

5-1968

The Legalization of Marihuana: A Realistic Approach, Part I

Law Review Staff

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Food and Drug Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Law Review Staff, *The Legalization of Marihuana: A Realistic Approach, Part I*, 21 *Vanderbilt Law Review* 517 (1968)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol21/iss4/5>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

LEGISLATION

The Legalization of Marihuana: A Realistic Approach, Part I

*"Bhang and ganja in the Old World, marihuana in the New, will never be put down by all the propaganda against them, whether true or false. Exhilaration of spirit, the flights of pure imagination, the feeling of ascending as though one floated above reality, the freedom from serious aftereffects, and most of all the lack of permanent damage —it is these that make the extermination of hemp seem quite hopeless, even to those dedicated to that enterprise."*¹

I. INTRODUCTION

All present indications point to an increase in marihuana use throughout the United States.² Twenty-five years ago, the drug was found almost exclusively among the working class and minority groups,³ but the present trend has been toward increased use among people in the middle and upper income and social strata of society.⁴ As a result of this trend, the "marihuana problem" is gaining widespread prominence. More and more individuals, especially youth, are being subjected to the severe penalties associated with possession and use of marihuana. Not only are people becoming more aware

1. Taylor, *The Pleasant Assassin: The Study of Marihuana*, in *THE MARIHUANA PAPERS* 15 (D. Solomon ed. 1966).

2. A REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 213 (1967) (hereinafter cited as *PRESIDENT'S REPORT*), states: "To the limited extent that police activity is an accurate measure, use appears to be increasing. Bulk seizures of marihuana by Federal enforcement authorities totaled 5,641 kilograms in 1965 as against 1,871 kilograms in 1960. Bureau of Narcotics arrests for marihuana offenses about doubled over the same period of time." Dr. Stanley F. Yolles, director of the National Institute of Mental Health, testified that the United Nations estimated that in 1950 there were 200,000,000 users of marihuana in the world, mainly in India and in North Africa. Estimates in the United States have been as high as 20,000,000, but it is much more likely that of 4,000,000 to 5,000,000 persons have used it at least once. The National Observer Mar. 11, 1968, at 12, col. 3. See also Lindesmith, *Introduction to THE MARIHUANA PAPERS*, *supra* note 1, at xxiii; NEW YORK COUNTY MEDICAL SOCIETY REPORT, *The Dangerous Drug Problem*, 22 N.Y. Med. 241, No. 9, May 5, 1966 (hereinafter cited as *N.Y. C'TY MED. SOC'Y REPORT*); Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

3. LAGUARDIA REPORT, *THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK* 8-11 (1944) (hereinafter cited as *MAYOR'S REPORT*); Solomon, *Editor's Foreword to THE MARIHUANA PAPERS*, *supra* note 1, at xiv-xv.

4. Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*, in *TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE* 24 (1967) (hereinafter cited as *Blum, Dangerous Drugs*); *PRESIDENT'S REPORT*, *supra* note 2, at 213; Solomon, *supra* note 3, at xx; Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

of the legal punishments, but existing facts as to the effects of marihuana are being brought to public attention with greater frequency. Nevertheless, there remains a great gap between the known facts and risks and reputed facts and risks.⁵ As is the case with other dangerous drugs, existing knowledge concerning such matters as the effects of marihuana on the individual, the types of persons who use it, and the relationship of use to crime is confused and incomplete. There is, however, sufficient information to warrant, if not require, a review of the existing system of control.

Before making such a review, it must be recognized that the programs, laws and recommendations based on existing knowledge may be of little value unless they stem from an objective analysis based upon accepted medical knowledge rather than an emotional reaction stemming from misinformation. The purpose of this note is to present the realities of marihuana generally with the hope of dispelling some unfounded myths which have been created and accepted by the majority of the public; it will examine the current method of prohibiting the use of marihuana and will then present what is believed to be a more realistic approach to the problem.

II. MARIHUANA

A. *General Aspects*

Marihuana comes from the flowering tops of the leaves of the female hemp plant, *Cannabis indica*.⁶ The plant often is found growing wild, but it can be cultivated in any temperate or semi-tropical climate, including the United States.⁷ Producing bizarre psychic and physical effects in man when eaten, drunk, or smoked, cannabis or hashish⁸ is used extensively in Middle Asiatic, Eastern and Southern Mediterranean, and North African countries, especially Egypt.⁹ In the United States, the dried leaves are smoked in the

5. Blum, *Dangerous Drugs*, *supra* note 4, at 26.

6. *Cannabis sativa* L., *Cannabis indica*, and *Cannabis americana* are agreed to be the same plant, varying somewhat in size and appearance with climate and soil, but always producing an intoxicating principle. It is consumed in many ways and under many names in different parts of the world. Murphy, *The Cannabis Habit: A Review of Recent Psychiatric Literature*, 15 U.N. BULL. ON NARCOTICS No. 1, 15 (Jan.-Mar. 1963). Other names for cannabis or its products include hashish, charas, bhang, ganja, dagga, and marihuana. L. GOODMAN & A. GILMAN, *THE PHARMACOLOGICAL BASIS OF THERAPEUTICS* 299 (3d ed. 1965). (The terms marihuana and cannabis will be used interchangeably throughout the note.)

7. PRESIDENT'S REPORT, *supra* note 2, at 213.

8. A derivative of the hemp plant which is more potent than marihuana. It is rarely found in the United States. *Id.*

9. In these areas, the common practice is to take it orally as a liquid or solid. PROCEEDINGS, WHITE HOUSE CONFERENCE ON NARCOTIC AND DRUG ABUSE 286 (1962) (hereinafter cited as PROCEEDINGS).

form of a cigarette ("reefer"), occasionally mixed with tobacco. The user must employ a technique of slow and deep inhalation of the unpleasant, irritating smoke, followed by complete consumption of the cigarette, in order to achieve maximal vaporization and absorption of the resins.¹⁰ The psychic changes induced vary with the individual, his existing mood, and environmental conditions. The usual effects are hilarity and a general breakdown of emotional restraints, although occasionally the individual becomes quarrelsome. Distortion in perception of time and space is common, and auditory perceptions of a rhythmic nature are markedly accentuated, leading to rather extensive use among musicians.¹¹

Although there is some medical use for the drug in other parts of the world—especially in folk medicine—it is generally agreed that neither marihuana nor other cannabis preparations currently have any accepted medical use in the United States.¹² Despite the fact that marihuana is no longer classified as an "official drug," there is still some feeling that it might have medical value.¹³ The literature of the past decade frequently mentions possible effects other than intoxication.¹⁴ In a recent trial involving possession and sale of marihuana, Dr. Joel Fort, a respected psychiatrist and drug consultant who has worked at the Federal Narcotics Hospital in Lexington, Kentucky, testified that marihuana might be useful for some agitated persons, "in that the tensions they live under, the depression that they might suffer from, would be relieved or alleviated by a certain pattern of marihuana use."¹⁵ A pharmaceutical chemist also stated that marihuana might have therapeutic value in medicine.¹⁶ Although reports of these effects may not now be sufficiently convincing to justify the drug's use in modern medicine, it is clear that more research can and must be done, especially in light of the extremely low cost of marihuana and its potential value to the poor in many countries.¹⁷

10. *Id.*

11. For a description of the immediate physical and psychological effects of marihuana use see Taylor, *supra* note 1, at 14-15. For a more detailed description of the biological aspects of marihuana and the manner in which it is used see PRESIDENT'S REPORT, *supra* note 2, at 213; PROCEEDINGS, *supra* note 9, at 286; Solomon, *supra* note 3, at xiii; Taylor, *supra* note 1, at 3.

12. PRESIDENT'S REPORT, *supra* note 2, at 213; Blum, *Dangerous Drugs*, *supra* note 4, at 26; GOODMAN & GILMAN, *supra* note 6, at 300.

13. The World Health Organization Expert Committee on Addiction-Producing Drugs feels that although marihuana has no medicinal effect which outweighs its disadvantages or which cannot be substituted for, the drug does have medicinal properties other than that of intoxication. Murphy, *supra* note 6, at 20.

14. *Id.*

15. Wall Street Journal, Nov. 20, 1967, at 8, col. 3. It is possible that marihuana might provide a safe and necessary outlet (preferable to alcohol) for persons burdened with the ever-increasing tensions and problems of today's world.

16. *Id.*

17. Murphy, *supra* note 6, at 21.

B. *Is Marihuana a Narcotic?*

Although marihuana is treated as a narcotic under many state laws and in the same manner as "hard narcotics" by federal law, it is not a narcotic.¹⁸ In general, drugs liable to abuse are usually put into either of two classifications—"narcotics" or "dangerous drugs," and the people who abuse them are usually called "addicts" or "users."¹⁹ The terms have been used carelessly and without the precision necessary for objective analysis. The dictionary defines a narcotic as a substance which "allays sensibility, relieves pain, and produces profound sleep."²⁰ Its legal definition, however, does not refer to one class of drugs, each having similar chemical properties or pharmacological effects.²¹ Rather, the term is applied to a number of different classes of drugs which have been grouped together for purpose of legal control.²²

The most accurate definition of narcotic is limited to opium, its derivatives and synthesized analogs.²³ "Narcotics" as described by law or in popular speech, however, may include a number of drugs which are not opiates and which do not produce severe psychological effects upon withdrawal as do most, but not all, of the opiates.²⁴ So it is that "narcotics" statutes may also include marihuana, cocaine, hallucinogens, and other drugs pharmacologically dissimilar to opiates.²⁵ On the other hand, substances such as alcohol which are centrally active (central nervous system affecting) and do produce strong withdrawal effects may not be classified as narcotics.²⁶

The Subcommittee on Narcotics Addiction of the New York County Medical Society has called marihuana "a mild hallucinogen."²⁷ This

18. See N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241, discussed in PRESIDENT'S REPORT, *supra* note 2, at 224; Blum, *Dangerous Drugs*, *supra* note 4, at 22; Murphy, *supra* note 6, at 21.

