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CANNABIS: A FORENSIC-MEDICAL REVIEW

by

John J. Cochrissen* and Carl M. Lieberman**

NO DOUBT some controls on the sale and possession of dangerous substances are mandatory for the health and safety of the individual and the community. Indeed, for controlling illicit supplies of dangerous substances and for deterring individual abuses, there is no alternative to the criminal law and its sanctions. But the array of substances requiring control is so immense that the task of designating them by law is difficult. In addition, appropriate legal designation is difficult because the health or social danger of any one drug depends not only upon the pharmacodynamics of the particular substance, but also upon who is using it and the circumstances of use. Criminal sanctions for the abusive use of drugs should not be more onerous than the dangers associated with such abuse. Accordingly, an inflexible code of repressive penalties will not yield the optimum control of the illegal use of a particular drug, at a particular time and place, by a certain individual.

Marijuana legislation was enacted in the 1930's¹ because of dangers attributed to its non-medical use.² Since then, experience has taught us two lessons. First, we were mistaken in our assessment of the dangers inherent in marijuana use, and secondly, excessive legal penalties are not an effective deterrent to expanding substance abuse. Marijuana is treated by federal law and by most state laws the same as the opiate narcotics,³ despite the fact that it is not a narcotic. Even though the most satisfactory definition restricts narcotics to opium, its derivatives, and synthetic analogs,⁴ narcotics statutes often control a number of drugs (marijuana, cocaine, peyote) dissimilar in structure and pharmacologic action.⁵ The abuse of marijuana offers a special challenge because the substance is widely used and control of individual use is most frequently attempted by statutes making simple possession a crime.⁶ These statutes are almost unenforceable

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¹ Marijuana Tax Act, INT. REV. CODE of 1954, §§ 4741-62.

² See notes 50-57 *infra*, and accompanying text.

³ Compare Harrison Narcotics Act, INT. REV. CODE of 1954, §§ 4701-26 with Marijuana Tax Act, INT. REV. CODE of 1954, §§ 4741-46. See also CAL. HEALTH & SAFETY CODE § 11001(d) (West 1964); N.Y. PUB. HEALTH LAW § 3301(38) (McKinney Supp. 1969); TEX. PEN. CODE ANN. art. 725b, § 1(14) (1961).

⁴ PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE app. A-2, at 40 (1967).

⁵ See note 3 *supra*.

⁶ E.g., INT. REV. CODE of 1954, § 4744(a). Though found constitutionally defective by the Supreme Court in *Leary v. United States*, 395 U.S. 6 (1969), the Government has interpreted the result as a waivable defect. The statute thus continues in force and the defect can and may be waived by a person facing a more serious charge. Memorandum to All United States Attorneys from Will Wilson, Assistant Attorney General in Charge of Criminal Division (Memo. No. 630,

because complainants or reporting witnesses are invariably lacking. Thus, enforcement officials must rely on informants and surveillance techniques.

An effective control system must provide a punishment commensurate with the crime, a punishment which will deter new crimes, and, most importantly, a device which will encourage the drug users to become socially-productive members of the community. Future legislative controls should carefully avoid the system which we have already found inadequate in the control of marijuana. Harsh and restrictive penalties for possession, sale, and distribution have been ineffective in curbing marijuana experimentation and abuse, and have been even less effective in converting convicted users into useful, achieving members of society.

I. A MEDICAL DESCRIPTION OF THE EFFECTS OF MARIJUANA

Although Indian hemp, *Cannabis sativa*, was grown in Virginia as early as 1611, the colonists did not indulge in smoking hemp for intoxication.⁷ Such indulgence occurred much later, when soldiers, while stationed in the Canal Zone (1916) and in Mexico (1911), were introduced to the inebriating potential of marijuana.⁸ The first reports of marijuana use in the United States date to a series of sensational newspaper exposés in the New Orleans press (1926). The articles focused on the use of marijuana by Negroes, its dissemination to young school children by criminal elements, and the commission of several violent crimes by users allegedly deranged by the drug.⁹ Today's wave of public concern over illicit marijuana use can be dated to 1963 reports of increased use by university students.¹⁰ Today, the use of marijuana by college and high school students, and even grade school children, has been documented. The hippie subculture has popularized a way of life which, among other aspects, centers on the use of psychoactive drugs. The number of non-narcotic drug abusers, including those dependent upon barbiturates, amphetamines, hallucinogens, and the minor tranquilizers, has never been precisely determined. Survey data suggests that in the United States at least eight to twelve million Americans have experimented with the various preparations of *Cannabis sativa*—mainly the commonly available marijuana, and the more expensive hashish.¹¹ On a worldwide basis, it is estimated that over 200 million individuals have tried marijuana.¹² Indeed, next to alcohol, it is the second most popular intoxicant in the world.

Cannabis sativa is a hardy weed which can grow to a height of fifteen to eighteen feet. Hashish or "hash" is a golden yellow, sticky resin which is collected from the leaves of cultivated plants. It is five to eight times as

June 20, 1969). See also N.Y. PUB. HEALTH LAW § 3305 (McKinney 1954); TEX. PEN. CODE ANN. art. 725b, § 2 (1961).

⁷ 1 R. BROTMAN & A. FREEDMAN, PERSPECTIVES ON MARIJUANA RESEARCH § 1, at 19 (1968).

⁸ 1 R. BLUM & ASSOCIATES, SOCIETY AND DRUGS 68-69 (1969).

⁹ J. KAPLAN, MARIJUANA—THE NEW PROHIBITION 88 (1970).

¹⁰ 2 R. BROTMAN & A. FREEDMAN, *supra* note 7, at 304.

¹¹ Statement of Dr. Stanley F. Yolles, Director, National Institute of Mental Health at Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 91st Cong., 1st Sess. 267 (1969).

¹² *Id.*

potent¹³ as marijuana, which consists of the flowering tops, leaves, and stems of unfertilized, non-cultivated plants. Chemical analysis has yielded over thirty cannabinoids, of which delta-8 and delta-9 trans-tetrahydrocannabinol (known as THC) account for the psychoactive potential of both marijuana and hashish in man.¹⁴ The quantitative content of THC depends upon soil, temperature, and other climatic conditions, with plants grown in sunny, dry zones yielding the highest content of THC.¹⁵ Recently, THC has been prepared synthetically.¹⁶ The procedure, however, is difficult and precludes extensive clandestine efforts at mass production. The illicit THC sold on the streets has been found to consist of mescaline or phencyclidine—both potent hallucinogens.¹⁷

In this country, the most common form of usage is by smoking, and a deep sustained inhalation is essential for the THC to diffuse across the pulmonary capillaries. The experienced user may become intoxicated with a single puff of a high quality "joint," while inexperienced novices may be unable to "turn on" with large doses of marijuana because of poor smoking technique. Marijuana is less frequently swallowed, but hashish has been a favorite ingredient of many recipes. Case reports of the sequelae of the intravenous injection of marijuana and hashish are rare, and a definitive statement of the effects of such usage cannot be made.¹⁸

The onset of action after smoking is within ten to twenty minutes, and the effects may persist for three hours.¹⁹ Smokers may maintain the intoxicated state by intermittently inhaling additional material. With repeated administration, tolerance to marijuana does not develop, and cross-tolerance to LSD, mescaline, and other hallucinogens has not been demonstrated.²⁰ In addition, withdrawal symptoms are not observed.²¹ Thus, marijuana and hashish do not have the addictive potential of the opiate narcotics (morphine, heroin, demerol, dilaudid, codeine) in humans.

The psychic effects generally begin with a feeling of relaxation and detachment. Audiovisual sensations are intensified, with color perception often the most affected.²² Illusions are common, while hallucinations are rare. Time perception is altered, usually manifested by a slowing of subjective time.²³ Emotions are loosened, with euphoria being more common

¹³ SPECIAL PRESIDENTIAL TASK FORCE RELATING TO NARCOTICS, MARIJUANA, AND DANGEROUS DRUGS, REPORT 8 (1969).

¹⁴ Isbell, Gorodetzky, Jasinski, Claussen, Spulak & Korte, *Effect of (-)Δ⁹-Trans-Tetrahydrocannabinol in Man*, 11 *PSYCHOPHARMACOLOGIA* 184 (1967).

¹⁵ TASK FORCE REPORT, *supra* note 13, at 7.

¹⁶ Mechoulam & Gaoni, *A Total Synthesis of a 1-Δ Tetrahydrocannabinol, the Active Constituent of Hashish*, 87 *J. AM. CHEM. SOC'Y* 3273, 3274 (1965).

¹⁷ *Hearings on Marijuana Before the House Comm. on Health & Welfare of the District of Columbia*, 91st Cong., 2d Sess. 10 (1970) (statement of Dr. Jesse Steinfeld, Surgeon General, U.S. Public Health Service); S. Cohen, *Marijuana: Pharmacology and Physiology* 1 (1969) (unpublished report of Director, Division of Narcotic Addiction and Drug Abuse, National Institute of Mental Health, on file with authors).

¹⁸ King & Cowen, *Effect of Intravenous Injection of Marijuana*, 210 *J.A.M.A.* 724-25 (1969).

¹⁹ Weil, *Cannabis*, 5A *SCIENCE JOURNAL*, Sept. 1969, at 36, 41.

²⁰ Grinspoon, *Marijuana*, 221 *SCIENTIFIC AMERICAN*, Dec. 1969, at 17, 19.

²¹ S. COHEN, *THE DRUG DILEMMA* 53 (1969).

²² S. Cohen, *supra* note 17, at 2.

²³ Weil, Zinberg, & Nelsen, *Clinical and Psychological Effects of Marijuana in Man*, 162 *SCIENCE* 1234, 1240 (1968).

than dysphoria. Some people experience drowsiness and feelings of hunger, while others feel unable to communicate properly. The latter may result from a combination of slowed, halting speech and a defect in the ability to retrieve information from immediate memory banks.²⁴ The individual is often passive and withdrawn. However, as with all disinhibiting agents, he might behave in an unrestrained emotional manner. While marijuana does not possess aphrodisiac properties,²⁵ the prolongation of subjective time may alter the perception of an erotic experience.

The most frequent physical effect of marijuana is a conjunctival hyperemia (red eye).²⁶ This is not due to an irritative smoke effect because it also occurs when THC is swallowed. Pupil size remains unchanged.²⁷ While an increase in heart rate is regularly noted, blood pressure, respiratory rate, blood sugar, and body temperature do not change significantly.²⁸ Nausea, a dry mouth from decreased salivation, and a cough from the irritant effects of the smoke are often mentioned.²⁹ Only some preliminary work on the cytogenetic effects of marijuana has been completed. It is, however, known to cross the placental barrier.³⁰ No carcinogenic activity has been attributed to marijuana.

The complications of acute marijuana intoxication are infrequent, and usually consist of anxiety or paranoid states.³¹ Any individual, especially a novice, may become confused about the changes that he is experiencing. The loss of ego-controls can result in delusional thinking, usually of a suspicious, paranoid nature. Misinterpretation of environmental cues can lead to a partial or complete belief in the paranoid scheme; the patient may panic and injure himself or others. Spontaneous recurrences of the marijuana state ("flashbacks") have also been described.³²

An absence of controlled research in the United States into the pharmacologic and social consequences of marijuana use has prompted some to extrapolate data obtained in foreign settings to the American scene. A review of the international literature reveals evidence of cannabis psychoses, loss of mental acuity, reduced energy, and social effectiveness.³³ However, the formulation of cross-cultural comparisons may be invalid because of the unsystematic description of the demographic characteristics of the samples, the obvious biases of institutionally selected samples (criminals or mental hospital patients), lack of standardization of mental health diagnoses, and a general lack of research sophistication among the observers. In addition, much of the marijuana used in the United States is of

²⁴ Weil, *supra* note 19, at 40.

²⁵ Jaffe, *Drug Addiction and Drug Abuse*, in *THE PHARMACOLOGICAL BASIS OF THERAPEUTICS* 300 (3d ed. L. Goodman & A. Gilman eds. 1965).

²⁶ Grinspoon, *supra* note 20, at 20-21.

²⁷ Weil, Zinberg, & Nelsen, *supra* note 23, at 1239.

²⁸ Grinspoon, *supra* note 20, at 20-21.

²⁹ *Id.*

³⁰ S. Cohen, *supra* note 17, at 4.

³¹ Talbot & Teague, *Marijuana Psychosis*, 210 *J.A.M.A.* 299 (1969).

³² Keeler, Reifler, & Liptzin, *Spontaneous Recurrence of Marijuana Effects*, 125 *AM. J. PSYCHIATRY* 384-86 (1968).

³³ Benabud, *Psychopathological Aspects of the Cannabis Situation in Morocco: Statistical Data for 1956*, 9 *BULL. ON NARCOTICS* 1 (1967).

much lower potency than the drug used in these foreign studies. The National Institute of Mental Health is negotiating with certain countries where marijuana use is endemic to evaluate more rigorously the long-term effects of chronic use. Further research is needed to elucidate both the short- and long-term physical and psychic effects of marijuana use. At present, the absence of valid scientific data should not lead to the assumption that long-term indulgence is harmless. As in the case of tobacco and alcohol, it is possible that from chronic use there are serious sequelae which will only become apparent through careful, longitudinal studies.

