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MARIJUANA LAWS—A CRIME AGAINST HUMANITY

Hyman M. Greenstein* and Paul E. DiBianco**

I. Introduction

American enforcement of laws prohibiting the use of marijuana is an unjustifiable and shocking practice which is ruining lives, interrupting careers and destroying relationships. Leaving an embittered citizenry in their wake, these laws are promoting social discord in the present as well as assuring similar strife for the future. They are an absurdity that must not be permitted to continue to ravage our nation and our sense of justice. It is therefore the contention of the authors that the use of the substance marijuana should be legalized immediately in order to stop the mindless alienation and criminalization of marijuana users, particularly the young, which our society is perpetrating by the continued enforcement of criminal sanctions against marijuana.

In the past several years, there have been many studies in the areas of science and legal scholarship about the effects of marijuana upon the individual user, the judicial system and society in general. These have proved illuminating with regard to arriving at an enlightened approach to the question of the legalization of marijuana. It is not one of the purposes of this paper to evaluate the scientific studies involved with an eye toward criticism of the methods used, nor is it one of our purposes to devote our entire effort to a detailed analysis of the efforts of others in the courts or in the area of legal scholarship. All this has been done by others in greater detail and with greater expertise than the authors of this article could hope to approximate. However, in order to make a persuasive argument, as this article is intended to be, it is helpful to utilize many of these studies, including case law, to understand fully the issue of the legalization of marijuana. It is from the basis of the knowledge imparted by these sources that it becomes proper to assert that legalization is desirable.

Two studies in particular are worth investigating, not only for the original thinking which they bring to bear on the marijuana problem but also because they serve as excellent reviews of the history of marijuana use, legislation and scientific knowledge. In short, they are essentially complete investigations of certain aspects of the marijuana issue. Dr. Lester Grinspoon’s book, Marihuana Reconsidered,1 and the very recent report of the National Commission on Marihuana and Drug Abuse, Marihuana—A Signal of Misunderstanding,2 which was made under authority of the Comprehensive Drug Abuse Prevention and Control Act of 1970, primarily by various Nixon appointees, both provide excellent studies and summaries of scientific, legal and social issues involved in the marijuana

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** Braun, Moriya, Hoashi & Kubota, Tokyo, Japan; B.A., University of Notre Dame, 1967; J. D., University of California (Boalt Hall) 1970.

1 L. GRINSPOON, MARIHUANA RECONSIDERED (1971) [hereinafter cited as GRINSPOON].

2 NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, FIRST REPORT. MARIHUANA—A SIGNAL OF MISUNDERSTANDING (1972) [hereinafter cited as COMMISSION].

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problem. In this regard they can be considered as updating the earlier landmark report of Professor John Kaplan. Recourse to either of these sources or to various others will provide the reader with a good understanding of the history of marijuana in this country, both its use and related legislation.

Generally, marijuana was introduced into this country by Mexican laborers and New Orleans inhabitants in the 19th century and was confined to use by minority groups until the early 1960's. However, in the 1920's, word of the use of this substance and of its alleged association with more dangerous drugs such as heroin reached government and law enforcement officials and a general feeling of prohibition against drug use of any kind (this was the Era of Prohibition against alcohol use) led to the enactment of laws against the use of marijuana. This did not occur, however, until after the "marijuana scare," a concerted effort on the part of many agencies, public and private, to "inform" the public about the dangers of marijuana as a killer drug capable of the worst horrors upon its user and a social disaster as well. This campaign, which was based upon misinformation and emotionalism, is attributed in large part to the then Commissioner of the newly created Federal Bureau of Narcotics, Henry J. Anslinger, who based his early opinions upon the "scientific studies? of Dr. Frank Gomila, Commissioner of Public Safety of New Orleans, and his chemist wife.

Thus, by 1931 several states had enacted laws against the use of marijuana (by "use" is variously meant possession, distribution, cultivation, etc.), and by 1937, the year of the enactment of the federal Marihuana Tax Act, nearly every state had made possession of marijuana illegal. The Marihuana Tax Act also acted as a general prohibition against the use of marijuana, and over the years the penalties for the use of marijuana were increased.

By 1956, the year of the last amendment to the Tax Act, the penalty for possession included a two-year minimum (mandatory), and the penalty for sale was five years for the first offense and ten for the second. All this and yet no one responsible for this legislation had ever done a comprehensive study as to the effects of marijuana. Everyone, it seemed was willing to "take Commissioner Anslinger's word for it" despite the fact that there had been several early objective studies made regarding the effect of marijuana upon individuals and society which had cast doubt on the claims of those opposed to marijuana use. These studies were simply ignored or belittled by those involved in campaigning and legislating against marijuana. For example, in 1958, a joint American Bar...
Association/American Medical Association Committee restudied the drug problem in the United States and was asked to report to the Federal Bureau of Narcotics. Among other heretical innovations, the committee urged the creation of heroin addiction treatment centers and a reconsideration of marijuana and other drugs. For this it was roundly condemned by Commissioner Anslinger, who, in a letter to the committee chairman called the report prejudiced, ambiguous, inconsistent, inaccurate and false propaganda, and went on to inform the committee that he was not trying to censor the report but merely wanted a “factual document.”

Commissioner Anslinger, without waiting for the committee’s “enlightenment,” went on to gather together his own group of “experts,” one of whom was the Honorable Twain Michelson, Superior Court judge for San Francisco, California. Judge Michelson was highly critical of the ABA-AMA study, but could offer no scientific or medical data regarding the dangers of the various drugs in question (he did, however, quote from Reader’s Digest and Women’s Home Companion). Noting that he had read in a newspaper of a petition signed by more than 2,200 Modesto High School students asking the California legislature to prescribe the death penalty for those convicted of selling narcotics to minors, the judge stated:

Here is an example of youth being aroused to the death dealing properties of contraband narcotics, but the ABA-AMA Joint Committee will not go along with them. Contrast this youth movement with the sentence imposed upon George Yokoyama by a California judge who placed the defendant on probation for two years, fined him $150 . . . “to be paid in installments,” following his conviction of having “Approximately 900 pounds of growing marijuana”—enough of the killer weed to send hundreds of juveniles reeling into a world of moronic behaviour, crime and near-insanity.

As late as 1963, a federal government committee was describing marijuana as a very dangerous drug.

What are these drugs that can turn potentially useful citizens into hopeless, estranged, dependent individuals? That can turn normal young men and women to crime? They are many and include . . . morphine, heroin . . . marijuana.

Thus, the federal and state governments went roaring into the 1960’s with completely thoughtless and repressive legislation, entirely unprepared for the increased use of marijuana and all the related problems which that would bring when the youth culture came into being.

While no one apparently ever polled the public to find out their views about

11 Id. at 98.
marijuana usage during the decades prior to the 1960's, it seems reasonable to assume that those among the citizenry who had an idea what marijuana was were probably in favor of harsh criminal penalties for its use because of the virulent antimarijuana campaign previously described. Yet today, public opinion, indeed all opinion, has altered its course. The National Survey, a poll conducted under the auspices of the National Commission, made a comprehensive statistical report of the attitudes of the public at large and various government officials and, inter alia, reported that at the present time, 51% of all adults polled believe that marijuana should be treated as a medical problem and 87% object to putting users in jail. Equally as important, 31% of all prosecutors polled admitted that they would not prosecute anyone arrested for smoking a marijuana cigarette at a private social gathering; and 53% admitted that the legislation against the possession and use of marijuana does not deter the under-30 group from such possession and use. Perhaps most important was the conclusion of the National Commission itself, as will be discussed in greater detail later in this article, which, after its comprehensive, yearlong study, recommended partial legalization of marijuana use (private, personal possession of marijuana and casual transfers for little or no remuneration).

This shift in opinion on the part of all concerned has been largely the result of an increased awareness of the effects of marijuana upon both the individual user and society. Generally, the awareness has been that of the relative harmlessness of marijuana in its effects upon the user when compared to many other drugs in use in America today.

