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MARIHUANA RESEARCH AND LEGAL CONTROLS, 1974

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
ALCOHOLISM AND NARCOTICS  
OF THE  
COMMITTEE ON  
LABOR AND PUBLIC WELFARE  
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

THE CURRENT STATUS OF RESEARCH AND THE SCIENTIFIC AND LEGAL LEGAL ISSUES CONCERNING MARIHUANA

NOVEMBER 19 AND 20, 1974



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# MARIHUANA RESEARCH AND LEGAL CONTROLS, 1974

TUESDAY, NOVEMBER 19, 1974

U.S. SENATE,  
SUBCOMMITTEE ON ALCOHOLISM AND NARCOTICS  
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 4232, Dirksen Senate Office Building, Hon. Harold E. Hughes (subcommittee chairman) presiding.

Present: Senators Hughes, Randolph, Schweiker, and Javits.

## OPENING STATEMENT OF SENATOR HUGHES

Senator HUGHES. The Subcommittee on Alcoholism and Narcotics will come to order so that we may begin hearings on the subject of marihuana.

During these 2 days, we will address ourselves to two questions: First, where do we now stand with respect to the findings of research into the psychological and physiological effects of marihuana use; and, second, are the costs of enforcing criminal laws against the private possession and use of marihuana justified.

During these past 10 days, marihuana has been much in the news. Ann Landers and William F. Buckley, Jr. both wrote columns suggesting that it is wrong to put people in jail for smoking it.

The U.S. Attorney for the District of Columbia announced that his office would stop prosecuting people found in possession of small amounts.

The Attorney General of the United States was reported to have stated in a news conference last week that he would welcome a change in the marihuana laws.

The annual conference of the National Organization for the Reform of Marihuana Laws received more press attention than has any previous activity of that organization.

The Washington Post, in its lead editorial yesterday, argued for the elimination of criminal penalties for use and possession of small amounts.

And, finally, yesterday the Department of Health, Education, and Welfare issued its fourth annual report on marihuana and health.

Several weeks ago, when we scheduled these hearings, we were not anticipating any of these events. It may be that today we are discussing "an idea whose time has come," or at least is coming soon.

As many of you know, our subcommittee does not have before it any bill to change the Federal law controlling the sale, possession, or use of marihuana. Such bills are referred to the congressional commit-

tees which have jurisdiction over legislation modifying the Federal criminal laws.

Our purpose, therefore, is not to elicit testimony on a pending bill. Instead, it is to review the current state of knowledge with respect to the risks incurred by the user of marihuana. We all know that there is a wide range of legal hazards.

What seems still unclear is the degree of risk to personal health entailed in the use of marihuana. We will be discussing both elements of risk with our witnesses during these 2 days in the hope of developing a better understanding of the facts among all those who are concerned with society's response to widespread use of marihuana.

According to the report issued yesterday by the Department of Health, Education, and Welfare, 1 in 7 Americans 12 years of age and above has used marihuana. Yet, we have recently heard some scientists assert that marihuana is an extremely dangerous substance. Moreover, its use is an illegal act in every jurisdiction in the Nation.

We are thus faced with serious questions as to an appropriate national response:

Is the health hazard so great as to endanger society, or is it so minimal that Government should refrain from interfering with the individual user?

Do the criminal laws impose on the individual and on society a burden which is so great and so unfair that they are far more damaging than the use of marihuana itself could be?

Even if we find that marihuana does present serious health hazards, are we justified in using the criminal law to solve health problems, when we do not use it in any similar way to solve the very well-known problems created by the use of such substances as alcohol and nicotine?

Our hearings may not resolve each of these issues, but I believe that they will contribute to the formulation of reasonable answers. And I am convinced that we must find good answers and act on them without much further delay.

We will now have a statement from Senator Javits.

**STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator JAVITS. Mr. Chairman, 26 million Americans have experimented with the use of marihuana, and 13 million of those may be defined as regular users. All of them are committing criminal acts every time they buy and use this controversial drug. While criminal penalties have clearly failed to prevent its widespread use, they do serve to identify a significant portion of our population as presumptive criminals of a victimless crime. Last year approximately 420,000 Americans were arrested for the possession, sale or use of marihuana—most of them between the ages of 18 and 25 without a previous arrest record. The cost of these arrests both in terms of tax dollars—equaling hundreds of millions of dollars each year—and personal cost to society—thousands of citizens put in jail or prison for long periods, lives disrupted and even ruined, families divided, records besmirched, and the pain of ostracism should be very carefully examined in the light of present laws. We must balance these "costs" which we now pay, with the price the individual may choose to risk

through the private decision to consume marihuana. Indeed, I believe that decision is a personal one and no more rightfully subject to legal prohibition than the use of other drugs, where correlations have been found between their use and degenerative effects on health; that is, alcohol, tobacco, and caffeine.

It is critical to realize that even in the light of current medical research which indicates the potential dangers of marihuana use, growing numbers of people begin and continue to experiment with this drug. Therefore, the criminal penalties and the social stigma which we attach to marihuana use is not in keeping with the rights of individuals to use other products known to be dangerous to one's health if they so choose. To the extent that it is agreed that use of the drug has impact on the individual user alone and not on society in general, we impose inequitably on personal right by maintaining criminal penalties for its use. Present laws do not deter the use of the drug, they only serve unfairly to punish segments of the population who choose to use it. Current legal trends support my belief that a noncriminal penalty would serve as a deterrent to marihuana use without the negative costs of arrest and prosecution which accompany criminal penalties.

There is, however, a need to continue to investigate the potentially dangerous effects of marihuana on human beings so that the decision an individual makes will be an educated evaluation rather than a risk based on biased or inaccurate information.

In addition, I believe the medical community has a responsibility to study beneficial effects in respect of illnesses incurred through the use of marihuana in order fully to examine the types of possibilities available through its use. The need for this type of work is great.

However, there is presently a positive relationship between the heat involved in this controversy and the degree to which research is random, oriented to fit prior hypotheses or ill suited to help us to resolve the dilemma marihuana has created for our society. We need a coordinated well-defined effort through prospective, as opposed to retrospective, research examining the medical costs and benefits to an individual's health incurred by the use of marihuana.

Whatever the necessary ongoing research discloses, I believe that the costs we are now imposing on marihuana use are too high. I advocate the decriminalization of the private use and small scale possession of marihuana and to achieve that goal have introduced S. 746 with Chairman Hughes of this subcommittee. Our bill would amend certain provisions of the Controlled Substances Act relating to marihuana and provide that personal use and sale (not for profit) of marihuana in small quantities will not be unlawful.

The Committee on Labor and Public Welfare has very great responsibilities with regard to the marihuana controversy, notwithstanding the legal decision which must be made by the Senate Judiciary Committee. It is our task to identify the qualities of marihuana as they impact on the health and welfare of all Americans individually and on the society as a whole. Through the aid of the witnesses' professional expertise we can help the public develop a comprehensive and thorough understanding of this issue. At the same time by clearing the air of misinformation and emotion, we can help develop the basis for a rational social policy regarding marihuana.

Senator HUGHES. I would like to ask my distinguished colleague from West Virginia, Senator Randolph, if he has any statement he would like to make this morning.

Senator RANDOLPH. Thank you, Mr. Chairman.

I have spoken to Senator Hughes earlier and indicated that I had an executive committee meeting of the Public Works Committee, and, as chairman, I necessarily have to be there. But I did want to come this morning at the beginning of the hearing and to say to you, Mr. Chairman, that I believe these hearings can bring intelligent and well-reasoned counseling to you and the other members of our subcommittee.

I also wanted to express appreciation for the conference that I have had with Dr. DuPont as we discussed these matters several weeks ago. I was impressed then by your realistic approach, Dr. DuPont. Also coupled with that realistic approach, which you have expressed on several occasions, in conferences and interviews, I believe that you, yourself, are thoroughly convinced that the use of marihuana is bad for the user, that its plusses are really negative, and that as you attempted to have an understanding of this drug and its use, and those who have researched the subject with you and for you, that you and they believe that the smoking of marihuana is dangerous to the health. It also causes difficulties from the standpoint of not only the health of the user, but the user perhaps in contact with others.

I mention the statement where a certain lack of alertness or coordination causes the user of marihuana, who is operating a motorcar, to be unable to do it as he or she should do it. I would hope that you would discuss these matters.

I am not asking now for responses because that would break the continuity of your presentation.

Concerning the figures used by our able chairman about the number of users, that is a partial answer to me, but I hope you will, if you can, approximate the actual users of marihuana, the number, the total number of our population, and if you set it off in brackets of age, that is understandable. But I would like to know the depth and scope of this use.

It is not necessary for me to ask you to respond now, but I hope you will later. You have used marihuana, as one newspaper commentator said; you had smoked pot. So I want you to tell this subcommittee why you did that? Was it an experiment for you or were you attempting to research the subject, or what was the background of your smoking?

I think we have not only the right, I think it is important that that be placed in the record, because what I have read is not definitive as to your use of the drug, how much, and why, and so forth. So, I hope you will, in a personal way, because you have a leadership and a responsibility now in this field, which we all recognize.

I thank you, Mr. Chairman, for giving me the opportunity to be present for these few minutes this morning.

I shall try to stay, if I can, a little longer.

Thank you very much.

Senator HUGHES. Thank you, Senator Randolph.

I would like to welcome our Republican colleague, after a great victory in the last election.

Senator SCHWEIKER. Glad to be back. It was not easy.

Senator HUGHES. Do you have any opening statement, Senator Schweiker?

Senator SCHWEIKER. No, except to say, Mr. Chairman, I am delighted that you have scheduled this series of hearings, and I am looking forward to hearing the witnesses. I appreciate the opportunity to be here and hope to have the time to personally devote to this subject.

Senator HUGHES. The Chair would like to say that I appreciate the interest and dedication of both these Senators who, from the beginning of this subcommittee, have both been contributors and have displayed regular interest and dedication.

Dr. DUPONT, if you have any of your scientific colleagues or staff members with you whom you would like to have at the table, please have them come on up as you testify.

**STATEMENT OF ROBERT L. DUPONT, M.D., DIRECTOR OF THE SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION, AND DIRECTOR OF THE NATIONAL INSTITUTE ON DRUG ABUSE, ACCOMPANIED BY DR. WILLIAM POLLIN, CHIEF OF RESEARCH, NATIONAL INSTITUTE ON DRUG ABUSE AND SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION, AND DR. ROBERT C. PETERSON, EDITOR OF THE MARIHUANA AND HEALTH REPORT AND ASSISTANT DIRECTOR FOR RESEARCH, NATIONAL INSTITUTE ON DRUG ABUSE**

Dr. DUPONT. I would like to keep them in reserve, and when I start to falter, I will call up the reinforcements.

My reserves are Dr. William Pollin, who is the Chief of Research at both the National Institute on Drug Abuse (NIDA) and the Special Action Office of Drug Abuse Prevention (SAODAP), Dr. Robert C. Peterson, who was the editor of the Marihuana and Health Report, and Assistant Director for Research at NIDA; and Dr. Stephen Szara, who handles HEW research activities in marihuana.

Senator HUGHES. Fine. You may proceed with your testimony as you like.

Dr. DUPONT. Thank you, Mr. Chairman.

My testimony is a little long. My usual procedure is to simply submit it for the record, but in this area there is so much controversy and such a tendency to reduce complex positions to a simple statement of either being for or against marihuana, that I think I would like, if I may, to read the statement in its entirety so we can all share that perspective.

Senator HUGHES. Fine. Go ahead.

Dr. DUPONT. Mr. Chairman, I am pleased to be here today to testify on the important and controversial subject of marihuana use in our society.

Drug use of any kind has always caused controversy in this country. We are a nation of people who hold diverse persuasions and beliefs. Millions of Americans are opposed to the use of alcohol and tobacco. Others reject the use of medicines in the treatment of disease, or of chemicals in the cultivation and preservation of food. Millions more oppose the consumption of mind-altering drugs for the purpose of inducing pleasure.

In all this welter of popular preference and belief, no substance—with the possible exception of alcohol—has caused as much public dispute as cannabis, or marihuana.

As a physician, and as Director of the Special Action Office for Drug Abuse Prevention, and the National Institute on Drug Abuse, I am concerned with the medical and social consequences of using cannabis.

Every year, as this subcommittee knows, the Department of Health, Education, and Welfare publishes a report entitled "Marihuana and Health."

The report is intended to summarize, for the benefit of Congress and the American people, the status of ongoing research regarding the extent and effects of marihuana use.

Between 1971, when the report was first issued pursuant to legislation, and the last issue in 1973, little change occurred. Most research seemed to indicate a relatively benign human response, both medically and psychologically, to the use of cannabis. The substance was not considered addicting or even habit-forming.

Clinical and preclinical studies had yielded no persuasive evidence of toxic or harmful effects from moderate use. This continuous outpouring of scientific studies attesting to the relatively innocuous properties of cannabis contributed to growing social demands for changes in the law, and to increasingly widespread acceptance of its use. The National Commission on Marihuana and Drug Abuse, while acknowledging that all the evidence was not in, nevertheless suggested, on the basis of available data, that all legal penalties should be removed for the possession of marihuana. And private organizations, such as the National Organization for the Reform of Marihuana Laws (NORML), whose annual convention I addressed last week, were founded to bring about reform in the marihuana laws.

All of the evidence of marihuana is still not in. But more is available now than was available a year or two ago. And it is significant enough, in quantity and content, for us to have recalled the fourth edition of the "Marihuana and Health Report," and to have engaged in extensive revision over the last several months.

I have with me today the revised fourth edition, containing several important studies which may indicate more serious implications of cannabis use than previous research suggested.

Let me emphasize that I am not saying that cannabis has been proved to be more dangerous than we previously thought. Much of the research conducted to date is of a preliminary nature. A good deal of it has only been completed at the preclinical level—that is, testing in animals, not man. Some of the findings are frankly contradictory. But there is enough indication at this time of potentially serious health consequences from cannabis use for us to be concerned.

Much of our research at the present time involves continued testing in both human and subhuman species, including monkeys, rats, cats, and rabbits. These studies have very wide application and significance.

Chief among these is the discovery that the principal active ingredient in marihuana, delta-9-tetrahydrocannabinol, is extremely soluble in fat and not soluble in water. This means that THC, unlike alcohol and most other drugs, does not pass rapidly through the body. Rather, it is absorbed in the fatty tissue of the body, and appears to accumulate in those areas of the body where fatty tissue is most prevalent.

This means, unfortunately, not just the hips and areas we normally associate with being overweight, but the more significant fatty areas in the vital organs, including the brain and gonads.

In addition, the active ingredients in marihuana accumulating in cells seem to have an effect upon certain basic cellular mechanisms involving the uptake of amino acids and the transformation of these and other substances into primary nuclear components, such as DNA.

Many substances, ranging from caffeine to antitumor agents, show a somewhat similar qualitative effect on DNA synthesis. Quantitatively, however, due to the long life of THC in the body resulting from its high degree of solubility in fat, the results may be significantly different.

Studies presently being funded by the National Institute on Drug Abuse (NIDA) within HEW have replicated the findings regarding the effect of marihuana on DNA synthesis, thus indicating that the effects of marihuana on the body, under some circumstances, may be more widespread than had previously been thought. Though conclusive evidence of its effects in humans is still not available, one result may be a reduction in the capacity of cells to divide and reproduce normally, thus reducing the capacity of the body to fight infection and producing possible genetic mutations as well.

This possibility of reduced disease resistance was discussed at length in testimony before Senator James Eastland's Senate Internal Security Subcommittee last May by Dr. Gabriel Nahas of Columbia University. We are presently attempting to replicate this specific finding.

The effect of tobacco on the lungs has long been of concern to scientists, both in terms of its carcinogenic effect and its effect in hastening the onset of a wide range of respiratory disorders.

Drs. Cecile and Rudolf Leuchtenberger, in Lausanne, Switzerland, have pioneered in comparing the chemical effects in marihuana and regular tobacco smoke on both mouse lung tissue and human lungs explants. They have found that exposure to marihuana smoke stimulates irregular growth in the respiratory system which resembles precancerous lesions. Their findings also substantiate research being conducted in this country in the primary areas of changes in DNA synthesis, cell division and growth.

Marihuana research at the clinical, or human, stage must be more limited in its nature and extent. We are not as free to experiment with people, but some important facts are known.

First, of concern to all ages and categories of Americans, is the effect of marihuana on driving. Evidence that marihuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities, and detract from performance on a divided attention task, all of which are involved in driving.

A recent Canadian study examined drivers' performance while marihuana intoxicated under both driving course and actual traffic conditions. A significant decline in performance, as measured by several criteria, was found in most drivers tested.

Based on the accumulated evidence, we can conclusively state that driving while under the influence of marihuana is dangerous.

Senator JAVITS. Could I ask one question at this point?

Senator HUGHES. Sure.

Senator JAVITS. Dr. DuPont, do we have any statistics on the likelihood, or the incidence of driving while under the influence of marihuana as compared with the incidence of driving while under the influence of alcohol? In other words, is there a practical relevance or is the scientific determination you have made, which I respect fully, really a problem with marihuana smokers?

Dr. DUPONT. Senator, we will not be able to answer that definitively until we have simple, inexpensive techniques to identify the presence of marihuana use equivalent to the widely available breath tests for alcohol. We are probably a year away from having such a test available, although the procedures are rapidly advancing. But we will be soon able to have these tests and to make the kind of surveys that will answer the question of what percentage of drivers are driving while intoxicated with marihuana.

But we can say, just from the basis of the sheer numbers of people who are now using marihuana in the United States, that driving while under the influence of marihuana is a significant problem today. I do not have any doubt about that.

Senator JAVITS. But the point I have made is ~~ir~~relevant, is it not?

If the people who smoke marihuana drive very infrequently, as compared with alcohol users, that would make a big difference, would it not?

Dr. DUPONT. Yes.

I doubt very much if the magnitude of the problem is the same as with alcohol. I would suspect the marihuana and driving problem is much less.

Senator JAVITS. When you say the magnitude, you mean the percentage of those who use it and drive?

Dr. DUPONT. Yes. The number of people who are using marihuana is less than the number using alcohol.

Senator JAVITS. Of course, our Commission, the one that Senator Hughes and I were on, found that 26 million Americans have experimented with marihuana, and 13 million are regular users.

You do not challenge those figures, do you?

Dr. DUPONT. No. In fact, they are the figures we are still using through 1973.

Senator JAVITS. Thank you.

Senator RANDOLPH. Mr. Chairman, may I interrupt?

Senator HUGHES. Yes.

Senator RANDOLPH. Dr. DuPont, in mentioning the traffic accidents, the incidents increasing, as you have indicated, would you say at this point that it is possible this could cause a rising incidence of accidents while men and women are working with intricate machinery?

Dr. DUPONT. Senator, I do not have any direct data on that. But let me make one point that may not be clear from my testimony. The marihuana effect on driving that I am talking about and the equivalent effect on work performance, relate to the period of intoxication only, that is within the first 2 or 3 hours after the use of marihuana.

So that we are talking about an employee who had to do any kind of work that involved concentration or mechanical skills while intoxicated with marihuana. He would show a decline in his performance which would add to the risk of injury and reduce performance.

But that is an effect of an acute intoxication with the drug, not an effect which persists days or weeks after using marihuana.

Senator RANDOLPH. You cannot address yourself, then, to the accidents in industry that I mentioned, in manufacturing?

Dr. DUPONT. No. I have seen no study that is able to estimate the percentage of the accidents in industry which are related to the consumption of marihuana or any other illegal drug. They may exist, but I am just not familiar with them. If there is any data on this subject I will see that it is provided for the record.

[The following information was subsequently supplied for the record.]

Active Research Projects Dealing with  
Drug Abuse in Industry

The Division of Research currently supports two grants and one contract which are examining the use and abuse of drugs in the industrial setting. In one of the grants, DA-00800, David Caplovitz of City University of New York is assessing the extent and type of drug use by persons employed in both blue collar and white collar industries, and the possible connections between job attributes and drug use. The study will seek to distinguish between hedonistic and adaptive reasons for the use of drugs. Work began in June 1974 and it is still too early for results.

In a second grant, DA-01080, which is being done at the University of Wisconsin-Milwaukee by Khalia Khavari, an interdisciplinary group of social scientists is investigating drug abuse in a sample of the Milwaukee work force. The study began in June 1974 and no results are yet available.

Under a contract, 42-73-210, with Consad Research Corporation a survey is being conducted in 197 firms drawn from the four Census regions of the Country. In Phase I of the study which began in June 1973, representatives of Management, Personnel, the Unions, Medical Departments, Security and First-line Supervisors were interviewed about the existence of drug abuse in their respective firms and the effects it might be having. Phase II will consist of interviews with workers concerning their own drug use or abuse.

Bearing in mind that brief summaries of large studies must be interpreted with caution, the following points can be extracted from Phase I of the study:

Thirty-five percent of all 1905 interviewees indicated the existence of a drug use problem, 72 percent of whom characterized the level of employee drug use as a "small" problem. Large firms (500 or more employees) perceived drug use problems more frequently than medium or small firms.

Of that third of the respondents who indicated the existence of a drug problem, over 68 percent, two out of three, cited marihuana as being a problem. One in ten, about a third, described it as a great problem, about a quarter, 25 percent, as moderate and 31.5 percent as a small problem. The major reported effects of drug abuse are an increase in absenteeism, declines in productivity and decreases work motivations. Infrequent effects include increased employee accidents, dissention among employees and theft and pilfering.

Senator RANDOLPH. Are you in a position to see that such a study be made?

Dr. DUPONT. I will certainly either make such a study or encourage that it be done. You have stimulated my interest sufficiently, and I will pursue that.

Senator RANDOLPH. Thank you.

Dr. DUPONT. To return to my opening statements, second, we now have reason to believe that levels of marihuana use which may be physically tolerated by young, healthy adults, may have an adverse effect on other groups within our population. Most of our human research to date has been conducted on young healthy mature males.

We are just beginning to study the effects on older, less healthy individuals, and have conducted no studies to date on the effects of marihuana on the population which most commonly experiments first with the drug—junior high and high school age young people who are in a crucial stage of their development.

At least one study of patients with clearly established coronary artery disease has found that chest pain—angina pectoris—was experienced sooner after exercise and after less work while smoking marihuana than while smoking an inactive placebo. Thus the use of marihuana by those with coronary difficulties appears to be especially unwise.

Evidence of the effects of marihuana on the brain, while not conclusive, also indicates some cause of concern. A variety of studies confirm the fact that marihuana impairs short-term memory processes while the user is intoxicated. This impairment appears to involve the transfer of information from short-term memory to longer term memory storage. There is evidence, too, that even light marihuana use impairs motor coordination and affects reaction time. Several other investigations of the acute effects of marihuana on brain activity tend to support users' assertions that, when intoxicated, they selectively attend to particular aspects of the outside world.

Preliminary studies also indicate that chronic use of marihuana may have a depressant effect on production of the male hormone testosterone. One study of American males revealed that of 20 chronic users studied, 6 had reduced evidence of fertility—lower sperm counts—and 2 were impotent. In this study, the testosterone levels promptly increased once marihuana use was discontinued.

It has been speculated, on the basis of this and other similar studies, that marihuana use during adolescence may have an adverse effect on the biological development of young boys; and this evidence, combined with the prolonged retention of marihuana in human cells, raises a question as to whether marihuana use during early pregnancy, when sex-differentiation of the fetus is occurring, may adversely affect the development of the male fetus.

Mr. Chairman, this summary of some of our more recent scientific research clearly raises more questions than it answers. But I believe it is vitally important to make the public aware of the fact that we are asking these questions.

The jury is not in on the risks associated with using this particular substance, and hearings, such as you are conducting today, and your distinguished colleague, Senator Eastland, conducted last spring, can accomplish a great deal by letting the public know where we stand and

what our concerns are. It is particularly important to do so at this time, when the available evidence indicates that marihuana use still is growing in our society.

There are some 26 million Americans who are estimated to have used, or at least experimented with marihuana. This is a cumulative figure for all age groups, starting with the age of 12. But, in order to understand what is happening with regard to marihuana use in our society, it is necessary to look at the trends within specified age groups.

In 1969, a nationwide sampling of high school senior boys revealed that 20 percent had at least experimented with the drug; a followup study of this same group in 1974 revealed that about 60 percent had used the drug one or more times, with little variation among young men who had chosen college, military service, or other employment after high school.

A similar study of a west coast county high school reveals an almost identical trend—25 percent of male high school freshmen in this particular school had used marihuana in 1968; almost half the male high school freshmen had done so by the spring 1974 survey, and the figure for senior boys was 62 percent. There is also some evidence from this California survey that marihuana use may be leveling off, at least in areas of widespread incidence of use. The 1974 figure for freshmen boys showed, for the first time in 8 years of recordkeeping, a slight decline, 2.6 percent, in reported use.

In considering the extent of marihuana use in our society, it is important to keep two factors in mind. First, extent of use varies widely by geographic region and, second, there is considerable evidence to support the view that most people only experiment with the drug, and relatively few develop a lifelong pattern of regular use.

About 50 percent of those high school seniors who have ever used marihuana report continuing or regular use. Extent of use also varies among young people in different regions of the country. The California high school where 62 percent of high school senior boys reported any use seems to be exceptionally high because of a history of extensive marihuana use in that area. For the most part, the percentage of high school students who have ever used marihuana throughout the Nation is far less, varying from an average of 23.5 percent in the West to 7 percent in the South.

Even among those people who have used marihuana regularly, as opposed to simply experimenting with it a few times, there is a noticeable fall-off phenomenon which seems to accompany maturation and changing lifestyles.

The single most significant factor related to the cessation of marihuana use by former college users has been found to be the development of a commitment to nonstudent roles, including family and job responsibilities. These changes also reflect an increasing social isolation from other marihuana users. Age alone is not a significant factor in this regard.

At the present time, 15 percent of the clients in federally funded drug abuse treatment programs have listed marihuana as their primary drug of abuse. I realize that for some of these clients their primary problem may be a brush with the law.

Increasingly, judges and prosecutors faced with the choice of sending a young person to jail for simple possession of marihuana, or

referring him or her to a treatment program, choose the latter course. Our data indicates that the number and percent of those in federally funded drug abuse treatment for problems with marihuana or hashish has been growing from 12.2 percent in the period April-June 1973, to 14.7 percent by October-December; to 15 percent in the first two quarters of 1974. The rate of involuntary admissions to treatment during this time period, while it has increased, cannot alone account for this upturn in admissions for marihuana problems.

In my travels around the country, and my talks with concerned citizens on this subject, I have become convinced that our attitudes toward the problem of marihuana use is fragmented and often counter-productive.

We do not want our young people to use marihuana, yet they are using it in record numbers and telling us, as they do so, that it is probably safer medically than our pills and alcohol.

We fear that the use of marihuana will lead to deeper involvement with other drugs, yet fail to perceive that the use of any drug—alcohol and tobacco included—often creates a climate in which more drug use is tolerated and thus lead to the same end.

What is needed in this country is what I believe this committee is seeking, a rational public policy regarding marihuana, based on the best evidence available and supported by an informed public.

As a doctor, my principal concern is with treatment and prevention. I believe that treatment should be provided by the medical profession for those who encounter problems with marihuana use. This includes counseling and supportive services within a program setting for those who are voluntarily and involuntarily admitted for treatment.

Second, emergency treatment should be provided in hospitals or through private physicians for those who encounter serious medical complications from use.

Preventive measures are also required, in the field of general and specialized education. I am particularly concerned with the number of young people who are likely to use marihuana while driving. Information on the effects of marihuana use on motor coordination and reaction time should be incorporated in all driver training courses, and knowledge of its effects should be made a condition for licensing as a motor operator.

Before I say anything else on the subject of the law, I would like to refer to a story which appeared in a number of newspapers and media reports last week. I have not called for decriminalization of marihuana possession, either as a spokesman for the administration or in my own right. My speech to the NORML convention last Friday did not represent a change in administration policy. Rather, it was a frank and objective discussion of the issues, and of the trends in law enforcement taking place around the country.

Current medical evidence, while it does not afford a decisive basis for public policy, nevertheless points to several harmful medical consequences which, I am convinced, justify a policy of continued discouragement of marihuana use.

Nevertheless it is important to recognize that there are many ways to legally discourage marihuana. Between 1967 and 1971, the Federal Government and most of the States moved to reduce the penalties for simple possession of marihuana from a felony to a misdemeanor. This

is an important step, reducing the actual sentence for possession for personal use to a maximum of 1 year in jail and/or a fine.

As a society, however, we still spend a great deal of time, effort, and funds on enforcing the marihuana possession laws. According to recent FBI statistics, 95,000 persons in California were arrested for marihuana violations last year alone, at a cost to the State of over \$100 million.

The number of persons arrested nationally was 420,000 in the same year, up more than 40 percent from the year before, and more than double the figure 4 years ago. Most of these people are between the ages of 18 and 25. They are arrested for possession of marihuana and may bear forever the stigma of an arrest record which can affect their employment opportunities and their entire future. On the other hand, the illegality of marihuana possession today is clearly a deterrent to large numbers of potential users.

The new scientific research does not answer the basic questions of social and legal policy which currently rest on the legislative agenda. Legislators in some States have already aimed to reduce the costs of the marihuana possession offense. Some have authorized conditional discharges or diversions in lieu of prosecution. Others have authorized the fact of conviction to be expunged from official records after a short period of time. These provisions are designed precisely to avoid the implications of the original decision to criminalize marihuana.

As another example, the State of Oregon has said that marihuana use should be legally discouraged, but the penalty should be in the category of a violation, carrying a maximum fine of \$100 and no criminal record. A violation is legal offense of lesser seriousness than a misdemeanor. It is not a "criminal" offense.

Even the most ardent opponents of marihuana use, including your colleagues, Senator Eastland, Senator Goldwater, and others, no longer contend that persons who choose to use the substance despite society's preference to the contrary should, as a matter of course, be put in jail.

A review of sentencing patterns has convinced me that many of our Nation's judges share this opinion. According to surveys by the Marihuana Commission, and subsequent national surveys a majority of the general public also opposes incarceration as a penalty for marihuana use.

We are watching the situation in New Mexico where, under the law, the possession of 1 ounce or less of marihuana for a first offender is punished by a fine of \$50 to \$100 or 15 days in jail. The jail sentences are rarely imposed, but it is a matter of discretion to be given to the judge. The penalty for repeat offenders is a fine of \$100 to \$1,000, or 1 year in jail. Suspended sentences are frequently given, and there are provisions in New Mexico law for expunging the record after 1 year.

From my position, the key question is, will lesser legal penalties serve as a deterrent, or will marihuana use increase once the stricter criminal penalties are removed? We are watching the effects of the various State laws closely, with this in mind.

But, clearly, in this country today I think we are much closer to an agreed upon social policy of marihuana than much of the debate in recent years has suggested.

Mr. Chairman, I have tried today to give you an overview of the effects and extent of marihuana use in this country, from my perspec-

tive as a public health official. I have tried also to at least outline for your consideration some of the questions we must face squarely in the formulation of public policy, and some of the possible answers as well.

I shall now be happy to respond to any questions.

Senator HUGHES. Thank you very much, Dr. DuPont, for your testimony.

Senator Randolph, if you have to leave, I will yield to you first.

Senator RANDOLPH. I had hoped we would have a quorum at the other meeting and we have not had it at the committee yet, so I will remain, but I will go in a moment.

I hope it was not improper for me to direct a question to you as a person who had tried or had used, in whatever time-frame, marihuana, to speak to this, Doctor, because you are a doctor and you are giving us testimony. And I think it is good for us to have the reasons why you did it.

Dr. DUPONT. Yes, Senator. I did not mean to avoid that. You raised a number of very important questions I will be happy to answer.

I was a little surprised by the question relating to my personal use of marihuana yesterday at a press conference. I did not have all my own thinking together on that subject. It has obviously become a matter of public record now and I have thought back on this issue.

I used marihuana three or four times between the years, roughly 1960 and 1965, in social settings with friends. My use was certainly not as part of any scientific experiment. It grew out of curiosity on my part to learn more about what people were talking about.

My discontinuance of use stemmed from a number of considerations, one of them being the consequences of continued use, both in terms of legality and in the terms of attitudes of other people about it, and also from a feeling that it was not a particularly pleasant experience for me personally.

At the time, my concerns about the health issues were not very great because the data about possible negative health consequences was not available.

Today, my commitment not to use marihuana is certainly reinforced by the potential health risks as well. But, in any event, I have not used the drug since about 1964 or 1965, and I have no intention of using it again.

Senator RANDOLPH. Thank you, Doctor. That is the only question. Thank you, Mr. Chairman.

Senator HUGHES. Dr. DuPont, in line with what you just said, do you drink alcoholic beverages?

Dr. DUPONT. Yes; I do. But I have recently given up cigars, Senator.

Senator HUGHES. Do you consider marihuana more dangerous than alcohol?

Dr. DUPONT. Well, when we try to compare the commonly used drugs, alcohol, tobacco, and marihuana, we can get ourselves into a lot of traps, because they are different substances with different effects and different risks. And they have different histories in our society.

Senator HUGHES. Regardless of the history, we have a lot of known facts about alcohol, that it kills, that it affects the brain, it affects a lot of the other organs in the body, and certainly contributes to death on the highways.

You gave up marihuana because of its possible physical effect, or at least that was one reason you gave.

Dr. DUPONT. Yes, sir.

Senator HUGHES. Would not the same reason apply to alcohol with abundantly more evidence?

Dr. DUPONT. I think, Senator, that my own view of alcohol is that my use is moderate and is not a substantial risk to my health at this time.

Senator HUGHES. Would that not apply to marihuana on the basis of the way you used it, three or four times in 5 years? That is certainly moderation, is it not?

Dr. DUPONT. Yes, it is. But there are some differences in the substances in terms of at least the potential problems—

Senator HUGHES. One is illegal and the other one is legal. Is that not the main reason?

Dr. DUPONT. That is one big difference. In addition there are some pharmacological differences. Alcohol is cleared out of the body very quickly and does not appear to affect basic biochemical functions to the same extent that marihuana does.

Senator HUGHES. Does not alcohol affect the brain on a permanent basis with continued usage, Doctor?

Dr. DUPONT. At very high levels of daily use, yes, Senator. I do not believe that there is any evidence that alcohol affects the brain in intermittent use at moderate levels.

Senator HUGHES. Has there ever been any research done on that?

Dr. DUPONT. Yes; there has, and you are probably more expert on that subject than I am. I would defer to you on that, but it is my understanding that I am not risking brain damage with the level of consumption of alcohol that I maintain at this point in my life.

Senator HUGHES. Have you ever known a death attributable to marihuana use?

Dr. DUPONT. No; but such a possibility exists. The substance can produce death in high doses, and I think that part of the problem—

Senator HUGHES. Could anyone smoke enough marihuana in 24 hours to kill himself?

Dr. DUPONT. Yes. It depends on the concentration of the substance.

Senator HUGHES. I am not talking about hashish. I am talking about marihuana.

Dr. DUPONT. Then probably not.

Senator HUGHES. Could they drink enough alcohol in 24 hours to kill themselves?

Dr. DUPONT. Yes; I think you could probably do it in half an hour or less.

Senator HUGHES. If you took it in extreme doses, it would bring death?

Dr. DUPONT. Yes.

Senator HUGHES. There are deaths resulting from both alcohol and nicotine, are there not?

Dr. DUPONT. Many, yes.

Senator HUGHES. We have really no evidence of death from marihuana use?

Dr. DUPONT. I think that is a fair statement.

Senator HUGHES. Not that I am aware of at least.

Dr. DUPONT. Part of the problem in terms of death, is that when you talk about alcohol deaths, you are often talking about alcohol-related deaths due to accidents, particularly traffic accidents. We just do not know enough about the effect of—

Senator HUGHES. Let us rule out accidents and talk about physiological death caused by the drug.

Dr. DUPONT. Again, I think that part of the problem is that the medical examiners of the country do not now have the capability of testing for marihuana in the tissues, and I think there is much yet to be learned on the subject of marihuana and death.

I am not saying that I think there is any large number of marihuana-related deaths, but the technology is not there now to definitively answer that question.

Senator HUGHES. Thank you. I am sorry to belabor you on that point. I do think the perspective is important.

You drink and I smoke nicotine, and we are talking about a third substance that other people use for the same reasons that you drink and I smoke. Ours is legal and theirs is not. We are talking about the question of which is more dangerous to society, the most effective and most moderate and reasonable way to control those substances—all three of them are our responsibility.

Dr. DUPONT. Absolutely.

Senator HUGHES. I think we should give equal attention to all of them, certainly with the same sense of responsibility to the public. I know you feel the same way. That was the perspective of my questioning only.

As you know, and as a matter of public record, I smoked marihuana once in my life, and that has been over 30 years now. It was during World War II when I did so, it created almost a sensation, as if I were an addict as a result of it.

When I said I gave it up because there was not anything to it, I immediately got letters from users all over the country saying I should continue the use of it and I would eventually get it. [Laughter.]

I did not follow their advice because I had no more interest in it.

Dr. DUPONT. Senator, I might add that I was quite anxious about how my admission of use would be reported in the press. At least the initial reactions I have had convince me that we have come a long way in this country in terms of the press managing of this issue. The articles I have seen and the television clips about my "confession," if you will, of yesterday, have been a lot more moderate and reasonable than was the treatment of similar confessions in the past.

Senator HUGHES. You will get some letters, Doctor, that would indicate that they would rather you had lied about it than to have stated publicly that you had experimented with it.

Unfortunately, that is the attitude, the questioning of the integrity of every public official today. And I am glad you were honest about the experimentation and brought it out. I think if we all were as truthful, we could get a better perspective and a reasoned approach to what we are doing.

I would like to get down to some of the other questions, if I could.

You mentioned the research that has been done since the Marihuana Commission report 2 years ago and the additional evidence. Though we all uniformly agree that we do not have enough evidence yet, is there not an abundance of it?

Are you satisfied with the quality of the research projects which have suggested danger in marihuana use? I am referring to the studies which led you to revise your fourth annual report.

Dr. DuPONT. Yes, I think the quality of most of the studies is quite high. Let me put this in a little perspective.

Four or five years ago, the research community was in a great struggle with the law enforcement community with regard to research on marihuana and other illegal drugs. I am sure you remember those bad old days. Researchers were unable to get authorization to pursue research and were unable to find a standardized substance to carry out research.

One of the measures of the changes in the last few years has been that this is no longer the case.

As a matter of fact, the Federal Government now funds a marihuana plantation in Mississippi and produces a very high quality standardized marihuana cigarette for research activities. I think that this is one of the factors that has helped our research become more sophisticated.

On the other hand, these more sophisticated research activities are still quite new and most of the results are still preliminary. I am not satisfied that we have yet seen the full fruition of a more reasonable and a more highly supported research activity. But I think the studies are good, and getting better.

Let me give you an example of one kind of study that has been of concern. That has been the impact of marihuana use on testosterone levels. That study by Dr. Kolodny in St. Louis has been criticized because he studied individuals who were smoking an unknown substance, that is street users, and not using a standard substance in a laboratory setting. The Kolodny study has now been replicated in a controlled laboratory setting, and the results from the two different laboratories are contradictory. We are pursuing that now to understand why the difference exists.

One difference appears to be the time that the blood samples are taken in relationship to the last use of marihuana. But the sophistication in the field is shown by the fact that we are asking these questions in a perfectly open way in the scientific community and coming up with very sound answers.

Senator HUGHES. Of course, as to street users, you would not have any control over the use of multiple substances.

Dr. DuPONT. That is another great concern, absolutely.

Senator HUGHES. Would that not be a real concern? Because, frequently, in street users you do have multiple use. Marihuana is sort of a bridge to substances which are considered more dangerous.

Dr. DuPONT. Yes, that is a very real concern in terms of attributing effects to a special agent, to-wit, marihuana. That is why many studies have to be carried out in a laboratory setting where the individual subjects are carefully monitored in terms of their use of other drugs, with regular urine tests being taken to be sure that they are not also using something else.

Senator HUGHES. Were any of these projects supported financially by the Special Action Office or the National Institute on Drug Abuse?

Dr. DuPONT. Yes. The initial Kolodny study was not, but the followup testing is being supported by the Federal Government.

Senator HUGHES. I am sure you are aware of the criticisms some of the studies have encountered.

Just to refresh your memory, such as the use of very massive doses of cannabis beyond the level which humans would or could ingest, and reliance upon the subjective reporting of the use of marihuana by subjects of research.

Dr. DUPONT. Yes, sir, I am well aware of that. Some of the studies have indeed suffered from this kind of a problem.

I recently was reviewing the Nobel Prize winner, Julius Axelrod's comments before a Senate subcommittee. He made this point specifically with respect to the research of Dr. Robert Heath.

Senator HUGHES. Are efforts by other scientists being made to replicate the studies?

Dr. DUPONT. Yes, absolutely. Not all the studies by any means are based on use of very high levels of marihuana.

One of the more convincing of the studies to me, at least, is the study referred to in Switzerland. These researchers expose tissue cultures to smoke from tobacco and marihuana cigarettes, and to a combination of the two in doses that are relatively small. In other words, they do not use high levels but relatively modest physiologic levels of both tobacco smoke and marihuana smoke. They found major cell pathology from both marihuana and tobacco smoke, but the cells were more affected by marihuana smoke.

On the other hand, I must emphasize with respect to this study that they are exposing tissue cultures to the smoke and not the whole organism. The body has many mechanisms for dealing with toxic substances that are not available to tissue culture. The whole respiratory system is designed to help prevent the kind of problems that are seen more vividly in tissue cultures.

Nevertheless, I was impressed by that data. And although it is not finally convincing in terms of the effect of marihuana smoke on man, it certainly is a cause for considerable concern.

Another fact which there is just no quarrel about, is that chronic bronchitis is indeed a common consequence of regular marihuana use. Some investigators have found early development of emphysema as well. It does indeed appear that marihuana smoke, quite independent of tobacco smoke, is an irritant to the lungs and can have serious health consequences just on that basis.

Senator HUGHES. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Doctor, you mentioned that one of the studies that you are trying to replicate has to do with the absorption in the fatty tissue of one of the key ingredients. You do not say in your statement how long a period of time you are talking about here.

What does the study indicate?

Dr. DUPONT. Something in the nature of a week. The metabolic breakdown products can be recovered in the urine until a week after use. The presumption is that it is present at even lower levels for longer periods of time. The closest analogy to this would be DDT, which also accumulates in the fatty tissues.

The body is designed to rid itself of substances which are water soluble. They are flushed out through the blood and urine quite fre-

quently. But when a substance is highly fat soluble and not soluble in water, then it tends to accumulate in fatty tissues.

Senator SCHWEIKER. You also say in your statement that if this study is borne out, there would be a significant difference between this and other kinds of drugs, because of the residual nature of it.

Dr. DUPONT. Yes, sir, absolutely.

Senator SCHWEIKER. A study was done, I guess it was the Columbia study you are referring to—

Dr. DUPONT. The study at Columbia which I referred to was the Nahas study about the immune response of the white cells.

Senator SCHWEIKER. You referred to the Columbia study in terms of the capacity of cells to divide and reproduce normally. There you talk about attempting to replicate this finding.

When do you expect to have a definitive outcome or determination on usual replication efforts? How long a program is that?

Dr. DUPONT. This is Dr. Szara.

Dr. SZARA. There are several grants and contracts that are designed to follow up the Columbia studies by systematic, well-controlled fashion. Dr. L. Harris and his coworkers in the Department of Pharmacology of the Medical College of Virginia are studying the effects of THC on RNA and DNA replication in animals. These studies are still ongoing and we have only preliminary abstracts essentially confirming the effects of high doses of THC on nucleic acid metabolism in certain cell types. Other studies are following up the immunological and chromosomal implications of the Columbia study. One of these studies done by Silverstein and Lessin on chronic marijuana users has just been published, and the results are essentially negative. The study was done by a different technique which is used clinically to detect gross cellular immune defects. I have a copy of the article and, if you permit me, I would like to submit it for the record.

Senator SCHWEIKER. Yes, we would like to have it. I would like to put it in the record, Mr. Chairman.

Senator HUGHES. Without objection, so ordered.

[The document referred to follows:]

## Normal Skin Test Responses in Chronic Marijuana Users

**Abstract.** *The cell-mediated immunity of 22 chronic marijuana smokers showed no difference from that of normal controls when evaluated by in vivo skin testing with 2,4-dinitrochlorobenzene. However, a significant difference was seen between these chronic marijuana users, all of whom could be sensitized to 2,4-dinitrochlorobenzene, and age-matched cancer patients, who showed a decreased capacity to be sensitized.*

In a study of 51 subjects, Nahas (1) suggested that cellular immunity may be impaired by the chronic use of marijuana. His *in vitro* studies showed that lymphocyte blastogenesis in response to allogeneic cells (mixed lymphocyte culture) and in response to the mitogen phytohemagglutinin was decreased to levels comparable to those of patients with a known impairment of cellular immunity (cancer, uremia, and kidney transplant patients), and that this depression was statistically different from that of normal controls. However, *in vivo* skin testing with the foreign antigen 2,4-dinitrochlorobenzene (DNCB) and with a battery of common antigens may be a better gauge of overall immunocompetence than any currently used *in vitro* lymphocyte function test, because skin testing closely correlates to clinical prognosis in cancer patients (2). Since 96 percent of the normal population can be sensitized to DNCB (2, 3), we tested the capacity of chronic marijuana users to develop a delayed cutaneous hypersensitivity response to DNCB and thus grossly evaluated, *in vivo*, their immunologic competence.

For this study, the chronic marijuana user was defined as one who regularly smoked marijuana a minimum of three times per week for at least 6 months (4). Tobacco smoking and alcohol were allowed but the regular or frequent use of other drugs disqualified the subject from the study. Skin testing with DNCB was performed in a standard fashion (2) on 22 healthy males ranging in age from 21 to 30 years. After the skin was cleansed with acetone, a sensitizing dose of 2000

$\mu\text{g}$  of DNCB dissolved in 0.1 ml of acetone was applied to the skin of the upper arm. A 100- $\mu\text{g}$  dose was applied at the same time to the ipsilateral forearm to test for previous sensitization. After 14 days, the subjects were challenged on the ipsilateral forearm with 100, 50, and 25  $\mu\text{g}$  of DNCB as well as with a cutaneous irritant, croton oil, as a check for an intact inflammatory response. On the same day, four common antigens in doses of 0.1 ml were injected intradermally in the contralateral forearm. The antigens were monilia (Hollister-Stier, 2 units), mumps (Lilly, 2 units), purified protein derivative (Connaught, 5 units, intermediate strength), and Varidase (Lederle, 10 units).

All positive reactions were scored as 1+ (erythema and induration of less than half the diameter of the test site), 2+ (measurable skin reaction over at least half of the test site), 3+ (reaction covering the entire test site), or 4+ (bullae formation).

All 22 subjects reacted to 50  $\mu\text{g}$  of DNCB (21 were either 3+ or 4+), and 21 reacted to 25  $\mu\text{g}$  of DNCB (14 were either 3+ or 4+). Seventeen subjects reacted to two or more common antigens, three subjects reacted to only one common antigen, and two subjects failed to react to any of them.

The failure of two DNCB-positive subjects to respond to any of the common antigens is probably not indicative of a defect in immunologic memory. In this age group, unresponsiveness is probably due to lack of exposure to these antigens.

The results of the DNCB skin testing are summarized in Table 1 and are

Table 1. 2,4-Dinitrochlorobenzene reactivity.

Groups	Subjects (No.)	DNCB-positive		DNCB-negative	
		Number	Percent	Number	Percent
Marijuana smokers	22	22	100	0	0
Normal controls*	279	267	96	12	4
Cancer patients (all ages) <sup>o</sup>	548	384	70	164	30
Cancer patients (ages 21 to 30)†	60	48	80	12	20

\* Data from published studies (2, 3). † Concurrent controls.

compared with combined data from published evaluations of DNCB skin testing in normal subjects and cancer patients (2, 3). In order to obtain an age-matched control group with probable immunodepression, we reviewed the skin test records of 60 consecutive cancer patients between the ages of 21 and 30 years from the Division of Oncology, University of California, Los Angeles. These patients, who were not under drug treatment at the time of testing, were tested by the identical procedure in the same institution as the marijuana users and represent a concurrent control group. Twelve (20 percent) were DNCB-negative. Thus, this DNCB procedure can detect a defective immune response.

When our group of 22 DNCB-positive, chronic marijuana users was compared to the control group of 279 normal subjects, there was no statistical difference (5, 6). It appears that the chronic use of marijuana does not decrease the capacity of a subject to become sensitized and to develop delayed cutaneous hypersensitivity when challenged with the hydrocarbon hapten DNCB. However, when the marijuana smokers were compared with either cancer group [all ages (5, 7) or ages 21 to 30 (5, 8)], a statistical difference was found.

The 10 percent difference in DNCB positivity between all cancer patients and the age-matched cancer patients, although not significant (5, 9), may be due to the fact that many patients in the age-matched group had early, localized disease. Immunocompetence appears to decrease with increasing age and extent of neoplastic disease.

Prolonged immunosuppression has profound implications. Patients with congenital immunodeficiencies and those with iatrogenic immunosuppression (such as renal transplant patients) develop cancer at rates at least 30 times that of the general population (10). However, there is no clinical or epi-

demologic evidence to suggest that chronic marijuana users might be more prone to the development of neoplastic or infectious processes.