19. PRESIDENT'S REPORT, *supra* note 2, at 211.

20. WEBSTER'S THIRD NEW INT'L DICTIONARY (1961).

21. PRESIDENT'S REPORT, *supra* note 2, at 212.

22. *Id.* It should be noted that all classifications of drugs based on presumed behavior outcomes or on legal status are inadequate and confusing. Blum, *Dangerous Drugs*, *supra* note 4, at 22.

23. Blum, *Mind-Altering Drugs and Dangerous Behavior: Narcotics*, in TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 40 (1967) (hereinafter cited as Blum, *Narcotics*). There is a large class of drugs, often referred to as psychoactive or psychotropic, which includes preparations classified as opiates, stimulants, sedatives, intoxicants, tranquilizers, antidepressants, and hallucinogens. Among these the term "narcotic" is most often applied to opium, its derivatives and synthetic analogs. Among intoxicants may be included alcohol, the volatile intoxicants such as some glues, gasoline, paint thinners, ether, etc., and in another class, cannabis-derived preparations such as marihuana. Blum, *Dangerous Drugs*, *supra* note 4, at 22.

24. Blum, *Narcotics*, *supra* note 23, at 40.

25. *Id.*

26. *Id.*

27. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. See also The National

characterization may not be completely accurate, however, in light of evidence that marihuana "seems more likely to produce intoxicating effects similar to alcohol" than hallucinations.²⁸ Although it is not this note's intention to classify marihuana, it is clear from the evidence presented that it does not fall within the medically accepted definition of narcotic. It is submitted that the drug should not be included within either the federal or state narcotic statutes.

C. *Extent of Use*

Although legalized supply of marihuana is allowed in only a few countries, its production and use is nearly worldwide.²⁹ In the United States the largest percentage of the marihuana comes from Mexico.³⁰ The consensus seems to be that its use is increasing³¹ and ranges from the young urban poor through disaffected "hippies," to artistic and university communities and young professional persons in metropolitan centers.³² Use appears to be concentrated in the 18 to 30 age group, but reports of both downward (high school) and upward (over 30) diffusion are appearing.³³ Dr. Richard H. Blum states that the "best estimate is that experimentation is far more common than regular use and that heavy use (as occurs in Africa and Asia) is quite rare."³⁴

There are reports of widespread use on campuses, but estimates that 20 to 50 percent or more of certain college populations have used the drug can neither be verified nor refuted.³⁵ Dr. Stanley F. Yolles, the director of the National Institute of Mental Health, testified that approximately 20 percent of the college students questioned

Observer, Mar. 11, 1968, at 12, col. 3.

28. Blum, *Dangerous Drugs*, *supra* note 4, at 22. "Both in the complexity of its effects and in more specific characteristics, cannabis is much closer to alcohol than to the opiates or to cocaine." Murphy, *supra* note 6, at 21. See also Rosenthal, *Dangerous Drug Legislation in the United States: Recommendations and Comments*, 45 TEXAS L. REV. 1037, 1047-48 (1967) (hereinafter cited as *Recommendations and Comments*).

29. Blum, *Dangerous Drugs*, *supra* note 4, at 24; Bouquet, *Cannabis* (Part II), 3 U.N. BULL. ON NARCOTICS No. 1, 38 (Jan. 1951).

30. The plant is cut, dried, and pulverized and then smuggled across the border, either loose or compressed in brick form. PRESIDENT'S REPORT, *supra* note 2, at 213; PROCEEDINGS, *supra* note 9, at 28-29.

31. See note 2 *supra* and accompanying text.

32. See note 4 *supra* and accompanying text. In contrast to marihuana use, heroin addiction on a large scale is an urban problem. Within the cities it is largely found in areas with low average incomes, poor housing, and high delinquency. The addict himself is likely to be male, between the ages of 21 and 30, poorly educated and unskilled, and a member of a disadvantaged ethnic minority group. PRESIDENT'S REPORT, *supra* note 2, at 212-13.

33. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

34. *Id.* See also N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241.

35. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241; PRESIDENT'S REPORT, *supra* note 2, at 213.

in recent surveys reported some experience with marihuana. It was estimated that about 2,000,000 high school and college students have had some experience with the drug, but of those students who reported using marihuana, 65 percent had used it less than 10 times, with "once or twice" the commonest response.³⁶ It would thus appear that the number of steady users of marihuana in our college population is small.³⁷

D. *Marihuana Myths*

Although marihuana is becoming a problem of national concern, there still is a great deal of misunderstanding regarding the actual facts and risks of marihuana use. Sufficient knowledge, however, exists to dispell the myths that exist. The major areas of confusion are summarized in the following questions: (1) Do marihuana users become physically addicted, as can users of heroin, morphine and alcohol? (2) Do users develop a psychological dependence on marihuana perhaps even harder to break than physical dependence? (3) Does it cause psychotic episodes or long-range personality changes? (4) Does marihuana cause violent crime and sexual excess? (5) Is marihuana a stepping stone to the more potent, addictive drugs?

III. EFFECTS OF MARIHUANA USE

A. *Addiction*

There appears to be no settled definition of addiction.³⁸ Most frequently it connotes physical dependence, resulting from excessive

36. The National Observer, Mar. 11, 1968, at 12, col. 2. A careful California study of 121 students showed that 14 (11%) reported marihuana experiences but the majority of these 11 percent had used it on only one or two occasions—and the study selected these students for their avowed interest in the psychedelic experience. N.Y. CITY MED. SOC'Y REPORT, *supra* note 2, at 241.

37. The important point in these facts is that "in contemporary America the employment of marihuana has ceased to be a subcultural affair limited to the underprivileged and the undereducated. It has become a custom that is rapidly expanding through the byways of the middle and upper classes. Today it is evident that the use of marihuana is rapidly spreading among the privileged and the literate, college student and professor alike, and finding warm and broadening acceptance by creative people of all ages in the arts, sciences, and professions who no longer wish to limit themselves to the psychologically numbing effects of alcoholic beverages." Solomon, *supra* note 3, at xx.

38. PRESIDENT'S REPORT, *supra* note 2, at 211-12. Sociologists speak of "assimilation into a special life style of drug taking." Doctors speak of "physical dependence," and alteration in the central nervous system that result in painful sickness when use of the drug is abruptly terminated; of "psychological or psychic dependence," an emotional desire, craving or compulsion to obtain and experience the drug. They speak of "tolerance," a physical adjustment to the drug that results in successive doses producing

use of certain drugs.³⁹ However, one can become physically dependent on substances, notably alcohol, that are not considered part of the drug abuse problem.⁴⁰ In addition, psychic or emotional dependence can develop to any substance, not only drugs, which affects consciousness and is used for escape, adjustment or simple pleasure.⁴¹

Despite the existing discrepancies between the medical and the legal definition of addiction,⁴² it is agreed that a general definition would include the following characteristics: (1) an overpowering desire or need to continue taking the drug and to obtain it by any means; (2) a tendency to increase the doses; (3) a psychic and generally a physical dependence on the effects of the drug; and (4) a detrimental effect both on the individual and on society.⁴³ Habituation, on the other hand, may be distinguished by the absence of true compulsion and physical dependence, little tendency to increase the dose, and use of the drug only for the pleasurable sensations it induces, not for relief of feelings of lack.⁴⁴ The obvious illustration of a habit-producing drug is alcohol.⁴⁵

Most studies indicate that in terms of the above definitions, cannabis is "habit-forming" rather than "addiction-producing."⁴⁶ The LaGuardia Report on *The Marihuana Problem in the City of New*

smaller effects and, therefore, a tendency to increase doses. Many statutes speak of habitual use; of loss of the power of self-control respecting the drug and of effects detrimental to the individual or potentially harmful to the public morals, safety, health or welfare. *Id.*

39. *Id.* at 212; Murphy, *supra* note 6, at 16-17. See also MAYOR'S REPORT, *supra* note 3, at 144-46.

40. PRESIDENT'S REPORT, *supra* note 2, at 212; Rosenthal, *Proposals for Dangerous Drug Legislation*, Appendix B, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 127 (1967) (hereinafter cited as *Proposals*).

41. PRESIDENT'S REPORT, *supra* note 2, at 212.

42. See note 38 *supra*.

43. Murphy, *supra* note 6, at 16-17. (emphasis added).

44. *Id.* at 17.

45. *Id.* See also MAYOR'S REPORT, *supra* note 3, at 144-46.