II. What Is Marijuana? What Are Its Effects?

It probably originated somewhere in Central Asia (as did mankind) and was first used perhaps five thousand years ago. Our marijuana is one-fifth to one-tenth as strong as other cannabis preparations which are preferred abroad, and it is looked down upon in other countries as fit only for the poor. It is the weakest of three grades used throughout the world; ganja, the intermediate grade, is the ground-up tops of specially cultivated plants; hashish or charas is the pure resin from the best cultivated plants and is usually the strongest. Marijuana is the entire foliage from ordinary plants. It is usually smoked, although it can also be ingested in foods or tea.

This description of cannabis is the first step in an objective understanding of marijuana. But knowledge of what marijuana is does not tell us what marijuana does.

Looking only at the effects on the individual, there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis...
So concluded the National Commission, going on to note that the heavy use of cannabis in its most potent forms over a long period of time, a practice of only 2% of all marijuana users, leads to psychological dependence proportionate to use, some minor behavioral changes and possible (results of studies are as yet inconclusive) pulmonary alteration.

Or, as the equally prestigious authority Dr. Lester Grinspoon, put it:

It is quite true that among the hundreds and hundreds of papers dealing with cannabis, there is relatively little methodologically sound research. Yet out of this vast collection of largely unsystematic recordings emerges a very strong impression that no amount of research is likely to prove that cannabis is as dangerous as alcohol and tobacco. The very serious dangers of tobacco, particularly to the pulmonary and cardiovascular systems, are becoming increasingly well known. . . . It is a curious fact that the only socially accepted and used drugs known to cause tissue damage (alcohol and tobacco) are the ones whose use Western society sanctions. It is reasonably well established that cannabis causes no tissue damage. There is no evidence that it leads to any cellular damage to any organ. It does not lead to psychoses de novo, and the evidence that it promotes personality deterioration is quite unconvincing, particularly in the forms and dosage used in the United States today.

Both the National Commission and Dr. Grinspoon devote a large portion of their reports to a detailed discussion of the physical and mental effects of marijuana on the individual user. The quotations reproduced above are indicative of the conclusions reached by both authorities. Both the Commission and Dr. Grinspoon based their conclusions upon careful analyses of the results of past and currently existing research projects by independent researchers. Many of the same studies are quoted by both the National Commission and Dr. Grinspoon, and both sources appear aware of the results of most if not all of the existing projects and studies that are available on the subject of marijuana's effects on the user. Generally, both the National Commission and Dr. Grinspoon report the following similar findings, many of which explode the old myths about the dangers of marijuana use. As just mentioned, short-term use of marijuana causes no organic damage to its user or any adverse mental effects. In addition, there are no known cases of human fatalities attributable to marijuana use, marijuana is not physically addictive, does not lead to a decrease in ambition or motivation (what has been variously termed the “drop out” or “amotivational syndrome”), is not a stepping-stone to the “harder drugs” such as heroin and cocaine, does not produce psychoses in its users, and is a mild

19 Commission at 87 et seq.
20 Commission at 65 (see generally 55-66).
21 Grinspoon at 370, 371.
22 Many of these studies are also mentioned in Kaplan’s work, supra note 3.
23 Grinspoon at 3; Commission at 62.
24 For a similar report, slightly dated, and reduced to chart form, see S. Yolles, Marijuana, Fable—Fact, 3 U.S. Code Cong. and Ad. News 4577-78 (1970).
25 Grinspoon at 227.
26 Grinspoon at 223; Commission at 65, 66; Kaplan at 164-175.
27 Grinspoon at 290; Commission at 62; Kaplan at 193.
28 Grinspoon at 225, et seq.; Commission at 87, 88; Kaplan at 270.
29 Grinspoon at 253 et seq.; Commission at 50; Kaplan at 148-160.
intoxicant (or psychoactive drug) which ought not necessarily be classified as a hallucinogen.\textsuperscript{30} It does not lead to crime, violent or non-violent,\textsuperscript{31} does not cause that most dread of all American fears, an increased sex urge,\textsuperscript{32} and it will not result, as its opponents used to assert in their heyday, in insanity.\textsuperscript{33} In many users it will, unlike alcohol,\textsuperscript{34} result in no substantial interference with driving. In fact, there are growing indications that cannabis preparations might have substantial medical value.\textsuperscript{35}

Actually, marijuana use is, for the most part, a relaxing, pleasurable experience for the vast majority of its users,\textsuperscript{36} one with no adverse side effects and one which is rapidly gaining in popularity in this country.\textsuperscript{37} In fact, the worst that the National Commission could say about long-term use of marijuana was that it appeared to have become part of the change in life-style that the youth in this country is undergoing, but the National Commission expressed doubt that marijuana usage was the cause of this change and was uncertain whether marijuana use came before or after the change in attitude.

The National Commission, relying upon studies and data available largely from other countries, attempted to gather information as to the effect of marijuana on a person who not only used cannabis over a long period of time, but who used very strong potions of it on a frequent or daily basis. While the Commission was not able to reach any definite conclusions regarding such use, it reported that such use apparently led to no increase in psychoses, change in life-style, inability to perform job assignments or any other significant physical or mental abnormalities. (There was some evidence of pulmonary diminution and psychological dependence on the drug. There are conflicting studies as to whether behavioral changes occur.)\textsuperscript{38} Although lack of a controlled study group makes reliability of these conclusions open to question, it would seem, nonetheless, that currently existing data tend to show that cannabis is a relatively harmless drug, especially in its weakest form—marijuana.\textsuperscript{39}

Where does all this information, some of it inconclusive, lead us? Assuming, \textit{arguendo}, that marijuana use is, compared to alcohol or tobacco use, relatively harmless, do we then legalize marijuana on that basis alone? Or do we go on the assumption that every drug, marijuana included, can be abused, and therefore the fewer drugs on the market the better? Even then, are criminal sanctions the proper tool for control of marijuana? Current governmental response to the increased use of marijuana by our youth and the increased awareness of marijuana's harmlessness in its effects on the user provides its own answers to these questions.

\textsuperscript{30} GRINSPOON at 168.
\textsuperscript{31} GRINSPOON at 308, 309 & 311, 312; COMMISSION at 23, 71-75.
\textsuperscript{32} GRINSPOON at 312 et seq.; COMMISSION at 434-38 (app. vol. I); KAPLAN at 80.
\textsuperscript{33} GRINSPOON at 253 et seq.; COMMISSION at 23; KAPLAN at 171 et seq.
\textsuperscript{34} GRINSPOON at 159-161; COMMISSION at 471-80 (app. vol. I); KAPLAN at 288-291.
\textsuperscript{35} GRINSPOON at 218 et seq.
\textsuperscript{36} GRINSPOON at 129, 130; COMMISSION at 56, 59.
\textsuperscript{37} GRINSPOON at 177; COMMISSION at 7, 8 (24 million Americans have tried marijuana—8.5 million are current users), 121.
\textsuperscript{38} COMMISSION at 62-65.
\textsuperscript{39} COMMISSION at 55-66 (app. vol. I).
III. Recent Statutory Developments

Since 1969, every state and the federal government have made changes in their marijuana statutes, all of them lessening penalties in one way or another and generally they accord possession of small amounts of marijuana misdemeanor treatment. As noted earlier, federal law has been, in past years, rather harsh in its treatment of the marijuana user. On October 27, 1970, Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970, was enacted. It is intended to encompass legislatively all drugs currently in use in the United States and those which might come into being or use in the future. With respect to marijuana it lessens criminal penalties dramatically. The Act places marijuana in the same category as heroin and other opium-derived drugs (there are five categories, or “schedules”) because of its alleged high potential for abuse and because of the claim that marijuana has no currently accepted medicinal use and that its use is not considered safe, even under medical supervision.

