefully, in the near future, this situation will change."

But Sallan is pessimistic about the prospect of extending THC to cancer patients on a widespread basis.

He's worried that the politics of policing marihuana will continue to interfere with legitimate attempts to put the drug into prescribed medical use.

For his own dealings with the federal agencies overseeing marihuana research have been discouraging, filled with distressing delays and obstructions.

Other scientists interested in investigating the drug have had similar experiences with the endless red tape, discouraging enough to lead Dr. William Regelson of the Medical College of Virginia to conclude "that the hassle just isn't worth it."

Because of what he called "overregulation," Regelson doesn't want to work with the drug any more, despite the encouraging results of his preliminary study on an advanced cancer population which indicated that THC seemed to have beneficial effects on depression, pain, nausea, and appetite.

At Southern Illinois University, Dr. Charles Whitfield conducted a pilot study similar to Sallan's and at a December scientific meeting reported similar success—it worked as an anti-vomiting agent in 75 percent of his cases.

In an interview, Whitfield seemed inclined to give up further work in this controversial area. "I have a gut feeling that the government does not want to see anything positive come out on marihuana because politically it is unpopular."

But at the Mayo Clinic in Rochester, Minn., and Mt. Sinai Hospital and Memorial Sloan-Kettering Cancer Center in New York, other researchers are intrigued enough to plan followup studies in the near future. And in Boston, Sallan and his colleagues are undeterred. In January they embarked on a second study, comparing THC with the conventional drugs that have been used with limited success in treating nausea.

The regulatory process begins with the Food and Drug Administration, which oversees the development of any new drug. Their procedures are elaborately detailed in order to protect the public from prematurely marketed drugs.

But for the marihuana researcher, much more is involved, including hospital inspections by the Justice Department's Drug Enforcement Administration and careful accounting to the National Institute on Drug Abuse (NIDA), the agency which supplies the "legal" THC for research purposes. (The THC, placed in gelatin capsules, is specially prepared by a Boston research firm or imported from an Israeli company.)

"It should be easier for doctors to obtain THC for research. We are trying to get it eased up, but the bureaucracy has millions of tentacles. It is because of the past history of our legal entanglement with this drug," admitted one NIDA official. He asked not to be named, and like numerous others contacted at the politically sensitive agency he at first avoided commenting on the details of the drug research.

"It is a very fascinating drug which has potential which is untapped as yet, but it is a Catch 22," the NIDA scientist continued. "It has to be tested to show that it is medically useful. But because of the illegality of marihuana, investigators are just plain discouraged with the mountains of red tape involved to get a little study going."

Despite the roadblocks, in the last decade marihuana "has been found to have some therapeutic potential in a number of diverse areas," concluded a recent NIDA report to Congress. In addition to the potential use as an anti-vomiting aid to cancer patients, promising applications may eventually lie in the treatment of glaucoma (it reduces eye pressure) as well as asthma (it dilates air passageways). More preliminary work in the use of cannabis as a sedative, an anticonvulsant, an antidepressant, and a pain killer has also been undertaken. And in animal experiments, THC has even been shown to slow down cancer growth.

It takes about five years—and in the case of cannabis chemicals probably more—for a drug to travel the regulatory route, sufficiently demonstrating both safety and efficacy to the federal regulators.

We're very conservative about what we call effective. There's a real danger in letting out an ineffective drug which people think is working," commented FDA's Dr. Edward C. Tocus, chief of the drug abuse staff in the Bureau of Drugs.

Sitting in his Boston office, the young doctor lamented the federal agencies' "bureaucratic obstructionist views." But he doesn't blame the middle men—the desk scientists "whose jobs depend on not making mistakes."

He feels that "within the limits of their humanity they probably fully agree with the study. They really don't want to make anybody suffer or obstruct progress. But to say yes to a highly controversial drug is a position that virtually no one other than the top man would be willing to make."

His memories of working with the marihuana drug stray back and forth between the poignant stories of the patients he has helped feel better and the frustrating days in which the promised drug shipment had been delayed once again.

His face lights up just thinking about one young boy of 18 suffering from a tumor of the shoulder muscle, who really "got into the soap operas when he was high on THC." One day Sallan entered his hospital room and the boy was holding a basin in his hand. "I was quite distressed because I was sure he was vomiting. It turned out he was just eating pretzels."

In addition to the nausea, many patients on chemotherapy lose their appetites completely. But this boy, as well as some others in the study, found interest in

food renewed soon after undergoing the monthly or biweekly treatments. The questionnaires he filled out while on the study revealed slightly unappetizing combinations of hotdogs, chocolate eclairs and milkshakes on more than one occasion.

In the first study, the patients ranged in age from 18 to 76 years, and the older ones got the same "high" responses as the younger despite their greater social reservations about the illicit drug. A young woman in her 20s described her response as a "good buzz," while a grandmother said she felt a "fluttery, floating feeling" come over her.

A rabbi with stomach cancer who suffered from severe nausea while on chemotherapy found that the THC relieved his misery, but he forgot to say his morning prayers one day while under the influence. He wasn't so upset about it, but his wife was. The rabbi finally discontinued taking the drug, recalled Sallan.

But a baptist preacher who didn't smoke or drink dropped out of the study for another reason—the THC was so effective that he didn't want to risk getting the placebo. The chemicals being used to treat his leukemia "made him about as sick as I've ever seen anybody. He was willing to try anything to get rid of the vomiting," said Sallan.

On the first day he participated in the study he felt much better. But on the second day he apparently received the placebo and was as sick as ever. The next day he admitted to Sallan that he had broken the rules of the study and gotten hold of some marihuana (from another preacher).

Of the 16 patients receiving THC, 13 experienced a "high" consisting of various mood changes. The next most common side effect was sleepiness. Two patients experienced THC toxicity, including visual distortion and hallucination.

The one with the most severe reaction was a university classics professor. "He got too high and was doing the soft shoe on the nurse's station," said Sallan. The patient later said he had no regrets, but he wouldn't want to try it again.

"It's not a wonder drug. To have to get someone high to stop their vomiting leaves a lot to be desired. But for a lot of people just being high and feeling good is something to which they look forward to," concluded the Boston doctor.

He will continue his experiments with a group of patients lucky enough to receive THC legally.

When asked for his opinion, Sallan admits he would tell them to smoke. "The study came from people who smoked marihuana. Millions of Americans seem to be able to find it when they want it. I have no qualms about telling cancer patients to smoke because it works. There's not much I can recommend to this population that works."

[From the Washington Star, Feb. 11, 1976]

LATEST U.S. MARIHUANA STUDY DEVOID OF DIRE HEALTH WARNINGS TO USERS

(By Michael Satchell)

The government's 5th annual Marihuana and Health Report to Congress may be the best news for pot smokers since Oregon became the first state to decriminalize marijuana possession two years ago.

For the first time the survey of new medical findings related to the marihuana and health issue contains no dire warnings that users of the drug face possible severe health consequences.

In fact, it reports that research conducted during 1975 had failed to support previous studies suggesting that smoking marihuana could lead to genetic damage, lower fertility rates or possible impotence.

The survey, which was released today, also reports on some promising new medical uses of the drug for cancer, asthma and glaucoma patients.

Dr. Robert L. DuPont, director of the National Institute on Drug Abuse which prepares the annual survey stresses in the report that while the new survey "does no give marihuana a clean bill of health as some would hope, it does not support the fear and irrationality that still characterize some of the public debate about marihuana."

The Government's top drug expert says continuing studies make it clear that marihuana intoxication, like getting drunk on alcohol, poses significant hazards. Just like drunks, people who are stoned on marihuana shouldn't fly airplanes, drive or operate industrial machinery, the report warns.

DuPont is known to privately favor scrapping criminal penalties for possession of small amounts of marihuana, and in the past he has ventured close to saying outright that he supports decriminalization.

What is holding him back is a fear that an endorsement of decriminalization by the government's chief drug spokesman will be misinterpreted as a message that smoking marihuana is medically safe.

DuPont has consistently stressed that the long-term effects of marihuana smoking still are not known despite recent major studies of long-term smokers that show no damage to the users.

These federally funded studies of heavily long-time smokers in Costa Rica, Jamaica and Greece found no reductions in the ability of smokers to work, nor any permanent or irreversible brain damage. They also cast serious doubt, according to U.S. researchers, on the theory that smoking lowers fertility. The NIDA report suggests that the numbers of persons studied in these recent surveys were not big enough to be conclusive.

The new report indicates that heavy smokers of marihuana can develop a physical dependency on the drug and a tolerance to its effects. New studies also confirmed the continually increasing use of the drug, mostly among young people. For the first time, a majority of the nation's 18- to 25-year-olds—some 53 percent—have now smoked marihuana, the report says.

"Unusual therapeutic promise" in the use of THC, the active ingredient in marihuana, was discovered in studies last year, the report continues.

A side effect of chemotherapy being given to cancer patients is extreme nausea and vomoting and standard anti-emetic drugs have been unsuccessful in preventing it. THC has been found to be an effective anti-emetic for virtually all of the cancer patients receiving it in tests, the reports shows, adding that most of the patients also got "high" from the drug.

THC preparations have also been valuable in reducing internal eye pressure in glaucoma patients. And use of the drug was found to be effective in dilating pulmonary air passages and decreasing airway resistance in asthma patients. Because smoking is obviously a lung irritant, THC is being developed in aerosol form for bronchial patients.

[From the Austin (Tex.) American-Statesman, Feb. 1, 1976]

MAJOR MARIHUANA STUDY REVERSES THEORIES

(By Brian Sullivan)

NEW YORK—The pendulum seems to be swinging the other way on the safety of marihuana.

For years, there have been numerous reports of the potential dangers of marihuana to the brain, the personality, the chromosomes—reports stemming largely from laboratory studies.

Now, at what may have been a landmark meeting on the subject of marihuana, researchers made public last week major studies of heavy, long-term users of the drug; studies that turned up no significant adverse effects on body or brain functions.

The key study, completed only last month, was conducted by University of Florida researchers in San Jose, Costa Rica, where marihuana has been readily available for decades, although its use is illegal. The study said: "Marihuana use as found among working class men in San Jose functions largely as a device which they feel aids them to cope with their daily routines and problems . . . There is no . . . clear evidence of marihuana-caused interference in the normal functioning of an adult, working class male, living in Costa Rica's capital city."

Last week's meeting—sponsored by the New York Academy of Science, the Department of Psychiatry of New York Medical College, and the National Institute on Drug Abuse—is the latest chapter in the long controversy over the dangers of marihuana.

In the United States, marihuana first became a public issue in the post-prohibition era. It was considered a "killer drug" then, widely associated with dangerous, even murderous, behavior. To smoke a "reefer" was to court brain damage. In recent years, there have been a bewildering array of reports suggesting adverse effects from pot, and other studies contradicting such findings.

In 1969, the National Institute of Mental Health decided that a different approach was needed. Many of the studies being reported lacked controls and

many were in laboratory settings that could not reveal what might happen in real situations. Studies of long-term users in Jamaica, Greece and Costa Rica followed.

In all three cases, scientists found no significant damage from long use of marihuana. The results of the Greek and Costa Rican studies were reported at the meeting last week. The Costa Rican study is considered by many scientists the most thorough done so far.

"The evidence is fairly clear that chronic cannabis use is not accompanied by the things written in the medical literature of the 1930s and 1940s," said Dr. Max Fink, from the State University of New York at Stony Brook, and a co-chairman of last week's meeting, called the Conference on Chronic Cannabis Use. Cannabis is the part of the marihuana plant used as the drug.

The researchers cautioned, however, that the newest findings do not settle the marihuana controversy. Still more largescale studies are needed, they said. There is, for example, one unresolved problem in the current research—contradictory findings as to whether the use of marihuana lowers blood levels of the male sex hormone testosterone. Limited studies with young people in this country indicate a lowering, but the Costa Rican study did not detect any change.

The central findings in the major studies to date are that clearly there is no brain damage, according to Dr. Fink and the other cochairmen of the conference, Dr. Rhea L. Dornbush of New York Medical College and Dr. Alfred M. Freedman, head of the Psychiatry Department at the college and a former president of the American Psychiatric Association.

In the Costa Rican study, the men participating the research smoked a mean of 9.6 cigarettes a day, but the range was from 2.5 to 40 a day. A few of the effects of marihuana seemed to be common to each of the 41 users in the study.

"Generally, users said that marihuana smoking helps them get to sleep. Most also said that marihuana increases their appetite for food and enjoyment of sex. Approximately three-fourths reported that marihuana always helps them work better," the study said.

The researchers found that the heaviest users had stable job records and they failed to find a lack of motivation.

"From these facts one cannot conclude that marihuana, as such, seriously interferes with an individual's functioning as a normal, productive member of society. Much more important determinants would seem to be his over-all life style, as established in childhood and adolescence, and carried into adulthood," the researchers concluded.

The Costa Rican study failed to confirm any movement from marihuana to such other drugs as amphetamines, barbiturates, heroin, LSD and cocaine. "These substances are available, but users showed little interest in them," the report said.

There were suggestions that users built up a tolerance for the drug. "The heaviest user averages 40 marihuana cigarettes a day and yet manages a very successful business with eight employes."

In the physical findings, the chronic marihuana users showed more symptoms of gastrointestinal discomfort than the 41 nonsmokers included in the study, and their body weights were lower, although none was markedly underweight. There was no evidence of an increased incidence of infection that would suggest any impairment of the body's natural defense mechanisms.

"Daily marihuana use for 10 to 28 years in this sample of men under the age of 50 years did not appear to impair their ability to function normally," the team concluded.

[From the New York Times, Jan. 28, 1976]

NEW MARIHUANA STUDIES SHOW NO ADVERSE EFFECT

(By Bayard Webster)

Several recent studies of chronic marihuana users, conducted independently in half a dozen countries, indicate that the drug has no apparent significant adverse effect on the human body or brain or on their functions.

The research essentially corroborates and expands on the results of an earlier study of marihuana use in Jamaica that found no significant correlation between heavy use of the drug and impaired physical, intellectual, social and cultural activities.

The findings were reported here yesterday in research papers delivered at a New York Academy of Sciences Conference on Chronic Cannabis Use that attracted more than 100 researchers from 10 countries.

A panel of experts, summing up the three-day conference at the Roosevelt Hotel, which was at its midpoint yesterday, pointed out that the findings should not be used as a black-or-white reason for legalizing the use of marihuana, but should be noted in the context of social pressures that lead to laws making it either legal or criminal to smoke or possess marihuana.

NEED FOR FUETHER STUDY

The panel also noted that the recent studies, reported in more than 30 scientific papers, should not be regarded as the definitive word on the effects of cannabis (that part of the marihuana plant used as the drug) but should be the spur that would lead to more comprehensive studies.

One panel member, Dr. Jared Tinklen Stanford University, said that the studies disclosed evidence of dangers from chronic marihuana use had been conducted primarily among relatively young—15 to 30 years old—populations that had used marihuana before.

"The need now," he said in an interview, "is for more research that will investigate the possible harmful effects of longer-term use—30 to 40 years among older populations.

"It's hard to find the effects of cigarette smoking on people in their 30's or 40's," he said. "But you begin to find the harmful effects when they're in their 50's and 60's."

Other members of the seven-person panel agreed that the recent studies, using more sophisticated techniques than previous research, showed that the effects of cannabis were much less harmful than had been thought a decade or two ago when marihuana was often referred to as the "killer drug" and was sometimes thought to lead to insanity.

Dr. Mai Fink of the Health Sciences Center, Department of Psychiatry at the State University of New York at Stony Brook co-chairman of the conference, related that when he started his research on cannabis in 1968 he was certain the drug had the same toxicity as opium or heroin.

"But I became convinced over the years that cannabis was very different from the opium-derived drugs," he said. "You look at the reports today which show no evidence of brain damage or cause for lack of motivation or lowering of testosterone levels and you realize that, so far, the findings on cannabis are trivial."

During yesterday morning's conference session, Dr. Glen D. Mellinger of the Institute for Research in Social Behavior, Berkeley, Calif., reported on a study of lack of motivation among college students who were chonic marihuana users.

The topic, known to psychologists as the amotivational syndrome, refers to general apathy, mental confusion and lack of goals among college students that often led to the student's dropping out. It had long been thought by some observers that marihuana was a major factor in many of these drop-outs.

But in a survey of 834 college students at the University of California at Berkeley who were examined and questioned in their freshman year and again two and a half years later, Dr. Mellinger found little significant difference in dropout rates among chronic marihuana users and non-drug users.

INFLUENCES ON DROP-OUTS

He also found little disparity in clarity of occupational goals or grade point average in the two groups. But he found other factors that seemed to correlate more closely with the drop-out rate. These included individual personality differences, men with low academic motivation before they started to use marihuana, and other family history problems.

In another study comparing measurement of marihuana with alcohol involvement in criminal or assaultive behavior among young men, Dr. Tinklenberg took a survey of 248 inmates of a California prison facility. Approximately half of them had been heavy drinkers before incarceration and the other half had been heavy marihuana users.

He found that alcohol-involved assaults or violence occurred approximately 15 times more frequently than cannabis-involved incidents. His studies also showed

that, in comparison with alcohol, cannabis was far less frequently involved in fights, difficulties with the police, family or social trouble, and automobile accidents.

Other research findings presented at the conference included studies of Egyptian, Costa Rican, Greek, Jamaican, Mexican and United States marihuana users. Almost all the repos said there had been no demonstrated significant statistical evidence of impaired health, physical and mental function, and social and cultural activity.

One study conducted by the Drug Abuse Council Inc., of Washington, the nation's largest private drug research organization, determined that when Oregon eased its marihuana laws to permit possession of one ounce or less of marihuana, the number of users did not increase significantly.

The conference, which concludes today, is being held under the sponsorship of the New York Academy of Sciences, the Department of Psychiatry of New York Medical College, the National Institute on Drug Abuse, and the Drug Abuse Council.

[From the Washington Post, Jan. 28, 1976]

STUDIES SEE NO HEALTH EFFECT OF POT SMOKING, RESEARCHERS SAY

(By Stuart Auerbach)

NEW YORK, Jan. 27—Federally funded studies of long-term users of high-potency marihuana in three foreign countries showed no difference between the health, ability to work, and brain functions of users and nonusers, a number of researchers said here today.

"There are really no differences," asserted Dr. Rhea L. Dornbush of the department of psychiatry of New York Medical College, a co-chairman of a conference on long-term marihuana use sponsored by the medical school, the National Institute on Drug Abuse and the New York Academy of Science.

"As far as we can see," she continued in an interview, "with all the methods we used—with different populations, different investigators, different techniques—it's all coming out the same."

Another conference co-chairman, Dr. Max Fink of the department of psychiatry of the State University of New York at Stony Brook, called "evidence from the meeting fairly clear that chronic cannabis (marihuana) use is not accompanied by so many of the consequences which have been written in the literature in the 1930s and the 1940s."

The thrust of the 32 scientific studies being presented at the three-day meeting, which started here Monday, contradicts earlier findings of possible damage to the brain, to the body's immunological defense mechanism, to the ability to be motivated to work hard and of chromosome damage.

Fink and the third cochairman, Dr. Alfred M. Freedman, insisted all the results clearly showed that there is no brain damage from long-term marihuana smoking. Freedman, head of the department of psychiatry at New York Medical College, is former president of the American Psychiatric Association.

Dr. Sidney Cohen of the University of California at Los Angeles, former head of drug research at the National Institute of Mental Health, added that studies of marihuana users at UCLA and the University of California at Berkeley disputed the notion that smoking pot killed a student's motivation to work.

Early studies had pointed to an "anti-motivational factor" that led to dropping out of college and work as a leading bad effect of marihuana smoking.

But Dr. Glen D. Mellinger, in his studies of Berkeley students, concluded that the dropouts were poorly motivated even before they began using marihuana—and the poor motivation may have led to drug use instead of the other way around.

The studies failed, however, to settle a recent controversy over whether marihuana smoking reduces the amount of the male sex hormone testosterone, as originally reported by Dr. Robert C. Kolodny of the Reproductive Biology Research Foundation in St. Louis.

A comparison of 84 Costa Rican marihuana users with 156 nonusers by a team of doctors headed by W. J. Coggins of the University of Florida turned up no differences in testosterone levels. But Cohen's studies at UCLA backed Kolodny's findings.

Studies of long-term users concentrated on Costa Rica, Greece and Jamaica because there are no groups in the United States who have used marihuana—and no other drug—as consistently over long periods of time. Marihuana use in this country is widespread and growing; Dr. Thomas Bryant of the Drug Abuse Council estimated the number of users at 29 million and 12 million smoke it regularly.

In many foreign countries—especially Jamaica—the marihuana used is as much as 10 times more powerful than that available here. Many of the foreign users smoke as many as 25 marihuana cigarettes a day—far more than regular users in America consume.

Nonetheless, studies showed little if any harm from the marihuana smoking. Fink called the poisonous effects of marihuana, as shown in the studies, "trivial at best."

The results of the conference studies accepted were not university accepted. Dr. Gabriel G. Nahas of Columbia University's College of Physicians and Surgeons, a strong opponent of marihuana use, challenged many of the findings as inconclusive.

In Costa Rica, the University of Florida team headed by Coggins concluded after complete physical examinations of 84 users and 156 nonusers that there was no difference in the health of the two groups. Another team—Drs. Paul Satz and Jack M. Fletcher of the University of Florida and Louis W. Sutker of the University of Victoria—found after giving 17 psychological and brain function tests to 41 users that "chronic marihuana use is not associated with permanent or irreversible impairment in higher brain functions or intelligence."

Despite the exteremely high potency of the marihuana and hashish, Dornbush found that Greek users suffered some impairment when asked to perform complex tasks while smoking. But they could do simple jobs without trouble.

A team of Greek doctors, giving physicals to 60 marihuana users compared with 64 nonusers, also found no difference in the health of the two groups.

In studying the health of American users, Cohen kept 28 men who used marihuana in the UCLA hospital and studied their reactions. He found the lowered testosterone levels and Dr. Donald P. Tashkin, an associate, reported "a mild but significant" narrowing of the passages to the lung probably due to irritation from smoking marihuana.

MARIHUANA AND HEALTH

Fifth Annual Report to the U.S. Congress From the Secretary of Health, Education, and Welfare 1975

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As has been true in the past, preparation of the fifth annual Marihuana and Health Report was made easier by the generous cooperation of the many members of the scientific community who supplied useful information on their current marihuana research. Their contribution is gratefully acknowledged.

The technical chapters were written by knowledgeable members of the research community who generously gave of their time on short notice to maintain a tight production schedule. They are:

Dr. Sidney Cohen, University of California at Los Angeles, Chapter 9 Therapeutic Aspects

Dr. Douglas Ferraro, University of New Mexico, Albuquerque, Chapters 4, 5 and 6, dealing with preclinical unlearned and learned behavior and with chronic effects on both

Drs. Lissy Jarvik and Steven Matsuyama, University of California at Los Angeles, Chapter 8, Effects on the Genetic and Immune Systems

Dr. Reese Jones, Langley-Porter Neuropsychiatric Institute, San Francisco, Chapter 7, Human Effects

Dr. Ralph Karler, University of Utah, Chapters 2 and 3, dealing with Chemistry and Metabolism and with Toxicological and Pharmacological Effects

Dr. William McGlothlin, University of California at Los Angeles, Chapter 1, Epidemiology of Marihuana Use.

Scientists on the staff of the National Institute on Drug Abuse who contributed to the report in a variety of ways include: Drs. Monique Braude, Norman Krasnegor, Daniel Lettieri, William Pollin, Joan Rittenhouse, Louise Richards, Stephen Szara, Robert Willette and Ms. Eleanor Carroll.

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Dr. Robert C. Petersen wrote the summary of the Report and as senior editor had primary responsibility for its overall preparation.

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INTRODUCTION

Marihuana, an issue once marked by emotionalism, is increasingly being examined thoughtfully. Much has been learned about marihuana use and its personal and social consequences. Yet, much remains to be understood. It is clear that marihuana is not a subject for simplistic analysis.

This present edition of Marihuana and Health represents the fifth in a series of annual reports from the Secretary of Health, Education, and Welfare to the Congress as required by Title V of Public Law 91-296. Last year, the fourth report in this series raised fundamental questions about the role of cannabis in altering the body's immune response, endocrine functioning and basic cell metabolism. Although more data are now available, the direct health implications of these earlier laboratory findings are still not certain.

There is little question that marihuana intoxication, like alcohol intoxication, poses significant hazards. For example, psychomotor performance is impaired by cannabis intoxication. This can have dangerous consequences in such areas as traffic safety and industrial performance. Intellectual performance and in particular, immediate memory, are also impaired while under the influence of the drug. Since marihuana is the third most widely used recreational drug -- exceeded only by alcohol and tobacco -- any adverse implications of its use are likely to be far-reaching.

It has become increasingly clear that marihuana use is inextricably bound up with the use of many other drugs. Those who use other licit and illicit drugs are far more likely to use marihuana than those who do not. Conversely, heavy marihuana users are more likely than those who are not, to use other drugs as well. While it was once thought, for example, that marihuana users were less likely to use alcohol than non-users, it is now evident that they are, in fact, more likely to do so. Frequently the two drugs are used simultaneously -- a combination that may be more hazardous than either used alone.

The increasing availability of higher potency materials makes it more likely that adverse consequences will ensue if the use of these stronger cannabis preparations becomes widespread.

This report does not give marihuana a "clean bill of health," as some would hope. Nor does it support the fear and irrationality that still characterize some of the public debate about marihuana. Instead, it is a progress report on our effort to understand a challenging health problem with immense social, political, and economic implications.

This year, in order to provide a somewhat broader perspective, the report is being issued as a general overview accompanied by a series of technical chapters which discuss the research findings in greater detail. In this manner we hope to better serve the needs of both the general reader and the research specialists.

Robert L. DuPont, M.D.
Director
National Institute on Drug Abuse

MARIHUANA AND HEALTH, 1975: SUMMARY AND OVERVIEW

EXTENT AND NATURE OF USE

Present evidence indicates that cannabis use has significantly increased among Americans during the last two years.

Throughout most of its history American marihuana use has consistently involved a minority of any national age group; however, the most recent national survey data indicate that in the 18-25 age group a majority (53%) have now tried the drug, up from 48% in 1972. Among those surveyed under 18, nearly one in four (23%) has ever tried marihuana -- an increase from the one in seven (14%) who reported in the 1972 survey ever having done so.

Current use -- defined as use within the past month preceding the survey -- has also significantly increased among those under 18. Seven percent reported such use in 1972, 12% did so in the most recent survey. There does not appear to have been a similar increase in such use among those over 18 -- among whom current use has remained the same or has slightly diminished depending on age, since 1972.

When questioned regarding their plans for future use, one third of those who have used marihuana indicate they definitely intend to do so again. Another third of this group indicate they might do so. Slightly smaller numbers of adults than of youths indicated their intention to continue use (1-1).

While there has been an increase in use by high school and junior high school age groups (attested to by both local and national survey results), future trends of marihuana use in America continue to be uncertain. Despite the other increases noted, use among adults has not increased. In part, this may be explained by research reported in the fourth Marihuana and Health report: changes such as marriage, parenthood and the assumption of other adult roles are inimical to continued marihuana use.

Support for the above interpretations is also found in data garnered from research conducted on a national sample of 20-30 year old men. This nationwide survey found that even within this restricted age group, larger proportions of the men in the younger subgroups used marihuana than did those who were older. Men pursuing more conventional life styles in that they were married and employed full time, were considerably less likely to be using marihuana than were either the unmarried or the unemployed (1-23).

Although there is good evidence of a continuing increase in marihuana use among younger people, there is little indication that such use has come to involve a significant proportion of the older population. For example, if we examine the behavior of those ages 26-34, in contrast to the 18-25 age group less than one third (29%) have ever used marihuana compared to over half (53%) of the younger group. One in four of the 18-25 group had, in fact, used in the month preceding the survey but less than one in twelve (8%) of those 26-34 had done so. In still older age groups use is even less common. Only 7% of those between 35-49 have ever used and only 2% of those over 50 have ever done so. Less than one in one hundred of the over 35 group had used during the month prior to the interview (1-1).

Despite the indications that marihuana has not become popular with older groups and the evidence that its use may be diminished as adult roles are adopted, any prediction regarding the future of cannabis in American society must be hedged with caution. A Gallup poll conducted in 1967 among college students indicated that only one in twenty had ever used the substance, but by 1974 over half (55%) reported use in the Gallup survey (1-9). In seven years, what was once clearly statistically deviant behavior has become the norm for this age group. While in previous years use was correlated with level of education, the percentage now reporting marihuana use is virtually identical for high school drop-outs, high school graduates and college graduates in similar age ranges.

National trends and use patterns mask distinctly different patterns in particular communities or geographical areas. In one Northern California county in which a survey of junior and senior high school students has been conducted each year since 1968, even the earliest findings indicated over one quarter of the ninth grade males (27%) had had some experience with marihuana during the previous year. Among male seniors nearly half (45%) reported use in the year preceding. Current (1975) comparable figures are now 49% for ninth graders and 64% for senior boys. However, the percentage reporting use on 50 or more occasions in the previous year has not markedly increased for the past five consecutive years (1971-1975) (1-4).

During the past five years since the first Marihuana and Health report, cannabis use in the United States has changed in character. Originally marihuana's popularity was concentrated among young people associated with a "counter culture." It was regarded as symbolic of their opposition to traditional values and to the prevailing political climate (Cf. the first Report, 1971).

*Numbers in parentheses refer to the several technical chapters and their lists of references. Thus, 1-1 refers to reference one in Chapter 1. This is the specific study from which the data are abstracted.

As use has spread to involve larger numbers and to more conservative segments — it has now been experienced by a majority in many groups — it has lost some of its nontraditional, antiestablishment symbolism. Early use often involved opposition to more traditional alcohol use. Now those who use marihuana are also very likely to use alcohol — frequently simultaneously. Marihuana use seems unlikely to displace more traditional alcohol use even among the young. Continuing research on patterns of multiple drug use and drug using contingencies may better enable us to predict both individual and group drug use.

Use patterns in other countries, even those in which cannabis use has been endemic for many years, provide few clues to future use in the United States. In other countries use is typically class related with the lower classes, the traditional users. While in some of these countries of traditional use there are now middle or upper class users, such users seem to have adopted marihuana as part of an international youth culture rather than by diffusion from native users. Expectations with respect to drug effects also differ in that traditional users do not share the recreational orientation that characterizes American users.

CHEMISTRY AND CHARACTERISTICS OF CANNABIS

Although a detailed discussion of developments in cannabinoid chemistry is of primary interest to the specialist, there is a range of developments of more general interest. The plant, cannabis sativa, far from being a simple substance is, in fact, chemically quite complex. The last several years of research have resulted in an increasingly sophisticated knowledge about this complex substance. There is a growing awareness of the need to much more adequately describe several major cannabis constituents if we are to adequately specify the nature of the material. The United Nations has now recommended that all research reports on cannabis describe not only the amount of delta-9-tetrahydrocannabinol (the major psychoactive ingredient) but that of cannabidiol and cannabinol as well.

The ability to synthesize various chemical components of marihuana as well as the drug's metabolites (i.e., compounds resulting from the biological transformation of the originally ingested material) is a significant advance. Availability of such pure substances provides researchers with necessary materials for careful study of the physiological role of marihuana's various components.

While primary interest has tended to center on delta-9-THC because of its role as the principal psychoactive ingredient in cannabis, the part played by several other ingredients may be important in producing other cannabis effects. These other ingredients alone or in combination, may account for possible adverse health consequences or contribute to the possible therapeutic usefulness of the drug.

The detection and analysis of marihuana in body contents such as blood, saliva, urine and breath is a problem important both to basic research and to forensic medical applications. For research, it is important to develop methods that accurately determine how much smoked or otherwise ingested marihuana actually becomes physiologically available. These amounts may be substantially different than the amount ingested because of losses that occur in consuming marihuana, delayed bodily absorption, and individual differences in ability to metabolize the drug.

In the clinical setting, appropriate treatment of the unconscious patient brought to the Emergency Room following an accident may be dependent on knowing whether he or she is marihuana intoxicated. In other medical situations being able to determine with certainty the level or fact of being intoxicated may make the diagnosis of the patient much easier.

The general increase in marihuana use has undoubtedly brought with it an increase in the numbers who drive while cannabis intoxicated. Recent evidence (Cf. Driving Effects) further confirms cannabis adversely affects driving. Thus, there is a real need for the development of one or more roadside methods that can be rapidly employed in much the same way as current tests for alcohol intoxication.

Although simple, rapid detection methods are badly needed, detecting marihuana use is inherently much more difficult than detecting alcohol use. The quantities of drug involved are much smaller and they are very rapidly transformed into metabolites which differ chemically from the originally consumed material. As with alcohol, it is important to quantify the level of use for all of the purposes outlined. During the past year considerable progress has been made in improving detection techniques.

In addition to newer, thin layer chromatography and high pressure liquid chromatography methods, two other techniques have shown unusual promise. Radioimmunoassay (RIA) is a technique in which an antibody specific to a drug or its metabolites is developed and then "tagged" by means of a radioactive molecule in its structure. When a solution of the tagged antibodies and of the body fluid in which the drug to be detected is made, the radioactive markers are displaced proportionately to the drug quantity present. The accuracy of RIA is now being compared with that of more cumbersome procedures.

A second technique under development is called the enzyme multiplied immunoassay test, or EMIT. The antibody reaction which is its basis is similar to that used in the radioimmunosassay technique. EMIT has the added advantages of involving less work, less sophisticated equipment and is more rapid thus making it more suitable for

rapid screening. Field trials on EMIT are ongoing.

A third method which also shows promise of shortly becoming available is likely to be most useful for traffic safety purposes. It utilizes breath samples in a manner roughly analogous to present roadside alcohol intoxication detection.

As has been repeatedly emphasized, marihuana and hashish vary widely in THC content and thus in their ability to intoxicate. This variability results from differences in plant genetic origin, conditions of cultivation and preparation of the material including the degree of concentration of leaves and flowering tops. A relatively recent addition to the illicit market is hashish oil, a substance having a THC concentration of 40-50% as compared to the 1-2% THC content of most marihuana ordinarily available in the United States. Increasing availability of such more potent cannabis preparations may have quite different implications from the more commonly used, weaker preparations that have been available in the past. Use of stronger material, particularly by relatively naive users unaccustomed to its effects, is considerably more likely to result in acute panic and other adverse reactions. Stronger cannabis and cannabis derivatives used under conditions in which the dose is more difficult to control, may also result in marked impairment in driving or other complex psychomotor skills. Such unexpected effects could have serious implications.

ANIMAL RESEARCH

A wide range of research on the effects of marihuana has been conducted with animals because their genetic and learning histories, unlike those of humans, can be accurately specified. Animal models also permit the use of high doses and other procedures not possible in human research. Apart from studies of various physiological effects of the drug which have been discussed primarily in relation to human findings, there are some behavioral observations in animals that are of interest.

Because there has been some question about the role of marihuana as a possible releaser of aggression, studies of animal aggression following marihuana or THC administration have been done. Generally, these drugs have been consistently found to suppress aggression when the animals are not under stress. When animals are stressed by a variety of means (e.g., food deprivation, sleep deprivation, morphine withdrawal, etc.) THC or marihuana tends to increase aggression.

The results of behavioral studies in animals suggest that the effects of cannabis on aggression may be complexly related to the degree to which the animal is subject to stress and the length of time over which it has received the drug. The degree to which these observations are relevant to human behavior is unknown although they do provide a basis for devising related human studies.

In an experiment which studied monkeys in three to six member social groups several changes of interest were found. Given oral doses equivalent to very heavy human cannabis use, the monkeys responded much like humans. They slept and rested more frequently; active social interaction such as grooming of others was reduced. Over more extended periods of administration, the monkeys gradually showed less and less of these effects. While aggression was initially reduced, after receiving THC for weeks or months during the year-long study the monkeys became irritable and aggressive (hitting, biting, chasing behavior increased). There was no evidence of the reduction in testosterone levels that has been reported in humans nor were menstrual cycles of females apparently disturbed (4-67).

More detailed discussion of the extensive research that has been done with animals is to be found in the technical chapters of this report.

HUMAN EFFECTS AND HEALTH IMPLICATIONS

Effects of marihuana can conveniently be divided into: 1) the acute effects of cannabis intoxication and 2) the longer range consequences of regular or chronic use. It is considerably easier to study acute effects and so after eight years of intensive investigations many, if not most, of these effects have been elucidated.

Human Acute Physiological Effects

An increase in heart rate and a reddening of the eyes have been the most consistently reported physiological effects of marihuana. Heart rate increases are closely dose related. Early awareness of this marihuana-induced tachycardia created concern over possible adverse cardiovascular effects of the drug especially in those with coronary disease. Several reports issued in the past year have confirmed a preliminary finding from last year. Marihuana use decreases exercise tolerance prior to the onset of chest pain (angina) in those with heart disease (7-137, 3, 4). Use by those with already existing cardiovascular deficiencies, therefore, appears to be unwise. The contrasting finding that marihuana produces minimal changes in heart function (aside from a rate increase) in young, healthy men illustrates that the drug's effects may significantly differ in persons with pre-existing medical problems from those in normals.

A number of reports have confirmed and extended initial evidence that smoked marihuana when acutely administered, results in improved pulmonary function as measured by bronchodilation (7-156, 157, 158). Optimism created by this finding has since been tempered by evidence that under conditions of more chronic use pulmonary function is impaired, rather than enhanced (7-62).

Evidence that marihuana and especially its principal psychoactive ingredient, delta-9-THC, are effective in reducing intraocular pressure in both normals and in glaucoma patients has been further confirmed. While some question exists whether this effect is due to a nonspecific drug-induced relaxation shared with other sedative drugs or to a more specific marihuana reaction, more recent evidence suggests it is THC-specific (Cf, Therapeutic Aspects).

Understanding of the metabolism and the mechanisms of action responsible for various marihuana effects has increased although many questions remain open.

More sophisticated attempts to measure various aspects of psychological and psychomotor performance have been generally consonant with subjective reports. Impaired memory, altered time sense and performance decrements on a variety of tasks have been experimentally confirmed. Generally, the more complex the task, the greater the degree of disruption produced by acute intoxication. Tasks which are relatively simple and with which the person is familiar are minimally affected. As the task becomes more demanding and novel and/or the dose of drug increases, performance decrements become larger. At lower doses, evidence confirms users' assertions that they are often able to "suppress the marihuana high" when the situations so demand.

Although users have reported enhanced auditory, visual and tactual awareness and sensitivity, experimental research has not confirmed these reports.

Driver Performance and Traffic Safety

Because of the prominent role the automobile plays in our society, the possible implications of marihuana intoxication for traffic safety have been emphasized. Early reports were more optimistic about driver performance than recent evidence. Those consuming alcohol to the level of legal intoxication were originally found to make significantly more driving errors in a driving simulator situation than those who had consumed a "social dose" of marihuana. While the marihuana-intoxicated subjects indicated that their driving performance was affected, they felt they could compensate by driving more slowly and cautiously.

Present evidence, whether derived from driver test course performance, from actual traffic conditions or from the experimental study of components of the driving task, all indicates that driving under the influence of marihuana is hazardous (7-90). The increasing simultaneous use of both alcohol and marihuana by drivers poses a threat that may well exceed that of either substance alone. While the parameters of risk connected with the use of marihuana alone or in combination with alcohol prior to driving are not yet known, discouragement of such use appears justified. A more accurate determination of the extent of risk involved in the various levels of intoxication would be desirable. Such studies are complicated by individual differences but are by no means impossible to execute.

Although there has been little systematic study of the relationship of marihuana smoking to possible pilot error, evidence related to driving is at least partially germane. Such skills as detection of peripheral stimuli and complex psychomotor coordination involved in driving are probably equally important in flying. In fact, the inherently greater complexity of flying suggests that performance is even more likely to be impaired under conditions of marihuana intoxication than is driving. Only one preliminary report of pilot performance has appeared in the research literature. This report indicates that under flight simulator test conditions experienced pilots show marked deterioration in their performance while marihuana intoxicated (7-108). More detailed studies are planned to better understand the nature of the performance deficits produced and their duration. A danger common to both driving and flying is that some perceptual or other deficits may persist for some time beyond the period of subjective intoxication. Under such circumstances an individual may attempt to fly or drive without realizing that his functioning is still impaired although he no longer feels "high."

Chronic Use-Special Problem Areas

Last year's report singled out several special problem areas involving potentially serious adverse consequences of chronic cannabis use. Subsequent research has not definitively resolved the questions raised but has expanded our knowledge base.

Some apparent inconsistencies in research findings regarding reduced plasma levels of the male hormone, testosterone, may be explained by the differing length of time users had been smoking before such levels were assessed. For example, the findings of one study that did not show a decrease during a several week period were matched by those in another study in which there were early negative findings. However, after four weeks elapsed a definite drop occurred (7-100). The decreases that have been found have still been within what are generally conceded to be normal limits. Their biological significance remains in considerable doubt. A preliminary finding that a marked reduction of sperm count (58%) occurred in five cannabis smokers following controlled conditions of smoking has been reported (7-171). While this poses the possibility of diminished fertility in chronic users, the small size of the sample and the study's preliminary nature make the work inconclusive.

With regard to hormonal aspects, two other adverse effects remain possibilities: 1) Inter-

ference with normal growth and sexual development of adolescent heavy users and, 2) Abnormal sexual differentiation of the male fetus developing in a mother who heavily uses marihuana during early pregnancy. No actual evidence for either of these speculative possibilities has yet appeared in the scientific literature.

The question of a cannabis induced impairment of the body's immune response remains important because of its potentially far reaching clinical implications. While a number of investigators have published findings that suggest that marihuana may interfere with cell-mediated immunity, other investigators have not found such evidence. Some of these differences may reflect procedural variations; nevertheless, the clinical significance of the positive findings remains in considerable doubt. At least one study of experienced marihuana smokers under well-controlled, closed experimental ward conditions found initial evidence of impaired immunity upon their admission to the study. However, by the 63rd day of controlled cannabis administration, their immune response had apparently returned to normal (8-39). This finding suggests that the impairment of immunity initially detected in these and other marihuana smokers may be related to factors other than marihuana use.

The implications of laboratory findings of inhibition of DNA, RNA and protein synthesis, all basically related to cellular reproduction and metabolism, are at present unknown. These findings based on in vitro (outside the body) study of animal and human tissue cultures are also being followed up and extended.

Similarly, no conclusive evidence exists regarding damage to human genetic functioning (i.e., chromosomal damage produced by marihuana). While the most carefully controlled studies have failed to demonstrate such damage, the research to date must be regarded as insufficient to permit definitive conclusions.

Presently, preliminary evidence of a range of potentially serious consequences of marihuana use exists. As indicated, these include: Disruption of basic cell metabolism through interference with DNA and RNA synthesis, possible interference with pituitary function, in turn, affecting testosterone production and possibly having other endocrine effects and interference with the body's disease defenses by affecting the immune response. Despite this laboratory evidence, the clinical implications remain in doubt. While no evidence has appeared indicating that marihuana users here or abroad suffer from unusually high rates of infectious disease or cancer which might result from defects in the immune response, carefully controlled large scale clinical studies have not yet been conducted. Similarly, there is no evidence — but neither have there been adequate systematic studies -- to establish whether users have significantly lower fertility rates or more serious problems with impotence than non-users.

The failure to detect gross clinical findings that might be expected does not, of course, mean that these issues have been resolved. To date systematic studies of matched samples have been modest in size. Detection of rarer consequences of use is less likely in studies of limited size and extent. As the number of chronically using Americans increases, larger scale epidemiological studies are becoming feasible. Plans for such studies are underway.

OTHER CHRONIC HUMAN EFFECTS

Tolerance and Dependence

Tolerance to cannabis -- diminished response to a given repeated drug dose — has been substantiated by research evidence. Development of tolerance to marihuana's effects was originally suspected because of the obvious ability of cannabis users overseas to ingest larger quantities of the drug without disruptive effects than was possible for less experienced American users. Systematic, controlled studies in which known doses of marihuana or THC were administered over extended periods have now confirmed this (8-53, 80, 109, 111).

The meaning of cannabis dependence is often somewhat vague. If we define it as a physical dependency manifested by physical symptoms following drug withdrawal, there is now evidence that it can occur. The symptoms that have been reported following discontinuance of high dose chronic administration of delta-9-THC include: Irritability, restlessness, decreased appetite, sleep disturbance, sweating, tremor, nausea, vomiting and diarrhea (8-80). It should be noted, however, that the after effects reported followed unusually high doses of orally administered THC under research ward conditions. Such changes have not commonly been observed in other studies nor has a "withdrawal syndrome" typically been found among users here or abroad.

Psychopathological and Neurological Aspects

The question of possible prolonged behavioral effects of chronic cannabis usage has been an area of fundamental concern throughout the American cannabis research program. As indicated in earlier reports, foreign observers have argued that a range of such effects occurs, including a specific cannabis psychosis, diminished intellectual performance and an "amotivational syndrome" (characterized by a loss of interest in work and other conventional activity). Interpretation of such reports has unfortunately been complicated by the lack of adequate control groups, poor research design, use of opium and other drugs, poor diagnostic criteria, nutritional deficiencies and other differing factors of life style.

Even when a particular consequence is correlated with marihuana use, it is often erroneously attributed to the drug use. A recent study of 38 first admissions to a psychiatric hospital illustrates the problem of interpretation involved: While there was a correlation between marihuana and subsequent psychiatric illness, it was less than with such causally unrelated variables as having danced and having drunk beer (7-2).

The acute panic anxiety reaction, previously mentioned in the discussion of acute effects, is probably the most common adverse reaction. However, a more prolonged cannabis psychosis has been reported in Eastern literature. It appears to occur under conditions of unusually heavy use or as a result of ingesting a larger amount than usual. Descriptions do not always distinguish between an acute brain syndrome or toxic delirium marked by clouded mental processes, disorientation, confusion and marked memory impairment and a more prolonged psychotic reaction precipitated by cannabis use. Often it is difficult to isolate the causative role of marihuana from that of pre-existing psychopathology or other drug use (7-64, 112).

Three NIDA-supported research studies of heavy chronic users conducted in Jamaica, Greece and Costa Rica have failed to detect evidence for a cannabis psychosis. However, given the comparative rarity of this syndrome and the small sample sizes used, it is possible that such a consequence was missed.

Studies of college student performance have generally failed to prove evidence of impaired intellectual performance related to marihuana use.

While there was no evidence of differences in grade point average or in educational achievement, marihuana users in one major study had greater difficulties than non-users in deciding career goals and were more likely to have dropped out of college to reassess their goals (7-11). Some of these studies suffer from several shortcomings, however; the samples studied may not have adequately emphasized college drop-outs thus excluding the very group that might have been most adversely affected by heavy use. A second consideration is that students typically have higher levels of ability than the general population. Particularly in more competitive academic environments, they may have above average motivation allowing them to better compensate for cannabis effects. Finally, even moderately heavy American student users use the drug less frequently, in less potent forms and in lesser quantity than more heavily using overseas populations.

Assessing the psychosocial effects of marihuana use in chronically using populations can be complicated. Changes in values and behavior attributed to marihuana use may, in fact, have preceded use rather than the use affecting the change in values. Especially in earlier years, users were much more likely to hold counterculture, antiestablishment views. For these users marihuana had symbolic value as a means of indicating their disdain for the prevailing value system. This disdain was frequently accompanied by a rejection of the traditional work ethic with its emphasis on competitive achievement. The group dynamics of marihuana use may, however, reinforce these counterculture views of more conventional motivation rather than result from any pharmacological action of the drug itself.

Similarly, attempts to create experimental models for testing the existence of such an "amotivational syndrome" have had serious limitations. Tasks chosen as tests may significantly depart from more realistic work tasks; the artificial environment of the research setting may not provide more typical motivational conditions. Two studies involving marihuana administration coupled with monetary reward for work performance did find a decline in productivity with heavier marihuana consumption. In one the task was simple and relatively undemanding, involving repetitive button pushing that could be carried on simultaneously with other activity (7-111). In the other, a more typical work task -- the making of wooden stools -- was carried on (7-13). The distinction between a direct effect on performance as a result of marihuana and on performance as a result of a decline in motivation is not easily made, however. In a third, quite limited study of agricultural performance undertaken in connection with the Jamaican study of chronic users, researchers found some decline in work performance although the decline was not dramatic (7-141).

When one turns to the neurological evidence there is little question that there are acute effects of marihuana intoxication although these are not easily distinguished from those of other psychoactive drugs as measured by conventional electroencephalograms. The EEG changes resulting from electrodes implanted deeply in the brain are dissimilar to other psychoactive drugs (7-67). The behavioral significance of the EEG changes that have been found in chronically using monkeys and in very limited human studies is not presently known.

Work in Greece has not supported previously cited evidence suggesting that brain damage marked by enlarged ventricles may result from marihuana use. The Grecian study, using non-invasive echo-encephalographic techniques for measurement of ventricle enlargement, found no evidence of such brain damage in heavily hashish using men matched with non-using controls (7-49).

Field Studies of Chronic Users

Although other portions of this and previous reports touch on one or another of the three Federally sponsored studies of chronic marihuana use in Jamaica, Greece and Costa Rica, it may be useful to summarize their findings, strengths and weaknesses here. The Jamaican study has been extensively reported in previous Marihuana and

Health reports, a recently published book and in the research literature (7-141). A report on the Greek study was delayed in order to make the data base as complete as possible. The third study in Costa Rica was just completed; its detailed findings will be released by Spring, 1976. In each of these research efforts, an attempt was made to match drug-using subjects with appropriate non-using counterparts. In the Jamaican and Costa Rican projects rather careful matching was done; in the Greek study such matching was less possible. All subjects were males because male use predominates in the cultures studied. Numbers of subjects were necessarily limited by the detailed procedures followed (Jamaica: 30 experimental, 30 control; Greece: 47 experimental, 40 control; Costa Rica: 40 experimental, 40 control, although 80 and 140 users and non-users respectively were actually examined).

The Jamaican study found few physiological or psychological differences between the matched smoker nonsmoker populations. A rather extensive battery of tests of physical and psychological functioning found no differences that could be directly attributed to marihuana use as such. While an attempt was also made to assess chromosomal abnormalities, that portion of the study must be regarded as inconclusive because of technical deficiencies in the methodology for that phase of the project.

The Greek study arose from a clinical impression by Greek observers that Greek hashish users, because of their heavy use patterns and already established researcher-subject rapport, would make a good study population for examining the effects of unusually heavy cannabis use.

A variety of neurological, psychological and physical measures found few changes attributable to cannabis use. Heavy emphasis was placed on possible brain damage as measured by electroencephalographic, echo-encephalographic (Cf. preceding section) and psychological test procedures. None of these measures showed evidence of brain damage (7-49).

The most recent Costa Rican study also examined matched samples of users and non-users especially carefully matched on such variables as age, marital status, education, tobacco smoking and alcohol use. Emphasis was placed on extensive medical examinations with special attention to pulmonary and neuropsychological functioning. Although detailed results have not yet been published, no evidence for a greater incidence of disease or of psychological deterioration has been found in the cannabis-using group (7-23).

None of the three studies found evidence of increased psychopathology or of an amotivational syndrome stemming from the use of cannabis.

While results of these studies must be regarded as somewhat reassuring of the lack of grossly adverse consequences of marihuana use, they can not, of course, be regarded as conclusive for several reasons. All three studies involve relatively small numbers of subjects. Equally limited studies of cigarette smoking, for example, which is known to have serious adverse health consequences, would not have been likely to detect those consequences. Psychological testing techniques are less apt to be satisfactory when used with subjects markedly different from the original standardization samples. To the extent that they are not culture free, performance for both experimental and control groups in cultures unlike those on which they were standardized may both show a culturally derived deficit. This deficit may mask a drug-related deficit in performance. Thus, the tests used may not be sufficiently sensitive to detect a difference that may in fact exist. Finally, it may be argued that the demands of a less technologically oriented society are less complex than those of the industrialized United States. Thus, the failure to find a drug-related decrement in social or work performance may reflect an unimpaired ability to meet the demands of a simpler situation that would not be true under more demanding circumstances.

THERAPEUTIC ASPECTS

Although cannabis has been used for over 3,000 years as a medicinal herb in native and scientific medicine, its use in Western medicine sharply declined in modern times. By the 1930s, American medicine had largely supplanted cannabis with more convenient and more stable pharmaceutical preparations. Our relatively recent concern with marihuana as a drug of abuse has led to scientific investigation into its properties by means of modern pharmacological techniques. Synthesized constituents of the natural material have been produced enabling researchers to study the properties and effects of each of the components of this complex material. This recent study has reawakened scientific interest in possible therapeutic uses for the natural material or its synthesized ingredients.

Although some of marihuana's properties -- notably its psychoactivity and its tendency to accelerate heart rate -- are undesirable for most medicinal purposes, cannabis has one highly desirable property. Compared to most pharmaceuticals it is very low in biological toxicity. Indeed, it is questionable whether any deaths can be directly attributed to an overdose of marihuana or hashish.

Whether or not cannabis or perhaps some modified constituent again becomes useful in medical practice will depend on whether some of the drug's promising therapeutic properties prove to be sufficiently persistent and its side effects controllable. Marihuana's usefulness as a medication for chronic disorders may also prove to be limited by the development of tolerance to its therapeutic effects.