A question that frequently arises concerns the extent to which marijuana use predisposes use of stronger hallucinogens or heroin. By necessity, the evidence for a progression from marijuana to heroin must rely on retrospective investigations of heroin users. According to the British Advisory Committee on Drug Dependence (1968):

It can clearly be argued on the world picture that cannabis use does not lead to heroin addiction—a number of isolated studies have been published, none of which demonstrates significant lines of progression (from cannabis to heroin) . . . and we have concluded that a risk of progression to heroin from cannabis is not a reason for retaining control of this drug.³⁴

Thus far, the American experience indicates that only a small number of regular users of marijuana will try heroin. The fact that a person has tried marijuana on one or more occasions, and then has used more dangerous substances later, does not define a cause-effect relationship.

At the time of the passage of the 1937 Marijuana Tax Act,³⁵ it was declared that marijuana use leads directly to violence, crime, and insanity.³⁶ No evidence to counter the crime-insanity hypothesis was offered at that time. Later, the Medical Society of the County of New York flatly stated that there was no evidence that marijuana use is associated with crime or violence in this country.³⁷ The British Advisory Committee Report of 1968 concluded: "The evidence of a link with violent crime is far stronger with alcohol than with the smoking of cannabis. . . . [I]n the United Kingdom the taking of cannabis has not so far been regarded, even by the severest critics, as a direct cause of serious crime."³⁸ Perhaps the most unbiased observation is that of the 1967 President's Commission on Law Enforcement and Administration of Justice, which reported that marijuana "might, but certainly will not necessarily or inevitably, lead to aggressive behavior or crime. The response will depend more on the individual than the drug. This hypothesis is consistent with the evidence that marijuana may release but does not alter basic personality structure."³⁹

³⁴ ADVISORY COMMITTEE ON DRUG DEPENDENCE, REPORT, CANNABIS 13 (H.M.S.O. 1968).

³⁵ INT. REV. CODE OF 1954, §§ 4741-62.

³⁶ See text accompanying note 53 *infra*.

³⁷ Louria, *The Dangerous Drug Problem*, 22 NEW YORK MEDICINE 241 (1966).

³⁸ ADVISORY COMMITTEE REPORT, *supra* note 34, at 13-14.

³⁹ TASK FORCE REPORT, *supra* note 4, at 13.

II. REVIEW OF THE HISTORY OF MARIJUANA LEGISLATION

Early Legislative Controls. In January 1929, the same legislation that established two federal narcotics farms included Indian hemp and peyote in its definition of habit-forming or narcotic drugs.⁴⁰ "This was the first time that these substances had been included as narcotics under Federal laws dealing with the subject."⁴¹ For reasons unknown, nowhere in the committee hearings or in the *Congressional Record* was there any discussion of the rationale for this categorization, nor are peyote and Indian hemp mentioned in the hearings or the *Record*.⁴² Only addiction to opiates is mentioned, and until 1965, peyote was not subject to other federal control.⁴³

In 1932, the National Conference of Commissioners on Uniform State Laws proposed the Uniform Narcotic Drug Act, which contained optional provisions extending a state plan of narcotics control to cannabis.⁴⁴ Within a few years, many states adopted the Uniform Act,⁴⁵ thereby classifying marijuana within the legal definition of a narcotic. A lack of general interest in marijuana at that time is indicated by the fact that passage of the Act went unnoticed by the public—at least there appears to have been no newspaper publicity.⁴⁶ Once enforcement of the Act began, the usage of marijuana received extensive popular attention. Enforcement officials occasionally reported seizing large quantities of marijuana.⁴⁷ Meanwhile, with its actual intoxicant effects substantially unknown, the alleged effects of marijuana were utilized for the self-serving purposes of users and nonusers alike. According to one reporter, "users painted a bad picture of dependency on cannabis to escape punishment or receive a discharge from the army. In fact, some persons caught . . . committing crimes of violence attempted pleas of insanity due to the influence of marijuana."⁴⁸ Nonusing writers or enforcers tended to paint a fearful picture of the habitual user as a violent criminal. It is possible that "[t]he often repeated wildfire spread of reefer smoking in the mid-1930's is . . . an artifact of new state laws. There had been no records of marijuana usage until legislation was passed in the 1930's."⁴⁹

⁴⁰ 42 U.S.C. § 201(j) (1964).

⁴¹ U.S. PUBLIC HEALTH SERVICE, DIVISION OF HYGIENE, PUBLIC HEALTH REPORTS Supp. No. 97, at 1 (1931), originally published in 44 PUBLIC HEALTH REPORTS 1256-60 (1929).

⁴² *Hearings on H.R. 12781 & 13645 Before the House Comm. on the Judiciary*, 70th Cong., 1st Sess. (1928); 69 CONG. REC. 6051, 8241, 8677, 9411-13 (1928), on the establishment of two narcotics farms.

⁴³ Peyote is classified as a dangerous drug under Drug Abuse Control Amendments of 1965, 21 U.S.C. § 321(v) (3) (Supp. IV, 1969).

⁴⁴ Uniform Narcotic Drug Act § 1(14), 9B U.L.A. 415, 417 (1966), approved by the National Conference of Commissioners on Uniform Laws of the American Bar Association in 1932.

⁴⁵ Twenty-six states had adopted the proposed Uniform Act by the close of 1935. *Id.* at 409-10.

⁴⁶ Survey of newspapers, reported in Mandel, *Problems with Official Drug Statistics*, 21 STAN. L. REV. 991, 1003 (1969).

⁴⁷ One author suggests that the reason for the reported large quantities is that the entire hemp plant was seized and weighed at maturity. *Id.* at 998-99.

⁴⁸ *Id.* at 1038.

⁴⁹ *Id.* at 1003. When a new law is passed, the before and after statistics are misleading because the before statistics are always zero, even if there were significant events which precipitated the legislation.

The Marijuana Tax Act. By 1937, it was believed that marijuana presented a health danger so severe that federal controls were necessary to curb its dissemination and use.⁵⁰ Thus, the Marijuana Tax Act was enacted.⁵¹ In congressional hearings, it was stated that all forty-eight states already controlled sale, and forty-four controlled possession, but the substance was believed to be so dangerous that state officials clamored for federal control.⁵²

The purpose of federal legislation, as stated in both the House and the Senate committee reports, was to discourage the widespread use of a drug thought to be related to a variety of evils:

Under the influence of this drug, the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, many violent crimes have been and are being committed by persons under the influence of the drug. Not only is marijuana used by hardened criminals to steel themselves to commit violent crimes, but it is also being placed in the hands of school children in the form of marijuana cigarettes by unscrupulous peddlers. Cases were cited at the hearings of school children who have been driven to crime and insanity through the use of this drug. Its continued use results many times in impotency and insanity.⁵³

Almost all of the testimony exposing the toxic effects of the drug was presented by officials from the Federal Bureau of Narcotics. It was reported that use of marijuana could carry effects lasting up to forty-eight hours,⁵⁴ could lead to commission of violent crimes,⁵⁵ and, in some cases, could cause insanity.⁵⁶ "I believe in some cases one [marijuana] cigarette might develop a homicidal mania, probably to kill his brother," was the response to a question on dosage toxicity.⁵⁷ It is interesting to note that in contrast to views expressed in the 1950's, the conclusion was strongly stated at these hearings that marijuana use does not lead to the use of narcotics.⁵⁸

Mr. Dingell: I am just wondering whether the marijuana addict graduates into a heroin, an opium, or a cocaine user.

