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# MARIJUANA LAWS—A CRIME AGAINST HUMANITY

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## I. Introduction

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

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

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

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

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

problem. In this regard they can be considered as updating the earlier landmark report of Professor John Kaplan.[3] Recourse to either of these sources or to various others[4] will provide the reader with a good understanding of the history of marijuana in this country, both its use and related legislation.

Generally, marijuana was introduced into this country by Mexican laborers and New Orleans inhabitants in the 19th century and was confined to use by minority groups until the early 1960's.[5] However, in the 1920's, word of the use of this substance and of its alleged association with more dangerous drugs such as heroin reached government and law enforcement officials and a general feeling of prohibition against drug use of any kind (this was the Era of Prohibition against alcohol use) led to the enactment of laws against the use of marijuana. This did not occur, however, until after the "marijuana scare," a concerted effort on the part of many agencies, public and private, to "inform" the public about the dangers of marijuana as a killer drug capable of the worst horrors upon its user and a social disaster as well. This campaign, which was based upon misinformation and emotionalism, is attributed in large part to the then Commissioner of the newly created Federal Bureau of Narcotics, Henry J. Anslinger, who based his early opinions upon the "scientific studies" of Dr. Frank Gomila, Commissioner of Public Safety of New Orleans, and his chemist wife.

Thus, by 1931 several states had enacted laws against the use of marijuana (by "use" is variously meant possession, distribution, cultivation, etc.), and by 1937, the year of the enactment of the federal Marihuana Tax Act,[6] nearly every state had made possession of marijuana illegal.[7] The Marihuana Tax Act also acted as a general prohibition against the use of marijuana, and over the years the penalties for the use of marijuana were increased.[8]

By 1956, the year of the last amendment to the Tax Act, the penalty for possession included a two-year minimum (mandatory), and the penalty for sale was five years for the first offense and ten for the second. All this and yet no one responsible for this legislation had ever done a comprehensive study as to the effects of marijuana. Everyone, it seemed was willing to "take Commissioner Anslinger's word for it" despite the fact that there had been several early objective studies made regarding the effect of marijuana upon individuals and society[9] which had cast doubt on the claims of those opposed to marijuana use. These studies were simply ignored or belittled by those involved in campaigning and legislating against marijuana. For example, in 1958, a joint American Bar

3 J. KAPLAN, MARIJUANA—THE NEW PROHIBITION (1970) [hereinafter cited as KAPLAN].

4 *See, e.g.*, Bonnie & Whitehead, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971 (1970). (This is a rather lengthy article incorporating legal analysis and student survey work).

5 For a more detailed history of marijuana legislation, *see* GRINSPOON at 10-29; COMMISSION at 3-14.

6 Act of Aug. 2, 1937, ch. 553, § 8, 50 Stat. 554 (codified as amended at 26 U.S.C.A. 4744).

7 GRINSPOON at 16.

8 *See* Act of Nov. 2, 1951, ch. 666, §§ 1, 5(1), 65 Stat. 767; Act of July 18, 1956, ch. 629, Title I § 101, 70 Stat. 567. *See also* Narcotic Control Act, Act of July 18, 1956, ch. 629, § 106, 70 Stat. 5570 (codified at 21 U.S.C.A. § 176(a)) (repealed 1970).

9 *See, e.g.*, MAYOR'S COMMITTEE ON MARIHUANA, THE MARIHUANA PROBLEM IN THE CITY OF NEW YORK (1944). (The LAGUARDIA REPORT.) W. Bromberg, *Marihuana Intoxication*, AMER. J. PSYCHIAT. 91 (1934) quoted in GRINSPOON at 18.

Association/American Medical Association Committee restudied the drug problem in the United States and was asked to report to the Federal Bureau of Narcotics. Among other heretical innovations, the committee urged the creation of heroin addiction treatment centers and a reconsideration of marijuana and other drugs. For this it was roundly condemned by Commissioner Anslinger, who, in a letter to the committee chairman called the report prejudiced, ambiguous, inconsistent, inaccurate and false propaganda, and went on to inform the committee that he was not trying to censor the report but merely wanted a "factual document."[10]

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

> Here is an example of youth being aroused to the death dealing properties of contraband narcotics, but the ABA-AMA Joint Committee will not go along with them. Contrast this youth movement with the sentence imposed upon George Yokoyama by a California judge who placed the defendant on probation for two years, fined him $150 . . . "to be paid in installments," following his conviction of having "Approximately *900 pounds of growing marijuana*"—enough of the killer weed to send hundreds of juveniles reeling into a world of moronic behaviour, crime and near-insanity.[11]

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

> What are these drugs that can turn potentially useful citizens into hopeless, estranged, dependent individuals? That can turn normal young men and women to crime? They are many and include . . . morphine, heroin . . . marijuana.[12]

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

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

10 ADVISORY COMMITTEE TO THE FEDERAL BUREAU OF NARCOTICS, ADVISORY REPORT, at viii (U.S. Gov't Printing Office 1958).

11 *Id.* at 98.

12 THE PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE, FINAL REPORT at 1 (U.S. Gov't Printing Office 1963).

marijuana usage during the decades prior to the 1960's, it seems reasonable to assume that those among the citizenry who had an idea what marijuana was were probably in favor of harsh criminal penalties for its use because of the virulent antimarijuana campaign previously described. Yet today, public opinion, indeed all opinion, has altered its course. The National Survey, a poll conducted under the auspices of the National Commission, made a comprehensive statistical report of the attitudes of the public at large and various government officials and, *inter alia,* reported that at the present time, 51% of all adults polled believe that marijuana should be treated as a medical problem[13] and 87% object to putting users in jail.[14] Equally as important, 31% of all prosecutors polled admitted that they would not prosecute anyone arrested for smoking a marijuana cigarette at a private social gathering, and 53% admitted that the legislation against the possession and use of marijuana does not deter the under-30 group from such possession and use.[15] Perhaps most important was the conclusion of the National Commission itself, as will be discussed in greater detail later in this article, which, after its comprehensive, yearlong study, recommended partial legalization of marijuana use (private, personal possession of marijuana and casual transfers for little or no remuneration).[16]

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

## II. What Is Marijuana? What Are Its Effects?

> It probably originated somewhere in Central Asia (as did mankind) and was first used perhaps five thousand years ago. Our marijuana is one-fifth to one-tenth as strong as other cannabis preparations which are preferred abroad, and it is looked down upon in other countries as fit only for the poor. It is the weakest of three grades used throughout the world; *ganja,* the intermediate grade, is the ground-up tops of specially cultivated plants; *hashish* or *charas* is the pure resin from the best cultivated plants and is usually the strongest. Marijuana is the entire foliage from ordinary plants. It is usually smoked, although it can also be ingested in foods or tea.[17]

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

> Looking only at the effects on the individual, there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis . . .[18]

13 COMMISSION at 122.
14 COMMISSION at 144.
15 COMMISSION at 120.
16 COMMISSION at 140, 152, 154.
17 MARIJUANA—MYTHS AND REALITIES 230 (J. L. Simmons ed. 1967).
18 COMMISSION at 65.

So concluded the National Commission, going on to note that the heavy use of cannabis in its most potent forms over a long period of time, a practice of only 2%[19] of all marijuana users, leads to psychological dependence proportionate to use, some minor behavioral changes and possible (results of studies are as yet inconclusive) pulmonary alteration.[20]

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

> It is quite true that among the hundreds and hundreds of papers dealing with cannabis, there is relatively little methodologically sound research. Yet out of this vast collection of largely unsystematic recordings emerges a very strong impression that no amount of research is likely to prove that cannabis is as dangerous as alcohol and tobacco. The very serious dangers of tobacco, particularly to the pulmonary and cardiovascular systems, are becoming increasingly well known. . . . It is a curious fact that the only socially accepted and used drugs known to cause tissue damage (alcohol and tobacco) are the ones whose use Western society sanctions. It is reasonably well established that cannabis causes no tissue damage. There is no evidence that it leads to any cellular damage to any organ. It does not lead to psychoses *de novo*, and the evidence that it promotes personality deterioration is quite unconvincing, particularly in the forms and dosage used in the United States today.[21]

Both the National Commission and Dr. Grinspoon devote a large portion of their reports to a detailed discussion of the physical and mental effects of marijuana on the individual user. The quotations reproduced above are indicative of the conclusions reached by both authorities. Both the Commission and Dr. Grinspoon based their conclusions upon careful analyses of the results of past and currently existing research projects by independent researchers. Many of the same studies are quoted by both the National Commission and Dr. Grinspoon,[22] and both sources appear aware of the results of most if not all of the existing projects and studies that are available on the subject of marijuana's effects on the user.[23] Generally, both the National Commission and Dr. Grinspoon report the following similar findings, many of which explode the old myths about the dangers of marijuana use.[24] As just mentioned, short-term use of marijuana causes no organic damage to its user or any adverse mental effects. In addition, there are no known cases of human fatalities attributable to marijuana use,[25] marijuana is not physically addictive,[26] does not lead to a decrease in ambition or motivation (what has been variously termed the "drop out" or "amotivational syndrome"),[27] is not a stepping-stone to the "harder drugs" such as heroin and cocaine,[28] does not produce psychoses in its users,[29] and is a mild

19 COMMISSION at 87 *et seq.*
20 COMMISSION at 65 (*see generally* 55-66).
21 GRINSPOON at 370, 371.
22 Many of these studies are also mentioned in Kaplan's work, *supra* note 3.
23 GRINSPOON at 3; COMMISSION at 62.
24 For a similar report, slightly dated, and reduced to chart form, *see* S. YOLLES, MARIHUANA, FABLE—FACT, 3 U.S. CODE CONG. AND AD. NEWS 4577-78 (1970).
25 GRINSPOON at 227.
26 GRINSPOON at 223; COMMISSION at 65, 66; KAPLAN at 164-175.
27 GRINSPOON at 290; COMMISSION at 62; KAPLAN at 193.
28 GRINSPOON at 235 *et seq.*; COMMISSION at 87, 88; KAPLAN at 270.
29 GRINSPOON at 253 *et seq.*; COMMISSION at 58; KAPLAN at 148-160.

intoxicant (or psychoactive drug) which ought not necessarily be clasified as a hallucinogen.[30] It does not lead to crime, violent or non-violent,[31] does not cause that most dread of all American fears, an increased sex urge,[32] and it will not result, as its opponents used to assert in their heyday, in insanity.[33] In many users it will, unlike alcohol,[34] result in no substantial interference with driving. In fact, there are growing indications that cannabis preparations might have substantial medical value.[35]

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

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

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

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

## III. Recent Statutory Developments

Since 1969, every state and the federal government have made changes in their marijuana statutes, all of them lessening penalties in one way or another and generally they accord possession of small amounts of marijuana misdemeanor treatment.[40] As noted earlier, federal law has been, in past years, rather harsh in its treatment of the marijuana user. On October 27, 1970, Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970,[41] was enacted. It is intended to encompass legislatively all drugs currently in use in the United States and those which might come into being or use in the future. With respect to marijuana it lessens criminal penalties dramatically. The Act places marijuana in the same category as heroin and other opium-derived drugs (there are five categories, or "schedules") because of its alleged high potential for abuse and because of the claim that marijuana has no currently accepted medicinal use and that its use is not considered safe, even under medical supervision.[42]

The penalty specified for distribution of marijuana, or for possession with intent to distribute the drug, is five years' imprisonment or $15,000 fine or both, and two years of mandatory parole for those imprisoned, for the first offense. The penalties double for a second offense.[43] However, those who distribute small amounts of marijuana for no remuneration are treated under a separate provision and accorded the same required penalty as those convicted of mere possession of marijuana (simple possession of any drug, be it marijuana, LSD or heroin brings the same penalty under the Act).[44] A conviction for possession of marijuana for a first offender brings with it, at the court's discretion, the possibility of a conditional discharge. That is, the first offender may be placed on a maximum of a year's probation during which time his conviction is not recorded as a final judgment. If the defendant successfully completes his term of probation, the conviction is set aside, and his record will show no conviction for a marijuana violation. (A separate file is kept by the Department of Justice to insure that no defendant receives such treatment twice.) For first offenders who are not sentenced under this provision or who violate their probation and are convicted of the crime of possession, the penalty is one year in jail or a $5,000 fine, or both. The penalty doubles for subsequent offenses.[45] The penalty for distribution is doubled (10 years and/or $30,000) for adults who distribute to minors; said penalty is increased threefold if the distributor has already been convicted once of distribution to a minor.[46] Thus, while federal law has become more lenient in its response to marijuana use, all phases of such use are still unlawful.

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

40 COMMISSION at 547, 548 (app. vol. I).
41 21 U.S.C. §§ 801-966 (Supp. 1971).
42 *Id.* § 812.
43 *Id.* § 841(b)(1)(B).
44 *Id.* § 841(b)(4).
45 *Id.* § 844.
46 *Id.* § 845.

states had extremely harsh penalties until the late 1960's. Some penalties are still rather heavy, compared to sister states' penalties and those of the federal government. But at least the specter of the death penalty has disappeared and that is, presumably, something every imprisoned marijuana offender can be grateful for. The reform movement among the states began its current drive with the passage of the Uniform Controlled Dangerous Substances Act by the National Conference on Uniform State Laws.[47] The Conference passed this Uniform Act on August 8, 1970, stating in its prefatory remarks that it sought uniformity among the states regarding the drug problem, and attributing the "drug abuse problem" to the increased mobility of the American citizens and their affluence.

The Uniform Act prohibits certain acts but leaves specific sentences to the individual states, thereby insuring the very lack of uniformity that the law was designed to remedy. Since its enactment, 30 states have adopted it and more are considering it for adoption.[48]

Under the Uniform Act marijuana is treated in much the same way as under the previously described federal Drug Act of 1970. All drugs are categorized into five schedules depending upon their potential for abuse, and penalties are assessed accordingly. Marijuana is again classified with the opiates, LSD, etc. There is also a provision against distribution to a minor, with a questionable comment,[49] and in many respects there is no difference between the federal law and the Uniform Act. Penalties under the Act are left to the individual states to determine. As mentioned previously,[50] every state has changed its law since 1969, and many of these states have adopted the Uniform Act. Those that have not are, in many cases, considering adoption, and many who decided not to adopt incorporated the philosophy of the Act or certain of its provisions into their statutory schemes. (The relevant chart provided by the National Commission is appended to this article. It is current up to March, 1972.)

Among the states, there are still glaring differences in penalties for marijuana use. By way of example, in Arkansas first and second violations of the provision against possession of marijuana are punishable by a *maximum* of one year in jail or a $250 fine or both.[51] The offender is labelled a misdemeanant. In Colorado, misdemeanor treatment is available to those who possess one-half ounce or less, but for those who possess more (keeping in mind that street use generally involves a "lid" which is one ounce) felony treatment occurs and the offender runs the risk of two to fifteen years for a first offense or a $10,000 fine or both. Penalties increase for subsequent offenses.[52] Sale of marijuana brings a penalty of five years to life in California, with a *mandatory minimum* of three years' im-

47 1970 HANDBOOK OF THE NATIONAL CONF. OF COMMS. ON UNIFORM STATE LAWS 223.

48 COMMISSION at 548 (app. vol. I).

49 1970 HANDBOOK, *supra* note 47, at § 406. (The reason for requiring a three-year difference between the seller and the buyer before this section becomes operative is because "In this situation, there is not the element of seduction so often found in the cases where the distributor and recipient are far apart in age.") *But see* COMMISSION at 41. (The process whereby one becomes a marihuana user is not a "seduction of the innocent.")

50 *See* text accompanying note 40 *supra*.

51 7A No. 590 [1971] Ark. Acts 1342.

52 12 COLO. REV. STAT. § 48-5-20(b) (1971 Supp.).

prisonment,[53] while in Maine, the penalty for sale is *not more than* five years' imprisonment and/or a $1,000 fine.[54] Sale to a minor is punishable by a *maximum* of five years' imprisonment and/or $5,000 fine in Georgia.[55] A similar violation in Missouri brings the incredible penalty of 10 years to life with no probation or parole possible![56]

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

## IV. Recent Judicial Developments

Recently, there have been an increasing number of attacks upon the constitutionality of marijuana laws. These attacks began in the 1960's[57] and have kept pace with the increase in the number of marijuana arrests. In 1965 there were approximately 20,000 arrests by state authorities for violations of drug laws; the number burgeoned to 495,000 arrests in 1971—with 90% of those arrests for possession of marijuana.[58] This enormous increase has not gone unchallenged, but rare is the case in which a marijuana law has been declared unconstitutional. One of the most heralded early attacks was in the case of *Commonwealth v. Leis*,[59] a 1969 Massachusetts case in which the defendant argued the unconstitutionality of the state statute in question on a variety of grounds. In ruling the statute constitutional, the Massachusetts Supreme Judicial Court stated that it did not believe that smoking marijuana was a fundamental liberty. Further, the inclusion of marijuana in the category of narcotics was not arbitrary. (The court seems, in this case, to have defined "narcotic" as any mind-altering drug.) In response to the argument that marijuana should be treated in the same manner as alcohol, the court answered that more information is available about alcohol abuse than is known about marijuana and, further, alcohol abuse can be more easily controlled. Finally, the court did not feel that penal sanctions for the possession of marijuana imposed a cruel and unusual punishment upon the defendant primarily because at the time of the appeal no sentence had been

53 CAL. HEALTH & SAFTEY CODE § 11531 (West Supp. 1972).
54 22 MAINE REV. STAT. ANN. § 2384 (Supp. 1972).
55 22 GEO. CODE ANN. § 79A-9915 (Supp. 1971).
56 12 MISS. CODE ANN. § 195.200 (1971).
57 *See, e.g.*, People v. Leal, 64 Cal. 2d 504, 413 P.2d 665 (1966).
58 COMMISSION at 106; 1971 statistics submitted October 13, 1972, at ABA national institute seminar on drug cases, Los Angeles, by Michael R. Sonnenreich, Executive Director, National Commission on Marihuana and Drug Abuse, Washington, D.C.
59 355 Mass. 189, 243 N.E.2d 898 (1969).

handed down and because the court did not find persuasive the argument that *any* punishment for marijuana possession is cruel and unusual.

Reviewing the *Leis* decision after a period of four years gives one an advantageous position. However, perhaps the most faulty logic on the part of the court was equally apparent four years ago. Reference is made to the argument that more is known about alcohol's effects than is known about those of marijuana. That, of course, is not the same thing as saying that it is known that marijuana produces undesirable effects. More is known about the dangers of alcohol abuse than about many drugs which can be bought without prescription today,[60] and yet those drugs are not made illegal and their users put into penitentiaries. Also, the inclusion of marijuana in the category of narcotics, by defining "narcotics" as any mind-altering drug, is a masterpiece of judicial mental contortion which would conceivably open the category of "narcotics" to every tranquilizer and sedative available today. Finally, the statement that more is known about alcohol abuse and that such abuse can be better controlled than marijuana abuse is amusing. Much indeed is known about alcohol abuse in this country. Nine million of our fellow citizens are alcoholics, and billions of dollars each year are lost to the national economy because of the abuse of this drug.[61] If anything, one would have expected the court to take judicial notice of the fact that alcohol abuse is *out of control* in this country.

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

A case from Florida the same year exhibited its own charm. *Borras v. State*[63] is interesting for the assertion upon the part of the Florida Supreme Court that marijuana is a "harmful, mind-altering drug," a remark for which the court offered no supportive citation. Further, the court met the argument that if one could constitutionally read obscene literature in one's home wihout fear of arrest, one could similarly smoke marijuana (this argument came quickly on the heels of the United States Supreme Court ruling in *Stanley v. Georgia*)[64] by maintaining that marijuana use is more dangerous to society than possession of obscene material. (Actually, the court's language reveals some uncertainty about this—it appears the court was not too keen on the idea of people reading obscene material either.) The state, it was reasoned, had an interest in preventing harm to the individual and to the public, and, therefore, the illegalization of marijuana was permissible. Then, in a flourish of pomposity and patriotic pride, the court announced that the State of Florida had an interest in having "robust citizens" capable of self-support who would bear arms and add to the country's resources.

60 COMMISSION at 481 *et seq.* (app. vol. I).
61 COMMISSION at 498 *et seq.* (app. vol. I); KAPLAN at 275-298.
62 153 Mont. 193, 456 P.2d 54 (1969).
63 229 So. 2d 244 (Fla. 1969).
64 394 U.S. 557 (1969).

Since marijuana is a threat to the individual and to society as a whole, its use can be totally prohibited.

The same court continued on in much the same vein in *Raines v. State*[65] by declaring that the classification of marijuana as a narcotic did not violate the Equal Protection Clause and that punishment under state penal provisions did not constitute cruel and unusual punishment.

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

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

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

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

The recent case of *People v. Sinclair*[71] has also served to bring the marijuana issue into focus. In this case, the defendant leader of a politically radical group known as the White Panthers, was convicted of possession of marijuana and sentenced to 9½ to 10 years in prison. In reversing his conviction, the Michigan Supreme Court handed down four separate opinions in which four of the justices

65 225 So. 2d 330 (Fla. 1969).
66 78 Wash. 2d 9, 475 P.2d 109 (1970).
67 49 Ill. 2d 338, 275 N.E.2d 407 (1971).
68 — W. Va. —, 187 S.E.2d 119 (1972).
69 11 CRIM. L. REP. (BNA) 2140 (April 18, 1972).
70 11 CRIM. L. REP. (BNA) 2204 (May 11, 1972).
71 387 Mich. 91, 194 N.W.2d 878 (1972).

voted for reversal and two merely for modifying the sentence imposed. The arguments were many and varied, including the opinion written for the court by Justice Swainson holding that the evidence used to convict was inadmissible because Sinclair had been entrapped. The argument that the sentence constituted cruel and unusual punishment was appealing to two of the justices while two also felt that classification of marijuana as a narcotic violated the Equal Protection Clause. One justice argued that the illegalization of marijuana denied the right to liberty and the pursuit of happiness.

In what was virtually a companion case, the court also decided *People v. Lorentzen,*[72] in which it held that a 20-year *minimum* term of imprisonment for sale of marijuana was cruel and unusual punishment. The court compared this sentence with others imposed upon those convicted of different crimes in Michigan and, *inter alia,* noted that the *maximum* for manslaughter in the state was only 15 years and for felonious assault with a gun merely four years.

Finally, the Hawaii Supreme Court was recently presented with the question of the constitutionality of the Hawaiian statute making possession of marijuana illegal in *State v. Kantner.*[73] The court held, in an exquisitely unique decision, that the marijuana law was constitutional. Three justices voted to uphold the law, two to declare it unconstitutional (the latter two on privacy, due process and equal protection grounds). One of those voting to uphold the law (Justice Abe) did so despite his own stated belief that the law was unconstitutional because he felt that the issue of constitutionality had not been properly raised. The majority opinion held that the classification of marijuana as a narcotic did not violate the due process and equal protection clauses of the federal and state constitutions because, while it may be true that marijuana is not scientifically a narcotic, the legislature has broad power in defining terms for legislative purposes, and, in any event, no one was misled by the legislative classification. Further, the court noted that marijuana was treated differently than other narcotic drugs under Hawaii law.

The classification argument has aspects of an "Oh, you know what we mean" justification. It overlooks the fact that by allowing an inaccurate classification, improper treatment of violators occurs. The legislature is not forced thereby to reconsider and justify the illegalization of marijuana. As for the argument that marijuana is treated differently, the very fact that it is included in the category of narcotics places a second offender in danger of receiving a mandatory one-year minimum imprisonment, a fate not imposed upon those found guilty for a second time of possession of LSD, amphetamines, barbiturates or any other "harmful drugs."[74]

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

72 387 Mich. 167, 194 N.W.2d 827 (1972).

73 493 P.2d 306 (Hawaii 1972); *petition for cert. filed* 40 U.S.L.W. 3577 (U.S. May 30, 1972) (No. 71-1558).

74 HAWAII REV. LAWS § 329-5 (1968). It should be noted that Hawaii has recently passed a law removing marijuana from the category of narcotics as of January 1, 1973. *See* Act 9, [1972] Hawaii, Acts: "The New Hawaii Penal Code."

been petitioned for a *writ of certiorari* asking that the statute prohibiting the use of the "narcotic" marijuana be declared unconstitutional.[75]

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

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

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

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

The authors rejected the argument that marijuana use is protected religious activity,[78] noting the difference between protection of religious beliefs, as guaranteed by the Constitution of the United States, and mere religious activity. Finally, the authors opined that before any court would ever hold that smoking marijuana is a fundamental right, it would necessarily be required to find that there is such a concept as sensual individuality. This the authors expressed doubt would ever occur. (Note, however, Justice Levinson's dissent in *State v. Kantner,*

75 State v. Kanter, 493 P.2d 306 (Hawaii 1972); *petition for cert. filed* 40 U.S.L.W. 3577 (U.S. May 30, 1972) (No. 71-1558).

76 Bonnie & Whitehead, *supra* note 4.

77 *See, e.g.,* Commonwealth v. Leis, 355 Mass. 189, 243 N.E.2d 898 (1969).

78 *See, e.g.,* People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964) (upholding religious use of peyote); Leary v. United States, 383 F.2d 851 (5th Cir. 1967), *rev'd on other grounds,* 395 U.S. 6 (1969).

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

Another equally analytical essay is to be found in the Appendix to the report of the National Commission.[79] In this chapter, entitled "The Constitutional Dimensions of Marihuana Control," the lawyer-authors focus attention upon the extent to which the United States Constitution may be seen to impose substantive limitations upon the prohibition of marijuana for personal use and the equally important question of whether the federal government can impose its policies in this area of the law upon the several states. Any attorney contemplating a constitutional attack upon a law prohibiting the personal use of marijuana would be remiss if he did not read this chapter which argues that there are several avenues available for constitutional attack upon such statutes. First, the essay argues for the private use of marijuana as a fundamental right, part of *Griswold's* "zone of privacy."[80] The second possible attack lies within the doctrine of inherent limitations upon the police power of a state, limitations arising out of the state's interest in protecting only the public as opposed to the private welfare. Acknowledging that attacks based upon the Freedom of Religion Clause or the Equal Protection Clause have generally failed, the chapter goes on to note new approaches that can be taken within the framework of these constitutional clauses that may prove more successful. The article argues that federal preemption of the field of marijuana regulation and control can be accomplished either through the Commerce Clause or the enabling provision (section 5) of the fourteenth amendment. Congress, it is argued, could legislate state enforcement of federal penal provisions in order to avoid imposing a heavy burden upon the federal judiciary, and the desired uniformity of treatment of all marijuana offenders would be achieved.

Finally, there is the argument put in the form of a recent petition to the Attorney General's Office that, assuming marijuana use can be criminalized, it should not be classified as one of the most harmful drugs. That is, it should be removed from Schedule I and placed in Schedule V.[81]

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

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

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

79 COMMISSION at 1123 (app. vol. II).
80 Griswold v. Connecticut, 381 U.S. 479 (1965).
81 Petition has been filed with the U.S. Dep't of Justice by the National Organization for Reform of Marijuana Laws (NORML), the Institute for Study of Health and Society and the American Public Health Assoc. (APHA) (May 18, 1972).

judicial nullification of marijuana laws, the fact is that such laws are presently in force in every state as well as in the federal legal system. The cost of enforcing them is immeasurable, but some statistics should serve as gross indicators of the social expense involved.

It has been estimated that enforcement of the laws against marijuana cost the State of California $75 million in 1968 alone.[82] The increased alienation of the young and the encouragement of unhealthy police practices are two other, and often ignored, social costs. In fact, the entire judicial system seems to have undergone some compromise because of these laws. One study reports that, in addition to the many other social costs involved, we also have the misfortune (from one point of view) of seeing judgments of acquittal returned in the face of overwhelming evidence of guilt solely because of the hesitancy on the part of judges to convict young defendants and place them in jeopardy of receiving serious punishment.[83]

Another social "cost" lies in the credibility gap developing between the judiciary and the public in general on the one hand and law enforcement officers on the other hand. The officers, it is feared, are becoming skilled perjurers in order to obtain drug convictions, a fact that has not gone unnoticed.[84]

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

Many proposals have appeared suggesting solutions to the marijuana problem. The National Commission has declared itself in favor of a policy of discouragement.[85] That is, the use of marijuana is to be discouraged, through partial prohibition of the drug. Total prohibition is deemed too harsh a remedy and, for that reason, the Commission recommends eliminating penalties for the possession of marijuana for private use, including private distribution of small amounts for no profit. Any other use (possession with intent to sell, cultivation, etc.) would continue to be a crime and, generally, the Commission urges felony treatment. Complete legalization is rejected because it is the hope of the Commission that marijuana is merely a fad which will soon die out if not encouraged. Also, the Commission does not believe that a substance which has uncertain long-term effects should be legalized. Nonetheless, the Commission does believe that the widespread use of marijuana in this country is an essentially innocuous practice and that the threat of incarceration is an unreasonable burden in certain instances. Further, legalization of some aspects of the marijuana problem would

82 Note, *Possession of Marijuana in San Mateo County: Some Social Costs of Criminalization* 22 STAN. L. REV. 101 (1969); L. Calof, THE FINANCIAL COST OF ENFORCING MARIJUANA LAWS (1968) quoted in KAPLAN, *supra* note 3, at 29.

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

84 KAPLAN at 44, 45; Comment, *Police Perjury In Narcotics "Dropsy" Cases: A New Credibility Gap,* 60 GEO. L.J. 507 (1971).

85 COMMISSION at 134 *et seq.*

free both law enforcement officials and the courts to concentrate their efforts on the more serious violators of the drug laws, the importers and manufacturers of the "hard drugs," and those who deal in marijuana solely for profit.

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

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

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

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

The Commission admits that private use of marijuana produces no social or individual harm and that laws prohibiting such use are constitutionally suspect. It agrees that even the practice of imposing civil fines would be of little value, since that would continue the current misuse of police manpower and the con-

current undesirable invasions of privacy necessary for law enforcement. And yet the Commission, hanging by a thread, argues for partial prohibition. Its justifications for this stance involve carefully constructed attempts to gather in every conceivable shred of evidence against marijuana use (it *might* have undesirable personal effects *if* used in *very heavy* amounts over a *long* period of time; it symbolizes anti-establishment values; its use is not responsible; it is of transient social interest, etc.).[86] While its carefully gathered statistical and scientific evidence goes in one direction, the Commission acrobatically, but not too convincingly, goes in the other.

Dr. Grinspoon opts for legalization of the personal use of marijuana of predetermined potency and consequently for governmental regulation of marijuana in much the same manner as alcohol.[87] He does not believe that long-term use degenerates the user,[88] and while he admits that marijuana is not completely harmless in its effects on the user, in the sense that no drug is ever completely harmless,[89] he does believe that its relative lack of harm merits kinder treatment for its use than the states and federal government have thus far afforded.

Approaching the subject from a different viewpoint, Professor John Kaplan wrote recently[90] that the problem with laws that seek to protect people from themselves is that they are so atypical that the "protected" person feels resentment toward the government because he knows of more dangerous activities that are not condemned. "The laws requiring one to protect himself are little islands of criminal liability in a vast sea of freedom to injure one's self."[91] These criminal laws, Kaplan goes on to say, are counterproductive in terms of educational programs because those to be educated—that is, the drug users—tend to feel that the educational process is just another means of enforcing the law. Thus, in implying that the prohibition against marijuana is doomed to failure, Kaplan points out that drug laws are successful only when people do not want a drug intensely. For example, the prohibition against alcohol did not work because the desire for alcohol on the part of large numbers of people was great. The ban against cyclamates does work because there is no black market demand for products with cyclamates.

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

Countless others have called for legalization of marijuana or at the very least a reconsideration of the current penalties imposed upon marijuana use. These voices include American Bar Association committees,[92] legislators[93] and the

86 COMMISSION at 150.
87 GRINSPOON at 367 *et seq.*
88 GRINSPOON at 276.
89 GRINSPOON at 9.
90 Kaplan, *The Role of the Law in Drug Control,* 1971 DUKE L. J. 1065.
91 *Id.* at 1072.
92 ABA Special Committee on Crime Prevention and Control, *New Perspectives on Urban Crime,* reported in 11 CRIM. L. REP. (BNA) 2018 (April 5, 1972) (urging consideration of the repeal of "victimless crime" laws); Committee on Alcoholism and Drug Reform (section

President's Commission on Law Enforcement and the Administration of Justice.[94] All of these authorities appear convinced that the greatest undesirable effect marijuana produces is the possibility of imprisonment.

## VI. Conclusion

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

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

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

on Individual Rights and Responsibilities) and Committee on Drug Abuse (section on Criminal Law) as reported in COMMISSION at 109 *et seq.*

93 11 CRIM. L. REP. (BNA) 2019 (April 5, 1972) (bill introduced in New York legislature seeking legalization of possession of four ounces or less).

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

95 COMMISSION at 127 *et seq.*

96 COMMISSION at 15; KAPLAN at 317-20 (discussion of the dangers of alcohol as compared to those of marijuana use).

section as preventing the improper use of substances which have a detrimental effect on the health and welfare of the American people, that alcohol and tobacco were to be specifically excluded from control under the Act.[97] The mere mention of this is certain to do much for the credibility of the legislation with American youth.

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

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

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

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

97 21 U.S.C. § 801, 802(6) (Supp. 1971).

ization of marijuana, the Government has continued to avoid the information presented and instead has sought new ways to justify illegalization. The arguments it offers are neither believed nor trusted.

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

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

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

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

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

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

Marijuana use should be treated as is the use of "the other intoxicant," alcohol. Legalization of marijuana use, with strict control by regulatory agencies, limitations on the age of the user, the manner and places in which it may be pur-

chased, its potency level predetermined, with no legally recognized justification for acts committed while under its influence, etc.—this is the more reasonable way of approaching the marijuana issue. Continued criminalization of marijuana users is an absurd way of dealing with essentially law-abiding citizens. This illogical stance on the part of government is serving only as more fodder for those who would convince our citizenry that government is an unresponsive tool in the hands of the few. In an ironic turnabout, it is the enforcement of a law that is endangering society, harming society's members. The laws against marijuana use have become a crime against humanity.

(taken from Marihuana—A Signal of Misunderstanding as reported by the National Commission on Marihuana and Drug Abuse, Appendix Vol. I at 532-37 (1972))

APPENDIX

| State | Year of Law[1] | Uniform Act | Classification of Marihuana[2] | Conditional Discharge for First Offense Possession Available[3] | Possession for Personal Use[4] | | Possession[5] | Sale[6] | Cultivation | Sale to A Minor |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Relevant Amount | Penalty | | | | |
| Alabama | 1971 | yes | hallucinogen | | amount discretionary for the court | NMT 1 yr. +/or NMT $1,000[7] | 2-15 yrs. +/or $25,000 | 2-15 yrs. +/or $25,000 | 2-15 yrs. +/or $25,000 | 4-30 yrs. +/or NMT $50,000 |
| Alaska | 1969 | | hallucinogen | | no separate penalty | | NMT 1 yr. +/or NMT $1,000 or custody for rehabilitation | NMT 25 yrs. +/or NMT $20,000 | no separate offense | up to life |
| Arizona | 1969 | | narcotic | | no separate penalty | | 1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000[8] | 5 yrs.-life & NMT $50,000 (parole after 3 yrs.) | 1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000 | 10 yrs.-life & NMT $50,000 (parole after 5 yrs.) |
| Arkansas | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. +/or NMT $250 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 10 yrs. +/or NMT $15,000 |
| California | 1970 | | narcotic | | no separate penalty | | NMT 1 yr. in county jail OR 1-10 yrs. + NMT $20,000 | 5 yrs.-life + NMT $20,000 (parole after 3 yrs.) | 1-10 yrs. (no release until served at least 1 yr.) | 10 yrs.-life + NMT $20,000 (parole after 5 yrs.; no probation) |
| Colorado | 1971 | | narcotic | yes | NMT 1/2 oz. | NMT 1 yr. +/or NMT $500 or NMT 1 yr. probation with psychiatric treatment | 2-15 yrs. + NMT $10,000 | 2-15 yrs. + NMT $10,000 | 2-15 yrs. + NMT $10,000 | life |
| Connecticut | 1971 | | controlled drug | | no separate penalty | | NMT 1 yr. +/or NMT $1,000 | 5-10 yrs. + NMT $3,000 over 1 kilo - 10-20 yrs. + NMT $3,000 | 5-10 yrs. + NMT $3,000 | no separate offense |
| Delaware | 1970 | | dangerous drug | yes | no separate penalty | | NMT 2 yrs. + NMT $500 | 5-10 yrs. + $1,000 to $10,000 | NMT 5 yrs. + NMT $3,000 | 7-15 yrs. + fined in discretion of court |
| Florida | 1971 | | narcotic | | NMT 5 g. | NMT 1 yr. or NMT $1,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 10 yrs. + NMT $10,000 (no probation) | NMT 10 yrs. + NMT $10,000 | 10 yrs.-life + NMT $10,000 (no suspension) |
| Georgia | 1970 | | depressant or stimulant | yes | NMT 1 oz. | NMT 1 yr. +/or NMT $1,000 | NMT 2 yrs. +/or NMT $2,000 | NMT 2 yrs. +/or NMT $2,000 | NMT 2 yrs. +/or NMT $2,000 | NMT 5 yrs. +/or NMT $5,000 |
| Hawaii | 1969 | | narcotic | | no separate penalty | | NMT 1 yr. OR 1-5 yrs. | NMT 10 yrs. at hard labor + NMT $1,000 | NMT 1 yr. OR 1-5 yrs. | NMT 20 yrs. at hard labor + NMT $1,000 |

| State | Year of Law | Uniform Act | Classification of Marihuana | Conditional Discharge for First Offense Possession Available | Possession for Personal Use: Relevant Amount | Possession for Personal Use: Penalty | Possession | Sale | Cultivation | Sale to A Minor |
|---|---|---|---|---|---|---|---|---|---|---|
| Idaho | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 6 mos. +/or NMT $300 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 10 yrs. +/or NMT $15,000 |
| Illinois | 1971 | yes | marihuana | yes | 2.5 g. or less<br>2.5 g.-10 g.<br>10 g.-30g. | NMT 90 days<br>NMT 180 days<br>NMT 1 yr. | 30 g.-500 g., 1-3 yrs.; more than 500 g. 1-5 yrs. | 2.5 g. or less, NMT 180 days; 2.5 g.-10g, NMT 1 yr. OR 1-2 yrs.; 10 g.-30 g., NMT 1 yr. OR 1-3 yrs.; 30 g.-500 g., 1-4 yrs.; over 500 g., 1-7 yrs. | NMT 1 yr. +/or NMT $1,500 | 2.5 g. or less, NMT 360 days; 2.5 g.-10 g., NMT 2 yrs. OR 2-4 yrs.; 10 g.-30 g., NMT 2yrs. OR 2-6 yrs.; 30 g.-500 g., 2-8 yrs.; over 500 g., 2-14 yrs. |
| Indiana | 1971 | | dangerous drug | | NMT 25 g. of marihuana or 5 g. of hashish | 30 days-1 yr. + NMT $500 | 1-10 yrs. + NMT $1,000 | 1-10 yrs. + NMT $1,000 | 1-10 yrs. + NMT $1,000 | no separate offense |
| Iowa | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 6 mos. +/or NMT $1,000 | NMT 5 yrs. + NMT $1,000 | NMT 5 yrs. + NMT $1,000 | NMT 7-1/2 yrs. +/or NMT $1,000 |
| Kansas | 1971 | | narcotic | | no separate penalty | | NMT 1 yr. +/or NMT $5,000 | minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000 | minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000 | no separate offense |
| Kentucky | 1970 | | dangerous drug | yes | no separate penalty | | treatment and rehabilitation NMT 1 yr. or NMT 6 mos. +/or NMT $600 | NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 10 yrs. +/or NMT $20,000 |
| Louisiana | 1970 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. +/or NMT $500 | NMT 10 yrs. at hard labor +/or NMT $15,000 | NMT 10 yrs. at hard labor +/or NMT $15,000 | NMT 20 yrs. at hard labor +/or NMT $30,000 |
| Maine | 1971 | | marihuana | | no separate penalty | | NMT 11 mos. + NMT $1,000 | NMT 5 yrs. +/or NMT $1,000 | NMT 11 mos. + NMT $1,000 | no separate offense |
| Maryland | 1970 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. +/or NMT $1,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | no separate offense |
| Massachusetts | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 6 mos. probation | NMT 2 yrs. +/or NMT $5,000 | NMT 2 yrs. +/or NMT $5,000 | no separate offense |

| State | Year of Law | Uniform Act | Classification of Marihuana | Conditional Discharge for First Offense Possession Available | Possession for Personal Use: Relevant Amount | Possession for Personal Use: Penalty | Possession | Sale | Cultivation | Sale to A Minor |
|---|---|---|---|---|---|---|---|---|---|---|
| Michigan | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 90 days +/or NMT $500 | NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 10 yrs. +/or NMT $5,000 |
| Minnesota | 1971 | yes | hallucinogen | yes | NMT 1-1/2 oz. of marihuana | NMT 1 yr. +/or NMT $1,000 | NMT 3 yrs. +/or NMT $3,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 10 yrs. +/or NMT $30,000 |
| Mississippi | 1971 | yes | hallucinogen | | no separate penalty | | NMT 6 mos. +/or NMT $500 NMT 4 yrs. +/or NMT $2,000[9] | NMT 4 yrs. +/or NMT $2,000 | NMT 4 yrs. +/or NMT $2,000 | NMT 8 yrs. +/or NMT $2,000 |
| Missouri | 1971 | yes | hallucinogen | yes | NMT 35 g. of marihuana or 5 g. of hashish | NMT 1 yr. +/or NMT $1,000 | NMT 5 yrs. OR NMT 1 yr. in county jail +/or NMT $1,000 | 5 yr. to life | NMT 20 yrs. in penitentiary OR 6 mos.-1 yr. in county jail | 5 yrs. to life or death |
| Montana | 1971 | | hallucinogen or dangerous drug | | NMT 60 g. of marihuana or 1 g. of hashish | NMT 1 yr. +/or NMT $1,000 | NMT 5 yrs.; if shown to be habitual user then committed to rehabilitation institution | 1 yr. to life | 1 yr. to life | no separate offense |
| Nebraska | 1971 | yes | hallucinogen | | NMT 1 lb. | NMT 7 days +/or NMT $500 | 1 yr. in prison OR NMT 6 mos. in jail +/or NMT $500 | 1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000 | 1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000 | no separate offense |
| Nevada | 1971 | yes | hallucinogen | yes | NMT 1 oz. | 1-6 yrs. + NMT $2,000 OR NMT 1 yr. in county jail + NMT $1,000 | 1-6 yrs. + NMT $2,000 | 1-20 yrs. + NMT $5,000 | 1-6 yrs. + NMT $2,000 | life with possible parole after 7 yrs. + NMT $5,000 |
| New Hampshire | 1971 | | controlled drug | | NMT 1 lb. | NMT 1 yr. +/or NMT $500 | NMT 5 yrs. +/or NMT $2,000 | NMT 10 yrs. +/or NMT $2,000 | NMT 10 yrs. +/or NMT $2,000 | no separate offense |
| New Jersey | 1970 | yes | hallucinogen | yes | NMT 25 g. of marihuana or 5 g. of hashish | NMT 6 mos. +/or NMT $500 (A quasi-criminal non-indictable offense) | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 10 yrs. +/or NMT $15,000 |
| New Mexico | 1972 | yes | hallucinogen | yes | NMT 1 oz.<br>More than 1 oz., less than 8 oz. | $50-$100 + NMT 15 days<br>$100-$1,000 +/or NMT 1 yr. | 8 oz. or more: 1-5 yrs. +/or $5,000 | 1-5 yrs. +/or NMT $5,000 | 10-50 yrs. +/or NMT $10,000 | 2-10 yrs. +/or NMT $5,000 |