In vivo skin testing has proved to be a valuable tool in the gross evaluation of the immune system because a delayed cutaneous hypersensitivity response requires the participation of a number of components of cell-mediated immunity. Since responses were normal in the chronic marijuana users we tested, it would appear that chronic marijuana smoking does not produce a gross cellular immune defect that can be detected by skin testing. Further study is needed to evaluate chronic marijuana use and its effect, if any, on the immune system.

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4. Marijuana smoking ranged from three times per week to several times per day. No marijuana was administered by us to these subjects, so the specific dose-age levels or percentage of tetrahydrocannabinol of the marijuana smoked is not known.
5. Statistical analyses performed were the Yates modification of the chi-square procedure and Fisher's exact probability test (two-tailed).
6.  $\chi^2 = 0.18$ ,  $P = .669$ ; Fisher's exact  $P = 1.000$ .
7.  $\chi^2 = 7.84$ ,  $P = .005$ ; Fisher's exact  $P = .001$ .
8.  $\chi^2 = 3.68$ ,  $P = .055$ ; Fisher's exact  $P = .030$ .
9.  $\chi^2 = 2.13$ ,  $P = .144$ ; Fisher's exact  $P = .133$ .
10. I. Penn and T. L. Starzl, *Transplantation* 14, 407 (1972).
11. Supported by contract HSM 42-71-89 from the National Institute on Drug Abuse, Grant CA 05262 and CA 12582, and the surgical services, Veterans Administration Hospital, Sepulveda, California. We thank S. Cohen, S. Golub, D. L. Morton, C. Bodai, A. Nizze, M. Hofmann, and I. J. Shaw.

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Senator SCHWEIKER. In your prepared statement you relate marihuana smoking to possible precancerous lesions in the lungs. You do not comment on how that would compare to regular cigarette smoking. Referring again to your testimony, is it very similar to cigarette smoking or is it more advanced than cigarette smoking? Give us some benchmark in relation to cigarette smoking.

Dr. DUPONT. In the Leuchtenberger studies they suggested that marihuana had a more powerful effect in lung tissue culture than did cigarette smoking. But again this is a tissue culture study and not a clinical study. We had no evidence of an association between marihuana smoking and lung cancer in human populations at this point.

Senator SCHWEIKER. Was this done with a mouse lung tissue?

Dr. DUPONT. And human lung tissue, but both were tissue cultures.

Senator SCHWEIKER. Tissue only.

In your statement you also talk about driving. Senator Javits and Senator Randolph asked you a little bit about that..

One thing I was not clear on is the comparison, in this case, to alcoholism. I think Senator Javits was asking you a question about the incidence of usage.

My question is, again, what benchmark, in terms of level of intensity or level of performance, can you indicate from your studies regarding alcohol versus marihuana usage?

Dr. DUPONT. For both substances, the effect on driving is dose related. It depends on how much of the substance the individual uses. Individuals who use very small quantities of alcohol often do not show reductions in their driving skills until the dose goes up. A similar dose-response relationship occurs with marihuana. The effect depends on the dose that the individual is using.

There is no dose equivalency of marihuana and alcohol so you cannot now compare the two, except to say in each category the effect is dose related.

Senator SCHWEIKER. Can you give us some layman's demarcation, in the case of joints, before you would be intoxicated in terms of impairing your driving? I am talking marihuana. Forget the alcohol for the moment.

Dr. DUPONT. The problem with the joints is, of course, that they have a very uncertain amount of THC. I am not sure what specific level of THC was used in the studies I referred to in my statement.

Senator SCHWEIKER. The study would certainly have some index.

Dr. DUPONT. It is in the study.

Senator SCHWEIKER. Would you please furnish that for the record?

Dr. DUPONT. Dr. Peterson points out that the cigarettes used in the study contained 4 milligrams and 8 milligrams of THC which is a fairly modest dose. The NIDA official marihuana content of THC for cigarettes is 20 milligrams, that is they are of higher potency than those used in this study. The dose used in this study is more equivalent to the street level of one marihuana cigarette.

Senator SCHWEIKER. You also say that the single most significant factor related to the cessation of marihuana use by former college users has been found to be development of commitment to nonstudent roles, including family and job responsibilities.

Are you saying there is essentially a student phenomenon that when they get on to other things, the use factor declines markedly? Is that what you are telling us?

Dr. DUPONT. I do not know that it is just students. I think one of the problems in this field has been that so many of the surveys have been conducted among students, that the general public has the impression that marihuana use is student related phenomenon.

I tried to point out in testimony that our new evidence shows that marihuana use occurs in nonstudents at about the same rate as among age-matched students. We do find that the level of marihuana use is higher in youth oriented groups.

For example, students and military are two examples of groups that are predominantly comprised of young people, and both show high rates of marihuana use. In work situations which usually involve exposure to a far greater age range we find lower rates of marihuana use. When youth get out of the youth dominated situations, where there is a higher social acceptance of marihuana use, then we find a higher rate of cessation of marihuana use. I do not want to emphasize that too much because, of course, many individuals who go into work settings do continue to use marihuana. It is not a 1-to-1 relationship. There is just a higher rate for giving it up among people who go into work settings than for those who stay in youth-oriented activities.

Senator SCHWEIKER. The youth culture is what you are talking about, whether it is the student or nonstudent variety?

Dr. DUPONT. If the peer reference group is predominantly youth-oriented, there is a higher incidence of continued use.

Senator SCHWEIKER. You go on to say that these changes also reflect an increasing social isolation from other marihuana users. I am not quite sure what you mean by that.

Dr. DUPONT. What I mean is that when an individual finds himself in a new social setting where there are fewer marihuana users, he is less likely to use marihuana and more likely to give it up. That sentence, as I intended it, was to reinforce the previous point.

Senator SCHWEIKER. Could we not make the same observations about alcohol?

Dr. DUPONT. Yes, I think it is true for most behavior. When we find ourselves in settings where many other people are exhibiting a particular behavior, the behavior is likely to continue. And when we find ourselves in situations where other people are not carrying on a particular behavior, we are likely to stop.

Senator SCHWEIKER. Now, you say that you would like to set the record straight about reports of your statement last week. You say you did not call for decriminalization. I am not clear what you are saying you did do last week.

Dr. DUPONT. What I did do was to review the medical evidence with respect to the problems of marihuana use and emphasize that it supported an effort to discourage marihuana use.

I also said that it seemed to me we could develop and support a policy of legal discouragement that did not rely on criminal penalties. I carried that through at some length to point out how that this could be done. I did not go the next step and say, therefore, that it should be done. I also pointed out that the possession offense itself is now primarily a State and local issue, and it is not primarily a Federal problem.

The Federal possession offense was made a misdemeanor in 1970 by the Controlled Substances Act. We have only about 1,500 Federal

arrests for possession of marihuana last year out of 420,000 total arrests, so the vast majority, 99-plus percent, are State and local arrests. The Federal Government is watching with interest what the States are doing with respect to how they handle the marihuana possession offense.

My own view is that we have to look very carefully at the non-criminal sanctions. One thing which is of great concern to me in this field is that when people talk about removing criminal sanctions, they immediately jump to the conclusion that, in fact, we are removing all sanctions. This is not the case.

One example that is very significant to me is how people respond to a stop sign when they are driving. You can sometimes come up to a stop sign and see that there is no traffic coming, and you pull through it with very low risk, and yet our law says you must stop. The vast majority of people accept that almost all of the time. If you are caught going through a stop sign, of course you are penalized by a "noncriminal" penalty—a ticket—that people accept. The sanction does influence behavior without the threat of prison. Too many people now assume that if we do not have a criminal sanction against the possession of marihuana, then we have no sanction at all.

What I pointed out in that speech was that there is a great and growing area of the law which involves noncriminal sanctions called "violations." This is the area where the Oregon statute places the marihuana possession offense. I am looking at that with great interest. The Federal Government is looking at that approach with sympathy. But we are not saying this is what everybody ought to do. That is the distinction, admittedly it is a fine line, but it is an important one.

Senator SCHWEIKER. Just one last question. You mentioned that you are a moderate user of alcohol and a most infrequent user of marihuana. I am just wondering, as a doctor, is the effect the same? In other words, for the people who use both—this is just an observation, I realize—is the ultimate effect the same in terms of whatever they are getting from both drugs?

Dr. DUPONT. No. The effects are different.

There are some similarities. They both are central nervous depressants. But marihuana is less of a general depressant and more of a selective depressant. At higher doses marihuana, THC, is mildly hallucinogenic which is not true of alcohol. From the user's point of view, there are some similarities and some differences.

I would point out another finding which is of great concern to me. Many people in public discussion of marihuana assume we are talking about either alcohol use or marihuana use. They assume that if young people are using marihuana they are not using alcohol, and vice versa. They assume that there is some fixed need in the public, or in an individual, for a recreational mind-affecting substance. The evidence is clearly to the contrary.

The evidence is that the use of alcohol and marihuana go together. In fact, the evidence is that the use of all drugs, licit and illicit, is positively associated, one drug with another. Similarly the giving up of one drug is associated with an increased likelihood of giving up of other drugs.

This is a fundamentally important point when we consider a policy of relaxing our disapproval of any drug. We do not achieve a reduc-

tion in the use of other drugs when we have increases in any drug use. Thus more marihuana use produces more alcohol use, not the reverse. This is the reason surveys of young people which find an increase in marihuana use also find a concomitant increase in alcohol consumption and tobacco consumption in the same people.

Senator SCHWEIKER. That is all. Thank you.

Senator HUGHES. Senator JAVITS.

Senator JAVITS. Dr. DuPont, are you not appalled, even in the present state of the research, with these unbelievable figures of arrest, 95,000 in California alone and 420,000 in the United States?

Dr. DUPONT. Yes, Senator.

Senator JAVITS. And is it not a fact that the research already has progressed to the point where it is really unjustified to destroy lives based upon this research? And based upon the fact that plenty of people are using alcohol and tobacco right now?

At this time we have enough research to say that marihuana should be decriminalized, whether you advocate it or whether the administration does. However, as a doctor and an expert, would you agree that research can continue for a hundred years and still never allow us to be sure?

Dr. DUPONT. There are two points I would like to make on this question.

First, as we get more research, we will find inevitably more problems with marihuana as we do with any substance as we carry on further research.

Second, it seems to me law and health are two entirely separate issues. One of the problems in this field is the tendency to condense complex and separate issues into one. Either you are for or you are against marihuana. This does violence to the complexity of the problem.

I suggest that there are two separate issues. One is the health consequences, and potential health consequences of smoking of marihuana. The other is how we can best handle marihuana in terms of the law. The mere existence of negative health consequences, of whatever severity, does not in itself, in my view, justify the use of criminal sanctions. These are separate issues.

Senator JAVITS. When I campaigned this year, as did Senator Schweiker, one of the things that worried people the most was crime on the streets. Now, is it not a fact that the diversion of the police effort to the rounding up of those accused of possession, et cetera, of marihuana must be a material factor in diminishing the amount of police protection available for other types of crimes?

Dr. DUPONT. I would assume that that is true, although, again, that would be a matter for a law enforcement person to testify directly on, Senator.

Senator JAVITS. Is it not a strange anomaly, and I am sure you listened, as I did, this morning, to the fact that the Federal prosecutor in the District of Columbia is telling the police to forget it. "I will not hold you responsible even though you are guilty of violating the law if you simply overlook these marihuana possession cases."

Is that not appalling to you, too?

Dr. DUPONT. Yes, sir.

Senator JAVITS. Now, I am not going to ask you this, because I can answer it myself, but in view of the fact that a misdemeanor is just

as much a crime as a felony, and goes on your record as such, just as much as a felony, and it is not just going through a red light—it is very different—is it not a fact that our Government simply has to reconsider this question, and unless the United States takes the lead, individual States are very unlikely to follow?

Sure, it is true this is a fraction of 1 percent of the cases. But we have not actually made the decision. We have not actually accepted the challenge. We have not actually said we will completely decriminalize the private use and private possession of small quantities, obviously only for such private use. That is a fact, is it not?

Dr. DuPONT. Yes, sir.

Senator JAVITS. We have got to grasp that nettle and deal with it. Senator Hughes and I say decriminalize. But I gather from what you say that the administration is not yet ready to espouse that position.

Dr. DuPONT. That is right, Senator.

Senator JAVITS. Now, is the administration's reason for not yet being ready to espouse that position the state of the research or timidity, or simply that it is very hard to break the bonds of the past, and the superstitions of the past—which, in many cases, have been completely undone by the research?

Dr. DuPONT. Our first concern right now is to learn a little bit more from the diverse experiences of the various States in handling this. I pointed out in my statement that Senator Eastland commended the New Mexico statute as opposed to the Oregon statute.

I submit to you there is not a great deal of difference between that and the Oregon statute. In fact, they have much more in common than really separates them, though there are significant differences.

The two major differences are that in New Mexico, the judge, at least, has the discretion of using incarceration for up to 15 days for first offense. The second difference is that under the New Mexico statute, there is a provision for an escalation of penalties for repeat offenses. Although New Mexico's statute makes possession a misdemeanor and Oregon's statute makes it a violation, neither envisions the regular use of prison sentences.

It seems to me that is a fairly narrow difference for the legislature to consider. It is certainly a narrower difference than the controversy would suggest.

Senator JAVITS. Is it not a fact, Dr. DuPont, that we make the law and the judge administers it? And if we thought the judge had enough on the ball to make the law, we would leave it to him or her. I am talking about making the law. I do not know who that judge in New Mexico is, or any particular instance will be, or what his ideas or background are, and what he or she believes, or what he or she thinks is best for our country. The judge is no substitute for us. You agree with that, do you not?

Dr. DuPONT. Yes, sir.

Senator JAVITS. I must say, excuse me for using you as my objective when you do not deserve it. You are doing what is your job. But it is high time that the United States acted and broke this logjam and simply adopted the proposition that this is essentially an offense but not a criminal offense. That is, the private use and private possession of small quantities, as Senator Hughes and I recommended.

And I think it now has another dimension in the diversion of police activity and disrespect for law or both, which not only the young

people have, but which many others would have when they realize—and I realized in my campaign—that the fact you were not given the maximum police protection was somewhat attributable to the diversion of police activity to markets like this that do not deserve it.

Dr. DUPONT. I would like to point out that the American public does not grasp the distinction between decriminalization and legalization. That is a distinction that I have tried to make clearly in my speech to NORML last Friday, and I have tried to re-emphasize it here.

Experiences like this hearing and the press coverage of it will help the public understand that these are two very separate alternatives. Once people grasp that, they may be much more willing to accept the kind of proposal you are talking about.

Senator JAVITS. Well, in order to complete that process of public education, would you care to state the differences as sharply as you can, in your own words?

Dr. DUPONT. Yes.

The criminal law implies a prison sentence. There is great area of law that does not put the transgressor at risk of a criminal or prison sentence, and these noncriminal sanctions shape behavior. I used the example of a stop sign. The American public is very familiar with the effect of the law in terms of shaping behavior at stop signs, and yet the person that goes through that stop sign does not risk going to prison for that.

[The following information was subsequently supplied for the record:]

In some States such traffic offenses are still technically classed as misdemeanors and the process of giving a ticket is the legal equivalent of an arrest. Other States call such petty offenses "violations" to distinguish them from criminal offenses. But whatever the legal technicalities, the American public does understand the distinction. They do not consider ordinary traffic offenses to be criminal offenses. When asked on an employment form if they have ever been "arrested" few people will even think of a minor traffic ticket as an arrest. And yet these "noncriminal" sanctions—such as traffic tickets—are considered serious and they affect our everyday lives in profound ways. In a similar way, Oregon has made marihuana possession a legal, but not a criminal, offense. Some people call this "decriminalization" and it is that. But it is a far cry from encouraging or even "permitting" marihuana use. This kind of decriminalization registers social disapproval and punishes marihuana use without incurring the excessive social costs to which you, Senator, referred earlier.

Senator JAVITS. And so if we decriminalize, we would stop short of the criminal stigma and the criminal sentence?

Dr. DUPONT. And we would also stop short of legalization, which I think is very important.

Senator JAVITS. We agree. Senator Hughes and I both had to face that problem, in our own judgment, and in being honest with ourselves, we came down on that side, as I gather we still do.

Well, thank you, Dr. DuPont, and forgive me for sharing with you some of my own pain about this issue, but I think you have made very, very vivid the reason for the policy established by this bill, and I really think that we will not break the syndrome in the States unless the United States acts and crosses that rubicon, to-wit, from criminalization to decriminalization without legalization.

Thank you, Mr. Chairman.

Senator HUGHES. I thank the distinguished Senator from New York. I certainly concur with his statements. We are still in agreement

on our position. I have seen nothing on the basis of new evidence that has convinced me that I should alter that position yet, at least. And in comparing marihuana with other substances which are commonly used and legal, and for which no penalties apply, and yet seem to be much more devastating and death dealing, I believe that our national policy is not only unjust but unreasonable.

Just, finally, I will ask a couple of questions for clarification because they relate to statements you made here this morning.

Could you clarify the meaning of the finding that marihuana impairs driving performance? Is that performance impaired temporarily or permanently? Which were you saying?

Dr. DuPONT. Driving performance is impaired only during the period of intoxication which lasts 1 to 3 hours after the use of a normal dose.

Of course, if there is a much larger dose, the effect would last longer. In any event, I am describing a temporary effect associated with intoxication.

Senator HUGHES. Dr. DuPont, in your opinion, does the use of marihuana by millions of Americans constitute a national health problem?

Dr. DuPONT. Yes, it does.

Senator HUGHES. Would you elaborate on that?

Dr. DuPONT. We are only beginning to understand the full consequences of widespread use of marihuana. It will be a while until we grasp the full impact of this development.

There are concerns about bronchitis, possible concerns about cancer of the respiratory system, the possible effects on testosterone levels and fundamental cell metabolism as well as the effects on work and driving. All these areas give us cause for major concern.

Senator HUGHES. Well, on a scale of 1 to 10 with the other national health problems, where would you put it?

Dr. DuPONT. I think there are many health problems of greater severity, Senator.

Senator HUGHES. It is not even on the scale, is it, in comparison?

Dr. DuPONT. I think the risk posed by marihuana use is substantial. We have to be careful about assuming that the social effects are trivial because most of our thinking in this field has been around the young adult, the healthy adult, who uses marihuana of low potency at infrequent intervals. For that individual we certainly do not know now of any serious health hazard.

On the other hand, the emergence of increasingly potent marihuana and marihuana-like preparations is a cause for concern. Senator Randolph asked me a question which I did not have a chance to respond to about how many people we are talking about. I must point out that we are talking about two and a half million Americans who are now daily users of marihuana.

Now, that is not a very high percentage of the total population. It is something like 1½ percent of the adult population. And those people are by no means all stoned all the time. I do not mean to give that impression.

But when we have a substance used that frequently by that many people, there is reason for concern.

Senator HUGHES. I am not saying we should not be concerned about any health problem, Doctor. We are concerned about measles and

mumps and everyone of them presents a problem. I am not trying to say to you or to induce you to say that marihuana is less dangerous than measles, for example.

But I think we are talking about whether it is a national health problem, and we do not want to leave the implication here today that marihuana consumption presently, even by these numbers, is any great threat in comparison with other health problems because I do not think it is. It is a threat but, in magnitude, I think we should keep it in perspective.

Is it any national social problem today?

Dr. DUPONT. Yes.

Senator HUGHES. How about a national security problem?

Dr. DUPONT. Yes, there is cause for concern in that area, particularly as it affects the functioning of our troops.

I think that widespread use of any intoxicant is a potential security problem. I would not rule that out.

Senator HUGHES. Does it contribute much to the national crime problem? Do you have any evidence to indicate that?

Dr. DUPONT. I do not have evidence that people commit crimes because of their intoxication with marihuana. That is for sure, for the vast majority, their only "crime" is possession of the drug itself.

Senator HUGHES. It contributes to it in reverse, because we are spending so much time arresting the smoker, that we are not spending enough time catching criminals, are we?

Dr. DUPONT. I will let that stand.

Senator HUGHES. Well, thank you very much, Dr. DuPont.

Senator SCHWEIKER. Doctor, you did mention earlier the analogy of the stop sign for people who do not come to a stop and are still arrested.

Dr. DUPONT. They are not arrested, Senator. They are given a ticket. That is the distinction between a violation and a criminal offense.

Senator SCHWEIKER. Just coming back to that line of thinking, you said that you would suggest that we take a hard look at the criminal penalties.

I assume you were not, in any way, saying that we should not have other inhibitors to the usage? I just wonder what specific kind of inhibitors there would be?

In other words, if you took away all the legal barriers, what kind of negative deterrence or deterrence of any kind would be available if there is the health problem some studies indicate?

Dr. DUPONT. Well, again, to go back to the Oregon experience, they have a potential for a fine up to \$100 for the possession of an ounce or less of marihuana. The general fines in Oregon, as I understand, are \$25 for possession. That is equivalent to the fines associated with driving through a stop sign. That is a realistic legal deterrent. That is a signal in the society that this is not approved behavior. That is very different from legalization, and yet it is not a criminal penalty. That is the distinction I am trying to make.

Senator SCHWEIKER. I see. Thank you, Mr. Chairman.

Senator HUGHES. Thank you, Senator Schweiker.

Thank you very much.

Dr. DUPONT. Mr. Chairman, if I could make just two quick comments.

I wonder if I could add for the record a copy of a summary of the "Marihuana and Health Report," which is abbreviated, and also a copy of my speech to NORML, because that was referred to in my testimony.

And, finally, Senator, I would not be doing justice to my own personal feelings or the feelings of millions of individual people if I did not take this opportunity to express my deep gratitude to you for your contributions to the field of drug and alcohol abuse over the last years.

It seems to me, and to all of us, that you have made an absolutely unique contribution which stands out from all others. You will be sorely missed from this body by all of us.

You leave behind you today a whole lot more sophisticated, well-supported and, I think, effective group to carry on in Government than was here when you brought this issue to public attention. These positive developments could not have occurred without your leadership.

Senator HUGHES. Thank you very much.

Without objection, those matters will be made a part of the official record as you requested.

[The material referred to follows:]

[Excerpt from *Marihuana and Health, Fourth Report to the U.S. Congress, from the Secretary of Health, Education, and Welfare, 1974*]

## SUMMARY

### Extent and Nature of Cannabis Use in the United States

The best current data indicate that approximately one in seven Americans twelve years of age or older has made some use of marihuana. Although more definitive data on a nationwide sample of the general population will not be available until Spring, 1975, present indications are that use has not changed appreciably in the general population since it was last reported in the third Marihuana and Health Report.

Overall estimates of national use mask the widely varying trends and levels of use by various subgroups and by regions of the United States. For example, there is some evidence that use among high school and junior high school students continues to increase though perhaps at a slower rate than in previous years. There are also wide geographical differences in the number who have tried the drug. Almost one in four living on the West Coast has used marihuana while in the South less than one in fourteen has done so. Studies of use in the various states also reflect wide regional variations.

A recent follow-up study of a nationwide sample of high school senior boys whose drug use was first explored in 1969 reveals a marked increase in the nonusers who have used since then. In 1969 only 20 percent had experimented with the drug; by 1974, over 60 percent had done so.

Adolescent drug use, like that of adults, differs markedly by geographical area. Over three times as many teenagers have used marihuana in the West as have used in the South (23.5 percent vs. 7.0 percent).

One West Coast county high school population has been of particular interest because it is an area of extensive drug use for which unusually complete trend data are available for the past six years (1968-1974). Use has continued to increase over the six year period. While only a little over a quarter of the male high school freshmen in the 1968 survey had used marihuana during the previous year, almost half had done so by the time of the Spring, 1974 survey. Although this represents nearly a two-fold increase of users in this relatively young group, it is also noteworthy that this was the first

year since the survey was begun in which a slight (2.6 percent) decline was noted in the freshman age group. At the time of the first survey (1968) use by senior girls lagged significantly behind that of boys (32 percent vs. 45 percent) but by 1974 the two sexes reported having used almost equally (62 percent for boys vs. 58 percent for girls). Generally, the rate of increase in use appears to have slowed since 1971 although total use continues to increase in this high use county.

Three state surveys of general population use illustrate the marked regional differences in use patterns. In Pennsylvania 22 percent of those fifteen or over had ever tried marihuana while in Minnesota and South Carolina the proportions of a similarly aged sample were 12.5 percent and 7.8 percent respectively. As in other nationwide surveys, regular users made up half of those reporting having ever used.

Cannabis use by college and university students continues to be extensive although there are marked regional variations in this age group similar to those found among high school students.

Serious doubt has been cast on the general belief that college students use marihuana to a greater extent than their noncollege attending peers. One major follow-up study of young men first studied while high school students has found that use, at least during the first year following high school graduation, was virtually identical in both groups.

In the general population about half of those who have ever tried the drug are not currently using it. However, among those who have continued to use marihuana, over half do so once a week or oftener and about one in five does so on a daily basis.

New light has been shed on some of the influences involved in continuing or discontinuing marihuana use. Attitudes approving social deviance, social support for drug use, friends' approval of such use and lack of church attendance are some of the factors predictive to some degree of marihuana use among high school students. "Openness to experience" was an important predictor of use in those not yet users. In one study, most heavy marihuana users on the college level have reported that they do not use in situations where control of behavior or concentration is required.

The most significant factors related to the cessation of marihuana use by former college users have been found to be the development of commitment to nonstudent roles, family and job constraints and increasing social isolation from other users. Age per se was not a significant factor.

Previous editions have discussed in detail marihuana and its relationship to the use of other drugs. Prior use of alcohol and tobacco in youthful groups is closely associated with later cannabis use. Contrary to popular opinion, there is little evidence to support the contention that marihuana use displaces the use of alcohol and other drugs. Those who use marihuana are also likely to use alcohol -- often simultaneously. Moreover, marihuana users as compared to nonusers are more likely to use or have used other, both licit and illicit, psychoactive drugs. The more heavily a user smokes marihuana, the greater the probability he has used or will use other drugs. It has been suggested that such use is related to "drug use proneness" and involvement in drug using subcultures rather than to the characteristics of cannabis, per se.

#### Preclinical Research

The preclinical findings of greatest interest and potential significance during the past two years have been a series of studies indicating that delta-9-THC (and possibly other marihuana constituents) have an effect upon certain basic cellular mechanisms which involve the uptake of amino acids and the nucleotides into primary nuclear components such as DNA. Since this may interfere with basic biological processes, the preliminary data raise the possibility that the effects of marihuana, under some circumstances, may be more widespread in the organism than has been previously thought. While many other substances from aspirin to antitumor agents show some of these effects, few are as fat soluble and, therefore, are retained as long in the body.

Initial studies, which will require considerable replication and follow-up before their significance is clear, have described possible adverse immunologic and genetic implications as well as potential therapeutic applications. While such possibilities exist, there is as yet no direct clinical evidence confirming them. No human research has been reported which demonstrates that disease

resistance is significantly impaired by marihuana use; studies of possible genetic damage have thus far shown contradictory results.

Understanding of the chemistry of marihuana and of its constituents has continued to advance. While much of this knowledge is primarily of interest to the specialist, it is worth noting that many other ingredients, in addition to the principal psychoactive ingredient, delta-9-THC, may play a role in the drug's effects and its duration of action. Constituents, such as the other primary cannabinoids and metabolites, may serve to modify various aspects of the drug's action and may also have other biological roles. By better understanding the complex chemistry of marihuana's constituents we can better understand the implications of its use and the mechanisms of its effects.

Forms of liquid hashish called hashish oil have come into illicit use since the last report. Their potency, reportedly ranging from 22 to 70 percent delta-9-THC, is significantly greater than that of the usual hashish previously available (usually not greater than 10 percent delta-9-THC). Since hashish oil has not yet come into widespread use, the implications of its use have not yet been investigated. However, availability of a much stronger cannabis preparation might be expected to make adverse effects more likely.

New and improved methods for detection and quantification of marihuana and its constituents in body tissue and fluids have been an important aspect of recent developments. While many of these are quite sensitive, unfortunately they are not yet simple enough for routine medical use or inexpensive wide scale screening. Development of simpler procedures remains an important goal which has significant research, clinical and forensic implications.

Animal experimentation with marihuana and synthetic delta-9-THC continues to be a valuable tool in understanding possible toxic and other effects in man, the drug's interactions with other drugs and the mechanisms of action of cannabis.

New data on the effects of marihuana on human lung explants (lung tissue grown in artificial tissue culture) continue to indicate a variety of changes in DNA synthesis, cell division and growth. Whether such changes have implications for humans similar to those produced by tobacco smoke remains in some question. Animal

studies of chronic marihuana smoke inhalation are in progress and should yield better answers to this important question.

Two aspects of delta-9-THC which have recently been investigated may prove to be of importance in future therapeutic application of the drug. There is a preliminary evidence that delta-9-THC delays rejection of skin grafts in rats suggesting a possible usefulness in organ transplant surgery. A second aspect, the inhibition of solid tumor growth in mice, may also eventually prove therapeutically useful in the treatment of human tumors. It should be reemphasized that this preclinical work is highly preliminary and the treatment possibilities are only speculative at this time.

Previously reported anticonvulsant effects of marihuana in animals have now been corroborated by several investigators. However, this antiepileptic property of cannabinoids is nonpersistent because of tolerance development. This, coupled with the psychoactive properties of the drug, casts into doubt the potential therapeutic use of cannabis or its synthesized constituents as effective human anticonvulsant agents.

#### Preclinical Behavioral Effects

One interesting finding in animal behavioral studies is that marihuana (at least in short term administration), in a variety of animal species has been found to reduce expressions of aggression. This observation is consistent with the widespread clinical impression that marihuana in humans, unlike alcohol, tends to reduce aggressive behavior rather than to potentiate it.

Animal studies to date also suggest that in order to develop behavioral tolerance to the effects of marihuana (i. e., the ability to compensate for the disruptive effects of intoxication), it is necessary for the behavior to be practiced while the animal is intoxicated. Thus, contradictory experimental findings reported in man may be partially attributable to behavioral mechanisms -- learned compensatory responses while under the drug's influence -- rather than pharmacological ones.

Although tolerance to many of the effects of marihuana has been convincingly demonstrated in animals and there is evidence of it

in humans, dependence has not typically been found in animal experimentation. Most research has found animals reluctant to self administer natural or synthetic material or to consume it in food or water when alternatives are available. Two groups of investigators did, however, find some evidence of physical dependence following prolonged drug administration. Since there is now some preliminary evidence of possible withdrawal symptoms following heavy use, the possibility of physical dependence will continue to be carefully investigated in further animal research.

### Human Research

#### Acute Effects

Studies on the acute effects of marihuana and its major ingredients have continued. Such research is useful in learning the role various marihuana constituents play in producing psychological and biological effects or in modifying the effects of marihuana's more active components. Two of the most abundant cannabinoids are cannabidiol and cannabitol. Neither was found to have effects in itself although a possible interactional role with delta-9-THC, the major psychoactive ingredient in natural marihuana, has not been ruled out. Delta-8-THC, another constituent of cannabis, has been found in human trials to have effects qualitatively similar to, though quantitatively less than, delta-9-THC. 11-hydroxy-delta-9-THC, believed to be the major metabolite of delta-9-THC, has been found to be active by three groups of investigators. The question of whether delta-9-THC acts primarily through its conversion to this metabolite has not yet been resolved. Research on the metabolic aspects of marihuana and its various constituents has helped elucidate some of the possible mechanisms of action of the drug. These data will also be useful in anticipating and explicating possible interactive effects of cannabis with other commonly ingested drugs.

One report on the effect of marihuana ingestion on the electrocardiograms of a small sample of young men expressed concern about possible effects on heart action, both acutely and on a cumulative basis. However, the observed effects were not replicated in a second study and may represent a benign, temporary stimulating effect of the drug rather than any seriously adverse effect on cardiac function; further clarification is required. Previous Marihuana and Health

Reports have expressed concern that the effects of marihuana -- thus far explored principally in relatively young adults -- might be of greater consequence in older, less healthy groups. At least one study of patients with clearly established coronary artery disease has found that chest pain (angina pectoris) was experienced sooner after exercise and after less work while smoking marihuana than while smoking an inactive placebo. Thus use of marihuana by those with coronary difficulties may be especially unwise.

Another study testing whether marihuana can alter physiological response to stress found that with moderately high doses response to experimentally induced stress was not reduced.

Several investigations of the acute effects of marihuana on brain electrical activity have been conducted. These electroencephalographic studies tend to provide objective support to users' assertions that, when intoxicated, they tend to selectively attend to particular aspects of the outside world. Alcohol, by contrast, was interpreted as having a generalized suppressive effect on brain arousal.

A variety of studies further confirms the fact that marihuana impairs short-term memory processes while the user is intoxicated. This impairment appears to involve the transfer of information from short-term memory to longer term memory storage.

Because of domestic restrictions on research involving the experimental administration of cannabis to women, there has not been systematic comparison of effects on males and females in the United States. However, Canadian investigators -- employing a wide range of intellectual and psychomotor tasks -- have found few differences between the sexes in their performance under conditions of acute intoxication.

#### Cannabis and Driving

Evidence that marihuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities and to detract from performance on a divided attention task, all of which are presumably involved in driving. A recent Canadian study of driving ability while marihuana intoxicated examined drivers' performance under both driving course and actual traffic conditions. A significant

decline in performance as measured by several criteria was found in most drivers tested. Based on the accumulated evidence, it seems clear that driving while under the influence of marihuana is ill-advised.

#### Genetic and Reproductive Aspects

The third report on Marihuana and Health indicated that "there continues to be little evidence from human case reports and research studies that cannabis preparations have either a significant teratogenic effect or have any significant effect on chromosome breakage." In one more recent study of marihuana users an increase in chromosomal abnormalities was found while in another study utilizing known dosages of pure cannabis preparations no drug-related increase was found. These contradictory data may reflect methodological and sampling differences and considerable uncertainty exists regarding the possible significance of these chromosome breaks. Hopefully, the present uncertainty will be clarified by ongoing or newly designed studies such as those looking at chromosomal number and DNA metabolism.

#### Chronic Effects

While tolerance to the effects of marihuana has not been generally observed among American users, there is increasingly convincing evidence that tolerance (i. e., larger dosages required to produce the same effects originally found with lower dosages) does develop under conditions of heavy, regular use. Given the relatively low doses and infrequent use typical of present patterns of use in the United States it is not surprising that tolerance has not usually been observed. One report based on a study of subjects in a hospital setting (receiving relatively large amounts of THC) describes an abstinence syndrome occurring following abrupt withdrawal of the drug. This withdrawal syndrome is reportedly characterized by sleep loss and disturbance, irritability, restlessness, hyperactivity, decreased appetite, sweating, sudden weight loss, increased salivation and increased intraocular pressure. While the amounts involved were usually large and quite atypical of current use patterns, the possibility of a withdrawal syndrome in at least some American heavy users must be considered.

Preliminary evidence in one study of chronic American marihuana smokers indicates that levels of the male hormone testosterone

may be lowered in chronic users. This study reported that six of the twenty young men studied had reduced evidence of fertility (lowered sperm counts) and two were impotent. Testosterone levels in this group were significantly lowered though they remained within what are generally regarded as normal limits, and promptly increased upon discontinuing marihuana use. Preliminary findings from two other studies of young male subjects were inconsistent: one found a depression in serum testosterone levels, another did not. The significance and implications of these findings will require further study. It has been speculated that depressed testosterone levels in young boys may affect adolescent development, or that marihuana consumed regularly during early pregnancy -- while sexual differentiation is occurring in the male fetus -- may adversely affect its development. There is, however, no empirical evidence to this effect at present.

The possibility that regular, heavy doses of marihuana may result in a diabetic-like response has been suggested by preliminary research, but is quite tentative and requires further investigation. There is no clinical evidence as yet of marihuana-precipitated diabetes.

While chronic users in the United States have used for appreciably shorter periods of time than users overseas, studies of American chronic users are potentially of great importance in assessing possible implications of marihuana use for the American population. In one large scale study of undergraduate student use comparisons were made between nonusers (including those who had done a limited amount of experimentation), occasional users and chronic users (those who had used three or more times a week for three years or more or for two years if use was almost daily). No statistical differences in academic performance were found nor was there any evidence of reduced motivation. It should, of course, be noted that some chronic users who dropped out may have been excluded. As yet, however, there is no evidence that in a college population use is typically accompanied by impaired performance or motivation. Another study of moderately using medical students who had used regularly for three or more years and who were matched with non-using medical students for intelligence, found no difference on an extensive battery of neuropsychological tests.

It should be kept firmly in mind that most research on American users involves samples of motivated groups using only modest

amounts of cannabis (by overseas standards) for limited periods of time. Overseas studies of longer term, heavier using groups have been limited to small samples. Rarer consequences of use or more subtle impairment which may be significant in a highly urbanized, industrial society may have escaped detection in these agrarian cultures.

#### Cannabis and Psychopathology

To date, well controlled studies demonstrate few differences in psychopathology in carefully matched samples of users and non-users. However, a series of clinical and case reports associating marihuana use with a wide range of psychiatric symptomatology has appeared. The question of a causal role of cannabis still remains largely unresolved. Most such studies have reported on small self-selected samples many of whom were consuming other drugs in addition to marihuana. Previously reported (Cf. earlier editions of Marihuana and Health), larger scale studies in countries where cannabis use is endemic which have described intellectual deficit or psychopathology associated with cannabis use have been poorly controlled, confounded by multiple drug use and used dubious diagnostic methods. Observations made in the last Report continue to appear sound. Serious psychiatric complications of use seem to be most common in those with a previous history of psychopathology who consume large doses of cannabis or inadvertently overdose. More recent findings tend to confirm the observation that American marihuana users who use heavily are somewhat more likely to come from populations with a higher pre-existing risk for psychiatric problems than has the general population.

#### Therapeutic Aspects

Cannabis has had a long history of use in native medicine to the present day, and in Western scientifically based medicine until supplanted by other more uniform and/or convenient drugs. More recently, with its investigation as a drug of abuse, has come a renewed interest in it and its synthesized constituents for use in modern medicine. It is too early to know which of the several applications that are being made of the drug will prove to be ultimately useful. While cannabis is a drug of very low toxicity it has, at the same time, limitations due to the psychological effects and possible tolerance to its effects developing over time.

A preliminary study of the possible therapeutic use of marihuana has explored several possible facets of the action of THC with a group of cancer patients. This preliminary work suggests that THC may be valuable in reducing the need for other pain reducing drugs in acting as an anti-emetic, in retarding weight loss and for its tranquilizing and mild mood elevating properties. Whether these initially observed effects will prove useful over more extended periods of use with larger numbers of patients is not known at this time. It is, however, reported that the side effect of intoxication sought by street users was not troublesome -- it was not experienced by the patient sample studied. The researchers interpret this as an indication of the importance of personal expectation (the "set" of the user) in determining one's subjective response. It is noteworthy that Jamaicans who use the drug primarily as a work adjunct and to relieve the discomfort of arduous conditions also do not characteristically report the "high" sought by American recreational users.

Other investigations have studied the use of cannabis or its constituents for such diverse purposes as the treatment of glaucoma and asthma, as a sedative, as a possible analgesic, as an anticonvulsant and as an antidepressant. While preliminary findings in the treatment of glaucoma and asthma have been encouraging, further clinical trials are needed and the drug's usefulness may be limited by several factors including the development of tolerance to its effects. Some investigators report that breathing efficiency assessed by measures other than bronchodilation is actually impaired. This finding also casts doubt on the clinical usefulness of marihuana in treating asthmatics. The drug's sedative potential is questionable because of its interference with normal sleep patterns, some "hangover" effects and mild insomnia following its discontinuance. Recent animal research, while confirming the anti-epileptic property of the drug in short term use, suggests that the effect is nonpersistent unless the dosage is increased over time. Results to date have shown no indication of effectiveness in the treatment of more seriously depressed patients. Finally, recent animal research discussed elsewhere (Cf. Preclinical Research) raises the possibility that marihuana may have some usefulness in facilitating organ transplants and in the treatment of some types of tumors.

CHANGING PERSPECTIVES ON THE  
MARIHUANA CONTROVERSY

Address by

Robert L. DuPont, M.D.

Director

Special Action Office for Drug Abuse Prevention  
Executive Office of the President

Delivered at the Third Annual Convention of the National Organization  
for the Reform of Marihuana Laws (NORML), November 15, 1974

First, let me say that speculation about a change in Administration policy is premature. The White House Special Action Office for Drug Abuse Prevention is not breaking with Administration policy, or announcing any change. Nevertheless, I am sure that you will be interested in my remarks.

Keith Stroup has assured me that no one from NORML has written the following letter which I received the other day following a brief appearance on the NBC evening news:

"Dear Mr. DuPont,

I don't know what your qualifications are for the office you hold, or even why you hold (it) as you obviously don't know much about the drug marijuana (which) you decline (to legalize). It's apparent that you have never smoked it or you wouldn't say the things you do about it. If it affect the testrone in males that would just decrease the population explosion and we women wouldn't have to worry about getting cancer from very legal pills. You say it affects driving. I say that's bullshit. If nothing else you are in more control of your vehicle as it becomes a part of you...People aren't going to quit smoking it no matter what your committee says...There's a whole book on marijuana by a Harvard professor entitled, Marijuana What You Should Know. I suggest you read it before you orally abuse our pro (marijuana) campaign on national T.V. Also are you aware a dentist has determined marijuana smokers have fewer cavities...Why don't you say anything of the pro facts or would it hurt your case? By the way who pays you?

Sincerely,

Joleene"

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Joleene is the latest example of the problems most of us have in speaking publicly on marihuana. One is sure to be misunderstood because of the intense polarization about the issue. Whatever is suggested, proposed or said, is viewed as either "for" pot, or "against" pot. Nothing else one says seems to matter.

This is especially true of public officials. Back in 1969 when I was extending my career from the correctional system in Washington to the treatment of heroin addicts, I was confronted by my first public question on marihuana. I was a guest on a TV talk show and in the usual warm-up exercise I was asked my position on legalizing pot. Frankly, it was an issue that I had given little thought to because of the pressing problems of the District's narcotic program. So I anxiously asked the reporter what my position should be. He pondered for a moment and said, "Say that you think prison sentences for using marihuana are wrong but that you don't want to encourage use by legalizing it."

That's what I said that day in 1969 and after subsequent thoughtful re-examination, that's what I've been saying ever since. The problem, which I am sure this Conference will be discussing, is to find a way to put that policy into practice.

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Our first task is to sort out some of the exaggeration that exists on this question. For example, an alleged epidemic of marihuana use in the mid 1930's precipitated attention in the Congress not unlike recent observations we've been hearing. When comparing the following statements, it is difficult to determine which applies to which year: First consider this:

"Despite the fact that medical men and scientists have disagreed upon the properties of marihuana, and some are inclined to minimize the harmfulness of this drug, the records offer ample evidence that it has a disastrous effect among many of its users... The deleterious, even vicious qualities of the drug render it highly dangerous to the mind and body upon which it operates to destroy the will, (and) cause one to lose the power to connect thought..."

Now, compare that to this one:

"The scientific evidence...points to an array of frightening social consequences, or possible consequences ...If the epidemic is not rolled back our society may be largely taken over by a "marihuana culture"--a culture

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motivated by a desire to escape from reality and by a consuming lust for self-gratification, and lacking any higher moral guidance. Such a society could not long endure."

Although some of the rhetoric of 1974 is similar to that of 1937, there are some things which have changed. For example, an important element of Commissioner Anslinger's case before the Congress was an alleged increase in marihuana use. He argued that 400 marihuana arrests had been made during the previous year in California alone. He estimated that the national number was probably twice that high since use was probably not as high outside California.

In response to this apparent increase in use, the Federal Bureau of Narcotics sought a Federal criminal prohibition against distribution and use of the drug. The declared goal was to eradicate use of marihuana.

Now some 4 decades later, criminal penalties have clearly failed to prevent widespread use of marihuana. Instead, some 26 million Americans have experimented with marihuana and more than 1/3 that number continue to use the drug regularly.

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All of them are committing criminal acts every time they buy and use the drug. And increasing numbers of these marihuana users are being arrested. In response to the epidemic of marihuana use in 1937, California authorities made 400 arrests. According to recently released FBI figures, there were 95,000 marihuana arrests in California last year alone. The national figure was 420,000, up by more than 1/3 over the number in 1972, and more than double the figure 4 years ago.

In 1937, criminal sanctions against marihuana were relatively costless. Indeed, it was so unobjectionable that most legislators gave the Marihuana Tax Act very little attention. After the Act had been reported out of Committee and was on the floor for passage, the following colloguy occurred: Mr. Rayburn indicated that "this bill has a unanimous report from the Committee and... there is no controversy about it." Mr. Snell then asked, "What is the bill?" Mr. Rayburn responded, "It has something to do with something that is called marihuana. I believe it is a narcotic of some kind."

Today, many Americans are petitioning their government for redress of grievances resulting from the marihuana laws. And the substantial social cost of enforcing the marihuana possession laws is tolled daily in the expenditure of criminal justice resources, the disruption of

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individual lives, and the corrosion of respect for the criminal law.

The overwhelming majority of persons arrested for marihuana law violations are apprehended for possessing the drug for their own use. Most of these persons are between the ages of 18 and 25 and have never been arrested before. Hundreds of millions of dollars are consumed each year (over \$100 million in California alone) in the process of disposing of these cases. The majority of these arrestees are not convicted, but have suffered the trauma of arrest. They will carry around that criminal arrest record for the rest of their lives.

In addition, enforcement of the marihuana possession offense is selective; society's most potent legal sanction is applied sporadically, often unwillingly...and with an unequal hand. The criminal sanction is pretty serious business. And as applied to marihuana use, the costs are substantial.

When we use the social costs to argue for change, we clearly must not obscure the social benefits which these laws bestow. To the extent that discouragement and containment of use is the object of

current policy, the deterrent functions of the criminal law cannot be lightly dismissed. In attempting to adjust marihuana policy to social realities of 1974, we must be careful not to overcompensate for the excesses of 1937.

As I look back over some of the developments of the past decade, I am convinced that the mythology and hyperbole of the 1930's has left a legacy of exaggeration in dealing with this subject. It is understandable that some modern advocates of change have contended that marihuana is harmless in order to counteract the exaggerations of earlier generations.

But marihuana is not harmless. And several recent studies seem to indicate that there may be serious risk to marihuana users. Many of these studies report laboratory findings of uncertain clinical significance. Research on marihuana using modern scientific techniques and standardized preparations of the drug has been undertaken only recently. Keeping these factors in mind, we must carefully weigh all new evidence as we try to make policy decisions which are

in the best interest of the Nation. I think Senator Eastland is to be commended for his effort to consolidate many of these new studies and to bring them to the attention of the American people. The hearings that Senator Hughes has scheduled for next week will continue to explore these issues.

The object of marihuana research is truth, not advocacy. On this score the Federal government, through the Marihuana and Health Report, offers a scrupulously objective and fair statement of the effects of marihuana use on health as we now know them. Congress wisely directed the Department of Health, Education and Welfare to prepare annual reports, incorporating all new research. We have already had three reports and the fourth will be forthcoming shortly. I have personally worked on this latest Report and am proud of it.

Recent research includes the discovery that the active ingredient in marihuana, delta-9-tetrahydrocannabinol, is extremely soluble in fat. This means that this substance, unlike alcohol

and most other drugs, does not pass rapidly through the body. Rather, it is absorbed in the fatty tissue of the body, and appears to accumulate in those areas where fatty tissue is most prevalent. This means, unfortunately, not just the hips and areas we normally associate with being overweight, but the more significant fatty areas in the vital organs including the brain. In addition, the active ingredients in marihuana accumulating in cells seem to have an effect upon basic cellular mechanisms involving the uptake of amino acids and the transformation of these and other substances into primary nuclear components such as DNA. Although conclusive evidence of its effects in humans is still not available, the result may be a reduction in the capacity of the body to fight infection and producing possible genetic mutations as well.

Efforts are now underway to see if recent research on the immunologic effects of marihuana can be replicated and to develop more conclusive data. Our preliminary data, however, indicates that the effects of marihuana on the body, under some circumstances,

may be more widespread than had previously been thought.

Another new line of inquiry relates to the effects of tobacco on the lungs which has long been of concern to scientists, both in terms of its carcinogenic effects and its effect in hastening the onset of a wide range of respiratory disorders. Doctors Cecile and Rudolf Leuchtenberger, in Laussane, Switzerland, have pioneered in comparing the chemical effects of marihuana and regular tobacco smoke on both mouse lung tissue and human lung explants. Their research substantiates research being conducted in this country in the primary areas of changes in DNA synthesis, cell division and growth.

I am also concerned about the latest evidence on the effects of marihuana on driving performance. It shows that especially as the dose increases, the impairment continues to mount. The use of marihuana has been found to increase both braking and starting times, to adversely affect attention and concentration abilities and to detract from performance on a divided attention task, all of which are involved in driving. A recent Canadian study of driving ability

during marihuana intoxication, examined drivers' performance under both driving course and actual traffic conditions. A significant decline in performance as measured by several criteria was found in most drivers tested. Based on the accumulated evidence, we can state that driving while under the influence of marihuana is dangerous.

In addition to these findings, we now have reason to believe that levels of marihuana use which may be physically tolerated by young, healthy adults, may have an adverse effect on other age groups, and less healthy individuals. At least one study of patients with clearly established coronary artery disease has found that chest pain (angina pectoris) was experienced sooner after exercise and after less work while smoking marihuana than while smoking an inactive placebo. The use of marihuana by those with coronary difficulties is especially unwise.