46. Murphy, *supra* note 6, at 17-22. All the information does not suggest that the drug itself induces dependency and addiction in its subject. However, it does offer an escape from the world, and for individuals whose personal inadequacy or social misery are great enough, the desire for such escape may lead to a rejection of life without the drug, which is indistinguishable from addiction. *Id.* at 18. See also Allentuck & Bowman, *The Psychiatric Aspects of Marihuana Intoxication*, 99 AM. J. PSYCHIATRY 248-51 (1942); Benabud, *Psychopathological Aspects of the Cannabis Situation in Morocco: Statistical Data for 1956*, 9 U.N. BULL. ON NARCOTICS No. 4, 9-10 (Oct.-Dec. 1957); Bouquet, *supra* note 29, at 35; G. S. Chopra & P. S. Chopra, *Studies on 300 Indian Drug Addicts with Special Reference to Psychosociological Aspects, Etiology and Treatment*, 17 U.N. BULL. ON NARCOTICS No. 2, 2 (April-June 1965) (hereinafter cited as *Studies*); I. C. Chopra & R. N. Chopra, *The Use of Cannabis Drugs in India*, 9 U.N. BULL. ON NARCOTICS No. 1, 26 (Jan.-Mar. 1957) (hereinafter cited as *Use in India*; Lindesmith, *The Marihuana Problem: Myth or Reality?* in THE MARIHUANA PAPERS, *supra* note 1, at 19 (hereinafter cited as *The Marihuana Problem*).

York concluded that true addiction to marihuana does not occur.⁴⁷ The evidence available at the time—the absence of any compelling urge to use the drug, the absence of any distressing abstinence symptoms, the statements that no increase in dosage is required to repeat the desired effect in users—justified the conclusion that neither true addiction nor tolerance is found in marihuana users.⁴⁸ The continuation and frequency of marihuana use, as in the case of many other habit-forming substances, depends upon controllable desires for its pleasurable effects.⁴⁹ The Report by the President's Commission on Law Enforcement and Administration of Justice states that although marihuana is equated in law with the opiates, the abuse characteristics of the two have almost nothing in common.⁵⁰ "The opiates produce physical dependence. Marihuana does not. A withdrawal sickness appears when use of the opiates is discontinued. No such symptoms are associated with marihuana. The desired dose of opiates tends to increase over time, but this is not true of marihuana.⁵¹ Both can lead to psychic dependence, but so can almost any substance that alters the state of consciousness."⁵² Dr. H. B. M. Murphy found after a review of recent psychiatric literature that the consensus was that cannabis is much closer to alcohol than to the opiates or to cocaine.⁵³

B. Physical Dependence

Even the strongest opponents of marihuana generally acknowledge that users do not become physically addicted.⁵⁴ The President's Report states that although nausea and vomiting may be among the immediate physiological effects, there are no lasting physical effects, and fatalities have not been noted. If tolerance develops at all, it is very slight and physical dependence does not occur.⁵⁵ Intrinsically, marihuana is less dangerous and less harmful to the human body than

47. MAYOR'S REPORT, *supra* note 3, at 144.

48. *Id.* at 146.

49. *Id.*

50. PRESIDENT'S REPORT, *supra* note 2, at 224.

51. A person experiencing pleasure with two marihuana cigarettes does not achieve any greater pleasure with six cigarettes. Allentuck & Bowman, *supra* note 46, at 249.

52. *Id.* Professor Blum's findings indicate that in the United States "neither cannabis psychosis nor cannabis dependency has been described, although marihuana may be one of a variety of drugs used in the multihabituation pattern, where a person takes many different drugs and appears dependent, but not on any one of them." Blum, *Dangerous Drugs*, *supra* note 4, at 24. (emphasis added).

53. Murphy, *supra* note 6, at 21. Allentuck & Bowman state that "[t]he psychic habituation to marihuana is not as strong as tobacco or alcohol." Allentuck & Bowman, *supra* note 40, at 249.

54. *Id.*; Bouquet, *supra* note 29, at 27; Chopra & Chopra, *Use in India*, *supra* note 46, at 19; Goodman & Gilman, *supra* note 6, at 301.

55. PRESIDENT'S REPORT, *supra* note 2, at 213.

is alcohol.⁵⁶ While the alcoholic commonly substitutes alcohol for food, marihuana stimulates the appetite.⁵⁷ Chronic alcoholism is associated with various psychotic conditions and diseases.⁵⁸ In comparison, the smoking of marihuana produces relatively trivial physical effects, although it does appear that immoderate use of the more concentrated products of the hemp plant may produce deleterious bodily effects.⁵⁹ Such effects, however, are not conspicuous among American reefer smokers because of the relatively small quantities of the essential drug which are ingested from the poor-quality marihuana ordinarily consumed in this country.⁶⁰

C. Psychological Effects

The psychiatric literature on cannabis smoking over the past 25 years is somewhat confused as regards the effects attributed to the drug. However, it is generally concluded that cannabis is habit-forming like alcohol and not addiction-producing like opium.⁶¹ Dr. Blum recognized that marihuana could lead to psychological dependence, but stated that cannabis dependency has not been described in the United States.⁶²

D. Marihuana Psychosis

Most investigators warn that it is exceedingly difficult to distinguish a psychosis due to marihuana from other acute or chronic psychoses.⁶³ The fact that marihuana is frequently used by the mentally unstable,⁶⁴ makes it difficult to ascertain whether marihuana was the primary

56. Chopra & Chopra, *Use in India*, *supra* note 46, at 19; Lindesmith, *The Marihuana Problem*, *supra* note 46, at 19. *See also* Allentuck & Bowman, *supra* note 46, at 249.

57. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 19; MAYOR'S REPORT, *supra* note 3, at 64.

58. Alcoholism is associated with Korsakoff's psychosis and cirrhosis of the liver. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 19.

59. *Id.* Chopra & Chopra, *Use in India*, *supra* note 46, at 19. *See also* Bouquet, *supra* note 29, at 27; MAYOR'S REPORT, *supra* note 3, at 64.

60. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 19. *See also* N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. The American marihuana smoker who inadvertently uses too much when he switches to the more potent ganja plant raised in Mexico and the West Indies is likely to experience nothing more alarming than going to sleep and waking up hungry. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 19-20.

61. *See* note 46 and text accompanying notes 46-53 *supra*.

62. *See* notes 52-53 *supra* and accompanying text.

63. Murphy, *supra* note 6, at 18-19; Chopra & Chopra, *Use in India*, *supra* note 46, at 24.

64. Murphy, *supra* note 6, at 19. "Like alcohol, it (marihuana) is alleged to carry no danger for the stable personality, but to attract the neurotic and psychopathic, who are also the people that tend to take the heavy doses." *Id.* at 21.

cause of insanity or whether indulgence in it was only secondary to the existing mental disorder.⁶⁵

Although studies in India⁶⁶ and North Africa⁶⁷ show that cannabis psychoses may occur in association with heavy use of potent forms of cannabis,⁶⁸ many writers suggest that cannabis is a relatively unimportant precipitating agent.⁶⁹ In a report by Dr. I. C. Chopra and Col. Sir R. N. Chopra on the use of cannabis in India, the authors concluded that:

the moderate use of these drugs does not lead to insanity in the majority of the individuals unless some predisposing factor is present. The will power and self-reliance of the addicts may be weakened, as is usually the case with drug habits, but the character and mental faculties of those taking small and moderate doses remain practically normal. The *social disfavor and boycott of the addicts* in certain parts of the country where the use of cannabis is not common makes it difficult for them to lead a normal life. The latter may bring about unfavorable changes in their character and gradual mental and moral deterioration, and *those who might have been otherwise law-abiding citizens may break the law*. In this way they become outcasts and idlers.⁷⁰

Other writers generally agree that a characteristic marihuana psychosis does not exist, and the drug will not produce a psychosis *de nova* in a well integrated, stable person. Dr. Murphy concluded that "evidence of chronic mental deterioration is difficult to obtain. In general the studies show no evidence of mental or physical deterioration."⁷¹ According to Dr. Blum cannabis psychosis has not been described in the United States,⁷² and in recent testimony, Dr. Joel Fort stated that he knew of no one who had been admitted to mental hospitals in this country "solely because of problems associated with marihuana."⁷³

65. Chopra & Chopra, *Use in India*, *supra* note 46, at 24.

66. *Id.* at 21.

67. Lambo, *Medical and Social Problems of Drug Addiction in West Africa*, 17 U.N. BULL. ON NARCOTICS No. 1, 9 (Jan.-Mar. 1965).

68. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

69. Murphy, *supra* note 6, at 18-19. See also Benabud, *supra* note 46, at 4.

70. Chopra & Chopra, *Use in India*, *supra* note 46, at 18-19. (Emphasis added). In commenting on the Chopra report, Professor Murphy stated that "although it is well established that cannabis use attracts the mentally unstable, the prevalence of major mental disorders among cannabis users appears to be little, if any, higher than that in the general population. Admittedly such data may contain some fallacies, but the techniques used by the Chopras in studying their habituees differed very little from those used in more modern mental health surveys. Therefore, it would appear that true cannabis psychosis must either be very rare indeed, or that it must be substituting for other forms of psychosis. Also, the data raised the question whether the use of cannabis may not be protecting some individuals from a psychosis." Murphy, *supra* note 6, at 19.

71. Murphy, *supra* note 6, at 19.

72. Blum, *Dangerous Drugs*, *supra* note 4, at 24.

73. Wall Street Journal; *supra* note 2, at 8, col. 3.

IV. MARIHUANA AND CRIME

Marihuana has long held the reputation of inciting individuals to commit sexual offenses and other antisocial acts.⁷⁴ The existing evidence, however, does not substantiate this claim.⁷⁵ Although proponents of the view that marihuana does not cause crime cannot conclusively prove their case,⁷⁶ they point to the prevailing lack of evidence to the contrary. Insofar as the use of marihuana is itself illicit, there can be no use of the drug without criminality. If, however, one considers crimes against person or property as opposed simply to violation of the law occurring because the drug is used, then the best evidence to date suggests that the marihuana-crime relationship depends upon "the kinds of persons who choose to use drugs, the kinds of persons one meets as a drug user, and on the life circumstances both before drug use and those developing afterward by virtue of the individual's own response and society's response to him."⁷⁷ In spite of popular beliefs to the contrary, one cannot assume that marihuana use leads inevitably to any particular type of social behavior, including criminality.⁷⁸

One hypothesis explaining the lack of evidence that marihuana is related to crime and violence is that, given the accepted tendency of marihuana to release inhibitions, the specific effect of the drug will depend on the individual and the circumstances.⁷⁹ Marihuana use results in an accentuation of all personality traits, both those harmful and those beneficial.⁸⁰ It does not impel its user to take spontaneous action, but may make his response to stimuli more emphatic than it normally would be.⁸¹ Thus marihuana does not alter the basic personality, but, by relaxing inhibitions may permit formerly suppressed antisocial tendencies to come to the fore.⁸² It does not itself give rise to antisocial behavior,⁸³ and the drug may, but certainly will not inevitably, lead to aggressive behavior or crime.⁸⁴

74. PROCEEDINGS, *supra* note 9, at 286.

75. Allentuck & Bowman, *supra* note 46, at 250; Blum, *Dangerous Drugs*, *supra* note 4, at 24-25; MAYOR'S REPORT, *supra* note 3, at 214; Murphy, *supra* note 6, at 16; N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241; Sagoe, *Narcotics Control in Ghana*, 18 U.N. BULL. ON NARCOTICS No. 2, 11 (April-June 1966).

76. *Id.*

77. Blum, *Dangerous Drugs*, *supra* note 4, at 23. See also Chopra & Chopra, *Use in India*, *supra* note 46, at 25.

78. *Id.*

79. PRESIDENT'S REPORT, *supra* note 2, at 225.

80. Allentuck & Bowman, *supra* note 46, at 250. See MAYOR'S REPORT, *supra* note 3, at 131-32.

81. *Id.*

82. Allentuck & Bowman, *supra* note 46, at 250. See also PRESIDENT'S REPORT, *supra* note 2, at 225.

83. *Id.*

84. PRESIDENT'S REPORT, *supra* note 2, at 225.

The person then, not the drug, is "responsible" for criminal acts.⁸⁵ When an already delinquent youth takes marihuana and commits yet another delinquent act, it may well be that the timing or expression of the delinquency is shaped by the drug-induced state of mind.⁸⁶ Generally, although the scientific evidence is not adequate, one would expect that the well-integrated person under heavy marihuana doses will not do things contrary to his ordinary conduct.⁸⁷ Less mature, more neurotic, or otherwise less well-integrated persons would seem to be more vulnerable to the acting-out of impulses, the temporary expressions of conflicts or the inducement by others to misbehave.⁸⁸ Thus, a review of crimes reportedly committed under the influence of marihuana must take note of the prior criminal and sociopsychological history of the offender.

The writers, especially within the medical community, agree that although aggressive behavior can occur, it is less common with cannabis than with alcohol. The drug does not per se induce criminal behavior, juvenile delinquency or sexual excitement.⁸⁹ Even Mr. Harry Anslinger, the head of the Bureau of Narcotics and the driving force behind the 1937 marihuana laws, drastically changed his earlier views on the relationship of marihuana to crime in the congressional hearings which led to the 1956 Narcotic Control Act. He played down the connection between marihuana use and crime, emphasizing instead that marihuana was dangerous primarily because it sometimes led to heroin addiction. He pointed out that marihuana is not an addicting drug and noted that marihuana users were not being counted in the Bureau's national survey of addiction.⁹⁰

Proponents of the view that marihuana is a major cause of crime and violence rely mainly on the hearings on the 1937 Act.⁹¹ It found that 125 of 450 men convicted of major crimes in 1930 were regular marihuana users. Approximately one-half were murderers and one-

85. Blum, *Dangerous Drugs*, *supra* note 4, at 28.

86. *See id.*

87. *Id.*

88. *Id.* Murphy, *supra* note 6, at 210.

89. Goodman & Gilman, *supra* note 6, at 300-01; Murphy, *supra* note 6, at 15-16. The report of the New York County Medical Society states that "there is no evidence that marihuana use is associated with crimes of violence in the United States." N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. In the Chopra Report, a study of the records of criminal cases in various jails and mental hospitals revealed that "in only a very few instances (1% to 2%) temporary or permanent mental derangement induced by cannabis drugs was directly responsible for a crime." Chopra & Chopra, *Use in India*, *supra* note 46, at 22. *See also* Bouquet, *supra* note 29, at 26; Bromberg, *Marihuana: A Psychiatric Study*, 113 J. AM. MED. ASS'N 4-12 (1939).

90. Lindesmith, *Introduction*, *supra* note 2, at xxiv.

91. *Hearings on Taxation of Marihuana Before the House Ways & Means Comm.*, 75th Cong., 1st Sess. 23-24 (1937), discussed in, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13 (1967).

fifth of those tried for larceny, robbery, and assault were regular users. Excerpts from files of law enforcement agencies were used to demonstrate a marihuana-crime casual relation. The validity of such a demonstration involves three assumptions which are questioned by opponents of the present law: (1) The defendant was a marihuana user. Usually this can be determined only by the defendant's own statement or by his possession of the drug at the time of arrest. (2) He was under the influence of marihuana when he committed the criminal act. Again a statement is most often the source of the information. Chemical tests of blood, urine, and the like will not detect marihuana. (3) The influence of the marihuana caused the crime in the sense that it would not have been committed otherwise.⁹²

Other writers have concluded from literature surveys and personal contact that the association between the use of marihuana and the commission of various crimes is clearly demonstrable.⁹³ Dr. James C. Munch bases such conclusions, in part, on a review of cases from law enforcement files where crimes of various types were apparently committed after use, and under influence of marihuana.⁹⁴ Commenting on this study, Professor Michael P. Rosenthal states that it is unclear whether in these cases the person charged was under the influence of the drug (and, if so, to what extent) at the time of the criminal act, or whether he was merely a user.⁹⁵ In either event it is extremely questionable whether such data throws light on the relationship between marihuana and crime, other than to show that: (a) some marihuana users, or (b) some marihuana users while under the influence of the drug, have committed some crimes. It does not tell us why they did so (*i.e.*, whether these persons would have been as likely to commit crime if they were not under the influence of the drug or were not users) or whether the estimated size of the group of marihuana users under the influence of the drug who do commit crime (other than the acquisition, use, and simple possession or disposition of marihuana itself) is significant or insignificant compared to the estimated size of the marihuana-using population.⁹⁶

With regard to the relationship of marihuana use to traffic accidents, sufficient data is lacking. One study in the United States, using a cannabis-like compound, suggested that motor performance was not

92. TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13 (1967). For a more detailed description of the passage of the Marihuana Tax Act see Lindesmith, *Introduction*, *supra* note 2, at xxiii-xxvi.

93. Munch, *Marihuana and Crime*, 18 U.N. BULL. ON NARCOTICS No. 2, 15-16 (April-June 1966).

94. *Id.*

95. Rosenthal, *Proposals*, *supra* note 40, at 127 n.440.

96. *Id.*

impaired but that the ability to shift attention was reduced.⁹⁷ Effects are no doubt related to dosage, but no driving studies based on varied dosages have been done.⁹⁸ The New York County Medical Society Report emphasized that marihuana users frequently have impaired judgment in certain areas, particularly in skilled activities such as driving.⁹⁹

V. MARIHUANA AS A STEPPING STONE TO ADDICTION DRUGS

It is a popular assumption that marihuana is a "stepping stone" to heroin in that it is a causal factor which predisposes a person to progress to heavy drug use.¹⁰⁰ With reference to the belief that marihuana leads to heroin use, three critical questions must be considered: (1) What proportion of marihuana users do not go on to heroin? (2) Is marihuana use an inevitable and necessary precondition of heroin use, that is, can it be shown (a) that all heroin users first took marihuana, (b) that such marihuana use is the only factor common to heroin users, and (c) that the presence of this common factor can be shown experimentally to be a determinant of heroin use?¹⁰¹ (3) Whether a marihuana user is more likely to go on to heroin than a non-marihuana user?

There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marihuana.¹⁰² This, however, does not mean that one leads to the other in the sense that marihuana has an intrinsic quality which creates heroin susceptibility.¹⁰³ There are too many marihuana users who do not graduate to heroin, and too many heroin addicts with no

97. Wendt, *Effects of Certain Drugs Used in Self Medication in Relation to Driving Performance and Traffic Hazards*, PROCEEDINGS OF THE SECOND HIGHWAY SAFETY RESEARCH CORRELATION CONFERENCE, April 5-6, 1954, discussed in, Blum, *Dangerous Drugs*, *supra* note 4, at 25.

98. *Id.*

99. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 241. See also The National Observer, Mar. 11, 1968, at 12, col. 3.

100. Blum, *Narcotics*, *supra* note 23, at 52-53.

101. *Id.* at 53. The results of such tests are, of course, negative. *Id.*

102. N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 242; PRESIDENT'S REPORT, *supra* note 2, at 225.

103. PRESIDENT'S REPORT, *supra* note 2, at 225. Blum points out that although case studies "suggest that many identified heroin users have had earlier experience with marihuana," they are also likely to have had even earlier illicit experience with cigarettes and alcohol. Blum, *Dangerous Drugs*, *supra* note 4, at 24. The Mayor's Report concluded that marihuana was neither a significant addiction producer itself, nor a serious channel to other addictions. MAYOR'S REPORT, *supra* note 2, at 25. Finally, the New York County Medical Society recognized in its report that it was true that over 50% of heroin users have had prior marihuana experience. However, among the hundreds of thousands of persons who have had one or a few marihuana experiences, "only a small number subsequently become heroin addicts." N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 242.

known prior marihuana use, to support such a theory.¹⁰⁴ Moreover, there is no scientific basis for such a theory. Dr. Louis S. Goodman and Dr. Alfred Gilman state quite explicitly that marihuana habituation does not lead to the use of heroin; the casual relationship between the two has never been substantiated.¹⁰⁵

Two reasonable hypotheses may explain the alleged relationship between marihuana and heroin. First, people who are predisposed to marihuana are also predisposed to heroin use.¹⁰⁶ Second, it may be that through the use of marihuana a person forms personal associations which later expose him to heroin.¹⁰⁷

VI. EXISTING LAW

A. History

In 1930—the year the Federal Bureau of Narcotics was established¹⁰⁸—only sixteen states had laws prohibiting the use of marihuana, and those statutes were generally mild and rarely enforced.¹⁰⁹ By 1937, largely as a result of almost eight years of persistent efforts by the Bureau, every state legislature had adopted a standard bill making marihuana illegal.¹¹⁰ With the passage of the Marihuana Tax Act in 1937, the plant's legal fate was effectively sealed; the Federal Bureau of Narcotics had created a "villainous *bête noir* out of whole cloth, which it then heroically proceeded to slay in a campaign that today seems more noteworthy for its zeal than for its principles."¹¹¹

104. PRESIDENT'S REPORT, *supra* note 2, at 225. Blum states that "[m]ost persons who experiment with marihuana do not try heroin, some heroin users even in slum cultures have not first tried marihuana, and among heroin users first trying marihuana a number of other common factors are also likely to be present. Among these may be experimentation with other illicit drugs reflecting a general pattern of drug interest and availability." Blum, *Narcotics*, *supra* note 23, at 53. See also Lindesmith, *The Marihuana Problem*, *supra* note 46, at 27; MAYOR'S REPORT, *supra* note 3, at 13; N.Y. C'TY MED. SOC'Y REPORT, *supra* note 2, at 242.

105. Goodman & Gilman, *supra* note 6, at 300. "There is no evidence to suggest that the continued use of marihuana is a stepping stone to the use of opiates." Allentuck & Bowman, *supra* note 46, at 250. "The truth of the matter . . . is that very few marihuana users go on to heroin, and very few alcohol users graduate to the use of heroin." Lindesmith, *The Marihuana Problem*, *supra* note 46, at 27.

106. PRESIDENT'S REPORT, *supra* note 2, at 225.

107. See Blum, *Narcotics*, *supra* note 23, at 53.

108. Under a recent reorganization plan the Bureau of Narcotics has been shifted from the Treasury Department to the Justice Department, N.Y. Times, Feb. 8, 1968, at 1, col. 1.

109. Solomon, *supra* note 3, at xv.

110. *Id.*

111. *Id.* at xv-xvi. For a detailed discussion of the history of the state and federal marihuana laws see *id.* at xiii-xvi; Lindesmith, *The Marihuana Problem*, *supra* note 46, at 23-27.

B. Federal Laws

1. *The Marihuana Tax Act.*—The Marihuana Tax Act was modeled after the Harrison Act.¹¹² It was designed to curb the use of marihuana by the use of federal police power, and, like the Harrison Act, imposed penalties upon both buyers and sellers. As stated, the objectives of the act were: (1) making marihuana dealings visible to public scrutiny; (2) raising revenue; and (3) rendering difficult the acquisition of marihuana for nonmedical purposes and noncommercial use.¹¹³ The Act was the result of a publicity campaign staged by the Federal Bureau of Narcotics under Mr. Harry Anslinger's direction and leadership.¹¹⁴ The bill was passed with little discussion and after brief hearings, on the ground that marihuana was a highly dangerous drug inciting its users to commit crimes of violence and often leading to insanity.¹¹⁵

At the federal level marihuana is controlled in a manner similar to heroin and other "hard narcotics." Federal control is maintained via the taxing power, and a transfer tax and an occupational tax are prescribed by the Marihuana Tax Act.¹¹⁶ The Act permits the Secretary of the Treasury or his delegate, to require registrants to render information returns, verified by affidavit, setting forth the quantity of marihuana received or harvested during "such period immediately preceding the demand of the Secretary . . . not exceeding 3 months."¹¹⁷ If the registrant is not solely a producer, he must set forth the persons from whom he received it and the date and quantity of each receipt.¹¹⁸ Most transfers¹¹⁹ are taxable and must be made pursuant to official written order.¹²⁰ The tax on transfers to registrants is one dollar an ounce;¹²¹ transfers to unregistered persons are taxed in the prohibitive amount of one hundred dollars an ounce.¹²²

112. 26 U.S.C. §§ 4701-36 (1964). The Act was passed by Congress in 1914 to control opium and its derivatives, including heroin and morphine.

113. PRESIDENT'S REPORT, *supra* note 2, at 224.

114. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 23.

115. *Id.* The public was told that marihuana was a "scourge" which undermined its victims and degraded them "mentally, morally and physically." It had a "corroding effect on the body and on the mind, weakening the entire physical system and often leading to insanity after prolonged use." H. ANSLINGER & W. TOMPKINS, *THE TRAFFIC IN NARCOTICS* 20-22 (1953).

116. 26 U.S.C. §§ 4741-62 (1964). The Act was originally passed in 1937. Act of Aug. 2, 1937, 50 Stat. 551. For a detailed description of the existing law, see PRESIDENT'S REPORT, *supra* note 2, at 213-14; Rosenthal, *Proposals*, *supra* note 40, at 128-29; Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1074-77.

117. 26 U.S.C. § 4754(a) (1964).

118. *Id.*

119. Exceptions are listed in 26 U.S.C. § 4742(b)(1)-(5) (1964).

120. 26 U.S.C. § 4742(a) (1964).

121. *Id.* § 4741(a)(1).

122. *Id.* § 4741(a)(2). A transferee must obtain an official written order form in

The Marihuana Tax Act prohibits interstate shipment, transportation, and delivery, but exempts from these prohibitions registrants who have paid the occupational tax and other enumerated classes of persons who are engaged in "legitimate" dealings.¹²³ It also prohibits persons required to register and pay the occupational tax from importing, manufacturing, producing, dealing in, compounding, prescribing, administering, dispersing, selling, or giving away marihuana without having registered and paid the tax.¹²⁴ Where a written order is required, the Act forbids transferors to make transfers without one,¹²⁵ and prohibits transferees required to pay the transfer tax from acquiring or otherwise obtaining the drug without having paid it.¹²⁶ Proof of possession combined with failure to produce a written order after reasonable notice and demand from the Bureau of Narcotics is "presumptive evidence of guilt" of unlawful possession.¹²⁷

2. *The Narcotic Drug Import and Export Act.*—The Narcotic Drug Import and Export Act prohibits knowing unlawful importation with intent to defraud the United States, and the receipt, concealment, purchase, or sale, or unlawful importation.¹²⁸ Unexplained possession of marihuana is "sufficient evidence to authorize conviction" under this section, just as it is in the case of the Marihuana Tax Act.¹²⁹

3. *Federal Penalties.*—Penalties under the federal marihuana laws are the same as for violations involving narcotics, and they are harsh.¹³⁰ Particularly long sentences are prescribed for sales to juveniles.¹³¹ In 1951, following the post-World War II upsurge in reported addiction, mandatory minimum sentences were introduced for all narcotic and marihuana offenses.¹³² In addition—as in the case of

triplicate from the Bureau of Narcotics. *Id.* § 4742(a). The original is to be given by the transferee to his transferor, and the transferee and the Bureau each keep a copy. *Id.* § 4742(d). Both the original and the transferee's copy are to be retained and made available for inspection for two years. *Id.* The written order requirement is inapplicable to transfers by registered practitioners to patients "in the course of . . . professional practice only," but the practitioner must maintain records of each transfer and keep them available for inspection for two years. *Id.* § 4742(b)(1). Similarly, transfers "made in good faith" pursuant to written prescription must be retained for inspection for two years. *Id.* § 4742(b)(2).

123. *Id.* § 4755(b).

124. *Id.* § 4755(a).

125. *Id.* § 4742(a).

126. *Id.* § 4744(a).

127. *Id.*

128. 21 U.S.C. § 176(a) (1964).

129. *Id.* § 174.

130. 26 U.S.C. § 7237 (1964). The present federal narcotics and marihuana laws equate the two drugs. An offender whose crime is sale of a marihuana reefer is subject to the same term of imprisonment as the peddler selling heroin. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 42.

131. 26 U.S.C. § 7237(b).

132. Boggs Act of 1951, 65 Stat. 767. United States drug control policies have

narcotics—probation, suspended sentence,¹³³ and young adult treatment¹³⁴ were unavailable for violations of the illegal importation and written-order provisions. Under a law enacted in November, 1966, violators of the federal marihuana laws were made eligible for parole.¹³⁵ Previously, violators of the illegal-importation and written order provisions were ineligible for parole,¹³⁶ and violators of other provisions were not eligible for parole for any offense after the first offense.¹³⁷

C. State Laws

Marihuana is included as a narcotic under the Uniform Narcotic Drug Act,¹³⁸ which is, either in whole or in part, the basis of narcotics regulation in forty-eight states.¹³⁹ Simple possession is prohibited in virtually every state, and some states also prohibit use. State penalties for marihuana violations are frequently severe,¹⁴⁰ as the statutes often make no distinction between penalties for marihuana and hard narcotics violations.

traditionally been built around two judgments: (1) that drug abuse was an evil to be suppressed; and (2) that this could most effectively be done by the application of criminal enforcement and penal sanctions. As a result, the one traditional response to an increase in drug abuse has been to increase the penalties for drug offenses. The premise has been that the more certain and severe the punishment, the more it would serve as a deterrent. Typically this response has taken the form of mandatory minimum terms of imprisonment, increasing in severity with repeated offenses, and provisions making the drug offender ineligible for suspension of sentence, probation, and parole. PRESIDENT'S REPORT, *supra* note 2, at 222-23. The mandatory minimum sentences were originally 2 years for the first offense, 5 years for the second, and 10 years for the third and subsequent offenses. In 1956 the mandatory minimum sentences were raised to 5 years for the first and 10 years for the second and subsequent offenses of unlawful sale and importation. They remained at 2, 5 and 10 years for the offense of unlawful possession. *Id.* at 223; 26 U.S.C. § 7237 (1964).

133. 26 U.S.C. § 7237(d)(1) (1964).

134. Pub. L. No. 85-752, § 7, 72 Stat. 845 (1958). In the case of other violations, they are not available after the first offense. 26 U.S.C. § 7237(d)(2); Pub. L. No. 85-752, § 7, 72 Stat. 847 (1958).

135. Pub. L. No. 89-793, § 502, 80 Stat. 1449 (1966). The President's 1963 Advisory Commission on Narcotic and Drug Abuse recommended that the sentencing of the petty marihuana offender should be left entirely to the *discretion* of the federal courts. There should be no mandatory minimum penalties for marihuana offenders and no prohibition of probation and parole. The Commission is opposed to mandatory minimum sentences even in the case of multiple offenders. PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 42. (Emphasis added).

136. 26 U.S.C. § 7237(d)(1) (1964).

137. *Id.* § 7237(d)(2) (1964).

138. See 9B UNIFORM LAWS ANNOTATED 415 (1966).

139. Rosenthal, *Proposals*, *supra* note 40, at 128-29. The exceptions are California and Pennsylvania. Legislation in some states is only in part based on the Act. Also, there have been varying amendments in a number of other states. Consequently, the law in those states having legislation based on the Act is not entirely uniform. *Id.* at 129 n.479.

140. *E.g.*, ALA. CODE tit. 22, § 258 (1958) (possession and sale: first offense, 5 to 20

D. Evaluation

Despite its objectives, the Marihuana Tax Act raises a small amount of revenue and exposes an insignificant number of marihuana transactions to public view, since only a handful of people are registered under the Act.¹⁴¹ It has become, in effect, solely a criminal law imposing sanctions upon persons who sell, acquire, or possess marihuana.¹⁴² Even in this respect the law has not been very successful.¹⁴³ In spite of legal controls, marihuana is said to be obtainable in most metropolitan centers in the United States.¹⁴⁴ The penalty has clearly not prevented the recent upsurge in use, and to what extent controls have reduced use cannot be said.¹⁴⁵

The complex pattern of offenses under the federal marihuana laws also has created a special sentencing problem¹⁴⁶ in that a single sale of marihuana may violate several statutory provisions. It may constitute concurrently a violation of the prohibition of the Narcotic Drugs Import and Export Act against trafficking in illegally imported narcotics,¹⁴⁷ a failure to comply with the requirement of the Marihuana Tax Act that a transfer of narcotic drugs be made pursuant to a written order on the prescribed Treasury form,¹⁴⁸ and a failure to comply with the requirement of the Marihuana Tax Act that narcotic drugs shall be sold in or from the original package containing the requisite tax stamps.¹⁴⁹ If there is a verdict of guilt on several counts, separate sentences may be imposed upon each, the result being a cumulative sentence considerably more severe than the total marihuana transaction warrants.

The effect of the introduction of mandatory minimum penalties can be determined to a certain extent. First, in spite of the application of

years and not more than \$20,000; subsequent offenses, 10 to 40 years and not more than \$20,000); IND. ANN. STAT. § 10-3538 (Supp. 1966) (Sale: first offense, 5 to 20 years and not more than \$2,000; subsequent offenses, 20 years to life and not more than \$5,000. Possession: first offense, 2 to 10 years and not more than \$1,000; subsequent offenses, 5 to 20 years and not more than \$2,000); PA. STAT. ANN. tit. 35, § 780-20(c), (d) (1964) (Possession: first offense, 2 to 5 years and not more than \$2,000; second offense, 5 to 10 years and not more than \$5,000; subsequent offenses, 10 to 30 years and not more than \$7,500. Sale: first offense, 5 to 20 years and not more than \$5,000; second offense, 10 to 30 years and not more than \$15,000; subsequent offenses, maximum of life imprisonment and not more than \$30,000). For a complete summary of state penalties for narcotics violations see W. ELDRIDGE, *NARCOTICS AND THE LAW*, 177-225 (2d ed. 1967).

141. PRESIDENT'S REPORT, *supra* note 2, at 224.

142. *Id.*

143. See note 2 *supra* and accompanying text.

144. Blum, *Dangerous Drugs*, *supra* note 4, at 25.

145. *Id.*

146. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTICS AND DRUG ABUSE 42-43.

147. 21 U.S.C. § 176(a) (1964).

148. 26 U.S.C. § 4742(a).

149. *Id.* § 4771(b).

such sanctions to marihuana, the traffic in that drug appears to be increasing.¹⁵⁰ Second, there has been a substantial increase in the percentage of the federal prison population serving sentences for narcotic and marihuana offenses.¹⁵¹ Third, these sentencing provisions have deprived the federal courts of almost all discretion in sentencing.¹⁵² Fourth, they have made rehabilitation of the convicted narcotic offender much more difficult.¹⁵³ The Bureau of Narcotics maintains that the present severe penalties act as a powerful deterrent.¹⁵⁴ This conclusion appears doubtful in light of the fact that the illicit traffic in marihuana seems to be continuing and even increasing.

VII. RECOMMENDATIONS

A. Education

There is convincing evidence that a critical need exists for an extensive and enlightened educational effort on marihuana use and,

150. PRESIDENT'S REPORT, *supra* note 2, at 223. See also note 2 *supra* and accompanying text.

151. At the close of fiscal 1965 there were 3,998 drug-law violators confined in all federal institutions. This number represented 17.9% of all persons confined. The average sentence being served by the drug-law violators was 87.6 months, and 75.5% of them were ineligible for parole. These figures compare with the 2,017 drug-law violators confined at the close of fiscal 1950, comprising 11.2% of all persons confined at that time. The 1950 violators were all eligible for parole, and while average sentence data is not available for that year, it would be safe to estimate that sentences averaged much less than one-half of 87.6 months. PRESIDENT'S REPORT, *supra* note 2, at 223.

152. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40. The Senate Subcommittee on Juvenile Delinquency, in a joint project with the Subcommittee on National Penitentiaries, sent a questionnaire to federal district judges, federal chief probation officers, federal prison authorities, and United States Attorneys, inquiring into the effects of the mandatory minimum sentence provisions, and the elimination of probation and parole in the handling of narcotic offenders. The answers to this questionnaire, digested and broken down, are as follows: (1) Of federal prison wardens, 92% were opposed to the mandatory minimum sentence provisions; 97% were opposed to the prohibition of probation or parole. (2) Of the federal district judges responding to the questionnaire, 73% opposed the mandatory minimum sentence provisions and 86% opposed the prohibition of probation or parole. (3) Of the probation officers who responded, 83% opposed the mandatory minimum sentence provisions and 86% opposed the prohibition of probation or parole. (4) Of the United States District Attorneys who responded, a group which understandably is predisposed toward more rigid punitive statutes, 50% opposed the mandatory minimum sentence provisions and 55% opposed the prohibition of probation or parole. The overall figures for the survey showed that approximately 75% of all those who responded, people who deal with the Narcotics Control Act of 1956 from day to day, oppose the two basic provisions of the act and seek their modification. PROCEEDINGS, *supra* note 9, at 230.

153. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40. This situation may have improved in regard to marihuana violators after enactment of the federal law making violators of marihuana laws eligible for parole. See notes 134 & 137 *supra* and accompanying text.

154. PRESIDENT'S 1963 ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE 40.

more generally, drug abuse. The problem areas are still clouded by misconceptions and misinformation about the perils of marihuana and the viciousness of the pusher.

Educational and legal efforts should reflect a rational policy, and that program should be based on the facts in order to make the public aware of the effects of marihuana. Since physicians, lawyers, social workers, and educators are frequently uninformed, an education program for professional personnel whose activities touch upon some aspect of this problem is likewise in urgent need. Finally, the program should also be directed toward the teenager, who should be made conscious of the full range of effects—physical and psychological—which marihuana, narcotics and other dangerous drugs can produce. It is believed that the best approach on this level would be a candid analysis of the problem by competent individuals in our schools.

To educate successfully, a variety of materials is needed. They should extend from suitable publications in professional journals to those designed for the mass media, ranging from books and articles to tapes and films. The federal and state governments must play an important role in this educational process from the standpoint of supplying facilities and providing financial resources.¹⁵⁵

B. Research

Under the present system of prohibition it is difficult to obtain marihuana for research purposes.¹⁵⁶ While federal funds are available to finance worthwhile research projects,¹⁵⁷ there do not appear to be sufficient researchers or research organizations willing and able to carry them out. The broad policy of a general research program should be to increase research done on the private level and that done by organizations. In the former instance, the increase in the ease of access to drugs would provide added incentive to the individual scientist. In the latter case, an affirmative approach must be taken to encourage programs directed at filling the gaps in our present knowledge. The traditional approach of those administering federal research funds has been to wait for a researcher or research

155. For an extensive discussion of this problem see *id.* at 17-20.

156. Blum, *Narcotics*, *supra* note 23, at 65.

157. The National Institute of Mental Health granted more than \$145,000 in the fiscal year ended June 30, 1967 for private research programs to determine in detail the chemical nature of the drug, its physical and psychological effects and the incidence of its use. In its 1968 budget, the Department of Health, Education and Welfare has asked Congress for \$1 million to establish an information and education center on narcotics and dangerous drugs, including marihuana. The center was recommended by President Johnson in his report to Congress on the findings of the national crime commission in February. *N.Y. Times*, Aug. 13, 1967, § 1, at 46, col. 1.

organization to initiate a project proposal.¹⁵⁸ This process should be reversed, with the federal government becoming more active in encouraging and assisting researchers and research organizations to undertake desired projects. It may also be valuable to assist in the enlargement of existing, and the establishment of new research centers dealing with drug abuse at universities and hospitals. Colleges and universities should bear a portion of the responsibility for further development of our knowledge of drug abuse since their resources encompass all techniques used in research on drug abuse. The research efforts of the government should be meshed where possible with the formal educational program of the nation.¹⁵⁹

C. Legal Control

1. *Legislative Approach.*—A general revision of the criminal law pertaining to marihuana must be undertaken. Further lawmaking in this regard should consider two key issues: (1) A law which is not based on facts and which has an unknown effect as far as control is concerned is not likely to solve real problems associated with marihuana use. (2) The apparent satisfaction produced by passing a criminal law directed at marihuana users must have some social function. It must do more than merely alleviate public anxiety or single out for punishment someone who represents what the public thinks is a social menace.¹⁶⁰

New legislation cannot be expected to satisfy everyone, nor should it attempt to do so; but it must find its basis in the correction of current inconsistencies, in the anticipation of known effects, and in meeting standards of economy, humanity, and good sense. Similarly, any effort to modify present programs by developing new social policy must expect to follow the traditional American legislative process of: (a) generating pressure for change; (b) participating in the debate over those changes; and (c) compromising the interests of important existing groups affected by the policy.¹⁶¹ In this light, this note's proposal is not designed with the idea that it would be a political compromise which might be subject to immediate acceptance by the general public; rather, it is an approach which probably finds its support within a minority of the public at the present time.

2. *Legalization of Marihuana.*—It is submitted that neither distribution nor possession with intent to distribute, nor simple possession, use or acquisition of marihuana should be treated criminally. Although

158. *Supra* note 152, at 27.

159. For an extensive discussion of this problem see *id.* at 21-30.

160. Blum, *Dangerous Drugs*, *supra* note 4, at 32.

161. Blum, *Drugs, Dangerous Behavior, and Social Policy*, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 69 (1967).

specific statutory recommendations will be suggested in Part II, it is appropriate to mention here a few general factors which must be considered. First, the legalization of marihuana will not be an easy task. The problems and issues involved are very complex and must be examined with care under the guidance of experts from both the medical and legal professions if a viable statute is to be enacted. Second, legalization will serve no purpose unless it gives, with certain limitations, those who desire to use marihuana the opportunity to obtain it. Certainly, complete legalization without restrictions should not be permitted, but by placing a heavy tax on the drug or by severely limiting the age of the consumer and the amount available, the legislatures will only perpetuate, under the guise of legalization, the evils inherent in the present system of regulation. An approach somewhat similar to that taken with alcohol is envisioned with a number of additional restrictions.¹⁶²

3. *Other Recommendations.*—Other writers have already recommended partial legalization, *i.e.*, that simple possession, use and acquisition no longer be punishable, but that the prohibition on the distribution of marihuana or possession with intent to distribute be maintained. Professor Rosenthal¹⁶³ has recommended that marihuana be regulated like any other dangerous drug, rather than like narcotics. At the federal level he would include it under the Drug Abuse Control Amendments where “neither simple possession, use, nor acquisition would be punishable.”¹⁶⁴ He feels that if the drug is not to be included under the Drug Abuse Control Amendments, “federal law should prohibit possession of the drug with a purpose to sell or otherwise dispose of it, and section 4744(a) . . . should be repealed.”¹⁶⁵ Dr. James L. Goddard, Food and Drug Administration Commissioner, appears to have taken a similar position. In a confidential memorandum recently circulated among top Health, Education and Welfare officials over the signature of Dr. Goddard, it was recommended that “legal penalties for possession of marihuana when it is intended for personal use only” should be removed.¹⁶⁶ Finally, Dr. Alfred R. Lindesmith, commenting on the President’s Advisory Commission’s position that because of the relatively trivial nature of the marihuana

162. Limitations might include restricting the age of the consumer, the process and quality of production and the method of distribution and advertisement. The scope of this note does not permit a more detailed analysis of specific proposals in this area.

163. Author of *Proposals for Dangerous Drug Legislation*, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 80 (1967).

164. Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1088.

165. *Id.* at 1120. Section 4744(a) of the U.S.C. prohibits obtaining or otherwise acquiring the drug without paying the transfer tax. Proof of possession coupled with failure after reasonable demand to produce a written order is “presumptive evidence of guilt.”

166. Wall Street Journal, Nov. 20, 1967, at 1, col. 1.

evil all mandatory sentences should be eliminated for crimes involving marihuana, stated:

These suggestions are excessively timid and not entirely logical for there is no reason why a mere user of marihuana should be subjected to a jail sentence at all. The marihuana user probably ought to be dealt with by the law along the same lines that are used with persons who drink alcohol.¹⁶⁷

The recommendation that simple possession, use and acquisition not be punished has three objectives: (1) The recommendation would eliminate the unreasonably harsh treatment to which the user is presently subjected. (2) It would permit federal and state control over the use of the drug. (3) It would permit the government to punish the pusher who is probably anxious to encourage users to progress to truly addiction-producing drugs.¹⁶⁸ Partial legalization would, however, tend to increase the use of marihuana but not permit this increased use to be supplied by legitimate distributors. As a result, the user-pusher contacts will be increased, probably leading to increased crime and increased heroin use, as the pusher would not be content to limit his sales to marihuana.¹⁶⁹

4. *Reasons for Legalization.*—In light of our present knowledge regarding marihuana and the objectives which the above approach is designed to achieve, there is no logical reason why only a half step should be taken by legalizing use and prohibiting distribution. It is no longer believed that the dangers of marihuana support the current narcotic-like system of prohibition. Marihuana is not only less dangerous than the "hard narcotics" but is in many respects less dangerous than those drugs regulated under the Drug Abuse Control Amendments.¹⁷⁰ If the dangers of marihuana do not support the criminal treatment of the user solely for his use, it is submitted that they do not support the punishment of the distributor.

It is agreed that use does not lead to physical dependence, and that marihuana psychosis does not exist in the United States. The latter occurs, if at all, among those who have used large amounts of the highly potent derivatives of cannabis for a long period of time, and there are few such users in the United States.¹⁷¹ There is

167. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 31.