Mr. Anslinger: No sir; I have not heard of a case of that kind. I think it is an entirely different class. The marijuana addict does not go in that direction.⁵⁹

The only opposition to the bill came from the small industry of hemp

⁵⁰ Lindesmith has indicated that the dangers were made public through a publicity campaign staged by the Federal Bureau of Narcotics. A. LINDESMITH, *THE ADDICT AND THE LAW* 228 (1965).

⁵¹ INT. REV. CODE of 1954, §§ 4741-62.

⁵² *Hearings on H.R. 6906 Before a Subcomm. of the Senate Comm. on Finance*, 75th Cong., 1st Sess. 9-10 (1937).

⁵³ S. REP. No. 900, 75th Cong., 1st Sess. 2 (1937); H.R. REP. No. 792, 75th Cong., 1st Sess. 1 (1937).

⁵⁴ See *Hearings on H.R. 6906*, *supra* note 52, at 12.

⁵⁵ *Hearings on H.R. 6385 Before the House Comm. on Ways and Means*, 75th Cong., 1st Sess. 21 (1937).

⁵⁶ See *Hearings on H.R. 6906*, *supra* note 52, at 14.

⁵⁷ *Id.* (statement of H.J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics of the Treasury Department).

⁵⁸ *Id.* at 14-15.

⁵⁹ See *Hearings on H.R. 6385*, *supra* note 55, at 24.

fibre growers and birdseed manufacturers who would be adversely affected by it,⁶⁰ and from Dr. William C. Woodward, a representative of the American Medical Association. He did not oppose control of marijuana by its inclusion in the Harrison Narcotic Act.⁶¹ Rather, he was concerned that a new control statute would impose an unnecessary burden of additional paper work on physicians, pharmacists, and ancillary personnel.⁶² Also opposed was the proscription of marijuana for medical purposes, since the therapeutic potential of the drug had not been completely evaluated.⁶³

The Marijuana Tax Act provided maximum penalties of five years imprisonment or a fine of not more than \$2,000 for illegal transfer or possession. Enacted as a revenue statute, the Act imposed a tax of approximately one dollar per ounce of marijuana on buyers, sellers, importers, growers, physicians, and other persons who dealt in marijuana commercially, prescribed it professionally, or possessed it.⁶⁴ However, the Act's enforcement mechanisms made any legal use cumbersome, and thus precluded intensive research by the scientific community.⁶⁵

The Boggs Amendment. During the late 1940's, there was growing concern about the spread of narcotic addiction and the abuse of barbiturates. At hearings held in 1951 by Hale Boggs, Chairman of the Subcommittee of the Committee on Ways and Means, drug abuse violators were viewed as chronic recidivists; accordingly, the weaknesses of narcotics-marijuana laws were perceived as stemming from the absence of minimum penalties and some abuse of judicial discretion.⁶⁶ Testimony was heard indicating that federal judges were not always giving heavy sentences.⁶⁷ The remedy proposed was to amend the Marijuana Tax Act so as to impose long, mandatory sentences after first offenses.⁶⁸

At the 1951 hearings, there was no testimony on health dangers from

⁶⁰ At one point in the hearings, it was asked whether birds that eat bird seed containing cannabis seeds "sing the same." See *Hearings on H.R. 6906, supra* note 52, at 13-14.

⁶¹ INT. REV. CODE of 1954, §§ 4701-26.

⁶² See *Hearings on H.R. 6385, supra* note 55, at 106.

⁶³ See Letter to the Committee, *Hearings on H.R. 6906, supra* note 52, at 33. The absence of testimony by medical and correctional professionals may indicate a significant absence of marijuana usage at this time. If the substance had a popular usage, these people probably would have come forth either to verify or deny the descriptions of marijuana. They would have desired to be heard either "pro," or "con."

⁶⁴ INT. REV. CODE of 1954, § 4741.

⁶⁵ See *The Marihuana Tax Act*, in *THE MARIHUANA PAPERS* 424 (D. Solomon ed. 1966). "Obviously, the details of that regulation make it far too risky for anyone to have anything to do with marihuana in any way whatsoever." *Id.* at 425.

⁶⁶ *Hearings on H.R. 3490 and H.R. 348 Before a Subcomm. of the House Comm. on Ways and Means*, 82d Cong., 1st Sess. 40-50 (1951).

⁶⁷ *Id.* Judges could suspend sentence and place on probation, when it was believed appropriate. "Federal judges are not doing their duty." *Id.* at 48. "In other words the situation is so bad that Federal judges should not be allowed discretion any longer?" *Id.* at 50.

⁶⁸ *Id.* at 67. Cunningham: "The dope traffic melts away where people get long sentences." Anslinger: "We find where we have light sentences the traffic is usually heavy, and where heavy sentences are meted out the traffic just disappears." *Id.* at 203. Dr. Paul B. Dunbar, Commissioner of the Food and Drug Administration, also believed in increased penalties. *Id.* at 217-18. A letter from the Department of Justice states, "[T]he principal deterrent to narcotic-marijuana violators is the possible prison sentence . . ." *Id.* at 80. Also mentioned was the fact that, because stiff penalties had effectively reduced white slave traffic, analogously they would reduce the drug problem. *Id.* at 68.

marijuana use. Rather, the stepping-stone theory was emphasized. In response to Congressman Boggs' observation that "only a small percentage of those marijuana cases was anything more than a temporary degree of exhilaration," Commissioner Anslinger of the Federal Bureau of Narcotics replied, "The danger is this: Over 50 percent of those young [narcotic] addicts started on marijuana smoking. They started there and graduated to heroin; they took the needle when the thrill of marijuana was gone."⁶⁹

On the floor of the House, there was only a limited debate of the amendments imposing mandatory sentencing.⁷⁰ Representatives Doughton (North Carolina), Celler (New York), and Simpson (Pennsylvania) opposed the harshness of the new penalties.⁷¹ However, there was no debate in the Senate,⁷² and its Committee on Finance reported favorably on the House bill.⁷³ Although the bill increased the penalties for marijuana offenses, along with those for narcotics offenses, the only mention of marijuana in the Senate Committee report was a statement recommending that penalties take into account the rate of recidivism in marijuana and narcotics violators.⁷⁴

The 1951 Act became known as the Boggs Amendment. It substituted for the old maximum sentence of five years imprisonment or a \$2,000 fine the following penalty structure:

First offense: not less than two years nor more than five years.