We are also specifically concerned about the effects of marihuana use in adolescence for two reasons. Some recent research findings suggest that levels of the male hormone, testosterone, are significantly

lowered in chronic marihuana users. Thus, there is the possibility that heavy use in late childhood or early adolescence may interfere with the normal sexual development of youngsters. In this age group, chronic marihuana use may also prevent acquisition of a wide range of coping skills required for later adult functioning.

Evidence of the effects of marihuana on the functioning of the brain, while not conclusive, also indicates some cause for concern. A variety of studies further confirm the fact that marihuana impairs short-term memory processes while the user is intoxicated. This impairment appears to involve the transfer of information from short-term memory to longer term memory storage.

Recent studies are beginning to indicate that a greater than expected percentage of marihuana users are consuming marihuana on a daily basis. One study sponsored by our office indicates that 14 percent of a national sample of 23 year old men smoke marihuana on a daily basis. I do not hesitate to say that this surprises and concerns me. It is considerably higher than I would have expected even for this youthful population.

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This finding raises many additional questions about the extent and pattern of marihuana use. Research must continue and policy-makers must continue to follow a cautious and judicious line. At the same time, our incomplete information about the effects of marihuana use on individual health must not be allowed to obscure the well-documented, harmful social effects of the marihuana laws on the public well being.

Research on marihuana is progressing rapidly. As new findings are available, we will have a more definitive and specific understanding of the health hazards of the drug.

I have arrived at several conclusions as a result of reviewing the most recent marihuana research.

First, it is obvious that we still have much to learn about the effects of marihuana.

Second, this updated, but still interim evidence, clearly requires intensified efforts to discourage the use of marihuana.

Third, this new medical research does not and cannot answer the basic questions of social policy which currently rest on the legislative agendas of many states and localities.

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Possession of marihuana is still a Federal crime. However, the Federal government's officially declared policy since 1969 has been to concentrate enforcement efforts solely on commercial trafficking. In fact the entire Federal Drug Abuse Prevention effort has been restructured in the last few years. Our earlier Federal policy of relying exclusively on law enforcement to arrest both users and sellers has been replaced by a policy which targets law enforcement on the drug distribution system and not on the users of illicit drugs. The drug user is the concern of a newly developed drug abuse prevention and treatment system. This new policy applies not only to marihuana, but to all illicit drugs and it is, in my opinion, the most important development in the drug abuse prevention area since the passage of the Harrison Narcotics Act in 1914.

So possession laws have primarily been a local matter for some time. And it is the state and local governments which primarily incur the rising social cost, particularly of marihuana law enforcement.

Let there be no mistake about the central political reality.

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Unless the courts declare the possession laws unconstitutional, the state legislatures must ultimately decide whether or not possession of marihuana should be a crime.

Of course, state legislators have been considering some type of marihuana reform legislation every session for almost a decade now. All of the states have acted once, and most have acted several times. The trend is unmistakable. Each time, the legislators aim to reduce still further the social and individual costs of the possession laws often by reclassifying the possession offense from a felony to a misdemeanor.

It is interesting to note that even the more ardent foes of marihuana use no longer contend that persons who choose to use the substance despite society's preference to the contrary should, as a matter of course, be put in jail. For example, Senator James Eastland in his recent report on the dangers of marihuana use emphasized that he did not favor incarceration for possession of small quantities of marihuana.

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A review of recent sentencing patterns suggests that, many of our Nation's judges share this opinion. And according to surveys of the Marihuana Commission, a majority of the general public also opposes incarceration as a penalty for marihuana use.

The threat of incarceration, of course, is the hallmark of the criminal sanction. But there are other consequences of a criminal conviction--the consequences of the stigma which attaches even if the offender is not sent to jail. Because of this fact, many prosecutors and judges withhold prosecution or conviction in large numbers of marihuana possession cases.

Legislators in most states have aimed to neutralize the costs of the marihuana possession offense by all kinds of techniques. Some have authorized conditional discharges or diversions in lieu of prosecution. Others have authorized the fact of conviction to be expunged from official records after a short period of time. These kinds of provisions are designed precisely to avoid the implications of making possession a criminal offense.

In this sense, legislators in most states have consistently voted to "decriminalize" possession of marihuana for personal use. Many legislators have already recognized that applying the criminal sanction for marihuana use is out of proportion to the benefits which these laws offer to the individual and to the society at large.

As my remarks have indicated, I have suspected for some time now that there is much less disagreement about the proper social policy toward marihuana than all the shouting would suggest. On the one side, support for legalization has been scattered, and on the other a repressive approach to the user is rarely advocated.

Instead, I think that there are two central propositions which command widespread support and stand out amid all the controversy.

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First, the continuing uncertainty about marihuana's effects mandates restraint and intensified efforts to discourage use of the drug. There is no way to avoid the conclusion that individuals who use marihuana are exposing themselves to unknown, and potentially substantial, risk to their health.

Second, criminal penalties for possession of marihuana for personal use are very costly.

In response to these issues, the National Commission on Marihuana and Drug Abuse recommended outright repeal of the possession offense. In the Commission's view, a legal prohibition of possession was not an essential corollary of a discouragement policy. However, in my opinion, the deterrent value of law is helpful in this effort. A prohibition symbolizes official disapproval. Most potential experimenters and casual users are influenced by a realistic threat that violations will be punished.

But the key question today is whether the benefits of deterrence are available at a lower social cost than the current criminal sanction.

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I think that they are.

The Department of Justice clearly plays a central role in the formulation of Federal policy on this aspect of the marihuana issue. I noted with great interest the recent remarks of Attorney General William Saxbe on marihuana laws. He said, "I would welcome a change in the marihuana laws. I will not lobby for it on the Hill, neither will I block any efforts to make the changes." As our recent experience in other areas affecting the Federal drug abuse response clearly shows, policy making is an integrating process which must take into consideration many points of view.

Any review in this area will also require an intensive review of our international treaty obligations.

The reduction of the supply of marihuana coming into the United States has been and remains a high priority. We have international treaty obligations and programs to curtail the supply and use of marihuana in this country. At this time, changes in the Federal law regarding marihuana would complicate our relations with other countries in regard to the overall narcotic control efforts.

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One additional advantage we have in this complex process of policy change is watching the results of State and local experimentation with different approaches for resolving the basic tension between discouragement and criminalization.

Specifically, in the area of marihuana policy, we are watching the Oregon experiment. In Oregon possession of small quantities of marihuana is no longer a criminal offense; it is a civil violation subject to a fine of up to \$100.

My lawyer friends tell me that the substitution of a non-criminal penalty for the criminal one is in keeping with a modern legal trend. Although the statutory labels vary, an increasing number of states have adopted the recommendation of the American Law Institute's Model Penal Code in 1962 to establish a category of offenses which do not give rise to the civil disabilities attending conviction of a crime. Some call it a "petty offense" or an "infraction" but most call it a "civil violation."

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One of the principles underlying this reform is that the criminal sanction should be reserved for morally reprehensible conduct and should not be diluted by application to conduct without serious social consequence.

In this regard, we are watching with interest the current experiment in Oregon. Will it work? Will there be any harmful effects? Will the use of marihuana increase? In what age groups? Will the experimentation with other drugs increase? Will the new violation statute be enforced? How? At what costs? Will the criminal justice system be relieved of a significant enforcement burden? Will there be a discernable reduction in the human costs of a criminal sanction against pot? Will the public continue to support the new policy? What about the criminal justice system's support? Will other states follow the Oregon lead? With what modifications?

All of these issues are important and will take some time to resolve. But the process of inquiry, modification, and compromise is the heart of public policy change.

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This refocusing process needs your continued help. We in Government appreciate the interchange we have and support we get on a regular basis from Keith Stroup and your distinguished Board. We need your constructive criticism to help us find the right way to formulate and implement our responsibilities.

In closing, let me add an observation from a popular American folk artist, Arlo Guthrie:

"The question is not what we'll be doing when we get there, but rather how to go and feel good that you're going. Going there is being there, or at least almost being there. Knowing what to do once you get there must be something like knowing what to do when you're anywhere."

On the marihuana problem we are moving. It's good to know we can help each other as we go.

Senator HUGHES. Our next witness is Dr. Jerome H. Jaffe, professor of psychiatry, College of Physicians and Surgeons, Columbia University.

Dr. Jaffe was also the first director of the Special Action Office for Drug Abuse Prevention at the White House.

Good morning, Jerry. Please be seated. It is good to see you back again. You are welcome to proceed with your testimony.

**STATEMENT OF JEROME H. JAFFE, M.D., PROFESSOR OF PSYCHIATRY, COLLEGE OF PHYSICIANS AND SURGEONS, COLUMBIA UNIVERSITY (FIRST DIRECTOR OF THE SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION)**

Dr. JAFFE. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify before you as you consider the very perplexing problem of how the Federal Government can best respond to the use of marihuana by a substantial segment of the American population.

In preparing my formal statement, I was acutely aware that I do not come before this committee today as an expert on the medical or toxicological aspects of marihuana, although I am generally familiar with the literature and I have written, on occasion, about the subject.

If my testimony here has value, it is because I was a participant in the evolution of the present Federal policies both before and during my recent tenure in the executive branch.

The national debate about marihuana is now almost 40 years old. My part in this debate began when I started teaching medical students about the pharmacology of the drug in 1961, and when I authored chapters in important textbooks. It continued when I became a consultant to the State of Illinois in 1966. At that time, the possession of marihuana in Illinois was a felony.

I took the position then that felony penalties for possession of marihuana were in poor social perspective. Along with others, I was successful in persuading the legislature that the penalties for simple possession of small quantities of marihuana should be markedly reduced.

Eventually, the legislators of Illinois did reduce these penalties, and I had the opportunity of returning briefly to Illinois from Washington for the signing of the bill that incorporated these changes into law.

I remember with a deep sense of satisfaction that, at that time, the Governor also signed an executive order directing that anyone serving a prison sentence for marihuana greater than that which he would have obtained under the new law was to be immediately released.

Meanwhile, at the Federal level, the Controlled Dangerous Substance Act of 1970 had reduced the penalties for possession of marihuana from a felony to a misdemeanor, at least for first offenders and, in addition, had made it unlikely that any first offender would go to jail for mere possession of small amounts.

In a sense, those who opposed imprisonment for simple possession of marihuana had gotten "not quite half-a-loaf." By the time the National Commission on Marihuana and Drug Abuse finished its first report recommending further reduction in penalties, I was a member of the executive branch, and I no longer felt free to express my personal opinions as to the most appropriate way to implement a policy of discouragement. The subsequent history of that recommendation is well known.

It was rejected by the President—totally and unequivocally. Suffice it to say, that the rejection was not based on the unanimous advice of his appointed experts. There were many who had hoped that, despite this action, after the election in 1972, there might be room for a more flexible position. Knowing the views of the President, the first drafts of the Federal strategy for 1973 supported the concept of penalties for possession of marihuana, but it was silent on whether these were to be criminal or civil. And at least a few of the drafters hoped that we could leave open the door to eliminate the use of imprisonment and substitute civil fines more or less along the lines of the minority view within the National Commission. However, the arguments supporting this position did not win the day.

The word "criminal" was inserted before "penalties" in the Federal strategy. Those who hoped that the strategy would be an opportunity for change in this area were disappointed and, without enthusiasm, the drafters marshalled the arguments for maintenance of the status quo. With respect to this issue, I left Government with a sense of frustration.

When President Ford declared amnesty for draft evaders, I felt that perhaps there was a chance for another kind of amnesty—for those who were jailed for mere possession of marihuana, and I wrote to Senator Hughes expressing this view.

I cannot honestly say that I am now or was then unequivocally in favor of legalization of marihuana or even of removal of all penalties, although some of the arguments for these positions are persuasive. However, I was, and I am convinced that the imprisonment of the mere user of the drug or even the threat of imprisonment can no longer be justified—in my opinion, it serves largely to clutter the courts, divert the police from more important responsibilities, and enrich the legal profession.

Yet, I do not want to leave the impression that eliminating criminal penalties is free of potential for adverse consequences.

Despite the short-term patterns observed in areas, such as Oregon, where criminal penalties have been eliminated, we are unable to predict how changes in Federal regulations will affect the consumption patterns of marihuana for the country as a whole. Furthermore, it is likely that no matter how the Government tries to frame its actions, a move away from criminal penalties will be interpreted by many as a sign that marihuana is safe and approved for use.

As a result, the shift away from the use of imprisonment or threat of imprisonment will be followed by an increased recreational use of marihuana. It is likely, but not certain, that such increased recreational use will be associated with an increase in the absolute number of citizens whose use of the drug is so heavy that their social functioning is

impaired, and their health is jeopardized. The dimensions of such risks are still controversial. Neither is it clear that those who become impaired will be drawn solely from the ranks of those who would have been impaired by the use of other drugs such as alcohol.

In short, I believe that, in the short run, a shift from criminal penalties to civil penalties—fines—or to no penalties at all for personal possession will not be free of social cost.

When I was a member of the executive branch of the Federal Government, I argued that these expected increased social costs of changes in penalty structure would be more than offset by the benefits that would flow from such changes. The benefits expected ranged from the concrete to the intangible; from savings in the area of law enforcement and corrections to an increased regard for the process of government and the possibilities of rational change on the part of millions of Americans who feel that present laws are both irrational and excessively harsh.

At that time, these arguments were not sufficiently persuasive, and the decision to hold the line on criminal penalties came from the "Oval Office."

However, the internal debate did succeed in muting a number of canards and myths about marihuana use that had been used in the past to justify the use of criminal penalties, and in separating as much as possible the problem of marihuana from the problem of heroin.

Almost 2 years of additional data and debate have not substantially altered the central issues. I assume that this committee is considering at this time not the legal distribution of marihuana, but merely what penalties, if any, should be attached to the possession for personal use of small amounts of marihuana. Therefore, in my opinion, we need not become embroiled in the question of whether chronic use of large amounts has adverse effects on health and behavior, or even whether the occasional use of marihuana is totally free of hazard.

On the basis of what was known about marihuana in 1972, the National Commission on Marihuana and Drug Abuse concluded that a policy of discouraging the use of marihuana should be continued. But they also recommended the removal of penalties for personal possession of small amounts and continuation of criminal penalties for its distribution.

This policy was criticized from some quarters for its seeming inconsistency and from others as the first step toward eventual legalization. It may be that when future generations look back on these recommendations, both criticisms may prove to be valid.

Yet, in a world where few problems have solutions that are without cost, and where there are few policies that do not create new problems, we must ask the question of whether the recommendations of the National Commission would not result in a better balance between social costs and benefits, tangible and intangible.

It is my view that, in the light of what we know about the acute effects of marihuana—and even allowing for some adverse consequences of chronic use that we now only suspect—we do not sufficiently safeguard the public health or improve the quality of life by imprisoning or even threatening to imprison those who elect to use marihuana despite the present laws against such use.

As such laws are currently enforced, the probability of arrest and confinement is so low that the deterrent effect of the law is virtually nonexistent.

Those who are arrested view the law as capricious or worse. Yet, it is inconceivable that a society as permissive as ours is with tobacco and alcohol, and as beset by rising rates of violent crime, would or should give sufficient priority to the enforcement of criminal laws against marihuana use to make such laws an effective deterrent.

Under such circumstances, our policy choices seem to narrow down to a few alternatives. We can maintain the present penalty structure, which, even when not enforced, conveys the message to other levels of government that jail or threat of jail is the appropriate response to marihuana use, or we can try to fashion some method of discouraging use that might have a lesser overall social cost.

Some groups have suggested that criminal penalties for personal possession be replaced by civil penalties—such as fines, in the range of those used for highway speeding offenses. Provided that the income from such fines is used to support treatment and research on drug abuse problems, this view has considerable merit, particularly if we accept the view that increased recreational use of marihuana will result in an increase in the number of people who develop patterns or dysfunctional use that may require some form of treatment.

Because I feel that the process by which recreational drugs are incorporated into societies is probably irreversible, I lean toward this approach rather than toward removal of all penalties at this time because it gives us a little more time to look at the effects of the change.

The National Commission has advocated total elimination of all penalties for personal possession. This recommendation has been called into question by some observers inside government and out who point to recent research findings that chronic use of marihuana may produce more adverse effects than were noted in the material available to the National Commission in 1972. I do not believe that the significance of these findings can be fully assessed in the context of congressional hearings.

However, I feel that these findings are not likely to change our options for the short term in any substantial way. Should they prove eventually that marihuana does have more adverse effects than we previously suspected, they will justify the decision to maintain the policy of discouragement.

But they will not, in my opinion, justify the imprisonment of an otherwise law-abiding citizen for the imprudence of using marihuana in the privacy of his home despite the risks to his or her health.

If further studies should eventually show that marihuana poses fewer risks to health than we previously feared, we shall be even more justified in moving away from a mechanism of discouragement where our effort to protect the public is more costly than the problems it seeks to prevent.

Thank you.

Senator HUGHES. Thank you very much, Dr. Jaffe. It is always good to hear your reasoned thoughts on matters we have had before us over the years that the subcommittee has been in existence, and you have been testifying since its creation.

I take it, then, you have not changed your views over the years regarding the personal use of marihuana in small amounts; you are still on the same plateau you were before?

Dr. JAFFE. I suppose that I have changed them slightly. Are you talking about my personal views or the official views?

Senator HUGHES. Your personal views.

Dr. JAFFE. My current personal views come halfway between the position of the use of a fine and decriminalization. I can also see advantages in a variety of other options for policies of discouragement.

I might point out one thing that bothers me just a bit in the position of total removal of all penalties, and that is that we run the potential of increasing health costs, and yet we do not allow for the possibility that those costs will come at a time of a "budget crunch."

The "fine" position, the use of fines, might at least generate income to handle that problem. On the other hand, people could take the position that we could, with legalization, have taxation of marihuana, and in this way raise far more income than we could with fines, amount sufficient to support treatment for a number of drug abuse problems.

I am concerned with the mechanism by which, when a policy is changed, and creates new—but obviously on balance lesser—problems, we mobilize the resources to handle the new—but lesser—problems. In this case, the lesser problems include the possibility that some people will become chronic marihuana users and the possibility of some unforeseen health hazards.

Senator HUGHES. In the field of chronic alcoholism, for example, during my years in the Senate we have been constantly moving away from the policy of jailing alcoholics or threatening them with jail. Instead, alcoholism is being treated as a public health rather than a criminal problem.

Now, the policy of the Government has switched in that almost completely now we believe that rather than putting an ill person in prison or jail, it is a public health problem and should be treated as such. Of course, there have been certain court rulings that supported those viewpoints.

If we are to handle marihuana as a public health problem, then certainly no one should go to jail for the minimal use of marihuana, should they?

Dr. JAFFE. I could not agree with you more. On that I am unequivocal.

Senator HUGHES. You are unequivocal on that?

Dr. JAFFE. Yes. The question is what we should do once we eliminate that as an issue. Not only should people not go to jail, I do not think they should be threatened with jail. Such situations generally have the effect of forcing them to hire rather costly legal talent, and although they may eventually have the case thrown out of court, or eventually get probation and not go to jail, I do not think you have accomplished anything substantial in terms of deterrents any more than if there was a simple fine without imprisonment.

I think the question comes down to this: Shall we consider the process of gradualism where we move from criminal penalty to something like a fine, or should we go all the way to no penalties for personal possession at all, with heavy taxation perhaps to legalization?

Frankly, I am not sure I have the wisdom to predict which would be a wiser policy.

I do have the feeling that to eliminate all penalties, no matter how we tried, would be a signal that might result in increased use. And knowing how frustrating it has been to try to convince intelligent Americans to stop smoking with all of the known adverse health

consequences, I am not eager to see us move toward a position that further fixes the drug as part of our social fabric.

But, on the issue of should we put people in jail, you have no argument from me, and I fully support the position that—if it was ever a wise position, it is no longer justified.

Senator HUGHES. Looking beyond our conviction that imprisonment for use of marihuana should be absolutely eliminated from public policy, in your opinion is the consumption of marihuana at current levels a national health problem?

Dr. JAFFE. I had a more confident feeling that I had all the information in front of me 2 years ago than I do now. My feeling is that it is potentially a problem. But certainly it is not high up on the scale of the things that this country has to be concerned with, and I certainly would not compare it in any way to alcohol or tobacco.

Senator HUGHES. As far as health is concerned?

Dr. JAFFE. As far as health concerns.

Senator HUGHES. I noticed in your statement that you said you were not convinced that if we banned marihuana and stopped using it all marihuana users would use alcohol.

But it does seem to me that people who use substances as a recreational drug for pleasure are going to use something. Availability does make the determination of what they can use, and if they cannot use marihuana, in all probability they will use alcohol in some form, or something worse.

Dr. JAFFE. That is certainly a possibility. My statement was meant to imply that there may be people whose marihuana use patterns may move them into dysfunctional use, very heavy use, who, for reasons I am not clear about, might not have become alcoholics. In other words, alcohol does not do for them what marihuana does. They could become chronic users. They might not become alcoholics. This was not meant, however, to marshal an argument in favor of maintaining the status quo.

It was simply that I think it is important not to convey the impression that we have any solutions that are free of their own cost. There may be some people who would do that—use marihuana to excess—and still, on balance, we should not imprison people just for the mere use of marihuana.

Senator HUGHES. You have been involved in research, involved in teaching, involved in writing textbooks, and deeply involved in the field of psychiatry in the medical profession. You have set up and operated an agency directly under the highest office of the land, and you faced the greatest epidemic of drug use in the history of this Nation, in both the military and the civilian sectors, during the Vietnamese war, and you are once again teaching.

You have been involved far longer than I have in all of these subjects.

I would like for you to just tell this subcommittee, from all of your background and professional interests, in all of these fields, what today you recommend that we do. We have got to adopt a policy that provides a reasonable approach, for the people of this country.

Many of the things we have been doing historically out of fear no longer makes sense. We all admit that, on the basis of current research, we have not reached the final conclusions, but I feel the same way

about alcohol. I do not feel the final conclusions are in on the devastations of alcohol against humanity either, and it does not seem to make any difference as they develop. No one pays any attention to the findings because a majority of people are using alcohol and want to continue it.

But, in the perspective of the other drugs and narcotics that can have such adverse effects on health, society, and national security, you are one man from whom I would like to have a recommendation as to where we should go.

What is your own personal recommendation, not related to any responsibilities to the administrations, or any other institutions of which you are or were a part?

Dr. JAFFE. I feel perfectly free to give you my own recommendation, irrespective of the positions that as a member of the administration I defended in the past.

I do feel that the committee should devise legislation to eliminate both imprisonment and the threat of imprisonment for the mere possession of marihuana.

I confess that I feel uneasy about giving strong advice to how far you should move in that direction.

In an original report to the White House, we outlined seven different options, ranging from increased penalties to total legalization with the use of taxation to support the inevitable cost of drug use in our society, including treatment programs for narcotic and alcoholism, an approach that might distribute the cost of these problems over those who use the drug.

I do not have the wisdom to advise you as to where in the middle of this range we should move at present. I do say that the present policy costs more than it is worth—that is, imprisonment or threatened imprisonment. I mentioned, I think, that it clutters the courts, et cetera. But whether we should have fines to see if we can discourage the use of this drug, or whether we should go the simple, total, no-penalty situation or legalization with heavy taxation is something that I frankly have pondered, searched my soul about, and still have great difficulty in advising you.

I am currently doing research on compulsive cigarette smoking. We have 50 million smokers. It is awfully difficult to convince them to even come in for free treatment programs.

The city of New York has recently enacted a system of fines against smoking in elevators and other public places, with the idea, perhaps, they can discourage it.

Whether that will be effective or not, I do not know. But we certainly pay a horrible price for the easy availability of tobacco.

Senator HUGHES. How are they ever going to enforce that?

Dr. JAFFE. It may very well be that they may be unable to enforce it, and that would be an argument, I think, in favor of simply not even trying to enforce the fines. I think one would have to look at the experience of States and other localities that may try to enforce fines, to see if that has any impact.

I can give you advice about moving away from a position; how far away from it is not something I can honestly advise you on. And it is not because I am defending any position. It is simply because it is a most perplexing and difficult problem.

I think I could see either position, either an interim system of fines to discourage, or even a system of total decriminalization for personal possession, although I think that the latter would tend to be interpreted as even more of a signal that marihuana use is OK and could result in a somewhat larger proportion of people using it.

Senator HUGHES. This will be my last comment, Senator Javits, because I want you to have the time you need. The country is crying out for justice, and Senator Javits and I have taken the position that in justice the use and possession of small amounts of marihuana should be decriminalized. We believed that would be the best reasoned approach 2 years ago, and I still feel that way today.

As I look at the current state of the evidence and research, I feel that it would be no more difficult to move from that position back into a tougher position again than it is to move out the other way.

People are going ahead with experimentation regardless of the law. We are not stopping it. We have not succeeded with either alcohol or cigarettes the other way.

I am a chronic cigarette smoker. I am addicted to nicotine. And I do not like to make that statement. I was addicted to alcohol. Abstinence is the only way I found to break that addiction.

Now you have succeeded, whether you know it or not, in making me feel terribly uncomfortable even lighting a cigarette sitting here on this panel. Every time I light one, I feel guilty, and I do not like it.

My daughters and my wife have made me feel very guilty at home when I light one, and I feel uncomfortable at that.

Now, the city of New York says it is illegal to smoke in a public building or elevators.

I have got to decide whether I should even go back to New York or not. And the seat space is diminishing on airplanes, where you now have only 3 seats instead of 103 where you can smoke.

Senator JAVITS. We are about to legislate that it is illegal to smoke in the presence of New York Senators.

Senator HUGHES. All I am saying to all of you antismokers, is that I feel the same damn way about alcohol as you feel about cigarettes. It is just devastating, wreaking just as much savagery on our society, and if we are really seeking justice in this country for all people, whether they use tobacco, marihuana, or alcohol, or other substances, then I feel that we ought to look at the danger of these substances and try with equal dedication to stop all of it, even if it attacks my drug and your drug as opposed to their drug.

If there is to be a national policy, then let us declare it our national policy and submit ourselves to it on the basis of the scientific evidence in relation to every drug and the damage it does to the individual, to national health and security.

This is not saying that I am going to reintroduce the Volstead Act, Jack. I do not mean to say that. But we ought to place things in perspective.

I agree that I should quit smoking.

You are a psychiatrist. Tell me why I do not.

I quit once for 2 years and started again. Have you got the answer? I would like to know.

Dr. JAFFE. Perhaps after the meeting we can discuss it. [Laughter.]

Senator HUGHES. If you have found a way and need another specimen, I am willing to submit. I want to quit.

Dr. JAFFE. Well, I have an interesting anecdote about a Congressman who was reviewing our budget, and much to the consternation of the entire agency. I confronted him about smoking, and I am very pleased to say that he put out his cigarette at that meeting. And, 2 years later, he was not smoking again.

So the technique of embarrassment is not without its positive benefits.

Senator HUGHES. My problem is that I cannot get you people to put down your glasses, even with devastation of alcohol in our society. I cannot understand why one should be preferable to the other when all cause great devastating public damage. That is what I am struggling with, very frankly.

Dr. JAFFE. I agree. I am not sure that the issues are so much medical as they are philosophical. They call for highest skills in the real and very difficult art of government. I don't know how you will really do this, because there are no clear answers.

I think the National Commission was wise in opting for a policy of discouragement. I do not think our country will be well served if we do the same thing with marihuana that we have done with tobacco.

But just how that policy should be implemented, what mechanisms strike the best balance between the humane, and the realistic in producing some damper on the tendency of people to use that which is available, I cannot really tell you.

I can say that imprisonment is inappropriate in my mind.

I have called it barbaric in other circumstances. I think it is. I certainly hope that you will have success in getting through a bill that will eliminate imprisonment or threat thereof.

Senator HUGHES. Dr. Jaffe, you have been a great contributor to the reasoned thinking and progress that has been made in the last decade in many aspects of this national problem. I certainly have appreciated my relationship with you, both as a friend and, at times, an antagonist, because of our separate positions. I feel we are making progress in all of these areas.

If it is any comfort to any of you, I do feel guilty every time I light a cigarette, even when I am alone.

So you may not succeed in doing anything other than making me feel psychologically bad. But at least you have done that much.

Senator Javits?

Senator JAVITS. Mr. Chairman, I will not go over the same ground.

My views respecting marihuana are identical with the Chair's. I do believe that we ought to, if we are going to go your route and it is not a bad route, that is, the route of the traffic violation as an interim measure, we ought to find out what other analogies there are in Federal law.

So, Mr. Chairman, I will, if the Chair will allow me for both of us, ask the Library of Congress to make part of its record an analysis of Federal statutes that would give us an analogy to the traffic violation concept.

Senator HUGHES. I would appreciate the Senator doing that and certainly concur with it.

Senator JAVITS. Secondly, while I appreciate the feelings of our Chairman and of the witness about alcohol and cigarettes, I do not want to break the back of this particular piece of legislation.

We have a specific target and a specific problem and it ties into policing in the country.

And I would hope, Mr. Chairman, that in the course of our hearings we could hear from police authorities to get some idea of the ambit of the diversion of police activity which results from the efforts to enforce laws that are very much like the Volstead Act laws, which have a lesser or no greater moral base.

I know the Chairman feels exactly as I do, and feel sure he is right in that the other two are just as bad—

Senator HUGHES. I agree with the Senator from New York completely. My statements were personal agonizing more than anything else.

We do have a single vision of what we are doing, and I do not disagree at all. It is by that very unity that we have had, I think, tremendous success in the field of alcoholism in the last 6 years, a field which you pioneered for years before that, before I was here in the Congress.

I thank you very much, Jerry, for coming and being patient in testifying.

Do you have anything that would be helpful to add?

Dr. JAFFE. I hope I will have an opportunity in the future to commend my Senator from New York for his efforts in this field. I am not sure that I will appear before you in any official way again, but I want to add my feelings to those of Dr. DuPont in paying tribute to you.

I am afraid that my words will fail me. But I think that to the extent that we have made progress, to the extent that we have a more rational approach, a more humane approach to the drug programs of this country, is in a large measure due to you and your efforts.

As a legislator, you will be sorely missed.

As conscience and integrity personified, you will be even more sorely missed.

And I certainly want you to know that those of us who worked in this field are deeply indebted to you as are all citizens of this country, and that I personally feel a sense of loss at your decision not to run again.

I want you to know that most of people in this field feel that you have done things that will leave a legacy of improved quality of life for years to come. And for them and myself I want to thank you.

Senator HUGHES. Thank you very much, Jerry.

Senator JAVITS. Mr. Chairman, I would like to adopt every word that Dr. Jaffe has said.

I am devastated you are leaving us, I really am. I have said it before and I will say it again. I think the greatest going away present I can give the Chair is to pledge myself to continue the work for which the Chair is so extraordinarily recognized here in Washington, D.C. and throughout the country.

Senator HUGHES. I thank the Senator and I also thank Dr. Jaffe, both very good friends as well as colleagues.

If I have contributed modestly to some success and to the thinking in this field in the years I have been here, it will allow me to look back

and believe that the time was not wasted as sometimes I feel it has been.

Thank you very much, Doctor.

The Chair calls Dr. Thomas E. Bryant, president of the Drug Abuse Council.

We welcome you, Dr. Bryant.

It is nice to see you.

You may proceed with your testimony, sir.

#### STATEMENT OF THOMAS E. BRYANT, M.D., PRESIDENT, DRUG ABUSE COUNCIL

Dr. BRYANT. Thank you very much, Senator.

Mr. Chairman and distinguished members of the committee, I appreciate the opportunity that your committee's invitation affords me, to come before you today to discuss some of the current issues surrounding marihuana usage in this country.

For those of you who may not be familiar with the work of the Drug Abuse Council, it was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation, and research funding in the field of drug use and misuse. The council was created in response to a widely felt need for concerted action in the private sector of our society.

Our charter at the council was spelled out in "Dealing With Drug Abuse: A Report To the Ford Foundation," published in 1972. Our rationale can perhaps best be expressed in the conclusion to chapter 1:

It is of fundamental importance that man has and will inevitably continue to have potentially dangerous drugs at his disposal, which he may either use properly or not, and that neither the availability of these drugs nor the temptation to misuse them can be eliminated. Therefore, the fundamental objective of a modern drug abuse program must be to help the public learn to understand these drugs and how to cope with their use in the context of everyday life. An approach emphasizing suppression of all drugs or repression of all drug users will only contribute to national problems.

From that perspective, we at the council applauded the publication of the first report of the National Commission on Marihuana and Drug Abuse, "Marihuana: A Signal of Misunderstanding," issued in March 1972. To us it represented a milestone in tempering the public dialog concerning marihuana by stripping it of the fear and panic which had previously clouded the search for a rational national response.

Since both you, Mr. Chairman, and Senator Javits were members of the National Commission, I need not tell you or other committee members what was contained in its report. But, for the record of this committee's hearings, I would like to briefly share with you my impression of the importance of the National Commission itself and to sketch some of its principal findings and recommendations.

I believe that the Commission in its two reports has set forth the most comprehensive critique of drug practices and policies ever issued in this country. And after 2 years of exhaustive study and analysis, the Commission itself, with all of its variety of background and outlook, achieved a consensus on a wide range of critical drug issues.

I found myself in substantial agreement with the analyses and recommendations of both reports when I first read them and I find myself with that same agreement today.

It was a distinguished commission headed by the Honorable Raymond Shafer, former Governor of Pennsylvania, sprinkled with respected and thoughtful medical, academic, law enforcement, and congressional Members. The Commission's first report recommended that possession of marihuana for personal use no longer be a criminal offense and that casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit, no longer be an offense. Those who have studied the first report, unfortunately still few in number, know that it was a responsible one, based on extensive investigation and analysis.

While the recommendations contained in the second report of the National Commission, issued 1 year later in 1973, are not on their face as controversial as those in the first report, the commentary and rationale concerning other drug use and misuse represent significant departures from the present underpinnings of public policy. For example, the policy assumption that an appropriate or feasible societal objective is to eliminate "nonmedical" drug use is discarded. And the policy assumption that individuals should not be allowed to risk their health by using drugs is considered a peripheral, rather than a focal, concern. Or, the final example, the value judgment that use of drugs for the explicit purpose of mood alteration is per se undesirable is questioned.

I had hoped that the Commission's first report would set the tone for a rational and dispassionate look at what was going on in this country regarding our response to marihuana and indeed there were some encouraging signs. Within 18 months after the report was made public, the State of Oregon abolished criminal sanctions for possession of 1 ounce of marihuana or less and replaced them with a civil fine of \$100 or less, similar to a traffic violation. The Oregon model was similar to that recommended by the National Commission—an official policy of discouragement of use by the imposition of a civil sanction, the elimination of criminal penalties. Criminal sanctions are retained, however, for possession of over 1 ounce, for selling and for cultivation.

The Drug Abuse Council commissioned a survey in Oregon during October of this year—the first anniversary of the new legislation—to assess what changes, if any, have occurred in marihuana usage during the last year and to find out what impressions Oregonians have of their new law. The interpretation of the results of such a survey is necessarily limited since no similar data existed prior to the passage of the decriminalization legislation and since many other factors could have influenced changes in use and attitudes other than the law itself.

The survey was conducted by Bardsley and Haslacher, Inc., of Portland, Oreg., a respected marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues. The sample for the survey interviews, which were face-to-face personal interviews, was of the adult population aged 18 and over. The firm used standard sampling methods, and like all surveys which do not question everyone, the results are subject to certain specified ranges of variation. The Council staff is now preparing an analysis of the Oregon survey results which will include a detailed discussion of the sampling techniques used and the range of variation. I will present that analysis for the record of this hearing as soon as it is completed.

The preliminary analysis of our survey data indicates several interesting points. These points are especially timely since the survey was conducted 1 year (54 weeks) after the effective date of the current Oregon law.

Nineteen percent of the survey sample have used marihuana.

Nine percent of the survey sample currently use marihuana.

Of the 81 percent of the survey sample who have never used marihuana and the 10 percent of the survey sample who have used marihuana but no longer do so, the following reasons were chosen for their nonuse: Possibility of legal prosecution, 4 percent; not available, 2 percent; not interested, 53 percent; marihuana may be dangerous to my health, 23 percent; other, 9 percent; and undecided, 9 percent.

Of those currently using marihuana, 6 percent report that they have used it less than 1 year; 91 percent for more than 1 year; with 3 percent unsure. All of the less-than-1-year users are between 18 and 29 years of age.

Of those currently using marihuana, the following changes were reported in usage during that last year: No change, 52 percent; increased, 5 percent; decreased, 40 percent; and undecided, 3 percent.

The survey sample differed sharply on its view toward the present Oregon law and other legal alternatives.

Fifty-eight percent favored the present Oregon law or favored changes making sale and/or possession of small amounts legal.

Thirty-nine percent favored stiffer penalties for possession of small amounts and use in private. Practically all of this 39 percent favoring stiffer penalties have never used marihuana.

In summary, the survey seems to indicate that the number of individuals using marihuana has not significantly increased in Oregon in the year since its decriminalization law went into effect. And of those using marihuana, a large percentage report a decrease in consumption, while only a small number report an increase in use. Lack of interest or health concerns seem to be the primary reasons for non-use or cessation of use, while lack of availability or legal sanctions seem to be peripheral concerns. A significant division of attitude toward the present law and stiffer penalties is shown.

All 50 States and the District of Columbia have already reduced from a felony to a misdemeanor the first-offense marihuana possession, with the Texas legislature among the most recent to approve such a reduction in May 1973. Texas had been the only State in the United States where a person convicted of possession of marihuana could be sentenced to life imprisonment. The Texas legislature experience in revision of its drug laws is worth noting because it contains a message which should serve as a caution to all of us who are concerned not only with a reasonable marihuana response but with an appropriate response to a variety of drug usage.

The legislative trade-off in Texas for a reduction in marihuana penalties was the establishment of harsher penalties for other selected drug use and possession. A monograph commissioned by our council, "Pot Luck in Texas: Changing a Marihuana Law," by Paul Danaceau, scheduled for release next month, includes the following description of the Texas drug law's nonmarihuana provisions:

First, the legislature raised the penalty for the only two non-narcotic drugs its members could name, "speed" and LSD. Second, the legislature established harsher penalties for non-prescription drugs (LSD) than it did for prescription

drugs such as amphetamines and barbiturates. Third, instead of basing its penalty schedules on knowledge of a drug's pattern of use and capacity for causing social harm, the legislature established penalty schedules that represented nothing more scientific or sophisticated than the extent to which most members personally disapproved of the various drugs and substances.

Mr. Danaceau observes that the legislators did in fact believe that a "get tough" drug bill was the only path to marihuana reform; they didn't want the voters back home to think they were "soft" on drugs. Yet, even with the new legislation, possession of up to 2 ounces of marihuana is punishable with up to 6 months and \$1,000, 2 to 4 ounces with up to 1 year and \$2,000.

Decriminalization of simple possession of marihuana has been endorsed by respected national groups in the 2 years since the National Commission's report: the National Council of Churches, the American Public Health Association, the American Bar Association, the National Education Association and many others. The State and local groups endorsing decriminalization range from the Vermont Bar Drug Law Reform Committee which went even further calling for legalization with tight controls, to the law and legislation committee of the New Jersey Narcotics Officer's Association which called for decriminalization while stressing at the same time that they were "absolutely and unalterably" opposed to the use of marihuana.

Against this backdrop, it is disturbing to compare the number of marihuana arrests as reported by the National Commission with those of more recent date. Because major responsibility for endorsing the possession laws lies at the State level, I shall concentrate on the data compiled by the Federal Bureau of Investigation tracking the continuing increase of State arrests. State arrests rose dramatically (1,000 percent) during the 5 years from 1965 to 1970, according to FBI figures cited by the National Commission. From 1965 to 1970 the number of arrests jumped from 18,815 to 188,682. The percentage increase from 1971 to 1973 was not nearly as dramatic (close to 80 percent), but in absolute numbers the climb was from 225,828 in 1971 to 420,700 in 1973, an increase of 195,000 arrests. These figures are tabularly summarized as follows:

STATE ARRESTS (AS REPORTED BY NATIONAL COMMISSION AND FBI UNIFORM CRIME REPORTS)

Year	Arrests	Percentage increase
National Commission:	18,815	
1965	31,119	65.39
1966	61,843	98.73
1967	95,870	55.02
1968	118,903	24.02
1969	188,682	58.68
1970		
FBI uniform crime reports:	225,828	19
1971	292,179	29
1972	420,700	43
1973		

The marihuana records for the District of Columbia for the years 1970-73 provide some insight into the nature and circumstances of arrests. District of Columbia marihuana arrests jumped from 266 in 1970 to 2,553 in 1973. It should be noted, according to figures of the morals division of the D.C. Metropolitan Police Department, that of total marihuana arrests in 1973, 91 percent of them were for

simple possession—a percentage which closely corresponds to national estimates. A summary of total marihuana arrests and percentage of that total which was for simple possession is included below:

## DISTRICT OF COLUMBIA ARRESTS

Year	Total arrests	Percentage increase over previous year	Percentage of total for simple possession
1970.....	266	17	77
1971.....	694	161	85
1972.....	1,667	140	93
1973.....	2,553	53	91

The circumstances leading to the arrest of persons in the District of Columbia for simple possession are varied. In 1973, for example, 4.5 percent came as a result of a marihuana investigation, 6.4 percent were incident to investigations of narcotics and other drugs, 39 percent were incident to arrest for other criminal offenses, 7.3 percent were incident to arrest for traffic offenses and 43 percent were described as "spontaneous." A full tabular summary for the years 1970-73 is included for the record.

## DISTRICT OF COLUMBIA CIRCUMSTANCES OF ARRESTS—SIMPLE POSSESSION

[In percent]

Circumstance	Year—			
	1970	1971	1972	1973
Marihuana investigation.....	15	5	6.4	4.5
Narcotic and drug investigation.....	22.5	20	5.4	6.4
Arrest for other criminal offenses.....	27.5	31.2	29	39
Arrest for traffic offenses.....	17.5	18.7	17.2	7.3
Spontaneous.....	17.5	25	41.9	43

What all this means is not entirely clear. The 10.9 percent of arrests resulting from marihuana or other drug investigations would tend to support law enforcement claims that they are no longer going after the simple possession of marihuana. But, on the other hand, 43 percent of the arrests are described as spontaneous, where there were no prior police investigations or arrests. Spontaneous is described by the morals division to be those situations where "the subject arrested was observed in possession of marihuana in the presence of the arresting officer." Traffic spot checks are also included in this category. That seems to mean that in the District of Columbia alone, in 1973, more than 1,000 persons were arrested for no other reason than simple possession of marihuana.

The 39 percent of simple possession arrests incident to criminal offenses is clearly the most troubling in terms of social policy. A breakdown of the nature of the criminal offense is not available. The mere presence of the drug or even that the offender is a known user of marihuana does not establish a causal link between the marihuana and the offense. Indeed, with the widespread and pervasive use of marihuana we would expect that a large number of individuals would possess it

at any given time regardless of whether they are ordinary citizens or allegedly criminals.

Regarding the relationship between marihuana and crime, the National Commission concluded that "neither informed current professional opinion nor empirical research, ranging from the 1930's to the present has produced systematic evidence to support the thesis that marihuana use, by itself, either invariably or generally leads to or causes crime, including acts of violence, juvenile delinquency, or aggressive behavior."

Dr. Jared R. Tinklenberg, assistant professor of psychiatry at Stanford University, currently a Fellow of the Drug Abuse Council, has done extensive investigation of the relationships between marihuana and crime, especially violent crime. He and his associates prepared a critical assessment of available evidence on the link between marihuana and crime for the National Commission. In an updated version of that analysis, published in late 1972, Dr. Tinklenberg concluded such a link has not been demonstrated. In his words:

During the past seventy-five years several distinguished commissions have investigated evidence of the possible role of marihuana in criminal behavior and reached strikingly similar conclusions: the behavioral effects of marihuana do not usually incite violent or sexual crimes; rather, the use of marihuana may reduce the possibility of aggression in most people. Recent laboratory and clinical studies support these conclusions and have demonstrated that while some individuals do commit crimes while under the influence of marihuana, marihuana users tend to be underrepresented in studies of assaultive offenders, especially if a comparison is made with users of alcohol, barbiturates, and amphetamines. Some sub-groups of marihuana users do commit crimes against property, but non-pharmacological variables are probably more important influences on such behavior than drug effects.

Today, marihuana use cuts across all demographic lines and appears to be steadily increasing. The National Commission reported to the public that, as of 1972, 24 million Americans had tried marihuana, with 8 million of these using it regularly—all illegally. It has been projected that by 1976 as many as 50 million citizens will have at least tried marihuana. It seems clear that marihuana has been established as the recreational drug of choice by many Americans, youth as well as adults, and that its prohibition has had little effect upon its availability and use.

The Drug Abuse Council has made two major efforts to bring the findings of the National Commission up to date. A major 18-month study of high school and college drug use being done by Daniel Yankelevich, Inc., should be completed soon. A national survey of both adults and teenagers was commissioned by the Council with Opinion Research Corporation of Princeton, N.J.

The preliminary findings of the Yankelevich survey show that among those high school and college students surveyed during April 1974, most current marihuana users fall into the category the National Commission called "moderate." Among the same student population more than twice as many drink alcohol as currently use marihuana and almost as many drink to get drunk on occasion as use marihuana.

	Current marihuana users	Alcohol users	Drink to get drunk
High school .....	25	58	23
College .....	38	80	42

Marihuana usage in the adult population, age 18 and over, appears to have stabilized since 1971. The Council's national survey by Opinion Research Corporation indicates that 16 percent of adults have ever used marihuana, as contrasted with the 15 percent of adults reported by the National Commission's survey in 1971. Of the adult population 6.8 percent currently use marihuana. Of the current users our survey shows that two-thirds of them are either experimental or intermittent users (once a week or less), one-fourth are moderate users (several times per week), and 9 percent are heavy users (more than once a day).

The National Commission summed up the emotion which has been injected into the marihuana debate:

The threat which marihuana use is thought to present to the dominant social order is a major undercurrent of the marihuana problems. Use of the drug is linked with idleness, lack of motivation, hedonism and sexual promiscuity. Many see the drug as fostering a counterculture which conflicts with basic moral precepts as well as with the operating functions of our society. The "dropping out" or rejection of the established value system is viewed with alarm. Marihuana becomes more than a drug; it becomes a symbol of the rejection of cherished values.

Even though we all recognize that by all statistical measures alcohol is by far and away our Nation's No. 1 drug problem in terms of wrecked lives, violence, traffic fatalities, untold misery to family and friends and other social costs, the official Federal document justifying drug programs and policies, the "Federal Strategy of Drug Traffic Prevention-1974," clearly identifies the underpinning of our national policy as based as much or more on value judgments concerning drug usage and its effects as on medical and scientific knowledge:

The social costs of alcoholism have been conservatively estimated as high as \$15 billion annually. Yet, with all of its costs, we recognize that millions of Americans use alcohol without serious ill effects and that the use of alcohol is a part of American life. Since the use of alcohol has been part of our national life, its use is not felt to threaten our basic value structure. In contrast, for most Americans the newer drug abuse problems have few, if any, redeeming features in terms of social ritual and custom.

Science itself is becoming a weapon in a battle between conflicting values and lifestyles and many of the scientists are taking off their hats to become protagonists and antagonists. Some of the summary language used, for example, to preface the marihuana hearings before the Senate Subcommittee on Internal Security in May and June of this year reminds us of earlier national hysteria. The marihuana euphoria was seen to be a danger to democracy with "subversive groups" playing a "significant role in the spread of the epidemic."

The Nation is seen as being "saddled with a large population of semizombies." If the "epidemic is not rolled back," the committee summary concludes, "our society may be largely taken over by a marihuana culture." Such is the nature of the extreme polarization on the marihuana issue. We have come full circle.

Some of the recent reports of the effects of marihuana have been exaggerated and misleading on both ends of the spectrum. Some researchers are drawing conclusions about the harm from marihuana which far exceed the data presently available and, in some cases, the research itself appears to be structured to assure a result supportive of a particular point of view. Others based on equally suspect research propound loudly the harmlessness of the drug. The result has been a

series of reports, some of which resemble propaganda more nearly than scientific research.

We who are involved in the drug abuse field have been too timid. We have abdicated our responsibility to suggest reasonable and rational approaches to the use of marihuana. We are simply permitting events to happen while we hide behind the curtain of medical research, of waiting for proof of health hazard to bolster society's preconceived notions, our punitive response.

We possess already medical proof concerning other drugs, but our approach is totally different.

We have medical proof, for example, that alcohol—the abuse or misuse of it—destroys the human liver, the brain, the kidney, and the body's resistance to disease.

But we do not jail those who simply use alcohol. We do not confuse potential health hazard with criminality.

We have substantial medical evidence that nicotine is injurious to human lungs, hearts, circulatory systems, and respiratory systems.

But, we do not jail those who smoke. We do not associate potential health hazard with criminality.

Caffeine and other chemical substances can also be abused to the detriment of the health of the abuser.

There are, of course, those who use alcohol, caffeine, and nicotine who still commit criminal acts.

I suggest we have two problems: A health problem, and a criminal problem. They are no more automatically synonymous in the case of marihuana than they are in the case of alcohol.

I suggest further that at times we have been guilty of playing the old game of taking a preconceived notion of criminality, structuring our laws to assure that users of marihuana are branded criminals, and then pointing to those so-called criminals to prove our preconceived notion.

We must continue to investigate the possible harmful consequences from marihuana use. The Drug Abuse Council itself is sponsoring a comprehensive critique of the major marihuana studies reported since the National Commission issued its final report in March of 1973, here in Washington in January of 1975. The participants will be distinguished scientists from the fields of immunology, cytogenetics, endocrinology, and psychiatry. But we cannot allow science to become a political tool, perverted in order to achieve a desired result. And, most importantly, we should not permit a medical debate to frustrate the decriminalization policy recommended by the National Commission. Even if marihuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm to society and to basic values you hold and I hold.

I would be happy to answer any questions which you might have. Senator HUGHES. Thank you very much, Dr. Bryant.

That is an excellent statement.

I think in perspective the problem that we are looking at here this morning, what we are attempting to do or at least what the Chair is attempting to do, is to get an overall view of the state we are in right now with respect to marihuana and possible consideration of legislation in the new Congress.

On the basis of the information you have and the current data, as I asked Dr. Jaffe, I would like to ask you, would you have a specific recommendation other than decriminalization right now?

Dr. BRYANT. I think, Senator, it would make a great deal of sense to move rapidly toward the decriminalization of marihuana, with no criminal penalties for possession and use of small amounts.

People have been talking, both speakers before me this morning, about watching and seeing what happens in Oregon and watching and seeing what happens in New Mexico.

We now have our initial survey 1 year later in Oregon. I know a couple of the witnesses who are to appear before this committee tomorrow will have some other information about what is happening in Oregon. I think it makes sense to begin to move, to take the necessary legislative steps and to build the necessary legislative background to move in the Oregon direction toward a simple civil violation penalty for possession and use.

I could only add to that that I think that while I know that you and the other members of the National Commission grappled long and hard trying to come out with a recommendation that met all the requirements that we have heard discussed so eloquently by both the previous speakers and you and the other Senators this morning, nothing is going to be very easy.

As Dr. Jaffe pointed out, there are going to be social costs for this.

If we move decriminalization toward the Oregon model or the other model, there will be social costs. I think the cost we are paying by continuing to criminalize far outweighs these other social costs.

Senator HUGHES. The critique would be available in January, did you say, next year?

Dr. BRYANT. Hopefully, we will have the Oregon law critique finished in the next 10 days to submit for the record of this committee.

[The information referred to follows:]



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### MARIJUANA SURVEY - STATE OF OREGON

Attached are the results of the Drug Abuse Council's survey of marijuana use in the State of Oregon taken one year after the abolition of criminal penalties for simple possession of marijuana. Oregon is the first of the fifty states to abolish such criminal penalties.

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December 15, 1974

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### SURVEY OF MARIJUANA USE - STATE OF OREGON

A majority (58 percent) of the State of Oregon residents favor the elimination of criminal penalties for the possession of small amounts of marijuana. Three out of every 10 Oregon adults approve of their state law that makes simple possession of marijuana a civil "offense"--akin to a parking ticket--carrying a fine but no jail term or criminal record. An additional 26 percent favor changes making sale and/or possession of small amounts of marijuana legal.

Oregon is the first state to abolish criminal penalties for possession of one ounce of marijuana or less and to replace them with a maximum civil fine of \$100. The independent Drug Abuse Council commissioned a survey in October 1974--the first anniversary of the new legislation--to assess what changes have occurred in marijuana usage during that year and to find out what impressions Oregonians have of their new law.

The Oregon survey consisted of 802 personal interviews with adults 18 years or over, representing a balanced sample of the state's population. As might be expected, young adults--ages 18 through 29--took a more liberal view on the four legal choices regarding sale and/or possession of small amounts of marijuana. The division is sharp between those who either have or currently use marijuana and those who have never used marijuana.

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## ATTITUDE TOWARD MARIJUANA LAW

	Civil penalties, as is	Possession of small amounts legal	Sale and possession of small amounts legal	Stiffer penalties
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
<u>Total adults</u>	<u>32</u>	<u>15</u>	<u>11</u>	<u>39</u>
<u>By Age</u>				
18-29	36	26	17	19
30-44	38	13	8	40
45-59	25	13	7	51
60 & over	27	5	9	53
<u>By Usage</u>				
Have used	26	37	29	7
Currently use	14	53	33	0
Never used	33	11	6	46

Two out of every ten Oregon adults have at least tried marijuana, with one out of every ten reporting that they currently use marijuana. Again, a sharp difference in marijuana usage is observed between younger adults and older adults.

## MARIJUANA USAGE

	<u>Have ever used</u>	<u>Never used</u>
	<u>%</u>	<u>%</u>
<u>Total adults</u>	<u>19</u>	<u>81</u>
<u>By Age</u>		
18-29	46	54
30-44	15	85
45-59	4	96
60 & over	2	98

It appears that the number of individuals using marijuana has not significantly increased in Oregon during the year since it has removed criminal penalties for simple possession of one ounce or less. Nineteen percent of Oregon adults report that they have used marijuana at least once; 9 percent of total adults say that they currently use marijuana. Of those currently using marijuana, only 6 percent report that they have used it for less than one year, 91 percent for more than one year. All of the less-than-one-year users are between 19 and 29 years of age.

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Of those individuals currently using marijuana, a large number report a decrease in usage during the last year, while only a small number report an increase.

## CHANGE IN MARIJUANA USAGE

	<u>Current users</u>
	%
Decreased usage	40
Increased usage	5
No change	52

Lack of interest and possible health dangers are the most important reasons chosen for not using marijuana by those who have either never used it or those who have stopped using it. The possibility of legal prosecution and the lack of marijuana availability rank low as reasons for not currently using marijuana.

## REASON FOR NOT CURRENTLY USING MARIJUANA

	<u>Current non-users</u>
	%
No interest	53
Health danger	23
Possibility of legal prosecution	4
Not available	2
Other reasons	9
Undecided	9

The federal National Commission on Marijuana and Drug Abuse, after an exhaustive two-year study, estimated in 1972 that 26 million Americans had tried marijuana, with 8 million of these using it regularly. The Commission recommended that possession of marijuana for personal use no longer be a criminal offense and that casual distribution of small amounts of marijuana not involving profit no longer be an offense. Oregon is the only state to adopt, in part, this recommendation, although many other states are presently considering it.

"It is disturbing to note the dramatic increase in arrests for simple possession of marijuana," according to Thomas E. Bryant, M.D., President of the Drug Abuse Council. "In 1973 alone, state arrests are reported by the FBI to be in excess of 400,000.

"It seems clear that marijuana has been established as the recreational drug of choice by many Americans, youth as well as adults, and that its prohibition has had little effect upon its availability and use. Other states should take a careful look at what has happened in Oregon since it has removed its criminal penalties for small amounts of marijuana and consider moving in the same direction."

The Oregon survey was conducted by Bardsley and Haslacher, Inc., of Portland, Oregon, a marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues.

The Drug Abuse Council, located in Washington, D.C., was established in 1972 by a consortium of private foundations to serve as an independent source of information, policy evaluation and research funding in the field of drug use and misuse.

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Dr. BRYANT. The national survey, done by Opinion Research Corp., will take us a few days longer. We will certainly submit it to the committee for your consideration.

Senator HUGHES. I would appreciate it as soon as we can get it.

Dr. BRYANT. We should keep several important things in mind: One is assessing what is happening in Oregon. Two, determining the attitudes of the country as we are trying to do with the national survey. Dr. DuPont spoke in terms of some of the other efforts being made to get a current reading of national attitude. We also need a resolution, or at least a comprehensive critique, of the most recently reported medical research findings.

It is all well and good to say, as I tried to say in my testimony, that we can separate the legal from the medical, that we have to do so.

I think it is very important that we separate the medical from the criminal response, but I think you, with your distinguished career as a public servant, would agree with me that things like scare headlines and even headlines of major medical findings that point to potential dangers weigh heavily in the minds of the public.

So that when reports come out about chromosome damage and brain damage and these kinds of things, the public takes these into consideration. I think some reports have been irresponsible, while some have been reported quite responsibly.

I think those of us in the private sector and those of us in the Government have to, on behalf of the Government, mount a critique and very hard hitting evaluation of these research findings and find out what is accurate and what is good research. And by what is good research I do not mean value judgments; rather what is well documented research, and what is not.

I have encouraged people at the National Institute of Drug Abuse to do this kind of thing.

I take this opportunity to commend their research effort in this regard, which I think is really quite comprehensive. I would also take this opportunity to commend Dr. DuPont. I think he has shown a great deal of courage this week. I believe he is the first Federal official speaking on behalf of this administration or any other who has got up and so candidly addressed the issues.

You had to read a little bit between the lines as to what he is saying and I can appreciate that, having once been a Federal official myself.

But I had no difficulty reading between the lines as to what he is saying and I commend him for it.

Senator HUGHES. Well, Dr. Bryant, I think both Dr. DuPont and Dr. Jaffe have been pioneers in this field in recent years, and certainly those of us who hold elected public office are aware of the risks involved in walking the frontiers of any of these issues. We are particularly being subject to mistakes, but more than that, to public hysteria caused by the stories and fears that weigh so heavily in these areas.

But I do believe that out of all of this has come a reasoned line.

If we can get a comprehensive viewpoint and separate the two problems, the public health and the criminal law, and look at them with reasoned judgment, I cannot conceive of any legislation that would not move to the point of decriminalizing the personal use of marijuana. It would not endorse the use of it by any means, as the National Commission did not, but would simply discourage use, but decriminal-

ize it. What is more savage to society than the effect of marihuana itself is the criminalization of it.

I certainly want to commend you and the council for the work you are continuing in correlating and bringing together what is being done in the country as well as in funding and supporting research efforts that we cannot presently do ourselves.

It should be very helpful to us in the committee and in the Congress in considering legislation in the future.

We do appreciate your generosity in filing those studies with us as soon as they are available from your council.

I have no further questions, Dr. Bryant. I just want to thank you for your cooperation and your patience and for being with us this morning.

Dr. BRYANT. Senator, I would be remiss if I did not express both my personal opinion and the opinion of the Drug Abuse Council and other organizations in the private sector and associate myself with the remarks by Dr. Jaffe and Dr. DuPont.

You are going to be sorely missed. We all thank you for the magnificent leadership that you have provided to all of us who are working in this field.

I, for one, urge you to continue and I also can make a commitment that those of us at least in the private sector with organizations like the Drug Abuse Council are still willing to line up behind you and follow you.

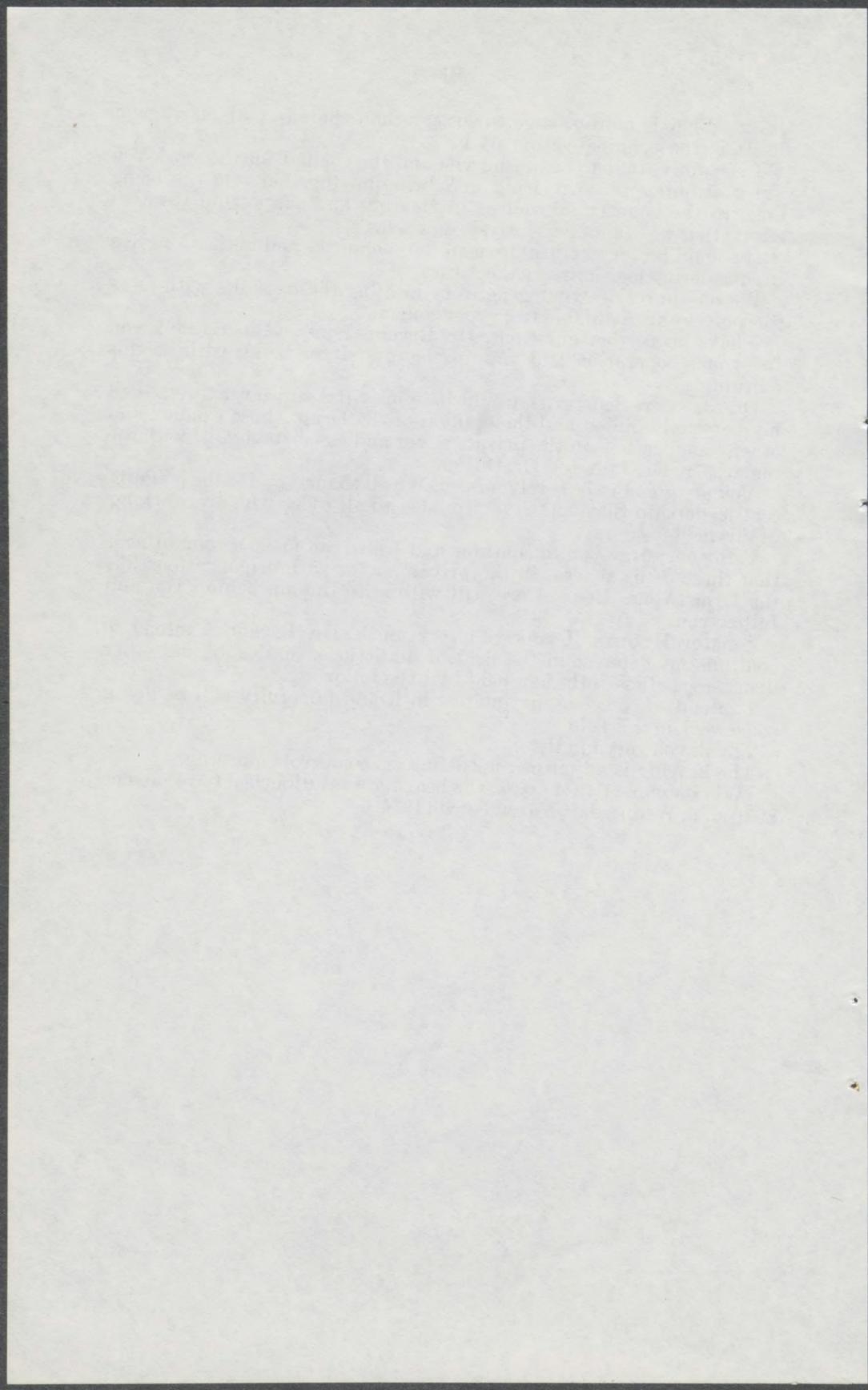
Senator HUGHES. Thank you very much, Dr. Bryant. I intend to continue my interest in the field of addictions, to alcohol and other drugs, regardless of the new field I will be following.

I intend to continue my interest in it and hopefully will be doing some work in this field.

Thank you very kindly.

The hearing is adjourned until 10 a.m., tomorrow morning.

[Whereupon, at 12:45 p.m., the hearing was adjourned to reconvene at 10 a.m., Wednesday, November 20, 1974.]



# MARIHUANA RESEARCH AND LEGAL CONTROLS, 1974

WEDNESDAY, NOVEMBER 20, 1974

U.S. SENATE,  
SUBCOMMITTEE ON ALCOHOLISM AND NARCOTICS  
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D.C.*

The committee reconvened, pursuant to recess, at 10 a.m., in room 4232, Dirksen Senate Office Building, Senator Harold E. Hughes (chairman of the subcommittee), presiding.

Present: Senators Hughes and Javits.

Senator HUGHES. The Subcommittee on Alcoholism and Narcotics will come to order.

The first witness is Mr. Michael Sonnenreich, speaking on behalf of Dr. Dana L. Farnsworth.

Mike, we want to welcome you before the subcommittee.

You may proceed with your testimony as you would like.

STATEMENT OF MICHAEL R. SONNENREICH, ESQ., SPEAKING ON BEHALF OF DR. DANA L. FARNSWORTH, FORMER VICE CHAIRMAN OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, HENRY K. OLIVER, PROFESSOR OF HYGIENE EMERITUS, HARVARD UNIVERSITY, AND CONSULTANT IN PSYCHIATRY, HARVARD SCHOOL OF PUBLIC HEALTH

Mr. SONNENREICH. Thank you very much, Senator. It is a pleasure to be here.

I am speaking on behalf of Dr. Dana L. Farnsworth, who was vice chairman of the National Commission on Marihuana and Drug Abuse, and I am speaking at his request.

I would like to read his statement.

The report of the National Commission on Marihuana and Drug Abuse has now been available to the American people for more than a year and a half. Its general conclusions, developed after 2½ years of study by hundreds of authorities in the field, are still as valid as when they were first made.

The Commission recommended, in 1972, that possession of small amounts of marihuana, 1 ounce or less, no longer be a criminal offense but that penalties be retained for possession of larger amounts presumably for sale. In addition, it asserted that the use of marihuana should be discouraged by all reasonable means, mainly through social controls, with particular emphasis on heavy and very heavy use.

Marihuana is a dangerous drug, as all drugs are when used excessively. However, its capacity for harm appears to be considerably

less than the harm done by the barbiturates, amphetamines, opium derivatives, and particularly alcohol.

Since the publication of the Commission's report in March 1972, numerous studies have been reported, some suggesting that the dangers of marihuana are far greater than the report indicates, others demonstrating that its use produces relatively little harm. In short, despite all these new studies, work in the past 2 years has not fundamentally changed the data base on which the recommendations were made.

The greatest harm stemming from marihuana use comes from the excessively harsh penalties applied to young persons caught with the drug in their possession. The harm done to a young person sentenced to several years in prison, or to any term in prison, is not limited to the cost of their incarceration but rather to the lives of otherwise effective persons being virtually ruined by the degrading experiences of prison life.

The stigma of a criminal record for relatively slight offenses effectively handicaps many persons in an unreasonable manner. In addition, the widespread disrespect for law and authority in general instilled by such harsh and basically unworkable laws is incalculable.

Several States have liberalized their marihuana laws, among them Oregon, Michigan, Rhode Island, and Texas. Others have lagged behind, stimulated, in part, by excessive and misplaced emphasis on the dangers of marihuana.

Recent attempts from several sources to persuade the American people that the use of marihuana is more destructive than it really is, and more dangerous than alcohol, the barbiturates, the amphetamines, and the opiates, are doing a disservice to the ideal of helping our people to learn how to use drugs for their benefit rather than to allow them to become their masters.

A finding made in 1973 that alcohol was the drug whose misuse was far and away the most serious problem facing this Nation was no surprise to the experts but disconcerting to many people, especially in that more than half our people do not consider it a drug.

The use of LSD and the amphetamines has apparently begun to decline, particularly among college students. Heroin use, on the decline for a short time, now once again seems to be increasing.

By no means is all concern with marihuana of a negative nature. There is considerable indirect evidence to suggest that therapeutic compounds could be derived from synthetic chemical structures modeled after those occurring in *cannabis sativa*, the marihuana plant. Such therapeutic possibilities include nonaddicting sedatives and analgesics, as well as compounds that may be useful in the treatment of high blood pressure and narcotic addiction. Work of this nature is now being actively pursued.

It can hardly be overemphasized that efforts to improve the quality of life of all our people through the removal of social and economic deprivation and raising the level of opportunity for self development will be the most effective means of reducing drug dependence.

Too much emphasis on any one particular index of personal frustration tends to divert attention from other sources of discontent. Ideally, solution of the drug problem should be one of the dividends of major

attention and effort toward the solution of all our social problems which, by their nature, impair human dignity in any of our citizens.

That is the statement that Dr. Farnsworth asked me to direct to the Committee, Mr. Chairman.

Senator HUGHES. Mr. Sonnenreich, would you care to add anything on your own?

First, I should ask you a couple of questions.

Were you the executive director of the National Marihuana Commission throughout its existence?

Mr. SONNENREICH. Yes, I was.

Senator HUGHES. Did you attend all of the hearings or practically all of them that were held here and around the world?

Mr. SONNENREICH. All of them.

Senator HUGHES. Did you do the work related to all the investigations of marihuana all over the globe?

Mr. SONNENREICH. That is correct, Senator.

Senator HUGHES. And before that time, were you not employed by the Justice Department?

Mr. SONNENREICH. I was.

Senator HUGHES. In what capacity?

Mr. SONNENREICH. I was Deputy General Counsel of the Federal Bureau of Narcotics and Dangerous Drugs, which has now become the Drug Enforcement Administration in the Department of Justice.

Senator HUGHES. On the basis of your own personal experience, would you like to say anything to the Committee this morning?

Mr. SONNENREICH. Yes, I would.

I firmly believe that the recommendations of the Commission, both its first and second reports, remain valid today. I think that the furor, or the recent publicity with respect to new scientific studies that are being conducted with respect to marihuana, are interesting and merit some careful attention. But I do not think they address the social issue which you, as a member of the National Commission, were actively involved in.

That social issue was what do we do with this drug, which is not just a drug but a social issue, and the question we resolved in the Commission, which was unanimous, and I still firmly personally believe it, is that the cost of the continual use of the criminal justice system to try and compel a social policy just does not work.

Now, with respect to marihuana, the decriminalization recommendation of the Commission is not only inevitable, but sound. I do not see any value whatsoever for putting people in jail for the use of marihuana.

Senator HUGHES. Well, as a matter of fact, the report of the Commission was condemned by the President before it was ever issued, was it not?

Mr. SONNENREICH. That is correct.

Senator HUGHES. His rejection seemed to add to the already existing public hysteria about marihuana, regardless of 2 years of effort in this country and all over the world by experts in every country which had had experience, including some countries where cannabis had been used for several hundred years. Is that not correct?

Mr. SONNENREICH. That is correct, Senator.

The fundamental issue, which is that we could disapprove or not condone the use of the drug, does not necessarily mean that there is a concomitant criminal penalty that has to be applied to it.

We could very strongly want to discourage the use of the drug or any psychoactive substance, but in terms of trying to enforce it through using an institutional approach, that is the criminal justice system, and incarceration, not only makes no sense, based on what we know about the substance, but does not seem to make sense knowing what we do about our own society. The statistics cannot be ignored in terms of the fact that a lot of people have used marihuana. They cannot be ignored that a lot of people will continue to use it. And they cannot be ignored that, from a curiosity point of view, the more we talk about this and the more we polarize the issue, the greater the curiosity factor becomes for many of our young people to just see what it is that we are creating such a fervor about.

The one thing that was pointed out in the Commission repeatedly is that we have to be absolutely certain that when the Government decides to impose any kind of restriction via the criminal justice system on any act that it seeks to condemn, then it must be competent to deal with that kind of situation. And if the law cannot deal with it, it loses credibility.

I think, to a large extent, we have lost a great deal of credibility in our criminal justice system through the use of these possession penalties on marihuana.

Senator HUGHES. Well, just to establish some of the basic facts which you say you still believe and which Dr. Farnsworth also reiterated in this statement which you read in his behalf as vice chairman of the National Marihuana Commission, No. 1, the Commission finding was that marihuana is a dangerous drug; is that correct?

Mr. SONNENREICH. That is correct.

Senator HUGHES. And you still believe it should be categorized as that today?

Mr. SONNENREICH. Well, dangerous is a relative term, as you know. It is a dangerous drug. Any drug used in excess is going to produce hazardous effects.

Senator HUGHES. Number 2, the recommendation was to use every method possible within reason to discourage the use of marihuana, was it not?

Mr. SONNENREICH. That is correct.

And I think that what Dr. Farnsworth is talking about and what I am talking about is that we have a great many sources of control that are not institutionalized. We have peer pressure, we have the church, and we have the local community. We exert pressures through these groups all the time on social behavior.

If the community feels something is not to be accepted, we use those social institutions, the private sector, to try and change attitude and change behavior. We do not always have to use the criminal justice system to do that.

Senator HUGHES. Was it not also the finding of the Commission that of the drugs and narcotics that we particularly looked at, including at least one drug, alcohol, marihuana was the least offensive of the group?

Mr. SONNENREICH. That is correct. Both if we were to talk about it from the scientific point of view, in terms of relative danger, it would be correct and if we talk about it from the social point of view, just limiting it to the United States, it is correct.

We know what the problems with a drug like alcohol are. We know what the social costs of alcohol are in terms of assaultive crime, in terms of loss of time on the job, and in terms of breakup within the family unit. These costs are very well documented.

I believe the figures are that approximately 10 million Americans might be classified as alcoholics in the United States.

Senator HUGHES. And was it not the unanimous conclusion of the Commission and yourself, as director, that the personal consumption of marihuana or private use in small amounts should be entirely decriminalized?

Mr. SONNENREICH. That is correct.

Senator HUGHES. Could you describe to the committee what the Commission and you meant by decriminalization?

Mr. SONNENREICH. We meant something very similar to what has been going on, and transpiring within the whole range of private activity.

It simply means we would control the manufacture and sale. We would continue to criminalize the commercial distribution, but not individual possession and use.

Senator HUGHES. That would continue to be criminalized?

Mr. SONNENREICH. That is correct. This is similar to the kind of situations you have with obscenity laws, that you had with alcohol prohibition. We would not make it a crime for the simple possession or the use of the drug. The fact that you have it in your possession does not mean you are criminally liable.

We also extend it beyond that, and I believe you were very intimately involved in this, both in terms of legislation, in the original 1970 act, and in the Commission, Senator, when we also included transfers of marihuana for small or little remuneration within the decriminalization framework. In this way, we recognized the way in which the drug was used, such as the so-called pot party.

There is the situation where somebody will give a marihuana cigarette to his friends. That kind of transfer, where he is not a commercial dealer, would be treated the same as simple possession, and we did not make that a crime.

What we were doing was, in effect, borrowing from what you had done in the 1970 Drug Abuse Prevention and Control Act. And I think that is valid, because I think we have to take into account the way in which a substance is used in the United States, not just simply draw very careful theoretical lines.

Senator HUGHES. In other words, one of the problems we were dealing with and trying to get at was that if five or six youngsters decided to have a pot party, and each chipped in a buck apiece to buy a small amount of marihuana, and one of these individuals made a contact and bought some for no profit to take back for sharing with five others, he was not a pusher. That is what we were dealing with.

Mr. SONNENREICH. In essence, that is correct.

We would not categorize that as criminal.

Senator HUGHES. In other words, let's carry this one step further, if we could. Dr. Farnsworth covered this very well in his statement, I think, but I would like for you to cover it also. Putting an individual into prison for a minor offense, and we found it to be a minor offense, was far worse than the offense itself, was it not?

Mr. SONNENREICH. In terms of social cost, absolutely.

Senator HUGHES. Could you describe that social cost for us to any extent, Mike?

Mr. SONNENREICH. We ran two studies back to back in the first year and the second year of the Commission. What we wanted to do was to find out just what was happening, who were the people that were getting arrested. We had our suspicions that they were young people, and we had our suspicions that they were heavily represented among the college students. And, of course, this was borne out in a six metropolitan area study.

The thing that was very disturbing was the fact that most of the people that were arrested for marijuana offenses, this was their first offense for any kind of criminal activity, including a moving traffic violation. I think the figure was about 93 percent of the people that were arrested for simple possession.

The question is, having been a prosecutor and recognizing how the system works—and it is imperfect and we admit it—it really is not designed to deal with that number of people and that type of individual. And the cost to society is having hundreds of thousands of young people being processed through a criminal justice system that really is not designed to deal with these people. It is designed to deal with our common law crimes and a variety of other crimes. I would be less than candid if I did not say that the system, during this processing, probably loses a great deal of credibility.

In 1972, we had almost 200,000 people arrested by State officials for marijuana offenses. Then it went up to 225,000, I believe, the next year. And from what I gather in statistics this year, it has gone over 300,000. That is an awful lot of people. This is the third largest category of crime that is reported by the FBI in their Uniform Crime Reports. The first is alcohol—drunk and disorderly. The second is petty larceny crimes under \$100. And the third is drug offenses.

One has to ask the question, aside from the tying up of the criminal justice system, as to just what the impact of that system is on the people going through it, in terms of criminal records, in terms of disruption of, perhaps, their college life, and in terms of disruption of their families. The social cost that is spread is enormous. We would have to quantify it pretty much the same way as we would in terms of alcohol cost, even where the person is not necessarily arrested, in terms of the impact on the family, and in terms of the impact on future work. These costs are hard to assign but they are very real.

I think what has happened is that we have turned a lot of rebels, who I might call mini-rebels, because much of this was symbolic, into some very, very discouraged and disappointed people within our system.

There are many faults in our criminal justice system, but I believe that we have to preserve that system and try to make it workable. Pouring all these people through that system just does not make it workable. The statistics prove it for the simple reason that most of these people never go to trial. They never get convicted.

What happens to the untrained or unknowing eye is that it looks like the system is being subverted when, in reality, the system is trying to keep itself together by diverting the people, dropping the cases, moving them into other alternatives, other than going through the court system.

And I think we have lost an incredible amount of credibility.

Senator HUGHES. Mike, one final question.

Your background in this field has been extensive and far more than any person normally gets. You have been a prosecuting attorney, an official of the old Bureau of Narcotics and Dangerous Drugs, and Executive Director of the National Marihuana Commission. In that job you were part of the team that conducted hearings, did the research, wrote the report and prepared the analyses and recommendations. You are now a private practicing attorney. What recommendation would you make to the Congress at this point in history on the basis of current research, some of which has raised, once again, the old questions regarding marihuana?

What should we do?

You have already stated that clearly, but just as a final statement, I would like for you to put it in perspective.

Mr. SONNENREICH. Scientific research that is going on, Senator, I think has to go on and continue. But I do not think it has anything to do with the issue.

The issue is whether or not people should be put in jail for using marihuana. I think that while everybody can voice concern and can carefully study all research findings that come out, I do not think it really has anything to do with this social policy issue.

I believe that the Congress should take the initiative. We know that with drug legislation and drug laws it is the States, in the past, that usually took the initiative. Now, what would be not only nice, but appropriate, is for the Congress of the United States to pass a bill, face the issue head on, and decriminalize the drug.

There is great concern and there is still a tremendous amount of misinformation in the public mind about the substance, and we are going to get a lot of emotional commentary by those who favor absolutely taking a giant step and dealing with marihuana like alcohol on one hand, and those who are concerned that it is a very, very dangerous substance and would like to keep the status quo.

But we are in an inevitable situation. The Congress has to pass a law. It has to decriminalize the use of the drug. It has to separate clearly the issue of utilization of our institutional processes, the criminal justice system, from the scientific and medical processes, which will go on and on, regardless of what the Congress does.

There is going to be a lot of research on this drug, as there is with a whole range of other drugs. There is going to be a lot of contradictory findings. I do not think that whether or not we find that it is 3 percent more dangerous, or 5 percent less dangerous is really going to have, other than as an informational kind of thing, an impact on changing the social policy, which I believe should be decriminalization.

Senator HUGHES. Thank you very much. I appreciate your opinions and also those of Dr. Farnsworth.

I hope you will extend to him my personal appreciation for his statement and continuing concern in this field.

Mr. SONNENREICH. Thank you.

Senator HUGHES. I want to say to you personally that over the last 6 years I enjoyed working with you in one capacity or another, sometimes occasionally as antagonist, but most of all as a friend.

Thank you very much.

Mr. SONNENREICH. Thank you, sir.

Senator HUGHES. The Chair now calls Mr. Keith Stroup, director, National Organization for the Reform of Marihuana Laws.

Mr. Stroup, welcome to the subcommittee. You may proceed with your testimony as you desire.

#### STATEMENT OF R. KEITH STROUP, DIRECTOR, NATIONAL ORGANIZATION FOR THE REFORM OF MARIHUANA LAWS

Mr. STROUP. Thank you, Mr. Chairman. I welcome the opportunity to appear today on behalf of the National Organization for the Reform of Marihuana Laws.

NORML is a nonprofit, public interest group seeking a non-criminal, commonsense response to the private use of marihuana. NORML is supported by approximately 20,000 members, and works through public education, with the legislatures and in the courts.

NORML does not advocate or encourage the use of marihuana and fully supports a policy of discouragement of all recreational drug use, including alcohol and tobacco, especially adolescent use. But we oppose the use of the criminal law against persons who, despite a policy of discouragement, freely choose to smoke marihuana.

The most prestigious and comprehensive official study of marihuana was undertaken by the bipartisan National Commission on Marihuana and Drug Abuse, chaired by former Pennsylvania Governor Raymond P. Shafer. Their unanimous recommendation: the possession of a small quantity of marihuana should not be a crime. This plan is called decriminalization, and we heartily endorse it.

Simply stated, decriminalization means law enforcement resources are focused at the commercial trafficker, and not the user. And this is important. Decriminalization is not based on whether or not a drug is harmful, but on the demonstrated harmfulness of the criminal law.

#### USAGE TODAY

According to surveys of the Shafer Commission, 26 million Americans have tried marihuana. This breaks down to 16 percent of the adult population over 18, and 14 percent of youth between 12 and 17. Two-thirds of all college students have tried marihuana, as have 55 percent of persons 18-21 years old, and 40 percent of the age group 22-25. Current users are estimated to number 13 million.

The individual who smokes marihuana today hardly fits the stereotyped image concocted in the 1930's—the depraved criminal who got “high” on his reefer and committed vicious crimes.

In fact, the Shafer Commission found—“the most notable statement that can be made about the vast majority of marihuana users—experimenters and intermittent users—is that they are essentially indistinguishable from their nonmarihuana using peers by any fundamental criterion other than their marihuana use.”

The use of marihuana today is socially the equivalent of the use of alcohol by most of our citizens. It is simply nothing more than a recreational drug of choice.

One point is obvious. The criminal law has not been an effective deterrent to use. Consumers Union, publishers of the highly respected journal, "Consumer Reports," recently concluded, after an in-depth study entitled "Licit and Illicit Drugs," "It is now much too late to debate the issue: marihuana versus no marihuana. Marihuana is here to stay. No conceivable law enforcement program can curb its availability."

#### MEDICAL CLAIMS

Today we hear a dialog of increasing intensity about alleged dangers present in marihuana. No drug is totally harmless, and this includes common aspirin, birth control pills, tobacco, alcohol, and marihuana. But marihuana has been shown to be relatively harmless. By that, I mean that its moderate use presents no significant threat to the health of the user, or to society as a whole. Any risk clearly falls within the scope of informed individual choice permitted in a free society.

The relative harmlessness of marihuana was expressed by the Shafer Commission, after their exhaustive 2-year review of all marihuana research, and in spite of a major research effort in the last 5 years the Government, through the Department of Health, Education, and Welfare, has found no significant harm caused by moderate use.

While much additional research is needed, it should be noted that the first controlled, comprehensive study completed on chronic, long-term use has found no difference between carefully matched groups of users and nonusers. A summary of this study, conducted in Jamaica where usage far exceeds that in the United States, is attached to my statement.

This past year, we have heard several new claims of potential harm from marihuana use. These claims have received widespread media exposure and, unfortunately, often far greater than the substance of the study warranted. Because of inadequate controls, excessive dosage levels, the known bias of the researchers, or for other reasons, the claims often fall flat under close objective examination. Unfortunately, the public is left only with the original unfounded impression.

Undoubtedly, some of this research has validity and efforts should continue to replicate the findings. But some of it is the result of work by researchers who see marihuana as an insidious evil substance that threatens their personal value system. In turn, they largely seek data to support their thesis that marihuana is a threat to the Nation's moral fiber.

I have attached critiques on some recent reports that I believe fall into this category.

Mathew P. Dumont, assistant commissioner for drug rehabilitation in the Massachusetts Department of Mental Health, recently observed that:

\*\*\* in the area of drug abuse, we are witnessing a confluence of the usually distinct forces of national politics, social science, medicine, and law enforcement as they perceive a confluence of youth, blackness, and social deviance in the form of drug addiction.

The confluent vested interests would, of course, deny that any such confluence exists in the drug area. But, as Dumont notes, they are not "generally aware of their confluence and do not perceive themselves as having malicious or self-serving intentions. The effect of their joint

behavior is, nonetheless, to identify, monitor, isolate, and neutralize individuals whose collective identities are threatening."

A glaring recent example is the report of the U.S. Senate Subcommittee on Internal Security entitled "Marihuana-Hashish Epidemic and Its Impact on United States Security." Subcommittee Chairman James O. Eastland talked of a "marihuana-hashish epidemic," a pending "national disaster," and "a large population of semizombies."

The Senator touched on his own fears when he warned that the country "may be largely taken over by a 'marihuana culture'—a culture motivated by a desire to escape from reality and by a consuming lust for self-gratification, and lacking any higher moral guidance."

In this simplistic analysis, Senator Eastland saw the roots of growing marihuana use tied to communism, the 1965 "Berkeley Uprising," and the "dirty speech movement."

The Senator's answer to this perceived threat—wage an all-out propaganda campaign, beginning with the distribution of his admittedly unbalanced one-sided report. And I think it should be noted here that Senator Eastland flatly refused to permit anyone to testify unless their testimony would support his premise—that marihuana was highly dangerous, medically and morally. The result is a biased, frightening document offering little scientific value and no solutions.

There is a very real need to continue the research efforts—and it should be under strict Government coordination—in an attempt to find out all possible consequences from marihuana use. But, unless some way is found to separate the serious research from the propaganda, no one can possibly know what or who to believe. We must not allow science to continue to be politicized in this misunderstood and emotional area.

#### THE CRIMINAL PROHIBITION

According to the FBI, more than 1 million persons have been arrested for marihuana offenses in this country in the last 4 years. [The table referred to follows:]

TOTAL MARIHUANA ARRESTS NATIONALLY

Year	Total marihuana arrests	Percent of total drug arrests	Percent increase over prior year	Total drug arrests
1970	188,682	45.4		415,600
1971	225,828	45.9	19	492,000
1972	292,179	55.4	29	527,400
1973	420,700	66.9	43	628,900
Total	1,127,389			2,063,900

Source: Uniform Crime Reports, Federal Bureau of Investigation.

Mr. STROUP. And note that 62 percent of those arrested were under the age of 21, and 88 percent of those arrested were under the age of 26.

A statistical analysis of State marihuana arrests by the Shafer Commission uncovered the unsettling fact that 93 percent were for possession, not sale, and two-thirds of these involved the quantity of 1 ounce or less. Only 7 percent of the arrests were against the commercial trafficker.

In sum, what we are doing in this country is arresting more than 400,000 young people each year, the vast majority possessing small quantities of marihuana for their personal use.

The use of the criminal law is a costly and inefficient instrument of enforcing moral standards or combatting different lifestyles. The marihuana laws stifle the already overburdened and overcrowded criminal justice system with the processing of thousands of minor arrests.

Over 10 percent of all defendants charged in Federal courts in 1973 were charged with marihuana violations. In 1970, this figure was less than 1 percent. A vast amount of valuable police and prosecutorial time and resources are used to prosecute marihuana cases, diverting valuable law enforcement resources away from the control of serious crime.

Nationally, it is estimated that approximately \$600 million is spent annually arresting marihuana smokers. To the millions of young people who are defined as criminals, the marihuana laws engender disrespect and bitterness for the entire legal system. They are crippled for life with the unrelenting burden of a criminal arrest record. We can ill afford to write off their lives and futures so casually.

The National Commission on Marihuana and Drug Abuse, in its second report, "Drug Use in America: Problem in Perspective," said:

American drug policy has been predicated on one fundamental notion: that the societal objective is to eliminate "non-medical" drug use. Inquiry has rarely been addressed to whether this goal is desirable or possible. Failure to address such questions is abetted by the exclusion of certain drugs and certain types of drug taking from the realm of social distress. For example, the non-medical use of alcohol and tobacco would be inconsistent with the declared goal; thus, statutory vocabulary and social folklore have established the fiction that they are not drugs at all. Although use of these substances may arouse concern, they are not viewed in the wider context of drug use.

Drug policy makers cannot truthfully assert that this society aims to eliminate non-medical drug use. No semantic fiction will alter the fundamental composition of alcohol and tobacco.

The fact is simply this, recreational drug use is part of our lives. An estimated 100 million people in this country drink alcohol; 60 million people smoke tobacco; and, as I pointed out earlier, more than 13 million regularly smoke marihuana. Add the over-prescribed executives and housewives with their "uppers" and "downers," the caffeine consuming coffee and cola drinkers, and suddenly we are all included.

So, we should stop talking about eliminating recreational drug use, and start planning our social policy with the purpose of minimizing harm.

First, the Government should continue to fund, coordinate, and monitor research concerning the potential harm from all recreational drug use.

Second, the Government should make the results of these studies readily available to the public through a comprehensive and honest educational program.

And, finally, once informed, then the choice lies with the individual, a free choice to use or not to use a recreational drug. We hope the choice will be against all drug use, but we still must recognize the sanctity of the individual's right to privacy and free choice, or we truly risk the tyranny of the Orwellian nightmare.

This does not mean that marihuana use, or any drug use, is to be encouraged. Certainly it is not.

Again, let me emphasize that minimizing all drug use should remain the overall goal. But our warnings must be clear, convincing and, most important, reflect an honest scientific and medical concern, rather than a moral one.

I want to close with a few more words about the concept of "decriminalization."

The Shafer Commission found that "neither the marihuana user nor the drug itself can be said to constitute a danger to public safety," and unanimously recommended the elimination of all criminal penalties against the user.

As I pointed out earlier, this approach allows the police and their resources to focus on the commercial trafficker, rather than the user. Thus, a discouragement policy is maintained without harming the individual user.

This approach has now been endorsed by a growing list of respected groups including American Bar Association, Consumers Union, publishers of Consumer Reports, National Conference of Commissioners on Uniform State Laws, American Public Health Association, National Advisory Commission on Criminal Justice Standards and Goals, National Council of Churches, the governing board of the American Medical Association, National Education Association, Central Conference of American Rabbis, B'nai B'rith, Canadian Commission of Inquiry into the Non-Medical Use of Drugs (Le Dain Commission).

And, only recently, special State legislative and advisory studies in California, New Jersey, and Michigan have called for marihuana decriminalization plans for their States.

The State of Oregon, as of October 1973, has adopted this system. Private marihuana possession in Oregon is now a civil violation punishable by a fine only. The offender is not placed in the criminal justice system and is thus spared the lasting social and career costs of a criminal arrest record. As you will hear from witnesses later at these hearings, the Oregon system is working well for all concerned.

The recent Harris poll, attached to my statement, reflects a discernible trend in this country. People are beginning to recognize that alcohol is our No. 1 problem, not marihuana. Sixty-one percent of the public believes marihuana is no more harmful than alcohol, and 31 percent see alcohol as worse. Moreover, the poll shows growing support for the Oregon approach. And, according to a poll conducted by the National Marihuana Commission in 1971, 51 percent of the public oppose jail penalties for the use of marihuana.

I am sure this percentage is now higher.

Bills to decriminalize marihuana have been pending in Congress for 2 years, with no action being taken. It is now time to begin the process of constructive and balanced legislative hearings, and bring the bills out of committee and to the floor for a vote.

This year, we can expect that about half a million Americans will probably be arrested on marihuana charges. This number will continue to grow as we wait for the Government to provide leadership. The people have a right to expect better of their Government.

Thank you, Mr. Chairman.

Senator HUGHES. Thank you very much, Mr. Stroup.

The committee will receive for the record the attached documents that you have supplied as supportive evidence before the committee.

[The following information was subsequently supplied for the record:]

# The Harris Survey

For Release: Thursday, February 28, 1974

## ALCOHOL BELIEVED MORE HARMFUL THAN MARIJUANA

By Louis Harris

Alcohol is rated "more dangerous for people to take" than marijuana by a 31-29 percent margin of the American people, while a full 30 percent see them as "equally dangerous." Thus, nearly two out of three seem to accept one of the principal arguments of those who say we have a double standard in dealing with these stimulants.

A majority (53-34 percent) say they "can see the time when marijuana will be used as much as alcoholic beverages in this country." Nonetheless, a more sizable majority opposes legalizing the sale of marijuana (70-23 percent) and also rejects legalizing the use of the drug (69-25 percent).

Adoption nationally of a new Oregon law which levies a small fine and no jail term on anyone caught with a small amount of marijuana in his possession is also opposed but by a much smaller margin, 49-36 percent.

Although attitudes toward marijuana have softened some over the past few years, most adult Americans by and large still take a rather firm line against its sale and use. Easily the strongest current for legalizing marijuana is the widespread conviction that alcoholic beverages, now legal in most parts of the country, are even more dangerous.

In late January, the Harris Survey asked a nationwide cross section of 1,594 households:

"Do you think marijuana or alcohol is more dangerous for people in this country to take?"

### ALCOHOL OR MARIJUANA MORE DANGEROUS?

	Total Public
	%
Alcohol more dangerous	31
Marijuana more dangerous	29
Both equally dangerous	30
Not sure	10

Alcoholic beverages are seen as just as dangerous and possibly even more dangerous than marijuana. In addition, a majority answered in the affirmative when asked:

"Can you see the time when marijuana will be used as much as alcoholic beverages in this country, or can't you see this happening?"

### WILL MARIJUANA BE USED AS MUCH AS ALCOHOL?

	Total Public
	%
Can see	53
Can't see	34
Not sure	13

A plurality is also convinced that when the present younger generation grows older it will not give up the use of marijuana:

(More)

"When the present younger generation gets older, do you think they will continue to use marijuana, or do you think it is something young people will grow out of?"

WILL YOUNG PEOPLE USE MARIJUANA WHEN THEY GROW OLDER?

	Total Public
Will continue to use marijuana	44
Will grow out of it	38
Not sure	18

Despite the expectation that marijuana is here to stay, a solid majority still stands steadfastly opposed to legalizing either the sale or use of pot. The cross section was asked:

"Do you think the (sale/use) of marijuana should be legalized or not?"

SHOULD SALE OR USE OF MARIJUANA BE LEGALIZED?

	Sale of Marijuana	Use of Marijuana
Favor	23	25
Oppose	70	69
Not sure	7	6

The number who oppose legalizing the sale of marijuana has declined from 79 to 70 percent of the public since 1972, but is still a decisive majority. The division on adopting Oregon's milder penalties for possession of marijuana is much closer, however:

"In Oregon, while it is still illegal to possess marijuana, the penalty for anyone having a small amount of marijuana in his possession is a small fine and no jail term. Would you favor or oppose adopting the Oregon marijuana law nationally?"

ADOPTING OREGON MARIJUANA LAW NATIONALLY

	Favor	Oppose	Not Sure
	%	%	%
<u>Nationwide</u>	<u>36</u>	<u>49</u>	<u>15</u>
<u>By Age</u>			
18-29	48	43	9
30-49	35	51	14
50 and over	27	53	20
<u>By Education</u>			
8th grade or less	19	50	31
High school	33	54	13
College	49	42	9

The division is sharp between young people under 30 who would favor such a law, by 48-43 percent, and those 50 and over who would oppose it, by a decisive 53-27 percent. The difference by education is equally wide: those with the fewest years of education oppose the Oregon law by 50-19 percent, but those with a college education favor it by 49-42 percent.

Equally sharp splits exist by size of place, with residents of big cities and the suburbs favoring the adoption of the Oregon law, but with small-town and rural residents opposing it.

Substantial shifts of public opinion will have to take place before legalized use of marijuana or milder penalties for using it will reflect the prevailing climate in the country. But there are visible signs that the public has resigned itself to the fact, legal or not, that marijuana has joined alcohol as a more or less permanent part of life in America.

Wednesday, October 17, 1973

world news of medicine and its practice—fast, accurate, complete

Vol. 14, No. 39

## Study of Chronic Use of Marijuana Demonstrates No Chromosome Breaks, Brain Damage, or Untoward Effects

Medical Tribune Report

**New York**—A double-blind clinical study of the effects of marijuana in a sample of a population long habituated to its use has yielded no evidence of significant physiologic or psychoneurologic differences between smokers and a control group of nonsmokers.

The study, which was commissioned by the U.S. Department of Health, Education, and Welfare to obtain controlled clinical evidence, so far lacking about the effects of chronic use, was opposed to acute use of cannabis, was carried out on the island of Jamaica by the Research Institute for the Study of Man, New York, in collaboration with the Faculty of Medicine, University of West Indies, Kingston.

The results of this investigation appear to lay at rest many common beliefs about the deleterious effects of marijuana—beliefs based on laboratory observations (or anecdotes) of acute effects in highly readily collected groups of study subjects, without regard for idiosyncratic physiologic differences or behavioral or sociologic background.

The project was begun in June, 1970, with a broad and intense 18-month anthropologic study to define typical mari-

juana smokers in representative Jamaican communities, and the final report, *Effects of Chronic Smoking of Cannabis in Jamaica*, embracing physiologic field studies and the results of in-hospital laboratory work, was submitted to HEW's National Institute of Mental Health in March, 1972, with no attendant publicity in this country.

In the clinical phase of the project, 30 confirmed smokers, in whom duration of regular use of marijuana ranged from seven to 37 years (mean of 17.5) matched with 30 controls who either had never smoked or had never been regular smokers and had long ceased.

During a six-day period of abstinence from cannabis—while in University Hospital, Kingston, Jamaica—all 60 were assessed by detailed medical history and examination, heart and lung radiography, electrocardiography, respiratory function tests, blood chemistry, liver and renal function, hematologic studies and tremor, and chromosomal studies.

In addition, blood and urine samples were analyzed for peripheral thyroid hormone levels and steroid excretion.

### None Had Used Hard Drugs

None of the 60 had ever used heroin,

an average of seven pounds lighter, suggesting the possibility that habitual smoking causes some suppression of appetite.

### No Abnormal Configurations

Abnormalities found in chromosome studies of peripheral blood cultures were slightly more frequent in the nonsmoker controls. Chromatid breaks and gaps were seen in 2.36 per cent of cells of marijuana smokers and in 2.90 per cent of cells of controls—not statistically significant. No abnormal configurations, exchanges, or dicentricity were seen.

"It appears that chronic cannabis use has no significant effect on the mitotic chromosomes of human peripheral blood lymphocytes in the Jamaican man. The incidence of mild chromatid breakage was no higher than that found in random Jamaican subjects."