The penalty specified for distribution of marijuana, or for possession with intent to distribute the drug, is five years’ imprisonment or $15,000 fine or both, and two years of mandatory parole for those imprisoned, for the first offense. The penalties double for a second offense. However, those who distribute small amounts of marijuana for no remuneration are treated under a separate provision and accorded the same required penalty as those convicted of mere possession of marijuana (simple possession of any drug, be it marijuana, LSD or heroin brings the same penalty under the Act). A conviction for possession of marijuana for a first offender brings with it, at the court’s discretion, the possibility of a conditional discharge. That is, the first offender may be placed on a maximum of a year’s probation during which time his conviction is not recorded as a final judgment. If the defendant successfully completes his term of probation, the conviction is set aside, and his record will show no conviction for a marijuana violation. (A separate file is kept by the Department of Justice to insure that no defendant receives such treatment twice.) For first offenders who are not sentenced under this provision or who violate their probation and are convicted of the crime of possession, the penalty is one year in jail or a $5,000 fine, or both. The penalty doubles for subsequent offenses. The penalty for distribution is doubled (10 years and/or $30,000) for adults who distribute to minors; said penalty is increased threefold if the distributor has already been convicted once of distribution to a minor. Thus, while federal law has become more lenient in its response to marijuana use, all phases of such use are still unlawful.

As for state laws, lack of uniformity has been their most noticeable characteristic. But here too, a lessening of the penalties has occurred recently. Most

40 Commission at 547, 548 (app. vol. I).
42 Id. § 812.
43 Id. § 841(b)(1)(B).
44 Id. § 841(b)(4).
45 Id. § 844.
46 Id. § 845.
states had extremely harsh penalties until the late 1960's. Some penalties are still rather heavy, compared to sister states' penalties and those of the federal government. But at least the specter of the death penalty has disappeared and that is, presumably, something every imprisoned marijuana offender can be grateful for. The reform movement among the states began its current drive with the passage of the Uniform Controlled Dangerous Substances Act by the National Conference on Uniform State Laws. The Conference passed this Uniform Act on August 8, 1970, stating in its prefatory remarks that it sought uniformity among the states regarding the drug problem, and attributing the "drug abuse problem" to the increased mobility of the American citizens and their affluence.

The Uniform Act prohibits certain acts but leaves specific sentences to the individual states, thereby insuring the very lack of uniformity that the law was designed to remedy. Since its enactment, 30 states have adopted it and more are considering it for adoption.

Under the Uniform Act marijuana is treated in much the same way as under the previously described federal Drug Act of 1970. All drugs are categorized into five schedules depending upon their potential for abuse, and penalties are assessed accordingly. Marijuana is again classified with the opiates, LSD, etc. There is also a provision against distribution to a minor, with a questionable comment, and in many respects there is no difference between the federal law and the Uniform Act. Penalties under the Act are left to the individual states to determine. As mentioned previously, every state has changed its law since 1969, and many of these states have adopted the Uniform Act. Those that have not are, in many cases, considering adoption, and many who decided not to adopt incorporated the philosophy of the Act or certain of its provisions into their statutory schemes. (The relevant chart provided by the National Commission is appended to this article. It is current up to March, 1972.)

Among the states, there are still glaring differences in penalties for marijuana use. By way of example, in Arkansas first and second violations of the provision against possession of marijuana are punishable by a maximum of one year in jail or a $250 fine or both. The offender is labelled a misdemeanant. In Colorado, misdemeanor treatment is available to those who possess one-half ounce or less, but for those who possess more (keeping in mind that street use generally involves a "lid" which is one ounce) felony treatment occurs and the offender runs the risk of two to fifteen years for a first offense or a $10,000 fine or both. Penalties increase for subsequent offenses. Sale of marijuana brings a penalty of five years to life in California, with a mandatory minimum of three years' im-

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47 1970 Handbook of the National Conf. of Comms. on Uniform State Laws 223.
48 Commission at 548 (app. vol. I).
49 1970 Handbook, supra note 47, at § 406. (The reason for requiring a three-year difference between the seller and the buyer before this section becomes operative is because "In this situation, there is not the element of seduction so often found in the cases where the distributor and recipient are far apart in age.") But see Commission at 41. (The process whereby one becomes a marijuana user is not a "seduction of the innocent.")
50 See text accompanying note 40 supra.
prisonment, while in Maine, the penalty for sale is not more than five years' imprisonment and/or a $1,000 fine. Sale to a minor is punishable by a maximum of five years' imprisonment and/or $5,000 fine in Georgia. A similar violation in Missouri brings the incredible penalty of 10 years to life with no probation or parole possible.

Such is the unequal treatment that the states have accorded to marijuana use. Of course, the same objection (i.e., unequal treatment) can be made about any penal provision. The reason this inequality has particular urgency in the area of drug laws is not only because individuality in state criminal codes is generally becoming less desirable in our modern, mobile times but also because, in the area of drug use and control, there seems little reason to discriminate among users. This is the reason for promulgation of the Uniform Act. Drug use is a nationwide problem, it cannot be insisted that its effect upon both users and upon society varies so much, in particular where marijuana is concerned, as to warrant different treatment by the several states.

IV. Recent Judicial Developments

Recently, there have been an increasing number of attacks upon the constitutionality of marijuana laws. These attacks began in the 1960's and have kept pace with the increase in the number of marijuana arrests. In 1965 there were approximately 20,000 arrests by state authorities for violations of drug laws; the number burgeoned to 495,000 arrests in 1971—with 90% of those arrests for possession of marijuana. This enormous increase has not gone unchallenged, but rare is the case in which a marijuana law has been declared unconstitutional. One of the most heralded early attacks was in the case of Commonwealth v. Leis, a 1969 Massachusetts case in which the defendant argued the unconstitutionality of the state statute in question on a variety of grounds. In ruling the statute constitutional, the Massachusetts Supreme Judicial Court stated that it did not believe that smoking marijuana was a fundamental liberty. Further, the inclusion of marijuana in the category of narcotics was not arbitrary. (The court seems, in this case, to have defined "narcotic" as any mind-altering drug.) In response to the argument that marijuana should be treated in the same manner as alcohol, the court answered that more information is available about alcohol abuse than is known about marijuana and, further, alcohol abuse can be more easily controlled. Finally, the court did not feel that penal sanctions for the possession of marijuana imposed a cruel and unusual punishment upon the defendant primarily because at the time of the appeal no sentence had been
handed down and because the court did not find persuasive the argument that any punishment for marijuana possession is cruel and unusual.

Reviewing the *Leis* decision after a period of four years gives one an advantageous position. However, perhaps the most faulty logic on the part of the court was equally apparent four years ago. Reference is made to the argument that more is known about alcohol's effects than is known about those of marijuana. That, of course, is not the same thing as saying that it is known that marijuana produces undesirable effects. More is known about the dangers of alcohol abuse than about many drugs which can be bought without prescription today, and yet those drugs are not made illegal and their users put into penitentiaries. Also, the inclusion of marijuana in the category of narcotics, by defining "narcotics" as any mind-altering drug, is a masterpiece of judicial mental contortion which would conceivably open the category of "narcotics" to every tranquilizer and sedative available today. Finally, the statement that more is known about alcohol abuse and that such abuse can be better controlled than marijuana abuse is amusing. Much indeed is known about alcohol abuse in this country. Nine million of our fellow citizens are alcoholics, and billions of dollars each year are lost to the national economy because of the abuse of this drug.61 If anything, one would have expected the court to take judicial notice of the fact that alcohol abuse is out of control in this country.

Another case remarkable for its justification of the inclusion of marijuana as a narcotic substance is *State v. White*,62 a 1969 Montana case which reasoned that it does not matter that marijuana is known now not to be a narcotic. What is important is whether it was reasonable to classify it as such in 1937 (the date of Montana's law). (It does not matter that the burning of "witches" is now considered to be a stupid, illegal and immoral action. If it was considered reasonable in 17th-century Salem, will we uphold the practice now?)

A case from Florida the same year exhibited its own charm. *Borras v. State*63 is interesting for the assertion upon the part of the Florida Supreme Court that marijuana is a "harmful, mind-altering drug," a remark for which the court offered no supportive citation. Further, the court met the argument that if one could constitutionally read obscene literature in one's home without fear of arrest, one could similarly smoke marijuana (this argument came quickly on the heels of the United States Supreme Court ruling in *Stanley v. Georgia*)64 by maintaining that marijuana use is more dangerous to society than possession of obscene material. (Actually, the court's language reveals some uncertainty about this—it appears the court was not too keen on the idea of people reading obscene material either.) The state, it was reasoned, had an interest in preventing harm to the individual and to the public, and, therefore, the illegalization of marijuana was permissible. Then, in a flourish of pomposity and patriotic pride, the court announced that the State of Florida had an interest in having "robust citizens" capable of self-support who would bear arms and add to the country's resources.

60 COMMISSION at 481 et seq. (app. vol. I).
61 COMMISSION at 498 et seq. (app. vol. I); KAPLAN at 275-298.
63 229 So. 2d 244 (Fla. 1969).
Since marijuana is a threat to the individual and to society as a whole, its use can be totally prohibited.

The same court continued on in much the same vein in _Raines v. State_65 by declaring that the classification of marijuana as a narcotic did not violate the Equal Protection Clause and that punishment under state penal provisions did not constitute cruel and unusual punishment.

Recent constitutional arguments have upon occasion been treated more kindly. _State v. Zornes_,66 a 1970 Washington case, held that marijuana was not a narcotic, but merely a mild hallucinogen and that any prosecutions pending at the time of the enactment of Washington's amendments to its narcotic drug act (which removed marijuana from treatment as a narcotic) must be processed under the new law. (The latter was merely a question of statutory construction.)

In _People v. McCabe_,67 a 1971 Illinois case, the Supreme Court held that classifying marijuana under the Narcotic Drug Act rather than under the Drug Abuse Control Act was so arbitrary as to deprive the defendant of the equal protection of the law. The court, with no more than a cursory analysis, noted that there were several cases _contra_ but felt that those cases had not had the equal protection argument put before them in the same manner as had been the situation in _McCabe_.

In 1972 the continued questioning of the constitutionality of marijuana and other drug laws showed no signs of abating. In March, the Supreme Court of Appeals of West Virginia was asked, in _Scott v. Conaty_,68 to declare unconstitutional that portion of the Uniform Controlled Substances Act which gave to the State Board of Pharmacy the power to reclassify drugs. (In the federal scheme, the Attorney General has this power.) The court declined to do so, and while the case at bar involved a charge of possession of LSD, the court mentioned, by way of _dictum_, that the law prohibiting the possession of marijuana is constitutional.

In April of this year, in _English v. Miller_,69 the Federal District Court for the Eastern District of Virginia held that classification of marijuana as a narcotic drug violates the Equal Protection Clause because marijuana is thereby included with addictive drugs. However, the Fifth Circuit held that there is a rational basis for concluding that all drug traffic affects interstate commerce. Therefore, it held, in _United States v. Lopez_,70 that the Comprehensive Drug Abuse Act of 1970 is constitutional through exercise of the Commerce Clause.

The recent case of _People v. Sinclair_71 has also served to bring the marijuana issue into focus. In this case, the defendant leader of a politically radical group known as the White Panthers, was convicted of possession of marijuana and sentenced to 9½ to 10 years in prison. In reversing his conviction, the Michigan Supreme Court handed down four separate opinions in which four of the justices

65 225 So. 2d 330 (Fla. 1969).
71 387 Mich. 91, 194 N.W.2d 878 (1972).
voted for reversal and two merely for modifying the sentence imposed. The arguments were many and varied, including the opinion written for the court by Justice Swainson holding that the evidence used to convict was inadmissible because Sinclair had been entrapped. The argument that the sentence constituted cruel and unusual punishment was appealing to two of the justices while two also felt that classification of marijuana as a narcotic violated the Equal Protection Clause. One justice argued that the legalization of marijuana denied the right to liberty and the pursuit of happiness.

In what was virtually a companion case, the court also decided People v. Lorentzen, in which it held that a 20-year minimum term of imprisonment for sale of marijuana was cruel and unusual punishment. The court compared this sentence with others imposed upon those convicted of different crimes in Michigan and, inter alia, noted that the maximum for manslaughter in the state was only 15 years and for felonious assault with a gun merely four years.

Finally, the Hawaii Supreme Court was recently presented with the question of the constitutionality of the Hawaiian statute making possession of marijuana illegal in State v. Kantner. The court held, in an exquisitely unique decision, that the marijuana law was constitutional. Three justices voted to uphold the law, two to declare it unconstitutional (the latter two on privacy, due process and equal protection grounds). One of those voting to uphold the law (Justice Abe) did so despite his own stated belief that the law was unconstitutional because he felt that the issue of constitutionality had not been properly raised. The majority opinion held that the classification of marijuana as a narcotic did not violate the due process and equal protection clauses of the federal and state constitutions because, while it may be true that marijuana is not scientifically a narcotic, the legislature has broad power in defining terms for legislative purposes, and, in any event, no one was misled by the legislative classification. Further, the court noted that marijuana was treated differently than other narcotic drugs under Hawaii law.

The classification argument has aspects of an "Oh, you know what we mean" justification. It overlooks the fact that by allowing an inaccurate classification, improper treatment of violators occurs. The legislature is not forced thereby to reconsider and justify the illegalization of marijuana. As for the argument that marijuana is treated differently, the very fact that it is included in the category of narcotics places a second offender in danger of receiving a mandatory one-year minimum imprisonment, a fate not imposed upon those found guilty for a second time of possession of LSD, amphetamines, barbiturates or any other "harmful drugs."

For these and other reasons, the Supreme Court of the United States has

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been petitioned for a writ of certiorari asking that the statute prohibiting the use of the "narcotic" marijuana be declared unconstitutional.\(^{75}\)

In addition to the many legal cases in which the constitutionality of the marijuana statutes have been questioned, there have been many similar arguments proffered by legal scholars and other interested parties. One of the most thoughtful and careful analyses of the entire question is to be found in the article by law professors Richard J. Bonnie and Charles H. Whitehead entitled "The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marihuana Prohibition."\(^{76}\) In that article, the authors supply a detailed history of the development of the laws against the use of marijuana as well as statistics and charts of laws, terms of imprisonment, numbers of arrests, etc. Far more important is their discussion of the nature and validity of some of the arguments most favored by those asserting the unconstitutionality of laws prohibiting the use of marijuana. The authors did not believe that equal protection or due process arguments would be successful primarily because doubt remained about the status of marijuana as a narcotic or a mild drug. Of course, in the two years since that article was written, both the report of the National Commission and the book by Dr. Grinspoon have appeared, hopefully laying that objection to rest.

The arguments that there is a right of privacy involving the use of marijuana and a right to put anything into one's own body are, the authors felt, without prior judicial support and rather shaky at best.

The professors felt that two other arguments had great appeal. The theory that any imprisonment for possession of marijuana constitutes cruel and unusual punishment seemed to them to be one which appellate courts might find convincing. Ironically, no court has since held accordingly, and some courts have specifically stated the opposite.\(^{77}\)

Secondly, the authors argued that the state had no right, under its police power, to make the private use or the possession of marijuana illegal. This was so, they reasoned, because the private use of marijuana does not create a public harm, and police powers are available to the state only to promote the public welfare. Such an argument would cast upon the state the burden of producing a rational basis for the continued illegalization of marijuana. The authors felt confident no state could ever meet that burden.