Second offense: not less than five years nor more than ten years, with probation and suspension excluded.

Subsequent offenses: not less than ten years nor more than twenty years with probation and suspension excluded.⁷⁵

Later Developments. After the passage of the Boggs Amendment, drug trafficking continued to be of great concern to the Congress. Committees in both houses conducted extensive hearings across the country to determine the extent of illicit drug traffic and the need for additional regulatory legislation.⁷⁶ It was felt that the Boggs Amendment had stemmed the rising tide of narcotics traffic and narcotic addiction, but that more stringent traffic control was still necessary. Consequently, the Narcotic Control Act of 1956⁷⁷ again raised the penalties for marijuana offenses to make them

⁶⁹ *Id.* at 206.

⁷⁰ 97 CONG. REC. 8195-211 (1951).

⁷¹ *Id.* at 8205-11.

⁷² 97 CONG. REC. 13,675-76 (1951).

⁷³ S. REP. NO. 1051, 82d Cong., 1st Sess. (1951).

⁷⁴ *Id.* at 3. Other testimony, quoted from Mr. Harry J. Anslinger, S. REP. NO. 1051, 82d Cong., 1st Sess. 3 (1951), in the Committee report indicated that the proposal was a good solution. "There should be a minimum sentence for the second offense. The commercialized transaction, the peddler, the smuggler, those who traffic in narcotics, on the second offense if there were a minimum sentence of 5 years without probation or parole, I think it would just about dry up the traffic."

⁷⁵ Act of Nov. 2, 1951, ch. 666, § 1, 65 Stat. 767, now 21 U.S.C. § 174 (1964).

⁷⁶ The Subcommittee on Improvement in the Federal Criminal Code of the Committee on the Judiciary of the Senate, 84th Cong., 1st Sess. (1955), operating under S. Res. 67, 84th Cong., 1st Sess. (1955).

⁷⁷ 18 U.S.C. §§ 1401-07 (1964); 21 U.S.C. §§ 174, 176, 184 (1964); INT. REV. CODE OF 1954, §§ 4744, 4755, 4774, 7237.

commensurate with those of hard narcotics. Marijuana was so treated mainly because it was believed to be a precursor of hard narcotics usage, and an agent which predisposed the user to commit violent crimes.⁷⁸ The dangers perceived were described in the Senate hearings:

Senator Daniel. Now, do I understand it from you that, while we are discussing marijuana, the real danger there is that the use of marijuana leads many people eventually to the use of heroin, and the drugs that do cause them complete addiction; is that true?

Mr. Anslinger. That is the great problem and our great concern about the use of marijuana, that eventually if used over a long period, it does lead to heroin addiction. The marijuana habit, it is a habit-forming drug as distinguished from an addiction-forming drug, is relatively easy to break. You can break the marijuana habit probably in a day. But when you get to becoming a heroin user, that is a different story. . . .

Senator Daniel. As I understand it from having read your book, an habitual user of marijuana or even a user to a small extent presents a problem to the community, and is a bad thing. Marijuana can cause a person to commit crimes and do many heinous things; is that not correct?

Mr. Anslinger. That is correct. It is a dangerous drug, and is so regarded all over the world. . . .

. . . .

Senator Welker. Mr. Commissioner, my concluding question with respect to marijuana: Is it or is it not a fact that the marijuana user has been responsible for many of our most sadistic, terrible crimes in this Nation, such as sex slayings, sadistic slayings, and matters of that kind?

Mr. Anslinger. There have been instances of that, Senator. We have had some rather tragic occurrences by users of marijuana. It does not follow that all crimes can be traced to marijuana. There have been many brutal crimes traced to marijuana, but I would not say that it is the controlling factor in the commission of crimes.⁷⁹

Dr. G. Halsey Hunt, Assistant Surgeon General, also testified at the hearings. But his comments showed lack of great concern about the danger of marijuana and were not followed by any questioning.⁸⁰ The new penal-

⁷⁸ H.R. REP. NO. 2388, 84th Cong., 1st Sess. 63 (1956). Apparently, 1952 was the highest point in post-war trafficking arrests. See *id.* at 58, where it was seen that traffic was on the decrease after 1952.

⁷⁹ *Hearings on Illicit Narcotics Traffic Before the Subcomm. on Improvements in the Federal Criminal Code of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess. 16-18 (1955).

⁸⁰ *Id.* at 235-36. The testimony went as follows:

Senator Welker. . . . We go now to the proposition of marijuana which, in your field or the medical field, is considered one of the minor narcotics but it causes, if I understand my case correctly, it causes the user to build up a sense of bravery, a sense of well-being that no normal person would ever advocate.

He would be a sadist in many cases, a murderer, without any idea that he was, in fact, a murderer.

I should not belabor this question with you because I know you know much more about this than I do.

I did want your observations, and I hope the staff will furnish Dr. Hunt with a copy of this matter which is generally circulated throughout the Nation. The publicity value alone of that thing, in my opinion, was terrible.

Take a young high school kid getting his first shot or chance to take a shot. His parents have told him it was wrong, it was evil, it was going to lead to a bad dis-

ties under the Narcotic Control Act of 1956 were as follows:

First possession: Not less than two years nor more than ten years, with probation and parole permitted.

Second possession or first sale: Not less than five years nor more than twenty years, with no probation, suspension, or parole.

Third possession or second sale and subsequent offenses: Not less than ten years nor more than forty years, with no probation, suspension, or parole.⁸¹

This basic penalty structure, which carries the possibility of a \$20,000 fine, obtains today, but a 1966 amendment permits parole of marijuana offenders after they have served at least one-third of their sentences.⁸²

In 1961, the Interdepartmental Committee on Narcotics reported to the President that the more stringent penalties enacted in 1956 were showing a recognizable impact.⁸³ The Committee made many recommendations for expanded medical treatment of the heroin addict, and for programs to provide education and training. The Committee's only mention of marijuana was a statement that it produces no physical dependence.⁸⁴

The Committee did recommend ratification by the United States of the Single Convention on Narcotic Drugs.⁸⁵ The Single Convention sets out in a single instrument an international agreement on narcotic drugs and cannabis. It provides that the substances it controls may be used only for medical and scientific purposes.⁸⁶ The Single Convention places no restrictions upon the degree of control to be imposed by signatory nations. The United States had not yet ratified the Convention, but those supporting ratification argued that the existence of a treaty obligation which required the control of marijuana would be useful against the arguments of a vocal few who are advocating its legalization.⁸⁷

ruptive life, and yet he reads something like this and he says, 'Heavens above, that is not so bad. Here are a couple of doctors who advocate or argue the question should we legalize narcotics.'