There were minor ECG abnormalities in 30 per cent of both groups, perhaps indicating the prevalence of a cardiomyopathy that has been recognized in Jamaica, possibly attributable to an obliterative disease of the small coronary vessels, often associated with heavy tobacco consumption.

Hematologic studies revealed eosinophilia in 11 subjects, seven nonsmokers and four smokers—not statistically significant. No significant differences were found in other hematologic tests, with the exception of hemoglobin and monocyte count values. There were twice as many nonsmokers as smokers in the low-Hb (10-14 Gm./100 ml.) range. There were six smokers in the high (17-20 Gm./100 ml.) range; only one nonsmoker fell into

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## Jamaica Study Finds No Harm In Chronic Use of Marijuana

this category. Twice as many smokers as nonsmokers had low (0-1 per cent) monoamine oxidase values; twice as many nonsmokers as smokers fell into the high (5-9 per cent) category.

Elevation of the liver enzymes, serum glutamic oxalacetic transaminase and serum glutamic pyruvic transaminase, was found in seven subjects—three nonsmokers and four smokers—but did not indicate significant liver damage.

Several interesting trends were noted in respiratory function, indicating an association between frequency and duration of smoking *per se* (tobacco cigarettes, marijuana) with respiratory function and differences in blood chemistry. Chronic heavy smokers (more than 20 tobacco cigarettes per day, plus chronic marijuana smoking) are at greater risk of functional hypoxia. No other statistically significant differences were established.

Arterial blood determinations of oxygen, carbon dioxide, pH, bicarbonate, and pulse rate, at rest and immediately after exercise, were made. The only statistically significant difference between smokers and controls on these measurements was that bicarbonate after exercise was found to be lower among smokers.

The excretion of a number of urinary steroids in the chronic smokers and matched controls was studied for indications of marked changes in adrenal cortical function in the smokers. Smokers and controls were compared for urinary metabolites of cortisol. No differences were found between the two groups either by t-test or by nonparametric statistical tests. The results indicated no significant reduction in cortisol secretion in the group of chronic cannabis users, compared with the nonsmokers.

**Thyroxine Content Determined**  
Total thyroxine and free thyroxine content were determined. The groups did not differ from one another.

Comparative examinations of the 60 men were conducted by two members of the Department of Psychiatry, University of the West Indies, to whom they were randomly assigned.

The objectives were to seek evidence of psychoses, of abnormalities of mood, thought, behavior, or perception, that might be attributed to marijuana. Eysenck Personality Inventory (short form) appraisals revealed no appreciable differences.

(The ward staff, unaware of which subjects were smokers, observed that those who were in fact smokers were more affable and more popular. Men of the nonsmoking group were more often thought to be neurotic, and were more often impatient with ward routines and discipline.)

No significant abnormalities emerged from mental status examinations. Only one subject, a nonsmoker, showed up as significantly depressed on the Hamilton Rating Scale. No score on either the Schizophrenic Rating Scale or the Wing Rating Scale was indicative of any disorder.

In view of the frequent reports that the use of cannabis leads to a so-called "amotivational syndrome," particular attention was given to work records of the subjects. No significant differences were found between smokers and nonsmokers. Electroencephalograms were obtained for all 60 subjects. No significant difference appeared between the two groups in definite abnormalities or equivocal cases. Further, most of the findings considered

definitely abnormal or equivocal were found in nature; unlikely to have been caused by any medication or drug effect.

Psychologic appraisals were done to see whether there were any nonacute, lingering, or irreversible neuropsychologic effects in chronic smokers during the hospital period, when they abstained long enough to be physiologically free of the active chemical constituents of cannabis.

(It is known that THC has a two-phase biologic half life in which the rapid phase lasts about 30 minutes and the slow phase 56 hours. By the time the men were tested, there could have been very little, if any, THC in their bodies.)

The tests yielded no consistent differences between smokers and nonsmokers; the data clearly indicating that long-term use by these men did not produce demonstrable intellectual or ability deficits when they were without the drug for three days. There was no evidence to suggest schizophrenic effects or brain damage.

In associated physiologic tests carried out in the field, independently of the hospital clinical studies, the work performance of farmers before, during, and after smoking of marijuana was closely observed by microanalysis of movements.

Total healing or soil-turning space covered, or work accomplished in number of plants reaped, was usually reduced per unit of time after smoking. The number of body movements per minute was often greater after smoking, but more movements were required to complete a given task.

Farmers believed that their work was more intense after smoking—that they were doing a better reaping job, for example—but "the extra movements per time and space unit may be related to cumulative inaccruses, resulting in the need for repetition."

Psychologic tests yielded no consistent differences between smokers and nonsmokers, the authors reported, "the data

clearly indicating that long-term (cannabis) use by these subjects did not produce demonstrable intellectual or ability deficits. There was no evidence to suggest schizophrenic effects or brain damage.

Case history data taken from both groups support a popular contention among Jamaican marijuana users that smokers are less frequently engaged in criminal activity than nonsmokers.

### Hallucinations Not Reported

Questionnaires also revealed that hallucinations are not associated with smoking. Only a few smokers reported having visions of little male or female deities, and then only under the influence of their first smoke—visions so stereotyped as to suggest that they were seen only because mythology says they are to be expected.

The director of the project for HEW was Vera Rubin, Ph.D., director of the Research Institute for the Study of Man, Lambros Comitas, Ph.D., Professor of Anthropology and Education, Teachers College, Columbia University, was codirector of this project.

The psychiatric testing was directed by Michael H. Beaubrun (M.B. Edin., FRCPsych., FACP, FAPA), Professor of Psychiatry and head of the department, University of the West Indies. The nonpsychiatric clinical testing was directed by Eric K. Cruickshank, M.D., FRCP, Professor and Head of Medicine, University of the West Indies.

NORML:  
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FOR IMMEDIATE RELEASE

FRIDAY, MARCH 8, 1974

FOR FURTHER INFORMATION CONTACT:

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# News

## MARIJUANA STUDY CHALLENGED

The National Organization for the Reform of Marijuana Laws (NORML) today challenged a recent claim that marijuana smokers may be more susceptible to infectious diseases. According to Keith Stroup, NORML's Director, "This latest claim is without scientific or medical merit. Rather, it represents one man's fanatical campaign to continue our current criminal prohibition against marijuana by exaggerating the potential harm to the user. The purported findings by Dr. Nahas," Stroup continued, "are contradicted and unsupported by the comprehensive research of the National Commission on Marijuana and Drug Abuse and the National Institutes of Mental Health, and by the epidemiological evidence among the estimated 26 million marijuana smokers in this country."

In a Memorandum to Editors and News Directors, NORML calls attention to the following points:

- 1) That Dr. Nahas is a fanatic whose opposition to marijuana is moral rather than scientific. Reviews of his book, Marijuana, The Deceptive Weed, are included as evidence of his bias.
- 2) The methodology of the study is challenged as unscientific due to procedural errors including:
  - (a) age differences in control and study groups;
  - (b) use of drugs other than marijuana by control and study groups;
  - (c) lack of demonstrated causal connection between marijuana use

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- page two -

- and purported finding of reduced white corpuscle activity;
- (d) unrealistic low standard error reported.
- 3) The purported in vitro (observable in a test tube only) findings are unsupported by in vivo (observable in the living body) findings. No increase in infectious diseases has been observed among long term chronic users in a government sponsored two-year Jamaican study, nor among the estimated 26 million smokers in the United States.
  - 4) The recommendation of the Marijuana Commission to remove criminal penalties for private marijuana use is still valid, regardless of the Nahas study. The Commission Vice-Chairman, Dr. Dana Farnsworth, affirms that nothing in the latest Nahas study makes these recommendations inappropriate.
  - 5) Although the study received wide news media dissemination as a "Columbia University study," in fact it is not. Columbia University says "Dr. Nahas speaks for himself, not for the University."

In challenging the Nahas study, NORML included critiques by drug researchers and experts with several medical institutions and universities, including Harvard, the Mayo Clinic, University of Minnesota and Georgetown University.

"All reported scientific findings deserve consideration," Stroup declared, "including those by Dr. Nahas. But we must carefully examine the possible bias of the author before reporting as fact any otherwise unsupported claim of harmfulness. When this is done with Dr. Nahas, it is not so surprising to read his conclusions. To him marijuana is not merely harmful, it is evil; not just a problem, but a curse. His attitude -- and we believe his study -- is based not on concern for the welfare of the individual, but on self-righteous fanaticism."

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MARCH 8, 1974

MEMORANDUM

TO: EDITORS AND NEWS DIRECTORS  
FROM: R. KEITH STROUP  
RE: PROCEDURAL AND SUBSTANTIVE DEFECTS IN  
RECENT NAHAS STUDY

On Friday, January 25, Dr. Gabriel Nahas held a New York press conference at which he announced finding "the first direct evidence of cellular damage from marijuana in man." This study allegedly demonstrated "that habitual marijuana smoking weakens the body's immune defenses against disease and inhibits the division of cells that specialize in these defenses."

With these dire warnings, Dr. Nahas then called for a thorough reappraisal of the findings of the two-year National Commission on Marijuana and Drug Abuse. "The medical profession should not accept those recommendations of the commission which might lead to marijuana legalization without further analysis of all the facts, especially those that are now being collected by researchers on a molecular level."

As a result of the press conference and a five page press release, front-page newspaper coverage and network TV news reports included this new "finding." Routinely the reports began by reference to Columbia University as the source of the research. Apparently no one bothered to question who Nahas was or if Columbia University endorsed his conclusions. And no one could challenge the purported findings since the article was not yet

Page 2 -- Memo to Editors and News Directors

in print. The one-page report was published in Science Magazine on February 1, 1974.

The purpose of this memo is to summarize the procedural and substantive defects in this study and to challenge the conclusions of its principal author, Dr. Gabriel Nahas.

#### I. ABOUT THE PRINCIPAL AUTHOR

Dr. Gabriel Nahas is a research professor of anesthesiology at Columbia University. His strong opposition to marijuana use, and his exaggerated fears of its dangers, are detailed in his book, Marijuana, The Deceptive Weed (Raven Press, New York, 1973). The book is so prejudiced that the Journal of the American Medical Association said,

"... examples of biased selections and interpretations of studies and omissions of facts abound in every chapter."

In the New England Journal of Medicine, Harvard psychiatrist and author of Marijuana Reconsidered, Dr. Lester Grinspoon, said of Nahas' book,

"Given the fact that Dr. Nahas sees the growing use of marijuana in this country as the green menace which threatens to destroy our way of life, his missionary fervor and tendentiousness are understandable. But what he produces is a kind of psychopharmacologic McCarthyism which compels him to use half-truths, innuendo, and unverifiable assertions and to discredit all major commissions and reports which failed to certify cannabis as a great deceptive menace."

#### A. Bias Towards Continued Criminal Prohibition

Dr. Nahas insists that our nation continue treating marijuana users as criminals. In Texas, for example, when the state legislature was considering lowering what was then the harshest marijuana penalty in the country (2 years to life for possession of even a small amount), Dr. Nahas testified in favor of retaining strong criminal penalties. He views pot not as merely harmful, but as evil; not as a problem, but as a curse. His attitude -- and, we believe, his study -- is based not on concern for the welfare of the individual and the

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public, but on self-righteous fanaticism.

B. Press Conference

Moreover, the manner in which he chose to release his findings -- in a press conference before his article was published -- suggests that he is more interested in propagandizing than in presenting data. Dr. Dana Farnsworth, Harvard psychiatrist and former Vice-Chairman of the National Commission on Marijuana and Drug Abuse comments,

"From the tenor of the inferences made in the press release issued prior to publication of the article, I fear that the generalizations may be considerably more sweeping than the facts warrant."

C. Columbia University

The press release issued by Dr. Nahas carried the name Columbia University and it began "A Columbia University study shows . . .". As a result, scores of editorials and news articles hailed these new "findings by Columbia University." Yet, Dr. William J. McGill, President of Columbia University, reports that Columbia University in no way wishes to endorse or otherwise comment on Dr. Nahas' findings.

"Dr. Nahas speaks for himself, not for the University."

Admitting that the Columbia University name was a factor adding undeserved credibility to the study, Dr. McGill continues,

"The coupling in the public mind of Dr. Nahas' statements with the University's prestige is inevitable, and, to us, unavoidable."

D. Conclusion

Dr. Norman Zinberg, Chief of Psychiatry, Boston's Washingtonian Center for Addictions, offers this advice about the need to consider the possible bias of Dr. Nahas:

"Dr. Gabriel Nahas' research presents serious ethical and scientific problems. First and foremost, it is essential that no significant research be dismissed because of the credentials or bias of the

researcher. Hence, Dr. Nahas' work deserves careful consideration. However, it is also essential that the position of the observer as a human being or a scientist be known and be taken into account, at least until new work is carefully validated. . . Thus, it would seem to me to be of importance that, until Dr. Nahas' work is replicated by objective scientists, his long-held conviction, prior to this research, that marijuana is a powerfully dangerous drug be mentioned. His conviction has gone beyond simple prejudice. . . The fervidity of his concern has gone beyond almost all other scientists, judges, policemen, and legislators. It seems to me ethically desirable that his position on this matter be well known when his research is considered. This is necessary because the possibility of experimenter bias affecting experimental result is a general problem of science, and most scientists are vigilant to that possibility."

Dr. David Smith, founder and Director, Haight-Ashbury Free Medical Clinic, feels more strongly about the prejudices of Dr. Nahas:

"Dr Nahas has obviously corrupted the scientific process to achieve his own preconceived political goals relative to marijuana and his study should be disregarded on both scientific and ethical grounds."

## II. ABOUT THE STUDY

### A. Need for Replication

First, the study should be replicated by other, more neutral, scientists. The danger of attempting to prove any claim from a single in vitro study is explained by Harvard Biologist, Dr. Thomas G. Wegmann:

". . . no experiment of this sort is believable until firstly, it is replicated in other labs, and secondly, and more importantly, experiments are done to evaluate the effect of tetrahydrocannabinol on various in vitro immune systems at concentrations within the physiological range.

. . . Before the experimenters claim that they have shown marijuana to cause defects in cell-mediated immunity, they should be able to demonstrate a clear in vitro effect of tetrahydrocannabinol on mixed lymphocyte culture, phytohemagglutinin responsiveness and responsiveness to an antigen such as tuberculin totally in vitro and with a reasonable dose response kinetics (in other words, increasing suppression with increasing dose). Such experiments would not prove that marijuana reduced resistance to infectious disease in chronic users, but it would be reasonable evidence for concern. At the moment, however, I do not think the data sufficient to cause great concern until the questions I have raised are answered and until the study is repeated."

## B. Retrospective Reasoning

Dr. Andrew Weil, author of The Natural Mind, attacks the retrospective reasoning used in the study:

"The study, 'Inhibition of Cellular Mediated Immunity in Marihuana Smokers,' by Gabriel Nahas et al raises the interesting possibility that chronic marijuana use may be correlated with weakening of the body's defenses against disease. Dr. Nahas and his co-workers suggest this possibility on the basis of retrospective reasoning. That is, they observed an effect in the present (apparent impairment of certain cells of the immune system) and tried to assign it to a cause in the past (chronic marijuana smoking). Regardless of how carefully controlled such investigations are, they are risky ways of drawing conclusions. For a very long time, logicians have known that retrospective reasoning is fraught with dangers of coming to incorrect hypotheses. Yet medical scientists, like Dr. Nahas and his colleagues, continue to use it, often with unfortunate results.

The only legitimate way to test a hypothesis is by prospective experiment. That is, groups of people should be examined, in this case for the health of their body defenses; then, marijuana should be administered in controlled fashion to some of the subjects; and changes in the immune system should be looked for over time. In the absence of such a prospective study, the possibility raised by the Nahas paper can be regarded as nothing more than a possibility, worth testing properly."

## C. Specific Questions of Methodology

Several specific questions concerning methodology arise from the study.

### 1) Age Differences

The study group had a median age of 22 years; the control group 44 years. Dr. R. Bjornsen, University of Minnesota, concludes,

"This age difference is inappropriate."

### 2) Use of Other Drugs

Also, Nahas first claims the marijuana smokers did not use any other "mind-altering" drugs, then contradicts himself by stating they drank alcoholic beverages and smoked cigarettes. Dr. David Smith stresses the importance of this oversight.

"The study is weak in several respects; but the area that was most striking to me as a toxicologist was his claim

that the 51 marijuana smokers with a median age of 22 which he studied had used cannabis products exclusively and did not use any other drugs. In his press release, however, he stated that the marijuana smokers "maintained" that they did not use any other mind-altering drugs although they drank alcohol and smoked cigarettes. It is well known that alcohol is a mind-altering drug and a potent sedative-hypnotic. In fact the National Commission on Marijuana and Drug Abuse claims it to be the number one drug problem in the United States, producing far more problems than marijuana. It is also well known that nicotine is a minor stimulant and a mind-altering drug. Numerous toxicological studies have been published on far sounder scientific grounds than the Nahas study documenting the toxicity of both alcohol and cigarettes. For example, recently it was determined that heavy cigarette smoking during pregnancy caused an increase in prematurity by weight.

There is no way that Nahas could attribute the findings in his study to cannabis alone rather than alcohol, nicotine, or possibly even caffeine which I would speculate that the subjects used. By deliberately stating that the subjects used no mind-altering drugs, Nahas was both misleading and dishonest in his toxicological interpretations. It stretches scientific credibility as to how he could ascribe the findings to cannabis alone."

University of Minnesota Professor, Dr. Bjornsen offers these comments about the claim that the marijuana smokers in the test used no other drugs:

"The experimental or study sample used by Nahas et al was made up of young persons who had used marijuana an average of four times per week for an average of four years. They were reported as using no other drugs. This freedom from other drugs is not just challengeable; it is preposterous. At least some, and perhaps all, of those subjects used caffeine, nicotine, alcohol, aspirin, amphetamines, barbiturates or antihistamines, for example, during those same years. So any observations on white blood cell (leukocyte) activity or on anything else cannot establish causal relationship between cannabis and whatever "effects" may be observed."

3) Low Standard Error

Dr. Wegmann indicates two additional areas of concern; an unexplained low standard error and an unfortunate lack of statistical analysis:

"The first thing that strikes the eye of anyone that works with mixed lymphocyte cultures is the fact that the data given in Table I shows an extremely low standard error. In other words, the variation from experiment to experiment reported seems abnormally low. Since it's not possible to tell exactly how this came about I would suspect that the individual replicated each experiment many, many, many times and got an artificially low standard error because of this. This is a statistical artifact if such is the case. The data should have been expressed in terms of standard deviation.

Also, there is no statistical analysis of the difference between the various groups. For example, is the difference between the mean for normal controls and marijuana smokers statistically significant either for the mixed lymphocyte culture activity or for the phytohemagglutinin response? This is not given in the paper. My own guess, and it is only a guess, is that these differences would not be significant. Everyone who works with mixed lymphocyte cultures knows they vary greatly from time to time and differences of this magnitude generally would not be considered very significant. But I would have to have access to their raw data in order to conclude this with any degree of certainty."

#### D. Similar Effect From Other Drugs

Dr. Bjornsen raises the question of whether other drugs such as aspirin cause a similar in vitro effect:

". . . carefully-conducted studies of biologic effects of other substances have shown similar in-vitro inhibition of leukocyte activity. I enclose a copy of one such reported study from a German university and published in 1971, concerning aspirin. Nahas is no fool: he almost certainly is aware of these other studies. His failure to mention them in connection with his report on the alleged effects of marijuana use was, then, probably intentional. In that case, it was also very possibly a willfully misleading thing. At best, Nahas' report is a muddier, not a clarifier. And that is unfortunate, since we have plenty of that already."

#### E. Lack of Substantiating Evidence

Finally, the purported findings of the Nahas study must be scrutinized closely due to the total lack of support from other studies. Comprehensive studies by the bi-partisan National Commission on Marijuana and Drug Abuse (Shafer Commission), as well as intensive inquiries by government commissions in England and Canada, failed to find the slightest evidence to support Nahas'

charge. Nor has the Department of Health, Education and Welfare found any similar evidence of cellular change in its research with marijuana. The National Institute of Mental Health recently completed the most comprehensive study ever conducted of heavy, long-term marijuana use. No significant harm was found. Dr. Vera Rubin, the Jamaican Study Director, comments on their findings:

"The Jamaican study of long-term chronic ganja smokers found no deleterious effects that could be attributed to cannabis. The potency of ganja (marijuana) normally smoked in Jamaica is much higher than that of 'pot' and the frequency and duration of ganja smoking is far greater than in the U.S. There was no difference in the incidence of disease and no 'adverse effects' were reported for the offspring of smokers."

#### F. Lack of Epidemiological Support

Dr. Zinberg notes the lack of epidemiological evidence to support the Nahas claims.

"If his in vitro findings about the loss of immune capacity were correct in vivo, one would have anticipated that during these last five years the millions of young people smoking marijuana would have shown increased incidence of infections. At colleges, where marijuana use has been documented to include over 50% of the population, one would surely expect the use of the health services to have shown a significant increase. No such increase has been reported. This lack of clinical evidence to support the decrease in immune capacity is particularly striking when one considers how marijuana is used. The ritual of passing a joint from mouth to mouth should be as good a way of spreading infections as anyone could devise. Were effective immune responses interfered with, clinicians should have been seeing a virtual deluge of infections, which is not so. Many researchers would themselves call attention to so obvious a discrepancy between the actual events and the logical suppositions implied by the research, but Dr. Nahas has not chosen to do so. Again, I must say that the behavior of the researcher does not affect the research, but the problems with the research itself, as well as Dr. Nahas' departures from usual ethical and scientific standards, make it especially important for both the lay and scientific communities to wait for replication before accepting these findings."

#### G. Other Possible Questions

This memorandum is intended as a discussion of possible defects in the study which might affect the validity of the results. It is certainly not

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exhaustive and additional, better structured research will be needed to substantiate or corroborate the claims.

Areas of concern not covered in detail herein, but which deserve attention, include:

- 1) Are these purported findings inconsistent with Nahas' findings, indicated as footnote #1, in Nature that THC increases immunological responses in mice?
- 2) Does reduced lymphocyte activity necessarily mean reduced immunological response? What about protection from humoral antibodies?
- 3) Could the reduced reactivity of lymphocytes be caused by foreign tissue rejection, allergic responses or autoimmune reactions?
- 4) Are the results of in vitro (tissue culture) studies often different from results of in vivo studies?

### III. THE MARIJUANA COMMISSION RECOMMENDATIONS

Dr. Nahas concluded that his research should cause "a thorough reappraisal of the findings of the National Commission on Marijuana." He apparently thought the Marijuana Commission's unanimous recommendation for removing criminal penalties for private use was based on a finding that marijuana is harmless. That is incorrect. No drug is harmless, but the Commission concluded that:

"marijuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it."<sup>1</sup>

And again:

". . . we believe that the criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. It

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<sup>1</sup>Marijuana: A Signal of Misunderstanding, p. 130.

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implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance."<sup>2</sup>

Have these latest reports altered this position? Commission Vice-Chairman

Dr. Dana Farnsworth says "NO":

"In any case, nothing in the report or the press release alters the significance of the data and recommendations contained in the two reports of the National Commission on Marijuana and Drug Abuse. Any and all serious and accurate research work done on the physiological and psychological effects of cannabis should be considered thoughtfully. Neither the article or the press release makes the Commission's recommendations out of date or inappropriate."

#### IV. CONCLUSION

This latest Nahas study should be examined by other researchers and an attempt should be made to replicate the findings. We are told that the National Institute of Mental Health is currently undertaking these steps.

Without additional substantiation, the claims made by Dr. Nahas appear highly speculative. They should not been reported as fact by the press. The public has once again been subjected to the political use of purported scientific research by a man whose moral fervor shows clearly through his scientific guise.

University of Chicago Professor Dr. Daniel X. Freedman, has noted the tendency of "experts" to "lend their fragmentary findings to various social movements and attempt to influence public behavior with premature publications."<sup>3</sup> He reports, with tongue in cheek, "we have seen that if a molecule produces pleasure, the Lord will punish the consumer with a dubious orthopedic disease known as 'fractured chromosomes.'"

<sup>2</sup>Marijuana: A Signal of Misunderstanding, p. 140.

<sup>3</sup>From the American Federation for Clinical Research Symposium on Drug Abuse, presented at the Annual Meeting in Atlantic City, N.J., May 1, 1971.

MEMORANDUM FOR THE DIRECTOR:  
National  
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Dr. Keith Stroup  
sq., Director

June 11, 1974

MEMORANDUM

RE: THE CONTINUING SAGA OF "REEFER MADNESS"  
FROM: KEITH STROUP

I have attached clippings from the New Orleans Times Picayune which pertain to the latest in a series of claims that marijuana is indeed the "killer drug" after all. As with prior reports (e.g., Nahas, Stenchever, etc.), neither the reporter nor the researcher made any attempt to hide their glee that they believed they now had data to support their preconceived notions. Consider the harmful political impact of picturing the skull of a monkey on the front page, with the comment, "There's no longer any doubt about it. Heavy, chronic smoking of "pot" can cause permanent brain damage." For those who care to remember, this is not dissimilar to the press accounts of one Victor Licotta, accused of slaughtering his family with an ax while high on marijuana in 1936. The Licotta case was cited repeatedly in Congressional hearings in 1937 as evidence of the insanity and violence caused by marijuana. Harry Anslinger liked to refer to it.

In this latest report, Dr. Robert G. Heath of Tulane University tested ten rhesus monkeys with doses of cannabis preparations, some smoked and some injected. Importantly, the dosage levels were so high as to render the results useless.

Dr. Heath says in his newspaper interview that the dosage "of course, represented a heavier dose of marijuana smoking than the kind indulged in by the average high-schooler in this country." He said the level of cannabis used was based "on the amount of cannabis used by American soldiers stationed in Germany," approximating "... the amount used by heavy marijuana smokers among the nation's highschoolers."

Well, if that's true, then Dr. Heath knows some incredibly heavy smokers in the military in Germany and in our high schools.

In fact, in his testimony before the Senate Internal Security Subcommittee, Dr. Heath said the "dose levels correspond to those in clinical study by Tennant, F.S. and Groesbeck, C.J. Psychiatric Effects of Hashish. Arch. Gen. Psychiat. 27:133-136, 1972."

- page two -

The dose levels in Tennant's research was reported to run from 50 grams of hashish per month to 600 grams per month. Assuming hashish to average 8 times the strength of marijuana, and assuming 1 1/2 marijuana cigarettes per gram, the average dose level used by Dr. Heath was the equivalent of from 600 cigarettes per month (20 per day) to 7,200 per month (240 per day).

Not surprisingly, two of the monkeys in Dr. Heath's research died during the project. Both were in the group using the heaviest dosage, and both died from respiratory complications. Considering the dose (the equivalent of 240 cigarettes per day), it is to be expected that respiratory complications would result. Because the effects of marijuana are dose related, the results of Dr. Heath's research have no applicability to the dangers presented to marijuana smokers. Can you imagine, for example, testing the effects of alcohol on man by giving monkeys 240 shots of alcohol per day?

Obviously, measuring the effects of marijuana on the brain is complicated. In its October 1973 Report, the Department of Health, Education and Welfare had this to say:

"Definitive conclusions regarding cannabis use and possible brain damage cannot be reached at this time. Thus far, such a causal connection remains unproven but neither can cannabis be completely exonerated on the basis of present evidence. It does seem likely on the basis of the Jamaican study that brain damage is not an inevitable nor even a likely result of chronic cannabis use when at a level that would be considered heavy (e.g., an average of 7 cigarettes per day) by present American standards. In general, there continues to be little evidence to suggest that light or occasional use of cannabis has serious deleterious physical effects."

It may be some time before serious researchers are able to determine conclusively whether chronic, heavy use of marijuana has any deleterious impact on the brain. Certainly the seriousness of such possible consequences requires continued research. But just as certainly, the absurdly high dose levels used by Dr. Heath render his work unsuitable for determining dangers to actual marijuana smokers. We can hardly be expected to base our social policy towards the use of marijuana on data which assumes users will smoke 240 cigarettes per day.

Harry Anslinger would have been impressed with Dr. Heath's work.

[From the Times-Picayune, New Orleans, June 28, 1974]

POT CAN DAMAGE BRAIN—INDICATION

(By Podine Schoenberger)

(First of two parts)

Memo to the parents of New Orleans:

If you've been trying to persuade yourselves that the "pot" which "Junior" is smoking isn't harming him, listen to this—

Experiments carried on with rhesus monkeys at Tulane Medical Center indicate that chronic, heavy smoking of marijuana can cause permanent brain damage.

Dr. Robert G. Heath, who heads Tulane's research team, said his studies also indicate that even moderate smoking of marijuana can result in behavioral changes which are sometimes irreversible.

Dr. Heath recently appeared before U.S. Sen. James O. Eastland's subcommittee on internal security.

After discussing his research with the senators, Tulane's psychiatrist told them that the most notable and consistent clinical changes which have been reported in heavy marijuana smokers include apathy approaching indolence, a reduced interest in socializing, and attraction to intense sensory stimuli, such as music and floating lights.

Less frequently, he added, have been reports of overt psychotic behavior and induction of abnormal muscle movement.

Dr. Heath said experiments carried on at Masters and Johnson laboratory in St. Louis, Mo., indicate that marijuana smoking reduces the level of sex hormones and that, in most instances in males, this leads to impotence.

Results of his own studies, he added, show that heavy smoking of marijuana also leads to respiratory changes, which, at Tulane, proved fatal to two of the monkeys.

Dr. Heath said the changes in brain function occur in deep sites of the brain.

"Other investigators have recorded similar changes in humans, who were displaying psychotic behavior," he explained.

Asked if this means that a teen-age "pot" smoker may develop undesirable behavior changes, Dr. Heath replied, "our research certainly suggests this possibility."

The Tulane psychiatrist told the senators that, as research got under way, the 10 monkeys involved were divided into groups.

"Electrodes were implanted deep in the brains of some of these monkeys," he explained, "and electroencephalograms were taken prior to, during and after they were exposed to the marijuana smoke."

Dr. Heath said the dangerous component of marijuana is called cannabis. He said the level of cannabis used in the monkey experiments was based on the amount of cannabis used by American soldiers stationed in Germany—GIs, who subsequently developed serious behavioral problems, including psychotic behavior.

"This of course, represented a heavier dose of marijuana smoking than the kind indulged in by the average high-schooler in this country," he admitted. "However, the amount of marijuana inhaled by our monkeys did approximate the amount used by heavy marijuana smokers among the nation's high-schoolers."

The research chief, who is chairman of Tulane's department of psychiatry and neurology, said such heavy doses of marijuana lead to unfavorable changes in the brains of the monkeys. This, he added, strongly suggests that when high-schoolers go in for the same heavy marijuana smoking they conceivably could develop permanent brain damage.

He said in the Mideast, where they've been smoking marijuana or hashish for centuries, the general public and politicians as well as members of the medical profession have long been aware of such deleterious effects.

[From the Times-Picayune, New Orleans, La., June 29, 1974]

POT DAMAGE—HOW IDEA WAS FOUND

(By Podine Schoenberger)

(Second of two parts)

At first the youthful pot smokers could hardly believe their ears.

When they heard that experiments carried on with rhesus monkeys at Tulane Medical Center indicated that heavy and chronic smoking of marijuana could cause permanent brain damage, some of them almost went into a state of shock.

For a long time these youthful pot smokers have been arguing that pot couldn't possibly hurt them. They have been saying things like, "Good old pot couldn't hurt a fly," and "Mom and Pop are always getting uptight over nothing."

But here were scientific data, here was apparent proof. Recently, no less an authority than Dr. Robert G. Heath appeared before U.S. Sen. James O. Eastland's subcommittee on internal security to tell the senators all about it.

If the young pot smokers were surprised over results of the marijuana study, Dr. Heath, who spearheaded the study, was not the least bit surprised.

For a long time this world-famed authority on schizophrenia and other mental ailments had suspected there was a tie-in between marijuana smoking and brain damage.

The psychiatrist based his suspicions on the fact that an initial study at Tulane, which involved implantation of electrodes deep into the areas of a human being's brain, showed that, even in the early stages of marijuana smoking changes in behavior did occur along with the recording changes.

After smoking the marijuana, the Tulane patient became more pleasant, cordial, gregarious. He smiled broadly and experienced moments of euphoria, with changes in mood occurring within three to five minutes after the first inhalation of smoke.

Dr. Heath said these behavioral changes were associated with very distinct alternations in the brain recordings from the areas that were known to be affected when patients showed disturbed psychotic behavior.

The psychiatrist said these changes were so profound Tulane researchers began to suspect that the continued use of marijuana, with repeated activation of these brain sites, would perhaps result in permanent brain damage. But, he added, they lacked proof. And so experiments with the rhesus monkeys were inaugurated.

"These experiments were designed to eliminate those variables present in human beings, that is their use of other drugs and any predisposition they might have to mental or emotional illness," Dr. Heath explained.

The Tulane researcher said that for six months the monkeys used in the experiment were exposed to varying degrees of marijuana smoke.

He said electrodes were placed deep into the brains of some of the monkeys and that electroencephalograms were taken prior to, during and following inhalation of marijuana smoke.

The pot was delivered to the monkeys with the aid of a respirometer, a tank-like apparatus, which, during the experiments, was kept filled with concentrated marijuana smoke.

Attached to the respirometer was a long tube, one end of which was inserted into the monkey's nostril.

"The smoke was pulled into the respirometer and delivered into the monkey's nasopharynx at a speed commensurate with the rate at which a human who smokes marijuana would tend to inhale," Dr. Heath explained.

The researcher said the EEGs in these studies were made from deep brain sites.

As the experiments got under way, he added, the monkeys were divided into several groups, with some of the groups used as controls.

"One group of monkeys were exposed to active marijuana three times a day, five days a week," he stated. "A second group was exposed to inactive marijuana three times a day, five days a week."

Dr. Heath said inactive marijuana is pot from which cannabis, marijuana's most dangerous component, has been removed.

The research chief said monkeys in the first two groups had electrodes planted deep in their brains. A third group, he added, smoked marijuana five days a week, three times a day but had no implanted electrodes.

Dr. Heath said a fourth group smoked moderately two times a week while a fifth group received daily injections of the harmful cannabis.

The Tulane researcher told the senators that "the question for which we sought an answer was, 'Does marijuana induce significant, irreversible effects on behavior, brain function and the structure of the brain.'"

"With the passage of time," he added, "the monkeys, exposed to both moderate and heavy doses of the marijuana as well as those who received regular injections of cannabis, developed chronic of persistent changes in brain activity. The monkeys exposed to inactive marijuana, showed no deleterious effects."

The research chief said, unfortunately youthful pot smokers have been lulled into a false feeling of security by certain authorities, who insist that marijuana is not harmful.

"These people never conducted studies on the subject and have no substantial data to prove their contention," he reminded.

What to do about it?

Dr. Heath said "our job is to generate the data we obtained."

"All we can do is say, 'Here are our data and they definitely indicate that heavy smoking of 'pot' should be up to the legislators of the nation.

"It should be up to the legislators of the nation to inform and protect our young people," he stated. "Yet, in the final analysis, it will probably be the kids themselves who will solve the problem. I honestly believe that if the kids of this nation know the true facts about marijuana they will be smart enough to stop smoking."

[From the Washington Post, Nov. 18, 1974]

#### THE LIMITS OF CRIMINAL SANCTION

Over the last several years, most states have reduced the felony statutes for possession of small quantities of marijuana to misdemeanors. One state, Oregon, has made simple possession of the drug the legal equivalent of a traffic offense. It was only a matter of time before the federal government would begin to move in the same direction. A presidentially appointed commission argued in 1972 for "decriminalization" and although President Nixon simply rejected the recommendation, a number of federal officials have since taken the position that making marijuana possession a federal felony offense serves no useful purpose.

The latest federal official to take that position is Dr. Robert L. DuPont, President Ford's chief adviser on drug abuse control. Significantly, Dr. DuPont chose a meeting here of the National Organization for the Reform of Marijuana Laws to endorse the Oregon solution. In doing so, Dr. DuPont took the same stance that many responsible officials in federal and state government have taken: Marijuana is potentially dangerous to the individual smoker, but smoking by individuals poses no threat to the society that justifies locking up those unlucky enough to be caught.

The marijuana laws, because they proscribe a "crime" that has no victim, are ordinarily enforced against those whose "criminality" comes to the attention of the authorities by accident. Thus, the other day, a federal official whose home here had been burglarized was arrested the same day for possession of an ounce of marijuana found by the police officers investigating the burglary. But for that accident, he can assume his private use of marijuana would have remained his private affair.

That is how it is with most of the 20 million Americans estimated to have smoked marijuana. There is hardly a legal restraint that compares with the law on marijuana for inconsistency of enforcement. Most people who smoke never are caught. About a half million people will probably be arrested this year. Many of those will be released as first offenders without any action having been taken against them, particularly if they are juveniles. The application of the law is selective in many parts of the country. Young people the police may wish to detain for other reasons often go to jail because they happen to have a small quantity of marijuana on their persons during encounters with police.

Under those circumstances, the logic of Dr. DuPont and those other federal officials who have called for "decriminalization" makes sense. It is unwise for a society to permit the creation of so large a class of presumptive criminals when their crime can be of no demonstrable harm to anyone other than themselves. This is especially so when other recreational drugs are readily available and legal. The danger to the individual who drinks alcohol is at least as great as the

danger of smoking marijuana, and may be far more so. Yet, it is perfectly legal for persons who are not minors to buy all the alcohol they wish. If the theory behind proscribing marijuana was that its use would diminish, the policy has been a failure. When the substance was made illegal in 1934, it was estimated that 50,000 Americans used it. The figure could be as high as 25 million today. "Marijuana," said a study by Consumers Union several years ago, "is here to stay."

Since there is little evidence to contradict that conclusion, and since many prosecutors—most recently the U.S. Attorney for the District of Columbia—have argued that they would like to get marijuana out of the way so they and the police can concentrate on real crime, it makes sense to support Dr. DuPont and those who argue for "decriminalization." But "decriminalization" should be recognized for what it is. It is a politically delicate way of saying that you are taking a first step toward the day marijuana will be legal. That is apparent on its face. Dr. DuPont says that "decriminalization" should be accompanied by programs that educate the public to the dangers of marijuana use. Despite such programs, it is doubtful that the use of marijuana is going to decline. If there is merit in relaxing the rules on possession, simple logic dictates that it makes sense eventually to legalize its sale and use and control its quality. That is the way to keep some of the more harmful and dangerously potent forms of the drug off the market. It is also a way of separating marijuana from some of the much more dangerous substances, such as cocaine, LSD and heroin, that now circulate through the same channels as marijuana.

For many young people, the illegality of marijuana makes a mockery of the law. Despite what those who seek to justify the criminal sanction might argue, the logic of the matter causes many youngsters to see duplicity in the current state of affairs. It is perfectly legal for their parents to drink alcohol but an indictable offense for them to possess marijuana. That kind of double standard is corrosive of the principle of the rule of law. The value of the criminal sanction in a society rests on the foundation of fairness. For that reason, the criminal sanction is most effective when it is limited to proscribing those offenses of genuine danger to the society. Possession of marijuana does not meet that test.

[From the Washington Star-News, Nov. 10, 1974]

#### END THE POT PENALTIES

(By William F. Buckley, Jr.)

A couple of years ago Johnny Carson turned suddenly to me, in a general discussion of the drug laws, and asked me point-blank: "Have you ever tried pot?" I said, yes, I had. And added primly that I was on my boat, outside the 3-mile limit, so that I wasn't breaking any law. (He went on to ask: "Did it do anything for you?" And I replied, "No.")

Now as a matter of fact, Carson should not have asked that question. It is in the category of questions you do not ask, like: "Have you ever cheated on your wife?" The rule is that you should never ask somebody a question if there is a high probability that the answer will reveal the questionee to be either a law-breaker or a liar. And of course for some such questions there is no escape clause. There is no such thing as cheating on your income tax outside the 3-mile limit.

But Carson did ask me, and my reply was truthful, and I have been plagued by it ever since. I seldom address a college audience without somebody bringing it up in some way or other during the question period. Example: "Mr. Buckley, how did pot get into your boat in the first place?" (My answer: Parthenogenesis.) Or: "Do you think it's fair that only people who have yachts can smoke pot legally?" (My answer: "Anybody can rent a boat. They come as low as ten, 15 bucks a day.") The audience is good-humored, mostly because if you are addressing a college audience, you are talking to a group 95 percent of which has experimented with pot. College students recognize that to experiment with pot is extremely safe, and you don't have to go out into the ocean to do it with impunity.

#### POT IS HARMFUL, BUT PEOPLE SHOULDN'T GO TO JAIL FOR SMOKING IT

I say extremely safe with sharp reservations, having read the figures for the arrests during 1973, and the projected arrests for this year. These come to 400,000 and a half-million respectively. The figures are appalling, and I pass them along

only because there is no reason to distrust the author of them. But what they seem to suggest is that although the typical campus is nowadays never, ever raided, still there are busts, hundreds of thousands of them, and a continuation of those preposterous penalties which are indefensible.

It is widely noticed that the Senate Internal Security Subcommittee has been transcribing a lot of anti-pot material offered by various doctors and scientists. It has not been widely noticed that the head of that committee, the draconian Senator James Eastland, has himself come out against any penalties for the users of marijuana (as distinguished from purveyors of it).

But somewhere along the line, the American public decided not to legalize pot. This conclusion it reached, in my opinion, on the grounds that any different conclusion would appear to be a capitulation to the counter-culture.

But at the same time, American parents reached the conclusion, or such is my reading of it, that they did not desire their 18-year-old boys and girls to be sent to jail for smoking pot which said parents had every reason to suppose they were experimenting with at school.

If the awful figures are correct—a half-million arrests—there has been a breakdown in communication between the public and the police.

The old adage is that the best way to get a bad law repealed is to enforce it. Perhaps this is what the police are trying to effect: the repeal of the law by the enforcement of it. In which event it is paradoxical that the police do not interfere with the colleges. Or is the problem that there aren't enough police to arrest the guilty students?

Little by little, the distinctions emerge. Richard Cowan, a young journalist from Texas, makes them most neatly, in my judgment. They are: Pot is harmful; but people shouldn't go to jail for smoking it. The difficulty is in trying to take the two positions simultaneously. The art of communication seems to break down. It is instantly supposed that if you desire decriminalization, you are saying there is nothing wrong in smoking pot. Or that if you disapprove of pot, you must be in favor of illegalizing it.

But there is a book in prospect on the subject, being written by the aforesaid Mr. Cowan, and it will be a blessing. In his case, frustration has been the mother of invention: he cannot communicate these simple disjunctions, so he is writing a book.

Meanwhile, the apparent indifference of parents to other parents' children being sent to jail for smoking pot, speaks poorly of our sense of community.

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[From the Washington Post, Thursday, Nov. 14, 1974]

REEFER

(By Ann Landers)

Dear Ann Landers:

I figured that all those loony letters would get to you sooner or later, but I didn't expect it to happen so soon. I honestly believe you've gone off your rocker.

I just read where you and some other oddballs have signed some sort of endorsement for marijuana. Now you say it is "normal" for kids to use it and all the scare stories about marijuana are nonsense and actually turning kids to harder stuff because they don't believe any of the propaganda about drugs.

I always thought you had good common sense, and I was pleased you were against pot because it helped me make a case with my own children. They have faith in what you say and will take it from you, but not from me.

Now, what am I to tell them when they catch up with your latest? Please explain. I am—Dumbfounded.

Dear Founded—or perhaps I should say Dear Dumb:

Talk about getting facts twisted, you win the cutglass fly swatter. My position on marijuana is unchanged. I haven't budged an inch. I still believe that marijuana is not harmless. I continue to be opposed to any mind-altering drug—including alcohol, especially for teen-agers.

I did sign a statement declaring that I am in favor of the decriminalization of marijuana. This does not mean that I want to see it legalized. I do not. But I do want to see the laws in regard to possession changed.

The name of the organization whose statement I endorsed is "NORML." It is The National Organization for the Reform of Marijuana Laws. The state volunteer coordinator is Paul H. Kuuhn Jr., a highly respected gentleman.

The other "oddballs" (your term, not mine) who have endorsed the decriminalization statement are John Finlator, William F. Buckley, Jr., James J. Kilpatrick, Sens. Barry Goldwater, Jacob Javits, Harold Hughes, Charles Percy and Adlai Stevenson II, and Joel Fort, M.D.

You write better than you read—and your apologies are accepted.

Senator HUGHES. Mr. Stroup, can you advise me a little more fully as to who and what your organization is?

Mr. STROUP. Well, we are a nonprofit public-interest lobby, the only purpose of which is to work toward the decriminalization of marihuana. In other words, we believe the user should not be treated as a criminal.

I think often the public feels that unless you are willing to exaggerate the dangers of marihuana and unless you are willing to support criminal penalties, somehow you are pro marihuana. We are not. We carefully noted earlier that we support a discouragement policy for all drug use, and that does include marihuana. However, we do not believe criminal penalties are warranted, and we believe that in a free society the informed individual must be allowed to make that choice himself.

Senator HUGHES. In other words, simply stated, you are advocating decriminalization and not legalization of marihuana?

Mr. STROUP. That is correct, yes, sir.

There are many people, myself included, who believe that sometime in the future, it might be 5 years or it might be 10 years, the Government will probably decide they would be better off in terms of minimizing harm from marihuana use if they had some controls over the market, certain age controls and certain quality controls.

There are some problems today that are simply not dealt with by decriminalizing the user, but at this time there is no national consensus to support legalizing the sale of marihuana with controls.

That is one thing that is obvious from the polls. There is a national consensus that the marihuana user is not in the ordinary sense a criminal.

So, it is our belief that we can eliminate most of the harm that is caused by marihuana laws today simply by taking the user out of the criminal justice system and using informed public education to discourage use.

Senator HUGHES. Do you believe that the current and most recent research that is available as to the harmful effects of heavy consumption of cannabis is any reason not to consider decriminalization immediately?

Mr. STROUP. No, sir. I certainly do not.

I think the new research, of which we have heard a lot in the last year, certainly gives smokers and marihuana users cause for caution.

It seems to me that much of the dangers indicated from the research have been exaggerated, and I think often it has been exaggerated for a specific political purpose. It has been exaggerated by those who would like to see a retention of criminal penalties.

But I think the medical and legal questions are totally separate. I think, on the one hand, we need to decriminalize the user but, on the other hand, the most important function of Government in this area should be to find out everything possible wrong with marihuana, every possible consequence with marihuana. Only the Government is in a position to determine that.

Once they determine that, I think they need to communicate that effectively to the user and the political user.

They should continue to decriminalize the user and move ahead with that social policy at the same time they are making extraordinary efforts to determine any possible harmful effects from the use of marihuana.

I think these new claims give reason for concern, but they do not provide any basis to question the Marihuana Commission recommendations for decriminalization.

As you know, it was not based on a finding of harmlessness.

Senator HUGHES. One final question, Mr. Stroup.

Is it possible that the "law and order" approach of continuing harassment and imprisonment and criminalization of marihuana smokers is, in fact, draining the effectiveness of law enforcement agencies by using manpower time and overloading the courts for what is basically a noncriminal activity in comparison to crimes of violence against persons? Are we inhibiting law and order rather than enhancing it?

MR. STROUP. It seems to me the statement of U.S. Attorney Silbert here in the District of Columbia in the past few days—and I notice this morning that Chief Judge Green agrees with Silbert's statement—that regardless of their views toward marihuana, the police and the police resources in this country are too valuable to waste chasing marihuana smokers.

Whether or not the police intend to chase marihuana smokers, the statistics show that about 93 percent of marihuana arrests in this country have been against the user and only about 7 percent against the commercial trafficker. I think there is no doubt about it, our real law and order advocates are beginning to realize that chasing marihuana smokers is diverting police time from areas where we need it.

Senator HUGHES. Well, thank you very much, Mr. Stroup, for your willingness to come and testify.

The Chair now calls Mr. J. Pat Horton, Lane County district attorney, Eugene, Oreg.

Mr. Horton, welcome to the Subcommittee on Alcoholism and Narcotics.

You may proceed with your testimony as you desire.

#### STATEMENT OF J. PAT HORTON, ESQ., LANE COUNTY DISTRICT ATTORNEY, EUGENE, OREG.

MR. HORTON. Thank you, Mr. Chairman. Thank you for the invitation to be here and the opportunity to share with you the efforts of decriminalization in the State of Oregon on the marihuana issue as well as the impact that that legislation has had after approximately 1 year of being in operation in our State.

Senator HUGHES. Would you define for me just what the present state of the Oregon law is?

MR. HORTON. Yes, I will.

Possession of less than 1 ounce of marihuana for private use thereof is currently classified as a violation, which is a noncriminal offense, punishable by a maximum fine of \$100.

I think for years the people in the criminal justice community have debated the issue of decriminalizing marihuana. Unfortunately, such debate became immobilized on whether or not marihuana was harmful to the user. That is not the issue. The issue is a clear one for law enforcement; in what fashion do we deal with 26 million Americans who defy marihuana laws in 49 States by incidentally, casually, or regularly using cannabis?

Marihuana is harmful to the individual. I, for one, am willing to concede that point to the opponents of decriminalization. The degree of harm is, of course, disputable. But, so are cigarettes and alcohol harmful to the individual.

Yet, as lawmakers, we have learned long ago that regulation of consumption of alcohol and tobacco must be personal with the individual. When the personal use of alcohol impacts society at large, law enforcement has a justifiable role regulating such behavior through prosecution for drunk driving, vehicular homicide, and consumption by minors.

Personal consumption of marihuana has a negligible, if any, impact on the rest of society. Even opponents to decriminalization do not argue that personal use of marihuana leads to crime of violence or crimes against property.

Why, then, should we, in legal communities, continue to urge enforcement of penal laws against millions of Americans when the net effect of such is disenfranchisement of our youth from responsible community positions and disillusionment with the propriety of our criminal justice system?

Oregon was the first State in the Union to decriminalize personal consumption of marihuana. As an advocate for that decriminalization, the following points were advanced and accepted by the Legislature:

1. Criminal sanctions should be commensurate to the severity of the act committed. Private individual use of marihuana simply does not justify harsh criminal penalties. By invoking civil penalties, for example, a maximum fine of \$100, personal use of marihuana is discouraged, yet there is a legislative recognition of fair treatment for people who wish to use the substance.
2. By maintaining criminal penalties for the sale or distribution of marihuana, expanded use by others is also discouraged. One of the biggest fears of some legislators was that an affirmative vote for decriminalization would mean legislative sanction for the use of the drug. Quite the opposite is true. Expanded use of the drug is discouraged by the maintenance of criminal penalties for sale or distribution.
3. Decriminalization has, in fact, prioritized police work into areas of violent crime and crime against property. When possession of small amounts of marihuana was a crime, we found that police officers allocated a disproportionate amount of their time to the apprehension of those individuals. Currently, law enforcement officers spend more time in the area of violent crimes and, thus, better serve their community.
4. The relationship between the youth in the community and the police has improved substantially. There is a growing recognition on behalf of the citizens in the State of Oregon that police are truly serving the interests of society rather than attempting to enforce unenforceable laws.

5. The community leaders of tomorrow no longer need fear the threat of criminal convictions on their records for engaging in behavior that is socially acceptable in many quarters. Even though Oregon courts in recent past years were reluctant to incarcerate people for minor possession of the drug, the presence of a criminal conviction on their record often barred these young people from engaging in the practice of law, from becoming a teacher, or engaging in other professions. Such is no longer the case under Oregon's new "violation" approach.

6. The impact on the criminal courts has been significant, for it has removed approximately one-third of the total number of cases awaiting trial from the docket, thus freeing valuable space in our courtrooms to adjudicate matters which have a serious concern to the community. By the same token, the jail population now is made up of serious felons rather than young people accused of possessing small amounts of marihuana who usually had no other criminal history.

Acceptance of the new legislation in Oregon has been overwhelmingly positive, especially among middle-aged people who have children in grade, junior high, or the high school level. An attempt by a small number of people in the State to restore criminal penalties for possession was overwhelmingly defeated.

Virtually every candidate for office and every incumbent in the State of Oregon, when questioned on the new decriminalization law, has indicated publicly that he favored such legislation and would vote legislatively to continue it.

By all measurable standards, decriminalization was a comfortable transition, signifying fair play to the individual and widespread acceptance by our electorate.

Now, any decriminalization of small quantities of marihuana must have some accompanying discretion for the police officer. Obviously, we cannot expect our police to carry around a set of balancing scales or weighing scales to determine whether or not the suspect is in violation of the fixed small quantity that perhaps will be decriminalized.

In Oregon we legislatively devised a violation program specifically for that purpose.

A little history about how decriminalization came into effect in Oregon. Prior to 1973, it was a felony. In 1971, the legislation was passed that made a misdemeanor of small amounts of marihuana, the possession thereof. In 1971, simultaneously, the legislature passed a statute which gave the arresting police officer discretion of whether or not to take into custody an individual accused of either a misdemeanor, for example, possession of marihuana, or any other innocuous class C type of felony.

It basically was a bail-oriented type of proceeding, which dispensed with the necessity of taking people to jail and making them post large amounts of money to assure freedom pretrial.

In 1972, in Lane County, Oreg., my jurisdiction, we began to use the citation program whenever possible in any possession of marihuana case, regardless of the amount. It was a very comfortable transition then when we moved, later in 1973, to decriminalize small amounts of marihuana possession.

Now, the citation program, at first, was met with some skepticism by police officials, because I suppose many of them shared the view, because giving a ticket or a citation of a person accused of marihuana

was foolhardy, because they expected these people were transient, usually unemployed, usually hippy-type persons, who obviously would not appear in court on his own promise to appear.

But, quite the contrary was found statistically. In Lane County we monitored the first 50 citations given for marihuana, once again in varying amounts. We found 100 percent of the people who were issued the citation, in fact, appeared at their designated time for arraignment. We also found something else remarkable, that approximately 62 percent of these people came in and admitted their guilt, dispensing with the trial.

Therefore, in 1973, the decriminalization of small amounts of marihuana went into effect. The citation program is still used. It is used in a fashion that when a police officer finds a person in possession of any amount of marihuana, he does not make the value sort or the distinction at the time of the exact amount. He gives that person a ticket; 8 to 10 days later, that person appears in court, thus giving the laboratory and prosecutor time to evaluate the substance, as well as the exact amount.

So, the citation program is an indispensable part of our decriminalization effort in Oregon from a very pragmatic and practical sense.

Thank you.

Senator HUGHES. Thank you very much, Mr. Horton.

First, you are the district attorney of your county in Oregon?

Mr. HORTON. Yes.

Senator HUGHES. This is an elective office?

Mr. HORTON. Yes.

Senator HUGHES. Have you stood for election since your recommendation of this law?

Mr. HORTON. No.

However, Senator, I might add that when I was running for office, one of my positions publicly was reform of the marihuana laws, expanded use of the citation program, specifically in the area of marihuana. That issue was debated fully and, I think, comprehensively.

The people knew, in my county at least, as well as all over the State, I suspect, my position on marihuana.

Senator HUGHES. Well, I endorse your position and believe it is not only healthy and wholesome, but morally right.

I asked the question out of curiosity. I believe the people will wholeheartedly endorse your position if you seek reelection to office.

I would like to ask you, have you found it easier to get convictions under this law than under the old law?

Mr. HORTON. By way of trial? We found we have not had one case go to trial, Senator, since the new law was passed under the violation section.

Senator HUGHES. In other words, you have had pleas in every instance without trial?

Mr. HORTON. We have usually had bail forfeitures.

Senator HUGHES. Well, I found that one of the problems, when I was Governor of Iowa, was getting convictions on charges of driving while intoxicated. It was exceedingly difficult in some jurisdictions.

It was almost impossible to draw a jury that would convict. We tried to get a reduction of penalties for lower blood alcohol counts, but did

not get anywhere. I thought it would result in more convictions and thereby more public pressures against public intoxication, certainly while driving.

But it is the same principle which aroused my curiosity. Has the State legislature convened since the passage of this law?

Mr. HORTON. Only in special sessions. They will convene again in January.

Senator HUGHES. Is there any public pressure to go back to the old system?

Mr. HORTON. A few months ago, some residents of eastern Oregon, primarily rural areas, attempted to place on the November general election ballot a referendum to restore criminal penalties and, as I alluded to in my previous statement, that was significantly defeated by the fact that they could not obtain sufficient signatures to place it on the ballot.

That is the only effort that I am aware of, either privately or legislatively, to restore criminal penalty.

Senator HUGHES. Has this law been in effect a full year yet?

Mr. HORTON. It has been over a year. It went into effect October 1973. The legislative research operation for the State of Oregon is in the process of compiling statistics to be made available to me, and I will certainly forward them to you.

Senator HUGHES. I would appreciate it if you would forward that statistical information to the subcommittee.

Mr. HORTON. Be assured I will.

Senator HUGHES. It will be helpful to us in the new Congress. On the basis of this year's experience, what is your recommendation to this subcommittee and, therefore, to the Congress of the United States regarding Federal law on personal consumption of small amounts of marihuana?

Mr. HORTON. That it be decriminalized.

Senator HUGHES. That it be decriminalized completely. Now, describe for me your understanding of decriminalization on a Federal basis.

Mr. HORTON. Basically, I think there need be some official recognition that discouraging the use and/or sale of marihuana is probably appropriate.

I think there need also be recognition that we need to more fairly treat the people who commit a rather innocuous offense. Consequently, I am somewhat enamored with the Oregon approach that both publicly and, I think, practically discourage its use but, at the same time, does not treat the user as a criminal.

Senator HUGHES. Mr. Horton, I would appreciate it if you could send me—I thought perhaps we already had it—a copy of the Oregon statute, if you would, and material related to it also as a matter of information for the subcommittee and the Congress.

I want to express my appreciation for your willingness to come and testify. You have had certainly no more difficulty with marihuana in your jurisdiction since the passage of the new law than before, have you?

Mr. HORTON. We have not had more difficulty.

Senator HUGHES. Have you had or undertaken any personal surveys in your own county, other than police records, as to the increased consumption that might be taking place?

Mr. HORTON. Not specifically an increased consumption, because, other than some type of poll, I do not know of any way empirically to do it.

We have obviously kept records of numbers of arrests, numbers of citations, thinks like that. It is only for our county.

Legislative research is doing that statewide.

Senator HUGHES. Thank you very much for testifying and coming before the committee.

Mr. HORTON. Thank you, Senator.

Senator HUGHES. I would like to say there is scheduled a vote on the floor of the Senate, and the Chair will have to go for the vote. It will be gone for about 10 or 15 minutes.

The subcommittee will stand in recess until the return of the Chair.

[Short recess.]

Senator HUGHES. The subcommittee is reconvened.

Mr. Richard J. Bonnie, professor of law, University of Virginia Law School.

Mr. Bonnie, welcome to the subcommittee.

You may proceed.

**STATEMENT OF RICHARD J. BONNIE, ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA LAW SCHOOL, CHARLOTTESVILLE, VA.**

Mr. BONNIE. Thank you, Mr. Chairman. It is a great pleasure to be here and share some of my observations about marihuana laws.

For the better part of the past 5 years, I have reflected on our current policy toward use of marihuana; and I have done so from many vantage points. Much of my attention has been directed to the origins of present policy, and I have recently coauthored "The Marihuana Conviction," University Press of Virginia 1974, which traces the remarkable history of marihuana prohibition in the United States.

Over the course of these 5 years, I have also formulated some very strong opinions about the wisdom of these laws, opinions shaped by my experience as a researcher, as a teacher and practitioner of criminal and constitutional law, and as associate director of the National Commission on Marihuana and Drug Abuse.

As I was preparing for my testimony today, I began to wonder what I could say that had not yet been said. I knew my basic message would be simple and easily formulated—the criminalization of possession of marihuana for personal use is totally indefensible.

I could devote the remaining time allotted to me to a recitation of the irrefutable case for decriminalization; I could do so in a wholly objective manner, pretending that the arguments for criminalization merit refutation. But this would be a charade. It has all been said so well and so often before.

Decriminalization has won extraordinary backing from most serious observers from all points on the political spectrum, including William F. Buckley and Tom Braden. It has been endorsed by a comprehensive assortment of professional organizations. The list is awesome—The Governing Board of the American Medical Association, The American Bar Association, and numerous State and local bar associations, the National Conference of Commissioners on Uniform State Laws,

the National Education Association, Consumers Union, the American Public Health Association, and the National Council of Churches.

Of central interest, of course, is the Report of the National Commission on Marihuana and Drug Abuse. The Commission was established in 1970 by the Congress for the express purpose of formulating sound policy recommendations in this emotionally charged area. After issuing authoritative findings of fact, the Commission painstakingly addressed the various social policy options.

In support of its central recommendation to decriminalize possession for personal use, the Commission documents the serious institutional and individual injuries caused by criminalization and then refutes every conceivable argument against repeal.

That was in 1972. Why, then, have not the legislatures responded? The Federal decriminalization bill introduced in this chamber by the distinguished chairman and his colleague from New York has lain unattended for 2 years, as has Congressman Koch's bill in the House. At the State level, only Oregon has removed criminal penalties for possession.

If we were to look at public statements alone, we would think the official defense of the status quo runs something like this, "Marihuana use has to be a crime because we are not yet sure how use of the drug would affect a person's physical and mental health if he were to use a lot of it."

But this is absurd. Since when is it criminal for a person to risk his health and well-being?

Consider the recent controversy regarding the automobile seatbelt buzzer and interlock system. I have no doubt that these devices decrease the risk of fatalities in traffic accidents by increasing the number of people wearing their seatbelts. Under the law in effect of 1974 models, the manufacturers were required to install these devices. Note carefully that the law did not coerce people to wear their seatbelts, and failure to wear seatbelts was not a crime. Instead, the law simply denied the consumer the choice to buy a less safe car.

Yet, Congress has just repealed the mandatory requirement that seatbelt buzzers and interlock systems be included in next year's models.

I cannot imagine more unequivocal support for the proposition that sometimes the American people and their representatives care very little about individual health and safety, and are sometimes willing to tolerate substantial risk for very little benefit. In this case, the enhancement of personal safety was apparently outweighed by the inconvenience of having to "buckle up."

Let me turn next to the problem of harmful substances used for nonmedical purposes.

We all know, of course, that long-term tobacco use is clearly harmful to individual health. Yet, the prevailing Government policy is to discourage use of the substance by informing the public of the risks and by prohibiting commercial attempts to encourage smoking. At the same time, in the context of this discouragement policy, the Government has not curtailed the availability of these substances, relying instead on personal choice.

Obviously, the same is true for the present social policy toward alcohol. And this is so despite the well-documented effects of chronic

alcohol use on individual health and the equally clearcut harms to the public health and safety flowing from acute or chronic alcohol intoxication.

My message then comes into clearer focus. The issue on the legislative agendas in every State capitol is not a health issue. Nor is it a moral issue. The intoxicant property of marihuana cannot honestly be distinguished from that of alcohol in terms of this society's moral and social acceptance of recreational drug use.

The issue is not the properties of marihuana—the ethics or effects of its use. No, the only issue is the wisdom of applying the criminal sanction to individuals who choose to use the drug despite the Government's preference to the contrary and despite the Government's efforts to suppress availability.

Throughout my testimony, I will assume that marihuana use poses serious risks to individual health and welfare if the drug is consumed in large doses or is used frequently over a long period.

I will assume, in short, that the risks are roughly equivalent to the risks associated with alcohol use, even though it is quite clear that this overstates the risks of marihuana use.

And I will assume further that Government has correctly decided to discourage any use of the drug in order to minimize the types of use which present these risks, although even this assumption may be questioned.

Even with these assumptions, the criminalization of the user is indefensible. Little social benefit is achieved by invoking or threatening to invoke the sanction. Yet, the costs of doing so are overwhelming. The question is not even a close one.

If the case is as persuasive as I have indicated, why is injustice perpetuated?

Again I ask, why have not the legislatures acted?

As I have turned this question over in my mind, I have begun to suspect that too many legislators are not sufficiently aware of limits of the criminal sanction. So, at the risk of repeating what has been said so well before, let me review some of the purposes and consequences of the criminalization of marihuana use.

Let me first consider the various purposes which can be served by criminal sanctions or by the criminal process. In this way we can isolate the benefits of criminalization which might be offered to offset its substantial "costs" as applied to marihuana use.

In the past, marihuana use was identified with immorality, criminality, and degeneracy, and the possession offense was a convenient device for punishing the marihuana user for his entire deviant lifestyle. But, marihuana users are no longer "outsiders," being drawn instead from the social mainstream.

For this reason, a desire to assist, not to punish, now characterizes popular and official attitudes toward the contemporary marihuana user. The public views the marihuana user for what he generally is, a young, otherwise law-abiding citizen. The prevailing motivation is to get him to stop using marihuana, not to punish him for having done it. To the extent that the retributive instinct supports the criminal sanction, it is totally inapposite to marihuana use.

The criminal process is sometimes used to identify particular offenders in need of treatment and to exert leverage for this purpose.

This is the primary rationale for the heroin possession offense, and for many sex offenses, as well, since it is presumed that most, if not all, persons who engage in these behaviors are in need of attention. The criminal offense is the entry mechanism.

However, most marihuana users and marihuana offenders as well are not in need of treatment in any sense and are, in fact, indistinguishable from their peers in all respects other than their marihuana use. They are not sick. The vast majority of marihuana users do not use the drug heavily and do not use any other illicit drug.

Thus, even if a possession offense is legitimately used as a leverage device in other contexts, this rationale is simply not applicable to possession of marihuana.

In some contexts, a behavior may be criminalized in part to give society an objective basis for confining a person who is perceived to be dangerous to person or property. Again, this rationale is totally inapplicable to marihuana use.

We come, then, to the only remaining rationale for a criminal prohibition—deterrence. The policymaking bodies have determined that citizens should be discouraged from using marihuana and have sought to preclude the drug's availability. Through its deterrent function, the criminal prohibition of possession may be regarded as a necessary implementation of this discouragement effort.

Despite its central role in our criminal law, the deterrent process is ill-understood and underresearched. The otherwise difficult task of determining why people believe in a given way is compounded by the need to isolate and define the different components of the legal threat. For present purposes, however, several propositions can be enunciated with some confidence.

1. The legal threat plays a greater role in shaping some types of behavior than other types. From this perspective, marihuana use is probably less deterrable than conduct which is a means to some other end—for example, forgery—and which is more visible and susceptible to detection.

2. Adolescents and young adults are less deterrable by legal threats than their elders. Since young people predominate among marihuana users, one would expect the overall deterrent process to be less effective.

3. The deterrent process plays little role in determining the frequency or amount of use. Whether a user will use heavily is instead determined by a wide variety of nonlegal variables, particularly psychological ones, as well as availability and price of the drug. The possession offense is thus inapposite to the Government's major aim—to minimize heavy use.

4. A corollary is that the possession offense does deter some people from experimenting with the drug—initial use—and may also deter some of those who have experimented with the drug from continuing to use it after the initial trial. This is not to say, however, that all of those who have not yet experimented or who have tried the drug and not continued have refrained from use because they were deterred by the law.

Quite the contrary is true. A large proportion of persons who have not yet used marihuana profess that they would not use the drug even if it were legitimately available, and offer health-related or

ethical reasons. This may be true of 75 percent to 90 percent of those who have not yet tried the drug. For them, the illegality of the drug and the criminalization of use have not played the key role in their failure to experiment. Similarly, a large proportion—perhaps 50 percent—of the persons who have chosen not to continue use after their initial experimentation profess that they would not become “users” even if the drug were legitimately available. “Loss of interest” is the most frequent explanation.

5. The range of persons who could be affected one way or another by the legal status of possession is relatively narrow—about one-fifth of those who have not yet experimented and perhaps a third of those who have experimented but forsaken use of the drug.

6. To the extent that the deterrent value of the possession offense depends on the credibility of the threat, the law must be enforced—violations must be detected and sanctions must be applied to violators. But society would pay a heavy price to maintain the credibility of this threat at a meaningful level.

Indeed, given the private nature of the behavior, the fourth amendment precludes a highly credible threat of detection. Moreover, society has also chosen to sacrifice the credibility of the threat at every phase of its application in order to reduce the costs.

7. To the extent that the mere existence of a criminal sanction, credible or not, functions as a deterrent, society can reap its benefit at very little cost simply by leaving the law on the books and failing to enforce it altogether—through desuetude.

This approach is in effect for adultery, of course, and has been endorsed editorially by the Los Angeles Times in opposition to repeal of the criminal penalties against marihuana use. The only loser, in such an event, of course, is the rule of law.

These observations suggest that repeal of the criminal sanction may result in a slight increase in experimentation by nonusers and a slight increase in the proportion of experimenters who become users. The data reported yesterday by Dr. Thomas Bryant of the Drug Abuse Council support this conclusion. But, two caveats are in order even on this narrow point.

First, this prediction is in comparison to the level of use under current sanctioning conditions. However, the levels of experimentation and use will continue to increase to some extent, as the level of enforcement—and the credibility of the threat—continues to drop.

Second, the substitution of a civil sanction may result in greater deterrence, by virtue of its greater probability of application than a sporadically applied criminal sanction.

Now, we must turn to the price this society currently pays for this ounce of deterrence. I will consider the impact of marihuana criminalization on the Nation's legal institutions, on the availability of law enforcement resources, and on the nearly half million individuals apprehended for violating the possession laws.

The most compelling reason for modification or elimination of marihuana prohibition lies in its disastrous impact on the law as an institution. In this century, American society has turned to law, particularly the criminal law, to serve a multitude of functions. An attitude has evolved that any behavior offending a prevailing sentiment should be punishable by law.

As a result, the legal system has been overextended until its value as a symbol has been magnified beyond its capacity to absorb disobedience.

When the law is so readily employed as a symbol of disapproval, it will be easily wielded as a symbol of oppression. When a society so frequently relies on the legal system to control behavior, it will inevitably debase and weaken the influence of those institutions with the greatest capacity to mold desirable conduct.

The marihuana laws manifest the crisis of law that this society now faces. No criminal law can be fairly or effectively enforced unless it commands a popular consensus. Yet, the consensus which supported the marihuana laws from 1915 to 1965 evaporated as soon as the prohibition encountered the rigors of public dialogue.

This is not to say that prohibition lacks the support of a popular majority. The point is that utility or propriety of a criminal law is not measured in votes but in shared values.

Price controls and other regulatory devices derive their legitimacy from the support of a majority, however transient; but outright criminal prohibitions, particularly those involving private behavior, derive their legitimacy from congruence with more enduring normative precepts.

The fact that one-third of the voting population of a major State actually registered electoral opposition to marihuana prohibition definitively establishes the evaporation of the marihuana consensus.

All other evidence establishes that uncertainty dominates the vast center of public opinion, while an increasingly smaller fraction of the public affirmatively supports the current prohibition.

Undoubtedly, marihuana prohibition does not command the minimum amount of public support necessary to sustain and reinforce a criminal prohibition.

As a result, the law suffers disobedience and ridicule. More than 26 million Americans have used marihuana and perhaps 13 million continue to use the drug. In this context the criminal justice system operates unfairly and without confidence. And the moral force of the criminal law wanes with each undetected or unenforced violation.

Criminal justice simply cannot be achieved when conviction of a crime is perceived to be an injustice not only by the defendant, but by large segments of the public and by the participants in the system itself.

Our society normally employs the criminal justice system to apprehend and punish those persons who have committed certain classes of acts which the general society believes to be deserving of punishment. We then utilize discretion at various points in the system to mitigate the implications of this presumptive judgment, in the few individual cases in which it is not warranted. Thus, depending on the culpability of the individual offender, we may forego prosecution or avoid a punitive sentence.

Where the marihuana laws are concerned, however, the presumption has become precisely the opposite. Since the larger society generally does not view its marihuana offenders, who are overwhelmingly young and law abiding, as morally culpable and deserving of punishment, the effort is now made to select from the near half million persons

who are arrested each year those few who should continue to be processed through the system.

Our police, our prosecutors, and our courts—sworn to uphold and enforce the laws of this Nation—have been confronted with a population of lawbreakers alien to the ordinary process of the criminal justice system. Thus, the system responds by contorting itself.

The discretion ordinarily exercised—whether or not to arrest, whether or not to prosecute, whether or not to convict, and whether or not to incarcerate—has been employed to determine which of these unlikely defendants should remain in the system; and as the need for discretion increases, so does the likelihood of selectivity and inequality.

The punitive instinct simply is not there. In most cases effort is directed not at securing the symbol of wrongdoing—the conviction—but, instead, to avoid stigmatizing the youthful or otherwise unlikely offender with a criminal record.

The criminalization of marihuana consumption has severely wounded the legal system, has eroded the public confidence in criminal justice, and has made a mockery of respect for law.

Other costs which can be identified with regard to the criminal sanction are the diversion of law enforcement resources, which have been mentioned by previous witnesses, and also the impact on the individual violators who are brought into the system. And I would like to devote a few minutes to these individual costs.

Persons who are apprehended but not convicted for marihuana violations are nonetheless the subjects of arrest records. The actual and potential threats to the individual's economic and social interests posed by arrest records have been well documented. These injuries stem from arrest records even when the arrest is not followed by conviction. The question is, thus, squarely presented whether this backdoor punishment—the sanction of arrest, and that applies to 425,000 people a year now—is justified in light of prosecutorial and judicial unwillingness to apply the sanctions of conviction and incarceration.

Then we turn to those that are convicted—perhaps 200,000 people last year, although we don't have the figures. Though convicted, most of these persons are spared the full impact of the criminal law. Neither the legislators nor the judges are anxious to punish the offender, or to impose harsh sanctions, so probation (with or without verdict) suspended sentences and fines are the normal dispositions, and expungement of the conviction is often available as well.

Nevertheless, despite these developments, large numbers of offenders are stigmatized by the record of conviction and some judges even persist in sentencing marihuana offenders to jail.

Conviction of a crime is a potent statement of social disapproval. Although the meaning of a "conviction" has been diluted by its application to behavior like marihuana use, serious social and economic disabilities continue to attach as if the criminal code were coextensive with serious wrongdoing, as it once was. Many potential employers do not stop to ask what offense an applicant has been convicted of; the label of "criminal"—that he has been convicted at all—is enough to stop inquiry altogether.

The public and its representatives must be educated about the meaning of criminalization. Too often the current laws, the ones now on the books, have been defended on the ground that the legislators have already reduced the penalties from a felony to a misdemeanor as if this statement rebutted the arguments for decriminalization.

A misdemeanor is still a crime. The consequences of a misdemeanor conviction are no less real because they are not as serious as those attending conviction for a felony.

In my statement I have included some of the disabilities that are imposed by virtue of conviction, by law, and as a matter of social practice.

In sum, the legislatures have apparently found it convenient to pass the buck to the police, prosecutors, and courts to ameliorate the consequences of criminalization. As a result, the police respond unsystematically and inconsistently; the prosecutors decline to prosecute, sometimes with screening guidelines, such as we have seen in the District of Columbia by U.S. Attorney Silbert, but most of the time without them; and the judges respond accordingly to their own views of the offense and of their role as judges. The real victim of legislative buckpassing is the rule of law. Police, prosecutors, and courts roam at large in a sea of discretion because the public does not want to punish, but the legislature does not want to repeal.

Each legislator in every State should ask himself if he would vote today to make possession of marihuana a criminal offense if there were no criminal sanction now in effect. If the issue is thus put, I am sure the answer is "no." The public simply would not stand for it.

If use of marihuana—a previously unknown drug—had suddenly appeared on the American scene in 1970 among the same population and on the same scale it has now achieved, prohibition would not even be considered.

The drug is used privately as a social drug, with shared ritual and meaning, among a broad spectrum of the American teenage and young adult populations. For the most part, use of the drug has not been associated with visible antisocial behavior. If marihuana had no past, the issue would be whether some form of Government regulation would prove beneficial to the users or to the public coffers. And even then the using population would insist that any restrictive action be tailored narrowly to achieve a specific governmental purpose.

The answer should be no different when the question is whether or not to repeal the prohibition now on the books. Indeed, the decision to me is made easier by the fact that the costs of criminal sanction are so well documented.

History has woven a web around the use of marihuana; public and legislative reluctance to modify or eliminate marihuana prohibition in 1974 is based entirely on attitudes molded by two generations of illegality.

Marihuana use in the sixties confronted a system of criminal prohibition which carried its own meaning as defined in another time. Decades of classification as a narcotic, the presumptive immorality attaching to felonious conduct, and the implication of addiction, crime, and insanity had instilled in the public consciousness a fear of marihuana unjustified by the demonstrable effects of its use.

That fear, and its codification by law, now bars the way to a much needed reform.

Thank you.

Senator HUGHES. Thank you very much, Mr. Bonnie.

I am at a loss even for questions to ask you; your statement is complete in itself.

Perhaps the best thing I could do to reinforce your statement is to ask you a little more clearly to define your own relationship with the National Marihuana Commission and your own personal experience from which you draw your recommendations in this statement.

Mr. BONNIE. Yes, sir. As the statement indicates, I was associate director of the Commission; and in that role I think it is fair to state that I was basically in charge of all the legal research done for and by the Commission. This included empirical work concerning what the law is and how it is actually being enforced, studies of the criminal law and limits of the criminal sanction, and historical work regarding the legislative responses. Finally, I was also primarily responsible for the formulation of alternative social policies and the legal alternatives for implementing social policy.

Senator HUGHES. Prior to that time did you have any relationship to this area of law?

Mr. BONNIE. As a practitioner of criminal law and as a teacher of criminal law and constitutional law, I did some criminal defense work in this area. I also had done some basic historical research as I have indicated.

Senator HUGHES. You are still teaching law at the University of Virginia, is that correct?

Mr. BONNIE. Yes, that is correct.

Senator HUGHES. Could you give me, then, just in conclusion, a final concise statement of your recommendation to the Congress of the United States based on the content of your statement here today?

Mr. BONNIE. My recommendation for Federal law is that the Congress of the United States pass the Hughes-Javits bill to decriminalize the private possession and use of marihuana and casual nonprofit distribution.

In addition, I would recommend that the State legislatures also adopt similar legislation for State law. I think it is important to emphasize that the Federal Government does not any longer enforce possession laws and that the social costs of these offenses are incurred entirely at the State level.

It is extremely important that the State legislatures respond as well.

Senator HUGHES. Well, thank you very much, Mr. Bonnie, for your patience and your testimony this morning. It is very helpful to us.

Mr. BONNIE. Thank you.

[The prepared statement of Mr. Bonnie with attachments follows:]

Statement  
of  
Richard J. Bonnie  
Submitted to the  
Subcommittee on Alcoholism and Narcotics  
of the  
Committee on Labor and Public Welfare  
United States Senate

November 20, 1974

Mr. Chairman and members of the Committee, it is a great pleasure to be here today and share with you some of my observations about the marihuana laws.

For the better part of the past 5 years, I have reflected on our current policy toward use of marihuana; and I have done so from many vantage points. Much of my attention has been directed to the origins of present policy, and I have recently co-authored The Marihuana Conviction (University Press of Virginia 1974) which traces the remarkable history of marihuana prohibition in the United States. Over the course of these five years I have also formulated some very strong opinions about the wisdom of these laws, opinions shaped by my experience as a researcher, as a teacher and practitioner of criminal and constitutional law, and as Associate Director of the National Commission on Marihuana and Drug Abuse.

As I was preparing for my testimony today, I began to wonder what I could say that had not yet been said. I knew my basic message would be simple and easily formulated -- the criminalization of possession of marihuana for personal use <sup>is</sup> ~~is~~ <sup>totally</sup> indefensible.

I could devote the remaining time allotted me to a recitation of the irrefutable case for decriminalization; I could do so in a wholly objective manner, pretending that the arguments for criminaliza-

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1. Hereafter, "possession" will refer to possession of small amounts for personal use and to casual, non-profit distribution of small amounts. The two activities are functionally equivalent, as the Commission, the Congress and many other legislatures have recognized. See Marihuana: A Signal of Misunderstanding at pages 157-58.

tion merit refutation. But this would be a charade. It's all been said so well and so often before.

Decriminalization has won extraordinary backing from most serious observers from all points on the political spectrum, including William F. Buckley and Tom Braden. It has been endorsed by a comprehensive assortment of professional organizations. The list is awesome: <sup>(Governing Board of the)</sup> The American Medical Association, The American Bar Association and numerous state and local bar associations, the National Conference of Commissioners on Uniform State Laws, the National Education Association, Consumer's Union, the American Public Health Association, and the National Council of Churches.

Of central interest, of course, is The Report of the National Commission on Marihuana and Drug Abuse. The Commission was established in 1970 by the Congress for the express purpose of formulating sound policy recommendations in this emotionally charged area. After issuing authoritative findings of fact, the Commission painstakingly addressed the various social policy options. In support of its central recommendation to decriminalize possession for personal use, the Commission documents the serious institutional and individual injuries caused by criminalization and then refutes every conceivable argument against repeal.<sup>2</sup>

That was in 1972. Why, then, haven't the legislatures responded? The federal decriminalization bill introduced in this

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2. Marihuana: A Signal of Misunderstanding, pages 138-146; 161-167.

chamber by the distinguished Chairman and his colleague from New York has lain unattended for 2 years, as has Congressman Koch's bill in the House. At the state level, only Oregon has removed criminal penalties for possession.

If we were to look at public statements alone, we would think the official defense of the status quo runs something like this: "Marihuana use has to be a crime because we're not yet sure how use of the drug would affect a person's physical and mental health if he were to use a lot of it."

But this is absurd. Since when is it criminal for a person to risk his health and well-being? Consider the recent controversy regarding the automobile seatbelt buzzer and interlock system. I have no doubt that these devices decrease the risk of fatalities in traffic accidents by increasing the number of people wearing their seatbelts. Under the law in effect for 1974 models, the manufacturers were required to install these devices. Note carefully that the law did not coerce people to wear their seatbelts, and failure to wear seatbelts was not a crime. Instead, the law simply denied the consumer the choice to buy a less safe car.

Yet, Congress has just repealed the mandatory requirement that seatbelt buzzers and interlock systems be included in next year's models. I can not imagine more unequivocal support for the proposition that sometimes the American people and their representatives care very little about individual health and safety and are sometimes willing to tolerate substantial risk for very little benefit. In this case the enhancement of personal safety was apparently outweighed by the inconvenience of having to "buckle up."

Let me turn next to the problem of harmful substances used for non-medical purposes. We all know of course that long-term

tobacco use is clearly harmful to individual health; yet the prevailing governmental policy is to discourage use of the substance by informing the public of the risks and by prohibiting commercial attempts to encourage smoking. At the same time, in the context of this discouragement policy, the government has not curtailed the availability of ~~these~~ <sup>This</sup> substances, relying instead on personal choice.

Obviously the same is true for the present social policy toward alcohol. And this is so despite the well-documented effects of chronic alcohol use on individual health and the equally clearcut harms to the public health and safety flowing from acute or chronic alcohol intoxication.

My message then comes into clearer focus. The issue on the legislative agendas in every state capital is not a health issue. Nor is it a moral issue. The intoxicant property of marihuana cannot honestly be distinguished from that of alcohol in terms of this society's moral and social acceptance of recreational drug use.

The issue is not the properties of marihuana -- the ethics or effects of its use. No, the only issue is the wisdom of applying the criminal sanction to individuals who choose to use the drug despite the government's preference to the contrary<sup>3</sup> and despite

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3. In his recent statements on this matter, Dr. DuPont has reaffirmed the distinction between the health-related issues and the criminal law issues. In the fourth Marihuana and Health Report, the federal government has continued its prudent effort to disseminate up-to-date information about the effects of marihuana on health and behavior. Continuing uncertainty about these effects and the suggestion that there may be serious risks from heavy use clearly justify Dr. DuPont's efforts to discourage initiation and continuation of use. But this speculation about the potentially harmful effects of heavy marihuana use on individual health must not be allowed to obscure the well-documented harmful effect of the marihuana laws on the public well-being.

the government's efforts to suppress availability.<sup>4</sup>

Throughout my testimony I will assume that marihuana use poses serious risks to individual health and welfare if the drug is consumed in large doses or is used frequently over a long period. I will assume, in short, that the risks are roughly equivalent to the risks associated with alcohol use.<sup>5</sup> And I will assume further that government has correctly decided to discourage any use of the drug in order to minimize the types of use which present these risks.<sup>6</sup>

Even with these assumptions, the criminalization of the user is indefensible. Little social benefit is achieved by invoking or threatening to invoke the sanction; yet the costs of doing so are overwhelming. The question isn't even a close one.

If the case is as persuasive as I have indicated, why is injustice perpetuated? Again, I ask: Why haven't the legislatures acted? As I have turned this question over in my mind, I have begun

4. The only debatable issue is whether marihuana ought to be legitimately available in a regulatory system for use as an intoxicant or whether, instead, the prohibition of cultivation and distribution outside medical channels should remain in force. My own opinion is that a regulatory approach is, over the long term, a preferable implementation of a discouragement policy. However, it is apparent that serious consideration of this approach is premature. The immediate priority is decriminalization of possession. Once this has been done, the Congress and the state legislatures should initiate serious investigations into the alternative regulatory approaches. See generally The Marihuana Conviction, pages 299-304.

5. This is apparently not the case since alcohol is demonstrably more harmful. See Drug Use in America: Problem in Perspective, pages 116-117, for the comparative effects of psychoactive substances.

6. This is not necessarily an obvious conclusion. The connection between mere use and drug-related risk may not be close enough to warrant a discouragement policy toward recreational use of marihuana. See Marihuana: A Signal of Misunderstanding, pages 131-135; see also Drug Use in America: Problem in Perspective, page 147, 205-208. In this connection, marihuana should be contrasted with substances having a greater reinforcement potential, such as tobacco cigarettes on one extreme or heroin on the other.

to suspect that too many legislators are not sufficiently aware of limits of the criminal sanction. So, at the risk of repeating what has been said so well before, let me review some of the purposes and consequences of the criminalization of marihuana use.

#### Purposes of Criminalization

Let me first consider the various purposes which can be served by criminal sanctions or by the criminal process. In this way we can isolate the benefits of criminalization which might be offered to offset its substantial "costs" as applied to marihuana use.

#### Punishment and Immorality

In the past, marihuana use was identified with immorality, criminality and degeneracy, and the possession offense was a convenient device for punishing the marihuana user for his entire deviant lifestyle. But marihuana users are no longer "outsiders," being drawn instead from the social mainstream.

For this reason, a desire to assist, not to punish, now characterizes popular and official attitudes toward the contemporary marihuana user. The public views the marihuana user for what he generally is, a young, otherwise law-abiding citizen. The prevailing motivation is to get him to stop using marihuana, not to punish him for having done it. To the extent that the retributive instinct supports the criminal sanction, it is totally inapposite to marihuana use.

#### Therapy and Leverage

The criminal process is sometimes used to identify particular offenders in need of treatment and to exert leverage for this purpose.

This is the primary rationale for the heroin possession offense, and for many sex offenses as well since it is presumed that most (not all) persons who engage in these behaviors are in need of attention. The criminal offense is the entry mechanism.<sup>7</sup>

However, most marihuana users and marihuana offenders as well, are not in need of treatment in any sense and are in fact indistinguishable from their peers in all respects other than their marihuana use. The vast majority of marihuana users do not use the drug heavily and do not use any other illicit drug. Thus, even if a possession offense is legitimately used as a leverage device in other contexts, this rationale is simply not applicable to possession of marihuana.

#### Control and Dangerousness

In some contexts, a behavior may be criminalized in part to give society an objective basis for confining a person who is perceived to be dangerous to person or property. Again, this rationale is totally inapplicable to marihuana use.

#### Deterrence and Discouragement

We come then to the only remaining rationale for a criminal prohibition: the policy-making bodies have determined that citizens

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7. See generally the Uniform Drug Dependence Treatment and Rehabilitation Act, especially § 412. See also Drug Use in America: Problem in Perspective, pages 243-277; Bonnie and Sonnenreich, Legal Aspects of Drug Dependence (CRC, in press 1974).

should be discouraged from using marihuana and have sought to preclude the drug's availability. Through its deterrent function, the criminal prohibition of possession may be regarded as a necessary implementation of this discouragement effort.

Despite its central role in our criminal law, the deterrent process is ill-understood and under-researched.<sup>8</sup> The otherwise difficult task of determining why people behave in a given way is compounded by the need to isolate and define the different components of the legal threat. For present purposes, however, several propositions can be enunciated with some confidence.

1. The legal threat plays a greater role in shaping some types of behavior than other types. From this perspective, marihuana use is probably less deterrable than conduct which is a means to some other end -- e.g. forgery -- and which is more visible and susceptible to detection.

2. Adolescents and young adults are less deterrable by legal threats than their elders. Since young people predominate among marihuana users, one would expect the overall deterrent process to be less effective.

3. The deterrent process plays little role in determining the frequency or amount of use. Whether a user will use heavily is instead determined by a wide variety of non-legal variables, particularly psychological ones, as well as availability and price of the drug. The possession offense is thus inapposite to the government's major aim -- to minimize heavy use.

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8. See generally, Zimring and Hawkins, Deterrence: The Legal Threat in Crime Control (1973).

4. A corollary is that the possession offense does deter some people from experimenting with the drug (initial use) and may also deter some of those who have experimented with the drug from continuing to use it after the initial trial. This is not to say however that all of those who have not yet experimented or who have tried the drug and not continued have refrained from use because they were deterred by the law.

Quite the contrary is true. A large proportion of persons who have not yet used marihuana profess that they would not use the drug even if it were legitimately available, and offer health-related or ethical reasons. This may be true of 75% to 90% of those who have not yet tried the drug; for them, the illegality of the drug and the criminalization of use have not played the key role in their failure to experiment. Similarly, a large proportion (perhaps 50%) of the persons who have chosen not to continue use after their initial experimentation profess that they would not become "users" even if the drug were legitimately available. "Loss of interest" is the most frequent explanation.

5. The range of persons who could be affected one way or another by the legal status of possession is relatively narrow-- about one fifth of those who have not yet experimented and perhaps a third of those who have experimented but forsaken use of the drug.

6. To the extent that the deterrent value of the possession offense depends on the credibility of the threat, the law must be enforced -- violations must be detected and sanctions must be applied to violators. But society would pay a heavy price to main-

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tain the credibility of this threat at a meaningful level. Indeed, given the private nature of the behavior, the Fourth Amendment precludes a highly credible threat of detection.<sup>9</sup> Moreover, society has also chosen to sacrifice the credibility of the threat at every phase of its application in order to reduce the costs.<sup>10</sup>

7. To the extent that the mere existence of a criminal sanction,<sup>11</sup> credible or not, functions as a deterrent, society can reap its benefit at very little cost simply by leaving the law on the books and failing to enforce it altogether -- through desuetude. This approach is in effect for adultery of course; and has been endorsed editorially by the Los Angeles Times in opposition to repeal of the criminal penalties against marihuana use.<sup>12</sup> The only loser, in such an event, of course, is the rule of law.

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9. See Heller, A Conflict of Laws; The Drug Possession Offense and the Fourth Amendment; 26 Okla. L. Rev. 317 (1973).

10. See the discussion at pages 12-14 infra.

11. That is, the mere declaration of criminality may make the difference. Scholars refer to this possibility as the "moralizing" or symbolic effect of the criminal sanction. This phenomenon probably doesn't play much of a role for marihuana use given changing public attitudes toward use and given the predominant role of social factors in determining whether an individual will use the drug.

12. See The Marihuana Conviction, page 282-284. Compare the ABA Standards on Criminal Justice which legitimize police and prosecutorial discretion not to enforce laws like the marihuana possession offense. Standards on the Urban Police Functions §§ 3.1-3.4, 4.1-4.3; Standards on the Prosecution Function §§ 3.4, 3.9.

These observations suggest that repeal of the criminal sanction may result in a slight increase in experimentation by non-users and a slight increase in the proportion of experimenters who become users. But two caveats are in order even on this narrow point. First, this prediction is in comparison to the level of use under current sanctioning conditions; however the levels of experimentation and use will continue to increase to some extent in any event as the level of enforcement (and the credibility of the threat) continues to drop. Second, the substitution of a civil sanction may result in greater deterrence, by virtue of its greater probability of application, than a sporadically applied criminal sanction.

#### The Costs of Criminalization

Now we must turn to the price this society currently pays for this ounce of deterrence. I will consider the impact of marihuana criminalization on the nation's legal institutions, on the availability of law enforcement resources and on the nearly half-million individuals apprehended for violating the possession laws.

#### Impact on Legal Institutions

The most compelling reason for modification or elimination of marihuana prohibition lies in its disastrous impact on the law as an institution. In this century American society has turned to law, particularly the criminal law, to serve a multitude of functions. An attitude has evolved that any behavior offending a prevailing sentiment should be punishable by law. As a result, the legal system has been overextended until its value as a symbol has been

magnified beyond its capacity to absorb disobedience. When the law is so readily employed as a symbol of disapproval, it will be easily wielded as a symbol of oppression. When a society so frequently relies on the legal system to control behavior, it will inevitably debase and weaken the influence of those institutions with the greatest capacity to mold desirable conduct.

The marihuana laws manifest the crisis of law that this society now faces. No criminal law can be fairly or effectively enforced unless it commands a popular consensus. Yet, the consensus which supported the marihuana laws from 1915 to 1965 evaporated as soon as the prohibition encountered the rigors of public dialogue. This is not to say that prohibition lacks the support of a popular majority. The point is that utility or propriety of a criminal law is not measured in votes but in shared values. Price controls and other regulatory devices derive their legitimacy from the support of a majority, however transient; but outright criminal prohibitions, particularly those involving private behavior, derive their legitimacy from congruence with more enduring normative precepts. The fact that one-third of the voting population of a major state actually registered electoral opposition to marihuana prohibition definitively establishes the evaporation of the marihuana consensus.<sup>13</sup> All other evidence establishes that uncertainty dominates the vast center of public opinion, while an increasingly smaller fraction of the public affirmatively supports the current prohibition. Undoubtedly, marihuana prohibition does not command the minimum amount of public support necessary to sustain and reinforce a criminal prohibition.

As a result the law suffers disobedience and ridicule.

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13. See the Marihuana Conviction, page 281.

More than 26 million Americans have used marihuana and perhaps 13 million continue to use the drug. In this context the criminal justice system operates unfairly and without confidence. And the moral force of the criminal law wanes with each undetected or unenforced violation. Criminal justice simply cannot be achieved when conviction of a crime is perceived to be an injustice not only by the defendant but by large segments of the public and by the participants in the system itself.

Our society normally employs the criminal justice system to apprehend and punish those persons who have committed certain classes of acts which the general society believes to be deserving of punishment. We then utilize discretion at various points in the system to mitigate the implications of this presumptive judgment. Thus, depending on the culpability of the individual offender, we may forego prosecution or avoid a punitive sentence. Where the marihuana laws are concerned, however, the presumption has become precisely the opposite. Since the larger society generally does not view its marihuana offenders, who are overwhelmingly young, as morally culpable and deserving of punishment, the effort is now made to select from the near half-million persons who are arrested each year, those few who should continue to be processed through the system.

Our police, our prosecutors, and our courts -- sworn to uphold and enforce the laws of this nation -- have been confronted with a population of lawbreakers alien to the ordinary process of the criminal justice system. Thus, the system has responded by contorting itself. The discretion ordinarily exercised -- whether or not to arrest, whether or not to prosecute, whether or not to convict, and whether or not to incarcerate -- has been employed to

determine which of these unlikely defendants should remain in the system: and as the need for discretion increases, so does the likelihood of selectivity and inequality.

The punitive instinct simply is not there. In most cases effort is directed not at securing the symbol of wrongdoing -- the conviction -- but instead to avoid stigmatizing the youthful or otherwise unlikely offender with a criminal record.

The criminalization of marihuana consumption has severely wounded the legal system, has eroded the public confidence in criminal justice, and has made a mockery of respect for law.

#### Diversion of Criminal Justice Resources

The police energies consumed by the more than 1000 marihuana arrests which they make each day are diverted from detection and apprehension of persons who have committed serious crimes against person or property. Many marihuana arrestees (more than 50%) are apparently dismissed at some point in the criminal process because of prosecutorial or judicial unwillingness to apply the criminal sanction; in these situations, criminal justice resources have been expended for no apparent purpose. Estimates of misallocated resources run as high as 600 million dollars per year. In this connection it is not surprising that spokesmen for police, prosecution, and judicial organizations are increasingly registering official support for repeal of the possession penalty.

I might also observe that substantial attention has been directed in recent months to two matters of criminal law with substantial public consequence. On the one hand, we apparently are witnessing additional increases in the incidence of street crime, and our present economic difficulties can only exacerbate the situation still more. On the other hand increasing public

anitpathy has been directed to the social and economic devastation -- and even political corruption -- engendered by white collar crime. The Attorney General has recently indicated that this administration will pull out the stops in its war on white collar crime. Against this background, the application of criminal justice resources to the problem of marihuana use and possession is simply ludicrous.

Impact on Individual Violators

Persons apprehended but not convicted for marihuana violations are nonetheless the subjects of arrest records. The actual and potential threats to the individual's economic and social interests posed by arrest records have been well documented.<sup>14</sup> The question is thus squarely presented whether this backdoor punishment -- the sanction of arrest -- is justified in light of prosecutorial and judicial unwillingness to apply the sanctions of conviction and incarceration.

Among those convicted, most individuals are spared the full impact of the criminal law. Neither the legislators nor the judges are anxious to punish the offender or to impose harsh sanctions. So probation, with or without verdict, suspended sentences and fines are the normal dispositions. And expungement of the conviction is often available.

Nonetheless, despite these developments, large numbers of offenders are stigmatized by the record of conviction, and some judges even persist in sentencing marihuana offenders to jail.

Conviction of a crime is a potent statement of social disapproval. Although the meaning of a "conviction" has been diluted by its application to behavior like marihuana use, serious social and economic disabilities continue to attach as if the criminal code were coextensive with serious wrongdoing. Many potential employers do not stop to ask what offense an applicant has been convicted of; the label of criminal is enough to stop inquiry altogether.

Here I would note the need to educate the public and their representatives about the meaning of criminalization. Too often

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14. See, e.g., *Menard v. Mitchell*, 430 F2d 486 (D.C. Cir. 1970); *Menard v. Saxbe*, 498 F2d 1017 (D.C. Cir. 1974).

the current laws have been defended on the ground that the legislators have already reduced the penalties from a felony to a misdemeanor as if this statement rebutted the arguments for decriminalization.

A misdemeanor is still a crime. The consequences of a misdemeanor conviction are no less real because they are not as serious as those attending conviction for a felony.

Consider the possible consequences of a misdemeanor conviction which arise by law

- up to one year in jail in the discretion of the sentencing court
- loss of, or ineligibility for professional licenses (e.g. medicine, dentistry, law)
- loss of, or ineligibility for industrial or other occupational licenses (e.g. nursing, barbering, private investigation, notary public, insurance adjuster)
- loss of, or ineligibility for public employment<sup>15</sup>

Consider further the empirically demonstrated consequences of criminal conviction in the private sector: Many employers will not even consider applicants with a prior criminal record; and even if there is no per se exclusion, most employers systematically hire persons without criminal records in preference to persons with such records.

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15. Half the state statutes bar from public employment persons with criminal records of one kind or another; the other half authorize the administrators in their discretion to deny employment to persons with prior criminal records.

Some legislators of course have recognized the adverse consequences of a criminal conviction and concluded that marihuana users don't really deserve that kind of disability. So they have adopted various techniques for avoiding the implications of the decision to criminalize: expungement of the record of conviction, diversion in lieu of prosecution or entry of conviction, probation without verdict and similar devices which avoid official records of guilt.

#### Time to Face the Issue

The legislatures have apparently found it convenient to pass the buck to the police, prosecutors and courts to ameliorate the consequences of criminalization. The police respond unsystematically and inconsistently; the prosecutors decline to prosecute, sometimes with screening guidelines, most of time without them; and the judges respond according to their own views of the offense and of their role as judges. The real victim of legislative buck-passing is the rule of law. Police, prosecutors and courts roam at large in a sea of discretion because the public doesn't want to punish but the legislature doesn't want to repeal.

Each legislator in every state should ask himself if he would vote to make possession of marihuana a criminal offense if there were no criminal sanction now in effect. If the issue is thus put, I am sure the answer is "no." The public would not stand for it.

If use of marihuana -- a previously unknown drug -- had suddenly appeared on the American scene in 1970 among the same population and on the same scale it has now achieved, prohibition

would not even be considered. The drug is used privately as a social drug, with shared ritual and meaning, among a broad spectrum of the American teenage and young adult populations. For the most part, use of the drug has not been associated with visible antisocial behavior. If marihuana had no past, the issue would be whether some form of government regulation would prove beneficial to the users or to the public coffers. And even then the using population would insist that any restrictive action be tailored narrowly to achieve a specific governmental purpose.

The answer should be no different when the question is whether or not to repeal the prohibition now on the books. Indeed, the decision is made easier by the fact that the costs of the criminal sanction are so well documented.

But somehow it does seem to make a big difference. It is contended that use of marihuana would be encouraged by decriminalization even though the substance itself would be contraband and its production and distribution would be outlawed. If the affirmative act of repeal is thought to be encouragement, then we have finally uncovered the pivotal explanation for legislative inertia.

History has woven a web around the use of marihuana; public and legislative reluctance to modify or eliminate marihuana prohibition in 1974 is based on attitudes molded by two generations of illegality.

Marihuana use in the 1960s confronted a system of criminal prohibition which carried its own meaning as defined in another time. Decades of classification as a narcotic, the presumptive immorality attaching to felonious conduct, and the implication of addiction, crime, and insanity had instilled in the public consciousness a fear of marihuana unjustified by the demonstrable effects of its use.

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That fear, and its codification by law now bars the way to a much needed reform. It is now time to make policy for today, not 1937 and to stop perpetuating the mistakes of past policy.<sup>16</sup> For this reason I urge the Congress and the state legislatures to repeal the criminal prohibition against possession of marihuana for personal use.

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Because the origins of marihuana prohibition undercut modern efforts to repeal it, I have attached, as an appendix, some relevant excerpts from The Marihuana Conviction (University Press of Virginia, 1974) by Professor Charles H. Whitebread and myself.

Some Comments on the Civil Fine

The only defensible alternative to a full de-penalization of marihuana use is the substitution of a civil sanction for possession in public. I refer of course to the Oregon scheme recently endorsed by Dr. Robert Dupont, Director of the National Institute on Drug Abuse and the Special Action Office for Drug Abuse Prevention.

As noted earlier, if violators are fined for every detected violation, the deterrent value of the civil sanction may approach, or even exceed, that of a sporadically applied criminal sanction. In my opinion, the ounce of deterrence thereby preserved does not warrant the diversion of law enforcement resources on the administrative burdens. However, for a legislature unwilling to discard the symbolism of illegality, the civil fine offers an acceptable substitute for the unacceptable criminal sanction.

In this regard, I should note that a civil sanction for marihuana use is in keeping with a significant modern trend. Commentators and public officials have consistently lamented the phenomenon of "overcriminalization" -- the tendency to attach a criminal sanction to any and all disapproved behavior.

Although the statutory label varies, an increasing number of states have adopted the recommendation of the American Law Institute's Model Penal Code in 1962 to establish a category of offenses which do not give rise to the civil disabilities attending conviction of a crime. Some call it a "petty offense" or an "infraction" but most call it a "civil violation." One of the principles underlying this reform is that the criminal sanction should be reserved for morally reprehensible conduct and should

not be diluted by application to conduct without serious social consequence.

Marihuana use, of course, is the perfect candidate for classification as a "violation," as the Oregon legislature recognized. The problem of marihuana use is not unique from a sanctioning standpoint. There are many examples of behavior that society wishes to prohibit but which are not serious enough to warrant the criminal sanction. Sometimes the law has the perfect word for the occasion -- in New Jersey, the non-criminal offense is called a "nuisance violation." In my opinion, that sums up the issue perfectly: marihuana use, under present circumstances, is a nuisance, not a disaster; if there is to be a sanction, it should be formulated in keeping with the minor social consequence of marihuana use.

## Appendix

Excerpts From The Marihuana Conviction:  
A History of Marihuana Prohibition in the United States

By  
 Richard J. Bonnie and Charles H. Whitebread, II

The practices of smoking marihuana and of growing it for that purpose filtered into the United States from the south in the early years of the twentieth century. Transported by Mexicans and West Indians, the plant and its intoxicant use encountered a hostile political and social climate. Gradually during the ensuing quarter-century, criminal prohibitions appeared on the statute books of nearly every state where the drug was used. Well into the 1930's, however, marihuana-smoking attracted little concerted attention from the national policy and opinion apparatus, which was deeply engaged in drug matters of much wider social impact than the limited, regional use of this new drug. Thus, the story of marihuana policy in the United States begins as a series of distinctly local tales.

Beginning around 1900 in the towns along the Mexican border and a decade later on the Gulf coast, the practice of marihuana-smoking entered the United States at two independent points. The users in the two areas differed, as did the degree of public awareness of the phenomenon and nature of the public perception. During the twenties the use of the drug spread from these points of entry in two directions, and with two distinct identities: it traveled north and west from the border, taking along an ethnic identity, and north and east from New Orleans, with its identity as a fungible narcotic and enslaver of youth.<sup>1</sup>

. . .

It has become fashionable in recent years to attribute the illegal status of marihuana to the Federal Bureau of Narcotics and its long-time head, Harry J. Anslinger. Such a theory has been particularly popular among those seeking to alter the existing public policy since it implies that what was done by one man is not entitled to the deference which a more broadly based policy would enjoy.

However, the recent public policy emerged in a more subtle, less controversial fashion. Although the federal narcotics bureaucracy, with Commissioner Anslinger at the helm, was to become marihuana's leading antagonist in the mid-thirties, a restrictive public policy toward the drug was well rooted locally before that time. During the "local" phase of marihuana prohibition, lasting roughly from 1914 to 1931, twenty-nine states, including seventeen

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1. From Chapter II "The Alien Weed," page 32.

west of the Mississippi, prohibited use of the drug for nonmedical purposes. (Four more states did so in 1933.)

The most important feature of this initial prohibitory phase is that marihuana was inevitably viewed as a "narcotic" drug, thereby invoking the broad consensus underlying the nation's recently enunciated antinarcotics policy. This classification emerged primarily from the drug's alien character. Although use of some drugs --alcohol and tobacco--was indigenous to American life, the use of "narcotics" for pleasure was not. Evidently, drugs associated with ethnic minorities and with otherwise "immoral" populations were automatically viewed as "narcotics." The scientific community shared this social bias and therefore had little interest in scientific accuracy.

From this instinctive classification of marihuana with opium, morphine, heroin, and cocaine flowed the entire set of factual supports on which narcotics prohibition rested. Marihuana was presumed to be addictive, its use inevitably tending to excess. Since its users--Mexicans, West Indians, blacks, and underworld whites--were associated in the public mind with crime, particularly of a violent nature, the association applied also to marihuana, which had a similar reputation in Mexican folklore. Since the nation was preoccupied during the twenties with lawlessness, especially among the foreign born, this association was a strong one.

To the idea of an alien cancer in the social organism was added the inevitable fear that it would spread. In New Orleans, Denver, and Chicago the specter of a doped school population was the cornerstone of the prohibitory effort. And during alcohol prohibition, paralleled by the local phase of marihuana prohibition, it was naturally imperative to suppress a drug which frustrated alcohol users might substitute for their customary intoxicant.

In short, marihuana prohibition was a predictable phenomenon. In states where either Mexicans or the weed had appeared, suppressing its use required no public clamor or citizens' movement; soon after being apprised of its presence, local lawmakers invoked the criminal law, and some also turned to Washington for assistance.<sup>2</sup>

. . .

Apprehensions about the constitutionality of federal action and the political influence of the pharmaceutical industry deterred the FBN (Federal Bureau of Narcotics) from seeking federal legislation in 1930 and 1931. The bureau chose to concentrate its energies instead of securing adoption of the Uniform [Narcotic Drug] Act, including the cannabis provision, by the state legislatures.

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2. Id. pages 51-52.

Even so, however, Commissioner Anglinger had not ruled out federal legislation "at the appropriate time."<sup>3</sup>

. . .  
[The Marihuana Tax Act (H.R. 6385) was introduced in April 1937 and passed in June.]

Marihuana was condemned without a trial. The decision makers did not insist on accurate information, and the policy-making process reflects only the trappings of science. The assumptions that marihuana caused addiction, insanity, and crime were not without serious attack even then; yet the federal narcotics bureaucracy made no serious effort before the decision to seek federal legislation to find out what the drug's effects really were.

The proponents of H.R. 6385 expressed no uncertainty in their public characterizations of marihuana's effects. Yet a collection of world authorities on the cannabis drugs observed in June 1937 that "as to the effects of abuse of cannabis, [available information] still leaves much to be desired." And immediately after the passage of the Marihuana Tax Act, the bureau convened a conference for the purpose of determining the effects of the drug. . . .<sup>4</sup>

. . .  
The act passed Congress with little debate and even less public attention. Although the Federal Bureau of Narcotics had not sought legislation, the bureau's efforts on behalf of the Uniform Narcotic Drug Act had created a climate of fear which provoked insistent cries for a federal remedy, particularly by a few state law enforcement agents hoping to get federal support for their activities. As a result, the law was tied neither to scientific study nor to enforcement need. The Marihuana Tax Act was hastily drawn, heard, debated, and passed. It was a paradigm of the uncontroversial law.<sup>5</sup>

. . .  
The scientific community was highly uncertain of the effects of the drug at the time national marihuana prohibition was achieved. This ambiguity was never perceived as an impediment to criminalization; yet it was never readily acknowledged either to the public or to the lawmakers. No group which opposed the law and might have insisted on facts rather than speculation had access to public opinion.<sup>6</sup>

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3. From Chapter 6 "The Federal Bureaucracy Finds a Way" p.118.
  4. From Chapter VII "What was the Marihuana Menace?" p. 127.
  5. From Chapter VIII, "Nonchalance on Capitol Hill" p. 174.
  6. From Chapter VIII "The Marihuana Mystery: Science 1938-1951" p. 187.

## The Collapse of the Marihuana Consensus<sup>7</sup>

FOR FIFTY YEARS a latent social consensus supported the nation's marihuana laws. This marihuana consensus was buttressed by a number of ideological and descriptive propositions. The belief that marihuana was a "narcotic" drug was of primary importance. The statutory definitions of marihuana in most states codified this, especially after the passage of the Uniform Act. In other states and in federal legislation, penalty provisions were based upon it. In legal status and in the legislative mind, marihuana was indistinguishable from the opiates and cocaine.

Marihuana prohibition rested in large part on the essential premise of the narcotics policy that use inevitably became abuse. The view that narcotics users were incapable of moderation was reflected in the overwhelming urge to refer to marihuana users as "addicts" and to postulate a strong psychological compulsion for use even if no physiological compulsion existed. There was also a predisposition to attribute other dysfunctional effects to marihuana. Policy makers were inclined to look for high incidences of mental deterioration, psychosis, and violent crime.

Another essential condition of the marihuana consensus was the demography of that portion of the population using it. Because it was used primarily by insulated ethnic minorities, Mexicans and blacks, the drug was always associated with the lowest levels of the socioeconomic structure. This had several important consequences. First, since the user populations were associated in the public mind with crime, idleness, and other antisocial behavior, a causal relationship between marihuana and such behavior seemed evident. Second, since these insulated minorities had no access to the policy-making and public opinion processes, hypotheses supporting this consensus went unchallenged. Sharing the basic public policy predisposition, the medical and scientific communities felt no particular need to study the drug and its effects, especially after cannabis was removed from the U.S. pharmacopoeia. The little research which was conducted tended to undercut prevailing beliefs, but these inconsistencies remained unpublicized because there was no constituency interested in revealing them. The narcotics bureaucracy was also, of course, inclined to suppress them.

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7. From Chapter XII, "The Collapse of The Marihuana Consensus," pages 222-226.

Final support for the marihuana consensus came from ideological factors reflected in American public policy during the first six decades of this century. Resting on society's interest in individual productivity and its preference for cultural homogeneity was a legislative tendency to inhibit any personal behavior thought to be incompatible with society's best interests. Two world wars, the depression, several recessions, the Korean conflict, and a cold war, kept the nation on the defensive. There was little tolerance for personal deviance. The notion that there was a sphere of personal activity immune from governmental scrutiny lost its constitutional footing. Legislatures continually sought to compel sexual, sensual, and even intellectual orthodoxy. As increased geographic mobility, institutional growth, and mass communications gradually loosened the capacities of nonlegal institutions—the family, church, schools—to regulate behavior, society relied more and more on the legal system, and the criminal law in particular, to symbolize and enforce the dominant order.

#### The Challenge

Beginning in the mid-sixties, the marihuana consensus evaporated, as each of its essential supports wobbled and fell away. The drug's sudden attraction to the nation's university population was of primary importance. Although marihuana arrests and seizures had hit their all-time low point in 1960,<sup>1</sup> by 1967 use of the drug was associated in the public mind with life on the campus. This new class of users, regardless of its size, had direct access to the public opinion process because it was drawn from the middle and upper socioeconomic brackets. As a result, this new use pattern incited a broad social awareness of the drug and awakened in the scientific and medical communities a new interest in research.

It is difficult to account entirely for this new interest in marihuana and to pinpoint exactly when it began. In all likelihood marihuana use may have been the most visible by-product of the merger of several different social and political movements in the mid-sixties. Perhaps the most specific of these was the national publicity given the LSD experimentation at Harvard University by Drs. Leary and Alpert in 1963. As a growing segment of the academic fringe began to preach consciousness-expansion, student attention and curiosity in the Northeast became focused on drugs and drug use.

At the same time, the so-called psychedelic movement was launched on the West Coast, particularly in the San Francisco area. Tom Wolfe has described the role of author Ken Kesey and his "Merry Pranksters" in this movement and its attendant subculture. As the Haight-Asbury scene and the West Coast drug culture attracted interest in the press, student curiosity across the country was aroused, as was that of the intellectual avant-garde in Greenwich Village and similar urban communities.

A much more pervasive social development influencing the interest in marihuana was a general loosening of restraints imposed by the legal system on behavior with "moral" overtones. Beginning with the widely acclaimed civil rights movement of the early 1960s, proceeding through the free speech movement, the antiwar movement, and the ecology movement, the decade was characterized by protest and civil disobedience. Martin Luther King's appeal to the higher moral law and the righteousness of his cause made a deep impression on the national conscience, piercing most deeply the souls of the country's youth. The civil rights movement weakened the moral force of the law as an institution by illustrating the evil which could be codified by secular authorities. This tendency was exacerbated, particularly among those in college, by the Vietnam escalation, which began in 1965. Disobedience of the marihuana laws may have been a convenient offspring of the protest attitude. Marihuana, of course, was ready-made for such a symbolic use, having been miscast in the past and being so easily aligned against the establishment's own alcohol.

Whatever its genesis, the change in use patterns immediately affected a number of conditions upon which the marihuana consensus rested. Most obvious was the challenge to the drug's classification as a narcotic. The revelation that marihuana was substantially *different* from the opiates and cocaine made a major impact on public attitudes. The substitution of other labels such as

"dangerous drug" or "hallucinogen" did not negate this impact; nor did the initial judicial conclusions that the legislature could legitimately classify marihuana as a "narcotic" even though it was not technically accurate to do so.<sup>2</sup> That marihuana was substantially different immediately dissipated the application of the narcotics consensus.

The scientific propositions attending the application of the narcotics consensus to marihuana had always been assumptions tied to broader social perceptions of the using class. But these assumptions no longer coincided with social expectations when use of the drug was taken up by society's privileged classes. The basic proposition that use inevitably became abuse was quickly challenged. It was as important to the drug's new advocates to emphasize that it was not "addictive" as it had been for its foes to maintain that it was. This society's fear of drug dependence had by now reached the level of moral antipathy, and marihuana's

innocence in this regard was an important revelation, even though the information had been available from the earliest prohibitory days. Similarly, the causal relationships between marihuana and crime, idleness, and incapacitation were now more difficult to maintain. The new users were not "criminals" or social outcasts. They were sons and daughters of the middle and upper classes. In short, when the consensus against marihuana lost its sociological support, it immediately lost its scientific support as well.

The continued vitality of its ideological support had also become debatable. Whereas society formerly imposed severe restraints on the individual's personal and social conduct in order to reap the benefits of his economic and political independence, another view was winning an increasing number of adherents. Under this view economic and political institutions have become increasingly omnipotent; the individual is increasingly dependent on the system rather than the system being dependent on him. Increasing numbers of individuals view themselves as cogs in the massive, impersonal, technological machine, the controls for which are beyond their grasp. Consequently, it is argued, a higher value must be placed on personal fulfillment in the noneconomic, nonpolitical sphere. A new emphasis must be placed on personal identity and the individualized, deinstitutionalized pursuit of happiness. Concurrently, as economic productivity demands less of each individual's time

and energy, and the workweek continues to shorten, a leisure ethic is emerging. From the perspective of productivity, the argument goes, society has less and less economic interest in what the individual does with his leisure time.

During the mid-sixties this ideological development was manifested in laws and judicial decisions upholding the individual's right to differ—intellectually, spiritually, socially, and sensually. Concurrently, a renaissance emphasis on individual privacy appeared. As an incredibly sophisticated technology continually expanded society's control over the individual, he began to insist that the wall around his private life be fortified. The courts responded, proscribing official snooping and invalidating laws interfering with familial decision-making—abortion, contraception, miscegenation—and with private sexual conduct.

A related trend, well underway during the sixties, was de-emphasis of the criminal law as a means of social control. Increasing numbers of legal scholars and social scientists were beginning to indict the process of "overcriminalization" under which the sphere of criminal conduct had been too broadly drawn. Of particular interest are offenses committed in private, by consenting individuals, such as drug offenses. The view that the criminal law was not the only, or even the best, way for society to express its disapproval of certain behavior was certainly a notion foreign to early twentieth-century policy makers.

A new class of users, revived scientific interest and debate, lively public interest, and fundamental ideological crosscurrents all combined to undermine the marihuana consensus in the mid-sixties. This is not to say, however, that the law was no longer defensible or defended—only that conflict replaced consensus. For the first time in its fifty-year history, marihuana prohibition encountered an operating public opinion process.

Senator HUGHES. The chair now calls Lt. Joseph J. Delaney. He is director of the Bergen County narcotics task force and president of the New Jersey Narcotic Enforcement Officers Association.

I welcome you to the subcommittee, Lieutenant Delaney.

**STATEMENT OF LT. JOSEPH J. DELANEY, DIRECTOR OF THE BERGEN COUNTY NARCOTICS TASK FORCE AND PRESIDENT OF THE NEW JERSEY NARCOTIC ENFORCEMENT OFFICERS ASSOCIATION; ACCOMPANIED BY JOHN STAMLER, ASSISTANT PROSECUTOR, UNION COUNTY, AND COUNSEL FOR THE NEW JERSEY NARCOTIC ENFORCEMENT OFFICERS ASSOCIATION**

Lieutenant DELANEY. Thank you very much.

Senator HUGHES. Would you identify your associate for the record? It would be helpful to me.

Lieutenant DELANEY. Yes, I will.

This is John Stamler; he is assistant prosecutor in Union County. He heads up their Narcotics Strike Force. And in addition, he is the counsel for the New Jersey Narcotic Enforcement Officers Association.

John is not here to advise me as to my statements; he is here voluntarily to give some of his own impressions of the marihuana issue.

Senator HUGHES. I would like to say to both of you gentlemen, Senator Williams wanted to be here to hear your testimony, but he has had other commitments in Congress that prevented him from being present this morning. He wanted me to apologize for his not being present.

Lieutenant DELANEY. Thank you.

Senator HUGHES. Please proceed with your testimony.

Lieutenant DELANEY. First, I would like for your own edification, to tell you who I am and maybe based upon that, some of my statements may be reflected by some of my expertise, if there be any.

I am a police officer, detective lieutenant by rank, and I have been a police officer for 18 years. I have been in the field of narcotics and dangerous drugs for the past 12 years, and I previously worked on the Harlem Narcotics Squad, New York City.

Also I am a counselor for alcoholics in Paterson, N.J., and have been for the last 7 years, and as a counselor also for addiction at DISMAS House, also located in Paterson, which may show some sort of conflict in my present field of endeavor. Now I am more particularly involved in the enforcement area in the county of Bergen, 5 miles from New York City.

The reason I am here, Senator, is probably because of a report sometime early in May of this year—when I was then head of the Law and Legislative Committee for the New Jersey Narcotic Officers, and at that time I was designated to look into the area of marihuana and hashish and come forward with a report by way of a proposal for the association.

John Stamler and myself worked together very closely on the report, of which I am sure you have a copy, of which I am sure NORML has a copy, and many other people have a copy.

Unfortunately, the report we put forth called for the decriminalization of marihuana. That was my feeling, that was John's feeling. And in some cases many of the law enforcement feelings.

I think decriminalization is a strange word, No. 1, in the State of New Jersey presently. We have, in fact, decriminalized marihuana for possession of small amounts under 25 grams. It calls for disorderly persons violation, maximum penalty 6 months in Bergen County jail, or \$500 fine, or both, which in and of itself is decriminalized.

If you should seek employment, you may answer the question, "Have you ever been arrested for a crime" in the negative. So that it is a little different in the State of New Jersey. It has been decriminalized.

We were going a little bit further in our decriminalization and calling for very much the same situation as now exists in Oregon, with a citation.

I think we bandied marihuana long enough. If Mr. Nader can remove cyclamates with one fell swoop, which is a few brief remarks, it seems to me we have, as in the words of some other people who testified presently, perpetuated the problem. There is no question in my mind as a law enforcer for the last 18 years that I have seen many, many people of considered high positions, glamorize the drug marihuana. I have seen in the field of entertainment, particularly, people allude to the drug marihuana in a very pleasant way. I have not seen the very same thing with hard core drugs. I have not seen the same thing with alcohol. There is no question in my mind that alcohol is the chief drug of abuse, and probably will continue to be.

I do not even consider the comparison of alcohol to marihuana. I think it is ludicrous to even get into that kind of argument with whoever.

As far as the use, we can compare any substance as far as use, but as far as abuse, it is something entirely different.

If we could remove the word "drugs" and just talk about people and who they are, and where their problems lie, we may be far along the road than we are presently.

But there is no question in my mind we have glamorized marihuana and hashish. Therefore, that was my report, that was John's report. He in fact is the author of this report.

We took it before our association, who, by the way, is not only comprised of law enforcers, but doctors, pharmaceutical people, educators, and the clergy, which numbered 1,500 in the State of New Jersey. And, unfortunately, the report was not accepted primarily by law enforcement. And in return, as president of that association, I would have to say, speaking for the State of New Jersey and Narcotic Enforcement Officers Association, that they have now by way of resolution come out in opposition of any form of decriminalization of marihuana or hashish in the State of New Jersey.

That is the position of the New Jersey Narcotic Enforcement Officers Association.

As far as the State of New Jersey, it has been alluded to today, the State has a commission, Senate Commission on Drug Abuse. Their recommendation is for decriminalization of marihuana. The attorney general of the State of New Jersey, Mr. Hyland, has also come out in favor of decriminalization of marihuana.

I guess what I am telling you today, and again I will have to tell you, have to say that is probably why I was invited initially; I do not know if the committee had full warning that this report was not in fact

adopted, if I would be sitting here before you. But I did call yesterday—

Senator HUGHES. We have something in common; the President condemned our report before we issued it. [Laughter.]

So I am used to that sort of thing.

Lieutenant DELANEY. Well, needless to say, Senator, I have made enemies with my fellow colleagues. But I really do not feel, in my personal opinion that I still have to stand by my conviction. I would not compromise my position.

As president of the association, if that is how I was invited, I would have to then tell the committee that the New Jersey Narcotic Enforcement Officers Association is in opposition to the decriminalization of marihuana in any form.

As an individual, I would tell you exactly what I just told you, that I favor decriminalization of marihuana.

And not because of the drug itself, but because what we collectively, as a society, have done, we have perpetuated the problem. We have become part of the problem, not part of the solution.

So that I do not consider again—I keep hearing “young people” mentioned, teenage people. That has not been my whole area of concern, because we seem to lay everything to the young. I know a wide variety of the adult population who use marihuana and hashish and if we are going to lay blame, if that is the case, let us lay it where it belongs, not just with the young.

So that marihuana, as someone previously said, is here to stay; that we perpetuate the problem. It comes in and of itself the problem. So that we have to communicate with each other, not talk at or talk to.

I did not prepare a statement because I feel I am talking to or at you. I want to talk with you. And that is the only way I can communicate with people. That is the way I communicate with most people that I work with. So maybe wherein lies my contradiction, I am on the one hand a law enforcement officer and, on the other hand, a counselor, deeply involved in two spectrums of abuse, alcohol and drugs. And, Senator, that is pretty much my statement.

Senator HUGHES. Well, I think each complements the other, rather than detracts, Lieutenant. It makes you a more compassionate law enforcement officer and probably a better counselor because in your position of law enforcement, you see so many things that in so many ways do destroy the lives of individuals that you have a concern from that standpoint.

My own hope would be that every law enforcement officer would have a deep concern for the lives of individuals, even those he has to arrest and incarcerate, and eventually testify against in prosecution.

But I see no conflict in your position personally.

Lieutenant DELANEY. Thank you.

Senator HUGHES. Mr. Stamler, would you like to add your testimony to his?

Mr. STAMLER. Thank you, Senator. I would like to, just by way of introduction, state I have been an assistant prosecutor for 7 years in Union County, N.J.

Senator HUGHES.. What county?

Mr. STAMLER. Union County, which immediately adjoins Essex. Again, across from Staten Island, just by way of geographical reference.

I would point out one of the comments made in our report, proposed report, which was not adopted, was that a large segment of the public, including those young people who find the use of marihuana fashionable, and their parents who cannot understand the attraction, has become alienated from the police officers who are sworn to serve that public.

Now, as Lieutenant Delaney mentioned, in effect, New Jersey has decriminalized the possession of small amounts of marihuana by making it a disorderly persons offense. But the anomaly that exists is that distribution or sale of marihuana in whatever amount, be it 1 gram or 1,000 pounds, is a high misdemeanor, punishable by 5 years in prison or \$15,000 fine, or both.

I now speak to you as a prosecutor who appears before grand juries and presents cases developed by undercover agents for our narcotics strike force. And I have found as personal experience increasing opposition from otherwise cooperative grand juries in voting indictments against persons charged with selling ounces, let us say, to undercover agents when they know possession of less than 25 grams would not be a crime, yet selling less than 25 grams would be a high misdemeanor. So we are finding a substantial resentment among the public that we serve and who we must work with in the form of grand juries, and, of course, petit juries.

My personal opinion is in accord with Lieutenant Delaney's, I am in favor of decriminalization of an amount of 10 grams or less, and we adopted that figure, I might say, based on the report of the President's commission which stated 10 grams of marihuana would make 28 to 30 cigarettes, marihuana cigarettes, and that would be a month's supply for a casual user.

We feel that an amount more than 10 grams would tend to encourage a person to give it to friends or to sell it, which are acts equally punishable under our law as distribution.

Senator HUGHES. Would you, Lieutenant Delaney, or both of you, describe the history of the report that you made that was not accepted by the association?

Would you describe how it originated, why you did it, what went into it, and the details of the report.

Lieutenant DELANEY. Well, probably in capsule form—and I do not mean that as a pun [laughter]—what we did originally was take a strong look at law enforcement's problems with enforcing the unpopular law of marihuana. And at that time I was not present for the board—I was second vice president in charge of the law and legislative committee, and I was then designated to do a research study in the area of marihuana, which began in the early part of 1973.

Senator HUGHES. The Commission instituted the study?

Lieutenant DELANEY. Yes, it did.

Senator HUGHES. The association?

Lieutenant DELANEY. Yes, it did. I was then designated primarily because of my longstanding involvement with the area of narcotics and dangerous drugs, and again more particularly with the area of marihuana.

As a result of that research study by my committee, we then got together with John Stamler and proposed at this point the report that your committee has relative to what we consider to have been law

enforcement's biggest problem, the area of marihuana and hashish by way of law enforcement.

The studies that were done are no different than the studies you have heard previously testified to. We looked into every area, scientific research, and we are well aware that there are deleterious effects to the constant use or abuse of any particular substance, and again marihuana or hashish.

I think that is where a lot of us lose sight of some of the problems we have within our society today; we refer to a drug, marihuana if you will, and then talk about the terrible abuse and the terrible effects of long-term use. And that lies behind the whole spectrum of use of marihuana.

There is a total, as far as I am concerned, individual area with the personal use of marihuana. I cannot pick out anyone in this room who can smoke marihuana casually and cope with it, although I know they are here. I cannot give you a cross section of our society by way of profile and tell you who can and who cannot smoke marihuana and handle it, and yet I know they are there. So that I cannot lie to all of those people and say that the constant use and deleterious effects are there for everyone. I just cannot do that.

So based upon those studies and based upon what we in law enforcement have seen relative to the problems of enforcing this law, we put forth this report which, as I stated earlier, was not adopted and how it got out I do not have the answer, but needless to say, it became a very sore issue within the association, because of its existence, and not its publication but somehow distribution.

Senator HUGHES. Were there specific reasons given for not adopting the report or was it more or less just an opinion taken and a vote of the association?

Lieutenant DELANEY. I am afraid it became an emotional issue, Senator, and I can think of no other way to describe it. It was purely emotional. There were factions within the association that were strongly opposed, thinking that if we, law enforcement, and more particularly a narcotic association, lent our support to decriminalization, that we, in effect, would have an influence on those people who may not have smoked before, but now, because of our endorsement, would. Which, again, I find difficult to believe, but maybe I can understand their concern.

Senator HUGHES. Well, as I understand it, you are taking into consideration the fact that marihuana does have dangerous and deleterious effects?

Lieutenant DELANEY. No question.

Senator HUGHES. And you are still maintaining the attitude that it should not be smoked?

Lieutenant DELANEY. Yes, sir.

Senator HUGHES. While at the same time you are identifying the difficulties of enforcement, the problems of the individual user, and the overall effects on the individual as well as the law enforcement agencies themselves in coping with what has become a gigantic enforcement problem nationwide, is that right?

Lieutenant DELANEY. That is exactly right, Senator.

Senator HUGHES. And your recommendations, then, were decriminalization?

Lieutenant DELANEY. Yes, sir.

Senator HUGHES. Mr. Stamler, can you add to that? Do you agree with the responses to that? Would yours be the same?

Mr. STAMLER. Yes, sir, and your description of the position is exactly correct, of the association, as to why we chose the position we did. We are adamantly against the use of marihuana, but we recognize that something had to be done to acknowledge the frustration of our past efforts and our association's usefulness in providing a meaningful solution to a major problem facing society and law enforcement.

Lieutenant DELANEY. I think what we are seeing in the law enforcement generally is selected enforcement. It appears to me, based upon my experience, we are definitely involved in selective enforcement.

In certain border areas, if you have 50 kilos or below, they take the marihuana; away you go.

In certain universities across our Nation, more particularly in our coastal areas, if you have 5 pounds or below, they take the marihuana and away you go—not away to jail, just out of the dorm, away from the scene.

So it seems to me you do not have to delve into the degree of severity, but rather the degree of certainty.

If we all knew where we stood, we would be better off. It seems marihuana is a geographical question. Predominantly we have become selective.

Senator HUGHES. Disruptive to the entire law enforcement agency?

Lieutenant DELANEY. Yes, sir.

Senator HUGHES. Senator Javits.

Senator JAVITS. Yes, thank you very much, Mr. Chairman.

Thank you, Lieutenant Delaney and Mr. Stamler, we appreciate your testifying. I had in mind the following question. You say it is a "geographical" question, is it because it impacts on the coasts primarily?

Lieutenant DELANEY. When I say geographical, Senator, as I briefly alluded to, it appears there is selective enforcement. In one State you may find marihuana laws to be extremely harsh; in another State extremely lenient. So it does become geographical.

Senator JAVITS. I think that is a critical reason why we should act nationally and decriminalize small quantity possession and use. I thoroughly agree, that then everybody would start from the same base.

Lieutenant DELANEY. Yes, sir.

Senator JAVITS. Could you estimate—in view of the fact that in your service you administer the narcotics laws against pushers, big operators, importers, et cetera—the amount of diverted time and energy of the law enforcement agency with which you are concerned, which is attributable to that which would be decriminalized if your recommendations had been accepted?

Lieutenant DELANEY. Yes, I think we spelled it out in our report, John? We spelled out in one section the police are thereby required to spend much more time processing and prosecuting that class of persons, and are prevented from uncovering or investigating these people who distribute marihuana and other drugs for gain.

As far as an estimate as to a percentage, Senator, it would be difficult for me to do that, although I can tell you it is a great deal of their time expended in that area.

Senator JAVITS. Can you give us any estimate, just order of magnitude?

Lieutenant DELANEY. If I was going to give you a guestimate, I would probably have to say that it would be 50 percent or better.

Senator JAVITS. One-half of their time would be spent in what would be decriminalized under Senator Hughes' and my bill, is that right?

Lieutenant DELANEY. Are you referring now to the time he would spend in the area that would be decriminalized?

Senator JAVITS. That is correct, what I am trying to get at is how much of the enforcement time would be saved?

Lieutenant DELANEY. Oh.

Senator JAVITS. If your recommendation respecting decriminalization had been accepted.

Lieutenant DELANEY. I would again have to say 50 percent.

Senator JAVITS. Fifty percent. It just seems to me that is an intolerable drain on your time, just as it is an intolerable drain of the time and energy of police officials on a statewide basis to have 420,000 arrests in the Nation last year. It is just beyond reason that we would tolerate this, strictly on law enforcement grounds alone, when there is so much to enforce and so much complaint about the failure to enforce it. Would you not agree with that?

Lieutenant DELANEY. Yes, I would, Senator. I would like to point out, however, one thing. It appears many law enforcement officials—and again at a high echelon position, who say repeatedly we should target certain people, certain areas of drug trafficking, I believe in that. You know, that is the concept in which I work presently as the director of narcotics task force. But I would not want to lose sight of the fact in order to reach the roof by the way of a ladder, you have to start at the bottom. Although I agree, just decriminalization, as I understand it, would help us more better to attack certain areas, I certainly would not want then to have anybody think that because we want to target our efforts in a higher echelon that we should not show concern for the bottom rung of the ladder, because in many instances that is how we in fact reach the high echelon.

Senator JAVITS. Have you also testified to a suggestion made yesterday by Dr. Jaffe, former Director of the White House Office, and others, that as a substitute for criminal penalties, there should be an analogy to traffic violation fines?

Lieutenant DELANEY. Yes, Senator.

Senator JAVITS. If sometime somebody is convicted for a serious violation and is picked up for running a red light—would the same analogy apply here?

Lieutenant DELANEY. Yes, sir. In our report we would liken punishment or whatever enforcement there is connected with it, criminalization, to that of the State of Oregon, which presently has maximum \$100 fine and citation situation.

Senator JAVITS. So you like that idea?

Lieutenant DELANEY. That was our idea. Unfortunately it was not adopted.

Senator JAVITS. That is correct. But it also deals with the problem you mentioned; to wit, getting a lead into bigger operators?

Lieutenant DELANEY. I do not think it would negate that.

It does not preclude search and seizure and does not negate area of checking the individual to see who he might deal with within the community or without.

Senator JAVITS. If anything, it would perhaps facilitate this because the operation would be much more open, since the small user would not be afraid of a criminal violation. Is that not correct?

Lieutenant DELANEY. I would have to agree in part with that; in some cases it would not be, but it certainly would lead in that direction.

Senator JAVITS. When one deals with people of such great experience as both of you, I often find you do not give us necessary information because we have not asked the right questions.

Is there any other enlightenment that you could give us relating to not just supporting, but even related to the position which Senator Hughes and I have taken, that decriminalization would serve a high social purpose in terms of the relationship to those who are arrested, and the barbarism in, for example, the State of Illinois; and secondly, that it would certainly facilitate enforcement in the narcotics field, and also free, assuming the movement gathered strength and resulted in similar action in all States, an enormous amount of police power for more important police work?

Lieutenant DELANEY. Senator, as an individual, I do not think I could add anything more than what yourself and Senator Hughes have put forth, or your witnesses have testified to previously, except maybe from a personal standpoint that I think we would have better communications with people for this particular passage.

Again, I would have to preface that with personally because I cannot speak to you as the president of the New Jersey Narcotics Officers Association, because I just told you their position; but as an individual, as a human being, I feel very strongly that your position and the witnesses who have testified that I have heard are my wishes also.

Senator JAVITS. May I say that I like very much the fact that you are courageous enough, notwithstanding that you are the president of the N.J. Narcotics Officers Association, to have come here, and in order to help you, to make it clear that I, for one, and I am sure all my colleagues, understand perfectly you are appearing in your strictly individual capacity.

Lieutenant DELANEY. Thank you, Senator.

Senator JAVITS. Thank you.

Senator HUGHES. Thank you, Senator Javits.

And, Lieutenant Delaney, checking with my staff director, contrary to both of our assumptions, we do not have a copy of your report. It has apparently been bootlegged in certain areas, I understand, and it has been pretty well reported.

I hate to ask you to officially give us a copy of something that you have not been directed as president to release.

If you want to volunteer it as an individual because it is already common knowledge, it would be advantageous to the subcommittee to have a copy of it.

Senator JAVITS. Mr. Chairman, we could, if it would relieve Lieutenant Delaney's protocol problems, subpoena that report.

[Laughter.]

If we could get the minority to agree, Senator Schweiker I am sure would agree.

Lieutenant DELANEY. Maybe I can clear it up, Senator Javits.

As far as I am concerned, it has been bootlegged, and as far as I am concerned, you can have a copy of it.

Senator JAVITS. Lieutenant Delaney, may the records show the committee could subpoena the document; but rather than go through that charade, you are simply making it available to the committee.

Lieutenant DELANEY. Yes, sir. I appreciate that. Thank you.

Senator HUGHES. I want to thank you very much for your understanding.

We did not want to place you in that sort of embarrassing position as president of your association; as you have already stated, there is enough conflict in the association without increasing it by your appearance here.

But we do appreciate receiving a copy of the report that has been rejected by your association and is contrary to their present official position as you have stated here.

We understand that you are testifying as individuals who undertook the report, and that you are making your personal recommendations on the basis of that study and your collective years of experience in the field.

I would just like to ask Mr. Stamler, Senator Javits asked you, Lieutenant, if he has any further recommendation he might make to the subcommittee and thereby to the Congress.

MR. STAMLER. If I may, I would like to read at least those portions of the recommendations that were included in this report and again I cannot emphasize enough are not the position of the association, but since I was the author of this report, I take credit for it, I will change the word "we" as it appears to "I" which is my personal feeling.

I am concerned with the monumental law enforcement administrative requirements and the court proceedings that follow an arrest for a small amount of marihuana. I am concerned that the efforts of these officers are needed in other areas of enforcement, that the people arrested will in all probability never commit any other type of offense other than marihuana offense throughout their lives, that they are the type of offenders who would never receive a custodial sentence, and that the cost to the public and the waste of officers' energy and ability further impede the effective administration of justice. It is my personal recommendation that a statute, Federal or State, be adopted which would make possession of 10 grams or less of marihuana, including any adulterants or dilutants, or possession of one gram or less of hashish a nuisance, the substance shall be seized by a law enforcement officer and the possessor thereof should be issued a summons and subject to a fine not to exceed \$100.

Those were then and are now my personal feelings on this issue.

[Discussion off the record.]

[The report referred to follows:]

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November 20, 1974

Senator Harold E. Hughes  
1327 New Senate Office Bldg.  
Washington, D.C. 20150

Dear Senator Hughes:

Enclosed please find 1 copy of the New Jersey "Drug Study Commission's" report which represents the results of a 20 month study by the commission. As you can see, the report deals with 3 topics: (1) an analysis of the marihuana problem; (2) the intervention process; and (3) the impact of stricter drug laws on the criminal justice system and the illicit drug system in New York and New Jersey. The chairman of this commission, Senator Alexander J. Menza, regrets that he was not able to testify before your Senate Subcommittee on Alcoholism and Narcotics. Given more notice, Senator Menza would have been prepared to testify on the results of the commission's marihuana study which recommends the decriminalization of small amounts of marihuana and hashish. [Enclosed is a copy of the legislation introduced in New Jersey in both the Senate and General Assembly to implement this recommendation.]

Senator Menza has no objections to the use of any portions of this report by your subcommittee. In addition, if the commission can be of any additional assistance please feel free to contact me. I would appreciate receiving copies of any testimonies or material relevant to your inquiry.

Very truly yours,

*Peter A. Guzzo*  
Peter P. Guzzo  
Research Associate

encl.  
PPG/dw  
cc: Hon. Alexander J. Menza

"MARIJUANA AND HASHISH:  
LAW ENFORCEMENT'S  
BIGGEST ENFORCEMENT PROBLEM"

A Report  
By

The New Jersey Narcotic Enforcement Officers Association

To

The People of the State of New Jersey  
and  
The Governor, the Legislature, and  
the Judiciary

I. INTRODUCTION

Relatively new among organizations representing the interests of law enforcement, the New Jersey Narcotic Enforcement Officers Association was formed in 1965 to provide a forum for the expression and exchange of ideas, for the training of professionals in drug abuse and enforcement, and as the spokesman for all persons who resent the toll that drugs have taken upon our youth.

The Association has grown to 1,500 members, and includes persons involved in federal, state, county and municipal law enforcement, and comprised also of educators, doctors, probation officers, attorneys, pharmacists, and persons from private industry. Unlike those law enforcement-oriented organizations which seek to improve the economic conditions of their members, this Association, through its members, serves all of the people of the State of New Jersey, and it is to them that this report is addressed.

II. THE PROBLEM

This report is directed to one problem: the possession for use of small amounts of marijuana and hashish. There are other serious problems, such as bail for persons who sell narcotics, mandatory minimum sentences for those sellers, and the general failure of our courts to meet their responsibilities to the public they serve; these problems, however, are the subject of resolutions by the Association to be made public at the conclusion of the conference.

Because the response to this issue - decriminalizing the possession for use of certain small amounts of marijuana and hashish - will be more emotional, and because the consequences will be far-reaching (to our knowledge, no law enforcement group has taken such a position), this report is presented to the people of this State in the hope that thereby there will be no misunderstanding as to the Association's proposals or the reasons therefor.

III. FINDINGS OF FACT

These findings of fact are based upon personal experiences by members of the Association in the investigation, arrest, prosecution, treatment or rehabilitation of more than 10,000 drug offenders.

Regardless of what arguments may be advanced as to the detrimental or beneficial effects of marijuana upon the human body or mind, certain facts we find as incontrovertible:

- (a) Marijuana is a popular drug of use and abuse in the United States;
- (b) The Association is absolutely and unalterably opposed to the use of marijuana, by whomever and for whatever reason;
- (c) Competent, credible, medical studies confirm that the use of marijuana is a destructive influence upon the human psychology and physiology;
- (d) Entertainment personalities, who are watched by, and are an influence upon, millions of Americans, regrettably attach to the use of marijuana glamour, attractiveness, or humor;
- (e) Most persons who use marijuana generally possess it in small amounts for their own use;

- (f) Most of those persons will not go on to a more dangerous drug;
- (g) Most of the arrests by police for marijuana possession involve the class of persons in (e);
- (h) The police are thereby required to spend much time processing and prosecuting that class of persons in (e), and are prevented from uncovering or investigating those people who distribute marijuana and other drugs for gain;
- (i) Nothing that has been done by the courts, law enforcement, medicine, education, or the media, has substantially influenced people in the use or non-use of marijuana;
- (j) It is unheard of for a person convicted of possession of a small amount of marijuana to receive a custodial sentence;
- (k) A substantial number of those people in (e) will, by reason of conviction for a marijuana offense, be denied education or employment opportunities, even if they cease using marijuana;
- (l) A large segment of the public (including those young people who find the use of marijuana fashionable, and their parents who cannot understand the attraction) has become alienated from the police officers who are sworn to serve that public;

(m) Ten (10) grams of marijuana will make twenty-eight (28) to thirty (30) cigarettes, an amount which the President's Commission on Marijuana found to be a month's supply for the casual user;

(n) An amount more than ten (10) grams of marijuana tends to encourage a person to give it to friends or sell it, acts equally punishable as "distribution" by our law;

(o) No matter what jurisdictions have decriminalized the use or possession of marijuana, those jurisdictions continue to take a strong position against distribution in any form.

IV. RECOMMENDATIONS

We are not urging the adoption of our recommendations because of personal conviction or philosophy. We do think something should be done that will acknowledge (a) the frustration of past efforts and (b) the Associations usefulness in providing meaningful solutions to problems facing society and law enforcement.

We are concerned with the monumental law enforcement administrative requirements and the court proceedings that follow an arrest for a small amount of marijuana; that the efforts of these officers are needed in other areas of enforcement; that the people arrested will in all probability never commit any other type of offense (other than a marijuana offense) throughout their lives; that they are the type of offenders who would never receive a custodial sentence; and that the cost to the public and the waste of officers' energy and ability further impede the effective administration of justice.

We recommend, therefore, that Section 20 of the Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.) be amended to read:

(i) Possession of ten (10) grams or less of marijuana, including any adulterants or dilutants, or possession of one (1) gram or less of hashish, is a nuisance. The substance shall be seized by any law enforcement officer. The possessor thereof shall be issued a summons and shall be subject to a fine not to exceed \$100;

(ii) Possession of more than ten (10) grams of marijuana, but less than twenty-five (25) grams, including any adulterants or dilutants, or ov more than one (1) gram of hashish but less than five (5) grams, is a disorderly persons offense;

(iii) In a prosecution or proceeding under subsections (i) or (ii) above, written certification by a chemist certified by the State Department of Health shall be accepted as evidence by the court in such prosecution or proceeding as proof of the results of analyses performed by such chemist.

Possession of more than twenty-five (25) grams of marijuana should continue to be a high misdemeanor; and the unlawful use of any controlled dangerous substance should continue to be a disorderly persons offense.

The use and abuse of alcohol by millions, while socially acceptable, are no reasons to permit, support or encourage the disablement of another twenty million Americans thereby the use and abuse of marijuana.

We cannot stress enough the importance of understanding the position of the Association: we oppose the use of marijuana; we favor the decriminalization of the possession for use of small amounts of marijuana only as a solution to an enforcement problem - and we continue to oppose strongly any move to legalize further the possession or distribution of marijuana and hashish.

Senator HUGHES. Thank you very much, Mr. Stamler. We were conferring here a moment. I hope you will excuse us. We were talking about the possibility of some further testimony.

I do want to thank both of you gentlemen for your patience and your appearance here this morning, and again compliment you for the courage in coming as individuals to express your continuing belief in a report that has resulted from collective years of personal experience. Lieutenant Delaney, personally I would like to compliment you for having the commitment and dedication to work as a counselor in these fields of addiction and to being an enforcement officer of long experience, 18 years in these fields. I think it is something that is highly worthwhile and something that you personally are to be congratulated for.

Thank you very much.

Lieutenant DELANEY. Thank you very much, Senator.

Senator JAVITS. Mr. Chairman, I would like to make a suggestion. Thank you, gentleman. I join with our chairman in thanking you for your testimony.

I would like to suggest that it would be very useful, in view of the way the testimony has developed, to get a mosaic of the law enforcement problem in the country as it relates to this particular situation—and examine the present diversion of police work for what we would decriminalize by our bill, and what it meant to law enforcement generally in the States and especially in the cities.

In view of the fact that the figures we already have indicate that almost half the total arrests respecting drug violations are marihuana arrests, we may find that this is so appreciable a factor as to make an extremely strong case on the diversion of police work. So I would request, Mr. Chairman, that the subcommittee call the Director of the Law Enforcement Assistance Agency in the Department of Justice, which aids local and State law enforcement activities, which can—if we give them notice and ample time for preparation—give us some mosaic of what this means to law enforcement generally in the criminal field.

Senator HUGHES. Well, I agree with the distinguished minority leader of the subcommittee that this would give us a more complete picture of perhaps one of the most important facets of the entire problem, which appears to us to be wasted time in law enforcement.

With the Senator's permission, rather than setting a date at the moment, I would like, simply adjourn the hearings of the subcommittee to a date agreed upon by the Chair and the Senator from New York. That date would in all probability be next week if that would be agreeable.

Senator JAVITS. Entirely.

Senator HUGHES. At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The material referred to follows:]



## AMERICAN BAR ASSOCIATION

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December 12, 1974

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Hon. Harold Hughes  
Chairman, Subcommittee on  
Alcoholism and Narcotics  
Committee on Labor and Public Welfare  
United States Senate  
Washington, DC 20510

Dear Chairman Hughes:

I noted with interest the Subcommittee's recent hearings on the decriminalization of marijuana and am pleased to submit for your consideration and inclusion in the hearing record a recommendation on this subject adopted by the American Bar Association's House of Delegates in August, 1973.

Enclosed with this recommendation is an explanatory report.

Sincerely,

*Herbert E. Hoffman*  
Herbert E. Hoffman

Enclosures

## AMERICAN BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES  
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

## RECOMMENDATION

Be It Resolved, That, because of the tendency to punish those who merely experiment with use of small quantities of marijuana and to apply too serious penalties to them, rather than to concentrate on detecting and punishing sellers of the drug, there should be no criminal laws punishing the simple possession of marijuana by users; and

Be It Further Resolved, That casual distribution of small amounts not for profit be treated as simple possession; and

Be It Further Resolved, That the American Bar Association deplores the use of marijuana; and

Be It Further Resolved, That educational programs should be established as widely as possible to discourage the use of marijuana and other drugs which may be harmful.

## REPORT

The report and the recommendations contained therein were duly adopted and approved by the Council of the Section of Individual Rights and Responsibilities at its May 12, 1973 meeting in Washington, D.C.

Previous Activity on the Part of the American Bar Association  
and the Section's Committee on Alcoholism and Drug Reform  
With Respect to Reforming the Present Marijuana Laws

On April 21, 1971, Hon. Raymond P. Shafer, Chairman of the Commission on Marijuana and Drug Abuse, wrote to Edward L. Wright, President of the American Bar Association, requesting an expression of the Association's views on existing marijuana laws. On May 7, 1971, Mr. Wright advised Governor

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Shafer that the Association "has not adopted any formal policy statement through its Board of Governors or House of Delegates." He added that several sections and committees were considering the problem and might be interested in communicating with the Commission. Chairmen of relevant sections and committees were advised of the President's response to Governor Shafer's inquiry.

On July 9, 1971, the Committee on Alcoholism and Drug Reform of the American Bar Association's Section of Individual Rights and Responsibilities sent its statement to the Commission on Marijuana and Drug Abuse. The Committee, without any dissent from its fourteen members, recommended the adoption of a regulated system of distributing marijuana similar to that now in use for alcohol, or at the very least, that criminal penalties be retained only for selling marijuana for profit, not for mere possession.

While acknowledging that marijuana use -- like the use of any drug, even aspirin -- can be dangerous, the Committee noted that alcohol is by far a greater threat to health, crime control and traffic safety. The Committee pointed to several societal costs resulting from the use of the criminal law in an attempt to suppress marijuana, costs which far outweigh the potential for harm associated with marijuana use. The marijuana laws:

- are incredibly harsh and disparate among differing jurisdictions;
- are selectively enforced;
- engender disrespect for all laws;
- criminalize the 26 million Americans who have used, or are using, marijuana;
- stigmatize tens of thousands of otherwise lawabiding citizens who are arrested and convicted for marijuana-related offenses;
- stifle the already overburdened criminal justice system with the processing of thousands of minor arrests;
- divert law enforcement resources away from the control of serious crime;
- impugn the credibility of the criminal law when it warns against the dangers of hard drug use;
- enable a black market distribution system to flourish, one which involves sellers who may traffic in hard narcotics and which permits the sale of adulterated substances, marijuana of uncertain potency and transfers to minors.

Following submission of its statement to the National Commission, the Committee recognized that the Association's failure to adopt a formal position with respect to an issue of such widespread interest and impact was wholly inappropriate. Committee deliberations in the months that followed produced last year's report and the resolution, subsequently submitted by the Section of Individual Rights and Responsibilities to the House of Delegates at the 1972 Annual Meeting in San Francisco. The resolution provided:

RESOLVED, that because the individual and social costs resulting from existing laws punishing simple possession of marijuana substantially outweigh any benefits derived, federal, state, and local laws punishing simple possession of marijuana should be repealed; and

BE IT FURTHER RESOLVED, that consideration be given to the feasibility of licensing the distribution of marijuana as a means of regulating its use.

After a debate in which, according to the ABA Journal for October, 1972, "it was obvious that many of these /sic/present simply do not believe the various scientific studies that indicate that marijuana is not harmful and does not lead to addiction to 'hard drugs,'" the House of Delegates approved a modified resolution providing:

RESOLVED, that, because the individual and social costs resulting from some existing laws punishing personal use or simple possession of marijuana substantially outweigh any benefits derived, federal, state and local laws punishing personal use or simple possession of marijuana should be overhauled and present excessive criminal penalties should be eliminated;

BE IT FURTHER RESOLVED, that the American Bar Association deplores the use of marijuana.

Additional reports, new data and changing conditions indicate that the Association's policy towards marijuana deserves further consideration and revision. The Committee wishes to make clear that at no time, either with its initial statement nor with the current report, has it sponsored or promoted the use of marijuana. Nor in view of the ready availability of marijuana does the Committee believe that the repeal of existing laws would encourage the use of this commodity. Indeed, the Committee recognizes that while long term, chronic use of the drug has not been proven harmful neither has it been proven safe. The crucial question which the Association must face is not a medical one. Rather, it is whether society's severest sanction, the penal law, should be used to punish a person who at most may be placing his own health in danger, particularly when by so doing society incurs significant costs far exceeding any real or potential benefits from the laws in question.

### Extent and Scope of Domestic Marijuana Use

If one single fact stands out above all others in the debate over marijuana it is that harsh criminal laws have been a total and utter failure as a deterrent to marijuana use. When marijuana was first prohibited at the Federal level with the passage -- despite opposition at the time from the American Medical Association -- of the Marijuana Tax Act of 1937, there were an estimated 50,000 cannabis users, mostly members of minority groups, especially blacks and Mexican-Americans. Within several years every state had made possession of marijuana illegal, and most states instituted lengthy prison terms for violators.

Nevertheless, the second report of the National Commission on Marijuana and Drug Abuse, released March 22, 1973, estimates that 26 million Americans have now smoked marijuana at least once in their lives (16% of all adults over the age 18, 14% of all youths between the ages of 12 and 17). Moreover, 13 million people indicated they considered themselves regular users of marijuana, a substantial increase from the 8.34 million regular users reported by the Commission in 1972. Two-thirds of all college students have tried marijuana, while a survey conducted by two Stanford University medical researchers revealed that 25% of all doctors have experimented with marijuana and 7% remain regular users.

These statistics are remarkable only because each and every one of these 26 million people knowingly committed a criminal act by merely trying marijuana. One need possess but minimal insight to realize the damage done to our system of law and government by such widespread disregard for any law, much less one which has achieved such symbolic prominence among so many concerned parties.

One can expect little decrease in marijuana usage in the future. A report prepared for the Bureau of Narcotics and Dangerous Drugs and published in Contemporary Drug Problems 467, by Dr. William H. McGlothlin of the UCLA Department of Psychology places the annual domestic consumption of marijuana in 1972 at 3.3 million pounds. For 1976 he projects between 9 and 22 million regular users consuming as much as 9.4 million pounds at maximum levels. Current estimates that 4 tons of marijuana are successfully smuggled into the country daily tend to be confirmed by the size of recent seizures.

For example, according to Newsweek, March 26, 1973, a joint U.S.-Mexican police raid netted 24.5 tons of marijuana about to be shipped across the border. The same article quoted a U. S. Customs agent as saying, "It would take one person every 15 feet along the 2,013 mile U. S.-Mexican border to control ground smuggling. In the air, its impossible."

Moreover, marijuana grows wild in virtually every state in the union. Pilot programs initiated by the Department of Agriculture in a futile attempt to eradicate marijuana from a number of midwestern states were abandoned several years ago.

Data such as this undoubtedly had a profound impact on the Consumers Union, for its recent book Licit and Illicit Drugs contains the following observation:

"It is now much too late to debate the issue: marijuana versus no marijuana. Marijuana is here to stay. No conceivable law enforcement program can curb its availability."

In brief, information presently available indicates convincingly that smoking marijuana has become a permanent part of our culture. This is true regardless of whether marijuana is believed good or bad, whether it is medically harmful or not, whether smoking it is seen as socially desirable or undesirable. Given the demand for and availability of marijuana the issue then becomes one of whether we as a people can continue a hopelessly futile prohibitory policy toward marijuana in the face of increasingly severe social costs by so doing.

#### Current Legal Approaches

One of the more odious aspects of the marijuana laws is the appalling disparity in the range of punishment prescribed from one jurisdiction to another, and the differences in sentences actually imposed within a given jurisdiction. Thus, a youth in Texas is subject to a sentence of life imprisonment, as a first offender, for possession of the same small quantity of marijuana possessed by a young Nebraskan whose sentence cannot exceed seven days in jail. In New York City -- though not necessarily in other parts of the state -- a first offender found in possession of a moderate quantity of marijuana is likely to have his case adjourned in contemplation of dismissal. On the adjourned date, the case is dismissed if the defendant has stayed out of further trouble, and his record expunged. Similar procedures may be followed at the judge's discretion in Tennessee, Oklahoma and West Virginia, among other states. Massachusetts imposes mandatory probation for first offenders in marijuana possession cases, and in New Jersey that state's Supreme Court has judicially barred jail terms for persons first convicted of possession. In Texas and Rhode Island, on the other hand, conviction for even a first offense is classified as a felony.

In at least one state -- Texas -- the imposition of long-term or life sentences for first offenders convicted of possessing small quantities of marijuana is not merely a possibility but a reality. At least one offender is currently serving a life sentence for conviction in 1962 of possessing one penny matchbox full of marijuana, and another first offender received a sentence in excess of fifty years in 1967 for possession of ten marijuana cigarettes.

According to a report prepared for the state Senate Interim Drug Study Committee entitled Marijuana in Texas, as of March 1972, 691 people were serving sentences averaging 9-1/2 years in Texas prisons for possession of marijuana. Included among this number were thirty people serving 30 years or more and thirteen people sentenced to life terms, three of them first offenders.

Some states, of course, have recently adopted less severe penalties for marijuana possession. Hawaii and Pennsylvania both now provide for maximum sentences of 30 days and/or a \$500 fine; New Mexico, 15 days and/or a \$100 fine. On the other hand, New York, despite the adjournment provisions mentioned supra retains a maximum penalty of 1 - 7 years for possession of 1/4 oz. to 1 oz. of marijuana, 7 - 15 years for over 1 oz. Additionally, even though many states have one year maximums for first offenders, those convicted a second time for marijuana possession might receive 10 or 20 year sentences in half a dozen states.

Moreover, the fact that stiff sentences are imposed in but a few cases raises another troublesome issue. If most marijuana defendants received probation, suspended sentences or short jail terms, what about the few unfortunates who receive maximum terms? In some instances, political dissidents, the poor, the young, and racial and ethnic minorities bear the heaviest burden of the law. (The Texas study found that blacks, Mexican-Americans and the poorly educated were disproportionately represented among those in prison.) A good example is the recent sentence of 10 years and 1 day given the editor of an underground newspaper in Dallas, Texas for possession of 1/18 of an ounce of marijuana. (Sentences of 10 years or less may be probated but any sentence over 10 years carries a mandatory term.)

Selective enforcement of marijuana laws and discriminatory and grossly uneven treatment for those convicted substantially undermines public confidence in the legal system.

In this context an additional question comes to mind: Is respect for law enhanced by retention of criminal sanctions which are flagrantly and persistently disregarded by millions of people and for which enforcement procedures are directed predominantly against young people in a totally arbitrary and capricious fashion? The Section answers this query in the negative. We believe that society and its legal institutions suffer far greater damage from the hypocrisy and unpredictability of current marijuana laws than from use of the drug itself.

At another level the National Commission on Marijuana and Drug Abuse found solid agreement among the large group of district attorneys it surveyed as to the ineffectiveness of current policy. More than half of the prosecutors agreed that present laws do not deter people under 30 from initiating marijuana use, do not deter those wishing to smoke regularly from so doing, and do not deter transfers of small amounts for little or no profit, even though most states treat such transfers as sales with accordingly harsh penalties. Judges, the Commission discovered, are equally disenchanted with the law -- only 13% said they would imprison an adult charged with possession of marijuana, and only 4% would incarcerate a minor.

Despite this attitude on the part of some elements of the criminal justice system, arrests of marijuana smokers have grown to staggering proportions. Between 1965 and 1970, state marijuana arrests increased dramatically from about 19,000 in 1965 to over 188,000 by 1970, and increased of nearly 1000 per cent. Estimates published in the ABA News indicate that the number of state arrests grew again in 1970 to 226,000, plus an additional 3300

Federal marijuana arrests. According to the National Commission approximately 93% of these arrests are for simple possession and about 88% of those arrested are under the age of 26 (58% under age 21). In other words, more than 600 young people are arrested every day in this country for nothing more than having in their possession some quantity, usually under one ounce, of marijuana. Included in this number are the sons and daughters of corporate presidents, elected officials, and law enforcement personnel; in other words, every strata of society feels the adverse impact of marijuana laws. The Section can imagine no other such purely private activity which carries with it such potentially severe consequences.

A young defendant charged with possession of marijuana need not be imprisoned or even convicted to suffer long term ill effects from his experience. Often arrest alone is enough to stigmatize an otherwise law-abiding citizen. While young people may be most often arrested, the grief, shame and emotional trauma involved is shared by their parents and family. Promising careers have been and continue to be ruined because of marijuana arrests, and convictions inevitably foreclose entry into many professions and occupations. The average person who first endures the horrors of the criminal justice system because of a marijuana arrest will leave his experience somewhat bitter and alienated. He may, in fact, become so disillusioned as to "dropout" -- the ultimate irony since marijuana laws are sometimes cited as essential to discourage pot smoking and the apathy and amotivation which allegedly follow. Clearly, for most individuals the present marijuana laws themselves carry a greater potential for harm than do any other aspect of marijuana use, including possible medical effects.

#### The Basic Issues

In his excellent book analyzing the legal and social realities of present day marijuana use, Marijuana, The New Prohibition, Stanford Law School Professor John Kaplan observes that "(T)he wisdom of a law should be determined in pragmatic terms by weighing the costs it imposes upon society against the benefits it brings." This simple balancing of interests, although self-evident, is sometimes overlooked in our eagerness to promote the general welfare.

Unquestionably, the motives of those who argue in favor of marijuana laws are unimpeachable. The intention is to curb the growing drug culture and prevent adverse health effects, though in actuality few unhealthy side effects have been substantiated despite some 3000 years of use and nearly 80 years of study. There are, of course, few virtues in smoking marijuana, though the same comment holds true for smoking cigarettes or drinking alcohol. If, in fact, the marijuana laws successfully deterred use, then the balancing test suggested by Professor Kaplan might well extol the value of the laws.

But available evidence points to the failure of the laws as a deterrent, as noted supra. The drug is readily available for those who want it, and the prospects of arrest, prosecution and conviction -- while an unpleasant reality to some -- are too remote to deter most users. The Consumers Union Report, Licit and Illicit Drugs, estimates that in the United

States, where five million marijuana cigarettes were smoked daily in 1971, the likelihood of being arrested on any particular occasion of use was far less than one chance in 5000; for many users the risk approached zero. The simple fact is that for the most part the law is probably an irrelevancy in the decision to use, or not to use the drug--except in those cases where marijuana is used -- for reasons of protest and to defy authority -- simply because it is illegal. One young man appeared before the New York State Commission on Campus Unrest and related how a severely worded law actually helped entice him to experiment with the drug which he knew to be harmless. He observed: "It isn't often that a person can create a felony in the privacy of his own room in his own house."

When reviewing society's approach toward other potentially deleterious substances one is immediately struck by the unique and adverse status accorded marijuana, this nation's third most popular and widely used (after alcohol and tobacco) recreational drug, according to the National Commission. For example, cigarette smoking is legal despite clear and unequivocal evidence of its danger to life and health. Persons with emphysema are warned that smoking is apt to result in their death. But it is not illegal, punishable by a jail term, for them to smoke cigarettes. Similarly, persons having relatively large amounts of fat in their blood are warned to refrain from certain high-cholesterol foods. But they are not subject to arrest and imprisonment when they ignore their doctor's advice.

Smoking marijuana, on the other hand, remains illegal despite the lack of reputable medical evidence as to direct harm from moderate use. Certainly marijuana smoking does not carry with it even the slightest threat of a lethal experience. On this point the National Commission stated:

"A careful search of the literature and testimony of the nation's health officials has not revealed a single human fatality in the United States proven to have resulted solely from ingestion of marijuana. Experiments with the drug in monkeys demonstrated that the dose required for overdose death was enormous and for all practical purposes unachievable by humans smoking marijuana. This is in marked contrast to other substances in common use, most notably alcohol and barbiturate sleeping pills."

A number of other findings of the thirteen member National Commission on Marijuana and Drug Abuse -- including nine appointees of President Nixon -- are worth considering in relation to potential dangers, both medical and social, arising from marijuana use.

-- "the most notable statement that can be made about the vast majority of marijuana users -- experimenters and intermittent users -- is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criterion other than their marijuana use."

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- "from what is now known about the effects of marijuana, its use at the present level does not constitute a major threat to public health."
- "a large amount of research has been performed in man and animals regarding the immediate effects of marijuana on bodily processes. No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marijuana."
- although a number of studies have been performed, at present no reliable evidence exists indicating that marijuana causes genetic defects in man."
- "in sum, the weight of the evidence is that marijuana does not cause violent or aggressive behavior; if anything, marijuana generally serves to inhibit the expression of such behavior."
- "no objective evidence of specific pathology of brain tissue has been documented. This fact contrasts sharply with the well-established brain damage of chronic alcoholism."
- "no outstanding abnormalities in psychological tests, psychiatric interviews or coping patterns have been conclusively documented."
- "in a word, cannabis does not lead to physical dependence."
- "although evidence indicates that heavy, long-term cannabis users may develop psychological dependence, even then the level of psychological dependence is no different from the syndrome of anxiety and restlessness seen when an American stops smoking tobacco cigarettes."
- "research has not yet proven that marijuana use significantly impairs driving ability or performance."
- "no valid evidence was found to support the thesis that marijuana, by itself, either inevitably, generally or even frequently causes or precipitates the commission of crime, including acts of violence, or juvenile delinquency. Within this framework, neither the marijuana user nor the drug itself can be said to constitute a danger to public safety."

The report of the National Commission is unique only for the comprehensive, thorough nature of its research. Most of the facts it reports and the conclusions it reaches have been noted by a number of other government commissions, including the Indian Hemp Drugs Commission (1893-94), the Panama Canal Zone Military Investigations (U.S. Army, 1925), the New York

Mayor's Committee on Marijuana (La Guardia Report, 1944), the Advisory Committee on Drug Dependence of the United Kingdom Home Office (Wootton Report, 1968), the Canadian Commission of Inquiry into the Non-Medical Use of Drugs (LeDain Commission, 1972), and the National Institute of Mental Health (*Marijuana and Health*, 1972). Not only were these reports in agreement as to the relative harmlessness of marijuana, many of them recommended that criminal penalties for private possession of marijuana be eliminated. The Section recognizes that differences may exist as to the validity of any given study or report on the subject. However, the Section also believes that the weight of the evidence clearly disproves allegations sometimes heard that "more study is required" or that "not enough is known about marijuana." Simply stated, such comments reflect either a basic ignorance of available information or a conscious attempt to obfuscate the issue.

The hypocrisy of justifying present marijuana laws on the grounds of danger to the users' health or to society generally is further emphasized when alcohol is considered. According to the National Commission, about 80 million Americans currently use alcohol, and dependence on alcohol is "without question the most serious drug problem in this country today."

Alcohol has been shown to be far more dangerous than marijuana in several respects. From the point of view of the health of heavy drinkers the evidence is conclusive. Heavy drinking is associated with nutritional deficiencies, cirrhosis, cardiovascular disease, tuberculosis, and brain damage. Alcoholics die earlier than non-alcoholics of natural and unnatural causes. Adverse social effects caused by heavy drinking among alcoholics and non-alcoholics, while too numerous to detail, include thousands of deaths due to traffic and other accidents. The link between alcohol and crime, particularly crimes of violence, is well known.

Any comparison of alcohol and marijuana should not overlook the issue of physical addiction. It is a uniformly accepted principle that of the two drugs, only alcohol is physically addictive. Alcoholics suffer from distressing withdrawal symptoms (known as delirium tremens) which, if untreated, may lead to death.

Alcohol presents a far greater danger than marijuana to society. This is not subject to honest debate. What has been questioned is the relevancy of the alcohol analogy. It has been urged on both sides of the "legalization" argument that the alcohol analogy is a "red herring." The Section feels that the alcohol analogy is not "red herring." It should be an important element in any consideration of laws making the possession and sale of marijuana illegal. We cannot overlook the question of hypocrisy being raised so adeptly by the younger generation. The label of "red herring" is hardly a rational response to this obvious difference in the handling of drug problems. There is simply no justification for present laws regulating alcohol yet prohibiting marijuana. We are concerned with inconsistencies in law and charges of hypocrisy both in law and in the enforcement of law, and as lawyers we are especially cognizant of the need for the legal system to be just and to appear to be just. Inconsistencies such as these must be corrected if we are to have any credibility when we preach respect for law and the institutions of government.

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Prohibition did not work for precisely the same reasons that existing marijuana laws do not work. People want the product and, accordingly, there is widespread flaunting of the law. Still, from nearly every medical and social perspective alcohol is far more destructive and has a far greater adverse impact than does marijuana. Consequently, the two positions (endorsing marijuana laws and opposing any change in alcohol possession and distribution laws) appear to us to defy logic.

But it is not only the alcohol analogy which persuades this Section to urge repeal of criminal penalties for simple possession of marijuana. On balance, the total "costs" of retaining these laws outweigh any benefits derived from them. For, as the National Commission concluded, "The actual and potential harm of use of the drug [marijuana] is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance."

#### The Link Between Marijuana and Use of Other Drugs

One of the arguments most often raised in defense of existing marijuana laws is that use of marijuana leads to use of heroin or other drugs. On this question the National Commission is unequivocal -- such arguments are absolutely false. To quote the Commission's findings:

If any one statement can characterize why persons in the United States escalate their drug use patterns and become polydrug users, it is peer pressure. Indeed, if any drug is associated with the use of other drugs, including marijuana, it is tobacco, followed closely by alcohol.

Marijuana use per se does not dictate whether other drugs will be used; nor does it determine the rate of progression, if and when it occurs or which drug might be used.

The fact should be emphasized that the overwhelming majority of users do not progress to other drugs.

While it is true that some 85 to 90 percent of heroin users have smoked marijuana, the more important consideration is that only about 3 percent of those trying marijuana have subsequently used heroin. Indeed, the Committee feels that laws prohibiting marijuana may have a more direct correlation with the use of heroin and other dangerous drugs than does any chemical or pharmacological property of the substance itself. This is true for two reasons.

First, the illegality of marijuana coupled with its popularity and consequent high demand gives rise to a flourishing black market. Most marijuana smokers obtain their supply from friends or other amateur sources. Indeed, Professor Eric Goode of the State University of New York at Stony Brook estimates that roughly 45 percent of all users have sold or otherwise

transferred marijuana at one time or another. At the same time, some marijuana smokers are forced to deal with professional black marketeers whose stock may include not only marijuana but also heroin, barbiturates, amphetamines or hallucinogens as well. These drug pushers have no qualms about offering other of their wares should marijuana be unavailable. Such was the case in late 1969 and 1970 when the U. S. Government's "Operation Intercept" program caused temporary shortages of and higher prices for marijuana. During this period large numbers of young people first began experimenting with "reds" (barbiturates). Ironically, then, present marijuana laws may tend to increase, for at least some young people their exposure to dangerous and addicting drugs.

A second, related factor concerns the user's attitude toward both marijuana and its legal status. A marijuana smoker knows that his use of the drug is illegal. He sees his friends arrested for similar behavior. (The National Commission found that 53 percent of all 16 and 17 year olds know someone who has been arrested for marijuana use.) He realizes he is a criminal because of an act he believes to be essentially harmless. Once his self-image is that of an "outlaw" he feels less inhibited about indulging in other behavior which society condemns. In many states the penalties for possession of dangerous drugs are equal to or only slightly more severe than penalties for marijuana possession. Once the marijuana smoker has risked arrest and imprisonment for his use of that drug he may well harbor no second thoughts about acquiring and using other illegal drugs.

Our marijuana laws have, indeed, created an entire generation of criminals, and respect for all law cannot but suffer as a result. This general attitude of disrespect for and disgust with the legal system poses a far greater societal threat than the simplistic and discredited notion that marijuana is an inevitable "stepping-stone" to heroin.

#### Marijuana and the Agencies of Criminal Justice

Clearly, an individual who is arrested and prosecuted on a marijuana charge endures great personal anguish for an act with de minimus social consequences. But the real loser because of the current marijuana laws is society itself. We find ourselves today in the midst of rising crime rates and growing concern over the adequacy of our law enforcement and criminal justice systems. Yet we persist in diverting an ample portion of our limited resources to the apprehension of young people whose only crime is smoking a marijuana cigarette. Accordingly, we must acknowledge that one of the most significant costs of present marijuana laws is their adverse effect on a criminal court system already groaning under the weight of huge backlogs of undisposed of cases and an overcrowded prison system which admittedly has virtually failed as an instrument of social rehabilitation.

The direct monetary costs involved are staggering. California alone spends an estimated \$100 million annually to enforce its marijuana laws. In terms of resource allocation, each and every police, narcotics and customs officer who spends his time pursuing marijuana users could more effectively serve the cause of crime control by switching his attention and efforts to those who traffic in heroin and other hard drugs.

Occasionally, someone argues that the failure of the marijuana laws as a deterrent to the proscribed behavior is no reason to repeal these laws, since other criminal laws, e.g., the homicide statutes, also fail in their deterrent capacity. That view might be persuasive if marijuana use were realistically perceived as dangerous or even unhealthy. Such is not the case, however. As the National Commission has declared:

"When the issue of marijuana use is placed in this context of society's larger concerns, marijuana does not emerge as a major issue or threat to the social order."

As already noted, there can be no doubt as to the utter failure of present laws in deterring the use of marijuana. Although the number of people arrested reached the astonishing total of 230,000, this figure represents less than 2% of the total number of regular marijuana smokers. Thus, for most users the possibility of arrest is so remote that few, if any, refrain from smoking marijuana because of the laws. Yet the cumulative effect on the criminal justice system of these thousands of arrests is staggering.

What is worse, enforcement of the marijuana laws has given rise to police practices of dubious wisdom and doubtful constitutionality. Long-haired young people have become prime targets of police harassment, which most often takes the form of wanton searches of persons and property without probable cause. Such tactics have, for example, become so prevalent along the New Jersey Turnpike that pending litigation seeks a permanent injunction to bar state police from engaging in future illegal searches. Even more insidious is the growing practice of deploying undercover narcotics agents in high schools and on college campuses. While the alleged goal is stopping hard drug traffic, the use of these agents most often comes to light amid highly publicized reports of campus "crackdowns" where dozens of students are arrested for possession of "narcotics." Close scrutiny of these reports reveals that almost all charges and drug confiscations involve not heroin or amphetamines but marijuana. On those campuses where agents are not deployed student informers are relied upon. Millions of students and young people no longer feel secure, even in the privacy of their rooms, a situation which must dismay those of us concerned with the diminishing rights of privacy we all enjoy.

In short, the marijuana laws are responsible for the wasteful and unwise deployment of law enforcement resources, for adding thousands of cases of trivial import to overloaded court calendars, and for inviting abuse of

the civil rights and civil liberties of millions of this nation's youth through unconstitutional searches and unhealthy police practices. In practical terms, these costs of existing marijuana laws are perhaps the most significant and certainly the most inexpedient.

#### Appropriate Governmental Response to the Use of Marijuana

We understand the concerns of those who support existing marijuana laws, though frankly we believe that many people have based their position on untenable arguments supported by discredited information and myth. We believe that if recreational drugs such as tobacco, alcohol and marijuana, remain popular -- and no reasonably objective observer could conclude otherwise for any of the aforementioned substances -- then the government has an obligation to regulate their availability and use. Reliance upon criminal sanctions in an attempt to regulate marijuana is, in our view, both inappropriate and counterproductive. In fact, a key point which must be stressed is that it is impossible to regulate a substance which is prohibited, a lesson which this country should have learned during the days of alcohol prohibition. (A curious footnote to Prohibition is the fact that while the sale of alcohol was universally forbidden, in only a few states was possession of alcohol illegal; this is in marked contrast to the present day situation with respect to marijuana which finds both sale and possession banned in all jurisdictions.)

Having said that, the question becomes one of what response to the issue by government is appropriate. There are several steps which government may properly take in this area. One is education. To date we have not done an adequate job of educating our citizens, both young and old, on the dangers of abusing any drug, including prescription and over-the-counter drugs. By grouping marijuana with heroin, by imposing strict penalties for its use and by overstating the possible dangers of the drug we have, in fact, lost credibility among both users and non-users of marijuana. As a result young people no longer believe us when we counsel against the dangers of narcotics. Thus the Section believes that an essential step in developing sound drug education programs is the reexamination of our response to the widespread use of marijuana and the revision of our criminal laws on the subject to reflect the wealth of information now available.

A second possibility involves governmental regulation of the channels of marijuana distribution. Contrary to what many believe, such a step would actually mean more controls over marijuana, not less. Age controls would be possible, as would purity and potency standards. At present none of these controls -- which are properly imposed on the other popular recreational drugs, tobacco and alcohol -- can be established for marijuana for the simple reason that a black market seller cares not whether his customer is 13 or 30, whether his product is pure or laced with more potent (and dangerous) adulterants, or whether the marijuana he sells is twice or even four times stronger than his previous supply thereby creating a potentially harmful situation for the novice smoker. Government regulation over the distribution of marijuana--with particular emphasis on purity and potency of the drug and age limitations on the buyer--will greatly reduce and perhaps eliminate the major known dangers associated with marijuana use today.

The wisdom of a government controlled regulatory system for distributing marijuana has recently been enunciated by the San Francisco Committee on Crime, by the District of Columbia Mayor's Advisory Committee on Narcotics Addiction, Prevention and Rehabilitation, and by Consumers Union. As the editors of the last named organization concluded in Licit and Illicit Drugs:

We do not recommend legalization because we believe that marijuana is 'safe' or 'harmless'. No drug is safe or harmless to all people at all dosage levels or under all conditions of use. Our recommendation arises out of the conviction that an orderly system of legal distribution and licit use will have notable advantages for both users and non-users over the present marijuana black market. In particular it will separate the channels of marijuana distribution from heroin channels and from the channels of distribution of other illicit drugs -- and will thereby limit the exposure of marijuana smokers to other illicit drugs. Even more important, it will end the criminalization and alienation of young people and the damage done to them by arrest, conviction and imprisonment for marijuana offenses.

#### The Section's Recommendation

The users of any drug want to know about its dangers. For that reason the government has a responsibility to continue research into possible effects of marijuana on the user, and to publicize its findings. But once adequate warnings are given, the government has fulfilled its obligations. Millions of cigarette smokers daily ignore the government's advice, stated clearly on each pack. Their behavior may be foolish, but it cannot be classified as criminal. The same approach should be followed for marijuana, which medically is a far less harmful substance.

In summary, the Section believes that the time has come for government to acknowledge its obligation to minimize the abuse potential of marijuana by instituting strict legal controls over its distribution and use while recognizing the exorbitant cost of continuing the impractical and ineffective approach toward marijuana presently being followed.

Accordingly the Section of Individual Rights and Responsibilities respectfully urges the House of Delegates of the American Bar Association to endorse our recommendation -- as a meaningful initial step toward a rational policy on marijuana -- that: (1) there should be no criminal laws punishing the simple possession of marijuana; (2) casual distribution of small amounts not for profit be treated as simple possession; and (3) regulatory schemes governing distribution of marijuana be established by the States.

Respectfully submitted,

McNeill Smith, Chairman

August, 1973

REMARKS OF DONALD E. SANTARELLI  
FORMER ADMINISTRATOR OF LEAA  
TO THE SUB-COMMITTEE ON ALCOHOLISM AND NARCOTICS

I offer these few remarks to make clear the perspective from which I view this most timely subject of law enforcement and marijuana use.

From the beginning of my experience as a law clerk and then as Assistant U.S. Attorney for the District of Columbia, through my experience as legislative counsel to both the House and Senate Judiciary Committee, and as Associate Deputy Attorney General from 1969 to 1972 up to my term as Administration of LEAA, I have maintained a consistent point of view - that we need to strengthen our law enforcement institutions in dealing with the problem of controlling crime in America. But in the evolution of my short career I have come, some time ago, to recognize that simply strengthening law enforcement is not a sufficient objective in the desire to control crime in America. I have come to the rather strongly held and often expressed view that a particularly necessary and missing element in the present war against crime is a role for individual citizens, both at the crime prevention and law enforcement ends of the spectrum. Citizens simply must do more. They must report crime, they must testify about crime, they must refuse to be victimized at the hands of the criminal elements as well as at the hands of the criminal justice system accountable as well as holding their other community institutions accountable.

I have tried diligently and with some controversy to turn the direction of LEAA towards the development of citizen initiatives. These programs would, hopefully, revitalize and restore the missing element of community participation in crime prevention and law enforcement. I pressed for the commitment of LEAA funds to citizens activities such as witness and victims programs; juvenile delinquency prevention programs; community support for corrections and rehabilitation programs. I believe strongly that a community must have the greater role in the crime prevention and law enforcement. It is from that perspective that I make the observations on the enforcement of so called "victimless crimes" and particularly on the enforcement of laws against possession for personal use of marijuana.



*The Commonwealth of Massachusetts*

*Commissioner of Probation*

*206 New Court House, Boston 02108*

November 25, 1974

Senator Harold E. Hughes  
1327 New Senate Office Building  
Washington, D. C. 20510

Dear Senator Hughes:

Enclosed is a copy of a drug monitoring program that you requested. This study covers the years 1973 and 1974.

The highlights of the study show that 53% of all new drug arrests and court appearances are the so-called youthful offender age group between 17-21 years.

There was a sharp decrease in new heroin arrests in the period between 1973 and 1974, showing a 28% decrease in this area.

Marijuana offenders constitute almost 56% of all new drug arrests and court appearances in Massachusetts.

Feel free to call upon me at any time in the future when you resume your hearings.

Very truly yours,

*Walter B. Murphy*

Walter B. Murphy  
Deputy Commissioner

WBM/mt  
enc.

## DRUG MONITORING STUDY

Since April, 1974, the Office of the Commissioner of Probation has continued the drug monitoring program begun in April, 1973 by the Prison Health Project in co-operation with the Office of the Commissioner. In 1974, four samples were drawn, one each in April, July, August and October, 1974. As in 1973, the sample consists of all new arraignments on charges involving controlled substances reported to the Office of the Commissioner by Massachusetts courts during five consecutive days in each of the four chosen months. The April sample consists of 304 defendant cases, the July sample, 279 cases, the August sample, 300 cases and the October sample, 309 cases, making a total of 1192 cases of individual defendants for the combined sample of 1974. The following is a limited, preliminary report, intended to indicate possible changes in drug use and law enforcement patterns. More detailed studies are currently being implemented.

In Table I (Offender Age at Arraignment) possible changes in number of defendants charged with controlled substance offenses in each of five age brackets are considered. The first change to be noted is the increase from 1973 to 1974 in all age groups up to the age of 22, ranging from a sharp increase of 13% in the 13-16 age group to a more modest 6.3% increase in the 17-21 age group. There is a decrease of 7% in the 22+ age group which now accounts for only 35% of the state total. This drop could suggest that perhaps drug experience is becoming progressively confined to the school years from high school years from high school through college, tapering off with increasing maturity. However, the so-called "youthful offender" group of 17-21 years still accounts for 53% of all offenders in this sample.

Table II (Offender Residence by Mental Health Region) shows the number of offenders in each of the seven regions which were delineated in the 1973 tables. It presents a contrasting and unexplained picture. Region I, composed primarily of Berkshire, Franklin, Hampshire and Hampden Counties shows a decrease of almost 18% while its neighbor, Region II, Worcester County, shows an increase of almost 16%. Similarly, Region III, Northern and Northwestern Middlesex County shows a decrease of 19% while neighboring Region IV, composed of Essex County plus Medford, Malden and Everett, shows a 44% increase. This is, by far, the largest increase of any region and is almost 29% higher than the increase in Worcester County. The remaining three regions show little change. Region VII continues to lead in offenders with over 18% of the state total. As in 1973, almost two-thirds of the cases reported are resident in the more densely populated eastern half of Massachusetts.

Table III (Type of Controlled Substance Reported) shows some striking changes. Cases involving Class A substances, primarily heroin, shows a sharp decrease of 28%, while Class D cases, primarily marijuana, shows an increase of 18%. Cases involving Class C, primarily LSD and other hallucinogens, show a massive increase of 165%. We must use some caution here before drawing any strong conclusions, however, for the numbers are small compared to those of Class A and Class D cases. Class B cases shows a comparatively slight increase of less than 5%, while Class E cases yields a decrease of the same proportion. Three additional categories of drug offenses in Table III may influence the interpretation of the results. Multiple substances increased 7% while "Other Charges" which includes possession of a hypodermic needle, obtaining drugs by false prescription, etc., where no specific drug is involved increased 65%. On the other hand, drug offenses with substances not reported decreased by 74%.

## SUMMARY

Summary

The 1974 combined sample of offenders involved with controlled substances shows an increase of all offenders 21 years of age and under, while the number of mature drug offenders of 22 plus years indicates a decline. An unexpected shift in offender residence has occurred and will have to be studied further. There is also an unexplained shift in the number of cases in which the residence was either unknown or out-of-state. The number of cases with an out-of-state address has decreased by exactly the same amount as the increase in the number of cases where the address was unknown. Whether there is a causal connection will have to be determined.

There is a sharp decrease in the number of Class A offenders and a substantial increase in the number of Class C offenders, coupled with an increase in the number of Class D offenders (marijuana), which, it should be pointed out, constitutes almost 56% of all controlled substance arrests and court appearances. The number of individuals with multiple drug possession increased slightly, while "Other Charges" in which no specific drug was involved has climbed sharply. There is, at the same time, a sharp drop in the number of cases in which the type of drug was unreported and this could account for some of the increases in types of drugs used.

The study suggests some possible trends. There is an increase in court appearances for marijuana charges which suggest that its use may be increasing. The decrease in the number of heroin cases suggests a diminished use due possibly to effective and cooperative enforcement by state, local and federal agents or successful rehabilitation programs. It is also possible that some Class A users are turning to other forms of controlled substances or to alcohol, which remains the nation's number one drug problem.

CONTROLLED SUBSTANCES

CLASS A	Heroin Other named opiates and opiate derivatives
CLASS B	Amphetamines Methamphetamine (Speed) Cocaine Methadone Opium Barbiturates (Seconal, etc.)
CLASS C	Hallucinogens including: LSD DMT THC (Hashish) Mescaline Peyote Psilocybin And certain named depressants
CLASS D	Marihuana And certain "barbitals"
CLASS E	Dilute mixtures of codeine, morphine or opium (cough syrups) Prescription drugs not named elsewhere

## DRUG MONITORING PROGRAM

1973 - 1974

TABLE I - AGE AT ARRAIGNMENT

<u>Age</u>	<u>Number</u>		<u>Percentage</u>	
	<u>1973</u>	<u>1974</u>	<u>1973</u>	<u>1974</u>
13-14	15	19	1.2	1.6
15-16	100	111	8.6	9.3
17-18	234	260	20.0	21.8
19-21	362	374	31.0	31.4
22 plus	457	425	39.1	35.7
Unknown	<u>2</u>	<u>3</u>	<u>.1</u>	<u>.2</u>
Total	1170	1192	100.0	100.0

## DRUG MONITORING PROGRAM

1973 - 1974

TABLE II - RESIDENCE

<u>Region</u>	<u>Number</u>		<u>Percentage</u>	
	<u>1973</u>	<u>1974</u>	<u>1973</u>	<u>1974</u>
I	169	139	14.4	11.7
II	121	140	10.3	11.8
III	124	100	10.6	8.4
IV	120	173	10.3	14.5
V	137	140	11.7	11.8
VI	179	173	15.3	14.4
VII	215	222	18.4	18.6
Other States	99	44	8.5	3.7
Unknown	<u>6</u>	<u>61</u>	<u>.5</u>	<u>5.1</u>
Total	1170	1192	100.0	100.0

## DRUG MONITORING PROGRAM

1973 - 1974

TABLE III - SUBSTANCE

<u>Substance</u>	<u>Number</u>		<u>Percentage</u>	
	<u>1973</u>	<u>1974</u>	<u>1973</u>	<u>1974</u>
Class A	141	101	12.1	8.5
Class B	62	65	5.3	5.5
Class C	23	61	2.0	5.1
Class D	565	667	48.3	55.9
Class E	22	21	1.9	1.8
Multiple	117	126	10.0	10.6
Unreported	176	45	15.0	3.8
Other Charges	<u>64</u>	<u>106</u>	<u>5.4</u>	<u>8.8</u>
Total	1170	1192	100.0	100.0

## DRUG MONITORING PROGRAM

1973 - 1974

TABLE III - SUBSTANCE

<u>Substance</u>	<u>Number</u>		<u>% Increase or Decrease</u>
	<u>1973</u>	<u>1974</u>	
Class A (heroin)	141	101	- 28.3%
Class B (amphetamines, barbiturates)	62	65	+ 4.8%
Class C (LSD)	23	61	+165.0%
Class D (Marijuana)	565	667	+ 18.1%
Class E (Codeine, etc.)	22	21	- 4.5%
Multiple	117	126	+ 7.6%
Unreported	176	45	- 74.4%
Other Charges	64	106	+ 65.6%
Total	1170	1192	

RESIDENCE BY REGION

The home address of each person arraigned was recorded. For the purpose of these studies, it was decided to aggregate this information into the seven Human Service Regions which are being used as the basis of planning the distribution of drug treatment services. These seven regions may be described as follows:

- Region I - Berkshire, Franklin, Hampshire and Hampden Counties
- Region II - Primarily Worcester County
- Region III - Northern and Northwestern Middlesex County and the Lowell area
- Region IV - Essex County plus the Malden-Medford-Everett area in Middlesex County
- Region V - Most of Norfolk County plus the southernmost section of Middlesex County
- Region VI - Suffolk County plus Brookline
- Region VII - Southernmost Norfolk County plus the Brockton area and all of southeastern Massachusetts

STATEMENT  
OF THE  
NATIONAL COORDINATING COUNCIL ON DRUG EDUCATION  
SUBMITTED TO THE  
SENATE ALCOHOLISM & NARCOTICS SUBCOMMITTEE  
SENATOR HAROLD E. HUGHES, CHAIRMAN

The National Coordinating Council on Drug Education is pleased to take this opportunity to discuss some of the concerns of drug education specialists as they relate to the marijuana control laws.

To begin with, it must be pointed out that the emphasis in drug education has shifted considerably in the past six or seven years. Prior to the sharp upsurge in drug use among young people which the media began noting in 1967-'68, the task of informing people about the effects and consequences of drug use was handled (if at all) through the traditional institutions: family, school, church, etc. These institutions were themselves supplied with such medical, scientific, social and legal information as existed through the auspices of the U.S. Government--chiefly the Bureau of Narcotics & Dangerous Drugs. Unfortunately, much of the data circulated in this manner was hopelessly inadequate; instead of supplying accurate and up-to-date information based on the best medical evidence, the Government frequently circulated reports which had not been revised since

the late 1930's, when the marijuana prohibition first went into effect. The results of this approach soon culminated in the classic nightmare of the educator: young people, whose understanding of drugs and their effects was anything but extensive, still seemed to know more about the subject than did the people who traditionally assumed the role of teacher and guide. And nowhere was this trend more obvious than in the case of marijuana.

What had happened to upset the usual balance was startlingly clear. While members of an older generation were sipping their martinis or taking a pill to help them sleep or relax, members of the latest generation were experimenting with a "newcomer" on the scene--the very existence of which caught most people unaware--and in the process a whole, sprawling body of first-hand information was being generated and dispensed. At the first glimpse of this situation, parents and educators stumbled over each other in the rush to issue clarion warnings against the dangers of "drug use." Evidence gathered thirty years earlier in a time of similar panic was held up as proof positive that smoking marijuana was harmful, capable of producing any number of behavioral deviations which the society at large had branded unacceptable. The confrontation between secondhand and outdated information and current first-hand experience was inevitable, and members of the younger generation were among the first to note (and in many cases to advertise) the discrepancies.

In the first place, it was abundantly clear to marijuana users that the bulk of the claims made against the drug (particularly those which dwelled on the social and personal pathology of users) were unsubstantiated by actual use. And once it was agreed in a peer-group setting that the negative short-term effects of marijuana use had been wildly overstated by those in positions of authority, it was easier to assume a cavalier attitude about any potentially negative long-term effects. This attitude undermined attempts by responsible drug researchers and educators to adopt a meaningful wait-and-see approach, particularly in view of the fact that the marijuana control laws made it difficult, if not impossible, for investigators to obtain the drug for testing under controlled settings.

Equally as damaging from an educator's viewpoint was the rising suspicion on the part of young users that the larger society was not so much taking an anti-drug stance in general, but was wielding its enormous power to pressure people into discontinuing the use of a specific category of drugs--the so-called "consciousness-expanders," specifically marijuana and the hallucinogens. The application of this double standard, however well-intentioned, made the drug educator's task just that much more difficult, for it seemed to be based on an antipathy towards the changing life-styles the counter-culture was rapidly adopting, rather than on any objective standards of evidence.

The result of this conflict of values was that the drug educator was forced into an over-reliance on the weakest argument of all, namely, that marijuana ought not be used because it was illegal. The obvious retort, of course, was: "Why is it illegal if it has not been demonstrated that it causes any discernible harm, from a medical standpoint or any other?" To which the only response that could reasonably be made was the rather lame: "Well, the tests so far are inconclusive; it may be shown to be harmful in some future findings."

This line of argument was being used at a time when the medical evidence as to the debilitating effects of alcohol was largely complete, whereas the results of marijuana research tended to support claims by marijuana advocates that their drug of choice was largely benevolent. The application of this legal/medical double standard has had the unfortunate effect of imbuing younger Americans with a kind of blanket skepticism as far as official pronouncements are concerned; if the recent studies indicating various deleterious effects of marijuana conducted by Nahas, Stenchever, etc. prove to have some foundation in fact, the task of communicating the results will be far more difficult than it ought to be.

It seems fair to say that the legal sanctions against a drug used daily by millions of American youth has had the double-edged effect of widening the gap of understanding between the generations, while at the same time obfuscating

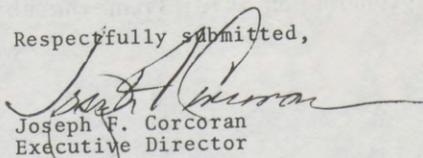
the real issue, which is that, for better or worse, human beings seem to be drug-taking animals. The job of drug education is not to encourage or discourage drug use, but to place the facts before the people and encourage them to make intelligent choices. Americans are traditionally a self-governing people. We take the notion of individual liberty seriously--particularly freedom of choice. We want the facts of the case laid out before us, the pros and cons argued, and insofar as it is possible, we want to make our own decisions. That is true both for a political body debating whether or not to decriminalize marijuana, or a youngster debating whether or not to smoke that first joint. Without a rational drug policy, rational and effective drug education is impossible.

In sum, then, present marijuana policy seriously undermines rational drug education efforts. We, of the National Coordinating Council on Drug Education, believe that marijuana as well as all other abusable substances, must be brought under a coherent framework of social, not criminal control.

In closing, we wish to thank the Chairman and members of the Subcommittee for having had the wisdom to initiate the current hearings, and we would be gratified indeed if, as drug educators, we succeeded in stating our case to the

public as fairly as the many witnesses before this panel have stated theirs.

Respectfully submitted,



Joseph F. Corcoran  
Executive Director

National Coordinating Council  
on Drug Education \*

\*This statement has been reviewed by the Board of Trustees of the National Coordinating Council on Drug Education. However, Mr. Paul Perito, Chairman of the Board, expresses his regrets at not being able to comment upon said statement due to extensive travel plans which have kept him away from the Washington area.

Senator HUGHES. With that understanding, then, the Subcommittee on Alcoholism and Narcotics is adjourned to a date to be set by the Chair if our schedule will permit.

[Whereupon, at 12:13 p.m., the subcommittee adjourned.]

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