



National Commission on Marihuana and Drug Abuse
801 19th Street N.W.
Washington, D.C. 20006

March 22, 1972

To The President and Congress of the United States:

As Chairman of the National Commission on Marihuana and Drug Abuse, I am pleased to submit to you our first year Report in conformance with the mandate contained in Section 601 of Public Law 91-513, The Comprehensive Drug Abuse Prevention and Control Act of 1970.

This Report "Marihuana, A Signal of Misunderstanding" is an all-inclusive effort to present the facts as they are known today, to demythologize the controversy surrounding marihuana, and to place in proper perspective one of the most emotional and explosive issues of our time. We on the Commission sincerely hope it will play a significant role in bringing uniformity and rationality to our marihuana laws, both Federal and State, and that it will create a healthy climate for further discussion, for further research and for a continuing advance in the development of a public social policy beneficial to all our citizens.

Whatever the facts are we have reported them. Wherever the facts have logically led us, we have followed and used them in reaching our recommendations. We hope this Report will be a foundation upon which credibility in this area can be restored and upon which a rational policy can be predicated.

By Direction of the Commission

Raymond P. Shafer
Raymond P. Shafer
Chairman

The President
The President of the Senate
The Speaker of the House

PERGAD-Beyonne, N. J.
**DEFENDANT'S
EXHIBIT**
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of existing regulatory schemes, together with an uncertainty about the permanence of social interest in marihuana and the approval inevitably implied by adoption of such a scheme, all impel us to reject the regulatory approach as an appropriate implementation of a discouragement policy at the present time.

Future policy planners might well come to a different conclusion if further study of existing schemes suggests a feasible model; if responsible use of the drug does indeed take root in our society; if continuing scientific and medical research uncovers no long-term ill-effects; if potency control appears feasible; and if the passage of time and the adoption of a rational social policy sufficiently desymbolizes marihuana so that availability is not equated in the public mind with approval.

PARTIAL PROHIBITION

The total prohibition scheme was rejected primarily because no sufficiently compelling social reason, predicated on existing knowledge, justifies intrusion by the criminal justice system into the private lives of individuals who use marihuana. The Commission is of the unanimous opinion that marihuana use is not such a grave problem that individuals who smoke marihuana, and possess it for that purpose, should be subject to criminal procedures. On the other hand, we have also rejected the regulatory or legalization scheme because it would institutionalize availability of a drug which has uncertain long-term effects and which may be of transient social interest.

Instead we recommend a partial prohibition scheme which we feel has the following benefits:

- Symbolizing a continuing societal discouragement of use;
- Facilitating the deemphasis of marihuana essential to answering dispassionately so many of the unanswered questions;
- Permitting a simultaneous medical, educational, religious, and parental effort to concentrate on reducing irresponsible use and remedying its consequences;
- Removing the criminal stigma and the threat of incarceration from a widespread behavior (possession for personal use) which does not warrant such treatment;
- Relieving the law enforcement community of the responsibility for enforcing a law of questionable utility, and one which they cannot fully enforce, thereby allowing concentration on drug trafficking and crimes against persons and property;
- Relieving the judicial calendar of a large volume of marihuana possession cases which delay the processing of more serious cases; and
- Maximizing the flexibility of future public responses as new information comes to light.

No major change is required in existing law to achieve all of these benefits. In general, we recommend only a decriminalization of possession of marihuana for personal use on both the state and federal levels. The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially; marihuana would be contraband subject to confiscation in public places; and criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the state level, fines would be imposed for use in public.*

Specifically, we recommend the following statutory schemes.

RECOMMENDATIONS FOR FEDERAL LAW

Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress provided the following scheme with respect to marihuana, by which was meant only the natural plant and its various parts, not the synthetic tetrahydrocannabinol (THC):

- Cultivation, importation and exportation, and sale or distribution for profit of marihuana are all felonies punishable by imprisonment for up to five years for a first offense and by up to 10 years for a second offense (the available penalty is doubled for sale to a minor).
- Possession of marihuana with intent to distribute is a felony punishable by imprisonment for up to five years for the first offense and by up to 10 years for a second offense.
- Possession of marihuana for personal use is a misdemeanor punishable by up to one year in jail and a \$1,000 fine for first offense and by up to two years in jail and a \$2,000 fine for second offense (expungement of criminal record is available for first offenders).

*Commissioners Rogers, Congressman from Florida, and Carter, Congressman from Kentucky, agree with the Commission's selection of a discouragement policy and also agree that criminalization and incarceration of individuals for possessing marihuana for their own use is neither necessary nor desirable as a means of implementing that policy.

At the same time, both Commissioners feel that the contraband concept is not a sufficiently strong expression of social disapprobation and would recommend in addition a civil fine for possession of any amount of marihuana in private or in public.

Both Commissioners feel that the civil fine clearly symbolizes societal disapproval and is a simple mechanism for law enforcement authorities to carry out. If a person is found by a law enforcement officer to be in possession of marihuana, the officer would issue such person a summons to appear in court on a fixed day. Although a warrant would not issue for search of a private residence unless there were probable cause to believe a *criminal* offense was being committed, a police officer legitimately present for other reasons could issue a civil summons for violation of the "possession" proscription.

- Transfer of a small amount of marihuana for no remuneration is a misdemeanor punishable by up to one year in jail and a \$1,000 fine for first offense and by up to two years in jail and a \$2,000 fine for second offense (Congress singled out marihuana in this way to allow misdemeanor treatment of casual transfers and permitted first offender treatment, as allowed for possession for personal use).

The Commission recommends *only* the following changes in federal law:

- POSSESSION OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE, BUT MARIHUANA POSSESSED IN PUBLIC WOULD REMAIN CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.
- CASUAL DISTRIBUTION OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION, OR INSIGNIFICANT REMUNERATION NOT INVOLVING PROFIT WOULD NO LONGER BE AN OFFENSE.