Do you see what I mean, Doctor?

Dr. Hunt. I am reminded of the discussions that went on in the late twenties, Senator, with respect to alcohol. The problems have some similarities.

Senator Welker. Thank you very much.

⁸¹ 21 U.S.C. §§ 174, 176 (1964); INT. REV. CODE OF 1954, § 7237.

⁸² These penalties which preclude parole in effect require that an offender serve two-thirds of his term (all prisoners can reduce sentence by one-third on the basis of "good time" behavior), whereas other offenders can be released on parole after one-third is served. 18 U.S.C. §§ 4161, 4202 (1964).

⁸³ INTERDEPARTMENTAL COMMITTEE ON NARCOTICS, REPORT TO THE PRESIDENT OF THE UNITED STATES 1-2 (1961) (on file with the authors).

⁸⁴ *Id.* at 4.

⁸⁵ *Id.* at 15.

⁸⁶ The Single Convention on Narcotic Drugs 1961, *opened for signature* March 30, 1961, [1967] 2 U.S.T. 1408, T.I.A.S. No. 6298, 50 U.N.T.S. 7515. The treaty received the Senate's advice and consent on May 8, 1967, without debate. 113 Cong. Rec. 6442 (daily ed. May 8, 1967). Accession was approved by the President on May 13, 1967; the accession was deposited with the United Nations Secretary-General on May 25, 1967. The treaty entered into force for the United States on June 24, 1967, and was proclaimed by the President on July 12, 1967. [1967] 2 U.S.T. 1407, T.I.A.S. No. 6298, at 1.

⁸⁷ Another important reason for becoming a party to the 1961 convention is the marijuana problem. . . . Several groups in the United States are loudly agitating to liberalize controls and, in fact, to legalize its use. . . . If the United States becomes a party to the 1961 convention we will be able to use our treaty obligations to resist

III. SOME CRITICISMS OF EXISTING LAWS

Generally. Since 1956, the support for stringent controls of marijuana has very gradually diminished. Harsh controls and the alleged dangers of the drug have begun to receive closer scrutiny.⁸⁸ Critics of the current penalty system have cited the increase in drug use and number of arrests as evidence of the failure of harsh penalties to operate as a deterrent.⁸⁹ In 1958, James V. Bennett, Director of the United States Bureau of Prisons, stated:

The experience we have had with the severe penalties in the Narcotic Control Act of 1956 indicates that the financial attractiveness for the seller and the psychological needs of the addict tend alike to obscure the seriousness of the penalties.

It must be remembered that the addict released from prison is doubly stigmatized. He must face not only the hostility and the suspicion the community reserves for the ex-con, he is also an untouchable because he uses drugs. . . . In the final analysis the responsibility of the community to provide continuous and long-term care for the addict is not significantly different in my opinion from that which we owe the alcoholic [or] mentally ill⁹⁰

In addition, an inflexible penalty structure is widely considered unacceptable. A survey of federal judges, probation officials, and district attor-

legalized use of marijuana. This discussion is going on all over the country, in many universities, and in fringe groups

SENATE COMM. ON FOREIGN RELATIONS, CONVENTION ON NARCOTIC DRUGS, S. EXEC. REP. NO. 11, 90th Cong., 1st Sess. 20 (1961) (statement of H. Anslinger), as quoted in Van Atta, *Effects of the Single Convention of Narcotic Drugs upon the Regulation of Marijuana*, 19 HASTINGS L. REV. 848 (1968).

⁸⁸ For example, as recently as 1967 and 1968, the "stepping stone" theory was mentioned at appropriation hearings for Federal Bureau of Narcotics fiscal requests. *Hearings on the Dept. of Appropriations for 1968 Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 1st Sess. pt. 3, at 470-71 (1967); *Hearings on Dept. of Treasury and Executive Office of the President Appropriations of 1969 Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 2d Sess. pt. 1, at 552-623 (1968). In 1966, when Congress was considering the availability of parole for marijuana offenders, the following was heard:

Mr. Ashmore: You stated, and I have heard before, that marijuana is not a habit-forming drug. Is that correct?

Mr. Katzenbach: That is right. Many marijuana users end up by subsequently leading up to heroin, so it has the effect of leading one into addiction, but it is not addictive in itself.

Mr. Ashmore: How about those who use it? The effect of it is unknown, is it not? It can cause one to commit murder, another sex violence, another something else?

Mr. Katzenbach: That is right.

Mr. Ashmore: In many ways it is as bad as heroin, morphine and what have you?

Mr. Katzenbach: From that point of view it is.

Hearings Before Subcomm. No. 2 of the House Comm. on the Judiciary, 89th Cong., 1st & 2d Sess. 88 (1966).

At *Hearings on Problems Relating to the Control of Marijuana Before a Subcomm. of the House Comm. on Government Operations*, 90th Cong., 2d Sess. 69 (1967), a "trigger theory" was mentioned in response to whether marijuana was the first step: "Mr. Giordano. Of the 60,697 addicts that are currently heroin addicts, 90 percent of those started on marijuana. I want to be clear on this. It's a steppingstone. Now, this doesn't say that just because somebody smokes a marijuana cigarette he is going on to heroin, but it's a trigger." (Emphasis added.)

⁸⁹ Burnett, *Crisis in Narcotics—Are Existing Federal Penalties Effective?*, 10 WM. & MARY L. REV. 636 (1969).

⁹⁰ Bennett, *A Prison Administrator Views Today's Narcotic Problems*, in SYMPOSIUM ON THE HISTORY OF NARCOTIC DRUG ADDICTION PROBLEMS, BETHESDA, MARYLAND, 1960, at 167-73 (DHEW-PHS No. 1050).

neys has revealed that seventy-three per cent of the judges, eighty-three per cent of the probation officers, ninety-two per cent of the prison wardens, and fifty per cent of the district attorneys opposed the mandatory minimum sentence provisions.⁹¹ The report of the Judicial Conference in 1961 disapproved in principle of those sentencing provisions in proposed legislation requiring the imposition of mandatory minimum sentences.⁹² This disapproval was reaffirmed in 1965.⁹³

Cost-benefit analyses of the marijuana enforcement structure have also been used to attack the current penalty system. John Kaplan, who has conducted such an analysis,⁹⁴ recently commented:

Even if we were completely convinced about the value of criminalizing marijuana, we might well hesitate before diverting such massive amounts of law enforcement energy from the area of crime against the person and against property. According to the latest statistics from the California Department of Justice Bureau of Criminal Statistics, arrests of juveniles and adults for marijuana violations were running at a yearly rate of 56,000 in 1969. When one considers that the good majority of these arrests were for simple possession of small amounts of marijuana untainted by any commercial dealing, the issue becomes even more stark. Whether or not the importance of shutting off the supply of marijuana justifies a continuing use of scarce law enforcement resources to prevent the trafficking in the drug, it is hard indeed to justify the expenditure of these resources on the huge number of mere possessors.