| State | Year of Law | Uniform Act | Classification of Marihuana | Conditional Discharge for First Offense Possession Available | Possession for Personal Use: Relevant Amount | Possession for Personal Use: Penalty | Possession | Sale | Cultivation | Sale to A Minor |
|---|---|---|---|---|---|---|---|---|---|---|
| New York | 1971 | | narcotic | yes | NMT 1/4 oz. | NMT 1 yr. | 25-99 cigarettes or more than 1/4 oz.: 2-1/3-7 yrs. 100 or more cigarettes or more than 1 oz.: 5-15 yrs. | 5-15 yrs. | NMT 1 yr. | 8-1/3-25 yrs. |
| North Carolina | 1971 | yes | marihuana | yes | no separate penalty | | NMT 6 mos. +/or NMT $500 | NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. +/or NMT $5,000 | no separate offense |
| North Dakota | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT $500 +/or NMT 1 yr. | NMT 10 yrs. +/or NMT $5,000 | NMT 10 yrs. +/or NMT $5,000 | NMT 20 yrs. +/or NMT $5,000 |
| Ohio | 1970 | | hallucinogen | | no separate penalty | | NMT 1 yr. +/or NMT $1,000 | 20-40 yrs. | 2-15 yrs. + NMT $10,000 | 30 yrs.-life |
| Oklahoma | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. | 2-10 yrs. + NMT $5,000 | 2-10 Yrs. + NMT $5,000 | 4-20 yrs. + NMT $10,000 |
| Oregon | 1971 | | narcotic | | NMT 1 oz. | NMT 1 yr. +/or NMT $1,000 | NMT 10 yrs. +/or NMT $2,500 | NMT 10 yrs. +/or NMT $2,500 | NMT 10 yrs. +/or NMT $2,500 | NMT 20 yrs. +/or NMT $2,500 |
| Pennsylvania | 1970 | | narcotic | | no separate penalty | | 2-5 yrs. + NMT $2,000 | minimum 5-20 yrs. + NMT $5,000 | NMT 1 yr. +/or NMT $5,000 | no separate offense |
| Rhode Island | 1970 | | narcotic | | no separate penalty | | NMT 15 yrs. +/or NMT $10,000 | NMT 40 yrs. | NMT 20 yrs. | up to life (no probation) |
| South Carolina | 1971 | yes | hallucinogen | yes | NMT 28 g. of marihuana or 10 g. of hashish | NMT 3 mos. +/or NMT $100 | NMT 6 mos. +/or NMT $1,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 10 yrs. +/or NMT $10,000 |
| South Dakota | 1971 | yes | hallucinogen | yes | NMT 1 oz. | NMT 1 yr. +/or NMT $500 | 2-5 yrs. +/or NMT $5,000 | 5-10 yrs. +/or NMT $5,000 | 5-10 yrs. +/or NMT $5,000 | 10-20 yrs. +/or NMT $5,000 |
| Tennessee | 1971 | yes | hallucinogen | | no separate penalty | | NMT 1 yr. +/or NMT $1,000 or treatment in state facility | 1-5 yrs. + NMT $3,000 | 1-5 yrs. + NMT $3,000 | 2-10 yrs. + NMT $6,000 |
| Texas | 1971 | | narcotic | | no separate penalty | | 2 yrs.-life | 5 yrs.-life | 2 yrs.-life | 5 yrs.-life |
| Utah | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 6 mos. +/or NMT $299 | NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. +/or NMT $5,000 | NMT 10 yrs. +/or NMT $5,000 |

| State | Year of Law | Uniform Act | Classification of Marihuana | First Offense Possession Available | Possession for Personal Use | | Possession | Sale | Cultivation | Sale to A Minor |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Relevant Amount | Penalty | | | | |
| Vermont | 1971 | | regulated drug | | NMT 1/2 oz. | NMT 6 mos. +/or NMT $500 | 1/2 oz.-2 oz., NMT 2 yrs. +/or $2,000; 2 or more oz., NMT 5 yrs. +/or NMT $5,000 | NMT 5 yrs. + NMT $10,000 | NMT 5 yrs. + NMT $10,000 | NMT 5 yrs. + NMT $10,000 |
| Virginia | 1971 | yes | hallucinogen | | no separate penalty | | NMT 1 yr. +/or NMT $1,000 | 1-40 yrs. +/or NMT $25,000 | 1-40 yrs. +/or NMT $25,000 | 5-40 yrs. +/or NMT $50,000 |
| Washington | 1971 | yes | hallucinogen | | NMT 40 g. | NMT 90 days +/or NMT $250 | NMT 5 yrs. +/or NMT $10,000 | NMT 5 yrs. +/or NMT $10,000 | NMT 5 yrs. +/or NMT $10,000 | NMT 10 yrs. +/or NMT $10,000 |
| West Virginia | 1971 | yes | hallucinogen | yes | NMT 15 g. | conditional discharge mandatory for first offense | 90 days-6 mos. +/or NMT $1,000 | 1-5 yrs. +/or NMT $15,000 | 1-5 yrs. +/or NMT $15,000 | 2-10 yrs. +/or NMT $15,000 |
| Wisconsin | 1969 | | dangerous drug | yes | no separate penalty | | NMT 1 yr. +/or NMT $500 | NMT 5 yrs. +/or NMT $5,000 | no separate offense | NMT 15 yrs. |
| Wyoming | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 6 mos. + NMT $1,000 | NMT 10 yrs. +/or NMT $10,000 | NMT 6 mos. +/or NMT $1,000 | NMT 20 yrs. +/or NMT $20,000 |
| District of Columbia | 1970 | | narcotic | | no separate penalty | | NMT 1 yr. +/or $100-$1,000 | NMT 1 yr. +/or $100-$1,000 | NMT 1 yr. +/or $100-$1,000 | no separate offense |
| Guam | 1970 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. +/or NMT $1,000 | NMT 2 yrs. +/or NMT $1,000 | NMT 2 yrs. +/or NMT $1,000 | NMT 4 yrs. +/or NMT $4,000 |
| Puerto Rico | 1971 | yes | hallucinogen | yes | no separate penalty | | 1-3 yrs. +/or NMT $5,000 | 5-20 yrs. +/or NMT $20,000 | 5-20 yrs. +/or NMT $20,000 | 10-40 yrs. +/or NMT $40,000 |
| Virgin Islands | 1971 | yes | hallucinogen | yes | no separate penalty | | NMT 1 yr. +/or $5,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 5 yrs. +/or NMT $15,000 | NMT 15 yrs. +/or NMT $45,000 |

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

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

3 Conditional discharge is designed to permit a judge to place a first offender on probation in lieu of sentencing him to prison. It is usually applicable only to cases of first offense possession, and is available only once with respect to any person. In addition, this provision calls for confidentiality of the defendant's record upon fulfillment of all the terms and conditions of his probation. This precludes any criminal record from following the individual in later life.

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

5 In states with no special provision for possession of small amounts, the "possession" offense covers possession of any amount. In states which do have such a special provision, "possession" offense covers possession of over the specified amount. Possession does *not* include possession with intent to sell. This offense is usually punishable as if it were the actual offense of sale. Thus, the penalty for possession with intent to sell is the same as that for sale in 36 jurisdictions. The following 12 jurisdictions do not have a penalty for possession with intent to sell: Colorado, Florida, Georgia, Indiana, Maine, Mississippi, Missouri, Montana, Nevada, Pennsylvania, Texas, and the District of Columbia. Six other states have made possession with intent to sell a separate offense from sale: Arizona, California, New York, Ohio, Rhode Island, and Vermont.

6 This heading may include delivery, distribution, dispensing, furnishing, transportation, trafficking or transfer according to the individual jurisdiction.

7 "NMT" designates not more than.

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

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