The most promising therapeutic applications of the drug are in the treatment of glaucoma, as an anti-emetic for cancer patients receiving chemotherapy and possibly in the treatment of

asthmatics. Other applications as a sedative-hypnotic, an anticonvulsant, an antidepressant, an analgesic and in connection with the treatment of alcoholics have been attempted, but the results have either been inconsistent or highly preliminary.

The use of cannabis and THC in treating the elevated intraocular pressures in glaucoma patients arose from the observation in normals that internal eye pressures were reduced by the drug. Subsequent research with patients has confirmed that the effect is also produced in the diseased eye and is as great as that produced by more traditional medications. Topical preparations applied to the eyes of rabbits have successfully reduced pressure raising the possibility of using such a preparation with humans. Human experimentation is not, however, expected in the immediate future because of the formidable problems in making certain that such a preparation is safe and can meet regulatory requirements (9-12, 25, 26).

The use of THC as an anti-emetic with cancer patients receiving chemotherapy shows unusual promise. One of the undesirable side effects of chemotherapeutic agents administered to cancer patients is that they produce marked nausea and vomiting. This side effect is very difficult for patients to tolerate and is also debilitating. Standard anti-emetic drugs have not, unfortunately, been notably successful in reducing this side effect. THC, by contrast, was found in a recent double-blind study (neither patient nor physician knew whether the drug received was active or inert) to be effective in virtually all of the patients receiving it. While 13 of the 16 patients receiving the drug became "high" and one third developed drowsiness, these effects were viewed as minor compared to the therapeutic benefit achieved (9-58).

Use of THC in the treatment of asthmatics is predicated on the observation that it dilates pulmonary air passages and decreases airway resistance (9-64). Based on observations in normals, research with asthmatics has demonstrated that marihuana relieves bronchospasm and has a more persistent action than traditional medication (9-65). Since smoked marihuana has obvious lung irritant properties, more recent research has employed aerosolized THC, also with promising results (9-46).

There has been a growing awareness that constituents other than delta-9-THC may have valuable therapeutic properties if freed of some of the undesirable side effects noted with THC. It is also possible for the organic chemist to produce a very wide range of chemical compounds which are broadly based on the chemical structure of the cannabinoids, but with changes in that structure which can markedly alter their action. Such chemically more remote compounds may ultimately prove more useful therapeutically than either the natural material itself or its synthesized ingredients. Because they are not the parent compounds they must, of course, be carefully tested for toxicity and therapeutic properties like any other new compound.

CHAPTER I

EPIDEMIOLOGY OF MARIHUANA USE

Present Patterns And Changes In Use

National Household Surveys (Adult)

The National Commission on Marihuana and Drug Abuse sponsored national household surveys of marihuana and other drug use in 1971 and 1972 (2, 3). A third national survey conducted in late 1974 - early 1975 provides a comparison with the earlier periods (1). (See Table A-1)

Another national survey conducted for the Drug Abuse Council in 1974 found very similar results. The percentages of adults (18 and over) reporting ever having used and currently using were 18 and 8% respectively (24). As can be seen in Table A-1, the number of adults currently using marihuana has not changed appreciably in the past two years. Usage continues to be concentrated in the 18-25 age bracket and is about twice as frequent for males as females.

Current usage is about equal for white and non-white groups. It is positively associated with education, and is highest for those now in college (33%). Current usage continues to be highest in the West (11%) and lowest in the South (4%), and higher in large metropolitan areas (9%) than in non-metropolitan regions (3%). However, all of these differences have become less pronounced in the past three years.

Because of the relatively small numbers involved, national general population surveys do not provide very accurate estimates of changes in heavy marihuana use; nevertheless, some information is available. The 1971 Marihuana Commission survey reported daily or more frequent use among adults at 0.5%, while the comparable value for 1972 was 1.4%. The follow-on survey in 1974 did not report the rate of daily use, but noted that adult usage of nine or more days in the past month was 2.7%. The 1974 Drug Abuse Council national survey reported 1.5% of the adult sample used marihuana daily or more frequently. These limited data do not appear to indicate a change in adult daily usage in the past two years.

National Household Surveys (Youth)

The results of the Marihuana Commission surveys of youth ages 12-17 and the results of the 1974 follow-on study are found in Table-A-2.

Table A-1

MARIHUANA USE AMONG ADULTS, 1971-1974 (1, 2, 3)

	% Ever Used			% Current Use*		
	1971	1972	1974	1971	1972	1974
All adults	15	16	19	5	8	7
Age:						
18-25	39	48	53	17	28	25
26-30	19	20	29	5		
35-49	9	6	7	1	1	1
50+	6	2	2	-	-	-
Sex:						
Male	21	22	24	7	11	9
Female	10	10	14	3	5	5

*Used during last month.

Table A-2

MARIHUANA USE AMONG YOUTH, 1971-1974 (1, 2, 3)

	% Ever Used			% Current Use*		
	1971	1972	1974	1971	1972	1974
All youth	14	14	23	6	7	12
Age:						
12-13	6	4	6	2	1	2
14-15	10	10	22	7	6	12
16-17	27	29	39	10	16	20
Sex:						
Male	14	15	24	7	9	12
Female	14	13	21	5	6	11

*Used during last month

Another set of national household data collected in a Columbia University study reported quite similar results (8, 16):

	% Ever Used			
Age:	1971	1972	1973	1974-75
12-17	15	15	17	22
16-17	28	31	32	40

However, the 1974 national survey conducted for the Drug Abuse Council reported considerably lower marihuana usage for 12-17 age group, 14% in the "ever used" category and 5% as "currently using"(24). This discrepancy may have been related to the relatively small sample size of 505. This survey also utilized "rider questions" attached to a larger unrelated survey.

The Marihuana Commission surveys in 1971 and 1972 reported daily marihuana usage for the 12-17 age group at 0.6% and 1.3% respectively. The follow-on 1974 survey found 4.4% indicated usage of nine or more times in the past month. The 1974-75 national survey for the Columbia University study found 2% of youth ages 12-17 and 4% of those either 16 or 17 years of age reported using marihuana 60 or more times within the two-month period. While the percentage of daily use was not reported for the earlier years, the 1974 Drug Abuse Council survey reported daily or more frequent usage by 1% of 12-17 age group and 3% of those 16-17.

Student Surveys

A longitudinal study of high school males followed from their senior year to five years after graduation provides an indication of changes in marihuana usage over time in the same group (14, 15). The sample of over 2,000 was selected from 87 public high schools so as to be representative of American males entering high school in 1966. (Data arrayed in Table A-3.)

Another study surveyed drug usage in 22 selected high schools throughout the United States in 1971 and 1973 (16). These data are not necessarily representative of the student population, but do provide an indication of changes in marihuana use over the two-year period. (Table A-4)

A survey of 16,000 male and female high school seniors in 130 schools, selected to be representative of public and private high schools throughout the country, was conducted in 1975 (15) and is to be repeated on an annual basis. The percentage of high school seniors reporting marihuana usage in the 1975 survey were:

Table A-3

PERCENTAGE OF MARIHUANA USE
AMONG A NATIONAL SAMPLE OF HIGH SCHOOL MALES (14, 15)

	Senior Year	One Year After Graduation	Five Years After Graduation
	1969	1970	1974
Ever Used	20	35	62
Any use in prior year	20	33	52
Daily or weekly sometime in prior year	6	9	21
Daily use sometime in prior year	1	2	9

Table A-4

PERCENTAGE OF MARIHUANA USE REPORTED IN 22 HIGH SHOOLS (16)

	Junior H.S.		Senior H.S.	
	1971	1973	1971	1973
Ever used	15	19	38	48
Ever used 60 or more times	2	4	11	17
Used in past two months	11	13	27	36
Used 60 or more times in past two months	1	1	2	4

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	%
Ever used	47
Used in last twelve months	41
Used in last month	29
Used 20 or more time in last month	6

The only regularly conducted national survey of marihuana use among college students is that prepared by Gallup (9). The percentages reporting having ever used this substance in surveys conducted between 1967 and 1974 were:

	%
1967	5
1969	22
1970	42
1971	51
1974	55

One other national student survey conducted in 1974-75 for the Drug Abuse Council found 48% of high school and 64% of college students reported having used marihuana (33, 34). The corresponding percentages for daily use were 6% and 8%.

One local survey of particular interest is that annually conducted among high school students in San Mateo County, California since 1968 (4). Table A-5 shows the percentage of ninth and twelfth grade male students reporting one or more, ten or more, and 50 or more uses of marihuana during the preceding year.

San Mateo County is adjacent to San Francisco, and thus had an earlier and more pronounced exposure to the counterculture movement and associated drug use than did most other areas. This is particularly evident in the figures for the late 1960's. For instance, one year after Gallup found only 5% of nationwide college students had used marihuana (1967), the comparable percentage for senior males in San Mateo county high schools was 45%. The percentage of San Mateo students using marihuana in 1975 is still substantially above the national level; however, the difference is not nearly so large. It is interesting to speculate on the meaning of this narrowing gap. One possibility is that the apparent plateau may be a ceiling and that the growth of marihuana use in San Mateo may have reached its limit. It may also be that other drugs (viz cocaine), not of great interest when the study began in '67, are now luring users away from marihuana. Many alternative explanations for the San Mateo phenomenon are possible; whether the phenomenon or its alternate interpretations have any meaning for the national level is unknown.

In summary, at the national level marihuana use appears to have significantly increased among youth during the past two years. This is indicated by the trend in national household surveys as well as surveys of various high school student populations. This conclusion is contrary to that suggested in the 1974 Marihuana and Health report, when data available at that time seemed to indicate a plateau had been reached (20). It also appears that daily marihuana use has increased among youth, although the available data on changes in daily use are fairly limited.

Table A-5

PERCENTAGE OF MARIHUANA USE AMONG MALE SAN MATEO COUNTY HIGH SCHOOL STUDENTS (4)

	One or more uses in past year		Ten or more uses in past year		Fifty or more uses in past year	
	9th Grade	12th Grade	9th Grade	12th Grade	9th Grade	12th Grade
1968	27	45	14	26	NA	NA
1969	35	50	20	34	NA	NA
1970	34	51	20	34	11	22
1971	44	59	26	43	17	32
1972	44	61	27	45	16	32
1973	51	61	32	45	20	32
1974	49	62	30	47	20	34
1975	49	64	30	45	20	31

Marihuana Use Among Males, Age 20-30

One of the most significant recent studies involved the interviewing of 2,500 selected to be representative of the 19,000,000 U.S. males in the 20-30 age group (23). This group evidences the highest rate of drug use, and the in-depth interviewing of a relatively large representative sample provided more reliable information on marihuana and other drug-using behavior than had previously been available.

The data were collected from October, 1974 to May, 1975 and showed that 55% of those interviewed had at some time used marihuana. Defining as current use any use in the year 1974-1975, the study reported 38% current users. Fifteen percent reported having used marihuana daily or almost daily at some time. Eleven percent reported using marihuana 1,000 or more times, and 11% also reported use within 24 hours of the interview. Hashish use at some time was reported by 29%, and the use of hashish oil by 11%. Surprisingly, 11% of the total sample and 41% of those described as heavy users reported growing marihuana for their own use.

When particular age categories within this group are examined, the data show that 37% of the men who were 29-30 at the time of the interview had used marihuana in comparison to 63% of the 20-24 age group. When those described as light or experimental marihuana users are excluded, the differences are even more striking; 12% of those 29-30 reported use in comparison to 37% of those 20-24. These results indicate that males now in their late twenties are less likely to have tried marihuana than men five to ten years younger, and are considerably less likely to adopt marihuana use as a frequent behavior. Similar or more pronounced differences probably exist for those over 30. For instance, the 1974 follow-on to the Marihuana Commission Survey found 7% of males and females aged 34-49 reported having used marihuana, but only 1% had done so within the past month.

The peak year of first marihuana use for the sample of males between 20 and 30 was 1969; however, the peak year for any use during the calendar year was 1974 when the rate for this group reached 37%. The authors concluded that the data were clearly consistent with an upward trend in marihuana use.

This study also revealed that the differences in marihuana use as a function of various demographic characteristics were not as pronounced in the group sampled as those reported in the general population. In the male 20-30 age group, 70% of those living in cities of over 1,000,000 population had used marihuana in comparison to 43% of those in communities of less than 2,500. In terms of education, the percentage reporting some use of marihuana was almost identical for those with less than high school education, high school graduates and college graduates. Those who had attended college without graduating showed a higher rate. For those aged 20-23 at the time of the interview, the percent having used marihuana was virtually the same for those still in school and those not. A higher percentage of blacks (65%) than whites (54%) reported some use, but the inverse relation of marihuana use to age was not as apparent in the black group. Blacks and other ethnic minorities showed a higher prevalence of marihuana use prior to the late 1960s, but minority youth were less influenced by the recent epidemic (5).

A Synthesis

The overall survey results indicate that marihuana use has not significantly penetrated the portion of the adult population over 30 years of age. Where use has occurred in this group, the frequency has been mostly of an experimental nature. However, the plateau in current marihuana use among adults found in national survey results may be deceptive in predicting future usage. As the more frequently using younger groups enter the adult age range, the overall rates are likely to increase.

Results from both household surveys and student studies indicate that marihuana use is still increasing among youth at the national level, although usage appears to have stabilized in certain areas which reached a relatively high level in the early 1970's. Most of the data on youth also indicate that daily or near-daily usage has increased in the past two to four years.

If recent marihuana usage in the United States is compared with that prior to the epidemic which began in the late 1960's or expecially with patterns of use in countries where cannabis use has been indigenous for many years, some useful perspectives emerge. It is clear that much of the recent American usage is quite minimal, both in terms of frequency of use and amount consumed (21, 27). The patterns of use often seem to be based more on the adoption of a fad or style than an attraction to the pharmacological properties of the drug. This is not to say that, once it is introduced as a fad, marihuana use will not be sustained because of its pharmacological effects.

Based on currently available survey data, it appears that around 2% of youth, aged 12-17 or about 8% of those who have tried it, are currently using marihuana daily. For those 17 years-of-age, around 4 or 5% are probably daily users and for 17-year-old males the percentage is of the order of 6 or 7%, or about 13% of those having tried it.

For adults, the overall daily use is probably only 1 or 2%, but a more meaningful percentage is that for the age groups primarily involved. As described earlier, the percentage of daily use among males 20-30 years of age is around 8 or 9% or 15% of those who have tried marihuana. For males 20-24 years of age, current daily use is around 10 or 11%, or about 17% of those having ever used the drug.

Social and Psychological Correlates

Research on the social and psychological correlates of marihuana use may be organized under three headings: 1) pre-use characteristics; 2) factors influencing transition from non-use to use, including the temporal order of drug-using behavior; and 3) correlates of marihuana use following its adoption. In most instances only statistical associations, as opposed to causal relationships, can be established.

Pre-Use Characteristics

This aspect has been thoroughly covered in earlier research and recent work has largely served to confirm prior findings. Aside from the association of marihuana with routine demographic variables such as those mentioned in the previous section, the majority of variables which predict marihuana use, ranging from a break with traditional values (7, 10, 19) to more severe behavioral and adjustment problems (11) are related to lack of conformity. Smith has found self and peer ratings of rebelliousness to be among the best predictors of high school students who subsequently become marihuana users (29).

Factors Influencing Transition from Non-Use to Use

In a longitudinal study of high school students, Jessor has shown that those individuals who will initiate marihuana use can be identified with considerable accuracy from various personality, belief and attitude measures (13). Furthermore, these measures, such as attitude towards deviance, value of achievement and friends' approval of drug use, show significant changes in the direction of the user group during the period of marihuana initiation. Jessor has found similar results with regard to the initiation of alcohol drinking and sexual behavior.

Several studies have investigated the role of child-rearing practices and parents' drug-using behavior in the initiation of adolescent drug use. One recent study found that perceived laissez-faire parent-child relationships led to high marihuana usage among the offspring; an autocratic relationship led to medium usage; and quasi-democratic or democratic relationships led to low usage (12). Another study found higher rates of marihuana use when the parents showed less disapproval of use, and also when the father used prescription drugs (25). Kandel also found a positive relationship between parents' drug-using behavior and the child's marihuana use, although her work demonstrated rather conclusively that this effect was minor in comparison to peer group influence (17). This emphasis on peer influence is in accord with the thesis of Suchman and others that student marihuana and other drug use is largely determined by the integration into a social subculture in which drug use is a part (31, 32).

One social environment, the military, has apparently proved to have less influence on marihuana and other drug use than was initially believed. O'Donnell, et. al., in their study of 20-30 year old males found that neither domestic nor overseas service had any effect on marihuana use (23). Robins has also found that Vietnam veterans' marihuana use after return was not significantly increased over that for a comparison group who did not enter the military (26).

Since marihuana use is known to generally precede other illicit drug usage, the question is often raised as to the role of marihuana in facilitating the transition or progression to more dangerous drugs. While not specifically answering this question, Kandel and associates have determined that the temporal sequence along the legal-illegal drug continuum is consistent (18, 28). By conducting longitudinal studies of two large samples of high school students, they were able to determine the order in which the various drugs were used. Only 1% of the sample began using illicit drugs without first using a legal drug. Beer and wine collectively constituted by far the most common "entry drug" (28%) with cigarettes accounting for 6% and hard liquor 3%. In addition to the fact that legal drug use virtually always

preceded illicit use, heavy use of both liquor (weekly) and cigarettes (over a pack a day) resulted in a high percentage (40%) moving from non-use to use of illicit drugs in a five month period. Only 2 to 3% of adolescent legal drug users progressed to other illicit drugs without first trying marihuana. If the individual progressed beyond marihuana, the next step was generally pills. Subsequent steps were psychedelics, cocaine and heroin, in that order; but, of course, only a small percentage progressed to the higher levels in the sequence. Heavy use of marihuana or other drugs along the sequence was more often followed by progression to the next step, and also by a higher probability of moving two or more steps during a single time period.

Correlates of Marihuana Use

Although marihuana use has become increasingly common over the past several years, it is not surprising that those who are less conventional in other respects are more likely to use the drug than are the more traditionally oriented. In their national study of males, ages 20-30, O'Donnell et. al., found that those men living in consensual unions (i.e., with a woman to whom they are not married) were more likely to be using marihuana than those living independently, or living in their parental home. Those who were married and living with their wives were least likely to be using the drug (the percentages of current use in ascending order were: married, 25%; living with parents, 38%; living independently, 56%; consensual union, 68%). A similar trend was found in the use of other drugs including alcohol and tobacco (i.e., current drug use of all types was greater by males in consensual unions than among those who were married). Those unemployed at the time of interview were more likely to have used marihuana in some time in their lives than those who were employed (72% of the unemployed had ever used compared to 52% of the employed) (23).

In this same study both self-reported criminal acts and contacts with the criminal justice system (some drug use related) were substantially higher for marihuana users than for the non-users. The authors caution, however, that "the fact that drug use sometimes occurs first and at other times criminal behavior precedes use indicated that if there is a causal connections between drug use and criminal behavior, it is not a simple one" (23). Similar results have been reported in terms of arrests by Brill and Christie (1% for non-users compared to 10% for regular marihuana users) (6).

An Air Force study of some 4500 men reporting marihuana use indicated somewhat poorer performance when compared with a control group of non-users (22). Finally, a longitudinal study of college freshmen found a strong relationship between marihuana and other drug use and the choice of unconventional careers (30). There was also a disproportionate tendency for marihuana users to change in the direction of unconventional careers during the two-and-one-half year follow-up period and the authors concluded, after multivariate analysis, that the results suggest a causal relationship. However, it should be stressed that, in general, studies relating marihuana use to other variables have not established more than a statistical association. It is clear that marihuana usage is frequently part of a larger pattern of nonconformity, but the existence of causal relationships between marihuana use and other behavior have generally not been determined.

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CHAPTER 2

CHEMISTRY AND METABOLISM

Because the drug abuse problem involves marihuana, the study of the pharmacological and toxicological properties of the drug must be pursued; cannabis, however, is a complex mixture of variable amounts of numerous, potentially active substances. The chemistry of marihuana is, therefore, of paramount importance to the investigator, and the recently reported development of relatively simple analytical procedures for the separation and quantitation of the major cannabinoids in marihuana is a significant advance. The effects of marihuana can now begin to be more meaningfully compared in different laboratories, and many of the past problems of conflicting data will be avoided simply by knowing the chemical composition of the sample at hand. Indeed, the United Nations has recommended that all research reports on the properties of marihuana include a quantitative account of the major cannabinoid content of the preparation involved.

Another notable contribution in the field of cannabinoid chemistry was the introduction of a refinement in the synthesis of delta-9-THC, the major psychoactive drug in cannabis. In recent years, the synthesis of delta-9-THC, as well as of other cannabinoids, has been subjected to extensive investigation, which has resulted in a continuous simplification of the synthetic procedures. Such developments have reduced the cost of synthesis and thereby increased the availability of these important drugs for scientific investigation. The long-term significance of the recent refinement must be viewed in the perspective of a long list of many contributions to our understanding of the chemistry of cannabis and its constituents. In the past few years the chemical study of cannabis has resulted in the isolation, characterization and synthesis of numerous constituents of marihuana, thus providing biologists with the opportunity to study the pure drugs. In a classical sense, the chemical advances represent the basis for the rational investigation of the pharmacology and toxicology of marihuana.

New reports of the isolation and identification of some of the metabolites of marihuana continue to represent the most important aspect of research in the area of metabolism. In the human, for example, cannabinol has now been reported as a metabolite, and several new ones have been isolated from urine. It is essential to pursue the identification of marihuana metabolites because the question of what accounts for the pharmacological and toxicological activity of marihuana can only be answered by a study of the constituents of cannabis and their respective metabolites. The importance of metabolism was first demonstrated a few years ago when 11-hydroxy-delta-9-THC, a major metabolite of delta-9-THC, was found to be as active as, or more active than, the parent compound. In the current Marihuana and Health report, the study of the anticonvulsant activity of the cannabinoids has revealed that another metabolite, 8-alpha, 11-dihydroxy-delta-9-THC, is also a very active substance. It is not unreasonable to assume that still other marihuana metabolites will be found to produce significant pharmacological and toxicological effects.

Drug Sources

The detailed chemical analysis of cannabis has been extended to yield more components (4, 43, 44), and investigators have recently identified a new spermidine alkaloid called cannabisativine in an alcoholic extract of the root of Cannabis sativa L. (24).

The importance of the influence of smoking marihuana on the nature of its chemical constituents continues to be recognized (14, 18, 19, 20, 37). A detailed analysis of the pyrolytic products of cannabidiol (CBD) has demonstrated that one of the principal volatile products formed is olivetol, a pharmacologically active chemical precursor of the cannabinoids (19).

The cannabinoids are potentially unstable compounds and their stability in chloroform, a commonly used solvent for extraction and storage of cannabinoids, has been re-examined (51): The results of a three-month storage study support a previous assessment that either synthetic or naturally occurring cannabinoid mixtures are reasonably stable. Other investigators have determined the influence of pH on stability by describing the kinetics of the degradation of delta-9- and delta-8-tetrahydrocannabinol (delta-9-THC, delta-8-THC) at different pH values (12).

More new cannabinoids have been synthesized and examined for pharmacological activity (8, 22, 52), and the synthesis of delta-9-THC has continued to be refined with the introduction of a one-step reaction using either chrysanthenol (35) or p-mentha-2, 8-dien-1-ol and olivetol (34).

Analytical Techniques: Detection

At the present time four principal methods are used for the analysis of cannabinoids: gas-liquid chromatography (GLC), thin-layer chromatography (TLC), mass spectroscopy (MS) and radioimmunoassay (RIA). The chromatographic procedures remain the most useful because they offer either simplicity, as in the case of TLC, or the best combination of sensitivity and selectivity, as in the case of GLC. The GLC methods have been especially useful in the separation and quantitation of cannabis constituents (31). One of these methods, which involves the formation of silyl derivatives and 2 % OV-17 chromatography columns (49), has been extremely valuable for the elucidation of the major components of cannabis. This method, referred to in the 1974 Marihuana and Health report (25), demonstrated that previous GLC analyses of cannabis failed to separate CBD from cannabichromene (CBC); hence, some CBD samples used in pharmacological studies were probably significantly contaminated with CBC. The recognition of the prevalence of CBC in some cannabis samples should prompt a re-evaluation of the pharmacological effects of pure CBD and an evaluation of the pharmacological properties of CBC, alone and in combination with CBD.

The variability in cannabis composition has led the United Nations to recommend that all scholarly reports on the effects of cannabis include a quantitative analysis for CBD, cannabinol (CBN) and delta-9-THC content; the GLC method described above was recommended for this purpose. Subsequently, the same research group published another GLC method which does not require derivatization, but still provides satisfactory separation of CBD and CBC (50). The relative simplicity of this procedure suggests that it is the current method of choice for the analysis of cannabis for its principal cannabinoid constituents.

New TLC methods for the cannabinoids continue to be developed (9, 16, 17, 29, 48). A two-dimensional TLC system has been described as capable of separating 27 constituents of hashish resin, including CBD, CBN, delta-9-THC and CBC (29). This technique uses silica-gel plates and the solvents n-pentane-diethyl ether-ethyl acetate (90:8:2) and n-pentane-acetone (90:10). In another report a new procedure for extracting urine enables the cannabinoid metabolites to be separated into neutral, weak and strong acid fractions, which can be easily fractionated further by TLC (17). In addition, the use of methanol to extract delta-9-THC and its metabolites from tissues was found to yield higher recoveries than other common extraction methods (38). Finally, the factors that influence the stability and color intensity of the chromogen-cannabinoid products have been identified as chromogen basicity, residual solvent and chromogen dyestuff (9).

High pressure liquid chromatography (HPLC) represents a new and potentially useful technique for cannabinoid analyses. The great separatory capability inherent in HPLC should lend itself well to the general problem of resolving complex cannabinoid mixtures. A recent report has described the use of dansyl derivatives for the fluorometric detection of cannabinoids separated by HPLC (1). The results obtained from the analysis of cannabinoid standards illustrate that the combination of dansyl derivatives and HPLC provides a method with the sensitivity and selectivity of GLC and mass fragmentography. This method has recently been used effectively in an examination of cannabinoid metabolites in dog feces (23). Furthermore, it is interesting to note that HPLC has been used to separate quantitatively delta-9-THC from other plasma heptane extractable substances (e.g., lipids) that can interfere with the GLC analysis of such extracts (11).

Since the pioneer mass spectroscopy work with cannabinoids by Agurell, et. al. (56), which was summarized in the fourth Marihuana and Health report (25), the technique has played an important role in the identification of individual cannabinoids. The inherent sensitivity of the technique lends itself well to the potential measurement of cannabinoids in biological samples; and workers at the Research Triangle Institute have developed a method for the quantitative analysis of human plasma for concentrations of delta-9-THC as low as 0.5 ng/ml (58). Mass fragmentographic methods have also been used in a number of other studies (16, 23, 29, 43, 44, 57).

Several reports have also appeared describing the use of RIA for the detection of cannabinoids, particularly in body fluids (13, 26, 46, 47). In addition, two new immunoassay techniques are under consideration: homogeneous enzyme immunoassay (36) and free radical immunoassay (6). The most appealing feature of immunoassay is its great sensitivity, but limited selectivity continues to restrict its applicability.

Metabolism

The continuing study of the biological disposition of the cannabinoids has yielded a greater understanding of factors affecting their metabolism, the nature of their metabolites, their distribution in the body and, finally, the routes of their excretion. Research into hepatic microsomal metabolism was designed to define the optimal in vitro conditions for the metabolism of delta-9-THC (40). The influence of several cannabinoid vehicles on delta-9-THC metabolism was evaluated, and apparent Km and Vmax values were determined. The pattern of metabolite production was followed as a function of duration of incubation.

Twenty-four hours after oral administration, crude cannabis resin was found to increase both pulmonary and hepatic aryl hydrocarbon hydroxylase activity in male rats (42). The stimulus for this effect may have been the trace quantities of benzo-(alpha)-pyrene found in cannabis resin. In another experiment, the rate of delta-9-THC metabolism both in vivo and in vitro was increased by the daily pretreatment of rats with phenobarbital (39). Despite an increased rate of metabolism, neither the apparent Km nor Vmax was altered. The phenobarbital effect was compared with the response in tolerant animals: In vitro, the rate and pattern of metabolism was unchanged, and, in vivo, the amounts of cannabinoid in tissue and its disappearance from blood was also unaffected. The data suggest a functional, rather than a dispositional, basis for tolerance.

Various drugs have been examined in terms of their effects on the in vitro and in vivo metabolism of delta-9-THC (41): Pentobarbital, phenobarbital, SKF 525-A, amphetamine and meprobamate all inhibited delta-9-THC metabolism in vitro; under similar conditions morphine and mescaline had no effect. In contrast to these general findings, only SKF 525-A affected delta-9-THC metabolism in vivo. It appears, therefore, that the in vivo interactions between delta-9-THC and other centrally acting drugs cannot be explained by an alteration in delta-9-THC metabolism.

Recent examinations of the delta-9-THC biotransformation products of rabbit and dog liver microsomes have revealed the presence of 1, 2- epoxyhexahydrocannabinol (3, 55); and a comparison of metabolites from the perfused dog lung and from dog hepatic microsomes has led to the discovery of side-chain hydroxylated derivatives (55). Moreover, there is now evidence that CBN and its oxidized derivatives are normal metabolites of delta-9-THC. CBN has been identified in human plasma following marihuana smoking (27), in rat bile (54) and in rat blood (28) after intravenous injection of delta-9-THC. Oxidized metabolites of CBN have also been identified (2, 5); and a new metabolite containing two carboxyl groups has been isolated from rabbit urine (30). Both rat and rabbit liver microsomes were found to convert CBN into a number of side-chain hydroxylated compounds (53). In addition, marihuana metabolites in human urine have been extracted by a new method which separates them into neutral, weak and strong acid fractions (17).

Various aspects of the distribution of the cannabinoids in the body have been investigated: Thus, one research group has found that the properties of delta-9-THC in plasma are a function of the method of administering the drug (10). In this study, delta-9-THC was administered either intravenously in polyethylene glycol or in rat serum, or in the form of cannabis smoke. Plasma disappearance curves varied, depending upon the method of administration, and, compared with the other two means of administration, injection in serum resulted in a slower elimination from plasma, a lower proportion of metabolites relative to delta-9-THC and a different distribution of binding to plasma proteins.

Other investigators found that the plasma-protein distribution of delta-9-THC after intravenous administration differs in female and male rats (7); and at all doses tested, the response in females was more pronounced. The latter finding correlated with that of higher tissue concentrations of delta-9-THC and its metabolites in the female; therefore, the enhanced activity of delta-9-THC in the female rat may be due to the higher tissue cannabinoid concentrations in the brain.

The relationship between tissue-drug concentration and pharmacological activity was extended in a comparative study of the effects of delta-9-THC and dimethylheptopyran (DMHP) on mouse immobility (21). Like delta-9-THC, the brain concentrations of DMHP and its hydroxylated metabolite correlated with the behavioral effect (21). Despite DMHP's greater potency, the fraction of the dose in the brain was smaller than that of delta-9-THC; thus, the potency difference between delta-9-THC and DMHP appears to be a consequence of the latter's greater activity at the site of action.

Plasma concentrations of delta-9-THC, 11-hydroxy-delta-9-THC, CBN and CBD were measured by radioimmunoassay as a function of time after their intravenous administration in the rabbit (45). Delta-9-THC was unlike the other drugs, because plasma values for reacting substances rose for several minutes after injection, presumably due to the rapid formation and re-entry of the 11-hydroxy metabolite into the plasma. In humans, this metabolite leaves the plasma more rapidly than does delta-9-THC (33); an observation that has been confirmed in mice (32).

In a study of lactating ewes, both delta-9-THC and its metabolites were recovered from the milk for as long as 96 hours after administration of a single, intravenous low dose (15). Other investigations have shown that biliary excretion in rats accounts for the elimination of 60% of an intravenous dose of delta-9-THC (3mg/kg) (40), that biliary excretion remains unchanged when tolerance to THC develops (39), and, finally, that most of the metabolites in the bile are highly polar substances.

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CHAPTER 3

TOXICOLOGICAL AND PHARMACOLOGICAL EFFECTS

The toxicological research reviewed in the present Marihuana and Health report is the result of the continuing need to identify and evaluate the toxicological properties of marihuana. To fill this need, a series of inhalation toxicity studies have made two major contributions. First, in the absence of detailed pathological studies in humans, marihuana has been administered to numerous species in a wide range of dosages by a variety of routes--including inhalation. The report that chronic administration of low doses by smoke inhalation results in a toxicity comparable to that elicited by other routes of administration serves to validate the conventional animal toxicity studies which are based on either the oral or parenteral route. Accordingly, the mass of animal data collected in the past few years leads to the conclusion that, to date, regardless of the route of administration, the observed toxicity of marihuana is not associated with any serious pathological changes.

Secondly, until the inhalation studies, most cannabinoid toxicity research was restricted to the principal psychoactive constituent of cannabis, delta-9-THC; now, however, cannabidiol and cannabichromene--both formerly considered pharmacologically inactive--are known to contribute significantly to the toxicity and lethality of marihuana. Clearly, future toxicological evaluations of cannabis constituents must be extended to all the major, naturally occurring cannabinoids, both alone and in various combinations.

Another important aspect of toxicological research arises from the reported effects of marihuana on such cellular components and products as lipids, proteins, nucleic acids, hormones and neurochemical transmitters. An association between some of these effects and animal behavior has now been made; most, but not all, of the changes appear to be readily reversible. These cellular effects and their implications are not easily understood, but they may reflect subtle alterations in function independent of any gross pathological changes. With chronic drug exposure, however, these subtle changes may evolve into significant toxicological factors.

The study of the pharmacological properties of marihuana is important for at least three reasons: 1) to define its effects, particularly its possible toxic effects; 2) to determine the potential interaction of its effects with various pathological states (e.g., coronary artery disease, liver disease, epilepsy); and 3) to evaluate the potential therapeutic uses of the cannabinoids. During the past year there have been significant contributions to the attainment of all these objectives. Several studies have recognized the ability of the cannabinoids to interact, not only with one another, but more importantly, with other drugs; the interaction in some instances results in the enhancement of a drug effect, in others in an antagonism. Such a complex set of effects has been described in the case of the barbiturates, the amphetamines and alcohol. The significance of this interaction potential is obviously not limited to drugs used only for illicit purposes: From the reported interaction effects, the concurrent use of marihuana with licit drugs could

conceivably result in an increased toxicity, a diminished therapeutic effectiveness or, even, an enhanced therapeutic effectiveness.

Another report of a potentially significant drug interaction centers on the delta-9-THC blockade of the morphine-abstinence syndrome. If this effect is confirmed, then the characteristics and consequences of the interaction should be defined further, particularly with reference to other drugs known to block the opiate-abstinence syndrome.

The pharmacological studies included in the present Marihuana and Health report reveal the toxic influence of marihuana on pre-existing pathological states (62): Thus, the clinical description of the adverse effect of smoking marihuana on cardiac function in patients with coronary artery disease is a significant contribution toward a more comprehensive picture of the toxicity of cannabis. There are also reports of animal data indicating that the use of marihuana may adversely affect the control of seizures. This interpretation is based on several observations of marihuana's central-nervous-system excitatory properties and on the hyperexcitability following withdrawal from repeated delta-9-THC treatment. These potentially unfavorable interactions with epilepsy may be independent of the anticonvulsant properties of marihuana, as is the case with some antiepileptic drugs, such as phenobarbital.

The Report (62) contains descriptions of two pharmacological effects that have definite clinical potential: The decrease in intraocular pressure and the anticonvulsant activity, both of which are described in sufficient detail to warrant serious consideration of their therapeutic application. Furthermore, the quantitative evaluation of the relative anticonvulsant and neurotoxic activity of several cannabinoids has demonstrated that a potentially useful therapeutic effect of cannabidiol is at least partially separable from the motor toxicity of marihuana, a finding which is further supported by the report of cannabidiol's complete lack of psychotoxicity in humans. A comparable pharmacological selectivity for other cannabinoid effects deemed potentially valuable clinically is thus a distinct possibility. Finally, the introduction of numerous synthetic cannabinoids presents an opportunity to search for the most appropriate agent for any given desired effect.

Toxicological Effects

Investigators have continued to evaluate the toxicity associated with chronic exposure to the cannabinoids using various routes of administration and several different species. Experiments have been of two basic types: those designed to study lethal effects produced by the chronic administration of massive doses, and others designed to study sublethal toxicity produced by relatively low doses, such as those commonly used by humans. The chronic low-dose work now includes rat studies of toxicity following smoke inhalation (71): The daily doses given to 1-, 5- and 23-day exposed animals were analogous to those taken by humans, and the results indicate that inhalation of delta-9-tetrahydrocannabinol (delta-9-THC) can produce the characteristic marihuana central-nervous-system (CNS) toxic effects (depression and excitation) elicited by other routes of administration. These effects, like those associated with other routes of administration, appeared in the absence of any pathological changes, and tolerance ultimately developed to most of them. In a study of the inhalation toxicity of Turkish marihuana (high in cannabidiol and cannabichromene and low in delta-9-THC content) rats were daily

exposed to smoke 5 days per week for 25 days (72). This treatment resulted in various manifestations of CNS depression and in a dose-related lethal effect--respiratory arrest; such results demonstrate that cannabidiol (CBD) and cannabichromene (CBC) can contribute to the toxicity of marihuana.

Massive oral doses of delta-9-THC or crude marihuana extract administered to rats daily for 28 to 91 days have been used to determine toxic neurochemical effects (59): After 28 days of treatment, significant decreases were observed in total brain protein, ribonucleic acid (RNA) and acetylcholinesterase activity. These neurochemical changes in rats coincided with the appearance of the CNS stimulation (fighting behavior and convulsions) characteristic of chronic marihuana treatment, and, like neurotoxicity, were partially reversed by 91 days of continued administration.

In a study similar to that described immediately above, neurochemical changes were evaluated in rats treated for as long as 180 days; in this instance, however, the doses were relatively low--2, 10 or 50 mg/kg/day orally (60). The two lower doses of delta-9-THC were again analogous to the drug content of the marihuana and hashish consumed by humans. (This work is the counterpart of a low-dose, chronic-toxicity study (74) referred to in the 1974 Marihuana and Health report (62). Neurochemical analyses of four areas of the brain (frontal cortex, parietal cortex, subcortical regions and cerebellum) were made at various times after the initiation of chronic treatment and generally showed neurochemical changes comparable to those produced in the massive-dose study described above. In the lower-dose study, however, changes required longer periods of treatment to appear and varied in the different areas of the brain. Some of the behavioral and neurochemical changes were sex-linked, and several occurred after the development of tolerance to the behavioral effects. Furthermore, a few of the neurochemical alterations were reversible, even after a 30-day recovery period.

Neurotoxicity and EEG effects of chronic oral treatment of rats and rhesus monkeys have also been described (79, 80). In rats acute treatment with 10 mg/kg delta-9-THC increased the frequency of surgically induced polyspike activity, while chronic treatment resulted in subcortical spike bursts with concomitant seizures. In the rhesus monkey chronically treated with crude marihuana extract equivalent to 12.5 mg/kg delta-9-THC or more, the neurotoxic manifestations always preceded and outlasted the effects on the EEG, and tolerance developed more rapidly to the EEG effects than to the neurotoxicity. The results suggest that the neurotoxic effects become manifest at lower doses than the characteristic EEG effects, findings similar to those previously reported in humans.

Monkeys treated intravenously (i.v.) with delta-9-THC exhibited, at the injection site, such toxic reactions as edema, necrosis, ulceration and fibrosis (83). In order to elaborate the local toxicity findings, the drug was chronically administered subcutaneously (s.c.) to rabbits in doses ranging from 15.9 to 153.4 mg/kg/day. The dermal responses, which were generally dose-related, included erythema, edema, ulceration and nodule formation. These results illustrate that the use of marihuana i.v. may be accompanied by local toxic reactions. The chronically treated animals displayed dose-related decreases in body and liver weights, in glycogen content of the liver, and in blood sugar and alkaline phosphatase activity; serum potassium concentration was elevated. As in other chronic toxicity studies from this group, no pathological tissue effects--other than those at the injection site--were discernible.

A study of the influence of different routes of administration and vehicles on the lethal dose 50 (LD50) values of delta-9-THC has also been made (73). The oral LD50 for delta-9-THC in an aqueous emulsion of sesame oil and polysorbate 80 was similar to that obtained with a pure sesame-oil vehicle, indicating that the composition of the emulsion did not affect the LD50. Furthermore, the i.v. LD50 for the same aqueous formulation was essentially identical to the inhalation LD50. In general, the results established the validity of the i.v. route of administration in the investigation of the pharmacology and toxicology of marihuana-like substances.

The continuing interest in the carcinogenic potential of marihuana smoke has brought forth a report that marihuana tar painted on mouse skin produced a variety of effects on squamous cells, including metaplasia of sebaceous glands (20). This good correlation with the established carcinogenicity of tobacco smoke led the investigators to conclude that cannabis smoke will also be carcinogenic, a conclusion which is supported by bioassays of marihuana tar on mouse skin. Both tumorgenicity and tumor-promoting activity were revealed although at levels significantly lower than those resulting from tobacco smoke (41). This contrasts with in vitro observations on human lung explants which suggest that cannabis smoke may be more carcinogenic than tobacco smoke (91).

In another investigation, marihuana smoke produced a dose-dependent depression of the bactericidal activity of pulmonary alveolar macrophages; the effect was related to a water-soluble constituent in the smoke rather than to delta-9-THC (23). It is possible that the toxicity of marihuana smoke to the alveolar macrophage may impair the ability of this cell to function in the host-defense mechanism of the lung.

Numerous reports have appeared describing the effects of delta-9-THC on the endocrines. The main thrust of research in this area has aimed at pituitary and gonadal hormones. (See Appendix G "Human Effects" for a detailed review of the latter.) One of the previously reported effects of heavy marihuana use in humans was gynecomastia (37). This effect has now been produced in rats given 1 mg/kg delta-9-THC s.c. for two to three weeks (38). In a related study, delta-9-THC in male rats increased pituitary weight, total pituitary prolactin and the concentration of prolactin in serum (24), but in a similar study, delta-9-THC decreased, rather than increased, serum prolactin concentrations (57). The discrepancy in these results may be due in part to differences in dosage: The effect in the former study was obtained at 16 mg/kg, whereas in the latter study the highest dosage employed was 10 mg /kg. In humans, marihuana use has had no apparent effect on serum prolactin. The gynecomastia described above was associated with normal serum hormone values, while another group of chronic marihuana users was also normal (56).

Research into the effect of delta-9-THC on other pituitary hormones has indicated that in rats delta-9-THC in doses of 5 to 20 mg/kg inhibited growth hormone and stimulated adrenocorticotropic hormone secretion; daily administration of 20 mg/kg for 20 days did not produce tolerance to these effects (55). The findings suggest that delta-9-THC acts as a stress stimulus of the hypothalamic-pituitary axis. A similar response to delta-9-THC in the mouse was evidenced by an increase in corticosterone concentration in plasma (69), although tolerance to the effect on steroid secretion rapidly developed in this species. The work of one group of investigators has shown an inverse relationship between plasma corticosterone and the amount of 5-hydroxytryptamine in whole brain. A positive

correlation between the steroid value and aggressive behavior in ovariectomized rats following chronic cannabis treatment was found (66). Aggressiveness was abolished by estrogen treatment, suggesting that previously described sex differences in response to cannabis may, in part, have been due to female variability during different phases of the estrus cycle.

The inhibitory effect of delta-9-THC on the secretion of growth hormone also manifested itself in prepuberal male rats (17), but in adult female rats high doses of the drug (50 mg/kg) elevated serum growth hormone values (28). In a study of male mice chronically treated with delta-9-THC, growth was depressed in a way similar to that seen in estradiol treated animals, suggesting that delta-9-THC can exert an estrogen-like effect (78).

Pharmacological Effects

The similarities in psychological actions between the liqueur absinthe and cannabis have led to a molecular structural comparison of their active principles, thujone and tetrahydrocannabinol (26). Because the substances have a similar molecular geometry and similar functional groups, they may exert their psychic effects by interacting with a common receptor in the CNS. The receptor should have a binding site for oxygen, a planar region for the allyl group and pockets, or cavities, for fitting with alkyl and hydrogen groups that are common to both drugs. The importance of the phenolic hydroxyl group in tetrahydrocannabinols in eliciting delta-9-THC-like activity in animals has also been established (86).

Studies of the effects of delta-9-THC on sleep-wakefulness patterns referred to in the 1974 Marihuana and Health report (62) have been expanded to include the male squirrel monkey whose patterns are similar to those of the human (1). Chronic treatment reduced slow-wave sleep time, which failed to return to normal, even after a 30-day recovery period. In addition to this change in sleep pattern, the time spent in Stage 1, or drowsy sleep was increased in treated animals and this change also persisted throughout the recovery period.

The analgesic activity of delta-9-THC has now been described in the dog, as well as in the rat, mouse and rabbit (54). Tolerance, which has been found to develop to such other effects in the dog as ataxia and sedation, also developed to the analgesic effect. Two cannabinoid-free extracts (an aqueous extract and a volatile oil) of marihuana also were found to elicit analgesia in mice. The analgesic potency of the extracts was much lower than that of delta-9-THC, but the nature of the analgesic material and its interaction with delta-9-THC are still unknown.

Many cannabinoids, in addition to delta-9- and delta-8-THC, are known to be anticonvulsants: These include cannabinol (CBN), dimethylheptylpyran (DMHP) and some of its isomers; 11-hydroxy-delta-9-THC (46); 8-alpha, 11-dihydroxy-delta-9-THC (45); and some new benzopyrans (70). Moreover, the activity of CBD has been confirmed and the compound subjected to a variety of seizure tests which have demonstrated that in its anticonvulsant properties the drug more closely resembles diphenylhydantoin (DPH) than does delta-9-THC (44, 49, 85). The interaction of CBD with other anticonvulsant drugs has also been described in studies that generally show that, in a maximal electroshock test in mice, CBD clearly enhances the potency of delta-9-THC, DPH and phenobarbital (PB). The determination of the protective indices (toxic dose/anticonvulsant dose) of several cannabinoids in mice indicates that motor toxicity is a separable effect from anticonvulsant activity

(46); for example, compared with delta-9-THC, DMHP is relatively more toxic and CBD significantly less toxic. Furthermore, the separation of toxicity from anticonvulsant activity is dramatically illustrated by the report that massive i.v. doses of CBD in humans do not produce either the marihuana-like psychotoxicity or tachycardia (68).

In rats and mice subjected to a maximal electroshock test, tolerance to the protective effect of delta-9-THC and CBD rapidly developed (46, 47), but a similar response to repeated treatment was associated with DPH and PB (47); in addition, tolerance to delta-9-THC or CBD involved cross-tolerance to DPH and PB (47). Tolerance has also been described for the antiseizure activity of delta-9-THC in the gerbil, but in this case it did not develop to the neurotoxic effects (82). It should be noted, however, that a study of the influence of repeated daily drug treatment on the results of several anticonvulsant tests indicates that tolerance does not develop to all the anticonvulsant properties of the cannabinoids (48). In fact, in some tests anticonvulsant activity increased, rather than decreased, with repeated treatment. Similar results were obtained with DPH but not with PB. The evidence suggests that the tolerance observed is not a dispositional but a functional adaptation. For example, in one study tolerance to protection against a maximal electroshock developed concurrent with an accumulation of cannabinoids in the CNS and increased sensitivity to cannabinoids in certain anticonvulsant tests, while no change occurred in plasma delta-9-THC concentration or in barbiturate sleep time (48).

Previous reports mentioned descriptions of some excitatory properties of delta-9-THC, especially in conjunction with toxicity produced by chronic, high-dose treatment. Withdrawal from repeated treatment with anticonvulsant doses of delta-9-THC also resulted in CNS hyperexcitability, as measured by a decrease in the 6-Hz-electroshock threshold test for minimal seizures (49, 50); no such withdrawal increase manifested itself in the case of CBD or DPH. On the other hand, withdrawal hyperexcitability to delta-9-THC could not be demonstrated when pentylenetetrazol (PTZ) was used to elicit minimal seizures (11). Following low-dose, i.v. administration, convulsant effects of delta-9-THC have been observed in a special strain of rabbits (19). Furthermore, delta-9-THC administered i.v. to the photosensitive baboon Papio papio resulted in an epileptiform EEG response, 3/sec rhythmic spikes and waves (63); no doses were anticonvulsant against the photically elicited myoclonic activity, but high doses (1-5 mg/kg) enhanced seizure responses in some cases.

In the area of cannabinoid hypothermic activity, one recent study compared several cannabinoid preparations with chlorpromazine in mice (58) and ranked them in order of decreasing potency as follows: chlorpromazine, marihuana extract, distillate, DMHP, delta-8- and delta-9-THC. Tolerance to the effects of both delta-9-THC and chlorpromazine rapidly developed, although more rapidly to the former drug. Antipyretic activity for delta-9-THC, suggested by previous reports, has now been confirmed in mice (16). Additionally, with respect to the mechanism which lowers body temperature, the results from direct and indirect calorimetry measurements suggest that delta-9-THC-induced hypothermia is associated with both a decrease in heat production and an increase in heat loss (4, 88). In brain, some investigators have found a decreased tissue metabolic rate following in vivo drug administration and a subsequent tolerance (64). Such an effect on metabolic rate could be mediated by either a direct or indirect action of the cannabinoids: A direct effect of several cannabinoids on tissue oxygen consumption in vitro has

been described by another research group (14) who reported that the cannabinoids depress the oxygen consumption of homogenates of liver, heart, brain and skeletal muscle. Moreover, mitochondrial preparations from the latter two tissues were studied further and their metabolic rates were also depressed. The dose-response data from the oxygen consumption research indicate that hypothermic doses of delta-9-THC yield tissue-drug concentrations sufficient to depress metabolic rate directly.

Recent research into the cardiovascular effects of marihuana has yielded a number of studies on various facets of this subject (cf. 15). For example, it has been found that in rats tolerance does not develop to the bradycardia commonly associated with chronic marihuana treatment (53). In addition, the effect of delta-9-THC on cardiac function has been described in pentobarbital-anesthetized dogs with an electrically maintained constant heart rate (9). In this study, the drug decreased aortic blood pressure, cardiac output, left ventricular peak pressure and left ventricular end-diastolic pressure, but the contractility index was not affected. The decrease in cardiac output could be restored to normal by elevating left ventricular end-diastolic pressure with an expansion of plasma volume. In dogs with a maintained constant cardiac output, delta-9-THC decreased blood pressure and total peripheral resistance, but increased intravascular blood volume. These results indicate that the delta-9-THC-induced decrease in cardiac output in the presence of constant cardiac rate is due to a decreased venous return, rather than to a decrease in myocardial function.

In a study using spinal preparations, delta-9-THC exerted no cardiovascular effects; hence, the role of the CNS in mediating delta-9-THC's effects on heart rate and blood pressure was investigated in cats anesthetized with chloralose (87). Spinal transection (C1-C2) abolished the drug-induced bradycardia and hypotension. The delta-9-THC-caused bradycardia was also blocked by the surgical removal of tone to the heart, but neither heart-rate nor blood-pressure effects were modified by bilateral vagotomy. Sympathetic outflow in the inferior cardiac nerve decreased after delta-9-THC administration although peripheral sympathetic functions were unaffected; thus, the cardiovascular effects of delta-9-THC appear to be due to a CNS action which results in a decrease in sympathetic tone.

Other investigators have examined the relationship between the sympathetic nervous system and delta-9-THC's cardiac effects in terms of changes in the uptake of noradrenaline by the heart and have found that delta-9-THC, like cocaine, can decrease in a dose-related manner the uptake of noradrenaline by the isolated, perfused rat heart, although cocaine appears to be about ten times more potent than delta-9-THC (32). The significance of such effects is not yet clear, but of great interest is the report that smoking marihuana can adversely affect cardiac function in patients with angina pectoris (3). In these patients, smoking one marihuana cigarette containing 19.8 mg delta-9-THC decreased exercise performance significantly more than smoking one placebo cigarette.

The cannabinoids' ability to decrease intraocular pressure is still inciting investigation and several congeners of delta-9-THC, administered either systemically or topically, have now been tested. These are listed in order of decreasing efficacy: 11-hydroxy-delta-9-THC; delta-9-THC; 8 alpha, 11-dihydroxy-delta-9-THC; SP111A; other derivatives (33). Delta-9-THC can decrease the pressure in the rabbit eye by 25% and increase outflow capacity by 70% and the role of the

sympathetic nervous system in mediating these effects has been established (34, 35, 36). The alpha-response is an enhanced total outflow facility and the beta-response is a vasodilatation of the efferent vessels from the anterior uvea, thereby causing a decrease in the formation of aqueous humor. Part of delta-9-THC's effect on intraocular pressure appears to be mediated through these actions on sympathetic receptors; but most arises from a central effect.

The influence of cannabinoids on biogenic amines continues to be a focal point for studies of their mechanism of action. In a rat study of repeated delta-9-THC treatment on brain metabolism of 5-hydroxytryptamine (5-HT) and norepinephrine (NE), the products of metabolism were isolated from whole brain following the intracisternal administration of radiolabelled 5-HT or NE (40). Chronic treatment yielded a decrease in the metabolism of 5-HT but an increase in that of NE. In another study in the rat, the effect of hypothermic doses of delta-9-THC on the metabolism of 5-HT and NE in the hypothalamus and brainstem was reported (89), and these results show that there are no changes in either the amount or the turnover of these amines in the two parts of the brain investigated. Several cannabinoids have been examined for their effect on the uptake of NE, 5-HT, dopamine (DA) and gamma-aminobutyric acid (GABA) by synaptosomes derived from various regions of the rat brain (6). The findings indicate that cannabinoids can inhibit the uptake of NE, 5-HT and GABA by hypothalamic synaptosomes; in addition, a discussion of the structural requirement for these effects is included. Delta-9-THC can also augment the release of NE from the isolated rat vas deferens (32), an observation which has led to the suggestion that the release of transmitter from peripheral stores may, in part, account for the hypotensive activity of delta-9-THC. Delta-9-THC can decrease the uptake of DA by crude striatal synaptosomal preparations (42); however, amphetamine is more potent in this regard. Delta-9-THC also appears to alter the intraneuronal disposition of DA without any effect on its metabolism (65). It is possible that these effects are related to delta-9-THC's known interaction with amphetamine.

Studies of the mechanism of action of delta-9-THC have been expanded to include its effect on cyclic adenosine, 3', 5' -monophosphate (cyclic AMP), and investigators have found that low doses of delta-9-THC (0.1-1.0 mg/kg intraperitoneally) cause a 50-160% increase in brain cyclic AMP, whereas higher doses (2.0-10 mg/kg) depress cyclic AMP 30-60% (27). This biphasic response apparently correlates with other previously reported biphasic responses in biogenic amines, temperature regulation and behavior.

The influence of tetrahydrocannabinols on brain acetylcholine content has also been investigated (5). The intravenous administration of 5 mg/kg delta-9- or delta-8-THC was found to decrease brain acetylcholine content, while 11-hydroxy-delta-9-THC, a metabolite, was ineffective. Delta-8-THC did not appreciably alter either acetylcholinesterase or choline acetyltransferase. The decrease in acetylcholine was not observed in rats treated with 6 mg/kg intraperitoneally (90). In contrast to the results described above for acute experiments, chronic oral cannabinoid treatment produced a decrease in brain acetylcholinesterase activity, as well as a decrease in total protein and RNA (59); however, no changes were observed in brain lipid, glycolipid or cholesterol concentration. In the chronic study, the neurochemical changes coincided with the onset of neurotoxicity; furthermore, both were partially reversed during continued drug treatment. The mechanism of some of the anticholinergic effects of the cannabinoids remains to be elucidated.

The relationships between cannabis and prostaglandins have been studied further and it has been confirmed that cannabinoids inhibit the formation of prostaglandins PGE1 and PGE2 but they also stimulate PGF production (22). In another study, eugenol, a minor volatile constituent of cannabis, was found to be a more active inhibitor of PGE1 synthesis than was delta-9-THC. This observation, combined with a demonstration of pharmacological activity in the essential oil fraction (76), indicates a need to consider the role of these substances in the pharmacology of cannabis. The release of PG-like substances by delta-9-THC from both rabbit kidney and guinea-pig lung has been reported (52): These substances produced renal vasodilation and pulmonary vasoconstriction, responses which were blocked by aspirin. The former effect may account for the diuretic property ascribed to delta-9-THC, while the delta-9-THC-caused release of PG-like material may be related to the increase in PG synthesis referred to above (22).

An examination of the influence of acute and chronic delta-9-THC treatment on the lipids of rat brain subcellular fractions has revealed the following effects: Acutely, the lipid content of the mitochondrial, synaptosomal and myelin fractions decreased, but in the microsomal fraction all major lipid components increased; chronically, these changes tended to return to normal (75). Other reports have noted a lysis of rat liver lysosomes in vitro by high concentrations of delta-9-THC (8), and the uptake of delta-9-THC in vivo by the lysosomes (43).

Numerous interaction studies of marihuana constituents have been undertaken since the last report and the interaction between cannabinoids, particularly between delta-9-THC and CBD, has received a great deal of attention. CBD's ability to antagonize some of the behavioral effects of delta-9-THC has been established and studies have been extended to the investigation of other effects. In one such study, prior treatment with CBD blocked the delta-9-THC induced catatonia, corneal areflexia and aggresiveness in REM sleep-deprived rats (51). In addition, CBD potentiated the delta-9-THC analgesic effect and impairment of rope climbing. In another study, pretreatment with apparently inactive doses of CBD reduced the depressant effects of delta-9-THC on body temperature, on heart rate and on respiration (7). CBD also reduced the depressant effects of delta-9-THC on variable-interval and fixed-interval schedules of food reinforced operant behavior (25). In these tests, high doses of CBD did affect these behavioral parameters, suggesting that CBD can function as a partial agonist. A comparison of the interaction of CBD and CBN with delta-9-THC showed that CBD intensified delta-9-THC's effects on animal motility, on food and water intake, on body temperature, on catalepsy, and on hexobarbital sleep time (30). CBN, in general, did not alter the activity of delta-9-THC, except in the barbiturate sleep-time test. In this case, CBN, in contrast to CBD, blocked the delta-9-THC prolongation of hexobarbital sleep time, thus corroborating an earlier report of CBN antagonism. The evidence presented suggests that CBD heightens the effects of delta-9-THC by a metabolic interaction at the level of the hepatic drug-metabolizing enzymes; on the other hand, the observed antagonism between CBN and delta-9-THC on sleep time appears to be a central interaction (29). The ability of CBD to potentiate the anticonvulsant activity of delta-9-THC was described above (85). An in vitro potentiation has also been reported (2). Both delta-9-THC and CBD were found to depress intestinal motility, but delta-9-THC was more potent. Inactive doses of CBD increased the depressant effect of delta-9-THC, demonstrating that potentiation was not necessarily mediated by a CBD blockade of delta-9-THC's metabolism.

The interaction of CBN with depressant, excitatory and peripheral effects of delta-9-THC has also been described (81): Inactive doses of CBN appeared to enhance the depressant effects and slightly inhibit excitatory effects, while having no effect on a peripheral response to delta-9-THC.

Additional studies have focused primarily on the interaction of cannabinoids with other drugs. Acutely, delta-8-THC, in a dose-related manner, prolonged alcohol sleep time, but tolerance developed to this interaction with repeated cannabinoid exposure (31). The enhanced sleep time produced acutely cannot be attributed to an altered rate of alcohol metabolism (31). The possibility that some of the effects of delta-9-THC are mediated by an action on chemical transmitters has been pursued by measuring the cannabinoid's influence on the LD50s of certain drugs. It was found to intensify the toxicity of some cholinergic drugs but to attenuate the toxicity of others; the toxicity of adrenergic drugs was significantly reduced by the pretreatment with delta-9-THC and, finally, delta-9-THC increased the toxicity of a 5-HT-blocking drug (77).

The interaction studies of cannabinoids and barbiturates have been expanded to include ether anesthesia (13, 61). Cannabis extract prolonged the duration of both barbiturate and ether anesthesia. However, after repeated treatment, tolerance developed to the interaction with ether but not to that with pentobarbital. CBN also prolonged the duration of ether anesthesia, but CBD tended to antagonize ether. The investigators suggested that the failure of others to observe any such effect on ether anesthesia may have been the consequence of the variable cannabinoid composition of cannabis extracts.

A study of the interaction of delta-9-THC pretreatment with d-amphetamine in aggregated mice, indicated that cannabinoid pretreatment can potentiate motor activity and lethality without affecting hyperthermia (21); these effects were associated with a decrease in the amount of amphetamine in the brain. The influence of a combined treatment of delta-9-THC and methamphetamine on the EEG and on behavior has been described by other investigators who reported methamphetamine reversed the delta-9-THC effects on the EEG, but the combination of drugs produced some striking behavioral disturbances, which appeared to be a potentiation of methamphetamine toxicity (18). An interaction between delta-9-THC and a naloxone-precipitated abstinence in morphine-dependent rats appears to exist for a single delta-9-THC pretreatment can block in a dose-related manner the naloxone-induced abstinence signs. Pretreatment with 10 mg/kg CBD failed to produce any such effect (39).

It should be noted that two comprehensive reviews (67, 84) on the general subject of the pharmacology of marihuana have appeared since the 1974 Marihuana and Health report (62).

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CHAPTER 4

PRECLINICAL EFFECTS: UNLEARNED BEHAVIOR

As the studies reviewed in the four previous Marihuana and Health reports (44, 45, 46, 47) have shown, the cannabinoids produce a variety of effects on unlearned behavior in different animal species. The literature pertaining to cannabis and unlearned behavior is now quite voluminous. Consequently, this appendix focuses primarily on the relevant literature which has appeared since the last report, although some attempt is made to consider this literature in light of previous findings. Furthermore, for the sake of exposition the appendix is organized around four categories of unlearned behavior: gross behavior; activity and exploration; consummatory behavior; and aggressive behavior.

Gross Behavior

Much of the early preclinical research with cannabinoids investigated the effects of these drugs on the gross behavior of a wide range of animal species. As has been discussed in previous Marihuana and Health reports and recent reviews of the animal literature (e.g., 53) a variety of gross behavioral changes are induced in animals by the cannabinoids. Included among these effects are: catalepsy, ataxia, abnormal body postures, hypersensitivity, and hyperactivity. Subsequent to this earlier work on gross behavioral changes, much of the preclinical work with cannabinoids pertained to learned rather than unlearned behavior. Most recently, however, there has been a renewal of interest in the gross behavioral changes induced in animals by cannabinoids. The primary reason for this has been the recognition that complex pharmacological interactions may occur among the cannabinoids.

The majority of cannabinoid research on unlearned behavior has used delta-9-THC or delta-8-THC since these particular cannabinoids have been established as the major active components of cannabis samples (49). However, several researchers reported that the pharmacological activity of cannabis samples was not always entirely explained by the tetrahydrocannabinol content of the samples (7, 36, 55). This led to the suggestion that interactions between THC and other cannabinoid constituents of cannabis, namely cannabidiol (CBD) and cannabinol (CBN), may be important. This suggestion was supported by findings that CBD inhibits the metabolism of delta-9-THC (25, 35, 42).

Experiments dealing with interactions of cannabinoids on gross unlearned behavior are still few in number. However, those interactions which have been observed appear, at this time, to be complex and are not always consistent among experiments. For example, in testing the effects of cannabinoids on catalepsy in rodents, investigators have found CBD and CBN administered alone to be either active (37, 61) or inactive (24). Moreover, when administered in combination with delta-9-THC, CBN has been reported either to have no effect on catalepsy (24) or to potentiate delta-9-THC induced catalepsy (61). Finally, CBD in combination with delta-9-THC has been reported to prolong (24) or to enhance (37) catalepsy induced by delta-9-THC.

The interactions between the cannabinoids on drug-induced loss of the righting reflex (anesthesia, sleeping-time) seem to be particularly complex (14, 15, 25, 37, 41, 43, 61). For example, CBN antagonizes delta-9-THC effects on pentobarbitone- (41) and hexobarbitone- (25) induced loss of the righting reflex but potentiates delta-9-THC-ether effects on the same unlearned response system in the same animal species (43). The complexity of these and other interactions (14) will most likely be better understood with additional research--especially research which can distinguish between drug interactions involving CNS activity and those involving cannabinoid-induced changes in tetrahydrocannabinol metabolism.

As would be expected, THC interacts with drugs other than the cannabinoids to affect unlearned gross behavior. Recent experiments have shown that delta-8-THC potentiates the loss of righting reflex induced in rats by alcohol (27) while delta-9-THC potentiates some, and antagonizes other, amphetamine-induced postural and activity behaviors in rats (30) and rabbits (16).

Activity and Exploration

Based on the research available at the time, the 1974 Marihuana and Health report (47) concluded that "cannabinoids generally suppress the spontaneous motor activity and exploration of animals, although findings regarding these effects are limited, as always, by drug route, time-effect, and drug-response considerations" (20, 26). The suppression effect of delta-9-THC on spontaneous motor activity has been confirmed by two recent studies (6, 56). In one of these (6), oral doses of delta-9-THC ranging from 1.25 mg/kg to 40.0 mg/kg were administered acutely to mice. The lowest drug dose produced a significant increase in activity while the remaining drug doses produced a dose-dependent suppression of activity. Other mice were used to investigate tolerance to the suppressive effects of 40.0 mg/kg of delta-9-THC (p.o.) on spontaneous activity. Complete tolerance developed after one dose and had a duration of less than four days.

Another aspect of this latter study (6) deserves mention. Specifically, the activity of mice that had been previously habituated to the experimental apparatus was not suppressed by a 40.0 mg/kg dose of delta-9-THC. This finding is in accord with other research (17, 19) which shows that prior habituation to an experimental situation can alter the effects of THC on motor activity in animals.

Delta-9-THC doses of 30.0, 60.0 and 120.0 mg/kg were administered subcutaneously to pregnant rats on the fourth day of gestation (66). It was found that delta-9-THC produced an increase in abnormal pregnancies but that it had no significant effect on the locomotor activity of the offspring. This latter finding is at odds with a previous experiment (7) in which effects were observed on the unlearned behavior of offspring from pregnant rats that had been administered delta-9-THC subcutaneously during the tenth to twelfth days of gestation. Additional research is needed to determine whether delta-9-THC has a direct action on the developing fetus which becomes manifest in the unlearned behavior of offspring.

The spontaneous activity of rats was additionally used to study the drug interaction between delta-9-THC and phencyclidine (56). It was found that an increase in activity produced by 5.0 mg/kg intraperitoneal injections of phencyclidine was antagonized by oral doses of delta-9-THC, ranging from 2.5 to 10.0 mg/kg, in a dose-related manner.

Exploratory behavior and performance on simple unlearned motor tasks have also been used recently to study the interactions of delta-9-THC with other cannabinoids. First of all, it has now been reported that CBD and cannabichromene (CBC), in inhaled doses from 1.0 to 2.0 mg/kg decreases exploratory behavior of rats in a dose-related manner (57) while CBN (10.0 mg/kg; i.p. injection) significantly increased exploration-ambulation in rats (61). However, CBD did not affect the motor coordination of mice over a wide range of i.p. doses (62). In combination with delta-9-THC, both CBD (37) and CBN (61) produce a pharmacological interaction on exploratory behavior in rats, although delta-9-THC and CBD do not seem to interact to affect motor coordination in mice (62).

Consummatory Behavior

Prior to 1973 delta-8-THC, delta-9-THC, hashish resin, and pyrahexyl were all shown to produce reductions in food and water intake, with a consequent weight loss, in animals. Research appearing since that time, much of which was reviewed in the fourth Marihuana and Health (47) report, has generally confirmed and extended these findings for delta-8-THC and delta-9-THC (3, 28, 32, 33, 39, 59, 60). In addition, inhaled doses of CBD and CBC have been recently shown to reduce the rate of growth in rats and to decrease their food and water consumption in a dose-related manner (57). On the other hand, neither CBN nor CBD were found to affect food and water consumption over a range of i.p. doses up to 80.0 mg/kg (24). However, in this latter study, CBD, but not CBN, was found to enhance the suppressive effects on consummatory behavior produced by delta-9-THC.

The general finding of cannabinoid-induced suppression of consummatory behavior stands in stark contrast to the findings that marihuana or hashish will increase the human appetite for food (1, 31). Several possible explanations have been offered to account for this discrepancy. Sofia and Barry (60) have suggested that since pure delta-9-THC has not been used with humans, the appetite-stimulant effect of marihuana might be due to a constituent other than THC. The recent findings regarding CBN, CBD and CBC reported above (24, 57) seem to make this suggestion less likely. It has also been suggested that, since most animal studies have not taken continuous measurements of consummatory behavior, increases in consumption may have been overlooked. However, in recent experiments with rats where such continuous measures have been taken (32, 60), dose-related delta-9-THC decreases in food and water intake have been confirmed. There is some evidence (28) to support the contention (22) that the discrepancy between animal and human consummatory behavior is due to the higher cannabinoid doses, relative to body weight, used in animals than in humans. Furthermore, the possibility that the discrepancy is related to humans' adaptation to a long-term deprivation regimen whereas most animals used are either nondeprived or acutely deprived has also received empirical support (29). Nevertheless, the discrepancy between animal and human experiments is inadequately explained. There is, of course, the possibility that the differences are due solely to between-species differences. If so, consummatory behavior will stand as a rare instance in which animal research with cannabinoids has not served reliably as a predictor of cannabinoid effects in humans.

Aggressive Behavior

If aggression is taken as a uniform behavior of threatening or attacking another animal, then conflicting findings regarding the effects of cannabinoids on aggressive behavior exist in the literature. However, a variety of procedures has been used to study the aggressive interactions between animals under the influence of cannabinoids, each of which tends to involve a different kind of aggressive behavior. In fact, when separated by aggression paradigms, the literature regarding cannabinoid effects on aggressive behavior is quite consistent. In general, the conclusion from both the last Marihuana and Health report (47) and a recent extensive review of the cannabis and aggression literature in animals (2) is that cannabinoids suppress aggressiveness in nonstressed animals but increase stress-induced aggression. While one recent study (51) has demonstrated an increase in aggression following long-term administration of THC to rats which were not apparently stressed, the above conclusion applies to the acute cannabinoid experiments on animal aggressiveness which have appeared since the last report. For the sake of discussion, the new experiments will be divided into categories of stress-induced and nonstress-induced aggression, with the latter category being subdivided into isolation-induced aggression, competitive aggression and predatory aggression.

Stress-induced Aggression

As indicated, when stressed animals are put under the influence of cannabinoids the usual outcome is an increase in aggressiveness. This outcome seems to be independent of the nature of the stressor used. Increased aggression under cannabinoids has been reported for such stressors as: starvation (13), low temperature (12), REM sleep deprivation (5, 11), withdrawal from morphine (10), septal lesions (21), electric shock (9) and most recently, ovariectomy (54).

Takahashi and Karniol (61) have investigated the interaction between CBN and delta-9-THC with respect to stress-induced aggression. Generally, this experiment produced results comparable to a similar previous investigation of the interactive effects of CBD and delta-9-THC on aggression induced by REM sleep deprivation (37). Intraperitoneal injections of 20.0 mg/kg delta-9-THC and 80.0 mg/kg CBN induced aggressiveness in the stressed rats. Interestingly, however, when the same doses of CBN and delta-9-THC were administered together, the amount of aggressiveness was less than that produced by delta-9-THC alone (61).

Isolation-Induced Aggression

Several experiments have shown that delta-9-THC and cannabis extract will suppress isolation-induced aggression in rats which have not also been subjected to stress (e.g., 21, 58). Other studies have shown that this cannabinoid-induced suppression of aggression is not a result of motor impairment (38) nor does it exhibit tolerance (63).

The interaction between delta-9-THC and CBD on isolation-induced aggression was investigated this year in mice (62). Intraperitoneal doses of 2.5 mg/kg delta-9-THC and 40.0 mg/kg CBD individually suppressed aggressiveness although the interaction between these two cannabinoids was not significant.

Competitive Aggression

Recent findings are in accord with previous results (34, 52, 64, 65) showing that delta-9-THC reduced dominance and social competition in animals. For example, Cutler et. al. (18) administered cannabis resin to mice in i.p. doses ranging from 4.0 to 100.0 mg/kg, then placed the mice with unfamiliar partners. These researchers found that the drug did not affect nonsocial behavior, social investigation or sexual behavior. However, dose-related increases in immobility and flight relative to aggression were obtained.

Ely et. al. (23) demonstrated the importance of the existing social structure in their examinations of cannabinoid effects on animal aggression. Doses of 0.5, 2.0 and 20.0 mg/kg of delta-9-THC were intravenously injected into mice whose dominant or subordinate status in their colonies was either relatively stable or whose dominance was threatened either by a rival or an intruder. In the stable colonies the only behavioral change noted was a limited period of reduced activity by the dominant males. Dominant mice confronted with a rival exhibited a reduction of activity and a consequent loss of their dominant status. Dominant mice confronted with an intruder made fewer attacks on the intruder than non-drugged dominant mice, but their aggressiveness returned to the pre-drug baseline level after 24 hours.

Dose effects of delta-9-THC on aggressive behaviors of resident and intruder rats were examined by Miczek (50). This investigator varied i.p. dose level from 0.125 to 4.0 mg/kg and found that as the dose was increased, attack and threat behaviors of the dominant resident rat decreased. Only at the highest dose level of 4.0 mg/kg did delta-9-THC interfere with the defensive and submissive behaviors of the intruder.

Predatory Aggression

Research appearing before the last report (47) supported the conclusion that cannabinoids reduce predatory aggression in nonstressed animals (2, 21, 48). Although one study (4) indicated that THC could produce muricidal behavior in rats which did not previously display such behavior, it was not possible to conclusively determine whether stress induced by food deprivation or the administration of the cannabinoid over a 40-day period was responsible for this result. However, a recent study by Miczek (51) indicates that the long-term administration period may have been the crucial factor. This investigator found that during an administration period of 60 days, previously nonmuricidal rats given sufficient food and water so as not to lose weight and an intraperitoneal delta-9-THC dose of 10 or 20 mg/kg/day developed mouse-killing behavior.

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CHAPTER 5

PRECLINICAL EFFECTS: LEARNED BEHAVIOR

A review of the previous four Marihuana and Health reports (40, 41, 42, 43) reveals that an extensive array of procedures and contexts have been used experimentally to study the effects of cannabinoids on the performance of learned behavior in animals. These preclinical behavioral experiments have provided a framework for, and guided the design of, subsequent human experimentation. Compared to previous years, only a few experiments pertaining to cannabinoids and learned behavior have appeared this year. By and large these more recent experiments confirm previous findings; no particularly novel procedures have been employed nor have there been dramatically unpredictable results. In part, the decrease in activity in cannabinoid preclinical animal research on learned behavior is one sign of an increase in human cannabinoid-learning investigations.

Several detailed taxonomies of learned behavior are possible. However, for the purposes of the present report, learned behaviors will be categorized into those involving: avoidance learning and aversive control; reinforcement schedules and maze learning; and discrimination learning.

Avoidance Learning and Aversive Control

Whether or not cannabinoids enhance, depress or fail to affect the acquisition of avoidance behavior depends importantly on the cannabinoid time-course of action (45) and dose (22), as well as on the particular cannabinoid (28) and type of avoidance task used (52). However, when the behavior investigated is performance, rather than acquisition, of a learned avoidance task, cannabinoids have been reliably found to have disruptive effects (e.g., 9, 27, 28, 47).

Additional reports of cannabinoid-induced impairment of established avoidance behavior have come from Tayal et. al. (53) and Pryor and Braude (51). In the latter study (51), it was further reported that delta-9-THC had a more than additive interaction with phencyclidine, over a wide range of doses for both drugs, in impairing conditioned avoidance behavior. The Tayal et. al. (53) experiment also found that tolerance develops to the disruption in avoidance performance induced by an alcoholic extract of cannabis. This finding of tolerance confirms and extends previous reports of cannabinoid tolerance development unde learned avoidance tasks (e.g., 27, 39). However, no new research has appeared to add to the finding (47) that delta-9-THC is cross tolerant with ethyl alcohol but not with morphine or chlorpromazine in a shuttle box avoidance task.

With respect to aversive control situations other than avoidance learning, there have been several reports that cannabinoids reduce the conditioned emotional response of animals to a stimulus previously associated with an unavoidable electric shock, regardless of whether an appetitive or aversive situation is used to maintain baseline responding (e.g., 23, 27). The usual interpretation given to this finding is that cannabinoids act to reduce fear or anxiety. However, a fear-reduction interpretation does not always gain support from research with humans (50).

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Moreover, Ferraro and Bruce (16) have argued that previous conditional emotional response experiments have been, in part, confounded by drug-state changes which occurred between the training and testing phases of these experiments. Indeed, when they compared the conditioned emotional responses of rats who had received all of their training and testing under 2.0 mg/kg delta-9-THC (intraperitoneal injection) with nondrug control rats, delta-9-THC was found to increase the conditioned emotional response (14).

Another factor which may be considered to temper the interpretation that cannabinoids reduce fear in aversive control situations is that delta-9-THC has been found to have an analgesic effect in animals (35) and humans (48, 49). This was demonstrated by Dykstra and McMillan (12) who used a titration procedure to determine the intensity at which monkeys would maintain a continuously applied electric shock. It was found that an injection of 15.0 mg/kg delta-8-THC caused the monkeys to adjust the shock to a higher intensity than they had in the absence of the drug.

In still another aversive control context, Corcoran et. al. (8) have extend previous findings that delta-9-THC (14) and hashish extract (7) produce "bait shyness" in rats when paired with novel tastes. In the Corcoran et. al. (8) study, delta-8-THC, CBD, and cannabigerol (CBG) all produced bait shyness. However, cannabichromene (CBC) did not produce a conditioned taste aversion in this aversive control situation.

Reinforcement Schedules and Maze Learning

Both operant and instrumental conditioning paradigms have been used to study the effects of cannabinoids on appetitively reinforced learned behavior in animals. In the operant conditioning context, schedules of reinforcement have received the most study. In the instrumental conditioning context, maze or alley learning has been the usual baseline for determining cannabinoid effects.

Following the outline established in the fourth Marihuana and Health report (43), experiments dealing with cannabinoid-reinforcement schedule interactions will be categorized into two major types: Type I experiments which focus on changes in schedule controlled responses, and Type II experiments in which such responses merely provide a baseline for the study of drug-related parameters.

The bulk of the earlier cannabinoid research with reinforcement schedules was of the first type (cf., 40, 41, 42, 43). What little research of this type there has been in the past two years (e.g., 9, 20, 55) has mainly tended to replicate and confirm the findings from the earlier research even where more complicated reinforcement schedules have been used (2). Taken all together, the research demonstrates that behavior under reinforcement schedule control is reactive to delta-9-THC and delta-8-THC as well as to other constituents of cannabis (10, 21). In general, such behavior is depressed in a dose-related manner by cannabinoids, although under schedules which tend to generate low response rates, a bi-phasic dose-response function or an alternation between periods of no responding and increased rates of responding are sometimes observed.

Although only limited attention has been given to the effects of cannabinoids on the acquisition and extinction of operant behaviors (18), the now very extensive literature on the relationship between cannabinoids and performance of schedule controlled responses has stimulated the use of such responses as baselines in Type II studies of drug-related parameters.

Among other things, reinforcement schedule baselines have been used in the past two years to study: between-cannabinoid comparisons (36); cross-tolerance between cannabinoids and other drugs (47); and differences between drug vehicles and routes of cannabinoid administration (1, 15, 17). An operant paradigm has also been used to investigate the interaction between delta-9-THC and cannabidiol. Davis and Borgen (10) found that intraperitoneal injections of 3.0 mg/kg delta-9-THC suppressed schedule controlled responding in rats while 25.0 mg/kg CBD did not. Similarly, intramuscular injections of 1.0 mg/kg delta-9-THC suppressed responding in pigeons while 50.0 mg/kg CBD did not. However, when animals were pretreated with their respective CBD doses, the THC induced suppression of responding was reduced.

An instance of the Type II reinforcement schedule experiment was recently performed by Dykstra et. al. (13). These researchers injected pigeons responding under variable interval, fixed ratio, and fixed interval schedules with a range of delta-9-THC and SP-111 doses (.3 to 18.0 mg/kg intramuscular injection administered either one or two hours before the start of the experimental session). SP-111 is a water soluble ester of delta-9-THC which bears a basic amino function (56). Both drugs produced a dose-related suppression of reinforcement schedule responding although delta-9-THC was three to six times more potent than SP-111 and had a faster time of onset.

A large number of both types of reinforcement schedule experiments have investigated the development of tolerance under the cannabinoids (e.g., 1, 2, 20, 36, 38, 47). These experiments have uniformly shown that tolerance readily develops in animals to cannabinoid-induced suppressant effects on operant responding. However, two studies have shown that, in this situation, tolerance development to delta-9-THC is due to the animals responding under the influence of the drug rather than to the mere exposure of the animals to delta-9-THC (5, 38). Moreover, Frankenheim (20) observed that repeated i.p. injections of delta-8-THC (10.0 and 17.8 mg/kg) tended to increase the sensitivity of rats to a response rate-increasing effect of the drug under a differential reinforcement of low rate schedule of reinforcement. This increased sensitivity was likened by Frankenheim (20) to the reverse tolerance sometimes reported for marihuana effects in humans.

Compared to operant reinforcement schedule research, the effects of cannabinoids on the acquisition and performance of instrumental maze or alley-way responding have not received extensive study. A Canadian study, not yet published, has found that permanent impairment of maze learning ability in rats occurred following six months of treatment with oral doses of either ethanol or cannabis extract. While the doses of THC and alcohol were both relatively high (20 mg THC/kg) the authors point out the animals were visibly intoxicated for "only about four hours after each dose, gained weight normally and were in good general health throughout the experiment." Based on the degree of intoxication, they argue that

the research may be relevant to possible learning impairment under conditions of unusually heavy human use (57). Based on previously published literature, it may be concluded that the cannabinoids impair reinforced and latent learning in a variety of instrumental conditioning situations including the Y maze, T maze, Lashley III maze and straight alley (11, 29, 44, 46, 54).

Discrimination Learning

The effects of cannabinoids on discrimination learning were reviewed for the first time in the previous Marihuana and Health report (43) under two subtopics: 1) the effects of cannabinoids on the performance of discriminations based on exteroceptive stimuli, and 2) the acquisition of stimulus control of behavior based on the presence or absence of cannabinoids.

As there have been few experiments published since the last report which describe the effects of cannabinoids on discrimination learning with exteroceptive stimuli, only a brief summarization of the existing literature will be made herein.

In general, the effects of cannabinoids on established stimulus discriminations are influenced by the same variables as determine the effects of other psychotropic drugs on discrimination performance (cf., 43). More specifically, disruption of discrimination performance by cannabinoids is more likely if the discrimination is complex rather than simple and if the discrimination is successive rather than simultaneous. The typical cannabinoid-induced disruption of discrimination performance is the result of dose-related decreases in responses to the stimulus associated with reinforcement and corresponding increases in responses to the stimulus associated with nonreinforcement. Finally, and in accord with the effects of most other psychotropic drugs, during generalization testing delta-9-THC reduces total response output but does not typically alter the slope of the generalization gradient.

It is now well established that animals can learn to discriminate between the presence of cannabinoids and a vehicle-control solution (3, 4, 19, 25, 31, 32, 33, 37). Jarbe et. al. (33) used an experimental procedure which is prototypic of research on this topic. Gerbils trained in a T maze were required to make discriminative choices based on whether delta-9-THC or drug vehicle alone had been injected prior to the training session. As is the usual outcome in cannabinoid stimulus studies of this sort, Jarbe et. al. (33) found that the delta-9-THC discrimination was acquired in a dose-related manner (from 0.5 to 16.0 mg/kg, i.p.). Furthermore, decreasing the dose or increasing the injection-test interval from that used in training led to a decrease in delta-9-THC associated choices. One final aspect of this study which is unique is that pentobarbital (20.0 mg/kg) interacted in a more than additive fashion with delta-9-THC to determine drug versus control solution choice responses.

The delta-9-THC discrimination paradigm has also been used recently to compare the potency of different routes of drug administration (3, 32). As compared to intraperitoneal administration, delta-9-THC administered orally or by inhalation had stronger stimulus properties while lesser stimulus properties were manifest after intravenous administration of delta-9-THC.

Although some quantitative differences exist, it now appears that the stimulus properties of delta-9-THC are interchangeable with delta-8-THC, 11-OH-delta-8-THC, cannabis extract, and hashish smoke (3, 32). However, neither CBD or CBN seemingly produce THC-like stimulus properties (32). Furthermore, a wide range of drugs from several pharmacological classes have been shown not to be interchangeable, in terms of stimulus properties, with delta-9-THC. Thus, there is support for a hypothesis that the active cannabinoids may have a unique mode of pharmacological action.

One final aspect of the cannabinoid-stimulus discrimination paradigm merits further study. Of concern is whether or not tolerance develops to the drug-stimulus properties of delta-9-THC. There have been three studies which address this concern. One study supports the development of tolerance (26), one provides indirect evidence supporting tolerance development (30), and finally, one provides data indirectly supporting a lack of tolerance development (6). Until additional experiments are performed it seems appropriate to conclude tentatively that a slow, and perhaps partial, tolerance develops to the stimulus properties of delta-9-THC.

State-dependent learning refers to the phenomenon that animals perform better if trained and tested under the influence of a drug than if a drug-state change occurs between the training and testing phases of an experiment. State-dependent learning has been shown for delta-8-THC and delta-9-THC (cf., 45). However, it is not clear from the THC literature whether or not symmetric disruptive effects are obtained between a change from a drugged to a nondrugged state (D-ND) and a change from a nondrugged to a drugged state (ND-D). Both symmetric and asymmetric state-dependent effects have been reported for THC (24). In the case of asymmetric effects, a change from the D to ND state produces greater impairment of responding than does a change from the ND to D state (22). Johansson et. al. (34) have shown that delta-8-THC will reliably induce asymmetric state dependency of this latter type if animals are first made tolerant to the acute disruptive effects of the drug.

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CHAPTER 6

PRECLINICAL CHRONIC EFFECTS: UNLEARNED AND LEARNED BEHAVIOR

There is no unequivocal answer to the question of whether or not tolerance develops to cannabinoid-induced effects on unlearned and learned behavior. In certain response systems, tolerance clearly develops and is characterized by its rapid development and large magnitude. Indeed, in the past two years tolerance has been demonstrated for both unlearned and learned responses in a range of animal species under a variety of drug conditions in studies examining: unlearned motor responses in rats (4); spontaneous activity in mice (3); conditioned avoidance performance in rodents and monkeys (30, 39, 46); analgesia in dogs (31); and reinforcement schedule performance in pigeons, monkeys and rats (2, 5, 21, 32).

In addition to demonstrations that tolerance to the cannabinoids can develop in unlearned and learned behavioral situations, there have been several experiments which serve to elucidate some of the determinants, both pharmacological and extrapharmacological, of tolerance development to the cannabinoids. These latter experiments encompass a wide variety of situations and parameters and, in some instances, suggest constraints on the generality or pervasiveness of tolerance to the cannabinoids. The studies described below are representative of these experiments.

Abel et. al. (1) have shown that tolerance to the effects of delta-9-THC on reinforcement schedule responding develops in pigeons at about the same rate after intramuscular, intravenous, or peroral administration. Tolerance also follows a similar course for delta-9-THC and its metabolite 11-OH-delta-9-THC (32). However, Fernandes et. al. (13) have suggested that CBD interacts with THC to enhance the tolerance development to THC.

Barnes and Fried (4) have shown that the age of the subject at the time of first exposure to delta-9-THC interacts with later tolerance development. Rats who first received delta-9-THC when immature developed tolerance more rapidly as adults than did rats who were adults when first drugged.

Rate of tolerance appears to depend as well on: the amount of prior training on a learning task (40); and the type (39), parameter values (19, 24, 30), and complexity of the learned task (16, 43). In general, as the amount of prior training is decreased and the difficulty of the learned task is increased, tolerance develops more slowly or does not develop at all. Another behavioral variable that seems to determine the rate of tolerance development is the behavioral consequences produced by delta-9-THC (14, 36). For example, in one experiment (36) tolerance developed to delta-9-THC much more rapidly if delta-9-THC acted to increase the number of shocks received by rats working under a conditioned avoidance task. In this same learning context, it appears that the development of delta-9-THC tolerance in appetitive reinforcement situations is facilitiated if animals are given the opportunity to respond under the influence of the drug rather than being given mere exposure to the drug. This latter finding has been reported for rats (7), pigeons (5), monkeys (35), and chimpanzees (18).

On the basis of findings such as the above, Ferraro (15) has followed the lead of others (12, 25) in proposing a behavioral model of marihuana tolerance. The essence of this position is that learning or drug-behavior interactions account, in part, for some of the characteristics of tolerance development to delta-9-THC. The pharmacological mechanism underlying tolerance development to the cannabinoids is not definitively known (cf., 37). However, there is evidence which suggests that the development of tolerance to delta-9-THC may proceed by more than one pharmacodynamic mechanism of action. For example, Anderson et. al. (3) found that both the time of onset and the duration of tolerance to delta-9-THC differed in mice with respect to drug effects on intestinal motility, temperature, and locomotor activity. As these researchers concluded, it seems unlikely that any one mechanism, such as metabolic tolerance, could account for the obtained differences in tolerance development over so wide a range of response systems. Other experimenters have provided data which suggest that delta-9-THC tolerance is not solely metabolic or drug distributional (10, 38). Obviously, additional research will be necessary in order to specify just what pharmacodynamic and learning factors are important in determining the development of tolerance to marihuana.

Admittedly, it is not possible to make direct comparisons between different cannabinoid tolerance experiments since they often differ in nonsystematic ways with respect to such variables as number, level and distribution of drug doses, behavioral task and species of subject. Nevertheless, it must be noted that the literature contains a fair number of experiments where a lack of tolerance development to the cannabinoids has been reported. This result has been found for rodents in such situations as: open-field behavior (42); isolation-induced aggression (11); food and water intake (23, 44); and discrimination learning based on exteroceptive (20) or drug-produced stimuli (6). By contrast, Frankenheim (22) has recently reported that repeated injections of delta-8-THC produce an increased sensitivity to some of the effects produced by this drug on reinforcement schedule-controlled responding in rats. This increased sensitivity was likened by Frankenheim (22) to a reverse tolerance effect.

With respect to other chronic effects of the cannabinoids, two experiments have failed to find any residual effects on learned behavior following discontinuance of delta-9-THC previously administered for 150 consecutive days (18) or aperiodically for seven months (17). And, with the exception of one experiment (41), animals have not been observed to self-administer cannabinoids. More specifically, monkeys do not self-administer delta-9-THC after receiving the drug for a month or when offered it as a substitute for cocaine (26). Rats forced to drink cannabis extract or hashish suspensions for long periods of time (up to 126 days) reject the drug in favor of a control solution (9, 33). Finally, mice are reluctant to consume food pellets containing delta-9-THC even after subsisting on the pellets for over two months. (34).

It is noteworthy that no behavioral symptoms of abstinence or withdrawal were reported in the above experiments at the termination of the forced drug regimens used (cf., 26, 33). One further experiment by Chesher and Jackson (8) reported the absence of an abstinence syndrome after withdrawal of cannabis extract administered in oral doses equivalent to up to 80.0 mg/kg delta-9-THC for 11, 13, and 28 days. In this study, mice were tested for their convulsive thresholds to pentylenetetrazol between six hours and six days following termination of the cannabis drug regimen. No differences were obtained between drug and control animals.

Despite the above evidence to the contrary, there were two reports last year that were suggestive with respect to delta-9-THC-produced dependence and abstinence symptoms (29, 45). In the better controlled of these experiments (45), rats were administered naloxone hydrochloride after a five-week pretreatment period with delta-9-THC (8.0 to 32.0 mg/kg, intraperitoneal injection). The rats exhibited narcotic-like withdrawal symptoms including diarrhea, teeth chattering and "wet dog" shakes. Two additional experiments published this year (27, 28) demonstrated that delta-8-THC and delta-9-THC, but not CBD, reduce the abstinence symptoms precipitated by naloxone hydrochloride in morphine-dependent rats. In the first of these (27), delta-9-THC doses of 5.0 and 10.0 mg/kg administered by the intraperitoneal route one hour before naloxone administration significantly reduced the frequency of wet shakes and diarrhea in the morphine treated rats. On the basis of their data, Hine et. al. (27, 28) concluded that the tetrahydrocannabinols may have some therapeutic utility in clinical narcotic detoxification programs.

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CHAPTER 7

HUMAN EFFECTS

Acute Effects

A person ingesting or smoking cannabis experiences a fairly predictable sequence of physiologic and psychologic changes which last a few hours and then gradually disappear. Although dose administered and individual differences in personality, expectations, setting and past drug experience all contribute to varied consequences from a given dose of cannabis, the variability in acute effects from cannabis seems no greater than with any other psychoactive drug. A number of reviews and collections of papers have appeared during the past year which attempt to cover the vast amount of information accumulating about the acute and chronic effects of cannabis (7, 27, 43, 70, 82, 114). Some authors have attempted to consider the research findings in the context of political-social decisions (43, 135) and point out the lacunae in the data as well as the well established facts (43). The continuing research efforts this past year have attempted to fill some of the gaps. Emphasis has been placed on the chemistry of cannabis constituents, less obvious effects such as hormonal changes and the initial studies of acute drug effects in populations other than those made up of self-selected marihuana users.

Activity of Natural and Synthetic Cannabinoids

Detailed pharmacokinetic studies of delta-8-THC in man using mass fragmentographic techniques indicate a similar time course and clearance pattern to that seen with delta-9-THC (103). A very rapid alpha phase was followed by a slower phase. While blood levels did not always predict physiological and psychological effects, they paralleled heart rate changes well.

DMHP, a synthetic cannabinoid, differs from delta-9-THC by having a double bond in the 6a, 10a positions. Intravenous administration in man produced profound cardiovascular effects but only minimal psychological effects (102). As is the case with natural cannabinoids, hydroxylation seemed to be the major metabolic pathway.

Metabolism of Cannabinoids and Biochemistry

Metabolites. Although studies of a major metabolite of delta-9-THC, 11-hydroxy-THC, indicate it is pharmacologically active, some question remains whether it is the only metabolite or whether delta-9-THC needs to be hydroxylated to 11-hydroxy-THC before the THC is active (72). In an attempt to clarify these issues, Hollister sorted people into fast and slow hydroxylators on the basis of antipyrine and phenylbutazone plasma disappearance rates. THC and these drugs are metabolized by the same liver microsomal enzyme system (169). There was no difference in speed of onset, intensity or duration of effects after intravenous injection of delta-9-THC when the two groups were compared (72). Such results suggest 11-hydroxy-THC may not be the sole source of delta-9-THC effects. Another group of investigators found 11-hydroxy-THC to leave the plasma more rapidly than THC, suggesting THC may, in fact, be more potent (133).

A number of additional marihuana metabolites have been reported in a series of studies (83, 84, 85) and for the first time, unchanged delta-9-THC was identified in the urine using conventional thin layer chromotographic techniques in amounts estimated at .01-.005% of the dose (74). New extraction procedures revealed a previously ignored fraction containing abundant metabolites (83) including many polar metabolites (84). The exact identity and activity has yet to be determined. In a review of structure activity relationships of cannabinoids in man, Hollister concluded that the potency of the THC molecule is altered by changing length of side chains, or by metabolic hydroxylations. No material has yet been formed in nature in cannabis itself or in THC metabolites which differ qualitatively from THC (71). There is now evidence indicating the human small intestinal mucosa, as well as the liver, can hydroxylate THC (59).

Cannabinoid Interactions. Studies of the possible interaction between delta-9-THC and the other two major cannabinoids of marihuana -- cannabinol (CBN) and cannabidiol (CBD) -- are not completely consistent in their conclusions. Hollister found only slight interaction between THC and CBD. After CBD, there was a delayed onset and prolonged effects of THC that were slightly more intense (73). The magnitude of the interactions was so small as to be clinically insignificant. However, other experiments in man with different samples of marihuana plant material containing varied amounts of CBN and CBD found differences in effects, possibly due to differing proportions of CBN, CBD and THC (18). A subsequent study by the same group found large doses of CBD to block many of the effects of THC (86). A possible complicating factor in cannabinoid interaction studies is the issue of instability of various synthetic and naturally occurring cannabinoids (165).

Interactions with Other Drugs. Besides CBD and CBN, other drug interactions with THC have been investigated in man. Secobarbital and smoked marihuana had additive effects on subjective responses and psychomotor impairment (32). Subjects had difficulty distinguishing 150 mg of secobarbital from 25 micrograms of THC/kg. When amphetamine and smoked marihuana were combined, additive effects of heart rate and blood pressure and subjective symptoms were observed, but no interaction effect on psychomotor performance was found (47). Based on the assumption that THC interferes with cholinergic brain mechanisms, physostigmine decreased the tachycardia and conjunctival injection, but had little effect on psychological changes (54). Little potentiation of narcotic drug effects was noted in a study evaluating THC as a pre-anesthetic agent (77). Animal studies indicate that whatever the drug combination the depressant effects of THC tend to predominate (138).

Assay Techniques. A great deal of effort has gone into the development of practical assays of cannabinoid levels in man. Such measures are needed not only for research purposes, but would be useful clinically and in law enforcement, (particularly in cases where intoxication while driving an automobile is an issue). A number of techniques using saliva and TLC with mass spectrometry (81), radioimmunoassay of blood and urine (105, 160), and gas chromatography of blood (106) have been reported but still are not sufficiently sensitive, specific and reliable for widespread practical application. The tight binding of THC to plasma protein (170) is only one of the many problems in the development of sensitive reliable tissue level assays (cf. Analytical Techniques, Detection).

Cardiovascular Effects

Cannabis has long been known to have marked cardiovascular effects (21, 143). Last year's report reviewed some preliminary data which resulted in some expressed concern about electrocardiographic changes during acute intoxication. The subsequent publication of a number of studies where cardiovascular dynamics were studied some time after administration of large doses of THC indicates that cannabis produces only minimal EKG changes in young healthy subjects (77, 8, 22, 104). Nonspecific P or T wave changes are most commonly noted. Occasional premature beats also occur. Tachycardia continues to be the most common and prominent physiological response to acute doses (145). In a study of prolonged administration of oral doses of 30 mg delta-9-THC given every four hours, heart rate slowing and blood pressure drops developed (8). Blunting of peripheral vascular reflexes developed along with plasma volume expansion. Although tolerance developed to the orthostatic hypotension, the supine hypotensive effects persisted throughout the period of drug administration. These changes commonly seen in laboratory animals but not previously noted in man suggest a biphasic action of THC in humans with an increase in sympathetic activity involving the heart and peripheral blood vessels at low doses and a centrally mediated sympathetic inhibition at higher doses (65). The slightly increased supine blood pressure would be consistent with this mechanism (22, 77, 104). Forearm blood flow increases and total peripheral resistance decreases slightly with acute doses (104, 77) consistent with beta-adrenergic stimulation. The great individual variability in response to large intravenous doses has, however, led one group to suggest an indirect episodic activation of the sympathetic system secondary to psychological arousal in addition to the beta-adrenergic stimulation (104). Cardiovascular and psychological mechanisms of action may be independent as is suggested by the observation that DMHP, a synthetic cannabinoid, produces profound cardiovascular but few psychological effects. (102).

A series of reports on the cardiovascular effects of cannabis smoking in persons with coronary disease are consistent with the preliminary report cited last year (137, 4, 3). Smoking either marihuana or high nicotine cigarettes decreased exercise performance prior to the onset of angina by increasing myocardial oxygen demand and decreasing myocardial oxygen delivery (4). Cardiovascular hemodynamics were evaluated by echocardiography (137). After marihuana, stroke index decreased and ejection fraction was greater. Carboxyhemoglobin made for some changes after both marihuana and placebo. These studies demonstrate that marihuana effects may differ in individuals with pre-existing disease than in normals. Most research studies thus far have, of course, been done on youthful selected, normal volunteers.

Pulmonary Effects

Because smoking is the most common means of cannabis consumption in this country, the effects of cannabinoids and marihuana smoke on pulmonary function has been of continuing interest. The fourth Marihuana and Health report described bronchodilating effects with possible therapeutic implications after marihuana smoking. Previous reports have described mainly adverse findings in frequent chronic cannabis smokers including bronchitis, obstructive pulmonary defects, and chronic cough (62).

Two groups publishing the promising reports described last year have continued and extended their studies (149, 156, 157, 168). Acute administration of either smoked marihuana or oral doses of THC produced statistically significant increases in bronchodilation and reversed experimentally induced bronchospasm in young adults with bronchial asthma (156, 157, 168). Indications are that the mechanism is independent of beta adrenergic or antimuscarinic effects (149). In contrast to these promising reports, a British group (34, 58) found that measures of forced vital capacity, peak expiratory flow rate and other clinically useful measures of pulmonary function did not improve in a group of patients with reversible airway obstruction given 10 mg doses of oral THC. One possible reason for these discrepant findings may be that the groups (149, 156) reporting cannabis-induced bronchodilation are using whole body plethysmography, an exceedingly sensitive measure that will detect very small changes in pulmonary function, whereas the less optimistic reports come from a group using less sensitive, although clinically relevant measurement techniques.

Chronic smoking may produce different and less useful effects than acute administration as indicated by pulmonary function changes during periods of chronic administration (109). Mendelson found significant impairments in pulmonary function tests (vital capacity, or FEV 1.0) in a group of chronic marihuana smokers (109). Further reduction in pulmonary function test performance developed during this study in which the volunteers smoked three to ten marihuana cigarettes daily for 21 days. An outpatient study of young adults with varying tobacco cigarette habits found more improvement in pulmonary function during an eight week period of no smoking in the cannabis smoker subgroup (5). An in vitro study suggests that the water soluble components of marihuana smoke may contain substances toxic to the defense network of the lung other than delta-9-THC or other cannabinoids (31). Studies using high doses of THC given intravenously noted only modest changes in minute ventilation and the ventilatory response to CO2 equivalent to that produced by 5 mg doses of morphine (77, 104).

A study of the respiratory effects of smoked marihuana and orally ingested delta-9-THC has examined the effects of the drugs on the respiratory response curve. Both the synthetic and natural material produced a respiratory depression in a group of previously chronic users. Although the effect was found to be slight, the authors recommend further study because of the possible relevance of this effect to patients with chronic lung disease or central nervous system impairment of respiratory regulation (172).

Endocrine and Metabolic Effects

The report of depressed plasma testosterone levels in chronic marihuana smokers (98) and the report of a failure to find such a change in marihuana smokers receiving the drug daily over a 21-day period (110) have led to further studies and discussion (55, 93, 96, 97, 99, 100, 101). Kolodny has reviewed the numerous problems confounding the study of the hypothalamic-pituitary-testicular axis in man (96) and discusses possible biologic implications of lowered testosterone levels. He presents data (97, 100) showing significant drops in plasma testosterone levels and luteinizing hormone levels two and three hours after smoking a single marihuana cigarette. In a chronic administration study, subjects showed no significant drop in levels after four weeks of daily marihuana smoking; but, then, with continued smoking they had significant drops in luteinizing hormone, followed

by falling testosterone levels and follicle stimulating hormone levels. Thus, the data from research finding no marihuana-related hormone changes (93, 110, 144) are quite consistent with studies that do (97, 98, 100) if the different time periods of marihuana use are taken into account. The biological significance of these changes is unclear and Kolodny is appropriately cautious in his interpretation of their importance (96). In most cases the plasma hormone levels remain within the usually accepted normal limits. Such alterations might be expected to be more important for prepubertal or pubertal males or males with already impaired sexual functioning. There might also be adverse effects on sexual differentiation of the fetus of mothers using cannabis. In the absence of clinical evidence for these consequences, such concern is at present speculative.

One surgeon has attempted to link such hormonal changes to the development of gynecomastia in male marihuana users (66, 69). He was able to stimulate the development of rat breast tissue by delta-9-THC administration (66). Other investigators (101) have not found changes in serum prolactin levels in men given THC experimentally. The absence of prolactin changes is surprising since many centrally acting drugs alter prolactin levels. The reported gynecomastia was postulated to result from a prolactin dependent mechanism.

In last year's report a study described glucose intolerance in a small group of subjects given intravenous doses of delta-9-THC (75). A lower dose of THC given as smoked hashish had no effect on blood glucose though blood lactic acid decreased (129). Glucose efflux from human erythrocytes was inhibited by THC and cannabidiol, suggesting some drug effects on glucose transport mechanisms (146). It would, however, be quite speculative to try to relate these changes to the craving for sweets often reported by cannabis users.

Sexual Functioning

Reports discussed in the section on "Endocrine Effects" describe sex hormone changes related to cannabis use. Although anecdotal accounts describe cases of sexual dysfunction possibly associated with such changes, properly controlled studies are needed to confirm them (96, 100). A number of accounts report enhanced sexual activity associated with cannabis use (11, 20, 51, 63, 93). However, the psychological, social and pharmacologic factors associated with sexual activity probably interact in complicated ways as is true with most other drug effects on sexual behavior (20, 93). For example, with cannabis, as with alcohol, dose is important. Small to moderate doses appear to be most effective as releasers of inhibitions (93). Larger doses and/or chronic use of marihuana may actually diminish sexual interest and potency in males. Adequate data elucidating the effect of marihuana use on sexual functioning are not yet available.

Neurological Effects

Perceptual, cognitive and mood changes are presumably reflected in changes in nervous system activity. As with any psychoactive drug, however, simple one-to-one correlations between behavioral changes and brain activity are rare (78). The most important questions have to do with how long the effects persist: for hours, days, weeks or are they permanent?

Most of the new studies are extensions of or attempts to replicate findings reported last year. Smoked cannabis produces acute, reversible, dose-related changes in brain waves as measured by computer-analyzed EEG (49, 91). Following ordinarily used doses, the changes are modest, consisting mostly of alpha wave slowing and are not indicative of any particular pathology. Cannabis does not appear to have unique qualities among CNS active drugs as measured by scalp EEGs. Changes in EEG recorded from deep brain structures, consisting of slow wave and spiking activity, have not, however, been seen with any other drug (67). These changes have been well-described in monkeys. Similar changes have been reported in a small number of humans (67). The behavioral significance of these neurological changes is yet to be determined (78). A recent review of possible neural mechanisms of cannabis suggests the hippocampus and other deep structures may be important sites of action (41), at least in animals.

Scalp EEG and evoked potentials showed marked changes in subjects given very large smoked doses of THC or marihuana (158, 159). Alpha abundance increased with posterior slow wave activity becoming prominent. Ataxia, hypersomnia, increased deep tendon reflexes, tremor, tonic muscle contractions and myoclonus followed these 1 mg/kg doses of THC.

Loss of REM sleep appears to be a predictable effect of cannabis (158, 159). Total sleep time increases. Stage 4 or slow wave sleep is relatively unaffected. In this respect cannabis is unlike any sedative-hypnotic drug studied thus far (48). When the drug is stopped after a period of prolonged administration, REM sleep stage and eye movements show a marked rebound above baseline levels. In contrast to the relatively small changes in waking EEGs after the drug is given, sleep EEG changes are very dramatic and large--both when the drug is acutely and chronically administered (48).

Changes in the slow cortical potentials recorded from the scalp (contingent negative variation or CNV) after cannabis are of particular interest since this measure is said to be sensitive to changes in motivation and attention deployment, among other factors. A recent study of the CNV obtained somewhat different results from those reported last year (10). Like many neurophysiologic measures, it appears the CNV is far more complicated than was originally assumed. It appears the CNV may get larger or smaller after cannabis, depending on the level of intoxication, the task demands, the motivation of the subject and changes in attention. To view the cannabis-induced CNV changes as any direct measure of attention deployment or motivation is probably an oversimplification (10).

Effects on Cell-Mediated Immune Response

Conflicting opinions as to the possible effects of cannabis on the cell-mediated immune response continue to appear (148). In the fourth report, the observation that chronic marihuana users had decreased in vitro lymphocyte response to allogeneic cells and to a mitogen was described (118). This original observation has led to extensive in vitro and animal studies described elsewhere in this report. Related studies in humans published this past year provide partial support for the notion of an immune system or thymus-derived cell alteration in people who smoke marihuana (30, 118, 134). However, other investigators using an in vivo skin testing procedure found no evidence of impairment of cell-mediated

immunity in chronic marihuana users (151). Marihuana smokers had less T cell response to phytohemagglutin stimulation and decreased PMN phagocytic capacity (134). The authors of the latter study caution that the clinical significance of these findings is uncertain. In possibly related in vivo studies, the white blood cells from both cannabis users and non-users showed similar dose-related inhibition of migration when exposed to THC and extracts of cannabis (147). Substances other than THC in the crude extract may have effects on this test system.

Administration of THC or cannabis to controlled populations, with before and after testing, is underway and may provide useful information in clarifying the etiology of the cell-mediated immune effects (125).

Other Physiologic Effects

Previous reports associated cannabis intoxication with decreases in intraocular pressure. The possible therapeutic implication of this unexpected effect is discussed in the section on therapeutic applications. More extensive studies in normal volunteer subjects indicate a non-dose-related pressure drop lasting from four to five hours (68). The magnitude of the eye pressure decrease (about 30%) was the same whether the person smoked one or 22 marihuana cigarettes. Effects on other aspects of eye physiology (acuity, refractive error, biomicroscopy, fundus changes, visual fields, ophthalmodynamometry, electroretinography and orthoptic evaluation) were minimal or absent. Other investigators concluded that the observed eye pressure decreases were more likely a consequence of drug-induced relaxation and sedation rather than specific cannabis effects on the eye, since other sedative drugs produced similar changes in eye pressure (52). Results of studies of the effects of smoked marihuana on galvanic skin response are consistent with drug-induced reduction in level of autonomic nervous system arousal (25).However, recent findings seem to contradict this interpretation (cf. Therapeutic Aspects).

Intravenous administration of a water infusion of cannabis resulted in gastroenteritis, hypoalbuminemia, hepatitis, and many cardiovascular changes secondary in part to hypovolemia (131). It is not entirely clear what symptoms were cannabinoid effects or, more likely, the non-specific effects of injected foreign plant material.

Acute Effects on Mental and Psychomotor Performance

As in previous years a host of studies have reported impaired functioning on a variety of cognitive and performance tasks while marihuana intoxicated. For the most part, impairments were dose-related. The investigators who gave the smallest doses generally reported the fewest effects. Impaired memory (9, 33, 38, 39, 167), altered time sense (9, 167) and decrements on performance on a number of tasks--such as those involving reaction time, concept formation, learning, perceptual motor coordination, attention and signal detection--are commonly described (9, 24, 25, 32, 35, 37, 115, 116, 119, 120, 121, 150, 162). A number of discussions of the locus of the memory impairment have appeared (33, 39, 164). There is a growing consensus that the memory defect is due to a storage problem rather than acquisition or retrieval. There has been concern that cannabis may increase the suggestibility of those using it. However, in laboratory studies marihuana smoking had no effect on hypnotic susceptibility (6).

Effects on Sensory Function

One of the more commonly reported effects of cannabis is a subjective change in sensation. A number of groups investigated drug effects on various aspects of sensory functioning. Although subjective impressions of changes in skin sensitivity are commonly associated with cannabis intoxication, no objective or measurable change in cutaneous sensitivity using a number of measures was noted (115). The decrease in auditory signal detection while intoxicated appeared to be due to a decrease in sensitivity rather than a change in criteria (120). This finding contrasts with the usual subjective reports of enhanced auditory sensitivity. THC given to patients suffering from pain demonstrated mild analgesic effects but 20 mg doses orally produced many unpleasant side effects --somnolence, dizziness, ataxia, blurred vision, etc. (126, 127). The experience of experimentally induced pain in normal subjects was also diminished by smoked marihuana (130). Pain secondary to spinal cord injury was decreased by cannabis use (42). The characteristics of preferred tone frequency were shifted while intoxicated (35).

Automobile Driving Performance

More evidence has accumulated indicating that driving ability and related skills are impaired by cannabis at doses likely to be commonly used in the United States (90, 89, 119, 44). Despite their commonly expressed belief that their driving ability is impaired when intoxicated (90, 163, 32), more cannabis users appear to drive today while intoxicated than was the case a few years ago. In limited surveys 60% to 80% of the users questioned reported driving soon after marihuana use (90, 154). The use of alcohol in combination with marihuana before driving was reported by 64% of one sample and during driving by 20% of the sample (90). As the risks of arrest for possession decrease, one might expect more users will take the chance of being caught while intoxicated and driving (154).

A more detailed report of a Canadian driving study discussed last year (89) has appeared (90). The data clearly demonstrate that marihuana in relatively low doses (cigarettes containing approximately 5 and 8 mg of THC) typically had a detrimental effect on driving skills and performance not only on a test course but also under more usual city driving conditions. However, as is true with alcohol, effects were not uniform with all drivers. Some, particularly at the lower dose, actually improved their performance. Thus, the problem of individual differences that has complicated developing and enforcing "drunk driving" laws will probably recur when discussions of the minimal allowable dose or blood level of cannabinoids come up.

Compared to most of the behavioral tasks studied in the laboratory, automobile driving is more complex. The relative importance of the various perceptual, cognitive and psychomotor functions in determining driving ability is not completely understood. For example, in some situations the cognitive impairment produced by cannabis may have only limited impact on actual driving performance due to concomitant drug-induced changes in risk acceptance or feelings of aggression. In a laboratory simulation of driving, cannabis-intoxicated subjects took longer to decide whether to pass another car seemed less likely to accept the risks of passing and seemed less aggressive than alcohol-intoxicated subjects (40, 45). Other laboratory simulator studies have found that, while some driving skills are relatively unaffected by marihuana, there is a dose-related impairment in the ability to attend to peripheral stimuli while driving (119). Such

an impairment might interfere with a driver's response to a car suddenly emerging from a side street.

Because of the many inherent inadequacies of laboratory driving simulator studies (90), cannabis-related driving risks will ultimately have to be assessed on the basis of studies of actual accident rates for users compared to non-users. This has been difficult in the study of alcohol. It promises to be still more difficult with cannabis because of the difficulties of measuring tissue levels of the cannabinoids, the longer excretion times, the more complicated metabolism and the often combined use of cannabis and alcohol while driving, making the relative contribution of either drug uncertain (90, 154).

Flying an airplane demands still more complex skills than does driving. There is little information concerning possible pilot error or impairment in performance as a result of having used marihuana. A preliminary study has shown that under flight simulator test conditions experienced pilots showed marked deterioration in performance following smoking marihuana containing 6 mg. of THC (108). More detailed studies are planned to follow up these initial observations.

Nonpharmacologic Determinants of Subjective Response

Sociocultural factors (128) appear to interact with such pharmacologic aspects as dose and route of administration so as to modify marihuana's subjective effects. Some of these factors were explored in studies published this past year. Laboratory studies are often criticized because a sterile, scientific laboratory setting may alter the response to the drug so that findings have little relevance to more typical conditions of use. A group of subjects were randomly assigned to smoke marihuana (16 mg THC) and were tested either in a typical medical research laboratory or a private living room designed to facilitate a pleasurable drug experience (76). Although there were great differences between subjects in their subjective responses to the smoked marihuana, the effect of the very different settings was negligible. A similar study using only a subjective level of intoxication as an index of drug effects found a psychedelic environment was associated with greater intoxication at intermediate dose levels, but not at the highest (16 mg THC) dose employed (14). Another attribute of the setting in which cannabis is often used is the possible effect of other intoxicated friends on a person's "high." However, in a study testing the effects of modeling, subjects smoking marihuana for the first time were relatively unaffected by the presence of an actor modeling a marihuana high (17). The results of this study suggest that previous experience with cannabis is a complicated socialization process in which individuals learn from friends and others to discriminate and label various aspects of the drug state (17). The mood one is in before smoking is sometimes thought to interact with the drug effects to produce varied outcomes. A laboratory study found no difference in subjective response to low doses of smoked marihuana and no difference in level of anxiety in groups of subjects made anxious by exposure to laboratory stresses (136). Finally, in a study mentioned in last year's report, but which had not yet been published, it was found that the dose of cannabis consumed in an experimental laboratory setting was determined by many factors (size of cigarettes, past drug experience) other than pharmacologic potency of the drug (15). A similar study by the same group (14) found that controlling the amount of drug consumed in accord with its varying strength was difficult for subjects, again suggesting that nonpharmacologic considerations are important in affecting the amounts consumed.

Cannabis and Psychopathology

The association of cannabis use with psychiatric illness raises complex questions for which no completely satisfactory answers are yet available. Two reviews of past research point out the many methodological and theoretical shortcomings of existing work (64, 112). A variety of psychiatric disorders are clearly associated with the use of cannabis—however, whether the psychopathology is an antecedent to use, a consequence or a mere coincidence is still very much open to question. A best guess is that cannabis use like that of many other psychoactive drugs will sometimes be an antecedent, a consequence or coincidental to psychopathology, depending on the person and many other variables (112).

As is often true in medicine, the ambiguity in diagnostic classification and definitions adds to the confusion concerning adverse psychological reactions associated with cannabis use. The following classification has been adopted in imposing some order on the literature (64, 112).

Acute Panic Anxiety Reactions

The acute panic anxiety reaction has been noted by many reviewers to be the most common adverse reaction to cannabis use (64, 112). The symptoms and signs are usually exaggerations of normal cannabis effects more generally described by users. Anxiety is often focused on fears of "going crazy." This reaction appears most likely to occur in novices and after consuming more potent materials. Personality variables that make for poorer coping skills play a role. The symptoms diminish with authoritative reassurance or in a few hours when the immediate drug effects have worn off. A number of reports in the past year illustrate these considerations (1, 87, 117, 124, 127, 164, 166).

Patients with chronic pain (127) and depression (1, 139) given low doses of THC in therapeutic trials had far more dysphoric and acute panic episodes than would be expected if the same doses were given to typically youthful cannabis users. These older people presumably found it difficult to accept the drug-induced mental changes as desirable. Younger but equally inexperienced "cannabis experimenters" often react similarly (164, 117).

Cannabis-induced mild paranoid feelings in student and "counter culture" users of marihuana are common and usually not a source of undue concern to them (87). About two-thirds of a student group and 95% of a counter culture group studied described suspicion of being subjected to a police raid or having friends tricking them while intoxicated. Inability to reality test concerning these suspicions was reported by over half of the subjects. Another field survey found that individuals with a tendency to use paranoid defense mechanisms experienced fewer acute anxiety reactions after cannabis (124). The authors thought that the more sophisticated defenses represented in paranoid functioning may be effective in preventing acute adverse reactions. The same study found that persons with high scores on the schizophrenia subscale of the MMPI tended to have more problems with adverse psychological reactions indicating (as have a host of previous studies) that pre-existing psychopathology is an important factor in such reactions.

Cannabis Induced Acute-Brain Syndrome or Toxic Delirium

The clinical features of the acute brain syndrome associated with cannabis intoxication--such as clouding of mental processes, disorientation, confusion and marked memory impairment--are similar to those produced by other exogenous toxins (64, 112). The syndrome is most likely to occur at high doses and to be dose-related, whereas the panic reactions may occur at any dose unfamiliar to the user (64, 112, 79). The toxic delirium is likely to follow the time course of other drug effects. This syndrome appears to be relatively rare in the United States.

Prolonged Reactions

Possible prolonged psychological effects of cannabis use are an area of serious concern and controversy. These include not only psychotic reactions but also personality change, change in life style, a possible "amotivational syndrome," "flashbacks" and a possible causal relationship between marihuana use and use of other drugs. Here it is even more difficult to establish precise cause and effect because the close relationship between ingestion of the drug and acute effects is lacking.

Descriptions of a specific long lasting cannabis psychosis appear largely in the Eastern literature, and thus are largely drawn from a culture where use is generally more frequent, and at higher dose levels, than normally is typical for the United States. This acute "cannabis psychosis" is generally associated with very frequent use and reportedly lasts one to six weeks or longer (64, 112). Recent studies abroad in Jamaica (141), Greece (155) or Costa Rica (23) where frequent users of high potency cannabis were examined failed to document the existence of a specific cannabis psychosis. However, small sample sizes were involved and such a relatively rare occurrence could well have been missed.

A few years ago a clinical report by Kolansky and Moore (95) described eight psychotic reactions in a group of 39 marihuana smokers in this country and attempted to demonstrate a cause-and-effect relationship to their marihuana use. A more recent clinical study demonstrates how correlations between various behaviors and subsequent psychiatric disorders can be misleading (2). Consecutive first admissions to a psychiatric hopital were evaluated. Thirty-eight patients who had used marihuana prior to the onset of psychiatric problems were studied. Indeed, apathy, poor judgment, confusion and depression followed marihuana smoking, but the correlations between marihuana use and subsequent illness was less than with such causally unrelated variables as having masturbated, having experienced sex education, and having drunk beer. In this clinical study marihuana use could not be singled out as a prime factor leading to psychiatric illness.

Marihuana flashbacks--spontaneous recurrences of feelings and perceptions similar to those produced by the drug--continue to be reported (12). The etiology of such flashbacks remains obscure, but those who experience them seem to require minimal treatment, if any.

Nonpsychotic Prolonged Adverse Reactions

Surveys of user and non-user populations provide some information as to neuropsychological changes, changes in life style and the so-called amotivational syndrome associated by some with cannabis use. In an all too rare prospective

study, Culver and King (28) compared groups of LSD-mescaline users with marihuana, hashish users and non-drug using controls. The investigators used a sophisticated psychological test battery including the Halsted-Reitan tests, the Wechsler Adult Intelligence Scale and tests of spatial perceptual abilities. When tested a year later the LSD-mescaline group scored least well on the trail making test but the performance of all three groups fell within normal limits. No evidence could be found for the existence of a neuropsychological deficit with either light or frequent cannabis use. Another study of heavy drug users using a similar test battery arrived at similar conclusions (13). However, the authors of the study remind their readers that one should not conclude that no organic changes occurred since psychological test data is inferential and definitive statements as to organic changes can only be based on radiological or pathological evidence. One study of multiple drug users in the Navy found a large number of psychiatric symptoms reported by them on the Cornell Medical Index but because of the variety of drugs habitually used it was impossible to single out marihuana use as an important factor (61).

The possible effects of cannabis on student performance has been a major concern because of the extensive use by that group. A longitudinal study of a sample of 1,970 college students examined the relationship between cannabis use and psychosocial adaptation and academic performance (11). Users and non-users did not differ in grade point average or in educational achievement, but the marihuana users seemed to have more difficulty in deciding on career goals and dropped out of college more often to reassess goals. A smaller percentage of regular users planned to seek advanced or professional degrees. There was, in the opinion of the users themselves, a poorer academic adjustment among the most frequent users than among infrequent or non-users. Only 6% of non-users reported a worsening of their emotional state since beginning college but 20% of the long duration users reported negative changes in emotional state. A problem with the study was that a significant percentage of the initial sample was lost over the three year period. If the loss was from the group who failed out or dropped out, those most likely to show loss of motivation or intellectual functions may have been automatically excluded from the study. Also, the study merely reported the students' own assessment of their adaptation since no interviews were attempted. Other questionnaire surveys reported differences between users and non-users but the question of causation remains and the mental health significance of some of the findings are unclear. Non-users scored higher on needs for achievement and order and not surprisingly had higher grades (152). Other surveys found marihuana users to be more dissatisfied, disillusioned and alienated (29), more oriented towards the past (88), but to be more creative and adventuresome (60). They also had lower levels of achievement (16).

The ability of cannabis users to work in other contexts has been examined in attempts to see if a measurable "amotivational syndrome" exists (113, 111). In a study of frequent and infrequent users smoking cannabis while living on a research ward, work output decreased as marihuana consumption increased (111). However, the investigators noted that "motivation" is a function of situational variables as well as drug factors. To term the decrement in work output "amotivational" would imply that the users in the experiment had lost interest in working for money. However, if the work decrement resulted from a drug-induced impairment of performance, it would not be proper to term it a motivation effect. In a similar

Canadian study (113) a fall in productivity (making stools) followed the smoking of cannabis. The decreased productivity appeared to be due to less time spent working rather than to decreased efficiency. The authors interpret this as indicative of an "amotivational syndrome." To the extent that these types of studies involve artificial work conditions and tasks dissimilar to more usual employment, it is hazardous to draw more general conclusions regarding the role of cannabis in a more generalized amotivational picture. Moreover, these studies involved intensive daily use. Their relationship to episodic or less frequent use in altering motivation is unknown.

An assumed relationship between cannabis use and the use of other drugs (mainly opiates) has been a source of concern. The progression hypothesis is a good example of a theoretical construct repeated so many times that it has become verified by repetition rather than by facts (161). The patterns of the shifts from one drug to another seem to be changing with more of a "progression" to "polydrugs" other than heroin (57). In a military population the pattern of drug use and selection of drugs was determined more by availability, peer pressure and drug use fads than by pharmacologic or personality variables (123). Cannabis users are, however, very likely to use other licit and illicit drugs with a positive correlation between level of cannabis use and the variety of drugs used (122).

Criminal and Aggressive Behavior

The often discussed possible link between cannabis use and crime or aggressive behavior was the topic of reviews (56, 92) and experimental studies (26, 107, 142). Both reviews (56, 92) concluded that evidence showing marihuana to cause crime is virtually nonexistent. Young prisoners who varied in their degree of marihuana use were compared using a number of personality measures (e.g., MMPI, CPI) (107). Non-users and occasional users had typical criminal profiles. Regular users of only marihuana were better socialized and adjusted, though more deviant, than collegiate marihuana users. Prisoners who used marihuana plus other drugs were the most deviant.

In addition to concern about marihuana use and criminality, the association between marihuana intoxication and hostile human behavior has been a topic of great interest and discussion. The results of observations and self-reports of hostile, aggressive feelings from research subjects intoxicated acutely or chronically with cannabis suggest the usual effects are to decrease expressed and experienced hostility (80, 109, 142).

Chronic Effects

Tolerance

Marked tolerance to the effects of cannabis doses commonly consumed in this country is not usually evident, presumably because of relatively infrequent use and the generally low doses of active material. However, as data accumulate from

countries where more frequent use of high doses is common (23, 49, 141, 155), it is apparent that tolerance must develop to many of the psychological and physiological effects. In controlled experimental situations where prolonged administration of THC or marihuana to volunteer subjects has been undertaken, what appears to be dose-related tolerance develops rapidly (8, 53, 80, 109, 111) as judged by behavioral, psychologic and physiologic measures.

In outpatient studies where frequent and infrequent users or other populations with differing drug histories are compared in their response to a given dose of cannabis, the results are less consistent. Marked tolerance to measured effects is rarely obvious, if evident at all (94, 132, 140, 155). However, when sensitive and reliable measures are used, even infrequent use may produce evidence of some degree of tolerance on outpatient laboratory tests (9, 24). Tolerance in man is apparently a dose-related effect as it is in animals (36).

Dependence

When volunteers were given 30 mg doses of THC orally for 10-20 days, sudden cessation of the drug was associated with the appearance of irritability, restlessness, decreased appetite, marked sleep disturbance (including sleep EEG alterations), sweating, salivation, tremor, weight loss, nausea and vomiting, diarrhea and, in general, a clinical picture similar to that following chronic administration at moderate doses of many sedative-hypnotic drugs (8, 48, 80). Such psychologic and physiologic changes have not been commonly observed in other chronic administration studies in this country. Restlessness and weight loss was reported by Mendelson in an inpatient volunteer study at the end of a 21-day smoking period (109). Drug-seeking behavior has not been associated with the withdrawal syndrome, but the presence or absence of such behavior is difficult to assess in the laboratory. A withdrawal syndrome has not been described in recent investigations of chronic users abroad (23, 49, 141).

Field Studies of Chronic Users

Several field studies of populations of frequent long-term users have searched for possible adverse or other effects associated with chronic use (23, 49, 94, 141). These all were concerned with users in countries where high potency cannabis is more readily available than in the United States.

The results of a chronic user study discussed in two previous reports were recently published in book form (141). The 30 experimental subjects had been smoking high potency cannabis almost daily for ten years or more. Few psychological or physiological differences between the cannabis smokers and nonsmokers were evident. There was no evidence for liver, kidney or cardiovascular malfunction. While no differences in chromosomal abnormalities were found, the results must be regarded as inconclusive because of various technical dificiencies of the study. Modest decreases in pulmonary function and altered hemoglobin levels were the only physiologic differences evident. The impact on these findings of tobacco use by the subjects is uncertain. After smoking cannabis, a small group of workers produced less work (weeding, hoeing, digging) with more movements, but otherwise showed no evidence of "amotivation." The importance

of cultural differences in the interpretation of drug effects is evident in that people in Jamaica did not find their appetite increased by cannabis, nor their hearing enhanced nor their time sense altered, and in fact said they used cannabis so as to work better. Although reassuring, the findings should also be judged in perspective. They were derived from a small group of selected users, so that rare consequences (if they did occur) such as brain atrophy or psychosis might not have been detected. The subjects were laborers and farmers in a very different culture, so that intellectual impairment may have been relatively difficult to detect.

A similar although larger and more complex study is underway in Costa Rica. Coggins presented a preliminary report (23). Eighty daily marihuana users and matched noncannabis-using controls were evaluated with extensive medical examinations, laboratory studies, X-rays, EEG, EKG and neuropsychological testing. Although the study is still in progress, no evidence for a greater incidence of disease or deterioration has yet to be found.

In studies of Greek and chronic hashish users approximately 47 chronic users were compared with 40 control nonusers on a variety of EEG, echoencephalographic, neuropsychologic and experimental laboratory tests (49, 94, 155). Conventional clinical measures of brain damage (EEG, echo-EEG) showed no evidence of abnormality in the chronic users. Tolerance to administered doses rapidly developed on the EEG indices. No evidence of withdrawal symptoms after three days of chronic administration was evident. When given high doses of THC, some of these very experienced subjects developed unpleasant psychological symptoms when their tolerance level was exceeded. These were all outpatients so no precise control over drug use outside of the laboratory was possible. A slightly higher incidence of personality disorders in the hashish-using group was better explained by psychosocial variables than by marihuana use.

Thus, these three field studies of users abroad do not report brain damage, psychosis or an "amotivational syndrome." However, the cultures are different, and the sample populations are relatively small so such drug effects can not be ruled out. They may be simply uncommon or difficult to measure.

Chronic Effects - Laboratory Studies

A number of groups have studied the effects of daily cannabis use in paid volunteer subjects consuming cannabis for up to 72-day periods while hospitalized (8, 48, 53, 80, 109, 111, 113). Although even 72 days is not really chronic use, such studies complement the more commonly performed acute outpatient studies. In general, in all these chronic or subchronic studies, subjects have tolerated the drug treatment phase well and very few dropouts, psychoses, or other blatant manifestations of distress were revealed. Except for the pulmonary function changes noted in one study (109), drug effects on mental, behavioral and physiologic functions appear to disappear rapidly on cessation of drug administration and have been, in general, similar to those seen in acute studies. Tolerance is evident at lower doses (53, 109) and obvious at high doses (80).

Adverse Physiologic Effects Associated with Chronic Use

Mention has already been made of the endocrine and immunologic changes reported in some populations of users. Mutagenesis and teratogenesis is discussed elsewhere in this report. A discussion of the report of brain ventricle changes was presented in a previous report. A paper describing the same group of subjects appeared this past year (46), but no similar reports have yet appeared. The difficulty of performing pneumoencephalograms in neurologically normal volunteers makes survey studies impossible. A number of groups are testing cannabis users with noninvasive techniques for measuring brain ventricle size (computerized tomography) and preliminary results should be available soon. An investigator who reported the electrical changes in the deep brain structures of a human smoking marihuana has now completed chronic studies in monkeys, finding similar electrical changes. The slow wave activity persists for months after the cessation of a chronic period of smoking. The behavioral and biological significance of the changes in man is uncertain.

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CHAPTER 8

EFFECTS OF MARIHUANA ON THE GENETIC AND IMMUNE SYSTEMS

The effects of marihuana and other cannabis preparations on the genetic and immune systems have recently been areas of intensive research. Since the fourth Marihuana and Health report, a wealth of new information has become available.

Animal Studies

In the area of preclinical investigations, chromosome studies in rats and hamsters have been negative (23, 35). However, cytological and cytochemical studies of hamster lung cultures (18) exposed to smoke from marihuana and tobacco cigarettes found an inhibition of DNA synthesis and cell division, abnormalities in mitosis, and variable DNA content in chromosomes. Recently, THC was found to reduce the number of lymphocytes and leukocytes and inhibit the hemolytic plaque forming cell response (a measure of antibody producing cells) in mouse spleens (16). In another study (13), an increase in lymphocytes in rat bone marrow accompanied inhibition of myelopoiesis following administration of delta-9-THC. There is also the report by Harris et. al. (11) that delta-9-THC administered orally to mice retarded tumor growth and increased survival 36%. Harris and associates also observed in another set of experiments that the acute administration of delta-9-THC inhibited 3H-thymidine uptake into the DNA of tumor cells but not into the DNA of bone marrow, spleen, testes, and brain. If the acute administration of delta-9-THC preferentially inhibits DNA synthesis in tumor cells in humans as well, then the potential usefulness of marihuana as an antineoplastic agent will have to be evaluated. Marihuana may also have potential therapeutic use as an immunosuppressant in transplantation surgery if the findings that it depresses cell-mediated immunity in rodents (20, 32) are substantiated in human studies.

Studies of Teratogenicity

Early studies of marihuana indicated teratogenic activity in rats, rabbits, mice and hamsters (7, 8, 36, 37). Recently, Fournier et. al. (6) have confirmed the findings in rabbits. Mantilla-Plata and Harbison (21) observed that the teratogenicity of delta-9-THC in mice could be modified by pretreatment with phenobarbital and SKF525A. Phenobarbital partially antagonized THC-induced reduction of fetal body weight, while SKF525A either antagonized or potentiated reduction of fetal body weight depending on the gestational age at which it was administered. In addition, SKF525A significantly increased the incidence of THC induced fetal resorptions. By contrast, the studies conducted on rats and rabbits by the National Institute of Drug Abuse (22) did not show deleterious effects of marihuana on either the pregnant mother or the fetus. This is reinforced by the negative finding by Banerjee et. al. (1), that delta-9-THC administered to rats produced no malformations among the fetuses, except for a dose related increase in the incidence of spongy spinal cords. Finally, there is the negative report by Legator et. al. (17); a

battery of tests (including the host-mediated assay, microsomal activation, blood and urine studies, dominant lethal and cytogenetic--micronucleus--examination) failed to detect any effect of delta-9-THC administered orally in the one mouse strain used in all of these studies. Uyeno (44) reported increasing complications associated with delta-9-THC administration to pregnant rats. Results of a later study (45) unfortunately are not interpretable for lack of controls.

The conflicting reports on teratogenic effects may be due to a number of variables including the specific strain used, route and time of administration and dosage. Well designed research projects utilizing animals are needed to determine under what circumstances marihuana acts as a teratogen in animals and how these findings may be applied to humans. To date, aside from occasional case reports, no systematic human studies on the teratogenic effects of marihuana have been carried out.

Human Studies

Chromosome Analyses

The assessment of genetic effects in man has been exclusively based on cytogenetic analysis; specifically, the examination of human chromosomes. In vitro cytogenetic studies did not show an increase in the frequency of chromosome breaks following the addition of delta-8-THC (33), delta-9-THC (41) and cannabis resin (24) to lymphocyte cultures, but did show dose dependent mitotic inhibition. Cytogenetic analyses of lymphocyte cultures from chronic marihuana smokers have been contradictory. The majority of these studies have been retrospective with comparisons made between marihuana smokers and controls. Seven studies of this type have been published. Negative findings were reported by Martin et. al. (24) on a Jamaican population and by Dorrance et. al. (5) on light marihuana users. Gilmour et. al. (9) also reported that light marihuana users did not show an increased frequency of cells with aberrations but that polydrug users, all of whom used marihuana heavily, did show a significant increase in abnormal cells. However, the use of other drugs makes it impossible to interpret this increase as due specifically to marihuana. Nahas et. al. (31) mentioned increased chromosome damage in chronic marihuana smokers but did not provide further information. According to Morishima (27), this increase was not statistically significant.

The three positive studies of marihuana effects on chromosomes should be interpreted with caution. Stenchever et. al. (42) reported a significant increase in the number of cells with breaks in marihuana users as compared to controls (3.4% vs. 1.2%). However, as stated in the fourth Marihuana and Health report, "the biological significance of the findings remained unclear because of several methodological and sampling questions raised by the authors themselves" (22). Herha and Obe (12) reported increased exchange-type aberrations (dicentrics and translocations) in chronic cannabis users. Close inspection of their data shows that five of the nine aberrations they observed occurred in only one of the eleven subjects. Further, chromatid and chromosome breaks, the most commonly reported type of aberrations, were not included in their analysis; when this is done, there is

no longer any difference between users and controls. In the third study (14)--the only one to examine chromosomes from direct bone marrow preparations--the authors reported a statistically significant increase in the frequency of breaks. Again, the increase was accounted for by two of the seven heavy cannabis users; the others showed no breaks. In addition, the total number of cells examined was small, 157 cells for all of the seven subjects. (In drug studies, 50-100 cells per subject are customarily considered minimal.) Since information on the number of cells analyzed for each subject was not provided, it cannot be determined whether the number was evenly distributed among all subjects.

Retrospective studies such as those cited above, with their many uncontrolled variables, make definitive interpretations and conclusions difficult, if not impossible. To resolve the controversy, prospective studies are needed.

So far, the results of only two prospective studies (with subjects serving as their own controls) have become available and both have been negative. Nichols et. al. (34) did not detect an increase in the percent of cells with breaks following the oral administration of hashish extract (containing THC, CBN and CBD), marihuana extract (delta-9-THC alone) and synthetic delta-9-THC to 30 subjects following a variety of schedules. The second study (a 94-day study with 72 days of unlimited smoking of marihuana cigarettes containing approximately 2.2% delta-9-THC) found no increase in the break frequency when baseline and post-exposure values were compared (25). However, subjects in both studies were all marihuana users and their baseline values may already have been elevated above those of non-drug using controls. Thus, even these prospective findings are not definitive.

Effects on chromosome complements have also been published. Leuchtenberger et. al. (18, 19), using an in vitro exposure of human lung cells, reported a relative increase in aneuploid cells. Even more strikingly, Morishima (26) reported that in marihuana smokers, a high proportion of cells (30.6%) contained from 5-30 chromosomes instead of the normal 46. In a subsequent study (28), the in vitro addition of delta-9-THC to leukocyte cultures was found to increase the frequency of cells with abnormally low chromosome numbers. The possibility that these types of cells have been overlooked by other investigators as technical artifacts, or that these cells may indeed be technical artifacts, is not settled. Since it markedly reduces the potential for technical artifacts, use of the flow microfluorometry technique to measure DNA content in intact lymphocytes from marihuana smokers and to compare it with DNA content of nonusers may resolve this question.

At this time, there is no conclusive evidence that the consumption of marihuana causes chromosome damage. Indeed, the two prospective studies carried out as part of large biobehavioral investigations on the effects of marihuana did not show increased break frequencies when baseline and post-exposure values were compared. There are no data available, however, on the long-term consequences of marihuana use.

Immune Responses

The immune system of man is compartmentalized into two parts: cell-mediated immunity and humoral- or antibody-mediated immunity. Each is dependent upon a major subpopulation of lymphocytes, the T- or thymus dependent cells and the B- or thymus independent cells, respectively. The initial publication

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was that of Nahas and associates (31) reporting that in vitro cell-mediated immunity, as assessed by mitogenic (phytohemagglutinin) and allogeneic cell stimulation, was significantly depressed in 51 chronic marihuana users compared to 81 controls. Indeed, it was depressed to a level similar to that seen in patients with known T- cell immunity impairment (uremia, cancer and transplant patients).

Investigations attempting to replicate this finding have led to contradictory reports. Gupta et. al. (10) compared by rosette formation the circulating populations of T- and B-cells in 23 healthy chronic marihuana smokers and 23 normal controls. They found that the mean percentage of T-cells forming rosettes was significantly lower in the marihuana smokers while the percentage of B-cell forming rosettes was similar in both populations. One might conclude, therefore, that smoking impaired T-cell function. Intradermal testing, however, on a limited subsample of marihuana smokers (including those with low or normal percentages of rosette forming T-cells) revealed no correlation with the presence or absence of a positive reaction to one or more antigens tested. Therefore, the results of this study concerning T-cell function are equivocal: When measured by rosette-formation, T-cell function was impaired; when measured by intradermal challenge, it was not. Petersen et. al. (38) also reported significantly lower percentages of rosette-forming T-cells in marihuana smokers, while B-cells remained normal. Although the responsiveness to phytohemagglutinin was not significantly different from that of controls, in that same study the cells from smokers did tend to be less responsive suggesting possible impairment of T-cell function. Serum levels of immunoglobulins G, A and M (a measure of B-cell function) were similar in marihuana smokers and non-smokers. Further, the capability of polymorphonuclear leukocytes to phagocytize killed yeast cells was reduced in smokers (phagocytic activity of polymorphonuclear leukocytes is a necessary prerequisite for the transformation of lymphocytes into macrophages which process antigens in the immune system).

The effects of macromolecular synthesis (i.e., DNA, RNA and protein synthesis) in lymphocyte cultures from normal controls exposed in vitro to many of the natural cannabinoids have been investigated. Cushman and Khurana (3) reported that in vitro incubation of control lymphocytes with delta-9-THC, cannabinol, and cannabidiol for one hour gave a dose-related reduction in rosettes. DeSoize et. al. (4) reported that in vitro addition of the natural cannabinoids (delta-9-THC, delta-8-THC, cannabinol, cannabidiol, cannabichromene, and cannabicyclol) to human lymphocyte cultures all affected DNA, RNA and protein synthesis as measured by uptake of 3H-thymidine, 3H-uridine, and 3H-leucine, respectively. These two laboratories also reported positive findings on cell-mediated immunity. Results obtained by Blevins and Regan (2) confirmed inhibition of DNA, RNA and protein synthesis following the in vitro addition of delta-9-THC to human diploid fibroblast, neuroblastoma cells and mouse neuroblastoma cells in culture. Further analysis detected no effect on either DNA repair synthesis or uptake of radioactively labelled precursors into the cell, but did demonstrate that the intracellular pool sizes of these precursors were depressed 50%. This last finding could account for the reduced synthesis reported by others.

All of the studies discussed so far point to impairment of cell-mediated immunity in marihuana users. There are others, however, which failed to confirm such impairment. Silverstein and Lessin (40) in an in vivo study evaluated the immunocompetence of 22 chronic marihuana smokers compared to 60 controls by

the gross criterion of ability to be sensitized to DNCB (2, 4-dinitrochlorobenzene) and found no differences. White et. al. (43) using both PHA and pokeweed mitogens in an in vitro study, also reported no impairment of mitogen-induced blastogenic response in twelve chronic marihuana users as compared to twelve matched controls. Lau et. al. (15) in a prospective study could detect no differences in either peak level of response to PHA or concentration of PHA at which the maximal blastogenic response occurred. However, they did find that in cultures without PHA, the level of 3H-thymidine incorporation was higher in marihuana smokers than controls. These investigators carried out assessments before and after fourteen days of oral doses of 210 mg/day delta-9-THC and at a one-week follow-up. Rachelefsky et. al. (39) in a prospective study evaluated the immune system of twelve chronic marihuana smokers before and after 64 consecutive days of smoking unlimited quantities of marihuana cigarettes containing approximately 2.2% delta-9-THC. They found that baseline total T-cells and B-cells were significantly lower than controls but increased to normal by the 63rd day, suggesting that factors other than marihuana smoking may have caused the depression seen at baseline. Response to PHA and allogeneic cells was normal and did not change over time; serum levels of immunoglobulins G, A and M were also within normal limits in their study.

Some progress toward reconciling these contradictory findings will be possible when the impact of certain subtle procedural variations becomes known. For example, Nahas et. al. (30), found that the cytotoxic effect of delta-9-THC added to 72-hour lymphocyte cultures for the initial 24 hours could be reversed by prolonged washing of the cells with the nutrient medium RPMI. That is, the level of incorporation of tritiated thymidine at 72 hours was the same in treated and non-treated cultures. They surmised that the negative findings by White et. al. (43) may have been the result of the washing procedure used in the isolation of lymphocytes; the cell-bound THC may have been washed away. Nahas et. al. also found that THC induced inhibition of thymidine incorporation increased as the serum concentration of the culture medium decreased. This, they suggested, could help resolve an apparent inconsistency between two earlier findings: the Nahas et. al. results summarized above (31), which showed marked inhibition of DNA synthesis in a medium with a serum concentration of 10%, and a later study (29) which examined the effect of THC on healthy blood in vitro and found the inhibition to be considerably less with a serum concentration of 20%. However, even this may not be an adequate explanation since in the first study fetal calf serum was used and in the second, pooled human serum.

There is general agreement among investigators that marihuana smokers taken off the street and tested have a reduced number of T-cells as measured by rosette formation. In light of the report by Rachelefsky et. al. (39) that the initially low level of T-cells returned to normal while subjects were confined on a ward smoking quality controlled marihuana cigarettes, it may be concluded that some as yet unidentified variable, and not marihuana, may be the cause of the reduced number of T-cells seen in chronic drug users. The relationship between reduced T-cell rosette formation and immunologic function, as assessed by mitogen and/or allogeneic cell stimulation, is not clear since Petersen et. al. (38) reported a significantly lower mean percentage of T-cells in marihuana smokers than controls, but no statistically significant differences in PHA responsiveness. There is as yet no evidence that marihuana smokers are more susceptible to diseases known to be associated with lower percentages of T-cells (e.g., cancer, viral infections) and/or

reduced responsivity to mitogens. Also, skin testing of chronic marihuana smokers indicates intact and normal T-cell functions. B-cell function, too, appears to be normal regardless of how assessed.

Summary and Conclusion

The retrospective design and other methodological imperfections of most human studies, whether chromosomal or immune, leave much to be desired and preclude definitive conclusions. For example, information on nutrition, health care, recent radiation exposure and drug use pattern--all of which are variables known to affect both the genetic and immune systems--is generally obtained retrospectively from the participating subjects and is, therefore, of dubious validity. The potential inaccuracy of such information may doom any attempt to identify a deleterious effect of a specific drug, like marihuana, even were the composition of illicitly obtained marihuana known. Many of the other methodological questions now plaguing researchers could be settled by the collaboration of several laboratories, particularly those reporting contradictory findings, in a single prospective double-blind research design with appropriate control groups.

There is no information on the teratogenic effects in humans and it may take several generations to detect them. The reports on teratogenic effects in animals are contradictory and further rigidly designed experimental studies are needed to supplement the few done so far.

Bearing in mind the limitations of the studies discussed in this report, there is at this time no conclusive evidence that the consumption of marihuana causes chromosome damage. The studies which have been most carefully controlled have failed to show such damage, but insufficient research has been conducted to allow any definitive conclusions.

A number of investigators have reported results indicating that marihuana may interfere with cell-mediated immunity, but until the inconsistencies between these findings and the negative results which have also been reported are resolved, and until the implications of particular procedural variations are more clearly understood, the question of whether or not THC impairs cell-mediated immunity in humans remains a moot one. There is preliminary evidence, however, that in certain rodents delta-9-THC depresses cell-mediated immunity and preferentially inhibits DNA synthesis in tumor cells as compared to cells of normal tissue. It is important, therefore, to verify the anti-immune and anti-tumor activity of delta-9-THC in animals since, if these findings are confirmed and found to hold true for humans, delta-9-THC may have potential as an immunosuppressing and antineoplastic agent.

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CHAPTER 9

THERAPEUTIC ASPECTS

Cannabis is one of the most ancient of healing drugs. It was and is an important folk medicine in many cultures. This fact alone is no reason to expect that it will qualify in today's stringent tests of medical efficacy and pharmacologic toxicity. One should not, however, summarily dismiss the possibility of therapeutic usefulness simply because the plant is the subject of current sociopolitical controversy. The controversy makes its impartial evaluation more difficult, but just because a substance has a potential for harm does not mean that it may not also have potential benefits. Furthermore, unaltered marihuana will not be the ideal preparation if some significant area of usefulness is found. Even its active cannabinoids can be improved upon by synthetic chemists. The benzopyran structure is a unique one which can be modified at many positions on the molecule. If the psychological changes of cannabis are not desired, they can be eliminated. If water solubility is preferred, it can be achieved. Although a good deal of further testing will be needed, there is a promise that certain of the pharmacologic effects of cannabis can be helpful.

When one surveys the specific therapeutic indications, some seem more promising than others. It is possible that cannabinoids may have a contribution to make in the treatment of glaucoma and asthma. Despite the recent finding that in certain animals, delta-9-THC is a convulsant in addition to being an anticonvulsant, some of the synthetic compounds may, one day, be helpful in managing certain forms of epilepsy. Inasmuch as only a single preclinical study (24) has examined the usefulness of cannabinoids in the treatment of tumors, it is much too early to say whether cannabis might have an anti-tumor action in man.

Some role may be found for a cannabinoid as a tranquilizer or a sedative-hypnotic. However, it will have to compete with a number of quite effective drugs already marketed for this purpose. Because of recent contradictory findings, a definite statement concerning the value of cannabis as an analgesic or antidepressant cannot be made at this time, but its antiemetic and euphoriant activity could provide needed relief for cancer patients undergoing chemotherapy. There is no evidence at present that the usefulness of cannabis exceeds that of currently available preanesthetic agents or those now in use for detoxification of patients in various drug and alcohol dependency states.

In addition to the possibility that specific benefits may some day, accrue, another reason for therapeutic interest in the cannabinoids is the possibility that their mechanisms of action may be different from the standard preparations. The elucidation of these mechanisms would be even more important than the finding of another therapeutic agent.

The Ancient Lore

The therapeutic use of cannabis predates recorded history. The earliest written reference is to be found in the fifteenth century B.C., Chinese

Pharmacopeia, the Rh-Ya (16). From the Chinese plateau its use as a folk medicine, ritual potion, fabric and intoxicating agent spread to India, the Middle East and far beyond.

An examination of the diverse claims made for cannabis as a medicament during past epochs reveals that many cannot be justified by the current knowledge of its pharmacologic activity. For instance, it had wide use as a lotion and poultice for a variety of skin afflictions. It had purported effectiveness in cases of leprosy, gonorrhea and arsenic poisoning. The smoke was tried in enema form for strangulated hernia and an application of the juice of the leaves was recommended for dandruff and vermin infestation.

On the other hand, a rationale can be found for certain of the early medicinal practices. Cannabis was widely used in painful conditions like neuralgia, dysmenorrhea and toothache and its relaxant and euphoriant properties may well have been utilized in the treatment of melancholia and hysteria. Because of its purported analgesic effect, supported by some recent findings, cannabis also found service in minor operations like circumcision and boil lancing.

Cannabis was one of the most important drugs in the Indian Materia Medica at the turn of this century (54). It was, and is, widely used in rural areas of the Indian subcontinent for asthma and bronchitis. A bronchodilator action has recently been quite well established, but cannabis is more likely to be a cause of, rather than a cure for, bronchitis. It was known to be an appetite stimulator; and this usage is confirmed in numerous subjective reports, although no precise mechanism for assessing the appetite-enhancing effect is available.

One interesting effect of bhang and ganja as reported by the Indian Hemp Drugs Commission, and more recently from Jamaican (57) and Costa Rican studies is the assertion that it is a "creator of energy"--that it increases staying power, relieves fatigue and is a stimulant. The Jamaican report told of its use as an energizer and motivator to work. Ganja breaks in back country Jamaica seem to be the equivalent of the North American coffee breaks. Employers have been known to supply their workers with ganja to "get more work out of them." This reason for use among laborers and farmers stands in sharp contrast with our concerns about a marihuana-induced "amotivational syndrome."

The scattered but persisting reports about an aphrodisiac property are not easy to evaluate. Much seems to depend upon the mental set of the consumer. If it is taken for that purpose, sexual interest, activity and enjoyment are likely to be enhanced. On the other hand sexually abstinent Indian monks used cannabis to diminish sexual drives and as an aid to meditation. While it may enhance sensory perception, prolong the subjective experience of time and reduce inhibitions, and thus intensify sexual experience, cannabis appears to have no direct effect upon sexual drive states (7). In fact, in view of the reports of lowered plasma testosterone levels after heavy usage, potency may, in some instances, be reduced (35).

Many therapeutic references can be found regarding the seeds of Cannabis sativa (23). For example, the seventh century Sythians inhaled and bathed in the vapors of hemp seeds thrown onto a fire, and "they howled with joy." The seeds contain essentially no active tetrahydrocannabinols, so that whatever joy there was

must have been due to the effects of the sauna. A persistent theme that runs from ancient times up to the present is the healing effect of external applications of cannabis. The potential efficacy of cannabis as a topical antibiotic has been most extensively researched in Czechoslovakia (30).

The Middle Period

During the latter half of the nineteenth century a resurgent interest in the medical usefulness of the hemp plant developed. Well over a hundred papers appeared in the medical journals of the day. Some of these reports are worth citing, however briefly. In Calcutta, O'Shaugnessey (47) tried cannabis on patients with a variety of ailments, including tetanus, rabies, epilepsy and rheumatism. He reported favorably on its anticonvulsant, analgesic and muscle-relaxing properties. This sparked a flurry of clinical investigations including those of M'Meens (42) who considered it a sedative-hypnotic, useful in such diverse disorders as neuralgia, dysmenorrhea, asthma and sciatica. Many favorable reports appeared, including those of Birch (3) and of Mattison (37) who recommended cannabis enthusiastically for the treatment of morphine, alcohol and other addictions. In 1890 Reynolds (55) wrote of its value in senile insomnia and tic douloureux (trigeminal neuralgia).

During this period Moreau de Tours (43) successfully treated obsessive compulsives, melancholics and patients with many other chronic psychiatric syndromes. His positive findings were confirmed by some, but not by other studies.

Despite the encouraging testimonials about cannabis, the drug began to fall into disuse at the beginning of the twentieth century. In retrospect, it would appear that the following reasons combined to account for its neglect:

1) Different batches of the plant had widely varying potencies, with some essentially ineffective and others stronger than the prescriber expected;

2) The drug had a poor shelf life. Many of the extracts of cannabis were practically inert by the time they were dispensed. Delta-9-tetrahydrocannabinol gradually breaks down into cannabinol at room temperature or when exposed to daylight and air. Cannabis sativa was, therefore, unreliable, and some of the contradictory clinical opinions might be explained on this basis.

3) Delta-9-THC is extremely insoluble in water and crosses the gastrointestinal wall with difficulty. It is for this reason that the oral route is two or three times less effective by weight than the pulmonary.

4) Synthetic, water soluble analgesics and hypnotics which had a much more predictable, stable pharmacological action were beginning to appear.

5) The final blow was the Marihuana Tax Act of 1937 which classified the drug as a narcotic. By that year, however, it was hardly employed in medical practice in the United States.

Even when the first synthetic tetrahydrocannabinol, pyrahexyl (Synhexyl), became available for clinical trials, it was not widely employed. Some work was done by Thompson and Parker (67), who treated various drug withdrawal syndromes with some success. In what may have been the first double blind study with a cannabinoid, Parker and Wrigley (48) administered it to 57 depressed patients.

They were unable to demonstrate a significant difference between pyrahexyl and the placebo. This study has been criticized by Grinspoon (23) for having used an inadequate dosage level. At any rate, both favorable and unfavorable reports with pyrahexyl can be found in the literature. It was tried in depressions, epilepsy and in addictive states. The value of many of the earlier reports is indeterminate. They were uncontrolled, poorly designed and impressionistic. Still, they did provide certain clues which have been exploited in present day pharmacologic investigations.

The Current Period

The systematic study of the clinical pharmacology of cannabis is less than ten years old. It required a number of scientific advances and administrative decisions before it could begin. These included:

1) The total synthesis of delta-9-THC by Mechoulam (38) permitting the manufacture of sufficient material for investigators.

2) The clarification of the relationship between delta-9-THC and the plant material (39).

3) The development of a source of uniform, assayed marihuana by the University of Mississippi group (52) under a NIDA contract.

4) The availability of a reliable assay procedure for delta-9-THC in marihuana.

5) The funding of animal and human studies designed to clarify the physiologic, pharmacologic and psychologic effects of cannabis.

6) The availability of various cannabinoids for research purposes from the National Institute on Drug Abuse.

7) The recent development of assay methods which can qualitatively identify cannabinoids in biological fluids (1).

Cannabis has been found to have some therapeutic potential in a number of diverse areas. They can be divided into two general groups, those that utilize the psychologic changes that the drug induces and those that do not. In the latter instance, the subjective symptoms often become undesired side effects of the drug.

The non-psychologic research directions include: intraocular pressure reduction, bronchodilator, anticonvulsant and tumor growth retardation.

The therapeutic efforts which rely on changes in the psychic state are: sedative-hypnotic, analgesic, antidepressant and tranquilizer, preanesthetic, antinauseant and antiemetic, and drug and alcohol dependence therapy.

Intraocular Pressure (IOP) Reduction

Hepler and associates (25, 26) undertook a study of the various ocular alterations produced by smoking cannabis in 1970. Among their early findings were a consistent, dose-related, clinically significant fall in IOP in subjects with normal

ocular tension. The IOP was also reduced with oral delta-9-THC and, to a lesser degree, with cannabinol and cannabidiol. Seven of eleven patients with ocular hypertension demonstrated a drop in IOP averaging 30% which lasted four to five hours. Topically instilled delta-9-THC in sesame oil produced a 40% reduction in IOP when compared to a treatment of sesame oil eye drops administered to a group of twelve rabbits.

Green et. al. (20, 21) demonstrated a fall in the IOP of rabbits given intravenous delta-9-THC. They postulated that delta-9-THC interacted with the adrenergic innervation system of the eye, namely that alpha-adrenergic blocking agents partly inhibited the THC effect. Apparently, beta-adrenergic blockade also dampens the delta-9-THC effect. The result of these adrenergic activities is a dilation of the efferent blood vessels. These effects were found to be modulated via an inhibition of prostaglandin synthetase.

Cooler and Gregg (12) compared intravenous (i.v.) doses of 1.5 and 3 mg of delta-9-THC, 10 mg diazepam (Valium) and a placebo in ten volunteers. IOP was diminished 29% with the low and 37% with the high delta-9-THC dosages. Diazepam lowered the pressures 10% and placebo 2%. These investigators also measured analgesia and noted no cutaneous or periosteal analgesic effects. Their subjects manifested an increased anxiety level on both doses of delta-9-THC. This study and others indicate that the IOP reduction is not due to any relaxing or euphoriant effects of cannabis as suggested by Flom et. al. (18).

Bronchodilation

During 1973 two articles referring to a bronchodilator effect appeared. Vachon et. al. (68) studied the effects of a single administration of smoked marihuana on normal subjects and asthmatic patients. Airway resistance decreased significantly permitting an increase in specific airway conductance and mean expiratory flow rates. The bronchoconstriction of the asthmatic patients was reversed for hours.

Tashkin et. al. (64) did a double blind study of 32 non-naive, male subjects randomly assigned to a placebo group, a 1% delta-9-THC and a 2%-delta-9-THC group. The investigators found that both dosages decreased airway resistance with a peak at fifteen minutes and with activity still present after an hour. Subsequently, they examined dose response curves with a placebo and 10, 15 and 20 mg of oral delta-9-THC and found that peak effects for the THC dosages were obtained at three hours. Persistent effects were evident for six hours.

Tashkin and associates also induced bronchospasm in asthmatics with methacholine or exercise (65). In a single blind fashion 10 mg of smoked delta-9-THC was compared to 1.25 mg of inhaled isoproterenol (Isuprel), both placebo controlled. Bronchospasm was relieved promptly by both drugs, not by their placebos. The isoproterenol had a higher peak effect, but the marihuana had a longer lasting activity.