The authors rejected the argument that marijuana use is protected religious activity,\(^{78}\) noting the difference between protection of religious beliefs, as guaranteed by the Constitution of the United States, and mere religious activity. Finally, the authors opined that before any court would ever hold that smoking marijuana is a fundamental right, it would necessarily be required to find that there is such a concept as sensual individuality. This the authors expressed doubt would ever occur. (Note, however, Justice Levinson's dissent in *State v. Kantner,* 493 P.2d 306 (Hawaii 1972); *petition for cert. filed* 40 U.S.L.W. 3577 (U.S. May 30, 1972) (No. 71-1558).)


\(^{76}\) Bonnie & Whitehead, *supra* note 4.


holding that the fundamental right involved is not the right to smoke marijuana but the right to do what one wishes in the privacy of one's home, presupposing that no harm to society is involved.)

Another equally analytical essay is to be found in the Appendix to the report of the National Commission. In this chapter, entitled "The Constitutional Dimensions of Marihuana Control," the lawyer-authors focus attention upon the extent to which the United States Constitution may be seen to impose substantive limitations upon the prohibition of marijuana for personal use and the equally important question of whether the federal government can impose its policies in this area of the law upon the several states. Any attorney contemplating a constitutional attack upon a law prohibiting the personal use of marijuana would be remiss if he did not read this chapter which argues that there are several avenues available for constitutional attack upon such statutes. First, the essay argues for the private use of marijuana as a fundamental right, part of Griswold's "zone of privacy." The second possible attack lies within the doctrine of inherent limitations upon the police power of a state, limitations arising out of the state's interest in protecting only the public as opposed to the private welfare. Acknowledging that attacks based upon the Freedom of Religion Clause or the Equal Protection Clause have generally failed, the chapter goes on to note new approaches that can be taken within the framework of these constitutional clauses that may prove more successful. The article argues that federal preemption of the field of marijuana regulation and control can be accomplished either through the Commerce Clause or the enabling provision (section 5) of the fourteenth amendment. Congress, it is argued, could legislate state enforcement of federal penal provisions in order to avoid imposing a heavy burden upon the federal judiciary, and the desired uniformity of treatment of all marijuana offenders would be achieved.

Finally, there is the argument put in the form of a recent petition to the Attorney General's Office that, assuming marijuana use can be criminalized, it should not be classified as one of the most harmful drugs. That is, it should be removed from Schedule I and placed in Schedule V.

It is arguments such as these, as well as those being proffered by appellate courts as cases continue to arise, which indicate clearly that the question of marijuana prohibition is one of those unsettled areas of the law. Everyone has his own favorite theory; many attorneys are attempting to find the theory that will appeal to a majority of justices in their appellate jurisdictions. With the advent of such cases as People v. Sinclair, it seems only a matter of time before marijuana statutes will begin to fall.

V. The Social Costs of Repressive Laws and Some Proposed Solutions

Despite the many varied arguments made in favor of legislative repeal or

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79 Commission at 1123 (app. vol. II).
81 Petition has been filed with the U.S. Dep't of Justice by the National Organization for Reform of Marijuana Laws (NORML), the Institute for Study of Health and Society and the American Public Health Assoc. (APHA) (May 18, 1972).
judicial nullification of marijuana laws, the fact is that such laws are presently in force in every state as well as in the federal legal system. The cost of enforcing them is immeasurable, but some statistics should serve as gross indicators of the social expense involved.

It has been estimated that enforcement of the laws against marijuana cost the State of California $75 million in 1968 alone.\textsuperscript{2} The increased alienation of the young and the encouragement of unhealthy police practices are two other, and often ignored, social costs. In fact, the entire judicial system seems to have undergone some compromise because of these laws. One study reports that, in addition to the many other social costs involved, we also have the misfortune (from one point of view) of seeing judgments of acquittal returned in the face of overwhelming evidence of guilt solely because of the hesitancy on the part of judges to convict young defendants and place them in jeopardy of receiving serious punishment.\textsuperscript{3}

Another social “cost” lies in the credibility gap developing between the judiciary and the public in general on the one hand and law enforcement officers on the other hand. The officers, it is feared, are becoming skilled perjurers in order to obtain drug convictions, a fact that has not gone unnoticed.\textsuperscript{4}

The costs to this country in actual governmental monetary outlay and, more importantly, in the rendering and ruin of the social fabric are immense. One fears that, in some ways, they are also irretrievable, at least insofar as the attitudes of American youth are concerned.

Many proposals have appeared suggesting solutions to the marijuana problem. The National Commission has declared itself in favor of a policy of discouragement.\textsuperscript{5} That is, the use of marijuana is to be discouraged, through partial prohibition of the drug. Total prohibition is deemed too harsh a remedy and, for that reason, the Commission recommends eliminating penalties for the possession of marijuana for private use, including private distribution of small amounts for no profit. Any other use (possession with intent to sell, cultivation, etc.) would continue to be a crime and, generally, the Commission urges felony treatment. Complete legalization is rejected because it is the hope of the Commission that marijuana is merely a fad which will soon die out if not encouraged. Also, the Commission does not believe that a substance which has uncertain long-term effects should be legalized. Nonetheless, the Commission does believe that the widespread use of marijuana in this country is an essentially innocuous practice and that the threat of incarceration is an unreasonable burden in certain instances. Further, legalization of some aspects of the marijuana problem would


\textsuperscript{3} Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County, 15 U.C.L.A. L. REV. 1499 (1968). (This study followed a number of adult and juvenile cases through their processing through the criminal justice system in Los Angeles. It analyzes the costs to both the system and the individuals who are caught up in the system.) See also Andrus & Moore, The Uniform Controlled Dangerous Substances Act: An Expositive Review, 32 LA. L. REV. 56 (1971).

\textsuperscript{4} Kaplan at 44, 45; Comment, Police Perjury In Narcotics “Dropsy” Cases: A New Credibility Gap, 60 Geo. L.J. 507 (1971).

\textsuperscript{5} Commission at 134 et seq.
free both law enforcement officials and the courts to concentrate their efforts on
the more serious violators of the drug laws, the importers and manufacturers of
the "hard drugs," and those who deal in marijuana solely for profit.

However, the National Commission seems to have an uncertain commitment
to its recommendations. Throughout its report one senses a feeling that the
Commission realizes that complete legalization is forthcoming and that its report
is an unsupportable middle way between the present repression and future legali-
zation. "If responsible use of the drug (marijuana) does indeed take root in our
society" the Commission intones, then it is foreseeable that future policy planners
might reach a conclusion different from that of the Commission, which has
decided to discourage marijuana use.

Another concern of the Commission, and one which possibly best explains
its awkward "Yes, it's legal; No, it's not" stance is the emphasis that marijuana
must be desymbolized. It is a drug used by the young to display anti-establishment
attitudes, the Commission warns, and this is decidedly undesirable. However,
should the day ever come that marijuana is desymbolized, so that the availability
of the drug does not connote societal approval, then a policy change might be
proper.

In these remarks are laid bare the "social concerns" of the Commission. We
are told that responsible use of the drug is needed, the assumption being that in-
asmuch as only "drop-outs" use it, it is being put to irresponsible use. Or could
the Commission be saying that since marijuana use is currently illegal, those who
use it are necessarily irresponsible? This leads down the confusing path of re-
quiring responsible use before legalization while insisting that responsible use
will only come after legalization. Perhaps the Commission is actually stating that
use is presently irresponsible because marijuana is as much a symbol as an intox-
icant. Smoking marijuana to show anti-establishment values is not responsible—it
is annoying to the American public. This too is one of the Commission's justi-
fications for discouraging marijuana use.

But the Commission would have been better advised to recommend legal-
ization of marijuana rather than discouragement on the basis of symbolization.
Rather than concerning itself with the misguided antipathy of Middle America,
the Commission ought to have realized that American youth desperately needs
a symbolic victory of its own. At a time when the younger generation is being
forced to fight an unpopular war (or is fighting against continuation of that war
at home) and seems to have very little power to affect its own direction, let alone
that of its country, a symbolic cause such as the legalization of marijuana takes
on added significance. To the older generation, marijuana legalization is merely
one of many matters to which its attention is drawn. To the younger generation,
it is a matter of extreme interest and importance. Thus, the "symbol" approach
the Commission takes can just as easily lead to the opposite conclusion from that
reached by the Commission.