168. *See* note 169 *infra* and accompanying text.

169. This is true because (1) marihuana is not addiction-producing and (2) tolerance is not a result of marihuana use, as the user can always achieve the same result with the same dosage.

170. Rosenthal, *Recommendations and Comments*, *supra* note 28, at 1118.

171. The legislatures must address themselves not only to the quality and quantity of the drug which should be sold, but also to the derivative of the drug used from the standpoint of potency.

also no reliable evidence that marihuana causes crime. The present evidence tending to support this view is not nearly sufficient to warrant the present prohibitions. Despite the number of heroin addicts who have had marihuana experience, apparently relatively few persons who have used marihuana become heroin addicts. In addition, making marihuana available would increase the amount of research done in this area and might produce beneficial results.

Finally, it is questionable whether the current narcotic-like system of regulation is any more effective in controlling marihuana traffic than the system of regulation embodied in the recommendation that marihuana be legalized and controlled. Legalization would undoubtedly increase use; but in light of existing knowledge and the regulation which could be maintained, it is likely that society would benefit in the long run from such an approach. Government-regulated distribution would probably eliminate a great deal of the user-pusher contact which at present appears to be a major factor in the marihuana-crime, marihuana-heroin relations.¹⁷² It would also eliminate the severe social and legal treatment of the marihuana user which in many cases is a factor which causes persons who might otherwise have been law-abiding citizens to become hardened criminals.¹⁷³ This factor becomes more significant when it is noted that young adults make up a major part of the marihuana using population today.

5. *Opposition to Complete Legalization.*—Admittedly, there would be opposition to the permissive position of total legalization. The more conservative reformer can call attention to the fact that, outside of a few Asian and African countries, the use of this substance is everywhere subject to legal restrictions. It is possible that legal sanctions exercise some deterrent effect and that without them the use of this drug might spread even more rapidly and assume more virulent forms. Should the use of marihuana become as widespread as that of alcohol, it might be too late to talk of effective restrictions, since the users would command too many votes. In addition a legal marihuana industry which advertised its product and sought to improve it through research and experimentation could be embarrassing to the nation as a whole, as well as a direct economic threat to the alcoholic beverage industries and possibly to the tobacco industry. A final and decisive argument seems to be that public opinion is not likely in the foreseeable future to accept indulgence in marihuana as an equivalent of, or substitute for, indulgence in alcohol.¹⁷⁴

It appears that the legalization of marihuana under regulation can meet all the above objections and achieve the desired goals of partial

172. See notes 77, 106 & 107 *supra* and accompanying text.

173. See note 70 *supra* and accompanying text.

174. Lindesmith, *The Marihuana Problem*, *supra* note 46, at 32.

legalization. First, it is much more realistic to regulate the distribution of marihuana by federal and state control, rather than by prohibiting distribution. Second, and probably most importantly, legalization would eliminate the pusher from the picture, since the user would be able to obtain marihuana from a government distributor or some other licensed seller. Assuming marihuana is not a predisposing principle which causes the user to progress to heroin, the legalization of marihuana would thus reduce the number of heroin users. The government could insure that the licensed distributors would not also be selling addiction-producing drugs, and if marihuana sale were legal, the distributor who was making a profit from his sales would not be tempted to sell other drugs, because such sales would place him under the constant threat of loss of license. Third, the recommendation which advocates the elimination of penalties for simple possession, use, and acquisition has implicit in it the proposition that the use of marihuana is not harmful, in which case there is no valid reason for prohibiting the distribution of marihuana.

As for the other objections to legalization, there appears to be no sufficient basis for rejecting such a move. The fact that almost all of the other countries have disapproved of and subjected marihuana to legal restrictions should not prevent the United States from taking this step. General disapproval of the use of marihuana does not mean that the preventive approach is the correct manner in which to treat the problem, or that the United States should follow the pattern set by other countries. The United States has recently signed a treaty requiring the prohibition of marihuana.¹⁷⁵ Although this action re-

175. The Senate on May 8, 1967, consented to the multilateral Single Convention on Narcotic Drugs, 19 CONG. Q. WEEKLY REP. 782 (May 12, 1967). The treaty was ratified by the President on May 15, 1967. LVI DEP'T STATE BULL. 897 (June 12, 1967). The treaty for the first time brings marihuana under international control: Article 4. *General obligations*. 1. The Parties shall take such legislative and administrative measures as may be necessary: (a) To give effect to and carry out the provisions of this Convention within their own territories . . . (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. Article 28. *Control of Cannabis*. . . 3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant. Article 33. *Possession of drugs*. The Parties shall not permit the possession of drugs except under legal authority. Article 36. *Penal Provisions*. 1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation, and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offenses when committed intentionally, and that serious offenses shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. Rosenthal, *Recommendations & Comments*, *supra* note 28, at 1121 n.424. Rosenthal

quires that any impetus for change emanate from the federal government, it should not be used as an excuse for failing to take an appropriate step toward solving the marihuana problem. It has been demonstrated that the present system has in fact failed to prevent the recent upsurge in the use of marihuana. As mentioned above, the legalization of marihuana might increase the extent of use in this country, but in the long run it probably would have a beneficial effect. The argument that legalization of marihuana might lead to excessive use and distribution as a result of advertising and experimentation by the cigarette companies can easily be met by including restrictions on advertising in marihuana legislation. Since the prohibition of the use and possession of marihuana is not a violation of due process, the government would be free to regulate the distribution of the drug in any manner it might see fit. Finally, the existence of adverse public opinion is not a valid argument for failing to enact an appropriate statute. Admittedly, it is unlikely, in light of present public sentiment that such a proposal would be enacted in the near future. This factor, however, is not a valid reason for not examining the facts and proposing a proper solution to the problem.

The one valid argument against the legalization of marihuana is that the extensive use of this drug will cause social problems similar to those associated with alcohol. Dr. Blum recognized that if there is a parallel in kinds of outcomes between marihuana and alcohol, there is "clearly a risk of unknown proportion that increased marihuana availability, as for example with its legalization, might lead to increased dependency and dangerous outcomes of the sort associated with alcohol itself, the latter unquestionably being a 'dangerous' drug in the social rather than legal sense."¹⁷⁶ Assuming that marihuana is a socially undesirable drug, the question which must be answered is whether, in light of the pleasurable results derived from its use and the absence of any serious mental or physical consequences, the use of the drug can be prevented. There is no question that the use of the drug can be prohibited by law, but as with alcohol there is reason for serious doubt that the law actually prevents its use.

The present marihuana laws are not only grossly unfair in light of the inherent risks of marihuana use, but also they have not proved

stated that the treaty probably would not prevent the adoption of the recommendation that simple possession, use and acquisition be no longer punishable. *Id.* The Commissioner of the Federal Bureau of Narcotics stated, however, that "it would be a violation of United States international treaty obligations to make possession of marijuana legal in this country The treaty requires imposition of criminal penalties for possession Failure to continue to provide such penalties for possession would be a violation of our treaty obligation." N.Y. Times, Nov. 16, 1967, at 38, col. 4.

176. Blum, *Dangerous Drugs*, *supra* note 4, at 26.

successful in preventing an increase in the use of the drug by all sectors of our society. It is widely believed that the punishments associated with marihuana possession and distribution must be mitigated, but mitigation will only lead to increased use and thus increased contact between the user and the pusher of drugs. In this light, the only realistic and practical approach to the regulation of this drug is through its legalization under governmental control. Marihuana use cannot be eliminated. Any approach to the regulation of this drug which hopes to solve its associated problems must find its basis in this general assumption.

VIII. CONCLUSION

The present is an ideal time for the revision of our federal and state marihuana laws. The President has just created a Bureau of Narcotics and Dangerous Drugs under the Justice Department, replacing the Bureau of Narcotics under the Treasury Department and the Bureau of Drug Abuse Control under the Department of Health, Education and Welfare.¹⁷⁷ Legalization of marihuana is the proposed solution, but if this step is not taken, it is mandatory that there be a revision of the presently existing laws with the objective being to bring the penalties for marihuana use and sale more in line with the known risks inherent in the use of the drug. Specific approaches to this problem will be examined in Part II of this note, but it is necessary at this time to set forth some general guidelines which will be followed. Legislation legalizing use and sale of marihuana should be adopted along the following lines:

- 1) Legalize acquisition, use and simple possession of marihuana.
- 2) Legalize licensed sale of marihuana under restricted circumstances, requiring high standards for the licensees.
- 3) Provide stiff penalties for unlicensed sale of marihuana.
- 4) Require licensed production of marihuana with high standards of quality, and prohibit private advertisement.
- 5) Tax consumption similarly to alcohol and tobacco.

In addition to discussing the legalization of marihuana use and sale, Part II of this note will examine alternative approaches to the problem, such as mitigation of present penalties and the treatment of use and sale as misdemeanors. It will also discuss in detail the recent treaty signed by the United States regulating marihuana.¹⁷⁸ If it is concluded at that time that the treaty precludes legalization, steps which can be taken to relieve the United States of its obligation will also be discussed.

177. N.Y. Times, Feb. 8, 1968, at 1, col. 1.

178. See note 175 *supra*.