The irritant quality of smoked cannabis, with its terpenes and coal tars, makes it a poor delivery vehicle for asthmatics. At present, an aerosolized delta-9-THC is being tried (46). The results of a pilot study are encouraging, showing that the aerosol produced a mean peak increase above baseline of 89%--much

greater than the increase observed when the same amount (10 mg) of delta-9-THC was smoked. Also, systemic effects such as the tachycardia and the "high" were not as pronounced with the aerosolized preparation.

This group also attempted to clarify the mechanism of bronchodilator action (59). In one set of experiments, six young males either smoked a cigarette containing 10 mg delta-9-THC or were injected with atropine before being challenged with methacholine. In contrast to atropine the cannabis-induced increase in specific airway conductance was not blocked by a methacholine challenge. In succeeding sets of experiments, the effects of combinations of propranolol and marihuana and isoproterenol and marihuana on young males were examined. Unlike isoproterenol, propranolol did not block the cannabis-induced increase in specific airway conductance. Apparently, cannabis is a bronchodilator independent of beta-adrenergic or antimuscarinic effects.

Anticonvulsant

Much of the work investigating the anticonvulsant properties of cannabis has been preclinical. The effects of cannabinoids on animal seizures resembling epileptic attacks, whether induced by pentylentetrazol (Metrazol) or by audiogenic or electrical means, have been recently examined. Consroe et. al. (8, 9, 10) found that delta-8-and delta-9-THC blocked all three types of seizures in a dose-related manner, and that these cannabinoids were qualitively comparable to diphenylhydantoin (Dilantin). Boggan (4) confirmed the effect of delta-9-THC in audiogenic seizure susceptible mice.

Rat hippocampal seizures precipitated by afferent electrical stimulation were used in another study of anticonvulsant activity (17). Cannabinoids were effective--more effective than diphenylhydantoin--in diminishing these seizure discharges. Cannabidiol was most potent, followed by cannabinol, delta-9-THC and delta-8-THC in order of effectiveness. Interestingly, the psychologically non-active cannabinoids outperformed the active ones.

Karler et. al. (31, 32, 33) showed that tolerance developed to the anti-seizure activity in the maximal electroshock test in rats treated with delta-9-THC and in mice treated with delta-9-THC, cannabidiol, diphenylhydantoin and phenobarbital. In other electrical seizure models tolerance was variable and specific for each model. It is possible that cannabidiol, which has no psychotoxicity or cardiotoxicy, has the further advantage of being a better anticonvulsant than delta-9-THC. Mechoulam (40) reported that 6-oxo-cannabidiol diacetate is a promising anticonvulsant.

The Davis and Ramsey pilot study in 1949 (13) examined the effect of tetrahydrocannabinols on five epileptic hospitalized children who had been receiving diphenylhydantoin or mephenytoin (Mesantoin) as medication. Two cases showed improvement after receiving one cannabidiol, while transfer to a second cannabinoid produced mixed results. Very little human investigation of the anti-epileptic properties of the cannabinoids has been done since.

Convulsant as well as anticonvulsant action has been demonstrated for cannabis. This is usually manifest when toxic or high chronic doses are used.

However, Consroe et. al. (11) have bred a strain of New Zealand rabbit which is quite susceptible to delta-9-THC seizures. Doses of 0.1-0.8 mg/kg i.v. produced behavioral seizures regularly. Spontaneously epileptic beagles were given delta-9-THC, cannabidiol or a placebo for twenty consecutive days. Myoclonic jerks and generalized seizures were observed only in those dogs receiving 3-5 mg/kg orally. A single case report suggests that cannanbidiol may activate spiking in epileptic patients (69).

In view of the problems involved with delta-9-THC (insolubility, variable oral absorption, psychotoxicity, tachycardia, convulsant potential), three new benzopyrans have been synthesized (51). These are dimethylheptylpyran (DMHP) analogues which are more active than diphenylhydantoin in rats given the supramaximal electroshock test. These new compounds have varied anticonvulsant profiles, do not produce tolerance and have minimal toxicity.

Retardation of Tumor Growth

Harris et. al. (24) have reported that mice inoculated with Lewis lung adenocarcinoma materials showed reductions of tumor size from 25 to 82%, depending upon the dose and duration of treatment, with subsequent administrations of oral delta-9-THC, delta-8-THC and cannabinol, but these investigators did not find such an effect with cannabidiol. Cannabinoids increased survival time by a quarter to a third compared to an increase of about 50% for cyclophosphamide. Friend leukemia virus growth was also inhibited by delta-9-THC, but L1210 murine leukemia was not. In vitro experiments confirmed the animal inhibition of growth, leading the authors to conclude that certain cannabinoids possess antineoplastic properties by virtue of their interference with RNA and DNA synthesis.

The therapeutic studies which rely upon the psychologic effects of marihuana follow.

Sedative Hypnotic

Freemon et. al. (19) confirmed the observation of others that delta-9-THC, like most hypnotics, reduces REM time during sleep. However, in contrast to findings with other hypnotics like the barbiturates, the abrupt withdrawal of THC after six consecutive nights of usage failed to produce a REM rebound, although mild insomnia was observed. Sofia and others (61) have demonstrated that pretreatment of laboratory animals with delta-9-THC reduces the dose of barbiturates needed for hypnosis and increases sleep time.

Studies attempting to exploit the well-known relaxing, sedating properties of cannabis have been performed. Two studies conducted by Neu and his colleagues (44) exploring the use of delta-9-THC as a bedtime sedative are difficult to reconcile with one another. In the first study nine subjects with sleep difficulties were given 10, 20 or 30 mg of delta-9-THC or a placebo at weekly intervals, double blind. The drug, as compared to the placebo, significantly reduced the time needed to reach a state of sleep. Furthermore, sleep was less interrupted during the drug nights. Side effects were mild, but they grew in number with increasing dosage. The main complaint was of feeling hungover or "stoned" the next day.

In the second study the delta-9-THC doses were reduced to 5, 10 and 15 mg to reduce hangover. These were compared to a placebo and to 500 mg of chloral

hydrate, a well-established hypnotic. Surprisingly, neither the chloral nor the delta-9-THC facilitated sleep induction or extended the duration of sleep as compared to the placebo. At the 15 mg dose level, some complaints of hangover were recorded. The authors suggested that difficulties in controlling the room temperature during the winter may have interfered with sleep sufficiently to negate any possible hypnotic effects of the active substances.

Tassinari et. al. (66) reported increases in total sleep time in eight volunteers. Stage II sleep was increased and REM sleep was reduced. The doses used were rather large (0.7 to 1 mg/kg of delta-9-THC).

Analgesic and Pre-anesthetic

One of the earliest folk uses for cannabis was its pain-relieving quality. A series of preclinical investigations by Kaymakalan et. al. (34) tended to confirm the analgesic effect. After having received intravenous administration of 1 mg/kg delta-9-THC, dogs received electric stimulation through an implanted dental electrode. The cannabinoid produced a definite analgesic effect, as shown by a fourfold increase in pain thresholds. Tolerance to analgesia, sedation and ataxia occurred in eight days. In another study delta-9-THC produced pain reduction in mice and rats as measured by the tail flick and writhing tests, and in rabbits receiving sciatic nerve stimulation. The analgesia produced with the doses used was equivalent to morphine analgesia--in fact, in rats a cross tolerance between delta-9-THC and morphine was found. An earlier study (49) measured the effect of delta-9-THC on rats with electrodes implanted in aversive brain sites. A non-dose related elevation of the pain threshold and an attenuation of the escape response were recorded.

A double blind Canadian study by Milstein (41) revealed a significant increase in pain tolerance among those who had smoked marihuana. Using a pressure algometer, the experimenter found that experienced subjects obtained greater analgesia than non-experienced subjects, although the increased pain tolerance was found only in the preferred hand. No effects on sensitivity to pain sensation were noted.

In another human study Hill et. al. (27) recorded opposite results. Here, 26 subjects received blind either marihuana smoke containing 12 mg of delta-9-THC from a spirometer or a marihuana placebo, then were given electrical skin stimulation. The THC was found to decrease tolerance and heighten sensitivity to pain.

In an impressionistic report Dunn and Davis (15) questioned ten paraplegics hospitalized in a V.A. Hospital, all of whom had admitted using marihuana in the past. Four reported that it produced a decrease in phantom pain sensations, five mentioned a decrease in spasticity, and five noted a decrease in headache pain and an increase in pleasant sensations.

Cancer patients in pain were studied by Noyes et. al. (45). Patients were given either delta-9-THC in 5, 10, 15 or 20 mg doses or a placebo. Pain reduction was greater at all delta-9-THC levels than in the placebo condition and significantly so at the 15 and 20 mg THC levels. These researchers felt that the pain relief was not due to the sedative or euphoriant effects.

Antidepressant

Since marihuana tends to elevate mood, it follows that an evaluation of its antidepressant potential would be sought. Kotin et. al. (36) administered 0.3 mg/kg of delta-9-THC or a matching placebo twice daily to eight patients who required hospitalization for their affective disorder. The patients were all considered moderately or severely depressed. Treatment lasted a week, with placebos substituted for the active drug thereafter. No evidence of a significant affectual change could be demonstrated. In chronic depressive states a longer duration of drug administration is sometimes needed.

A group at the Medical College of Virginia (53) performed a double blind study with cancer patients receiving chemotherapy. An initial starting dose of 0.1 mg/kg t.i.d. was used which was raised if previous doses were well tolerated. On a battery of personality tests and mood scales the delta-9-THC acted as a mood elevator and tranquilizer producing significant improvement on two of three Zung depression scales. Cognitive functioning was unimpaired and appetite enhancement and retardation of weight loss were noted from the clinical records. The need for narcotics was decreased, and patients had the impression that some pain relief resulted. Relief of nausea and vomiting was problematic.

Pre-anesthetic

A number of studies have examined the role that delta-9-THC can play as a preanesthetic agent, with mixed results. When it was given prior to inhalation anesthesia, the requirement for cyclopropane and halothane was decreased (50, 62). Smith (60) found that normal volunteers given 200 mcg/kg THC intravenously experienced marked sedation with minimal respiratory depression. Also, salivation was diminished, bronchodilation occurred, and cardiac output increased on the basis of the expected tachycardia. Although the author cautioned that some of the observed effects may have been due to the alcohol in which the delta-9-THC was dissolved, that amount of the drug given intravenously could easily have provided the manifestations recorded. Whether delta-9-THC has a potential usefulness in anesthesiology will depend on findings from additional studies.

Gregg and Small (22) found two dosage levels of intravenous delta-9-THC ineffective in controlling anxiety in oral surgery patients. In fact, in low doses it elevated anxiety, sometimes to a marked degree. Intravenous diazepam (Valium) outperformed the drug under investigation.

Smith (60), having searched for suitable pre-anesthetic combinations, reported that 5 mg of delta-9-THC intravenously produced fear in a number of patients. In combination with an opioid it provided useful sedation but with a marked decrease in carbon dioxide sensitivity. When combined with a barbiturate, the CNS depression was unpleasant and associated with some restlessness, but the response to carbon dioxide was unchanged. With diazepam definite drowsiness and other depressive effects were notable, and the ventilatory response to carbon dioxide was decreased. The investigator suggested that the combination of marihuana with pre-anesthetic or anesthetic medications could lead to undesirable potentiation.

Johnstone et. al. (29) also examined delta-9-THC in combination with other drugs. THC was administered intravenously after subjects had been pretreated

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with oxymorphone (OXM) or pentobarbital (PBL). The sedative effects of OXM were increased by THC, but the cannabinoid also increased respiratory depression. The combination of PBL and THC did not cause respiratory depression but produced such intense anxiety and psychotomimetic reactions that four of the seven subjects receiving this combination were not given the full course of five THC doses. The investigators concluded that neither combination was a desirable anesthetic premedication and also expressed reservations about the value of THC alone for such a purpose.

Antinauseant and Antiemetic

Sallan (58) gave two oral courses of delta-9-THC or a placebo to a small number of cancer patients in chemotherapy who were not responding well to the conventional antiemetics. Nausea and vomiting were brought under control with the drug significantly more often than with the placebo. Sedation, which could be considered desirable in this group of patients, was a frequent side effect.

Alcoholism and Drug Abuse

Rosenberg (56) has studied the response of a group of alcoholics and normal volunteers to marihuana cigarettes (0.4 gm/50lb body weight) and to alcohol (2 ml vodka/kg). This investigator found that alcoholics tended to be less responsive to stress (mental arithmetic and talking to a videocamera) and were more likely to withdraw from a stress situation than the normals. Alcoholics became more angry and depressed after alcohol ingestion as measured by mood scales. Marihuana produced a more positive mood state and did not interfere with the arousal reaction, although it greatly increased heart rate and produced an acute paranoid or confusional state in 3 of the 27 subjects. This investigator also found that disulfiram (Antabuse) and marihuana could be given safely together in the treatment of alcoholism. The study is continuing, but the early findings indicate that marihuana may be a suitable therapeutic adjunct for some alcoholics.

Hine and colleagues (28) have implanted morphine pellets in rats. Delta-9-THC in 1, 2, 5 and 10 mg/kg doses was injected 71 hours later. After one additional hour, 4 mg/kg of naloxone (Narcan) was delivered. The two higher doses blocked the appearance of wet shakes, escapes, diarrhea and increased defecations, although neither delta-9-THC nor cannabidiol precipitated abstinence in these rats. The results indicate that delta-9-THC may be worth studying in narcotic detoxification situations.

Mechanism of Action

The precise mechanism by which cannabis exerts its various pharmacologic effects is not known. Burstein (5, 6) found that delta-9-THC reduced prostaglandin formation by inhibiting prostaglandin synthetase. Other cannabinoids also have this effect, as does olivetol, from which delta-9-THC is synthesized. Many prostaglandins exist, and it will be necessary to determine what effect the cannabinoids have on the various fractions. Prostaglandin inhibition would explain a number of the physiologic actions attributed to cannabis such as the intraocular pressure reducing and bronchodilating effects.

The influence of cannabinoids on neurotransmitters has been examined, but the results are inconsistent. Banerjee et. al (2) have shown that the psychologically active cannabinoids and cannabidiol are potent inhibitors of norepinephrine, dopamine, serotonin and GABA in vitro, while the cannabinoid-biogenic amines relationship is undoubtedly much more complex. Drew and Miller (14) believe that cholinergic dominance best explains the mental effects. Monoamine oxidase inhibition of the various cannabinoids is also beginning to be studied.

Summary

The further study of the cannabinoids for various therapeutic applications seems worthwhile. Numerous synthetic cannabinoids have begun to appear; these do not have the disadvantages (insolubility, undesired psychic effects, instability) intrinsic in the naturally-occurring ones. Therapeutic efficacy may also be enhanced by molecular manipulations. Thus, it is likely that if any cannabinoid achieves clinical acceptance, it will be a synthetic.

Findings of importance are: 1) the wide safety margin between effective and lethal doses, of cannabinoids; and 2) that in many instances the mechanism of action appears to differ from the medication commonly employed. The hemp plant and its derivative chemicals turn out to be neither the best nor the worst of substances. Like everything else it should be used for its beneficial effects and avoided for its noxious aspects.

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SUMMARY *

Extent and Nature of Cannabis Use in the United States

The best current data indicate that approximately one in seven Americans twelve years of age or older has made some use of marihuana. Although more definitive data on a nationwide sample of the general population will not be available until Spring, 1975, present indications are that use has not changed appreciably in the general population since it was last reported in the third Marihuana and Health Report.

Overall estimates of national use mask the widely varying trends and levels of use by various subgroups and by regions of the United States. For example, there is some evidence that use among high school and junior high school students continues to increase though perhaps at a slower rate than in previous years. There are also wide geographical differences in the number who have tried the drug. Almost one in four living on the West Coast has used marihuana while in the South less than one in fourteen has done so. Studies of use in the various states also reflect wide regional variations.

A recent follow-up study of a nationwide sample of high school senior boys whose drug use was first explored in 1969 reveals a marked increased in the nonusers who have used since then. In 1969 only 20 percent had experimented with the drug; by 1974, over 60 percent had done so.

Adolescent drug use, like that of adults, differs markedly by geographical area. Over three times as many teenagers have used marihuana in the West as have used in the South (23.5 percent vs. 7.0 percent).

One West Coast county high school population has been of particular interest because it is an area of extensive drug use for which unusually complete trend data are available for the past six years (1968-1974). Use has continued to increase over the six year period. While only a little over a quarter of the male high school freshmen in the 1968 survey had used marihuana during the previous year, almost half had done so by the time of the Spring, 1974 survey. Although this represents nearly a two-fold increase of users in this relatively young group, it is also noteworthy that this was the first

* "MARIHUANA AND HEALTH" Fourth Report to the U.S.Congress from the Secretary of Health, Education, and Welfare, 1974.

year since the survey was begun in which a slight (2.6 percent) decline was noted in the freshman age group. At the time of the first survey (1968) use by senior girls lagged significantly behind that of boys (32 percent vs. 45 percent) but by 1974 the two sexes reported having used almost equally (62 percent for boys vs. 58 percent for girls). Generally, the rate of increase in use appears to have slowed since 1971 although total use continues to increase in this high use county.

Three state surveys of general population use illustrate the marked regional differences in use patterns. In Pennsylvania 22 percent of those fifteen or over had ever tried marihuana while in Minnesota and South Carolina the proportions of a similarly aged sample were 12.5 percent and 7.8 percent respectively. As in other nationwide surveys, regular users made up half of those reporting having ever used.

Cannabis use by college and university students continues to be extensive although there are marked regional variations in this age group similar to those found among high school students.

Serious doubt has been cast on the general belief that college students use marihuana to a greater extent than their noncollege attending peers. One major follow-up study of young men first studied while high school students has found that use, at least during the first year following high school graduation, was virtually identical in both groups.

In the general population about half of those who have ever tried the drug are not currently using it. However, among those who have continued to use marihuana, over half do so once a week or oftener and about one in five does so on a daily basis.

New light has been shed on some of the influences involved in continuing or discontinuing marihuana use. Attitudes approving social deviance, social support for drug use, friends' approval of such use and lack of church attendance are some of the factors predictive to some degree of marihuana use among high school students. "Openness to experience" was an important predictor of use in those not yet users. In one study, most heavy marihuana users on the college level have reported that they do not use in situations where control of behavior or concentration is required.

The most significant factors related to the cessation of marihuana use by former college users have been found to be the development of commitment to nonstudent roles, family and job constraints and increasing social isolation from other users. Age per se was not a significant factor.

Previous editions have discussed in detail marihuana and its relationship to the use of other drugs. Prior use of alcohol and tobacco in youthful groups is closely associated with later cannabis use. Contrary to popular opinion, there is little evidence to support the contention that marihuana use displaces the use of alcohol and other drugs. Those who use marihuana are also likely to use alcohol -- often simultaneously. Moreover, marihuana users as compared to nonusers are more likely to use or have used other, both licit and illicit, psychoactive drugs. The more heavily a user smokes marihuana, the greater the probability he has used or will use other drugs. It has been suggested that such use is related to "drug use proneness" and involvement in drug using subcultures rather than to the characteristics of cannabis, per se.

Preclinical Research

The preclinical findings of greatest interest and potential significance during the past two years have been a series of studies indicating that delta-9-THC (and possibly other marihuana constituents) have an effect upon certain basic cellular mechanisms which involve the uptake of amino acids and the nucleotides into primary nuclear components such as DNA. Since this may interfere with basic biological processes, the preliminary data raise the possibility that the effects of marihuana, under some circumstances, may be more widespread in the organism than has been previously thought. While many other substances from aspirin to antitumor agents show some of these effects, few are as fat soluble and, therefore, are retained as long in the body.

Initial studies, which will require considerable replication and follow-up before their significance is clear, have described possible adverse immunologic and genetic implications as well as potential therapeutic applications. While such possibilities exist, there is as yet no direct clinical evidence confirming them. No human research has been reported which demonstrates that disease

resistance is significantly impaired by marihuana use; studies of possible genetic damage have thus far shown contradictory results.

Understanding of the chemistry of marihuana and of its constituents has continued to advance. While much of this knowledge is primarily of interest to the specialist, it is worth noting that many other ingredients, in addition to the principal psychoactive ingredient, delta-9-THC, may play a role in the drug's effects and its duration of action. Constituents, such as the other primary cannabinoids and metabolites, may serve to modify various aspects of the drug's action and may also have other biological roles. By better understanding the complex chemistry of marihuana's constituents we can better understand the implications of its use and the mechanisms of its effects.

Forms of liquid hashish called hashish oil have come into illicit use since the last report. Their potency, reportedly ranging from 22 to 70 percent delta-9-THC, is significantly greater than that of the usual hashish previously available (usually not greater than 10 percent delta-9-THC). Since hashish oil has not yet come into widespread use, the implications of its use have not yet been investigated. However, availability of a much stronger cannabis preparation might be expected to make adverse effects more likely.

New and improved methods for detection and quantification of marihuana and its constituents in body tissue and fluids have been an important aspect of recent developments. While many of these are quite sensitive, unfortunately they are not yet simple enough for routine medical use or inexpensive wide scale screening. Development of simpler procedures remains an important goal which has significant research, clinical and forensic implications.

Animal experimentation with marihuana and synthetic delta-9-THC continues to be a valuable tool in understanding possible toxic and other effects in man, the drug's interactions with other drugs and the mechanisms of action of cannabis.

New data on the effects of marihuana on human lung explants (lung tissue grown in artificial tissue culture) continue to indicate a variety of changes in DNA synthesis, cell division and growth. Whether such changes have implications for humans similar to those produced by tobacco smoke remains in some question. Animal

studies of chronic marihuana smoke inhalation are in progress and should yield better answers to this important question.

Two aspects of delta-9-THC which have recently been investigated may prove to be of importance in future therapeutic application of the drug. There is a preliminary evidence that delta-9-THC delays rejection of skin grafts in rats suggesting a possible usefulness in organ transplant surgery. A second aspect, the inhibition of solid tumor growth in mice, may also eventually prove therapeutically useful in the treatment of human tumors. It should be reemphasized that this preclinical work is highly preliminary and the treatment possibilities are only speculative at this time.

Previously reported anticonvulsant effects of marihuana in animals have now been corroborated by several investigators. However, this antiepileptic property of cannabinoids is nonpersistent because of tolerance development. This, coupled with the psychoactive properties of the drug, casts into doubt the potential therapeutic use of cannabis or its synthesized constituents as effective human anticonvulsant agents.

Preclinical Behavioral Effects

One interesting finding in animal behavioral studies is that marihuana (at least in short term administration), in a variety of animal species has been found to reduce expressions of aggression. This observation is consistent with the widespread clinical impression that marihuana in humans, unlike alcohol, tends to reduce aggressive behavior rather than to potentiate it.

Animal studies to date also suggest that in order to develop behavioral tolerance to the effects of marihuana (i.e., the ability to compensate for the disruptive effects of intoxication), it is necessary for the behavior to be practiced while the animal is intoxicated. Thus, contradictory experimental findings reported in man may be partially attributable to behavioral mechanisms -- learned compensatory responses while under the drug's influence -- rather than pharmacological ones.

Although tolerance to many of the effects of marihuana has been convincingly demonstrated in animals and there is evidence of it

in humans, dependence has not typically been found in animal experimentation. Most research has found animals reluctant to self administer natural or synthetic material or to consume it in food or water when alternatives are available. Two groups of investigators did, however, find some evidence of physical dependence following prolonged drug administration. Since there is now some preliminary evidence of possible withdrawal symptoms following heavy use, the possibility of physical dependence will continue to be carefully investigated in further animal research.

Human Research

Acute Effects

Studies on the acute effects of marihuana and its major ingredients have continued. Such research is useful in learning the role various marihuana constituents play in producing psychological and biological effects or in modifying the effects of marihuana's more active components. Two of the most abundant cannabinoids are cannabidiol and cannabinol. Neither was found to have effects in itself although a possible interactional role with delta-9-THC, the major psychoactive ingredient in natural marihuana, has not been ruled out. Delta-8-THC, another constituent of cannabis, has been found in human trials to have effects qualitatively similar to, though quantitatively less than, delta-9-THC. 11-hydroxy-delta-9-THC, believed to be the major metabolite of delta-9-THC, has been found to be active by three groups of investigators. The question of whether delta-9-THC acts primarily through its conversion to this metabolite has not yet been resolved. Research on the metabolic aspects of marihuana and its various constituents has helped elucidate some of the possible mechanisms of action of the drug. These data will also be useful in anticipating and explicating possible interactive effects of cannabis with other commonly ingested drugs.

One report on the effect of marihuana ingestion on the electrocardiograms of a small sample of young men expressed concern about possible effects on heart action, both acutely and on a cumulative basis. However, the observed effects were not replicated in a second study and may represent a benign, temporary stimulating effect of the drug rather than any seriously adverse effect on cardiac function; further clarification is required. Previous Marihuana and Health

Reports have expressed concern that the effects of marihuana -- thus far explored principally in relatively young adults -- might be of greater consequence in older, less healthy groups. At least one study of patients with clearly established coronary artery disease has found that chest pain (angina pectoris) was experienced sooner after exercise and after less work while smoking marihuana than while smoking an inactive placebo. Thus use of marihuana by those with coronary difficulties may be especially unwise.

Another study testing whether marihuana can alter physiological response to stress found that with moderately high doses response to experimentally induced stress was not reduced.

Several investigations of the acute effects of marihuana on brain electrical activity have been conducted. These electroencephalographic studies tend to provide objective support to users' assertions that, when intoxicated, they tend to selectively attend to particular aspects of the outside world. Alcohol, by contrast, was interpreted as having a generalized suppressive effect on brain arousal.

A variety of studies further confirms the fact that marihuana impairs short-term memory processes while the user is intoxicated. This impairment appears to involve the transfer of information from short-term memory to longer term memory storage.

Because of domestic restrictions on research involving the experimental administration of cannabis to women, there has not been systematic comparison of effects on males and females in the United States. However, Canadian investigators -- employing a wide range of intellectual and psychomotor tasks -- have found few differences between the sexes in their performance under conditions of acute intoxication.

Cannabis and Driving

Evidence that marihuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities and to detract from performance on a divided attention task, all of which are presumably involved in driving. A recent Canadian study of driving ability while marihuana intoxicated examined drivers' performance under both driving course and actual traffic conditions. A significant

decline in performance as measured by several criteria was found in most drivers tested. Based on the accumulated evidence, it seems clear that driving while under the influence of marihuana is ill-advised.

Genetic and Reproductive Aspects

The third report on Marihuana and Health indicated that "there continues to be little evidence from human case reports and research studies that cannabis preparations have either a significant teratogenic effect or have any significant effect on chromosome breakage." In one more recent study of marihuana users an increase in chromosomal abnormalities was found while in another study utilizing known dosages of pure cannabis preparations no drug-related increase was found. These contradictory data may reflect methodological and sampling differences and considerable uncertainty exists regarding the possible significance of these chromosome breaks. Hopefully, the present uncertainty will be clarified by ongoing or newly designed studies such as those looking at chromosomal number and DNA metabolism.

Chronic Effects

While tolerance to the effects of marihuana has not been generally observed among American users, there is increasingly convincing evidence that tolerance (i.e., larger dosages required to produce the same effects originally found with lower dosages) does develop under conditions of heavy, regular use. Given the relatively low doses and infrequent use typical of present patterns of use in the United States it is not surprising that tolerance has not usually been observed. One report based on a study of subjects in a hospital setting (receiving relatively large amounts of THC) describes an abstinence syndrome occurring following abrupt withdrawal of the drug. This withdrawal syndrome is reportedly characterized by sleep loss and disturbance, irritability, restlessness, hyperactivity, decreased appetite, sweating, sudden weight loss, increased salivation and increased intraocular pressure. While the amounts involved were usually large and quite atypical of current use patterns, the possibility of a withdrawal syndrome in at least some American heavy users must be considered.

Preliminary evidence in one study of chronic American marihuana smokers indicates that levels of the male hormone testosterone

may be lowered in chronic users. This study reported that six of the twenty young men studied had reduced evidence of fertility (lowered sperm counts) and two were impotent. Testosterone levels in this group were significantly lowered though they remained within what are generally regarded as normal limits, and promptly increased upon discontinuing marihuana use. Preliminary findings from two other studies of young male subjects were inconsistent; one found a depression in serum testosterone levels, another did not. The significance and implications of these findings will require further study. It has been speculated that depressed testosterone levels in young boys may affect adolescent development, or that marihuana consumed regularly during early pregnancy -- while sexual differentiation is occurring in the male fetus -- may adversely affect its development. There is, however, no empirical evidence to this effect at present.

The possibility that regular, heavy doses of marihuana may result in a diabetic-like response has been suggested by preliminary research, but is quite tentative and requires further investigation. There is no clinical evidence as yet of marihuana-precipitated diabetes.

While chronic users in the United States have used for appreciably shorter periods of time than users overseas, studies of American chronic users are potentially of great importance in assessing possible implications of marihuana use for the American population. In one large scale study of undergraduate student use comparisons were made between nonusers (including those who had done a limited amount of experimentation), occasional users and chronic users (those who had used three or more times a week for three years or more or for two years if use was almost daily). No statistical differences in academic performance were found nor was there any evidence of reduced motivation. It should, of course, be noted that some chronic users who dropped out may have been excluded. As yet, however, there is no evidence that in a college population use is typically accompanied by impaired performance or motivation. Another study of moderately using medical students who had used regularly for three or more years and who were matched with non-using medical students for intelligence, found no difference on an extensive battery of neuropsychological tests.

It should be kept firmly in mind that most research on American users involves samples of motivated groups using only modest

amounts of cannabis (by overseas standards) for limited periods of time. Overseas studies of longer term, heavier using groups have been limited to small samples. Rarer consequences of use or more subtle impairment which may be significant in a highly urbanized, industrial society may have escaped detection in these agrarian cultures.

Cannabis and Psychopathology

To date, well controlled studies demonstrate few differences in psychopathology in carefully matched samples of users and non-users. However, a series of clinical and case reports associating marihuana use with a wide range of psychiatric symptomatology has appeared. The question of a causal role of cannabis still remains largely unresolved. Most such studies have reported on small self-selected samples many of whom were consuming other drugs in addition to marihuana. Previously reported (Cf. earlier editions of Marihuana and Health), larger scale studies in countries where cannabis use is endemic which have described intellectual deficit or psychopathology associated with cannabis use have been poorly controlled, confounded by multiple drug use and used dubious diagnostic methods. Observations made in the last Report continue to appear sound. Serious psychiatric complications of use seem to be most common in those with a previous history of psychopathology who consume large doses of cannabis or inadvertently overdose. More recent findings tend to confirm the observation that American marihuana users who use heavily are somewhat more likely to come from populations with a higher pre-existing risk for psychiatric problems than has the general population.

Therapeutic Aspects

Cannabis has had a long history of use in native medicine to the present day, and in Western scientifically based medicine until supplanted by other more uniform and/or convenient drugs. More recently, with its investigation as a drug of abuse, has come a renewed interest in it and its synthesized constituents for use in modern medicine. It is too early to know which of the several applications that are being made of the drug will prove to be ultimately useful. While cannabis is a drug of very low toxicity it has, at the same time, limitations due to the psychological effects and possible tolerance to its effects developing over time.

A preliminary study of the possible therapeutic use of marihuana has explored several possible facets of the action of THC with a group of cancer patients. This preliminary work suggests that THC may be valuable in reducing the need for other pain reducing drugs in acting as an anti-emetic, in retarding weight loss and for its tranquilizing and mild mood elevating properties. Whether these initially observed effects will prove useful over more extended periods of use with larger numbers of patients is not known at this time. It is, however, reported that the side effect of intoxication sought by street users was not troublesome -- it was not experienced by the patient sample studied. The researchers interpret this as an indication of the importance of personal expectation (the "set" of the user) in determining one's subjective response. It is noteworthy that Jamaicans who use the drug primarily as a work adjunct and to relieve the discomfort of arduous conditions also do not characteristically report the "high" sought by American recreational users.

Other investigations have studied the use of cannabis or its constituents for such diverse purposes as the treatment of glaucoma and asthma, as a sedative, as a possible analgesic, as an anticonvulsant and as an antidepressant. While preliminary findings in the treatment of glaucoma and asthma have been encouraging, further clinical trials are needed and the drug's usefulness may be limited by several factors including the development of tolerance to its effects. Some investigators report that breathing efficiency assessed by measures other than bronchodilation is actually impaired. This finding also casts doubt on the clinical usefulness of marihuana in treating asthmatics. The drug's sedative potential is questionable because of its interference with normal sleep patterns, some "hangover" effects and mild insomnia following its discontinuance. Recent animal research, while confirming the antiepileptic property of the drug in short term use, suggests that the effect is nonpersistent unless the dosage is increased over time. Results to date have shown no indication of effectiveness in the treatment of more seriously depressed patients. Finally, recent animal research discussed elsewhere (Cf. Preclinical Research) raises the possibility that marihuana may have some usefulness in facilitating organ transplants and in the treatment of some types of tumors.

[From the Hospital Physician, December 1975]

DEBUNKING THE MARIJUANA RESEARCHERS

(By Edward M. Brecher[1])

Many housestaff physicians no doubt assume that making a significant contribution to the medical sciences is a long and arduous process, requiring years of preparation. This may be true of other fields; but *marijuana* research is different. You don't even have to follow the simple rules of evidence you learned as a first-year medical student to turn out a paper publishable in *The Lancet* or the *New England Journal of Medicine*—if the paper purports to show that marijuana is a dangerous drug. Here, in four easy lessons, is a guide to instant success.

LESSON NO. ONE—POST TOKE ERGO PROPTER TOKE

Pick almost any pathological condition or syndrome and ask patients who exhibit the condition whether they smoke marijuana. If you can find 10 marijuana smokers in your sample, you have a publishable contribution to the world's scientific literature.

One pioneer example of this approach appeared in *The Lancet* back in 1971. It was a study by Dr. A. M. G. Campbell, an eminent English neurologist, on 10 cases of cerebral atrophy among marijuana smokers.

The evidence that all 10 in fact suffered from cerebral atrophy was unchallengeable; indeed, *The Lancet* reproduced air encephalograms establishing the diagnosis beyond doubt. But the etiological role of marijuana in the atrophy was less rigorously established.

Four of the 10 patients, for example, had suffered significant head injuries. One had had convulsions *before* he smoked his first joint. All 10 had taken LSD, and varying numbers had taken other drugs, barbiturates, amphetamines, morphine, heroin—as well as marijuana. Alcohol is known to produce cerebral atrophy; the alcoholic intake of the ten patients was not stated. Just why the cerebral atrophy should be attributed to marijuana rather than to these or other possible antecedents was nowhere made clear.

In other research fields, of course, the Campbell paper would be cited as a superb example of the *post hoc ergo propter hoc* fallacy—the fallacy of assuming that because B follows A, A must be the cause of B. But in marijuana research, *post toke ergo propter toke* is not a fallacy; it is a standard operating procedure.

Finding 10 cases of cerebral atrophy among Librium or Valium takers, or among margarine eaters or cider drinkers, will not earn you an instant reputation as a promising young scientist. Only marijuana and a few other illicit drugs offers this opportunity. Don't expect scientific kudos or publicity in the lay press, moreover, if your study concludes that marijuana does *not* produce damage. Surely *The Lancet* would have rejected the Campbell paper out of hand if it had been based on ten air encephalograms showing long-term heavy-dose hard-core potheads with *undamaged* brains.

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Together with his late wife, Ruth, Brecher has authored more than 250 articles, in both lay and professional journals. He is a regular lecturer at several medical schools.

Brecher has been the recipient of the Albert Lasker Memorial Award for medical writing, the "Ellie" award of the American Society of Magazine Editors, and the George Polk Award for Outstanding Magazine Writing. He is the senior author of Licit and Illicit Drugs: The Consumers Union Report on Narcotics, Stimulants, Depressants, Hallucinogens, Inhalants, and Marijuana—including Caffeine, Nicotine, and Alcohol. Other books to his credit are An Analysis of Human Sexual Response (with Ruth Brecher), The Sex Researchers, and Methadone Treatment Manual. His most recent efforts, due to be published shortly by the U.S. Government Printing Office, is Health Care in Correctional Institutions.

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LESSON NO. TWO—ESCALATE THE DOSAGE

Undergraduate medical students learn early in their studies the importance of the *dose-response curve.* You can kill even a healthy patient, after all, with sufficiently massive doses of H_2O, sodium chloride, or other common substances. Sound procedure requires that you administer a drug at several different dosage levels and report how the response varies with the dose. In marijuana research however, no dose-response curves are demanded. You need only select a dose of marijuana enormous enough to produce damage, and then report that damage has indeed occurred.

Exhibit A for this lesson in dosage escalation is a study by Dr. Robert C. Heath at the Tulane University School of Medicine in which electrodes were implanted deep in the brains of six rhesus monkeys so that their electroencephalograms could be recorded before, during, and after exposure to marijuana smoke. EEG changes were in fact noted, following both acute and chronic exposure.

Impressive evidence? Perhaps. But the dose Dr. Heath used to demonstrate acute effects was roughly equivalent to the smoking of 100 marijuana cigerettes at a single session. To demonstrate chronic effects, Dr. Heath gave his monkeys the equivalent of 30 joints per session, three sessions a day, five days a week, for six months.

Don't be afraid, moreover, to use this dose escalation approach with *human* subjects. Here is an advertisement which appeared in an underground San Francisco newspaper, the *Bay Guardian*, in April 1974:

Subjects Needed

> To participate in a government-sponsored research project to study the effects of marijuana. To participate you must be male, between the ages of 21–35 years, and have used marijuana on a regular basis. The study involves living on a closed psychiatric ward and receiving dosages under close supervision.

This study was under the supervision of Dr. Reese T. Jones of the Langley-Porter Neuropsychiatric Institute in Berkeley. The research was financed by a $350,000 federal grant. Volunteers accepted for the experiment were paid $25 per day and were given oral doses of delta-9-THC, believed to be one of the major active ingredients in marijuana, in capsule form six times a day for three weeks. Dosage totalled 210 milligrams of THC per day.

How much marijuana would a pothead have to smoke to get the equivalent of 210 mg. of oral THC daily? Opinions differ. It is commonly thought that a typical "street" joint weighs about half a gram and contains about one percent THC; such a joint contains 5 milligrams of THC—not all of which, of course, reaches the blood stream. Dr. Sanford Feinglass estimates that the dosage used in the Langley-Porter experiment equalled the smoking of 168 joints per day. Dr. Jones himself has been quoted as saying it was equal to "only" eight to ten "good San Francisco joints" per day. Another authority believes that a head would have to "smoke one joint every seven minutes throughout a 24-hour period to equal the 210-mg. THC dose." All hands agree that 210 mg. is *not* the usual daily dose even for inveterate pot smokers who stay stoned all day long.

The report on the Langley-Porter experiment has not yet been released. When it is, expect another rash of "marijuana is dangerous" headlines.

LESSON NO. THREE—DON'T WORRY ABOUT SAMPLE SIZE

In May 1974, Dr. Akira Morishima of Columbia University's College of Physicians and Surgeons reported to the Internal Security Subcommittee of the United States Senate that the chromosomes of marijuana smokers differ markedly from the chromosomes of controls. "It seems logical to anticipate," he added, "potential danger in (the) immune defense system, development of cancer . . . genetic mutation and birth defects" as a result of chromosome defects among marijuana smokers.

Dr. Morishima's May 1974 report was based on a comparison of the chromosomes of three marijuana smokers with those of three controls. This lesson that sample size is irrelevant in marijuana research is one that should save future researchers many arduous hours of travail.

LESSON NO. FOUR—STUDY TESTOSTERONE

There are few human parameters which show greater lability than the serum testosterone level. Enormous variations occur from month to month, from day

to day, and even from hour to hour—with no known cause and no visible effect.

In one classic experiment undertaken as part of his M.D. thesis, Dr. C. A. Fox checked testosterone levels of one subject (perhaps himself) each morning at 10 a.m. over a 43-day period. One fine morning, the level was above 450 ng. per 100 ml; the next morning it was barely 200 ng.; two mornings later it was down to 120 ng.—and the next morning it was back to 450 ng. again, with no apparent explanation and no effects noted for either the fall or the rise. On another occasion, the serum testosterone level inexplicably soared from less than 200 ng. one morning to more than 500 ng. the next morning. With such inherent lability, the odds are good that you can prove almost anything about serum testosterone levels.

Nor does *averaging* the levels eliminate the apparently causeless and effectless variations. During the initial Fox study, the 10 a.m. serum testosterone levels varied from 145 to 565 ng. with a mean of 321.5 ng. over a 43-day period. When the study was repeated on the same subject over another 43-day period six months later, the range was from 269 to 717 ng. with a mean of 440 ng. No explanation was available for the 37 percent rise in mean testosterone levels.

Hour-to-hour levels are similarly capricious. Thus in a study which checked levels at 15-minute intervals, one subject sitting quietly in a room suffered a fall in serum testosterone from 628 to 410 ng. per 100 ml. in three hours for no apparent reason; another showed a similarly inexplicable rise from 286 to 438 ng. in two hours while similarly sitting quietly in the same room.

The above fluctuations occurred in individual subjects. When different subjects are compared, even more startling variations are found. Thus in one study of 16 apparently normal, healthy, young males, levels varied from 246 to 785 ng.; in another study of 23 normal, healthy, young males, levels varied from 260 to 770 ng. Why? Nobody really knows. Such lability makes it possible to prove—or disprove—almost any hypothesis with a little luck and very little effort.

In 1971, for example, Dr. Robert C. Kolodny and his associates at the Reproductive Biology Research Foundation in St. Louis (the Masters-Johnson research center) reported that 20 homosexual males had significantly lower serum testosterone levels than 20 heterosexual controls. A subsequent research team reported no difference in serum testosterone levels between homosexual and heterosexual males. A third team reported that homosexual males have *higher* serum testosterone levels than heterosexual controls. The next step, inevitably, was to study the testosterone levels of marijuana smokers.

Dr. Kolodny and his St. Louis associates were also first in the field with a report on 40 heterosexual males, for each of whom they made two serum testosterone determinations. Twenty had never smoked marijuana; they showed a mean serum testosterone level of 742 ng. per 100 ml. The 20 marijuana smokers in the study showed a mean of 416 ng. Those who reported smoking five to nine joints per week showed a mean of 503 ng. compared with 309 ng. for those who smoked 10 or more joints per week. The Kolodny report was published in the *New England Journal of Medicine.*

As might be expected, the Kolodny findings were soon challenged. Dr. Jack H. Mendelson of Harvard and his associates recruited 27 healthy males—12 "casual" marijuana smokers and 15 "heavy" smokers. The average serum testosterone levels, based on six successive daily determinations, were 988 ng. per 100 ml. for the casual smokers and 1115 ng. for the heavy smokers. "These values are in the upper range of normal adult levels and are not significantly different from each other," the Mendelson group noted.

The 27 volunteers in this Mendelson study were then locked up in a hospital ward, and for three weeks were given all the marijuana they wanted. The casual smokers averaged from one to four or five joints per day; the heavy smokers averaged from one to seven or eight joints per day. Testosterone levels did not fall. "Under controlled conditions," the Mendelson group announced, "high-dosage marijuana intake was not associated with suppression of testosterone levels when multiple plasma samples were obtained before, during, and after the 21-day smoking period." The Mendelson findings, like the Kolodny findings, were reported in the *New England Journal of Medicine.*

Thereafter, Dr. Kolodny and his St. Louis associates returned to the problem, recruiting an additional 20 marijuana smokers for further testosterone studies. Did these fresh recruits, like the first group of 20, show low testosterone levels? Here was Dr. Kolodny's chance to buttress his earlier findings. Since his second study has not yet beeen published, I wrote to ask him about it.

During the first two weeks following recruitment, Dr. Kolodny replied, the volunteers in his second study were instructed to refrain from smoking mari-

juana; and during the next 10 days, they were locked up in a hospital ward without access to marijuana. Then marijuana was supplied them. Serum testosterone testing was not begun until these first 24 days had elapsed. Thus no one will ever know whether this second group of marijuana smokers resembled Dr. Kolodny's first group with low testosterone levels or Dr. Mendelson's group with remarkably high testosterone levels. What a pity!

In the second Kolodny study, the 20 volunteers were locked up for three months in a hospital ward, and given five marijuana cigarettes of known potency daily after the first ten days. Serum testosterone levels began to fall after the fourth week, and continued to fall thereafter.

Here let me digress for a moment. While serum testosterone levels fluctuate capriciously from month to month, from day to day, and even from hour to hour in the same subject, and while they vary widely from one young, apparently healthy subject to another, a few factors are known to influence the levels. For example, sexual stimulation—such as viewing pornographic films—produces a significant rise in serum testosterone. So does sexual intercourse. In animal experiments, locking males up on close confinement together lowers testosterone levels, and the same may be true of human males. But the effects of sexual stimulation and sexual intercourse in humans have been documented only over periods measured in hours; nobody knows the effects of locking up heterosexual males together in a hospital ward, without sexual access to females, for periods as long as three months. Thus the Kolodny group had a golden opportunity to kill two birds with one stone. They could simultaneously have determined the effects of incarceration and the effects of marijuana on healthy young males.

To accomplish this, they need only have followed the elementary rule taught in high school science courses: *don't forget to include controls in a research protocol.* If they had divided their 20 volunteers into two groups of 10, and had provided only one of the two groups with marijuana, two outcomes would have been possible. Perhaps the serum testosterone levels of the marijuana smokers would have fallen while the levels in the controls remained stable. In that event, the fall could have been traced to marijuana with reasonable assurance. *But the second Kolodny study lacked controls;* hence there is no way of knowing whether the fall was due to incarceration or to marijuana.

If there had been controls, and if the serum testosterone levels in both the marijuana smokers and the controls had fallen, marijuana would of course have been exonerated. With only a slight further refinement, moreover, the study would have established the effect of incarceration on testosterone levels. The refinement would have been the taking of baseline levels when the volunteers were first recruited, so that each volunteer could serve as his own control in a comparison between levels before, during, and after incarceration. In the absence of both baseline levels and controls, the experiment proves nothing about either marijuana or incarceration. Even so, it made front-page headlines in the *New York Times* in September, under a headline reading "Male Sex Debility Traced to Marijuana." It was also featured in the Medicine Section of *Time.*

I could go on and on, but these four lessons are more than enough to prove my point. Research indicating that marijuana is a dangerous drug is the shortest route to scientific and lay recognition. Federal funding is available; and you don't have to worry about bothersome obstacles to research on other topics such as avoiding the *post hoc ergo propter hoc* fallacy, or preparing dose-response curves, or securing an adequate sample, or even dividing your research population into subjects and controls.

[From the Journal of the Addiction Research Foundation, Toronto, Nov. 1, 1975]

Year-Old U.S. Army Pot Study Surfaces

(By Milan Korcok)

A major study of the chronic use of marihuana, funded by the U.S. Army and conducted by Dr. Jack H. Mendelson of Harvard University, has been extracted from the military bureaucracy by the National Organization for Reform of Marihuana Laws (NORML).

The report, which cost the army $382,000, finds marihuana virtually benign in respect to any behavioral or biological risks of long-term use.

The abstract of the report lists these conclusions:

No impairment in motivation to work for money even when users smoked a large number of marihuana cigarettes.

Some decrease in work performance the day following heavy smoking, though "not biologically significant."

Some impairment of lung functions "closely related to the smoking process per se rather than to any pharmacological action of marihuana."

No change in testosterone level .(Suppression of testosterone might impair sexual or procreative function.)

Significant weight gain related to smoking marihuana.

No evidence that chronic marihuana use impaired cognitive or neurological function.

Some change in social and psychological factors associated with interpersonal responses, but not to the point of interfering with group behavior.

The report, which clearly substantiates many of the conclusions drawn in the Jamaica-Ganja study was discovered almost by accident when NORML filed requests with nine federal agencies for reports on any research being done on marihuana.

The request was filed under the Freedom of Information Act, designed to allow greater public access to data compiled with the aid of public funds.

The fact this report had been completed more than a year ago (September 1974) and had not been publicly released, or even referred to during that period of time, prompted NORML's executive director Keith Stroup to charge the army with a "cover up" because it "didn't like what was found."

"This is very important information and should have been disseminated. The work was paid for with tax dollars and the public should be told these findings immediately," said Stroup.

In fact, some of the results have been emerging via the scientific journal process. Dr. Mendelson's work on testosterone, funded by the army, has been reported. So has information involving comparative pharmacology of alcohol and marihuana, and relationships between marihuana use and motivation.

In response to NORML's charges, Col. France F. Jordan, executive officer of the Army Medical Research and Development Center which commissioned the study, said these studies do get into the medical journals but "everybody's too damned lazy to pick them up".

Stroup contends release of this data under one cover, in comprehensive form, might have made considerable public impact at a time when the marihuana debate was quite fervent.

Stroup, however, admits the army was "fairly responsive" to the NORML request, much more so than any other federal agencies, one of which reportedly requested a $300 fee to make a computer search of what was available.

In response to NORML's request, the army first sent summary sheets describing four different research projects being done.

"All we got back were one-page summaries," Stroup told The Journal. "But when we saw this one, a bell rang."

NORML subsequently filed a request to get the full report, but Stroup, who admits he was impatient with what he felt was a "runaround", released copies of the summary to The New York Times and the Washington Star

"We needed help so let a couple of journalists have the summary."

Within one week after news of the summaries appeared in the press (Oct. 4 and 5, full copies of the report were given to NORML.

The Journal's request for the report was filled immediately.

WHY WAIT?

The Army marihuana study (page 16) is an important contribution to our knowledge of cannabis.

Like the Ganja in Jamaica study it addresses a critical set of questions. But why was its release delayed?

NORML has charged the study was deliberately suppressed because the data did not support the position of the hawks.

Others might indulge in a bit of cynicism about the fact that as the anti-marihuana forces gathering about the Eastland committee in the summer and fall of 1974 were being given full media exposure, a report of this magnitude was sitting, gathering dust. Well, maybe.

The army is to be commended for sponsoring this research, and also for being the first government agency off the mark in responding to NORML's request for information.

But it does itself a disservice by failing to follow through so as to make information as widely accessible as possible.

[From the Journal of the Addiction Research Foundation, Toronto, Nov. 1, 1975]

U.S. Army Study Unveiled—Supports "Ganja Study" Findings

(By Milan Korcok)

The report on long-term ganja smoking in Jamaica has hardly had time to gather dust and now another massive study on chronic marihuana use has emerged.

Sponsored by the US Army at a cost of $382,000, and conducted by Dr. Jack H. Mendelson at the McLean Hospital Alcohol and Drug Abuse Research Center in Massachusetts, the report on behavioral and biological concomitants of chronic marihuana use strengthens many of the conclusions made in the Ganja report. (The Journal, September) and sheds light on areas not covered in the Jamaican studies.

In effect, chronic marihuana use among heavy and casual smokers monitored in a research setting showed none of the "amotivational syndrome" so long claimed to be an effect of smoking pot.

Furthermore, no significant changes were observed in physical and laboratory assessments following smoking, there was no evidence of any significant adverse effects on cognitive or neurological function, and there were no adverse changes in testosterone lvels as a result of chronic marihuana use.

The researchers noted some decreased capacity in work performance the day following smoking, but not to the point of being biologically significant. There aiso appeared to be some psychological changes that affected the way individuals interacted with each other, but not to the detriment of group behavior.

The researchers noted some impairment to lung function that prompted them to argue against use of this drug to persons with underlying pulmonary disease, though the changes could have been attributed to the smoking process per se. They also found significant weight gain among the smokers.

Several findings drawn from this body of research have already been reported.

THE DESIGN

The experimental design involved constant monitoring, in a research ward of McLean Hospital, of 27, tightly-screened heavy and casual users, who were given free access to marihuana in return for work performed.

The heavy users had been smoking marihuana for an average of 5.6 years, had started smoking while in their 17th year, and reported using the drug an average of 42 times a month.

The casual users had been smoking 5.3 years, had begun at 18 years of age, and had averaged almost 12 smoking occasions a month.

The subjects, four at a time, were put through a 31-day period—an initial five-day block during which they had no marihuana a 21-day block during which they could buy and smoke all the marihuana they wished, and a subsequent five-day non-marihuana period. They served as their own controls, with baseline tests being run on them during the non-marihuana periods.

The research ward was fitted out with individual bedrooms for the subjects, a common activity room, and examination facilities.

Work program involved a simple button pressing device. To earn points, subjects would press the device—each response spaced one second or more apart. Each press would signal a point, and every 1,800 points could be exchanged for 50 cents at the end of the study, or for a marihuana cigarette during the free-smoking period. Purchase of one cigarette required one half hour of sustained work.

Each marihuana cigarette, .09 grams, contained 2% THC. All smoking was done under supervision.

MARIHUANA USE, WORK, AND MOTIVATION

Though the marihuana literature is stocked with claims about the drug's depressant effects and its "amotivational" influence on behavior, such claims were not substantiated by the army studies.

Marihuana, in fact, interfered very little with work output. Both casual and heavy users often worked at very high rates both during and immediately after smoking. The peak smoking period (from 8 p.m. to midnight) was also the period of greatest work output.

Casual users averaged 2½ marihuana cigarettes per day, heavy smokers close to six.

The amount of smoking increased as the experiment went on, to the point that on the last smoking day, the heavy smokers actually consumed an average of 14 "joints" each. The subjects all knew ahead of time, it was to be their last smoking day.

Work outputs of both groups decreased the day following marihuana use. Heavy users showed less inclination to work the day after heavy marihuana use, and among casual smokers, the more they smoked the less they worked the following day.

The researchers, however, caution against too free a generalization of these findings, largely because of the potential influence on motivation exerted by the research setting itself.

As the experiment went on, sleep time increased, time devoted to work decreased, and there were some suggestions about boredom setting in.

"Under natural but uncontrolled settings, work output may not be significantly influenced," says the report. This clearly supports the major finding of the Jamaican study which showed that not only does marihuana NOT produce indolence, but also it is used with success to fuel the work ethic, and to encourage hard, tedious, repetitive work tasks.

TOLERANCE

Development of tolerance to the various effects of marihuana use has been a contentions area among researchers. Many studies have noted a tendency for consumption to increase after continued long-term use. This tendency has often been attributed to development of tolerance.

Tolerance to the subjective effect of smoking—the "high"—would induce the smoker to consume more and more to get a set level of intoxication. This rate of progression becomes important if it is ever conclusively proven that chronic marihuana use can be related to such physical damage as respiratory dysfunction, or to psychological dependence.

Using measurements of pulse rate as well as the subjects' own ratings of their "high", the researchers found the casual users (consuming between 15 and 30 mg of marihuana per day) showed no signs of tolerance developing. In effect, the "high" they were getting at the end of the smoking series was of the same intensity and duration as with their first smoke.

Among heavy users (consuming between 30 and 60 mg daily) the situation was different.

Pulse readings, and ratings of intoxication showed that as they progressed further into the smoking period, the intensity of high remained constant but the effect of each cigarette did not last as long. This was indicated by the fact that pulse readings immediately after a smoking period remained constant throughout the series, but 25 minutes after smoking readings tended to diminish as the studies went on.

What this essentially means, according to the researchers, is that "tolerance does not develop . . . to marihuana intoxication . . . unless rather heavy doses of delta 9 THC are administered repeatedly."

Taking it one step further, the researchers suggest the tendency of users to increase consumption over time, appeared not necessarily to be due to the development of any tolerance, but possibly to other psychosocial and environmental factors that would influence them to smoke.

Why did the subjects smoke more and more as the studies went on?

In their own words, because they were bored, because the drug was available, and because "being stoned helped me better tolerate the ward routine".

PHYSIOLOGICAL EFFECTS

Perhaps the most dramatic finding in respect to physiological consequences of smoking was that subjects gained an average of six pounds during the 21-day free-smoking period. (In the Jamaican study, smokers were an average seven pounds lighter than the non-smokers).

Of obvious concern to the researchers was the effect of smoking on lung function. Measurements of peak air flow showed significant increases in flow rate in 12 of 15 subjects—suggesting an acute, bronchodialtor effect of marihuana.

Another concern was that in presmoking baseline studies, six subjects showed decreased vital capacity. Since they had all been smoking marijuana for at least

five years, this finding suggested "perhaps there may be chronic, irritative, inflammatory or other pulmonary disruptive process related to long-standing smoking of marihuana."

TESTOSTERONE

The research study's findings that high dose marihuana did not suppress testosterone levels in either casual or heavy users is bound to add to an already exuberant debate between Mendelson and several other researchers, primarily Dr. Robert Kolodny of the Reproductive Biology Research Foundation in St. Louis.

Dr. Kolodny has reported marked reductions in plasma testosterone levels among marihuana users.

Other reports linking reduced testosterone and marihuana have suggested chronic marihuana use can lead to enlarged breasts in males, as well as loss of or impairment of sexual and procreative function.

But the Mendelson studies refute many of these conclusions, largely on the basis of methodological peculiarities.

The Army report says in the Kolodny studies samples were obtained on only two different days, usually a month apart. Yet, testosterone levels vary widely in males, says the report. Consequently, time and frequency of sampling are of major importance.

The Mendelson samples were done daily, throughout the course of the studies.

Mendelson is also critical of Kolodny's reliance on the subject's verbal recollection of drug use, and the failure to carry out urine screening to detect the possible presence of any other drugs.

"It is at least possible that suppression of plasma testosterone levels observed by Kolodny et al may be related to ingestion of substances other than marihuana."

COGNITIVE AND MOTOR TASKS

Use of marihuana among the casual and heavy users in the army studies has been shown to cause little impairment of cognitive and psychomotor activities.

Results of various assessments showed no cumulative marihuana-related changes and no acute marihuana effects on simple reaction time, perceptual flexibility, or psychomotor performance.

In respect to effects of use on short term memory and vigiliance, results were not so clear cut.

Although smoking did not have any residual effects on short term memory, the acute effects of marihuana did interfere with the casual users' performance. It did not affect heavy users in respect to short term memory.

According to the researchers, the findings suggest the effect of marihuana on the acquisition and storage phases of short term memory (which require attention), may be the crucial factor in its effects on short term memory performance.

THE GROUP

The only significant changes marihuana use exerted on the group process was that it induced the casual users to talk less and to retreat into their own thoughts more.

When intoxicated, the casual user showed he was more interested in his own thoughts than in those of others, but not to the point of abandoning the group.

Says the army report: "Although the absolute amount of interaction was reduced, intoxicated subjects generally did take part in the discussion, and their participation did not indicate they were incapable of communicating coherently and intelligently. Few anomalies in speech or expression were observed that could be related to marihuana intoxication."

Heavy users, on the other hand, showed no changes in respect to group behavior, except they seemed to laugh more.

It was said a little differently, certainly more lyrically, in the Jamaica-Ganja report which noted that those who prefer to smoke in a group usually go to the bush where they can enjoy "good and loving thoughts."

"I feel more merry, not lonesome."

Another big study finds no harm in 'grass'

Cannabis consumption investigated in Jamaica

Beginning with the Indian Hemp Drugs Commission Report in 1894, studies of the effects of marijuana smoking have produced controversy after controversy. Yet no large-scale study has ever actually found any serious harm in the practice.

The latest, an investigation commissioned by the National Institute of Mental Health, is no exception. The results of this study, done for the NIMH's Center for Studies of Narcotic Addiction and Drug Abuse and directed by Drs. Vera Rubin and Lambros Comitas of New York's Research Institute for the Study of Man, are only just now available in the U.S.

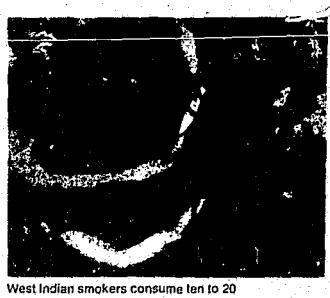
Conducted from 1970 to 1972 in Jamaica, West Indies, where marijuana smokers consume ten to 20 times more grass, called *ganja* in that country, than their American counterparts, the study was a collective effort involving researchers in fields as diverse as anthropology, pathology, sociology, medicine, psychiatry, and psychology. A preliminary report entitled "Effects of Chronic Smoking of Cannabis in Jamaica," was presented to the NIMH in March 1972, and a book on the findings, *Ganja in Jamaica*, was prepared by Drs. Rubin and Comitas. Because the text was published by a Dutch company, copies of *Ganja in Jamaica* have only recently arrived in this country.

The pattern of cannabis consumption in Jamaica is different from that of the U.S. Compared with typical American users who smoke only one or two "joints" a week, Jamaicans smoke a prodigious quantity of marijuana. One part of the report claims that the average Jamaican user smokes seven or eight marijuana cigarettes a day, and the potency of Jamaican ganja averages at least ten times more THC (Δ^9-tetrahydrocannabinol, the drug's chief active ingredient) than the typical Mexican marijuana smoked in the U.S. The widespread use and socially acceptable status of ganja creates another major difference between Jamaican and American use. Smokers are not considered deviant in Jamaica. Among the rural population, to smoke is to conform, whereas those who refrain from smoking are considered eccentric.

The clinical studies on the effects of chronic smoking were made by the faculty of the University of the West Indies and by the staff of the university hospital. Sixty adult working-class men—30 ganja smokers and 30 nonsmokers—were selected and admitted to the hospital for six consecutive days. Detailed medical histories were taken, and the examination included heart and lung radiology, ECGs, hematologic studies, treponemal serology, respiratory function tests, and chromosome studies. Urine and blood samples were forwarded to the U.S. for analysis of peripheral thyroid hormone levels and steroid excretion. Samples of ganja submitted by smokers were also sent to U.S. laboratories for THC analysis.

No significant physical abnormalities were found except in two smokers. One of these had a long history of bronchial asthma, and in the other the findings indicated a form of neuropathy. There was no evidence, however, to suggest that these disabilities were caused by ganja. In both groups blood pressures were normal, and x-rays showed normal hearts and lungs.

Minor ECG abnormalities were found in both smokers and controls. No significant variations were found in cortisol secretion or in peripheral thyroid hormone levels between smokers and controls, and the incidence of mild chromosome breakage was no higher than that found in other random chromosome studies at the University of the West Indies.



West Indian smokers consume ten to 20 times more marijuana than do Americans.

The major statistical differences between the two groups were in hemoglobin and monocyte count values and in post-exercise bicarbonate levels. Chronic heavy smokers of both tobacco and ganja were at greater risk of functional hypoxia, but it is suspected that this may result from the tobacco that is customarily mixed with ganja by Jamaicans.

The Jamaican study has been hailed by Raymond Philip Shafer, who headed President Nixon's National Commission on Marijuana and Drug Abuse, as the "first intensive, multidisciplinary study of marijuana use to be published." Dr. Sidney Cohen, former director of the Division of Narcotic Addiction and Drug Abuse at NIMH, feels that the Jamaican study is a valid one, but doesn't think that it has proved that chronic marijuana use is harmless. "Just as we didn't realize the relationship between tobacco smoking and lung cancer 100 years ago, we may someday find a correlation between marijuana and cancer. However, I find the study provocative—the medical profession should pay attention to it," he said.

Dr. Lester Grinspoon, associate professor of psychiatry at Harvard Medical School and author of *Marihuana Reconsidered*, regards the Jamaican study as significant because of its field nature. "But there are some cultural differences, and what is shown for rural Jamaicans isn't necessarily true for people in this country," he stressed. ■

[From Rational Drug Therapy, Vol. 9(7), July 1975]

What a Physician Should Know About Marihuanna

(By Jared R. Tinklenberg*)

Marihuana is a crude preparation of various parts of the Indian hemp plant, *Cannabis sativa*, which grows in most parts of the world. In the last two decades there have been marked increase in the non-medical use of this psychoactive plant and also greater understanding of its effects in man. This discussion summarizes our current knowledge of marihuana and emphasizes what a physician should know about its pharmocology.

Tetrahydrocannabinols (THC) and their metabolites are the principal active ingredients in marihuana and are responsible for most of the potency of cannabis preparations. Plant concentrations of THC vary widely depending on the geographical area where the plant was grown and methods of cultivation, harvesting, and curing. Plants grown in the United States have a low THC content and therefore produce relatively weak cannabis preparations.

Hashish is a potent cannabis preparation derived primarily from the thick resinous materials of the flowering tops and upper leaves that yield high concentrations of THC. Although THC can be synthesized, the cost of the procedure limits its production by this method. In different countries and even within a given country, the colloquial expressions for various cannabis preparations differ. In this article the generic term cannabis will be used to refer to all natural and synthetic preparations which contain THC and other cannabinoids. However the reader should remember that there is a great deal of difference in potency among preparations and thus in their clinical effects.

CLASSIFICATION

One of the difficulties in understanding cannabis is that it does not precisely fit into any of the usual pharmacological categories; its action varies considerably depending on the dose and time course of drug effects. In small doses, cannabis initially causes exhilaration, euphoria, heightened perceptions, and other effects similar to those induced by stimulants of the central nervous system, whereas later in the time action course, sedation usually becomes predominant. With larger doses, such as might be obtained with potent hashish, the effects of cannabis more closely resemble those of psychedelic drugs rather than of drugs of any other category. Although cannabis preparations are often legally and popularly classified as narcotics, their effects differ from those of heroin, opium, morphine, and other narcotic analgesics.

METABOLISM

In the United States cannabis preparations are most commonly smoked, but they are also ingested in the form of confections. With inhalation, about 50 percent or less of the smoked THC is absorbed and enters the pulmonary circulation; the rest is lost by inappropriate inhalation technique or is accumulated in pulmonary tissue. The onset of action of cannabis when inhaled is usually within minutes, peaks in 20 to 30 minutes, and ceases within an hour or two after cessation of smoking. After ingestion up to 95 per cent of THC is absorbed and the onset of effects occurs in about one hour, reaching a maximum in two or three hours and largely dissipating after four to five hours.

The THC molecules are rapidly metabolized into a variety of products that are quickly distributed to almost all parts of the body. The extremely low water solubility of the cannabinoids suggests that cannabis solubility in plasma may be easily exceeded so that there is accumulation in certain body tissues, such as fat, that are compatible with the extremely lipophilic cannabis molecules. Because these lipophilic characteristics are much stronger than with most other drugs in common use, even a single dose of cannabis is sequestered and eliminated slowly over the course of a week or more. During this prolonged retention, it is unclear whether the cannabinoids continue to exert biological effects. As with

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many other drugs, the repetitive use of cannabis tends to accelerate metabolism and excretion.

In addition to its major psychoactive component, delta-9-THC, natural cannabis contains dozens of other cannabinoids which may have effects of their own or may modify the effects of delta-9-THC. Although these constituents are only beginning to be investigated, it appears that most of the clinically important effects of cannabis are the results of THC.

CELLULAR AND BIOCHEMICAL EFFECTS

A large dose of cannabis has a deleterious effect on certain basic cellular mechanisms that involve the uptake of amino acids and nucleotides into primary nuclear components such as DNA. This results in a variety of changes in DNA synthesis, cell division, and cell growth. Although other substances exert these effects, cannabis is virtually unique in being highly fat soluble and thus is retained within the body for long periods of time. However, as mentioned previously, it is unclear how long cannabis is biologically active; it may persist in the body primarily in an inert form. In addition, the clinical significance of these effects on basic cellular processes is unknown.

At dosages comparable to what is commonly used in the United States, no consistent effects of cannabis at a genetic or cytogenetic level have been demonstrated. The use of cannabis does not exert significant changes in the hemogram, electrolytes, blood glucose, free fatty acids, or other commonly obtained measures of body chemistry. Although glucose tolerance may be lowered by cannabis, clinical consequences are rare. Under certain experimental conditions, cannabis impairs the functioning of our component of the immune system, the T-lymphocytes, that are responsible for cell-mediated immunity. Consequences of this impairment in terms of altered susceptibility to disease have yet to be established. Since, according to skin patch testing, chronic smoking of cannabis does not cause gross immune deficit and since the few available studies do not indicate an increased incidence of disease (including infections or tumors) in chronic users of cannabis, the clinical significance of cannabis-impaired, cell-mediated immunity remains an important but unresolved issue.

Physiological effects. One consistent effect of cannabis is an increase in heart rate that is dose-related. This tachycardia, which seems to be mediated both by increased and sympathetic nervous system activity and by inhibition of the parasympathetic system, varies from 80 beats per minute to 150 or more. Any alterations in the electrocardiogram are usually minor nonspecific ST and T segment changes that may merely reflect the sympathomimetic action of cannabis and the increased heart rate. Cannabis usually has no significant effect on blood pressure, although orthostatic hypotension may occur.

Dilatation of the conjunctival vessels, which occurs regardless of the route of administration and creates the characteristic blood-shot eyes, is another invariable effect of cannabis. Other ocular changes include slight pupillary constriction, reduction in tear secretion, and increase in glare recovery time. A recent finding is that in some individuals cannabis decreases intraocular pressure, presumably by affecting both the inflow and outflow of aqueous humor. The clinical utility of this effect for the treatment for glaucoma is unclear, as is indicated below.

Bronchodilation in the absence of changes in respiratory rate is another acute effect of cannabis. Increased conductance with the use of cannabis, which stems from an increase in airway caliber, is diametric to the bronchoconstricting effects of tobacco smoke. However, as is often the case in clinical pharmacology, the effects of chronic smoking of cannabis are often not so salutary; rhinopharyngitis, sinusitis, asthma, and bronchitis have been reported in heavy cannabis smokers.

Most of the other physiological effects of cannabis are minor or inconsistent. Muscular weakness, increased deep tendon reflexes, fine tremors, and decrements in hand steadiness and body equilibrium are notable in some users. Certain users experience a marked increase in appetite, especially for sweets. Cannabis induces only minor changes in thresholds for pain but, as with many psychoactive drugs that alter attention, may under certain conditions decrease subjective complaints of pain. The effects of cannabis as reflected in electroencephalograms are inconsistent.

EFFECTS ON HORMONES

The short-term administration of cannabis has been reported to lower human plasma testosterone levels, but does not consistently affect plasma luteinizing hormone, follicle stimulating hormone, cortisol, or prolactin. Decreaes in growth hormone response to insulin challenges and decreased estradiol levels suggest that the lower testosterone concentration reflects altered central regulatory processes rather than impaired testicular capacity, although the precise mechanisms are undefined. Also unknown is the clinical significance of these findings. In most studies the total reduction in testosterone is not large, and thus the effects on potency, sterility, adolescent sexual development, sexual differentiation during early gestation, and other androgen-sensitive processes may not be appreciable. Further investigation is needed before conclusions can be drawn.

Possibly related to the cannabis-induced decrease in circulating androgens is the recent finding of gynecomastia in some adolescent users. Again, the importance of these findings is unclear since gynecomastia in adolescents may stem from various etiologies and direct links with cannabis consumption have not been firmly established.

PSYCHOLOGICAL AND BEHAVIORAL EFFECTS

As with most psychoactive drugs, there is wide individual variability in the psychological effects of cannabis and marked differences among individuals in awareness and interpretation of these alterations. The user's expectations of how cannabis will affect him and his prior experiences with the drug, if any, are important influences on drug effects. Initial effects of cannabis at low doses usually include euphoria, heightening of subjective sensory experiences, alteration in the perception of time, and induction of a relaxed laissez-faire passivity. With moderate doses, these effects are intensified by impaired immediate memory function, disturbed thought patterns, lapses of attention, and a subjective feeling of unfamiliarity. With higher doses of cannabis (as with most psychoactive drugs), behavioral effects are determined largely by the drug properties themselves and less by the psychosocial factors of setting. Very high doses induce changes in body image, depersonalization, and marked sensory distortion. Some individuals, especially those with limited experience in the use of cannabis, interpret these alterations as incipient psychosis and fear that they will become permanently "crazy." The user's mood may change from the usual pleasant lassitude to various degrees of anxiety, including rate incidents of panic and aggressiveness. These adverse reactions are similar in many respects to "bad trips" that may accompany use of lysergic acid diethylamide (LSD) and other potent psychedetic drugs. Bad trips occur much less frequently, are less severe, and are usually less prolonged with the use of cannabis than with the use of LSD. The treatment of these reactions is discussed below.

The effects of cannabis on behavior are usually related to dose and task complexity. The effects of low doses of cannabis on simple tasks such as uncomplicated reaction time are often minimal; however, performance of more complex tasks that require fine discrimination and difficult decisions is usually impaired. Contrary to prevailing myths, cannabis does impair the ability to operate a motor vehicle, especially in conditions of heavy traffic where the individual is bombarded by many stimuli simultaneously and decisions have to be made rapidly. Recent studies have also shown that cannabis disrupts the ability to pilot an airplane that necessarily involves sophisticated integration of perceptions of time and space.

SLEEP

Initial use of cannabis is characterized by pronounced soporific effects, especially during the latter part of the time course of action. However with the repeated use of cannabis, tolerance to these sedating effects develops rapidly. Most other effects of cannabis on sleep are comparable to those with depressants of the central nervous system such as alcohol and barbiturates; rapid eye movement (REM) sleep is suppressed by these drugs and there is a rebound of REM when use is discontinued. Consistent with the slow metabolism of certain cannabis metabolites, most effects of cannabis on sleep are sustained; even single doses of cannabis can alter the REM deprivation compensation response for five days or more. Some heavy users of cannabis report disturbances in sleep with

frequent awakenings and nightmares that continuue as long as four to six months after the cessation of use of cannabis. The effect of cannabis on sleep differs from that of alcohol in that cannabis induces either no change or a slight increase in slow wave sleep, whereas alcohol decreases this component of sleep. The significance of this difference is not clear.

CHRONIC EFFECTS

There have been no adequate, large scale, epidemiological studies of the consequences of intensive, long-term consumption of cannabis and therefore knowledge of the chronic effects of the drug is incomplete and lacks reliability. Clinical reports indicate that smoking cannabis is associated with a variety of respiratory disorders including bronchitis, asthma, and pharyngitis. Cannabis may impair the T-cell mediated component of the human immune response, but it is unclear what significance this alteration has in the total immune response and hence for the susceptibility to disease. There is no definite evidence that the use of cannabis causes serious mental illness or induces persistent generalized decrements in motivation in the form of a motivational syndrome. Similarly, in the few studies done well there has been no evidence of cannabis-induced brain damage. While as yet there is no definite evidence that cannabis represents a danger to human genetic and reproductive processes, the fact that cannabis may alter DNA synthesis suggests the possibility of changes along these lines with chronic use.

As further investigations of chronic users of cannabis are completed, other adverse consequences of the drug may be identified. One should be aware of the inevitable time lag between the widespread use of a drug and the recognition of long-term adverse effects. Tobacco, with its long history of extensive use as a "harmless" drug, is only one of many examples.

TOLERANCE AND DEPENDENCE

Although marked tolerance to cannabis seldom develops with current patterns of consumption in the United States that entail the use of low potency preparations, experimental and cross cultural studies clearly indicate that tolerance can rapidly develop when potent preparations of cannabis are used. With the sudden cessation of heavy consumption, a withdrawal syndrome occurs characterized by sleep disturbance, irritability, restlessness, decreased appetite, sweating, and sudden weight loss because of the elimination of retained body fluids. These discomforts are usually mild in comparison with the extreme distress experienced during opiate, barbiturate, or alcohol withdrawal. Shortly after withdrawal from cannabis all tolerance to the drug is rapidly lost. Cannabis users, unlike opiate users, do not usually manifest a psychological compulsion to return to the use of cannabis.

Drug dependence is determined not only by tolerance and withdrawal reactions, but also by positive psychosocial effects. As with virtually all drugs exerting positive effects, a certain percentage of chronic users will increasingly center their lives around cannabis, gradually excluding other daily activities. In addition, one should not assume that the chronic user will confine his drug intake to cannabis. Drug dependencies are interrelated; people who extensively use one type of psychoactive agent are prone to use other drugs excessively as well. Contrary to what is believed, there is little evidence that the use of cannabis displaces the use of alcohol or other drugs. Chronic users of cannabis are at greater risk for heavy consumption of cigarettes, alcohol, and other nonmedical drugs than those who use cannabis in moderation or not at all.

CONTRAINDICATIONS

As one would expect with the cannabis-induced tachycardia, the use of the drug by patients who have heart disease is definitely contraindicated. In patients who have coronary artery insufficiency, angina pectoris and exercise intolerance often occur more rapidly when cannabis is used. Knowledge of drug interactions is limited, but some evidence indicates that cannabis interacts adversely with the centrally active acetylcholinesterase inhibitor, physostigmine, to produce profound depression. The use of cannabis with any potent drug is probably unwise. Since cannabis rapidly crosses the placental barrier, use during pregnancy, especially during the first trimester, should be avoided. Adverse reactions and toxic psychosis are more common in older users; people over thirty are at greater risk for unpleasant effects.

ADVERSE REACTIONS AND OVERDOSE

In managing an adverse reaction to or an overdose of cannabis, one should remember that cannabis has an extremely high lethal dosage range and that the untreated course of toxicity from cannabis is invariably benign. The main treatment in such situations is supportive and symptomatic, although it must be established that other drugs were not used simultaneously. The use of emetics, gastric lavage, and stimulants to the vital or respiratory centers is not indicated when cannabis alone has been taken. High doses of cannabis may induce transient bradycardia and decrease the blood pressure, but these conditions usually improve by placing the patient in a supine position with legs elevated.

Transient panic reactions and toxic psychosis are infrequent reactions to cannabis. These conditions are best treated with verbal support, reassuring the patient that although he is suffering from the adverse effects of a drug, the distress will gradually subside. The patient's surroundings should be arranged to reduce unnecessary stimulation and yet avoid sensory deprivation and reduction of orienting cues. Thus patients should be treated in quiet rooms with moderate lighting; talking should be subdued but understandable; and rapid or sudden movement should be avoided.

In many cases, supportive treatment is all that is required; however, if the patient remains distressed or becomes increasingly agitated, a sedating drug should be administered, preferably by the oral route. My preference is diazepam (Valium), in an initial dose of 20 to 30 mg. orally. However, the physician is well advised to use moderate doses of the short-acting sedative with which he is most familiar.

POSSIBLE THERAPEUTIC USES

Recent clinical trials suggests that cannabis may have some therapeutic effects. As described previously, cannabis is a potent bronchodilator. Airway resistance is significantly decreased; specific airway conductance and expiratory flow rates are increased. Although the mechanisms involved have not been clearly identified, the fact that cannabis increases the diameter of bronchi in a matter unlike that of standard antiasthmatic agents is of interest.

Investigations are underway to determine the clinical utility of cannabis in treating glaucoma, especially in those patients who do not respond to conventional treatment. However, the reduction of intraocular pressure is quite variable and many patients complain of cannabis-inducted dizziness, somnolence, perceptual changes, and cognitive impairment.

Preliminary investigations using cannabis in patients with carcinoma in advanced stages suggest that the drug is an appetite stimulant which helps retard weight loss and reduce cachexia. In addition, cannabis exerts some tranquilizing, mood elevating, analgesic, and antiemetic effects. Some cannabinoids also retard the growth of certain tumors. Although the tumors are not curbed to the extent that would be required for therapeutic purposes, cannabis is of theoretical interest because it does not appear to act in the same manner as conventional anticancer drugs.

Initial clinical trials using cannabis for treating anxiety, insomnia, endogenous depression, epilepsy, and other conditions have not been especially promising. Further investigations for therapeutic efficacy is clearly warranted because the drug has unique pharmacological properties that are just beginning to be understood.

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AMERICAN ACADEMY OF PEDIATRICS

Committee on Drugs

Effects of Marihuana on Man

The Committee on Drugs has reviewed the pharmacology of marihuana with special emphasis on effects in man because of the enormous impact of this drug on society. Much of modern day society's reaction to and attitudes about this psychoactive agent does not reflect its pharmacology, and it is only recently that pertinent biologic facts about marihuana have become known. The Committee reports these facts here, in part, to inform the Academy membership of these facts and, in part, to provide a perspective with which to consider the various societal controls (*i.e.*, laws) on the use of marihuana.

COMPOSITION

Marihuana is a mixture of leaves and flowering tops of the plant *Cannabis sativa L.* It contains approximately 1% Δ-9-tetrahydrocannabinol (THC), the principal psychoactive substance in marihuana. Street preparations tend to vary in Δ-9-THC content; the range is 0% to 5%. An average marihuana cigarette contains 500 mg of marihuana and, therefore, about 5 mg of Δ-9-THC. Hashish, usually used in Eastern (Asiatic) countries and in North Africa, is the resinous substance of the flowers and leaves of *Cannabis sativa L* in which Δ-9-THC is found. Hashish contains 5% to 15% Δ-9-THC and is usually smoked as a mixture of the resin and tobacco. Generally, marihuana cigarettes do not contain tobacco, although some street preparations do.

USERS

In considering adverse effects of marihuana, it is important to appreciate some pertinent epidemiologic facts. It is estimated that 24,000,000 Americans have tried marihuana at least once and that there are 8,300,000 current users in this country.[1] Approximately 70% of adults and youth (12 through 17 years) who were found by the National Commission on Marihuana and Drug Abuse[1] to use marihuana used it so infrequently as to be considered experimental users. Individuals in this category have used marihuana at least once (most of them) but no more than once a month. Almost 20% of adult and youthful users take marihuana more than once per month, but no more than ten times a month (intermittent users). About 7% of the adults and youths surveyed indicated that they use marihuana more than ten times per month but less often than once daily (moderate users). Finally, about 4% of adults and youths who ever used marihuana use it more than once per day and are considered heavy users. A small fraction of these are extremely heavy users, and are almost continually intoxicated from smoking marihuana with a relatively high Δ-9-THC content many times a day.

BASIC PHARMACOLOGICAL CONSIDERATIONS

The main psychoactive ingredient of marihuana is Δ-9-THC. The isolation and recognition of this substance, the ability to assay for it quantitatively in natural materials, and its synthesis have allowed more precise psychopharmacologic studies of marihuana. Delta-9-THC is rarely available for use outside of a research setting. Delta-8-THC is another psychoactive substance in cannabis but usually occurs in negligible concentrations. Other neutral and acidic cannabinoids are found in cannabis, but they probably exert little biologic effect. However, they may

modify the effects of Δ-9-THC and thus confound the comparison of the actions of purified preparations of this compound with those of cannabis.

Smoking marihuana is a most effective route of administration, although the amount of Δ-9-THC absorbed into the bloodstream from the lungs varies considerably among smokers. Psychoactive and physiologic effects appear in two to three minutes, sometimes less, after smoking. The peak effect occurs in 10 to 20 minutes, and the duration is about 90 to 120 minutes after smoking a single cigarette (approximately 5 mg of Δ-9-THC). The pharmacologic effects of Δ-9-THC are delayed when administration is oral. Onset is usually 30 to 60 minutes after ingestion; peak effects occur in two to three hours, and the effects last for three to five hours. It requires approximately three times more marihuana or Δ-9-THC when administration is oral to obtain effects equivalent to those from smoking.

Studies with Δ-9-THC tagged with carbon 14 have provided information on its pharmacokinetics and metabolism in man. For instance, it has been found that THC is almost completely metabolized[2]; less than 1% is recovered unchanged in urine or feces, regardless of the route of administration. Animal and *in vitro* studies indicate that nonspecific hepatic microsomal oxidases rapidly transform Δ-9-THC into 11-hydroxy-THC (11-OH-THC).[3] This metabolite is psychoactive, being as potent as Δ-9-THC. 11-OH-THC is further rapidly metabolized to the inactive 8, 11-dihydroxy-THC. A good correlation exists between the time course of pharmacologic effects and plasma levels of Δ-9-THC and its immediate metabolites. Peak effects and blood levels were noted 10 to 30 minutes after smoking and about three hours after oral administration. It is not clear whether the parent compound or psychoactive metabolities were most psychoactively effective because the blood levels were determined by measuring radioactivity (reflecting unchanged Δ-9-THC and metabolities), administered initially as carbon 14 tagged Δ-9-THC.

Once Δ-9-THC is absorbed, there is an initial rapid decline of plasma Δ-9-THC concentration in about two hours.[4] Delta-9-THC is transported in the lipoprotein fraction of plasma while the more polar 11-OH-THC is bound to albumin. After the initial two hours, Δ-9-THC disappears from the plasma at a slower rate for several days. The different rates of disappearance of Δ-9-THC from the plasma suggest rapid uptake and slow release by certain tissues. In the rat, Δ-9-THC is accumulated in fat much more than in any other tissue and persists for two weeks.

The initial distribution of Δ-9-THC is probably a function of vascularity and lipid content of the various organs. Thus, in rats, lung, salivary glands, jejunum, kidney, adrenals, muscle, liver, and testis (in decreasing order of concentrations of Δ-9-THC and metabolites) are the most prominent tissues for the early distribution.[5] Brain levels of Δ-9-THC (and metabolites) persist for as long as seven days, and at that time concentrations are as high or higher than for other organs. Studies on the distribution in monkey brain indicate that there is an early concentration of radioactivity in gray matter, especially of the visual and frontal cortex.[6] This radioactivity may reflect the more polar metabolites of THC. A later phase of organ distribution probably reflects excretion of the cannabinoids; some 60 minutes after administration of Δ-9-THC, relatively high concentrations (of radioactivity) are found in liver, bile, the gastrointestinal tract, kidneys, and bladder.[3] Of interest is the fact that there is enterohepatic cycling of the metabolic products of Δ-9-THC. Delta-9-THC crosses the placental barrier in pregnant animals, and sizeable concentrations are found in the fetus.[7] Effects on viability of the fetus are under investigation.

Delta-9-THC metabolites are principally excreted in the urine and feces. Radioactive metabolites persist in urine and feces for days after administration of a single large dose. The use of cannabis appears to be detectable for a longer period than that of alcohol.

The physiologic responses to the administration of Δ-9-THC or marihuana include a dose-dependent increase in heart rate.[8] Pretreatment with propranolol (a β-adrenergic blocking agent) has been reported to inhibit the effect of Δ-9-THC on heart rate.[9] Another response to Δ-9-THC is conjunctival reddening, irrespective of route of administration (smoking or ingestion). It has been noted that Δ-9-THC may effect a decrease in intraocular pressure. There are no evident changes in body temperature, respiratory rate, or deep tendon reflexes after administration of marihuana or Δ-9-THC. Pupillary size is affected almost imperceptibly; a *decrease* can be recorded by careful measurement.[10] Delta-9-THC does not usually affect fasting blood sugar levels or plasma levels of free fatty acids.

Physiological and biochemical measurements are being used to document the neurologic effects of cannabis in man and animals. Electroencephalographic changes, detected by computer rather than visual analysis, have been reported in volunteers who smoked marihuana in high or low doses and placebo cigarettes. The principal

changes noted were an increase in the percent of alpha time with decreased theta and beta bands.[11] Young chronic users of marihuana, when acutely intoxicated, showed a decreased auditory-evoked EEC response.[12] Studies on biogenic amines and neurotransmitter substances in the brain of experimental animals administered Δ-9-THC seem most promising in understanding the mechanism of action of cannabis. Effects on serotonin and catecholamine concentration in localized brain areas are being studied. The technique of autoradiography has been used to detect accumulations of radioactive Δ-9-THC or metabolites in specific brain areas at the time of maximal behavioral activity in the monkey.[6] The lateral geniculate nuclei, the amygdala, the hippocampus, and the inferior and superior colliculi accumulated the labeled compounds at the peak of behavioral activity. Relatively large concentrations were also found in the cerebellum.

PSYCHOLOGICAL EFFECTS

The subjective effects of marihuana have been reported by many sources. Common and characteristic subjective effects in nonlaboratory settings have repeatedly indicated that the perception of the external environment is changed in all sensory modalities. Visual imagery is more vivid than usual; the subject sees forms and meaningful patterns in ambiguous visual material. There is an awareness of subtle qualities of sound rhythms, purity, and distinctness. Touch, taste, and smell are subjectively enhanced. Time perception seems changed; subjects report slowing down or stopping of time. Marihuana seems to potentiate social interaction; however, high doses tend to remove the user from the group, perhaps because of the enhanced psychoactive effects. Other typical components of the marihuana high are a feeling of lightness of the limbs, uncontrollable laughter without provocation, and difficulties in remembering from moment to moment the thread of what is being said in a conversation.

Almost invariably users report a pleasant, positive, emotional state. The temporarily overwhelming negative emotional state, known as "freakout," occurs infrequently in about 20% of experienced marihuana users.[13] Almost always this state can be handled by reassurance and support. "Freakouts" may occur more frequently in new users, especially with potent preparations.

The attitude and expectations of the subject determine the subjective response of using marihuana. Even with experienced users,[14] a placebo effect is common, especially in double-blind studies. Apparently, this reflects a learned set of expectations in the user. The interpersonal situation also is a determinant of the subjective response to marihuana. There is a greater variety of subjective symptoms when marihuana is smoked in a group setting. Sedative effects seem to predominate when the same subject smokes alone.

Marihuana and Δ-9-THC affect motor and mental performance in a dose-dependent manner, especially when dosage is carefully controlled. Motor performance (on various standardized tests) deteriorates with the dose of marihuana administered by smoking. Testing of mental performance has shown dose-related impairment of verbal output, counting, and color discrimination.[15] Short-term memory seems to be the mental faculty most significantly affected by marihuana. Moderate amounts of marihuana seem not to interfere with the information retrieval component of this mental faculty but more likely with initial learning, thus affecting the acquisition process involved in the storage of information.[16]

Comparative studies of the effects of marihuana, alcohol, and other drugs on mental and motor performance are especially interesting. Delta-9-THC in doses of 2.5 to 5 mg (the content of one half to one marihuana cigarette) provided the same performance decrements as three bottles of beer or 3 oz of 100-proof whiskey taken one half hour before testing (equivalent to a blood alcohol level of 0.05%). When alcohol (first) and marihuana (second) were consumed together, an additive decrement on mental and motor performance was noted.[17]

There is a significant effect of smoking experience on mental and motor test performance. In general, individuals with more experience seem to score better than those with little or no smoking experience after administration of standardized doses of marihuana.[18]

Of particular importance is the effect of marihuana on driver performance. A significant dose-related increase in brake time has been found after ingestion of marihuana.[19] An increased amount of time is required for recovery from glare when driving at night.[20] This effect lasted for several hours after smoking marihuana. It was not related to pupillary size. Sedation and effects of marihuana which increase complex visual reaction time and variability in performance because of occasional lapses of attention would be expected to impair driving performance.

TOLERANCE

It is now generally agreed that physical dependence on cannabis comparable to that for the opiates, alcohol, and barbiturates does not exist (*i.e.*, withdrawal from the drug is not followed by

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a characteristic abstinence syndrome). On the other hand, tolerance to cannabis has been conclusively demonstrated in several species of animals and probably develops in man with prolonged use of potent preparations. When increasing drug doses are required to obtain the same degree of effect in an individual, tolerance has developed. The concept of tolerance should be restricted to a specific action of a drug rather than to all the effects of the drug. Dispositional tolerance refers to changes in absorption, distribution, metabolism, and excretion which result in a decreased intensity and duration of contact between the drug and its target tissue. Any change in the target tissue which makes it less sensitive to the same dose of the drug results in functional tolerance.

Tolerance, probably dispositional tolerance, to various pharmacologic and behavioral actions of marihuana and Δ-9-THC occurs in a number of animal species (pigeons, rats, dogs, mice, monkeys, and chimpanzees).[21] This tolerance develops rapidly and is long-lasting. Hundredfold increases over the initially effective dose produce little effect in tolerant animals of some species. Cross tolerance for various effects has been demonstrated between Δ-9-THC and Δ-8-THC, but not LSD, morphine, and mescaline. Tolerance to the behavioral actions of THC may result from the animal learning to adapt to effects of the drug (a type of functional tolerance). However, there is clear evidence for metabolic tolerance as shown by an increase in the lethal dose during the course of tolerance development. SKF-525-A, an inhibitor of hepatic microsomal enzymes which interferes with THC metabolism, has been shown to possess a blocking action on tolerance in laboratory animals.[21] Animals develop tolerance to some effects of THC but not others. Thus, differential tolerance is an important consideration for interpreting the results of various studies dealing with the development of tolerance.

A number of reports from Asian and Middle Eastern populations describe the daily use of enormous amounts of cannabis by chronic users.[22] That tolerance has developed for psychoactive effects is suggested by the fact that the quantities consumed produce dysphoria in less experienced users but do not interfere with the usual daily activities of some chronic, heavy users. Smokers in these Eastern groups have increased the initial daily consumption some five to six times over a 20- to 30-year period to achieve the same degree of psychologic effect.

The development of tolerance has been studied and compared in long-term, intermittent, and moderate marihuana users given free access to the drug over a 21-day period.[21] The investigators concluded that tolerance developed for the depressant and some physiological (pulse rate) and psychological effects (impaired recent memory, time estimation, and psychomotor coordination) of cannabis and that the duration of the desired high shortened with continuing exposure to the drug. Other more recent studies have tended to confirm one or more of these observations.

Of special interest have been reports suggesting "reverse tolerance" for marihuana. The basic observation has been that of a novice smoker requiring more marihuana initially to achieve psychological effects than after his first few trials with the drug. It is as if an individual has to acquire the ability to perceive the desired effects of the intoxicated state. Supporting this phenomenon are observations of experienced users becoming high after receiving the same amount of Δ-9-THC or marihuana which was psychologically ineffective for naive subjects. Behavioral factors seem to account for such increased sensitivity.

ADVERSE PHYSICAL EFFECTS

Interest in and debate over the adverse effects of marihuana have stemmed from legal prohibitions and have raised questions concerning the appropriate stance of society and, in turn, the law with regard to this drug. Any consideration of the pharmacology of cannabis should include information concerning acute and chronic physical toxicity and psychiatric illness. In general, manifestations of acute physical toxicity are minimal, even with administration of large doses. Death from overdose has rarely been reported, and critical analysis of reports of fatality make it possible to conclude that definite incrimination of marihuana is lacking in most instances. For instance, although a cannabis metabolite was found in the urine of one victim recently reported to have succumbed from an overdose of marihuana, no cannabis was found in body tissues.[24] Large amounts of cannabis were found in the room of the victim, and no other cause of death was apparent. Acute toxicity studies in animals and human case reports all indicate a high ratio of lethal to effective dose for marihuana; this ratio is more favorable than for alcohol and barbiturates.

Uneventful recovery from coma following overdose with hashish (nine to ten large pipefuls were smoked) has been reported.[25] The most commonly reported physical reactions to marihuana are nausea, vomiting, and dizziness. These manifestations tend to occur most often in inexperienced smokers or with oral administration.

The intravenous administration of street preparations of marihuana has resulted in severe toxicity.[26] Hypotension, chills, fever, leukocytosis, hepatosplenomegaly, and anuria have been reported following intravenous administration, which results in injection of insoluble particles and perhaps bacteria into the bloodstream.

Reports of chronic, physical effects of marihuana must be judged from the perspective of the population group under scrutiny. Heavy, long-term patterns of marihuana use in Eastern (Asiatic) populations have not yet been matched in Western groups where only small numbers of chronic users have been observed. Populations associated with heavy, chronic use of cannabis differ from Western groups in such important variables as nutritional status, patterns of disease, and perhaps in the potency of the cannabis preparation (e.g., hashish in the East, marihuana in the West).

In view of the usual route of administration of cannabis preparations, it is not surprising to encounter a relatively large number of reports dealing with the respiratory tracts of chronic users. High frequencies of chronic bronchitis have been encountered in heavy, long-term users from Eastern populations.[27] Because mixtures of cannabis and tobacco are smoked in these populations, disentangling the respiratory effects of each of these agents poses a difficult problem. A group of 22 American soldiers in West Germany who smoked huge quantities of hashish (100 gm or more monthly) for 6 to 15 months exhibited a high frequency of upper and lower respiratory complaints: bronchitis, sinusitis, asthma, and nasopharyngitis. Twenty-one of the 22 soldiers also smoked tobacco.[28] Five of nine patients with bronchitis were studied for pulmonary function and showed mild obstructive changes which improved on diminished hashish exposure, irrespective of tobacco smoking. It is difficult to relate these findings to the usual chronic user of marihuana in the United States because enormous amounts of a preparation containing about five times as much THC as in marihuana were smoked by soldiers. The clinical observations seemed to implicate hashish; but, it is not clear what level, if any, of marihuana exposure can affect pulmonary physiology. An attempt to define a pathologic effect on the lungs of marihuana smokers was undertaken by Mann *et al.*[29] who studied structure and function of alveolar macrophages obtained by pulmonary lavage from heavy users (3 to 20 cigarettes per day for at least one year). These investigators demonstrated no differences in phagocytic capacity (for *Candida albicans*) of macrophages from marihuana or tobacco smokers and nonsmokers. Twenty-five percent fewer macrophages were recovered from the lungs of marihuana smokers as compared to recovery from nonsmokers (other studies have shown recovery of increased numbers of pulmonary macrophages from tobacco smokers than from nonsmokers). The investigators concluded that macrophages, a primary pulmonary defense against inhaled organisms and particles, were apparently replaced by other cell types. Thus, this finding may be reflected in the clinical respiratory picture described here for chronic and heavy exposure to cannabis preparations. Although there is little information on the respiratory status of intermittent and moderate users, the respiratory tract may be a potential target for adverse effects of long-term cannabis use. The information on pulmonary effects must be weighed, and tar from marihuana cigarette smoke has a carcinogenic effect on mouse skin similar to cigarette tobacco tar.[30]

A high frequency of obliterative arteritis involving the lower extremities has been reported for young Morrocan males who are heavy cannabis users. Unfortunately, this is a clinical report and there are no control data.[31] There is no definite evidence that long-term use of cannabis causes liver dysfunction.

Of note is the claim by British physicians that regular use of cannabis produces cerebral atrophy in young adults.[32] These physicians reported evidence of ventricular dilatation by air encephalography in ten young adult males who used marihuana consistently for 3 to 11 years; other drugs (amphetamines, LSD) were also used, but reportedly less frequently. Normal values for ventricular measurements were obtained from age-matched patients with normal air encephalographic examinations and follow-up confirmation of a neurologically normal state. There was no attempt to control for exposure to marihuana and other psychoactive agents. This clinical observation is not enough to prove that long-term use of marihuana predisposes to or results in cerebral atrophy. There are variables other than marihuana which also must be controlled (e.g., the role of the other psychoactive drugs). The reliability of the histories of drug abuse given by the subjects of this study is questionable. Carefully controlled studies are needed to substantiate this clinical report.

The effects of long-term use have been studied in a small sample of cannabis users in Jamaica.[33] Thirty long-term smokers of ganja (3% THC, on average, usually smoked with tobacco) and 30

matched nonusers were selected for intensive hospital investigation. The ganja smokers in this study had used the drug for a mean duration of 17.5 years. No significant differences were found between users and controls for neurologic and EEG abnormalities, liver function tests, abnormal chest x-rays, and chromosomal aberrations. Ganja smokers, 90% of whom also smoked tobacco, showed significantly higher hemoglobin concentrations and hematocrits than did nonusers (19 of 30 nonusers smoked tobacco). These differences may reflect the effects of chronic ganja and/or tobacco smoking on the lungs of users; the hematological changes may be related to functional hypoxia. However, the results of pulmonary function tests did not differ between ganja smokers and nonusers.

New findings concerning the possible adverse effects of chronic intensive marihuana use (at least four days a week for a minimum of six months) on the endocrine system have recently been reported.[34] Plasma testosterone levels were found to be significantly depressed in 20 marihuana smokers. More significantly, a suggestion of a dose-related response was noted in that there was an inverse relationship between amount of marihuana used and plasma testosterone concentration. The depressed plasma hormone levels were raised to normal concentrations on cessation of marihuana smoking or by administration of human chorionic gonadotropin; these observations suggest central suppression of testicular secretion of androgen. Oligospermia was noted in approximately one third of the marihuana users. The authors concluded that their findings raise an area of serious concern, but still do not answer specifically the question of safety in the use of marihuana.

MUTAGENESIS AND TERATOGENESIS

Results of studies seeking evidence of chromosomal abnormalities in peripheral blood lymphocytes of marihuana smokers are inconclusive. Two studies have suggested that abnormalities do not occur, at least for "light" marihuana users (one to two cigarettes per month or less)[35] and a small group of smokers including both light and heavy users.[36] Neither study would detect a low frequency of chromosomal abnormalities in heavy marihuana users. A more recent study has shown increased chromosome breakage in marihuana users.[45]

Another aspect of this recent study, dealing with the effect of chronic marihuana smoking on cell-mediated immunity, exemplifies the application of newer knowledge and techniques to learning about the effects of this drug in man.[37] Mixed lymphocyte culture (MLC) and phytohemagglutinin (PHA) responsiveness of the lymphocytes of 51 individuals who smoked marihuana at least once a week for at least one year was investigated; no other drugs were used by these subjects. MLC and PHA responsiveness reflects the status of cell-mediated immunity in man. Eighty-one healthy volunteers were used as controls, and the results of these tests were also compared to data from groups of patients with impaired cellular immunity (e.g., patients with uremia or malignancy and those receiving immunosuppressive therapy). The results of this study indicated that the mean response of the lymphocytes of marihuana smokers to allogenic cells (MLC) or PHA was significantly less than that of the control group and about the same as for the patients exhibiting impaired cellular immunity.

The basis for the depressed MLC and PHA responses of the marihuana smokers' lymphocytes is unknown. The investigators suggest that DNA synthesis is impaired, but their own summarized evidence for this hypothesis—chromosome breaks, micronuclei, and a decreased number of cells synthesizing DNA in studies on four marihuana smokers—was not presented in a form permitting analysis. The data on chromosome breaks are controversial because, as indicated here, other groups have failed to find an increased frequency of chromosome damage among marihuana users. Unless this finding is consistent among different laboratories, extrapolation to mutagenesis and teratogenesis is extremely tenuous.

The design of this investigation suffers from flaws common to many other studies on adverse effects of marihuana. The assumption that marihuana is the only variable differentiating the control and study groups cannot be accepted. Variables correlated with marihuana smoking are unexamined in this (and other) studies, even though one or more of these may be depressing the MLC and PHA responses. Evidence of a "dose-response" relationship which demonstrates increasing frequency of chromosomal aberrations and increasing impaired MLC and PHA responses with increasing marihuana exposure should be sought. Although this type of evidence would not completely rule out the etiologic significance of other correlated variables, it would tend to suggest a causal role of marihuana.

The evidence is minimal for incriminating marihuana as a teratogen in man. The three clinical case reports of children born with birth defects to mothers who used marihuana[38-40] can hardly be used as such evidence; multiple drugs

were used by the mothers and there is relatively high frequency of birth defects in the general population. If marihuana were a human teratogen, we might expect more than three clinical case reports of association because of the large number of users in this country. However, it is extremely difficult to demonstrate cause-and-effect relationships for mutagens and teratogens in man so animal studies can provide useful information. Indeed, reports of cogenital malformations in offspring and decreased litter size in various experimental animals exposed to (usually extremely large doses of) cannabis, certainly indicate that avoidance of exposure to marihuana during pregnancy would be wise.

ADVERSE PSYCHOLOGICAL EFFECTS

Perhaps one of society's greatest concerns with marihuana has been its possible relationship to mental illness. Clinical observations provide most of the information on this relationship; unfortunately, critically devised and analytic epidemiologic studies utilizing control groups and well-founded frequency data are lacking. In addition to the pharmacologic properties and dose received of a psychoactive drug, the psychologic state of the individual and the setting in which the drug is taken are two important variables which determine effect. Adverse psychologic effects may be dependent on these two variables and make it difficult to isolate the role of the psychoactive agent. Much of the information on cannabis-related mental illness originates in developing nations where the relatively low standards of medical care have resulted in low priorities for dealing with mental illness, few well-trained psychiatrists, and poor facilities for dealing with psychiatric disorders. Careful diagnosis and evaluation of the mentally ill patient is probably lacking. Chronic illness in these countries, especially infectious diseases and malnutrition, may affect mental function. Data from these countries on the frequency of mental illness among users and nonusers of marihuana are unavailable. Thus, there are reasons for using caution in relating much of the seemingly relevant information to Western populations.

If lack of critical information hampers delineation of a cause-and-effect relationship between marihuana and mental illness, the nonspecificity of the adverse psychologic reaction(s) attributed to cannabis does not improve the chances for critical analysis. For instance, there are no specific manifestations which distinguish between cannabis psychosis, an acute toxic state which occurs after heavy use, and other types of toxic psychoses. There is an acute onset of confusion, visual and/or auditory hallucinations, paranoid ideas and excitation or aggressive behavior; this state is self-limited (days to a few weeks). The diagnosis has given important weighting to a history of heavy cannabis intake, a situation which could lead to a biased inflation of the frequency of cannabis-induced psychosis. The similarity among cases reported from Eastern populations as cannabis psychosis may suggest that this is a diagnostic entity; however, this says nothing about the role of the psychoactive agent.

Administration of relatively large doses of Δ-9-THC isolated from cannabis can produce acute toxic psychosis and hallucinations in a controlled setting.[41] Thus, it is not surprising to find various reports of toxic psychologic reactions following use of marihuana in Western populations. Smith and Mehl of the Haight-Ashbury Clinic (San Francisco)[42] believe that the ingestion of large amounts of drugs, inexperience of the user, and personality factors predispose to such reactions which are manifested by panic, fear, depersonalization, confusion, disorientation, depression, and paranoid ideas.[43] Among case reports associating panic reactions and psychotic states with use of marihuana, other factors (possibly) predisposing to the mental disturbance can often be found—a severe degree of stress, schizophrenia in the patient or his family, and preexisting psychopathology.[44] Again, the host and the setting in which cannabis is taken are significant in understanding the etiology of these adverse reactions. The use of marihuana, especially heavy use, apparently can precipitate adverse psychologic effects, from mild reactions to psychotic episodes. Host and situational factors appear to contribute to many of these adverse effects. Fortunately, the psychotic episodes tend to be self-limited and of short duration if marihuana use is terminated.

A consideration of the frequency of toxic psychologic reactions associated with marihuana use soon indicates the poor quality of the data on which such estimates are based, even in Western populations. The reports of widespread cannabis use in American soldiers in Viet Nam suggested that a useful source of data was available.[45] This source provided an estimate of five cases per 45,000 troops per month of (acute onset) psychosis associated with a history of marihuana use. (The authors reporting this estimate indicated the presence of predisposing personality factors.) Of course, such an estimate provides no indication of the risk to a marihuana user of developing a psychosis because the actual number of such users among American troops in Viet Nam was

not reported; the estimate was based on the total American military population. Other similar estimates, from the student health service at Yale (11 cases per 8,500 students for the 1968-1969 academic year)[13] and from Los Angeles County Hospital (nine admissions resulting from the use of marihuana out of 700,000 admissions during the period from 1961 to 1969—most of these patients were admitted after intravenous injection of marihuana),[14] are again uninformative.

The recurrence of psychoactive effects when not under the influence of marihuana has been described by the term "flashback."[15] Euphoria, anxiety, or hallucinations may be features of the flashback, often depending on the psychologic manifestations of previous (especially recent) intoxications. These recurrences are intermittent, usually occur within days to a few weeks after using marihuana, and tend to disappear with time. Although flashbacks have been reported in individuals who have used only marihuana, these phenomena seem to occur more frequently in individuals who have used hallucinogenic drugs previously. The repetition during marihuana intoxication of hallucinations previously experienced with our psychoactive drugs is another phenomenon, perhaps related psychopharmacologically to flashbacks, which has been reported. The basis for these types of recurrent phenomena are poorly understood.

The amotivational syndrome refers to the loss of conventional motivation and to preoccupation with drug-taking and its subculture. The regular long-term use of marihuana may produce this syndrome (the marihuana hypothesis).[17] Individuals who are constantly and chronically intoxicated cannot be expected to show conventional levels of motivation, although their desire to remain in the intoxicated state will motivate them to obtain sufficient amounts of the drug. Such individuals have been the subjects of reports from countries where the most potent preparations of cannabis are used. A less severe form of this syndrome may be manifest in this country in youths who are dropping out of school and refusing to prepare themselves for traditional adult roles and in young adults who, after a number of years of regular marihuana use, show subtle personality changes as indicated by diminished drive, lessened ambition, loss of effectiveness, apathy, and introversion.[18] An important issue appears to be the role of marihuana in the etiology of the amotivational syndrome.

There is no objective evidence for or against the hypothesis that the amotivational syndrome results from organic brain changes brought about by chronic use of large amounts of cannabis. Preexisting personality traits of heavy marihuana users which attract them to the drug must be considered in the etiology and pathogenesis of the behavior complex known as the amotivational syndrome. The emphasis in our present day society on reexamining traditional values and roles, which correlates with youthful rebellion and interest in "dropping-out," indicates that interaction of the drug and social variables must also be considered in any examination of the amotivational syndrome. In the absence of data which provide insight into this possible adverse effect, an hypothesis equally suitable to the marihuana hypothesis is that psychosocial variables bring individuals into the counterculture, one of whose characteristics is use of cannabis.

CONCLUSIONS

Various adverse effects have been attributed to marihuana and other cannabis preparations. Most of these claims cannot be well substantiated because they are based on uncontrolled observations, improperly controlled studies, studies with small sample sizes, and retrospective analyses. Comparative studies of users and nonusers purporting to demonstrate physiologic or psychological adverse reactions usually fail to differentiate between a marihuana effect and effects of other variables correlated with the use of this drug. Demonstration of a specific adverse effect of marihuana (by studying users before and after abstaining from the drug) and of a dose-response relationship may tend to overcome this flaw in comparative studies.

Repeated clinical observations, properly executed investigations, and controlled animal studies are now documenting certain adverse effects of marihuana. Present knowledge indicates that, except for the effects of long-term smoking of potent cannabis preparations on the upper and lower respiratory tract, acute and chronic physical toxicity is rather low in man. The clinical significance of altered MLC and PHA responses and depressed plasma testosterone levels of marihuana users remains to be demonstrated. Animal studies indicating a teratogenic potential for cannabis are sufficient to recommend avoidance of exposure to marihuana by women who are or may become pregnant.

Observations on psychologic and physiologic effects of marihuana indicated that, as with alcohol and other psychoactive drugs, individuals who are "high" should not drive. Use of marihuana, especially heavy use, can precipitate adverse psychologic reactions. Host and situational

factors appear to contribute to many of these adverse effects.

Tolerance to cannabis develops with prolonged use of potent preparations. A relationship between marihuana tolerance and adverse effects is not evident.

The biomedical aspects of the use of marihuana are being monitored, and we can expect more information on its adverse effects. As more information becomes available, the Committee on Drugs will bring it to the attention of the Academy membership.

The Committee on Drugs continues to adhere to its conclusion stated in 1971.[10] Namely, that there should be no criminal penalties for simple possession and use of marihuana. When adequate methods for detecting concentrations of cannabis in the body (blood, urine, etc.) become available, the Committee would favor appropriate legal penalties for driving while intoxicated by marihuana.

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Commentary

Marihuana
Can It Hurt You?

"MARIHUANA! Can it hurt you?" was a question asked with some urgency by a boy in a group of ninth-grade students visiting the US Capitol Building. The youngsters, curious about a group of men walking by, were told that they were scientists who just completed a day of testimony on the toxicity of marihuana to a subcommittee of the Committee on the Judiciary in the US Senate.

This boy's compelling question highlights an important issue in medicine today. We possess accumulated scientific knowledge of marihuana's toxic effects on humans, yet we are without adequate and effective means to deliver this information to the public. The consequence is that the known toxic effects from marihuana use are not adequately prevented.

Wynder and Peacock[1] said recently that modern medicine has been highly successful in the prevention of devastating infectious diseases, through the coordinated efforts of researchers and clinicians. They indicate that in certain clinical conditions, such as cardiovascular diseases, cerebrovascular accidents, and malignant neoplasms, similar preventive results have not occurred, although much time has elapsed since discovering certain factors known to reduce death risks. The authors said the reason these discoveries have been inadequately used preventively is that

> apathy exists among most human beings when it comes to anything for which the results are long delayed. . . . This public attitude is matched by a similar disinterest among most physicians for preventive measures.

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Extensive Clinical and Laboratory Evidence of Toxicity

A comparable situation prevails regarding the large accumulation of clinical and laboratory work that demonstrates cannabis toxicity. If adequately publicized, this work might have far-reaching preventive effects.

In the past decade, we have seen hundreds of patients suffering from psychiatric and neurological symptoms that resulted from cannabis use, and have described our findings in several publications.[2-3]

In our reports, we detailed the toxic psychological effects of cannabis use in 51 of our patients, all of whom demonstrated symptoms that simultaneously began with cannabis use and disappeared within 3 to 24 months after cessation of drug use. *Moreover, a correlation of the symptoms to the duration and frequency of smoking was established.* When these observations were coupled with the stereotyped nature of the symptoms seen, regardless of psychological predisposition, we presumed that with intensive cannabis use, biochemical and structural changes occurred in the central nervous system.

All subjects clearly demonstrated *an early diminution in self-awareness and judgment along with slowed thinking and shorter spans in concentration and attention.* We also reported a gradual development of *"goallessness," blunted emotions, a counterfeit impression of calm and well-being, and a prevailing illusion of recently developed insight and emotional maturity.* Many demonstrated *difficulty in depth perception and an alteration in the sense of timing,* both of which are particularly hazardous during automobile driving. These clinical findings, along with other more severe mental symptoms, have been similarly reported by other investigators.[illegible]

Consequences of Legalized Status

Some may ask, "But aren't these symptoms found only in people who use marihuana heavily? What about occasional or moderate use?" In an editorial "Marihuana: Buyer Beware," THE JOURNAL warned that

> Spokesmen who espouse tolerance toward "occasional" or "moderate" use of marihuana should be mindful of the possibility that, for whatever reasons, occasional may become "frequent" and moderate may become "intensive," with forbidding consequences.

The editorial continued, "If marihuana ever were given the same legal status as alcoholic beverages, nothing could be said except, 'buyer beware'."[7]

Despite this and similar warnings, marihuana use has continued to escalate, as have the toxic effects. This has led to a large increase in communications by laboratory and clinical investigators who report toxic effects on many body systems and physiological mechanisms.

Campbell[6] showed enlarged lateral ventricles indicative of cerebral atrophy in young, steady cannabis users, while Heath[8] eliminated many human variables in his laboratory work with rhesus monkeys. In his work, electrodes were deeply planted in the brain, and the results consistently demonstrated abnormal electroencephalograms. Anatomical structural alterations found during some postmortems suggested irreversible brain changes.

Retention in Tissues

Lemberger et al[9] have shown the retention of cannabis Δ^9-tetrahydrocannabinol in tissues for as long as eight days. This retention is particularly noteworthy in fatty tissues such as brain and testicles.

Kolodny et al[10] recently reported lowered sperm counts and testosterone levels to the point of temporary infertility in the marihuana smoker, likely related to the retention of the drug in the testes.

Still other investigators indicate that marihuana has effects on body cellular processes that include reduction in number of T-lymphocytes and resultant interference in the immune process,[2,3,4] reduction of DNA and RNA synthesis,[2,3,4,5] and an increased number of cells with broken chromosomes.[4,5] Emphysema, pharyngitis, and bronchitis have been reported,[2,3,4] and premalignant lesions in lung tissues[2,3,4] have also been noted.

To date, most of the public remains uninformed about medical findings that clearly indicate substantial health hazards as a result of marihuana smoking. A systematic campaign to disseminate medical information is long overdue, particularly by governmental agencies and the news media.

The physician should not be apathetic about the current marihuana epidemic. By familiarizing himself with the results and potentials of marihuana toxicity, he is in a uniquely effective position to act as the spearhead in a coordinated community effort to prevent the cannabis epidemic from becoming endemic.

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When Friends or Patients Ask About . . .

William H. Crosby, MD, *Coordinator*

Marihuana

Gabriel G. Nahas, MD, PhD

"MARIHUANA is no more dangerous than alcohol or cigarettes and should be legalized for anyone over the age of sixteen." So declared Margaret Mead in 1968. Ever since, similar statements have been made with increasing regularity by others who wish to see the use of marihuana legalized, or at the very least "decriminalized."

And yet, in that same year, 1968, a joint statement was issued by the Committee on Drug Dependence of the National Research Council, National Academy of Sciences, and the American Medical Association, stressing the following points:

1. Cannabis is a dangerous drug and a public health concern. In virtually all societies where it has been extensively used, sanctions against both users and distributors have been necessary.

2. Legalization of marihuana would create a serious abuse problem in the United States.

3. Penalties for violations of marihuana laws are too harsh. They should therefore be modified to penalize distributors and to deal with users in a flexible manner.

4. Additional research on marihuana should be encouraged. All presently available knowledge warrants an effort to reduce the use of this drug.

This joint statement was in keeping with those issued by all the international conventions of scientific and legal experts assembled since 1924 under the aegis first of the League of Nations and then of the United Nations. All of these conventions have recommended that cannabis derivatives, as well as opium and coca-leaf derivatives, be classified as "stupefying drugs."

Such drugs were considered to be profoundly destructive to man and society, and their use was to be limited to medical purposes only. These conventions also recommended that private possession for nonmedical use be considered an offense to be penalized. As marihuana has no therapeutic value, the Single Convention of the United Nations on Stupefying Drugs (1961), of which the United States is a party, recommended that cultivation of the drug-type plant be eliminated over the next 25 years. These recommendations were taken at the initiative of the representatives from Asia and Africa, who claimed that the widespread usage of marihuana was associated with physical and mental morbidity of a large number of their people as well as with social stagnation. And yet, at the same time that President Johnson signed the Single Convention in 1967, millions of young Americans were beginning to smoke and enjoy marihuana.

As the use of marihuana spread throughout America and Canada, a growing number of psychologists, sociologists, lawyers, and physicians have urged that marihuana be treated as a soft, recreational drug that should be made freely available, discounting the empirical historical reports about cannabis from Asia and Africa. These intellectuals, despite the absence of any hard scientific evidence, have claimed that cannabis use produces little physical damage, is less harmful than alcohol or tobacco, and may have redeeming social value.

Marihuana Not Harmless

In contrast, recent scientific evidence has shown that marihuana is not at all harmless. It contains unique substances, the "cannabinoids," which are soluble only in fat and are stored in body tissues, including the brain, for weeks and months, in the same manner as DDT. Anyone using marihuana more than once a week (the time required for its elimination) cannot be drug-free, in contrast to the use of tobacco and alcohol. Two review articles published in *Science* (185:683-685, 775-776, 1974) have summarized this scientific evidence:

1. Chronic marihuana smoking impairs cellular-mediated immunity as measured by the tests of lymphocyte transformation or a T-lymphocyte rosette formation. T-lymphocytes sampled from heavy marihuana smokers show a decreased ability to undergo proper cell division due to a general antimitotic property of the cannabinoids. Our own studies indicate that besides Δ^9-tetrahydrocannabinol (THC, the psychoactive substance), all other natural cannabinoids and their metabolites contained in marihuana inhibit in lymphocyte cultures the synthesis of DNA, RNA, and protein by impairing the precursor uptake of these molecules so essential for proper cell division. This antimitotic effect of marihuana products, which is due to olivetol, the small molecule which they all have in common, has been observed by others. Zimmerman from Toronto has observed the effect in tetrahymena. Blevin and Regan from Oak Ridge, using normal and malignant human cell cul-

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tures, have observed a 40% to 50% decrease of DNA, RNA, and protein synthesis by THC 10 ⁻⁵ M. Harris and colleagues from Richmond, Va, have used the cell impairment ability of THC to inhibit malignant tumor growth in mice. They have observed immune depression in rodents in related experiments. No impairment of human clinical immunity, however, has been reported in chronic marihuana smokers (who, like 98% of the population, present a positive dinitrochlorobenzene test). Nevertheless, one may well ask what will happen to them in a decade or two, when the aging process has further decreased their immune mechanisms.

2. Cannabis may cause chromosome abnormalities that could lead to genetic damage. Further studies at Columbia by A. Morishima show that many of the cultured lymphocytes sampled from marihuana smokers are also structurally abnormal: 30% of these cells in metaphase contained only 5 to 20 chromosomes, whereas in nonsmokers the percentage is only 7%. Very similar findings were reported by Cecile and Rudolf Leuchtenberger on lung cultures exposed to marihuana smoke.

These studies lead to the speculation that marihuana products that accumulate in ovaries and testes might also interfere with DNA metabolism of the germ cells. Such alterations of the gonads raises the possibility that marihuana might have mutagenic effects. Both THC and crude marihuana extract cross the placental barrier. (In this regard, it must be remembered that in countries where long-term cannabis use has prevailed, only the male population has indulged.)

3. Cannabis may act on hormone regulators and produce impotence and temporary sterility. Confirming animal studies, Robert Kolodny and associates from St. Louis have observed in heavy marihuana smokers a lowered sperm count and impotence (impotence has also been reported by John Hall of Jamaica, as well as by Indian and Moroccan physicians). Hormones such as luteinizing hormone, antidiuretic hormone, growth hormone, and prolactin are also affected by marihuana.

4. Heavy use of cannabis is severely debilitating to the bronchial tract and lungs. Reports from areas where potent cannabis preparations are used, such as India, Egypt, and Morocco, indicate that excessive smoking produces bronchial irritation, chronic catarrh, laryngitis, and "asthma." Studies in Boston in 1971 for the National Commission on Marihuana showed impairment of lung function. Similar upper respiratory and bronchial tract symptoms have been observed in studies on young American soldiers. Lung biopsy specimens showed that squamous cell metaplasia and atypical cells occurred in all, with basal cell hyperplasia and subepithelial gland changes in most, lesions that are statistically and anatomically related to carcinoma of the lung. Tar yield from marihuana smoke condensate has been shown to be as carcinogenic to the skin of a mouse, as is smoke from the tobacco of commercial cigarettes.

5. Marihuana causes sharp personality changes that lead to marked deterioration in what is normally considered good mental health. Cannabis products are psychoactive and induce temporary effects, such as impairment of short-term memory storage and alterations in electroencephalographic patterns, especially when measured with deep electrodes. The storage of THC and of the other natural cannabinoids and their metabolites in the brain has not been related to permanent brain damage; however, this is difficult to show histologically for any psychotropic drug. Robert Heath of Tulane has conducted experiments with rhesus monkeys that have shown alterations of brain wave patterns that persisted when smoking was discontinued.

Impairment of psychomotor performance, symptoms of physical and mental deterioration, and lack of motivation have been associated with long-term use of marihuana ever since Moreau made such observations of hashish users in Egypt 150 years ago. When such symptoms were reported in the United States, sociologists and psychologists coined the term "amotivational syndrome" and argued whether it was due to impairment of the brain or only reflected the "subculture" with which marihuana users associate!

It is now well established that in all animal species, including man, a considerable degree of tolerance to the physiological and psychological effects of marihuana develops rapidly. American volunteers in Boston or Los Angeles, after a few weeks are able to increase 10 to 20 times the number of joints they smoke daily! Such observations, which are in keeping with older ones, put to rest the so-called reverse tolerance discovered by some students at Harvard, who claimed that marihuana was the only psychoactive drug that required a smaller dose to obtain the initial effect!

Need for Studies

Because of these scientific findings, even those who claimed that marihuana was harmless are now heeding the danger signals. They are calling for longitudinal, epidemiological studies of marihuana similar to those that took 40 years to ascertain the damaging effects of tobacco. Such longitudinal studies, which should concentrate on investigating cellular damage, will take at least a decade to complete in America. As a result, some are now being undertaken abroad in areas of chronic marihuana consumption. In the meantime, preventive medicine would dictate that a moratorium be called on any further attempts to make marihuana socially acceptable and more readily available to the youth of America. This attitude would be welcomed by all the national and international organizations that are trying to maintain a measure of control over the growing use of dangerous drugs in the Western world.

And the time for unlimited experimentation is rapidly running out. Throughout history, social acceptance of marihuana in a society sets citizens on a one-way downward course; in the past, there has been no way to turn back. In any event, the idea that marihuana is harmless must be reviewed. For too long, with a near-total lack of scientific evidence, this notion has enjoyed a high degree of acceptance, with a complete disregard for both history and preventive medicine.

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MARIJUANA: THE HEALTH QUESTIONS

Is marijuana as damaging as recent reports make it appear?

By Edward M. Brecher and the Editors of Consumer Reports

Over the past year the news media have carried many stories warning that smoking marijuana produces severely damaging effects on the human body. CU has followed these news accounts with great interest. In our special publication, "Licit and Illicit Drugs," published in 1972, we presented an exhaustive study of the scientific, social, and legal evidence through the end of 1971. Based on the evidence then available, we recommended that marijuana should be regulated rather than prohibited, that all persons currently imprisoned for marijuana possession or for sharing marijuana with friends should be released, and that past offenses of these kinds should be erased from the legal records. The time has come to take a fresh look at the alleged dangers of marijuana.

THE SCIENTIFIC CASE AGAINST MARIJUANA

Many of the recent allegations concerning the effects of marijuana on health have appeared in reputable scientific journals. Here, in summary, is the case against marijuana recently presented to the public.

Edward M. Brecher, an award-winning science writer and investigative reporter, has been a frequent contributor to CONSUMER REPORTS since 1938. He was a principal collaborator on "The Consumers Union Report on Smoking and the Public Interest" (1963), which foreshadowed the U.S. Surgeon General's report of 1964; and he was the senior author of "Licit and Illicit Drugs," the CU report cited by the American Library Association as one of 43 books "of outstanding merit" in 1972.

1. Smoking marijuana damages the brain irreversibly and ages it prematurely.

In December 1971, the late Dr. A. M. G. Campbell and his associates reported in a leading British medical journal, The Lancet, on X-ray studies of the brains of 10 chronic marijuana smokers. Compared to a group of nonsmokers of the same age, the marijuana group reportedly showed "evidence of cerebral atrophy"—that is, a wasting away of brain tissue.

Such X-ray studies, called air encephalograms, can be painful and hazardous, and no other research group has yet ventured to repeat the Campbell study. Several studies involving other techniques, however, are often cited in support of Dr. Campbell's findings. At the Tulane University School of Medicine, for example, Dr. Robert G. Heath implanted electrodes deep in the brains of six rhesus monkeys and recorded the monkeys' brain waves before, during, and after heavy exposure to marijuana smoke. In monkeys, as in humans, temporary changes in brain-wave patterns are normal with almost any change in the body or its environment. But persistent changes are cause for concern. Dr. Heath reported that after his monkeys were subjected to marijuana smoke in large doses daily for months, the changes became persistent; they could be observed as long as five days after marijuana exposure was discontinued. Further, an autopsy report on two of Dr. Heath's monkeys indicated "structural alteration of cells in the septal region of the brain." The alterations

were said to be "minimal," visible only under a microscope. "Our previous experience with similar conditions," Dr. Heath stated, "would lead us to assume that this chronic smoking of marijuana has probably produced irreversible changes in brain function."

Dr. Campbell's 10 patients and Dr. Heath's two monkeys provide the only direct evidence of possible brain damage to date. Indirect evidence, however, comes from Drs. Harold Kolansky and William Moore, psychiatrists at the University of Pennsylvania School of Medicine and the Institute of the Philadelphia Association for Psychoanalysis. Drs. Kolansky and Moore are convinced, on the basis of their observations of marijuana-smoking patients, that chronic smoking produces "a specific and separate clinical syndrome," or pattern of behavior, which has been called "the amotivational syndrome." The hallmarks of this syndrome are said to be "disturbed awareness of the self, apathy, confusion, and poor reality testing." Other signs are sleep disturbances, memory defects, and impairment of the time sense.

"Many of those we examined," Dr. Kolansky said, "were physically thin and often appeared so tired that they simulated the weariness and resignation of some of the aged. All appeared older than their chronological age. . . ." These observations, the Philadelphia psychiatrists concluded, "seemed to imply some form of organic change" in the brains of chronic marijuana smokers.

2. Smoking marijuana lowers the body's resistance to infectious diseases and cancer.

The human body has several defenses against infectious diseases, foreign protein substances, and possibly even against some types of cancer. One of these immunological defenses is provided by the "T-lymphocytes"—certain white blood cells derived from the thymus gland. When viruses or some other foreign substances invade the body, the T-lymphocytes multiply very rapidly and attack the invaders. This is an important aspect of the "immune response."

Dr. Gabriel G. Nahas and his associates at Columbia University's College of Physicians and Surgeons reported in Science in February 1974 that the immune response of marijuana smokers is impaired. The Nahas group based its conclusion on a complex series of laboratory procedures. They removed some T-lymphocytes from the blood of 34 marijuana smokers, allowed the cells to multiply in laboratory cultures for 72 hours, and then exposed them to pooled donor lymphocytes or to a specific chemical—either of which normally evokes the immune response in those cells.

Under these circumstances, the T-lymphocytes of the marijuana smokers assimilated less thymidine (an important cell building block) from the culture solution than did those of the nonsmokers. This result suggested that the cells from the smokers were not multiplying normally.

Dr. Nahas interprets this finding to mean that the immune response of the T-lymphocytes of marijuana smokers is impaired. In this respect, he states, they resemble the T-lymphocytes of some patients with cancer or kidney disease. He concludes that marijuana smokers lack an essential means of defense against infectious diseases and cancer.

In October 1974, Dr. Sudhir Gupta and his associates at Roosevelt and St. Luke's Hospitals in New York City reported related findings in The New England Journal of Medicine. Using a procedure that tests the response of T-lymphocytes to sheep red blood cells, they observed that the reaction of T-lymphocytes from marijuana smokers was weaker than the reaction of T-lymphocytes from nonsmokers. They concluded that marijuana might induce a reduction of T-lymphocyte function in man.

3. Smoking marijuana increases the likelihood of birth defects and of hereditary diseases.

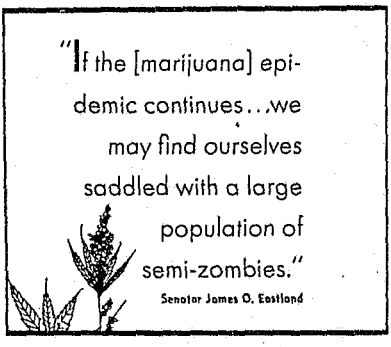
Most normal human cells have 46 chromosomes. Each chromosome carries numerous genes, or units of DNA (deoxyribonucleic acid), which govern the manufacture of proteins within the cell and regulate many of the cell's other functions. Sperm cells and ova each contain only 23 chromosomes; these are of particular importance, for they carry the DNA "genetic code" from parents to offspring.

Back in 1967, reports began to appear alleging that the drug LSD damages chromosomes. Subsequent careful studies failed to confirm this allegation, and the earlier reports are now generally discredited.

Among those who reported that LSD does not damage chromosomes was Dr. Morton Stenchever of the University of Utah College of Medicine. In January 1974, however, Dr. Stenchever and his associates reported in the American Journal of Obstetrics and Gynecology that they had found a somewhat elevated proportion of damaged chromosomes in the lymphocytes of 49 marijuana smokers, including some who smoked marijuana only twice a week or less.

Another chromosome study, not published at this writing, was described at hearings of the U.S. Senate Subcommittee on Internal Security last May. Dr. Akira Morishima, an associate of Dr. Nahas, told the subcommittee that he had compared 956 lymphocytes from marijuana smokers with 954 from nonsmokers. More than 30 per cent of the lymphocytes from smokers contained fewer than 31 chromosomes instead of the usual 46. Among lymphocytes from nonsmokers, only about 10 per cent contained so few chromosomes.

"Since lymphocytes constitute an essential component of



cellular immunity and chromosomes are basic units of inheritance at the cellular level," Dr. Morishima told the Senate subcommittee, "it seems logical to anticipate potential danger in [the] immune defense system, development of cancer . . . , genetic mutation and birth defects."

In the Nahas experiment, it will be recalled, T-lymphocytes failed to multiply rapidly when challenged with foreign substances. The *reason* they failed to multiply, Dr. Nahas declares, was that they could not manufacture enough DNA. Dr. Morishima similarly attributes his finding of too few chromosomes to a defect in DNA manufacture.

4. Smoking marijuana causes precancerous changes in the lung cells and other lung damage.

Damage to lung cells from marijuana smoke has been reported by Drs. Cecile and Rudolph Leuchtenberger of Switzerland and also by Dr. Forest S. Tennant, whose studies were performed while he was a medical officer stationed with the U.S. Armed Forces in Europe. In addition, some clinical studies suggest that those who smoke large amounts of marijuana for long periods may be more likely to develop chronic bronchitis or other conditions indicating lung-cell damage than those who do not.

Dr. Cecile Leuchtenberger's work, however, goes far beyond lung-cell damage. She grew lung cells of human origin in her laboratory and subjected them to repeated whiffs of marijuana smoke. Under these conditions, she found damage to chromosomes, changes in the number of chromosomes, and changes in DNA manufacture—which she interpreted as suggesting precancerous changes. She also reported abnormal sperm cells in mice exposed to marijuana. Thus, Dr. Leuchtenberger alleges five different kinds of marijuana damage—more than any other scientist to date.

5. Smoking marijuana may lead to sterility, impotence, or both, among men.

Testosterone is the most potent male sex hormone. The concentration of testosterone in the blood of a human male can be readily measured. In April 1974, Dr. Robert C. Kolodny and his associates at the Reproductive Biology Research Foundation in St. Louis (the Masters-Johnson sex research center) reported in The New England Journal of Medicine that they had studied testosterone blood levels of 20 frequent marijuana smokers and 20 nonsmokers. The levels in the marijuana smokers, though within normal limits, were lower than the levels in the nonsmokers. And the levels in subjects who smoked 10 or more marijuana cigarettes per week were lower than the levels of those who smoked only five to nine per week.

Six marijuana smokers had relatively low sperm counts and two complained of impotence; such effects might (or might not) be related to low testosterone levels. When one of the men who complained of impotence stopped smoking marijuana, he reported his potency had been restored.

SENATOR EASTLAND'S CONCLUSIONS

Many of the findings reviewed above were nationally publicized last spring at hearings of the Senate Internal Security Subcommittee, chaired by Senator James O. Eastland of Mississippi. Senator Eastland drew these personal conclusions from the testimony:

"(1) If the cannabis [marijuana] epidemic continues to spread . . . we may find ourselves saddled with a large population of semi-zombies—of young people acutely afflicted by the amotivational syndrome. . . .

"(2) We may also find ourselves saddled with a partial generation of young people—people in their teens and early twenties—suffering from irreversible brain damage. . . .

"(3) The millions of junior high school and grade school children who are today using marijuana may produce another partial generation of teen-agers who have never matured, either intellectually or physically, because of hormonal deficiency and a deficiency in cell-production during the critical period of puberty. . . . We may witness the phenomenon of a generation of young people who have begun to grow old before they have even matured.

"(4) . . . There is the possibility . . . that we may develop a large population of youthful respiratory cripples. And there is the possibility—which can only be confirmed by epidemiological studies—that marijuana smokers are producing far more than their quota of malformed and genetically damaged children. . . ."

If the scientific reports of adverse marijuana effects are well-founded, there can of course be no possible objection to their then being widely publicized through Congressional hearings, news accounts, or other means. The truth about marijuana should be known. But if the reports are poorly founded, that fact needs to be reported, too. For such misinformation serves only to frighten the public unnecessarily, especially the millions of marijuana smokers, former smokers, and their families—many of whom may now be waiting in dread for brain damage, cancer, and other predicted disasters to strike themselves or their loved ones. Accordingly, it may prove useful for CU to review recent medical evidence overlooked—or ignored—by the Eastland subcommittee and by the press that covered the hearings.

THE JAMAICA STUDY

Back in 1970, when CU's "Licit and Illicit Drugs" was still in the research stage, a different but almost equally horrifying collection of marijuana hazards was being publicized. Yet many marijuana smokers appeared to remain in good health and in good spirits, just as they do today. Perhaps, we reasoned, it is too early to gauge the true effects of marijuana smoking in the United States or Canada.

But what of other countries where marijuana has been a daily custom for generations? If dire adverse effects existed, they would surely be readily visible there, observable without air encephalograms, implanted electrodes, or other sophisticated laboratory procedures. Scientists dispatched to such countries would not have to *predict* the long-term consequences of marijuana use; they could readily see and measure those effects.

The same idea, of course, occurred to others, including administrators at the National Institute of Mental Health. They commissioned the Research Institute for the Study of Man to study marijuana effects on the island of Jamaica. For decades, Jamaicans have smoked marijuana much stronger than that smoked in the United States.

Although the Jamaica report was completed nearly three years ago, it has still not been published in the United

States. Indeed, CU was unable to obtain a copy from the Government agencies concerned. An edition in English was finally scheduled to be published last month (February) by Mouton, a Dutch firm in The Hague. The report, titled "Ganja in Jamaica," is by Drs. Vera Rubin and Lambros Comitas, director and associate director, respectively, of the Research Institute for the Study of Man.

In Jamaica, the report explains, marijuana is called "ganja" and is used in many ways. It is smoked, brewed as a tea, chewed, and used in cooking. In rural areas especially, it is an important element of folk medicine and superstition. "Children are introduced to ganja quite early," the Jamaica report notes, "first as a medicament in 'bush tea' or in a crude method of vaporizing, where adults blow smoke at an infant with respiratory congestion." Increasing doses of marijuana tea throughout infancy are recommended as a prophylaxis against disease. Schoolboys are urged to smoke marijuana to "help them study," to "improve memory," and to "help pass examinations." This widespread use of marijuana is found both among farmers and villagers and among residents of the slums of Kingston, Jamaica's capital.

The Jamaica study was launched in June 1970, when six anthropologists were sent into the field—five into rural districts and the sixth into an urban slum neighborhood. They found heavy ganja smoking common among the poor, despite severe legal penalties (not less than 18 months' imprisonment with hard labor for a first offense).

One of the anthropologists, Dr. Joseph H. Schaeffer, studied the effects of marijuana on ability and willingness to work. He recorded in detail how much work both smokers and nonsmokers did in a sample week and how much metabolic energy they expended while at work. In general, Dr. Schaeffer found that field laborers actually performed more motions and expended more energy after smoking marijuana than before. But they appeared to accomplish less when on marijuana—weeding a smaller patch of crops in an hour, for example. Dr. Schaeffer also reported, however, that marijuana use in group labor situations tended to increase the social cohesiveness of the workers. While it may have decreased overall efficiency, it appeared to make the prospect of long hours in the field more palatable and increase the laborers' willingness to work.

The Jamaica report calls this the "motivational syndrome"—as distinguished from the "amotivational syndrome" described by other psychiatrists.

Following this and other field studies, the Jamaica research team brought 30 male marijuana smokers and 30 nonsmokers to University Hospital at the University of the West Indies for six days of intensive medical examinations. The 60 subjects ranged in age from 23 to 53; the average age was 34. All but one of the marijuana smokers had first smoked before the age of 20; they had been smoking marijuana for 17.5 years, on the average (the range was from 7 to 37 years). They did not smoke marijuana while in the hospital.

But it was the frequency with which they smoked that will startle American readers. To qualify as a "heavy" smoker in the Jamaica study, one had to smoke at least eight "spliffs" (ganja cigarettes) a day. In the U.S., a "heavy" smoker is often defined as one who smokes more than seven marijuana cigarettes a *week*. And the typical Jamaican spliff is more potent than the typical North American marijuana "joint." Thus, Jamaicans smoke considerably heavier doses than their American counterparts, even though the latter tend to inhale more deeply than Jamaicans.

The 30 control subjects were matched with the ganja smokers for age and socio-economic status. It was, however, impossible to enlist enough working class males in the right age bracket who had never once used marijuana. Accordingly, the control group was composed of 12 men who had never smoked ganja plus 18 confirmed nonsmokers who had smoked only occasionally in the past. All but three of the ganja smokers and all but 11 of the controls also smoked tobacco cigarettes. (Tobacco is also sometimes mixed with ganja in spliffs to make a "better smoke.")

Summarizing the examination findings, the Jamaica report notes "no significant physical abnormality" in any of the controls or in 28 of the 30 ganja smokers. One ganja smoker had a long history of asthma; another had a little-understood nervous condition known as "Jamaican neuropathy," suspected of being an atypical form of neurosyphilis. "There is nothing to suggest that these disabilities were in any way related to the use of cannabis," the report states.

The marijuana smokers and controls were well matched in height as well as age, but the smokers weighed seven pounds less on the average—a difference, the report noted, that "might indicate that the chronic use of cannabis causes some suppression of appetite."

X-rays of the lungs were normal in both groups except for some scarring of the lungs in one of the subjects who did *not* smoke marijuana. Since smoking tobacco cigarettes impairs lung function, it was also necessary to discount that effect when gauging the effects of marijuana. At worst, the Jamaica findings suggest, impaired lung function is produced by inhaling smoke, whether tobacco or marijuana.

Since the marijuana smokers in the Jamaica study were also in many cases the children and grandchildren of persons who smoked marijuana, and since many of them were probably exposed to marijuana before birth as well as during infancy, childhood, adolescence, and adult life, the study of their chromosomes by Dr. Marigold J. Thorburn of the University of the West Indies is of no small interest. Briefly, the chromosomes of the marijuana smokers were in good condition. In fact, they showed slightly fewer abnormalities than were found in the control group, though the difference was not statistically significant.

In addition to these and other studies of physical health, both ganja smokers and controls were given thorough psychiatric examinations by Drs. Michael H. Beaubrun and Frank Knight, both psychiatrists. Only one ganja smoker and one control reported a history of past mental illness. Four ganja smokers and three controls had had alcohol problems sufficiently acute to interfere with work or social functioning. Two ganja smokers, however, "reported that they had been able to reduce their alcohol intake, and seemed to relate this to ganja use."

On the Eysenck personality test, the "extroversion

scores" were identical for ganja smokers and controls. The only man suffering from depression, as gauged by the Hamilton Ratings Scale for Depression, was not a marijuana smoker. Not a single smoker or control appeared to be schizophrenic on either of two rating scales.

The brain-wave recordings of both ganja smokers and controls were also compared. Significant differences were not found.

A battery of 19 psychological tests, designed to compare ganja smokers and nonsmokers on 47 measures, including 11 measures of intelligence, was administered in the Jamaica study. Smokers had not smoked marijuana for two days before the tests and did not smoke on the test day. The marijuana smokers scored better on 29 of the 47 measures—a statistically insignificant finding.

Drs. Beaubrun and Knight summed up as follows: "The data clearly indicate that the long-term marijuana use by these men did not produce demonstrable intellectual or ability deficits when they were without the drug for three days. There is no evidence in the results to suggest brain damage."

The psychiatrists also asked about regularity and continuity of employment and frequency and nature of job changes. No significant differences were found between marijuana smokers and controls. Thus, careful psychiatric examination showed no evidence that these Jamaicans were "semi-zombies" after having smoked very large quantities of very strong marijuana for an average of 17.5 years.

CONFLICT OF EVIDENCE

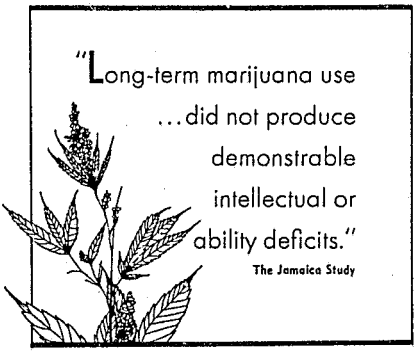
By far the greatest conflict of evidence on marijuana exists between the Jamaica study and the studies cited earlier. But there are also notable conflicts among the latter studies themselves. Here are some examples.

1. Brain damage. The Campbell report, it will be recalled, found evidence of brain damage in a group of marijuana smokers. But was the damage present before the patients started to smoke marijuana? If not, was it caused by marijuana, by some other drug, or by some nondrug factor, such as a blow on the head? Here is what Dr. Kolodny—the scientist who believes marijuana smoking lowers testosterone levels—has to say about the Campbell report:

> Research in cannabis effects on humans has not always been performed or presented with objectivity. Many studies have been severely limited by indiscriminately including multiple drug users, thus frequently raising more questions than providing useful information. As an example of such research, I would like to comment briefly on the [Campbell] study entitled "Cerebral Atrophy in Young Cannabis Smokers. . . ." In the 10 cases reported, all 10 men had used LSD—many of them over 20 times—as well as cannabis, and 8 of the 10 had used amphetamines. One subject had a previous history of convulsions, four had significant head injuries, and a number had used sedatives, barbiturates, heroin, or morphine. On the basis of these facts, speculative connection between cannabis use and brain damage is highly suspect. Unfortunately, this type of report is typical of much of the research done in this field.

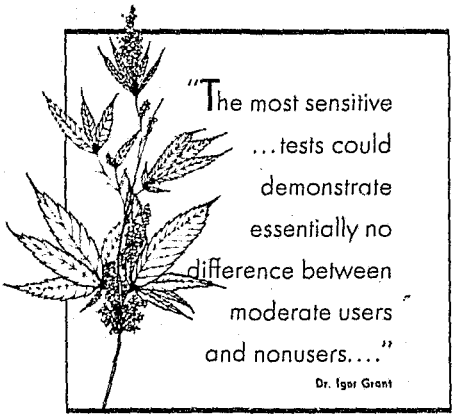
Next, consider this comment on the work of Dr. Heath, who reported brain-wave changes in rhesus monkeys exposed to marijuana smoke, by Dr. Julius Axelrod, who won a 1970 Nobel Prize for two studies, one of them concerned with the effects of drugs on the brain. Dr. Axelrod appeared as a witness before the Eastland subcommittee to warn against marijuana. Asked at the subcommittee hearings about Dr. Heath's experiments, Dr. Axelrod replied:

> . . . One of the fundamental principles in pharmacology is the amount of a compound or drug that enters the body. You could take the most poisonous compound, and if you take too little, there is no effect. One may take a very supposedly safe compound, and if you give enough of it, it will cause toxic effects. This, I think, all pharmacologists recognize. I respect Dr. Heath; he is a fine neurologist; but the doses he has given for the acute effect, for example, would be equivalent to smoking 100 marijuana cigarettes, a very heavy dose of marijuana. And the amount he has given for the chronic effect represents smoking 30 marijuana cigarettes three times a day for a period of six months. [Even the heavy ganja smokers in the Jamaica study smoked only a fraction of this.] The results indicate that marijuana causes an irreversible damage to the brain. But the amounts used are so large that one wonders whether it's due to the large toxic amounts Dr. Heath has given. I think it would be a better experiment if he had done what is done in pharmacology, a dose-response [curve]: smaller amounts equivalent to that used by an occasional marijuana smoker and larger amounts used by a chronic smoker [would be given] to see what levels would produce these irreversible effects. I hope that this will be done.



Dr. Lester Grinspoon of the Harvard Medical School similarly points out that the monkeys in the Heath study did not smoke marijuana voluntarily but had the heavy doses forced into their lungs. Since the monkey lung is about 1/15th the size of a human lung, the concentration of marijuana in the monkey lung may have been 15 times as high as that of a comparable dose in the human lung. Allowing for this and other dosage disparities, Dr. Grinspoon notes, it is possible that Dr. Heath's monkeys were exposed to marijuana concentrations vastly greater than those experienced by the usual human smoker.

Nor have the brain-damage allegations of Drs. Kolansky and Moore gone unchallenged. At the University of Pennsylvania (with which Drs. Kolansky and Moore are associated), another team of researchers headed by Dr. Igor Grant



administered a neurolo[illegible]examination to 29 marijuana smokers and 29 nonsmo[illegible]ntrols, all of them medical students. In addition to the neurological functions usually tested, six measures specifically designed to reveal brain damage were used. The examiners did not know which examinees were marijuana smokers and which were nonsmokers. No difference was found between the two groups.

In addition, the Grant team administered a battery of neuropsychological tests designed to reveal brain damage. "We found no difference between marijuana smokers and nonsmokers on seven out of eight measures," Dr. Grant and his associates reported. "Marijuana smokers did not perform quite as well as nonsmokers . . . on one of the three subtests of the Tactual Performance Test." The team added, however, that "the absence of confirmatory findings in the other tests has led us to conclude that this one finding did not indicate a neuropsychological deficit among marijuana smokers." They summed up their findings in these terms:

> A battery of the most sensitive neuropsychological tests now available could demonstrate essentially no difference between moderate users and nonusers of marijuana. These results agree with those of Mendelson and Meyer who employed similar tests with 10 casual and 10 heavy users.

Finally, the allegations of an "amotivational syndrome" and of brain damage are challenged by the findings of Dr. Norman Q. Brill and his associates at the University of California at Los Angeles School of Medicine. This group checked the college grades of 1380 UCLA undergraduates in 1970, then followed up on the same sample in 1971 (1133 students) and 1972 (901 students). Many of those who left college as well as those who stayed on were followed up.

Six groups of students could be discriminated during this study: those who had never smoked marijuana; those who began smoking during the study; those who increased use during the study; those whose usage remained stable throughout the study; those who decreased use; and those who quit marijuana altogether.

All six groups showed a steady improvement in college grades from year to year. The nonsmokers had the highest grades as freshmen but the lowest grades as seniors and graduate students; the differences were not statistically significant. Neither college grades nor other factors checked by the UCLA scientists supplied any evidence of brain damage or of an amotivational syndrome. "So far as we have been able to determine by this longitudinal study," the Brill group concluded, "the dire consequences that were predicted have not materialized."

2. Lowered resistance to disease. Dr. Nahas, it will be recalled, grew T-lymphocytes from marijuana smokers in laboratory cultures and then challenged them with foreign substances. He interpreted his results as indicating an impairment of the immune response among marijuana smokers—an impairment similar to that found in some cancer patients.

Among those alarmed by the Nahas findings were Dr. Melvin J. Silverstein and his associate, Ms. Phyllis J. Lessin, at the University of California at Los Angeles. Patients with this kind of defect in immunity, they noted in a recent issue of Science, "develop cancer at rates at least 80 times that of the general population." But was Dr. Nahas right in interpreting his results to mean a loss of immune response?

To check on the Nahas claim, Dr. Silverstein and Ms. Lessin took an approach that determines the immune response in the human body itself instead of in a test tube. They challenged chronic marijuana smokers with a foreign substance called DNCB (2,4-dinitrochlorobenzene). A small amount of DNCB was first rubbed on the skin to sensitize it; two weeks later, small doses of DNCB were injected into the skin. Under these circumstances, 96 per cent of all adults develop an immune reaction—a reddening of the skin around the test area and sometimes more severe skin changes. These changes can be graded from 1-plus (a minimum reaction) to 4-plus (a very severe reaction, including blistering).

When this test was run on 22 marijuana smokers, the results clearly indicated that their immune responses were intact and vigorous. All 22 showed a response to even a small (50-microgram) dose of DNCB, and in 21 of the 22 the response was severe (3-plus or 4-plus). Even with only a 25-microgram dose, 21 of the 22 showed an immune reaction, and 14 of the reactions were 3-plus or 4-plus. No resemblance was found to the immune reactions of a control group of cancer patients. Tests with other foreign substances confirmed this finding of a normal immune response in marijuana smokers.

"...There is no clinical or epidemiologic evidence to suggest that chronic marijuana users might be more prone to the development of neoplastic [cancerous] or infectious processes," Dr. Silverstein and Ms. Lessin noted. "Since responses were normal in the chronic marijuana users we tested, it would appear that chronic marijuana smoking does not produce a gross cellular immune defect that can be detected by skin testing."

3. Birth defects and hereditary disease. The Stenchever report that marijuana damages chromosomes, like earlier claims that LSD damages chromosomes, is being heavily challenged by contradictory evidence.

At the Institute for Medical Research in Camden, N.J.,

for example, Dr. Warren W. Nichols and his associates performed a well-controlled study of marijuana effects on chromosomes. They first checked the chromosomes of 24 occasional marijuana smokers and found them to be in good condition. They then gave their 24 subjects measured doses of marijuana daily for five or 12 days and checked their chromosomes again. No damage was detected.

Other investigators who have failed to find marijuana damage to chromosomes include Dr. Thorburn of the University of the West Indies (in the Jamaica study), Dr. Henry B. Pace and his associates at the University of Mississippi, and Dr. Richard L. Neu of the Upstate Medical Center, State University of New York. Animal studies have also failed to provide evidence of chromosome damage.

As for the Morishima report that the lymphocytes of marijuana smokers have *fewer* than the normal number of chromosomes, two difficulties should be noted.

First, all of the lymphocytes studied by Dr. Morishima and reported by him to the Eastland subcommittee came from just three marijuana smokers and three nonsmokers; this is an extremely modest base from which to anticipate, in Dr. Morishima's words, "potential danger in [the] immune defense system, development of cancer . . . genetic mutation and birth defects."

The second difficulty: if more than 30 per cent of the lymphocytes of chronic marijuana smokers contain fewer than 31 chromosomes instead of the normal 46, how could this gross lack of chromosomes have escaped the attention of Drs. Nichols, Stenchever, Thorburn, Pace, Neu, and others who have been intensively examining lymphocytes for chromosome breaks and other minor abnormalities?

4. Lung damage. Though the evidence to date is far from decisive, there is no reason to doubt that marijuana smoke, like tobacco smoke and other kinds of smoke, may damage human lung cells. *How much* damage remains an unanswered question. But the extent of damage is probably more closely related to the amount of smoke inhaled than to the type of smoke. Thus, it is hardly plausible at this stage of scientific knowledge to worry that someone who is smoking a pack of tobacco cigarettes a day—140 a week—may experience further lung damage by adding two or three marijuana cigarettes a week.

For very heavy users who smoke many marijuana cigarettes a week, of course, the risk of lung damage may be serious. Dr. David E. Smith of the University of California at San Francisco Medical School, who is also medical director of the Haight-Ashbury Free Clinic, has accordingly suggested that such users switch from marijuana smoking to other forms of marijuana consumption—such as drinking marijuana tea—to protect their lungs from smoke.

5. Sterility and impotence. Back in 1971, Dr. Kolodny and his associates at the Masters-Johnson sex research center in St. Louis reported that male homosexuals have lower testosterone levels than male heterosexuals. That report, like the Kolodny report on low testosterone levels in marijuana smokers, was widely circulated by the mass media. Within two or three years, however, three efforts to replicate the Kolodny finding failed, and it is now generally agreed that no significant difference exists between homosexual and heterosexual testosterone levels. The Kolodny report on testosterone levels and marijuana is now experiencing a similar challenge.

In November 1974, Dr. Jack H. Mendelson and his associates at the Alcohol and Drug Abuse Research Center, Harvard Medical School-McLean Hospital, reported a carefully controlled study of marijuana effects on testosterone. Like the Kolodny study, the Mendelson study was published in The New England Journal of Medicine.

The Mendelson group selected for its study 27 young male marijuana smokers, some of them casual smokers and others heavy smokers who had consumed more than one marijuana cigarette a day for the past year and who had been smoking marijuana for an average of 5.6 years (range, three to nine years). All subjects were requested to refrain from marijuana smoking for two weeks and were then admitted for a 31-day stay in a locked hospital ward, where access to marijuana and other drugs was rigorously controlled.

During the first six days of the experiment, no marijuana was permitted. Testosterone levels were measured each morning. The average levels were in "the upper range of normal adult male levels." The heavy smokers had somewhat higher levels than the casual smokers, but the difference was not statistically significant.

During the next 21 days, the subjects were allowed to "earn" marijuana by performing a simple manual task. They were required to smoke this marijuana under observation to make sure it was really consumed. As the days rolled by, both the casual and the heavy marijuana smokers gradually increased their consumption, some of them to very high levels. Their testosterone levels did not fall. Under these carefully controlled conditions, the Mendelson group concluded, "high-dosage marijuana intake was not associated with suppression of testosterone levels. . . ."

THE PATTERN OF EVIDENCE

Out of all of these many studies (and others not reviewed here), a general pattern is beginning to emerge. When a research finding can be readily checked—either by repeating the experiment or by devising a better one—an allegation of adverse marijuana effects is relatively short-lived. No damage is found—and after a time the allegation is dropped (often to be replaced by allegations of some other kind of damage due to marijuana).

If the test procedure is difficult—like the air encephalograms that Dr. Campbell employed, or like Dr. Heath's work with electrodes implanted deep in the brain—independent repeat studies are not run in other laboratories. So these allegations of damage continue to be cited in the scientific literature and in the lay press. Then they, too, are eventually replaced by fresh allegations of marijuana damage.

After reviewing the voluminous evidence available up to January 1972, CU did not conclude in "Licit and Illicit Drugs" that marijuana was "harmless." On the contrary, we then pointed out, "no drug is safe or harmless to all people at all dosage levels or under all conditions of use." We see no need to withdraw or modify that conclusion.

We do, however, see a need to comment on the adverse legal and social consequences of misinformation about the health effects of marijuana. We shall do so next month.

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Marijuana and Heroin: A Study of Initiation of Drug Use by Heroin Addicts

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Abstract

Many studies have explored the question of whether or not marijuana use leads to heroin use. An unstated assumption in most of these studies seems to be the presupposition that marijuana use was the drug user's initiation into use of drugs. In two samples of ex-heroin addicts it was found that a majority of the subjects had not begun their drug use with marijuana.

The relationship between marijuana use and heroin use has been an issue for over thirty years. As Glatt (1969) points out, "many 'opponents' base their main objections to cannabis on the 'escalation' argument, i.e. the risk of progressing from cannabis to the 'hard' drugs, heroin and cocaine." A classic statement of the "escalation" or "stepping-stone" hypothesis may be found in an article entitled "Marijuana—A Calling Card to Drug Addiction" by former U.S. Narcotics Bureau Commissioner Henry L. Giordano (1968)*. Mr. Giordano supports his statement of the hypothesis with the assertion that most heroin addicts have experienced use of marijuana prior to their first use of heroin.

This assertion is, in fact, supported by a number of studies. Chein, *et al.*, (1964) reported that of ninety-six addicts in their study, eighty-three had used marijuana prior to their first use of heroin. Chapple (1966) reported that eighty of a sample of one-hundred British heroin addicts had used marijuana before their first use of heroin. In his study of 119 Puerto Rican addicts discharged from the U.S. Public Health Service Hospital in Lexington, Kentucky between 1935 and 1962, Ball (1967) found that opiate use was usually preceded by smoking marijuana with neighborhood friends. In yet another study, Ball, Chambers and Ball (1968) studied all the addict patients released from the U.S. Public Health Service Hospitals at Lexington, Kentucky and Fort Worth, Texas; they found that for patients from the sixteen states with highest rates of heroin addiction, seventy per cent of the heroin addicts had used marijuana prior to use of heroin.

The obvious flaw in such studies is that it gives no idea how many marijuana users did not become heroin addicts. If in a given sample there are 1,000 heroin addicts and ninety-five per cent were previously marijuana users, but there are 10,000 marijuana smokers in the same sample population, then less than ten per cent of the marijuana smokers became heroin users.

* See also: Harms, 1972; Bindelglas, 1973; and Nahas & Greenwood, 1974.

A second set of studies have approached the problem from the other end, conducting prospective studies with identified marijuana users to determine what per cent would subsequently become heroin users. The Institute for the Study of Crime and Delinquency (1967) found that fifteen per cent of the juveniles arrested in Los Angeles for possession of marijuana were subsequently identified as heroin users. In a follow-up study of adults arrested for marijuana possession, the California Bureau of Criminal Statistics (1968) found that fifteen per cent of the males and five per cent of the females were subsequently arrested for possession of heroin. In contrast to these two studies conducted in California, Glazer, *et al.*, (1969) conducted follow-up studies of adolescent offenders in New York City, arrested in 1957, and in 1962, determining how many were listed on the New York City Health Department's Narcotics Register as heroin users between 1963 and 1968. They found that 39·8 per cent of the marijuana users in the 1957 sample and 41·3 per cent of those in the 1962 sample were so listed. This compared to non-drug users at 12 per cent of the 1957 sample and 15·1 per cent of the 1962 sample; 49·0 per cent of the heroin users in the 1957 sample and 52·5 per cent of those in the 1962 sample were listed on the Narcotics Register from 1963 to 1968.

These studies also raise some obvious questions. For one thing, are arrest statistics or listings on a Narcotics Register an accurate reflection or use? The answer probably is no. For another, are arrested drug users typical of drug users in general? It does not seem likely that arrested drug users, especially among juveniles, are representative of the total drug-using population, and furthermore the sociocultural and personal variables which effect the probability of a person being arrested (C. F.: Piliavin and Briar, 1964) may be closely related to the casual factors in heroin addiction. And finally, the fact of being arrested and labelled a delinquent may raise the probability of engaging in further and more diverse deviant behaviour; being labelled as a drug abuser may particularly increase the probability of further and more diverse drug abuse. (Duncan, 1969).

Eliminating these objections, a survey of a national population sample conducted for the National Commission on Marijuana and Drug Abuse found that four per cent of their sample of former marijuana users had used heroin. The same study showed that less than one-half of one per cent of the non-marijuana users had used heroin. In an additional study of 105 selected, middle class, young, working adult marijuana smokers from California, only two per cent of the marijuana users were also heroin users. The Commission did find, however, that there was a definite association between marijuana usage and the use of other drugs in general, but reported that in the majority of cases the use of other drugs was experimental only and did not become a regular pattern of use (National Commission, 1972).

Glatt (1974) has pointed out that since marijuana is an illegal drug, its user is necessarily exposed to groups of fellow law-breakers and may come to be influenced by them and by society's judgements of them and him to accept the definition of himself as an "asocial character." In purchasing marijuana he must enter into a black market situation in which he is likely to come into contact with users and sellers of heroin. "In this way cannabis users run a much greater risk than the average person of being introduced to heroin." Furthermore, having already violated the societal rule against drug use, and experienced no apparent ill-effects from its use, he may find it a small step to using other drugs. "It would seem therefore,"

Glatt (1974) concludes, "that going on to heroin is certainly a greater hazard for the smoker than for non-smokers, but it is by no means inevitable and it happens only in a (probably relatively small) minority."

An unstated assumption in all of the preceding studies seems to be the presupposition that use of marijuana not only preceded use of heroin, but was the drug user's initiation into the use of illicit drugs. The only report in the literature dealing directly with this issue seems to be Harms (1972) study in which he reports that from 75 to 85 per cent of heroin users began their drug use with marijuana. No detail of the study or of the sample(s) is given.

This paper will report two surveys examining the initial drug used by persons who subsequently became heroin addicts. The same criticisms with regard to unrepresentativeness of samples which have been made of the studies reviewed above may certainly be made of these two samples. Nevertheless, they should serve as a starting point in bringing this issue under systematic examination.

Inmate Sample

Sixty inmates of a Southern United States prison, who had been identified as serving sentences for drug or drug-related offenses and who were admitted heroin addicts, were interviewed concerning their history of drug abuse. The median age of the sample subjects was twenty-two. Their mean educational achievement was ninth grade. The two most common offenses for which they were currently imprisoned were possession of narcotics and burglary (in support of their drug habit).

Each subject was asked six questions, as follows: (1) What was the first illegal drug you used? (2) What was the second? (3) Had you used alcohol prior to using narcotics? (4) Were you a heavy drinker prior to using narcotics? (5) Did you first use drugs while in jail or in a juvenile or adult correctional institution? (6) Did you first use narcotics while in jail or in a juvenile or adult correctional institution?

Marijuana was named as the first illicit drug used by only two (3·3 per cent) of the subjects and as the second drug by ten of the subjects (16·6 per cent). The most frequently named initial drug was "speed" (amphetamines), which was reported as the first illicit drug used by thirty-seven (61·6 per cent) of the subjects. Complete results for questions one and two are reported in Table 1.

Table 1. *Inmate Sample*

Drug Type	First Drug Used		Second Drug Used	
	#	%	#	%
Barbiturates	5	8·3	23	38·0
Hallucinogens	0	0·0	2	3·3
Marijuana	2	3·3	10	16·6
Narcotics	4	6·6	17	28·3
Solvents	6	10·0	0	0·0
Speed (amphetamines)	37	61·6	6	10·0
Syrup (cough syrup)	6	10·0	2	3·3

Forty-four (73·3 per cent) of the subjects reported use of alcohol prior to use of narcotics, but only sixteen (26·6 per cent) reported that they had been a "heavy drinker" prior to use of narcotics. Twenty-two subjects (36·6 per cent) reported that their first use of illicit drugs occurred in a jail or correctional institution. First use of narcotics while incarcerated was reported by twenty-eight (46·6 per cent) of the subjects.

Methadone Patient Sample

A second sample of nineteen subjects were drawn as volunteers from the patient population of a methadone rehabilitation program located in a major Southern U.S. city, one and one-half years after the initial sample. The subjects were sixteen male and three female patients. Their median age was twenty-three.

Subjects were asked to report the order in which they first used each of the seven major categories of abusable drugs. They were also questioned about their history of arrests and incarcerations.

Two subjects (10·5 per cent) reported that marijuana was the first drug they had used for intoxication. Six subjects (13·5 per cent) reported that marijuana was the second drug they had experienced. Alcohol was most frequently reported as the first drug used, being reported by fourteen of the nineteen subjects (73·6 per cent). See Table 2. for complete results on this question.

Table 2. *Methadone Patient Sample*

Drug Type	First Drug Used		Second Drug Used	
	#	%	#	%
Alcohol	14	73·6	0	0·0
Barbiturates	0	0·0	3	15·2
Hallucinogens	0	0·0	0	0·0
Marijuana	2	10·3	6	31·5
Narcotics	1	5·2	4	21·0
Solvents	2	10·3	4	21·0
Speed (amphetamines)	0	0·0	2	10·5

All nineteen subjects reported that they had been incarcerated at least once in a jail or detention home. Ten (52·5 per cent) reported that they had been in prison or a juvenile correctional institution. Fourteen subjects (73·6 per cent) reported that they had been arrested prior to their first use of drugs other than alcohol. Fifteen subjects (78·9 per cent) reported that they had been arrested before their first use of narcotics. Four reported their first use of drugs while in a correctional facility. The same number reported their first use of narcotics in a correctional facility.

Out of this sample six respondents (31·5 per cent) reported that they had used narcotics prior to their first use of marijuana. Five of these were young users (aged 18–22 years) and the sixth was the oldest in the sample group.

Summary and Discussion

This study has found that in two samples of heroin addicts, marijuana was not the starting point for drug use in a majority of the cases. There are a multiplicity of

starting points for drug dependence, marijuana use is one of them, but it is only *one* of the many possibilities.

Alcohol is the predominant drug in Western culture (along with tobacco and caffeine, which were not considered in this study), hence it is predictable that most heroin addicts will have had experience with alcohol prior to use of narcotics. If heroin addicts tend to come from populations in which marijuana use is widespread (as it is among young people in many parts of the world today), then we can expect many heroin addicts to have experienced marijuana smoking. By the same light, if heroin addicts come from populations in which milk is commonly consumed, most heroin addicts will have drank milk prior to their first use of heroin.

That is not to say that marijuana use is an unrealted to heroin use as is milk drinking. Rather, it is meant only to point out that association does not necessarily denote causality and that the logic of *post hoc, ergo procter hoc* is a logical fallacy and not a research tool.

Some users of marijuana are seeking escape. Some of those users will go to other drugs seeking a better pharmacological means of escape. And some of those will find that means in heroin. But the crucial deciding factors lie in the persons and his environment, not in the pharmacology of a drug.

Narcotics (opium) date to the stone age, marijuana nearly as far back into history, but the epidemic of drug dependence we face today is a product of our times. The sooner we stop putting the full blame on inanimate drugs or on pitiful drug addicts and start looking for the social and interpersonal factors which produce escape behaviour on an epidenic scale, the sooner we will begin to learn how to stop that epidemic.

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[From the San Francisco Examiner, Sept. 18, 1974]

MARIHUANA—CONTRADICTING SCIENTISTS' FINDINGS

(By Gordon S. Brownell)

Recently, The Examiner published a misleading article headlined "Scientists Shift on Marihuana" by writer Karen Peterson, which portrayed a distorted picture of the present climate of medical and scientific thinking regarding marihuana.

The article dealt with research which emphasized alleged dangers from marihuana use, without reference to the preponderance of contrary evidence and studies conducted by private and governmental researchers which have shown marihuana not as dangereous as once believed.

There was no mention of the exhaustive, two-year study by the National Commission on Marihuana and Drug Abuse which was appointed by President Nixon. The commission concluded that while further marihuana research is necessary, there is no reason to continue to criminalize and jail the individual user.

On the federal level, the research being conducted by the Department of Health, Education and Welfare comprises the most objective and thorough evaluation of the effects of marihuana available in the United States. Its findings are at variance with the conclusions reached by the scientists described in the Aug. 29 article.

As the first case in point, there is the "brain-damage" monkey which is one of the subjects of Dr. Robert G. Heath's research at Tulane University. According to the article, the monkey's "brain waves are not normal. He is a steady marihuana smoker, that's why."

What the article did not point out is that the dosage levels used in Dr. Health's experiments with rhesus monkeys were extraordinarily high, up to 300 grams or 120 marihuana cigarettes daily. Researchers have long known the effects of marihuana are dose related, but there are few, if any, marihuana users capable of consuming such huge amounts of cannabis regularly, if ever. The National Commission on Marihuana and Drug Abuse pointed out that while heavy users smoke several (3 to 7) cigarettes daily, the overwhelming majority of users consume much less. Thus, it seems hardly appropriate, if not absurd, to base our social policy towards the use of marihuana on data which assumes users smoke 120 cigarettes a day.

The Peterson article also cited research of Dr. Gabriel Nahas of Columbia University. His well-publicized study that marihuana use leads to a breakdown of the immunization process and renders the user more susceptible to infectious diseases remains unsubstantiated by other research. In fact, Nahas' findings are contrary to the most respected and significant double-blind clinical study of chronic use conducted to date, which was commissioned by the federal government.

As the third annual H.E.W. Report to Congress, "Marihuana and Health (1973)" states:

"The Jamaican study of long-term chronic ganja smokers found no deleterious effects that could be attributed to cannabis. The potency of ganja (marihuana) normally smoked in Jamaica is much higher than that of 'pot' and the frequency and duration of ganja smoking is greater than in the U.S. There was no difference in the incidence of disease and no 'adverse effects' were reported in the offspring of the smokers."

Among other researchers mentioned in the article were Dr. Morton Stenchever of the University of Utah and Professor Hardin Jones of the University of California. Both have reported alleged chromosome damage from marihuana use. Professor Jones has made the startling observation that "the chromosome damage found by Professor Stenchever, even in those who use cannabis 'moderately', is roughly the same type and degree of damage in persons surviving atom bombing with a heavy level of radiation exposure (approximately 150 roentgens). The implications are the same."

In contrast, the third annual H.E.W. Report to Congress cited above states:

"The possibility that cannabis preparations might cause genetic or birth defects has been a source of concern although there has been little evidence to support it. The bulk of the present evidence, particularly that of well controlled studies, suggests that the likelihood of genetic or neonatal abnormalities arising from cannabis use at present levels of use is low. There is no convincing evidence that chromosome abnormalities arise from marihuana use."

It is sad however, that the extensive research of the National Commission and the Dept. of H.E.W. does not attract the prominent headlines and media coverage that the more sensational and fear-arousing studies do. The present state of marihuana criminalization has resulted largely from the general tendency of the media to attach an unwarranted amount of credibility to the "scare" techniques often employed by the more evangelic anti-marihuana propagandists.

In the thirties and fourties, for instance, the mainstay of the marihuana's prohibitionists was marihuana's alleged casual relationship to crimes of violence and insanity. In the fifties and up until the mid-sixties, the fear of heroin and marihuana's "stepping-stone" addictive qualities received wide-spread attention

In recent years, the focus has shifted to marihuana's effects on the brain, chromosomes and possible birth defects. In each phase of marihuana prohibition, a different fear-arousing rationale for maintaining criminal penalties against the user has been put forth, to the unfortunate subjugation of saner, less strident, voices.

In any event, it is questionable of the wisdom of whether medical effects alone can provide the basis for formulating the most effective permanent public policy on marihuana. Decriminalization is not based upon the premise marihuana use is harmless, but rather that such use should fall within the ambit of individual choice permitted in a free society. It is a social policy aimed at reducing the harm caused by defining marihuana users as criminals.

This point was made strongly by Dr. Robert Kolodny, research director of the Reproductive Biology Research Foundation in St. Louis, whose findings that heavy marihuana use may interfere with male sexual response were cited by writer Peterson. In his appearance before the Senate Internal Security Subcommittee hearings on marihuana last May, Kolodny spoke for the authors of this study:

"However, we wish to draw the distinction between our role as scientists and as concerned citizens . . . (As scientists) our position is simply that of wanting the legislators and the public to be well-informed on all sides of this issue . . . (As concerned citizens) we would now like to state our personal hope for a move toward the decriminalization of marihuana possession."

"We must continue to investigate the possible harmful consequences from marihuana use," Dr. Thomas E. Bryant, president of the independent and highly respected Drug Abuse Council in Washington, D.C., has stated. "But we cannot allow science to become a political tool, perverted in order to achieve a desired result."

[From JAMA, Vol. 235, No. 12, Mar. 22, 1976]

MARIHUANA INGREDIENT HAS VARIOUS MEDICAL USES

(Medical News)

Marihuana, grass, maryjane, or pot. The names are different, the connotation the same—a euphoric experience, a "high." But the fact is that marihuana contain a pharmacologically active agent—Δ^9-tetrahydrocannabinol (THC)—that may be therapeutic as far as patients with glaucoma, bronchospastic diseases, and terminal cancer are concerned.

Sydney Cohen, MD, hopes that the social reputation of the drug will not preclude its potential benefits. He is clinical professor of psychiatry at the University of California Los Angeles School of Medicine and he has studied the effects of THC in patients with glaucoma and asthma. In an interview with Medical News he explained that the intraocular pressure-lowering effects of THC have been known since 1971. In normal persons, the reaction is dose-related and clinically significant while in patients with glaucoma, THC lowers intraocular pressure "as well as any good antiglaucoma agent currently available."

Intraocular pressure dropped 30% (for four to five hours) in seven of 11 patients with wide-angle glaucoma. Unfortunately, Dr. Cohen said, the compound also caused a "high"—and this may be interpreted as unpleasant in some older patients. Robert S. Hepler, MD, at UCLA is now trying to develop a form of the drug that will reduce intraocular pressure without the "high." According to Dr. Cohen, the answer probably lies in THC eye drops that would have a direct effect on the eyeball, or possibly a synthetic agent.

At a New York Academy of Sciences Conference on Chronic Cannabis Use, Dr. Cohen reported that "in rabbits, topically instilled THC in sesame oil produced a 40% reduction in intraocular pressure when compared to a group given

only sesame oil. So far, tolerance to the intraocular pressure reduction has not been established."

The bronchial effects of aerosolized THC are also being studied and "may be surprising," he added. Despite the initial, significant narrowing of the smaller and larger airways after inhalation of cannabis, the airways *dilate* with THC.

In a single-blind study by Donald P. Tashkin, MD, at UCLA, bronchospasm was induced in asthmatic volunteers by exercise and methacholine. The investigators then compared the effects of 10 mg of smoked THC to aerosolized isoproterenol, and placebo. Both drugs (but not the placebo) promptly relieved bronchospasm. Although isoproterenol achieved a higher and earlier peak effect, the effect of the THC lasted longer. With *aerosolized* THC, the mean peak increase in specific airway conductance was 90% above baseline—"much greater than when equivalent amounts (10 mg) of THC are smoked," the investigator reported. Also, such systemic effects as tachycardia and the "high" were not as pronounced with aerosol THC.

The mechanism of action is not clear, Dr. Cohen said, but apparently is not β-adrenergic blockade. The effects of THC in some ways resemble those of isoproterenol and atropine, but the mechanisms involved are different. Propranolol does not block THC-induced increases in specific airway conductance (it does block this effect of isoproterenol). Also metacholine blocks atropin-induced increases in bronchial diameter, but does not seem to interfere with similar effects of THC.

When Dr. Tashkin reported his results at the Conference on The Therapeutic Aspects of Marihuana at Asilomar, Pacific Grove, Calif., he said that "it is of interest that the smallest dose of aerosolized THC (5 mg) results in a peak bronchodilator effect approximating 80% of that following 20 mg of Δ^9-THC and comparable to that following 1,250μg of isoproterenol."

In addition, he said, "the bronchodilator effect of 5 mg of Δ^9-THC was longer-lasting than that following isoproterenol (five hours vs 30 minutes)." Bronchodilation resulting from 5 mg of aerosolized THC was accompanied by only a modest (11%) short-lived (15-minute) increase in heart rate and no significant "high." In contrast, 10 to 20 mg of aerosolized THC produced significant pulse and psychological changes lasting up to two hours.

In Dr. Tashkin's view there may be therapeutic advantages to smaller doses of aerosolized THC over smoked and oral THC with respect to the magnitude, speed of onset, and duration of bronchodilation. This method of administration may also have fewer cardiac and central nervous system effects.

Another speaker at the Asilomar conference, Joel R. Butler, PhD, of North Texas State University, Denton, described the effects of THC on 54 patients with advanced cancer. One purpose of the study was to gather data on THC's acute and chronic psychological and physiological effects in patients with limited life expectancy. The investigators also wanted to determine the compound's toxicity and proper dose size. One area of psychological interest was THC's possible beneficial effect on terminal patients, such as reversal of depressive trends and anxious behavior, analgesia and antiemesis, and appetite stimulation—all problems associated with advanced cancer.

The result: THC did in fact act as both a tranquilizer and a euphoriant when administered as a "general tonic" in 5-mg capsules (suspended in sesame oil) supplied by the National Institute on Drug Abuse. There was no indication of cognitive impairment and the cancer patients showed a definite tendency to maintain weight. Dr. Butler said these positive results may have been due to drug-induced psychological improvement, diminished pain and neusea, and—possibly—even some specific effect on the "elusive machanisms" that produce cachexia in cancer patients. He added a word of caution: his data are too preliminary to serve as guidelines for any clinicians.

[Newhouse News Service Article]

New Federal Report Outlines Medical Applications of Pot

(By Susan Fogg)

Almost lost amid reports on the ill effects of marihuana on human health were findings that the drug shows some promise as a medical application to a variety of physical and emotional ailments.

The bulk of the official federal report on "Marihuana and Health" (the government continues to favor the "h" spelling released last week was devoted to detailing the latest research on the dangers of pot smoking.

But the report also outlined some of the therapeutic applications of marihuana that researchers have been testing. These findings are tentative, and have little or no application to recreational use of the drug.

Perhaps the most striking study was conducted with 34 cancer patients at the Medical College of Virginia, where patients receiving marihuana showed a number of benefits.

Marihuana apparently served as an appetite stimulant which helped check weight loss. The drug also helped suppress nausea, and worked as a pain killer.

Marihuana also served as a mood elevator and tranquilizer, but without giving the cancer patients the "high" experience by street users.

The researchers attributed this lack of a high both to the hospital setting and to the fact that the patients did not know what drug they were taking.

Other tests on lab animals indicated that marihuana may have some potential as an adjunct to anesthesia during surgical procedures. Initial studies show, according to the federal report, that use of marihuana as a sedative may reduce the amount of anesthesia needed.

Other research into the usefulness of marihuana as a sedative in treating disorders like insomnia and emotional depression has shown mixed results, but the federal report said further investigation was warranted.

In one study five retarded children with grand mal epilepsy were treated with a synthetic drug based on the active ingredient in marihuana, with results as good or better than conventional medications.

However, animal studies indicate that the anti-convulsive properties of marihuana may be limited by an apparent increase in tolerance for the drug, so that doses must be increased for it to continue to work.

Traditionally, marihuana was used in Western medicine as a treatment for convulsions, chronic pain, opiate and alcohol addiction, and asthma.

Over the past two years, researchers have again been looking at marihuana in the treatment of asthma, on the basis that in normal users, smoking marihuana dilates the major airways into the lungs.

However, scientists are concerned with other findings that smoking can cause respiratory damage. Nonetheless, the report concluded that "further investigation is desirable."

Other studies reported in "Marihuana and Health" indicate that the drug can impair driving ability, temporarily lower male sex hormone level and possibly bring about changes in cell structure that could lead to lowered body resistance to infection or genetic damage.

These hormonal and cellular effects of marihuana—still unconfirmed—could have especially serious effects on either the young adolescent or on the old, the federal report said.

Attention: smoking grass may be good for your health

By Richard Lance Christie

In the last few months, a rash of government reports, medical studies and newspaper stories have begun – once again – to trumpet the dangers of marijuana. Not since the days of Reefer Madness, *the hysterical movie made in the '30s about a murdering marijuana freak, has there been such sound and fury over grass. Marijuana Causes Male Impotency! Marijuana Interferes with Body Immunity Mechanism! Marijuana Affects Fundamental Chemistry of Living Cells! After releasing the latest HEW report on marijuana a couple of weeks ago, the top White House expert on drugs, Dr. Robert J. DuPont, warned that "the health consequences are unknown and potentially quite severe." Sen. James Eastland (D-Miss.), whose Internal Security subcommittee released its own report on the marijuana-hashish "epidemic," even went so far as to suggest that it stems from a Communist plot.*

Once again we are being exposed to the latest opinions of a relatively small group of investigators and authorities who believe the products of the hemp plant are either insidiously dangerous or menacingly unknown. But the fact is that marijuana is one of the oldest and most widely used drugs for intoxication and medicine known to man. And our research knowledge about the chemical action and public health implications of cannabis is at least as good as our equivalent knowledge about aspirin.

Today, roughly 14 percent of all Americans older than 12–or some 28 million people–have tried smoking marijuana at least once. Last year 420,000 of them were arrested for possessing or dealing marijuana–twice the number in 1970. And, despite the fact that DuPont and the man who preceded him at the White House, Dr. Jerome Jaffe, have both said they oppose prison terms for marijuana users, two bills to decriminalize grass are languishing in the House and Senate.

To clear the air around what is emerging as a major issue on the national agenda–the legalization or at least decriminalization of marijuana–we have asked a leading marijuana researcher to lay out what is known about the weed's medical properties, sorting out the hard medical fact from the soft moralistic opinion. Richard Lance Christie was the research coordinator and then project director of the UCLA Longitudinal Marijuana Study, funded by the National Institute of Mental Health, for 3½ years. Now completing his Ph.D at UCLA on the relationship between marijuana use and cultural stance, Christie is also working as chief of research and evaluation for the New Mexico Department of Hospitals and Institutions, which is in charge of drug abuse, mental health and retardation.

Used in moderation, grass will *not* make you impotent, damage your memory or kill you. But it *could* help cure your asthma, relieve your migraine, inhibit cancer and give you a new lease on life

As he explains below, "the killer weed" has many positive medical properties and, if further research is encouraged, might prove to be an unexploited wonder drug of the future.

Information about the effects of the cannabis plant on man are impressive in both amount and antiquity because the drug has been used for so long. Archaeologists have found that cannabis was used in Europe by the Bylony Culture 7,000 years ago, and an urn filled with marijuana leaves dating from 500 B.C. was recently unearthed near Berlin, Germany. The mythical emperor Shen Nung's herbal, written about 1000 B.C., mentions several uses of cannabis, and the drug was being used as an anesthetic in China around 2000 B.C. Cannabis is highly praised in the Aryan *Vedas*, dating from 2000 B.C. through several centuries after Christ. In Hindu mythology, the gods are depicted as giving the drug for the welfare of mankind, bringing joy to and relieving anxiety in the user. A papyrus of Pharaoh Ramses advises washing sore eyes with cannabis extract. Most native cultures in Asia and Africa knew of and used cannabis as a medicine and intoxicant, and do so today.

Cannabis was formally introduced to Western medicine in 1839 by W. B. O'Shaughnessy, M.D., a brilliant 30-year-old British doctor serving in India. He reviewed 900 years of medical uses of cannabis there, and then experimentally investigated the drug's toxicity and effects on animals and men. He found, as have investigators since, that the cannabis drugs are relatively nontoxic as drugs go and that they can be effective as a pain reliever, anticonvulsant and muscle relaxant. Sir J. Russell Reynolds, M.D., Queen Victoria's personal physician, conducted research on cannabis for 30 years (whether the queen served as guinea pig is unknown). He confirmed cannabis's lack of toxicity, and found it particularly effective as a pain reliever in cases he saw as involving a psychosomatic, emotional component, as in aborting migraine headaches and relieving menstrual cramps.

As a result of the favorable reports, cannabis came into widespread use medically for an expanding number of complaints in the West. The 1851 *U.S. Pharmacopeia* listed "neuralgia, gout, rheumatism, tetanus, hydrophobia, epidemic cholera, convulsions, chorea, hysteria, mental depression, delirium tremens, insanity and uterine hemorrhage" as the complaints for which cannabis "has been specially recommended." Popularity of cannabis as a medicine waned, however, because of two problems. First, cannabis could not be injected into the bloodstream because of poor water solubility, and onset of effect by mouth is very slow, the peak taking two to four hours to attain. Second, effects were hard to predict with a given dose. We know now that a large part of this latter problem was due to lack of control over the potency of preparations sold to and by pharmacists. The concentration of the 30-odd cannabinoids in cannabis varies as a function of temperature, water, soil conditions and the genetic strain of the plant, and some of the medically active cannabinoids degenerate with exposure to heat and air over time after harvesting. In addition, in common with all drugs to a greater or lesser degree, there is considerably individual variation in people's responses to a given dose of cannabis.

The effects of use of cannabis on man have been thoroughly studied, but the information thus obtained has yet to be rationally considered in forming social policy. The Indian Hemp Drugs Commission, for example, issued their seven-volume report in 1894 after two years of investigations. The British commissioned the study in hopes it would document ill effects from using cannabis so that the drug could be banned and Scotch whiskey sold instead at a sizable profit in taxes to the Crown. The nine-man commission interviewed every doctor practicing in what is now India and Pakistan, reviewed the records of every criminal case and mental hospital case in which use of cannabis was alleged to be involved, and viewed the effects of cannabis generally on a culture that had been using it for 2,600 years. They concluded that "moderate" use of the hemp drugs is not injurious mentally, physically or morally, while "excessive" use produces ill effects on body and mind and "both indicates and intensifies moral weakness." Commissions in 1931, 1944, 1968, and the contemporary LeDain Commission in Canada and the U.S.A. National Commission on Marihuana and Drug Abuse (which concluded that only the heaviest 2 percent of pot users in the U.S. were a population "at risk" from a public health point of view) all replicated the general finding of the Indian Hemp Drugs Commission.

Marijuana is an emotion-laden subject about which hundreds of myths and popular beliefs have evolved. Most of these are poorly supported in fact, and instead appear to serve needs related to issues larger than the merits of marijuana. On one hand, such countercultural gurus as Timothy Leary and Jerry Rubin advocated marijuana and hallucinogen use as instrumental to producing revolutionary (as opposed to "conditioned") consciousness. On the other hand, certain investigators have engaged in what Harvard University's Dr. Lester Grinspoon calls "psycho-pharmacological McCarthyism," conducting poor research or interpreting results out of perspective in order to demonstrate that marijuana has catastrophic ill effects. What this illustrates is that the

All drugs are damaging and lethal in sufficient amounts; aspirin, for example, causes massive bleeding from the intestines, irreversible kidney damage and toxic psychosis

National Commission on Marihuana was referring to by labeling its report, "Marihuana: Signal of Misunderstanding." Marijuana, in this culture, has come to be associated with an anti-technological, anti-authoritarian, anti-conventional and pro-hedonistic value system (this is not true in some other cultures). Some people seek to present marijuana as good because they like these associated values and lifestyles, and others seek to demonstrate marijuana is evil because they oppose them. A person committed to scientific values cannot help but see these positions as a modern equivalent of Tweedledum and Tweedledee, since the legitimate object of science is to find those things which will prove themselves.

Since misconceptions about marijuana seem to be the loudest school of thought on the subject today, let's examine them first.

Smoking grass lowers your resistance to disease: A group of investigators at Columbia University headed by Gabriel Nahas reported in *Science* that they found the T-cell immune responses of a group of young cannabis users to be depressed relative to those of a much older control group of cancer patients, and superior by only a small margin to a group of organ transplant patients whose T-cell immunity was deliberately disabled to prevent rejection of the transplant. These results imply that marijuana users could not resist cancer, among other speculative consequences.

At UCLA, however, Nahas's results could not be confirmed using a chronic marijuana-using population and using a different test of T-cell immune response which is better validated to predict prognosis in cancer patients than that used by Nahas.

The UCLA research makes Nahas's finding suspect, and suspicion is increased by checking the available literature concerning disease and mortality rates among cannabis-users vs. their nonusing peers. If there is a difference, it has not been observed. It is true that in many cultures cannabis users belong to the lowest and most wretched classes, with cannabis being used to ease the burden of their existence, which tends to be disease-ridden and brief. When users are compared to nonusers in the same social class, however, no difference in disease and mortality rates is noted.

It is even less surprising that Nahas, et al., have not enjoyed much support in their findings when one observes Nahas's previous concern for scientific values. In a review of Nahas's 1972 book, *Marihuana: Deceptive Weed*, by Barry Liskow, M.D., in the conservative *Journal of the American Medical Association* (April 30, 1973, p. 631), it is noted that: "To support his [Nahas's] essentially moralistic viewpoint [that marihuana is evil], examples of biased selection and interpretation of studies and omissions of facts abound in every chapter. . . so much of the volume is distorted that one must know the marihuana literature in order to judge the accuracy of each statement."

Marijuana causes chromosome damage: The media widely reported the recent findings of Dr. Stenchever, an obstetrician at the University of Utah, who reported a higher rate of chromosome breakage in the blood cells of marijuana users than nonusers. Regrettably, the media does not bother to do literature reviews. I did, and found the "box score" on studies of chromosome damage from cannabis is now 1:5:1: that is, one study (Dr. Stenchever's) "for" marijuana use being related to chromosome breakage, five studies "neutral" in finding no relationship in humans, and one study among Jamaicans using the equivalent of 27 joints of American-grade marijuana a day

for an average of 17 years daily finding a *lower* rate of chromosome damage in users than in a matched group of nonusers.

Marijuana use by pregnant women will cause birth defects in the unborn: Research on this issue is far from satisfactory, and an attitude bordering on paranoia is appropriate when considering use of chemicals by pregnant women. The adverse effect of tobacco smoking on the unborn child's development, for example, is well documented. However, research with animals, although there is considerable difference between species, indicates that it takes huge amounts of cannabis to influence fetal development. If one makes the dubious assumption that dosage in a female rat can be extrapolated to a female human, the dosage of marijuana which begins to cause stunting in size of the offspring figures out to about 1,300 joints of American-grade marijuana per day, for a 115-pound woman.

Marijuana makes men impotent: Recently, Kolodny, Masters, Kolodner and Toro of the Reproductive Biology Research Foundation reported a preliminary study of 20 young males who had used marijuana at least four days a week during the preceding six months. They found in the experimental group that blood levels of the male sex hormone, testosterone, was 44 percent lower than in a control group and that one-third had depressed sperm counts. This study is presently being replicated under controlled conditions at UCLA. So far the St. Louis group's results are being confirmed. THC (the "high"-producing chemical among the 60-odd cannabinoids in marijuana) is similar structurally to the female sex hormone estradiol, and cannabis has central nervous system effects that could influence the reproductive system through a variety of pathways. What these results mean is unclear, however. Kolodny, et al., speculate that heavy use of marijuana by a pre-adolescent boy could inhibit puberty, and by a pregnant woman carrying a male fetus might inhibit sexual development of the infant. Public health records on cultural groups using cannabis heavily are not detailed enough to adequately check these speculations, but no obvious effects are noted in these groups. The concerns of most people, however, center on what these hormonal findings mean to the sex life of adult males. As to effects on sex drive, the main mediator of sexual desire in both male and female is androgen, with some evidence available that testosterone has more to do with aggression than with sex. In our data on both college marijuana users and long-term heavy users of marijuana outside college, we find a systematic *positive* association between frequency of marijuana use and frequency of sexual activity among males, and this association cannot all be removed by manipulating other variables. Those heavy marijuana users with poor sexual adjustment typically have long histories of poor psychological adjustment as well, often verifiable as predating drug involvement.

Since we are unable to demonstrate any gross negative impact of marijuana use on male sex drive and behavior in our field data, what we may be observing in these laboratory hormone studies is the discovery that marijuana is a somewhat active male contraceptive and aggression-reducing agent.

Smoking marijuana will give you lung cancer: Preliminary evidence indicates that marijuana smoke is at least as damaging to lung tissue as tobacco smoke. However, the changes in lung tissue which presage cancer occur, on the average, after 20 "pack-years" of exposure in tobacco smokers, i.e., 20 years of one pack per day (20 cigarettes), or 10 years of two packs per day, etc. Since the average consumption of marijuana cigarettes by daily users in the U.S. is only 2.5 cigarettes a day, precancerous changes would be expected to occur after 160 years of a typical daily marijuana use regimen. It does not seem likely that marijuana smoking will cause a notable increase in the incidence of lung cancer.

Queen Victoria's physician found marijuana particularly effective as a pain reliever, aborting migraine headaches and relieving menstrual cramps

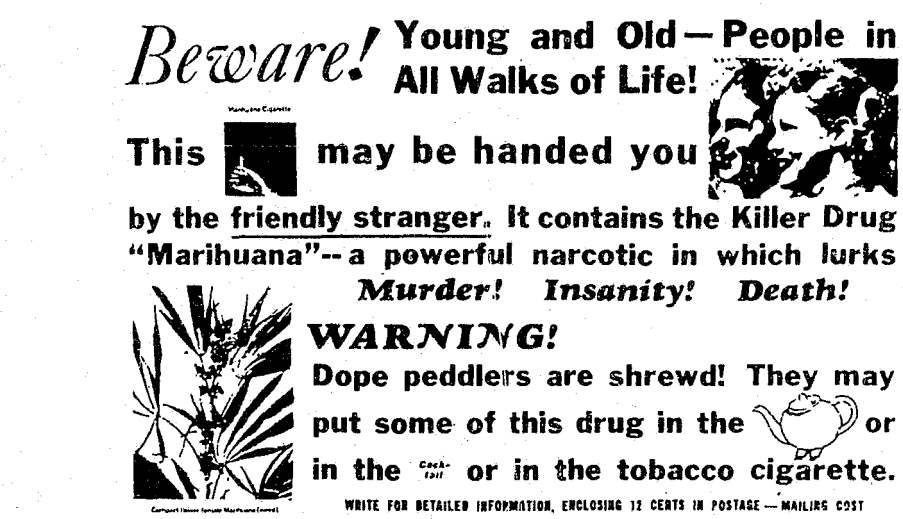
Marijuana causes males to grow breasts: Thirteen cases of young males growing breasts (gynecomastia) after heavy marijuana use have been reported. I suspect this represents an idiosyncratic reaction involving the youth's metabolisms mistaking THC for the female hormone estradiol, which has a similar chemical structure. Given the rate of breast development observed among the half million young men using marijuana as heavily in the U.S.A. (and millions more using more heavily overseas) as these 13 men afflicted with unforeseen developments, most males' metabolisms apparently don't do this.

Grass damages one's memory: Anyone who has toked up with friends knows how easy it is to forget what the conversation was about or where a certain train of thought began. Only after much backtracking along a distinctly nonlinear conversation can the original idea be recaptured. This experience has led some users to suspect these temporary memory lapses might be taking a more permanent toll.

Until recently, when some clinical studies, chiefly by Kolansky and Moore, presented case histories of people who allegedly degenerated mentally as a result of using marijuana in ordinary social doses, evidence to this point was largely anecdotal. The problem with selected populations of people referred for treatment to psychiatrists is that one cannot tell which came first, or what causes what. For example, one might observe that a number of people who killed their families with axes had a great devotion to *Kung Fu* and karate movies. An authority who concluded that watching *Kung Fu* causes homicidal mania would be laughable, since it is common knowledge that millions watch the same show without such consequences. However, authorities have attributed degeneration of memory and personality to social levels of marijuana use despite the fact that several large, representative studies like ours at UCLA have not found such degeneration to occur with marijuana use except rarely. In most cases where marijuana use and memory deterioration occur together, other factors appear to be responsible, with the marijuana use more understandable as a symptom of the problem rather than as its cause.

One encounters a number of cases, however, in which marijuana use itself appears to have been the cause of disturbing mental ill effects. The most sensible possibility to account for these rather rare cases is that some people react adversely to marijuana as some do to every food and drug. Just as penicillin and bee stings are lethal to a few people but not to most, marijuana may cause severe memory and personality problems in a few people who are in effect "allergic" to it.

It is also possible for the individual who uses marijuana quite heavily to suffer "hangover effects" from large accumulations of cannabinoids in the body which may interfere with memory. Our own experiences and those of investigators abroad indicate this condition will clear up after abstinence from the drug for 7 to 14 days. There is no good evidence that there is a permanent effect on memory and a good amount of evidence that there



Reefer madness propaganda distributed by the Feds in the 1930s.

is not.

Marijuana causes brain damage: This contention, inherited from the *Reefer Madness* days when marijuana was the drug of insanity and death, has received new publicity lately with widely ballyhooed research from England and Tulane University. The English study reported finding cerebral atrophy (shrinking of the brain due to cell death, normally found in senility) in 13 young "cannabis users." The media failed to mention that these subjects were culled from thousands of patients in metropolitan London precisely because they had symptoms of senility, and that juvenile-onset cerebral atrophy has always affected a certain number of young people who are not drug-involved. They also failed to point out that all the 13 were either heavy multiple-drug users or were known to have histories of brain damage, or both.

In short, we have a situation equivalent to selecting only *Kung Fu* viewers who have committed axe murders, and then displaying them as typical *Kung Fu* viewers; and secondly, all the 13 subjects had one or more *more probable* causes for cerebral atrophy in their histories than cannabis use. The fact that the British investigators fixated on cannabis use as their choice for the cause of brain shrinkage says more about their biases than about marijuana's effects.

The Tulane University study has received wide exposure this year. At the university, Dr. Heath has had 10 monkeys smoking or being injected with marijuana, and has observed death and brain damage to result in some. Further, he alleged the dosages he used are equivalent to those used by high schoolers in the United States. Examination of his data, however, indicates he has a strange idea of what high schoolers use. Calculating his dosages in terms of the weight and potency of samples of marijuana actually taken from users over the past few years, they add up to be the equivalent of from 20 to 240 joints per day per monkey. Even for a human that's a lot of dope. Only those monkeys in the highest dose conditions died or showed severe pathology.

All drugs are damaging and lethal in sufficient amounts; aspirin, for example, causes massive bleeding from the intestines, irreversible kidney damage and toxic psychosis. Further, many drugs like alcohol have a lethal dose to intoxicating dose ratio of 10:1. Thus, what Heath's data actually shows is that marijuana is so nontoxic that it takes extended exposure to a ratio of 240:1 to produce lethal effects. If Heath had been studying the effects of alcohol on man by using equivalent overdoses, all his monkeys would have died the first day of the study, and with aspirin they probably would have died or showed damage sooner. Further, cannabis undergoes significant chemical changes when pyrolized (burned). The applicability of findings using injected cannabis extracts to determine the effects of social use is therefore very questionable.

Moreover, aside from the defects of these studies, no brain damage was found in such well-controlled studies of chronic users as that in Jamaica, funded by the National Institute of Mental Health. Subjects in this study had smoked the equivalent of from 7 to 24 American joints a day of "ganja" for an average of 17 years. When compared to a matched group of nonusers from the same social strata, no differences were found in any aspect of mental or physical function. Field studies involving about 2,000 sub-

jects' social behavior, life histories, work output, etc., also showed no differences between those using ganja, however long or heavily, and those not using it. In Jamaica, 60 percent of the adult male population uses ganja, but no social stereotypes exist about ganja users being different from nonusers. Possibly as a result, there are no differences, even in lifestyle and attitudes.

It is worth noting that some of the studies alleging brain damage from cannabis use come from the Middle East or from studies of Middle Eastern hashish users in Europe. Middle Eastern hashish has been found to contain high concentrations of a quite toxic group of cannabinoids known as cannabivarins. The presence of these substances, plus the curious habit of using camel dung as a binder in hashish manufacture, may account for the relatively high incidence of observed ill effects from heavy hashish use.

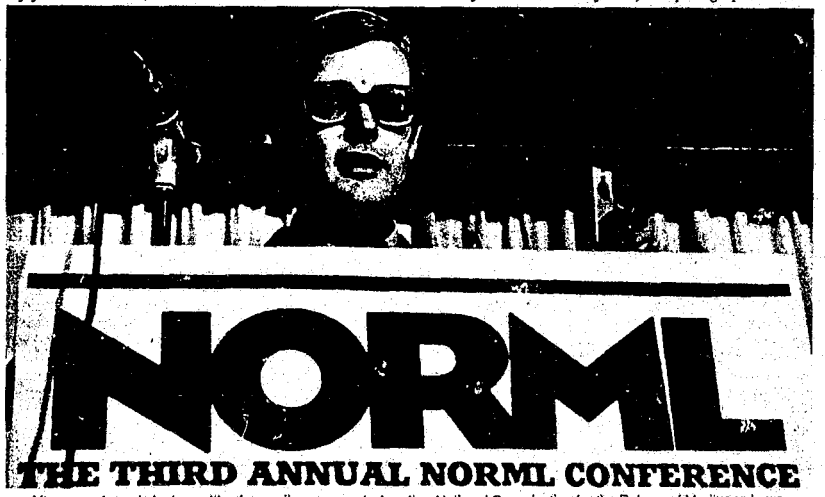
Grass is an aphrodisiac: Some native cultures believe cannabis is an aphrodisiac, while others scoff at the idea. In fact, several cultures use cannabis as a means of reinforcing sexual abstention. In summary, it seems correct to say that smoking cannabis can make one more relaxed and attuned to a sensual state of consciousness, and this, plus a seeming intensification of the senses, may be beneficial to some people's sexual behavior and enjoyment. In others, intrusive associations, physical reactions, etc., may interfere with sexual performance, although this is less common. Since sexuality is an area uncommonly susceptible to the effects of suggestion, the expectations of the user about the effects of marijuana on sex, whatever they are, are highly likely to fulfill themselves.

"Pot" keeps insects away: This view is not in vogue in the United States, but in folk medicine, cannabis plants are grown around cabbages to repel caterpillars, and twigs of cannabis are hung in bedrooms to repel gnats and flies. Whether or not this is effective remains to be tested under controlled conditions, although we know of only one species of insect that will attack cannabis.

So much for the rumors and half-truths. They abound largely because competent research in recent years has been stunted by the legal constraints on the plant and on those who study it—not to mention the political and social stigmas associated with it. Nevertheless, a substantial amount of unbiased research is currently being done on marijuana; and far from demonstrating the hazards of its use, the evidence points to many positive medical effects. This work has been conducted under sound methodological standards, and is consistent with what we know historically—but has received scant attention outside the research community.

Intraocular pressure: At UCLA in 1972, Hepler and Petrus of the Jules Stein Eye Institute found that, within minutes of smoking ordinary marijuana, the pressure of fluid in the eyeball drops, and remains depressed for about four to five hours, returning to its original level in about eight hours. Recent findings indicate it is the "high"-producing delta-9 tetrahydrocannabinol (THC) in marijuana that is responsible. This could be of great importance because a major cause of blindness in the United States is glaucoma, a disease in which excessive fluid pressure in the eye can destroy the retina unless controlled. In preliminary studies, Hepler and his associates have found that glaucoma patients who were given marijuana to smoke show fluid pressure drops to the normal range. Existing medication for glaucoma is far from satisfactory in terms of reliability and side effects, so these findings are viewed with great interest.

Bronchial dilation: For centuries, one of marijuana's uses in folk medicine was as an asthma remedy and antitussive. In the U.S., pre-rolled marijuana cigarettes were manufactured by Grimault and Sons at the turn of the century and marketed in drugstores as an asthma remedy. At UCLA's pulmonary function laboratory, Tashkin and his associates found in 1972 that smoked marijuana is more effective than isoproterenol (the medication usually used) in opening up constricted



After opposing criminal penalties for marijuana users before the National Organization for the Reform of Marijuana Laws, White House drug expert Robert DuPont hedged his position by sounding the alarm on the weed's health hazards.

bronchial airways in asthmatics, and these results have been confirmed by others.

Primary suggestibility: Before the turn of the century, marijuana was used by some psychiatrists to produce a state of heightened suggestibility so that otherwise nonresponsive patients could be hypnotized. Recent experimental studies have not supported these reports that marijuana can assist in hypnotizing people. In 1965 at Stanford University, Sjoberg demonstrated that the major hallucinogens LSD and mescaline enhance primary suggestibility (receptivity to hypnotic-type suggestions) during a waking state to a magnitude comparable with deep hypnosis. This study stimulated great interest in whether or not marijuana has similar effects. Helen Joan Crawford demonstrated in our laboratory this year that both low and high "social" doses of marijuana on the average enhanced primary suggestibility to a magnitude comparable with the state produced by hypnosis in the same subjects. Several subjects who were not responsive to hypnosis when "straight" showed significant suggestibility enhancements when "stoned," a finding which could have implications for psychotherapy. This heightened suggestibility while under the influence of marijuana provides an explanation for the subjective reports of heightened "sensitivity" to people and environments while "high." It also casts new light on users' common observations that smoking marijuana makes group experiences more easily shared and seems to "lower inhibitions," but in a very different way than does the depressant alcohol.

People who are bored, jaded and generally disinterested in life could become activated by marijuana's stimulating effect on imagination and the intensity of perceived sensation

Anesthesia: Harris and his associates, at the University of North Carolina Medical School, and Smith, at the University of Pennsylvania, have been investigating the properties of cannabis as an anesthetic, a use that dates back to 2000 B.C. in folk medicine. Early reports indicate that administering massive quantities (in humans, the equivalent of 1,000 joints or so) of a cannabinoid preparation produces anesthesia in the animal subject. Although unconscious, the animal shows no depression of respiration and heart action, retains life-maintaining reflexes such as gagging, and, in addition, shows a marked lowering of body temperature (hypothermia). Most anesthetics do depress vital signs and reflexes; thus cannabis may provide an improved way to relieve pain in circumstances where limited medical attention is available, such as among accident victims and battlefield casualties. Since hypothermia extends the time tissues can survive without oxygen, this effect of cannabis anesthesia is additionally attractive. However, Smith's results with human clinical research are not released, and there may be undesirable effects or difficulties in use of cannabis with man that counteract these advantageous features of the drug as an anesthetic.

Antibiotic: Czechoslovakian researchers have found that the classic use of cannabis in many cultures as a poultice for use on wounds, piles, corns, burns, sore feet and as a wash for sore eyes is based on sound medical properties. The fresh cannabis plant contains a cannabinoid called Cannabidiolic acid, which is a potent gram-positive antibiotic. The Czech research shows that it is effective against staphylococcus, streptococcus, enterococcus, the germs causing pneumonia, diphtheria, typhoid, tuberculosis and numerous other bacteria causing human and animal diseases. Cannabidiolic acid is effective against strains of bacteria entirely resistant to penicillin and other antibiotics currently used, and has the same potency as penicillin. Unfortunately, Cannabidiolic acid is deactivated rapidly in the blood, and degenerates swiftly in the presence of oxygen and heat. It can be stabilized in a medical base, but until the incompatibility with human blood can be worked out, it is usable for external infections only. The Czechs got excellent clinical results using Cannabidiolic acid as a salve or poultice for the conditions listed above, and in irrigations of body passageways such as the urinary tract and ear canal. The researchers also found that their cannabis preparations exerted a local anesthetic action on the treated tissues, yielding particularly good clinical results when applied to burns, the nipples of nursing women, bed sores, exposed pulp in dental cases and skin infections in animal handlers.

In addition to clearly demonstrated pharmacological properties, marijuana has a number of promising properties suggested either by as yet unconfirmed new research or by observation of folk medicine uses of the drug which seem to be effective across cultures.

Anticonvulsant: In folk medicine, cannabis is commonly used for cough, headache, menstrual cramps, as a relaxant and the like. Western doctors working with cannabis in the 1800s substantiated the effectiveness of cannabis for these purposes. Several decades ago, Davis and Ramsey conducted a study with brain-damaged epileptic children whose seizures were not being controlled by the traditional combination of Phenobarbital and Dilantin. Using synthetic THC (synhexyl), they obtained as good or better results in all cases than with previous medication. Consistent with the findings of British doctors, including Queen Victoria's personal physician, our research at UCLA shows that female marijuana users report significantly less time lost from work and school because of menstrual difficulties, and less cramping and pain. British researchers also found that cannabis stops spotting between menses. Our subjects commonly report that they use cannabis to good effect in aborting migraine headaches and similar tension-related problems, an effect substantiated in the last century by the British. Currently in the U.S., there is work now being done on the anticonvulsant properties of cannabis.

Anorexia nervosa: This condition consists of a pathological loss of appetite, leading to wasting of the body from malnutrition. Asian physicians, including modern practitioners trained in the West, report effective use of cannabis to restore appetite in such cases. Any marijuana user experiencing the "blind munchies" can testify to the drug's effect on appetite.

Addictive drug withdrawal and maintenance: Cannabis has been used clinically from time to time to aid in the "abstinence syndrome" (withdrawal) from "addicting" drugs such as heroin, barbiturates and alcohol, with mixed results. What investigatois have not dealt with systematically is what Brecher, author of *Licit and Illicit Drugs*, identifies as the "post-abstinence syndrome": periodic attacks of "anxiety, depression and craving" for the drug persisting up to several years after the physical dependence has ceased.

Brecher marshals evidence that suffering the post-abstinence syndrome motivates detoxified addicts to return to the use of a dependence-producing drug, although they may choose a different drug than they previously used. For example, in New Mexico some 60 percent of heroin

addicts become alcoholics within two years after withdrawal from heroin. Mikuriya and other investigators have reported cases in which alcoholics have successfully substituted marijuana for alcohol, and in our research we have observed a number of such cases. We have also encountered cases in which former heroin addicts self-medicate with marijuana when they feel distress, and have remained heroin-free for many years following this practice. Whatever the depressant involved, what is immediately obvious in these cases is that the individual is highly functional while maintaining on marijuana by comparison to his sorry state when drinking or mainlining. Several married subjects among the ex-addicts I have studied have middle-aged, "straight" wives, all of whom I observed to be quite anxious that their husbands not run out of marijuana. When the husbands use pot, the wives report them to

In folk medicine, cannabis plants are grown around cabbages to repel caterpillars, and twigs of cannabis are hung in bedrooms to repel gnats

be affable, interested in staying home and playing with the kids, making love, eating hungrily and listening to music; able and willing to work steadily and stay out of trouble.

When on alcohol, these men were typically abusive, belligerent, in jail or otherwise not working frequently, and when working or in possession of money most of it went for alcohol. Whatever the merits of marijuana use in the average person, it is certainly the opinion of these women that chronic marijuana intoxication is greatly preferable to chronic alcohol intoxication. Research to determine what role, if any, marijuana might play generally in ex-addict maintenance and recidivism is under way.

A tonic for the blahs: Cannabis has been used for centuries in folk medicine to restore the spirits. It is reputed to have a tonic-like action, increasing energy, interest in life and appetite. Various early research projects in this century obtained conflicting results with true clinical depression, and it seems fair to summarize that cannabis does not relieve the kind of cyclic depressive condition, unrelated to circumstances in life, that has become increasingly common in recent years and is commonly treated with tricyclic antidepressants like Equanil. Instead, careful reading of the literature and observation of the effects of marijuana today lead me to suspect that these early folk healers were treating ennui, not clinical depression. People who are bored, jaded and generally disinterested in life could become activated by marijuana's stimulating effect on the imagination and the intensity of perceived sensation, or simply by the mild change in perspective produced by getting stoned.

During the 1950s, according to one unverified story told among drug researchers, a research team administered marijuana to patients on a hospital geriatrics ward with marked positive results: a renewed interest in food, social interaction and trips off the ward.

In a related vein, research on terminally ill cancer patients is currently in progress at UCLA to determine the effects on appetite, sleep, mood and need for pain-killing drugs produced by taking marijuana.

Cancer cure: In August of 1974, a group of pharmacologists at the Medical College of Virginia reported that the "active ingredient" in marijuana which causes the high—THC—inhibits the growth of a number of different kinds of cancer, including viral leukemia, in mice. Although a powerful drug recently introduced for cancer treatment in humans was somewhat more effective in inhibiting cancer growth than was THC, its side effects are seemingly far more serious. This research directly contradicts the findings of Nahas, et al., who claim marijuana reduces the T-cell immune response, which allegedly combats cancer and viruses. In addition, an attempt by a UCLA research team to replicate the Columbia findings met with failure. These conflicting results and the immense interest in finding cancer cures should stimulate intense future research in this area.

Given the large number of alternative possibilities for medical use of cannabis, it is probable that at least a few will prove out well enough in clinical practice to be adopted into Western medicine's pharmacopeia. One hopes that rationality will somehow come to prevail in the political arena so that research to determine what the benefits and hazards of marijuana use truly are, in objective comparison to other drugs, can be conducted and decisions made on the basis of sound information. ●

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Part 7—Bibliography on Marihuana Control

NORML Suggested Marihuana Bibliography

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The Marihuana Conviction

A History of Marihuana Prohibition in the United States

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and
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University Press of Virginia
Charlottesville

Selected Bibliography

This selected bibliography lists many of the published books and articles to which we referred in researching and writing this book. Of equal importance, however, were the letters, papers, and unpublished memorandums in the files of the Bureau of Narcotics and Dangerous Drugs in Washington, D.C., and the microfilm newspaper files in many of the nation's libraries. In many instances, the identifying information for specific memorandums and letters, as well as newspaper clippings, was incomplete. In such cases, we simply recorded the available data, which are included in the preceding compilation of reference material. We have not listed these sources here.

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Second Report of the National Commission on Marihuana and Drug Abuse

March 1973

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CHAPTER THREE

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