The Commission admits that private use of marijuana produces no social
or individual harm and that laws prohibiting such use are constitutionally suspect.
It agrees that even the practice of imposing civil fines would be of little value,
since that would continue the current misuse of police manpower and the con-
current undesirable invasions of privacy necessary for law enforcement. And yet the Commission, hanging by a thread, argues for partial prohibition. Its justifications for this stance involve carefully constructed attempts to gather in every conceivable shred of evidence against marijuana use (it might have undesirable personal effects if used in very heavy amounts over a long period of time; it symbolizes anti-establishment values; its use is not responsible; it is of transient social interest, etc.). While its carefully gathered statistical and scientific evidence goes in one direction, the Commission acrobatically, but not too convincingly, goes in the other.

Dr. Grinspoon opts for legalization of the personal use of marijuana of predetermined potency and consequently for governmental regulation of marijuana in much the same manner as alcohol. He does not believe that long-term use degenerates the user, and while he admits that marijuana is not completely harmless in its effects on the user, in the sense that no drug is ever completely harmless, he does believe that its relative lack of harm merits kinder treatment for its use than the states and federal government have thus far afforded.

Approaching the subject from a different viewpoint, Professor John Kaplan wrote recently that the problem with laws that seek to protect people from themselves is that they are so atypical that the "protected" person feels resentment toward the government because he knows of more dangerous activities that are not condemned. "The laws requiring one to protect himself are little islands of criminal liability in a vast sea of freedom to injure one's self." These criminal laws, Kaplan goes on to say, are counterproductive in terms of educational programs because those to be educated—that is, the drug users—tend to feel that the educational process is just another means of enforcing the law. Thus, in implying that the prohibition against marijuana is doomed to failure, Kaplan points out that drug laws are successful only when people do not want a drug intensely. For example, the prohibition against alcohol did not work because the desire for alcohol on the part of large numbers of people was great. The ban against cyclamates does work because there is no black market demand for products with cyclamates.

Kaplan therefore proposes that marijuana be legalized and regulated in much the same manner as alcohol, with the potency of the drug controlled and maintained at a mild dosage. He further argues for licensing of sellers, sales to be conducted in liquor establishments only and other thoughtful limitations upon the distribution and use of marijuana.

Countless others have called for legalization of marijuana or at the very least a reconsideration of the current penalties imposed upon marijuana use. These voices include American Bar Association committees, legislators and the

86 Commission at 150.
87 Grinspoon at 367 et seq.
88 Grinspoon at 276.
89 Grinspoon at 9.
91 Id. at 1072.
92 ABA Special Committee on Crime Prevention and Control, New Perspectives on Urban Crime, reported in 11 Crim. L. Rep. (BNA) 2018 (April 5, 1972) (urging consideration of the repeal of "victimless crime" laws); Committee on Alcoholism and Drug Reform (section
President's Commission on Law Enforcement and the Administration of Justice.\textsuperscript{94} All of these authorities appear convinced that the greatest undesirable effect marijuana produces is the possibility of imprisonment.

VI. Conclusion

In the past several years, as new information has become public, the marijuana issue has been brought more clearly into focus. The task of supporting the stance that marijuana use should be legalized has become much easier as a brief review of the material presented in this article should reveal. It is now generally conceded that short-term use of cannabis preparations is, for all practical purposes, without any detriment to the user and that the primary effect of such use is that of mild, pleasurable relaxation. The consequences of long-term use also appear to be relatively minor, and the only area about which there is still doubt is that of long-term heavy use, especially of potent preparations of cannabis. However, even here it is possible to extrapolate to the conclusion that, in comparison with the results that similar use of other drugs would bring, the effects would not be too deleterious.

However, it does not end the controversy merely to assert that marijuana preparations appear to be among the milder intoxicants. Several other questions must be resolved, among which is the question of whether any intoxicant should be condoned by a society. The National Commission found the argument that society should not formally approve the use of any intoxicant to be persuasive.\textsuperscript{95} But once the use of a drug reaches the proportions that marijuana use has, the question shifts. The question then becomes whether any society should criminalize those who use intoxicants, once it is determined that the use of those intoxicants for the majority of users poses little or no threat of lasting harm. Our society has answered that question in the negative in the area of two intoxicants which are clearly harmful—alcohol and tobacco.

The current approach to the use of marijuana on the part of government is completely unreasonable and arbitrary. Without any real justification legislative bodies have criminalized the use of marijuana and have, in recent years, reasserted this approach despite the increasingly wide dissemination of information explaining the origin of such legislation—a beginning based solely upon anxiety, fear and misinformation. These laws have continued despite clear evidence of the relatively harmless effects of cannabis preparations for the average user, a claim the proponents of alcohol and tobacco use would be hard put to assert.\textsuperscript{96} Those who enacted the federal Comprehensive Drug Abuse Act of 1970 even had the audacity to announce, while justifying the legislation in an introductory

\begin{itemize}
\item on Individual Rights and Responsibilities) and Committee on Drug Abuse (section on Criminal Law) as reported in \textit{Commission} at 109 \textit{et seq.}
\item 93 \textit{11 CRIM. L. REP. (BNA) 2019 (April 5, 1972) (bill introduced in New York legislature seeking legalization of possession of four ounces or less).}
\item 94 \textit{PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY} (1967).
\item 95 \textit{Commission} at 127 \textit{et seq.}
\item 96 \textit{Commission} at 15; \textit{KAPLAN} at 317-20 (discussion of the dangers of alcohol as compared to those of marijuana use).
\end{itemize}
section as preventing the improper use of substances which have a detrimental effect on the health and welfare of the American people, that alcohol and tobacco were to be specifically excluded from control under the Act.\textsuperscript{97} The mere mention of this is certain to do much for the credibility of the legislation with American youth.

The entire controversy surrounding marijuana occasionally seems in danger of becoming woefully misdirected. Rather than quibble over such unresolved questions as whether long-term, heavy use leads to an alteration of the pulmonary function, and whether the studies show this to be irreversible, perhaps we need to be reminded that the real issue is whether society should be invoking criminal sanctions against drug users at all. If one persists in the use of a drug, even assuming that such drug is deleterious to the user, society's reaction should not be criminalization of the user. In a Nation where heroin addiction is becoming more and more recognized for the sickness that it is, and methadone treatment centers are springing up throughout the Nation, how curious that users of another, much milder drug should still be treated entirely as criminals.

Leaving aside the question of the proper reaction of society to drug use in general, we must ask ourselves what society's response to the use of the specific drug marijuana should be. Should the use of marijuana—an essentially harmless drug in many respects—be criminalized solely on the basis that there is more to be learned about the use of the drug? Of course there is more to be learned about the use of the drug, but it would appear that sufficient knowledge has been gained to assure even the most critical observer that the use of cannabis will not destroy either its users or society. Further, once a large number of people have decided that they will persist in the use of an intoxicant, government should not continue to criminalize the users of that drug. This is a lesson we learned from the Prohibition Era.

The constant recourse to penal sanctions against the use of marijuana has become a greater evil than the use itself. Once preliminary indications reveal that a substance appears relatively harmless, the burden should shift to those who would ban its use to come forward with some evidence that the drug is harmful, rather than merely insisting that more can be learned about the effects of the drug, something which is true of every drug on the market. One senses that the refusal on the part of Government to end the criminalization of marijuana use has its roots not so much in a concern for the health and welfare of the marijuana user as much as in political and emotional considerations. The much-heralded generation gap is closing in the United States, not so much because the younger generation is growing appreciative toward the older for imprisoning it for use of an intoxicant milder that the one favored by the older generation, but because the "younger generation" is getting older. Marijuana users are reaching into business and professional circles, and it might not be too unreasonable to speculate that what is replacing the generation gap is an increasing alienation from their government on the part of a growing number of American adults.