Moreover, entirely apart from whether the law enforcement energies could better be used elsewhere, there is reason to believe that the application of these resources to marijuana does a good deal of harm. Not only does the very existence of the law tend to bring otherwise non-criminal users into contact with considerably more anti-social drug peddlers, but for the unfortunate few (at least as compared to the total number of marijuana users in our population) who are caught, it is likely that both their criminality and drug use will be increased rather than decreased by the experience.⁹⁵

Recommendations by Professional Commissions and Official Committees.

In the early 1930's the Panama Canal Zone Governor's Committee reported that no deleterious effects could be found among the soldiers who smoked the local marijuana. The study used both observations and experiments to test for residual effects.⁹⁶

In 1944 a report to the mayor of New York City stated: "In most instances, the behavior of the smoker is [that of] a friendly, sociable character. Aggressiveness and belligerency are not commonly seen. . . . The marijuana user does not come from the hardened criminal class and there was no direct relationship between the commission of crime and violence

⁹¹ WHITE HOUSE CONFERENCE ON NARCOTIC AND DRUG ABUSE, PROCEEDINGS 230 (1962).

⁹² JUDICIAL CONFERENCE OF THE UNITED STATES, ANNUAL REPORTS 98-99 (1961).

⁹³ *Id.* 20 (1965).

⁹⁴ J. Kaplan, *supra* note 9, at 21-51.

⁹⁵ Kaplan, *Forward to Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A.L. REV. 1503 (1968).

⁹⁶ *Report of the Panama Canal Zone Governor's Committee, April-December 1925*, MILITARY SURGEON, NOV. 1933, at 274, reported in R. BROTMAN & A. FREEDMAN, *supra* note 7, § 2, at 17.

and marijuana. . . . [M]arijuana itself has no specific stimulant effect in regard to sexual desires.⁹⁷

In 1951, the American Bar Association's Commission on Organized Crime expressed its disapproval of the mandatory minimum penalties in the Boggs Amendment.⁹⁸ Continued American Bar Association concern resulted in the Criminal Law Section of the ABA forming a joint committee with the American Medical Association. The committee's final report favored medical rather than penal management of narcotic addiction and stated: "Though drug peddling is acknowledged to be a vicious and predatory crime, a grave question remains whether severe jail and prison sentences are the most rational way of dealing with narcotic addicts."⁹⁹ Prior to the release of the committee's final report, its chairman published an appendix in an interim report in which he questioned (1) the value of long sentences in deterring, and (2) whether an effective enforcement campaign which raises drug prices (and profits) can ever dissuade the illicit trafficker.¹⁰⁰

The Model Penal Code does not deal with the criminalization of simple possession. The official commentary to a draft related that despite agreement that drug abuse is a medical-psychological problem, it is the police who continue to encounter and deal with the vast majority of drug addicts.¹⁰¹ Section 250.5 of the Model Code, dealing with non-therapeutic drug use, classified public drug intoxication as a fineable offense, but not a crime, thus placing it in the same category as public alcoholic intoxication.¹⁰² An individual committing three violations during a year is charged with a petty misdemeanor with a maximum sentence of one year.¹⁰³ The Model Code makes the offender eligible for treatment in lieu of prosecution.¹⁰⁴

The President's Advisory Commission on Narcotic and Drug Abuse (the Prettyman Commission) reported in November 1963:

The Commission makes a flat distinction between the two drugs (narcotics and marijuana) and believes that the unlawful sale or possession of marijuana is a less serious offense than the unlawful sale or possession of an opiate.

The Commission believes that the sentencing of the petty marijuana offender should be left entirely to the discretion of the courts. There should be no mandatory minimum sentences for marijuana offenders and no prohibition of probation or parole.

The courts should have the discretion to impose a fixed sentence (with eligibility for parole), to suspend sentence, or to impose an indeterminate sentence. The Commission is opposed to mandatory minimum sentence, even in the case of multiple offenders.¹⁰⁵

⁹⁷ See THE MARIJUANA PAPERS, *supra* note 65, at 355.

⁹⁸ 76 ABA REP. 387 (1951).

⁹⁹ JOINT COMMITTEE OF THE AMERICAN BAR ASSOCIATION AND AMERICAN MEDICAL ASSOCIATION ON NARCOTIC DRUGS, DRUG ADDICTION: CRIME OR DISEASE? 163 (Interim and Final Reports 1961).

¹⁰⁰ Ploscowe, *Some Basic Problems in Drug Addiction and Suggestions for Research*, in *id.* app. A, at 15-120.

¹⁰¹ MODEL PENAL CODE § 250.11, Comment (Tent. Draft No. 13, 1961).

¹⁰² *Id.* § 250.5 (Proposed Official Draft 1962).

¹⁰³ *Id.* § 250.11 (Tent. Draft No. 13, 1961).

¹⁰⁴ *Id.* § 6.13 (Proposed Official Draft 1962).

¹⁰⁵ PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE, FINAL REPORT 42 (1963).

The Advisory Commission did not believe that severe penalties served as a deterrent: "The weakness in the deterrence position is proved every day by the fact that the illicit traffic in narcotics and marijuana continues."¹⁰⁶ Although the Commission recommended that the simple possession of narcotics should be controlled, it did not make any similar recommendation for marijuana.¹⁰⁷

In 1967, the President's Commission on Law Enforcement and the Administration of Justice issued a report, challenging the relationship between marijuana and crime, violence, and progression to hard narcotics.¹⁰⁸ Although it recognized that research information was incomplete, the Commission stated that "enough information exists to warrant careful study of our present marijuana laws and the propositions on which they are based."¹⁰⁹

The National Commission on Reform of Federal Criminal Laws will submit its final report to the President and Congress in November 1970. However, the Study Draft of the Commission has recommended a reduction in possession penalties.¹¹⁰ Drugs are dichotomized into dangerous drugs and abusable drugs, and marijuana is classed in the latter category.¹¹¹ First possession of an abusable drug is only a fineable offense, but subsequent offenses are punishable as misdemeanors.¹¹² A defense to prosecution for possession is proof that the defendant lacks substantial mental capacity to refrain from use.¹¹³ In his comments on the recommendation, the consultant wrote: "More severe punishment for possession should at the least await solid scientific information that marijuana is as harmful as some people believe it is. Deterrence, while of course important, cannot be the sole end of the criminal law. Punishment must also be related to the seriousness of the offense."¹¹⁴

The Council on Mental Health, the Committee on Drug Dependence of the American Medical Association, and the Committee on Problems of Drug Dependence of the National Research Council, National Academy of Science, have jointly advocated greater discrimination in penalties imposed upon offenders, and have suggested that "equitable penalties, insofar as they enhance respect for law, can contribute to effective prevention."¹¹⁵

A possible change in penalties was suggested in the 1967 congressional hearings on marijuana.¹¹⁶ A representative of the Food and Drug Administration stated that marijuana was not as dangerous as LSD, and, therefore,

¹⁰⁶ *Id.* at 40.

¹⁰⁷ *Id.*

¹⁰⁸ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 211-37 (1967).

¹⁰⁹ *Id.* at 225.

¹¹⁰ NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS, STUDY DRAFT OF A NEW FEDERAL CRIMINAL CODE §§ 1824, 1827 (1970).

¹¹¹ *Id.* § 1821.

¹¹² *Id.* § 1824 (Comment).

¹¹³ *Id.* § 1824(2).

¹¹⁴ NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS, WORKING PAPERS, DOC. NO. 38, at 38 (to be published; on file with authors).

¹¹⁵ *Marijuana and Society*, 204 J.A.M.A. 1181 (1968).

¹¹⁶ *Hearings on Problems Relating to the Control of Marijuana Before a Subcomm. of the House Comm. on Government Operations*, 90th Cong., 2d Sess. 56-74 (1967).

its possession penalties should be less severe than those for LSD. Also suggested was that a lack of possession penalties for LSD had not precluded effective control of that substance.¹¹⁷ Intra-departmental memoranda of the Department of Health, Education, and Welfare were submitted which recommended repeal of the Marijuana Tax Act, placement of marijuana under the Drug Abuse Control Amendments, a felony penalty for sale and distribution, and elimination of a possession penalty for personal use.¹¹⁸

In some states there has been legislative reform of marijuana laws. In 1968, California reduced the marijuana possession penalties which had been raised only a few years before.¹¹⁹ Connecticut removed marijuana from the narcotics definition and classified it as a dangerous drug, thereby reducing the possession penalty to a misdemeanor.¹²⁰ And New Mexico amended its Penal Code reducing marijuana possession to a misdemeanor in 1969.¹²¹ Alaska, Washington, Wisconsin, and North Carolina have also followed this trend.¹²²

IV. A CONCLUDING OBSERVATION

Given the difficulty of enforcing present laws, a marijuana user may take only a slight risk when using the drug. The magnitude of the risk obviously varies with the setting. For example, in the Haight-Ashbury section of San Francisco, public marijuana smoking is permitted,¹²³ and it was openly condoned on a large scale at the recent music festival in Woodstock, New York.¹²⁴

Those who do get caught, however, face penalties which, in some instances, may amount to cruel and unusual punishment. *Watson v. United States*¹²⁵ held that the mandatory minimum ten-year imprisonment to

¹¹⁷ *Id.* at 16.

¹¹⁸ *Id.* at 21-31.

¹¹⁹ CAL. HEALTH & SAFETY CODE § 11500 (West, 1964).

¹²⁰ CONN. GEN. STAT. REV. § 19-481 (1968). "Many jurists, prosecutors and law enforcement officers appear to regard the present penalties as so oppressive that they utilize various other means to dispose of such charges as an alternative to prosecution for possession." CONNECTICUT DRUG ADVISORY COUNCIL, REPORT OF COMMITTEE TO STUDY MARIJUANA LAWS 21 (1969).

¹²¹ N.M. STAT. ANN. § 54-7-13 (Supp. 1969).

¹²² ALASKA STAT. §§ 17.12.010-150 (Supp. 1969); N.C. GEN. STAT. § 90-111 (Supp. 1969); WASH. REV. CODE § 69.40.070 (1969); ch. 384, § 18, [1969] Wis. Acts 1940.

Canada recently has enacted legislation to reduce possession penalties in response to evidence of widespread recourse to marijuana and to insufficient substantiation of toxicity to justify the earlier, harsher penalty structure. Possession is now punishable as a "summary conviction," which is comparable to a misdemeanor and carries a maximum imprisonment of six months. CAN. REV. STAT. c. 41 (1969); Speech by Hon. J. Munro, Minister of National Health and Welfare, Montreal, May 22, 1969.

¹²³ Mandel, *supra* note 46, at 1029.

¹²⁴ At least 90 percent of those present at the festival were smoking marijuana. In addition, narcotics of any and all description, from hash to acid to speed to horse, were freely available. Perhaps out of fear of rousing the crowd to hostility, police made fewer than 100 arrests on narcotics charges. By and large, the U.S. has accepted the oversimplification that all narcotics are dangerous and thus should be outlawed. The all but universal acceptance of marijuana, at least among the young, raises the question of how long the nation's present laws against its use can remain in force without seeming as absurd and hypocritical as Prohibition.

TIME, Aug. 29, 1969, at 32.

¹²⁵ No. 21,186 (D.C. Cir., Dec. 13, 1968).

which a defendant, a convicted narcotic addict, was sentenced, constituted an eighth amendment violation. The District of Columbia court of appeals stated: "The result of this sentencing scheme is that a convicted murderer, kidnaper, arsonist, rapist, traitor, robber, or saboteur may receive a lighter sentence than is mandatorily imposed on an addict who possesses narcotics more than once. And all these dangerous felons may be eligible for release before the hapless addict if they are sentenced to any term less than thirty years."¹²⁶ The court expressed its dilemma by indicating its reluctance "to intrude upon the congressional prerogative by dismantling the narcotics sentencing statutes brick by brick until we reach a constitutionally acceptable result."¹²⁷

Leaving to the courts the problems of correcting the severity of penalties mandatorily imposed for violation of the federal drug statutes may be a lengthy process. Legislation pending before the 91st Congress¹²⁸ may eliminate the *Watson* court's dilemma, as mandatory minimums and unreasonably long first offense sentences will be abolished. But the question remains whether changing the penalty structure will improve the efficiency of the legal control system and enhance its deterrent effect. Certainly, the health and social consequences imputed to the non-therapeutic use of marijuana demand a concerted scientific research effort. Perhaps of equal importance is the need for a re-evaluation of our Western mores from which proceed our judgments on the various patterns of all non-therapeutic chemical use.

¹²⁶ *Id.* at 19.

¹²⁷ *Id.* at 20.

¹²⁸ S. 3426, 91st Cong., 2d Sess. (1970).