The Commission further recommends that federal law be supplemented to provide:

- A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE, NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.

Commissioners Rogers and Carter believe that the legal system must be utilized directly to discourage *the person* from using marihuana rather than being utilized only indirectly as in the case of contraband.

This civil fine would not be reflected in a police record, nor would it be considered a criminal act for purposes of future job consideration, either in the private sector or for government service.

Agreeing with the other Commissioners that the casual transfers of marihuana for no profit should be treated in the same manner as possession for one's own use, Congressmen Rogers and Carter do not agree that it should extend to transfers involving remuneration. They prefer the limiting language of the Comprehensive Drug Abuse Prevention and Control Act of 1970 which does not include the term "or insignificant remuneration not involving a profit."

Apart from the addition of the civil fine to the contraband recommendation in the respects set out above, Congressmen Carter and Rogers are in complete agreement with the statutory recommendations set out in the Report.

Commissioner Ware concurs completely with the statements made by Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. The policy set forth in this Report, subject to the already noted comments of the two Congressional Commissioners, makes sense for marihuana on the basis of what is known about the drug and in the absence of any conclusive showing which would verify

RECOMMENDATIONS FOR STATE LAW

Under existing state marihuana laws, cultivation, distribution and possession with intent to distribute are generally felonies and in most states possession for personal use is a misdemeanor. The Commission strongly recommends uniformity of state laws and, in this regard, endorses the basic premise of the Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws. The following are our recommendations for a uniform statutory scheme for marihuana, by which we mean, as under existing federal law, only the natural cannabis plant and its various parts, not the synthetic tetrahydrocannabinol (THC):

Existing Law

- CULTIVATION, SALE OR DISTRIBUTION FOR PROFIT AND POSSESSION WITH INTENT TO SELL WOULD REMAIN FELONIES (ALTHOUGH WE DO RECOMMEND UNIFORM PENALTIES).

some of the anecdotal law enforcement testimony heard by the Commission regarding criminal behavior exhibited while under the influence of marihuana.

Commissioner Ware feels that some penalty short of criminalizing the user, such as a civil fine or some type of intensive drug education, will act as a positive deterrent toward minimizing the incidence of marihuana use especially among the young. Further, he is opposed to the use of *any* drug for the express purpose of getting intoxicated, and includes alcohol within this category. The Commissioner feels that what is needed is an internalizing of discipline among our citizenry, with the legal system assisting this process through the use of disincentives.

Commissioners Hughes, Senator from Iowa, and Javits, Senator from New York, feel that the Commission has taken a major, highly laudable step in recommending that the private use of marihuana be taken out of the criminal justice system. They concur in its threshold judgment that overall social policy regarding this drug should seek to discourage use, while concentrating primarily on the prevention of irresponsible use. They disagree, however, with three specific recommendations relating to the implementation of this discouragement policy.

First, they would eliminate entirely the contraband provision from the partial prohibitory model adopted by the Commission. They want it eliminated first because its legal implications are confusing and the subject of disagreement even among lawyers. Whether or not possession of a given substance is criminal, possession of material designated as contraband makes that possession *unlawful*. Also, marihuana designated as contraband would be subject to government search and seizure, even though the underlying possession is no longer criminal. The provision—which does not apply to marihuana held for personal use within the home—is considered by both Commissioners to be an unnecessary “symbol” of the discouragement policy. It will not foster elimination of the misunderstanding and mistrust which is a hallmark of our current marihuana policy.

Commissioner Hughes and Javits seek to eliminate it also because as a practical matter it serves no useful law enforcement purpose within the overall partial prohibitory model. If marihuana held for personal use within the home is not contraband, why should marihuana held for personal use within one's

Private Activities

- POSSESSION IN PRIVATE OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE.
- DISTRIBUTION IN PRIVATE OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD NO LONGER BE AN OFFENSE.

Public Activities

- POSSESSION IN PUBLIC OF ONE OUNCE OR UNDER OF MARIHUANA WOULD NOT BE AN OFFENSE, BUT THE MARIHUANA WOULD BE CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.
- POSSESSION IN PUBLIC OF MORE THAN ONE OUNCE OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF \$100.
- DISTRIBUTION IN PUBLIC OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION OR INSIGNIFICANT REMUNERATION NOT INVOLVING A PROFIT WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF \$100.
- PUBLIC USE OF MARIHUANA WOULD BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF \$100.
- DISORDERLY CONDUCT ASSOCIATED WITH PUBLIC USE OF OR INTOXICATION BY MARIHUANA WOULD BE A MISDEMEANOR PUNISHABLE BY UP TO 60 DAYS IN JAIL, A FINE OF \$100, OR BOTH.

automobile be contraband? The area of operation of the contraband provision is extremely narrow. If one possesses *more* than one ounce of marihuana in public, it may be seized without regard to the contraband doctrine since such possession is a criminal violation.

Since the contraband provision does not apply to marihuana possession and use in private, the only effective area covered by the contraband provision is the area of possession in public of *less* than one ounce. The Commission has chosen to remove the stigma of the criminal sanction in this kind of case. To impose instead a contraband provision, which it is argued is in the nature of a civil "in rem" seizure which does not operate against the person, is to cloud the issue and to weaken the force of the basic decriminalization. A persuasive justification simply has not been made.

Both Commissioners seek to eliminate it also because they believe that the voice of the Commission should be loud and clear that the preservation of the right of privacy is of paramount importance and cannot be casually jeopardized in the pursuit of some vague public or law enforcement interest which has not been defined and justified with clarity and precision.

The second area of disagreement with the Commission's recommendations concerns the casual distribution of marihuana and the not-for-profit sale. As understood: