

[COMMITTEE PRINT]

95TH CONGRESS } HOUSE OF REPRESENTATIVES
1st Session }

CONSIDERATIONS FOR AND AGAINST THE
REDUCTION OF FEDERAL PENALTIES FOR
POSSESSION OF SMALL AMOUNTS OF
MARIHUANA FOR PERSONAL USE

REPORT
OF THE
SELECT COMMITTEE ON NARCOTICS
ABUSE AND CONTROL
NINETY-FIFTH CONGRESS

FIRST SESSION
SONAC-95-1-9



MAY 1977

NCJRS

NOV 3 1977

ACQUISITIONS

Printed for the use of the
Select Committee on Narcotics Abuse and Control

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

43690

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

LESTER L. WOLFF, New York, *Chairman*

PETER M. RODINO, JR., New Jersey
PAUL G. ROGERS, Florida
E (KIKI) DE LA GARZA, Texas
JAMES R. MANN, South Carolina
HERMAN BADILLO, New York
MORGAN F. MURPHY, Illinois
CHARLES B. RANGEL, New York
FORTNEY H. (PETE) STARK, California
JAMES H. SCHEUER, New York
GLENN ENGLISH, Oklahoma
BILLY LEE EVANS, Georgia

J. HERBERT BURKE, Florida
TOM RAILSBACK, Illinois
LOUIS FREY, JR., Florida
ROBIN L. BEARD, Tennessee
BENJAMIN A. GILMAN, New York
TENNYSON GUYER, Ohio

EX OFFICIO

MARIO BIAGGI, New York
CARDISS COLLINS, Illinois
STEPHEN L. NEAL, North Carolina

JOE SKUBITZ, Kansas

STAFF

JOSEPH L. NELLIS, *Chief Counsel*
DOREEN THOMPSON, *Staff Counsel*
HOWARD WALLACH, *Staff Counsel*
ROSEMARIE BROOKS, *Professional Staff Member*
ALMA BACHRACH, *Investigator*
ELSWORTH DORY, *Investigator*

(II)

CONTENTS

	Page
Introduction.....	1
Federal policy considerations.....	2
Legal considerations.....	4
Medical considerations.....	6
I. Overview.....	6
II. Human effects.....	8
A. Impairment of the body's natural defense system against disease.....	8
B. Chromosomal and cell metabolism alteration.....	8
C. Brain damage.....	9
D. Impairment of psychomotor performance in driving and flying.....	10
E. The likelihood of tolerance and dependence.....	10
F. Possibility of marihuana use leading to harder drugs.....	11
G. Psychopathology resulting from use.....	11
III. Chronic overseas user studies.....	12
IV. Other observations.....	12
V. Recent studies.....	14
Ammunition in the grass war.....	14
Law enforcement considerations.....	15
I. Past and current Federal efforts to enforce marihuana laws and the probable effect of Federal decriminalization on these efforts.....	15
A. U.S. Customs Service.....	15
B. Department of Justice (U.S. Attorney and Drug Enforcement Administration (DEA)).....	16
II. Effect of Federal enforcement efforts on probable cause, deterrence, and equal protection and respect for laws.....	16
A. Probable cause.....	16
B. Deterrent effect of criminal penalties.....	17
C. Equal protection and respect for laws.....	17
III. Areas where limited Federal and local police resources should be applied.....	19
Sociological considerations.....	20
Public and private sector considerations.....	23
California-Oregon experience.....	26
I. The California experience.....	26
A. Summary.....	27
B. Law enforcement costs.....	28
C. Judicial system costs.....	28
D. Drug offender diversion program.....	29
E. Levels of usage.....	29
F. Public attitudes.....	30
G. Other findings.....	30
II. The Oregon experience.....	31
Summary of the opinions of opponents of decriminalization.....	33
Summary of the opinions of proponents of decriminalization.....	34
Conclusion.....	36
Addenda submitted by Congressman Robin L. Beard, Jr.....	37

LIST OF WITNESSES

Vernon Acree, Commissioner, U.S. Customs Service, the Department of the Treasury.

Ramon Adame, Director, Aliviane, El Paso, Tex.

Robert Baird, M.D., Director, HAVEN, New York City.

John Bellizzi, Executive Director, International Narcotics Enforcement Officers Association.

Peter Bensinger, Administrator, Drug Enforcement Administration.

Peter Bourne, M.D., Director-Designate, Office of Drug Abuse Policy.

Henry Brill, M.D., New York City.

Bertram Brown, M.D., Director, National Institute of Mental Health.

Congresswoman Yvonne B. Burke, Democrat, California.

Benjamin Civiletti, Assistant Attorney General, Criminal Division Department of Justice.

John Datt, American Farm Bureau.

Edward Davis, Chief, Los Angeles Police Department; President, International Association of Chiefs of Police.

Richard Davis, Director, Oregon Department of Human Resources.

Robert L. DuPont, M.D., Director, National Institute on Drug Abuse.

Mathea Falco, Special Assistant and Senior Adviser to the Secretary of State on Narcotics Matters.

Lester Grinspoon, M.D., Associate Professor of Psychiatry, Harvard Medical School.

Richard G. Hatcher, Mayor of Gary, Ind.

Eugene Hollingsworth, Chief, Bureau of Investigation and Narcotic Enforcement, California.

Jerome Hornblass, Esq., Director, Addiction Services Agency, New York City.

Jerome Jaffe, M.D., Professor of Psychiatry, Columbia University.

Senator Jacob Javits, Republican, New York.

Burton Joseph, Esq., Playboy Foundation, Inc.

State Senator Stephen Kafoury, Oregon.

Congressman Edward Koch, Democrat, New York.

Mylio Kraja, American Legion.

Brooksley Landau, Esq., American Bar Association.

Jay Miller, American Civil Liberties Union.

Gabriel Nahas, M.D., Ph. D., Research Professor, Columbia University.

Herbert Raskin, M.D., American Medical Association.

Charles Sevilla, Esq., Public Defender, California.

Keith Stroup, Esq., Executive Director, National Organization for the Reform of Marijuana Laws.

Robert E. Whalen, Commissioner of Health and Welfare, New Hampshire.

Joseph Turner, Chief Investigator, Alaska State Troopers.

INTRODUCTION

In pursuit of its mandate, set forth in House Resolution 77, 95th Congress 1st Session (1977), that the Select Committee on Narcotics Abuse and Control conduct a continuous, comprehensive study and review of the problems of narcotics abuse and control, the committee held 3 days of public hearings on March 14, 15, and 16, 1977. These hearings were primarily designed to obtain testimony from Federal, State and local officials, citizens, and organizations holding widely divergent views on the issue whether Congress should amend Section 844 of the Controlled Substances Act of 1970, 21 U.S.C. Sections 801-904, to decriminalize the possession of small amounts of marihuana for personal use. Section 844 currently provides criminal penalties of up to 1 year in prison and/or up to \$5,000 in fines for the simple possession of marihuana. "Decriminalization" would mean that the possession of small amounts of marihuana would be subject to a civil fine.

The committee arranged its hearings to give both proponents and opponents reasonable and equal opportunity to testify. Witnesses included not only Federal, State and local officials, but also medical experts, Members of Congress, persons connected with drug abuse treatment programs, representatives of the organized bar and organized medicine, representatives of jurisdictions which have reduced the penalties for the possession of small amounts of marihuana for personal use, and representatives of farm, veterans, and civil liberties organizations. The committee heard expositions of fact and opinion, ranging from policy at the White House level to the views of citizens.

The Controlled Substances Act of 1970, as it relates to the possession of small amounts of marihuana for personal use, has not been enforced by Federal authorities for a number of years. This raises an especially difficult policy issue since discretionary enforcement of any law tends to breed disrespect for all laws.

It was conceded by all witnesses that, generally, Federal law is a persuasive model for State law. The nine States which have reduced penalties for possession for small amounts of marihuana for personal use are Oregon, Ohio, Alaska, California, Colorado, Minnesota, Maine, South Dakota and Mississippi. Of the remaining States, 32 are currently considering decriminalization bills.

What follows are the facts and opinions, both pro and con, produced by the witnesses and evaluated by the committee in accordance with existing scientific, legal, and sociological research. The committee has made a qualitative analysis of the testimony and prepared statements of the witnesses based upon the following categories: Federal policy considerations, legal considerations, medical considerations, law enforcement considerations, sociological considerations, public and private sector considerations, and the California-Oregon experience, and summaries of the opinions of opponents and proponents of decriminalization.

The committee perceives its role under its mandate as requiring it to present its evidentiary record and its findings without taking a position either for or against a reduction in penalty under Federal law for the possession for personal use of small amounts of marihuana.

FEDERAL POLICY CONSIDERATIONS

Dr. Peter Bourne, Director-Designate of the Office of Drug Abuse Policy, presented the administration's policy on marihuana decriminalization. As a national policy, the administration discourages the abuse of all drugs, including alcohol and tobacco. However, it takes the position that present Federal criminal penalties as they apply to the possession of small amounts of marihuana for personal use do not effectively deter the use of marihuana and are more harmful than marihuana abuse (T. p. 10).

According to Dr. Bourne's testimony, President Carter supports the policy that the individual States should be free to determine whether they wish to decriminalize the possession of small amounts of marihuana for personal use and the Federal Government should not seek to influence that decision (T. p. 12). To maintain the freedom of decision for the States, the President recommends that Federal law which is now rarely enforced with regard to possession of small amounts of marihuana for personal use be amended along the lines suggested in bills S. 601 and H.R. 432, 95th Cong., 1st Sess. (1977), recently submitted to Congress by Senator Jacob Javits (R-N.Y.) and Representative Edward Koch (D-N.Y.) (T. p. 12).

Dr. Bourne made very clear, however, that legalization of marihuana, rather than decriminalization of possession of small amounts, would be totally inappropriate because such action would encourage the use of the drug when the administration seeks to deter it. Legalization would also lead to wide-scale commercialization which the administration opposes. In addition, according to the testimony of Ms. Mathea Falco, Special Assistant and Senior Adviser to the Secretary of State on Narcotics Matters, United States treaty obligations (specifically, the Single Convention on Narcotic Drugs, 1954) require that the United States maintain an official policy of discouragement toward marihuana consumption precluding legalization but permitting reduction in penalties or even total elimination of all penalties for simple possession as was recommended in 1973 by the National Commission on Marihuana and Drug Abuse (T. p. 17).

The State Department, according to Ms. Falco's testimony, takes the position that decriminalization of the possession of small amounts of marihuana for personal use would not undermine our cooperative drug control programs overseas. Other countries have already found that the criminal justice system is not the most appropriate way of dealing with individuals who possess or use small amounts of marihuana. Therefore, as long as the United States continues to discourage the use of marihuana through civil citation, fine, or otherwise, our international support for the control or eradication of international illicit drug production and trafficking would be unaffected (T. p. 26).

The administration defended its position on decriminalization by elaborating on the lack of impact which this revision of our criminal

statutes would have on the Federal narcotics enforcement effort. Narcotics enforcement on the Federal level is shared by a number of Federal agencies, principally the U.S. Customs Service and the Drug Enforcement Administration (DEA). Federal narcotics prosecution is handled by the Department of Justice through local U.S. attorneys and directed by the Criminal Division. The Commissioner of Customs, the Administrator of DEA, and the Assistant Attorney General for the Criminal Division of the Department of Justice stated that revision of the Federal statute to decriminalize the possession of small amounts of marihuana for personal use would have no impact on the policy, performance, or effectiveness of their organizations or their mandates (T. pp. 29-30).

The Customs Service, represented by Commissioner Vernon Acree, pointed out that decriminalization of the possession of small amounts of marihuana for personal use would not change the effect of laws which make it illegal to import marihuana or any other controlled substance. These laws "treat violations as felonies regardless of the amount seized from the criminal defendant. Therefore, the possibility would exist that felony prosecutions of the importation of small amounts of marihuana would continue despite decriminalization for simple possession of small quantities. Amendments to these sections would be required to avoid such a result" (S. p. 7). At present, the Customs Service is levying an administrative penalty, in addition to confiscation of the drug itself, on any individual who is apprehended for importing small amounts of marihuana and hashish, where both Federal and local authorities have declined prosecution. The Customs Service has found the administrative penalty to be the most efficient means of dealing with the smuggler of small amounts of marihuana or hashish. The purpose of this penalty is to deter the ordinary user from engaging in smuggling and to provide punishment for cases which would otherwise go unprosecuted. The administrative penalty system also provides for a degree of national consistency in drug prosecutions (S. p. 10).

DEA, according to Administrator Peter Bensinger, has and will continue to concentrate its efforts on disrupting the major marihuana traffickers who often deal in tonnage quantities. At present, DEA is not arresting individuals for possession of small amounts of marihuana for personal use and therefore decriminalization would not change its operating procedures (T. p. 18).

Mr. Benjamin Civiletti, the Assistant Attorney General in charge of the Criminal Division of the Department of Justice, stated that because of limited Federal resources, the Justice Department is not prosecuting cases involving the possession of small amounts of marihuana. Furthermore, Mr. Civiletti stated that having laws on the books which are not prosecuted undermines the public's faith and confidence in the equal enforcement of criminal justice (T. p. 78).

The Carter administration remains committed to the prosecution of those who traffic in marihuana. For this reason, it will not discriminate between the trafficking in marihuana of varying tetrahydrocannabinol (THC) concentrations. In addition, since the administration is not encouraging the use of marihuana, it will continue to prosecute individuals who cultivate marihuana. The overall position of the criminal justice representatives was expressed by Dr. Bourne, who

stated: "We at the Federal level have determined that scarce criminal justice resources can best be used to immobilize major drug traffickers and not focus on the minor offenders" (T. p. 13).

LEGAL CONSIDERATIONS

According to Ms. Brooksley Landau representing the American Bar Association (ABA), "the FBI has reported that 2 million persons have been arrested [for marihuana smoking] since 1970 * * *. Law enforcement techniques in investigating illegal use or possession of marihuana often involve searches of persons and residences. These invasions of privacy would be diminished by elimination of the criminal sanction for marihuana use" (S. p. 4). She further testified that "fair and impartial law enforcement is virtually impossible in light of the extremely large number of users" (S. p. 4). The ABA "deplores the use of marihuana" and supports "discouraging the use * * * through education," (S. p. 2, T. p. 302), recognizing that "when the law defines as criminal an activity in which one-fifth of the adult population has engaged, the society's respect for law may be significantly undermined" (S. p. 3, T. p. 301).

Edward M. Davis, Chief of the Los Angeles Police Department and spokesman for the International Association of Chiefs of Police, arguing in opposition to marihuana decriminalization, testified:

Law serves as a teacher of what is healthy, productive, and acceptable and what isn't. The fact that any law isn't perfectly kept does not mean that it is ineffectual. I have not heard, as yet, that God has retracted the Ten Commandments merely because mankind often fails to live up to them. The fact of the matter is that strong, clear laws recognizing the dire effects of marihuana use are necessary as the stated policy of this nation and of its member states (S. p. 8).

John J. Bellizzi, Executive Director of the International Narcotics Enforcement Officers Association, contended that the way to discourage and prevent the use of marihuana would be to oppose decriminalization and legalization of this substance and "to strongly enforce all marihuana laws" (S. p. 2).

Dr. Robert W. Baird, Director of the HAVEN Clinic, New York City, maintained that a lawbreaker must be "prepared to take the penalty for knowing[ly violating] the law. This state of permissiveness, overindulgence, and being intimidated by the marihuana lobbyists can compromise our basic concepts of what is right and wrong" (S. p. 4).

Basing their positions on legal considerations, Senator Jacob Javits; Representatives Edward Koch and Yvonne Brathwaite Burke (D-Calif.); Jerome Hornblase, Director of Addiction Services Agency, New York City; Jay Miller, Associate Director (Washington Office) of the American Civil Liberties Union (ACLU); and Brooksley Landau of the ABA testified in favor of decriminalizing the Federal statute, as it applies to possession for personal use of small amounts of marihuana.

The Javits-Koch marihuana decriminalization bills (S. 601 and H.R. 432) would remove criminal penalties for the personal possession

and use and not for profit transfer of up to 1 ounce of marihuana from the Controlled Substances Act of 1970 and substitute a civil fine not exceeding \$100 for the present penalty of up to 1 year imprisonment and/or up to \$5,000 in fines. This fine would be enforced by citation rather than arrest (Javits S. p. 1).

The ACLU would go beyond the position advocated by Senator Javits and Representatives Koch and Burke. In addition to supporting the decriminalization of the use and possession of small amounts of marihuana, the ACLU favors legalizing the commercial production and distribution of small amounts of marihuana for private use, a proposal that would plainly contravene our treaty obligations under the Single Convention of 1961.

In addition, the following observations emerged:

1. The Controlled Substances Act of 1970 provides criminal penalties for possession and trafficking in narcotics.

2. Schedule I of that Act proscribes the possession or sale of marihuana along with heroin, LSD, nescaline, peyote and other drugs for which there is no approved medical use in the United States.

3. Under that Act, private possession of any controlled substance constitutes a misdemeanor, the first offense punishable by up to 1 year in jail and/or a fine of up to \$5,000.

4. There have been no prosecutions in the Federal courts in the last 2 years for possession for personal use of small amounts of marihuana, and of the reported 400,000 arrests for marihuana use and/or trafficking in 1975, less than 1 percent was for Federal violations (Miller S. p. 13).

5. The legislative history of the Controlled Substances Act of 1970 indicates that it was designed to enable the Federal Government to control certain substances by minimizing the quantity of drugs available to the general public.

6. According to the view of one witness, criminal punishment for the use and possession of small amounts of marihuana constitutes a denial of substantive due process of law (Miller S. p. 9).

7. Criminal penalties for possession of small amounts of marihuana for personal use are selectively and inequitably enforced (Javits S. pp. 3-4, Landau S. p. 4, Stroup T. p. 353).

8. Under the Single Convention on Narcotic Drugs of 1961, to which the United States is a signatory, a country may reduce penalties for the use of marihuana but its sale may only be legalized for therapeutic and research purposes. (Article 28)

9. According to the Supreme Court of the State of Alaska, an individual's constitutionally protected right to privacy precludes any Federal or State penalty for the private possession or cultivation of marihuana for personal use (*Ravin v. State*, 537 P. 2d, 494 (1975)).

10. According to Charles Sevilla, California Public Defender, decriminalization of marihuana in California resulted in a savings of \$12.3 million in court and law enforcement costs for 1976 (Sevilla T. pp. 545-546).

11. Prior to passage of statewide decriminalization, California had a diversion program for individuals who possessed small amounts of marihuana. If the individual completed a drug education program and did not repeat the misdemeanor for a period of 2 years, the citation

was expunged from the individual's record (Sevilla T. pp. 608-609, DuPont T. p. 36).

12. The implication of civil citations for personal marihuana use in States that have reduced criminal penalties presents a serious problem. It appears that in each of these States there is no means of enforcing payment of fines except by bench warrant procedure and the inherent power of the court to punish for contempt.

13. The Controlled Substances Import and Export Act of 1970, 21 U.S.C. Sections 951-966, prohibits an individual from importing a controlled substance into the United States without having registered it with the Attorney General. An individual convicted of violating this statute for the first time may be imprisoned for not more than 15 years, or fined not more than \$25,000, or both (Acree S. p. 6).

14. Under the Customs Simplification Act of 1954, 18 U.S.C. Section 545, it is unlawful to knowingly import any contraband into the United States. The penalty for violating this statute is imprisonment of up to 5 years, a fine of not more than \$10,000, or both (Acree S. p. 6).

15. Decriminalizing the possession of small amounts of marihuana for personal use "would have no impact upon the continuing effects of these statutes [the Customs Simplification Act of 1954 and the Controlled Substances Import and Export Act of 1970] since they govern the importation, not possession, of the drug" (Acree S. p. 7). In the absence of a comprehensive Federal policy permitting the importation of small amounts of marihuana for personal use and specifically exempting such amounts as a controlled substance, the Customs Service would treat the importation of such marihuana "as regular merchandise and would be required to seize undeclared shipments under 18 U.S.C. 545 [the Customs Simplification Act of 1954] and violators would be subject to the felony provisions of that statute in the same manner as for gold, diamond or liquor smuggling" (Acree S. p. 7).

MEDICAL CONSIDERATIONS

I. OVERVIEW

Testifying as to the human effects of marihuana use were: Drs. Robert W. Baird, Director, HAVEN, New York City; Peter Bourne, Director-Designate of the Office of Drug Abuse Prevention; Henry Brill, New York City; Bertram Brown, Director, National Institute of Mental Health (NIMH); Robert DuPont, Director, National Institute on Drug Abuse (NIDA); Lester Grinspoon, Professor of Psychiatry, Harvard Medical School; Jerome Jaffe, Professor of Psychiatry, Columbia University and former head of the Special Action Office for Drug Abuse Prevention; Gabriel Nahas, Research Professor at the College of Physicians and Surgeons, Columbia University; and Herbert Raskin, representing the American Medical Association (AMA).

At the conclusion of 3 days of hearings before the committee, the medical experts agreed that after 10 years of research on marihuana, at substantial cost (i.e., NIDA's annual budget for research into the health consequences of marihuana use is \$4 million), the long-term effect of marihuana use is still undetermined. Several witnesses agreed that additional studies could demonstrate serious hazards from chronic use or potentially from even occasional use. Others urged that

the Controlled Substances Act of 1970, the source of the present Federal criminal sanction, should remain intact while research continues. Dr. Lester Grinspoon concluded, however, that the need for further research should not preclude policymakers from making recommendations regarding marihuana use:

Rigorously impartial scientific investigation is important to counteract the prejudice and irrationality that have characterized much of the debate about marihuana, but this impartiality should not be allowed to degenerate into a false objectivity that declares it unscientific to make policy recommendations. We must take the scientific conclusions where they lead us as citizens, and stop the increasingly unjustifiable persecution of marihuana users (S. p. 30).

The witnesses not only expressed their opinions on the physiological and psychological effects of marihuana but also on the issue of the decriminalization of the possession of small amounts of marihuana for personal use. While disagreeing on this issue, they agreed (with the exception of Dr. Grinspoon) that legalization should not occur.

Dr. Jerome Jaffe stated that the time is not right for legalization:

If we were more certain of the long-term health consequences of chronic marihuana use, and if we could be sure that they would be no worse than the effects we have observed to date, then instituting a mechanism for legalized distribution and regulation would be the most sensible change we could make. Such a system would yield far more revenue than it would consume and such revenues could be used to defray the costs of drug-related problems, including those related to heroin addiction and alcoholism (S. p. 4).

Dr. Bertram Brown, who as early as 1971 had called for "minimal or non-existent" fines for marihuana use (T. p. 19) spoke out against legalization and in support of decriminalization when he described marihuana as "a dangerous drug, particularly for pre-adolescents. We do not yet know the consequences of long-term use. We should decriminalize * * * but we should not legalize" (T. p. 20).

Dr. Grinspoon proposed that marihuana should be legalized because the harm caused by the present approach outweighs the possible effects of legalized use:

If we balance the concrete, immediate, and substantial harm caused by the present punitive, repressive approach to marihuana against some dubious and nebulous possible cumulative effect of legalized marihuana use, it should be obvious where the weight falls. There is a *prima facie* case against any such restrictions on liberty * * *. Let advocates of prohibition continue to try to prove that some effect of legalized marihuana would be worse than the effects of criminal penalties for its use, but let the burden of proof be on them (S. p. 29).

Dr. Grinspoon added that legalization "would not imply [official] endorsement in the case of marihuana any more than it does in the case of tobacco or alcohol" (S. p. 30).

Dr. Jaffe, who is against legalization, yet not strongly in favor of decriminalization, favors civil penalties "provided that the income

from such fines is used to support treatment and research" (S. p. 6) thus allowing time to examine the effects of the change, eliminate the threat of incarceration, and for all practical purposes put a price tag on the consequences of using marihuana. He supported his views by pointing out that "in 1976, 11% of the persons admitted to federally sponsored drug treatment programs indicated that marihuana was the primary drug problem" (S. p. 5). Dr. Jaffe added that this country is already paying a price for marihuana use since according to the 1976 Drug Abuse Warning Network (DAWN) statistics from NIDA:

Marihuana is second only to heroin and was listed much more commonly as a problem than abuse of barbiturates or cocaine. The DAWN system data for 1976 shows that marihuana is reported in fourth place as a cause of acute drug related complications, somewhat more commonly than aspirin, which is in fifth place, and just behind heroin, which ranks third in the DAWN system. Because of these costs I have been reluctant to recommend changes that will make marihuana use and distribution a socially approved and irreversible part of our culture, *without giving consideration at the same time to the means by which we can cope with these marihuana induced costs* (S. p. 5).

II. HUMAN EFFECTS

The medical witnesses testified as to the psychological, behavioral and physiological effects of marihuana use particularly, impairment of the body's natural defense system against disease, chromosomal and cell metabolism alteration, brain damage, impairment of psychomotor performance in driving and flying, the likelihood of tolerance and dependence, the possibility of marihuana use leading to the use of even stronger drugs, and possible psychopathology resulting from use.

A. IMPAIRMENT OF THE BODY'S NATURAL DEFENSE SYSTEM AGAINST DISEASE

According to Dr. Grinspoon, the effects of marihuana smoke on the body's immunological defense system is a difficult research issue. "Neither the reliability of the available measuring techniques nor the proper way of interpreting the results is agreed upon" (S. p. 25). Dr. Grinspoon cited the Silverstein and Lessin (1976) and Munson (1975) studies which disagree with the statement that the use of marihuana leads to lowered immunity or cancer (S. p. 25).

Dr. Robert DuPont cautions, however, that "in rats it's found that marihuana consumption does depress the immune system and raises a question about the organism, the body's ability to deal with infection and, for that matter, potentially carcinogenic substances" (T. p. 58).

B. CHROMOSOMAL AND CELL METABOLISM ALTERATION

According to Dr. Gabriel Nahas, marihuana use can cause chromosome damage (S. pp. 7-8). However, Dr. Nahas' testimony is disputed by HEW's Sixth Annual Report, *Marihuana and Health*, which indicates that "overall, there is no convincing evidence at this time that marihuana uses causes clinically significant chromosome damage" (p. 17). Dr. Nahas further urged the committee to beware that marihuana

use could affect spermatogenesis and impair reproductive functions (S. pp. 7-8); and possibly impair the central nervous system (S. pp. 12-14, 16-17). In addition, he stated that when tetrahydrocannabinol (THC), the principal chemical in marihuana interacts with other drugs, depressions result (S. p. 14).

Dr. Grinspoon concluded that "two characteristics of studies associating marihuana with genetic damage make them questionable: they are based on examination of body cells * * * rather than on observation of actual fetal abnormalities; and they are retrospective, so that it is impossible to separate the effects of marihuana from other factors" (S. p. 26).

Dr. Nahas further warned that short-term studies indicate that marihuana, even in small amounts, disrupts cellular metabolism inhibiting DNA, RNA and protein synthesis (S. p. 4, T. pp. 562-564). HEW's Sixth Annual Report states that the implications of these cellular metabolism studies are still unknown. However, if the inhibition of DNA synthesis occurs in human as it does in animal tumors, the potential value of marihuana as an anti-cancer drug will be explored (p. 17).

C. BRAIN DAMAGE

Dr. Nahas warned that marihuana use could and did under laboratory research conditions cause brain damage (S. pp. 6-8). Even as Dr. Nahas alerted the committee to this possible result. The *Journal of the American Medical Association* 237 (March 1977), pp. 1229-1232 reported two studies both concurring that given the dosage levels utilized, there was an absence of cerebral atrophy. The findings of these studies disputed the results of the study, published in *Lancet* 2 (November 1971) : 1219-1224, the British Medical Journal, in which a research team led by Dr. A. M. G. Campbell found evidence of damage to parts of the brains of 19 young men who were heavy marihuana smokers.

In the Campbell study, air or gas was injected into the brains of the 10 participants and the degree of damage was determined through pneumoencephalogram studies. For this reason, the British physicians used patients with some prior evidence of brain damage, and avoided asking patients with no known neurological complaints to submit to what is regarded as a painful process and one that is not without risk. Asserting that the Campbell study had numerous deficiencies, Dr. Grinspoon testified that all subjects were psychiatric patients; no comparisons were made with psychiatric patients who did not use cannabis; two of the patients were epileptics; several had head injuries; one was mentally retarded and as many as five were schizophrenic. Further, Dr. Grinspoon pointed out that "all had taken LSD, most had used amphetamines, and a few were heavy users of opiates, barbiturates and tranquilizers" (S. p. 22). Dr. Grinspoon concluded that the Campbell study suffered from a lack of controls and limited samples (S. p. 23).

The two recent studies in this area, finding absence of cerebral atrophy, were conducted in St. Louis, Missouri and Belmont, Massachusetts and involved two samples of young men with histories of heavy cannabis smoking:¹

¹ U.S. Department of Health, Education, and Welfare, *Marihuana and Health* (Washington, D.C.: Government Printing Office, 1970), pp. 18-19. Information on these studies was not a part of the official testimony but the findings were of such importance that this summary has been included.

In the St. Louis study 12 young male subjects, aged 20-30 (mean age=24.1) who had smoked at least 5 joints a day (mean No.=9.0/day) for 5 more years (mean years=6.6) were compared to 34 neurologically normal young men of similar age who did not indicate drug use. In the Boston (sic) study, 19 heavily using young male marihuana smokers, whose use was verified on a closed research ward, were matched with a control series of nonusing males of similar age. (*Marihuana and Health*, p. 10.)

The studies involved an X-ray technique using the computerized transaxial tomography (CTT) in which the heads of the subjects were scanned by a beam of X-rays and a picture was taken without interjecting a foreign substance. The resulting pictures or scans were then read blindly by experienced neuroradiologists. In St. Louis, the study was conducted by Dr. Ben T. Co and by Dr. Donald W. Goodwin of Kansas Medical School. Other members of the team were Drs. Mokhtar Gado, Michael Mikhael and Shirley Y. Hill. The Massachusetts study was conducted by Dr. John Keuhle of Harvard. It also included Drs. Jack Mendelson, Kenneth Davis and Paul F. J. New.

D. IMPAIRMENT OF PSYCHOMOTOR PERFORMANCE IN DRIVING AND FLYING

Medical testimony before the committee was not always at odds; Drs. Peter Bourne (S. p. 1), Robert DuPont (S. p. 2, T. p. 42), John Baird (S. p. 2), and Herbert Raskin (S. p. 3, T. p. 550) agreed that driving while under the influence of marihuana could be dangerous. Dr. Baird enumerated the dangers of distortion in perception of time and space and decreased attention span (S. p. 2). Dr. Grinspoon indicated that "cannabis reduces driving skill * * * but possibly not as much as alcohol at intoxicating doses; and unlike alcohol, it does not increase aggressiveness * * *" (S. p. 3).

The implications while operating a motor vehicle are significant. A recent study by the Department of Transportation underlines medical concern in this area when it confirms that the overall conclusion of this study is that the use of marihuana by drivers may constitute a danger to driving safety, because it impairs sensory perceptual functions. ("The Effect of Marihuana Dosage on Driver Performance," U.S. Department of Transportation, October 1973, p. vi.) Dr. DuPont further stated that one of the top priorities at NIDA is research to correlate "various levels of marihuana in the body and specific decrements in driving performance" (S. p. 42).

Dr. Baird reported a simulated flight study in which 6 pilots committed 13 major errors after using marihuana while the pilots using a placebo, committed only 1. The errors were in navigation, altitude elevations, fuel exhaustion, and stalling. In the minor error range, Dr. Baird reported there were 33 errors with marihuana and only 6 with the placebo (T. pp. 451-452).

E. THE LIKELIHOOD OF TOLERANCE AND DEPENDENCE

According to Dr. Bourne, research to date indicates that "while marihuana intoxication seems to carry with it the same hazards as

alcohol with respect to the operation of automobiles, it is not addicting * * * (S. p. 1). Dr. Grinspoon stated unequivocally that "cannabis is not physically addictive." While he recognized that mild withdrawal symptoms from cannabis use have been reported in tests on animals and human beings in laboratory situations, he asserted that "a cannabis abstinence syndrome does not exist, even among Jamaicans who use up to 420 mg of THC a day * * * (S. pp. 12-13).

F. POSSIBILITY OF MARIHUANA USE LEADING TO HARDER DRUGS

Several witnesses discussed the so-called "stepping-stone" or "gateway" theory, that marihuana smoking somehow leads to the use of other dangerous drugs.

Dr. Nahas stated that "increasing use of marihuana would lead to an increasing use of other drugs" (S. p. 22, T. p. 579). In support of this, he referred to a survey conducted by Dr. D. Kandel, published in *Science* 190 (1975) : 912 entitled "Stages in Adolescent Involvement in Drug Use":

This survey was performed on 5,468 students grade 8 to 12 in New York State schools and on 985 senior, 6 months after graduation. It was "found that marihuana was a crucial step on the way to other illicit drugs." 26 percent of marihuana users progress to opiates or other potent drugs, while 1 percent of non-drug users do so." [sic] This sequence is found in each of the 4 years in high school and in the year after graduation (S. p. 22).

Dr. Grinspoon stated that "there is no good evidence that any property of marihuana produces a peculiar susceptibility to heroin addiction or that marihuana users tend to 'graduate' to heroin" (S. p. 13). He added that "if any progression from marihuana to other drugs does occur (and this is doubtful), it is likely to be toward psychedelics like LSD rather than toward heroin, which offers a different kind of euphoria and is generally condemned by the intellectual and cultural leaders who favor use of marihuana" (S. p. 14).

Dr. Nahas' testimony regarding the "stepping-stone" or "gateway" theory is in conflict with the research of Drs. Albert Carlin and Robert Post published in *Journal of the American Medical Association* which contradicted the Kandel survey. This study of 100 marihuana users disclaimed the notion that marihuana users develop a taste for other drugs, particularly opiates. Dr. Dale Cameron, former head of World Health Organization's Drug Dependence Unit, has reported the same conclusions on the international front. The "stepping-stone" or "gateway" theory remains unresolved.

G. PSYCHOPATHOLOGY RESULTING FROM USE

In his statement and testimony to the committee, Dr. Baird emphasized the psychologic or mind altering effects of marihuana use over the physiological. Reasoning that the physical effects of LSD are controversial while the mind altering effects are known, he concluded that the same thing can be said about marihuana. He listed these effects as distorted time, distance and depth perception; decreased sensation of touch, concentration, and motivation; marked paranoia sometimes

accompanied by physical outbursts, uncontrollable laughter and hunger; altered muscle coordination; relaxation of sexual inhibitions; increased internal search for happiness, relaxation or euphoria; hallucination; sleepiness; and decreased emotional maturation (S. pp. 2-4).

Dr. Grinspoon asserted that most of the chronic psychological and behavioral effects of marihuana have been discounted by newer research (S. p. 11). In terms of distance and depth perception, Dr. Grinspoon conceded that cannabis use does reduce driving skill. He suggested however, that hallucination, confusion, disorientation, apprehension and illusion is possible with emotionally unstable individuals, "but now that there are 13 million people who smoke marihuana regularly, as well as many heavy cannabis consumers abroad, if the drug precipitated a psychosis with any regularity we would have some unequivocal evidence of the fact" (S. pp. 5-7). He added that in Eastern societies where large dosages of hashish are eaten, it is possible that "acute toxic psychosis" does occur (S. p. 5).

III. CHRONIC OVERSEAS USER STUDIES

Dr. Henry Brill, an opponent of decriminalization, referred to the two prominent overseas chronic users studies, the Greek and Jamaican studies, which he visited onsite. He stated that he is in "complete agreement with the hospital (Jamaican mental hospital's) diagnosis" of psychosis due to cannabis (S. p. 2, T. p. 197). He acknowledged that the "reasons for the scientific caution of the investigators are completely understandable, and this is in no sense a criticism of the investigations, but the limitations of their results must be understood in order to evaluate them and to see that the positive findings from Greece and Jamaica still stand, and are in no way impaired by what was not found" (S. p. 197).

The applicability of overseas chronic users studies to the United States is discussed in HEW's Sixth Annual Report, *Marihuana and Health*, written by Dr. Robert C. Petersen. Discussing the Jamaican, Grecian and Costa Rican studies, Dr. Petersen states that the limited sample, the cultural differences, and the demands of an industrialized society versus a less industrialized society "all make direct translation of the results to American conditions hazardous" (p. 21). The report further states that these studies are not directly relevant to the implications of marihuana use by American adolescents at an earlier stage of development and under different social conditions." However, Dr. Brill notes that the later inclusion of middle-class Jamaican youth in the Jamaican study showed "an increase in school dropouts, loss of interest, conduct disorder and transient psychoses" (T. p. 196). The subjects of the initial Jamaican study were farmers.

IV. OTHER OBSERVATIONS

In addition, the following observations were made by the medical witnesses:

A. Dr. Baird, an opponent of decriminalization with strong beliefs in the "stepping-stone" theory (S. pp. 3-4), offered the following recommendations to the committee:

1. A Federal drug-abuse hospital must be established in New York City with follow-up clinics.
2. Development of teenage hospitals divorced of adult addicts so they don't learn further tricks.
3. Compulsory hospitalization of addicts who can't make it on an ambulatory basis.
4. Compulsory examination of all students—high school, elementary, junior high, and to search for evidence of drug use.
5. Periodic exams of all armed forces personnel in the United States and overseas.
6. Development of narcotic specialists with probationary commitment power.
7. Drug seminars for school teachers, principals, judges, superintendents, legislators, and all people connected with youth and the young people themselves.
8. Utilization of more male teachers for students between 6 and 14 because this time when psychologic molding of disturbed youngsters develops, the female identification is too powerful in many of these homes.
9. Punishment for a professional nonaddict pusher should be a minimum of 25 years in prison (S. p. 4).

Dr. Baird further recommended a year's probation for first offenders (T. p. 455); reduction of the legal amount to less than 1 ounce since "75 joints" can come out of that amount; and a high fine of up to \$1,000 or incarceration (T. p. 456).

B. According to Dr. Grinspoon, the substantiated, common adverse effects of chronic marihuana use are due to residues in the smoke rather than the drug itself (S. p. 27). These effects include mild functional hypoxia in body tissues and mild airway obstruction after 47 to 59 days of heavy smoking (S. p. 27).

C. Dr. Grinspoon offered some social insight on marihuana and the irrationality of physicians' opinion of its medical potential when he pointed out that as long as the drug was favored by blacks, Hispanics, and Bohemians, it was regarded as a high abuse drug with no therapeutic advantages. As a result, he said, the medical, legal, law enforcement, educational, and legislative institutions got together and enacted the Controlled Substances Act of 1970 and marihuana was placed on Schedule I, classifying it as a drug of high abuse potential and no medical use. Dr. Grinspoon concluded that "now that marihuana has become so popular among middle-class youth, we are more willing to investigate its therapeutic value seriously; recreational use is now spurring medical interest instead of medical hostility" (S. p. 36).

D. Dr. Raskin concluded that the best prevention strategy is to "make your own self-informed decision in terms of whether you are going to use it or not * * *. Learn about it * * * and be well aware of what the potential consequences are if you do use it" (T. p. 592).

E. From his perspective, as an opponent of decriminalization, Dr. Brill indicated that the marihuana discussions have become political, and that "negative findings never outweigh positive ones" but that the

failure to observe an effect doesn't deny its existence. Dr. Brill said it may show that effort must be made to look at the right cases, at the right time and with the right techniques (T. p. 193, S. p. 2).

F. Dr. Brill further testified that the report of National Commission on Marihuana Abuse (1972) "did not give marihuana a clean bill of health" (T. p. 200). He urged that the report should not have been interpreted as a "covert step toward legalization" (T. p. 200). Dr. Brill, a member of the 1972 Commission does agree with the recommendations of that Commission "in general" (T. p. 200).

G. While Dr. Brill testified regarding school dropout problems in Jamaica (T. p. 196) due to marihuana use, Dr. Baird, who has spent 23 years working with over 6,000 addicts in a clinic in Harlem, spoke to the committee in terms of the social consequences of marihuana use (T. p. 412). He stated:

The problem of drugs plays an important role in education. In New York City there are only 75 to 80 percent of students attending class any one day. There is also a 40 percent dropout rate and 65 percent of students are below the national reading level. This all will be reflected in lack of job opportunities, increased unemployment and increased welfare costs (S. p. 2).

V. RECENT STUDIES

The following chart lists the recent, key research studies covering the major medical issues associated with marihuana use. It was compiled by Dr. Norman E. Zinberg, Professor of Psychiatry, Harvard Medical School, who, having examined marihuana research conducted between 1970 to 1975, warned that "scientists on both sides of the marihuana question have been influenced by their prejudices."¹

AMMUNITION IN THE GRASS WAR

	Warning reports	Calming reports
Amotivational syndrome.....	1970: Bureau of Narcotics and Dangerous Drugs. 1972: L. J. West. 1973: U.S. Army; Nixon. 1974: Eastland Committee hearings. 1975: Reese T. Jones.	1970: National Clearing House. 1972: 2d Annual HEW Report on Marijuana and Health; Shafer Commission Report. 1973: Hochman and Brill in American Journal of Psychiatry. 1974: Le Dain Commission. 1975: Drug Abuse Council; Consumer Reports; Jamaica Study.
Chromosome damage and birth defects.	1970: Bureau of Narcotics and Dangerous Drugs. 1971: Hall, AMA President. 1973: Stenchever; Curtis; Landers; Nixon. 1974: Eastland hearings; Morishima.	1970: David Dorrance. 1971: HEW; Hall, AMA President. 1972: Shafer Commission. 1973: NORML. 1974: Le Dain; Nichols; Thorburn; Pace; Neu. 1975: Consumer Reports; Jamaica Study.
Brain damage.....	1970: BNDD Report. 1971: A. M. G. Campbell; Rat experiments. 1973: Prevention article; Ni on. 1974: Eastland hearings; Health.	1971: HEW. 1972: Shafer Commission; Grinspoon. 1973: Stunkard. 1974: Le Dain Commission; Axelrod. 1975: Jamaica Study.
Psychosis.....	1971: Kolansky and Moore. 1973: Nixon. 1974: Eastland hearings. 1975: Reese T. Jones.	1972: Shafer Commission. 1974, Le Dain Commission. 1975: Jamaica Study.
Stepping-stone to heroin.....	1971: Coleman. 1973: Landers; Nixon. 1974: Eastland hearings; Paton.	1971: Carlin and Post; Cameron. 1972: Shafer Commission. 1974: Le Dain; David Duncan. 1975: Jamaica Study.
Immune response.....	1973: Study by Nahas. 1974: Nahas; Gupta; Eastland hearings.	1975: White; Silverstein and Lessin; Jamaica Study.
Sex impairment.....	1972: New England Journal of Medicine. 1974: Kolodny (NEJM).	1974: Mendelson. 1975: Brecher.

¹ Norman E. Zinberg, "The War Over Marihuana" *Psychology Today*, December 1976, pp. 3, 5. This chart is reprinted with the permission of Dr. Zinberg, to whom the committee wishes to extend its gratitude.

LAW ENFORCEMENT CONSIDERATIONS

Testimony concerning the effect of Federal decriminalization on law enforcement efforts centered on the following areas: (a) past and current Federal efforts to enforce the marihuana laws and the probable effect of Federal decriminalization on these efforts; (b) effect of Federal enforcement efforts on probable cause, deterrence, equal protection and respect for laws; and (c) areas where the limited Federal and local police resources should be applied.

I. PAST AND CURRENT FEDERAL EFFORTS TO ENFORCE MARIHUANA LAWS AND THE PROBABLE EFFECT OF FEDERAL DECRIMINALIZATION ON THESE EFFORTS

A. U.S. CUSTOMS SERVICE

Mr. Vernon Acree, Commissioner of the U.S. Customs Service of the Department of the Treasury, testified that there are currently two statutes which are used by Customs as a basis for arresting narcotics smugglers. The first is the Controlled Substances Import and Export Act, 21 U.S.C. Sections 951-966, which makes it unlawful to import a controlled substance into the United States without a registration issued by the Drug Enforcement Administration (DEA). Marihuana is listed as a controlled substance under this statute. The second statute is the Customs Simplification Act of 1954, 18 U.S.C. Section 545, which makes it unlawful to fraudulently and knowingly import or bring into the United States any merchandise contrary to law.

Mr. Acree testified that in 1976, there were 18,000 seizures totalling 795,000 pounds and 5,000 arrests connected with marihuana smuggling attempts. He stated that there was a massive marihuana smuggling situation along the Southeast Atlantic, Gulf, and Southern Pacific Coasts and that there is a particularly acute problem in the number of hovering vessels that are off the coast outside the continental limits that deliver marihuana and other drugs to smaller vessels (T. pp. 15-16).

Mr. Acree further testified that Federal decriminalization of small amounts of marihuana for personal use would have no effect on the work of the Customs Service since under the above-mentioned statutes, Customs makes arrests for the felony of importation and not for the possession of marihuana. He suggested that if decriminalization occurred, it would be wise to amend the Controlled Substances Act to exclude the importation of small amounts of marihuana (S. p. 7).

Mr. Acree stated that decriminalization probably would not significantly affect Federal prosecution since this enforcement effort is currently decided on a case-by-case basis depending on various criteria, such as amount seized. Federal authorities often decline prosecution even after an offender is arrested with a large quantity of marihuana. When the Federal Government declines to prosecute, Customs turns the offender over to local authorities for prosecution. However, some local jurisdictions also refuse to prosecute the offenders if they are not local residents, reasoning that the enforcement problem is a Federal concern.

As a remedy for this situation, on May 27, 1976, Customs initiated uniform procedures, whereby administrative penalties are assessed

for unprosecuted marihuana violations. The penalties are escalating fines depending on the amount. There is a \$25 penalty for less than an ounce of marihuana and a penalty of \$100 for a violation between 1 and 2 pounds. Since Mr. Acree has directed his enforcement priorities against the large smuggler/wholesaler, he stated his belief that the administrative penalty is the most efficient means of dealing with a smuggler of small amounts of marihuana. He added that the penalty would deter the ordinary user from smuggling marihuana across the border. Mr. Acree stated that if there is Federal decriminalization, and no consequent threat of criminal prosecution, smuggling will increase (T. p. 97) and that Customs would then have to spend an even greater amount of time in the processing of administrative penalties (S. pp. 4-10).

B. DEPARTMENT OF JUSTICE (U.S. ATTORNEY AND DRUG ENFORCEMENT ADMINISTRATION (DEA))

Mr. Peter Bensinger, Administrator of the DEA and Benjamin Civiletti, Assistant Attorney General, Criminal Division, Department of Justice, testified that decriminalization of Federal laws prohibiting possession of small amounts of marihuana for personal use would have virtually no effect on the current law enforcement efforts of the Office of the U.S. attorney or the DEA. They stated that for all practical purposes, the Federal Government is not currently arresting or prosecuting individuals who are apprehended with small amounts of marihuana in their possession (T. pp. 24, 30-31, 89). They stated the Federal Government lacks the resources for extensive prosecution, and hence concentrates its enforcement efforts on the large-scale trafficker (T. pp. 24-25, 32, 89).

Mr. Civiletti explained that there are only 1,700 U.S. attorneys and assistant U.S. attorneys and that the Federal courts are not geared for volume operations. As a result prosecutors must weigh the realistic priorities of marihuana prosecutions against prosecution of cases involving organized crime, heroin, amphetamine and barbiturate misuse, white-collar crime, frauds, etc. in order to determine where resources can best be utilized. Mr. Civiletti stated that in Tucson, Ariz., for example, 55 percent of the current Federal cases are drug prosecutions (T. pp. 91-92). Mr. Civiletti denied, however, that there was de facto decriminalization since the statutes are being used for purposes of probable cause. They are used when there is a very strong belief that the marihuana user is engaged in another crime. If the user is also arrested for another illegal activity, he is prosecuted on both counts.

II. EFFECT OF FEDERAL ENFORCEMENT EFFORTS ON PROBABLE CAUSE, DETERRENCE, AND EQUAL PROTECTION AND RESPECT FOR LAWS

A. PROBABLE CAUSE

Concern was expressed during the hearings whether a civil penalty for possession of small amounts of marihuana would prevent the police from using suspicion of marihuana possession as probable cause for a search and seizure, which often leads to discovery of more serious crimes. Mr. Civiletti testified that his agency currently uses suspicion of possession of small amounts of marihuana as a basis for probable

cause (T. pp. 92-93), but that the Justice Department would lose this enforcement tool under decriminalization. Thus, there would be no basis for probable cause if a policeman saw smoke or smelled a small quantity of marihuana (T. p. 45). Probable cause would still exist, however, if there were grounds to suspect that there was a large amount of marihuana in a house (T. p. 56).

There was also testimony that this restriction on the use of the doctrine of probable cause would be beneficial since there would be a decrease in invasions of privacy, such as searches of persons and residences (Landau S. p. 4), and of selective enforcement of marihuana laws for the purpose of investigating persons suspected of committing other crimes (T. p. 269).

B. DETERRENT EFFECT OF CRIMINAL PENALTIES

A number of witnesses discussed whether current laws and law enforcement procedures were effective in deterring the possession of small amounts of marihuana, and whether this deterrence would disappear if there were decriminalization. Several persons stated that the deterrent effect of the laws is virtually nonexistent because there is a very low probability of arrest and confinement (Jaffe S. p. 5, T. p. 48). It was stated that criminal penalties may actually heighten drug abuse (Hornblass S. p. 11). Some also believe that marihuana use will continue to slowly increase, regardless of prohibitory laws, due to demographic changes in the population (T. pp. 209-210). Other witnesses contended, however, that fear of prosecution does act as a deterrent (T. pp. 96-97, 101-102). Conflict emerged among the witnesses as to whether a civil fine of \$100 for possession of small amounts of marihuana would deter use of marihuana (T. pp. 275, 469). The general consensus among the witnesses was that we can expect some degree of decrease in the deterrence factor and some increase in the use of marihuana, if there is a reduction in penalty (Jaffe S. p. 3, T. pp. 119, 202). One witness believed that it is too early to predict any results (Bourne T. pp. 95-96).

It was reported that usage in Oregon had not increased in 1974 or 1975 following decriminalization in October 1973. A study in 1976 indicated that usage had risen but remained below the average of other west coast States (Bourne S. p. 2). There was also no appreciable increase of marihuana use in California following that State's reduction in penalties on January 1, 1976 (T. p. 274). A report from California's Office of Narcotics and Drug Abuse, Health and Welfare Agency, stated that in a survey conducted the year following decriminalization in California, less than 3 percent of those who used marihuana was a new user. Further, only one in eight of the new users indicated that the willingness to try marihuana was due to the reduction in penalties (T. p. 118).¹

C. EQUAL PROTECTION AND RESPECT FOR LAWS

Concern was also expressed at the hearings that the lack of enforcement of marihuana laws erodes respect for law (T. p. 78) and renders the laws meaningless (T. p. 211).

¹The committee is indebted to Professor Leon C. Hunt whose book "The Heroin Epidemic" defines a successful prevention program in terms of "focus on the individual new user" (see p. 67, Interim Report of the Select Committee on Narcotics Abuse and Control, 95th Congress, 1st Session).

It was also said that there is unequal application of the law, a lack of justice and a profound inequity in a situation where although 35 million Americans have violated the law by trying marihuana and 13 million Americans are using the drug today, actual law enforcement is only directed against a small percentage of marihuana users (Javits S. p. 2, Koch S. p. 2, Landau S. p. 4). The enforcement statistics show that there are approximately 200 persons in State and Federal prisons for possession and/or sale of small amounts of marihuana (T. p. 3). There are 400,000 persons arrested annually for marihuana law violations. Of this total 93 percent are for possession and in two-thirds of the cases, the violations are for possession of 1 ounce or less of marihuana (Miller S. p. 4).

An example of the selective enforcement problem is a situation where a police chief or sheriff decides to arrest 50 persons at a party, while knowing at the time that there were no similar arrests over the past 6 months (T. p. 249).

One witness testified that when the tiny minority of persons are arrested, they then face the possibility of going to jail. If this person is a juvenile, he or she could spend from 8 to 21 years in juvenile facilities. If he or she is between the ages of 18 and 23, conviction may follow under statutes particularly directed at youths, such as the Young Adult Offender Act or the Youth Correction Act, where there is a possibility of 6 years incarceration (Jaffe T. p. 600). Those persons arrested for violating marihuana laws subsequently view the laws as capricious or worse. Moreover, millions of Americans feel that present laws are both irrational and excessively harsh (Jaffe S. pp. 4-5).

There were questions raised whether a double standard and an inequitable application of the law would exist if there were decriminalization for possession of small amounts of marihuana with a continuation of the enforcement of felony statutes against those trafficking and selling marihuana. Dr. Bourne stated that this type of procedure was proper (T. p. 23) and Mr. Civiletti indicated that both the seller and buyer would be liable for criminal prosecution (T. p. 93). Ms. Landau believed that it was perfectly consistent to decriminalize use and retain or strengthen the criminal penalties for sale. She stated that the distinction between two such different standards has long been recognized by the courts under the equal protection clause. She stated that different kinds of conduct can be regulated in different ways, particularly with respect to the application of a criminal sanction for a desired deterrent effect (T. p. 328). The committee's chief counsel, Mr. Nellis, expressed concern that a transaction in which the seller is committing a felony and the buyer is absolved from criminal sanction may have equal protection implications.

There was a recognition that with decriminalization of small amounts of marihuana, the issue arises as to what is a small amount. This determination has been based not on frequency of use but on the amount the person has in his possession (T. p. 64). The amount is an arbitrary figure to be set by the legislature, however, it was suggested that possession of 1 or 2 ounces would indicate an intent to possess and not to sell marihuana (T. pp. 24, 62). It was stated that some people may keep 1 or 2 pounds for their personal use (T. p. 63).

The National Commission on Marihuana and Drug Abuse, attempting to determine an inconsequential quantity that would not lend it-

self to sale and trafficking, initially stated that possession of 3 ounces or less indicated personal use. They eventually reduced this amount to 1 ounce, which is approximately the content of 1 pack of cigarettes (T. pp. 272-273). Most organizations, however, including the ABA, have not specified what quantity they consider to be a small amount of marihuana (T. pp. 333-334).

The witnesses also believed that there would be an unequal application of Federal laws if there were only a decriminalization for persons above a certain age, with a retention of criminal penalties for the remainder of the population. If individual States desire an age distinction, they have the option of keeping a criminal penalty for persons under a certain age in a manner similar to State laws regulating the purchase of alcohol by minors (T. pp. 75-77).

III. AREAS WHERE LIMITED FEDERAL AND LOCAL POLICE RESOURCES SHOULD BE APPLIED

The most frequent comment made by the witnesses regarding law enforcement was that local police forces had limited resources and that these resources could be better spent enforcing more serious crimes rather than prohibiting the possession of small amounts of marihuana.

The National League of Cities testifying through Mayor Richard Hatcher, stated that " * * * less emphasis should be placed on enforcing marihuana laws when casual users and small amounts are involved, so that limited enforcement revenues can be directed toward large-scale trafficking in addictive and or socially destructive drugs" (S. p. 1). He further stated that the detectives in the Gary, Ind. Police Department believe the marihuana laws are arbitrary and unenforceable (T. p. 154); and the Gary Police Department does not have the time, manpower, or desire to pursue persons engaged in a victimless crime, like marihuana possession (T. p. 155). Congresswoman Yvonne Brathwaite Burke stated that one-half of the inner city crime is drug related and that residents prefer that the police apprehend persons involved in serious crime and drug pushers, who provide hard drugs to children, rather than on arrests for minor offenses, such as marihuana possession (T. p. 245, Miller S. pp. 5-6). By way of illustration she stated that the effect of this policy in a test area was that while marihuana arrests decreased, there was an 18-percent increase in arrests for serious drug offenses.

Ms. Brooksley Landau representing the American Bar Association (ABA), agreed that the time, resources, and the \$600 million spent each year in enforcement of criminal laws against marihuana offenses could be better spent in enforcement efforts to combat more serious crimes. In addition, the ABA believes that the processing of the violations through the court system is an unnecessary expenditure of the courts' time and resources (S. p. 5). It is estimated, for example, that it costs the New York Criminal Justice System over \$17 million to arrest, arraign, and adjudicate those arrested for marihuana crimes (Hornblass S. p. 10). It is also estimated that the local criminal justice agencies in California, as a result of the drastic reduction of penalties, will save at least \$25 million in workload costs in 1976 (Miller S. p. 4).

Mr. Edward Davis, Chief of the Los Angeles Police Department and President of the International Association of Chiefs of Police, took sharp issue with the lack of resources argument. He said it is a

myth that cities lack resources, since police in American cities spend less than 6 percent of their resources against criminals involved in drugs (T. pp. 122-123). Virtually all of the law enforcement efforts of his department are directed against major traffickers and peddlers (T. p. 135), and about 80 percent of the individual prosecutions for personal possession of marihuana arose from police coming in contact with the person for another offense (T. p. 134). Chief Davis further testified that his resources have remained constant through decriminalization and that there was a decrease in arrests of approximately 20 percent for the first year. This decrease resulted from police discouragement in having to: complete a "traffic-ticket" type form; confiscate and weigh the marihuana, fill out cumbersome reports; and release the arrested individuals. However, these methods have now been revised, and the rate of arrest is currently as high as it was prior to decriminalization (T. pp. 119, 140). Chief Davis asserted that in some cases, due to political pressures, some police departments have virtually ceased to enforce marihuana laws just as some departments have ceased collecting information on terrorists. He added that although the costs are lower now, there will eventually be a high price to pay for these decisions (T. p. 127).

Mr. John Bellizzi, Executive Director of the International Narcotics Enforcement Officers Association, testified that a decriminalization of marihuana laws would increase the burden on the police and the courts. He estimates that there are 20,000 persons arrested each year in New York City for possession of small amounts of marihuana and that with a civil ticket or fine, there will be a tenfold increase in apprehended persons. Mr. Bellizzi stated that there would be a logistical problem for police to hand out 200,000 tickets, to obtain persons to administer the necessary paperwork and to issue warrants to those who refuse to pay their tickets (S. p. 11).

SOCIOLOGICAL CONSIDERATIONS

Sociological considerations in the reduction of Federal penalties for the possession of small amounts of marihuana involve the following issues: usage patterns; effective means of deterrence; inherent American values relating to personal liberty; relationship between marihuana, other drugs and/or crime; and public perception of marihuana abuse and tolerance for decriminalization.

Proponents of decriminalization argued that it would be more beneficial to society to reduce the penalties for marihuana abuse. In this way, thousands of otherwise law-abiding individuals would not be labeled as criminals each year for possession of small quantities of marihuana (Stroup S. p. 1, Javits S. p. 4). Dr. Jerome Jaffe, Professor of Psychiatry, Columbia University, and former Director of the Special Action Office for Drug Abuse Prevention, stated that the expected social costs of change in penalty structure would be more than offset by the benefits that would flow from such a change (T. p. 191). Representatives of a major sector of law enforcement (the International Narcotics Enforcement Officers Association and the International Association of Chiefs of Police) emphasized that decriminalization would give the impression that marihuana is a harmless drug and encourage its use (Bellizzi S. p. 1, Davis S. p. 48). This situation

poses a dilemma since the Carter administration has asserted that it is firmly committed to discouraging drug abuse of all kinds (Bourne T. p. 13).

To place the decriminalization issue in proper perspective, the witnesses stressed that one must first become aware of the usage patterns for marihuana. In recent years, marihuana use has increased to enormous proportions, not just in the United States but worldwide. According to surveys conducted by the National Institute on Drug Abuse (NIDA), 36 million Americans have tried marihuana at least once, and 13 million Americans smoke the substance regularly (Koch T. p. 232, Javits T. p. 240). Over half of all Americans between the ages of 18 and 25 have tried marihuana, and 1 out of every 4 is currently a regular user (Miller S. pp. 1-2). The National Commission on Marihuana Abuse (1972) concluded that the marihuana user is almost indistinguishable from his non-using peers (Stroup T. p. 350). The National Organization for the Reform of Marihuana Laws (NORML) points out that the best indicators of marihuana use are demographic information such as higher usage on the east and west coasts; between the ages of 18 and 25; at higher educational levels; and in urban areas (NORML Leg. Memo p. 3). Both Keith Stroup, Executive Director of NORML and Jerome Hornblass, Director, Addiction Services Agency, New York City, emphasized that the stereotype created in the 1930's of the marihuana user as a debilitated criminal who commits vicious crimes is absurd (Stroup S. p. 2, Hornblass T. p. 366). On the other hand, John Bellizzi, Executive Director, International Narcotics Enforcement Officers Association, brought to light several violent crimes which he contended had a correlation to marihuana use (S. p. 13).

Another issue addressed by the witnesses is the apparent lack of success current criminal statutes have had in deterring the use of marihuana, and the drain on enforcement resources which these statutes pose. One must keep in mind that Federal witnesses representing the Drug Enforcement Administration (DEA), Customs and the Department of Justice agreed there would be no change in their respective operations and, therefore, no cost saving if decriminalization were adopted as a Federal policy. Any possible savings would be at the State and local levels where arrests still take place. Specific dollar savings allegedly made by law enforcement agencies as a result of decriminalization are cited in the California-Oregon experience section of this report. In this connection, some witnesses noted that contrary to what proponents of decriminalization claim, decriminalization would increase the burden upon police and courts (Bellizzi S. p. 10). Further, Chief Edward Davis of the Los Angeles Police Department emphasized that his department had been unable to realize a cost saving even after California reduced the penalties for the possession of small amounts of marihuana for personal use (T. p. 127). Moreover, Mr. Bellizzi referred to a statement by Holly V. Holcomb of the State Police of Oregon which disputes the belief that Oregon State Police have saved time and money since that State decriminalized possession of small amounts of marihuana for personal use (T. p. 11). Several witnesses did express the need to focus limited criminal justice resources on the more violent crimes against persons and property (Miller S. p. 4, Burke T. p. 247, Bourne S. p. 4).

Dr. Robert DuPont, Director, NIDA, cited a 1975 national survey of American high school seniors which indicated that fear of criminal sanction was the reason for deterring only 3 percent of individuals from using marihuana, and only one-eighth of these persons stated a change in the law would cause them to experiment with marihuana. Most marihuana users are recreational drug users who use marihuana or other drugs because they enjoy them (Stroup T. p. 394). The only determinant, to some extent, which relates marihuana to the use of other drugs is the social intercourse an individual has with persons who may be dealing in or using other drugs (Grinspoon T. p. 368, Adame S. p. 2). Dr. Lester Grinspoon, Professor of Psychiatry, Harvard Medical School believes that individuals who use marihuana to treat anxiety or depression will continue to do so regardless of the law (T. p. 401).

Since the use of marihuana has escalated in recent years, many of the witnesses stated that harsh criminal penalties do not serve as a deterrent. Rather, they hold that more harm is done to individuals who are deprived of the right to pursue various careers because of a criminal record (Koch S. p. 2, Burke T. p. 248, Landau T. p. 300). Notwithstanding, several witnesses agreed that relaxation of marihuana laws would lead to increased use of marihuana and other drugs (Brill T. p. 204, Jaffe T. p. 206, Turner T. p. 208, Davis T. p. 112). Other witnesses stated, in substance, that a more effective deterrent would probably be either further medical evidence demonstrating the harmfulness of the substance and/or a prevention and education program which focuses on reducing demand (NORML policy #6, Hornblass S. p. 16). On the other hand, opponents argue that if you concede marihuana is, at the very least, as harmful as alcohol and tobacco, and that education and health warnings have failed to eliminate the tragedies brought about by the abuse of these "recreational" drugs, then education and health warnings are also likely to fail for marihuana abuse (Davis S. pp. 7-8, Bellizzi S. p. 2, Baird S. p. 3).

The next sociological issue discussed by the witnesses concerns the philosophy of narcotics law enforcement as it applies to marihuana, and the conflict of marihuana enforcement with the principle of equal protection of the law. Mayor Richard Hatcher of Gary, Ind., contended that marihuana laws and their enforcement across the country are arbitrary, capricious, and by and large, unenforceable (T. p. 156). He stated that decriminalization would be beneficial from a law enforcement and social point of view (T. p. 163). Brooksley Landau, representing the American Bar Association (ABA), also contended that fair and impartial law enforcement is virtually impossible in light of the extremely large number of users involved (T. p. 301). However, Peter Bensinger, Administrator, DEA, confirmed that few arrests for possession of small amounts of marihuana are made at the Federal level (T. p. 18). Yet, several witnesses felt the issue of selective enforcement of marihuana laws justifies legislation at the Federal level to influence the formulation of State and local laws regarding marihuana (Javits S. p. 4, Stroup S. p. 11, Miller S. p. 13).

One proponent of decriminalization stated that he could not grasp the logic of the radical change of legal consequences as between the buyer and seller in a marihuana transaction, i.e., the consumer, committing a possible misdemeanor; and the seller, committing a possible

felony (Adame S. p. 3). In agreement, Chief Davis declared it to be illogical to decriminalize the use while hypocritically making it a crime to provide the substance (S. p. 11).

A recent NIDA study found that 86 percent of those surveyed oppose a jail term for the possession of marihuana and 55 percent favor a fine and/or probation (Miller S. pp. 1-2). However, it is generally recognized that the majority of marihuana offenders, although arrested and involved in the criminal justice system, usually receive a small fine and possibly a suspended sentence. The public's concern, therefore, relates to the individual who is "branded" a criminal and the inherent consequences of this action (NORML S. p. 6). Some witnesses felt, however, that one of the functions of law in a society is to restrict the behavior of citizens from unhealthy, unacceptable expressions and to direct them toward healthy and productive ones (Davis S. p. 8). One such witness, John Bellizzi, Executive Director of the International Narcotics Enforcement Officers Association, stated that this organization takes a strong stand against decriminalization because of the effect marihuana has upon young people, the community, the States and the Nation (S. pp. 1-2).

PUBLIC AND PRIVATE SECTOR CONSIDERATIONS

After 3 days of testimony before the committee, both the proponents and opponents of decriminalization in the public and private sectors agreed on three major issues, namely:

- (1) Federal marihuana laws are selectively and inequitably enforced.
- (2) Present marihuana laws as they relate to possession of small amounts are, by and large, unenforceable.
- (3) Federal marihuana laws should be changed and a more uniform system of State laws implemented.

Most of the proponents and opponents in the public and private sectors emphasized one key point: that a social vacuum exists in the national debate on marihuana. The witnesses, for the most part, did not debate the issue whether marihuana use is right or wrong, but rather, whether possession of small amounts of marihuana for personal use is an appropriate situation in which to apply criminal sanctions.

The opponents testified that decriminalization would eventually act as a step toward legalization; the wide appeal for marihuana, especially among young people, is a cause for alarm; and relaxation of marihuana laws may bring on an increased use of other illicit drugs.

Proponents on the other hand, testified that fair and impartial national enforcement of the marihuana laws has been virtually nonexistent; the fundamental thrust of the law should be directed at reducing the demand for marihuana; and most public opinion polls show that the majority of Americans do not favor harsh penalties or even criminal penalties for the use of marihuana.

Dr. Jerome Hornbliss, a proponent of decriminalization, pointed to a survey conducted by the Addiction Services Agency of New York City, which concluded that the majority of New York City's judges and directors of drug treatment programs believe New York's stringent drug law has not been successful in deterring drug abuse. Dr. Hornbliss noted that the majority of those responding to the survey favored

changes in the law which would allow more lenient sentences for possession of small amounts of marihuana and would encourage the use of treatment as a substitute for prison terms for addicts (T. pp. 307-308). Dr. Hornbluss urged the Federal Government to lead the Nation in enacting fundamental changes by decriminalizing Federal marihuana laws (S. p. 1).

Mr. Keith Stroup, National Director, NORML, informed the committee of a national survey conducted by the National Institute on Drug Abuse (NIDA) which pointed out that only 10 percent of the people in the United States favor jail for marihuana users; 86 percent favor something less than jail; and 4 percent remain undecided. The poll also concluded that 55 percent of the public would favor a small fine and/or probation, if any penalty at all, for these minor offenses (S. p. 11). Stroup further points to the "hypocrisy of the establishment" that accepts 60 million cigarette smokers and 100 million alcohol drinkers as socially acceptable but treats 36 million marihuana users as criminals (S. p. 11).

The ACLU, represented by Mr. Jay Miller, not only supported decriminalizing possession of small amounts of marihuana for personal use, but went on record favoring the decriminalization of "small scale cultivation, non-profit or gift transfer, and transportation of marihuana for personal use" (S. p. 15). Ms. Brooksley Landau of the ABA took a similar position in supporting the "casual distribution of small amounts of marihuana on a not-for-profit-basis," though a "small amount" was not defined (T. p. 299).

Mayor Richard Hatcher of Gary, Ind., a spokesman for the National League of Cities, described decriminalization as an "idea that has come and gone" (T. p. 156). Mayor Hatcher informed the committee of the League's 1976 survey of cities with 30,000 or more residents in which a total of 429 municipalities responded. "Overall," Hatcher said, "58 percent of the cities contacted reported that they were moving toward either decriminalization or less stringent enforcement when small amounts of marihuana are involved" (S. p. 2).

Police Chief Edward Davis of Los Angeles stated the position of the International Association of Chiefs of Police (IACP). IACP "absolutely opposes any relaxation of our national marihuana laws" (T. p. 114). Chief Davis noted that it would be absolutely illogical to legalize or decriminalize at the users' end and to hypocritically make it a crime to supply the substance (T. p. 112). This theory was also reflected in the testimony of Chief Investigator Joseph Turner of the Alaska State Troopers. Mr. Turner acknowledged that his department was against decriminalization and that law enforcement officers in Alaska do not enforce any of the violations under present law. This action, Mr. Turner said, is due in part to the liberal attitude of his State's judicial system (T. p. 208).

Dr. Jerome Jaffe addressed the issue of decriminalization saying, "we do not sufficiently safeguard the public health or improve the quality of life to justify imprisonment or even threatening to imprison those who elect to use marihuana" (T. p. 190). Dr. Jaffe said he is convinced that imprisonment or the threat of incarceration could no longer be justified (T. p. 191). Also supporting this position was Dr. Henry Brill, a New York physician. However, Dr. Brill ventured

to tell of his personal disagreement with the implication that marihuana use is a purely personal affair which has no social impact (T. p. 199). Dr. Brill concluded, "I find the supporting evidence to be in conflict with my own experience and with the best available information" (T. pp. 202-204). Dr. Jaffe and Dr. Brill agreed that relaxation of controls on marihuana will likely lead to increased use in certain age groups, and increased use of other illicit drugs (T. pp. 202-206).

Dr. Jaffe further reported that the National Commission on Marihuana Abuse in 1972 advocated the total elimination of all penalties for personal use of marihuana (T. p. 191), but the data he has received from treatment programs for drug users sponsored by the Federal Government leads him to believe that "our country is already paying a price for the use of marihuana" (S. p. 4).

Mr. Burton Joseph of the Playboy Foundation took marihuana laws to task describing them as "quixotic in enforcement, a denial of equal protection of the law in the social sense, where penalties vary substantially from community to community within the State, and from State to State within our Nation" (T. p. 373). Mr. Joseph urged the committee to take the lead to decriminalize Federal law predicting such a move will eliminate one of the elements that breeds disrespect for the law (T. p. 373).

Sharing this view were Ms. Brooksley Landau of the ABA and Mr. Mylio Kraja of the American Legion. Ms. Landau said, "fair and impartial law enforcement in this area is virtually impossible" (T. p. 301). Mr. Kraja also pointed out that penalties are greater in some States than in others; and that the hardship placed on the offender under existing State laws is very harmful (T. p. 35). With this in mind, Kraja commented, "it is our belief that the discriminatory treatment of marihuana offenders because of the totally inconsistent State laws contributes significantly to the problem at hand" (S. p. 2(a)). Moreover, Mr. Kraja added, "the American Legion's only official position on the legal treatment of marihuana is in opposition to legalization partly because we are not sure what the firm definition of decriminalization really is" (S. p. 1).

The strongest statement on the legal issue was made by Dr. Jerome Hornblass of Addiction Services Agency of New York City. Speaking to the committee, Dr. Hornblass emphatically stated, "our current marihuana laws lead to duplicity, corruption, contempt and falsity" (T. p. 305).

The largest membership organization to appear before the committee was the American Farm Bureau Federation (AFBF) which represents 2.6 million families. Representing the AFBF was Mr. John Datt who said, "we feel it would be most unwise for the Congress or any of the States to legalize the use of marihuana" (T. p. 584). However, Mr. Datt did put his organization on record as favoring a lesser penalty for first-offense users of marihuana (T. p. 584). In addition, Mr. Datt sounded a warning of the spread of marihuana and other drugs to America's rural areas. "For many, many years," he said, "many of the rural people felt that this was a problem that existed in the cities. But in recent years we've recognized that it is a problem that exists as much in our small towns and rural communities as it does in New York, or some of the other major cities" (T. p. 584). Mr. Datt said the AFBF has noted this problem and firmly supports legis-

lation to deal severely with those who are engaged in the illegal manufacture, distribution and sale of marihuana and other dangerous drugs, and to increase funding to those agencies involved in enforcing the existing laws against importation and sale of illegal drugs (T. p. 584).

Mr. Ramon Adame, Director of Aliviane in El Paso, Tex., while in opposition to decriminalization, spoke of the "feelings of dishonesty and ambivalence" when discussing the subject. He talked of the dilemma of the "interface of the consumer with a possible misdemeanor, and the seller with the possible felony, both meeting in a criminal environment but with—different consequences involving an illegal substance * * *" (T. p. 431). Speaking about the Spanish-American community in El Paso, Mr. Adame said, "they don't care if there is a law on the books or not. They are not even interested or concerned about laws, they are just concerned about their own problems" (T. p. 473).

CALIFORNIA-OREGON EXPERIENCE

The committee received testimony relative to the lowering of penalties for the possession of small amounts of marihuana for personal use by the States of Oregon and California. The experiences of these two States were singled out as they are the only States which have conducted followup studies on the impact of their revised statutes. Representing the State of Oregon were Mr. Richard Davis, Director of the Oregon Department of Human Resources and State Senator Stephen Kafoury, who assisted with the drafting of Oregon's decriminalization legislation. Representing the State of California were Mr. Eugene Hollingsworth, Chief of the Bureau of Investigation and Narcotics Enforcement of the California State Justice Department; and Mr. Charles Sevilla, Deputy Public Defender for the State of California. Testimony pertinent to California's experience was also received from Chief Edward Davis of the Los Angeles Police Department and Congresswoman Yvonne Brathwaite Burke.

The witnesses focused upon the experiences of these States in dealing with the marihuana issue; the impact which decriminalization has had on the health and social behavior of their citizens; the levels of usage and the legal and law enforcement issues. In addition, a report prepared by the California Health and Welfare Agency, Office of Narcotics and Drug Abuse was submitted to the hearing record.

I. THE CALIFORNIA EXPERIENCE

According to the January 1977 study by the California State Office of Narcotics and Drug Abuse, senate bill 95, enacted in California in July 1975, reduced the penalties for possession of 1 ounce or less of marihuana from a possible felony to a citable misdemeanor with a maximum penalty of \$100. After three or more convictions for this offense within a 2-year period, the fourth conviction requires the offender to enter a drug diversion program. All records of the event are destroyed after 2 years. Under this law, possession in excess of 1 ounce for personal use is treated as a straight misdemeanor and possession of concentrated cannabis (hashish) remains an alternate felony/misdemeanor (CR p. 1-1.)

The objectives of S.B. 95 were twofold. First, enactment was expected to reduce the estimated \$100 million in costs to the criminal justice system incurred through processing marijuana law violators. Second, it was expected to continue the policy of discouraging the use of marijuana while realistically punishing those who choose to ignore the policy (CR Intro.). The study conducted by the California State Office of Narcotics and Drug Abuse is an attempt to gauge the realization of these objectives by reviewing the effects of decriminalization on the enforcement of marijuana possession laws; law enforcement costs; patterns of marijuana usage; drug treatment enrollment programs; and public attitudes toward the new law.

A. SUMMARY

The study reports that statewide surveys indicate general public support for the relaxed California marijuana law. Six in ten (61 percent) California adults either approve of S.B. 95 or believe possession of small amounts of marijuana should be legalized. Legalization or the current approach is even preferred among those who have never used the drug. Few expressed interest in returning to the provisions of S.B. 95's predecessor which provided stiffer criminal penalties (CR p. 1).

The enactment of S.B. 95 appears to be responsible for a significant reduction in reported marijuana possession offenses based on the 1975 and 1976 arrest and citation data. California experienced its greatest rate of marijuana related arrests in 1974. Since then they have declined, and total arrests and citations for marijuana possession in the first 6 months of 1976 have decreased 47 percent for adults and 14.8 percent for juveniles compared to arrests for the same period in 1975 (CR p. 3). However, it should be noted that marijuana possession offenses were experiencing a downward trend prior to passage of S.B. 95 (CR p. 1).

According to the study, a major impetus to the enactment of S.B. 95 was the anticipated reduction in law enforcement costs. The study indicates substantial cost savings to the criminal justice system as a result of this statute. Combined law enforcement and judicial costs totalled \$17 million for the first half of 1975 compared to \$4.4 million for the comparable period in 1976, a 75-percent reduction in costs. While the extent of cost reduction has been derived from incomplete or estimated data, according to the study, the general direction of the savings is clear (CR pp. 5-6).

On the other hand, Eugene Hollingsworth, Chief of the California Bureau of Investigation and Narcotic Enforcement challenged the California report stating that there are other costs that offset the dollar savings. He stated that "a reduction in penalties for possession of marijuana has been accompanied by a significant increase in the use of marijuana" (T. p. 5).

Chief Edward M. Davis of the Los Angeles Police Department who opposes marijuana decriminalization, indicated in his statement that marijuana seizures had been declining steadily since 1971 (S. p. 5). He stated that, "after the new marijuana laws became effective on January 1, 1976, seizures skyrocketed to over 3,000 pounds in just the first quarter. This was a 539-percent increase when compared to the

first quarter of 1975" (S. p. 6). According to Chief Davis, his department has not saved "a nickel." Seizures have increased "from 2,000 pounds in a year to 18,000 pounds" and have generated more work (T. p. 127). Chief Davis further stated that arrests now are as high as they were prior to decriminalization (T. p. 140).

Congresswoman Yvonne Burke, challenging Chief Davis' position on decriminalization of marihuana, stated that "it is a case of the cops copping out" she added that it's a lot easier for the police to go into a group of high school students and arrest them than it is to go out and face some of your more dangerous criminals. "I would hope that law enforcement officials would look at this [the latter] as the important method of using their time and their resources to try and have an impact on our community" (T. pp. 246-247).

The California study further revealed that some police agencies contend that the new decriminalization statute has given rise to unexpected problems. For example, separate filing systems had to be created to easily delineate the records of offenders to be destroyed after 2 years; and the authority of the investigating officer has been reduced in suspected misdemeanor offenses since he can no longer conduct a search without probable cause into the possibility of further criminal activity, as he could when marihuana possession was classified as a felony (CR p. 5).

B. LAW ENFORCEMENT COSTS

Police agency costs to enforce the marihuana possession laws for adults declined from an estimated \$7.6 million during the first 6 months of 1975, to \$2.3 million during the same period in 1976 (CR p. 4). Factors responsible for such costs are booking procedures and incarceration pending release or posting of bail. To summarize, custody arrests for marihuana possession in the period from January to June 1975 totalled 24,351 at a cost of \$5.4 million. Comparative figures for 1976 were 3,811 arrests at a cost of \$850,000. Pre-trial incarceration costs for the first half of 1975 were estimated at \$2.2 million and for the same period in 1976 they were \$300,000 (CR p. 5).

The California study reports that S.B. 95 has resulted in costs other than arrest and citation costs. These costs result from the record destruction provisions of the act, requiring the separate filing systems so that records can be easily identified for destruction (CR p. 5).

C. JUDICIAL SYSTEM COSTS

The study indicates that S.B. 95 has significantly reduced court costs for processing marihuana violation cases. Costs in the first 6 months of 1975 were \$9.4 million compared to \$2.0 million in the first 6 months of 1976. This cost reduction is a conservative one, however because jail and probation costs for convicted offenders in both years were not included (CR p. 6). A detailed examination of these costs revealed that prosecutorial costs in the first half of 1975 were \$2.9 million compared to nearly \$700,000 during the same period in 1976. Public defender costs were approximately \$2.1 million, compared to \$500,000 in the same period while court costs are estimated at nearly \$600,000 for the first half of 1975 and \$136,000 for the first half of 1976.

Probation Department (diversion only) costs were estimated at \$3.9 million for the first half of 1975 compared to \$700,000 for the same period in 1976 (CR p. 6).

D. DRUG OFFENDER DIVERSION PROGRAM

According to Charles Sevilla, Public Defender of the State of California, under S.B. 95 if a youngster up to age 23 is stopped in a car and he is in possession of less than an ounce of marihuana, the policeman will issue a citation, the equivalent of a traffic ticket. However, after the fourth citation the offender must be diverted to a treatment service. If he successfully completes the diversion programs, the citation is dismissed.

The California study indicates that S.B. 95 changed the nature of the diversion program, which was originally established as a treatment and education referral program for abusers of all drugs. According to the study, it became apparent that marihuana law offenders consumed an overwhelming proportion of the resources. The change in the law has resulted in a like change in direction of the diversion programs (CR p. 13-15).

In 1975, statewide diversions were 85 percent (20,540) marihuana related and 15 percent (3,691) hard drug related. In 1976, diversions were split equally, 5,954 marihuana related and 5,979 hard drug related. Between 1975 and 1976, the diversion population was reduced by 14,586 marihuana offenders and increased by almost 2,300 hard drug offenders including over 2,000 heroin addicts. These figures are consistent with 1976 arrest statistics (CR p. 13-15).

The California study concluded that the reduction in marihuana offender referrals to the community diversion programs and the increase arrest of hard drug offenders and addicts have more than offset any savings to the State's drug abuse program. Marihuana offenders are referred more to probation programs or school based drug education classes, thus increasing the possibility that all offenders will be dealt with more effectively (CR p. 15).

E. LEVELS OF USAGE

According to the study, both proponents and opponents of S.B. 95 expected an increased willingness on the part of Californians to experiment with marihuana as a result of the bill's passage. A November 1976 survey conducted by the Field Research Corporation revealed that 35 percent of adults admitted to having tried marihuana and of these, 14 percent consider themselves current users. Less than 3 percent reported having tried marihuana for the first time within the year (1976), and of these only one in eight said they tried it because of the reduced penalties (CR p. 10).

On the other hand, Mr. Hollingsworth reported that surveys by Field Research Corporation found that between February 1975 and November 1976, the number of California's adult citizens involved with marihuana usage escalated sharply from 28 percent to 34 percent and the percentage of those who currently are users of the drug rose from 9 percent to 14 percent, an increase of almost 55 percent in the number of regular users of marihuana (S. pp. 5-6).