The continued illegalization of marijuana has taken on the aspect of a government cover-up. Faced with growing evidence and support for the legal-

Marijuana law is relatively harmless. That is an important consideration. The constitutionality of marijuana laws is questionable. That too is an important consideration. But the real issue of marijuana use now lies in considerations of justice, reason and fair play. Government must stop alienating American youth by pursuing the criminalization of marijuana. Instead of focusing on such false issues as whether long-term heavy use might prove slightly harmful—something that is true of the very food we eat—our national and local leaders should reaffirm the American principle that that government is best which governs least. The marijuana user should be allowed to seek his own ways to happiness, even if many would disagree with the emphasis he places on marijuana in this quest. Marijuana should be allowed to "float free" in our society, much like gold in the international market place, in order that it might find its market. If this were allowed, marijuana use might save some of our fellow citizens from the perils of alcohol and tobacco use.

Our Victorian attitude that "victimless crimes" may be punished because of their tenuous (often non-existent) connections with the general welfare must cease. Such "crimes" have been the focal point of more wasted energy and more grief than our judicial system can tolerate.

We must also stop this illogical discrimination between "user" and "seller," a categorization which we know does not exist. We should control these profiteers (the user-sellers) like any others we encounter in our society. If making a profit off drug use bothers government and the American public, why is the same not true in regard to alcohol and tobacco use? And if such profiteering is so unsettling, perhaps now is the time to re-evaluate our commitment to capitalism.

All those who piously assert their anxiety for the marijuana user should show some real concern for these users. Instead of worrying about the possibility that the users' hearts may skip a beat 40 years from now, these "protectors" should show some pity for those who are going to jail and having lives, marriages and careers ruined, all because of the enforcement of illogical, unsound laws.

By admitting that marijuana users should not be jailed, critics such as the National Commission have admitted that the prohibition against marijuana is unreasonable. That being so, there is no reason to discriminate among the various types of use. Big-city users, who must buy their marijuana, should not be preferred over rural users, who cultivate their own.

It must be recognized that marijuana is not entirely a legal or medical issue. It is also a social question. Social considerations such as those outlined in this article are the ones this nation should be addressing itself to. The unreasonable-ness of the present marijuana legislation is a matter that creates social implications for our legislators while also presenting legal questions for our courts. The evidence is clear—marijuana laws should be repealed.

Marijuana use should be treated as is the use of "the other intoxicant," alcohol. Legalization of marijuana use, with strict control by regulatory agencies, limitations on the age of the user, the manner and places in which it may be pur-
chased, its potency level predetermined, with no legally recognized justification
for acts committed while under its influence, etc.—this is the more reasonable
way of approaching the marijuana issue. Continued criminalization of mari-
juana users is an absurd way of dealing with essentially law-abiding citizens. This
illogical stance on the part of government is serving only as more fodder for
those who would convince our citizenry that government is an unresponsive tool
in the hands of the few. In an ironic turnabout, it is the enforcement of a law
that is endangering society, harming society's members. The laws against mari-
juana use have become a crime against humanity.
<table>
<thead>
<tr>
<th>State</th>
<th>Year of Law</th>
<th>Uniform Act</th>
<th>Classification of Marijuana</th>
<th>Possession for First Offense</th>
<th>Possession for Personal Use</th>
<th>Sale</th>
<th>Cultivation</th>
<th>Sale to A Minor</th>
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<td>Alabama</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>amount discretionary for the court</td>
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(taken from Marijuana—A Signal of Misunderstanding as reported by the National Commission on Marijuana and Drug Abuse, Appendix Vol. I at 535-37 (1972))
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<th>Year of Law</th>
<th>Uniform Act</th>
<th>Classification of Marijuana</th>
<th>Conditional Discharge for First offenses</th>
<th>Possession for Personal Use</th>
<th>Relevant Amount</th>
<th>Penalty</th>
<th>Possession</th>
<th>Sale</th>
<th>Cultivation</th>
<th>Sale to A Minor</th>
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<td></td>
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<td>+/or NMT 5 yrs.</td>
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<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
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<td></td>
<td>2.5 g. or less</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
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<td></td>
<td>2.5 g. or less</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
</tr>
<tr>
<td>Indiana</td>
<td>1971</td>
<td>dangerous</td>
<td>drug</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>Iowa</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td></td>
<td></td>
<td>NMT 6 mos.</td>
<td>+/or NMT 6 mos.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
</tr>
<tr>
<td>Kansas</td>
<td>1971</td>
<td>yes</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1970</td>
<td>dangerous</td>
<td>drug</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1970</td>
<td>yes</td>
<td>hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td></td>
<td></td>
<td>NMT 6 mos.</td>
<td>+/or NMT 6 mos.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
</tr>
<tr>
<td>Maine</td>
<td>1971</td>
<td>yes</td>
<td>marijuana</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>Maryland</td>
<td>1970</td>
<td>yes</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 30 days.</td>
<td>+/or NMT 30 days.</td>
<td>NMT 2 yrs.</td>
<td>+/or NMT 2 yrs.</td>
<td>NMT 5 yrs.</td>
<td>+/or NMT 5 yrs.</td>
<td>NMT 10 yrs.</td>
</tr>
<tr>
<td>State</td>
<td>Year</td>
<td>Uniform Act</td>
<td>Classification of Marijuana</td>
<td>Possession for First Offense</td>
<td>Possession</td>
<td>Sale</td>
<td>Cultivation</td>
<td>Sale to A Minor</td>
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<tr>
<td>Michigan</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 90 days $500</td>
<td>NMT 5 yrs. $5,000</td>
<td>NMT 10 yrs. $5,000</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Minnesota</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 1-1/2 oz.</td>
<td>NMT 1 yr. $1,000</td>
<td>NMT 5 yrs. $15,000</td>
<td>NMT 10 yrs. $15,000</td>
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<tr>
<td>Mississippi</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 6 mos. $500</td>
<td>NMT 4 yrs. $2,000</td>
<td>NMT 8 yrs. $2,000</td>
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<tr>
<td>Missouri</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 35 g. of marihuana or 5 g. of hashish</td>
<td>NMT 1 yr. $1,000</td>
<td>NMT 5 yrs. OR 1 yr. in county jail $1,000</td>
<td>NMT 20 yrs. in penalitary death</td>
<td></td>
<td></td>
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<tr>
<td>Montana</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 60 g. of marihuana or 1 g. of hashish</td>
<td>NMT 1 yr. $1,000</td>
<td>NMT 5 yrs.; if shown to be habitual user then committed to rehabilitation institution</td>
<td>5 yrs. to life</td>
<td>NMT 10 yrs. OR 5 yrs. to life or death</td>
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<tr>
<td>Nebraska</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 1 lb.</td>
<td>NMT 7 days $500</td>
<td>1 yr. in prison OR 5 mos. in jail $500</td>
<td>1-5 yrs. OR 5 mos. in county jail $2,000</td>
<td>no separate offense</td>
<td></td>
<td></td>
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<tr>
<td>Nevada</td>
<td>1971</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 1 oz.</td>
<td>1-6 yrs. + NMT $2,000</td>
<td>1-10 yrs. + NMT $5,000</td>
<td>1-5 yrs. + NMT $2,000</td>
<td>life with possible parole after 7 yrs. + NMT $5,000</td>
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<tr>
<td>New Hampshire</td>
<td>1971</td>
<td></td>
<td>controlled drug</td>
<td>NMT 1 lb.</td>
<td>NMT 1 yr. $500</td>
<td>NMT 5 yrs. $5,000</td>
<td>NMT 10 yrs. $2,000</td>
<td>no separate offense</td>
<td></td>
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<tr>
<td>New Jersey</td>
<td>1970</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 25 g. of marihuana or 5 g. of hashish</td>
<td>NMT 6 mos. $500</td>
<td>NMT 5 yrs. $15,000</td>
<td>NMT 5 yrs. $15,000</td>
<td>NMT 10 yrs. $15,000</td>
<td></td>
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<tr>
<td>New Mexico</td>
<td>1972</td>
<td>yes</td>
<td>hallucinogen</td>
<td>NMT 1 oz.</td>
<td>NMT 50-100 + NMT 15 days $100-$1,000</td>
<td>8 oz. or more: 1-5 yrs. $5,000</td>
<td>1-5 yrs. $5,000</td>
<td>10 yrs. $10,000</td>
<td>2-10 yrs. $10,000</td>
<td></td>
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<tr>
<td>State</td>
<td>Year of Uniform Law</td>
<td>Classification of Marijuana</td>
<td>Possession for Personal Use</td>
<td>Possession</td>
<td>Sale</td>
<td>Cultivation</td>
<td>Sale to A Minor</td>
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<tr>
<td>New York</td>
<td>1971</td>
<td>narcotic</td>
<td>yes</td>
<td>NMT 1/4 oz.</td>
<td>NMT 1 yr.</td>
<td>NMT 1 yr.</td>
<td>8-1/3-25 yrs.</td>
<td></td>
<td></td>
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<tr>
<td>North Carolina</td>
<td>1971</td>
<td>marijuana</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 6 mos. + for NMT $500</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>no separate offense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>1971</td>
<td>hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 500 + for NMT 1 yr.</td>
<td>NMT 10 yrs. + for NMT 5,000</td>
<td>NMT 20 yrs. + for NMT 5,000</td>
<td></td>
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<tr>
<td>Ohio</td>
<td>1970</td>
<td>hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 1 yr. + for NMT $1,000</td>
<td>20-40 yrs.</td>
<td>2-15 yrs. + for NMT $10,000</td>
<td>30 yrs.-life</td>
<td></td>
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<tr>
<td>Oklahoma</td>
<td>1971</td>
<td>hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 1 yr.</td>
<td>2-10 yrs. + for NMT $5,000</td>
<td>2-10 yrs. + for NMT $5,000</td>
<td>4-20 yrs. + for NMT $10,000</td>
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<tr>
<td>Oregon</td>
<td>1971</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>NMT 1 oz. + for NMT $1,000</td>
<td>NMT 10 yrs. + for NMT $5,000</td>
<td>NMT 10 yrs. + for NMT $5,000</td>
<td>NMT 10 yrs. + for NMT $5,000</td>
<td>NMT 20 yrs. + for NMT $10,000</td>
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<tr>
<td>Pennsylvania</td>
<td>1970</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>2-5 yrs. + for NMT $2,000</td>
<td>minimum</td>
<td>5-20 yrs. + for NMT $5,000</td>
<td>NMT 1 yr. + for NMT $5,000</td>
<td>no separate offense</td>
<td></td>
<td></td>
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<tr>
<td>Rhode Island</td>
<td>1970</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>NMT 15 yrs. + for NMT $10,000</td>
<td>NMT 40 yrs.</td>
<td>NMT 20 yrs.</td>
<td>up to life (no probation)</td>
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<tr>
<td>South Carolina</td>
<td>1971</td>
<td>hallucinogen</td>
<td>yes</td>
<td>NMT 28 g. of marijuana or 10 g. of hashish</td>
<td>NMT 3 mos. + for NMT $100</td>
<td>NMT 6 mos. + for NMT $1,000</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 10 yrs. + for NMT $10,000</td>
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<tr>
<td>South Dakota</td>
<td>1971</td>
<td>hallucinogen</td>
<td>yes</td>
<td>NMT 1 oz. + for NMT $250</td>
<td>NMT 1 yr. + for NMT $1,000</td>
<td>2-5 yrs. + for NMT $5,000</td>
<td>5-10 yrs. + for NMT $5,000</td>
<td>5-10 yrs. + for NMT $5,000</td>
<td>10-20 yrs. + for NMT $10,000</td>
<td></td>
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<tr>
<td>Tennessee</td>
<td>1971</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 1 yr. + for NMT $1,000</td>
<td>NMT 1,000 or treatment in state facility</td>
<td>1-5 yrs. + NMT $3,000</td>
<td>1-5 yrs. + NMT $3,000</td>
<td>2-10 yrs. + NMT $5,000</td>
<td></td>
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<tr>
<td>Texas</td>
<td>1971</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>NMT 6 mos. + for NMT $250</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 10 yrs. + for NMT $5,000</td>
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<tr>
<td>Utah</td>
<td>1971</td>
<td>hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 6 mos. + for NMT $250</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 5 yrs. + for NMT $5,000</td>
<td>NMT 10 yrs. + for NMT $5,000</td>
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</tr>
<tr>
<td>State</td>
<td>Year of Law</td>
<td>Uniform Act</td>
<td>Classification of Marijuana</td>
<td>Possession for Personal Use</td>
<td>Possession</td>
<td>Sale</td>
<td>Cultivation</td>
<td>Sale to A Minor</td>
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<tr>
<td>Vermont</td>
<td>1971</td>
<td>regulated drug</td>
<td>NMT 1/2 oz.</td>
<td>1/2 oz. - 2 oz., NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 5 yrs. + $10,000</td>
<td></td>
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</tr>
<tr>
<td>Virginia</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 1 yr. + $1,000</td>
<td>NMT 1 yr. + $1,000</td>
<td>NMT 10 yrs. + $50,000</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Washington</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>NMT 40 g.</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 10 yrs. + $10,000</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
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<tr>
<td>West Virginia</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>NMT 15 g.</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 5 yrs. + $10,000</td>
<td>NMT 10 yrs. + $10,000</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Wisconsin</td>
<td>1969</td>
<td>dangerous drug</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>yes</td>
<td>no separate penalty</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1970</td>
<td>narcotic</td>
<td>no separate penalty</td>
<td>NMT 1 yr. + $100-$1,000</td>
<td>NMT 1 yr. + $100-$1,000</td>
<td>NMT 1 yr. + $100-$1,000</td>
<td>NMT 10 yrs. + $50,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guam</td>
<td>1970</td>
<td>yes hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 10 yrs. + $50,000</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 10 yrs. + $50,000</td>
<td>NMT 15 yrs.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Virgin Islands</td>
<td>1971</td>
<td>yes hallucinogen</td>
<td>no separate penalty</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 5 yrs. + $500</td>
<td>NMT 10 yrs. + $50,000</td>
<td>NMT 15 yrs.</td>
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</tbody>
</table>

1. "Year of Law" means the year in which the jurisdiction's marijuana laws were revised or amended in any way. This includes those jurisdictions that enacted entirely new laws, as well as those that may have only changed a penalty provision.

2. The Uniform Controlled Substances Act classifies marijuana as a hallucinogen. This is the modern trend, as most jurisdictions have come to realize that scientifically marijuana is not a narcotic.

3. Conditional discharge is designed to allow a judge to place a first offender on probation in lieu of sentencing him to prison. It is usually applicable only in cases of first offense possession, and is available only once with respect to any prior convictions or future offenses. This provision is subject to revival at the discretion of the judge.

4. Some jurisdictions have created a separate penalty for possession of a limited amount of marijuana. While state laws usually do not specify these penalties, it may be inferred that states consider possession of less than the designated amount to be for personal use.

5. In states with no special provision for possession of small amounts, the "possession" offense covers possession of any amount. In states which do have such a special provision, "possession" offense covers possession of any amount, but does not include possession with intent to sell. This offense is usually punishable as a felony offense.

6. This provision requires clarification in a number of jurisdictions. The following is a summary of what has been reported as the general practice in the United States:

7. The term "NMT" designates not more than.

8. There are several jurisdictions that give prosecutorial and sentencing discretion as to whether a particular offender is to be treated as a felon or a misdemeanant. This is indicated on the chart by use of "GAG" in the appropriate column.

9. In the Mississippian Uniform Act, two separate penalties for possession were maliciously included. The Mississippi Legislature is currently attempting to correct this error.