The claim that marihuana usage increased after passage of S.B. 95, was challenged by Mr. Sevilla who stated that during 1976 "when S.B. 95 went into effect, there was a 3-percent increase in usage; one out of eight of those people who were new users had experimented with marihuana because of decriminalization. This means that approximately 3 out of every 1,000 Californians experimented with marihuana in 1976 as a result of the new legislation. (T. pp. 544-545).

Usage on both an occasional and frequent basis appears heaviest among the 18- to 29-year-old age group, and current users appear to be more male than female. The increase in those having used the drug after passage of S.B. 95 is less than those now reporting use, though the increase does not appear to be substantial either, according to the study. Frequency of use patterns has been subject to only slight changes in the survey periods of February 1975 and November 1976. Lack of interest in the drug and fear of possible health hazard remain the two most often cited reasons for not using marihuana according to the study (CR p. 11).

F. PUBLIC ATTITUDES

The California study indicates that according to a 1976 survey, one in four California adults favored S.B. 95. A more liberal stance was taken by 38 percent of those questioned who favored legalizing the sale or possession of marihuana. Twenty-nine percent favored stiffer penalties (CR p. 19).

The survey consisted of 1,033 personal interviews. Younger adults tended to be more liberal, however, every age group below 60 years old preferred the present law or legalization. Among current users, 88 percent favor legalization (CR p. 19).

While a majority of the people surveyed were aware of the specific provisions of the new law, it would appear that among interested Californians, the issue of marihuana decriminalization has lost a substantial degree of the fervor that had surrounded the issue during its public debate 2 years ago. Both users and non-users alike appear to subscribe to the theory that the misdemeanor charge for possession is a better method of dealing with the offender (CR p. 20).

Mr. Hollingsworth disagreed with the California study, stating that he spoke not only for the Attorney General and the Department of Justice, but for the California Peace Officers' Association and the California Narcotics Officers Association. These organizations believe that "decriminalization will lead to further and more widespread drug usage" (T. p. 495).

G. OTHER FINDINGS

The California study also reached the following conclusions:

1. S.B. 95 did not alter procedures for dealing with the trafficker of marihuana. Between 1975 and 1976, arrests for distributing marihuana, as a percentage of all marihuana arrests rose for both the adult and juvenile offender, though not substantially (CR p. 7).

2. There has been an 11-percent decrease in the amount of marihuana seized in California between 1975 and 1976. The supply side of the market has not been noticeably affected by S.B. 95 (CR p. 7).

3. "Arrests of adults and juveniles driving under the influence of a drug in the first half of 1976 increased 46.2 percent and 71.4 percent, respectively, over the same period, although the data do not indicate which drug was used" (CR p. 8).

4. "Adult arrests for non-marihuana drug offenses increased 18 percent and for persons under the influence of heroin, arrests increased 48.2 percent between the first half of 1975 and the first half of 1976. The California study concluded that it did not have sufficient information on current drug use to determine whether or not those increased arrests * * * reflect a change in the number of drug users. A more probable explanation is that greater police concentration on hard drug offenders has resulted in increased arrests" (CR p. 8).

II. THE OREGON EXPERIENCE

Prior to 1971, the possession of marihuana in Oregon was classified as a felony, carrying a maximum penalty of 10 years in jail. In early 1971, the criminal code was revised to allow wider discretion by judges in sentencing procedures for possession of marihuana, if the violation was a first offense (Kafoury S. p. 1).

Between the 1971 and 1973 sessions of the Oregon State Legislature, a special committee was established to review the problems of drug abuse and to "investigate the extent of drug use and the methods by which it can be controlled and reduced" (Kafoury S. p. 1). Although the committee concluded that the law enforcement model was not effective and the social harms resulting from the criminal sanctions were worse than marihuana's dangers, it did not recommend legalization because of the uncertain political climate. Instead, it recommended that the criminal penalties be dropped or at least reduced (Kafoury S. p. 2).

During the 1973 legislative session, Oregon State legislators amended the criminal code to provide a civil rather than a criminal penalty for the possession of up to 1 ounce of marihuana accompanied by a fine of up to \$100. The 1973 amendment passed the Oregon legislature by approximately two-thirds majority (Kafoury S. p. 3). According to State Senator Stephen Kafoury of Portland, the 1-ounce limit was established because this is the amount normally purchased by the consumer. Any person arrested with amounts larger than 1 ounce could be presumed to be engaged in commercial activity. The \$100 fine represented the average fine which was being levied against most first offenders prior to the enactment of the law, since most first offense violators were sentenced to probation as opposed to incarceration (S. p. 3).

Both Senator Kafoury and Richard Davis, director of Oregon's Human Resources Department testified that marihuana use increased slightly after penalties were reduced for possession of small amounts; for 1974 arrests were up slightly from the previous year; decriminalization has decreased law enforcement costs; and local authorities are directing their attention to other areas of crime enforcement. Senator Kafoury and Mr. Davis did not conclude however, that the increase in marihuana use in Oregon has anything to do with the lessening of penalties (Kafoury T. p. 521) (Davis T. p. 518).

Mr. Davis told the Committee that the presence of marihuana was widespread in Oregon well before decriminalization (T. p. 484). He also noted that half of the young people under 18 years of age had at least experimented with the substance prior to decriminalization (S. p. 1). Senator Kafoury added that even though selling marihuana to a minor in Oregon is a class A felony (the toughest penalty in the State of Oregon) this did not keep teenagers from smoking marihuana (T. p. 507). He noted, however, that the decriminalization law does not affect juveniles in Oregon. There are different jurisdictions for juvenile courts than for adults (T. p. 508).

Mr. Davis cited a statewide poll in which current users of marihuana showed a 39-percent decrease. Of those polled, 9 percent said they had increased their use, with the remaining half showing no change in usage (S. p. 3). "In spite of the early predictions," Mr. Davis said, "usage of marihuana has not surged. We found that usage in the 3 years since decriminalization has increased by no more than 5 percent in the over 18 age group and much of this is due to the increase in numbers in the age group that smokes marihuana, rather than an increase in new smokers" (S. p. 3).

To date, there has been no widespread move by Oregonians to return to the old system of criminal penalties for possession of marihuana. Studies by the Drug Abuse Council concluded that the majority of adults in Oregon have favored the present law during the 3 years it has been in effect. The Council places the figure at 58 percent (Davis S. p. 5).

Throughout the hearings, concern was voiced over whether law enforcement agencies were making narcotics arrests under the new law. In a letter to the committee, Robert Fisher, the Superintendent of Oregon's Criminal Division, stated that "we are spending more time enforcing drug laws than we were prior to the liberalization law, as borne out by the percentages of increase each year of those individuals possessing less than 1 ounce of marihuana. On the other hand, Mr. Fisher notes, "in defense of the law, it has been made less taxing on our police resources, less antagonism between police officers and individuals possessing marihuana and that the person does not suffer any civil disability, i.e., have a police record" (see letter, p. 2).

In reference to the judicial system, Mr. Davis concluded that judges feel that the changes in the law are a more fair approach to the situation and they seem comfortable with the change (S. p. 4). Senator Kafoury, however, indicated that the problem since 1973 has been unequal enforcement by overzealous prosecutors, adding that, "in a few areas of the State, people have found themselves in the anomalous position of being charged with felonies for transporting less than 1 ounce, or cultivating one plant, whereas if the offense had been possession, the charge would have been only a violation" (S. p. 5). The Senator did state, however, that generally the growing of small amounts of marihuana or transporting or giving to another person is presently being handled as a violation of the courts (T. p. 513).

Finally, Mr. Davis said that among the major factors contributing to the use of marihuana in the schools are social factors not affected by law enforcement. He observed, "We're spending in the State of Oregon a quarter million dollars in education programs to try and deal with the substances abuse" (T. p. 518).

The Oregon experience does raise the possibility that, although changes in the law may not have an immediate effect, such changes may result in a long-term change in public understanding of the moral, social and medical propriety of marihuana use.

SUMMARY OF THE OPINIONS OF OPPONENTS OF DECRIMINALIZATION

1. Decriminalization of Federal marihuana laws will place a huge and unfair amount of pressure on the States to also decriminalize their marihuana laws.

2. Marihuana use will increase if there is decriminalization of Federal marihuana laws.

3. The increased use of marihuana following decriminalization will result in the need for expensive and complicated health services.

4. There will eventually be a high price to pay for decisions not to prosecute violators of marihuana laws.

5. Decriminalization is just the first step toward eventual legalization.

6. If there is a decriminalization of Federal marihuana laws, it will be difficult to continue to request other countries to work to halt the growth and sale of marihuana.

7. Marihuana use has caused brain damage under laboratory research conditions. In 1971, a British research team led by Dr. A. M. G. Campbell found evidence of damage to parts of the brains of 19 young men who were heavy marihuana smokers.

8. Short-term studies indicate that marihuana, even in small amounts, disrupts cellular metabolism, which inhibits DNA, RNA, and protein synthesis.

9. Marihuana use could affect spermatogenesis, damage chromosomes, impair the reproductive functions, harm the central nervous system, and possibly damage the embryo in pregnant females.

10. Heavy marihuana use can cause bronchitis.

11. Marihuana is a dangerous drug for pre-adolescents.

12. Marihuana may be a steppingstone to heroin. In the environment and drug subculture that exists today, it is rare that any drug is used in an isolated manner. Marihuana use tends to promote experimentation with other drugs.

13. It is dangerous to work at a factory and to operate a vehicle or heavy machinery under the influence of marihuana, since its use distorts perception of time and space, and decreases the attention span.

14. The Jamaican study may show that use of marihuana may not affect workers doing manual labor, but it may affect a higher order of thinking.

15. The failure to discover medical dangers from marihuana use does not deny the existence of such dangers. It may only indicate that researchers have not looked at the right cases, at the right time and with the right techniques.

16. Criminal laws prohibiting the possession of small amounts of marihuana are a deterrent.

17. There is no one currently in jail in California due to an arrest for possession of one marihuana cigarette.

18. The argument that cities lack resources to apprehend all persons who violate marihuana laws is a myth since American cities only spend approximately 6 percent of their resources to combat vice and drugs.

19. Under decriminalization, there will be a tenfold increase in apprehended persons and a logistical problem to obtain sufficient personnel to hand out tickets, administer paperwork and issue warrants.

20. There would be a double standard and unequal enforcement of the law if there is decriminalization for possession of small amounts of marihuana while continuing the enforcement of felony statutes against those trafficking and selling marihuana.

21. Under decriminalization, the police could no longer use a suspicion of possession of small amounts of marihuana as a basis for probable cause, a procedure which often leads to the discovery of more serious crime.

22. Decriminalization would be the best of both worlds for organized crime.

23. A drastic increase in the number of marihuana seizures followed California's reduction of the penalties for the possession of small amounts of marihuana.

24. Under California's liberalized law, the sanction, even after four civil violations, is diversion from the criminal justice system to a rehabilitative program. Thus, except for payment of monetary fines, there is no real deterrent against possession of marihuana.

25. The minor civil penalties assessed in the decriminalized State of Oregon are meaningless since if violators do not pay the fine, the judge will likely divert the user to a rehabilitative program instead of imposing short jail terms for contempt.

SUMMARY OF THE OPINIONS OF PROPONENTS OF DECRIMINALIZATION

1. Nine States have decriminalized or reduced their marihuana laws and 33 States are considering similar action. Since Federal law is usually a model for State law, a continuation of Federal criminal penalties will inhibit States from changing their own laws.

2. Decriminalization of Federal laws will not significantly increase the use of marihuana.

3. In a survey conducted in California for the year after that State reduced the penalties for the possession of small amounts of marihuana, less than 3 percent of the current users were new users. Only one in eight of the new users indicated that the willingness to try marihuana was due to the reduction in penalties.

4. Marihuana usage in Oregon had not increased in 1974 or 1975 after decriminalization in October 1973. A study in 1976 indicated that usage had risen, but less than the average for other west coast States.

5. Marihuana, like any other psychoactive drug, can be used in moderation with no measurable ill effects by most people.

6. The National Commission on Marihuana and Drug Abuse (1972) spent \$1 million in its study of marihuana and did not find any serious medical problems resulting from use of the drug.

7. Studies that associate marihuana use with chromosome and genetic damage are suspect since they were based on an examination of

body cells rather than fetal abnormalities. In addition, the studies are retrospective, which make it impossible to separate the effects of marijuana from other factors. HEW's Sixth Annual Report indicates that there is currently no convincing clinical evidence that marijuana use causes significant chromosome damage.

8. The implication of cellular metabolism studies are still unknown. However, if marijuana usage inhibits DNA synthesis in human tumors in a manner similar to its effect in animal tumors, marijuana's potential as an anticancer drug will be researched.

9. The Campbell study which indicates that marijuana usage could cause brain damage is questionable. First, all of the patients had prior damage and were psychiatric patients. Second, there were no comparisons with psychiatric patients who did not use cannabis. Lastly, all had tried LSD, most had used amphetamines, and a few were heavy users of opiates, barbiturates, and tranquilizers.

10. In 1977, two American research teams found that, in contradiction to the 1971 Campbell study, heavy marijuana use does not injure brain tissue and does not have a toxic effect.

11. Marijuana use does not increase aggressive behavior.

12. Marijuana does not, unlike alcohol or cigarettes, cause death, even in extreme situations.

13. There is no evidence that marijuana is addicting, that it produces a susceptibility to heroin addiction, or that marijuana users tend to graduate to heroin.

14. In the Federal Government, there is a de facto decriminalization of Federal marijuana laws prohibiting possession of small amounts of marijuana since there is virtually no enforcement of these laws.

15. People lose respect for a law that is not enforced or is selectively enforced.

16. There is unequal application of law, a lack of justice and a profound inequity in a situation where 35 million Americans have violated the law by trying marijuana, 13 million Americans are currently using the drug and yet actual law enforcement may only be directed against a small percentage of the total users.

17. Public opinion polls indicate that a substantial majority of Americans believe that there should be no criminal penalties for personal use of marijuana. Present laws provide virtually no deterrence to usage of marijuana due to the very low probability of arrest and confinement.

18. The limited resources of the police are most effectively spent in the apprehension of persons involved in serious crimes rather than in a victimless crime such as marijuana possession.

19. Police agency costs to enforce marijuana possession laws against adult offenders declined in California following decriminalization, from an estimated \$7.6 million during the first 6 months of 1975 to \$2.3 million during the same period in 1976.

20. California, as the result of its drastic reduction in marijuana penalties, saved at least \$25 million in workload costs in 1976.

21. There are 400,000 persons arrested annually for violating marijuana laws, and there are approximately 200 persons in State and Federal prisons for possessing and/or sale of small amounts of marijuana.

22. The penalty for possession of small amounts of marihuana can be more detrimental to a person than any use of the drug. It is an exceedingly harsh penalty for a person to receive an arrest record if apprehended for possession of marihuana. The arrest record would prevent the person from obtaining jobs, licenses, etc.

23. Under decriminalization, the police could no longer use a suspicion of possession of small amounts of marihuana as a basis for probable cause. This is beneficial since there would be a decrease in invasions of privacy and searches of persons and residences.

CONCLUSION

The Select Committee undertook the examination of this issue because of great public interest which had been communicated to the committee by other Members of Congress, the news media, and the public at large. The committee does not make any conclusions or recommendations with respect to what Congress should or should not do regarding reduction of marihuana possession penalties. In accordance with its mandate under H. Res. 77, it has gathered this body of evidence and has presented it in its most objective form.

ADDENDA SUBMITTED BY CONGRESSMAN ROBIN L.
BEARD, JR.

Hon. LESTER L. WOLFF,
Chairman, Select Committee on Narcotics Abuse and Control,
Washington, D.C.

DEAR MR. CHAIRMAN: There are a few very minor addenda I would like to make to the report. The evaluation of a massive body of information such as was presented to your committee during its recent hearings is always a difficult task, and there are always bound to be some differences of opinion on the relative significance of various items of information. It is my personal belief, however, that the several items of information to which I refer in the attached memorandum do contribute to a better understanding of the problem, and that is why I would like to ask that the memorandum be printed as my personal addendum to the report.

With kindest regards.

Sincerely,

ROBIN BEARD,
Member of Congress.

Page 5, Point 3 states that "under the Act (the Controlled Substances Act of 1970), private possession of any controlled substance constitutes a misdemeanor, the first offense punishable by up to one year in jail, and or a fine of up to \$5,000." This is correct. However, the Controlled Substances Act also makes it possible for the judge, at his discretion, to place first offenders on probation for up to one year's time, with no criminal record, unless they violate the terms of their probation. It is my understanding that in the 40 or more States that have patterned their laws on the Controlled Substances Act of 1970, it has been an almost universal rule in recent years that first offenders have not been sent to prison, but instead have been given a warning, or, at the worst, have been placed on probation. It is a valid question whether youthful first offenders should be subjected to any kind of criminal arraignment or prosecution. However, for the sake of factual accuracy, I think it important to correct the impression conveyed by some of our witnesses that thousands of young people have been going to jail in recent years for the simple possession of a few joints of marihuana.

Page 5, Point 11 states: "Prior to passage of statewide decriminalization, California had a diversion program for individuals who possessed small amounts of marihuana. If the individual completed a drug education program and did not repeat the misdemeanor for a period of 2 years, the citation was expunged from the individual's record." It is my understanding from conversations with a number of people in the

field of law enforcement in California that the various diversion programs are far less effective than they were before California embarked on its present marihuana laws. The best known of the various California diversion programs prior to the new law, was the citation-diversion program which was pioneered in Sacramento in 1973-74. This program was very highly praised in the report by the San Francisco Barristers Association, which I am submitting together with this letter, and I would like to ask if this is possible, that it be printed as an appendix to the hearings. This program was so dramatically effective because it was backed up by the alternative of criminal prosecution if the arrestee did not elect to enter the diversion program. Confronted with this option, as the Barristers Association reported, 100 percent of the arrestees opted for citation-diversion. As things are today, the youthful arrestee is confronted with the option of paying the fine, or entering the diversion program; diversion becomes mandatory only on the fourth offense. Under these circumstances, I am informed, there has been a dramatic falling-off in the effectiveness of diversion programs in Sacramento, San Diego, and other cities. The lesson to be drawn from this is that, if there is to be an effective citation-diversion law, it has to be backed up by the possibility of criminal misdemeanor prosecution for repeat offenders.

Page 8-II-B reads: "According to Dr. Gabriel Nahas, marihuana use can cause chromosome damage. However, Dr. Nahas' testimony is disputed by HEW's Sixth Annual Report, Marihuana and Health, which indicates that 'overall, there is no convincing evidence at this time that marihuana use causes clinically significant chromosome damage' ". Obviously, any new evidence of medical damage by marihuana or any other drug has to be replicated a number of times by independent researchers before it can be considered confirmed. More often than not, the development of any such new evidence is accompanied by a period of controversy in the scientific community. There was, for example, a fierce controversy in the scientific community on the effect of cigarette smoking before the Surgeon General issued his findings. When HEW says, "overall, there is no convincing evidence at this time that marihuana causes clinically significant chromosome damage", this is not the same thing as saying that "Dr. Nahas is disputed by HEW's Sixth Annual Report". I believe it would be more accurate to say that HEW raised questions about the finality of this evidence. While Dr. Nahas' evidence may not be considered final, I think it is worth noting that the HEW report does refer to other researchers who have reported parallel evidence of chromosome damage.

Page 9, paragraph 3 reads: "Dr. Nahas further warned that short-term studies indicate that marihuana, even in small amounts, disrupts cellular metabolism inhibiting DNA, RNA and protein synthesis. HEW's Sixth Annual Report states that the implications of the cellular metabolism studies are still unknown. However, if the inhibition of DNA synthesis occurs in human as it does in animal tumors, the potential value of marihuana as an anticancer drug will be explored" The fact that THC reduces DNA, RNA and protein synthesis within the body cells is apparently accepted as confirmed by the HEW Report. The Report does suggest the possibility that this property might

conceivably endow marihuana with an antitumor capability in fighting cancer. But, even though all the implications may not be understood at this stage, it is self-evident that a serious reduction in DNA, RNA and protein synthesis in healthy cells and a consequent reduction in the rate of cell generation, could have serious implications for the health of the chronic user.

Page 10, Section E: This section, on "The Likelihood of Tolerance and Dependence" quotes Dr. Grinspoon only. Dr. Grinspoon is quoted as stating unequivocally that "cannabis is not physically addicting". In the interest of balance, I think it important to point out that Dr. Baird and several of the other witnesses seem to be convinced that a condition of dependency develops after chronic marihuana use. From my knowledge of the literature on the point, it appears that scientific opinion is also divided on the question of tolerance and dependence.

Page 17, paragraph 4 states: "It was reported that usage in Oregon had not increased in 1974 and 1975 following decriminalization in October of 1973." These statements were based on a survey conducted during the latter part of 1976 by the Drug Abuse Council. This survey did in fact report only a minor increase, percentage-wise, in the total number of adults who had ever used marihuana. However, this statement by itself is deceptive. A more careful examination of the report reveals that in the 18 to 29 year old age group—the age group with which we are most concerned because most adults over the age of 30 do not embark on careers as marihuana users—the number of those who had used marihuana increased from 46 percent to 62 percent. This represents an increase of some 35 percent in the age group most at risk. This, I submit, is a very substantial increase, which belies the assurance that decriminalization in Oregon has had no significant impact on the scale of use of marihuana. Further than this, I have been told by law enforcement officials in Oregon that whereas prior to decriminalization, marihuana seizures were relatively few and when they did occur, were limited to some pounds or tens of pounds of marihuana, today they are making many seizures of marihuana that range up into the multiton level.

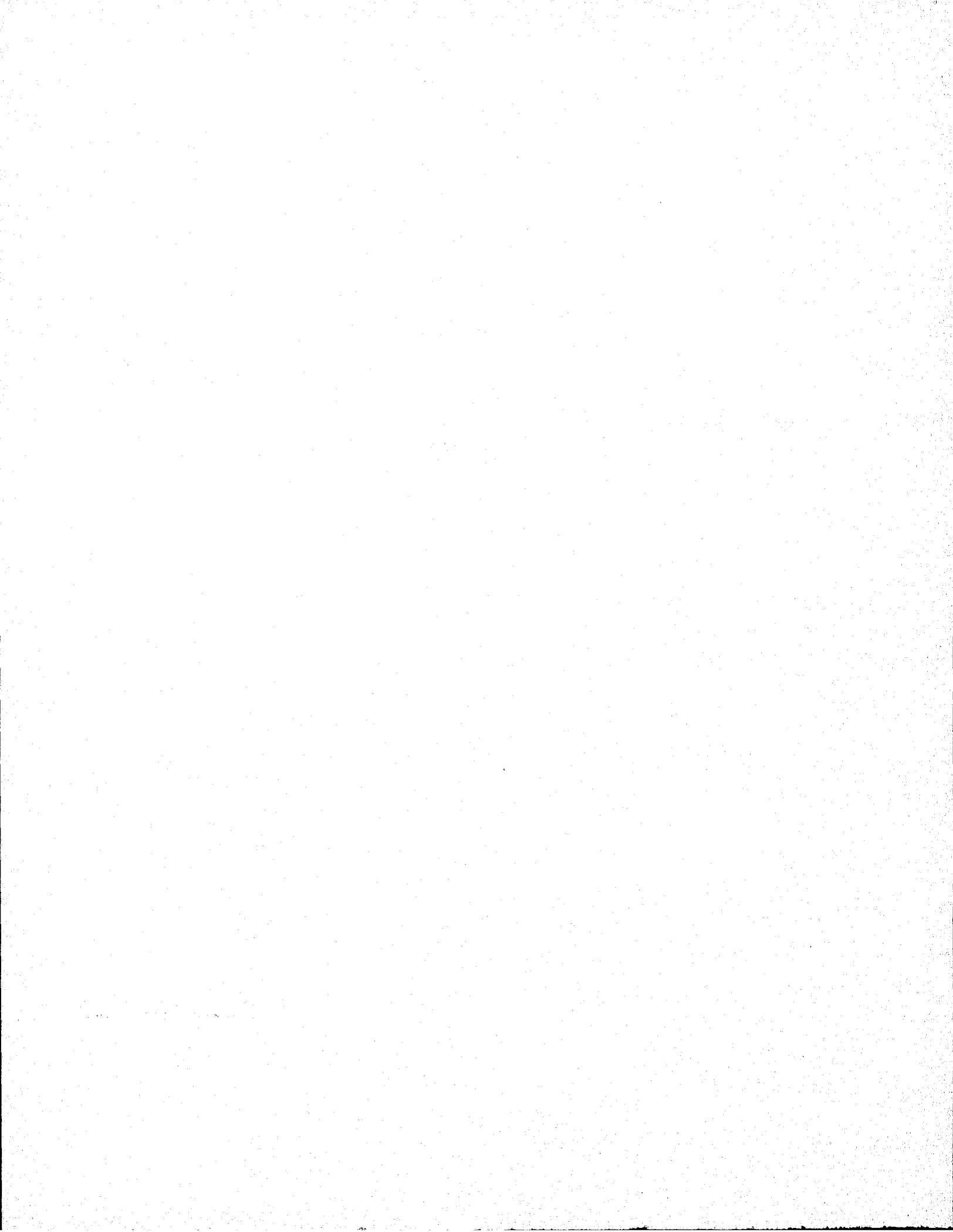
Page 22, Paragraph 1 states: "Dr. Robert DuPont, Director, NIDA, cited a 1975 national survey of American high school seniors which indicated that fear of criminal sanction was the reason for deterring only 3 percent of individuals from using marihuana, and only one-eighth of these persons stated a change in the law would cause them to experiment with marihuana." There is some confusion on this point because the information provided is incomplete. In his testimony before the Eastland Committee in May, 1975, Dr. DuPont pointed out that, among those who had once smoked marihuana but had stopped using it, fear of the law was given as the No. 1 reason for not smoking. This is borne out by the attached table, which Dr. DuPont provided for the appendix for the Eastland hearings. If it can be done, I would like to suggest that this table be included in the appendix of our own hearings, because I do believe it is pertinent to the matter under consideration.

Reasons for never using marijuana or for stopping use of marijuana

Reasons mentioned by those who have never used marijuana: ¹	Percent
"It's against my beliefs"-----	57.7
"Concerned about possible psychological damage"-----	51.5
"Concerned about getting arrested"-----	51.1
"Concerned about possible physical damage"-----	50.9
"It might lead to stronger drugs"-----	48.1
"My wife or girlfriend would disapprove"-----	41.2
"My parents would disapprove"-----	41.0
"Concerned about possible loss of control of myself"-----	38.7
"I don't like being with people who use it"-----	37.0
"Concerned about becoming addicted to marijuana"-----	32.9
"Concerned about loss of energy or ambition"-----	31.2
"My friends don't use it"-----	28.0
"Not enjoyable"-----	26.3
"I might have a bad trip"-----	22.0
"Hard to get"-----	3.6
Reasons mentioned by those who have used marijuana: ²	
"Concerned about getting arrested"-----	51.9
"My wife or girlfriend would disapprove"-----	37.9
"Not enjoyable"-----	33.2
"Concerned about possible psychological damage"-----	32.7
"Concerned about possible physical damage"-----	30.6
"My parents would disapprove"-----	30.1
"Concerned about loss of energy or ambition"-----	27.8
"It might lead to stronger drugs"-----	26.8
"Concerned about possible loss of control of myself"-----	22.8
"It's against my beliefs"-----	19.0
"I don't like being with the people who use it"-----	18.2
"Concerned about becoming addicted to marijuana"-----	17.1
"My friends don't use it"-----	10.1
"I might have a bad trip"-----	8.3
"Hard to get"-----	4.7

¹ Each percentage represents the portion who mentioned each specific reason for not using marijuana, based on the 488 members of the cross-time sample who mentioned at least one reason for not using marijuana and who are classified as never having used the drug.

² Each percentage represents the portion who mentioned each specific reason for not using marijuana, based on the 335 members of the cross-time sample who mentioned at least one reason for not using marijuana and who are classified as marijuana users on the cross-time index.



END